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

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

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Introduction

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

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

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

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

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

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

Some judgments are only available in French.

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

Note on the Importance Level :

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

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

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

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

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

- **Grand Chamber judgments**

Mooren v. Germany (link to the judgment in French) (no. 11364/03) (Importance 1) – 9 July 2009 – No violation of Article 5 § 1 – Lawful detention on account of the foreseeability of the decision of the Court of Appeal – Violation of Article 5 § 4 – Lack of a speedy review – Refusal to grant the applicant's counsel access to the case file in the proceedings

On 25 July 2002 the applicant was arrested and remanded in custody on suspicion of tax evasion. On 16 August 2002 the Mönchengladbach District Court upheld the detention order. An appeal by the applicant to the Regional Court was dismissed on 9 September 2002. The applicant's lawyer, who unsuccessfully requested access to the case file, refused to accept an offer by the public prosecutor's office to explain its contents to him orally.

On 14 October 2002 the Düsseldorf Court of Appeal, on an appeal by the applicant, set aside the decisions of August and September 2002 upholding the order for the applicant's detention and remitted the case to the District Court. The Court of Appeal declined to give its own decision on the applicant's detention or to quash the detention order of 25 July 2002, which it held to be defective in law (rechtsfehlerhaft), but not void (unwirksam). The applicant remained in custody.

In October 2002 the Mönchengladbach District Court again ordered the applicant's detention. The Regional Court dismissed an appeal by the applicant against that order but suspended its execution subject to certain conditions. The applicant was released on 7 November 2002 and on 18 November his lawyer was authorised to consult the case file. The applicant referred his case to the Federal Constitutional Court, but without success.

On 9 March 2005 the Mönchengladbach District Court found the applicant guilty of tax evasion and sentenced him to a total of one year and eight months' imprisonment suspended on probation.

The application was lodged on 26 March 2003. In a judgment of 13 December 2007, the Court held, by five votes to two, that there had been no violation of Article 5 § 1 and unanimously that there had been two violations of Article 5 § 4, on account of the lack of a speedy review of the lawfulness of the applicant's detention and of the refusal to grant his lawyer access to the case file.

The applicant complained that the Court of Appeal had not set aside the order for his detention initially made by the District Court on 25 July 2002 or ordered his release even though it had found the order illegal. He further alleged that by remitting the case to the District Court, the Court of Appeal had unduly delayed the proceedings for judicial review of the legality of the detention order, with the result that they were not terminated within a reasonable time. Finally, he complained that during the proceedings on the application for judicial review of the legality of his detention his lawyer was refused access to the file, which had made it impossible to mount an effective defence. In its judgment of 13 December 2007, the Chamber held that the application should be examined solely under Article 5. The parties did not dispute that decision in the proceedings before the Grand Chamber.

Article 5 § 1

The Court noted at the outset that, as the Düsseldorf Court of Appeal had found in its judgment of 14 October 2002, the detention order failed to comply with the formal requirements of domestic law as it did not describe in sufficient detail the facts and evidence forming the basis for the suspicion against the applicant. The Court reiterated that defects in a detention order did not necessarily render the underlying detention "unlawful" for the purposes of Article 5 § 1, unless they amounted to "a gross and obvious irregularity" (see *Minjat v. Switzerland*, 28 October 2003)

"87. The Court further notes that the District Court had jurisdiction to issue the detention order of 25 July 2002 against the applicant and heard representations from the applicant at a hearing before issuing the order and notifying him that it had done so. Furthermore, on the basis of the material before them, all the domestic courts agreed throughout the judicial review proceedings that the substantive conditions for the applicant's detention – a strong suspicion that he had evaded turnover, income and trade taxes and the danger of collusion or of his absconding – were met (see also §§ 88-89)."

The Court stressed that the Court of Appeal's decision was sufficiently foreseeable and had not, therefore, violated the general principle of legal certainty, as the applicant had argued. Firstly, the distinction between orders that were merely "defective" and those that were "void" was very clear in German law. Secondly, even though the Court of Appeal's decision to remit the case to the court of first instance ran counter to the wording of the Code of Criminal Procedure, which required the appeal court to take the decision on the merits, it was based on a well-established jurisprudential exception to that rule (§ 90). Lastly, the Court considered that remitting the case to a lower Court was a recognised technique for establishing in detail the facts and for assessing the relevant evidence and that the benefits of remitting the case could outweigh the inconvenience caused by any delay. It further considered that the decision to remit had not been arbitrary in the applicant's case.

The Court therefore found that the applicant's detention was lawful and in accordance with a procedure prescribed by law for the purposes of Article 5 § 1.

Article 5 § 4

As regards the speed with which the review was conducted, the Court reiterated that in guaranteeing a right of challenge to detainees, Article 5 § 4 also proclaimed the right to persons unlawfully detained to a speedy judicial decision ordering their release. Endorsing the Chamber's reasoning, the Court found that the Düsseldorf Court of Appeal's decision of 14 October 2002 to remit the case to the court of first instance had unjustifiably delayed the process of judicial review, in violation of Article 5 § 4.

As regards the inability of the applicant's lawyer to gain access to the sections of the case file submitted by the prosecution, the Court reiterated that appeals against detention must be adversarial and ensure equality of arms between the prosecution and the defence. Under the Court's settled case law (see *Schöps v. Germany*, 13 February 2001), equality of arms was not ensured if the defence was denied access to documents in the case file which were essential in order effectively to challenge the lawfulness of the detention. There had therefore been a violation of Article 5 § 4 on that account also.

Judges Rozakis, Tulkens, Casadevall, Gyulumyan, Hajiyev, Spielmann, Berro-Lefèvre and Bianku expressed a joint partly dissenting opinion.

- **Right to life**

Leparskienė v. Lithuania (no. 4860/02) (Importance 3) – 7 July 2009 – No violation of Article 2 – Effective and proper investigation following the death of the applicant's son

In May 2001 the applicant's 15-year old son, on refusing to stop the car he was driving, was shot by a police officer. He was seriously injured and died a few months later. The police officer concerned was subsequently convicted of abuse of office and manslaughter and sentenced to two years and six months' imprisonment; the execution of his sentence was suspended for three years. The applicant complained that the police officer should have been convicted of murder, that his punishment had been inadequate and that there had been no effective investigation into her son's death or legal remedy to obtain compensation. The Court considered that the investigation following the incident had been proper and effective: it had started on the very day of the shooting when many other investigative actions had also been carried out; the applicant had been recognised as a victim and granted access to the investigation and the trial. The investigation had established both the cause of death of the applicant's son and the identity of the person responsible for it. In addition, the domestic courts had given substantial reasoning as to why they had characterised the act committed by the officer as manslaughter as well as specified grounds for opting to suspend the sentence. Finally, the authorities had dismissed the police officer in question from the police and he had never been re-employed by the police or other law enforcement authorities. Therefore, the Court held unanimously that there had not been a violation of Article 2. The Court also found that by failing to bring a claim for non-pecuniary damage before the civil courts the applicant had not fully exhausted the available domestic remedies and dismissed her claim in respect of the non-availability of a legal remedy by which to obtain compensation.

- **Conditions of detention**

Sulejmanovic v. Italy (no. 22635/03) (Importance 2) – 16 July 2009 – Violation of Article 3 – Conditions of detention from November 2002 to April 2003 in Rebibbia Prison – No violation of Article 3 – Conditions of detention from April to October 2003

Between 1992 and 1998 the applicant had been convicted a number of times on a few charges and sentenced to two years, five months and five days' imprisonment. He was arrested on 30 November 2002 and imprisoned in Rebibbia Prison. He was given a prison sentence of one year, nine months and five days.

On 20 October 2003, having been granted a remission of sentence, he was released from prison.

The applicant complained about his conditions of detention, in particular prison overcrowding and insufficient daily exercise outside his cell. It was not in dispute between the parties that for at least two and a half months at the beginning of his detention, the applicant had shared his cell with five other inmates, each thus having approximately 2.70 m^2 personal space, which was much less than the standards recommended by the CPT, which had set 7 m^2 per prisoner as a minimum desirable guideline for a detention cell (§43).

The Court found that the flagrantly insufficient amount of personal space available to the applicant until April 2003 had in itself constituted inhuman or degrading treatment. The Court held by five votes to two, that there had been a violation of Article 3.

After being transferred in May 2003 to another cell, the applicant's situation improved: up until his release he had personal space of 3.24 m^2, 4.05 m^2 and 5.40 m^2 respectively.

The Court noted that whilst the prison overcrowding in Rebibbia Prison complained of by the applicant was extremely regrettable, it had not reached alarming proportions at the material time. The Court pointed out that the applicant had not complained of heating or hygiene problems and had not specified any actual consequences of his detention for his state of health (see in particular §§ 45-49).

Accordingly, the Court held that the treatment imposed on the applicant after April 2003 had not reached the minimum level of severity that would bring it within the scope of Article 3 of the Convention. It unanimously concluded that there had been no violation of Article 3 regarding the applicant's conditions of detention after April 2003.

Judge Sajó expressed a concurring opinion, and Judges Zagrebelsky and Jočienė a joint dissenting opinion.

Generalov v. Russia (no. 24325/03) (Importance 2) – 9 July 2009 – Violations of Article 3 – Conditions of detention in correctional facility ZhH-385/5 – Lack of an effective investigation into the ill-treatment – No violation of Article 3 and 13 – Adequate medical assistance during imprisonment – Violation of Article 6 § 1 – Lack of a legal ground to reject the applicant's claim for examination in respect of ill-treatment

From August 2001 to December 2002 the applicant served a sentence for theft in a correctional facility in Lepley in the Republic of Mordovia. He complained about the conditions of his detention in that facility and of ill-treatment. He also complained about the courts' refusal to examine his claim for compensation following his ill-treatment. The Court held unanimously that there had been a violation of Article 3 on account of the applicant's conditions of detention (see *Polufakin and Chernyshev v. Russia*, 25 September 2008) and no violation of Article 13 in respect of the alleged lack of an effective remedy relating to the poor conditions of detention. The Court held that there had been no violation of Article 3 on account of the alleged ill-treatment of the applicant, and that there had been a violation of this Article on account of the lack of an effective investigation into his allegation of ill-treatment. Lastly, the Court held that the applicant's right of access to a court had been breached in violation of Article 6 § 1.

Marian Stoicescu v. Romania (no. 12934/02) (Importance 3) – 16 July 2009 – Violation of Article 3 – Conditions of detention in Bucharest-Jilava Prison

The applicant complained about the conditions of his detention between September 2002 and April 2003 in Bucharest-Jilava Prison, where he was serving a sentence for attempted murder with aggravating circumstances. He referred to prison overcrowding, poor-quality water and a deplorable lack of hygiene. The Court held that there had been a violation of Article 3 and declared the remainder of the application inadmissible.

- **Ill-treatment in detention / Lack of medical assistance**

Grori v. Albania (no. 25336/04) (Importance 2) – 7 July 2009 - Violation of Article 3 – Lack of an adequate medical treatment during detention – Violation of Article 5 § 1 – Unlawfulness of the enforcement of the sentence imposed by the Italian courts – Violation of Article 34 – Domestic authorities' failure to comply in good time with the interim measure of transferring the applicant to a civilian hospital

The applicant is currently in Peqin High Security Prison serving a 15-year prison sentence for international narcotics trafficking and a life sentence for murder and illegal possession of firearms, the latter offences having been committed on Italian territory.

Mr Grori was initially detained in Albania on 30 April 2001 on the basis of an arrest warrant issued in Italy on 16 February 2001 in relation to his alleged involvement in drug trafficking. On that same day, Interpol Rome asked the Albanian authorities to initiate criminal proceedings against the applicant for crimes committed on Italian territory. In July 2002 the Albanian Prosecutor General charged Mr Grori with international narcotics trafficking and on 29 December 2003 the Albanian courts found him guilty as charged and sentenced him, in June 2006, to 15 years in prison. In addition, on 2 February 2001, the Italian authorities sentenced in absentia the applicant to life imprisonment for murder and to five years for illegal possession of firearms. However, they could not request the enforcement of that sentence in Albania, as at the time neither country was party to any international agreement on the matter. While in detention pending the criminal proceedings in Albania for drug-trafficking carried out in Italy, on 15 May 2002 Mr Grori was served with an Albanian judicial decision ordering his detention pending the proceedings for the validation of the sentence imposed on him in Italy.

Mr Grori complained before the Albanian courts that that there had been no relevant international agreement in force between the countries at the relevant time for such a validation to take effect.

The domestic courts found against him, concluding that according to international criminal law rules, cooperation between countries could occur even in the absence of bilateral treaties, on the basis of good will, generally recognised norms and the principle of reciprocity.

Between 24 September 2003 and 16 February 2004, Mr Grori asked for an appropriate medical examination in view of the deterioration in his health. In August 2004 he was diagnosed with multiple sclerosis, the doctors reporting that his disease could cause him shock, organ damage, permanent disability or death. In 2005, he brought several sets of criminal proceedings against the prosecution and the Head of Tirana Prison Hospital complaining of negligence in the provision of medical care to him given that it had been delayed.

