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LEGAL AND HUMAN RIGHTS CAPACITY BUILDING DEPARTMENT

LEGISLATIVE SUPPORT AND NATIONAL HUMAN RIGHTS STRUCTURES DIVISION

**National Human Rights Structures Unit**

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

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"Promoting independent national non-judicial mechanisms for the protection of human rights, especially for the prevention of torture"

("Peer-to-Peer II Project")

**Joint European Union – Council of Europe Programme**

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

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## Introduction

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

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

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

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

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

**The preparation of the RSIF is funded under the so-called Peer-to-Peer II Project, a European Union – Council of Europe Joint Project entitled "Promoting independent national non-judicial mechanisms for the protection of human rights, especially the prevention of torture".**

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

We invite you to read the INFORMATION NOTE No. 128 (provisional version) on the Court's case-law. This information note, compiled by the Registry's Case-Law Information and Publications Division, contains summaries of cases which the Jurisconsult, the Section Registrars and the Head of the aforementioned Division examined in March 2010 and sorted out as being of particular interest.

## A. Judgments

### 1. Judgments deemed of particular interest to NHRSs

The judgments presented under this heading are the ones for which a separate press release is issued by the Registry of the Court as well as other judgments considered relevant for the work of the NHRSs. They correspond also to the themes addressed in the Peer-to-Peer Workshops. The judgments are thematically grouped. The information, except for the comments drafted by the NHRS Unit, is based on the press releases of the Registry of the Court.

Some judgments are only available in French.

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

**Note on the Importance Level**:

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

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

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

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

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

- **Grand Chamber judgments**

**Depalle v. France (no. 34044/02) (link to judgment in French) and Brosset-Triboulet and Others v. France (no. 34078/02) (link to judgment in French) (Importance 1) – 29 March 2010 – No violation of Article 1 of Protocol No. 1 – The demolition of the houses, owned by the applicants and falling within the category of 'maritime public property', was justified by the growing need to protect coastal areas and their use by the public**

In the first case Louis Depalle and his wife purchased in 1960 a dwelling house in the municipality of Arradon (the Morbihan department), built on land on the seashore falling within the category of maritime public property. At the time of the purchase, occupancy of the public land was authorised by a decision of the Prefect of Morbihan that had been made in favour of the former occupants in consideration of payment of a charge, which was regularly renewed, by a prefectural decision in favour of the applicant and his wife, until 31 December 1992. The prefectural decisions specified that the authorities reserved the right to modify or withdraw the authorisation should they deem it necessary, on any ground whatsoever, and without compensation. The decisions also stated that the applicant and his wife had to, if required by the relevant authority, restore the site to its original state.

For centuries French law has provided that maritime public property cannot be appropriated for private ends (it is inalienable and not subject to limitations). In September 1993 the Prefect of Morbihan refused to renew the authorisation to occupy public property following the entry into force of the January 1986 of the Coastal Areas Act. However he offered Mr and Mrs Depalle the possibility of signing an agreement with the State authorising them to remain on the site for their lifetime, on condition that they did not undertake any works other than maintenance. The agreement prohibited the sale or transfer of the land and house to third parties.

The second case concerns similar facts. In 1945 the applicants' mother had acquired a dwelling house in the municipality of Arradon falling within the category of maritime public property. The successive occupants of the plot of land had been granted authorisation by the prefect to occupy the site and this had been systematically renewed since 25 September 1909. The last decision authorising occupancy, which had been granted to the applicants' mother, had expired on 31 December 1990. In September 1993, on account of the entry into force of the Coastal Areas Act, the Prefect of Morbihan refused to renew authorisation to occupy the site and offered to enter into an agreement with the applicants' mother on the same lines as had been proposed to Mr and Mrs Depalle.

In both cases the applicants rejected the Prefect's proposals and, following the Prefect's refusal to simply renew the decisions authorising occupation of public property, sought judicial review of the Prefect's decision in the Rennes Administrative Court. The Prefect, for his part brought proceedings against them before the same court for unlawful interference with the highway and sought an order against them to restore the seashore at their own expense and without prior compensation. After the Rennes Administrative Court and the Nantes Administrative Court of Appeal had ruled in favour of the authorities, the *Conseil d'État* adopted a judgment in March 2002 in both cases in which it found that the properties in question did indeed fall within the category of maritime public property, that the applicants could not therefore rely on any real property right over those dwellings and that, accordingly, the obligation to restore the properties to their original state without compensation was not a measure prohibited by Article 1 of Protocol No. 1. The houses have not yet been demolished to date.

