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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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TABLE OF CONTENTS

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.

- **Right to life**

Kallis and Androulla Panayi v. Turkey (no. 45388/99) (Importance 3) – 27 October 2009 – Two violations of Article 2 (substantive and procedural) – The killing of a soldier by the Turkish authorities in the UN buffer zone in Cyprus – Lack of an effective investigation

According to the applicants, their son Stelios Kalli Panayi, who was nineteen years old at the material time in 1996 and serving in the Cyprus National Guard as a private soldier, entered the United Nations (UN) buffer zone in Nicosia to exchange his hat with one belonging to a soldier of the Turkish-Cypriot armed forces. He was off duty and unarmed. The Turkish armed forces shot him. When members of the UN force in Cyprus (UNFICYP) attempted to reach him in order to provide the medical treatment needed to save his life, the Turkish armed forces opened fire and did not allow it, as a result of which he died.

The UN Secretary-General issued a report on the incident stating that an unarmed National Guard soldier was shot and killed inside the UN buffer zone in central Nicosia. The investigation revealed that the lethal round was fired by a Turkish-Cypriot soldier whom members of the UN force in Cyprus observed entering the buffer zone with his rifle strung across his back.

The applicants complained about the killing of their son by the Turkish armed forces and about the lack of an effective investigation into the killing.

Killing of Stelios Panayi

The Court noted that it had not been contested by the parties that the applicants' son had voluntarily crossed the UN buffer zone. The Turkish Government had also accepted that it had been a Turkish soldier who had fired and killed Stelios Panayi. The Court also noted the UN report issued about the incident. Although Stelios had been wearing uniform and hence one could have assumed that he might have carried a gun, that fact alone could not in the circumstances have justified the shots fired at him. The Turkish soldiers had been in complete control of the area and Stelios' behaviour had not posed a threat to them; consequently the soldiers would have been able to stop him without jeopardising his life. The Court further observed that UN soldiers had been prevented from reaching Stelios and providing him with medical treatment. The Court found unanimously that Stelios Panayi had been killed by representatives of the Turkish authorities who had used excessive force, not justified by the circumstances of the case, in violation of Article 2.

Inadequate investigation into the killing

The Court observed that the Turkish Government had only produced a few notes prepared by the military authorities and describing the basic events surrounding the shooting. The versions had not been challenged in the light of the material evidence available to the Turkish authorities or of the statements of the UN personnel. The Court also observed that the investigation had been carried out by the same body to which those implicated in the events belonged: it could therefore hardly be described as "independent". Furthermore, the question of the criminal liability of the Turkish soldier who had killed Mr Panayi had never been even examined by the domestic authorities. The Court found that the authorities had failed to carry out an effective criminal investigation into the circumstances surrounding the death of Stelios Panayi, and held unanimously that there had been a violation of Article 2.

Andreou v. Turkey (no. 45653/99) (Importance 3) – 27 October 2009 – Violation of Article 2 – Unjustified use of potentially lethal force outside the UN buffer zone in Cyprus

The incident occurred in August 1996 when Ms Andreou went to the spot of the killing of Anastasios Isaak – beaten to death by Turkish-Cypriot policemen and counter-demonstrators three days earlier at a rally in protest against the Turkish occupation of the northern part of Cyprus – and, remaining outside the UN buffer zone, looked on at the ensuing tensions between Greek-Cypriot demonstrators and the Turkish Republic of Northern Cyprus ("TRNC") authorities. She witnessed Solomos Solomou enter the buffer zone and, in protest, climb up a flagpole flying the Turkish flag; he was shot and died from his injuries. Immediately after the shooting, Turkish or Turkish-Cypriot soldiers opened fire on the crowd inside the buffer zone.

Ms Andreou, although outside the buffer zone, sustained a serious gunshot wound to her abdomen. According to a press release issued by the UN Forces in Cyprus (UNFICYP), two of its high-ranking members had seen uniformed Turkish or Turkish-Cypriot military personnel kneeling down and firing in the direction of the demonstrators inside the UN buffer zone. As a result, two British UNFICYP soldiers and two Greek-Cypriot civilians (one of whom was the applicant) were hit by gunfire. Following the incident in 1996 and until her death in November 2005, the applicant developed numerous conditions, including pleuritis, post-traumatic stress and depression.

Ms Andreou alleged that her life had been put in serious danger. She also alleged that the use of excessive force against her had amounted to inhuman treatment and had had lasting effects on her physical and mental health in violation of Articles 3 and 8.

The Court considered that Ms Andreou had been the victim of conduct which by its very nature had put her life at risk, even though, in the event, she had actually survived. Article 2 was therefore applicable in the applicant's case. The Court noted that the firing into the crowd on 14 August 1996 had constituted a disproportionate use of force in the circumstances and could not be justified by the argument, as suggested by the Government, that it had been necessary to quell "a riot or insurrection". Even though the demonstrators, who had sticks and iron bars, had been throwing stones at the Turkish forces, such firing could and did cause serious injuries to demonstrators, bystanders and members of the UN forces. It appeared to be a preventive measure, taken to discourage further violence before the crowd had the time to react to the shooting of Mr Solomou. The excessive force used against Ms Andreou had not therefore been made necessary by the state of heightened tension of the demonstration; nor had it been made necessary by her own behaviour: she had not crossed the ceasefire line making it "absolutely necessary" to "effect a lawful arrest"; she had been hit by the bullet while standing outside the UN buffer zone. Finally, Turkey had failed to indicate whether its security forces had been given clear instructions and appropriate training to avoid arbitrary and/or abusive use of potentially lethal force, which against the applicant had not therefore been "absolutely necessary" and had not been justified by any of the exceptions permitted under Article 2. Accordingly, the Court held unanimously that there had been a violation of that Article. The Court further held unanimously that it was not necessary to examine the applicant's complaints under Articles 3 and 8.

Kolevi v. Bulgaria (no. 1108/02) (Importance 2) – 5 November 2009 – Violation of Article 2 (procedural) – Lack of an effective investigation into a senior Bulgarian prosecutor's murder – Violation of Article 5 §§ 1, 3 and 4 – Unlawfulness of detention – Failure to be brought promptly before a judge – Failure to examine speedily the applicant's appeal against his detention

The applicant's wife and his two children maintained the application after Mr Kolev's death and submitted additional complaints. Mr Kolev was a high-ranking prosecutor, dismissed in January 2001 and sent into retirement. Following his appeal submitting that he had neither reached the requisite age nor had asked for retirement, the courts decided in his favour. He resumed work as a prosecutor. Mr Kolev publicly stated his opinion that the Chief Public Prosecutor at the material time suffered from a psychiatric disorder, committed unlawful acts and ordered criminal proceedings on fabricated charges against persons he found inconvenient. Shortly after Mr Kolev's public accusations, several sets of criminal proceedings were brought against him and members of his family, on various unrelated charges.

In June 2001 Mr Kolev was arrested in front of his home and charged with illegal possession of drugs and a fire-arm. On the day of the arrest, a prosecutor ordered Mr Kolev's provisional detention for 72 hours, at the expiry of which a new prosecutor ordered his detention for another 72 hours without mentioning the first order. Mr Kolev alleged that he had seen the prosecutors place the drugs among his possessions at the time of his arrest. He repeatedly challenged his continuous detention after the expiry of the first 72 hours. Initially, the court found that Mr Kolev's detention before 25 June was not subject to judicial control. In September 2001 he was placed under house arrest and ultimately released in November 2001. In February 2002, the criminal proceedings against him were terminated as the court found that he enjoyed immunity from prosecution. In November 2002 the Supreme Judicial Council (the Council) dealt with the public accusations against the Chief Public Prosecutor submitted by a former Member of Parliament. Many high-placed officials testified against the Chief Public Prosecutor submitting that he punished every subordinate who disobeyed his orders including when those were unlawful.

Mr Kolev repeatedly voiced in public that he might be killed as part of a merciless campaign against him orchestrated by the Chief Public Prosecutor. In December 2002 he was shot dead in front of his home. An investigation was opened the same day and it included expertises and witness questioning. The same former Member of Parliament who challenged the Chief Public Prosecutor before the Council testified about earlier events concerning crimes allegedly committed by the Chief Public Prosecutor. He, Mr Kolev's family and other persons stated their conviction that the Chief Public Prosecutor and persons from the national anti-terrorist squad had been behind the murder. Although a number of new investigative acts were ordered and carried out, the investigation was suspended repeatedly, the last time in September 2008, for failure to identify the perpetrator.

Mr Kolev had complained about not having been brought promptly before a judge, of having been detained unlawfully and for an excessively long time, and of his appeal against his detention not having been examined speedily. Mr Kolev's widow, daughter and son further complained that the investigation into their husband and father's murder was neither independent nor effective, in breach of Article 2, as it was under the control of the Chief Public Prosecutor.

Article 5 complaints

Bringing Mr Kolev promptly before a judge

The Court first noted that Article 5 § 3 of the Convention required that a person be brought promptly before a judge or judicial officer as a guarantee against possible ill-treatment or unjustified limitations on a person's liberty. The Bulgarian authorities had not explained why it had not been possible to bring Mr Kolev before a judge earlier than five days and eight hours after his arrest. The Bulgarian law applicable at the time had been deficient in that it either allowed blanket authorisation for or did not prohibit consecutive periods of police or prosecutor-ordered detention before a person was brought before a judge. The Court held unanimously that this deficiency in the law and the acts of the prosecutors had resulted in a violation of Article 5 § 3 of the Convention.

Unlawful and excessively long detention

The Court limited its examination to the period between 13 September and 29 November 2001, the complaint concerning the remaining period having been declared inadmissible. It found that Mr Kolev's deprivation of liberty had been unlawful under domestic law as he had enjoyed immunity from prosecution at the time and domestic law had expressly and clearly prohibited criminal proceedings against and the detention of persons who enjoyed such immunity. The detention order in respect of Mr Kolev had been invalid and as such contrary to Article 5 § 1 of the Convention.

Prompt examination of appeal against detention

The Court found that Mr Kolev's appeal against his detention had only been examined 36 days after he had lodged it due, in particular, to a delay in its transmission. This delay had been unlawful and arbitrary, both in terms of domestic law which required that such appeals be transmitted to the courts immediately, and in terms of the Convention which required a speedy examination by a court. Accordingly, the Court held unanimously that there had been a violation of Article 5 § 4.

Article 2 complaint (ineffective investigation)

The Court noted that the investigative authorities had been aware that the Chief Public Prosecutor had ordered or approved unlawful acts against Mr Kolev and they had also received testimonies of persons considering that high-ranking prosecutors, including the Chief Public Prosecutor himself, might have been implicated in Mr Kolev's murder. Consequently, in the absence of clear evidence that these allegations were groundless, the investigators should have examined them and should have undertaken the necessary investigation steps. That was decisive in the light of the Convention requirement that investigations' conclusions must be based on thorough, objective and impartial analysis of all relevant elements.

The Court noted that up until September 2003 the Bulgarian Constitution did not make it possible to bring criminal charges against the Chief Public Prosecutor against his will. While eventually the law had been changed, in practice no Bulgarian prosecutor would have brought charges against the Chief Public Prosecutor, as admitted by the Bulgarian Government. That had been the consequence of a number of factors, such as the centralised structure of the Prosecution service, the working methods which had prevailed when Mr F. had been the Chief Public Prosecutor and the existing institutional arrangement. In particular, the prosecutors alone had the exclusive power to bring criminal charges while the Chief Public Prosecutor had full control over each and every decision issued by a prosecutor or an investigator. In addition, the Chief Public Prosecutor could only be removed from office by decision of the Supreme Judicial Council, some of whose members were his subordinates. The Court observed that this arrangement has been repeatedly criticised in Bulgaria as failing to secure sufficient accountability. The Court also considered highly relevant that the Government had not informed the Court of any investigation ever undertaken into any of the numerous allegations made publicly about unlawful and criminal acts allegedly committed by the former Chief Public Prosecutor.

In these circumstances, given that the investigation of Mr Kolev's murder had been for practical purposes under the control of the Chief Public Prosecutor until the end of his term of office in 2006, that his possible involvement had not been investigated and that after 2006 no serious investigative measures had been undertaken, the Court held unanimously that the investigation had not been independent and effective, and there had been a violation of Article 2.

- **Conditions of detention**

Erdem Onur Yıldız v. Turkey (no. 49655/07) (Importance 3) – 27 October 2009 – No violation of Article 3 – No evidence to conclude that the applicant's detention was incompatible with his state of health

The applicant was sentenced to three years and nine months' imprisonment for membership of an illegal organisation. He alleged that his state of health was incompatible with prison conditions. The Court held that there had not been a violation of Article 3 due to the absence of any evidence to conclude that the applicant's detention was incompatible with his state of health as long as he received adequate medical care.

Shuvaev v. Greece (no. 8249/07) (Importance 3) – 29 October – Violation of Article 3 – Conditions of pre-trial detention – Violation of Article 5 § 3 – Lack of reasoning of the detention orders

In September 2006 the applicant was placed in pre-trial detention for selling drugs to a minor. He complained of the conditions of his pre-trial detention in the police headquarters of Salonika and of the lack of reasoning in the detention orders. The Court concluded that there had been a violation of Article 3 due to the poor conditions of detention and a violation of Article 5 § 3, due to the length of that detention (nine months and fifteen days).

- **Right to liberty and security / Administrative detention**

Shabani v. Switzerland (no. 29044/06) (Importance 3) – 5 November 2009 – No violation of Article 5 § 3 – Justified continued pre-trial detention in an international drug-trafficking case

The applicant is currently being held in Bois-Mermet Prison in Lausanne. After being arrested in "the former Yugoslav Republic of Macedonia" on suspicion of taking part in an international trafficking operation with ramifications in Switzerland, he was extradited to Switzerland and was taken into pre-trial detention on 29 October 2003. On 15 September 2005 a preliminary investigation was opened in respect of the applicant for alleged membership of a criminal organisation, money laundering and a serious offence under the Federal Misuse of Drugs Act.