On 10 January 2008, upon his request, the Court ordered the Albanian Government as an interim measure to transfer him immediately to a civilian hospital for examination and appropriate medical treatment. On 28 January 2008, the Government transferred him to Tirana University Hospital Centre where he passed a specialised medical examination. Since 17 June 2008, Mr Grori has been receiving regularly the appropriate medical treatment for his disease.

Mr Grori complained of having received inadequate medical treatment in prison and about the unlawfulness of his detention for the validation and enforcement in Albania of the life sentence imposed by the Italian courts in his absence. He also complained that his transfer to a civilian hospital in January 2008, as indicated by the Court under Rule 39 of its Rules of Court, had been delayed, in breach of Article 34.

Article 3 (medical treatment)

The Court noted with concern that between April 2005 and 28 January 2008 Mr Grori had been left for long periods of time without adequate medical treatment, despite suffering from a serious disease. In particular, the last medical report on his state of health had confirmed that the progression of the disease over the years had been due to the lack of medical care. The Government had not provided any justification about why it had refused to provide him with the medical treatment prescribed by the civilian doctors, especially given that it had been provided free of charge to persons in public hospitals at the time; the Government had likewise failed to explain how the treatment with vitamins and anti-depressants could be considered adequate in the circumstances. Neither had the government provided a plausible explanation for the deterioration of the applicant's health in prison. The Court concluded that all the above had created such a strong feeling of insecurity in Mr Grori that, combined with his physical suffering, it had amounted to degrading treatment, in violation of Article 3.

Article 5 § 1

The Court noted that the Supreme Court's search for a legal basis for the applicant's detention, had led it to import into domestic law provisions of international law instruments which had not yet entered into force with respect to Albania. Thus, the legal basis ultimately found by the Supreme Court could scarcely be said to have met the requirements for "lawfulness" as regards the applicant's detention and the conversion of his sentence imposed by the Italian courts. The Court concluded therefore that, between 15 May 2002 and 29 December 2003, Mr Grori had not been detained in accordance with a procedure prescribed by law, and that there had therefore been a violation of Article 5 § 1 (§§ 157-161).

Article 34

The Court noted that despite having become aware at the latest on the morning of 11 January 2008 of its order to transfer the applicant into a hospital, the Government had effectuated his transfer only on 28 January 2008. Accordingly, the Court's order had not been complied with for 17 days and there had been no objective obstacles preventing the authorities to do so (see *Paladi v. Moldova*, 10 March 2009). There had therefore been a violation of Article 34.

Other complaints

The Court held that it was not necessary to examine separately under Article 6 § 1 the applicant's complaint as regards the unlawfulness of the proceedings concerning the validity and enforcement in Albania of the sentence imposed on him in Italy. It also dismissed the applicant's other complaints.

Khider v. France (no. 39364/05) (Importance 3) – 9 July 2009 – Violation of Article 3 – Ill-treatment during detention – Violation of Article 13 – Lack of an effective remedy

The applicant is currently detained in Liancourt Prison in the context of proceedings against him for armed robbery carried out as part of a gang, false imprisonment with voluntary release before the seventh day, attempted murder of a prison officer, criminal conspiracy and participation in an attempted escape. The applicant complained of his conditions of detention and the security measures imposed on him as a "prisoner requiring special supervision", in particular repeated transfers from one prison to another, prolonged periods in solitary confinement and systematic body searches. The Court held unanimously that there had been a violation of Article 3. It further found that there had been a violation of Article 13 on account of the lack of an effective remedy by which he could have filed such a complaint.

- **Length of detention**

Prencipe v. Monaco (no. 43376/06) (Importance 2) – 16 July 2009 – Violation of Article 5 § 3 – Excessive length of pre-trial detention – No violation of Article 3 – No incompatibility between the applicant's state of health and her continued detention

The applicant stands charged with having misappropriated several million euros when she worked as a bank employee in Monaco. On 6 January 2004, she confessed to misappropriating the money. The next day she was charged and remanded in custody. Appeals and requests for her release lodged by the applicant and her counsel were rejected. The appeals were based in particular on the duration of the detention and the applicant's state of health, which was allegedly incompatible with her continued detention. On 13 December 2007, while the criminal proceedings were in progress, she was released "in order to comply with the requirements of the ECHR concerning the reasonable length of detention pending trial".

Article 5 § 3

The Government asked the Court to strike the case out of its list in so far as the complaint under Article 5 § 3 was concerned. The Government offered to pay the applicant EUR 15,000 to settle the case once and for all (§§ 54-55). The Court considered that the Government's declaration made no acknowledgment that the length of the applicant's detention pending trial in this case had been in violation of Article 5 § 3 of the Convention. Also, although the sum proposed by the Government appeared satisfactory, the Court observed that the Government were offering it *ex gratia*. In the circumstances the Court considered that the Government's unilateral declaration did not suffice to render further examination of this complaint unnecessary, and decided to examine it (§§ 60-63).

The merits

The applicant's detention pending trial had lasted almost 4 years. However, the Court limited its examination to the period from the entry into force of the Convention in respect of Monaco (on 30 November 2005) to the applicant's release.

The applicant had been under suspicion when she was placed in detention and throughout the investigation, and had indeed confessed. However, the reasons given by the domestic courts to justify her detention had been too abstract and insufficiently substantiated (the seriousness of the offences and the threat to law and order; the need to guarantee the applicant's appearance in court; the risk of collusion or pressure between the co-accused). The Court pointed out in particular that the matter of whether the applicant was able to offer sufficient guarantees that she would appear in court if released had not been properly examined (see in particular §§ 82-85). Ultimately, the justification for the length of the applicant's detention, while relevant, had been insufficient in the circumstances as the initial relevance had not withstood the test of time. The impugned detention had therefore been in violation of Article 5 § 3.

Article 3

The various medical reports drawn up and produced before the Court made no mention of any incompatibility between the applicant's state of health and her continued detention or of any deterioration in her health as a result of her detention, and no suggestion that the prison was unable to cater for her needs. The prison authorities had therefore not failed in their duty to take all the necessary measures in that respect (§§ 105-107). The Court accordingly found that it had not been established that the applicant had been subjected to treatment which attained a sufficient level of severity to fall within the scope of Article 3 of the Convention, and unanimously concluded that there had been no violation of that provision.

Cahit Demirel v. Turkey (no. 18623/03) (Importance 2) – 7 July 2009 – Violation of Art. 5 §§ 3 and 4 – Length of the pre-trial detention and lack of an effective remedy to challenge lawfulness of the detention – Violation of Article 6 § 1 – Excessive length of criminal proceedings

The applicant was arrested in April 1996 on suspicion of involvement in the PKK (the Workers' Party of Kurdistan), an illegal organisation. He was released pending trial in May 2003. The proceedings against him were ultimately terminated in May 2005 on the ground that the statutory time-limit had expired. The Court held unanimously that there had been a violation of Article 5 §§ 3 and 4 on account of the length of the applicant's detention pending trial which had lasted nearly six years and four months, and the lack of an effective remedy for him to challenge the lawfulness of his detention. Moreover, the Court found that the violations of Article 5 §§ 3 and 4 found in this case originated in widespread and systemic problems arising out of the malfunctioning of the Turkish criminal justice system and the state of the relevant Turkish legislation, and reiterated that Turkey had a legal

obligation to adopt the necessary measures in order to put an end to the violations found and redress as far as possible their effects.

"45. The Court […] observes that in almost all of its judgments against Turkey where there was a violation of Article 5 § 3, it found that the domestic courts ordered the applicants' continued detention pending trial using identical, stereotyped terms, such as "having regard to the nature of the offence, the state of the evidence and the content of the file" (see Dereci v. Turkey). The Court also found that the courts failed to give consideration to the application of other preventive measures foreseen by Turkish law, such as a prohibition on leaving the country or release on bail, other than the continued detention of the applicants (see Yavuz v. Turkey). Similarly, the Court has repeatedly held there is no remedy in Turkish law within the meaning of Article 5 § 4 by which applicants could challenge the lawfulness of their pre-trial detention.

46. Thus, the Court considers that the violations of Article 5 §§ 3 and 4 of the Convention found in the instant case originated in widespread and systemic problems arising out of the malfunctioning of the Turkish criminal justice system and the state of the Turkish legislation, respectively (Gülmez v. Turkey)."

The Court also held that there had been a violation of Article 6 § 1 on account of the excessive length – nine years and one month – of the criminal proceedings.

- **Right to a fair trial**

Stagno v. Belgium (no. 1062/07) (Importance 2) – 7 July 2009 – Violation of Article 6 § 1 – Disproportionate limitation of the right of access to court by Belgian courts' strict application of a statutory limitation period

After their father's death, the applicants, who were minors at the time, together with their three brothers and one other sister, were granted a payout by the company Fortis AG as beneficiaries of his life insurance. Their mother, being the statutory administrator of her minor children's property, was paid by the insurer, on 2 February 1987, the sum of 3,058,071 Belgian francs, which she deposited in savings accounts that were emptied within less than a year.

In 1996 and 1997 the applicants each brought an action against their mother and the company Fortis Banque. During the proceedings they dropped the claim against their mother after entering into an agreement in which she undertook to pay them one third of the sums owed to them.

Their action against Fortis Banque was declared inadmissible on the ground that the three-year limitation period was applicable, regardless of the capacity of the parties, to any claim arising from an insurance policy.

The applicants appealed against that decision in 2004 but were unsuccessful, as the Court of Appeal rejected their argument that, since they had been minors, it had been legally impossible for them to act at the relevant time. In 2006 an appeal on points of law lodged by the sisters was also dismissed on the ground that the aim pursued by the limitation period, namely to avoid the disappearance of evidence and means of verification, could not be fulfilled if it were open to insured persons or their beneficiaries to bring a claim many years after the event on which it was based. The applicants argued that they should not be penalised for failing to apply, at the ages of 9 and 10, for the appointment of a special guardian, and that they had found themselves de facto in a situation where they had no legal representative through whom they could have asserted their rights. The Court of Cassation found that it was not appropriate to allow different treatment for persons without legal representation.

The applicants complained of a violation of their right of access to a court, alleging that the Belgian courts had deprived them of any effective remedy before a court by rejecting their action as statute-barred, given that the statutory limitation period had not been suspended while they were minors even though they had been unable to bring legal proceedings during that period.

The Court reiterated that statutory limitation periods pursued the legitimate aim of ensuring legal certainty, as a time-bar on claims protected potential defendants from belated complaints and meant that the courts would not have to give judgments based on evidence that had become uncertain or incomplete with the passing of time. However, it had been practically impossible for the Stagno sisters to defend their property rights against the company Fortis AG before reaching their majority, and when they did come of age, their claim against the company had become time-barred.

The Court took the view that the strict application of a statutory limitation period, without taking into account the particular circumstances of the case, had prevented the Stagno sisters from using a remedy that in principle was available to them. That limitation on their right of access to a court was disproportionate in relation to the aim of guaranteeing legal certainty and the proper administration of justice (see in particular §§ 30-33 of the judgment).

The Court held by six votes to one that there had been a violation of Article 6 § 1.

Judges Jočienė and Karakaş expressed a joint partly concurring opinion and Judge Sajó a dissenting opinion.

Gorgievski v. "the former Yugoslav Republic of Macedonia" (no. 18002/02) (Importance 2) – 16 July 2009 – No violation of Articles 6 §§ 1 and 3 (d) – Fairness and sufficient reasoning in domestic courts' assessment

The applicant worked as a sanitary inspector at a border post near the city of Delčevo. On 29 July 1999, the applicant took a sum of money from a local businessman in exchange of his promise to facilitate some administrative procedures relating to the import of goods. The businessman had previously alerted the police and the applicant was arrested shortly after the payment. The same day he was remanded in custody for a month. On 11 February 2000, the applicant was sentenced to three months imprisonment. He appealed the judgment arguing that he was the victim of entrapment and that the trial court had not taken into consideration the statements of capital defence witnesses. On 27 September 2000 the Štip Court of Appeal dismissed the applicant's claim. The appeal judgement was upheld by the Supreme Court.

The applicant alleged that he had been entrapped by an agent provocateur, that the Court of Appeal's refusal to hear some capital witnesses had violated the principle of equality of arms and that its decision was not sufficiently reasoned.

The Court recalls that while Article 6 guarantees the right to a fair hearing, it does not lay down any rules as to the admissibility of evidence, in particular the hearing of witnesses, which is a matter to be primarily regulated under domestic law. It also recalls that the use of undercover agents in criminal cases is not prohibited as long as it does not amount to an instigation to commit an offence which would otherwise not be committed.

In the present case, the domestic courts found that the businessman did not incite the applicant to request a bribe but only reported the facts to the police and accepted to participate in the organisation of the applicant's arrest. The proceedings before the domestic courts were adversarial and the courts' findings were based on documentary evidence as well as on the hearing of several witnesses, including two called by the defence. The fact that a new witness was not called before the Court of Appeal, which wrongly believed that he had already made a statement before the trial court, is irrelevant because his testimony related to events which followed the taking of the money. The Court therefore sees no reasons to depart from the national courts' findings and concludes unanimously that there has been no violation of Articles 6 §§ 1 and 3 (d).