The applicants submitted that the obligation imposed on them to demolish the houses at their own expense and without compensation was not compatible with their rights under Article 1 of Protocol No. 1 and of Article 8. The applications were lodged with the Court in September 2002. On 25 September 2008 the Chamber to which the cases had been allocated relinquished jurisdiction in favour of the Grand Chamber under Article 30 of the Convention.

Article 1 of Protocol No. 1

The Court accepted that the applicants owned "possessions" within the meaning of Article 1 of Protocol No. 1. Whilst the authorisations to occupy public property had not given them real property rights over public property, the time that had elapsed had had the effect of vesting in them a proprietary interest in peaceful enjoyment of the house. On the merits, the Court reiterated that the Convention recognised the right of Contracting States to control the use of property in accordance with the general interest, on condition that the right of property was respected. In these cases the non-renewal of decisions authorising occupancy of public property and the orders to demolish the houses could be seen as representing control over the use of property in accordance with the general interest of promoting free access to the shore. The role of the Court was to ensure that a "fair balance" was achieved between the demands of the general interest of the community and those of the applicants, who wanted to keep their house. In determining whether this requirement was met, the Court recognised that the State enjoyed a wide discretion in its decision-making, particularly in a case, like the present one, concerning regional planning and environmental conservation policies where the community's general interest was pre-eminent. The Court held, that the applicants could not justifiably claim that the authorities' responsibility for the uncertainty regarding the status of their houses had increased with the passage of time. On the contrary, they had always known that the decisions authorising occupation of the public property were precarious and revocable. The tolerance shown towards them by the State did not alter that fact. The applicants, who maintained that the houses were part of the national heritage and did not in any way impede access to the shore, were not justified in claiming that the measures imposed on them ran counter to the general interest. The Court reiterated that it was first and foremost for the national authorities to decide which type of measures should be imposed to protect coastal areas. The Court noted that after such a long period of time demolition would amount to a radical interference with the applicants' "possessions". However, this was part and parcel of a consistent and rigorous application of the law given the growing need to protect coastal areas and their use by the public, and also to ensure compliance with planning regulations. The Court noted further that the applicants had refused the Prefect's proposals to continue enjoying the houses subject to conditions. Those proposals, which did not appear unreasonable, could have provided a solution reconciling the competing interests. The Court added that the lack of compensation could not be regarded as a disproportionate measure used to control the use of the applicants' properties,

carried out in pursuit of the general interest. The principle that no compensation was payable, which originated in the rules governing public property, had been clearly stated in every decision authorising temporary occupancy of the public property issued to the applicants over decades. The Court held that the applicants would not bear an individual and excessive burden in the event of demolition of their houses without compensation. Accordingly, the balance between the interests of the community and those of the applicants would not be upset. The Court held, by thirteen votes to four, that there had not been a violation of Article 1 of Protocol No. 1. In both judgments Judge Casadevall expressed a concurring opinion; Judges Bratza, Vajić, Björgvinsson and Kalaydjieva a joint partly dissenting opinion; and Judge Kovler a partly dissenting opinion.

**Medvedyev and Others v. France (no 3394/03) (Importance 1) (link to judgment in French) – 29 March 2010 – Violation of Article 5 § 1 – Unlawful deprivation of liberty on account of the lack of a sound legal basis to satisfy the general principle of legal certainty – No violation of Article 5 § 3 – The period of eight or nine hours was compatible with the concept of "brought promptly" before a judge enshrined in Article 5 § 3**

The nine applicants were crew-members of a cargo vessel named the Winner. In June 2002 the French authorities requested authorisation to intercept the Winner, which was registered in Cambodia, as it was suspected of carrying significant quantities of narcotics for distribution in Europe. In a diplomatic note dated June 2002 Cambodia consented to the intervention of the French authorities. The French Navy apprehended the vessel off the shores of Cap Verde and the crew was confined to their quarters on board under French military guard. On their arrival in Brest on 26 June 2002, 13 days later, the applicants were taken into police custody and were brought before investigating judges the same day. On 28 and 29 June they were charged and remanded in custody. On conclusion of the criminal proceedings against the applicants, three of them were found guilty of conspiracy to illegally attempt to import narcotics and received sentences ranging from three to 20 years' imprisonment. The other six applicants were acquitted.