Before and after that date, Mr Shabani applied to the Appeals Division of the Federal Criminal Court for release, but his applications were refused on the ground that there were risks of his absconding and colluding. He made several further applications, all unsuccessful due to the evidence of the applicant's involvement in a criminal organisation and a risk of him absconding. In December 2007 the indictment against Mr Shabani was filed, and in March 2008 he made a final unsuccessful application for release. The Federal Court confirmed that there was a manifest risk of the accused absconding and referred also to the public interest in the proper conduct of the case, the extremely serious nature of the offences, the applicant's lack of cooperation and the special security measures required by the situation. In October 2008 Mr Shabani was found guilty by the Federal Criminal Court of aggravated offences against drugs legislation and of having played a leading role in a criminal organisation. He was sentenced to 15 years' imprisonment. Since the statement of reasons for the judgment of 30 October 2008 has not yet been served on the applicant, it is not yet enforceable.

Mr Shabani complained that the length of his pre-trial detention had been excessive.

The Court reiterated that Article 5 § 3 enshrined the right to liberty pending a criminal trial. The persistence of reasonable suspicion that the person arrested had committed an offence was a condition *sine qua non* for the validity of the continued detention but after a certain lapse of time it was no longer sufficient. In order to extend pre-trial detention further, the authorities had to give "relevant" and "sufficient" reasons and show that they had displayed "special diligence" in the conduct of the proceedings. Mr Shabani's pre-trial detention had been justified by the suspicions that he had committed criminal offences and the reasons given for extending his detention were relevant and sufficient, namely the strong suspicion that he had committed the crimes of which he was accused and the risk of him absconding and colluding with others during the investigation. The Court found that the Swiss courts had duly and thoroughly substantiated their decisions to continue his detention.

The Court emphasised the international community's interest in preventing organised crime and noted that the activities of the organisation in question had been likely to affect the well-being of large numbers of people and to cause excessive costs to society. In view of the extremely complex nature of the case in question, which involved an international criminal organisation and a trafficking operation producing considerable sums of money, the investigative measures had not been disproportionate. Furthermore, the authorities could not be accused of any periods of inactivity in the proceedings. As to Mr Shabani's complaint about the eight months taken to set the case down for hearing, the Court noted that security issues relating to the trial had been discussed at length by the authorities and accepted their view that it had been necessary to take effective security measures in the special circumstances of the case. The Court found that while the applicant's pre-trial detention had been lengthy, it had not been contrary to Article 5 § 3 and concluded by four votes to three that there had been no violation of that Article.

Judge Rozakis, joined by Judges Steiner and Hajiyev, expressed a dissenting opinion, which is annexed to the judgment.

Karapetyan v. Armenia (no. 22387/05) (Importance 3) – 27 October 2009 – Violation of Article 3 – Conditions of detention – Violation of Article 6 § 1 taken together with Article 6 § 3 (b) – Failure to provide the applicant with adequate time and facilities for the preparation of his defence – Violation of Article 2 of Protocol No. 7 – Failure to provide the applicant with the right to have his conviction reviewed; Stepanyan v. Armenia (no. 45081/04) (Importance 3) – 27 October 2009 – Violation of Article 6 § 1 – Lack of a public hearing

Following alleged irregularities in the 2003 presidential elections, the applicants alleged that they were sentenced to administrative detention on account of their political opinions and or activities. Both applicants were arrested (Mr Karapetyan in March 2003 and Mr Stepanyan in May 2004), and, within the same day, were taken to their local police station, charged, brought before a court and convicted under Article 182 of the Code of Administrative Offences to, respectively, ten and eight days detention for disobeying the police and using obscene language.

Mr Karapetyan complained about the conditions of his detention. Mr Stepanyan, who was released after six days of detention on health grounds, lodged an extraordinary appeal to the Criminal and Military Court of Appeal. In that appeal he denied at length the account of events as presented by his arresting police officers, the only witnesses at his trial, and on the basis of which he was convicted. In June 2004 the President of the Court of Appeal, in the light of written submissions and without having heard the police officers or the applicant, upheld Mr Stepanyan's conviction.

Both applicants complained about the unfairness of the proceedings against them, notably that their cases were examined in an expedited procedure, therefore not giving them adequate time and facilities for the preparation of their defence. Mr Stepanyan further alleged that there had been no oral hearing before the Criminal and Military Court of Appeal which tried him. Mr Karapetyan also complained that he had no appeal procedure at his disposal. Lastly, Mr Karapetyan complained that the conditions of his detention were in breach of Article 3.

Article 3

The Court noted that Mr Karapetyan had had no more than 1.25 square metres of personal space – less than the CPT's standard minimum requirement of 4 sq. m per inmate in multi-occupancy cells – in a pest-infested cell with lack of natural light, no sleeping facilities and an unsanitary toilet. Although his detention had been relatively short, the Court held unanimously that those conditions had to have caused the applicant suffering, diminishing his human dignity and arousing in him feelings of humiliation and inferiority, in violation of Article 3.

Article 6

As in a number of other similar cases against Armenia in which the Court had already found a violation of Article 6 § 3 (b), the Court noted that the administrative case against Mr Karapetyan had been examined in an expedited procedure during which he had been taken to and kept in a police station without any contact with the outside world, charged, and, in a matter of hours, brought before a court and convicted. It therefore held unanimously that Mr Karapetyan had not had a fair hearing in his case, in particular on account of him not having been given adequate time and facilities for the preparation of his defence, in violation of Article 6 § 3 (b) taken together with Article 6 § 1.

The Court found that Mr Stepanyan's complaints under Article 6 about the expedited proceedings of his conviction of May 2004 had been lodged out of time and declared them inadmissible. As concerned his complaint about the unfairness of the extraordinary appeal proceedings in which his conviction had been upheld, the Court considered that the applicant's guilt or innocence could not have been properly determined without a direct assessment of the evidence given in person by the applicant and the two police officers in question. It held unanimously that Mr Stepanyan had not had a fair trial before the Criminal and Military Court of Appeal on account of the lack of an oral hearing in his case, in violation of Article 6 § 1.

Article 2 of Protocol No. 7

The Court found, as in other cases previously brought before it against Armenia that the procedure under which Mr Karapetyan had been convicted had not provided him with a clear and accessible right to appeal, it having lacked any clearly-defined procedure or time-limits or consistent application in practice. The Court therefore held unanimously that there had been a violation of Article 2 of Protocol No. 7.

Miernicki v. Poland (no. 10847/02) (Importance 3) – 27 October 2009 – Violation of Article 5 § 1 – Unlawfulness of detention – No violation of Article 5 § 3 – Justified length of the trial due to the exceptional complexity of the case – Violation of Article 8 – Censorship of the applicant's correspondence with the Court

The applicant is currently serving an eight year sentence in Wołów Prison for drug trafficking and for being the leader of an organised criminal gang. He complained about the unlawfulness of the decision reviewing his detention and the excessive length of his detention on remand. The case also concerned the Polish authorities' censorship of the applicant's correspondence.

The Court observed that, according to Article 40 § 1 of the Code of Criminal Procedure, a judge is *ex lege* disqualified from his participation in a case, if he has participated, in a lower court, in the delivery of a decision subject to an appeal. Moreover, it is his obligation to disqualify himself from the proceedings. Thus, the fact that the same judge was deciding in the lower and in the higher court on the extension of the applicant's detention was contrary to the domestic law. The Court concluded that during the period starting with the defective decision, when the decision "in accordance with a procedure prescribed by law" was given, the applicant's detention was unlawful in violation of Article 5 § 1.

In the light of the evidence submitted before the Court, the latter concluded that the length of the investigation and the trial was justified by the exceptional complexity of the case. The Court considered that the domestic authorities handled the applicant's case with acceptable expedition and concluded that there has been no violation of Article 5 § 3 of the Convention.

The Court also concluded that there has been a violation of Article 8 due to the censorship of the applicant's correspondence with the Court.

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

Haralambie v. Romania (no. 21737/03) (Importance 2) – 27 October 2009 – Violation of Article 6 – Domestic courts' dismissal of the applicant's action without examining the merits of the case – Violation of Article 8 – Six years of delay to access a personal file drawn up by the secret services during the communist period

Following a final decision against the applicant concerning a request for restoration of the plots of land belonging to his mother, the applicant asked the National Council for the Study of the Archives of the former Secret Services of the Communist Regime, *Securitate* ("the CNSAS"), whether he had been subjected to surveillance measures in the past. He was informed that a file in his name did exist but that it was necessary to wait for his file to be transferred by that Service. In October 2005 a file in the applicant's name was transmitted to the CNSAS by the Romanian Intelligence Service. In May 2008 the CNSAS indicated that the date of birth in the file did not correspond to that of the applicant and that checks were therefore necessary. A few days later the CNSAS invited the applicant to come and consult the file, which bore the annotations "opened on 12 April 1983" and "the file was microfilmed on 23 July 1996". A note indicated that the applicant had commented unfavourably on politics and on the economic situation. An undertaking by the applicant, dating from 1979, to collaborate with the *Securitate* had also been included, with official comments to the effect that he was evading his security work and that he would be placed under investigation and that his correspondence would be monitored.

The applicant complained about the proceedings concerning the restoration of the land that had belonged to his mother and about the obstacles to his right of access to the personal file created on him by the former secret services.

Article 6 § 1

The fact that the applicant's action concerning the location of the disputed land had been dismissed by the courts without an examination of the merits of the case, on the ground that the administrative authorities had sole jurisdiction in that area, had impaired the very essence of his right of access to a court. The Court concluded unanimously that there had been a violation of Article 6 § 1.

Article 8

The Court reiterated the vital interest for individuals who were the subject of personal files held by the public authorities to be able to have access to them and emphasised that the authorities had a duty to provide an effective procedure for obtaining access to such information. A Romanian law, amended in 2006, had established an administrative procedure for access to the *Securitate* files, which set the time-limit for transfer of archives at 60 days. However, it was not until six years after his first request that the applicant was invited to consult his file. The legislative amendment in 2006 indicated the need for speed in such a procedure, a fact recognised by the Romanian authorities, especially since, in this particular case, the applicant was already elderly.

The applicant's file had been available since 1996 in the form of microfilms, and had been in the possession of the CNSAS since October 2005. The Court considered that neither the quantity of files transferred nor shortcomings in the archive system justified a delay of six years in granting his request. As the authorities had not provided the applicant with an effective and accessible procedure to enable him to obtain access to his personal files within a reasonable time, the Court concluded unanimously that there had been a violation of Article 8.

Chaudet v. France (no. 49037/06) (Importance 2) – 29 October 2009 – No violation of Article 6 § 1 – Fairness of proceedings on account of the *Conseil d'Etat's* assessment of all the evidence in the applicant's file – Violation of Article 6 § 1 – Presence of the Government Commissioner at the *Conseil d'Etat's* deliberations

The applicant, an air hostess, suffered five work-related accidents as a result of air turbulence. She was awarded a disability pension in June 2002 (for a degree of disablement of 8%), then given disabled-worker status in April 2003. She was declared unfit for the duties of an air hostess the same

month by the civil aviation medical, without giving her the reasons for the decision, and later declared permanently unfit for such duties. In October 2004 the civil aviation medical board declared that this permanent incapacity was not attributable to the airline, thus depriving the applicant of the right to receive compensation in that respect. After an unsuccessful application for review, Ms Chaudet challenged that decision before the *Conseil d'Etat*, considering, in particular, that insufficient reasons had been given for it. Having examined in detail her arguments of fact and law and studied the Government Commissioner's submissions, the *Conseil d'Etat* dismissed the appeal in a judgment holding, in particular, that sufficient reasons had been given for the disputed decision, in view of the legal requirement to respect medical confidentiality.

Ms Chaudet complained of the unfairness of the proceedings before the civil aviation medical board, on account of the inadequacy of the reasons given for its decision, and about the fact that it had been impossible for her to have access to the case file on which the decision had been based. She also complained about the presence of the Government Commissioner at the deliberations of the bench of the *Conseil d'Etat* which ruled on her case.

On the fairness of the proceedings before the civil aviation medical board

Ms Chaudet was entitled to have her claims examined by a tribunal which met the requirements of Article 6 § 1, since they were genuinely aimed at obtaining payment of compensation provided for by law. The Court did not consider it necessary to examine whether the civil aviation medical board met the requirements of Article 6 § 1. In contrast, it was obliged to ensure that the *Conseil d'Etat* satisfied the applicant's right to a court and to determination of the dispute by a court. In this case, the *Conseil d'Etat* did not have "full jurisdiction", which would have had the effect of substituting its decision for that of the civil aviation medical board. It had nonetheless addressed all of the submissions made by the applicant, on factual and legal grounds, and assessed all of the evidence in the medical file, having regard to the conclusions of all the medical reports discussed before it by the parties. The applicant's case had thus been examined in compliance with the requirements of this Article and the Court concluded that there had been no violation of Article 6 § 1.

On the presence of the Government Commissioner at the *Conseil d'Etat's* deliberations

Reiterating its case-law that the presence of the Government Commissioner at the deliberations of the bench of the *Conseil d'Etat*, as was the situation at the time of the disputed events, was incompatible with the requirements of a fair hearing, the Court concluded (unanimously) that there had been a violation of Article 6 § 1.

Davran v. Turkey (no. 18342/03) (Importance 2) – 3 November 2009 – Violation of Article 6 § 1 – Infringement of the right of access to the Court of Cassation by the assize court's dismissal of the applicant's appeal on points of law for failure to comply with procedural time-limits

In May 1996 the applicant was sentenced *in absentia* by the Midyat Assize Court to a period of imprisonment for abuse of office. He lodged an appeal on points of law with the Court of Cassation. The applicant could not be found, but he nevertheless filed written supplementary defence pleadings in August 2000. Research indicated that in May 2001 he was working as a lawyer in Bursa. In May 2001 the assize court sentenced him *in absentia* to four years' imprisonment for fraud and abuse of office. Since another set of criminal proceedings had been brought against the applicant for submitting a false lawyer's certificate, the applicant was arrested and placed in pre-trial detention in Istanbul Prison in September 2001; the Midyat Assize Court was not informed. Having been unable to locate the applicant, the Assize Court decided to notify the judgment of May 2001 through publication in the Official Gazette, under section 28 of the Notification Act. In the absence of an appeal on points of law, the judgment became final in January 2002. On an unspecified date the Assize Court transmitted the final judgment to the Istanbul prosecutor for execution, and Mr Davran learned of his conviction and sentence in April 2002.