- **Length of proceedings**

Padalevičius v. Lithuania (no. 12278/03) (Importance 2) – 7 July 2009 – Violation of Article 6 § 1 – Excessive length of civil proceedings – No violation of Article 6 of Protocol No. 1

The applicant complained about the excessive length of civil litigation. He also complained about the annulment of his title to a plot of land derived from a transaction which the domestic courts found to have been in breach of the restitution laws. Addressing the applicant's complaints about the length of proceedings the Court reiterated that where the outcome of proceedings was decisive for civil rights and obligations, those proceedings came within the scope of Article 6 § 1 even if they were conducted before a Constitutional Court. The Court held that the proceedings before the Constitutional Court about the constitutionality of the Government's decrees on the basis of which the land purchase agreement had been concluded had been closely linked to the proceedings before the civil courts. In the light of all the circumstances of the case, the Court concluded that the reasonable time required by Article 6 § 1 had been exceeded, and that there had therefore been a breach of that provision. As regards the applicant's complaint under Article 1 of Protocol No. 1, the Court emphasised that it was mindful of the importance of the legitimate aims pursued by the restitution laws and the particular difficulties States faced when regulating the restitution of nationalised property after decades of totalitarian rule. Consequently, the Court would not regard as disproportionate every imbalance between the relevant public interest and the effects of restitution laws on the particular individual concerned. A certain "threshold" of hardship must have been crossed for the Court to find a breach of the applicant's Article 1 Protocol No. 1 rights. Having examined in detail the applicant's situation, the Court did not consider that such a threshold of hardship had been reached in respect of him. Therefore this part of the application was dismissed as manifestly ill-founded.

Daneshpayeh v. Turkey (no. 21086/04) (Importance 2) – 16 July 2009 – Violation of Article 6 § 1 – Excessive length of civil proceedings – Violation of Article 13 – Lack of an effective remedy due to the absence of national courts before which to complain about the length of judicial proceedings

The applicant complained that the length of the civil court proceedings against him had been excessive and that no remedy had been available by which to challenge that length. The Court held that there had been a violation of Articles 6 § 1 and 13.

Referring to Article 46 (binding force and execution of judgments), the Court, pointing out that the violation of Article 13 had occurred because there was no national court before which the applicant could complain about the length of judicial proceedings, held that the most appropriate means of putting an end to the violation found would be to bring the domestic law into line with Article 13 of the Convention.

The Court referred to its case-law on the subject and drew the Government's attention to the relevant texts adopted by the Committee of Ministers of the Council of Europe, notably Resolution Res (2004) 3 on judgments revealing an underlying systemic problem and Recommendation Rec (2004) 6 on the improvement of domestic remedies (§§ 41-51).

- **Right to respect for home and property rights**

Zehentner v. Austria (no. 20082/02) (Importance 1) – 16 July – Violation of Article 8 and Article 1 of Protocol No 1 – Lack of procedural safeguards considering the applicant's lack of legal capacity

In August 1998 a district court ordered the applicant to pay approximately 7,440 EUR to G. for the cost of plumbing work carried out in her apartment; in June 1999 she was ordered to pay money to another creditor, W. In May 1999 the court granted G.'s request for the enforcement of the payment plus the costs of the proceedings by judicial sale of the applicant's apartment. In October 1999 the applicant was informed of the date of the judicial sale by registered letter and on 17 November 1999 the judicial sale took place, however, in her absence. The court sold her apartment for approximately EUR 59,000 to a limited liability company; the decision for the sale was served on her on 24 November 1999 by deposition in the post office. In January 2000 part of the proceeds of the sale were allocated to the applicant's creditors and in February 2000 she was evicted from the apartment.

In March 2000 the applicant had a nervous breakdown and spent more than a month in a psychiatric hospital. The court instituted guardianship proceedings and obtained a medical expert's opinion according to which she was suffering from paranoid psychosis since 1994 and since then had not been able to make rational decisions. The court appointed her a provisional guardian in March 2000.

In April 2000 the court served the decision of 17 November 1999 concerning the judicial sale of the applicant's apartment on her guardian. As of 17 April 2000 she, represented by her guardian, appealed numerous times before the domestic courts of different level against this decision asking that it be annulled and the enforcement proceedings suspended.

In response to her appeals the courts found that the payment orders of August 1998 and June 1999 were not enforceable as she had not been capable of participating in the proceedings; however, the appeals against the enforcement of the orders were ultimately dismissed as the courts held that reversing the enforcement was no longer possible given that the decision allocating the proceeds of the sale to the creditors had become final and the creditors had been paid.

The applicant complained of the judicial sale of her apartment having deprived her of her possessions. The Court considered it appropriate, in addition to Article 1 of Protocol No. 1, to examine the applicant's complaint in addition under Article 8.

Admissibility

In March 2006, the applicant herself had requested the Court to proceed with the examination of her case stating that she did not wish her guardian to represent her before the Court but was unable to appoint another representative. The Court found that the applicant was in a position to pursue her complaint and declared it admissible.

Article 8 (protection of family life and home)

The Court found that the applicant had lacked legal capacity for years by the time the judicial sale of the apartment and her eviction had taken place, so she had not been able either to object or to resort to the remedies available in the legislation. In addition, she had been left without any means of

obtaining a review of her case as a result of the absolute nature of the time-limit for appealing against a judicial sale provided for in domestic legislation. Given that persons who lacked legal capacity were particularly vulnerable, the Court found that specific justification had to be required where a person lacking legal capacity was concerned. The Austrian Supreme Court had not given any such justification and had not carried out any weighing of the conflicting interests of the purchaser in good faith and the debtor lacking legal capacity. As regards whether the absolute time-limit had served the general interest of preserving legal certainty, the Court recalled its case law in which it had held that legal certainty would not be violated in circumstances of compelling character. Accordingly, the arguments relied upon by the Government were not sufficient to outweigh the consideration that the applicant had been deprived of her home without having been able to participate effectively in the proceedings, in violation of Article 8 (see *Connors v. the United Kingdom*, 27 May 2004).

Article 1 of Protocol No1

The Court noted that the proceedings in this case had been between private parties, however it considered that even in such a case the State was under an obligation to afford both parties the necessary procedural guarantees. It found the suggested procedural mechanism by the Government an unfeasible scenario for the applicant, a person lacking legal capacity, to be able to recover her possessions of which she was deprived without adequate guarantees (see in particular §§ 75-77). In addition, in view of its findings in respect of the violation of Article 8, the Court held that there had also been a violation of Article 1 of Protocol 1.

Judge Malinverni and judge Kovler expressed a joint partly dissenting opinion.

- **Right to correspondence with the family and with the Court**

Nikitenko v. Latvia (no. 62609/00) (Importance 2) – 16 July 2009 – Violation of Article 3 – Conditions of detention in Jelgava police station – Two violations of Article 8 – Disproportionate interference with the applicant's right to correspondence with his family and with the Court

According to the most recent information available to the Court, the applicant was in prison in Jelgava. He complained about the conditions of his detention in police custody and of unjustified interference with his right to respect for correspondence, particularly with the Court. The Court found that the applicant's conditions of detention – from 24 January to 28 February 2000 – in a temporary isolation cell in Jelgava police station had amounted to "degrading treatment" resulting in a violation of Article 3. It also held that, due to the large application of decree no. 113 that was applicable at the time concerning the matter of the detainees' correspondence with their families, there had been violations of Article 8 on account of the ban on corresponding with his mother and girlfriend during his detention and the opening by the prison authorities of the letters addressed to the applicant by the Court (see *Kornakovs v. Latvia*, 15 juin 2006). No separate issue arose under Article 34.

Mgłosik v. Poland (no. 8403/02) (Importance 3) – 16 July 2009 – Violation of Article 5 § 3 – Excessive length of pre-trial detention – Violation of Article 8 – Interference with the applicant's correspondence with the Court

The applicant is currently serving a prison sentence. He alleged that his pre-trial detention had been excessively long. The case further concerned the censorship of the applicant's correspondence with the Court, which raised a question with respect to Article 8. The Court held unanimously that there had been a violation of Article 5 § 3 on account of the excessive length – just over four years – of the applicant's pre-trial detention and a violation of Article 8, on account of censorship of the applicant's letters to the Court (see *Michta v. Poland*, 4 May 2006).

Kisielewski v. Poland (no. 26744/02) (Importance 3) – Pasternak v. Poland (no. 42785/06) (Importance 3) – 7 July 2009 – Violation of Article 8 – Interference with the applicant's correspondence with the Court while in detention

The Court raised and examined the issue of Poland's compliance with Article 8, and held that there had been a violation of this Article on account of the monitoring of the applicant's correspondence with the Court.

- **Freedom of expression**

Féret v. Belgium (no. 15615/07) (Importance 1) – 16 July 2009 – No violation of Article 10 – Domestic courts' decision to convict the applicant (chairman of the political party *Front National*) for distributing leaflets advocating racial discrimination was a proportionate interference with his right to freedom of expression in order to protect the rights of the immigrant community

Between July 1999 and October 2001 the distribution of leaflets and posters by the applicant's party, in connection with the election campaigns of the Front National, led to complaints by individuals and associations for incitation of hatred, discrimination and violence, filed under a law of 30 July 1981 which penalised certain acts inspired by racism or xenophobia.

On 19 February 2002 the applicant was interviewed by the police in connection with those complaints.

The applicant's parliamentary immunity was waived on the request of the Principal Public Prosecutor at the Brussels Court of Appeal. In November 2002 criminal proceedings were brought against him as author and editor-in-chief of the offending leaflets.

On 4 June 2003, in order to be able to rule on the merits, the Brussels Criminal Court re-opened the proceedings. An appeal by the applicant concerning the jurisdiction of that first-instance court was declared inadmissible in June 2003 and in March 2004 the Court of Cassation dismissed his appeal on points of law against the Court of Appeal's decision.

On 13 June 2004 the applicant was elected to the Bruxelles-Capitale Regional Council and to the Parliament of the French Community, both positions affording him new parliamentary immunity.

The public prosecutor reactivated the proceedings on 23 June 2004. On 20 February 2006 the Brussels Court of Appeal held a complete trial and on 18 April 2006 sentenced the applicant to 250 hours of community service related to the integration of immigrants, together with a 10-month suspended prison sentence. It declared him ineligible for ten years. Lastly, it ordered him to pay one euro to each of the civil parties.

The court found that the offending conduct on the part of the applicant had not fallen within his parliamentary activity. An appeal on points of law by the applicant was dismissed on 4 October 2006.

The applicant alleged that his conviction for the content of his political party's leaflets represented an excessive restriction on his right to freedom of expression.

The Court observed that the interference with the applicant's right to freedom of expression had been provided for by law and had the legitimate aims of preventing disorder and of protecting the rights of others (see §§ 58-59).

The Court referred to Recommendation No.R (97)20 of the Committee of Ministers and to the ECRI report on Belgium. It noted that the leaflets presented the communities in question as criminally-minded and keen to exploit the benefits they derived from living in Belgium, and that they also sought to make fun of the immigrants concerned, with the inevitable risk of arousing, particularly among less knowledgeable members of the public, feelings of distrust, rejection or even hatred towards foreigners (see in particular §§ 69- 71). While freedom of expression was important for everybody, it was especially so for an elected representative of the people: he or she represented the electorate and defended their interests. However, the Court reiterated that it was crucial for politicians, when expressing themselves in public, to avoid comments that might foster intolerance (§ 75).

The impact of racist and xenophobic discourse was magnified in an electoral context, in which arguments naturally became more forceful. To recommend solutions to immigration-related problems by advocating racial discrimination was likely to cause social tension and undermine trust in democratic institutions. In the present case there had been a compelling social need to protect the rights of the immigrant community, as the Belgian courts had done.

With regard to the penalty imposed on the applicant, the Court noted that the authorities had preferred a 10-year period of ineligibility rather than a penal option, in accordance with the Court's principle of restraint in criminal proceedings. The Court held by 4 votes to 3 that there had been no violation of Article 10. The Court added that the remainder of the application was inadmissible.

Judges Sajó, Zagrebelsky and Tsotsoria expressed a joint dissenting opinion, which is annexed to the judgment.

Wojtas-Kaleta v. Poland (no. 20436/02) (Importance 3) – 16 July 2009 – Violation of Article 10 - Sanctioning a journalist for her critical opinion concerning a public matter constituted a disproportionate restriction

The applicant was a journalist employed by a Polish public television company (TVP). At the beginning of April 1999 the national newspaper Gazeta Wyborcza published an article reporting that two classical music programmes had been taken off the air. The article quoted an opinion expressed by the applicant in her capacity of the President of the Polish Public Television Journalists' Union in which she stated that although the TVP director had suggested this step would create new opportunities for classical music to be aired, she herself saw no steps taken in that direction.

In addition, the applicant signed an open letter in protest against the above measure. The letter was addressed to the Board of TVP.

Later in the month of April 1999, the applicant was reprimanded in writing by her employer for failing to observe the company's regulations which required her to protect her employer's good name. Following an unsuccessful objection to the reprimand, the applicant brought a claim against TVP before the district court requesting that the reprimand be withdrawn. The court dismissed her claim in a judgment of January 2001 in which it found that the applicant was guilty of having behaved in an unlawful manner and that this was a necessary and sufficient prerequisite for the disciplinary measure imposed on her. On appeal, in April 2001, the higher regional court upheld the contested judgment.

