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AND LEGAL AFFAIRS

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Legal and Human Rights Capacity Building Division

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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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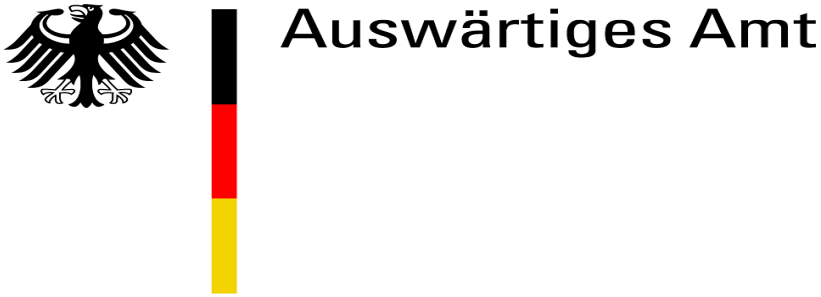

Part I : The activities of the European Court of Human Rights

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 / Domestic violence**

Opuz v. Turkey Grand Chamber (no. 33401/02) (Importance 1) – 9 June 2009 – Violation of Article 2 – National authorities' failure in their positive obligation to protect the right to life of the applicant's mother – Violation of Article 3 – State authorities' failure to take protective measures in the form of effective deterrence against serious breaches of the applicant's integrity by her husband – Violation of Article 14 in conjunction with Articles 2 and 3 – The violence suffered by the applicant and her mother was a gender-based violence

In 1990, the applicant, Nahide Opuz, started living with H.O., the son of her mother's husband. Ms Opuz and H.O. got married in November 1995 and had three children in 1993, 1994 and 1996. They had serious arguments from the beginning of their relationship and are now divorced.

The application was lodged with the Court on 15 July 2002 and was examined for admissibility and merits at the same time. Third-party comments were received from Interights which was given leave to intervene.

The applicant alleged that the Turkish authorities failed to protect the right to life of her mother and that they were negligent in the face of the repeated violence, death threats and injury to which she

herself was subjected. She relied on Articles 2, 3, 6 and 13. She further complained about the lack of protection of women against domestic violence under Turkish domestic law, in violation of Article 14.

Article 2

The Court considered that, in the applicant's case, further violence, indeed a lethal attack, had not only been possible but even foreseeable, given the history of H.O.'s violent behaviour and criminal record in respect of his wife and her mother and his continuing threat to their health and safety. Both the applicant and her mother had suffered physical injuries on many occasions and been subjected to psychological pressure and constant death threats, resulting in anguish and fear. The violence had escalated to such a degree that H.O. had used lethal weapons, such as a knife or a shotgun. The applicant's mother had become a target of the violence as a result of her perceived involvement in the couple's relationship; the couple's children could also be considered as victims on account of the psychological effects of the ongoing violence in the family home. As concerned the killing of the applicant's mother, H.O. had planned the attack, since he had been carrying a knife and a gun and had been wandering around the victim's house prior to the attack.

According to common practice in the member States, the more serious the offence or the greater the risk of further offences, the more likely it should be that the prosecution continue in the public interest, even if victims withdrew their complaints.

"145. […] The legislative framework then in force, particularly the minimum ten days' sickness unfitness requirement, fell short of the requirements inherent in the State's positive obligations to establish and apply effectively a system punishing all forms of domestic violence and providing sufficient safeguards for the victims. The Court thus considers that, bearing in mind the seriousness of the crimes committed by H.O. in the past, the prosecuting authorities should have been able to pursue the proceedings as a matter of public interest, regardless of the victims' withdrawal of complaints (see in this respect Recommendation Rec(2002)5 of the Committee of the Ministers, §§ 80-82 above).

146. The legislative framework preventing effective protection for victims of domestic violence aside, the Court must also consider whether the local authorities displayed due diligence to protect the right to life of the applicant's mother in other respects.

147. […] While the Government argued that there was no tangible evidence that the applicant's mother's life was in imminent danger, the Court observes that it is not in fact apparent that the authorities assessed the threat posed by H.O. and concluded that his detention was a disproportionate step in the circumstances; rather the authorities failed to address the issues at all. In any event, the Court would underline that in domestic violence cases perpetrators' rights cannot supersede victims' human rights to life and to physical and mental integrity (see the Fatma Yıldırım v. Austria and A.T. v. Hungary decisions of the CEDAW Committee) […] .

148. […] the local public prosecutor or the judge at the Magistrate's Court could have ordered on his/her initiative one or more of the protective measures enumerated under sections 1 and 2 of Law no. 4320. They could also have issued an injunction with the effect of banning H.O. from contacting, communicating with or approaching the applicant's mother or entering defined areas (see in this respect Recommendation Rec(2002)5 of the Committee of the Ministers, § 82 above). On the contrary, in response to the applicant's mother's repeated requests for protection, the police and the Magistrate's Court merely took statements from H.O. and released him (see paragraphs 47-52 above). While the authorities remained passive for almost two weeks apart from taking statements, H.O. shot dead the applicant's mother".

In these circumstances, the Court concluded that the national authorities cannot be considered to have displayed due diligence. They therefore failed in their positive obligation to protect the right to life of the applicant's mother within the meaning of Article 2 of the Convention.

"[…] 151. The Court notes that a comprehensive investigation has indeed been carried out by the authorities into the circumstances surrounding the killing of the applicant's mother. However, although H.O. was tried and convicted of murder and illegal possession of a firearm by the Diyarbakır Assize Court, the proceedings are still pending before the Court of Cassation (see paragraphs 57 and 58). Accordingly, the criminal proceedings in question, which have already lasted more than six years, cannot be described as a prompt response by the authorities in investigating an intentional killing where the perpetrator had already confessed to the crime.

[…]153. Moreover, the Court concludes that the criminal-law system, as applied in the instant case, did not have an adequate deterrent effect capable of ensuring the effective prevention of the unlawful acts committed by H.O. The obstacles resulting from the legislation and failure to use the means available undermined the deterrent effect of the judicial system in place and the role it was required to play in preventing a violation of the applicant's mother's right to life as enshrined in Article 2 of the Convention. The Court reiterates in this connection that, once the situation has been brought to their attention, the national authorities cannot rely on the victim's attitude for their failure to take adequate

measures which could prevent the likelihood of an aggressor carrying out his threats against the physical integrity of the victim (see Osman v. the United Kingdom, cited above, § 116). There has therefore been a violation of Article 2 of the Convention".

Article 3

The Court considered that the response to H.O.'s conduct had been manifestly inadequate in the face of the gravity of his offences. The judicial decisions, which had had no noticeable preventive or deterrent effect on H.O., had been ineffective and even disclosed a certain degree of tolerance towards his acts. Notably, after the car incident, H.O. had spent just 25 days in prison and only received a fine for the serious injuries he had inflicted on the applicant's mother. Even more striking, as punishment for stabbing the applicant seven times, he was merely imposed with a small fine, which could be paid in installments.

"171. As regards the Government's assertion that, in addition to the available remedies under Law no. 4320, the applicant could have sought shelter in one of the guest houses set up to protect women, the Court notes that until 14 January 1998 – the date on which Law no. 4320 [of the Family Protection Act] entered into force – Turkish law did not provide for specific administrative and policing measures designed to protect vulnerable persons against domestic violence. Even after that date, it does not appear that the domestic authorities effectively applied the measures and sanctions provided by that Law with a view to protecting the applicant against her husband. Taking into account the overall amount of violence perpetrated by H.O., the prosecutor's office ought to have applied on its own motion the measures contained in Law no. 4320, without expecting a specific request to be made by the applicant for the implementation of that law. Finally, the Court noted with grave concern that the violence suffered by the applicant had not in fact ended and that the authorities continued to display inaction. Despite the applicant's request in April 2008, nothing was done until after the Court requested the Government to provide information about the protection measures it had taken. […]

173. Finally, the Court notes with grave concern that the violence suffered by the applicant had not come to an end and that the authorities had continued to display inaction. In this connection, the Court points out that, immediately after his release from prison, H.O. again issued threats against the physical integrity of the applicant. Despite the applicant's petition of 15 April 2008 requesting the prosecuting authorities to take measures for her protection, nothing was done until after the Court requested the Government to provide information about the measures that have been taken by their authorities. Following this request, on the instructions of the Ministry of Justice, the Diyarbakır Public Prosecutor questioned H.O. about the death threats issued by him and took statements from the applicant's current boyfriend.

174. The applicant's legal representative again informed the Court that the applicant's life was in immediate danger, given the authorities' continuous failure to take sufficient measures to protect her client. It appears that following the transmission of this complaint and the Court's request for an explanation in this respect, the local authorities have now put in place specific measures to ensure the protection of the applicant."

The Court therefore unanimously concluded that there had been a violation of Article 3 as a result of the authorities' failure to take protective measures in the form of effective deterrence against serious breaches of the applicant's personal integrity by her ex-husband.

Article 14

The Court first looked at the provisions related to discrimination against women and violence according to some specialised international human rights instruments, in particular the Convention for the Elimination of Discrimination Against Women and the Belem do para Convention, as well as at the relevant documents and decisions of international legal bodies, such as the United Nations Commission on Human Rights and the Inter-American Commission. It transpired from the international-law rules and principles, accepted by the vast majority of States, that the State's failure – even if unintentional - to protect women against domestic violence breached women's right to equal protection of the law.

According to reports submitted by the applicant drawn up by two leading non-governmental organisations, the Diyarbakır Bar Association and Amnesty International, and uncontested by the Government, the highest number of reported victims of domestic violence was in Diyarbakır, where the applicant had lived at the relevant time. All those victims were women, the great majority of whom were of Kurdish origin, illiterate or of a low level of education and generally without any independent source of income (§194).

Indeed, the reports suggested that domestic violence was tolerated by the authorities and that the remedies indicated by the Government did not function effectively. Research showed that, despite Law no. 4320, when victims reported domestic violence to police stations, police officers did not investigate their complaints but sought to assume the role of mediator by trying to convince the victims

to return home and drop their complaint. Delays were frequent when issuing and serving injunctions under Law no. 4320, given the negative attitude of the police officers and that the courts treated the injunctions as a form of divorce action. Moreover, the perpetrators of domestic violence did not receive dissuasive punishments; courts mitigated sentences on the grounds of custom, tradition or honour.

The Court therefore considered that the applicant had been able to show that domestic violence affected mainly women and that the general and discriminatory judicial passivity in Turkey created a climate that was conducive to domestic violence. Bearing in mind the general and discriminatory judicial passivity in Turkey, albeit unintentional, mainly affected women, the Court considered that the violence suffered by the applicant and her mother may be regarded as gender-based violence which is a form of discrimination against women. Despite the reforms carried out by the Government in recent years, the overall unresponsiveness of the judicial system and impunity enjoyed by the aggressors, as found in the applicant's case, indicated that there was insufficient commitment to take appropriate action to address domestic violence. The Court therefore concluded that there had been a violation of Article 14, in conjunction with Articles 2 and 3 (see §§ 200-201).

Other Articles

Given the above findings, the Court did not find it necessary to examine the same facts in the context of Articles 6 and 13.

- **Conditions of detention**

S.D. v. Greece (no. 53541/07) (Importance 2) – 11 June 2009 - Violation of Article 3 – Conditions of detention in holding centres for foreigners – Violation of Article 5 §§ 1 and 4 – Unlawfulness of detention of the applicant - an asylum seeker- and refusal by Administrative Court to examine the lawfulness of the detention of an alien being held with a view of expulsion

The applicant, S.D., is a Turkish national who lives in Athens. Having been subjected to detentions and violence by the Turkish authorities because of his political convictions and his work as a journalist, he left Turkey and swam to Greece in 2007. On arriving in Greece he was arrested by the police for entering the country illegally. From 12 May to 10 July 2007 S.D. was detained in the holding facility at the Soufli border guard station.

S.D. alleged that he had immediately asked for political asylum, but no such request was registered.

When he arrived in Greece on 12 May 2007, proceedings were brought against him for using forged papers and entering the country illegally.

On 24 May 2007 the applicant's appeal against the decision to deport him was rejected by the District Police Commissioner, on the grounds that he represented a threat to the country's peace and security.

The applicant's objections against his detention were dismissed by the Administrative Court, according to which such objections were admissible in Greek law only if the person concerned intended to leave the country within thirty days, which was not the case here, as the applicant had applied for political asylum.

On 10 July, while his asylum application was being processed, the applicant was transferred to the Petrou Rali holding facility for foreigners in Attica, where he remained confined to his cell until 16 July 2007, to be brought before the Advisory Committee on Asylum for an opinion on his application. On 17 July 2007 the applicant was issued with an asylum seeker's certificate valid for six months, which has since been renewed twice, giving him the right to work and to receive medical assistance.

S.D. renewed his objections against his detention before the administrative tribunal, which allowed them on 16 July 2007. The court held that, in general, the expulsion and removal of a foreigner who had entered Greece illegally and applied for asylum there were prohibited. In the case in point it found that the examination of S.D.'s asylum application was pending and ordered his release.

Relying on Article 3, S.D. complained about the conditions in which he had been detained for two months in the Soufli and Petrou Rali holding centres – without physical exercise, contact with the outside world or medical attention. Relying also on Article 5 §§ 1 and 4, he complained that he had been detained while he was an asylum seeker and that the Administrative Court had refused to examine the lawfulness of his detention.

Article 3

The applicant alleged that the Soufli holding facility had been overcrowded and the blankets dirty and he had been deprived of outdoor activities, medical treatment, hot water and telephone calls. The Greek Government did not explicitly deny those allegations.

The allegations were in fact corroborated by several reports by national (the Greek Ombudsman, see §§ 33-36) and international institutions – including the Office of the UN High Commissioner for Refugees, the 2008 report of the Council of Europe Commissioner for Human Rights and Human Rights Watch – confirming the deplorable conditions of detention in all the holding facilities near the border between Greece and Turkey.

The Court considered that, even assuming that the applicant had shared a relatively clean room with a bath and hot water with one other Turkish detainee, as stated by the head of the Greek section of Amnesty International when she visited the Soufli holding facility on 18 May 2007, S.D. had still spent two months in a prefabricated cabin, without being allowed outdoors and without access to a telephone, blankets or clean sheets or sufficient hygiene products. He was subsequently held in Patrou Rali and confined to his cell for six days, in unacceptable conditions as described by the European Committee for the Prevention of Torture following their visit in February 2007 (see §§ 49-51).

The Court concluded unanimously that S.D., while an asylum seeker, had experienced conditions of detention that amounted to degrading treatment in violation of Article 3.

Article 5 § 1f

The Court noted that S.D.'s asylum application had not been registered until the third attempt, on 17 May 2007, and that the authorities had then failed to take his asylum seeker status into account. His detention with a view to expulsion had in fact had no legal basis in Greek law after that date since asylum seekers whose applications were pending could not be deported. His detention had therefore been unlawful, in violation of Article 5 § 1f.

Article 5 § 4

The Court noted that in Greece people who, like S.D., could not be expelled pending a decision about their application for asylum but wished to challenge the lawfulness of their detention found themselves in a legal vacuum. Greek law did not permit direct review of the lawfulness of the detention of an alien being held with a view to expulsion.