In April 2002 he brought proceedings before the assize court, challenging the validity of the notification and requesting leave to appeal on points of law. He alleged that the publication of a judgment in the Official Gazette had no legal effect and that the judgment could have been served on him in prison. In May 2002 his application was dismissed by the assize court; the notification was declared to be compatible with the law and, consequently, the application for an appeal on points of law was ruled inadmissible, since it had been submitted after expiry of the legal time-limit of fifteen days following publication of the judgment. This judgment was upheld by the Court of Cassation.

Mr Davran alleged that the dismissal of his appeal on points of law for failure to comply with the procedural time-limits had infringed his right of access to a court.

The Court reiterated that a State which instituted courts of cassation - bodies which played a crucial role in criminal proceedings - was required to ensure that persons amenable to the law would enjoy

before these courts the fundamental guarantees contained in Article 6. Admittedly, Mr Davran had helped to make application of the Notification Act more difficult, by absconding for the four months following the delivery of the judgment against which he intended to lodge an appeal on points of law. However, as the applicant had submitted, it was not section 28 of the Notification Act which was applicable in this case, but section 19 – requiring the notification of a judgment to a prisoner though the prison authorities; this would have given him an effective right of access to the Court of Cassation.

The Court further noted the shortcomings in the arrangements for publication of the judgment, and replied to the submissions of the Turkish authorities, which alleged that it was impossible for the judicial authorities in Midyat to be informed of Mr Davran's arrest in Istanbul; the Court pointed out that it was incumbent on the State to put in place an information network between the judicial authorities across the country. Mr Davran had thus suffered an excessive restriction of his right of access to a court. The Court concluded unanimously that there had been a violation of Article 6 § 1.

Nunes Guerreiro v. Luxembourg (no. 33094/07) (Importance 3) – 5 November 2009 – Violation of Article 6 § 1 – Court of Cassation's overly formalistic approach in declaring the grounds for applicant's appeal inadmissible as lacking the requisite clarity

In December 2004 the applicant was refused a disability pension. His subsequent appeals against that decision were dismissed two times in 2005 and 2006. He appealed on points of law to the Court of Cassation through the lawyer who had represented him in the proceedings before the lower courts, and submitted that the latter had misinterpreted the law in declaring his appeal ill-founded; in his arguments in support of the appeal, he explained how in his view the legal provisions should have been interpreted. In February 2007 the Court of Cassation dismissed the appeal, holding that the grounds for it did not explain how the legal provisions cited had been infringed or incorrectly applied. According to a principle established by the Court of Cassation, only the grounds for appeal as submitted by the appellant are considered, and if it their formulation were incomplete, the arguments raised in support cannot remedy their shortcomings.

The applicant complained that he had been deprived of his right of access to a court, since the Court of Cassation had failed to address the arguments raised in his written pleadings before it.

The clarity required by the Luxembourg Court of Cassation in the formulation of grounds of appeal pursued the legitimate aim of enabling it to carry out its review on points of law.

The Court had to examine whether that requirement had been applied in a manner proportionate to the aim pursued. It reiterated that pleadings before the Court of Cassation should be considered as a whole, in that appellants had to raise their grievances in respect of the appellate court's judgment either in the actual grounds for appeal or, if need be, in the arguments in support of them. The applicant could not be said to have failed to satisfy that requirement, as his pleadings before the Court of Cassation had set out the decisive aspects of the case and his grievances concerning the appealed judgment. The clarity required by the Court of Cassation in the formulation of the grounds for appeal was not essential for it to be able to carry out its review. Such a requirement considerably diminished the protection of individuals' rights before the Court of Cassation, especially in view of the fact that Luxembourg did not have a system of specialist lawyers before that court. The Court found that declaring the grounds for appeal inadmissible as lacking the requisite clarity had amounted to an overly formalistic approach, which had prevented the applicant from obtaining a ruling by the Court of Cassation on the merits of his appeal. The restriction imposed on the applicant's right of access to a court had not been proportionate to the legitimate aim pursued and the Court held unanimously that there had been a violation of Article 6 § 1.

Pandjikidzé and Others v. Georgia (no 30323/02) (Importance 2) – 27 October 2009 – Violation of Article 6 § 1 – Lack of a "tribunal established by law" on account of the absence of sufficient legal basis for the judicial practice of lay judges

In April 1999, on the basis of information from the counter-espionage service of the Ministry for State Security, the head of that Ministry's investigation service instituted criminal proceedings against a group X, on the charge of preparing a plot to overthrow the incumbent authorities. The group in question had allegedly been lead by the former Minister of Security of the Georgian State and had been working towards the assassinations of the Georgian Government members. In the context of the subsequent investigation and after having been subjected to telephone tapping, in May 1999 the three applicants were arrested and accused, among other things, of having taken part in preparing the plot and assassinations. In December 1999, the preparatory investigation was completed and the applicants were subsequently committed for trial. In November 2001, the Criminal Bench of the Supreme Court, composed of one professional judge and two lay judges (*msajuli*), found the applicants guilty of high treason in the form of a plot against the constitutional order (Mr Kantaria was

also convicted of the illegal purchase and handling of weapons) and sentenced each of them to three years' imprisonment. In January 2002 the Criminal Bench, sitting in a composition of three professional judges, upheld the judgment of 8 November 2001.

Prior to the abolition of the institution of lay judges on 25 March 2005, the lay judges at the Georgian Supreme Court were individuals from other professions who were invited to take part, alongside a professional judge, in examining criminal cases at first instance. The institution in question was a residue of the Soviet judicial system, in which lay judges acted as representatives of the people, whose participation in the implementation of justice they guaranteed.

The applicants alleged that the criminal proceedings against them had been unfair. Their main complaint was that the Criminal Bench of the Supreme Court which had tried them at first instance had not been a "tribunal established by law", since it included two lay judges who were not legally competent to exercise the functions of a judge.

The Court reiterated that a tribunal must always be "established by law". A body that had not been established in accordance with the intention of Parliament would necessarily lack the required legitimacy, in a democratic society, to examine the cases of individuals. There was no doubt that the existence of the Criminal Bench of the Supreme Court, made up of a professional judge and two lay judges, was provided for by law. On the other hand, Georgian law did not adequately regulate the issue of how lay judges were to carry out their function as judges. The relevant sections of the Acts which previously governed this question had, at the time of the events under dispute, been abrogated and had not been replaced by any other text. Successive laws adopted between 1997 and 2005 had extended the terms of office of lay judges, but there was no text that contained provisions concerning, among other things, the selection of candidates, their appointment, their rights and obligations, etc. Yet these elements, – as much as the existence of the court itself – ought to have been provided for by law in order for a court to be considered as having been "established by law". Ultimately, the two lay judges who sat in the case of the applicants had been required to dispense justice on an equal footing with the professional judge and, in view of their number, held the majority of votes necessary to determine the merits of a criminal charge. In so far as the exercise of their function as judges resulted from a judicial practice that did not have a sufficient legal basis in domestic law, the bench on which they sat did not amount to a "tribunal established by law". The Court held that there had been a violation of Article 6 § 1.

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

Bayatyan v. Armenia (no. 23459/03) (Importance 1) – 27 October 2009 – No violation of Article 9 – Conscientious objection was not recognised as legitimate in Armenia at the material time

The applicant is a Jehovah's Witness. Declared fit for military service, he became eligible for the spring draft of 2001 but declared that he refused to perform military service for conscientious reasons, although he was prepared to do alternative civil service. He did not appear for military service in mid-May 2001, as ordered by summons, and temporarily moved away from home so that he would not be drafted by force. Two weeks later the Parliamentary Commission for State and Legal Affairs informed the applicant that since there was no law in Armenia on alternative service, he was obliged to serve in the Armenian army. In October 2001 the applicant was charged with draft evasion. Placed in detention, the district court convicted him as charged and sentenced him to one year and six months in prison, later increased by the Court of Appeal to two and a half years. The judgment was upheld by the Court of Cassation. In July of that year the applicant was released on parole after having served ten and a half months of his sentence.

The applicant complained that his conviction had violated his right to freedom of thought, conscience and religion as guaranteed by Article 9 of the Convention. He also submitted that the Article should be interpreted in light of present-day conditions, namely the fact that the majority of Council of Europe member States had recognised the right of conscientious objection and that Armenia, in 2000, before becoming a member, had committed to "pardon all conscientious objectors sentenced to prison terms".

The Court first noted that it was legitimate to take account of the fact that a majority of the Council of Europe member States had adopted laws providing for alternative service for conscientious objectors. However, Article 9 had to be read together with Article 4 § 3 (b), which excluded from the definition of forced labour, as prohibited by the Convention, "any service of a military character or, in cases of conscientious objectors, in countries where they are recognised, service exacted instead of compulsory military service". It followed that the choice whether or not to recognise conscientious objectors was left to each Contracting Party. At the time of the applicant's refusal to perform military service, the right to conscientious objection was not recognised in Armenia. His conviction had

therefore not been in breach of his Convention rights, even though he could have had a legitimate expectation to be allowed to perform alternative service, given the Armenian Government's declaration to pardon conscientious objectors. The Court further noted that a law on alternative service had been adopted in Armenia in the meantime, but considered that its substance and manner of application fell beyond the scope of this application. The Court therefore held by six votes to one that there had been no violation of Article 9.

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

Lautsi v. Italy (no. 30814/06) (Importance 1) – 3 November 2009 – Violation of Article 2 of Protocol No. 1 examined jointly with Article 9 – Restriction on the parents' right to educate their children in conformity with their convictions on account of the compulsory display of a symbol of a given system of belief in premises used by the public authorities

In 2001-2002 the applicant's children attended a State school where all classrooms had a crucifix on the wall. The applicant considered that this was contrary to the principle of secularism by which she wished to bring up her children and informed the school of her position, referring to a Court of Cassation judgment of 2000, which had found the presence of crucifixes in polling stations to be contrary to the principle of the secularism of the State. In May 2002 the school's governing body decided to leave the crucifixes in the classrooms. In July 2002 the applicant complained to the Veneto Regional Administrative Court about the decision of the school's governing body, on the ground that it infringed the constitutional principles of secularism and of impartiality on the part of the public authorities. The Ministry of State Education, which joined the proceedings as a party, emphasised that the impugned situation was provided for by royal decrees of 1924 and 1928. In January 2004 the administrative court granted the applicant's request that the case be submitted to the Constitutional Court for an examination of the constitutionality of the presence of a crucifix in classrooms. Before the Constitutional Court, the Government argued that such a display was natural, as the crucifix was not only a religious symbol but also the "flag" of the only Church named in the Constitution (the Catholic Church), a symbol of the Italian State. In December 2004 the Constitutional Court held that it did not have jurisdiction, on the ground that the disputed provisions were statutory rather than legislative. The proceedings before the administrative court were resumed, and in March 2005 that court dismissed the applicant's complaint. It held that the crucifix was both the symbol of Italian history and culture, and consequently of Italian identity, and the symbol of the principles of equality, liberty and tolerance, as well as of the State's secularism. The *Consiglio di Stato* dismissed the applicant's appeal, on the ground that the cross had become one of the secular values of the Italian Constitution and represented the values of civil life.

The applicant alleged, in her own name and on behalf of her children, that the display of the crucifix in the State school attended by the latter was contrary to her right to ensure their education and teaching in conformity with her religious and philosophical convictions, within the meaning of Article 2 of Protocol No. 1. The display of the cross had also breached her freedom of conviction and religion, as protected by Article 9 of the Convention.

The Court noted that the presence of the crucifix could easily be interpreted by pupils of all ages as a religious sign, and that they would feel that they were being educated in a school environment bearing the stamp of a given religion. This could be encouraging for religious pupils, but also disturbing for pupils who practised other religions or were atheists, particularly if they belonged to religious minorities. The freedom not to believe in any religion (inherent in the freedom of religion guaranteed by the Convention) was not limited to the absence of religious services or religious education: it extended to practices and symbols which expressed a belief, a religion or atheism. This freedom deserved particular protection if it was the State which expressed a belief and the individual was placed in a situation which he or she could not avoid, or could do so only through a disproportionate effort and sacrifice. The State was to refrain from imposing beliefs in premises where individuals were dependent on it. In particular, it was required to observe confessional neutrality in the context of public education, where attending classes was compulsory irrespective of religion, and where the aim should be to foster critical thinking in pupils.

The Court was unable to grasp how the display, in classrooms in State schools, of a symbol that could reasonably be associated with Catholicism (the majority religion in Italy) could serve the educational pluralism that was essential to the preservation of a "democratic society" as that was conceived by the Convention, a pluralism that was recognised by the Italian Constitutional Court. The compulsory display of a symbol of a given confession in premises used by the public authorities, and especially in classrooms, thus restricted the right of parents to educate their children in conformity with their convictions, and the right of children to believe or not to believe. The Court concluded, unanimously, that there had been a violation of Article 2 of Protocol No. 1 taken jointly with Article 9 of the Convention.

- **Right of protection of property**

Si Amer v. France (no. 29137/06) (Importance 2) – 29 October 2009 – No violation of Article 14 taken together with Article 1 of Protocol No. 1 – Absence of discriminatory treatment in the restrictions on the right to additional pensions for persons employed in Algeria before 1962

From 1953 to 1962 Mr Si Amer worked in Algeria in a company incorporated under French law and had voluntarily taken out supplementary insurance with the Employees' Inter-professional Insurance Fund ("the CIPS"). During this period the CIPS received contributions paid by Mr Si Amer in due form.

In 1964 an agreement was signed between France and Algeria, which had become independent, regulating relations concerning supplementary pension schemes. Subsequently, an amendment to the French inter-professional agreement of 1961 on supplementary pensions imposed a criterion of residence in France or Monaco in order to have validated employment carried out in Algeria. In 1998 the applicant applied to the French fund for access to his rights to a supplementary pension. His application was dismissed on the ground that he did not meet the residence requirement. This refusal was confirmed in writing in 1998 and 2002.