The applicant complained that the courts had restricted unduly her freedom of expression by having referred merely to her obligations as an employee while disregarding her professional obligations as a journalist.

The Court first observed that the case raised a problem of how the limits of loyalty of journalists working for public television companies should be delineated and, in consequence, what restrictions could be imposed on journalists in public debate (see *Fuentes Bobo v. Spain*, 29 February 2000). The Court then considered that where a State had decided to create a public broadcasting system, the domestic law and practice had to guarantee that the system provided a pluralistic audiovisual service. Under the applicable legislation in this case the public television company had been entrusted with a special mission including, among other things, assisting the development of culture with emphasis on the national intellectual and artistic achievements.

In § 49, the Court noted that, "[*t*]*he courts, when examining the applicant's request for that reprimand to be set aside, endorsed the employer's conclusions. However, the Court observes that they took no note of the applicant's argument that she had been acting in the public interest. They limited their analysis to a finding that her comments amounted to acting to the employer's detriment. As a result, they did not examine whether and how the subject matter of the applicant's comments and the context in which they had been made could have affected the permissible scope of her freedom of expression. Such an approach would have been compatible with the Convention standards."*

The Court further noted that the applicant had to enjoy freedom of expression in all her capacities: as an employee of a public television, as a journalist or as a trade-union leader. Further it considered that, given the responsibility of journalists to contribute to and encourage public debate, the obligation of discretion and constraint did not apply with equal force to them as it was in the nature of their functions to impart information and ideas.

In her comments and open letter the applicant had referred to widely shared concerns about the declining quality of music programmes, something which had been a matter of public interest. In addition, the applicant's statements had relied on a sufficient factual basis and had at the same time amounted to value judgments which were not susceptible of proof. Neither had her comments been a gratuitous attack on another person aiming to offend them, as their tone had been measured and there had been no personal accusations. Finally, the applicant's good faith had never been challenged neither by her employer nor by the domestic authorities involved in the proceedings (see §§ 49-52. Accordingly, having balanced the different interests involved in the present case, the Court held that there had been a violation of Article 10.

Willem v. France (no. 10883/05) (Importance 2) – 16 July 2009 – No violation of Article 10 – Proportionate interference with freedom of expression on account of the conviction of the applicant, a mayor, for calling a boycott on Israeli products

On 3 October 2002, during a session of the town council and in the presence of journalists, Mr Willem, mayor of Seclin town, announced that he intended to call on his services to boycott Israeli products in the municipality. He stated that he had taken that decision to protest against the anti-Palestinian policies of the Israeli Government. Representatives of the Jewish community in the department of Nord filed a complaint with the public prosecutor, who decided to prosecute the applicant for provoking discrimination on national, racial and religious grounds, under Articles 23 and 24 of the Press Act of 29 July 1881. Mr Willem was acquitted by the Lille Criminal Court but sentenced on appeal on 11 September 2003, and fined 1,000 euros (EUR). He lodged a cassation appeal but was unsuccessful.

Mr Willem took the view that his call to boycott Israeli products was part of a political debate concerning the Israeli-Palestinian conflict and was without doubt a matter in the general interest. He complained that his conviction had thus constituted a violation of his right to freedom of expression within the meaning of Article 10 of the Convention.

The Court observed that the interference with the applicant's freedom of expression had been provided for by law and that it pursued a legitimate aim, namely to protect the rights of Israeli producers. The Court reiterated that for interference with freedom of expression especially that of an elected representative, to comply with the Convention, it had to be "necessary in a democratic society". Like the French courts, the Court took the view that Mr Willem had not been convicted for his political opinions but for inciting the commission of a discriminatory, and therefore punishable, act. The Court further noted that, under French law, the applicant was not entitled to take the place of the governmental authorities by declaring an embargo on products from a foreign country, and moreover that the penalty imposed on him had been relatively moderate. The Court therefore found that the impugned interference had been proportionate to the legitimate aim pursued and held by six vote to one, that there had been no violation of Article 10 (see in particular §§ 33-38).

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

- **Protection of property**

Zeïbek v. Greece (no. 46368/06) (Importance 2) – 9 July 2009 – Violation of Article 1 of Protocol No. 1 taken alone and in conjunction with Article 14 – Refusal to grant the applicant a pension payable for life as the mother of a large family – Discrimination on grounds of citizenship

Between 1974 and 1982 the applicant had four children with her husband, who like her was a Greek citizen and a Muslim. When the fourth child was born she became the mother of a "large family" under Greek law.

While the Zeïbek family were visiting the applicant's father in Turkey, they all had their Greek nationality withdrawn by a decision of the Minister of the Interior dated 22 November 1984. That decision was based on Article 19 of the Nationality Code as then in force, authorising such a measure against "any person of foreign origin who leaves Greece without intending to resettle there". The family's appeals against that decision were dismissed.

In 1998 Article 19 of the Nationality Code was repealed. The authorities then invited members of the Muslim community who had been deprived of their Greek nationality to apply for naturalisation, which the applicant and her family did on 4 November 1999. On 23 March 2001 Greek nationality was restored to the applicant and to her children except for one daughter, Ilkaï. Being both a minor and married, Ilkaï was considered to be dependent on her husband and was not therefore entitled to acquire Greek nationality through her mother.

On 19 December 2001 the applicant applied for a pension, payable for life, as the mother of a large family, in accordance with law no. 1982/1990. However, her application was rejected on 22 November 2002 on the ground that, as her four children did not all have Greek nationality, the statutory requirements were not met. The applicant's appeals against this refusal were dismissed. On 22 May 1996 the Supreme Administrative Court found, among other things, that Article 21 of the Constitution – which protects the family and motherhood – was relevant only to the need to preserve and promote the Greek nation and did not concern foreign families living in Greece.

The decision depriving Ilkaï of her Greek nationality was set aside on 25 January 2007.

Relying in particular on Article 1 of Protocol No. 1 taken alone and in conjunction with Article 14, Mrs Zeïbek complained of the fact that she had been deprived of the large-family pension payable for life.

The applicant, at the time of Ilkaï's birth, had acquired the status of mother of a large family. According to Greek law and practice, that status was in principle to be retained for life, even when one or more of the children ceased to be attached to the family and regardless of the children's nationality (provided the mother lived permanently and legally in Greece). This was already guaranteed by Greek law at the

time the applicant's pension application was rejected in 2002. The pension itself had been introduced by a law of 1990.

The applicant and certain members of her family had not therefore been reinstated as Greek nationals with all the ensuing rights that were, by contrast, conferred on all large families of Greek origin. The reinstatement should have involved recognising the applicant as the mother of a large family with all the benefits arising from that status, as if the withdrawal of nationality had never taken place.

In this context, and having regard to the importance given to the protection of large families both by the Constitution and by the legislature, the Court found it surprising that the Supreme Administrative Court, in its judgment, had associated the granting of such protection with the "need to preserve and promote the Greek nation" – a criterion based not on Greek nationality but on national origin (see in particular §§ 47-50).

The Court held unanimously that there had been a violation of Article 1 of Protocol No. 1, taken alone and in conjunction with Article 14 of the Convention, as the applicant had been subjected to a difference in treatment that was not based on any "objective or reasonable justification", and had had to bear an excessive and disproportionate burden that upset the fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights.

Moon v. France (no. 39973/03) (Importance 3) – 9 July 2009 – Violation of Article 1 of Protocol No. 1 – Disproportionate penalty imposed on the applicant for failing to declare a sum of money at the French-Swiss border

On 9 November 2000, when passing through customs at the French-Swiss border on the way to France, the applicant was found to be in possession of an undeclared sum equivalent to 48,084 euros (EUR), in breach of an obligation to declare sums over EUR 7,622. The amount by which that threshold was exceeded (EUR 40,422) was seized from him, who explained that the money was part of a loan he had taken out with a Swiss company and was intended for the purchase of a house or a sports car.

On 3 October 2001 he was convicted of failing to declare a sum of money and fined 40,000 French francs (EUR 6,098). The fine was to be taken from the sum seized and the remainder returned to him. The court noted that Mr Moon had not been acting on behalf of a secret or mafia-type organisation, since he had shown that his possession of such a sum was consistent with his level of income and personal assets.

Further to appeals lodged by the customs authorities and the applicant, the court upheld his conviction, but ordered the confiscation of the sum in excess of the declaration threshold (EUR 40,422) and raised the fine to one quarter of the total sum that had been in his possession when crossing the border (EUR 12,021).

An appeal on points of law by the applicant was dismissed on 21 January 2004.

The applicant complained, in particular, that the penalty imposed on him for failing to declare a sum of money to the customs authorities, namely the confiscation of the part of the sum in excess of the declaration threshold, together with a fine, was disproportionate to the offence in question.

The interference by the authorities in Mr Moon's right to the protection of his property had been provided for by law and had pursued an aim in the general interest, namely to prevent the laundering of money from drug trafficking.

The Court observed, however, that in the light of the evidence before it, Mr Moon had never been prosecuted or convicted, in the United Kingdom or France, for money laundering or any related offences. The Court took into consideration the significant amount of the penalty imposed on Mr Moon which reached a total of EUR 52,443 by combining the confiscation of the sum in excess of the declaration threshold (EUR 40,422) with a fine corresponding to one quarter of the total sum in his possession at the border (EUR 12,021).

The Court held unanimously that this penalty was disproportionate to the offence committed and that its imposition had not struck a fair balance between the general interest and the applicant's fundamental rights, in violation of Article 1 of Protocol No. 1.

Tarnopolskaya and Others v. Russia (nos. 11093/07 and 19 other applications) (Importance 3) – 9 July 2009 – Violation of Article 6 and Article 1 of Protocol No 1 – Quashing of final judgments restoring old-age pensions for emigrants whose pensions had been awarded in accordance

with the legislation of the USSR on the ground of misinterpretation of the substantive law was in breach with the principle of legal certainty

In the 1980s and 1990s the 20 applicants in this case emigrated from the USSR to Israel where they obtained Israeli nationality. When they emigrated, the old-age pensions they were receiving from the Soviet authorities were discontinued.

In 2000 the applicants applied unsuccessfully to the regional departments of the Pension Fund of Russia for the payment of their pensions to be restored, following which they brought civil proceedings against the Pension Fund. Their claims were allowed and final judgments were delivered in their favour.

The Pension Fund restored the pensions in ten cases. At a later stage, however, the Fund lodged requests with the respective regional courts for supervisory review of the final judgments in the applicants' favour referring to a lack of coherence in the approach followed by the different regional courts on the matter. The Presidia, a special composition of the courts acting as a higher instance regional courts, granted the requests of the Pension Fund as according to their interpretation of the relevant domestic legislation there was no basis under domestic law for the payments to be awarded to the applicants; as a result the judgments were quashed and the applicants' claims dismissed.

Relying on Article 6 § 1 and Article 1 of Protocol No. 1, the applicants complained about the quashing through the supervisory review procedure of the binding and enforceable judgments in their favour between 2005 and 2007.

Article 6 § 1

"35. In the present case the final judgments were quashed on the grounds of the alleged misinterpretation of the substantive law. According to the Court's constant case-law, the fact that the Presidia disagreed with the interpretation of substantive law made in the lower courts' final judgments was not, in itself, an exceptional circumstance warranting the quashing of a binding and enforceable judgment and a reopening of the proceedings on the applicants', especially taking into account that at the material time there was no settled domestic case-law on the issue. No other reasons for the quashing of the final judgments were relied upon by the higher courts.

36. The foregoing considerations are sufficient to enable the Court to conclude that in the present cases there was no circumstance justifying departure from the principle of legal certainty."

Article 1 of Protocol No 1

The Court observed that the final judgments in the applicants' favour had unconditionally ordered the Pension Fund to restore the pension payments which had been made earlier. Thus, the judgments had created assets for the applicants; the subsequent quashing of the judgments therefore had deprived the applicants of the opportunity to receive the sums awarded to them by the courts (§37). There had therefore been a violation of Article 1 of Protocol No 1.