The applicants complained that they had been deprived of their liberty unlawfully, particularly in the light of international law, as the French authorities had not had jurisdiction in that regard; they further complained that it had taken too long to bring them before "a judge or other officer authorised by law to exercise judicial power" within the meaning of that provision.

Article 1

The Court had established in its case-law that the responsibility of a State Party to the Convention on could arise in an area outside its national territory when as a consequence of military action it exercised effective control of that area, or in cases involving the activities of its diplomatic or consular agents abroad and on board aircraft and ships registered in, or flying the flag of, the State concerned. France had exercised full and exclusive control over the Winner and its crew, at least *de facto*, from the time of its interception, in a continuous and uninterrupted manner. Besides the interception of the Winner by the French Navy, its rerouting had been ordered by the French authorities, and the crew had remained under the control of the French military throughout the voyage to Brest. Accordingly, the applicants had been effectively within France's jurisdiction for the purposes of Article 1.

Article 5 § 1

The Court noted that the applicants had been under the control of the special military forces and deprived of their liberty throughout the voyage, as the ship's course had been imposed by the French military. The Court therefore considered that their situation after the ship was boarded had amounted to a deprivation of liberty within the meaning of Article 5. The Court was fully aware of the need to combat international drug trafficking and could see why States were so firm in that regard. However, it took the view that this could not justify the creation of an area outside the law. It was not disputed that the purpose of the deprivation of liberty to which the applicants were subjected while the vessel was being escorted to France had been to bring them "before the competent legal authority" within the meaning of Article 5 § 1 (c). However, the intervention of the French authorities could not, as the Government contended, be justified on the basis of the Montego Bay Convention or under international customary law. Nor were there grounds for French law to be applied, as Cambodia was not a party to the conventions transposed into domestic law, in particular the Vienna Convention, and the Winner had not been flying the French flag. Cambodia nevertheless had the right to engage in cooperation with other countries outside the framework of the international conventions; the diplomatic note issued by the Cambodian authorities on 7 June 2002 constituted an ad hoc agreement authorising the interception of the Winner, but not the detention of the crew members and their transfer to France, which were not covered by the note. The fact that the French authorities had intervened on the basis of this exceptional cooperation measure – added to the fact that Cambodia had not ratified the relevant conventions and that no current and long-standing practice existed between Cambodia and France in the battle against drug trafficking at sea – meant that their

intervention could not be said to have been "clearly defined" and foreseeable. It was regrettable that the international effort to combat drug trafficking on the high seas was not better coordinated, bearing in mind the increasingly global dimension of the problem. For States that were not parties to the Montego Bay and Vienna Conventions one solution might be to conclude bilateral or multilateral agreements, like the San José agreement of 2003, with other States. Developments in public international law which embraced the principle that all States had jurisdiction whatever the flag State, in line with what already existed in respect of piracy, would be a significant step forward. Accordingly, the deprivation of liberty to which the applicants had been subjected between the boarding of their ship and its arrival in Brest had not been "lawful", for lack of a legal basis of the requisite quality to satisfy the general principle of legal certainty. The Court held by ten votes to seven that there had been a violation of Article 5 § 1.

