DIRECTORATE GENERAL OF HUMAN RIGHTS
AND LEGAL AFFAIRS

LEGAL AND HUMAN RIGHTS CAPACITY BUILDING
DEPARTMENT

**Division II - National Human Rights Structures Unit**

Strasbourg, 14 October 2009

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

## Issue n°25
## covering the period from 14 to 27 September 2009

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*The **selection** of the information contained in this Issue and deemed relevant to NHRSs is made under the responsibility of the NHRS Unit*

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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) carefully selects and tries to present in a user-friendly manner. The information is sent to the Contact Persons in the NHRSs who are kindly asked to dispatch it within their offices.

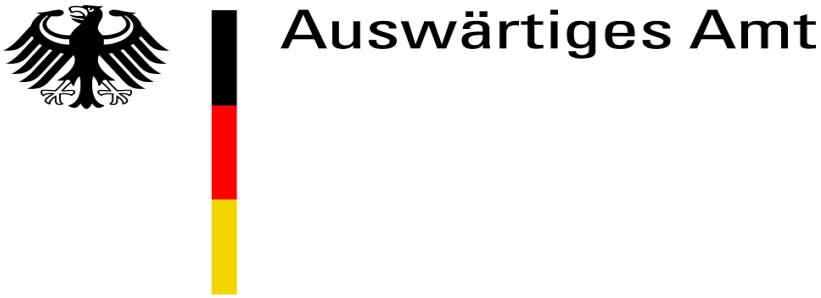
Each issue covers two weeks and is sent by the NHRS Unit to the Contact Persons a fortnight after the end of each observation period. This means that all information contained in any given issue is between two and four weeks old.

Unfortunately, the issues are available in English only for the time being due to limited means. However, the majority of the documents referred to exists in English and French and can be consulted on the websites that are indicated in the Issues.

The selection of the information included in the Issues is made by the NHRS Unit. It is based on what is deemed relevant to the work of the NHRSs. A particular effort is made to render the selection as targeted and short as possible.

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

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



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

## 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, is based on the press releases of the Registry of the Court.

Some judgments are only available in French.

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

**Note on the Importance Level**:

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

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

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

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

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

- **Grand Chamber judgments**

**Enea v. Italy (link to judgment in French) (no. 74912/01) (Importance 1) – 17 September 2009 – No violation of Art. 3 – National authorities' fulfilment of their positive obligation to protect the applicant's physical well-being – Violation of Art. 6 § 1 – Infringement of the right of access to a court – No violation of Art. 6 § 1 – No restriction of a "civil" right further to the applicant's placement in a special regime unit – Violation of Article 8 – Infringement of the right to respect for the applicant's correspondence**

The applicant was sentenced to 30 years' imprisonment for, among other offences, membership of a Mafia-type criminal organisation, and has been in detention since 23 December 1993.

On 10 August 1994, in view of the danger posed by the applicant, the Minister of Justice issued a decree ordering that he should be subject for one year to the special prison regime provided for in the second paragraph of section 41*bis* of the Prison Administration Act. This provision allows application of the ordinary prison regime to be suspended in whole or in part for reasons of public order and safety. The decree imposed restrictions on, among other things, family visits (one hour-long visit per month) and the number of parcels received; the applicant was also prohibited from seeing non-family members, using the telephone and organising or taking part in certain activities. In addition, his correspondence was monitored. Application of the special regime was extended until late 2005 by means of 19 decrees, each valid for a limited period.

Mr Enea lodged several appeals with the Naples court responsible for the execution of sentences, which on three occasions decided to ease some of the restrictions imposed on him. He did not lodge

an appeal on points of law, maintaining that the Court of Cassation would have dismissed any such appeals as being devoid of purpose since the validity of the ministerial decrees in question had already expired when the court responsible for the execution of sentences gave its rulings. In late February 2005 the court allowed the applicant's appeal against decree no. 19 and ordered application of the special regime to be discontinued.

On 1 March 2005 the prison authorities placed the applicant in a high-supervision (*Elevato Indice di Vigilanza* – E.I.V.) unit, where certain very dangerous prisoners are held separately from other inmates.

Mr Enea has a number of health problems and was thus obliged to use a wheelchair. Between June 2000 and February 2005 he served his sentence in the part of the hospital wing of Naples prison reserved for prisoners detained under the section 41*bis* regime. In October 2008 the Naples court responsible for the execution of sentences ordered a stay of execution of the applicant's sentence, as his state of health had become incompatible with detention in prison. Mr Enea has since been subject to house arrest.

The applicant alleged that his continued detention had been contrary to Article 3 in particular in view of his state of health.

He further contended that he had been subject to substantial restrictions in the exercise of his right to a court in connection with the ministerial decrees making him subject to the section 41*bis* regime and the prison authorities' decision to place him in the E.I.V. unit.

The applicant also complained of the restrictions placed on contact with his family and of the monitoring of his correspondence.

Finally he complained that he had been unable to practise his religion, in particular by attending the funerals of his brother and girlfriend.

Article 3

The Court noted that the restrictions imposed on the applicant under the special prison regime had been necessary in order to prevent him from maintaining contacts with the criminal organisation to which he belonged. It also noted that the courts responsible for the execution of sentences had lifted or eased certain of those restrictions and that Mr Enea had received treatment appropriate to his state of health, either in prison or in a hospital outside prison. Accordingly, it considered that the treatment to which the applicant had been subjected did not exceed the unavoidable level of suffering inherent in detention and concluded, by 15 votes to 2, that there had not been a violation of Article 3.

Article 6 § 1

With regard to the imposition of the special prison regime provided for in section 41*bis*, the Court noted that prisoners subjected to that regime have ten days from the date on which the ministerial decree is served in which to lodge an appeal, which does not have suspensive effect, with the court responsible for the execution of sentences; the latter in its turn must give a ruling within ten days. The Court noted that for one of the 19 decrees issued against the applicant – decree no. 12 – the court responsible for the execution of sentences had given its ruling well after the 10-day deadline laid down in the legislation, and dismissed the appeal on the ground that the validity of the impugned decree had expired and that the applicant was consequently no longer subject to it. The Court considered that, since it had not resulted in a decision on the merits of the application of the special regime, the courts' review of decree no. 12 had been deprived of its substance. It concluded, unanimously, that there had been a violation of Article 6.

As to the restrictions on the right to a court during the period of detention in the E.I.V. unit, the Italian Government submitted that, unlike the special prison regime under section 41*bis*, this type of measure did not fall within the scope of the criminal limb of Article 6 § 1. They also argued that the interest of a prisoner in not being assigned to a particular unit of the prison in which he was serving his sentence could not be characterised as a "civil right" giving access to a court within the meaning of Article 6. Mr Enea's application was therefore inadmissible. This point of view was shared by the Slovakian Government as a third-party intervener.

Like the Italian Government, the Court considered that Article 6 § 1 was not applicable under its criminal head to placement in the E.I.V. unit. On the other hand, it noted that most of the restrictions to which the applicant had allegedly been subjected on account of this placement related to a set of prisoners' rights which the Council of Europe had recognised by means of the European Prison Rules, adopted by the Committee of Ministers in 1987 and elaborated on in a Recommendation of 11 January 2006. The Court acknowledged that although this recommendation was not legally binding on the member States, the great majority of them recognised that prisoners enjoyed most of the rights to which it referred and provided for avenues of appeal against measures restricting those rights.

The Court therefore considered that in this case, to use the wording of Article 6 § 1, a "dispute (contestation) over a right" could reasonably be said to have existed. In addition, there was no doubt that some of the restrictions alleged by the applicant – such as those restricting his contact with his family and those affecting his pecuniary rights – clearly fell within the sphere of personal rights and were therefore civil in nature. Accordingly, the Court found, by 16 votes to 1, that this part of the application was admissible.

On the merits, the Court noted that, while it was true that a prisoner could not challenge *per se* the merits of a decision to place him or her in an E.I.V. unit, an appeal lay to the courts responsible for the execution of sentences against any restriction of a "civil" right (affecting, for instance, a prisoner's family visits). In the present case, not only was the applicant not subjected to any such restriction but, if he had been, he would have had access to a court. Accordingly, the Court concluded unanimously that there had not been a violation of Article 6 § 1 in this respect.

Article 8

Following its well-established case-law (see *Messina v. Italy)*, the Court noted that the monitoring of the applicant's correspondence had been in breach of Article 8, as it had not been in accordance with the law, in so far as section 18 of the Prison Administration Act - on the basis of which the measure had been imposed - did not regulate either the duration of the measure or the reasons capable of justifying it, and did not indicate with sufficient clarity the scope and manner of exercise of the discretion exercised by the competent authorities. The Court concluded unanimously that there had been a violation of Article 8 for the period running from 10 August 1994 to 7 July 2004, the applicant having failed to submit evidence enabling it to ascertain whether his correspondence had been monitored after that date.

Articles 13 and 9

The Court held unanimously that there was no need to examine separately the complaint under Article 13 and declared inadmissible the complaint under Article 9.

Judges Kovler and Gyulumyan expressed a partly dissenting opinion, which is annexed to the judgment.

**Scoppola v. Italy (No.2) (link to judgment in French (no. 10249/03) (Importance 1) – 17 September 2009 – Violation of Article 7 – State's failure in its obligation to grant the applicant the benefit of the provision prescribing a more lenient penalty which had come into force after the commission of the offence – Violation of Art. 6 – Infringement of the principle of legal certainty**

The applicant is at present imprisoned in Parma. On 2 September 1999, after a fight with his children, the applicant killed his wife and injured one of the children. He was arrested on 3 September. At the end of the preliminary investigation the Rome prosecution office asked for the applicant to be committed to stand trial for murder, attempted murder, and ill-treatment of his family and unauthorised possession of a firearm. At a hearing in February 2000 before the Rome preliminary hearings judge ("the GUP") the applicant asked to be tried under the summary procedure, a simplified process which entailed a reduction of sentence in the event of conviction. The judge agreed to his request.

In the version in force at that time, Article 442 of the Code of Criminal Procedure ("the CCP") provided that, if the judge considered that the penalty to be imposed was life imprisonment, such penalty should be converted into 30 years. On 24 November 2000 the GUP found the applicant guilty and noted that he was liable to a sentence of life imprisonment; however, as the trial had been conducted under the summary procedure, the judge sentenced the applicant to a term of 30 years.

However, Legislative Decree no. 341, which had entered into force that very day, had just amended Article 442 of the CCP. The latter now provided that in the event of trial under the summary procedure, life imprisonment was to be substituted for life imprisonment with daytime isolation if there were cumulative offences or a continuous offence.

The Public Prosecutor's Office at the Rome Court of Appeal considered that, in view of the entry into force of the new version, the applicant's sentence should have been life imprisonment rather than 30 years. Accordingly, it appealed against the GUP's decision.

On 10 January 2002 the Rome Assize Court of Appeal sentenced Mr Scoppola to life imprisonment. Noting that Legislative Decree no. 341 of 2000 had entered into force on the very day of the GUP's decision, it considered that, since its provisions were classed as procedural rules, they were applicable to all pending proceedings. The Assize Court of Appeal further observed that under the terms of Legislative Decree no. 341 the applicant could have withdrawn his request to be tried under the summary procedure and have stood trial under the ordinary procedure. As he had not done so, the

first-instance decision ought to have taken account of the change in the rules introduced by the legislative decree.

After his appeal on points of law was dismissed, the applicant lodged an extraordinary appeal with the Court of Cassation on the ground of a factual error. He argued that he had been convicted in breach of the fair-trial principles guaranteed by Article 6 of the European Convention on Human Rights and on the basis of retrospective application of the criminal law – in the form of Legislative Decree no. 341 – in breach of Article 7 of the Convention. That appeal too was dismissed.

The application was lodged with the Court on 24 March 2003 and was declared partly admissible on 13 May 2008. On 2 September 2008 the Chamber to which the case had been assigned relinquished jurisdiction in favour of the Grand Chamber under Article 30 of the Convention. A hearing was held in Strasbourg on 7 January 2009.

The applicant's complaints related not only to the alleged retrospective application of criminal law in violation of Article 7 but also to the compatibility with Article 6 § 1 of the provisions introduced by Legislative Decree no. 341.

Article 7

The Court reiterated as essential the prohibition of the retrospective application of criminal law to the detriment of an accused, provided in Article 7, nevertheless, as the Court had consistently ruled since a 1978 decision of the European Commission of Human Rights, Article 7 did not guarantee the right of the accused to a more lenient penalty provided for in a law subsequent to the offence.

However, the Court considers important the changing conditions in the responding State and in the Contracting States in general and responds to emerging consensus as to the standards to be achieved. It acknowledged that there had been important developments internationally. In particular, the principle of the applicability of the more lenient criminal law was enshrined in the American Convention on Human Rights, the European Union's Charter of Fundamental Rights and the statute of the International Criminal Court. Moreover, the Luxembourg-based Court of Justice of the European Communities, whose decision was also endorsed by the French Court of Cassation, held that this principle formed part of the constitutional traditions common to the member States of the European Union.

The Court considered that since 1978 a consensus had gradually emerged in Europe and internationally around the view that application of a criminal law providing for a more lenient penalty, even one enacted after the commission of the offence, had become a fundamental principle of criminal law. In the light of such consensus the Court therefore decided to depart from its previous case-law and affirm that Article 7 § 1 guaranteed not only the principle of non-retroactivity of more stringent criminal laws but also, and implicitly, the principle of retroactivity of the more lenient law. That principle was embodied in the rule that where there were differences between the criminal law in force at the time of the commission of the offence and subsequent criminal laws enacted before adoption of a final judgment, the courts had to apply the law whose provisions were most favourable to the defendant.

In the applicant's case, the Court considered that the relevant paragraph of Article 442 of the CPP was a provision of substantive criminal law given that it had set the length of the sentence to be imposed in the context of summary procedures. By virtue of the principle of retroactivity of the more lenient criminal law, of all the versions of such provisions which had been in force during the period between the commission of the offence and the adoption of the final judgment, the Italian courts should have applied the one more favourable to Mr Scoppola.

The Court therefore concluded, by eleven votes to six, that by failing to do so, the Italian courts had acted in violation of Article 7.

Article 6 § 1

The Court observed that the Italian summary procedure entailed undoubted advantages for the defendant but also a dilution of some of the procedural safeguards inherent in the concept of a fair trial. By requesting the summary procedure, Mr Scoppola, in exchange for a 30-year sentence instead of a life sentence, unequivocally waived his right to a public hearing, to have witnesses called, to have new evidence produced and to examine prosecution witnesses.

The Court considered that, although Contracting States were not required to adopt simplified procedures, where such procedures did exist it was contrary to the principle of legal certainty and the protection of the legitimate trust of persons engaged in judicial proceedings for a State to be able to reduce unilaterally the advantages attached to waiving fair trial safeguards. It therefore concluded, unanimously, that there had been a violation of Article 6 in this respect.

Judge Malinverni expressed a concurring opinion joined by judges Cabral Barreto and Šikuta. Judge Nicolaou expressed a partly dissenting opinion joined by Judges Bratza, Lorenzen, Jočiené, Villiger and Sajó.

**Varnava and Others v. Turkey (link to judgment in French) (nos.16064/90, 16065/90 and other applications) (Importance 1) – 18 September 2009 – Continuing violation of Article 2 – Disappearances during the 1974 conflict in northern Cyprus – State's failure to effectively investigate the fate of the nine missing men – Continuing violation of Article 3 – Inhuman treatment on account of the State in face of the relatives' suffering – Continuing violation of Article 5 in respect of Eleftherios Thoma and Savvas Hadjipanteli – Unacknowledged detention – No violation of Article 5 in respect of the other seven missing men**

The applications were introduced before the Court in the name and on behalf of 18 Cypriot nationals, nine of whom had disappeared during military operations carried out by the Turkish Army in northern Cyprus in July and August 1974. The nine other applicants are or were relatives of the men who disappeared.

Among the nine people who disappeared, eight were members of the Greek-Cypriot forces that had attempted to oppose the advance of the Turkish army. According to a number of witness statements, they had been among prisoners of war captured by the Turkish military. The ninth person, Mr Hadjipanteli, a bank employee, was taken for questioning by Turkish soldiers on 18 August 1974. His body, which bore several bullet marks, was found in 2007 in the course of a mission carried out by the United Nations Committee of Missing Persons (CMP).

The Turkish Government disputed that these men had been taken into captivity by the Turkish Army. They submitted that the first eight were military personnel who had died in action and that the name of the ninth one did not appear on the list of Greek-Cypriot prisoners held at the stated place of detention, inspected by the International Red Cross. The Cypriot Government stated, however, that the nine men had gone missing in areas under the control of the Turkish forces.

The applicants alleged that their relatives had disappeared after being detained by Turkish military forces in 1974 and that the Turkish authorities had not accounted for them since.

The applications were lodged with the European Commission of Human Rights on 25 January 1990. They were joined by the Commission on 2 July 1991, and declared admissible on 14 April 1998. They were transmitted to the Court on 1 November 1998.

In its judgment of 10 January 2008 ("the Chamber judgment"), the Chamber held unanimously that there had been violations of Articles 2, 3 and 5 of the Convention and that no separate issues arose under Articles 4, 6, 8, 10, 12, 13 and 14 of the Convention. It also held that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicants.

On 7 July 2008, under Article 43 of the Convention the case was referred to the Grand Chamber at the Turkish Government's request. The Cypriot Government submitted written observations and so did the organisation REDRESS which, in September 2008, was granted leave to intervene in the written procedure. A public hearing took place at the European Court of Human Rights in Strasbourg, on 19 November 2008.

The Government challenged the Court's jurisdiction to examine the case on several counts. First, they submitted, among other things, that there was no legal interest in determining these applications given that the Court had already decided on the question of the disappearances of all missing Greek Cypriots in the fourth inter-State case. Secondly, the applications fell outside of the Court's temporal jurisdiction given that they all related to facts which had occurred before Turkey's acceptance of the right of individual petition on 28 January 1987. Lastly, too much time had lapsed between the facts and the introduction of the applications which had to be declared inadmissible for not being taken before the Court within six months after Turkey's acceptance of the right to individual petition.