- **Cases concerning Chechnya**

Karimov and Others v. Russia (no. 29851/05) (Importance 3) – 16 July 2009 – Two violations of Article 2 – Lack of a plausible explanation for the disappearance of the applicants' relative and of lack of an effective investigation in that regard – Violation of Article 3 – The psychological suffering of the applicants as a result of the above disappearance - Violation of Article 5 - Unacknowledged detention of the applicants' relative - Violation of Article 8 and a violation of Article 1 of Protocol No 1 - Unlawful search of the house of the applicants and seizure of their property - Violation of Article 13 in conjunction with Article 2 – Impossibility for the applicants to obtain the identification and punishment of those responsible – Violation of Article 13 in conjunction with Article 8 and Article 1 of Protocol No 1 – Lack of effective remedies in that respect

Yusupova and Others v. Russia (no. 5428/05) (Importance 3) – 9 July 2009 - Violation of Article 2 - The authorities' failure to conduct an effective investigation into the circumstances in which the applicant's relative disappeared

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 more complete information, please refer to the following link:

- press release by the Registrar concerning the Chamber judgments issued on 7 July 2009: here.
- press release by the Registrar concerning the Chamber judgments issued on 9 July 2009: here.
- press release by the Registrar concerning the Chamber judgments issued on 16 July 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	16 Jul. 2009	Nenov (no. 33738/02) Imp. 2	Violation of Art. 6 § 1	Infringement of the right to a fair trial on account of the applicant's inability to benefit from the advice of an officially designed counsel	Link
Croatia	09 Jul. 2009	Bubić (no. 23677/07) Imp. 3	No violation of Art. 1 of Prot. No. 1	The annulment of the applicant's property title was in accordance with domestic law	Link
Finland	07 Jul. 2009	D. (no. 30542/04) Imp. 3	Violation of Art. 6 § 1 (fairness)	Limitations on the rights of the defence on account of the use of the applicant's child videotaped account as essential evidence in the criminal proceedings against him	Link
Georgia	16 Jul. 2009	Kobelyan (no. 40022/05) Imp. 3	Violation of Art. 6 § 1	Excessive length (approximately six years and ten months) of the criminal proceedings for three levels of jurisdiction	Link
Greece	09 Jul. 2009	Elezi and Others (no. 33863/07) Imp. 3	Violation of Art. 6 § 1 Violation of Art. 13	Excessive length of criminal proceedings Lack of an effective remedy	Link
Greece	16 Jul. 2009	Christodoulou (no. 514/07) Imp. 2	Violation of Art. 6 § 1	Infringement of the right to a fair trial on account of the fact that the application of the procedural rule ensuring the proper administration of justice (annulment of the proceedings before the Audit Court, which found that the acknowledgment of receipt of the notice of appeal the applicant had served on the other party had been filed in court out of time, according to the legislation then in force) had been disproportionate to the legitimate aim pursued	Link
Italy	07 Jul. 2009	Annunziata (no. 24423/03) Imp. 3 Piacenti (no. 24425/03) Imp. 3	Violation of Art. 8	Interference with the right to respect for correspondence without a sufficient legal basis	Link Link
Latvia	07 Jul. 2009	Zavoloka (no. 58447/00) Imp. 2	No violation of Art. 13 in conjunction with Art. 2	Lack of an arguable claim	Link
Moldova	16 Jul. 2009	Baroul Partner-A (no. 39815/07) Imp. 2	Violation of Art. 6 § 1 Violation of Art. 1 of Prot. 1	Infringement of the right to a fair trial on account of the domestic courts' interpretation of the rules concerning the prescribed time-limit for instituting court actions Unjustified interference with the applicant company's right to property on account of the upholding of the Prosecutor	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 and the Office of the Commissioner for Human Rights.

				General's action	
Poland	07 Jul. 2009	Dyller (no. 39842/05) Imp. 3 Maciejewski (no. 23755/03) Imp. 3 Maruszak (no. 11253/07) Imp. 3 Woźniak (no. 29940/06) Imp. 3	Violation of Art. 5 § 3	Excessive length of the pre-trial detention (almost two years) (just over six years and seven months) (approximately three years and eleven months) (two years and seven months)	Link Link Link Link
Poland	07 Jul. 2009	Feliński (no. 31116/03) Imp. 3	Violation of Art. 5 § 3 Violation of Art. 8	Excessive length of pre-trial detention (just over four years and five months) Interference with the applicant's right to correspondence with the Court	Link
Poland	07 Jul. 2009	Grzegorz Hulewicz No. 2 (no. 6544/05) Imp. 3	No violation of Art. 5 § 3	Length of the investigation and pre-trial detention justified by the complexity of the case	Link
Poland	07 Jul. 2009	Kata (no. 9590/06) Imp. 3	No violation of Art. 6 § 1	No interference with the right of access to court on account of the domestic courts' careful examination of the applicant's financial situation	Link
Poland	07 Jul. 2009	Plechanow (no. 22279/04) Imp. 2	Violation of Art. 1 of Prot. No. 1	State's failure to comply with positive obligation to safeguard the applicants' right to effective enjoyment of their possessions	Link
Poland	07 Jul. 2009	Polańscy (no. 21700/02) Imp. 3	Violation of Art. 1 of Prot. No. 1	Excessive delay in payment of the compensation for expropriation to the applicant	Link
Romania	07 Jul. 2009	Stanca Popescu (no. 8727/03) Imp. 3	Violation of Art. 6 § 1 (fairness)	Infringement of the right to legal certainty on account of the reversal of a judgment ordering the return to the applicant of a plot of land	Link
Romania	16 Jul. 2009	Baka (no. 30400/02) Imp. 3	No violation of Art. 6	Justification of the length of the proceedings by the complexity of the case	Link
Russia	09 Jul. 2009	Avdeyev and Veryayev (no. 2737/04) Imp.3	Violation of Art. 5 §§ 1 (c) and 3	Unlawfulness of detention only regarding the period from 5 June to 10 July 2003 and excessive length of detention (eight months and eight days)	Link
Russia	09 Jul. 2009	Ilatovskiy (no. 6945/04) Imp. 3	Violation of Art. 6 § 1 (fairness)	"Tribunal not "established by law" on account of the lack of legal grounds for the participation of two lay judges	Link
Russia	09 Jul. 2009	Kononovich (no. 41169/02) Imp. 3	Violation of Art. 5 § 3	Excessive length of pre-trial detention (over nineteen months)	Link
Russia	16 Jul. 2009	Potapov (no. 14934/03) Imp. 3	Violation of Art. 6 §§ 1 and 3 (c)	Infringement of the right to a fair hearing on account of the unavailability of free legal representation	Link
Russia	16 Jul. 2009	Tsarkov (no. 16854/03) Imp. 3	Violation of Art. 5 §§ 1 and 3	Unlawfulness of pre-trial detention and excessive length of detention (approximately four years and one month)	Link
Turkey	07 Jul. 2009	Akyaz (no. 6178/04) Imp. 3	Violation of Art. 5 § 3	Excessive length (more than seven years and seven months) of pre-trial detention	Link

			Violation of Art. 6 § 1	Length of proceedings still pending before the domestic courts (more than 13 years)	
Turkey	07 Jul. 2009	Tağaç and Others (no. 71864/01) Imp. 3	Violation of Art. 6 § 1 (fairness) Violation of Art. 6 § 1 in conjunction with Art. 6 § 3 (c)	Infringement of the right to a fair hearing on account of the presence of a military judge on the bench of the Istanbul State Security Court Lack of effective legal assistance during detention in police custody	Link
Turkey	07 Jul. 2009	Yerdelenli (no. 41253/04) Imp. 3	Two violations of Art. 3	Ill-treatment in police custody at the Kadıköy security police headquarters and lack of an effective investigation in that regard	Link
Turkey	16 Jul. 2009	Yananer (no. 6291/05) Imp. 3	Violations of Art. 3	Ill-treatment while in police custody and lack of an effective investigation in that regard	Link
Turkey	16 Jul. 2009	Ali Yavuz (no. 35160/05) Imp. 3	Violations of Art. 3 Violation of Art. 13	Ill-treatment while in police custody and lack of an effective investigation further to the acquittal of the accused police officers by domestic courts due to statutory time limitations Lack of an effective remedy	Link
Turkey	16 Jul. 2009	Çimen Işık (no. 12550/03) Imp. 3 Elçiçek and Others (no. 6094/03) Imp. 3	Violation of Art. 6 § 3 (c) in conjunction with Art. 6 § 1 (fairness)	Lack of legal assistance while in police custody	Link Link
Turkey	16 Jul. 2009	Mücek (no. 7605/05) Imp. 3	Violation of Art. 5 § 3	Excessive length (eleven years) of the pre-trial detention	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	07 Jul. 2009	Becskei (no. 8266/05) link Turus (no. 31566/03) link	Violation of Art. 1 of Prot. No. 1	Deprivation of property on account of total lack of compensation further to illegal nationalisation
Romania	07 Jul. 2009	Roman (no. 30453/04) link	Violation of Art. 1 of Prot. No. 1	Violation on account of domestic authorities' failure to enforce a final decision in the applicant's favour concerning the nationalisation of her property
Romania	16 Jul. 2009	Aurel Popa (no. 21318/02) link	Violation of Art. 1 of Prot. No. 1	Idem.
Romania	16 Jul.	Case of Chamber of	Idem.	Deprivation of property on account of total lack of compensation further to illegal

	2009	Commerce, Industry and Agriculture of Timisoara (No 1) (nos. 13248/05, 13321/05 etc.) link Case of Chamber of Commerce, Industry and Agriculture of Timisoara (No 2) (nos. 23520/05, 23524/05 etc.) link		nationalisation
Romania	16 Jul. 2009	David (no. 34247/06) link	Idem.	Violation on account of domestic authorities' failure to enforce a final decision in the applicant's favour concerning the nationalisation of his property

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
Cyprus	16 Jul. 2009	Christodoulou (no. 30282/06)	Link
Germany	16 Jul. 2009	Bayer (no. 8453/04)	Link
Germany	16 Jul. 2009	D.E. (no. 1126/05)	Link
Lithuania	07 Jul. 2009	Vorona and Voronov (no. 22906/04)	Link
Lithuania	16 Jul. 2009	Naugzemys (no. 17997/04)	Link
Poland	07 Jul. 2009	Gordon-Krajcer (no. 5943/07)	Link
Poland	07 Jul. 2009	Prądzyńska-Pozdiakow (no. 20982/07)	Link
Poland	07 Jul. 2009	Przybyła (no. 42778/07)	Link
Poland	07 Jul. 2009	Tymieniecki (no. 33744/06)	Link
Poland	07 Jul. 2009	Waltoś and Pawlicz (nos. 28309/06 and 48102/06)	Link
Poland	16 Jul. 2009	Suchecki (No. 1) (no. 20166/07)	Link
Slovakia	07 Jul. 2009	Ďurech and Others (no. 42561/04)	Link
Russia	16 Jul. 2009	Kharitonov (no. 39898/03)	Link
Turkey	16 Jul. 2009	Karataş and Yıldız and Others (nos. 4889/05, 4897/05, 24009/05 etc.)	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 15 to 21 June 2009.**

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

- ***Decisions deemed of particular interest :***

Daddi v. Italy (no. 15476/09) (Importance 1) – 16 June 2009 – Alleged violation of Article 6 § 1 (length) and Article 13 – Inadmissible for non exhaustion of domestic remedies – Accessibility of the "Pinto" remedy – Effectiveness

On 14 November 1994 the applicant asked the Tuscany Regional Administrative Court to set aside a number of planning decisions adopted between 1985 and 1994 by Carmignano District Council. On the same day she asked for a date to be set for the case to be heard. On 13 September 2006 she again asked for a date to be set for a hearing. The hearing was held on 12 April 2007. In a judgment of 10 May 2007, the Regional Administrative Court gave judgment in Mrs Daddi's favour. As the judgment had not been served beforehand, it became final on 31 October 2008.

On 6 March 2009 the applicant complained to the European Court of Human Rights that the length of the proceedings had been excessive. She submitted that she had not lodged an application under the Pinto Act, since the Italian courts would have declared such an application inadmissible on account of the entry into force, on 25 June 2008, of the second paragraph of Article 54 of Legislative Decree no. 112/2008. The applicant emphasised that the proceedings had already ended by the date of the entry into force of the legislative decree.

The Court considered that applications to the courts of appeal under the Pinto Act were an accessible remedy, and that there was not yet any cause to doubt the effectiveness of that remedy at present. It noted that it could not be excluded that the second paragraph of Article 54 of Legislative Decree no. 112/2008 might be interpreted by the Italian courts in such a way as to make any application under the "Pinto" procedure concerning the length of administrative proceedings which had ended before 25 June 2008 inadmissible solely because no urgent request for a hearing had been made. Such a practice might indeed give cause to absolve applicants in that position from the obligation to make use of the "Pinto" procedure.

However, the Court considered that mere doubt about the prospects of success of a particular remedy which was not quite evidently bound to fail did not constitute a valid reason to justify a decision not to avail oneself of it. Moreover, the applicant had not provided any example of a domestic decision to the effect she had relied on in her submissions. In addition, no settled case-law could have emerged from the higher courts in the short space of time which had elapsed between the entry into force of Legislative Decree no. 112/2008 and the lodging of the present application. Furthermore, the Court observed that an interpretation compatible with the principles of the Convention did not seem to be excluded by the wording of the provision concerned and that, as far as possible, such an interpretation was binding on the Italian courts both under the Convention and under domestic law. Consequently, the Court concluded that in order to comply with Article 35 § 1 of the Convention Mrs Daddi ought to have applied to the competent court of appeal by virtue of the Pinto Act. It followed that the application had to be declared inadmissible for non-exhaustion of domestic remedies.