S.D. had been unable to have the lawfulness of his detention reviewed by the Greek courts. There had been no possibility in Greek law for him to obtain a decision on the matter, in violation of Article 5 § 4.

Shteyn (Stein) v. Russia (no. 23691/06) (Importance 3) – 18 June 2009 – Violation of Article 3 – Conditions of detention – Violation of Article 5 §§ 1 (c), 3 and 4 – Length of detention and validity of an extension order – Violation of Article 6 § 1 – Length of criminal proceedings

Arrested in December 2004 on suspicion of smuggling ecstasy, the applicant Mr Shteyn was convicted at final instance in March 2009 to 11 years' imprisonment for drug-trafficking, among other offences. He complained about the conditions of his detention and about the unlawfulness of his detention in 2006, delays in the examination of his appeals against detention orders as well as the excessive length of his detention on remand and of the criminal proceedings against him. The Court held unanimously that there had been a violation of Article 3 on account of the conditions of Mr Shteyn's detention in Tomsk Remand Centre no. 70/1 and a violation of Article 5 § 1 in relation to one detention order. It considered that the excessive length – over three years - of his detention and the delays in examination of his appeals against two detention orders had amounted to violations of Article 5 §§ 3 and 4 respectively. Lastly, the Court held unanimously that there had been a violation of Article 6 § 1 on account of the length – more than four years - of the criminal proceedings against him.

- **Police misconduct**

Gurgurov v. Moldova (no. 7045/08) (Importance 3) – 16 June 2009 – Violation of Article 3 – Severe pain and suffering which fall to be treated as acts of torture inflicted on the applicant by the police and lack of effective investigation in that respect – Violation of Article 13 – Lack of effective remedies to claim compensation for ill-treatment

The applicant, Sergiu Gurgurov, was arrested and placed in detention in October 2005 on suspicion of theft of some mobile telephones.

Amnesty International, the United Nations High Commissioner for Human Rights, the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment and the Moldovan Ombudsman all raised in November and December 2005 serious concerns with the authorities about the situation of the applicant. In June 2006, the Prosecutor General of Moldova wrote a letter to the Moldovan Bar Association deploring the fact that Moldovan lawyers had brought to the

attention of international human rights bodies certain Moldovan criminal cases and stating that his office would investigate such practices under the Moldovan Criminal Code.

After his release Mr Gurgurov was diagnosed, among other things, with a fracture of his cranial bones, cerebral contusion and injury to his spine, paralysis of his legs and post-traumatic deafness. As a result of the injuries received during his detention, he was officially recognised as having a second-degree disability amounting to a 75% loss of his working capacity.

Basing their conclusions only on part of the testimonies provided and on selected medical findings, the prosecution authorities dismissed the applicant's allegations of ill-treatment a number of times and, finally, in a decision of February 2009, concluded that he was simulating his condition.

Article 3

Ill-treatment

The parties agreed on the following: the period during which Mr Gurgurov had been detained; that immediately upon his release he had been hospitalised with severe injuries; and that he had not been suffering from any of those injuries before his arrest in October 2005. The Court found therefore established that the injuries had been caused to him during his detention and, given that the Government had not provided any explanation about their origin, it held that they had been the result of the ill-treatment inflicted upon him while in police custody. In view of the gravity of the violence suffered by Mr Gurgurov, as a result of which he had become disabled, the Court held unanimously that he had been tortured, in violation of Article 3.

Investigation

The Court noted that the independence of the prosecutor's office had been doubtful throughout the investigation carried out into this case. Having expressed a clear point of view right from the beginning of the investigation, it had further attempted to put pressure on the applicant's lawyer to dissuade her from bringing the complaints before international human rights bodies (see in particular §§ 65 – 68).

In addition, a series of serious shortcomings in the investigation had been observed, including significant delay in the medical attention to Mr Gurgurov and selective consideration of evidence. The Court concluded that the prosecutor's office had not made any genuine efforts to investigate the case and discover the truth. On the contrary, there had been strong indications that it had tried to cover up the facts and create obstacles to identifying and punishing those responsible.

Accordingly, the Court held unanimously that, there had been a violation of Article 3 on account of the lack of effective investigation into the case.

Article 13

In § 73 of the judgment, the Court considered that given the inadequacy of the investigation into the applicant's criminal complaint against the police officers who had ill-treated him, a civil claim based on the same facts and allegations would not have had any prospects of success. Accordingly, the Court considered that it has not been shown that effective remedies existed enabling the applicant to claim compensation for the ill-treatment suffered at the hands of the police. The Court held unanimously that, there had been a violation of Article 13 taken in conjunction with Article 3.

- **Right to a fair trial**

Lawyer Partners, A.S. v. Slovakia (no. 54252/07 and other applications) (Importance 1) – 16 June 2009 – Violation of Article 6 § 1 – Violation of right of access to court by domestic authorities' refusal to register actions submitted by the applicant company in electronic form

The applicant company, Lawyer Partners, A.S., is a private limited company with its registered office in Bratislava. Between 2005 and 2006 the applicant company concluded contracts with Slovak Radio in which it acquired the right to recover unpaid broadcast receiver licenses in 355 917 cases.

Lawyer Partners, A.S. was obliged to sue those persons who had refused to pay the debt which it had acquired the right to recover. It prepared individual actions with a request for payment orders to be issued against the debtors.

Thus in March and July 2006, the applicant company filed actions with several district courts. Given the number of individual proceedings – more than 70 000 – the actions were generated by means of computer software and recorded on DVDs that were sent to the courts concerned, accompanied by an explanatory letter. The courts refused to register the actions, indicating that they lacked the equipment to receive and process submissions made and signed electronically.

The Constitutional Court rejected the complaints lodged by Lawyer Partners, A.S. in respect of the refusals – it alleged a violation of its right of access to a court – on account of the complaints having been lodged outside the statutory two month time limit.

The Ministry of Justice first stated in April 2006 that ordinary courts did not have the facilities to receive electronic submissions; following meetings with presidents of district and regional courts in November 2006 and February 2007 it concluded however that they were adequately equipped. Information about how to file submissions signed electronically was published on the website of the Ministry of Justice in October 2008.

The 15 applications were lodged with the European Court of Human Rights between 5 December 2007 and 10 June 2008. They were examined for admissibility and merits at the same time.

Relying on Article 6 § 1 of the Convention, the applicant company complained that its right of access to a court had been violated in that the domestic courts had refused to register its actions submitted in electronic form.

Although other means such as telegraph, fax, written or oral form had been provided in Slovakian law for filing submissions with courts, the only practical possibility for the applicant company to institute the 70 000 individual proceedings had been to submit the actions electronically. If printed, the documents recorded on the DVDs would have filled more than 40 million pages. The Court recalled that, although the domestic courts had pleaded their lack of technical equipment to process the applicant company's actions, the possibility of electronic filing had been incorporated in domestic law since 2002. The Court thus found unanimously that the refusal to examine the applicant company's submissions had imposed a disproportionate limitation on its right to present its cases to a court in an effective manner, in violation of Article 6 § 1.

Dubus S.A. v. France (no. 5242/04) (Importance 3) – 11 June 2009 - Violation of Article 6 § 1 – Lack of independence and impartiality of the disciplinary proceedings opened by the Banking Commission against the applicant company – No violation of Article 6 § 1 – The *Conseil d'Etat* had not failed to give reasons for its decision

The applicant is Dubus S.A., an investment company whose registered office is in Lille. Its business consists of receiving, transmitting and executing orders for third parties and trading on its own behalf. In 2000 it was inspected by the Banking Commission, the supervisory authority responsible for credit and investment establishments, chaired by the Governor of the Bank of France ("the Commission"), following which notice of a regulatory offence was served on it, together with a request to take remedial action.

On 28 September 2000, on the strength of the inspection report, the Banking Commission decided to open disciplinary proceedings against Dubus S.A. The company was accused, in particular, of failure to comply with the regulations concerning the reporting of its clients' deposits, the insufficiency of its own funds, and breaches of the rules of management, book-keeping and transmission by investment firms of their annual accounts and periodical documents. The Chair of the Commission informed the applicant company of the reasons.

Relying on Article 6 § 1, the applicant company complained of the lack of impartiality and independence of the Banking Commission in disciplinary proceedings the latter had taken against it, and also of the unfairness of the proceedings before the Commission and the *Conseil d'Etat.*

Lack of impartiality and independence

The Court underlined the lack of precision of the texts governing proceedings before the Commission and noted the lack of any clear distinction between the functions of prosecution, investigation and adjudication in the exercise of its judicial power. While the combination of investigative and judicial functions was not, in itself, incompatible with the need for impartiality, this was subject to their being no "prejudgment" on the part of the Commission.

Like the Conseil d'Etat, the Court found no fault with the Commission's power to open a case of its own motion, but it stressed the need for stricter controls, to avoid giving the impression that guilt had been established from the very start of the disciplinary proceedings.

The Court noted that the applicant company might reasonably have had the impression that it had been prosecuted and tried by the same people, and had doubts about the decision of the Commission, which, in its various capacities, had brought disciplinary proceedings against it, notified it of the offences and pronounced the penalty. The Court noted that the role of the Secretariat and Secretary General of the Commission had added to the confusion. The Secretariat had carried out administrative investigations on the instructions of the Commission, setting disciplinary proceedings in motion where necessary. It had then replied to the submissions of the respondent party, thereby intervening in the

judicial process. Lastly, the investigation had been carried out on behalf of the Commission, which had subsequently pronounced the sanction (see in particular §§ 57, 59-60 of the judgment).

The Court was therefore unconvinced by the French Government's argument that there was an effective separation in the Commission's role between the disciplinary proceedings and the administrative investigation.

It held unanimously that there had been a violation of Article 6 § 1 in so far as the applicant company's doubts about the Commission's independence and impartiality were objectively justified because of the lack of any clear distinction between its different functions.

Inequality of arms

The Court did not consider it necessary to examine the applicant company's complaint under Article 6 § 1 concerning the inequality of arms between the Secretariat of the Commission and the persons against whom it took action.

As to the proceedings before the *Conseil d'Etat*, the Court considered that the latter had examined the impartiality of the impugned proceedings in full, and had justified the principle of the Commission being able to open a case of its own motion in view of the particular situation of independent authorities whose role was to regulate the markets. It had therefore not failed to give reasons for its decision. The Court further referred to its conclusions (Wagner c. Luxembourg) concerning appeals to the *Conseil d'Etat* and the second level of jurisdiction they afforded (§69). It held unanimously that there had been no violation of Article 6 § 1 with respect to the complaints concerning the unfairness of the proceedings before the *Conseil d'Etat*.

- **Enforcement of domestic decisions**

Silvestri v. Italy (no. 16861/02) (Importance 2) – 9 June 2009 – Violation of Article 6 § 1 – Non-enforcement of court judgment by prison services – Violation of Article 1 of Protocol No. 1 – Inability to obtain severance pay

The applicant has been an employee of the prison service management staff since 1977.

In September 1996 Mr Silvestri was appointed governor of Empoli Women's Prison, which is a prison for drug addicts. By a decision of 21 March 1997, the Director-General of the Prison Administration Department decided to transfer him to the Regional Inspectorate (*Provveditorato regionale*) of Tuscany, in Florence, on grounds of a "workplace" incompatibility. The applicant had allegedly had relational difficulties both with his direct colleagues and with outside operators.

Mr Silvestri challenged the decision in the Tuscany Regional Administrative Court. In a judgment of 29 October 1997, the court found in his favour and set the decision aside for failure to hear submissions from both sides. The court noted, in particular, that the applicant had not been informed of the procedure arranging his transfer until 20 March 1997, that is, one day before the decision was issued. The prison service did not appeal and the judgment became final.

Subsequently, the applicant was first transferred to another prison and then reassigned to Empoli Prison, but on a lower grade than the one he had previously held. He made two attempts to be reinstated in his former post of governor at Empoli Prison, in accordance with the judgment given in his favour, but these were unsuccessful despite the favourable outcome of various sets of enforcement proceedings he had instituted. In the meantime, on 10 April 2002, the prison service terminated the applicant's employment contract and established that he was entitled to compensation of four months' salary. Mr Silvestri tried unsuccessfully to obtain payment of this amount.

Relying on Article 6 § 1, Mr Silvestri complained of the prison service's refusal to enforce the judgment of 29 October 1997 and reinstate him in his former post. He also complained, under Article 1 of Protocol No. 1, of his inability to obtain his severance pay.

Article 6 § 1

The Court reiterated that, according to its case-law, the obligation to enforce a court judgment was not limited to the operative provisions of the judgment in question. The substance of the judgment also had to be observed and applied. By lodging an application for judicial review with the State's administrative court the litigant sought not only annulment of the impugned act or omission, but also and above all the removal of its effects.

Whilst the Court acknowledged that there might be circumstances justifying failure to order specific performance of an obligation imposed by a final court decision, it noted that the Italian courts had referred neither to factual circumstances precluding enforcement nor legal obstacles to enforcement of the judgment in question. Consequently, the authorities' failure to comply with the judgment of the

Administrative Court had breached the applicant's right to effective judicial protection, contrary to Article 6 § 1 (§§ 60-63).

Article 1 of Protocol No. 1

The Court held that in the circumstances of the case, by refusing to pay the applicant the amount due to him, the relevant authorities had interfered with his right to peaceful enjoyment of his possessions. There had been no valid justification for that interference. It had accordingly been arbitrary and amounted to a violation of the principle of lawfulness (§§ 72-74). Consequently, there had been a violation of Article 1 of Protocol No. 1.

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

Kvasnica v. Slovakia (no. 72094/01) (Importance 2) – 9 June 2009 – Violation of Article 8 –The interception of the applicant's telephone calls was not "necessary in a democratic society"

The applicant, Roman Kvasnica is a practicing member of the Slovak Bar Association. In 1999 the Minister of the Interior set up a team of investigators to probe into large-scale organised criminal activities of a financial nature supposedly related to one in a group of companies for which Mr Kvasnica acted as legal representative between August 1999 and March 2001.

The investigators tapped Mr Kvasnica's professional mobile after having obtained a judicial authorisation. He learned about it for the first time in November 2000; in 2001, records of his conversations were already leaked to various interested groups, including politicians and journalists. In 2002, it was brought to his knowledge that the exact records of his conversation with third persons, which had been made by the financial police, were freely accessible on the internet. These records included conversation with his colleagues, clients, and friends, and were manipulated to include statements which Mr Kvasnica and the other persons involved had not made.

In January 2001 Mr Kvasnica complained of the interception of his conversations to the Ministry of Interior and requested that an investigation into it be carried out. The director of the special financial and criminal police also lodged a criminal complaint in connection with the interception as he considered that it had been unlawful because it had not been based on specific suspicion against Mr Kvasnica and no concrete purpose for it had been indicated.

The applicant was questioned in relation with his complaint in June 2001, but was not informed of the results of the investigation. The complaint by the police director was dismissed by the Inspection Service in September 2001 with a decision – never communicated to the applicant – noting that, as a judge had authorised the interception, it was not possible to question it.