Article 5 § 3

The Court reiterated that Article 5 was in the first rank of the fundamental rights that protected the physical security of an individual, and that three strands in particular could be identified as running through the Court's case-law: strict interpretation of the exceptions, the lawfulness of the detention and the promptness or speediness of the judicial controls, which must be automatic and must be carried out by a judicial officer offering the requisite guarantees of independence from the executive and the parties and with the power to order release after reviewing whether or not the detention was justified. While the Court had already noted that terrorist offences presented the authorities with special problems that did not give them carte blanche to place suspects in police custody, free from effective control. The same applied to the fight against drug trafficking on the high seas. In this case the applicants had been brought before the investigating judges – who could certainly be described as "judge[s] or other officer[s] authorised by law to exercise judicial power" within the meaning of Article 5 § 3 – 13 days after their arrest on the high seas (the Court regretted the fact that the Government had not submitted substantiated information concerning the presentation of the applicants to the investigating judges until the Grand Chamber stage). At the time of its interception the Winner had been off the coast of the Cape Verde islands, and therefore a long way from the French coast. There was nothing to indicate that it had taken any longer than necessary to escort it to France, particularly in view of the weather conditions and the poor state of repair of the vessel, which made it impossible for it to travel any faster. In view of these "wholly exceptional circumstances", it had been materially impossible to bring the applicants before the investigating judges any sooner, bearing in mind that they had been brought before them eight or nine hours after their arrival, a period which was compatible with the requirements of Article 5 § 3. The Court therefore held by nine votes to eight that there had been no violation of Article 5 § 3. Judges Costa, Casadevall, Bîrsan, Garlicki, Hajiyev, Šikuta and Nicolaou expressed a joint partly dissenting opinion, as did Judges Tulkens, Bonello, Zupančič, Fura, Spielmann, Tsotsoria, Power and Poalelungi.

- **Conditions of detention / Ill-treatment / Risk of being subjected to ill-treatment**

**Klein v. Russia (no. 24268/08) (Importance 2) – 1 April 2010 – Violation of Article 3 – Effecting the extradition order to Colombia would breach Article 3 of the Convention**

The applicant, an Israeli national, is currently detained in remand prison IZ-77/4 in Moscow. In 2001, the Colombian criminal courts convicted him of teaching military and terrorist tactics, committed together with accomplices, and sentenced him to ten years and eight months' imprisonment combined with a fine. In August 2007, the applicant was arrested at Domodedovo Airport, Moscow, on the basis of an Interpol notice for his arrest with a view to extraditing him to Colombia. The Interpol notice was issued following an arrest order handed down by the Colombian courts. Mr Klein was then placed in custody until his transfer to Colombia. In August 2007 the federal newspaper "Rossiyskaya Gazeta" published an article entitled "The Mafia's Teacher Awaits Extradition" which reported that, having learned of the arrest of the applicant, the Vice-President of Colombia had stated that 'it should be ensured that this gentleman rot in jail for his participation in the training of armed groups'. Following assurances given in October 2007 by the Colombian Government to the Russian authorities to the effect that Mr Klein would not be given the death penalty or ill-treated and would be indicted only in respect of the acts mentioned in the extradition request, the Prosecutor General of Russia ordered his extradition to Colombia in January 2008. Mr Klein appealed before the Russian courts referring, among other things, to the wide-spread human rights violations in Colombia resulting from the decades-long civil war. He also alleged that the Colombian Government's guarantees were not sufficient given in particular the Vice-President's statement in his regard. His appeals were dismissed on the basis of the diplomatic assurances given by the Colombian Government, the fact that the applicant was not convicted for political reasons, that the Colombian Vice-president was not a hierarchical superior of the judiciary and that Mr Klein's acts were punishable also under Russian law. On 26 May 2008 the applicant requested the Court, under Rule 39 of the Rules of Court, to prevent his

expulsion to Colombia because of a serious risk that he will be ill-treated there. On 27 May 2008 the Court indicated to the Russian Government under Rule 39 that the applicant should not be extradited to Colombia until further notice.

The applicant complained that if extradited to Colombia, he would most probably be ill-treated and would face an unfair trial. He also alleged that he did not have an effective remedy under Russian law to complain of the risk of ill-treatment in Colombia.