- ***Other decisions***

State	***Date***	***Case Title***	***Alleged violations (Key Words)***	***Decision***
46 member States	16 Jun. 2009	Beygo (no. 36099/06) link	Alleged violation of Art. 6 § 1 (lack of impartiality of the Administrative Tribunal of the Council of Europe on account of the appointment of its members by the Committee of Ministers)	Inadmissible *ratione personae* Application of the *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* case law
Bulgaria	16 Jun. 2009	Manlievi (no. 37703/03) link	Length of civil proceedings and lack of an effective remedy in that regard	Struck out of the list (friendly settlement reached)
Bulgaria	16 Jun. 2009	Iliev (no. 11342/04) link	Excessive length of criminal proceedings and lack of an effective remedy	Idem.
Bulgaria	16 Jun. 2009	Petkov (no. 33733/04) link	Excessive length of criminal proceedings	Struck out of the list (applicant no longer wishing to pursue his application)
Croatia	18 Jun. 2009	Kušenić (no. 8308/08) link	Excessive length of civil proceedings	Struck out of the list (friendly settlement reached)
Cyprus	18 Jun. 2009	Mollazeinal (no. 20198/05) link	Alleged violation of Art. 2, 3, 5, 6, 7, 8, 13, 14 17 and 4 of Prot. 4 (risk to be submitted to torture or killed if expelled to Iran, ill-treatment by the police and immigration authorities, unlawful detention and lack of an effective remedy in that regard, unfairness of the decisions concerning the asylum applications)	Inadmissible as manifestly ill-founded (lack of substantial grounds to believe in the existence of a real risk of being ill-treated or killed in Iran), no respect of the six month requirement and non exhaustion of domestic remedies (concerning the alleged ill-treatment), non exhaustion of domestic remedies (concerning the unlawfulness of detention), incompatible *ratione materiae* (concerning the complaint about the unfairness of the decisions), no appearance of violation of the Convention (concerning the remainder of the application)
Finland	16 Jun. 2009	Liuksila (no. 13224/05) link	Alleged violation of Art. 6 (length and unfairness of the proceedings), Art. 1 of Prot. 1 (deprivation of property)	Partly struck out of the list unilateral declaration of the Government (concerning the length of proceedings) Partly inadmissible (concerning the remainder of the application)
France	16 Jun. 2009	Association Solidarite Des Francais (no. 26787/07) link	Alleged violation of Art. 6 § 1 (infringement of the principle of equality of arms), Art. 9 (infringement of the right to freedom of assembly and of the right to religion)	Inadmissible as manifestly ill-founded (no appearance of violation of the Convention)
France	16 Jun. 2009	Sl. (no 45022/07) link	Alleged violation of Art. 3 (risk to be submitted to torture if expelled to Russia) and Art. 13 in conjunction with Art. 3	Struck out of the list, as the matter resolved at domestic level (the applicant was granted refugee status)
France	16 Jun. 2009	Desbordes (no 12082/05) link	Alleged violation of Art. 6 and Art. 1 of Prot 1 (non-enforcement of a decision in the applicant's favour in good time)	Inadmissible (the applicant could not claim to be a victim of a violation as the matter was resolved at domestic level)
France	16 Jun. 2009	Ma (no 4920/08) link	Alleged violation of Art. 3 (risk to be submitted to torture if expelled to Sri-Lanka) and Art. 13 (lack of an effective remedy on account of the shortness of the delay to challenge the refusal to enter the French territory)	Struck out of the list (applicant no longer wishing to pursue his application)

France	16 Jun. 2009	Munier (no 16319/07) link	Alleged violation of the right of access to a court to challenge a fine	Struck out of the list (friendly settlement reached)
France	16 Jun. 2009	Grosz (no 14717/06) link	The applicant was arrested and deported during World War II Alleged violation of Art. 4 § 2 (the applicant was required to perform forced labour) Art. 6 § 1 and Art. 13 (lack of a fair hearing on account of the immunity of the German state and impossibility to obtain an adequate compensation)	Inadmissible, partly as incompatible *ratione temporis* (concerning the forced labour), and as manifestly ill-founded (the domestic courts' refusal to examine the applicant's complaint for the compensation on account of the rules concerning State immunity constituted a proportionate restriction to the right of access to a court)
France	16 Jun. 2009	Surjus (no 28663/08) link	Alleged violation of the right to a fair trial	Struck out of the list (friendly settlement reached)
Germany	16 Jun. 2009	Rambus INC. (no 40382/04) link	Alleged violation of Art. 6 and 1 of Prot. 1 (lack of a fair trial before the European Patent Organisation with regard to the applicant company's patent rights)	Inadmissible as manifestly ill-founded on account of no appearance of a violation of the Convention (application of the *Bosphorus* case law)
Hungary	16 Jun. 2009	Ujság (no 23532/05) link	Alleged violation of Art. 6 and 13 (unfairness and length of proceedings)	Struck out of the list (friendly settlement reached)
Hungary	16 Jun. 2009	Rigó (no 28082/05) link	Alleged violation of Art. 6 (length of criminal proceedings)	Idem.
Iceland	16 Jun. 2009	Benediktsdóttir (no. 38079/06) link	Alleged violation of Art. 8 (State's failure to provide the applicant with sufficient protection against unlawful publication of her private e-mails in the media)	Inadmissible as manifestly ill-founded (fair balance between the newspaper's freedom of expression and the applicant's right to respect for her private life)
Poland	16 Jun. 2009	Nawrocki (no.40548/06) link	Alleged violation of Art. 5 § 3 (excessive length of remand detention), Art. 8 (prohibition to maintain personal contact with the family) and unfairness and excessive length of criminal proceedings	Partly struck out of the list (unilateral declaration of the Government concerning the length of detention) Partly inadmissible as manifestly ill-founded (Art. 8) and for non exhaustion of domestic remedies (Art. 6)
Poland	16 Jun. 2009	Józef Oleksy (no. 1379/06) link	Alleged violation of Art. 6 §§ 1, 2 and 3 (b) (unfairness of lustration proceedings, infringement of the defence rights and of lack of equality of arms), Art. 13 (lack of an effective remedy) and Art. 14 (different treatment from another accused in criminal proceedings)	Inadmissible *ratione personae* as the applicant can no longer claim to be the victim: any defect that may have existed at the time has been rectified by the discontinuation of the lustration proceedings
Romania	16 Jun. 2009	Rădoi (no. 32596/06) link	Alleged violation of Art. 6 § 1 (length of proceedings related to heritage)	Struck out of the list (friendly settlement reached)
Romania	16 Jun. 2009	Țiburcă (no. 4292/03) link	Alleged violation of Art. 1 of Prot. 1 in conjunction with Art. 14 (the allowance awarded when the applicant retired from military had been unlawfully subjected to income tax), Art. 6 (unfairness of proceedings in regard to the alleged violations)	Idem.
Romania	16 Jun. 2009	Coțofan (no. 14219/03) link	Idem.	Idem.
Romania	16 Jun. 2009	Dominte (no. 27601/04) link	Idem.	Idem.
Romania	16 Jun. 2009	Roman and Costin (no. 6007/04) link	Alleged violation of Art. 6 § 1 (unfairness of the compensation proceedings), Art. 6 § 1 and 1 of Prot. 1 (non-enforcement of a decision in the	Inadmissible (no respect of the six month requirement)

			applicants' favour)	
Romania	16 Jun. 2009	Constantinescu and Others (no. 33605/03) link	Alleged violation of Art. 6 § 1 and Art. 1 of Prot. 1 (non-enforcement of a decision in the applicants' favour)	Inadmissible for an abuse of the right of application
Romania	16 Jun. 2009	Cosa (no. 17058/03) link	Idem.	Struck out of the list (applicant no longer wishing to pursue his application)
Russia	18 Jun. 2009	Budina (no. 45603/05) link	Alleged violation of Art. 3 on account of the fact that the applicant's pension was too small for survival	Inadmissible as manifestly ill-founded (no evidence before the Court to conclude that the level of pension and social benefits available to the applicant have been insufficient to protect her from damage to her physical or mental health or from a situation of degradation incompatible with human dignity)
Slovakia	16 Jun. 2009	V.C.. (no. 18968/07) link	The applicant is of Roma origin Alleged violation of Art. 3, 8, 12 on account of the applicant's sterilisation without her full and informed consent and lack of an effective investigation in that regard, Art. 13 (lack of an effective remedy) and Art. 14 in conjunction with Art. 3, 8, 12 (discrimination on grounds of race and sex)	Admissible (all complaints) References to the Commissioner's 2006 report, the ECRI's 2009 report
Slovenia	16 Jun. 2009	Bokan (no. 289/05; 2462/05 etc.) link	Alleged violation of Art. 6 § 1 (length of proceedings) and Art. 13 (lack of an effective remedy)	Struck out of the list (matter resolved at the domestic level : the applicants have since been in a position either to negotiate a settlement with the State Attorney's Office or, if that should be unsuccessful, to lodge a "claim for just satisfaction" in accordance with the relevant provisions of the 2006 Act)
Slovenia	16 Jun. 2009	Civic (no. 28108/05; 29279/05 etc.) link	Idem.	Idem.
Slovenia	16 Jun. 2009	Rozman (no. 1371/05; 10729/05 etc.) link	Idem.	Idem.
Slovenia	16 Jun. 2009	Skornik (no. 3469/06; 16392/06 etc.) link	Idem.	Idem.
Switzerland	18 Jun. 2009	Lebet and Others (no. 18061/03) link	Alleged violation of Art. 8 § 1 (violation of the right to home and the right for the protection of health on account of the construction of electricity lines next to the applicants' house), Art. 6 § 1 (lack of impartiality of the court)	Inadmissible for non exhaustion of domestic remedies
Sweden	16 Jun. 2009	A.M. and Others (no. 38813/08) link	Alleged violation of Art. 3 (risk to submitted to torture or killed if deported to Russia), Art. 8 (violation of the right to respect for social and family life if forced return to Russia), Art. 6 (unfairness of proceedings and deprivation of a fair hearing before the Migration Court), alleged violation of Art. 1 of Prot. 7	Inadmissible as manifestly ill-founded (lack of substantial grounds to believe in the existence of a real risk of being persecuted or tortured), no violation of Art. 8 (on account of the fact that the applicants are Russian nationals and have lived all their lives in Russia, except for the last four years), incompatible *ratione materiae* concerning Art. 6 (this provision does not apply to deportation proceedings) and

				Art. 1 of Prot. 7 (the applicants are not "lawfully residing" in Sweden)
the Netherlands	16 Jun. 2009	Osman Suleiman Mahmoud Abdullah (no. 9583/06) link	Alleged risk of being subjected to treatment in breach of Art. 3 if expelled to Sudan	Struck out of the list (matter resolved at the domestic level: the applicant was granted residence permit)
the Netherlands	16 Jun. 2009	Mol (no. 10470/07) link	Alleged violation of Art. 6 § 1 (length of proceedings) and Art. 13 (lack of an effective remedy)	Struck out of the list (unilateral declaration of the Government)
the United Kingdom	16 Jun. 2009	Shukla (no. 2526/07) link	Alleged violation of Art. 6 § 1 (absence of any detailed direction to the jury on adverse inferences)	Inadmissible as manifestly ill-founded (no appearance of violation of the Convention)
Turkey	16 Jun. 2009	Aydin (no. 34170/07) link	Alleged violation of Art. 5 § 3 (length of pre-trial detention), Art. 5 § 4 (lack of remedy to challenge the lawfulness of the detention), Art. 5 § 5 (lack of an enforceable right to compensation for the lengthy detention), Art. 6 § 1 (length and unfairness of criminal proceedings, lack of legal assistance while in police custody)	Partly adjourned (concerning the length of pre-trial detention and criminal proceedings, the applicant's rights to take proceedings to challenge the lawfulness of his detention and to have an enforceable right to compensation), partly inadmissible (concerning the remainder of the application)
Turkey	16 Jun. 2009	Neşet (no. 33099/04) link	Alleged violation of Art. 6 § 1 (deprivation of the right of access to a court)	Struck out of the list (applicant no longer wishing to pursue her application)
Turkey	16 Jun. 2009	Işik (no. 35224/05) link	Alleged violation of Art. 6, 13 and 14 (discrimination on account of the divergence in the case-law of the Court of Cassation)	Inadmissible as manifestly ill-founded (no appearance of violation of the Convention)

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 13 July 2009 : link
- on 20 July 2009 : link

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

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

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

Communicated cases published on 13 July 2009 on the Court's Website and selected by the NHRS Unit and the Office of the Commissioner for Human Rights

The batch of 13 July 2009 concerns the following States (some cases are however not selected in the table below): France, Germany, Greece, Italy, Latvia, Malta, Moldova, Poland, Romania, Russia, the Netherlands, Turkey and Ukraine.