Relying on Article 8, Mr Kvasnica complained about the interception of his telephone calls.

The Court first recalled that telephone conversations were covered by the notions of "private life" and "correspondence" within the meaning of Article 8 and their monitoring amounts to an interference with the exercise of one's rights under Article 8. The Court reiterated that States enjoy a certain margin of appreciation in assessing the existence and extent of such necessity, but this margin is subject to European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court.

It then observed that the interception had been ordered on the basis of a law, the Police Corps Act of 1993, in order to prevent crime by establishing facts in the context of an investigation into suspected large-scale organised criminal activities of a financial nature. Given that the relevant provisions of that Act had been replaced shortly after the events at stake by new legislation offering a broader scope of guarantees, the Court found it unnecessary to examine separately the applicant's argument challenging the quality of the law in force at the relevant time.

As regards the application of that law, however, the Government had not made available the relevant documents concerning the system of control of telephone tapping which existed at the time as, under domestic legislation, they were classified. The Court, therefore, could not be satisfied that the interception had been ordered in accordance with the law.

"[...], *it has not been shown that the guarantees were met relating to the duration of the interference, whether there had been judicial control of the interception on a continuous basis, whether the reasons for the use of the devices remained valid, whether in practice measures were taken to prevent the interception of telephone calls between the applicant as a lawyer and criminal defendants as his clients. Similarly it has not been shown that the interference restricted the inviolability of applicant's home, the privacy of his correspondence and the privacy of information communicated only to an extent that was indispensable and that the information thus obtained was used exclusively for attaining the aim set out in section 36(1) of the Police Corps Act 1993."* (§ 86).

The Court concluded that the procedure for ordering and supervising the implementation of the interception of the applicant's telephone had not been fully compliant with the requirements of the relevant law; nor had it been put into practice so as to keep the interference with his private life and correspondence to what had been indispensable for the purposes of the investigation. It therefore held unanimously that there had been a violation of Article 8.

Krawiecki v. Poland (no. 49128/06) (Importance 3) – 9 June 2009 – Violation of Article 8 – The interference with the applicant's correspondence with the Court was not "in accordance with the law"

Diagnosed as suffering from severe schizophrenia, the applicant has been detained in a pre-trial detention centre and in a mental hospital. Mr Krawiecki submitted that he had been ill-treated during his detention. The Court raised of its own motion an issue under Article 8 (right to respect for private and family life and correspondence) concerning the applicant's correspondence with the Court's Registry while in detention.

"25. The Government did not indicate a specific legal basis in domestic law for the interference. The Court notes that the interference took place on one occasion when the applicant was in detention.

26. The Court observes that, […] detained persons should enjoy the same rights as those convicted by a final judgment. Accordingly, the prohibition of censorship of correspondence with the European Court of Human Rights contained in Article 103 of the same Code, which expressly relates to convicted persons, was also applicable to detained persons. Thus, the censorship of the applicant's letter to the Court's Registry was contrary to domestic law. It follows that the interference in the present case was not "in accordance with the law".

The Court held unanimously that there had been a violation of Article 8 on account of the monitoring of the applicant's correspondence which had been contrary to domestic law. It further held that the remainder of Mr Krawiecki's application was inadmissible, his submission being too confused.

- **Freedom of expression**

Cihan Öztürk v. Turkey (no. 17095/03) (Importance 2) – 9 June 2009 – Violation of Article 10 – Failure of national authorities to strike a fair balance between freedom of expression and a civil servant's reputation

The applicant wrote an article in which he criticised the former director of the State postal service for having acted negligently in a project to restore a post office building with historic value. The article, published in May 2000 in a non-profit publication of the State postal service, blamed the ex-director for the dilapidated state and partial collapse of the building.

The ex-director sued the editor-in-chief of the magazine asking the court to order the magazine to publish her reply to the allegations made. The court granted her request. Subsequently, she brought a separate action for damages against the applicant, Mr Öztürk and the editor-in-chief, claiming that the article was defamatory and constituted an attack on her reputation. In November 2001, the domestic court found that Mr Öztürk and the editor-in-chief had gone beyond the limits of permissible criticism in respect of the former director as they had used demeaning statements which implied that she had taken bribes. In December 2001, he appealed unsuccessfully against that court's decision.

Considering the ironic tone of the article written by Mr Öztürk, and the fact that it had been published in a magazine whose main readers were the employees of the Postal service, the Court found that Mr Öztürk's aim had been to raise awareness among those employees about the need to protect historic buildings. Therefore, the criticism expressed in the article had to be understood as imparting information and ideas in order to contribute to a debate on a matter of legitimate public interest. Furthermore, regard being had to the satirical character of the article, it could not be interpreted as a serious accusation of bribe-taking (see in particular §§ 27-31).

Consequently, Mr Öztürk's statements ought to have been seen as value judgments which, as a rule, were not susceptible of proof. In addition, they had been based on facts known to the public at the time given that the authorities had already brought criminal proceedings against the former director for breach of duty in the context of that building project.

The Court held that the decision of the national court ordering the editor-in-chief to publish the letter-response of the former director would have been a sufficient remedy in the circumstances of the case.

"33. Bearing in mind the amount of the compensation which the applicant was ordered to pay, together with the editor-in-chief of the magazine, the Court observes that the sanction imposed on the applicant was significant. This could deter others from criticising public officials and limit the free flow of

information and ideas […]. The national courts might instead have considered other sanctions, such as the issuance of an apology or publication of their judgment finding the statements to be defamatory. Indeed, the order issued by the Fatih Criminal Court for the publication of the letter of correction sent by Ms G.B. would appear to be a sufficient remedy in the circumstances of the present case […].

34. In view of the foregoing, the Court finds that the reasons adduced by the domestic courts cannot be regarded as sufficient and relevant justification for the interference with the applicant's right to freedom of expression. The national authorities therefore failed to strike a fair balance between the relevant interests."

The Court found that the interference imposed by domestic courts was not "necessary in a democratic society" and it held unanimously that there had been a violation of Article 10.

The applicant complained that the domestic courts' decisions ordering him to pay damages to the plaintiff had been unfair for the purposes of Article 6 § 1 of the Convention. The Court held that there was no need to make a separate ruling under Article 6.

- **Right to respect for property**

Djidrovski v. "the former Yugoslav Republic of Macedonia" (no. 46447/99) (Importance 2)
Veselinski v. "the former Yugoslav Republic of Macedonia" (no. 45658/99) (Importance 3) – 24 June 2009 – Violation of Article 1 of Protocol No. 1 – Interference with a former army serviceman's right to purchase an apartment with a price adjustment legitimately expected

The applicants are retired officers of the former Yugoslav army. As former officers of the Yugoslav army they had been entitled, under federal legislation enacted in 1990, to purchase their apartments at a price which was reduced by the amount of their contributions as serving officers to a fund for the construction of army apartments. This legislation remained in force after the independence of "the former Yugoslav Republic of Macedonia" and regulations were adopted to implement the arrangements in 1992 and 1994.

The applicants both applied unsuccessfully to purchase their apartments at the reduced price provided for under the original federal legislation, Mr Veselinski in 1992 and Mr Djidrovski between 1992 and 1994.The applicants both instituted judicial proceedings and obtained decisions in their favour first from a Skopje municipal court and then the Skopje Appellate Court. Both applicants subsequently purchased their apartments at the reduced price as foreseen under the original arrangements.

In 1996, after the applicants had completed the purchase of their apartments, the Constitutional Court abrogated the relevant legislation but without retroactive effect.

Subsequently, however, in separate decisions the Supreme Court found that neither applicant had been entitled to purchase the property in question at the reduced price. The relevant judgments were served on the applicants, but it does not appear that the Government has taken any steps to enforce them. Both applicants continue to live in the apartments.

The applicants claimed to be victims of a breach of Article 1 of Protocol No.1.

The Court noted that in essence the case concerned the price applicable to the purchase of the apartments; at most the applicants ran the risk of being required to pay the difference. The Government had submitted that this did not fall within the scope of Article 1 of Protocol No. 1.

A federal law that had remained in force until it had been abrogated in 1996 had provided for sale of apartments to army servicemen at a beneficial price.

In 1996, when the Constitutional Court had abrogated the relevant federal legislation, it had done so without retroactive effect, thereby impliedly endorsing all purchases of apartments at beneficial prices that had been completed prior to its decision, including therefore the purchases by the applicants of their apartments.

"83. […] the Court deduces that for the six apartments in question the Ministry of Defence agreed to undertake the obligation to pay the price difference for their sale at a reduced price. The Government did not furnish any detail as to the criteria concerning the said exchange of apartments.

84. […] Thereby, the Constitutional Court impliedly endorsed all purchases of apartments at beneficial prices that had been completed prior to the issuance of the Constitutional Court's decision. The Court notes that the applicant had purchased the apartment in which he had been living at a reduced price before the Constitutional Court's decision was issued. He had concluded his sale contract with the Government on 17 April 1996, and it had been authorised by a court on 15 May 1996, whereas the Constitutional Court's decision was issued on 26 June 1996.

85. In the circumstances, taking into account the applicant's previous contributions and the agreements in force at the time, the Court considers that the applicant may be regarded as having a "legitimate expectation" that the purchase of his apartment be at a reduced price."

According to the Court's case-law, such a "legitimate expectation" was capable of attracting the protection of Article 1 of Protocol No. 1.

The Supreme Court had subsequently held that the applicants had had no right to buy their apartments at the reduced price. While the European Court had only a limited power to deal with alleged errors of fact or law committed by national courts, it considered that the Supreme Court decision had failed, without any explanation, to take into account the pre-existing legal position and practice (§ 86 in *Djidrovski*).

As a result of that decision the beneficial condition attaching to the applicants' purchase of their apartments had been, apparently, invalidated and they were liable to a claim to pay further sums of money. This could be regarded as an unjustified interference with their peaceful enjoyment of their possessions and there had therefore been a violation of Article 1 of Protocol No. 1.

The Court considered that it was not necessary to examine the applicants' complaints under Article 14 of the Convention taken in conjunction with the Article 1 of Protocol No. 1.

Trgo v. Croatia (no. 35298/04) (Importance 2) – 11 June 2009 – Violation of Article 1 of Protocol No. 1 – Violation of property rights by domestic courts' refusal to acknowledge ownership acquired by the applicant by adverse possession on the basis of a provision later on abrogated as unconstitutional

Relying on Article 1 of Protocol No. 1, the applicant alleged in particular that his right to peaceful enjoyment of his possessions had been violated because the domestic courts had refused to acknowledge his ownership of certain plots of land he had acquired by adverse possession.

"66. Turning to the particular circumstances of the present case, the Court observes that he domestic courts established: (a) that the land in question had been owned by the applicant's late uncle, (b) that it had been confiscated in 1949 by the socialist authorities and that the State had been recorded as its owner in the land register ever since, (c) that the applicant's mother had been in possession of the land since 1953, as the applicant had continued to be after her death on 16 February 1992. There is no indication that anyone, apart from the State itself, acquired any rights over that land during socialism, or that any (third) person, except the applicant himself (see paragraph 25 above), has ever claimed any rights in respect of that land. The Court therefore considers that the concerns that prompted the Constitutional Court to abrogate section 388(4) of 1996 Property Act were not present in the applicant's case. That provision was abrogated to protect the rights of third persons whereas in the applicant's case there were no rights of third persons involved.

67. In these circumstances, the Court considers that the applicant, who reasonably relied on legislation, later on abrogated as unconstitutional, should not – in the absence of any damage to the rights of other persons – bear the consequences of the State's own mistake committed by enacting such unconstitutional legislation. In fact, as a consequence of the abrogation, the ownership of the property the applicant acquired by adverse possession on the basis of the provision later on abrogated as unconstitutional, was returned to the State, which thereby benefited from its own mistake. In this connection, the Court reiterates that the risk of any mistake made by the State authority must be borne by the State and the errors must not be remedied at the expense of the individual concerned, especially where no other conflicting private interest is at stake."

The Court therefore held unanimously that there had been a violation of Article 1 of Protocol No. 1 to the Convention, and that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant.

Novikov v. Russia (no. 35989/02) (Importance 2) – 18 June 2009 – Violation of Article 1 of Protocol No. 1 – Refusal of domestic courts to award a compensation for the loss of properties sustained as a result of the authorities' failure to safe-keep them

The case concerned the applicant's complaint that aviation fuel seized in 1998, which he subsequently acquired the right to claim on the basis of an assignment agreement, was lost by the authorities but he was not awarded any compensation. He relied in particular on Article 1 of Protocol No. 1.

"51. It follows [...] that although the applicant had an opportunity to bring proceedings against the State, the national courts made contradictory findings in relation to the factual and legal grounds for the applicant's claim for compensation while acknowledging the fact that the impossibility to return the

fuel was imputable to a public authority. In the light of the above considerations, the Court considers that the Russian courts' refusals to award the applicant compensation for the loss sustained as a result of the authorities' failure to safe-keep his property amounted in the circumstances of the case to a disproportionate interference with his "possessions" under Article 1 of Protocol No. 1."

The Court held unanimously that there had been a violation of Article 1 of Protocol No. 1 to the Convention as a result of the authorities' failure to return the fuel or to pay compensation.

- **Right to free elections and enforcement of a domestic judgment**

Petkov and Others v. Bulgaria (nos. 77568/01, 178/02 and 505/02) (Importance 1) – 11 June 2009 – Violation of Article 3 of Protocol No. 1 – Failure of electoral authorities to reinstate the applicants on electoral lists despite final judicial decisions in their favour – Violation of Article 13 – Lack of effective remedies allowing the applicants to vindicate effectively their right to stand for Parliament

The applicants are three Bulgarian nationals.

In 1997, a law was adopted, the so-called "Dossiers Act", which provided for the disclosure of the names of individuals who had collaborated with the State security agencies in the communist past. The task of disclosure was entrusted to a special body, "the Dossiers Commission", which had to publish reports containing the names of such individuals.

In the context of the parliamentary elections on 17 June 2001, the Election of Members of Parliament Act ("the electoral law"), which was adopted on 9 April 2001, allowed political parties to withdraw nominations of candidates if there was information which indicated that they had collaborated with the former State security agencies. On 5 June 2001 the Central Electoral Commission decided that the relevant information could be provided by the Dossiers Commission either through the reports it was supposed to prepare or through certificates issued by it. The Central Electoral Commission's decision specified that on the basis of these documents, and of a request by the political party concerned, the relevant regional electoral commission could annul the candidate's registration. On 13 June 2001 this decision was declared null and void by the Supreme Administrative Court, which held that the only lawful means for establishing collaboration with the former State security agencies were the reports to be drawn up by the Dossiers Commission, not certificates issued by it.

In the parliamentary elections held on 17 June 2001 all three applicants ran as candidates for the National Movement Simeon II. Prior to these elections, the applicants were struck off the lists of candidates by the relevant regional electoral commissions on account of allegations – based on certificates issued by the Dossiers Commission – that they had collaborated with the former State security agencies. The decisions to strike them off the lists were subsequently declared null and void by the Supreme Administrative Court, in line with its judgment of 13 June 2001. However, the electoral authorities did not restore the applicants' names to the lists. As a result, they could not run for Parliament.