Mr Si Amer brought proceedings against the CIPS before the Paris *Tribunal de grande instance*, which dismissed his claims. The applicant argued that the so-called "residence" requirement amounted to a disguised nationality requirement. The judgment was upheld by the appeal court, which considered that the residence requirement was not discriminatory, as it had been imposed on all employees who had worked in Algeria irrespective of their nationality. The Court of Cassation dismissed Mr Si Amer's appeal on points of law, stating that there were no arguable grounds of appeal.

Mr Si Amer complained that the dismissal of his claim for payment of the supplementary pension amounted to discrimination in the exercise of his property right.

The Court noted firstly that the applicant had a proprietary interest which came within the scope of Article 1 of Protocol No. 1 with regard to a benefits scheme provided for by law, and that the Court was required to ensure that the criteria for awarding it had not been discriminatory. It reiterated that a difference in treatment constituted discrimination if, without objective and reasonable criteria, it targeted persons in a relevantly similar situation.

The difference in treatment between persons in comparable professional situations who had contributed to a French supplementary pension fund while employed in Algeria prior to independence was clear, notably on the basis of whether or not they were subsequently resident in France. Nonetheless, the Court considered that that difference had had the legitimate aim, under the Franco-Algerian agreement of 1964, of ensuring effective rights for persons who had been repatriated to France and of dividing the burden of past situations with regard to supplementary pensions between Algeria and France, with a view to ensure the financial stability of the scheme in this way. Under the terms of the agreement, Mr Si Amer had a right to payment that was identical to his right prior to the independence of Algeria; in fact, the disputed difference in treatment concerned only the arrangements for implementing the supplementary scheme. As to the validity of his right, the French authorities had merely applied the Franco-Algerian agreement, which left it to the two States to define the level of benefits to be paid to the persons affiliated to their respective domestic institutions.

No shortcoming could therefore be attributed to the French State and the difference in treatment could not be regarded as discriminatory. Accordingly, the Court concluded unanimously that there had been no violation of Article 14 taken together with Article 1 of Protocol No. 1.

Suljagić v. Bosnia and Herzegovina (no. 27912/02) (Importance 1) – 3 November 2009 – Violation of Article 1 of Protocol No. 1 – Structural problem related to Bosnia and Herzegovina's shortcomings in the repayment scheme for foreign currency deposited before the dissolution of the Socialist Federal Republic of Yugoslavia

Working abroad in the 1970s and 1980s, the applicant had deposited foreign currency with a bank in Tuzla during the era of the Socialist Federal Republic of Yugoslavia (SFRY). The bank was nationalised after Bosnia and Herzegovina became independent and subsequently sold to a commercial bank in Slovenia. Following a complaint by the applicant about his inability to withdraw his funds, the Human Rights Commission of Bosnia and Herzegovina found in 2005 that the relevant legislation, which did not allow withdrawal of "old" foreign-currency savings but only gave savers the possibility to use their deposits to purchase the state-owned flats in which they lived, was in breach of the Convention. In April 2006 the Old Foreign-Currency Savings Act entered into force, providing for the recompense of original deposits. Interest accrued by 1991 was to be calculated at the original rate, whereas interest accrued from January 1992 until 15 April 2006 was to be cancelled and recalculated at an annual rate of 0.5%. The Constitutional Court considered this reduction to be justified given the

need to reconstruct the national economy following the war in Bosnia. The assessment of the amounts due to each claimant was to be carried out by verification agencies. Claimants having obtained verification certificates were entitled to a cash payment of up to 1,000 convertible marks (the equivalent of EUR 500) and any remaining amount was to be reimbursed in government bonds. However, in the Federation of Bosnia and Herzegovina, one of the administrative entities of the State, bonds due in March 2008 have not yet been issued and the first instalment of the amortisation plan for the bonds was paid almost eight months after it was due.

The applicant alleged that the legislation of Bosnia and Herzegovina governing foreign-currency savings deposited before the dissolution of the SFRY failed to strike a fair balance between the public interest and his property rights as guaranteed by Article 1 of Protocol No. 1 to the Convention. The applicant complained in particular that he would receive no cash payment other than the initial BAM 1,000 and that for further cash payments he would have to sell the government bonds at the end of the amortisation period in 2015, most likely for a fraction of their nominal value. He also complained about the low interest rate for the period from 1 January 1992 until 15 April 2006 and maintained that the current legislation lacked guarantees that the necessary funds would indeed be allocated on time.

The Court first noted that, notwithstanding the fact that the application had been lodged in 2002, it would limit its analysis to the current legislation on "old" foreign-currency savings. The Court observed that in addition to the initial payment, according to the amortisation plan for the government bonds, the applicant was entitled to receive his entire old foreign-currency savings in eight instalments. Given the effects of the war and the ongoing reforms of the economic structure the Court considered that the State could limit access to savings. The Court did not see any reason why the applicant would not be able to sell the bonds for anything near their nominal value. Moreover he was not required to sell them, but could instead opt for the cash payments in eight instalments, one of which he had already received. Regarding the interest rate for the period from January 1992 to April 2006, the Court took note of the fact that the neighbouring countries, in which similar repayment schemes were set up, had agreed to pay considerably higher interest rates. Nevertheless, the Court did not consider this factor sufficient to render the current legislation contrary to Article 1 of Protocol No. 1, thereby following the argument of the Constitutional Court of Bosnia and Herzegovina regarding the need to reconstruct the national economy following the war. However, the Court agreed with the applicant, that the implementation of the legislation was unsatisfactory. As a result of the fact that the bonds due in March 2008 had not been issued the applicant was still unable to sell them on the Stock Exchange and thus obtain early cash payments. Moreover there had been a delay in paying the instalments.

Notwithstanding the fact that the "old" foreign currency savings inherited from the SFRY constituted a considerable burden on the successor States, the rule of law underlying the Convention required the Contracting Parties to consistently apply the laws they had enacted. The Court therefore held unanimously that in view of the deficient implementation of the legislation there had been a violation of Article 1 of Protocol No. 1. The Court moreover unanimously decided to adjourn, for six months from the date on which the judgment becomes final, the proceedings in any cases concerning "old" foreign-currency savings in the Federation of Bosnia and Herzegovina and in the administrative entity of the Brčko District in which the applicants have obtained verification certificates (like the applicant in the present case).

Under Article 46 (binding force and execution of judgments), the Court noted that the case concerned a systemic problem, namely the shortcomings of the repayment scheme for foreign currency deposited before the dissolution of the SFRY. This problem lay behind more than 1,350 similar applications currently pending before the Court. The Court held unanimously that Bosnia and Herzegovina had to ensure, within six months from the date on which the judgment becomes final, that in the Federation of Bosnia and Herzegovina government bonds are issued, outstanding instalments are paid and that, in the case of late payments of forthcoming instalments, default interest is paid at the statutory rate.

Judge Mijović expressed a concurring opinion, which is annexed to the judgment.

Olymbiou v. Turkey (no. 16091/90) (Importance 3) – 27 October 2009 – Violation of Article 1 of Protocol No. 1 – Lack of compensation for the interference with the applicant's right of protection of property – Violation of Article 8 – Continuing deprivation of applicant's right to respect for her home – No violation of Articles 3, 5, 6, 7, 11, 13, 14

The case concerned Ms Olymbiou's complaint that the Turkish occupation of the northern part of Cyprus had deprived her of her home and properties since 1974. She also complained that she was unlawfully arrested and beaten during her participation in an anti-Turkish demonstration in Nicosia in July 1989 and that the ensuing proceedings against her had been unfair. She also alleged that she was deprived of her property and arrested, beaten and prosecuted following the 1989 demonstration solely because she was a Greek-Cypriot.

The Court concluded that there had been a violation of Article 1 of Protocol No. 1 on account of the fact that the applicant was denied access to, the control, use and enjoyment of her properties as well as any compensation for the interference with her property rights. It also concluded that there had been a continuing violation of Article 8 by reason of the complete denial of the right of the applicant to respect for her home.

- **Disappearances cases in Chechnya**

Khantiyeva and Others v. Russia (no. 43398/06) (Importance 3) – 29 October 2009 – Violations of Article 2 (substantive and procedural) – Disappearance of the applicants' relative and lack of an effective investigation – Violation of Article 3 – Inhuman treatment on account of the applicants' mental suffering – Violation of Article 5 – Unacknowledged detention – Violation of Article 13 in conjunction with Article 2 – Lack of an effective remedy

Satabayeva v. Russia (no. 21486/06) (Importance 3) – 29 October 2009 – Violations of Article 2 (substantive and procedural) – Disappearance and presumed death of the applicant's son and lack of an effective investigation – Violation of Article 5 – Unacknowledged detention – Violation of Article 13 in conjunction with Article 2 – Lack of an effective remedy – Violation of Article 38 § 1 (a) – Refusal of the Russian authorities to submit documents requested by the Court

Vakhayeva and Others v. Russia (no. 1758/04) (Importance 3)– 29 October 2009 – Violations of Article 2 (substantive and procedural) – Disappearance and presumed death of the applicants' relative and lack of an effective investigation – Violation of Article 3 – Inhuman treatment on account of the applicants' mental suffering – Violation of Article 5 – Unacknowledged detention – Violation of Article 13 in conjunction with Article 2 – Lack of an effective remedy – Violation of Article 38 § 1 (a) – Refusal of the Russian authorities to submit documents requested by the Court

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 27 Oct. 2009: here.
- Press release by the Registrar concerning the Chamber judgments issued on 29 Oct. 2009: here.
- Press release by the Registrar concerning the Chamber judgments issued on 03 Nov. 2009: here.
- Press release by the Registrar concerning the Chamber judgments issued on 05 Nov. 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	05 Nov. 2009	Spas Todorov (no. 38299/05) Imp. 3	Violation of Art. 6 § 1 Violation of Art. 13	Excessive length of criminal proceedings for gang rape of two minor girls and lack of an effective remedy	Link
Finland	03 Nov. 2009	Nieminen (no. 16385/07) Imp. 3 Petroff (no. 31021/06) Imp. 3	Violation of Art. 6 § 1	Excessive length of proceedings for aggravated narcotics offences (in the case of Mr Niemen) and a tax offence (in the case of Mr Petroff)	Link Link
France	29 Oct. 2009	A.J.P (no. 17020/05) Imp. 2	No violation of Art. 3 (conditions of detention) Violation of Art. 5 § 3	The applicant's detention did not reach the minimum level of severity to fall under the scope of Art. 3 Excessive length of pre-trial detention	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

Greece	29 Oct. 2009	Velisiotis (no. 39614/07) Imp. 3	Violation of Art. 6 § 1	Excessive length of criminal proceedings for fraud	Link
Greece	05 Nov. 2009	Sampsonidis and Others (no. 2834/05) Imp. 3	Just satisfaction	Compensation for 354 Greek nationals or trading companies who were the owners of expropriated land	Link
Greece	05 Nov. 2009	*Société anonyme* Thaleia Karydi Axte (no. 44769/07) Imp. 2	Violation of Art. 6 § 1 Violation of Art. 1 of Prot. No. 1	Infringement of the right of access to a court and infringement of the right of protection of property on account of the compulsory sale of the plot of land belonging to the applicant company by auction for the purpose of recovering a debt owed to a bank	Link
Greece	05 Nov. 2009	Triantaris (no. 44536/07) Imp. 3	Violation of Art. 6 § 1	Excessive length of criminal proceedings for fraud and the use of fraudulent documents	Link
Hungary	03 Nov. 2009	Neu (no. 45392/05) Imp. 3	Violation of Art. 6 § 1	Excessive length of proceedings (almost thirteen years for one level of jurisdiction) on charges of trafficking in stolen goods	Link
Poland	03 Nov. 2009	Kachan (no. 11300/03 Imp. 3	Violation of Art. 6 §§ 1 and 3 (d) No violation of Art. 6 §§ 1 and 3 (d)	Failure to provide the applicant with an opportunity to question witnesses (concerning witnesses W.A. and A.M.) Concerning witness W.J.	Link
Poland	03 Nov. 2009	Osuch (no. 30028/06) Imp. 3	Violation of Art. 5 § 3	Excessive length of pre-trial detention on suspicion of fraud (see also *Kauczor v. Poland* concerning the widespread problem of the Polish authorities' failure to justify continued detentions by relevant and sufficient reasons)	Link
Poland	03 Nov. 2009	Sierpiński (no. 38016/07) Imp. 3	Violation of Art. 1 of Prot. No. 1 No violation of Art. 6 § 1	State's failure to comply with its positive obligation to provide measures safeguarding the applicant's right to the effective enjoyment of his possessions concerning compensation proceedings after expropriation of the applicant's plot of land No unreasonable or disproportionate restriction on the right of access to a court	Link
Poland	03 Nov. 2009	Staszewska (no. 10049/04) Imp. 2	No violation of Art. 3	The recourse to physical force in this case had been made necessary by the applicant's own conduct	Link
Slovakia	03 Nov. 2009	Jenisová (no. 58764/00) Imp. 3 Salus (no. 28697/03) Imp. 3 Šefčíková (no. 6284/02) Imp. 3	Violation of Art. 1 of Prot. No. 1	Infringement of the right to peaceful enjoyment of possessions on account of the compulsory letting of the applicants' lands (see *Urbárska obec Trenčianske Biskupice v. Slovakia*)	Link Link Link
the United Kingdom	27 Oct. 2009	Crompton (no. 42509/05) Imp. 2	Violation of Art. 6 § 1 (length) No violation of Art. 6 § 1 (fairness)	Excessive length of proceedings (eleven years) concerning the applicant's redundancy from the army The High Court had "full jurisdiction" in respect of the applicant's complaint, which was therefore determined by an independent and impartial tribunal	Link