State	Date of communication	Case Title	Key Words
France	22 Jun. 2009	K.Y. no. 14875/09	Alleged violation of Art. 3 – Risk to be submitted to ill-treatment if extradition to Russia – Alleged violation of Art. 13 – Lack of an effective remedy in respect of the asylum proceedings
France	22 Jun. 2009	M.V. and M.T. no. 17897/09	
Italy and Greece	23 Jun. 2009	Sharifi and others no. 16643/09	The applicants (32 Afghans, 2 Sudanese and 1 Eritrean, 10 of them being minors) are apparently detained in the retention centre of Patras (Greece) – Alleged violation of Art. 2 and 3 – Risk to the applicants' life or risk to be submitted to torture if extradition to the applicants' countries of origin – Ill-treatment by Italian and Greek police officers and conditions of detention in Patras – Alleged violation of Art. 13 – Lack of legal assistance and of a translator in Greece – Alleged violation of Art. 4 of Prot. 4 – Collective expulsion from Italy – Alleged violation of Art. 34 – Infringement of the right to individual petition before the Court due to lack of legal assistance
Latvia	22 Jun. 2009	Radiņš no. 31849/03	In particular alleged violation of Art. 3 – Conditions of detention in the Aizkraukle short-term detention unit – Alleged violation of Art. 3 of Prot. 1 – Infringement of the right to vote in the elections of the Latvian Parliament
Romania	22 Jun. 2009	Demian no 5614/05	In particular alleged violation of art. 3 – Conditions of detention and lack of adequate medical care in the penitentiary centre of Baia Mare and Gherla
Russia	26 Jun. 2009	Shchiborshch and Kuzmina no. 5269/08	Alleged violation of Art. 2 and 3 – Ill-treatment and death of the applicants' son due to excessive and unjustified use of police force when trying to place the applicant's son (victim), suffering from a psychiatric disorder, in hospital – Lack of an effective investigation – Alleged violation of Art. 13 – Lack of an effective remedy in respect of the above complaints
Russia	26 Jun. 2009	Zubkov no. 29431/05	Alleged violation of Art. 5 §§ 1, 2 and 3 – Unlawfulness of arrest – Alleged violation of Art. 6 § 1 – Excessive length of criminal proceedings and inaccurate assessment of evidence by the trial court – Alleged violation of Art. 8 § 1 – Interference with the right to respect for home and private life due to the video surveillance in the applicant's flat – Alleged violation of Art. 8 § 2 – Lack of legal basis of the interception of the applicant's telephone conversations and video surveillance in his flat
the Netherlands	24 Jun. 2009	Z.L. no. 33314/09	The applicant is an Afghan national whose request for asylum in the Netherlands was refused on the basis of Article 1F of the 1951 Geneva Convention relating to the Status of Refugees – Alleged violation of Art. 3 – Risk to be subjected to treatment contrary to this Article if expelled to Afghanistan – Alleged violation of Art. 6 – Refusal of the applicant's request for asylum on basis of Art. 1F of the above Convention, despite the fact that no related criminal proceedings have been brought against him in the Netherlands – Alleged violation of Art. 8 – Infringement of the applicant's right to respect for family life (all the applicant's relatives have Dutch nationality and legal residence in the Netherlands)
the Netherlands	22 Jun. 2009	Ramdhan no. 13837/07	Alleged violation of Art. 5 § 1 (e) – Unlawfulness of detention in psychiatric hospital – Alleged violation of Art. 5 § 4 – Lack of an effective procedure to challenge the above lawfulness – Alleged violation of Art. 5 § 5 – Lack of an effective and enforceable right to compensation for the applicant's detention – Alleged violation of Art. 6 – Lack of an effective defense due to the Regional Court's failure to inform the applicant about the request for an authorisation for observation
Turkey	24 Jun. 2009	Dbouba no. 15916/09	The applicant, is a Tunisian national and is currently being held in Gaziosmanpaşa Foreigners' Admission and Accommodation Centre in Kırklareli – Alleged violation of Art. 3 – Risk to be subjected torture and ill-treatment if expelled to Tunisia on account of the applicant's affiliation with Ennahda, an illegal organisation – Alleged violation of art. 5 § 1 (e) – Unlawfulness of detention – Alleged violation of Art. 5 § 2 – Lack of reasoning for the detention decision – Alleged violation of Art. 5 § 4 – Lack of remedy to challenge the lawfulness of the detention
Ukraine	24 Jun. 2009	Rozgon no. 26122/08	Alleged violation of Art. 6 – Unfairness and length of proceedings – Alleged violation of Art. 8, 9, 10 – Wrongful removal of the applicant's daughter from her custody on religious grounds and against her will, through an alleged abuse of

			power by the Head of the Childcare Service of the Dnipropetrovsk District State Administration – Interference by the authorities with the applicants' private and family life – Alleged violation of Art. 14 – Discrimination on religious grounds
Cases concerning Chechnya			
Russia	25 Jun. 2009	Avkhadova and Others no. 47215/07	Disappearance cases in Chechnya – Alleged violations in particular of Art. 2, 3, 5 and 13
Russia	26 Jun. 2009	Sagaipova and Others no. 332/08	
Russia	26 Jun. 2009	Kosumova no. 27441/07 and Others	

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

The batch of 20 July 2009 concerns the following States (some cases are however not selected in the table below): Austria, Azerbaijan, Belgium, Croatia, France, France and Greece, Lithuania, Moldova, Poland, Russia, Switzerland, the Netherlands, the United Kingdom and Turkey.

State	Date of communication	Case Title	Key Words
Croatia	01 Jul. 2009	Kačinari no. 61059/08	Alleged violation of Art. 2, 3 and 8 – State authorities' failure to comply with their positive obligations to protect the applicant's life and his right to respect of his private life – Alleged violation of Art. 13 – Lack of an effective remedy – Alleged violation of Art. 14 – Discrimination on the ground of ethnic origin (Albanian)
France and Greece	30 Jun. 2009	Xb. no. 44989/08	The applicant is of Somali origin and belongs to the Reer Baraawé clan. He alleges that he had been ill-treated by Greek police before being expelled to Somalia, where he was arrested and tortured. He managed to escape and return to France.
Moldova	30 Jun. 2009	Oprea and 3 other applications no. 38055/06	Alleged violation of Art. 3 – Lack of an adequate medical assistance in the Centre for Fighting Economic Crime and Corruption detention facility – Alleged violation of Art. 5 §§ 1, 3 and 4– Unlawfulness of pre-trial detention – Alleged violation of Art. 6 § 1 – Unfairness of proceedings See questions to the parties regarding the existence of a "systemic problem" concerning conditions of prison and medical care and treatment of prisoners (references to the relevant CPT reports, to the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment of February 2009 and to Court's judgments regarding Moldova).
Poland	30 Jun. 2009	Urban no. 23614/08	In particular alleged violation of Art. 6 § 1 – Lack of independence of the Constitutional Court – Alleged violation of Art. 14 – Discrimination on the ground of social origin
Russia	03 Jul. 2009	Galeyev no. 19316/09	Alleged violation of Art. 3 – Risk to be subjected to ill-treatment if extradited to Belarus – Alleged violation of Art. 5 §1 (f) – Unlawfulness of detention pending extradition
Russia	03 Jul. 2009	Khaydarov no. 21055/09	The applicant is a Tajikistani national and he is currently detained in a remand prison in Moscow – Alleged violation of Art. 3 – Risk to be subjected to ill-treatment if extradited to Tajikistan – Alleged violation of Art. 5 § 1 (f) – Unlawfulness of detention pending extradition – Alleged violation of Art. 5 § 4 – Lack of an effective remedy to challenge the lawfulness of the detention – Alleged violation of Art. 13 – Lack of an effective remedy in respect of possible ill-treatment in Tajikistan – Alleged violation of Art. 6 § 2 (presumption of innocence)
Russia	02 Jul. 2009	Kolyadenko and 3 other applications no. 17423/05	Alleged violation of Art. 2, 8 and 1 of Prot. 1 – Authorities' failure to comply with their positive obligations to take appropriate measures to protect the applicants' lives and property against natural hazards – Failure to take appropriate measures to mitigate the risk of floods – Damage suffered by their homes and property during the flood – Domestic courts' refusal to award them any compensation
Switzerland	03 Jul.	Perera	The applicants are Sri-Lanka nationals – Alleged violation of Art. 3 and 2

	2009	no. 18880/09	(Perera) – Risk to be executed or to be subjected to torture if expelled to Sri-Lanka
Switzerland	03 Jul. 2009	Polgasdeniya no. 14385/09	
the United Kingdom	01 Jul. 2009	B.S. no. 7935/09	The applicant is an Iranian national and lives in Cardiff According to the statement of facts, on 20 December 2008, the applicant lodged an application before the Court and requested an interim measure to prevent her expulsion. The applicant and her son were taken into immigration detention on 31 March 2009, pending their removal to Greece which was set for 3 April 2009. On 2 April 2009, the President of the Chamber decided to apply Rule 39 of the Rules of Court and indicated to the Government of the United Kingdom that the applicant should not be expelled until further notice. The applicant and her son were released from immigration detention following the application of Rule 39 by the Court. – Alleged violation of Art. 3 – The applicant's removal to Greece would amount to violations of Art. 3 and 8
the United Kingdom	01 Jul. 2009	Murisho no. 44048/07 JMB no. 44048/07	Alleged violation of Art. 8 – Interference with the applicants' right to respect for their private and family life on account of the first applicant's deportation to Uganda
<u>Case concerning Chechnya</u>			
Russia	02 Jul. 2009	Yakhikhanov no. 61434/08	Alleged violation of Art. 2, 5, 6 and 13 – Killing of the applicants' father and lack of effective domestic remedies

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

New procedures produce first decisions 146 Single Judge decisions adopted (10.07.09)

Following the decisions taken at the Madrid Ministerial session in May (see Press Release No.391a09), the Court is able to make use of certain procedures provided for in Protocol No. 14 to the European Convention on Human Rights, which has been ratified by 46 out of the 47 member States of the Council of Europe but cannot enter into force fully until the last State ratifies.

Under these procedures, which are intended to help the Court cope with its heavy caseload, the number of Judges dealing with certain categories of straightforward cases is modified. A single Judge is empowered to reject clearly inadmissible applications as opposed to a three Judge Committee under the present Convention. Furthermore, a three Judge Committee will be entitled to declare admissible and give judgment in cases which are plainly well-founded because the particular issue in the country concerned has already been dealt with by the Court. Before, only Chambers (seven Judges) or the Grand Chamber (seventeen judges) could declare cases admissible and render judgments.

These procedures will only be available in respect of countries which have accepted them either by ratifying Protocol No. 14 bis (adopted in Madrid) or by entering a declaration agreeing to the provisional application of Protocol No. 14.

This week the first decisions have been taken under the single Judge procedure.

On 7 July, decisions were taken concerning: 41 applications against the United Kingdom; 76 applications against Germany; 17 applications against the Netherlands; and, 1 against Denmark. On 10 July decisions were taken concerning: 8 applications against Switzerland; and, 3 applications against Norway.

The other countries which have accepted the new procedures are Luxembourg with immediate effect and Ireland, from 1 October 2009, Monaco and Slovenia, from 1 November 2009.

Addendum to the Rules of Court (09.07.09)

An addendum to the Rules of Court relating to the provisional application of certain procedures in Protocol No. 14 entered into force on 1 July 2009. Press Release, read the Addendum

Relinquishment of jurisdiction in favour of the Grand Chamber (21.07.09)

The Chamber to which the case of A, B and C v. Ireland had been allocated has relinquished jurisdiction in favour of the Grand Chamber. The applicants, all three of whom live in Ireland, travelled to the United Kingdom to have an abortion. They complain about the restrictions on the possibility of abortion in Ireland. The Court will hold a hearing in the case on 9 December 2009.

Visit by the President of Slovenia (06.07.09)

On 6 July 2009 Danilo Türk, President of Slovenia, visited the Court and met President Costa. Boštjan Zupančič, the judge elected in respect of Slovenia, and Erik Fribergh, Registrar, took also part in this meeting.

Visit by the President of Croatia (07.07.09)

On 7 July 2009 Stjepan Mesić, President of Croatia, visited the Court and met President Costa. Nina Vajić, the judge elected in respect of Croatia, and Erik Fribergh, Registrar, also attended this meeting.

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 15 to 16 September 2009 (the 1065th meeting of the Ministers' deputies).
See the Preliminary list of items for consideration

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)

CM/ResChS(2009)6E / 08 July 2009 : European Social Charter - European Committee of Social Rights (ECSR) - Election of a member (Adopted by the Committee of Ministers on 8 July 2009 at the 1063rd meeting of the Ministers' Deputies)

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

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

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

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C. European Commission against Racism and Intolerance (ECRI)

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

CM/ResCMN(2009)5E / 08 July 2009 : Resolution on the implementation of the Framework Convention for the Protection of National Minorities by Albania (Adopted by the Committee of Ministers on 8 July 2009 at the 1063rd meeting of the Ministers' Deputies)

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)

MONEYVAL Evaluator Training Seminar (13.07.09)

MONEYVAL held an evaluator training seminar on 6 - 10 July 2009. The seminar, which was held in San Marino, was attended by 31 delegates from 24 different countries. In addition to delegates from 19 MONEYVAL countries there were also delegates from Austria, France, the Netherlands and Switzerland as well as a representative from the GIABA Secretariat (Inter Governmental Action Group against Money Laundering in West Africa). The San Marino authorities made a generous contribution to the costs of the seminar. The purpose of the seminar was to train future evaluators in anticipation of the commencement of the 4th Round of mutual evaluations by MONEYVAL. The seminar consisted of a number of presentations by international experts, including representatives of International Monetary Fund (IMF) and the World Bank. The learning was consolidated by participation in a number of worked exercises and case studies. The materials used were based on training materials prepared by FATF, the IMF and the World Bank as well as material prepared by MONEYVAL.