Preliminary objections by the Government

*Legal interest*

The Court first noted that for an application to be substantially the same as another which it had already examined it had to concern substantially not only the same facts and complaints but be introduced by the same persons. While the fourth inter-State case had indeed found a violation in respect of all missing persons, the individual applications allowed the Court to grant just satisfaction awards for pecuniary and non-pecuniary damage suffered by individual applicants, and to indicate any general or individual measures that might be taken. Satisfied that a legal interest remained in pursuing the examination of these applications, the Court rejected the Government's objection.

*Temporal jurisdiction*

The Court noted that the applicants had specified that their claims related only to the situation pertaining after 28 January 1987 (namely the date of Turkey's acceptance of the right of individual petition). The Court held that obligation to account for the fate of the missing men by conducting an effective investigation was of a continuing nature and even though the men had been missing for over 34 years without any news, this obligation could persist for as long as the fate of the missing persons was unaccounted for. Accordingly, the Court dismissed the Government's objection on this count.

*Late submission to the Court*

The Court noted that the applicants had introduced their applications some 15 years after their relatives went missing in 1974 and that it had not been possible for them to do so before 1987. Having regard to the exceptional situation brought about by the international conflict, the Court was satisfied that the applicants had acted with reasonable expedition, even though they had brought their complaints about three years after Turkey had accepted the right to individual petition. The Court therefore rejected this objection too.

Article 2

The Court noted that the Turkish Government had not put forward any concrete information to show that any of the missing men had been found dead or had been killed in the conflict zone under their control. Nor had there been any other convincing explanation as to what might have happened to them that could counter the applicants' claims that the men had disappeared in areas under the Turkish Government's exclusive control. In light of the findings in the fourth inter-State case, which had not been refuted, these disappearances had occurred in life-threatening circumstances where the conduct of military operations had been accompanied by widespread arrests and killings.

The Court fully acknowledged the importance of the CMP's ongoing exhumation and identification exercise and gave full credit to the work being done. It noted, however, that while its work was an important first step in the investigative process, it was not sufficient to meet the Government's obligation under Article 2 to carry out effective investigations. In particular, the CMP was not determining the facts surrounding the deaths of the missing persons who had been identified, nor was it collecting or assessing evidence with a view to holding any perpetrators of unlawful violence to account in a criminal prosecution. No other body or authority had taken on that role either. The Court did not doubt that many years after the events it would be difficult to assemble eye-witness evidence and mount a case against any alleged perpetrators. However, recalling its case-law on the clear obligation of States to investigate effectively, the Court found that the Turkish Government had to make the necessary efforts in that direction. The Court concluded that there had been a continuing violation of Article 2 on account of Turkey's failure to effectively investigate the fate of the nine men who disappeared in 1974.

Article 3

The Court recalled its finding in the fourth inter-State case that in the context of the disappearances in 1974, where the military operation had resulted in considerable loss of life and large-scale detentions, the relatives of the missing men had suffered the agony of not knowing whether their family members had been killed or taken into detention. Furthermore, due to the continuing division of Cyprus, the relatives had been faced with very serious obstacles in their search for information. The Turkish authorities' silence in the face of those real concerns could only be categorised as inhuman treatment.

The Court found no reason to differ from the above finding. The length of time over which the ordeal of the relatives had been dragged out and the attitude of official indifference in the face of their acute anxiety to know the fate of their close family members had resulted in a breach of Article 3 in respect of the applicants.

Article 5

The Court found that there was an arguable case that two of the missing men, Eleftherios Thoma and Savvas Hadjipanteli, both of whom had been included on ICRC lists as detainees, had been seen last in circumstances falling within the control of the Turkish or Turkish Cypriot forces. However, the Turkish authorities had not acknowledged their detention, nor had they provided any documentary evidence giving official trace of their movements. While there had been no evidence that any of the missing persons had been in detention in the period under the Court's consideration, the Turkish Government had to show that they had carried out an effective investigation into the arguable claim that the two missing men had been taken into custody and not seen subsequently. The Court's findings above in relation to Article 2 left no doubt that the authorities had also failed to conduct the necessary investigation in that regard. There had therefore been a continuing violation of Article 5 in respect of Eleftherios Thoma and Savvas Hadjipanteli.

Given that there had been no sufficient evidence showing that the other seven men had been last seen under Turkish control, there had been no violation of Article 5 in respect of them.

Other Articles

Having had regard to the facts of the case, the submissions of the parties and its findings under Articles 2, 3 and 5 of the Convention, the Court concluded that it had examined the main legal questions raised in the present application and that it was not necessary to give a separate ruling on the applicants' remaining complaints.

Judges Kalaydjieva, Power, Spielmann, Villiger and Ziemele expressed concurring opinions, and Judge Erönen expressed a dissenting opinion. All opinions are annexed to the judgment.

- **Right to life**

**Beyazgül v. Turkey (no. 27849/03) (Importance 3) – 22 September 2009 – Violation of Article 2 – Insufficient safeguards in the legislation concerning police operations in force at the time**

On 19 September 2001 the applicant's son was killed in the region bordering Iran. Gendarmes on duty in that area, where illegal trafficking of fuel was taking place, came across suspicious individuals. The latter fled in response to warning shots fired by commandant A.K., who then shot in their direction. On the following day gendarmes, alerted by villagers, discovered the body of the applicant's son, buried under half a metre of earth. According to the autopsy report, death had resulted from a gunshot wound and destruction of the central nervous system.

On 23 November 2001 A.K. was charged with homicide committed in excess of his duties, and acquitted of that charge by the Assize Court in a judgment of 11 February 2004 in which the behaviour of A.K. was considered in accordance with the law in force at the relevant time. That judgment was overturned by the Court of Cassation, and on 13 June 2007 the Assize Court reached the same findings as in its judgment of 11 February 2004. The case is currently pending before the Court of Cassation.

The applicant complained, among other things, about the legislation in force at the relevant time, which permitted gendarmes to open fire with no regard to the proportionality of such an act.

The Smuggling (Prevention and Inspection) Act (Law no. 1918), in force at the relevant time, authorised the firing of shots at any individual within the security zones, whether or not they were in possession of a weapon, if they refused to comply with warning shots (§56).

The Act did not therefore offer the required level of protection against the real and immediate risk to life that could arise in police operations (see also *Makaratzis v. Greece*).

The Court concluded unanimously that there had been a violation of Article 2. It also held that no separate issue arose under Article 3.

- **Risk of death or ill-treatment in the case of deportation**

**Abdolkhani and Karimnia v. Turkey (no. 30471/08) (Importance 1) – 22 September 2009 – Probable Violation of Art. 3 – Existence of a real risk of being subjected to treatment contrary to Art. 3 of former members of the People's Mojahedin Organisation in Iran if deported to Iran or Iraq – Violation of Article 13 – Lack of an effective remedy – Violation of Article 5 §§ 1, 2 and 4 – Unlawful detention – Lack of communication of the reasons of their detention to the applicants – Lack of judicial review of the lawfulness of the detention**

The applicants, Iranian nationals are currently being held in Gaziosmanpaşa Foreigners' Admission and Accommodation Centre in Kırklareli (Turkey).

As members of the People's Mojahedin Organisation ("the PMOI"), they left Iran and went to Iraq to live in a PMOI camp. Discontent with the organisation's goals and methods, they left and entered a refugee camp set up by the United States forces in Iraq. In 2006 and 2007, they were both recognised as refugees by the United Nations High Commissioner for Refugees ("UNHCR").

In April 2008 the refugee camp in which the applicants were staying closed down. They then went to Turkey where they were arrested and deported back to Iraq on 17 June 2008. They immediately re-entered Turkey. On 21 June 2008 they were arrested again and detained in police custody. On being arrested and charged with illegal entry they asked for a lawyer; they were not, however, given access to legal assistance.

On 23 June 2008, the applicants were convicted of illegal entry into Turkey; their sentence was deferred for a period of five years. The courts noted that the applicants would be deported; the applicants were not notified either of the decision to deport them or the reasons for that decision.

The Turkish authorities attempted to deport them to Iran on 28 June 2008. It was unsuccessful as the Iranian authorities refused their admission.

On 30 June 2008 under Rule 39 of the Rules of Court (interim measures), the Court asked the Turkish Government to stay the applicants' deportation until 4 August 2008. That deadline was subsequently extended until further notice.

The applicants have also made numerous petitions to the police and the Turkish authorities in which they have requested temporary asylum. Hamid Karimnia has also filed a petition with the Ministry of the Interior challenging his detention. The applicants have not received any reply to their various petitions. Initially detained in police custody in Muş, the applicants were transferred on 26 September 2008 to Gaziosmanpaşa Foreigners' Admission and Accommodation Centre in Kırklareli, where they remain to date.

The applicants alleged that, if deported to Iran or Iraq, they were at real risk of death or ill-treatment. They also complained that they had been prevented from lodging an asylum claim and from challenging their deportation, in breach of Article 13. Finally, they alleged that their detention with a view to removal was unlawful, in breach of Article 5 § 1, that they were not informed of the reasons for their detention from 23 June onwards, in breach of Article 5 § 2, and that they were not able to challenge the lawfulness of that detention, in breach of Article 5 § 4.

Article 3

As regards the risks of ill-treatment if the applicants were to be deported to Iran, the Court noted reports from Amnesty International, Human Rights Watch and the UNHCR Resettlement Service about PMOI members in Iran either being executed or found dead in suspicious circumstances in prison. Information about what had happened to certain PMOI members who had voluntarily returned to Iran was on the whole contradictory and unreliable. Moreover, unlike the Turkish authorities, UNHCR had interviewed the applicants and concluded that their fears with regard to their return to their country of origin had been credible (see in particular §§ 84-87).

As concerned the alleged risks in Iraq, the Court observed that the removal of Iranian nationals to that country was carried out in the absence of a proper legal procedure, former PMOI refugees being systematically refused at the Iraqi border. Furthermore, there were reports that those PMOI refugees who had been admitted had gone missing, quite possibly removed to Iran.

Concerning the Government's argument that allowing PMOI members, such as the applicants, to stay in Turkey would create a risk to national security, public safety and order, the Court reiterated that however undesirable or dangerous the conduct of a person, Article 3 was absolute in nature. In any case, the applicants had left the PMOI and were now UNHCR recognised refugees.

Therefore, the evidence submitted by the applicants and the third party, set against the Turkish Government's lack of argument or documents capable of dispelling doubts about the applicants' allegations, was sufficient for the Court to conclude that that there was a real risk of the applicants being subjected to treatment contrary to Article 3 if they were returned to Iran or Iraq.

Article 13

The Court was struck by the fact that both the administrative and judicial authorities had remained totally passive regarding the applicants' serious allegations of a risk of ill-treatment if returned to Iraq or Iran. Moreover, by failing to consider the applicants' requests for temporary asylum, to notify them of the reasons for not taking their asylum requests into consideration and to authorise them to have access to legal assistance while in police detention in Muş, the national authorities had prevented the applicants from raising their allegations under Article 3 within the relevant legislative framework. The applicants could not even apply to the authorities for annulment of the decision to deport them as they had never been served with the deportation orders. Nor had they been notified of the reasons for their threatened removal from Turkey. In effect the applicants' allegation that their removal to Iran or Iraq would have consequences contrary to Article 3 had never actually been examined by the national authorities. The applicants had not therefore been provided with an effective and accessible remedy in relation to their complaints under Article 3, in violation of Article 13.

Article 5 §§ 1, 2 and 4

In the absence of clear legal provisions establishing the procedure for ordering and extending detention with a view to deportation and setting time-limits for such detention, the national system had failed to protect the applicants from arbitrary detention and, consequently, their detention could not be considered "lawful", in violation of Article 5 § 1.

The Court observed that the applicants had been arrested on 21 June 2008 and subsequently detained in police custody. On 23 June 2008 they had been convicted of illegal entry. Yet they had not been released and from then on have not been detained on any criminal charge, but in the context of immigration control. In the absence of a reply from the Government or any document in the case file to show that the applicants had been informed of the grounds for their continued detention after 23 June 2008, the Court concluded that the national authorities had never actually communicated the reasons to them, in violation of Article 5 § 2.

Given the findings that the applicants had been denied legal assistance and had not been informed of the reasons for their detention, the applicants' right to appeal against their detention had been deprived of all effective substance. Nor had the Government submitted that the applicants had at their disposal any procedure through which the lawfulness of their detention could have been examined by a court. The Court therefore concluded that the Turkish legal system had not provided the applicants with a remedy whereby they could obtain judicial review of their detention, in violation of Article 5 § 4.

- **Domestic violence**

**E. S. and others v. Slovakia (no. 8227/04) (Importance 2) – 15 September 2009 – Violation of Articles 3 and 8 – State's failure to provide the applicants adequate protection against domestic violence**

In March 2001 E.S. left her husband, S., father to her three children, and filed for divorce, which was granted in May 2002. She was subsequently granted custody of the children.

In April 2001 E.S. filed a criminal complaint against her husband claiming that he had ill-treated both her and their children and sexually abused one of their daughters. Two years later he was convicted of ill-treatment, violence and sexual abuse and sentenced to four years' imprisonment.

In May 2001 E.S. requested an interim measure ordering her husband to move out of the council flat of which they were joint tenants. The domestic courts subsequently dismissed her request, finding that under the relevant legislation it lacked the power to restrict her husband's right to use the property. On appeal, the courts upheld that decision noting that E.S. would be entitled to bring proceedings to terminate the joint tenancy after a final decision in the divorce proceedings and, in the meantime, she could apply for an order requiring her husband to refrain from inappropriate behaviour. The Constitutional Court subsequently held that there had been no violation of E.S.'s rights as she had not applied for such an order. However, it held that the lower courts had failed to take appropriate action to protect E.S.'s children from ill-treatment. It did not award compensation as it considered that the finding of a violation provided appropriate just satisfaction.

Following the introduction of new legislation, E.S. made further applications and two orders were granted in July 2003 and December 2004: the first preventing her ex-husband from entering the flat; and, the second awarding her exclusive tenancy.

In the meantime, the applicants had to move away from their home, family and friends and Er.S. and Ja.S. had to change school.

The applicants complained that the authorities had failed to protect them adequately from domestic violence.

The Government submitted that E.S. had failed to exhaust domestic remedies. It accepted that there had been a violation of her children's rights under Articles 3 and 8 but claimed that they had been provided with adequate redress by the domestic courts.

The Court found that the alternative measure proposed by the Slovak Government, an order restraining E.S.'s ex husband from inappropriate behaviour, would not have provided the applicants with adequate protection against their husband and father and therefore did not amount to an effective domestic remedy which E.S. was required to exhaust. E.S. had not been in a position to apply to sever the tenancy until the divorce had been finalised in May 2002, approximately a year after the allegations against her ex-husband had first been brought. Given the nature and severity of the allegations, E.S. and her children had required immediate protection. During that period there had therefore been no effective remedy open to E.S. by which she could ensure that she and her children would be protected against the violence of her former husband. In relation to E.S.'s children, the Court did not consider that the finding of a violation amounted to adequate redress for the damage that they had suffered.

The Government accepted that E.S.'s children had been subjected to treatment which had gone beyond the threshold of severity where Articles 3 and 8 could be applied. The Court found that Slovakia had also failed to protect E.S.'s rights under Articles 3 and 8. The Court therefore concluded that Slovakia had failed to fulfil its obligation to protect all of the applicants from ill-treatment, in violation of Articles 3 and 8.

- **Right to a fair trial / Excessive length of proceedings**

**Pishchalnikov v. Russia (no. 7025/04) (Importance 1) – 24 September 2009 – Violation of Article 6 § 1 – Excessive length of criminal proceedings – Violation of Article 6 § 1 in conjunction with Article 6 § 3 – Infringement of the right to a fair trial and of the principle of equality of arms on account of the lack of legal assistance during initial stages of questioning by the police**

In December 1998, the applicant was arrested on suspicion of aggravated robbery. He was interrogated – both on the day of his arrest and immediately on the following day – in the absence of a lawyer, although he had clearly indicated a defence counsel he wanted to represent him. During these interrogations the applicant confessed to having taken part in the activities of a criminal group which included a murder, kidnapping, hijacking and unlawful possession of weapons.

During subsequent interrogations between January and August 1999 the applicant refused legal assistance; he was advised by a legal aid lawyer on a few occasions after that.

The investigation was completed in January 2000 and Mr Pishchalnikov studied the file until June 2000. The file was sent to court in August 2000, yet the first hearing was only held at the end of May 2001. Mr Pishchalnikov was convicted in January 2002 of several crimes, including aggravated murder, torture, kidnapping, theft and robbery. He appealed before the Supreme Court which upheld partially the conviction and sentenced him to 20 years in prison. Mr Pishchalnikov was not assisted by a lawyer during his appeal.

Mr Pishchalnikov complained that he had not been legally represented at crucial stages in the proceedings, that the lawyer provided to him had not assisted him effectively, and that the proceedings against him had lasted for too long.

Absence of a lawyer

The Court first noted that, as soon as arrested, Mr Pishchalnikov had asked sufficiently clearly for a specific lawyer to represent him. The authorities had not contacted that lawyer neither had they offered free legal assistance to Mr Pishchalnikov. Instead they had interrogated him intensely in the first few days after his arrest, in the absence of a lawyer, in an effort to generate the evidence aiding the prosecution's case. Subsequently, the confessions he had made had been decisive for his conviction.

In addition, the Court was not convinced that Mr Pishchalnikov had fully realised the consequences of waiving his right to be legally represented. While the evidence collected suggested that he had systematically refused counsel, it had been unexplainable that during purely formal procedural investigative steps the applicant had always been assisted by legal aid counsel, while he had usually refused legal assistance when he had to answer the investigators' questions. Furthermore, after the applicant had been assisted by legal aid counsel on a mandatory basis and had been interrogated in counsel's presence, he had denied his confession statements made to the investigators during the first two days after his arrest.