Turkey	03 Nov. 2009	Kabul and Others (no. 9362/04) Imp. 3	Violation of Art. 5 § 3 (All applicants except Mr Baysal and Mr Aşkın) Violation of Art. 5 § 4 (All applicants)	Excessive length of detention in police custody in connection with membership of an illegal organisation Lack of an effective remedy	Link
Turkey	03 Nov. 2009	Ali Ayhan (no. 20406/05) Imp. 3	Violation of Art. 6 § 1 Violation of Art. 6 §§ 1 and 3 (c)	Excessive length of criminal proceedings and lack of legal assistance while in detention (see *Salduz v. Turkey*)	Link
Turkey	27 Oct. 2009	Er (no. 21377/04) Imp.3	Violation of Art. 6 § 1	Excessive length of criminal proceedings on charges of professional misconduct, bribery, assault and battery while serving in the Turkish armed forces	Link
Turkey	27 Oct. 2009	M. Yılmaz (no. 39994/04) Imp. 3	Violation of Art. 1 of Prot. No. 1	Failure to enforce a final judgment in the applicant's favour regarding compensation owed to him after the authorities rescinded the sale of a plot of land	Link
Turkey	27 Oct. 2009	Yusuf Büyükdağ (no. 22920/04) Imp. 3	Violation of Art. 6 § 1	Excessive length of criminal proceedings on charges of aiding and abetting an illegal armed organisation and attempting to overturn the constitutional order	Link

3. Repetitive cases

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

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

State	**Date**	**Case Title**	**Conclusion**	**Key words**
Romania	03 Nov. 2009	Adam (no. 45890/05) link	Violation of Art. 6 § 1	Domestic authorities' annulment of an appeal lodged by the applicant on account of non-payment of stamp duty
Romania	27 Oct. 2009	Bohnenschuh (no. 14427/05) link Vidrascu (No. 2) (no. 11138/06) link	(Both cases) Violation of Art. 1 of Prot. No. 1 (Mrs Vidrascu) Violation of Art. 6 § 1	Deprivation of property as a result of illegal nationalisation and total lack of compensation; failure to enforce a final judgment in the applicants' favour concerning compensation Excessive length of proceedings
Romania	27 Oct. 2009	Dermendyin (no. 17754/06) link	Violation of Art. 1 of Prot. No. 1	Deprivation of property as a result of illegal nationalisation and total lack of compensation; failure to enforce a final judgment in the applicant's favour (see also *Viaşu v. Romania* for a systemic problem in Romania concerning lack of compensation after nationalisation)
Romania	27 Oct. 2009	S.C. Prodcomexim S.R.L. (no. 35877/05) link	Violation of Art. 6 § 1 (fairness) Violation of Art. 1 of Prot. No. 1	Domestic authorities' failure to fully enforce a final judgment in the applicant company's favour concerning reimbursement for repairs from the town council
Turkey	27 Oct. 2009	Efendioğlu (no. 3869/04) link Eryılmaz (no.	Violation of Art. 1 of Prot. No. 1	Deprivation of property without compensation

		32322/02) link Kahyaoğlu (nos. 53007/99 and 71347/01) link		
Turkey	27 Oct. 2009	Karayiğit (no. 45874/05) link	Violation of Art. 6 § 1 (fairness)	Failure to provide the applicant with a copy of the written opinion submitted to the Supreme Military Administrative Court by the principal public prosecutor
Turkey	27 Oct. 2009	Yıldız and Sevinç (no. 26892/02) link	Violation of Art. 6 § 1 (fairness) Violation of Art. 6 § 1 (length)	Deprivation of an independent and impartial tribunal; failure to provide the applicant with a copy of the written opinion submitted to the Court of Cassation by the Chief Prosecutor Excessive length of 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**
Bulgaria	05 Nov. 2009	Nachev (no. 15099/04)	Link
Finland	03 Nov. 2009	Lappalainen (no. 22175/06)	Link
France	29 Oct. 2009	Kalfon (no. 23776/07)	Link
Greece	29 Oct. 2009	Stavrinoudakis (no. 26307/07)	Link
Hungary	27 Oct. 2009	Mária Menyhárt (no. 33552/05)	Link
Hungary	27 Oct. 2009	Oravecz (no. 15481/05)	Link
Hungary	03 Nov. 2009	Schwartz (no. 25073/05)	Link
Hungary	03 Nov. 2009	Schwartz and Others (no. 5766/05)	Link
Hungary	03 Nov. 2009	Wolfgéher and Turula (no. 36739/05)	Link
Moldova	27 Oct. 2009	Matei and Tutunaru (no. 19246/03)	Link
Portugal	27 Oct. 2009	Ferreira Araújo do Vale (no. 6655/07)	Link
Romania	27 Oct. 2009	Marinică Tițian Popovici (no. 34071/06)	Link
Russia	29 Oct. 2009	Troshkin (no. 7514/05)	Link
Slovakia	27 Oct. 2009	Janík (no. 5952/05)	Link
Slovakia	03 Nov. 2009	Chrapková (no. 21806/05)	Link
"the former Yugoslav Republic of Macedonia"	05 Nov. 2009	Stoleski and Siljanoska (no. 17547/04)	Link
Turkey	27 Oct. 2009	Elif Karakaya (no. 5173/05)	Link

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

Those decisions are published with a slight delay of two to three weeks on the Court's Website. Therefore the decisions listed below cover **the period from 5 to 18 October 2009**.

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

State	***Date***	***Case Title***	***Alleged violations (Key Words)***	***Decision***
Belgium	13 Oct. 2009	Mousset (no 33960/07) link	Alleged violation of Art. 6 § 3 b) and d) (the applicant complained about the unfairness of proceedings before the Court of Appeal)	Struck out of the list (applicant no longer wished to pursue his application)
Bulgaria	06 Oct. 2009	Geren (no 22437/05) link	Alleged violation of 6 § 3 (e) (failure to provide the applicant with the free assistance of an interpreter), Articles 3, 5 § 1, 6 §§ 1, 2, 3 (a), (c), (d), (e) and 7 and Art. 1 of Prot. 1 (unlawfulness of detention, conditions of detention, unfairness and outcome of the criminal proceedings)	Partly adjourned (concerning the free assistance of an interpreter), partly inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention concerning the remainder of the application)
Bulgaria	06 Oct. 2009	Kodzhabasheva (no 9371/04) link	Alleged violation of Art. 6 § 1 (excessive length of a partition-of-property proceedings) and Art. 13 (lack of effective remedy)	Struck out of the list (applicant no longer wishing to pursue her application)
Bulgaria	13 Oct. 2009	Zaharievi (no 6194/06) link	First applicant – Alleged violation of Art. 2 § 1 (State's failure to secure uninterrupted supply of free life-saving medicines to the applicant), Articles 2, 6 § 1, 13 and 14 (excessive length of proceedings for damages and lack of an effective remedy), Art. 6 § 1 and Art. 1 of Prot. 1 (excessive amount of court fees) Both applicants – Alleged violation of Articles 2, 3 and 8	Partly adjourned (concerning the State's failure to secure uninterrupted supply of free life-saving medicines, the length of proceedings, the alleged lack of an effective remedy and the allegedly excessive court fees), partly inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention concerning the remainder of the application)
Bulgaria	06 Oct. 2009	Marinov (no 7528/04) link	Alleged violation of Art. 6 § 1 (excessive length of criminal proceedings)	Struck out of the list (applicant no longer wished to pursue his application)
Bulgaria	13 Oct. 2009	Tanova (no 30478/05) link	Alleged violation of Art. 6 § 1 (excessive length of criminal proceedings) and Art. 13 (lack of an effective remedy)	Struck out of the list (friendly settlement reached)
Bulgaria	13 Oct. 2009	Mitov (no 22579/02) link	The application concerned the applicant's alleged unlawful placement in a psychiatric hospital without relying on any specific provision of the Convention	Idem.
Denmark	13 Oct. 2009	Panjeheighalehei (no 11230/07) link	Alleged violation of Art. 3 on account of the Refugee Board's decision to deport the applicant to Iran, Art. 6 § 1 and 13 (deprivation of the right of access to a court for compensation)	Partly inadmissible as manifestly ill-founded (on account of the applicant's failure to submit enough substantial and concrete evidence that there had been a real risk of being subjected to torture), partly incompatible *ratione materiae* (concerning the claim under Art. 6 § 1)
Finland	06 Oct. 2009	Lehtonen (no 59555/08) link	Alleged violation of Art. 6 § 1 (excessive length of compensation proceedings, deprivation of an independent and impartial tribunal, infringement of the principle of equality of arms) and Art. 13 (lack of an effective remedy), Art. 6 § 2 (infringement of the principle of presumption of innocence)	Partly struck out of the list (unilateral declaration of the Government concerning the length of compensation proceedings and the lack of an effective remedy), partly inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention concerning the remainder of the application)
Finland	06 Oct. 2009	Molander (no 37484/07) link	Alleged violation of Art. 6 § 1 (length and unfairness of criminal proceedings), Art. 8 (defamation due to pre-trial investigation)	Partly struck out of the list (unilateral declaration of the Government concerning the length of proceedings), partly inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention concerning the

				remainder of the application)
Finland	06 Oct. 2009	Ahlskog (no. 2) (no 8118/07) link	Alleged violation of Art. 6 § 1 (length and unfairness of civil proceedings)	Inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention)
Finland	06 Oct. 2009	Siitonen (no 35631/07) link	Alleged violation of Art. 6 § 1 (excessive length of criminal proceedings) and Art. 13 (lack of an effective remedy)	Struck out of the list (it is no longer justified to continue the examination of the application pursuant to Art. 37 § (c))
Finland	06 Oct. 2009	S. (no 48915/06) link	Alleged violation of Art. 6 § 1 (excessive length and unfairness of proceedings), Art. 13 (lack of an effective remedy)	Partly struck out of the list pursuant to Art. 37 § 1 c) (unilateral declaration of the Government concerning the length of proceedings and the lack of an effective remedy), partly inadmissible as manifestly ill-founded (concerning the unfairness of the proceedings)
Finland	13 Oct. 2009	Huuhtanen (no 44946/05) link	Alleged violation of Art. 6 § 1 (lack of an independent and impartial tribunal and unfairness of proceedings)	Inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention)
France	06 Oct. 2009	*Association Nationale Des Pupilles De La Nation* (no 22718/08) link	Alleged violation of Art. 14 in conjunction with Art. 1 of Prot. 1 (difference of treatment between the orphans "victims of barbaric acts" and other orphans whose parents' death caused the same amount of suffering)	Incompatible *ratione materiae*
France	06 Oct. 2009	Consorts Ganivet (no 33948/06) link	Alleged violation of Art. 1 of Prot. 1 (domestic authorities' failure to enforce a final judgment in the applicants' favour ordering the expulsion of illegal occupants out of their property)	Struck out of the list (applicants no longer wished to pursue their application)
France	06 Oct. 2009	Meddouri (no 16718/06) link	Alleged violation of Art. 6 § 1 and 13 (lack of an impartial and independent tribunal, lack of an effective remedy to defend a public accountant's personal and pecuniary responsibility against hierarchical abuse), Art. 1 of Prot. 1 (a public accountant forced to have litigation responsibilities transferred to him)	Partly struck out of the list (unilateral declaration of the Government concerning the impartial presence of the Commissioner on the bench of the *Conseil d'Etat*), partly inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention concerning the remainder of the application)
France	06 Oct. 2009	Poniatowski (no 29494/08) link	Alleged violation of Art. 6 § 1 and 2 (lack of a fair trial before the *Conseil d'Etat*), Art. 1 of Prot. 1	Partly inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention, partly incompatible *ratione materiae*
France	06 Oct. 2009	Mokrane (no 19579/06) link	Alleged violation of Art. 3 (attack on the applicant in the presence, and with the help of, police officers), Art. 5 (deprivation of liberty), Art. 13 (lack of an effective remedy)	Inadmissible as manifestly ill-founded (lack of the evidence to conclude that there was a violation of the rights and freedoms protected by the Convention; lack of an "arguable" claim in respect of Art. 13)
France	06 Oct. 2009	Earl Pauvert (no 25617/08) link	Alleged violation of Art. 1 of Prot. 1 (lack of adequate compensation for expropriation of a plot of land)	Inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention)
France	13 Oct. 2009	SODY (*Société de Distribution des Yvelines*) and Others (no 39560/06) link	Alleged violation of Art. 1 of Prot. 1 (failure to inform the applicant company about the existence of a debt), Art. 6 § 1 (insufficient motivation of the Court of Cassation's decision)	Inadmissible as manifestly ill-founded (fair balance established between the different interests at stake and sufficient reasoning of the Court of Cassation's decision)
Germany	06 Oct. 2009	Appel-Irrgang and Others (no 45216/07)	Alleged violation of Art. 9 § 2 and Art. 2 of Prot. 1 (the requirement for the 1st applicant to attend ethics	Inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the