The Court recalled that, as it had found in its earlier case law, in order to determine whether there was a risk of ill-treatment in a receiving country, it had to examine the foreseeable consequences of sending the applicant to it, bearing in mind the general situation there and his personal circumstances. Mr Klein feared ill-treatment, on the one hand, because of the poor general human rights situation in Colombia and, on the other hand, because he thought he personally was at a greater risk as a result of the Colombian Vice-President's statement to the media threatening to have the applicant "rot in jail". Considering the general political climate in Colombia, the Court compared the Colombian Government's submission that human rights were respected there with reports provided by the United Nations High Commissioner for Human Rights and the United States Department of State. Those reports alerted that many human right violations had taken place in Colombia in the recent past, such as extrajudicial killings, forced disappearances and arbitrary detentions of which representatives of the State had been suspected. The Court also noted the United Nations Committee Against Torture's had expressed concerns that people suspected of terrorism and illegal armed activities risked torture in Colombia. Consequently, in view of the findings of those reliable sources, the overall human rights situation in Colombia was far from perfect. As regards the personal situation of Mr Klein, the Court found that the Vice-President's statement to have him "rot in jail" could be regarded as an indication that the applicant ran a serious risk of being ill-treated while in detention in Colombia. In addition, the Colombian Government's assurances had been rather vague and in any event insufficient to ensure adequate protection against the risk of Mr Klein's ill-treatment when contrasted with the different reports by international sources. Finally, the Court noted that the Russian courts had not duly addressed Mr Klein's concerns about him being ill-treated in Colombia. In fact, they had limited their assessment of the situation to a mere observation that, notwithstanding the Vice-President's statement in respect of the applicant, the Colombian judiciary were independent from the executive branch of power and thus could not be affected by the statement in question. The Court held by five votes to two that implementation of the extradition order against the applicant would breach Article 3. The Court also held unanimously that, in the interests of the proper conduct of the proceedings, Russia should not extradite the applicant until such time as the present judgment became final or further order.

**Akhmetov v. Russia (no. 37463/04) (Importance 2) – 1 April 2010 – Violation of Article 3 – Domestic authorities' failure to take sufficient measures to provide the applicant with adequate medical assistance**

The applicant, who suffers from a rare tumour, complained that he had not received adequate medical treatment in prison YaV-48/T-1, Chelyabinsk Region, where he had been serving a sentence for a number of criminal offences. In light of the evidence submitted to its attention, the Court accepted that the authorities took steps aimed at providing the applicant with radical treatment outside the penitentiary system. However, in view of the particular circumstances of the present case, it found that those measures were not carried out with sufficient expedition. Taking into account the particularly grave and complex nature of the applicant's condition, the authorities should have been mindful of the danger of it becoming irreversible due to the delay in radical treatment. The Court considered that the authorities should have started to investigate the possibility of treatment in a civilian hospital shortly after having received the recommendation for such treatment, rather than waiting for more than a year for the outcome of the examination. Accordingly, there had been a violation of Article 3 of the Convention.

**Arif Çelebi and Others v. Turkey (nos. 3076/05 and 26739/05) (Importance 3) – 6 April 2010 – Violations of Article 3 (substantive and procedural) – Torture in police custody – Lack of an effective investigation**

The applicants claimed that they had been tortured in 1997 while detained in police custody on suspicion of membership of an illegal armed organisation. They alleged beatings, sleep deprivation, "Palestinian hanging", rape and being squeezed in the testicles. They complained about the treatment to which they were subjected and about the manner in which the authorities had carried out the investigation and ensuing criminal proceedings concerning their allegations, resulting in impunity.

As to the seriousness of the treatment in question, the Court reiterated that, under its case-law in this sphere (see, among other authorities, *Selmouni v. France*), in order to determine whether a particular form of ill-treatment should be qualified as torture, it must have regard to the distinction, embodied in Article 3, between this notion and that of inhuman or degrading treatment. It appears that it was the intention that the Convention should, by means of this distinction, attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering. In this connection, the Court considered that the treatment complained of was inflicted intentionally by the police officers for the purpose of extracting confessions. In these circumstances, the Court found that it was particularly serious and cruel and capable of causing severe pain and suffering. It therefore concluded that the ill-treatment involved in this case amounted to torture within the meaning of Article 3 of the Convention. Moreover, the Turkish criminal-law system as applied in the instant case, namely the discontinuation of the prosecution for being time-barred following lengthy proceedings, has proved to be far from rigorous and would have had no dissuasive effect capable of ensuring the effective prevention of unlawful acts such as those complained of by the applicants. Accordingly, there had been both a substantive and a procedural violation of Article 3.

**Lotarev v. Ukraine (no. 29447/04) (Importance 2) – 8 April 2010 – Violations of Article 3 (substantive and procedural) – Ill-treatment in detention – Lack of an effective investigation**

The applicant is currently serving a life sentence in Zhytomyr Prison. He alleged in particular that in June 2004 staff of that prison had excessively beaten him, fracturing his ribs, and that the ensuing investigation into his allegation had been inadequate.