Subsequently, Mr Dimitrov's case was reviewed by the Constitutional Court, which acted upon the request of fifty-seven members of Parliament and the Plenary Meeting of the Supreme Administrative Court. The Constitutional Court found against Mr Dimitrov, stating that while the electoral authorities' failure to give effect to the final judgment in his favour was problematic, it could not render the election of the person who had replaced him on the ballot illegal, but only lead to an award of damages. Accordingly, in October 2004 Mr Dimitrov brought an action for damages under the 1988 State Responsibility for Damage Act. In February 2008, these proceedings were still pending before the first instance court.

Relying on Article 3 of Protocol 1 and on Article 13, the applicants complained that they had been prevented from running in the 2001 parliamentary elections and had not had effective remedies in that respect.

Article 3 of Protocol 1

The Court first pointed out that the right to stand for Parliament was an individual right protected by Protocol No. 1 to the Convention. In order to determine whether it had been breached in this case, it examined whether the electoral authorities' failure to give effect to the final and binding judgments of the Supreme Administrative Court had prevented the applicants from standing in the parliamentary elections on 17 June 2001. It pointed out that it was not its task to determine whether these judgments had been correct, nor to resolve the issues of which they had disposed.

The Court observed that, while the reason for this failure had apparently been the electoral authorities' belief that the judgments had been erroneous and outside the jurisdiction of the Supreme

Administrative Court, in a democratic society abiding by the rule of law the authorities could not cite their disapproval of the findings made in a final judgment to justify their refusal to comply with it.

The Court took account of the difficulties facing the electoral authorities due to the fact that two of the Supreme Administrative Court's judgments had been delivered just a couple of days before the elections, and one even afterwards. However, the Court found that these difficulties had been of the authorities' own making: notably, the electoral law had been adopted just over two months before the elections, at odds with the Council of Europe's recommendations on the stability of electoral law; instead of requiring political parties to verify links with former State security agencies before nominating candidates, parties had been allowed to do so after the nomination; and the practical arrangements for the application of the rule concerning withdrawal of candidates had been clarified by the Central Electoral Commission only 12 days before the elections actually took place. All this had resulted in serious practical difficulties and had led to legal challenges that had to be adjudicated and acted upon under extreme time constraints.

Accordingly, the Court held by five votes to two that there had been a violation of Article 3 of Protocol 1 on account of the electoral authorities' failure to reinstate the applicants on the lists despite the final domestic judgments in their favour.

Article 13

The Court found that the remedy relied on by the Government – a claim under the 1988 State Responsibility for Damage Act – could not by itself be considered effective. Even if ultimately successful, it would not have been sufficient, as it could have only led to an award of compensation. The Court pointed out that in the electoral context only remedies capable of ensuring the proper unfolding of the democratic process could be considered effective.

The Court examined the availability of such remedies in Bulgaria and found that the Constitutional Court could hear challenges to the lawfulness of parliamentary elections and review the lawfulness of the election of individual members of Parliament. However, the Court was not persuaded that this remedy was effective, because it was not clear whether the scope of the Constitutional Court's review allowed it to address satisfactorily the essence of the applicants' grievances and whether it would have been able to provide the applicants with sufficient redress, by, for instance, ordering repeat elections. This uncertainty was apparently due to the lack of clear and unambiguous provisions in this domain and to the scarcity of rulings on such matters. The latter, in turn, stemmed from the limitation on the persons and bodies who could bring a case to the Constitutional Court. Under Bulgarian law, only a limited category of persons or bodies were entitled to refer a matter to that court. This meant that the participants in the electoral process could not directly compel the institution of proceedings before it, whereas under the Court's settled case-law, a remedy could only be considered effective if the applicant were able to initiate the procedure directly (see in particular §§ 80-82).

There had therefore been a violation of Article 13 in respect of the applicants' complaint under Article 3 of Protocol 1.

Judges Maruste and Jaeger expressed a dissenting opinion, which is annexed to the judgment.

- **Principle of *non bis in idem***

Ruotsalainen v. Finland (no. 13079/03) (Importance 1) – 16 June 2009 – Violation of Article 4 of Protocol No 7 – Two measures imposed on the applicant in two separate and consecutive sets of proceedings concerned the same offence

Stopped by the police in January 2001 during a road check, the applicant, Mr Ruotsalainen was found to be driving with more leniently taxed fuel than the diesel oil his van should have been running on. Summary penal order proceedings were brought against him and he was fined 720 Finnish marks for petty tax fraud. It was also noted that, the applicant having admitted to refueling the van himself, there had been a notion of intent behind his offence. The applicant did not contest the fine and it therefore became final in March 2001.

Administrative proceedings were also brought against Mr Ruotsalainen and in September 2001 he was charged the difference in tax. It was found that he had used his van in 2001 with fuel more leniently taxed than diesel oil and that, as he had failed to give the Vehicle Administration or Customs prior notification of that usage, the normal difference in tax charge was trebled to FIM 90,000 (the equivalent of EUR 15,137).

The domestic authorities subsequently rejected both the applicant's request for a reduction of the tax charge and his appeal to have the decision overturned.

Relying on Article 4 of Protocol No 7, the applicant complained that he was punished twice for the same motor vehicle fuel tax offence.

The Court reiterated that the aim of Article 4 § 1 of Protocol No. 7 was to prohibit the repetition of criminal proceedings that had been concluded by a final decision.

The Court decided that both sanctions imposed on the applicant had been criminal in nature: the first set of proceedings having been "criminal" according to the Finnish legal classification; and, the subsequent set of proceedings, although classified as part of the fiscal regime and therefore administrative, could not just be considered compensatory given that the difference in tax charge had been trebled as a means to punish and deter re-offending, which were characteristic features of a criminal penalty (see §§ 46-48).

Furthermore, the facts behind both sets of proceedings against the applicant had essentially been the same: they both concerned the use of more leniently taxed fuel than diesel oil. The only difference had been the notion of intent in the first set of proceedings.

"55. In the ensuing administrative proceedings the applicant was issued with a fuel fee debit on the ground that his car had been run on more leniently taxed fuel than diesel oil. The fuel fee debit was trebled on the ground that the applicant had not given prior notice of this fact. Although the Administrative Court's decision noted that the applicant had admitted having used the wrong fuel, the imposition of the fuel fee debit did not require intent on the part of the user of the wrong fuel.

56. To sum up, the facts that gave rise to the summary penal order against the applicant related to the fact that he had used more leniently taxed fuel than diesel oil in his pickup van without having paid additional tax for the use. The fuel fee debit was imposed because the applicant's pickup van had been run on more leniently taxed fuel than diesel oil and it was then trebled because he had not given prior notice of this fact. This latter factor has above been considered to have amounted to a punishment to deter re-offending. Thus, the facts in the two sets of proceedings hardly differ albeit there was the requirement of intent in the first set of proceedings. The facts of the two offences must, the Court considers, therefore be regarded as substantially the same for the purposes of Article 4 of Protocol No. 7. As the Court has held, the facts of the two offences serve as its sole point of comparison. Lastly, the Court notes that the latter proceedings did not fall within the exceptions envisaged by the second paragraph of the said provision."

Accordingly, the Court concluded unanimously that there had been a violation of Article 4 of Protocol No. 7.

- **Judgments concerning Chechnya**

Khalitova and Others v. Russia (no. 33264/04) (Importance 3) – 11 June 2009 – Violation of Article 2 – Deaths of the applicants' relatives, Ali Uspayev, Amir Magomedov, Aslan Dokayev and Rustam Achkhanov and lack of an effective investigation into their disappearance – Violation of Article 3 – Mental suffering endured by the applicants – Violation of Article 5 – Unacknowledged detention of the applicants' relatives – Violation of Article 13 taken in conjunction with Article 2

Khasuyeva v. Russia (no. 28159/03) (Importance 3) – 11 June 2009 – Violations of Article 2 - Death of the applicant's son, Abu Khasuyev – Lack of an effective investigation into his disappearance – Violation of Article 3 – Mental suffering endured by the applicant – Violation of Article 5 – Unacknowledged detention of the applicant's son – Violation of Article 13 taken in conjunction with Article 2.

Magomadova v. Russia (2393/05) (Importance 3) – 18 June 2009 - Two violations of Article 2 – Absence of a plausible explanation for the disappearance of the applicant's son – Lack of an effective investigation in the respect of that disappearance – Violation of Article 3 - Psychological suffering of the applicant as a result of the disappearance of her son – Violation of Article 5 – Unacknowledged detention of the applicant's son – Violation of Article 13 in conjunction with Article 2 – Impossibility for the applicant to obtain the identification and punishment of those responsible and redress for her suffering

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 9 June 2009: here.
- press release by the Registrar concerning the Chamber judgments issued on 11 June 2009: here.
- press release by the Registrar concerning the Chamber judgments issued on 16 June 2009: here.
- press release by the Registrar concerning the Chamber judgments issued on 18 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
Poland	09 Jun. 2009	Jan Pawlak (no. 8661/06) Imp. 3 Marzec (no. 42868/06) Imp. 3	Violation of Art. 5 § 3	Excessive length of detention pending trial (over two years and nine months in the case of Jan Pawlak, and four years and almost five months in the case of Marzec) See reference to the Commissioner's memorandum, the Committee of Ministers interim resolution and to the judgment *Kauczor v. Poland*	Link Link
Poland	09 Jun. 2009	Matoń (no. 30279/07) Imp. 3	Violation of Art. 6 § 1 (length)	Excessive length (eight years and eight months) of criminal proceedings	Link
Poland	09 Jun. 2009	Sobolewski (No. 2) (no. 19847/07) Imp. 3 Strzałkowski (no. 19847/07) Imp.3	Violation of Art. 6 § 1 in conjunction with Art. 6 § 3 (c)	Refusal of leave to attend hearing held before the appellate court	Link Link
Spain	09 Jun. 2009	Bendayan Azcantot and Benalal Bendayan (no. 28142/04)	Violation of Art. 6 § 1 (length)	Excessive length (seven years and almost ten months) for enforcement of final judgment	Link
Spain	09 Jun. 2009	Moreno Carmona (no. 28142/04) Imp. 3	Violation of Art. 6 § 1 (length)	Excessive length of criminal proceedings (almost 13 years and six months)	Link
France	11 Jun. 2009	Laudette (no. 19/05) Imp.3	Violation of Art. 6 § 1 (fairness)	Failure to provide the applicant with a copy of the report by the reporting judge for the Court of Cassation resulting in inequality of arms	Link
Armenia	16 Jun. 2009	Gasparyan (no. 2) (no. 22571/05)	Violation of Art. 6 § 1 in conjunction with Art. 6 § 3(b)	Lack of fair hearing due to inadequate time and facilities for the preparation of defence	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.

		Imp. 3	Violation of Art. 2 of Prot. No. 7	Lack of a clearly-defined appeal procedure, time-limits or consistent application	
Romania	16 Jun. 2009	Soare (no. 72439/01) Imp. 2	Violation of Art. 6 § 1 (length) Violation of Art. 13	Excessive length of criminal proceedings before the investigating authorities (more than six years and eight months) and lack of an effective remedy in that respect	Link
Turkey	16 Jun. 2009	Alptekin (no. 6016/03) Imp.3 İmren (no. 6045/04) Imp. 3	Violation of Art. 6 § 1 (length)	Excessive length of the criminal proceedings (approximately ten years and eleven months and seven years and four months respectively)	Link Link
Turkey	16 Jun. 2009	Aygül (no. 43550/04) Imp. 3	Violation of Art. 5 §§ 3 and 4 Violation of Art. 6 § 1 (length)	Length of pre-trial detention (approximately 13 years and five months), lack of a hearing before the court that would examine the applicant's objections against his detention Length of proceedings (16 years and eight months)	Link
Turkey	16 Jun. 2009	Aytan and Ömer Polat (no. 43526/02) Imp.3	Violation of Art. 5 §§ 3, 4 and 5	Excessive length and unlawfulness of detention and lack of any compensation in that connection	Link
Turkey	16 Jun. 2009	Bahçeci and Turan (no 33340/03) Imp. 2)	Violation of Art. 10	The criminal conviction was a disproportionate restriction for freedom of expression	
Turkey	16 Jun. 2009	Bilgin and Bulga (no. 43422/02) Imp. 3 Gülçer and Aslım (no. 19914/03) Imp. 3	Violation of Art. 6 §§ 1 and 3 (c) (fairness)	Failure to communicate the Principal Public Prosecutor's opinion and presence of a military judge on the bench of the State Security Court (in the case of Bilgin and Bulğa), absence of a lawyer while in police custody	Link Link
Turkey	16 Jun. 2009	Gülabi Aslan (no. 36838/03) Imp. 3	Violation of Article 6 § 3 (c) in conjunction with Article 6 § 1 (fairness)	Unfairness of proceedings before the State Security Court	Link
Turkey	16 Jun. 2009	Karabil (no. 5256/02) Imp.3	Violation of Art. 6 §§ 1 and 3 (c) (fairness) Violation of Art. 6 §§ 1 and 3 (b) (fairness)	Absence of a lawyer during the preliminary investigation and failure to provide the applicant with the Principal Public Prosecutor's opinion at the Court of Cassation on the merits of his appeal	Link
Russia	18 Jun. 2009	Sukhov (no. 32805/03) Imp. 3	Violation of Art. 6 § 1 (length)	Excessive length (approximately seven years and three months) of criminal proceedings	Link
Ukraine	18 Jun. 2009	Bevz (no. 7307/05) Imp. 3	Violation of Art. 6 § 1 (length) Violation of Art. 13	Excessive length of criminal proceedings (almost seven years) and lack of an effective remedy in that regard	Link
Ukraine	18 Jun. 2009	Gavrylyak (no. 39447/03) Imp. 3	Violation of Art. 6 § 1 (length)	Excessive length of criminal proceedings (over eight years)	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	09 Jun. 2009	Di Pasquale (no. 27522/04) link Scannella and Others (no. 33873/04) link	Violation of Art. 8 Violation of Art. 13	Incapacities resulting from the applicant's impossibility to be registered in bankruptcy register (*see Albanese v. Italy* of 23.03.2006) Lack of an effective remedy in that regard (Di Pasquale)
Italy	09 Jun. 2009	Vessichelli (no. 29290/02) link	Violation of Art. 1 of Prot. No. 1 Violation of Art. 6 § 1 (fairness)	Disproportionate interference with the right to respect for the property on account of lack of sufficient compensation after expropriation Unfair proceedings as there had been no evidently compelling public interest to justify the retroactive application of the law [see *Scordino v. Italy* (n°1)]
Ukraine	18 Jun. 2009	Batrak (no. 50740/06) link Bilokin and Others (no. 14298/06) link Kashlakova and Others (no. 40765/05) link Osaulenko (no. 34692/07) link Pidorina and Kyrylenko (nos. 12477/06 and 31453/06) link Shygareva and Mazhanova (nos. 9450/07 and 22503/07) link Vasylyeva (no. 20511/05) link	Violation of Art. 6 § 1 (fairness) Violation of Art. 1 of Prot. No. 1	State's failure to enforce final judgments in the applicants' favour in good time or at all
Ukraine	18 Jun. 2009	Khmylyova (no. 34419/06) link Snigur and Onyshchenko (nos. 33064/06 and 35799/06) link	Violation of Art. 6 § 1 (fairness)	Idem.