		link	classes was contrary to her religious convictions)	Convention)
Germany	13 Oct. 2009	Göbel (no 35023/04) link	Alleged violation of Art. 1 of Prot. 1 (lack of adequate compensation for expropriation of plot of land)	Admissible
Germany	13 Oct. 2009	Althoff and Others (no 5631/05) link	Alleged violation of Art. 1 of Prot. 1 (lack of adequate compensation due to the retroactive application of a new law), Art. 14 (difference of treatment)	Admissible
Germany	13 Oct. 2009	Bayerl (no 37395/08) link	Alleged violation of Art. 8 § 1 (Court of Appeal's refusal to grant an application for the return of the applicant's son to Bulgaria), Art. 6 § 1 (arbitrariness of the domestic court's decision)	Inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention)
Germany	13 Oct. 2009	Matterne (V) (no 4041/06) link	Alleged violation of Articles 2, 3, 5, 6, 9, 10 and 13 (outcome and unfairness of 43 civil, criminal and other proceedings)	Idem.
Italy	06 Oct. 2009	Pesce (no 19270/07) link	Alleged violation of Art. 6 (the applicant's inability to contest his placement under the special "EIV" regime while in detention)	Inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention)
Poland	06 Oct. 2009	Portuś (no 52468/07) link	Alleged violation of Art. 6 § 1 (unfairness and excessive length of criminal proceedings), Art. 13 (lack of an effective remedy)	Partly struck out of the list (unilateral declaration of Government concerning the length of proceedings), partly inadmissible as manifestly ill-founded (concerning the remainder of the application)
Poland	13 Oct. 2009	Jakowicz (no 16778/02) link	Alleged violation of Art. 6 § 1 (lack of access to a court in respect of the applicant's claims raised before the Polish Foundation)	Incompatible *ratione materiae*
Poland	13 Oct. 2009	Cywiński (no 10676/08) link	Alleged violation of Art. 5 § 3 and 6 § 1 (excessive length of pre-trial detention and of criminal proceedings)	Partly struck out of the list (unilateral declaration of Government concerning the length of pre-trial detention), partly inadmissible for non exhaustion of domestic remedies (concerning the claim under Art. 6 § 1)
Poland	06 Oct. 2009	Wilczewski (no 6362/07) link	Alleged violation of Art. 5 § 3 (excessive length of pre-trial detention)	Struck out of the list (friendly settlement reached)
Poland	13 Oct. 2009	Szyjka (no 13824/08) link	Idem.	Struck out of the list (unilateral declaration of Government)
Poland	13 Oct. 2009	Mamczarek (no 37902/07) link	Alleged violation of 6 § 1 (excessive length of civil proceedings)	Struck out of the list (friendly settlement reached)
Poland	13 Oct. 2009	Olszowy (no 29982/04) link	Alleged violation of Art. 3 (ill-treatment by police officers while in police custody, lack of an effective remedy and mental suffering as a result of the above treatment)	Inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention)
Poland	13 Oct. 2009	Szymczyk (no 1232/08) link	Alleged violation of Art. 5 § 3 and 6 § 1 (excessive length of pre-trial detention and of the criminal proceedings)	Struck out of the list (unilateral declaration of Government)
Poland	13 Oct. 2009	Majkut (no 4880/09) link	Alleged violation of Art. 6 § 1 (deprivation of the possibility to have the case examined by the Supreme Court on account of the Court of Appeal's dismissal of the applicant's request for a legal-aid lawyer)	Struck out of the list (friendly settlement reached)
Poland	13 Oct. 2009	Pszenny (no 61694/08) link	Alleged violation of Art. 5 § 3 and 6 § 1 (excessive length of pre-trial detention and of the criminal proceedings)	Idem.

Portugal	06 Oct. 2009	Mendes De Carvalho De Sousa Girão (no 11944/08) link	Alleged violation of Art. 6 § 1 (excessive length of civil proceedings concerning the payment of alimony and lack of an independent and impartial tribunal)	Inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention)
Portugal	06 Oct. 2009	Sá (no 30374/06) link	Alleged violation of 6 § 1 (excessive length of civil proceedings)	Struck out of the list (unilateral declaration of Government)
Romania	13 Oct. 2009	Benderliu (no 24263/03) link	Alleged violation of 6 § 1 (length and unfairness of criminal proceedings), Art. 1 of Prot. 1 (seizure of the applicant's movable and immovable property for the duration of the criminal proceedings)	Struck out of the list (applicant no longer wished to pursue his application)
Romania	06 Oct. 2009	Lazăr (no 7022/02) link	Alleged violation of Art. 6 § 1 (length and unfairness of proceedings), Art. 6 § 2 (infringement of the presumption of innocence), Art. 7 (conviction without an arguable ground), Art. 11, Art. 1 of Prot. 1, Art. 2 of Prot. 4	Inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention)
Romania	13 Oct. 2009	Carp (no 12358/03) link	Alleged violation of Art. 1 of Prot. 1 and Art. 14 (allowance awarded when the applicant retired from military had been unlawfully subjected to income tax)	Struck out of the list (friendly settlement reached)
Russia	08 Oct. 2009	Gusev (no 22464/04) link	Alleged violation of Art. 3 (ill-treatment by police officers), Art. 5 § 1(c) (unlawfulness of detention), Art. 8 (being forced to go to the police station), Art. 13 (lack of an effective remedy)	Struck out of the list (no member of the applicant's family wished to pursue the application following the applicant's death)
Slovakia	06 Oct. 2009	Bartl (no 50365/08) link	Alleged violation of Art. 6 § 1 (length of enforcement proceedings)	Inadmissible as manifestly ill-founded (the applicant cannot claim to be victim of a violation)
Slovakia	13 Oct. 2009	Kubiny (no 21387/06) link	Alleged violation of Art. 6 § 1 (length of proceedings)	Struck out of the list (friendly settlement reached)
Slovakia	13 Oct. 2009	Priščáková (no 24704/05) link	Alleged violation of Art. 6 § 1 (length of proceedings), Art. 13 (lack of an effective remedy)	Partly struck out of the list (unilateral declaration of Government concerning the length of proceedings), partly inadmissible as manifestly ill-founded ((no violation of the rights and freedoms protected by the Convention concerning the remainder of the application)
Slovakia	13 Oct. 2009	Kováčová and Others (no 1660/02) link	Alleged violation of Art. 1 of Prot. 1 (use of the applicants' properties by gardeners without compensation and subsequent transfer of the above properties to the gardeners)	Inadmissible (non-exhaustion of domestic remedies)
Slovenia	06 Oct. 2009	Lačen (no 76657/01) link	Alleged violation of Art. 6 § 1 (unfairness of proceedings), Art. 6 § 1 in conjunction with Art. 14 (different sums of compensation awarded as a result of the different delays of proceedings before the domestic courts), Art. 1 of Prot. 1 (failure to be provided with default interest)	Partly inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention), partly incompatible *ratione materiae*
Sweden	13 Oct. 2009	Halilova and Others (no 20283/09) link	Alleged violation of Art. 3 (risk of being subjected to torture if expelled to Kazakhstan on grounds of the applicants' Kurdish ethnicity, ill-treatment in detention), Art. 8 and Art. 3 (family separation due to alleged deportation)	Partly adjourned (concerning family separation due to alleged deportation), partly inadmissible as manifestly ill-founded (concerning the remainder of the application)
the Czech Republic	13 Oct.	Šubrt (no 43471/02)	Alleged violation of Art. 6 § 1 (lengthy execution proceedings) and	Inadmissible (non-exhaustion of domestic remedies)

	2009	link	Art. 1 of Prot. 1 (unjustified interference with the right to peaceful enjoyment of possessions)	
"the Former Yugoslav Republic of Macedonia"	13 Oct. 2009	Atanasova (no 9787/05) link	Alleged violation of Art. 6 (length of proceedings)	Struck out of the list (unilateral declaration of the Government)
"the Former Yugoslav Republic of Macedonia"	13 Oct. 2009	Topuzovska (no 45037/07) link	Alleged violation of Art. 6 § 1 (length and unfairness of proceedings)	Partly struck out of the list (unilateral declaration of Government concerning the length of proceedings), partly inadmissible (the applicant's failure to substantiate her complaints concerning the remainder of the application)
"the Former Yugoslav Republic of Macedonia"	13 Oct. 2009	Redžepovaand Others (no 6439/07) link	Alleged violation of Art. 6 § 1 (length and outcome of proceedings)	Idem.
"the Former Yugoslav Republic of Macedonia"	13 Oct. 2009	Simonovski (no 574/06) link	Alleged violation of Art. 6 § 1 (length of proceedings) and Art. 1 of Prot. 1 (deprivation of property)	Idem.
the Netherlands	13 Oct. 2009	Bingöl (no 18450/07) link	Alleged violation of Art. 6 § 1 (lack of a fair trial), Art. 7 (non-foreseeability of the law), Art. 6 § 2 (infringement of the principle of presumption of innocence), Art. 1 of Prot. 1 (rejection of the applicant's request for a business permit)	Partly adjourned (concerning the alleged breach of the presumption of innocence), partly inadmissible (non respect for the six-month requirement concerning the remainder of the application)
the United Kingdom	06 Oct. 2009	Watkins (no 35757/06) link	Alleged violation of Art. 8 § 1 (unlawful interference with the applicant's right to respect for his correspondence on account of the interception of his legal mail), Art. 6 (deprivation of the right of access to a court), Art. 13 (lack of an effective remedy)	Inadmissible (the applicant can no longer claim to be a victim as he was awarded sufficient redress at the domestic level)
the United Kingdom	06 Oct. 2009	Allen and Others (no 5591/07) link	Alleged violation of Art. 8 and Art. 1 of Prot. 1 (interference with the right to respect for the home on account of the plans for the construction of a second runway at Stansted), Art. 14 (discriminatory treatment in the enjoyment of the property rights), Art. 6 § 1 (courts' refusal to award a protective costs order)	Inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention)
the United Kingdom	06 Oct. 2009	SW (no 33755/06) link	Alleged violation of Articles 1 – 14, 17, Art. 1 and 2 of Prot. 1, Art. 2 of Prot. 4, Art. 4 of Prot.7 and Art. 1 of Prot. 12 (violations of the above provisions on account of the removal of the applicant's children from her care and the conduct and length of the related court proceedings)	Struck out of the list (applicant no longer wished to pursue her application)
the United Kingdom	06 Oct. 2009	Thomson (no 43371/05) link	Alleged violation of Art. 8 and Art. 13 (interception of the applicant's communications and lack of an effective remedy)	Struck out of the list (friendly settlement reached)
the United Kingdom	06 Oct. 2009	A.B.S. (no 26970/07) link	Alleged violation of Art. 3 (risk of being subjected to ill-treatment if expelled to Nigeria), Art. 8 (infringement of the right to private and family life due to above deportation)	Struck out of the list (applicant was considered to no longer wish to pursue his application on the basis that as after his deportation to Nigeria, no ongoing contact address was provided to the Court)
the United Kingdom	06 Oct. 2009	Lynch (no 19504/06) link	Alleged violation of Art. 6 § 1 (excessive length of proceedings), Articles 5 §§ 4 and 5, 7 § 1 and 13	Inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention)

Turkey	06 Oct. 2009	Erkuş (no 38381/06) link	Alleged violation of Art. 3 (ill-treatment while in police custody), Art. 6 (unfairness of proceedings)	Idem.
Turkey	06 Oct. 2009	Fabian (no 18428/03) l link	Alleged violation of Art. 6 § 1 (excessive length of criminal proceedings and lack of legal assistance)	Struck out of the list (applicant no longer wished to pursue his application)
Turkey	06 Oct. 2009	Taştan (no 41824/05) link	Alleged violation of Art. 3 (ill-treatment in police custody), Art. 5 (excessive length of pre-trial detention), Art. 6 (the applicant's conviction on the basis of statements from other accused persons taken by the police under duress)	Partly adjourned (concerning the ill-treatment in police custody), partly inadmissible as manifestly ill-founded (concerning the remainder of the application)
Turkey	06 Oct. 2009	Dünük (no 28436/02) link	Alleged violation of Art. 3 (ill-treatment in police custody and lack of an effective investigation), Art. 5 (unlawfulness and length of detention)	Struck out of the list (friendly settlement reached)
Turkey	06 Oct. 2009	Poweract Industries (no 109/04) link	Alleged violation of Art. 6 § 1 and Art. 1 of Prot. 1 (non-enforcement of a decision in the applicant's favour)	Partly inadmissible for non respect of the six-month requirement, partly incompatible *ratione personae*)
Turkey	06 Oct. 2009	Başak (no 31592/05) link	Alleged violation of Art. 1 of Prot. 1 (delayed payment of additional expropriation compensation)	Struck out of the list (applicant no longer wished to pursue his application)
Turkey	06 Oct. 2009	Şaman (no 35292/05) link	Alleged violation of Art. 3 and Art. 13 (ill-treatment in detention and lack of an effective remedy), Art. 6 §§ 1 and 3 a) and e) (unfairness of proceedings, failure to inform the applicant of the accusations against her, lack of the assistance of an interpreter), Art. 6 § 3 c) (absence of legal assistance in detention)	Partly adjourned (concerning the failure to inform the applicant of the accusations against her, lack of the assistance of an interpreter, and the absence of legal assistance in detention), partly inadmissible as manifestly ill-founded (concerning the remainder of the application)
Turkey	06 Oct. 2009	Taşkın (no 5289/06) link	Alleged violation of Articles 1, 3 and 13 (ill-treatment in detention and lack of an effective investigation), Art. 5 § 2 (failure to inform the applicant of the reasons for his detention), Art. 6 §§ 1 and 3 a), b), c) and d) (absence of legal assistance in detention and lack of sufficient time to prepare the defence)	Partly adjourned (concerning the failure to inform the applicant the reasons for his detention), partly inadmissible as manifestly ill-founded (concerning the remainder of the application)
Turkey	06 Oct. 2009	Uzunkulaoğlu (no 16187/04) link	Alleged violation of Art. 1 of Prot. 1, Art. 17 and Art. 18 (failure to enforce a final judgment in the applicant's favour)	Inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention)
Turkey	06 Oct. 2009	Akçakaya and Others (no 16630/03) link	Alleged violation of Art. 6 § 1 (lengthy non-enforcement of final judgments in the applicants' favour), Art. 1 of Prot. 1 (inadequate compensation for expropriation of plot of land concerning Mr Akatay), Art. 13 (lack of an effective remedy)	Idem.
Turkey	13 Oct. 2009	Çetinkaya (no 8945/04) link	The case concerned the length of civil proceedings (approximately seven years and six months for two levels of jurisdiction)	Struck out of the list (friendly settlement reached)
Turkey	13 Oct. 2009	Erol (no 45572/04) link	Alleged violation of Art. 5 §§ 3 and 5 and Art. 6 § 1 (length of detention, infringement of the right to be released pending trial and length of proceedings)	Idem.
Turkey	13 Oct. 2009	Tür Köy Sen and Konur (no 45504/04) link	Alleged violation of Art. 11 and Art. 14 (suspension of the activities of an agricultural trade union, difference of treatment)	Inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention)
Turkey	13	Edizaslan and	Alleged violation of Articles 5, 6, 8	Struck out of the list (friendly

	Oct. 2009	Others (no 8582/03) link	and 1 of Prot. 1 (inadequate compensation for expropriated properties)	settlement reached)

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 2 November 2009 : link
- on 9 November 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 2 November 2009 on the Court's Website and selected by the NHRS Unit

The batch of 2 November 2009 concerns the following States (some cases are however not selected in the table below): Azerbaijan, Bulgaria, Finland, Georgia, Greece, Malta, Moldova, Poland, Romania, Russia, Slovakia, Spain, Sweden, Switzerland, the Netherlands, the United Kingdom, Turkey and Ukraine.