Consequently, the Court found that the lack of legal assistance to Mr Pishchalnikov at the initial stages of police questioning had affected irreversibly his defence rights and undermined the possibility of him receiving a fair trial. There had therefore been a violation of Article 6 § 3 (c) in conjunction with Article 6 § 1.

The Court considered that the damage caused to Mr Pishchalnikov's rights as a result of him not having had a lawyer during the initial police questioning was of such a magnitude that it was not necessary to examine separately whether he had been effectively assisted by a lawyer at the later stages of the proceedings.

Length of proceedings

The Court observed that the proceedings had lasted approximately four years and eight months for two levels of jurisdiction. There had been substantial periods of inactivity which had been attributable to the domestic authorities and for which the Government had not submitted any satisfactory explanation. Accordingly, there had been a violation of Article 6 § 1 as the length of the criminal proceedings against Mr Pishchalnikov had been excessive.

**Sartory v. France (no. 40589/07) (Importance 1) – 24 September 2009 – Violation of Article 6 § 1 – Excessive length of compensation proceedings before the administrative courts**

The applicant worked as a police inspector at the relevant time. In 1994 he was transferred to another city "in the interests of the service" after the Minister of the Interior found that he had divulged information to the press concerning the operation of the Grenoble police. He challenged his transfer in

the administrative courts and the Administrative Court of Appeal found in his favour. The proceedings lasted from September 1995 to April 2002.

In December 2002 Mr Sartory brought a claim for compensation in the Grenoble Administrative Court, alleging that the length of the proceedings concerning his transfer had been excessive. In January 2006 his claim was referred to the *Conseil d'Etat*, which (by virtue of Decree no. 2005-911 of 29 July 2005) had jurisdiction to deal with actions of this kind at first and last instance. In May 2007 the *Conseil d'Etat* allowed the applicant's claim and awarded him 3,000 euros in compensation.

Mr Sartory complained that the length of proceedings in the administrative courts concerning his transfer had been excessive, thereby depriving him of any opportunity to enjoy a normal career. He further argued that the compensation he had been awarded on that account by the *Conseil d'Etat* was insufficient.

Admissibility

The Court reiterated that an applicant could no longer claim to be the "victim" of a violation of the Convention if the authorities had acknowledged the violation, at least in substance, and afforded appropriate and sufficient redress.

In Mr Sartory's case, the Court observed that the *Conseil d'Etat* had clearly acknowledged the violation, namely the excessive length of the proceedings concerning his transfer. However, it found that the redress afforded (3,000 euros) had not been appropriate and sufficient. It considered that that amount might have constituted appropriate redress if the compensation proceedings had not been excessively lengthy; however, that had not been the case. The French courts had failed to act expeditiously in determining the claim for compensation, a remedy which by its very nature required a speedy decision. The *Conseil d'Etat* should therefore have awarded Mr Sartory a larger amount to compensate for the additional delay, so as not to penalise him a second time.

Mr Sartory could accordingly still claim to be the "victim" of a violation of his right to a hearing within a reasonable time. The Court thus went on to examine whether there had been a violation of that right.

Merits

The *Conseil d'Etat* had itself found that the length of the proceedings concerning the applicant's transfer had been excessive, noting in particular that the case had not entailed any special difficulty. The Court reiterated, moreover, that employment disputes by their nature called for a particularly expeditious decision, in view of what was at stake for those concerned, their personal and family life and their career. However, Mr Sartory had had to wait more than six years to have his transfer set aside.

The Court concluded that the length of the proceedings had been excessive and that there had been a violation of Article 6 § 1.

**Procedo Capital Corporation v. Norway (no. 3338/05) (Importance 1) – 24 September 2009 – No violation of Article 6 § 1 – Absence of legitimate doubts on the High court's impartiality in a civil dispute over securities dealings**

The applicant, Procedo Capital Corporation, is a limited liability company registered in Panama. The case concerned Procedo's complaint about the lack of impartiality of the Norwegian High Court as a whole, after the disqualification of one of its lay members, in proceedings with regard to a dispute with Sundal Collier, a Norwegian securities broker.

In October 1998 Sundal Collier brought proceedings against Procedo requesting that it pay for shares purchased on its behalf; in December 1999 Procedo brought a counter-action requesting compensation on account of the fact that information and advice provided by Sundal had caused it losses. In January 2002 Oslo City Court found in favour of Sundal and dismissed Procedo's counter-claim.

Procedo appealed and Borgarting High Court held an oral hearing over 19 days between October and November 2003. Four and half days into the hearing lay member A., invited to sit with the High Court to provide financial expertise, revealed that he had certain links with Sundal. In particular, he was a partner with a consultancy firm, PricewaterhouseCoopers, and had been involved in one of its auditing and accounting assignments for ABG Sundal Collier, a parent company of Sundal Collier. As a result, on 23 October 2003, the other High Court members, although finding nothing to indicate that lay member A. would not have been "fully able to reach an impartial decision in the case", upheld Procedo's request that he withdraw. Those High Court members further decided to provisionally disjoin the proceedings.

On 27 October 2003 the High Court rejected Procedo's claim that, as a consequence of lay member A.'s participation, the High Court as a whole should be disqualified and the proceedings discontinued.

On 17 November 2003, after 11 more days of hearings and two days of deliberations, the High Court, reiterating that the proceedings should be disjoined, decided to close the proceedings and adjudicate the case. In January 2004 the High Court upheld the City Court's judgment in the main and ordered Procedo to pay Sundal's legal costs. Procedo's appeal to the Supreme Court was refused in July 2004.

The applicant company complained about lay member A.'s participation in the first part of the oral hearing before the Norwegian High Court and about the latter's refusal, following the disqualification, to discontinue the proceedings and refer the case to a differently composed High Court.

First, the Court found that there was no evidence to suggest that lay member A. had been personally biased against Procedo. Furthermore, the reasons for doubting lay member A.'s objective impartiality, although legitimate, had not been particularly strong. His assignment had only been indirectly linked to Sundal Collier and had involved providing advice of an essentially technical character. There had been no direct link between lay member A. and the opposing party in the proceedings and he had had no direct interest in the outcome of the case. Moreover, lay member A.'s presence had been limited to and terminated at a relatively early phase of the hearing. Nor was the Court persuaded that lay member A. could have contaminated the rest of the proceedings by having influenced the other members against Procedo. Any misgivings of that nature had been adequately addressed by the High Court members' decisions of 23 and 27 October 2003 that, respectively, lay member A. should withdraw and that his disqualification did not disqualify them. Indeed, the provisional decision of 23 October 2003 and the final decision of 17 November 2003 to disjoin the proceedings had been reached in lay member A.'s absence.

In conclusion, the nature, timing and short duration of lay member A.'s involvement in the proceedings did not raise legitimate doubts as to the impartiality of the High Court as a whole. The High Court had not therefore been under any obligation to discontinue the proceedings and restart them before a differently composed High Court. Accordingly, the Court held unanimously that there had been no violation of Article 6 § 1.

**Pietiläinen v. Finland (no. 13566/06) (Importance 2) – 22 September 2009 – Violation of Article 6 § 1 in conjunction with Article 6 § 3 (c) – Disproportionate interference with the right to a fair trial on account of the discontinuation of the applicant's appeal due to his absence at trial**

On 24 February 2004 the applicant was convicted of aggravated fraud and given a one year and eight month prison sentence. He appealed and was subsequently summoned to attend six oral hearings between 28 February and 24 March 2005. Witnesses were heard between 14 and 24 March 2005, and the applicant in particular on 15 March 2005. However, he did not attend the first of the hearings; he was represented by counsel. Due to the applicant's absence on that day the Helsinki Appeal Court decided to discontinue his appeal.

In March 2005 he notified the Appeal Court that he had been absent due to illness and provided a medical certificate. The Appeal Court rejected the applicant's claims as the medical certificate was dated after the day of the hearing in question and, in any case, his state of health was not such as to constitute a valid excuse for absence. In October 2005 the Supreme Court refused leave to appeal.

The applicant complained about the unfairness of the proceedings against him.

The Court considered that it was the Helsinki Appeal Court's duty to allow the applicant's counsel to defend him on 28 February 2005, even in his absence. Indeed, the scope of that particular hearing was not entirely clear and did not apparently concern issues for which the applicant's attendance in person had been strictly necessary; his presence had essentially been required from 14 March 2005 onwards when, according to the procedural plan set up by the court, witnesses were to be heard. Nor had it been indicated in the summons that just one day's absence would be regarded as absence from the whole main hearing (see in particular §§ 31-34).

The discontinuation of the applicant's case had therefore constituted a particularly rigid and severe sanction, in particular in view of the rights of the defence and the requirements of a fair trial. The Court therefore held unanimously that there had been a violation of Article 6 §§ 1 and 3 (c).

**Mérigaud v. France (no. 32976/04) (Importance 2) – 24 September 2009 – No violation of Article 6 § 1 – Unjustified doubts concerning impartiality of a chartered surveyors' supervisory body**

The applicant is a self-employed chartered surveyor. On 3 December 1999 the Surveyors' Union of Corsica lodged a complaint against him with the Marseilles Regional Council of the Order of Chartered

Surveyors ("the regional council") for encouraging the unlawful practice of the profession of chartered surveyor by farming out work to D., a topographer. A hearing of the disciplinary section of the regional council was held on 7 March 2000, with G., the Chairman of the regional council, presiding. The applicant requested G.'s withdrawal, on account of positions G. had adopted against him in the past, but to no avail.

In a call for tenders in May 1996, concerning topographical surveys to be carried out in Upper Corsica, the applicant's office had been selected, then ruled out on the strength of an opinion of G., expressed in a letter to the Director of Roads of Ajaccio, that it was preferable to choose a Corsican surveyor's office as The applicant did not meet the conditions concerning the opening of a branch office or a project office in Corsica. That intervention led to the regional council being fined 75,000 euros by the Competition Council for obstructing fair competition.

Subsequent to the hearing of 7 March 2000, on 22 March 2001 the regional council suspended the applicant for a year for farming out to D. work which should have been done by a chartered surveyor. The applicant appealed against that decision and the case was examined by the five-member investigation panel of the High Council of the Order of Chartered Surveyors. Deliberating on 29 May 2002, 20 members of the High Council – including four members of the investigation panel – set aside the decision of the regional council for failure to comply with the obligation to investigate a matter before referring it to a disciplinary body. They nevertheless suspended the applicant for 12 months for having unlawfully sub-contracted work to D. that should have been done by a registered chartered surveyor.

The applicant appealed against that decision on points of law, complaining of the presence of members of the investigation panel at the deliberations of the adjudicating body, of the fact that the case file had not been made available to him beforehand and also that he had not had an opportunity to present his case. On 3 March 2003 the Conseil d'Etat decided not to admit the applicant's appeal.

The applicant complained of a lack of impartiality on the part of the judicial bodies of the Order of Chartered Surveyors.

While the content of G.'s letter to the Director of Roads of Ajaccio was, in itself, no basis for doubting G.'s personal impartiality vis-à-vis the applicant, the general context and the fact that G. had not withdrawn from the disciplinary hearing – considering the authority he exerted over his colleagues in his capacity as chairman of the regional council – could have given rise to doubts in the applicant's mind which were objectively justified concerning the impartiality of the judicial body as a whole. The regional council had therefore not been an impartial tribunal within the meaning of Article 6 § 1.

According to the applicant, in the appeal proceedings, the High Council had similarly failed to show impartiality, because the investigation panel had taken part in the deliberations. The Court pointed out that there had been no sign, in the investigation stage, of any bias against the applicant, and that by its very nature the task of the investigation panel was limited to verifying the facts and presenting them objectively, which was what it had done in this case.

The final decision had been reached in the judgment given following the deliberations, based on the evidence adduced and discussed at the hearing. The preliminary findings of the investigation panel had not influenced their final decision.

The Court accordingly held that there had been no objective justification for the applicant's doubts and that the appeal proceedings had provided a remedy for his complaints in so far as the High Council afforded all the guarantees of impartiality required by Article 6 § 1. The Court found unanimously that there had been no violation of that provision.

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

**Stochlak v. Poland (no. 38273/02) (Importance 2) – 22 September 2009 – Violation of Article 8 – National authorities' failure to enforce judicial decisions ordering the return of the applicant's child**

The applicant, Wojciech Stochlak, is a Polish national who has lived in Canada since 1985. In 1993 he and his wife E.S., a Polish national, had a daughter. At the end of a holiday in Poland in 1996 E.S. refused to return to Canada, having decided to remain in Poland with their daughter.

Mr Stochlak brought proceedings for the return of the child in January 1997. On 7 March 1997 the district court ordered that the child be returned to her father. That decision was upheld on 17 April 1998, after which E.S. lodged an appeal on points of law.

In June 1997 Mr Stochlak brought civil enforcement proceedings, requesting permission to recover the child by force. The district court scheduled hearings at which E.S. failed to appear, submitting medical certificates to justify her absence. The proceedings were also suspended twice. On 2 December 1998 the district court ordered E.S. to return the child within three weeks. This was not done. On 2 April 2002, during a hearing, she refused to reveal the child's whereabouts.

Mr Stochlak then attempted to bring criminal proceedings against E.S. for abduction of the child, and against his wife's parents for abduction and unlawful custody in an unknown location. All three attempts were unsuccessful, as the courts found that there was no case to answer

The Ministry of Justice contacted the regional court, the police and schools. In January 2003 a special police unit was put in charge of looking for the girl, and a meeting was held to coordinate the search efforts. Mr Stochlak, deprived of any contact with his daughter during the proceedings, contacted the relevant Polish bodies as well as private detective agencies and the Canadian authorities. Meetings were organised between the Polish and Canadian authorities.

In April 2003 Mr Stochlak travelled to Poland, where he met the police officers responsible for the scheduled operation to recover the child. He was reunited with his daughter on 14 April 2003. Since then they have lived together in Canada. On 22 March 2007 the Warsaw Regional Court granted the Stochlaks a divorce. Parental authority was vested in both parents jointly, and the child's place of habitual residence was fixed as her father's home.

Mr Stochlak complained about the Polish authorities' failure to act in the proceedings for the enforcement of judicial decisions ordering his daughter's return to Canada.

Proceedings relating to the granting of parental responsibility required urgent handling, as the passage of time could have irremediable consequences for relations between a parent and his or her child.

It was clear in January 1997 that Mr Stochlak's daughter had been unlawfully removed. A year and seven months passed between the district court's first decision (7 March 1997) and the dismissal of E.S.'s appeal on points of law.

Furthermore, in the context of the civil enforcement proceedings, during the three years following the decision of 2 December 1998 – ordering E.S. to return the child within three weeks – no activity by the authorities could be identified. It was only in January 2003 that a meeting was organised to ensure effective cooperation between the various State bodies.

The authorities had not taken measures to punish the lack of cooperation by the child's mother, which was the source of most of the problems. The authorities had to have an adequate and sufficient legal arsenal to be able to take sanctions in the event of manifestly unlawful behaviour by the parent with whom a child lived. Yet no coercive measure had been taken against E.S. in the context of the enforcement proceedings, and none of the three sets of criminal proceedings had resulted in a sanction.

The authorities had therefore failed to make adequate efforts to enforce the judicial order, regarding Mr Stochlak, for the return of his child. The Court concluded unanimously that there had been a violation of Article 8.

**Pacula v. Latvia (no. 65014/01) (Importance 3) – 15 September 2009 – Violation of Art. 8 – Interference with the right to correspondence**

The applicant complains under Article 6 §§ 1 and 3 (d) about the unfairness of the proceedings against him. He further complains under Article 8, about the violation of his right to correspondence. Lastly he claims to be a victim of violation of Article 34. The Court held that there has been a violation of Article 6 §§ 1 and 3 (d) that the applicant has been unable to question the witnesses against him. The Court further held that the applicant's right to correspondence with itself has been violated in breach of Art. 8. The Court held also that there has not been a violation of Article 34 and Article 6 §§ 1 and 3 (d) pending the second set of proceedings.

**Georgi Yordanov v. Bulgaria (no. 21480/03) (Importance 3) – 24 September 2009 – Violation of Article 8 – Recording of a meeting between the applicant and his lawyer**

Sentenced to life imprisonment for aggravated murder the applicant complained about the recording of a meeting with his lawyer. The Court held that interference with the applicant's right to correspondence with his advocate constitutes a violation of the applicant's right provided by Article 8 of the Convention.

- **Freedom of thought, conscience and religion**

**Miroļubovs and Others v. Latvia (no. 798/05) (Importance 1) – 15 September 2009 – Violation of Article 9 – Authorities' failure to fulfil their duty of impartiality on account of the unwarranted intervention in an internal dispute within an old orthodox community**

The applicants are Father Ivans (Ioanns) Miroļubovs, a Latvian national, Sergejs Pičugins, a "permanent resident non-citizen" of Latvia and Albīna Zaikina, also a Latvian national. At the relevant time Father Miroļubovs was an Old Orthodox "spiritual master" and the other two applicants were members of the Riga Grebenščikova Old Orthodox parish (Rīgas Grebenščikova vecticībnieku draudze – "the RGVD").

The Old Orthodox faith originated from the great schism of the Russian Orthodox Church in the mid-17th century. The main difference with the Orthodox Church concerns acts of worship. The RGVD is the largest of Latvia's 69 Old Orthodox communities.

In 1995 Father Miroļubovs was appointed chief spiritual master of the RGVD. The same year, the adoption by the community of new statutes – found by the Ministry of Justice to be lawful – led to a split between the parishioners and to violent incidents. In 2001 a new registration certificate was issued to the RGVD by the Religious Affairs Directorate ("the Directorate"), which in May 2002 also approved the new statutes adopted by the RGVD in which the latter stressed its complete independence from other religious organisations.