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
Poland	09 Jun. 2009	Henryk Kozłowski (no. 17731/03)	Link
Poland	09 Jun. 2009	Kamecki and Others (no. 62506/00)	Link
Germany	11 Jun. 2009	Deiwick (no. 17878/04)	Link
Greece	11 Jun. 2009	Examiliotis (no. 15545/07)	Link
Greece	11 Jun. 2009	Stamouli (no. 55862/07)	Link
Germany	11 Jun. 2009	Mianowicz (No. 2) (no. 71972/01)	Link
Poland	16 Jun. 2009	Kęsiccy (no. 13933/04)	Link
Turkey	16 Jun. 2009	Erhun (nos. 4818/03 and 53842/07)	Link
Turkey	16 Jun. 2009	Abdulaziz Danış (no. 23573/02)	Link
Turkey	16 Jun. 2009	Başaran and Others (nos. 42422/04 and 6 other applications)	Link
Russia	18 Jun. 2009	Rysev (no. 924/03)	Link
Russia	18 Jun. 2009	Sokorev (no. 33896/04)	Link
Russia	18 Jun. 2009	Vdovina (no. 13458/07)	Link
Ukraine	18 Jun. 2009	Bublyk (no. 37500/04)	Link
Ukraine	18 Jun. 2009	Koziy (no. 10426/02)	Link
Ukraine	18 Jun. 2009	Pilipey (no. 9025/03)	Link
Ukraine	18 Jun. 2009	Termobeton (no. 22538/04)	Link
Ukraine	18 Jun. 2009	Yeroshkina (no. 31572/03)	Link

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

Those decisions are published with a slight delay of two to three weeks on the Court's Website. Therefore the decisions listed below cover the period from 4 to 31 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
Russia	07 May 2009	Khodorkovskiy (no 5829/04) link	Alleged violation of Art. 3 (conditions of detention in the remand centres no. 99/1 and 77/1 in Moscow and in courtroom), Art 5 § 1 (b), 2, 3 and 4, Art. 18 (criminal prosecution having been politically motivated)	Partly admissible (concerning the complaints under Art. 3, 5 §§ 1 (b), 3, 4 and Art. 18), partly inadmissible (concerning the complaint under Art. 5 § 2
Russia	07 May 2009	Meshcheryakov (no 6642/03) link	Alleged violation of Art. 2, 3, 5, 7 and 17 (ill-treatment following arrest and unlawful detention)	Struck out of the list (applicant no longer wishing to pursue his application)
Russia	07 May 2009	Dyukarev (no 18999/07) link	Alleged violation of Art. 6, 8 14 and Art. 2 of Prot. No. 4 (deprivation of the applicant's property as a result of the quashing of the final judgment)	Idem.
Russia	07 May 2009	Myasnikova (no 2712/04) link	The applicant complained under Art. 6 and 13 and Art. 1 of Prot. No. 1 about the delayed enforcement of a judgment	Struck out of the list (friendly settlement reached)
Russia	07 May 2009	Martynenko (no 26749/03) link	The applicant complained that the social benefits she was entitled to were inadequate, that the court awards she received were too small and that the judgment in her favour had not been executed in full	Struck out of the list (applicant no longer wishing to pursue her application)
Russia	14 May 2009	Pavel Zaytsev (no 2329/05) link	Alleged violation of Art. 6 § 1 (unfairness of criminal proceedings and lack of independent and impartial tribunal)	Inadmissible for non exhaustion of domestic remedies
Russia	14 May 2009	Borovskaya (no 6746/08) link	Alleged violation of Art. 5 § 1 (c), Art. 5 § 3 (unlawfulness and length of detention), Art. 6 § 1 (partial domestic courts)	Struck out of the list (applicant no longer wishing to pursue her application)
Russia	14 May 2009	Senko (no 32348/06) link	The applicant complained under Art. 1 of Prot. No. 1 that she had been deprived of her property as a result of the quashing of the final judgment	Idem.
Russia	14 May 2009	Maksimkina (no 5570/06) link	Alleged violation of Art. 6 (length of proceedings) and Art. 13 (lack of an effective remedy in that respect)	Idem.
Russia	14 May 2009	Datser (no 43260/02) link	Alleged violation of Art. 3 (inadequate conditions in the Biysk Central Town Hospital and lack of medical assistance), Art. 13 (lack of effective remedy in this respect), Art. 6 (lack of medical expert examination in the proceedings), Art. 2 and Art. 14 (discrimination on the ground of German ethnic origin)	Partly inadmissible (for non exhaustion of domestic remedies concerning the allegations under Art. 3, 13, 6) partly inadmissible (no appearance of violation of the Convention, concerning the allegations under Art. 2 and 14)
Russia	14 May 2009	Rakitina (no 25921/06) link	Alleged violation of Art. 1 of Prot. No. 1 (excessive delay regarding the enforcement of a final decision in the applicant's favour)	Struck out of the list (friendly settlement reached)
Russia	14 May 2009	Agafonova (no 33351/06) link	Idem.	Idem.

Russia	14 May 2009	Podkhaliuzina (no 5673/05) link	Alleged violation of Art. 6, 13, 17 and Art. 1 of Prot. No. 1 (excessive delay regarding the enforcement of final decision in the applicant's favour)	Idem.
Russia	14 May 2009	Mokina (no 23570/06) link	Alleged violation of Art. 6 and Art. 1 of Prot. No. 1 (excessive delay for the enforcement of final decision in the applicant's favour)	Idem.
Russia	14 May 2009	Bykova (no 38146/05) link	Idem.	Idem.
Slovakia	05 May 2009	Belakova (no 47451/06) link	The applicant complained under Article 6 § 1 about the excessive length of proceedings	Struck out of the list (applicant no longer wishing to pursue her application)
Slovakia	05 May 2009	Švábovský (no 31215/05) link	Alleged violation of Art. 6 § 1 and Art. 1 of Prot. No. 1 due to the excessive length of the civil proceedings	Idem.
Slovenia	05 May 2009	Rozman (no 483/03) link	Alleged violation of Art. 6 (excessive length of proceedings) and Art. 13 (lack of an effective remedy in that respect)	Struck out of the list (friendly settlement reached)
Slovenia	05 May 2009	Kojic (no 455/03) link	Idem.	Idem.
Sweden	12 May 2009	Brandt (no 3458/06) link	Alleged violation of Art. 6 § 1 (excessive length of proceedings)	Struck out of the list (applicant no longer wishing to pursue his application: he withdrew the application because he had failed to exhaust the domestic remedies)
Sweden	12 May 2009	Aberg (no 15606/07) link	Alleged violation of Art. 6 (unfairness and length of proceedings), Art. 6 § 3 (a) (not having been informed promptly about the accusations against the applicant) and Art. 6 § 2	Struck out of the list (friendly settlement reached)
"the former Yugoslav Republic of Macedonia"	05 May 2009	Nikolovski (no 26248/06) link	Length of compensation proceedings	Idem.
"the former Yugoslav Republic of Macedonia"	05 May 2009	Miloseski (no 40913/04) link	Idem.	Idem.
the Netherlands	05 May 2009	Belewal (no 9258/07) link	The applicant complained under Art. 8 that residence for the purpose of family reunion was refused to his children - left behind in Afghanistan- as a result of which he was unable to enjoy family life with them	Struck out of the list (Art. 37 § 1b)
the United Kingdom	05 May 2009	Sacker (no 15651/07) link	Alleged violation of Art. 2 and 13 (failure to protect the applicant's daughter's life by the Prison Service, lack of investigation and effective remedy)	Struck out of the list (friendly settlement reached)
Turkey	05 May 2009	Demirel (no 15588/04) link	Alleged violation of Art. 5 § 1 (unlawful detention), Art. 6 § 1 (inability to duly challenge the unlawfulness of detention in the review proceedings) and Art. 6 §1 (c)	Partly adjourned (concerning the applicant's right to challenge the lawfulness of her pre-trial detention), partly inadmissible (concerning the remainder of the

			(lack of legal assistance)	application)
Turkey	05 May 2009	Ilhan (no 33658/04) link	Alleged violation of Art. 3, 5, 6 and 13 (ill-treatment and lack of an effective investigation)	Inadmissible as manifestly ill-founded (the applicant had no arguable claim of violation of his rights)
Turkey	12 May 2009	Pipi (no 4020/03) link	Alleged violation of Art. 8 (publication of information about the applicant), Art. 6 § 1 (unfairness of proceedings) and Art. 14 (discrimination on the ground of the applicant's origins)	Inadmissible as manifestly ill-founded (proportionate interference with the applicant's right to private life in line with the national margin of appreciation), (no appearance of violation concerning the claims under Art. 6 and 14)
Turkey	12 May 2009	Yildirim (no 40104/05) link	The applicant suspecting that her baby had been swapped for a stillborn complains about the authorities' failure to conduct an investigation, under Art. 1, 2. Under Art. 8, 9 she also claims that the hospital authorities had buried the corps of the baby without the parents' consent	Inadmissible as manifestly ill-founded (no convincing evidence submitted by the applicant)
Turkey	05 May 2009	Bingol (no 40848/04) link	Alleged violation of Art. 6 § 1 (length of administrative proceedings and unfairness of proceedings)	Partly adjourned (concerning the length of proceedings) partly inadmissible as manifestly ill-founded (concerning the remainder of the application)
Turkey	12 May 2009	Akat (no 34740/04; 2399/06) link	Alleged violation of Art. 6 § 1 (length of administrative proceedings), Art. 6 § 1, Art. 2 of Prot. 7 (unfairness of proceedings), Art. 13 and 14	Partly adjourned (concerning the length of proceedings) partly inadmissible as manifestly ill-founded (concerning the remainder of the application)
Turkey	12 May 2009	Dumanoglu (no 44903/04) link	Alleged violation of Art. 6 § 1 (unfairness of proceedings)	Struck out of the list (applicant no longer wishing to pursue her application)
Turkey	12 May 2009	Kose (no 1272/04) link	Alleged violation of Art. 6 and 13 (excessive length of proceedings)	Struck out of the list (applicant no longer wishing to pursue his application)
Turkey	12 May 2009	Koc (no 26380/06) link	Alleged violation of Art. 5 § 3, 6 §§ 1, 3, Art. 13 et 14 (excessive length of criminal proceedings and of pre-trial detention)	Struck out of the list (friendly settlement reached)
Turkey	12 May 2009	Ertik (no 6370/03) link	Alleged violation of Art. 6 (lack of information about the accusations and lack of public hearing	Struck out of the list (applicant no longer wishing to pursue his application)
Ukraine	05 May 2009	Pryymak (no 35666/06) link	The applicant complained about the non enforcement of a judgment in her favour	Struck out of the list (lack of effective participation of the applicant in the procedure before the Court)
Germany	19 May 2009	Mianowicz (IV) (no 37111/04; 55440/07; 55443/07) link Mianowicz (XV) (no 41629/07) link	Alleged violation of Art. 6 § 1, 1 of Prot. 1, Art. 13, Art. 14 and Art. 3 (excessive length of proceedings, Lack of effective remedy in that regard) Alleged violation of Art. 6 § 1, 1 of Prot. 1, Art. 13, (excessive length of proceedings, lack of an effective remedy in that regard), Art. 8, 14, 3	Partly adjourned (concerning the length of proceedings and lack of an effective remedy in that respect), partly inadmissible (concerning the remainder of application) Idem.

		Mianowicz (XIX) (no 32637/08) link	Alleged violation of Art. 6 § 1, 1 of Prot. 1, Art. 13, (excessive length of proceedings, lack of an effective remedy in that regard), Art. 1, 3 and 14	Idem.
		Mianowicz (XI) (no 3863/06) link	Alleged violation of Art. 6 § 1, Art. 13, (excessive length of proceedings, lack of an effective remedy in that regard), Art. 8 and 14	Idem.
		Mianowicz (XII) (no 37264/06) link	Alleged violation of Art. 6 § 1, 1 of Prot. 1, Art. 13, (excessive length of proceedings, lack of an effective remedy in that regard), Art. 14 and 3	Idem.
		Mianowicz (nos. 4678/05 ; 22426/05; 3810/06; 37273/06) link	Alleged violation of Art. 6 § 1, 1 of Prot. 1, Art. 13, (excessive length of proceedings, lack of an effective remedy in that regard), Art. 14	Idem.
Armenia	26 May 2009	Davtyan (no 29736/06) link	Alleged violation of Art. 3 (conditions of detention, lack of medical care in Nubarashen detention facility), Art. 5 §§ 1, 3 (unlawfulness and length of detention), Art. 6 (unfairness and length of proceedings), Art. 7 (lack of legal certainty of the 2003 Criminal Code), Art. 1 of Prot. 1 (excessive court fees)	Partly adjourned (concerning the lack of requisite medical assistance in detention and the foresseeability of application of Art. 325 of the 2003 Criminal Code to the applicant's case) Partly inadmissible (concerning the remainder of the application)
Azerbaijan	28 May 2009	Guliyev (No. 2) (no 35559/05) link	Alleged violation of Art. 5, 6, 13 and 14 (unfairness in the proceedings concerning the refusal to suspend the detention order and refusal of the applicant's request to substitute the pre-trial detention order, unlawfulness of his three days' detention in Simferopol, Ukraine), Art. 3 of Prot. 1 and Art. 14 (criminal charges politically motivated), Art. 6 (unfairness of the proceedings concerning the refusal to issue the applicant with a domestic identity card and a diplomatic passport)	Partly adjourned (concerning the alleged violation of the applicant's right to liberty and security, the applicant's inability, due to the length of the criminal proceedings against him, to participate in the elections under the same conditions as other candidates and the invalidation of the election results in five polling stations of the applicant's constituency)
Belgium	19 May 2009	Illiu and others (no 14301/08) link	Alleged violation of Art. 3, 5 § 1 and 8 § 2 (detention of a 3 year old child in the repatriation centre 127bis in Steenokkerzeel for adults with his parents, lack of adequate medical care and deprivation of liberty), Art. 13 and Art 1 of Prot. 7 (lack of an effective remedy against the detention)	Inadmissible partly for non-exhaustion of domestic remedies, (concerning the conditions of third applicants detention and concerning the deprivation of liberty), partly for incompatibility *ratione materiae* (concerning the complaints under Art. 1 of Prot 7 which is not ratified by Belgium), and no arguable claim under Art. 13, partly as manifestly ill-founded (Art. 8)