State	Date of communication	Case Title	Key Words of questions submitted to the parties
Azerbaijan	15 Oct. 2009	Aghazade no. 5588/04	Alleged violation of Art. 3 – Torture and ill-treatment while in detention – Alleged violation of Art. 10 § 1 and Art. 11 § 1 – The applicant's arrest due to his political activities and issues of freedom of expression and peaceful assembly
Finland	12 Oct. 2009	Davari no. 48933/09	Alleged violation of Art. 3 – Risk of being subjected to ill-treatment if expelled to Iran
Georgia	13 Oct. 2009	Ourouchadze no. 37395/09	Alleged violation of Art. 3 – The applicant's state of health was incompatible with her detention – Lack of adequate medical care in detention – Alleged violation of Art. 6 §§ 1 and 3 d) – Alleged entrapment by the Bk-va – Insufficient reasoning of the decisions convicting both of the applicants – The applicants' absence pending the hearings before the Court of Cassation – Inability to question witnesses
Malta	12 Oct. 2009	Aquilina and Others no. 28040/08	Alleged violation of Art. 10 – Infringement of the right to freedom of expression in particular the right to impart information on account of the applicants' conviction for publishing an article concerning a lawyer found in contempt of court
Moldova and Russia	13 Oct. 2009	Pocasovschi and Mihăilă	Alleged violation of Art. 3 – Conditions of detention – Alleged violation of Art. 6 § 1 – Excessive length of civil proceedings – Alleged violation of Art. 13 – Lack of

		no. 1089/09	an effective remedy – Alleged violation of Art. 34 – The obstacles encountered in communicating with the applicants while lodging the present application by the administration of prison no. 8 and/or by the "Moldavian Republic of Transdniestria" militia (see *Ilaşcu and Others v. Moldova and Russia*)
Poland	12 Oct. 2009	Leimert no. 17716/09	Alleged violations (substantive and procedural) of Art. 2 – Failure to protect the applicant's son's right to life during his stay in Pabianice police station – Lack of an effective investigation
Romania	14 Oct. 2009	Toma no. 34403/05	Alleged violation of Art. 3 – Ill-treatment while in detention after the hearings before the Court of Appeal of Constanța – Lack of an effective investigation
Sweden	13 Oct. 2009	Halilova and Others no. 20283/09	Alleged violation of Art. 8 – Infringement of the right to respect for family life on account of the requirement that the first, second and third applicants return to Kazakhstan to apply for residence permits in Sweden – Alleged violation of Art. 3 – If the deportation order were enforced, would the separation of the first applicant from the fifth applicant amount to an infringement of Art. 3 having due regard to his young age and the fourth applicant's alleged inability to care solely for him A partial decision on admissibility is available on HUDOC
Switzerland	15 Oct. 2009	Gajtani no. 43730/07	Alleged violation of Art. 8 – Infringement of the right to respect to family life on account of the return of the applicant's children to "the Former Yugoslav Republic of Macedonia" following the separation of the couple and the children's mother move to Switzerland – Alleged violation of Art. 13 of the Hague Convention on the Civil Aspects of International Child Abduction – Domestic courts' failure to take into account the children's opinions – Alleged violation of Art. 6 § 1 – Infringement of the applicant's right of access to a court
the Netherlands	16 Oct. 2009	G.G.S. no. 53926/09	Alleged violation of Art. 3 – Risk of being subjected to ill-treatment if expelled to Afghanistan – Alleged violation of Art. 13 – Lack of an effective remedy – Alleged violation of Art. 8 – Infringement of the right to respect for family life if deported to Afghanistan – Alleged violation of Art. 5 – Unlawful detention
the Netherlands	14 Oct. 2009	Mfwa Muyuku no. 46970/07	Alleged violation of Art. 3 – Risk of being subjected to ill-treatment if expelled to the Democratic Republic of the Congo – Alleged violation of Art. 13 – Lack of an effective remedy
the Netherlands	14 Oct. 2009	Sanogo no. 32702/07	Alleged violation of Art. 3 – Risk of being subjected to ill-treatment if expelled to Côte d'Ivoire
the United Kingdom	13 Oct. 2009	N.M. no. 38851/09 and M.M. no. 39128/09	Alleged violation of Art. 3 and/or Art. 2 – Risk of being executed or being subjected to ill-treatment if expelled to Uzbekistan
Ukraine	13 Oct. 2009	Editorial Board of Pravoye Delo and Shtekel no. 33014/05	Alleged violation of Art. 10 § 1 – Infringement of the right to freedom of expression on account of the applicant's conviction for publishing an article concerning the corruption of senior officials of the Odessa Regional Department of the Security Service

Communicated cases published on 9 November 2009 on the Court's Website and selected by the NHRS Unit

The batch of 9 November 2009 concerns the following States (some cases are however not selected in the table below): Albania, Armenia, Austria, Bulgaria, Croatia, Denmark, France, Italy, Latvia, Moldova, Romania, Russia, Sweden, "the former Yugoslav Republic of Macedonia", the United Kingdom, Turkey and Ukraine.

State	**Date of communication**	**Case Title**	**Key Words of questions submitted to the parties**
Armenia	20 Oct. 2009	Nalbandyan and Nalbandyan no. 9935/06; and Nalbandyan no.	Alleged violation of Art. 3 – Ill-treatment while in police custody at the Vardenis Police Department – Lack of an effective investigation – Alleged violation of Art. 6 §§ 1 and 3 (c) – Lack of effective legal assistance – Alleged violation of Art. 6 § 1 – Infringement of the right of access to a court

		23339/06	
Austria	19 Oct. 2009	Sahin no. 1566/08	Alleged violation of Art. 6 § 1 and Art. 8 – Infringement of the right of access to a court and of the right to respect for family life concerning the provisional placement of the applicant's children in a children's home
Denmark	19 Oct. 2009	Thanabalasi-ngam no. 21376/09	Alleged violation of Art. 3 – Risk of being subjected to ill-treatment if expelled to Sri-Lanka – Alleged violation of Art. 8 – Infringement of the right to respect for family life if deported to Sri-Lanka
France	19 Oct. 2009	P.M. no. 25074/09	Alleged violation of Art. 3 – Risk of being subjected to ill-treatment if expelled to the Republic of Congo – Alleged violation of Art. 13 – Lack of an effective remedy in relation to alleged treatment contrary to Art. 3 before the National Court for the Right to Asylum
France	19 Oct. 2009	Popov no. 39472/07 Yakovenko (wife Popov) no 39474/07	Alleged violation of Art. 3 and Art. 8 – Treatment contrary to Art. 3 and infringement of the right to respect for family life on account of the applicants' placement in administrative detention with two minor children (three years and six months respectively)
Latvia	20 Oct. 2009	Antonovs no. 19437/05	Alleged violation of Art. 3 – Infection with hepatitis C while in detention – Lack of an effective investigation – Lack of adequate medical assistance
Romania	20 Oct. 2009	Cucu no. 22362/06	Alleged violation of Art. 3 – Conditions of detention in Jilava and Giurgiu prisons – Lack of an effective remedy – Ill-treatment in Giurgiu Prison – Lack of an effective investigation – Alleged violation of Art. 6 § 1 and Art. 8 – The authorities' refusal to enforce a final court decision allowing the applicant to be visited by Miss P.N.E. – Alleged violation of Art. 3 of Prot. 1 – Withdrawal of the applicant's right to vote during the execution of his prison sentence
Romania	20 Oct. 2009	Geanopol no. 1777/06	Alleged violation of Art. 3 – Ill-treatment and conditions of detention in Rahova prison and lack of an effective investigation
Russia	19 Oct. 2009	Gladkov no. 15162/05	Alleged violation of Art. 3 of Prot. 1 and Art. 10 – Restriction on the applicant's right to vote while in prison
Sweden	20 Oct. 2009	H.N. and Others no. 50043/09	Alleged violation of Art. 3 – Risk of being executed or killed if expelled to Burundi
Sweden	20 Oct. 2009	X. no. 51104/08	Alleged violation of Art. 3 – Risk of being subjected to ill-treatment if expelled to Libya
Turkey	21 Oct. 2009	Çakir no 16051/05 and other applications	Alleged violation of Art. 2 – Infringement of the right to life on account of the lack of sufficient respect for required standards relating to the construction of buildings allegedly resulting in the death of the applicants' parents and children in an earthquake – Lack of an effective investigation – Alleged violation of Art. 6 – Unfairness and length of proceedings – Alleged violation of Art. 13 – Lack of an effective remedy

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

Elections at the Court (17.11.09)

Jean-Paul Costa has been re-elected as President of the Court for a second term of three years with effect from 19 January 2010. In addition, the Plenary Court has also re-elected Nicolas Bratza as Vice-President of the Court and Françoise Tulkens as President of the Second Section. Press release, composition of the Court

Relinquishment (02.11.09)

The Chamber to which the case of *McFarlane v. Ireland* was assigned has relinquished jurisdiction in favour of the Grand Chamber. The applicant complains, in particular, of the length of the criminal proceedings against him and claims that he had no effective remedy in this regard.

List of pending cases before the Grand Chamber

Part II : The execution of the judgments of the Court

A. New information

The Council of Europe's Committee of Ministers will hold its next "human rights" meeting from 1 to 4 December 2009 (the 1072th 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)

Croatia signs the Revised European Social Charter (06.11.09)

Ambassador Anica Djamić, Permanent Representative of Croatia to the Council of Europe, signed the Revised European Social Charter in the presence of Maud de BOER-BUQUICCHIO.

International Conference of Data Protection and Privacy Commissioners, Madrid, 4-6 November 2009 (04.11.09)

This conference is the largest forum dedicated to privacy in the world. It brings together each year the highest authorities and institutions guaranteeing data protection and privacy, as well as experts in the field from every continent. Mr Régis BRILLAT, Head of the Department of the ESC, participated in a session on the protection of privacy in the workplace.
Programme
Conference Website

Seminar on the Revised Charter held in Tirana (05.11.09)

In the framework of the Third Summit Action Plan, a seminar on the Revised Charter was held in Tirana from 5 to 6 November 2009, with the aim of providing comprehensive information to the Albanian authorities on the Charter, its case law and its monitoring mechanisms, in order to bring about a wider application of this instrument. This seminar was attended by Mrs Monika SCHLACHTER and Mrs Jarna PETMAN, members of the European Committee of Social Rights, as well as two administrators from the Department of the ESC, Ms Rovena DEMIRAJ and Mr Ramón PRIETO-SUAREZ.
Programme

The next session of the European Committee of Social Rights will take place from 7-11 December 2009.

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

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

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

CPT President calls for an end to impunity for perpetrators of torture (06.11.09)

The President of the CPT, Mauro Palma called on countries on 6 November to take effective measures to end the practice of impunity in Europe for State officials suspected of perpetrating acts of torture and ill-treatment, a problem encountered by the CPT in many countries. “The credibility of the prevention of torture is undermined each time officials responsible for such offences are not held to account for their actions”, he said. "It's time to move firmly on this issue and it’s time to end it," he said

in a press briefing held in Strasbourg on the margins of the conference marking the CPT's 20th anniversary.

Mr. Palma also pointed to the growing problem of overcrowding in prison systems throughout Europe: "Simply building more prisons is not the solution; interrelated measures looking at, for example sentencing guidelines, community sanctions, conditional release should be put in place to overcome the phenomenon of overcrowding. Otherwise, overcrowding will continue to jeopardise both the safe running of prisons and the rehabilitation of individual offenders," he said.

With around half a million irregular migrants entering European countries annually, the issue of safeguards for immigration detainees has become another priority area of activity for the CPT: "Irregular migrants are particularly vulnerable to various forms of ill-treatment and unfortunately there are still far too many instances where the CPT comes across places of deprivation of liberty for irregular migrants which are totally unsuitable," said Mr. Palma.

"States should be selective when exercising their power to deprive them of their liberty and every effort should be made to avoid it when it comes to minors," said the CPT President, adding that in the most recent General Report, the Committee has set out its views on the safeguards that should be adopted for this group of persons.

During the briefing, Mauro Palma also acknowledged that States sometimes see a tension between their obligation to protect their citizens, for example, against acts of terrorism, and the need to uphold basic values. "For the CPT, striking the right balance is misguided when talking about the prohibition of torture. It is only by defending those values which distinguish democratic societies from others that Europe can best guarantee its security."

In response to a question, Mr Palma recalled that the CPT had examined the application of surgical castration on sentenced sex offenders in the Czech Republic, and found that it amounted to degrading treatment. The Committee has called upon the authorities to end immediately its use. He added that it was an "invasive, irreversible and mutilating" measure which had no place in Europe today.

Mr. Palma also stated that the issue of restraints in psychiatric establishments remained of particular concern for the CPT. "A patient should only be restrained as a measure of last resort and for the shortest period possible. The time is ripe for every psychiatric establishment in Europe to have a comprehensive, carefully developed, policy on this question".

Finally, Mr Palma reflected on the 20 years of the existence of the CPT and the reputation of the Committee as an independent professional body monitoring places of detention in Europe. "The total eradication of torture in the European continent may never come but it can certainly be combated successfully and reduced to a marginal phenomenon. The CPT will continue to play its part working with the relevant actors in the countries it visits" he concluded.

C. European Commission against Racism and Intolerance (ECRI)

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

Serbia: publication of the 2nd cycle government comments (26.10.09)

The government comments on the 2nd cycle Advisory Committee opinion were submitted on 30 September 2009 and made public on 26 October 2009.

Portugal and Kosovo[1]: adoption of Advisory Committee Opinions (05.11.09)

On 5 November 2009, the Advisory Committee on the Framework Convention for the Protection of National Minorities adopted opinions on Portugal and Kosovo which are restricted for the time-being. These opinions will now be submitted to the Committee of Ministers, which is to adopt conclusions and recommendations.