On 14 July 2002 an extraordinary general meeting of the RGVD took place. In parallel with that meeting, which was held in the temple in Riga and in which the applicants participated, another meeting gathered outside attended by, among others, Old Orthodox spiritual masters. The two rival groups each claimed to constitute the legitimate general meeting.

The outside meeting decided to elect new members and change the RGVD's statutes on the ground that Father Miroļubovs and his followers had renounced their Old-Rite beliefs and had effectively converted to the Orthodox Church, thereby forfeiting all their rights within the community.

Both factions requested formal approval from the Directorate. The latter, in a decision of 23 August 2002, recognised the outside meeting as legitimate, formally approved it and registered it as the new RGVD parish council on 10 September 2002. The applicants and their fellow worshippers were expelled by force from the temple and no longer admitted. From that point on they operated informally under the name of "the RGVD in exile".

On 10 January 2003, on a request by the applicants, the Court of First Instance set aside the Directorate's decisions of 23 August and 10 September 2002. The Directorate appealed against that judgment and the Regional Court found in its favour. On 14 January 2004 an appeal by the applicants on points of law was dismissed by the Senate of the Supreme Court.

The applicants alleged, in particular, that the manner in which the domestic authorities had intervened in an internal dispute within their religious community had infringed their right to freedom of religion under Article 9. They also relied on Articles 8 and 11.

On the objection as to inadmissibility raised by the Latvian Government

In December 2008 the Government informed the Court that documents relating to the negotiations with a view to a friendly settlement had been sent to the Latvian Prime Minister via a third party. The Government concluded that the application should be declared inadmissible on the ground of an abuse of the right of petition as there had been a breach of the confidentiality requirement under the friendly-settlement procedure.

The Court stressed that an intentional breach of confidentiality by an applicant could indeed amount to abuse of the right of petition and result in the application being rejected.

However, the Court noted the difficulty of monitoring compliance with this requirement and the threat to the applicant's defence rights if it were imposed as an absolute rule. In the instant case, as the Latvian Government had not adduced evidence that all the applicants had consented to the disclosure of the confidential documents, the Court was unable to find that the applicants had abused the right of individual petition.

Article 9

The Court noted that the autonomy of religious communities was an essential component of pluralism in a democratic society, where several religions or denominations of the same religion co-existed. While some regulation by the authorities was necessary in order to protect individuals' interests and

beliefs, the State had a duty of neutrality and impartiality which barred it from pronouncing itself on the legitimacy of beliefs and their means of expression.

The authorities had failed to fulfil that duty as they had not adduced evidence of sufficiently serious reasons warranting withdrawal of the recognition granted to the RGVD bodies in 1995 and May 2002, and had implicitly determined the applicants' status as members of the Orthodox Church. The Directorate's decision had not given sufficient reasons; in particular, it had been issued in spite of the opinion expressed by the Holy Synod of the Russian Orthodox Church that the applicants had not converted to that faith (see n particular §§ 85-90, 93-95). Furthermore, the Directorate ought to have taken account in this sensitive case of the specific characteristics of the Old Orthodox faith, namely its very heterogeneous structure.

Lastly, the Court stressed that the Latvian courts had not examined the case on the merits or afforded redress for the damage sustained by the applicants.

The Court therefore held that there had been a violation of Article 9 and that no separate issue arose under Articles 8 and 11.

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

- **Freedom of expression**

**Manole and Others v. Moldova (no. 13936/02) (Importance 1) – 17 September 2009 – Violation of Article 10 – State's failure to provide sufficient legal safeguards against political control of the national television and radio station "Teleradio Moldova"**

The applicants are or were all employed by Teleradio-Moldova (TRM), which was, at the time of the events in question, the only national television and radio station in Moldova.

According to the applicants, throughout its existence, TRM was subjected to political control which they claimed worsened after February 2001 when the Communist Party won a large majority in Parliament. In particular, senior TRM management was replaced by those who were loyal to the Government. Only a trusted group of journalists were used for reports of a political nature which were edited to present the ruling party in a favourable light. Journalists were reprimanded for using expressions which reflected negatively on the Soviet period or suggested cultural and linguistic links with Romania. Interviews were cut and programmes were taken off the air for similar reasons. The opposition parties were allowed only very limited opportunity to express their views. In the first half of 2002, following a strike by TRM staff demanding end of censorship, two TRM journalists were subjected to disciplinary sanctions; they appealed in court which decided in their favour. A number of reports by international organisations and non-governmental groups affirmed that domestic law did not sufficiently guarantee the independence of editorial policy at TRM, and that the opposition was not adequately represented on the air.

In April 2002, the Moldovan Audiovisual Coordinating Council published its conclusions on the question of alleged TRM censorship. It found that certain words and topics were indeed prohibited in TRM's reports. However, it dismissed other allegations of censorship as excuses used by the journalists to cover their lack of professionalism.

The Government did not deny the specific incidents alleged by the applicants and accepted the Audiovisual Council's conclusions. It did, however, submit that opposition politicians had access to national television for ten minutes a week and, during the 2005 electoral campaign, for an hour every day.

In July 2002 Parliament adopted a law on TRM transforming the company from state to public. As a result, all applicants had to sit examinations to be confirmed in their posts. A large number of the journalists who were on strike earlier that year were not retained in post and 19 of them were banned from entering the TRM premises. The applicants claimed they were dismissed for political reasons and appealed in court, however, unsuccessfully.

The applicants complained that they were subjected to a censorship regime imposed by the State authorities through TRM's senior management.

The application was lodged with the European Court of Human Rights on 19 March 2002.

The Court first noted that the Government did not deny the specific examples cited by the applicants of TV or radio programmes that had been banned from air because of the language used or their subject-matter. Further, having accepted that TRM maintained a list of prohibited words and phrases, the Government had not provided any justification for it. In addition, given that the authorities had not monitored TRM's compliance with their legal obligation to give balanced air-time to ruling and

opposition parties alike, the Court found the relevant data provided by non-governmental organisations significant. The Court thus concluded that in the relevant period TRM's programming had substantially favoured the President and ruling Government and had provided scarce access to the air to the opposition.

*"§ 108. The Court notes that during most of the period in question TRM was the sole Moldovan broadcasting organisation producing television programmes which could be viewed throughout the country. Moreover, approximately 60% of the population lived in rural areas, with no or limited access to cable or satellite television or, according to the Secretary General's Special Representative, newspapers. In these circumstances, it was of vital importance to the functioning of democracy in Moldova that TRM transmitted accurate and balanced news and information and that its programming reflected the full range of political opinion and debate in the country and the State authorities were under a strong positive obligation to put in place the conditions to permit this to occur."*

However, during the period considered by the Court, from February 2001-September 2006, when one political party controlled the Parliament, Presidency and Government, domestic law did not provide a sufficient guarantee of political balance in the composition of TRM's senior management and supervisory body nor any safeguard against interference from the ruling political party in these bodies' decision-making and functioning. The Court therefore concluded that there had been a violation of Article 10.

The Court held that as a response to its finding of a violation, Moldova had to reform its legislation at the earliest opportunity and ensure that it is in line with relevant Council of Europe recommendations.

- **Freedom of assembly**

**Saime Özcan v. Turkey (no. 22943/04) Kaya and Seyhan v. Turkey (no. 30946/04) (Importance 3) – 15 September 2009 – Violation of Article 11 – Infringements of trade union freedom on account of the penalties received for participating in days of strikes – Violation of Article 13 in the case of Kaya and Seyhan – Lack of an effective remedy**

All three applicants were penalised for participating, as teachers and members of the trade union Eğitim Sen, in national days of strike action organised by the trade union in December 2000 and December 2003. Ms Özcan was given a suspended criminal sentence (a prison term of over three months plus a fine; the former was eventually also commuted to a fine) and was barred from public service for two and a half months. The effects of this criminal penalty continued for several years until it was set aside in 2007 following the entry into force of the new Criminal Code. Ms Kaya and Mr Seyhan received disciplinary warnings.

The three applicants contended that their right to freedom of association within the meaning of Article 11 had been breached as a result of the criminal penalty and warnings they had received. Ms Kaya and Mr Seyhan further maintained that no remedy had been available to them in Turkey by which to challenge the measure taken against them.

The Court ruled that the penalties complained of, although very light in the case of Ms Kaya and Mr Seyhan, had been such as to dissuade trade union members from legitimate participation in strikes or other trade union action and had not been "necessary in a democratic society". There had therefore been a breach of the applicants' right to freedom to demonstrate.

The Court took the view that no safeguards had been afforded to Ms Kaya and Mr Seyhan to prevent possible abuse or to simply allow a review of the lawfulness of disciplinary measures such as the one imposed on them. In fact, the Constitution and the law made no provision for judicial review of warnings or reprimands. No evidence had been adduced, either, of the existence of any authoritative case-law to the opposite effect pre-dating the applicants' complaint to the Court.

- **Protection of property**

**Moskal v. Poland (no. 10373/05) (Importance 1) – 15 September 2009 – Violation of Article 1 of Protocol No 1 – Discontinuation of early-retirement pension further to authorities' error**

The applicant, Maria Moskal, is a Polish national who lives in Glinik Chorzewski, mother of a child born in 1994 who suffers from asthma, various allergies and recurring infections. This is the first of about 120 similar applications which have been lodged with the Court, all from the same region of Poland, concerning the revocation of erroneously awarded early-retirement pensions awarded to parents with children requiring permanent health care.

In August 2001 Ms Moskal asked the Social Security Board for an early retirement pension in order to care for her child who, she claimed, needed constant care because of his medical condition. Her request was granted from 1 September 2001 after which she gave up her job of 30 years. Subsequently she was issued a pensioner's identity card marked "valid indefinitely" and for the following ten months she received her early retirement pension without interruption.

In June 2002 the Social Security Board decided to discontinue the payment of Ms Moskal's pension from 1 July 2002. The Board found in particular that the medical documentation in support of the applicant's request submitted the previous year had been insufficient.

Ms Moskal appealed unsuccessfully in court against the discontinuation of her pension. The final domestic judicial instance – the Supreme Court – found that reopening was justified because the authorities had only found out that crucial evidence had been lacking from the file after the decision granting the pension had been taken. Ms Moskal was not asked to return her early retirement payments she had received till that date.

Between 1 July 2002 and 25 October 2005 Ms Moskal did not receive any social benefits and claimed she had no other income. Following separate social security proceedings, on 25 October 2005, the District Labour Office granted her a pre-retirement benefit amounting to approximately 50% of her discontinued early retirement pension; this benefit was granted with a retroactive effect starting from 25 October 2002, however, without interest.

The application was lodged with the European Court of Human Rights on 1 February 2005. Ms Moskal complained that the authorities had deprived her of her property in unfair proceedings.

The Court first noted that Ms Moskal had acquired a property right as a result of the 2001 Social Board's decision granting her an early retirement pension. That decision had been in force for ten months before the authorities had become aware of their error. Although Ms Moskal had challenged her pension withdrawal in court, a judicial decision had only been taken two years later and in the meantime she had not received any social security benefits.

The Court emphasised that the authorities had to act with the utmost scrupulousness when dealing with matters of vital importance for individuals, such as welfare benefits. Thus, while public authorities had to be able to correct their mistakes, they had to take particular care to avoid that individuals bear excessive hardship as a result of their errors.

Following the authorities' 2002 decision to stop Ms Moskal's pension, found to have been granted wrongly, she had suddenly lost her only source of income. As she had only been granted the new pre-retirement benefit in October 2005, to half of the amount of the revoked pension and without any interest, it followed that the authorities' mistake had left her with 50 % of her expected income, and that after three-years of proceedings. Consequently, there had been a violation of Article 1 of Protocol No 1. It was not necessary to examine separately the applicant's complaints under Article 6 and Article 8.

Judges Bratza, Hirvelä and Bianku expressed a joint partly dissenting opinion which is attached to the judgment.

**Amato Gauci v. Malta (no. 47045/06) (Importance 2) – 15 September 2009 – Violation of Article 1 of Protocol No. 1 – National authorities' failure to provide adequate procedural safeguards in the 1979 law on unilateral leases**

The case concerned the applicant's inability to repossess a house – despite expiry of the tenants' lease – or to obtain fair and adequate rent. In the 1990s Mr Gauci inherited a maisonette in Sliema from his parents. Since 1975 Mr Gauchi's father had been renting the maisonette to Mr and Mrs P for 90 Maltese liras (MTL) (approximately EUR 210); the contract stipulated that the premises were to be returned to the owner after 25 years.

In April 2000 the applicant informed Mr and Mrs P. that he did not wish to renew the contract and that they should vacate the premises. Mr and Mrs P. replied that they were availing themselves of the right, under a new law enacted in 1979, to retain possession of the premises under a lease, without the consent of the owner.

The applicant's claims before the Maltese courts with regard to the fact that he had been deprived of his property without adequate compensation were ultimately rejected on appeal in May 2006. The courts found that the law at issue constituted control of the use of property, which had been legitimate and in the general interest, namely to prevent large-scale evictions. The courts further found that the maximum compensation available to the applicant by law, fixed at MTL 180 (approximately EUR 420) per year by the Rent Regulation Board, was "certainly low" but was higher than that payable under other rent laws in force in the country and did not therefore violate his property rights.

According to an architect's report of March 2002 submitted by the applicant, the market rental value of his premises was MTL 120 (approximately EUR 280) per month.

The applicant complained that the 1979 law imposed on him a unilateral lease relationship for an indeterminate time without fair and adequate rent.

The Court noted that both the applicants' parents and subsequently the applicant himself suffered interference with their property rights; however the case before the Court was confined to the applicant's rights. It was not in dispute between the parties that that interference had been lawful and pursued a legitimate aim, namely the social protection of tenants.

The Court noted that the applicant could not physically possess his house as it was occupied by tenants whose lease could not be terminated. The possibility of the tenants leaving his house voluntarily was remote, especially since the tenancy could be inherited. Nor did the applicant have available an effective remedy which would have enabled him to evict the tenants or obtain an adequate amount of rent. Consequently, the application of the law itself lacked adequate procedural safeguards aimed at achieving a balance between the interests of the tenants and those of the owners.

*"§ 63. In the present case, having regard to the low rental value which could be fixed by the Rent Regulation Board, the applicant's state of uncertainty as to whether he would ever recover his property, which has already been subject to this regime for nine years, the lack of procedural safeguards in the application of the law and the rise in the standard of living in Malta over the past decades, the Court finds that a disproportionate and excessive burden was imposed on the applicant. The latter was requested to bear most of the social and financial costs of supplying housing accommodation to Mr and Mrs P."*

It followed that Malta had failed to strike the requisite fair balance between the general interests of the community and the protection of the applicant's right of property, in violation of Article 1 of Protocol No.1.

- **Disappearances cases in Chechnya**

**Asadulayeva and Others v. Russia** (No. 15569/06) (Importance 2) – 17 September 2009 – Substantive and procedural violation of Art. 2 – Death of the applicant's relative and authorities' failure to conduct an effective investigation into the circumstances of the disappearances or killing of the applicants' relatives – Violation of Art. 3 – Psychological suffering of the applicants – Violation of Art. 5 – Unacknowledged detention – Violation of Art. 13 in conjunction with Art. 2

**Magomadova and Others v. Russia** (No. 33933/05) (Importance 2) – 17 September 2009 – Violation of Art. 2 – Authorities' failure to conduct an effective investigation into the circumstances of the disappearances or killing of the applicants' relative – Violation of Art. 3 – Psychological suffering of the applicants – Violation of Art. 5 – Unacknowledged detention – Violation of Art. 13 in conjunction with Art. 2

**Zabiyeva and Others v. Russia** (No. 35052/04) (Importance 3) – 17 September 2009 – Violation of Art. 2 – Authorities' failure to conduct an effective investigation into the circumstances of the killing of the applicants' relatives – Violation of Art. 3 – Psychological suffering of the applicants, ill-treatment of Umar and Tamara Zabiyevi and lack of an effective investigation – Violation of Art. 13 in conjunction with Art. 2 and 3

**Rezvanov and Rezvanova v. Russia** (No. 12457/05) (Importance 3) – 24 September 2009 – Violations of Art. 2 – Disappearance of the applicants' relative and lack of an effective investigation – Violation of Art. 3 – The applicants' psychological suffering – Violation of Art. 5 – Unacknowledged detention of the applicants' relative – Violation of Art. 8 and Art. 1 of Prot. 1 – Searches and seizures of properties – Violation of Art. 13 in conjunction with Art. 2, 8 and of Art.1 of Prot. 1

**Babusheva and Others v. Russia** (No. 33944/05) (Importance 3) – 24 September 2009 – Substantive and procedural violation of Art. 2 – Disappearance of the applicants' relative and lack of an effective investigation – Violation of Art. 3 – The applicants' psychological suffering (save for the seventh applicant) – Violation of Art. 5 – Unacknowledged detention of the applicants' relative – Violation of Art. 8 and Art. 1 of Prot. 1 – Searches and seizures of properties – Violation of Art. 13 in conjunction with Art. 2, 8 and Art.1 of Prot. 1

## 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[1]. For a more complete information, please refer to the following link:

- Press release by the Registrar concerning the Chamber judgments issued on 15 Sept. 2009: here.
- Press release by the Registrar concerning the Chamber judgments issued on 17 Sept. 2009: here.
- Press release by the Registrar concerning the Chamber judgments issued on 22 Sept. 2009: here.
- Press release by the Registrar concerning the Chamber judgments issued on 24 Sept. 2009: here.