Bulgaria	26 May 2009	Microintelect Ood and Others (no 34129/03) link	Alleged violation of Art. 1 of Prot. 1 (forfeiture of the alcohol belonging to the company), Art. 6 § 1 and 13, Art. 6 § 2 and Art. 7 § 1	Partly adjourned (concerning the forfeiture of the alcohol in the billiards club and the electronic games club and the impossibility of intervening in the proceedings for judicial review of the two penal orders) Partly inadmissible (concerning the remainder of the application)
Finland	19 May 2009	Loukola (no 51262/07) link	The applicant complained under Art. 6 § 1 about the length of the proceedings	Struck out of the list (friendly settlement reached)
Finland	19 May 2009	Vuori (no 23263/08) link	Idem.	Idem.
France	19 May 2009	Messier (no 25041/07) link	Alleged violation of Art. 6 §§ 1 and 3, Art. 6 § 2 (infringement of presumption of innocence by the journal *"La Tribune"*), Art. 1 of Prot. 1	Partly adjourned (concerning the absence of communication to the applicant of the different elements of the investigation) Partly inadmissible (concerning the remainder of the application)
France	19 May 2009	Vernes (no 30183/06) link	Alleged violation of Art. 6 § 1 (unfairness of proceedings before the *Commission des opérations de bourse* –COB- and before the *Conseil d'Etat*), Art. 6 § 1 and 8 (disproportionate interference with professional life)	Partly adjourned (concerning the lack of a public hearing before the COB and its lack of impartiality) partly inadmissible (concerning the remainder of the application)
France	19 May 2009	Association "Alberto and Annette Giacometti" (no 36246/06) link	Alleged violation of Art. 6 § 1 (unfairness of proceedings before the *Conseil d'Etat*), Art. 11 and Art. 1 of Prot. 1 (interference with the applicant's property rights)	Inadmissible as manifestly ill-founded (no appearance of violation of the Convention)
France	19 May 2009	SA LPG Finance Industrie (no 43387/05) link	Alleged violation of Art. 6, 8 et 13 (visits and seizures during tax proceedings)	Inadmissible for non exhaustion of domestic remedies
Greece	19 May 2009	Dragou and others (no 39587/07) link	The applicant complained under Art. 6 § 1 about the length of the proceedings	Struck out of the list (friendly settlement reached)
Greece	28 May 2009	Papatheofanous (no 28261/07) link	Alleged violation of Art. 6 § 1, 13 and 1 of Prot. 1 (expropriation of plot of land without any legal basis and legitimate aim)	Inadmissible partly as manifestly ill-founded (regarding Art. 6 § 1 and 13) partly for non-exhaustion of domestic remedies (complaint under Art. 1 of Prot 1)
Italy	19 May 2009	Addari (no 26054/05) link	Alleged violation of Art. 6 § 1 (excessive length of initial proceedings and of "Pinto" proceedings	Struck out of the list (applicant no longer wishing to pursue her application)
Moldova	19 May 2009	Dicusari (no 38655/05) link	Alleged violation of Art. 6 § 1 and 1 of Prot. 1 (failure to enforce the final judgment in the applicant's favour within a reasonable time and to afford appropriate redress for the delayed enforcement)	Struck out of the list (friendly settlement reached)
Moldova	19 May	Mirosnicenco (no 38679/05)	Alleged violation of Art. 6 § 1 and 1 of Prot. 1 (failure to enforce the final	Idem.

	2009	link	judgment in the applicant's favour)	
Moldova	26 May 2009	Agatiev (no 11610/06) link	Alleged violation of Art. 5 § 4 (impossibility to lodge an appeal in cassation), Art. 6 § 1 (no participation in the court hearing, length of proceedings, judgments insufficiently motivated)	Idem.
Poland	19 May 2009	Kedzior (no 38166/02) link	Alleged violation of Art. 6 § 1 (excessive length of administrative proceedings) and Art. 1 of Prot. 1 (nationalization of the property and conversion into a forest without the requisite administrative decision)	Partly struck out of the list (unilateral declaration of the Government concerning the length of proceedings), partly inadmissible for incompetence *ratione temporis* (concerning Art. 1 of Prot. 1)
Poland	19 May 2009	Szenk (no 2) (no 3515/07) link	Alleged violation of Art. 6 § 1 (excessive length of administrative proceedings)	Struck out of the list (friendly settlement reached)
Poland	19 May 2009	Wilczynski (No 3) (no 4215/06) link	Alleged violation of Art. 6 § 1 (excessive length of proceedings and refusal to examine the complaint by the Supreme Court)	Partly struck out of the list (unilateral declaration of the Government concerning the length of proceedings) partly inadmissible as manifestly ill-founded (concerning the alleged lack of access to court)
Poland	19 May 2009	Arkadiusz Kubik (no 2) (no 49324/08) link	The applicant complained under Art. 6 § 1 about the length of the proceedings	Struck out of the list (unilateral declaration of the Government)
Poland	19 May 2009	Korytkowski (no 970/06) link	Alleged violation of Art. 6 § 1 (fair hearing), Art. 13 (imposed condition for appeal to be prepared by a lawyer whereas a lawyer could refuse to prepare a cassation appeal), Art. 14 (discrimination for no choice as to the form of taxation forcing the applicant too adopt one which had excluding him from exclusion from farmers' insurance scheme)	Struck out of the list (friendly settlement reached)
Poland	19 May 2009	Przewoski (no 54305/07) link	Alleged violation of Art. 6 (length of criminal proceedings), Art. 6 § 3 (d) (failure of the trial court to hear witnesses proposed by the applicant in the second set of proceedings)	Idem.
Poland	19 May 2009	Lewandowski (no 41409/08) link	Alleged violation of Art. 6 (length of proceedings)	Idem.
Poland	26 May 2009	Tymoszuk (no 46366/07) link	Alleged violation of Art. 5 § 3 (excessive length of pre-trial detention)	Struck out of the list (unilateral declaration of the Government)
Poland	26 May 2009	Trębacz (no 32402/07) link	Alleged violation of Art. 6 § 1 (excessive length of criminal proceedings)	Struck out of the list (friendly settlement reached)
Poland	19 May 2009	Matyba (no 39137/07) link	Alleged violation of Art. 5 (unlawfulness of the detention in the sobering up centre, ill-treatment during arrest), Art. 6 and 13 (alleged lack of access to a court)	Partly struck out of the list (unilateral declaration of the Government concerning the denial of the applicant's right of access to a court) partly

				inadmissible (concerning the remainder of the application)
Poland	26 May 2009	Kozak (no 42123/08) link	Alleged violation of Art. 6 § 1 (excessive length of criminal proceedings)	Struck out of the list (friendly settlement reached)
Poland	19 May 2009	Sienkiewicz (no 19554/03) link	Alleged violation of Art. 6 (unfairness of proceedings, refusal of applicant's lawyer to represent him during the cassation appeal, length of detention on remand)	Partly struck out of the list (unilateral declaration of the Government concerning the applicant's deprivation of cassation appeal) partly inadmissible (concerning the remainder of the application)
Poland	26 May 2009	Winkler (no 40048/07) link	Alleged violation of Art. 6 § 1 (refusal of the Court of Appeal to appoint a legal-aid lawyer who would lodge a cassation appeal, lack of sufficient reasoning in the court's decision)	Struck out of the list (friendly settlement reached)
Poland	26 May 2009	Wrobel (no 17157/04) link	Alleged violation of Art. 6 § 1, Art. 13 (refusal of the Court of Appeal to appoint a legal-aid lawyer who would lodge a cassation appeal, lack of sufficient reasoning in the court's decision) and Art. 17	Idem.
Poland	26 May 2009	Adamczyk (no 23941/08) link	The applicant complained under Art. 6 § 1 about the length of the proceedings	Struck out of the list (unilateral declaration of the Government)
Portugal	26 May 2009	Gouveia Gomes Fernandes and Freitas E Costa (no 1529/08) link	Alleged violation of Art. 10 (sentence further to the publication of an article), Art. 6 § 1 and 14	Partly adjourned (concerning Art. 10) and partly inadmissible as manifestly ill-founded (concerning the remainder of the application)
Portugal	26 May 2009	Terroso and Terroso Oliveira Macieira (no 22952/06) link	Alleged violation of Art. 2, 5 and 8 (lack of compensation for having been contaminated with HIV in public hospital Santo Antonio), Art. 14 (difference of treatment between haemophiliacs and non haemophiliacs)	Struck out of the list (friendly settlement reached)
Romania	19 May 2009	Penciu (no 27110/03) link	Alleged violation of Art. 1 of Prot. 1 (allowance awarded when the applicant retired from military had been unlawfully subjected to income tax), Art. 6 (unfairness of proceedings), Art. 14 See *Driha v. Romania* of 21.02.2008	Idem.
Romania	19 May 2009	Coc (no 26851/03) link	Alleged violation of Art. 1 of Prot. 1 (allowance awarded when the applicant retired from military had been unlawfully subjected to income tax), Art. 6 (unfairness of proceedings), Art. 1 and 2 of Prot. 12	Idem.
Romania	19 May 2009	Burian (no 22067/03) link	Alleged violation of Art. 1 of Prot. 1 (allowance awarded when the applicant retired from military had been unlawfully subjected to income tax), Art 14	Idem.
Romania	19 May 2009	Jurca (no 25227/06) link	Idem.	Idem.
Romania	19 May	Buna (no	Alleged violation of Art. 6 § 1 and 14 (infringement of principle of legal	Idem.

	2009	45898/05) link	certainty on account of the contradictory case law of the High Court of Cassation)	
Romania	19 May 2009	Ioan (no 43873/05) link	Alleged violation of Art. 1 of Prot. 1 (allowance awarded when the applicant retired from military had been unlawfully subjected to income tax), Art 14	Idem.
Romania	19 May 2009	Cazangiu (no 26855/03) link	Alleged violation of Art. 1 of Prot. 1 (allowance awarded when the applicant retired from military had been unlawfully subjected to income tax), Art. 1 and 2 of Prot. 12	Idem.
Romania	19 May 2009	Chițu (no 26854/03) link	Idem.	Idem.
Romania	19 May 2009	Lucaciu (no 1190/03) link	Alleged violation of Art. 1 of Prot. 1 (allowance awarded when the applicant retired from military had been unlawfully subjected to income tax), Art 14	Idem.
Romania	19 May 2009	Dragu (no 11947/06) link	Idem.	Idem.
Romania	19 May 2009	Teodorovici (no 26881/03) link	Idem.	Idem.
Romania	19 May 2009	Pîrțac (no 26065/07) link	Alleged violation of Art. 1 of Prot. 1 and Art. 6 (non enforcement of a decision in the applicant's favour)	Struck out of the list (applicant no longer wishing to pursue her application)
Russia	19 May 2009	Khmel (no 29764/06) link	Alleged violation of Art. 1 and Art. 6 of Prot. No. 1 (non enforcement of a decision in the applicant's favour)	Struck out of the list (friendly settlement reached)
Russia	19 May 2009	Solovyeva (no 25677/05) link	Alleged violation of Art. 1 and Art. 6 of Prot. 1 (non enforcement of a decision in the applicant's favour)	Struck out of the list (applicant no longer wishing to pursue her application)
Russia	19 May 2009	Adonyeva and Tokmakova (no 26648/06) link	Alleged violation of Art. 1 and Art. 6 of Prot. 1 (non enforcement of a decision in the applicant's favour)	Struck out of the list (friendly settlement reached)
Russia	19 May 2009	Zakharova (no 39421/07) link	Alleged violation of Art. 1 and Art. 6 of Prot. 1 (non enforcement of a decision in the applicant's favour)	Idem.
Russia	19 May 2009	Vorobyeva (no 25685/05) link	Alleged violation of Art. 1 and Art. 6 of Prot. 1 (non enforcement of a decision in the applicant's favour)	Struck out of the list (the applicant had died and no member of her family or heir has expressed the wish to continue the proceedings)
Russia	28 May 2009	Zemerov (no 32084/03) link	Alleged violation of Art. 6 and Art. 1 of Prot. No. 1 (length of the civil proceedings and adjustment of the monthly payments delayed)	Inadmissible partly as manifestly ill-founded (regarding the delay of the monthly payment) partly for no respect of the time frame of six months
Russia	28 May 2009	Brailova (no 42149/04) link	Alleged violation of Art. 6, Art. 14 and Art. 1 of Prot. No. 1 (length of proceedings, enforcement of judgment against the applicant)	Inadmissible as manifestly ill-founded (no appearance of violation of the Convention)

Russia	28 May 2009	Reshetnikov (no 18218/04) link	Alleged violation of Art. 6 (unfairness of proceedings, unlawfulness of the applicant's conviction), Art. 6, 13 and 14 (refusal of domestic authorities to prosecute the judges who tried the applicant), Art. 5 §§ 1, 4, 5 (unlawfulness and length of pre-trial detention, lack of compensation in that connection)	Inadmissible partly for no respect of the time frame of six months (concerning the complaints under Art. 5) partly for no appearance of violation of the Convention regarding the remainder of the application

C. The communicated cases

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

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

- on 8 June 2009 : link
- on 15 June 2009 : link
- on 22 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 8 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 8 June 2009 concerns the following States (some cases are however not selected in the table below): Austria, Belgium, Croatia, France, Georgia, Germany, Romania, Russia, Serbia, the Netherlands, the United Kingdom, Turkey and Ukraine.

State	**Date of communication**	**Case Title**	**Key Words**
Austria	20 May 2009	Küchl (no. 51151/06)	Alleged violation of Art. 8 – Courts failure to protect the applicant (trained to be priest) against defamatory newspaper article which displayed his private life in public
Austria	20 May 2009	Kurier Zeitungsverlag und Druckerei GmbH (no. 1593/06)	Alleged violation of Art. 10 – Interference with the freedom of expression by the Austrian courts' order to pay compensation to a third party further to articles published by the daily newspaper owned by the applicant company
Austria	20 May 2009	Rothe (no. 6490/07)	Alleged violation of Art. 8 – Courts failure to protect the applicant against a defamatory newspaper article which displayed his private life in public

Belgium	19 May 2009	Awdesh (no. 12922/09)	Alleged violation of Art. 3 – Risk to be submitted to treatment in violation of Art. 3 if deportation to Greece and then possibly to Iraq See reference to the report of the Commissioner for Human Rights in the questions to the parties
Croatia	20 May 2009	Jularić (no. 26611/08)	Alleged violation of Art. 3 – Lack of an effective investigation – Conditions of detention in Zagreb County Prison and lack of adequate medical care
France	19 May 2009	Gas and Dubois (no 25951/07)	Alleged violation of Art. 8 – Lack of remedy against court decision rejecting the adoption of a partner's child by her same sex partner – Alleged violation of Art. 14 – Discrimination based on sexual orientation
Georgia	20 May 2009	Jeladze (no. 1871/08)	Alleged violation of Art. 3 – Infection with Hepatitis C in Rustavi no. 6 Prison – Lack of adequate medical treatment
Romania	18 May 2009	Mărgărit (no 1330/03)	Alleged violation of Art. 3 –Ill-treatment in police custody No 13 pending interrogation – Unlawful detention and arrest – Lack of an effective investigation – Alleged violation of Art. 6 – Conviction without sufficient evidence
Russia	20 May 2009	Yuldashev (no. 1248/09)	Risk of being submitted to torture and ill-treatment in case of extradition to Uzbekistan – Alleged violation of Art. 5
Russia	20 May 2009	Karimov (no. 54219/08)	
Russia	20 May 2009	Salikhov (no. 23880/05)	Alleged violation of Art. 3 - Forceful removal of his underwear and cutting of his fingernails and forceful taking of a blood sample in the interrogations room of the Uysk village police department – Conditions of detention in Uysk police station –Lack of an effective investigation in that regard – Alleged violation of Art. 6
the United Kingdom	19 May 2009	Othman (no. 8139/09)	Alleged violation of Art. 3 - Risk of being subjected to torture or ill-treatment if deported to Jordan – Alleged violation of Art. 5 - Risk of a flagrant denial of his right to liberty if deported – Alleged violation of Art. 6 - Risk of a flagrant denial of justice if retried in Jordan
the Netherlands	22 May 2009	N.T. (no. 53560/07)	Alleged violation of Art. 3 – Risk of being subjected to ill-treatment if expelled to Afghanistan
Turkey	19 May 2009	Gündüz (no 34278/04 and 5 other applications)	Alleged violation of Art. 11 –The disciplinary measures taken against the applicants were allegedly contrary to their right to join a trade union – Alleged violation of Art. 6 – Lack of a fair hearing
<u>Cases concerning Chechnya</u>			
Russia	20 May 2009	Barshova (no. 8300/07)	The applicants, from Chechnya, represented before the Court by their lawyers and by lawyers of the Stichting Russian Justice Initiative (Beksultanova), complain about violations of Art. 2, 3, 5 and 13 In the case of Khamzatov and others, the applicants claim to be victims of violation of Art. 2 and 13
Russia	20 May 2009	Beksultanova (no. 31564/07)	
Russia	20 May 2009	Gerasiyev and Others (no. 28566/07)	
Russia	20 May 2009	Khamzatov and Others(no. 31682/07)	

Communicated cases published on 16 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 16 June 2009 concerns the following States (some cases are however not selected in the table below): Armenia, Azerbaijan, Bulgaria, Croatia, Georgia, Germany, Greece, Malta, Poland, Portugal, Romania, Sweden, "the former Yugoslav Republic of Macedonia", the Netherlands, the United Kingdom, Turkey and Ukraine.