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

[1] All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

E. Group of States against Corruption (GRECO)

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

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

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

Part IV: The inter-governmental work

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

Spain ratified on 28 October 2009 the Convention on the Recognition of Qualifications concerning Higher Education in the European Region (ETS No. 165).

Hungary ratified on 6 November 2009 the European Agreement on the Abolition of Visas for Refugees (ETS No. 31).

B. Recommendations and Resolutions adopted by the Committee of Ministers

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C. Other news of the Committee of Ministers

Samuel Žbogar received the European Charter on Freedom of the Press (27.10.09)

The Slovenian Foreign Minister and Chairman of the Committee of Ministers participated on 26 October in Luxembourg in a parliamentary discussion on freedom of the press and the protection of journalists' sources. "During economic crisis and global challenges, we need freedom of expression and journalists who can report freely and independently", said Minister Žbogar upon receiving the European Charter on Freedom of the Press.

Samuel Žbogar participates in a Quadripartite Meeting between the EU and the Council of Europe (27.10.09)

As Chairman of the Committee of Ministers of the Council of Europe, the Slovenian Foreign Minister, Samuel Žbogar, participated on 27 October in Luxembourg in a quadripartite meeting between the European Union and the Council of Europe. The agenda for the meeting, which took place in the context of the EU General Affairs and External Relations Council (GAERC), included three items: Georgia, Moldova, and Belarus.
Conclusions

Priorities of the forthcoming Swiss Chairmanship of the Committee of Ministers (28.10.09)

On 28 October Micheline Calmy-Rey, Head of the Federal Department of Foreign Affairs and the next Chairperson of the Committee of Ministers of the Council of Europe, met with the Secretary General, Thorbjørn Jagland, to discuss their cooperation during the forthcoming Swiss Chairmanship. The head of the Swiss diplomacy expressed support for the Secretary General's priorities with regard to the relations with Council of Europe institutional partners and the efforts to reinforce the efficiency, the relevance and the political role of the organisation in the European architecture. This is in line with the main priorities of the Swiss chairmanship, which will also include efforts to secure the future of the European Court of Human Rights - with a major conference planned for February 2010 in Interlaken - and activities to promote and strengthen democratic institutions in Council of Europe member States. The Secretary General and the Minister agreed to maintain very close cooperation and open communication lines throughout the Chairmanship.

Council of Europe concerned about a new death penalty case in Belarus (30.10.09)

"We are deeply disturbed by the news that the Belarus Supreme Court has once again rejected an appeal against the death penalty handed down to a Belarusian citizen, and that Andrei Zhuk, condemned to death by a Minsk regional court on 22 July, may face imminent execution," stated the

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

Chair of the Committee of Ministers, Samuel Žbogar, and the Secretary General, Thorbjørn Jagland, on 30 October. They called on President Alyaksandr Lukashenka to grant clemency to Mr Zhuk, to declare forthwith a moratorium on the use of the death penalty in Belarus, and to commute the sentences of all prisoners sentenced to death to terms of imprisonment.

Convention on Human Rights and Biomedicine: 10 years on (03.11.09)

The Steering Committee on Bioethics (CDBI) and the Slovenian authorities, under the Slovenian Chairmanship of the Committee of Ministers, organised a conference on the European Convention on Human Rights and Biomedicine (also known as the Oviedo Convention), on 3 November in Strasbourg. The aim of the conference was to consider the impact of the convention, its topicality and the timelessness of its principles.
Webcast [in French only]
File

Ljubljana Conference - Rehabilitating our Common Heritage (07.11.09)

The conference, organised in the framework of the Slovenian Chairmanship of the Committee of Ministers, took place on 6 and 7 November in Ljubljana and aimed to raise awareness about the importance of rehabilitation of cultural heritage. The conference brought together high representatives from South-East Europe, Kyiv initiative countries and other Council of Europe member States.
More information
Ljubljana declaration
IRPP/SAAH Project Website

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*

PACE monitoring co-rapporteurs visit Albania (30.10.09)

Jaakko Laakso (Finland, UEL) and David Wilshire (United Kingdom, EDG), co-rapporteurs for Albania of the Monitoring Committee of PACE conducted a fact-finding visit to the country from 3 to 5 November to take stock of the honouring of obligations and commitments by Albania *vis-à-vis* the Council of Europe. This visit will enable them to finalise a report which will be debated at the January plenary session of PACE (25-29 January 2010). Interviews were scheduled with the President of the Republic, the Prime Minister, the Speaker of Parliament, the Ministers of Foreign Affairs, Interior and Justice, and the President of the Constitutional Court. The co-rapporteurs also met with the mayors of several towns and cities, including Tirana and Shkoder, and representatives of the Montenegrin minority. Lastly, they will be holding discussions with representatives of the Directorate General of Prisons, during a visit to a prison.

➢ *Themes*

Dick Marty appalled by the killing of Maksharip Aushev (26.10.09)

Dick Marty (Switzerland, ALDE), PACE rapporteur on the human rights situation in the North Caucasus, expressed on 26 October his shock at the murder, on Sunday 25 October, of Maksharip Aushev, Ingush opposition figure, in the region of Kabardino-Balkaria, a neighbouring republic of Ingushetia.

"This further political assassination targets all those who are committed to peace and human rights in this long-suffering region. This must not become just one more case on the long list of similar crimes whose perpetrators go unpunished. To have some prospect of success, the investigation must have Moscow's support, at the very highest level. As the Assembly's rapporteur, I will be keeping a very close watch on developments in this case", Mr Marty said.

Maksharip Aushev had accused local agencies of the Federal Security Service (FSB) and local police controlled by Chechen President Ramzan Kadyrov of being responsible for many extrajudicial killings, abductions and cases of torture in the North Caucasus. A leading opposition figure against the former President of Ingushetia, Murat Zyazikov, he had recently announced his support for the new President Yunus-Bek Yevkurov, himself the victim of an attack this summer.

Marked setback in media freedom in Council of Europe area, analysis shows (26.10.09)

The Council of Europe area has suffered a “marked setback” in the overall level of media freedom in the past three years, according to a background report by an independent expert presented today to PACE’s Sub-committee on the Media.

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

The country-by-country report, by the academic and former BBC senior correspondent William Horsley, was commissioned as a contribution to a PACE report on media freedom being prepared by the sub-committee's Chair Andrew McIntosh (United Kingdom, SOC), and presented at a PACE hearing today in Luxembourg. It gathers data from several NGOs monitoring journalists' freedom, who also contributed to the hearing. "It is apparent from this survey of the last three years that the violations and abuses are more acute and pervasive than has been widely understood," according to the report.

At least 20 journalists have been killed on duty apparently because of their work since the start of 2007, the report points out – compared with 13 deaths in the preceding three years – while the scale of violent assaults remains unacceptably high. The great majority of targeted killings or serious assaults took place in Russia, Armenia, Azerbaijan, Moldova and Belarus, but cases were also recorded in Turkey, Croatia, Serbia, Greece and Spain.

The spread of freedom of information laws, as well as the decriminalisation of libel and abolition of blasphemy in some states, are positive developments, but "often the effect has been blunted by contrary trends towards more controls and interference in media independence", the report concludes.
Background report (PDF)
European Charter on Freedom of the Press

Official visit by PACE President to Japan (05.11.09)

PACE President Lluís Maria de Puig conducted an official visit to Japan from 9 to 12 November. Meetings were scheduled with the Speaker of the House of Councillors (the upper house of the Japanese Parliament), the Vice-Speaker of the House of Representatives (the lower house), the Minister of Justice, the Senior Vice-Minister for Foreign Affairs, the Director General of the European Affairs Bureau, and the Minister of State for Financial Services and for Postal Reform, who is also Chairman of the Parliamentary Members' League for the Abolition of the Death Penalty.

European Union accession to the ECHR must be a priority, says PACE President (05.11.09)

PACE President Lluís Maria de Puig welcomed on 5 November the entry into force of the Lisbon Treaty on 1 December 2009 and expressed the hope that accession by the European Union (EU) to the ECHR, made possible by the Treaty, would be a priority for the EU. "As from next month, the 27-member EU will be in a position to become more democratic, more transparent and more effective.

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

A. Country work

Commissioner Hammarberg encourages Bulgaria to make more efforts to protect the rights of minorities and children (06.11.09)

Commissioner Thomas Hammarberg concluded a three-day visit to Sofia during which he assessed progress on the protection of the rights of minorities and disadvantaged children. The Commissioner encouraged the authorities to ensure equal opportunities for minorities. Of particular concern is the situation of the Roma community. He visited a Roma settlement in the Republika district of Sofia where he assessed the living conditions as inhumane. “No one should live in these conditions in today’s Europe” he declared. He called upon the authorities to enhance social housing and to ensure that no eviction takes place without offering suitable alternative accommodation.

The Commissioner welcomed the programmes aimed at Roma inclusion and appealed for further targeted measures to improve Roma’s access to health care and employment. “Local authorities should also be involved in this process” he stressed. He shared the authorities’ view that education is of paramount importance and noted that specific attention should be paid to the enrolment of Roma children in schools and that root causes of drop-out should be addressed.

The protection of other ethnic groups living in Bulgaria, such as the Turkish and Macedonian minorities, was also discussed. Referring to the Council of Europe human rights standards, he recommended a renewed, systematic dialogue with these communities in order to address and solve all pending issues. Commissioner Hammarberg noted with concern cases of xenophobic acts, including against the Muslim community. He was informed of cases of harassment against Pomak leaders and teachers apparently based on ill-founded suspicions of Islamic fundamentalism. He invited the authorities to address these problems promptly.

Commissioner Hammarberg welcomed the measures taken by the authorities to improve the respect of the rights of children living in institutions. He had the possibility to observe progress when visiting an institution for children with mental disabilities in Gorna Banya in Sofia. “Efforts have been made to close a number of old and unsuitable institutions for children with disabilities.” He invited the authorities to further this process of de-institutionalisation by adopting a national strategy that would include local authorities as well as parents and civil society organisations.

Finally, the Commissioner participated in a conference on inclusive education, organised by the Bulgarian Helsinki Committee and the Mental Disability Advocacy Center, and called for a better integration of children with special needs in mainstream schools. “Although Bulgaria has adopted policies for such changes, improvements on the ground remain limited.” The Commissioner stressed that the 2008 decision of the European Committee of Social Rights regarding access of children with disabilities to education and training should be fully implemented.

The Commissioner will publish early next year a report with his recommendations on the issues raised during this visit.

B. Thematic work

“Intelligence secrecy is no excuse for covering up human rights violations” says Commissioner (02.11.09)

“Intelligence agencies have acquired new powers and resources - but they are not kept under sufficient political and judicial control. Governments should improve the oversight of these services” writes Commissioner Thomas Hammarberg in his new Viewpoint article. In particular, he points out the need to control co-operation between agencies in different countries. “Investigations into human rights violations have been prevented with the argument that such exposure would disturb the inter-agency collaboration” he says.
Read the Viewpoint

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

(under the auspices of the NHRS Unit of the Directorate General of Human Rights and Legal Affairs)

The First Meeting of the European National Preventive Mechanisms against torture (NPM) Network on 5 November 2009, Strasbourg

In the framework of the so-called "European NPM Project", a project that sets up a specific branch of the Peer-to-Peer network dedicated to NPM issues, the Council of Europe's NHRS Unit[1] invited the Head and an additional staff member of each designated NPM in the Council of Europe region to gather for the first time. The meeting was generously funded by a grant of the Ministry of Foreign Affairs of the Federal Republic of Germany and took place at the Council of Europe headquarters in Strasbourg.

The objectives of this first meeting were twofold: first to present and discuss the "European NPM Project" and to create a forum and active network whereby the NPMs could exchange views and experiences, and second to discuss the issue of producing and disseminating NPM annual reports. The Council of Europe's European NPM Project and its purpose, working methods and Project team were introduced and the need of joint decisions on a work programme for 2010 - 2011 underlined. There was an analysis by the APT (Association for the Prevention of Torture) of the NPM annual reporting obligations within the OPCAT (Optional Protocol to the UN Convention Against Torture) and of the ways in which various NPMs fulfil those obligations. Furthermore, a report on a pilot on-site exchange of experiences between the NPM of Estonia and experts with CPT (the European Committee for the Prevention of Torture), SPT (the United Nations Sub-Committee on the Prevention of Torture) and APT expertise was presented by the Estonian Deputy Chancellor of Justice Office. Lastly, the next steps under the European NPM Project for the detailed preparation for the work-programme for 2010-2011 were discussed with all participants.

The meeting gathered 31 representatives from 17 NPMs. The NPMs of Liechtenstein and the Czech Republic were unable to attend. Further, the Swiss NPM, whose members had just been appointed, was not yet functioning at the material time and as such was also not present at the meeting. The Deputy-Ombudsman of Serbia and the Head of the Unit for persons deprived of their liberty participated exceptionally as observers. The Secretary of the SPT also attended as an observer.

This First Meeting of European NPM Network marked the start of the European NPM Project, as the institutions present (i.e. 17 of the 19 NPMs that were operational at that moment in time in the Council of Europe member states) expressed their keen interest in the Project. All participants were asked to designate a Contact Person for their respective NPMs by 1st December. The next activity under the European NPM Project is scheduled to take place in January 2010 in Padua, Italy. It will be the First Meeting of the Contact Persons of the European NPM Network.

Conference on "New Partnerships on Torture Prevention" on the occasion of the 20th anniversary of the CPT, Strasbourg, 6 November 2009

This joint APT-CPT Conference gathered the members of the CPT and the SPT as well as their respective secretariats, the Heads and senior staff of the European NPMs, representatives of other international bodies, academics and civil society. The participants used the opportunity to exchange views regarding three key issues for the prevention of torture in Europe: exchange of information between the two international (SPT and CPT) and the national (NPMs) actors, coherence of approaches, and implementation of the recommendations made by the prevention bodies. Proceedings of the Conference will be published in the first semester of 2010.

The European NPM Project was also explained and, to some extent, discussed at this conference. It was widely hailed by the participants as an extremely promising avenue for optimizing the prevention of torture in the Council of Europe region.

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