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

| State | Date | Case Title and Importance of the case | Conclusion | Key Words | Link to the case |
|---|---|---|---|---|---|
| Bulgaria | 24 Sept. 2009 | Agromodel OOD and Mironov (no. 68334/01) Imp. 3 | Violation of Art. 6 § 1 | Unfairness of proceedings on account of domestic courts' refusal to examine the applicant company's claims for damages, on the ground that it had not paid court fees | Link |
| Finland | 15 Sept. 2009 | Aiminen (no. 24732/06) Imp. 3 | Violation of Art. 6 § 1 | Excessive length of criminal proceedings (see *Pélissier and Sassi v. France)* | Link |
| Finland | 22 Sept. 2009 | Knaster (no. 7790/05) Imp. 3 | Violation of Art. 6 § 1 | Idem. | Link |
| Italy | 22 Sept. 2009 | Cimolino (no. 12532/05) Imp. 3 | No violation of Art. 6 § 1 | Absence of adversarial proceedings before the Court of Cassation did not affect the outcome of the proceedings | Link |
| Poland | 15 Sept. 2009 | Arciński (no. 41373/04) Imp. 3 | Violation of Art. 6 § 1 in conjunction with Art. 6 § 3 (c) | Infringement of the right of access to a court on account of the court of appeal's failure to inform the applicant of his procedural rights | Link |
| Poland | 15 Sept. 2009 | Giermek and Others (no. 6669/03) Imp. 3 | Two violations of Art. 6 § 1 (right to a fair hearing and right to a fair hearing within reasonable time) | Non-enforcement of a final judgment in the applicants' favour and length of proceedings | Link |
| Poland | 15 Sept. 2009 | Jamroży (no. 6093/04) Imp. 2 | Violation of Art. 5 § 3 | Excessive length of detention on remand | Link |
| Poland | 15 Sept. 2009 | Lorenc (no. 28604/03) Imp.3 | Violation of Art. 6 § 1 | Excessive length of proceedings | Link |
| Romania | 15 Sept. 2009 | Rasidescu (no. 39761/03) Imp. 3 | Violation of Art. 1 of Prot. No. 1 | Infringement of the right to peaceful enjoyment of possessions on account of the deprivation of the applicants' possessions together with a total lack of compensation | Link |
| Romania | 15 Sept. 2009 | Tamir and Others (no. 42194/05) Imp. 3 | Violation of Art. 1 of Prot. No. 1 | Idem. | Link |
| Romania | 22 Sept. 2009 | Bican (no. 37338/02) Imp. 3 | No violation of Art. 6 § 1 | Reasonable delay of civil proceedings concerning the applicant's status as an adopted child | Link |
| Romania | 22 Sept. 2009 | S.C. Pilot Service S.A. Constanța (no. 1477/02) Imp. 3 | Just satisfaction | Just satisfaction following the violations of Art. 6 § 1 and Art. 1 of Prot. No. 1 on account of the failure to execute final decisions authorising the applicant company | Link |

[1] The "Key Words" in the various tables of the RSIF are elaborated under the sole responsibility of the NHRS Unit of the DG-HL

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|---|---|---|---|---|---|
| | | | | to exercise its piloting activities | |
| Russia | 17 Sept. 2009 | Borodkin (no. 42234/04) Imp. 3 | Violation of Art. 1 of Prot. No. 1 | Quashing of an enforceable judgment in the applicant's favour by way of supervisory review | Link |
| Russia | 17 Sept. 2009 | Kozlov v. Russia (no. 30782/03) Imp. 3 | No violation of Art. 6 | The applicant's absence at court hearings did not affect the principle of equality of arms | Link |
| Russia | 17 Sept. 2009 | Yevdokimov (no. 17183/05) Imp. 3 | Violation of Art. 5 § 1 | Unlawful detention: twenty-three days longer than final prison sentence | Link |
| Russia | 17 Sept. 2009 | Zharkova (no. 32380/06) Imp. 3 | Violation of Art. 6 § 1 | Excessive length of proceedings | Link |
| "The former Yugoslav Republic of Macedonia" | 17 Sept. 2009 | Bočvarska (no. 27865/02) Imp. 2 | Violation of Art. 6 § 1<br><br>Violation of Art. 1 of Prot. No. 1 | Excessive length of civil proceedings and<br>Quashing of an enforceable judgment in the applicant's favour | Link |
| Turkey | 15 Sept. 2009 | Arzu v. (no. 1915/03) Imp. 3 | Violation of Art. 5 § 3<br><br>Violation of Art. 6 § 3 (c) in conjunction with Art. 6 § 1 and Art. 6 § 1 | Excessive length of two periods of pre-trial detention (over eight years and one month in total)<br>Lack of access to a lawyer while in police custody and excessive length of proceedings | Link |
| Turkey | 15 Sept. 2009 | Etem Karagöz (no. 32008/05) Imp. 3 | Violation of Art. 5 §§ 3 and 4<br>Violation of Art. 6 § 1 | Excessive length of pre-trial detention and lack of an effective remedy | Link |
| Turkey | 15 Sept. 2009 | Güli Kara (no. 30944/04) Imp. 3 | Violation of Art. 6 § 1 | Excessive length of proceedings | Link |
| Turkey | 15 Sept. 2009 | Hatipoğlu (no. 23945/05) Imp. 3 | Violation of Art. 6 § 1 | Idem. | Link |
| Turkey | 15 Sept. 2009 | İhsan Baran (No. 1) (no. 8180/04) Imp. 3 | Violation of Art. 6 § 3 (c) in conjunction with Art. 6 § 1 | Lack of legal assistance while in police custody | Link |
| Turkey | 22 Sept. 2009 | Ahmet Arslan (no. 24739/04) Imp. 3<br>Çelebi and Others (no. 2910/04) Imp. 3<br>Halil Kaya (22922/03) Imp. 3 | Violation of Art. 6 § 3 (c) in conjunction with Art. 6 § 1 | Just satisfaction following the violation of Art. 6 § 3 (c) in conjunction with Art. 6 § 1 on account of the lack of legal assistance during the applicants' detention in police custody | Link<br><br>Link<br><br>Link |
| Turkey | 22 Sept. 2009 | Akdüz and Others (no. 6982/04) Imp. 3 | Just satisfaction<br>Violation of Art. 1 of Prot. 1 | Violation of Art. 1 of Prot. No. 1, failure to pay a debt established by a judicial decision, and inadequate rate of interest applied to that debt | Link |
| Turkey | 22 Sept. 2009 | Baş v. Turkey (no. 49548/99) Imp.3 | Just satisfaction | Just satisfaction following the violation of Art. 1 of Prot. No. 1 and of Art. 6 § 1 on account of the refusal to pay a widow's pension and the length of proceedings | Link |
| Turkey | 22 Sept. 2009 | Çetiner and Yücetürk (no. 24620/04) Imp.3 | Violation of Art. 1 of Prot. No. 1<br>Just satisfaction: claim rejected | Infringement of the right to property on account of a decision to designate the applicants' land as public forest without compensation | Link |
| Turkey | 22 | Göksel Tütün | Violation of Art. 6 § 1 | Length of proceedings | Link |

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|---|---|---|---|---|---|
| | Sept. 2009 | Ticaret ve Sanayi A.Ş. (no. 32600/03) Imp.3 | Just satisfaction | | |
| Turkey | 22 Sept. 2009 | Kapçak (no. 22190/05) | Violation of Art. 8 Just satisfaction | Interception of correspondence between the applicant and his family by prison staff | Link |
| Turkey | 22 Sept. 2009 | Singar (no. 13467/05) Imp.3 | Violation of Art. 6 § 1 Just satisfaction | Excessive length of criminal proceedings | Link |
| Turkey | 22 Sept. 2009 | Talay (no. 34806/03) Imp. 3 | Just satisfaction Violation of Art. 5 §§ 1 and 5 | Detention further to a decision ordering a stay of execution of a sentence | Link |
| Turkey | 22 Sept. 2009 | Ünay (no. 24801/05) Imp. 3 | Violation of Art. 5 § 3 Just satisfaction | Excessive length of his pre-trial detention | Link |
| Turkey | 22 Sept. 2009 | Uyanık and Kabadayı v. Turkey (no. 7945/05) Imp. 3 | (1st applicant) Violation of Art. 5 § 3 (1st applicant) Violation of Art. 6 § 1 Just satisfaction: no claim made within time-limit | Excessive length of detention on remand and excessive length of criminal proceedings (only in respect of the 1st applicant) | Link |

*The following cases concern property issues following the 1974 conflict in northern Cyprus. All judgments are given on 22 September 2009. They all relied in particular on Article 1 of Protocol No. 1 and many also on Article 8. In four of the cases (Andreou Papi, Christodoulidou, Strati and Vrahimi) the applicants further complained that they were subjected to ill-treatment during an anti-Turkish demonstration, in breach in particular of Articles 3, 11 and 14.*

Andreou Papi v. Turkey (no. 16094/90) – Violation of Art. 1 of Prot. No 1 – Just satisfaction: question reserved for decision at a later date

Christodoulidou v. Turkey (no. 16085/90) Violation of Art. 3 – Violation of Art. 1 of Prot. No 1 – Just satisfaction for the Art. 3 violation: question reserved for decision at a later date in respect of the Art. 1 of Prot. 1 violation

Diogenous and Tseriotis v. Turkey (no. 16259/90) – Violation of Art. 8 – Violation of Art. 1 of Prot. No 1 – Just satisfaction: question reserved for decision at a later date

Epiphaniou and Others v. Turkey (no. 19900/92) – Violation of Art. 8 – Violation of Art. 1 of Prot. No 1 – Just satisfaction: question reserved for decision at a later date

Hadjiprocopiou and Others v. Turkey (no. 37395/97) – Violation of Art. 1 of Prot. No 1 – Just satisfaction: question reserved for decision at a later date

Hadjithomas and Others v. Turkey (no. 39970/98) – Violation of Art. 8 – Violation of Art. 1 of Prot. No 1 – Just satisfaction: question reserved for decision at a later date

Hapeshis and Hapeshi-Michaelidou v. Turkey (no. 35214/97) – Violation of Art. 8 – Violation of Art. 1 of Prot. No 1 – Just satisfaction: question reserved for decision at a later date

Hapeshis and Others v. Turkey (no. 38179/97) – Violation of Art. 1 of Prot. No 1 – Just satisfaction: question reserved for decision at a later date

Iordanis Iordanou v. Turkey (no. 43685/98) – Violation of Art. 8 – Violation of Art. 1 of Prot. No 1 – Just satisfaction: question reserved for decision at a later date

Josephides v. Turkey (no. 21887/93) – Violation of Art. 1 of Prot. No 1 – Just satisfaction: question reserved for decision at a later date

Loizou and Others v. Turkey (no. 16682/90) – Violation of Art. 8 – Violation of Art. 1 of Prot. No 1 – Just satisfaction: question reserved for decision at a later date

Ramon v. Turkey (no. 29092/95) – Violation of Art. 1 of Prot. No 1 – Just satisfaction: question reserved for decision at a later date

Roch Ruby Hotels Ltd v. Turkey (no. 46159/99) – Violation of Art. 1 of Prot. No 1 – Just satisfaction: question reserved for decision at a later date

Saveriades v. Turkey (no. 16160/90) – Violation of Art. 8 – Violation of Art. 1 of Prot. No 1 – Just satisfaction: question reserved for decision at a later date

Strati v. Turkey (no. 16082/90) – Violation of Art. 3 – Violation of Art. 8 – Violation of Art. 1 of Prot. No 1 – Just satisfaction: question reserved for decision at a later date in respect of the other two violations

Skyropiia Yialias Ltd v. Turkey (no. 47884/99) – Violation of Art. 1 of Prot. No 1 – Just satisfaction: question reserved for decision at a later date

Vrahimi v. Turkey (no. 16078/90) – Violation of Art. 1 of Prot. No 1 – Just satisfaction: question reserved for decision at a later date

Zavou and Others v. Turkey (no. 16654/90) – Violation of Art. 8 – Violation of Art. 1 of Prot. No 1 – Just satisfaction: question reserved for decision at a later date

## 3. Repetitive cases

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

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

| State | Date | Case Title | Conclusion | Key words |
|---|---|---|---|---|
| Romania | 22 Sept. 2009 | S.C. Concordia Internațional S.R.L. Constanța (no. 38969/02) link<br><br>Simionescu-Râmniceanu (No. 2) (no. 43953/02) link | Violation of Art. 6 § 1 (right to a fair hearing)<br>Violation of Art. 1 of Prot. No. 1 (protection of property)<br>Just satisfaction | Unfairness of proceedings, infringement of the principle of legal certainty<br><br>(See *Brumărescu v. Roumania*) |
| Turkey | 22 Sept. 2009 | Aldemir (no. 37215/04) link | Violation of Art. 6 § 1 | Unfairness of proceedings - no public hearing<br><br>*(See Karahanoğlu v. Turkey)* |
| Turkey | 22 Sept. 2009 | Ali Taş (no. 10250/02) link | Violation of Art. 1 of Prot. No. 1 | Deprivation of property, designated as public forest area, without compensation |
| Turkey | 22 Sept. 2009 | Hasan Polat (no. 32489/03) link | Violation of Art. 6 § 1 | Lack of independence and impartiality of the State Security Court during criminal proceedings |

## 4. Length of proceedings cases

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

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

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

| **State** | **Date** | **Case Title** | **Link to the judgment** |
|---|---|---|---|
| Finland | 22 Sept. 2009 | Oy Hopotihoi Suomen Lelukamarit Toy & Hobby Ltd and Matti Kangasluoma (no. 38158/07) | Link |
| Romania | 22 Sept. 2009 | Balea (no. 31253/03) | Link |
| Romania | 22 Sept. 2009 | Lăzărescu (no. 3912/03) | Link |
| Serbia | 22 Sept. 2009 | M.V. (no. 45251/07) | Link |
| Turkey | 22 Sept. 2009 | Barker (no. 34656/03) | Link |
| Turkey | 22 Sept. 2009 | Saruhan and Çelik (no. 5298/06) | Link |
| Turkey | 22 Sept. 2009 | Seval Tekstil Sanayi ve Mümessillik Dış Ticaret Ltd. Şti. (no. 8476/05) | Link |
| Turkey | 22 Sept. 2009 | Sürgit (no. 27597/06) | 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 24 August to 6 September 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*** |
|---|---|---|---|---|
| Austria | 03 Sept 2009 | Holzinger (no 10099/06) link | Alleged violation of Art. 6 (procedural issues before the domestic courts, particularly length of proceedings) | Struck out of the list (friendly settlement reached) |
| Bulgaria | 25 Aug. 2009 | Bogoev (no 42025/04) link | Alleged excessive length of criminal proceedings and lack of an effective remedy | Idem. |
| Bulgaria | 25 Aug. 2009 | Radev (no 10909/04) link | Idem. | Idem. |
| Bulgaria | 25 Aug. 2009 | Nozharova (no 44096/05 and 50 other applications 44132/05; 44159/05 etc.) link | The applicants complain about the difficulties encountered making it impossible to practise their profession as a result of the adoption of new internal legislation in the matter | Inadmissible (no respect of the six-month requirement) |
| Croatia | 27 Aug. 2009 | Radan (no 49019/06) link | Alleged violation of Art. 1 of Prot. 1 (expropriation of a larger part of the applicants' property had been used for the construction of a tunnel than the part originally referred to in the expropriation decision) | Struck out the application for the second applicant (following his death), inadmissible for the first applicant (non-exhaustion of domestic remedies) |
| Croatia | 03 Sept 2009 | Getoš-Magdić (no 56305/08) link | Alleged violations of Art. 5 §§ 1 and 3 (failure to bring the applicant promptly before a judge, length of | Partly adjourned (concerning the lawfulness of the detention, the right to be brought promptly before |

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| | | | detention), Art. 5 § 4 (unfairness of proceedings concerning the lawfulness of detention), Art. 6 §§ 1 and 3 (length of criminal proceedings, deprivation of the right to attend the hearings); alleged violation of the presumption of innocence by domestic courts, difference of treatment between the defendants | a judge, the right to be tried within a reasonable time and the lawfulness of detention proceedings), partly inadmissible (concerning the remainder of the application) |
| Croatia | 03 Sept 2009 | Pavlinović (no 17124/05 ; 17126/05) link | Alleged violation of Art. 1 of Prot. 1 (infringement of the right to respect for property on account of domestic courts' decision to declare null the contracts upon which the applicants had relied on and bought their flats), Art. 6 § 1 (outcome of civil proceedings) | Inadmissible as manifestly ill-founded (proportionate interference with the applicant's right to respect for property, lack of arbitrariness in the proceedings) |
| Finland | 01 Sept 2009 | Jokinen (no 37233/07) link | Alleged violation of Art. 8 (infringement of the right to respect for the home as a result of the breaking into the applicants' home by three civil servants), Art. 6 and 13 (unfairness of proceedings) | Partly struck out of the list (unilateral declaration of the Government concerning the right to respect for the home), partly inadmissible as manifestly ill-founded (concerning the remainder of the application) |
| France | 01 Sept 2009 | Jacquier (no 45827/07) link | Alleged violation of Art. 8 (infringement of right to respect for the home and correspondence as a result of the searches conducted in the applicant's office), Art. 6 (lack of access to a court) | Inadmissible partly as manifestly ill-founded (proportionate interference with the applicant's right to respect for the home), partly for non-exhaustion of domestic remedies (concerning the claims under Art. 6) |
| France | 01 Sept 2009 | Agboton and Others (no 30088/06) link | The application concerns the retroactive application of a law pending proceedings | Struck out of the list (friendly settlement reached) |
| France | 01 Sept 2009 | H. M. (no 49566/08) link | Alleged violation of Art. 3 (risk to be subjected to ill-treatment, if expelled to Sudan) | Struck out of the list (applicant no longer wishing to pursue his application) |
| France | 01 Sept 2009 | Loquen (no 42514/05) link | Alleged violation of Art. 6 § 1 (unfairness of proceedings before the *Conseil d'Etat*) | Struck out of the list (unilateral declaration of the Government) |
| France | 01 Sept 2009 | Carsoulle (no 12051/08; 13259/08; 13260/08 etc.) link | Alleged violation of Art. 6 § 1 and Art. 1 of Prot. 1 (deprivation of compensation for housing) and Art. 1 of Prot. 12 (difference of treatment from other employees) | Inadmissible (incompatible *ratione personae* concerning the claims under Art. 6§ 1 and Art. 1 of Prot. 1 and incompatible *ratione materiae* concerning the claims under Art. 1 of Prot. 12*)* |
| Germany | 25 Aug. 2009 | Pokrzeptowicz-Meyer (no 11328/06) link | Alleged violation of Art. 8 (transferral of sole parental custody to the applicant's child's father), Art. 14 (discrimination on grounds of nationality) and Art. 6 (outcome of criminal proceedings) | Inadmissible as manifestly ill-founded (no appearance of violation of the rights and freedoms of the Convention) |
| Greece | 27 Aug. 2009 | Chrysochoos (no 27660/08) link | Alleged violation of Art. 6 (length of proceedings) Art. 14 and Art. 1 of Prot. 1 (difference of treatment concerning retirement pension) | Struck out of the list (friendly settlement reached) |
| Greece | 27 Aug. 2009 | Vasiliou and Others (no 25257/08) link | Alleged violation of Art. 6 § 1 (excessive length of civil proceedings) and Art. 1 of Prot 1 | Idem. |
| Greece | 27 Aug. 2009 | Papanastasiou and Others (no 24999/08) link | Idem. | Idem. |
| Hungary | 25 Aug. 2009 | Oláh (no 26844/05) link | Alleged violation of Art. 6 § 1, Art. 13 and Art. 1 of Prot 1 (length of civil proceedings involving a property dispute) | Idem. |