State	Date of communication	Case Title	Key Words
Georgia	29 May 2009	Aladachvili (no 17491/09)	The applicant complains under Art. 3 that his detention conditions in the penitentiary hospital and in prison were incompatible with his health
Greece	29 May 2009	Georgiou (no 8710/08)	Alleged violation of Art. 3 – Lack of adequate medical care in pre-trial detention – Alleged violation of Art. 13 – Lack of an effective remedy in that regard
Malta	25 May 2009	Dadouch (no. 38816/07)	Alleged violation of Art. 8 § 1 – Interference with the right to family life further to refusal to register the applicant's marriage with a Russian national – Alleged violation of Art. 14 –
Romania	28 May 2009	Abou Amer (no. 14521/03)	Alleged violation of Art. 3 – Conditions of detention in the airport transit facilities and in the Otopeni Centre for the Reception, Selection and Accommodation of Foreigners – Alleged violation of Art. 5 § 1 for the first applicant – Alleged violation of Art. 8 – Alleged violation of Art. 13 – Lack of an effective remedy
Sweden	27 May 2009	N. (no. 23505/09)	Alleged violation of Art. 3 - Risk of being submitted to ill-treatment if deported to Afghanistan
the Netherlands	28 May 2009	Krops (no. 26748/07)	Alleged violation of Art. 2, 3 and 5 § 1 (d) – The applicant was placed, as a minor and on the basis of a civil court's order, for one and a half year in a youth prison without any form of treatment pending his placement – Alleged violations of Articles 6 and 13
the United Kingdom	25 May 2009	Abdi (no. 27770/08)	Alleged violation of Art. 5 § 1(f) –Unlawful detention with a view to deportation to Somalia – Length of detention
Turkey	27 May 2009	Bayhan (no 50178/06 and 62 other applications)	Alleged violation of Art. 6 – Fairness of proceedings – Alleged violation of Art. 8, 9, 10 – Interference with the applicants' rights to correspondence, right to information and right to freedom of expression on account of refusal to publish their publications written in Kurdish langue – Alleged violation of Art. 13
Turkey	27 May 2009	Moghaddas (no. 46134/08)	Alleged violation of Art. 2 and 3 – Risk to the applicant's life if deported to Iraq – Conditions of detention at the Güzelçamlı gendarmerie station in Kuşadası – Alleged violation of Art. 13 – Lack of remedy to challenge the deportation – Alleged violation of Art. 5 §§ 1, 2, 3 –Unlawfulness and length of detention
Turkey	26 May 2009	Dink (no 2668/07 and 4 other applications)	Alleged violation of Art. 2 – Failure to protect the applicant's life – Alleged violation of Art. 10 – Alleged violation of Art. 14 in conjunction with Art. 10 – Discrimination on ground of the applicant's Armenian origins

Communicated cases published on 22 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 22 June 2009 concerns the following States (some cases are however not selected in the table below): Bulgaria, Croatia, Estonia, Germany, Italy, Moldova, Norway, Poland, Romania, Russia, "the former Yugoslav Republic of Macedonia", the United Kingdom, Turkey and Ukraine.

State	Date of communication	Case Title	Key Words
Croatia	02 Jun. 2009	Drljan (no 34687/08)	The applicant complains under Art. 6 §§ 1 and 3(d) that he had no opportunity to question any of the witnesses in the criminal proceedings against him
Estonia	04 Jun. 2009	Tarkoev and Others (no. 14480/08) Minin and Others (no. 47916/08)	Alleged violation of Art. 1 of Prot 1 – Lack of entitlement to retirement pension despite contributions to the pension funds – Alleged violation of Art. 1 of Prot. 1 in conjunction with Art. 14 – Discrimination on grounds of the applicants' military service in Russian army – Alleged violation of Art. 6 § 1 – Lack of impartiality of domestic courts – Alleged violation of Art. 6 § 1 separately and in conjunction with Art. 14 – Excessive court fees
Italy	02 Jun. 2009	Di Sarno and Others (no 30765/08)	Alleged violation of Art. 2 and 8 – Failure to take the measures to improve the public service with a view to eliminate waste creating a real danger for the life and health of the local population – Alleged violation of Art. 6 and 13
Norway	05 Jun. 2009	Aune (no. 52502/07)	Alleged violation of Art. 8 – Interference with the right to respect for family life by court decision depriving the applicant of her parental responsibilities and authorising her son's adoption by his foster parents
Poland	02 Jun. 2009	Piontek (no. 21307/07)	Alleged violation of Art. 10 – Interference with the right to freedom of expression further to sanction due to an open letter published in a local newspaper criticising a public agent
Russia	05 Jun. 2009	Fedosov (no. 41414/04)	Alleged violation of Art. 3 – Infection with tuberculosis in detention facility OS-34/24 in the Republic of Komi – Alleged violation of Art. 6 and 13 – Decisions made by domestic courts without the applicant being present – Alleged violation of Art. 34 - Hindrance of his right of individual petition by the authorities
Russia	05 Jun. 2009	Kopanitsyn (no. 43231/04)	Alleged violation of Art. 3 – Detention conditions in pre-trial detention centre IZ-77/1 (Moscow) - Ill-treatment in detention ward IVS-1 (Moscow) – Alleged violation of Art. 5 – Unlawfulness and length of detention – Alleged violation of Art. 34 – Authorities' interference with the applicant's correspondence with the Court
Russia	05 Jun. 2009	Tereshchenko (no. 33761/05)	Alleged violation of Art. 3 – Condition of detention in detention centre of the Talovskiy police station and in Voronezh remand centre no. 36/1 and lack of medical assistance – Alleged violation of Art. 13 – Lack of an effective remedy – Alleged violation of Art. 8 – Limitation on family visits in detention – Alleged violation of Art. 34 due to authorities' refusals to dispatch his correspondence to the Court in 2006 – Alleged violation of Art. 6 § 1
the former Yugoslav Republic of Macedonia	04 Jun. 2009	Sulja (no. 22184/08)	The applicant complains under Articles 2 and 3 that her relative had been beaten, as a result of which he had died in the hands of the police – Lack of effective investigation – Lack of an effective remedy under Art. 13
Ukraine	04 Jun. 2009	Sukhorukov (no. 49140/06)	Alleged violation of Art. 3 – In particular conditions of detention in Shakhtarsk ITT, in Kharkiv SIZO-27 and in Dnipropetrovsk SIZO-3
Case concerning Chechnya			
Russia	05 Jun. 2009	Gelayev and Others (no.	Alleged violation of Art. 2 – Disappearance of the applicant's relative Murad Gealev and lack of investigation in that regard – Alleged violation of Art. 3 – The second and fourth applicant complain about ill-treatment during the abduction of

		20216/07)	their relative Murad Gelaev and lack of effective investigation on that regard – Mental suffering as a result of their relative's disappearance – Alleged violation of Art. 5 – Unlawful detention – Alleged violation of Art. 13 lack of effective remedy against the above violations

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

Referrals to the Grand Chamber (25.06.09)

The cases of *Mangouras v. Spain*, *Neulinger and Shuruk v. Switzerland* and *Taxquet v. Belgium* have been referred to the Grand Chamber of the Court. Press Release

Grand Chamber hearing (17.06.09)

The Court held a hearing in the case of *Guiso-Gallisay v. Italy* concerning the application of Article 41 (just satisfaction) in the case of the indirect expropriation of land owned by the applicants in Sardinia. Press release, webcast of the hearing

Part II : The execution of the judgments of the Court

A. New information

2–4 June 2009: Committee of Ministers to supervise the execution of European Court of Human Rights judgments

You may now consult the other documents related to this meeting that became public (see also RSIF n° 18) on the Committee of Ministers' website [Human Rights (DH) meetings]: http://www.coe.int/t/cm/humanRights_en.asp

New website of the Department for the execution of judgments of the European Court of Human Rights (22.06.09)

The new site presents *inter alia* general information on execution of judgments, as well as links to the main reference documents - in particular the Committee of Ministers' annual reports on its supervision of execution of judgments - and to documents and other lists concerning the current state of execution of the cases pending before the Committee of Ministers.

A search tool has also been introduced to facilitate access to Committee of Ministers' meeting documents related to execution of judgments of the European Court of Human Rights.

Website: www.coe.int/execution

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)

The European Committee of Social Rights held its 237th 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 response of the Finnish authorities (17.06.09)

The CPT has published on 17 June 2009 the response of the Government of Finland to the report on the CPT's most recent visit to Finland, in April 2008. The response has been made public at the request of the Finnish authorities.

The CPT's report on the April 2008 visit was published on 20 January 2009. The response of the Finnish Government is available on the Committee's website: http://www.cpt.coe.int

C. European Commission against Racism and Intolerance (ECRI)

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

Bosnia and Herzegovina: publication of the 2nd cycle opinion and government comments (10.06.09)

The Opinion of the Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities (FCNM) on Bosnia and Herzegovina has been made public by the Government. The Advisory Committee adopted this Opinion in October 2008 following a country visit in March 2008.

Summary of the Opinion:

"Bosnia and Herzegovina has taken a number of measures to advance the implementation of the Framework Convention. Legislation on the protection of persons belonging to national minorities was adopted by the Federation and Republika Srpska. Further steps should nonetheless be taken to ensure that the existing legislation is fully implemented.

Persons belonging to national minorities continue to be included in the category of "Others", do not enjoy the same political rights as those belonging to the three constituent peoples and remain on the sidelines of public affairs. They still have low visibility within the society since the institutional system is focused on the interests of the three constituent peoples.

Commendable Action Plans for Roma housing, health and employment were recently devised with a view to advancing the implementation of the 2005 National Strategy for Roma. It is crucial that they are implemented without further delay as many Roma continue to face serious difficulties in the field of education, employment, housing and access to health care.

Moreover, their possibilities to participate in decision-making processes are very limited.

In the field of education, there is a most worrying trend towards increased segregation of pupils along ethnic lines.

Consultative bodies for national minorities were set up in Republika Srpska and at the state level. It is important that these bodies be given adequate support so that they can effectively participate in the formulation of laws and policies.

The government comments on the Opinion have also been made public."

E. Group of States against Corruption (GRECO)

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

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

GRETA holds its second meeting on 16-19 June 2009 in Strasbourg (15.06.09)

The Committee of the Parties of the Council of Europe Convention on Action against Trafficking in Human Beings met for the second time on 15 June 2009 at the Council of Europe in Strasbourg. In preparation for the first monitoring round of the Convention, GRETA will prepare its Rules of procedure for evaluating implementation of the Convention by the Parties. GRETA will also start preparing a questionnaire for the first evaluation.

At this meeting the Committee held its first exchange of views with the President of GRETA. The Committee also held an exchange of views on the proposal for a European Union "Council Framework Decision on preventing and combating trafficking in human beings, and protecting victims".

* 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

Luxembourg signed on 9 June 2009 Protocol No. 14bis to the Convention for the Protection of Human Rights and Fundamental Freedoms (CETS No. 204), and has accepted 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).

The **Netherlands** have accepted on 10 June 2009 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).

Ireland signed without reservation on 17 June 2009 as to ratification Protocol No. 14bis to the Convention for the Protection of Human Rights and Fundamental Freedoms (CETS No. 204).

San Marino signed on 19 June 2009 Protocol No. 14bis to the Convention for the Protection of Human Rights and Fundamental Freedoms (CETS No. 204). See also special file in RSIF n° 18.

Turkey ratified on 10 June 2009 the Protocol amending the European Social Charter (ETS No. 142).

Belgium ratified on 12 June 2009 the Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 159), and Protocol No. 2 to the European Outline Convention on Transfronfier Co-operation between Territorial Communities or Authorities concerning interterritorial co-operation (ETS No. 169).

Hungary signed on 16 June 2009 the European Agreement on the Abolition of Visas for Refugees (ETS No. 31).

Serbia signed on 18 June 2009 the European Convention on the Exercise of Children's Rights (ETS No. 160), and the European Convention on the Adoption of Children (Revised) (CETS No. 202).

Montenegro signed on 18 June 2009 the European Convention on the Exercise of Children's Rights (ETS No. 160), the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201), and the European Convention on the Adoption of Children (Revised) (CETS No. 202).

Belgium, **Estonia**, **Finland**, **Georgia**, **Hungary**, **Lithuania**, **Montenegro**, **Norway**, **Serbia**, **Slovenia**, **Sweden** and **"the former Yugoslav Republic of Macedonia"** have signed on 18 June 2009 the Council of Europe Convention on Access to Official Documents (CETS No. 205).

B. Recommendations and Resolutions adopted by the Committee of Ministers

CM/Rec(2009)4E / 19 June 2009

Recommendation of the Committee of Ministers to member states on the education of Roma and Travellers in Europe (Adopted by the Committee of Ministers on 17 June 2009 at the 1061st meeting of the Ministers' Deputies).

C. Other news of the Committee of Ministers

Council of Europe concerned about changes to media and NGO legislation in Azerbaijan (16.06.09)

We are very concerned about some of the proposed changes to the legislation regulating non-governmental organisations and media in Azerbaijan. Amendments as proposed, which will be reportedly submitted for parliamentary decision this Friday, may create serious obstacles for the freedom of expression and normal functioning of the civil society in Azerbaijan. They may even lead to the closing of the Council of Europe School of Political Studies in Baku.