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

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

Part IV : The intergovernmental work

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

Slovenia ratified on 7 July 2009 Protocol No. 14bis to the Convention for the Protection of Human Rights and Fundamental Freedoms (CETS No. 204).

Austria signed on 7 July 2009 Protocol No. 14bis to the Convention for the Protection of Human Rights and Fundamental Freedoms (CETS No. 204).

Luxembourg signed on 7 July 2009 the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201).

Iceland signed on 7 July 2009 the Additional Protocol to the Convention on Human Rights and Biomedicine concerning Genetic Testing for Health Purposes (CETS No. 203), and also signed without reservation as to ratification Protocol No. 14bis to the Convention for the Protection of Human Rights and Fundamental Freedoms (CETS No. 204).

Norway signed and approved on 9 July 2009 the European Convention on Cinematographic Co-production (ETS No. 147).

Romania ratified on 16 July 2009 the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xénophobic nature committed through computer systems (ETS No. 189).

The **United Kingdom** ratified on 17 July 2009 the Additional Protocol to the Convention on the Transfer of Sentenced Persons (ETS No. 167).

B. Recommendations and Resolutions adopted by the Committee of Ministers

CM/Rec(2009)6E / 08 July 2009

Recommendation of the Committee of Ministers to member states on ageing and disability in the 21st century: sustainable frameworks to enable greater quality of life in an inclusive society (Adopted by the Committee of Ministers on 8 July 2009 at the 1063rd meeting of the Ministers' Deputies)

CM/Rec(2009)5E / 08 July 2009

Recommendation of the Committee of Ministers to member states on measures to protect children against harmful content and behaviour and to promote their active participation in the new information and communications environment (Adopted by the Committee of Ministers on 8 July 2009 at the 1063rd meeting of the Ministers' Deputies)

C. Other news of the Committee of Ministers

Assassination of Natalia Estemirova: Statement by Samuel Žbogar, Minister of Foreign Affairs of Slovenia and Chairman of the Committee of Ministers (16.07.09)

I have learned with deep regret that Natalia Estemirova, a prominent human rights activist of the NGO “Memorial”, was assassinated on 15 July 2009. I strongly condemn this criminal act and call upon the Russian authorities to promptly investigate the murder and bring the assassins and their instigators to justice.I share the grief of the family of Ms Estemirova and her friends at “Memorial”.

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*

Bulgarian elections generally in line with standards, but more efforts needed (06.07.09)

The 5 July 2009 parliamentary elections in Bulgaria were generally in accordance with international standards, but further efforts are necessary to ensure the integrity of the election process and increase public confidence, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the PACE concluded in a joint statement released today.

The observers noted that the elections provided voters a broad choice in a visible and active election campaign demonstrating respect for fundamental freedoms. But late changes to the election system, concerns about the effectiveness of law enforcement and the judiciary, as well as pervasive and persistent allegations of vote-buying, negatively affected the election environment.

“These elections were competitive and generally well run. But concrete measures are now needed to ensure full public confidence in the process, and particularly to eliminate electoral malpractices and strengthen the legal system,” said Ambassador Colin Munro, Head of the OSCE/ODIHR limited election observation mission.

“Despite grave imperfections linked to last minute changes in the electoral legislation and repeated allegations of vote buying that surrounded the 5 July elections, I am hopeful that Bulgaria will put the existing problems to rest and will fully justify its membership in the community of democratic values,” said Tadeusz Iwinski, Head of the PACE delegation.

The observers said election day overall appeared to proceed in a calm and orderly manner, although there were reported cases of attempted fraud involving absentee voting.

The full statement of preliminary findings and conclusions is available on the OSCE website at www.osce.org/odihr and the PACE website at http://assembly.coe.int/

Monitoring visit by PACE co-rapporteurs to Montenegro (07.07.09)

In the context of the monitoring procedure relating to Montenegro's honouring of its obligations and commitments, Jean-Charles Gardetto (Monaco, EPP/CD) and Serhiy Holovaty (Ukraine, ALDE), co-rapporteurs of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe (PACE), started on the 7 July a fact-finding visit to Podgorica, during which they were due to meet the President of the Republic, Prime Minister, Speaker of Parliament, Minister of Foreign Affairs, Minister of the Interior and Minister of Justice. Discussions were also scheduled with the President of the Supreme Court, the Supreme State Prosecutor and representatives of political parties, NGOs and the media.

Ukraine: new law on presidential election should be in line with Council of Europe recommendations (08.07.09)

The co-rapporteurs of the Parliamentary Assembly of the Council of Europe (PACE) for the monitoring of Ukraine, Renate Wohlwend (Liechtenstein, EPP/CD) and Sabine Leutheusser-Schnarrenberger (Germany, ALDE), have called on the Ukrainian parliament to pass a law on the presidential election which takes fully account of Council of Europe recommendations.

Draft law No. 4741 on the presidential election is currently under discussion in the Verkhovna Rada, which was due to decide on it on 9 July 2009.

"We believe that this law is crucial for the democratic electoral process," said the co-rapporteurs. "But it should be the subject of an in-depth reflection and public debate and take fully into account the existing recommendations of PACE and of the Venice Commission in this matter."

"PACE and the Venice Commission remain available to assist in ensuring that the draft law will be in line with Council of Europe standards of democracy and human rights," they concluded.

Ukraine: call for better implementation of judgments of the Court (09.07.09)

Christos Pourgourides (Cyprus, EPP/CD), rapporteur of the Parliamentary Assembly of the Council of Europe (PACE) on the implementation of judgments of the European Court of Human Rights, has ended a two-day visit to Kiev (8-9 July 2009) with a call for greater domestic parliamentary supervision to ensure Ukraine implements judgments of the Court.

The Rapporteur obtained assurances that Parliament will now take a more pro-active approach in supervising the Strasbourg Court's judgments, and that long overdue structural changes in the legal and justice system are now being finalised. During the rapporteur's visit, a Memorandum of Understanding was signed as regards regular parliamentary supervision of the Strasbourg Court's judgments.

Mr Pourgourides stressed that "party politics should be kept out of the judicial system", that there is an urgent need to resolve the unacceptable situation in which domestic Courts' decisions remain unenforced, and that additional resources must be made available to the judiciary.

During the visit, the rapporteur met the Minister of Justice, the Prosecutor General, judges of the Supreme Court, as well as a number of other officials, to discuss problems with implementation of the Court's judgments.

This is the second in a series of visits aimed at applying parliamentary pressure on states where delays or difficulties in implementing Court judgments have arisen. The rapporteur has previously undertaken a visit to Bulgaria, and will later travel to Greece, Italy, Moldova, Romania, the Russian Federation and Turkey.

May 2008 memorandum listing outstanding issues for Ukraine (PDF)

Freedom of assembly in Georgia: co-rapporteurs welcome pledge to seek Council of Europe advice (13.07.09)

The co-rapporteurs for Georgia of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe (PACE), Mátyás Eörsi (Hungary, ALDE) and Kastriot Islami (Albania, SOC), have welcomed the statement by the Speaker of the Georgian Parliament, David Bakradze, that the draft amendments to the laws on rallies, police and administrative offences will be submitted to the Venice Commission to ensure their compliance with Council of Europe standards of democracy and human rights. These draft amendments are currently under discussion in the Georgian parliament and were adopted in a first reading on 11 July 2009.

"Freedom of assembly and expression are crucial for democracy. It is thus essential that any amendments to these laws are in conformity with European standards," the co-rapporteurs said.

PACE President concludes official visit to Italy (13.07.09)

Lluís Maria de Puig, President of the Parliamentary Assembly of the Council of Europe (PACE), made an official visit to Italy on 16 and 17 July, during which he was due to meet the President of the Republic Giorgio Napolitano, the Speaker of the Chamber of Deputies Gianfranco Fini, the Vice-President of the Senate Vannino Chiti, the Minister for Relations with the Regions Raffaele Fitto, and the members of the Italian delegation to PACE. Mr de Puig also had a meeting at the Vatican with the Secretary for Relations with States, Dominique Mamberti.

This visit was the opportunity to inform the Italian authorities of recent and forthcoming developments in the work of the Parliamentary Assembly and to exchange views on topical international political issues.

- *Themes*

PACE shocked by murder of Natalia Estemirova (16.07.09)

Following the brutal murder of Natasha Estemirova, a highly respected human rights defender and head of the Human Rights Center "Memorial" in Grozny (Chechnya), the President of the Parliamentary Assembly of the Council of Europe (PACE), Lluís Maria de Puig, and parliamentary rapporteurs (*) today expressed their shock and dismay, urging the authorities to hold to account not only the direct perpetrators, but also the instigators and organisers of this heinous crime.

"This is one murder of a human rights defender too many - the Russian authorities in Moscow, at the highest level, must at last take decisive action to rein in the lawlessness in Chechnya and the whole North Caucasus region and protect those who stand up for the rights of their fellow citizens, as a matter of national responsibility", they said.

"Natasha Estemirova was invited only recently to speak before the Committee on Legal Affairs and Human Rights at its next meeting on 11 September 2009, at a hearing on the human rights situation in the region which will focus on the problem of impunity. She will be sorely missed", they added.

"Mrs Estemirova had been collecting information on serious human rights violations in the region in recent weeks. She has paid with her life for this courageous work", they concluded.

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

A. Country work

Moldova: "Ill-treatment and police brutality should be stamped out" says Commissioner Hammarberg in his report (17.07.09)

"The violations of the prohibition against ill-treatment, which surfaced so acutely after the post-electoral demonstrations of 6-7 April, must be tackled head-on to restore a climate of confidence. Decisive action should be taken to enforce a firm attitude of 'zero tolerance' of ill-treatment throughout the criminal justice system" said the Council of Europe's Commissioner for Human Rights on publishing today his report on the visit to Moldova.

"It is clear that there is a need to review not only the behaviour of individual police officers, but also the responsibility of their superiors" says Commissioner Hammarberg. "Full clarity must be established on this breakdown of professionalism and respect for basic standards. I hope that the resolve expressed by the Moldovan authorities to overcome this problem and ensure accountability will be followed by concrete, resolute and sustained action."

Furthermore, Commissioner Hammarberg stresses that "prosecutors, judges, senior police officers and lawyers should be attentive to allegations or signs of possible ill-treatment, and there needs to be proper screening, recording and reporting of injuries in police detention facilities."

The Commissioner finds that pressure put upon media and non-governmental organisations involved in reporting on allegations of human rights violations is unacceptable. "Free expression and information should be protected, including in times of crisis. At the same time, media professionals should make a special effort to adhere to professional and ethical standards."

Finally, Commissioner Hammarberg recommends that thorough and comprehensive inquiries be carried out into the events. "Apart from clarifying the issues relating to the elections themselves, it is essential that the developments during the demonstrations, including the violent acts and the failed riot control measures be investigated. There needs to be a prompt follow-up to the human rights violations, in particular the numerous instances of ill-treatment by the police. The inquiries must be independent, impartial, transparent and perceived as credible by the people of Moldova."

The report is based on the findings of a visit to Moldova carried out by the Commissioner on 25-28 April 2009. It is available, together with the government's comments, on the Commissioner's website.

Read the Report

Read in Russian (.pdf or .doc)

B. Thematic work

"States should put an end to Roma statelessness" says Commissioner Hammarberg (06.07.09)

"States should employ all possible means to end the statelessness of Roma and provide them with a nationality" said the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, releasing his Viewpoint today.

"There are Roma in a number of European countries who have no nationality and live outside social protection. They face a double jeopardy as being stateless makes life even harder for those who are already stigmatized and facing a plethora of serious, discrimination-related problems. For those who happen to be migrants as well, their situation is even worse. "

Read the Viewpoint

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

Killing of Natalia Estemirova - Statement by Council of Europe Human Rights Commissioner Thomas Hammarberg (15.07.09)

The brutal assassination of Natalia Estemirova was a horrible and cowardly crime and an attack against fundamental human rights principles. A determined and effective response is now required.

Mrs Estemirova was abducted Wednesday morning in Grozny, Chechnya. She was pushed into a car by several assailants as she left her apartment at around 08.30 AM.

Some hours later her dead body was found in Ingushetia, in a forest near Nazran. According to the information received, she was killed by a headshot.

Natalia Estemirova was one of the leading members of the Memorial HRC in the North Caucasus and had received several international awards for human rights protection in Chechen Republic. In particular, she was the first winner of the Anna Politkovskaya Award in 2007.

I express my deep condolences to the family and colleagues of Mrs Estemirova and urge the Russian authorities to carry out an immediate, thorough and impartial investigation with a view to ensuring the criminal accountability and punishment of the perpetrators, in line with the European Convention on Human Rights and with the Committee of Ministers Declaration on Human Rights Defenders.

The killing of Mrs Estemirova is a reminder that much stronger actions are needed to protect activist members of human rights organisations.

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

C. Miscellaneous (newsletter, agenda…)

The Office of the Commissioner for Human Rights publishes a regular electronic newsletter. Read the latest issue: No.28 / 31 July 2009.