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| Hungary | 01 Sept 2009 | Harcz (no 47833/06) link | Alleged violation of Art. 6 § 1 and Art. 1 of Prot 1 (length of civil proceedings involving a compensation dispute) | Idem. |
| Latvia | 01 Sept 2009 | Ustinovs (no 9000/03) link | Alleged violation of Art. 5 § 3 (length of pre-trial detention on remand) and Art. 5 § 4 (lack of an effective judicial review of the lawfulness of the detention) | Idem. |
| Latvia | 01 Sept 2009 | Jurģis (no 39081/07) link | Alleged violation of Art. 6 § 1 (length and unfairness of proceedings) | Idem. |
| Latvia | 01 Sept 2009 | Šafira (no 18507/06) link | Alleged violation of Art. 6 §§ 1 and 3 (d) (length and outcome of proceedings, absence of amnesty, refusal to use certain tapes as evidence, inability to examine witnesses), Art. 2 and 4 of Prot. 7 (deprivation of the right to appeal and violation of the principle *non bis in idem*) | Idem. |
| Moldova | 25 Aug. 2009 | Card Box Production S.R.L. (no 38598/07) link | Alleged violation of Art. 6 § 1 (right of access to a court was allegedly violated by failure to fully enforce a final judgment in favour of the applicant company) and Art. 1 of Prot 1 (failure to fully enforce a final judgment in favour of the applicant company had allegedly violated its right to protection of property) | Idem. |
| Poland | 01 Sept 2009 | Kołodziejek (no 3684/08) link | Alleged violation of Art. 6 § 1 (excessive and unreasonable length of proceedings) | Idem. |
| Poland | 01 Sept 2009 | Mączeńska (no 39815/08) link | Idem. | Idem. |
| Poland | 01 Sept 2009 | Flis (no 58049/08) link | Idem. | Idem. |
| Poland | 01 Sept 2009 | Bartosiewicz (no 41536/08) link | Alleged violation of Art. 6 § 1 (excessive length of proceedings and violation of other procedural rights) | Partly struck out of the list (unilateral declaration of Government concerning the length of proceedings), partly inadmissible (concerning the remainder of the application) |
| Poland | 25 Aug. 2009 | Kasprzyk (no 6675/08) link | Alleged violation of Art. 5 § 3 (length of pre-trial detention) | Struck out of the list (friendly settlement reached) |
| Poland | 01 Sept 2009 | Wnuk (no 38308/05) link | Alleged violation of Art. 6, 13, 17 and 18 (lack of a fair hearing before the Supreme Court, refusal to entertain the applicant's cassation appeal) | Inadmissible as manifestly ill-founded (no appearance of violation of rights and freedoms of the Convention) |
| Romania | 01 Sept 2009 | Rădulescu and Others (no 37506/03) link | Alleged violation of Art. 6 § 1 and of Art. 1 of Prot. 1 (non-enforcement of a judgment in the applicants' favour) | Inadmissible as manifestly ill-founded (pursuant to Art. 35 §§ 3 and 4 of the Convention) |
| Romania | 25 Aug. 2009 | Sârbu (no 6932/03) link | Alleged violation of Art. 1 of Prot. 1 (allowance awarded when the applicant retired from military had been unlawfully subjected to income tax) and of Art 14 (difference of treatment) | Partly struck out of the list (unilateral declaration of Government), partly inadmissible (incompatible *ratione materiae)* |
| Romania | 01 Sept 2009 | Molie (no 13754/02) link | Alleged violation of Art. 2, 6 and 13 (national authorities' failure to protect the applicants' son's life, lack of an effective investigation and lack of an effective remedy) | Inadmissible as manifestly ill-founded (absence of failure in State's positive obligation to protect the life of the teenager, fair and in-depth investigation into the applicants' son's death) |

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| Russia | 27 Aug. 2009 | Bogatyrev (no 22960/04) link | The applicant complains about the non-enforcement of a judgment in his favor and of the lack of adequate compensation | Inadmissible for no respect of the six-month requirement |
| Serbia | 01 Sept 2009 | Radaković (no 32280/07) link | Alleged violation of Art. 6 § 1 and Art. 1 of Prot 1 (length of child maintenance proceedings) and Art. 13 (lack of an effective remedy) | Struck out of the list (friendly settlement reached) |
| Serbia | 01 Sept 2009 | Zlatković (no 48190/06) link | Alleged violation of Art. 6 § 1 (excessive length of proceedings of a property-related suit) | Idem. |
| Slovenia | 01 Sept 2009 | Glunec (no 13558/04) link | Alleged violation of Art. 6 § 1 and Art. 1 of Prot 1 (length of proceedings) and Art. 13 (lack of an effective remedy) | Struck out of the list (matter resolved at the domestic level) |
| The Czech Republic | 25 Aug. 2009 | Haškovcová and Věříšová (no 43905/04) link | Alleged violation of Art. 1 of Prot. 1 (deprivation of property as a result of a discriminatory law) and Art. 6 (unfairness and length of proceedings), Art. 13 (lack of an effective remedy before the Cassation court) | Partly adjourned (concerning the deprivation of property), partly inadmissible (the applicants can no longer claim to be victims) |
| The Czech Republic | 01 Sept 2009 | Golha (no 7051/06) link | Alleged violation of Art. 6 § 1 (length and unfairness of proceedings), Art. 1 of Prot. 1 (deprivation of property rights as a result of the length of proceedings) | Partly adjourned (concerning length of proceedings and lack of an effective remedy in that respect), partly inadmissible (concerning the remainder of the application) |
| "The Former Yugoslav Republic of Macedonia" | 01 Sept 2009 | Timova (no 8233/07) link | The application concerns the length of proceedings for division of property | Struck out of the list (friendly settlement reached) |
| The Netherlands | 01 Sept 2009 | Harutioenyan (no 43700/07) link | Alleged violation of Art. 3 (risk to be subjected to treatment contrary to this Article if expelled to Armenia, lack of adequate medical treatment in Armenia for the applicant's state of health), Art. 13 (lack of an effective remedy) | Inadmissible as manifestly ill-founded (no appearance of violation concerning the deportation), and lack of an "arguable claim" (concerning claims under Art. 13) |
| The United Kingdom | 02 Sept 2009 | Hughes (nos 61395/00; 63683/00; 64729/01 etc.) link | Alleged violation of Art. 8, 1, 4 and Art. 1 of Prot. 1 (discrimination on grounds of sex concerning a claim for widows' benefits) | Partly struck out of the list (friendly settlement concerning the non-entitlement to a Widow's Payment and/or Widowed Mother's Allowance), partly inadmissible (concerning the remainder of the application) |
| The United Kingdom | 25 Aug. 2009 | A.D. (no 39586/05) link | Alleged violation of Art. 6 (unfairness of criminal proceedings), Art. 14 (difference of treatment from the persons convicted of murder committed as adults) | Inadmissible as manifestly ill-founded (no appearance of violation of the Convention rights) |
| Turkey | 25 Aug. 2009 | Aydin and Sen (no 41091/05) link | Alleged violation of Art. 6§1 (delayed payment of additional expropriation compensation) | Struck out of the list (applicants no longer wishing to pursue their application) |
| Turkey | 01 Sept 2009 | Mohamadi (nos 1163/08; 1170/08) link | Alleged violation of Art. 2, 3 (risk of execution or being subjected to ill-treatment if expelled to Iran or Iraq), Art. 13 (impossibility to lodge an asylum claim and lack of an effective remedy), Art. 5 §§ 2 and 4 (failure to inform the applicants about the reasons of their detention) | Idem. |
| Turkey | 01 Sept 2009 | Özmen (no 4545/05) link | Alleged violation of Art. 6 (length of administrative proceedings) | Struck out of the list (friendly settlement reached) |
| Turkey | 01 Sept 2009 | Karadağ (no 24036/05) link | Alleged violation of Art. 6 § 1 (delayed payment of the expropriation compensation) and Art. 1 of Prot. 1 (loss of value in | Struck out of the list (applicant no longer wishing to pursue his application) |

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| | | | compensation further to inflation) | |
| Turkey | 01 Sept 2009 | Humartaş (no 38714/04) link | Alleged violation of Art. 6 (length of criminal proceedings) | Struck out of the list (friendly settlement reached) |
| Turkey | 25 Aug. 2009 | Gül (no 19342/04) link | Alleged violation of Art. 6 § 1 and Art. 1 of Prot. 1 (deprivation of property on account of the failure to receive attorney fees) | Struck out of the list (applicant no longer wishing to pursue his application) |
| Turkey | 25 Aug. 2009 | Ciritoğlu and Others (no 37886/04 ; 13811/05) link | Alleged violation of Art. 1 of Prot. 1 (lack of compensation after expropriation), Art. 14 | Inadmissible as manifestly ill-founded (no appearance of violation of the Convention rights) |
| Turkey | 25 Aug. 2009 | Yalçin (no 33121/04) link | Alleged violation of Art. 6 § 1 (length of administrative proceedings) | Struck out of the list (friendly settlement reached) |
| Turkey | 01 Sept 2009 | Kırlangıç (no 30689/05) link | Alleged violation of Art. 3 (ill-treatment while in detention), Art. 5 (length of detention on remand and of pre-trial detention, unlawfulness of detention, lack of legal assistance while in detention), Art. 13 (lack of an effective remedy), Art. 14 in conjunction with Art. 5 (discrimination on ground of citizenship) | Partly adjourned (concerning the ill-treatment in detention, the length of detention and the lack of legal assistance in detention), partly inadmissible (concerning the remainder of the application) |
| Turkey | 01 Sept 2009 | Yiğitler (no 33110/04) link | Alleged violation of Art. 1 of Prot. 1 (expropriation of a plot of land without any compensation) | Inadmissible (incompatible *ratione temporis*) |
| Turkey | 01 Sept 2009 | Dalkılıç (no 27002/05) link | Alleged violation of Art. 6 § 1 (length of civil proceedings) | Struck out of the list (friendly settlement reached) |
| Turkey | 01 Sept 2009 | Açıkgöz (no 40883/02) link | Alleged violation of Art. 6, 13 and 1 of Prot. 1 (expropriation of plot of land without any compensation) | Struck out of the list (applicant no longer wishing to pursue her application) |

## C. The communicated cases

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

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

- on 21 September 2009 : link
- on 28 September 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.

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 21 September 2009 on the Court's Website and selected by the NHRS Unit**

*The batch of 21 September 2009 concerns the following States (some cases are however not selected in the table below): Austria, Belgium, Croatia, France, Georgia, Germany, Greece, Hungary, Italy, Poland, Romania, Russia, Switzerland, the Czech Republic, the Netherlands, Turkey and Ukraine.*

| State | Date of communication | Case Title | Key Words |
|---|---|---|---|
| Belgium | 03 Sept. 2009 | Gharibzadeh no 7295/09 | Alleged violation of Art. 3 – Risk of being expelled to Afghanistan (where the applicants risk of being subjected to torture) if expelled to Greece – Alleged violation of Art. 8 – Infringement of the right to respect for family life on account of the conditions of detention of asylum seekers in Greece, particularly hard for a family with three minor children |
| Croatia | 03 Sept. 2009 | A no 55164/08 | Alleged violation of Art. 2, 3 and 8 – State's authorities' failure to provide the applicant and her daughter with adequate protection from her violent former husband – Alleged violation of Art. 13 – Lack of an effective remedy – Alleged violation of Art. 14 in conjunction with Art. 2, 3, 8 and 13 – Discrimination on the grounds of sex |
| France | 02 Sept. 2009 | Beghal no 27778/09 | Alleged violation of Art. 3 – Risk of being subjected to ill-treatment if expelled to Algeria – Alleged violation of Art. 8 – Interference with the right to respect to family life on account of the fact that the applicant's wife and children are French nationals and they are residing in France |
| Greece | 03 Sept. 2009 | A. A no 12186/08 | Alleged violation of Art. 3 – Conditions of detention in Samos detention center – Alleged violation of Art. 5 § 1 – Unlawfulness of detention – Alleged violation of Art. 5 § 2 – Failure to inform the applicant of the reasons of his arrest in a language he understands – Alleged violation of Art. 5 § 4 – The applicant's inability to have a judicial decision concerning the lawfulness of his detention |
| Greece | 03 Sept. 2009 | Dimitras and Others no 35793/07 | Alleged violation of Art. 9 – Infringement of the right to freedom of expression, conscience and religion on account of the obligation imposed on the applicants to take a religious oath – Alleged violation of Art. 13 – Lack of an effective remedy |
| Italy | 01 Sept. 2009 | Pezzino no 32226/04 | Alleged violation of Art. 3 – Conditions of detention in the prisons of Vicence, Voghera and Palermo and during transfers to the prisons |
| Poland | 31 Aug. 2009 | Horych no 13621/08 | Alleged violation of Art. 3 and 8 – Conditions of detention and various restrictions due to the applicant's solitary confinement with particular restrictions on the applicant's contact with family – Alleged violation of Art. 5 § 3 – Length of pre-trial detention – Alleged violation of Art. 6 § 1 – Length of proceedings – Alleged violation of Art. 8 – Censorship of the applicant's correspondence |
| Russia | 03 Sept. 2009 | Asyanov no 25462/09 | Alleged violation of Art. 3 – Conditions of detention in facility no. IZ-77/1 of Moscow – Infection with tuberculosis while in custody – Lack of adequate medical care while in detention |
| Russia | 31 Aug. 2009 | Antipenkov (no 2) no 28438/07 | Alleged violation of Art. 3 – Conditions of detention in the temporary detention facility of the Dyatkovo Department of Interior, Bryansk Region – Alleged violation of Art. 13 – Lack of an effective remedy |
| Russia | 31 Aug. 2009 | Salimov no 35776/05 | Alleged violation of Art. 3 – Conditions of detention in SIZO no. 1 of Yekaterinburg |
| Russia | 31 Aug. 2009 | Shirokov no 2655/04 | Alleged violation of Art. 3 – Conditions of detention in the temporary detention ward of the Maloyaroslavetskiy District Department of the Interior – Alleged violation of Art. 6 §§ 1 and 3 (d) – The applicant's inability to examine witnesses against him |
| Turkey | 01 Sept. 2009 | Benzer and Others no 23502/06 | Alleged violation of Art. 2 and 3 – Failure to protect the applicants' deceased relatives, as well as the injured applicants' right to life – Failure to carry out an effective investigation |
| Turkey | 01 Sept. 2009 | Ölmez and Turgay nos 2318/09, 12616/09 | Alleged violation of Art. 10 – Interference with the applicants' freedom of expression on account of the suspension of the publication and the distribution of *Politika, Yedinci Gün, Özgür Yorum, Analiz* and *Ayrıntı* (weekly newspapers) – Alleged violation of Art. 6 §§ 1, 3 and 2 – Lack of a public hearing – Violation of the principle of equality of arms |
| Turkey | 01 Sept. 2009 | Yilmaz no 36369/06 | Alleged violation of Art. 3 and 8 – Gynaecological examination of the applicant (a minor at the time of facts) without her agreement while detention – Alleged violation of Art. 13 – Lack of an effective remedy |
| Ukraine | 31 Aug. 2009 | Tarasov no 17416/03 | Alleged violation of Art. 3 – Ill-treatment while in police custody – Lack of an effective investigation – Alleged violation of Art. 6 – Infringement of procedural rights pending proceedings before the domestic court |

| Cases concerning Chechnya | | | |
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| Russia | 31 Aug. 2009 | Alikhadzhiyeva no 37193/08 | Alleged violation of Art. 2 – Disappearance of the applicants' relatives – Lack of an effective investigation – Alleged violation of Art. 3 – Mental suffering in connection with the disappearance of the applicants' relatives – Alleged violation of Art. 5 – Unlawful deprivation of liberty – Alleged violation of Art. 13 – Lack of an effective remedy |
| Russia | 03 Sept. 2009 | Umayeva and Umayev no 47354/07 | |