We therefore call on the authorities to postpone the decision on the proposed amendments. The Council of Europe is ready to provide assistance in order to ensure that any changes will be in line with the Council of Europe standards of democracy and human rights.

Samuel Žbogar, Minister of Foreign Affairs of Slovenia and Chairman-in-office of the Committee of Ministers of the Council of Europe, Lluís Maria de Puig, President of the Parliamentary Assembly of the Council of Europe, Terry Davis, Secretary General of the Council of Europe

Part V : The parliamentary work

The Parliamentary Assembly of the Council of Europe held its Summer Session in Strasbourg on 22-26 June 2009. You may consult the agenda here. All the information regarding this session will be available in RSIF n° 20.

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

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

➢ *Countries*

Monitoring visit by PACE rapporteurs to Moldova (08.06.09)

Josette Durrieu (France, SOC) and Egidijus Vareikis (Lithuania, EPP/CD), co-rapporteurs of the Parliamentary Assembly of the Council of Europe (PACE) for the monitoring of the obligations and commitments of Moldova, are to make a fact-finding visit to Chisinau on 10 June, as part of follow-up to PACE Resolution 1666 (2009) on the functioning of democratic institutions in Moldova.

Belarus: PACE rapporteur welcomes the opening of a Council of Europe Information Point in Minsk (08.06.09)

"We hope that this Infopoint will be the first significant sign of a new path in Belarus and a major change in the relations between the country and the Council of Europe," said Andrea Rigoni (Italy, ALDE), PACE rapporteur on Belarus, at the opening ceremony of a new Information Point in Minsk. "Our greatest hope is that it will, ultimately, be able to contribute to the process of democratisation in this country and bring it into our organisation, which is the House of Democracy".

Read the Speech by Andrea Rigoni, PACE rapporter on the situation in Belarus

PACE monitoring co-rapporteurs visit Serbia (10.06.09)

Charles Goerens (Luxembourg, ALDE) and Andreas Gross (Switzerland, SOC), PACE co-rapporteurs for the monitoring of obligations and commitments by Serbia made a fact-finding visit to Belgrade on 12 June, during which they were due to meet the President of the Republic, Boris Tadic, to discuss the authorities' practical plans to honour their remaining obligations and commitments, in the spirit of Assembly Resolution 1661 (2009). Talks were also scheduled with the members of the Serbian delegation to PACE.

See Resolution 1661 (2009)

Monitoring visit by PACE co-rapporteurs to Armenia (15.06.09)

Georges Colombier (France, EPP/CD) and John Prescott (United Kingdom, SOC), PACE co-rapporteurs on the monitoring of the honouring of obligations and commitments by Armenia, made a fact-finding visit to Yerevan on 16 and 17 June 2009, as part of the implementation of PACE Resolutions 1609 (2008), 1620 (2008) and 1643 (2009) on the functioning of democratic institutions in Armenia.

The co-rapporteurs met the President of the Republic Serzh Sargsyan, the President of the National Assembly Hovik Abrahamyan, the Minister for Foreign Affairs Edward Nalbandian and the Prosecutor

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

General Aghvan Hovsepyan. Meetings are also scheduled with the Ad hoc Parliamentary Committee of Inquiry into the events of 1-2 March 2008 in Yerevan, the parliamentary delegation to PACE, as well as representatives of the diplomatic community and civil society. The report was debated by the Assembly during its plenary session on 24 June.

Official visit by PACE President to "the former Yugoslav Republic of Macedonia" (15.06.09)

Lluís Maria de Puig, President of the Parliamentary Assembly of the Council of Europe (PACE), made an official visit to "the former Yugoslav Republic of Macedonia" on 16 and 17 June, where he met the President of the Republic Gorge Ivanov, the President of the Assembly Trajko Veljanoski, the Prime Minister Nikola Gruevski, and the Minister of Foreign Affairs Antonijo Milososki.

President Lluís Maria de Puig said that since its declaration of independence and subsequent accession to the Council of Europe in 1995, the country had made steady progress on the path of strengthening its democratic institutions, affirming the principles of rule of law and effectively protecting human rights and national minorities. He also emphasised the country's active involvement in the process of European integration.

"However, 'the former Yugoslav Republic of Macedonia' still has issues to face in the process of consolidating its democratic institutions. The confidence of all political players in the parliamentary process must be bolstered," said the PACE President. In that connection, he emphasised that the role of the President of the Republic should be to make it easier for the various political forces to engage in constructive dialogue.

Read Full speech (French only)

Moldova: statement by PACE co-rapporteurs following changes to Electoral Code (17.06.09)

Josette Durrieu (France, SOC) and Egidijus Vareikis (Lithuania, EPP/CD), co-rapporteurs of the Council of Europe Parliamentary Assembly (PACE) for the monitoring of Moldova's obligations and commitments, made the following statement today:

"We take note of the positive changes to the Electoral Code which the Moldovan Parliament adopted on Monday and which tend in the direction of the Venice Commission's and the Assembly's recommendations. These changes, which were adopted by 59 out of 101 votes, the opposition having declined to associate itself with the ballot, are intended to reduce the electoral threshold from 6% to 5% and the participation threshold from 50% plus one vote to 33% plus one vote. However, we observe that the following issues have not been settled: Electoral lists: these have raised objections for not being up to date. They gave rise to supplementary lists, not only contestable but indeed contested by the observers of the poll. There is an overriding need to make all the necessary changes before the new election. As we have not received information to that effect, we hope that the compilation of the new lists will be completed by the next ballot; Voting by Moldovan electors resident abroad: there are over 500 000 Moldovans living abroad. We regret that the matter of voting by these citizens has not been settled.

We are keeping an attentive watch on the post-election events in Moldova, and we shall do likewise during the forthcoming early elections. We sincerely wish that the campaign may proceed under optimum conditions and in accordance with European standards especially as regards access to the media."

PACE rapporteurs on Georgia: "Abkhazia is in danger of slipping into a human rights black hole" (18.06.09)

The Council of Europe Parliamentary Assembly (PACE) rapporteurs on the consequences of the war between Georgia and Russia, Luc van der Brande (Belgium, EPP/ CD) and Mátyás Eörsi (Hungary, ALDE), as well as Corien Jonker (Netherlands, EPP/CD), rapporteur on the humanitarian consequences of this war, today jointly expressed great concern that Russia had vetoed the continuation of the mandate of the UN Observer Mission to Georgia (UNOMIG) and its work in the breakaway region of Abkhazia.

Regretting that repeated Assembly demands to ensure the continuation of the work carried out by the UN Observer Mission in Georgia had not been heeded, the PACE rapporteurs called on all parties to think about the people and not the politics.

"Without UNOMIG in Abkhazia there will be no independent human rights protection and monitoring, and an almost complete lack of any international presence. Those who will suffer are the people, and particularly those living in the Gali region," they added.

"No one wants a further exodus from the Gali region, but without human rights protection guarantees and monitoring, this exodus will become a real risk", the rapporteurs concluded.

- *Themes*

Restitution of housing, land or property is the 'optimal response' for refugees and IDPs, says PACE rapporteur (11.06.09)

"Restitution is the optimal response to housing, land and property loss, because it allows a free choice between all three durable solutions for a refugee or internally displaced person (IDP), namely return to the original home in safety and dignity, integration at the place of displacement or resettlement," said Jørgen Poulsen (Denmark, ALDE), who is preparing a PACE report on "Solving property issues of refugees and internally displaced persons". He was speaking at the end of a fact-finding mission to Bosnia and Herzegovina (8-10 June 2009).

"Should restitution for some reason not be possible, pecuniary compensation or compensation in kind must be provided," Mr Poulsen continued. He highlighted that all restitution claims should be dealt with as speedily as possible using the set of guidelines elaborated by the UN, known as the Pinheiro Principles. "These principles," he added, "should be promoted and used across Europe."

"The way in which Bosnia and Herzegovina has tackled the issue of property restitution might serve as a good example for other countries faced with the same issue," he continued. "Some questions in Bosnia and Herzegovina, however, remain to be solved. These include finding means to reconstruct destroyed property and solutions for people who were deprived of their housing and who, for different reasons, are still confined to collective centres."

The family: an essential resource in a time of crisis, says PACE rapporteur (16.06.09)

"The family should be seen as one of the essential resources for kick-starting the economic system. In that respect, legislators are able to steer social and family policies towards strengthening family cohesion while enabling families to face the challenges raised by the crisis," Luca Volontè (Italy, EPP/CD) emphasised today at the opening of a Council of Europe Conference of Ministers responsible for Family Affairs, organised in conjunction with the Austrian Ministry of the Economy, Family and Youth.

"The Parliamentary Assembly can be a useful partner in developing standards for family policies, through its ability to enhance inter-parliamentary collaboration in the matter and to engage in dialogue with the grassroots, civil society, experts and governments," he added. Mr Volontè is currently preparing a report on family cohesion as a development factor in time of crisis.

European "asylum lottery" is an affront to the rule of law, says PACE Chair on Migration and Refugees (19.06.09)

On the eve of World Refugee Day, Corien Jonker (Netherlands, EPP/CD), Chair of the Council of Europe Parliamentary Assembly (PACE) Migration and Refugee Committee reminded governments and civil society that "World Refugee Day is a day to bring the plight of 10 million refugees world wide into our homes and hearts."

"In Europe our borders are becoming ever more controlled and our asylum procedures tightened making it increasingly difficult for asylum seekers to access asylum procedures," Corien Jonker said. "States have the right to control their borders, but they cannot disregard persons in need of international protection, and the role of the PACE Migration and Refugee Committee is to ensure that Europe lives up to its obligations towards this vulnerable group of persons."

Mrs Jonker stated that in the week following World Refugee Day, the Committee intends to approve a report on Quality and consistency of asylum decisions in the Council of Europe member states, highlighting drastically diverging acceptance rates of asylum seekers in the 47 member states of the Council of Europe. "Poor quality decision-making and inconsistency of asylum decisions result in unfairness and suffering for asylum seekers. It creates an "asylum lottery" in Europe and is an affront to the rule of law in member states." Corien Jonker said .

- *Speeches*

Carina Hägg promotes a legally binding instrument to combat violence against women (18.06.09)

“Combating violence against women, especially in the private sphere, should be enhanced in Europe with a legally binding instrument. I therefore invite the Ministers of Justice to support the current drafting of a convention which can effectively combat the most widespread and most severe forms of violence against women, including domestic violence, and that should encompass the gender dimension”, declared in Tromsø Carina Hägg (Sweden, SOC), Chair of the PACE Sub-Committee on violence against women, at the opening of the 29th Conference of Council of Europe Ministers of Justice.

“The Parliamentary Assembly is more involved than ever to support the efforts to draw a convention on gender-based violence, which should enhance the protection of victims and prosecution of perpetrators. Impunity must be eradicated from Council of Europe member states”, she added.

Read the Speech

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

A. Country work

"Belgium should improve detention conditions and strengthen migrants' rights" says Commissioner Hammarberg in a report (17.06.09)

"Belgium has a good system of human rights protection, but more efforts are needed in certain areas, in particular on prison conditions, asylum procedures and the protection of the rights of migrants", said the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, when presenting his report on the Kingdom today.

The report welcomes the adopted programme for renovation and the construction of new prison facilities, but stresses that there is a need for immediate action to reduce overcrowding and to address inhumane detention conditions in some prisons. "Alternatives to imprisonment should be developed. Untried, convicted and psychiatric detainees should be detained separately and an effective and independent mechanism to deal with prisoners' complaints should also be set up."

In addition, the report raises issues on the system of youth justice and recommends that resources be increased to ensure the effectiveness of alternatives to detention. To lock up minors must be the very last resort and they should never be detained together with adult prisoners.

Although the asylum procedures have been improved, the Commissioner calls for more transparency and better access to information. "Frontline legal advice services should be created to advise and inform detained migrants of their rights."

The Commissioner welcomes the new policy not to detain most of the irregular migrant families and considers the new housing system a substantial improvement. However, he regrets that in certain cases children and their parents continue to be detained and calls for an appropriate solution. "Living conditions and access to health care should be improved in the closed centres for aliens."

Furthermore, Commissioner Hammarberg stresses that "terrorism related offences and special methods of investigation should be defined with greater precision" and stresses that anti-terrorism measures should be used in a proportionate manner. The report suggests a review of the restrictions placed on the rights of the defence and on the collection and use of personal data.

On discrimination, the Commissioner highlights the need to promote gender equality and to improve services for women victims of violence. He also recommends the setting up of an impartial and effective body for treating complaints about discrimination based on language under the new anti-discrimination legislation.

After having assessed the overall human rights situation in Belgium Commissioner Hammarberg suggests that his recommendations be analysed as part of a general review of further steps to be taken. He proposes that work is started to develop a national plan of action for the systematic implementation of human rights.

The report is based on the findings of a visit carried out last December and it is published together with the Government response.

Read the Report

B. Thematic work

"International organisations should be accountable when they act as quasi governments" says Commissioner Hammarberg (08.06.09)

“An international accountability deficit is no good for anyone, least of all the local population. No-one, especially an international organisation, is above the law” states Commissioner Hammarberg in his latest Viewpoint published today. The Council of Europe Commissioner for Human Rights underlines that “when international organisations exercise executive and legislative control as a surrogate state they must be bound by the same checks and balances as we require from a democratic government. Lack of accountability may undermine public confidence in the international organisation and thereby its moral authority to govern. It also promotes a climate of impunity and sets a negative model for domestic governments.”

Read the Viewpoint

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

Guantanamo: Commissioner Hammarberg appeals to European governments to co-operate with President Obama for the closure of the camp (09.06.09)

Following a visit to Washington DC on 1 and 2 June, Commissioner Hammarberg addressed a letter to all Council of Europe member states calling upon them to follow the example already provided by certain member states and welcome "cleared" ex-detainees in need of international protection. During the visit, the Council of Europe Commissioner for Human Rights also pressed for the US to offer "cleared" prisoners residence in the country and made clear his position that “detainees for whom there is evidence of criminal activities should be tried in accordance with international human rights law standards. The others should be released in full respect of the principle of presumption of innocence. Reparation for all those unlawfully detained should also be provided.”

Read the Letter

“Repression is not the only answer to juvenile crime” says Commissioner Hammarberg (19.06.09)

“Any measure to tackle juvenile offences should always focus on children’s needs and interests, not on repression” said today the Council of Europe’s Commissioner for Human Rights, Thomas Hammarberg, publishing his issue paper on “Children and Juvenile Justice: Proposals for Improvements.” “Despite a certain perception that children are becoming more violent, available statistics do not reflect an overall increase of the rate of youth crime” he said. “States use different approaches to respond to young offending and youth justice systems vary from one country to the next. Children’s rights standards, based on international and European instruments, take on added importance amid this diversity. Identifying the relevant international and European standards on juvenile justice and outlining examples of how these standards are being implemented, the Commissioner calls on member States to put in place systems which are effective and rights-based, and secure the well-being of children and young people in conflict with the law.”

Read the Issue Paper

C. Miscellaneous (newsletter, agenda…)

You may consult the latest issue of the electronic newsletter published by the Office of the Commissioner: No.27 / 11 May - 30 June 2009.