**Communicated cases published on 28 September 2009 on the Court's Website and selected by the NHRS Unit**

*The batch of 28 September 2009 concerns the following States (some cases are however not selected in the table below): Armenia, Austria, Bulgaria, Cyprus, France, Germany, Greece, Latvia, Moldova, Montenegro, Poland, Romania, Russia, Switzerland, the Netherlands, the United Kingdom, Turkey and Ukraine.*

| State | Date of communication | Case Title | Key Words |
|---|---|---|---|
| Austria | 11 Sept. 2009 | E.B. no 27783/09 | Alleged violation of Art. 14 in conjunction with Art. 8 – Discrimination on the ground of his sex or other status, on account of the Austrian courts' decisions that took previous convictions under Section 209 of the Criminal Code as an aggravating factor and as a reason for refusing conditional release (see *L. and V. v. Austria,* nos. 39392/98 and 39829/98) |
| Bulgaria | 11 Sept. 2009 | Dimitrov no 18059/05 | Alleged violation of Art. 3 – Ill-treatment while in detention in Plovdiv – Lack of an effective investigation |
| Bulgaria | 08 Sept. 2009 | Kenanov no 23609/05 | Alleged violation of Art. 5 § 1 e) – Deprivation of liberty on account of the applicant's placement in a psychiatric hospital – Alleged violation of Art. 5 § 5 – Lack of an effective remedy to challenge the above deprivation of liberty |
| Bulgaria | 10 Sept. 2009 | Goranova-Karaeneva no 12739/05 | Alleged violation of Art. 8 – Interference with the right to respect for the private life and correspondence on account of the phone tapping measures carried on the applicant – Alleged violation of Art. 13 – Lack of an effective remedy |
| Bulgaria | 07 Sept. 2009 | Zashevi no 19406/05 | Alleged violation of Art. 2 – Failure to carry out an effective investigation into the circumstances of the applicants' son's death – Alleged violation of Art. 13 – Lack of an effective remedy |
| Latvia | 08 Sept. 2009 | Gulbis no 12462/08 | Alleged violation of Art.3 – Ill-treatment during the detention – Lack of an effective investigation |
| Latvia | 08 Sept. 2009 | Mitkus no 7259/03 | Alleged violation of Art. 3 – Inhuman or degrading treatment on account of the applicant's infection with HIV and hepatitis C – Lack of an effective investigation – Alleged violation of Art. 6 § 1 – Length of proceedings and unfairness of hearings – Alleged violation of Art. 6 § 3 (d) – The applicant's inability to examine the witnesses against him – Alleged violation of Art. 8 – Interference with the applicant's right to respect for private life on account of the publication of his photograph and personal data in a newspaper article |
| Moldova | 07 Sept. 2009 | Popa no 17008/07 | Alleged violation of Art. 2 and 3 – Ill-treatment in the hands of the police – Lack of an effective investigation against the police officers involved – Alleged violation of Art. 13 – Lack of an effective remedy |
| Poland | 07 Sept. 2009 | Stettner no 38510/06 | In particular alleged violation of Art. 3 – Lack of adequate medical care in detention on remand in the Lublin Detention Centre |
| Poland | 08 Sept. 2009 | Rokosz no 15952/09 | Alleged violation of Art. 3 – Treatment contrary to this Article on account of the applicant's detention in spite of his health state |
| Romania | 08 Sept. 2009 | Goh no 9643/03 | Alleged violation of Art. 3 – Conditions of detention in Jilava, Rahova and Mărgineni Prisons |
| Romania | 08 Sept. 2009 | Momier and Costache no 29032/04 | Alleged violation of Art. 3 and 8 – Domestic authorities' failure to ensure effective protection of a minor from alleged sexual aggression perpetrated by his father – Alleged violation of Art. 3 and 8 in conjunction with Art. 13 – Absence of an effective child protection in the Romanian law – Alleged violation of Art. 6 § 1 – Unfairness of proceedings – Alleged violation of Art. 14 – Discrimination on grounds of religious affiliation |
| the United Kingdom | 08 Sept. 2009 | S.S. no 34274/08 | Alleged violation of Art. 3 – Risk of being subjected to torture if expelled to Sri Lanka |
| the United Kingdom | 08 Sept. 2009 | S.L. no 42923/08 | |
| Turkey | 10 Sept. 2009 | Çağdavul and Others no. 9542/06 | Alleged violation of Art. 2 and 3 – Deaths and injuries resulting from use of force by the police officers – Lack of an effective investigation – Alleged violation of Art. 10 and 11 – Alleged violation of Art. 13 – Lack of an effective remedy – Alleged violation of Art. 14 – Discrimination on account of the applicants' Kurdish |

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| | | | ethnic origin |
| Turkey | 10 Sept. 2009 | Özkurt no 37140/06, 37149/06 and 37151/06 | Alleged violation of Art. 10 § 1 – Infringement of the right to freedom of expression on account of the applicant's conviction for publishing three articles on Kurdish-American political relations and the PKK |
| Ukraine | 08 Sept. 2009 | Nazarenko no 31074/05 | Alleged violation of Art. 3 – Conditions of detention in Donetsk Pre-Trial Detention Centre no. 5 – Alleged violation of Art. 6 §§ 1 and 3 c) – Hearing in the absence of the applicant's lawyer |
| Ukraine | 08 Sept. 2009 | Salakhov and Islyamova no 28005/08 | Alleged violation of Art. 2 and 3 – The applicant's death due to treatment and conditions of his detention – Lack of a medical care and adequate medical assistance in the prison (the applicant had been infected with HIV) |
| **Cases concerning Chechnya** | | | |
| Russia | 11 Sept. 2009 | Giriyeva and Others no 17879/08 | Alleged violation of Art. 2 – Disappearance and death of the applicants' relatives and lack of an effective investigation in that regard – Alleged violation of Art. 3 – Mental suffering in connection with the disappearance of their relatives – Alleged violation of Art. 13 – Lack of an effective remedy |
| Russia | 11 Sept. 2009 | Inderbiyeva no 56765/08 | |
| Russia | 11 Sept. 2009 | Makharbiyeva and Others no 26595/08 | |
| Russia | 11 Sept. 2009 | Khashuyeva no 25553/07 | |

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

**Protocol No. 14*bis* enters into force (30.09.2009)**

Protocol No. 14*bis* to the European Convention on Human Rights, which aims to improve the capacity of the Court to process the increasing number of applications before it, enters into force on 1 October. Press Release

**Open Day at the Human Rights Building (21.09.2009)**

As part of the European Heritage Days, an Open Day was held at the Human Rights Building on Sunday 20 September 2009, from 9 a.m. to 6 p.m. Photo gallery

**Launch of news feeds for judgments and decisions (25.09.2009)**

The Court is launching additional RSS news feeds on its Internet site – a facility to allow Internet users to receive automatic electronic updates on subjects of interest to them. Press Release

**Round table in Bled (Slovenia) (23.09.2009)**

On 22 September 2009 the Registrar of the Court, Erik Fribergh, took part in a round table in Bled entitled "Between Madrid and Interlaken - short-term reform of the European Court of Human Rights", organised as part of Slovenia's chairmanship of the Committee of Ministers of the Council of Europe, and spoke on the subject of repetitive applications. Speech

**Visit of Prince Guillaume, Hereditary Grand Duke of Luxembourg (24.09.2009)**

On 23 September 2009 His Royal Highness Prince Guillaume, Hereditary Grand Duke of Luxembourg, visited the Court. He was received by President Costa and met members of the Registry. Dean Spielmann, the judge elected in respect of Luxembourg, and Erik Fribergh, Registrar, were also present. Photo Gallery, Link to the President's pages

# Part II : The execution of the judgments of the Court

## A. New information

The Council of Europe's Committee of Ministers held its latest "human rights" meeting from 15 to 16 September 2009 (the 1065th meeting of the Ministers' deputies).
Link to the Decisions adopted at the meeting

Links to the Resolutions adopted at the meeting:

- CM/Del/Dec(2009)1065volresE / 30 September 2009

  1065th meeting (DH), 15-16 September 2009 - Resolutions adopted

- CM/ResDH(2009)75E / 16 September 2009

  Final Resolution - Execution of the judgment of the European Court of Human Rights - A against United Kingdom (Application No. 25599/94, judgment of 23.09.1998, Interim Resolution ResDH(2004)39) - (Adopted by the Committee of Ministers on 16 September 2009 at the 1065th meeting of the Ministers' Deputies)

- CM/ResDH(2009)74E / 16 September 2009

  Interim Resolution - Execution of the judgment of the European Court of Human Rights - Gongadze against Ukraine (Application No. 34056/02, judgment of 08/11/2005, final on 08/02/2006) (Adopted by the Committee of Ministers on 16 September 2009 at the 1065th meeting of the Ministers' Deputies)

## B. General and consolidated information

Please note that useful and updated information (including developments occurred between the various Human Rights meetings) on the state of execution of the cases classified by country is provided:

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

For more information on the specific question of the execution of judgments including the Committee of Ministers' annual report for 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)

**Serbia ratifies the European Social Charter (revised) (14.09.09)**

Mr Rasim LJAJIC, Minister for Labour and Social Affairs of the Republic of Serbia, handed to Maud de BOER-BUQUICCHIO the instruments of ratification of the European Social Charter (revised), entry into force on 1 November 2009.

Table of signatures and ratifications
Accepted provisions

**Conference in Bucharest on the development of social law in Romania (18.09.09)**

In commemoration of the 150th anniversary of the Law Faculty of the University of Bucharest, an international conference was held on the role of European legislation in the development of social law in Romania on 21 September 2009. The conference was attended by Mr Alexandru ATHANASIU, member of the European Committee of Social Rights, and Mr Régis BRILLAT, Head of the Department of the European Social Charter.

Programme (French only)

**Seminar on social rights set forth in the Statute of Autonomy of the Community of Andalusia (21.09.09)**

A seminar was held in Seville from 23 to 25 September 2009 entitled *"Derechos Sociales y Políticas Públicas en el Estatuto de Autonomía para Andalucía"* (Social rights and public policies in the Autonomous Statute of Andalusia). The main objective was to give a presentation and an analysis of the social rights set forth in the Statute of Autonomy of Andalusia to Andalusian civil servants. Mr Luis Jimena Quesada, member of the European Committee of Social Rights, and Mr Régis BRILLAT, Head of Department of the European Social Charter attended this seminar.

Programme (Spanish only)

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

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

An electronic newsletter is now available to provide updates on the latest developments in the work of the Committee:
http://www.coe.int/t/dghl/monitoring/socialcharter/newsletter/newsletterno1sept2009_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 responses of the Lithuanian authorities (15.09.09)**

The CPT has published the responses of the Government of Lithuania to the report on the CPT's most recent visit to Lithuania, in April 2008. The responses have been made public at the request of the Lithuanian authorities.The CPT's report on the April 2008 visit was published on 25 June 2009.

**Council of Europe anti-torture Committee visits Ukraine (23.09.09)**

A delegation of the CPT recently carried out a two-week visit to Ukraine. The visit, which began on 9 September 2009, was the CPT's fifth periodic visit to this country. The CPT's delegation assessed progress made since the previous periodic visit in 2005 and the extent to which the Committee's recommendations have been implemented, in particular in the areas of initial detention by Internal Affairs bodies, imprisonment, detention of foreign nationals under aliens legislation, and psychiatry.

During the visit, the delegation met Mr Oleksandr GALINSKYI, Head of the State Department on Enforcement of Sentences, and held consultations with senior officials from that Department as well as from the Ministry of Internal Affairs, the Ministry of Justice, the Ministry of Health, the State Border Service, the Prosecutor General's Office and the Office of the Parliamentary Commissioner for Human Rights. Meetings were also held with representatives of the UNHCR Regional Representation in Kyiv, the Delegation of the Commission of the European Union to Ukraine, the Office of the OSCE Project Co-Ordinator, the Mission of the International Organisation for Migration, and members of several non-governmental organisations.

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

## C. European Commission against Racism and Intolerance (ECRI)

**Council of Europe's Anti-Racism Commission publishes new reports on the Czech Republic, Greece and Switzerland (15.09.09)**

ECRI published on 15 September 2009 three new reports examining racism, xenophobia, antisemitism and intolerance in the Czech Republic, Greece and Switzerland. The Chair of ECRI, Eva Smith Asmussen, said the reports note positive developments in all three of these Council of Europe member states, but also detail continuing grounds for concern.

In **the Czech Republic**, a new criminal code was adopted in 2008, containing more extensive provisions against racism. In recent years the Ombudsman has carried out detailed investigations into cases of possible discrimination against the Roma. Steps have been taken to adjust the education system so as better to meet the needs of socially disadvantaged children.

At the same time, however, there has been a disturbing intensification in the activities of extreme right-wing groups. Most victims of racially motivated offences are reported to be Roma. Little progress has been made towards improving the situation of the Roma, who face segregation in schools and housing and discrimination in employment. The issue of forced sterilisations of Roma women has not been adequately addressed yet.

In **Greece**, the legislative framework on non-discrimination has been consolidated with the adoption of the 2005 Equal Treatment Act and the 2008 amendment of the Criminal Code making the racist motivation of an offence an aggravating circumstance. In an encouraging development, there have been successful prosecutions in recent years against antisemitic and anti-Roma publications.

However, on the whole, the legislation prohibiting incitement to racial hatred is still seldom applied and so far, few racial discrimination complaints have been filed due to insufficient legal assistance and information on available remedies. Roma continue to face problems in the fields of employment, housing and justice and the existing Integrated Action Plan should be better implemented. Issues relating to the freedom of association of persons belonging to some ethnic groups have not yet been solved. Significant improvements are called for in the treatment of refugees, asylum seekers and immigrants.

In **Switzerland,** measures have been taken to foster the integration of immigrants in areas such as employment, housing and health. The federal bodies in charge of racism and migration have continued to raise awareness on racism and racial discrimination. Steps have been taken to combat right-wing extremism.

However, there has been a dangerous growth of racist political discourse against non-citizens, Muslims, Black people and other minorities. Legislation is insufficiently developed to deal with direct racial discrimination, which targets in particular Muslims and persons from the Balkans, Turkey and Africa. Travellers and Yenish communities with an itinerant life style are still faced with a shortage of stopping sites and prejudice leading to instances of discrimination. Legislation governing asylum seekers has been tightened and hostility towards them has increased.

The reports are part of ECRI´s 4th monitoring round, which focuses on the implementation of its previous recommendations and the evaluation of policies and new developments since its last report. In two years time ECRI will carry out a follow up assessment.

Report on the Czech Republic
Report on Greece
Report on Switzerland

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

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## E. Group of States against Corruption (GRECO)

**Group of States against Corruption publishes report on Albania (17.09.09)**

Regarding the *criminalisation of corruption* [theme I], GRECO recognises that the criminal law of Albania complies to a large extent with the relevant provisions of the Council of Europe Criminal Law Convention on Corruption (ETS 173). Nonetheless, several deficiencies in current legislation were identified such as the limited application of existing provisions with regard to bribery of foreign and international public officials; the low level of sanctions available for bribery committed in the private sector; and several loopholes relating to the jurisdiction over offences of bribery and trading in influence committed abroad. The practical implementation of the relevant criminal legislation needs to be enhanced.

Concerning *transparency of party funding* [theme II], the report acknowledges that Albania is currently engaged in a promising reform process aimed at remedying the low level of transparency in Albanian political financing. The new Electoral Code, in force since January 2009, introduces a new system of transparency and monitoring of election campaign financing. GRECO stresses that concrete measures will now be necessary to effectively implement the new regulations. Above all, an independent and powerful mechanism for monitoring both election campaign financing and general party funding – as opposed to the current ineffective regime of responsibilities shared between various institutions – needs to be developed. Furthermore, there is a clear necessity to align the Law on Political Parties with the standards of the new Electoral Code in respect of transparency, supervision and enforcement. The Albanian authorities are asked to pursue their efforts to establish and implement a comprehensive system of transparency of political financing.

Prepared within the framework of GRECO's Third Evaluation Round, the report as whole addresses 12 recommendations to Albania. GRECO will assess the implementation of these recommendations towards the end of 2010, through its specific compliance procedure.

Report: Criminalisation of Corruption / Transparency of Party Funding

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

**Public Statement in respect of Azerbaijan (25.09.09)**

MONEYVAL issued a third public statement in respect of Azerbaijan under Step VI of its Compliance Enhancing Procedures at its 30th Plenary meeting (21-24 September 2009). The first Public Statement issued by MONEYVAL on 12 December 2008 and the second Public Statement of 20 March 2009 both remain in effect.

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

**Outcome of the 30th Plenary Meeting (25.09.09)**

MONEYVAL, at its 30th plenary meeting, achieved several significant results: the adoption of the mutual evaluation report of Armenia (prepared by IMF); the adoption of the first year progress reports submitted by Romania (report / annexes), the Russian Federation, "the former Yugoslav Republic of Macedonia" and Israel; the adoption of the second year progress report submitted by Albania (report) and the Slovak Republic; the adoption of the third compliance report of San Marino (report / annexes Part 1/ Part 2); the adoption on 24 September, under Step VI of the Compliance Enhancing Procedures, of a third statement in respect of Azerbaijan; the revision of its Rules of Procedure; the launching of a new typology research project on "Criminal money flows on the internet: methods, trends and multi-stakeholder counteraction".

The next plenary meeting is scheduled from 7 to 11 December 2009.

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

**Committee of the Parties - third meeting (21.09.09)**

The Committee of the Parties of the GRETA held its third meeting on Monday, 21 September 2009 at the Council of Europe in Strasbourg.

At this meeting the Committee elected Ambassador Zurab Tchiaberashvili (Georgia) as Chair for a first term of office of one year and Ambassador Thomas Hajnoczi (Austria) as Vice-Chair also for a first term of office of one year. The Committee also held an exchange of views with the President of GRETA, continued its discussion on the European Commission Proposal for a "Council Framework Decision on preventing and combating trafficking in human beings, and protecting victims" and considered possible topics for thematic debates relating to trafficking in human beings.

**Launching event of the Joint Council of Europe/United Nations Study on trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs: 13 October 2009**

This new joint Council of Europe/United Nations publication will be presented at a special launching event in the United Nations headquarters in New York on 13 October 2009 during the 64th Session of the United Nations General Assembly.

This event is organised by the Council of Europe and the United Nations and co-sponsored by Slovenia, as the country holding the current Chairmanship of the Committee of Ministers of the Council of Europe and Spain, as the country previously holding the Chairmanship of the Committee of Ministers and the world leader regarding organ donation and organ transplantation.

Programme (PDF)

# Part IV: The intergovernmental work

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

**Serbia** signed and ratified on 14 September 2009 the European Convention on Transfrontier Television (ETS No. 132), and ratified the European Convention on the Protection of the archaeological Heritage (Revised), (ETS No. 143).

**Romania** signed on 15 September 2009 Protocol No. 14bis to the Convention for the Protection of Human Rights and Fundamental Freedoms (CETS No. 204).

**Spain** ratified on 16 September 2009 Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto (ETS No. 46), and Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 117).

**Albania** has accepted on 16 September 2009 the provisional application in its respect of certain provisions of Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention (CETS No. 194).

**Belgium** ratified on 17 September 2009 the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198).

**Spain** signed on 24 September 2009 the Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, regarding supervisory authorities and transborder data flows (ETS No. 181).

## B. Recommendations and Resolutions adopted by the Committee of Ministers

CM/Res(2009)6E / 23 September 2009

Resolution on the starting date of the term of office of the new Secretary General (Adopted by the Committee of Ministers on 23 September 2009 at the 1066th meeting of the Ministers' Deputies)

CM/Res(2009)5E / 23 September 2009

Resolution on the status and conditions of service of judges of the European Court of Human Rights and of the Commissioner for Human Rights (Adopted by the Committee of Ministers on 23 September 2009 at the 1066th meeting of the Ministers' Deputies)

CM/RecChL(2009)5E / 23 September 2009

Recommendation of the Committee of Ministers on the application of the European Charter for Regional or Minority Languages by Cyprus (Adopted by the Committee of Ministers on 23 September 2009 at the 1066th meeting of the Ministers' Deputies)

CM/RecChL(2009)4E / 23 September 2009

Recommendation of the Committee of Ministers on the application of the European Charter for Regional or Minority Languages by Armenia (Adopted by the Committee of Ministers on 23 September 2009 at the 1066th meeting of the Ministers' Deputies)

CM/Rec(2009)7E / 23 September 2009

Recommendation of the Committee of Ministers to member states on national film policies and the diversity of cultural expressions (Adopted by the Committee of Ministers on 23 September 2009 at the 1066th meeting of the Ministers' Deputies)

## C. Other news of the Committee of Ministers

**Committee of Ministers and Parliamentary Assembly: Enhanced dialogue and co-operation (14.09.09)**

Samuel Žbogar, Slovenian Minister for Foreign Affairs and Chairman of the Committee of Ministers, and Lluís Maria de Puig, Parliamentary Assembly President, said in a joint statement on 14 September they had reached an agreement on a proposed package of measures to enhance dialogue and co-operation between the two statutory organs of the Council of Europe. "It includes a series of measures, including the review of the future election procedures and immediate action for improving dialogue and co-operation in general. We also propose to task the Secretary General to report to us not later than October 2010 on an array of other suggested measures for enhancing co-operation," they added.

**Bled discussion on reforming the European Court of Human Rights (23.09.09)**

The discussion on the short-term reform of the Court, which took place on 22 September in Bled, Slovenia, focused on improving the efficiency of the Court within the existing legal system, but also on making a contribution to the long-running debate on the necessity for long-term reform of the Court. At present there are 113,850 applications awaiting resolution before the European Court of Human Rights, and a further 58,000 are expected this year.

**Publication of a report on minority languages in Armenia (23.09.09)**

The Committee of Ministers has made public on 23 September the second report on the situation of minority languages in Armenia. This report has been drawn up by a committee of independent experts which monitors the application of the European Charter for Regional or Minority Languages.

**Publication of a report on minority languages in Cyprus (23.09.09)**

The Committee of Ministers has made public on 23 September the second report on the situation of minority languages in Cyprus. This report has been drawn up by a committee of independent experts which monitors the application of the European Charter for Regional or Minority Languages.

**The Committee of Ministers is closely following the investigation into the murder of G. Gongadze (23.09.09)**

The Committee of Ministers has adopted an Interim Resolution in the case of *Gongadze v. Ukraine*. In its judgment the European Court of Human Rights found a violation of Article 2 of the Convention on account of the authorities' failure to protect the life of Georgy Gongadze, a journalist killed in September 2000. The Committee noted with satisfaction the developments that had taken place in the investigation since the adoption of its first Interim Resolution in 2008. In the light of these developments, the Committee strongly encouraged the Ukrainian authorities to enhance their efforts with a view to bringing to an end the ongoing investigation whilst bearing in mind the findings of the Court in this case.

**Statement by Samuel Žbogar on the ratification of Protocol No. 14 by Russia (23.09.09)**

The Chairman of the Committee of Ministers of the Council of Europe Samuel Žbogar, Minister of Foreign Affairs of the Republic of Slovenia, took note of the statement adopted on 23 September by the Russian State Duma to resume the question of the ratification of Protocol No. 14 to the European Convention on Human Rights. Samuel Žbogar looks forward to the ratification of this important international instrument by the State Duma at the earliest opportunity. This would enable the entry into force of Protocol No. 14, thus reinforcing the protection of human rights in all Council of Europe member states.

# Part V: The parliamentary work

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## 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*

**Russian parliamentary delegation's credentials challenged (15.09.09)**

A group of 72 members of the PACE has requested the reconsideration of the credentials of the Russian delegation to the Assembly on the substantive grounds that Russia has persistently failed to honour its obligations and commitments.

In a motion submitted on 11 September, the signatories said Russia had not only failed to fulfil the key demands in two Assembly resolutions on the war between Georgia and Russia, but had undertaken steps that "further depart" from them. Under the rules, a report is automatically prepared on a challenge of credentials, which was to be debated by the Assembly during its session from 28 September to 2 October 2009.

Motion for a resolution
Assembly's Rules of Procedure

**Autumn session: climate change, the Russia-Georgia war one year later, election of the Secretary General (17.09.09)**

The challenges posed by climate change, the war between Russia and Georgia one year later and the election of the Council of Europe's new Secretary General are among highlights of PACE autumn session in Strasbourg (28 September-2 October 2009). Slovenian President Danilo Türk was to address the Assembly and French Secretary of State for European Affairs Pierre Lellouche was to take part in a debate on the future of the Council of Europe in the light of its 60 years of experience.

### ➢ *Themes*

**To enhance co-operation between the two statutory organs of the Council of Europe (14.09.09)**

Mr Samuel Žbogar, Slovenian Minister for Foreign Affairs and Chairman of the Committee of Ministers, and Mr Lluís Maria de Puig, President of the PACE made a joint statement on Draft proposals for enhanced dialogue and co-operation between the Parliamentary Assembly and the Committee of Ministers. "It includes a series of measures, including the review of the future election procedures and immediate action for improving dialogue and co-operation in general. We also propose to task the Secretary General to report to us not later than October 2010 on an array of other suggested measures for enhancing co-operation," they added. The Chairman of the Committee of Ministers and the President of the Assembly will continue to meet regularly to monitor progress in this regard.

**International Day of Democracy: declaration by the PACE Bureau (15.09.09)**

To mark its support for the UN International Day of Democracy on 15 September, PACE Bureau adopted the following statement: "The world's celebration of the UN's International Day of Democracy touches a special chord with the Council of Europe and its Parliamentary Assembly. Sixty years ago, in 1949, the Council of Europe was created by ten European countries trying desperately to recover

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

from the onslaught of nazism and fascism and the horrors of World War II, in order that Europe would never again experience such a negation of basic human values and rights."

**A reminder from the President that there is a PACE recommendation on the conservation and use of landscape (15.09.09)**

Addressing today's meeting of the General Assembly of the European Network of Local and Regional Authorities for the Implementation of the European Landscape Convention (RECEP-ENELC), the President of PACE pointed out that the Assembly has already adopted a recommendation on the conservation and use of the landscape potential of Europe. It had called for recognition of the concept of landscape in national law, for the implementation of proper national, regional and local landscape policies, and for the participation of civil society and non-governmental organisations in schemes to preserve the potential of the landscape.

**Living in a healthy environment should become a human right (21.09.09)**

The right to "live in a healthy and viable environment" should be enshrined in the European Convention of Human Rights, according to PACE Committee on the Environment, Agriculture and Local and Regional Affairs. PACE's Rapporteur on Climate Change, former UK Deputy Prime Minister and Kyoto Protocol negotiator John Prescott, is backing the call as part of its New Earth Deal campaign to secure a fairer deal at the UN Climate Change Conference in Copenhagen in December.

Mr Prescott, who on 21 September began a tour of British schools at the Globe Academy in Southwark, London, delivering a presentation on climate change, Kyoto and Copenhagen as part of UN Climate Week, said: "In 1949, the Council of Europe drew up the European Convention of Human Rights to ensure that we never again had to endure a global war."

"60 years on, the global threat isn't from war but from climate change." "That's why we propose drafting a new Protocol to the Convention, enshrining the right to a healthy and viable environment as a fundamental human right."

**"If the government breaks the law, it breeds contempt for the law (22.09.09)**

European governments should be guided by the words of a great American judge of last century, Mr Justice Brandeis, who wrote in 1928: "If the government becomes a law-breaker, it breeds contempt for the law," according to Christos Pourgourides (Cyprus, EPP/CD), speaking during a round table in Florence on 18-19 September on the challenges for the judiciary of the fight against terrorism. The event, involving international judges, law professors and other legal experts, was co-organised by PACE's Sub-committee on Crime Problems and the Fight against Terrorism. Topics covered included fair trials, the use of intelligence material as evidence, and abuses of the state secrets doctrine.

**PACE Forum on early warning in conflict prevention (22.09.09)**

Peace is the principal precondition for the genuine enjoyment of democracy, the rule of law and human rights. The realisation that peace between Council of Europe member states cannot be taken for granted has led the Bureau of the PACE to organise in Strasbourg on 24-25 September 2009 a Forum on early warning in conflict prevention, with the aim of taking stock of existing mechanisms and exploring whether and how they could be further enhanced.

The forum brought together academics, parliamentarians from the 47 member States who have a keen interest in conflict prevention issues, be they PACE members, members of other international assemblies or national parliamentarians, as well as representatives of international governmental and non-governmental organisations involved in conflict prevention, such as OSCE, EU, UNDP, International Crisis Group and International Alert.

Part of the reflection will also be on how the Council of Europe, and PACE in particular, could play a greater role to prevent tensions between European states from erupting into violence, while ensuring co-operation and co-ordination with other international actors.

**PACE President evokes a 'duty of vigilance' to keep the peace (25.09.09)**

"We cannot take peace for granted, even on our continent," said PACE President Lluís Maria de Puig, closing a two-day PACE forum on early warning in conflict prevention held in Strasbourg. "The

Assembly owes it to itself to put peace, and maintaining peace, at the very heart of its work [...]. We have a duty of vigilance."

Participants at the forum, which was created partly in response to the war between Georgia and Russia one year ago, recommended that parliamentarians focus on what political action they could take to head off conflicts, and said the Council should create a mechanism bringing together all those involved in different forms of "early warning" work.

The forum was only "a point of departure" which would lead to concrete steps in due course, the President added. PACE Forum on early warning in conflict prevention

**What next for migrants and asylum seekers from the 'Calais Jungle'? (24.09.09)**

"What next?" asked Corien W.A. Jonker, Chair of the Committee on Migration, Refugees and Population of the PACE, commenting after the bulldozers went in to destroy the tent and shack village established by irregular migrants and asylum seekers and refugees waiting for the opportunity to cross from France into the United Kingdom.

"We saw the closure of Sangatte in 2002, we have now seen the evictions from the 'Calais Jungle' in 2009, but we are no nearer to solving the problem of people living in desperate conditions, taking desperate steps to establish new lives," said Mrs Jonker.

Mrs Jonker said that she could understand the reasoning of the French authorities prompting them to close the "Calais Jungle", but expressed concern about the fate of those persons previously living in the camp who might have international protection needs. She urged the French authorities to ensure that those who sought asylum were given every opportunity to make their claims in France and that they were not transferred to transit countries where their claims might not be properly assessed.

"I am concerned about the quality and consistency of the asylum decisions in some European countries, which is the reason why I have reservations about sending asylum seekers back to these countries," Mrs Jonker added, pointing to a recent report by her committee on the issue of the quality and consistency of asylum decisions in Europe.

**PACE: 2009 'Gender Equality Prize' awarded in Strasbourg on 30 September (25.09.09)**

Lluís Maria de Puig, President of the PACE presented the Assembly's 2009 Equality Prize in Strasbourg on Wednesday 30 September, at a ceremony held during its autumn session (28 September-2 October).

The winner of the first prize, the Portuguese Socialist Party (Partido Socialista), represented by Pedro Silva Pereira, Portuguese Minister of the Presidency received the trophy, a statuette by the artist Ewa Rossano, and was offered a co-operation activity under the aegis of the PACE Committee on Equal Opportunities for Women and Men. The winners of the second and third prizes, the British Labour Party and the Swedish Left Party (Vänsterpartiet) respectively, will receive a diploma.

The three winners were designated on 8 September by the Equality Committee to reward the steps they had taken to significantly improve women's participation in their parties or in the elected assemblies of their respective countries.

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

## A. Country work

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## B. Thematic work

**"The stigmatising of persons with intellectual disabilities is a neglected human rights crisis" says Commissioner Hammarberg (14.09.09)**

"Decision makers should fight harder against the marginalisation and stigmatisation of people with intellectual disabilities and ensure their participation and integration into society" said Thomas Hammarberg, Council of Europe Commissioner for Human Rights, in his Viewpoint published on 14 September 2009. "Persons with intellectual disabilities are rarely consulted or even listened to and a great number of them continue to be kept in old-style, inhuman institutions. Conditions in some of the "social care homes" are appalling in many countries. In these segregated institutions very little, if any, rehabilitation is provided. Not infrequently, persons with intellectual disabilities are placed together with persons having psychiatric problems and unnecessarily given sedatives against their will. They are in some cases deprived of their liberty and treated as if they were dangerous."

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

**"Persons with mental disabilities should not be deprived of their human rights" says Commissioner Hammarberg (21.09.09)**

"Individuals with mental health or intellectual disabilities have been treated as non-persons whose decisions are meaningless, even in recent years. They have been deprived of basic human rights" said Thomas Hammarberg, Council of Europe Commissioner for Human Rights, in his Viewpoint published on 21 September 2009. "Their mere existence has been seen as a problem and they have sometimes been hidden away in remote institutions or in the backrooms of family homes. Though much of this has changed with the progress of the human rights cause, persons with mental health or intellectual disabilities do still face problems relating to their right to take decisions for themselves, also in important matters."

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

**"Europe must respect the rights of migrants", says Commissioner Hammarberg on the occasion of the 70th anniversary of the CIMADE (26.09.09)**

"Across Europe there is an unfortunate trend to repel, at any cost, irregular migrant flows, thus putting human lives at serious risk", said Thomas Hammarberg, Council of Europe Commissioner for Human Rights, in his speech on 26 September on the occasion of the 70th anniversary of the CIMADE. "This is often part of so-called 'migration management'. […] The recent new deaths of migrants in the Mediterranean Sea reminded us once again of the human tragedies that such border control methods entail without really achieving their purpose of genuine control. States have a legitimate interest to control their borders. They have, in principle, the right to decide on the entry and stay of foreign nationals. However, international standards are clear and states' sovereignty is not unlimited in this area."
Read the speech

## C. Miscellaneous (newsletter, agenda…)

Commissioner Hammarberg presented on 23 September the 2nd Quarterly Activity Report to the Committee of Ministers and the Parliamentary Assembly, 1 April to 30 June 2009. Read the Report

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

# Part VII : Activities of the Peer-to-Peer Network

**Workshop on "The protection and promotion by national human rights structures of the rights of elderly people", European Youth Center, Budapest (Hungary) (15-16 September 2009)**

The fourth workshop organised in 2009 by the NHRS Unit under the Joint EU-Council of Europe "Peer-to-Peer Project" for the attention of heads and staff of ombudsman offices and national human rights institutions was attended by around 40 participants, including the ombudsmen of Voijvodina (Serbia) and Kemerov and Saratov (Russia). Simultaneous interpretation was provided between English, Russian and Serbo-Croatian.

The discussions were structured following the three parts of Article 23 of the Revised European Social Charter, a provision accepted by 16 of the 47 member States of the Council of Europe. Article 23 distinguishes between three different phases of ageing and formulates elderly persons' rights accordingly:

- The right to remain a full member of society as long as possible: right to adequate resources and to information;
- The right to choose one's life-style freely and to lead an independent life in one's familiar surroundings for as long as one wishes and is able to;
- The rights of an elderly person living in an institution.

A cross-cutting theme is the right to respect of one's dignity as defined by the different international instruments and the positive obligations that it imposes on the authorities. The existence of limits of those positive obligations in terms of resources at the disposal of the authorities was acknowledged but could not lead to exempting States totally of their responsibilities.

It was acknowledged that the ideal definition of who is considered an "elderly person" would be a functional one that would take into account a person's individual needs. However, for reasons of feasibility authorities often resort to the simplifying criterion of age, most often retirement age – which varies from country to country and is not the same for both genders or different professions.

Rachel Buchanan from AGE, the European Older People's Platform, gave the list of concerns, which specialized NGOs in Europe voice in the EU bodies as regards elderly persons' rights in EU member states.

Prof. Csilla Kollonay Lehoczky, member of the European Committee of Social Rights (ECSR) and Ramon Prieto Suarez, member of the ECSR's Secretariat, explained both the substantive content of Article 23 and the possibilities for NHRSs to contribute to the monitoring mechanism of the Social Charter.

It was recalled that the RSIF informs the NHRSs of relevant conclusions and case law of the ECSR. But the representatives of the NHRSs said it would be helpful if each NHRS received from the ECSR Secretariat both the reports on implementation sent by its government with an invitation to comment thereon, and the ECSR's conclusions on their country when they become public.

Andres Lehtmets, member of the European Committee for the Prevention of Torture (CPT), gave an overview of the various dangers of ill-treatment of elderly persons in institutions and informed of the ways in which the CPT tries to prevent ill-treatment from happening, inviting NHRSs to exert a similar sort of careful and systematic control.

A debriefing paper of the results of the workshop is under preparation and will be sent to the participants of the workshop as well as to all NHRSs, via their contact persons.