The Court noted that while in the present case the state authorities denied any relation between the incident of June 2004 and the applicant's injuries, they failed to advance any explanation whatsoever as to the origin of those injuries. The Court cannot accept the Government's argument that the prison administration was not aware of what had happened to the applicant, as being deprived of his liberty he was subject to its control and responsibility (see *Satık and Others v. Turkey).* The Court also noted that, as a detainee, the applicant was in a particularly vulnerable position and the authorities were under a duty to protect his physical well-being. The Court concluded that the State is responsible under Article 3 of the Convention on account of the applicant's ill-treatment in prison and that there had been a violation of that provision.

The Court also noted that although the Government produced a copy of the prosecutor's letter of 20 April 2005 notifying the applicant's mother of the decision about the refusal to institute criminal proceedings upon the applicant's complaint of ill-treatment, it was not post-marked and the Government put forward no other evidence that this letter, together with the decision of 19 April 2005, had actually been sent or otherwise delivered to the applicant or his representative. The Court has already found in a similar situation that under the circumstances the applicant could not be considered to have been duly informed of the decision at issue, which was sufficient for rejecting the Government's objection as to exhaustion of domestic remedies. In any event, had even the applicant been informed of the aforementioned decision, the Court considers that he cannot be reproached for not seeking repeated reopening of the investigation, which is found it be ineffective. Accordingly, the Court found that there has been a violation of Article 3 of the Convention under its procedural limb as well.

- **Right to liberty and security**

**Allen v. United Kingdom (no. 18837/06) (Importance 2) – 30 March 2010 – Violation of Article 5 § 4 – Domestic authorities' refusal to allow the applicant to attend a prosecution appeal against bail, which had already been granted to her in first instance, was unjustified – No violation of Article 5 § 3 – No persuasive authority for concluding that the first obligatory appearance before a judge should have encompassed the power to grant release on bail**

In October 2005 the applicant was charged with two offences of conspiracy to supply hard drugs. The following day, she was granted bail by the deputy district judge. As the prosecution gave notice that it wished to appeal against bail, the applicant remained in detention. The appeal hearing was to take place four days later and the applicant's counsel arranged for her to be present at the court building. He twice requested that the applicant be allowed to be present while the appeal was heard. The judge declined the request, holding in particular that allowing her to be present would set a precedent for any defendant in custody wishing to attend an appeal against bail. The judge allowed the prosecution's appeal and refused bail, on the grounds that there was a risk that the applicant would abscond or obstruct the course of justice by providing her co-accused with information about the prosecution case. The applicant made two requests for permission to apply for judicial review of the decision not to allow her to attend the hearing, which were refused in November and December 2005 respectively, on

the grounds that the relevant provision of the domestic Criminal Procedure Rules did not entitle her to be present at the hearing of the appeal.

The applicant complained that not permitting her to attend the hearing of the prosecution's appeal against bail breached her rights under Articles 5 § 4 and 6 § 1. She also complained that the deputy district judge did not meet the requirements of Article 5 § 3 to be authorised "to exercise judicial power", as he was not able to give a binding ruling on bail.

The Court noted that the applicant's complaint about not having been able to attend the appeal hearing against the bail decision should be examined under Article 5 § 4 alone. The Court observed that the applicant had initially been granted bail by the deputy district judge, who had been able to make an assessment of her in person, and that she had expected to be immediately released. In contrast to other cases in which the Court had previously found that special criteria had to be met for an applicant's personal attendance to be required under Article 5 § 4, the present case did not concern an applicant's appeal against detention in remand, but a prosecution appeal against bail that had already been granted and without which the applicant would have been entitled to be at liberty. The Court found that since the relevant domestic law qualified a prosecution appeal against bail as a re-hearing of the application for bail, the applicant should have been afforded the same guarantees as at a first instance hearing. Since the applicant had already been in the court building on the day of the hearing, allowing her to attend would have caused no practical inconvenience. It concluded, by 6 votes to 1, that there had been a violation of Article 5 § 4. With regard to the applicant's complaints under Article 5 § 3, the Court recalled that in another case it had found no persuasive authority for concluding that the first obligatory appearance before a judge must encompass the power to grant release on bail. The Court therefore rejected the applicant's contention that the deputy district judge did not "exercise judicial power," as his decision on bail was open to appeal. It therefore unanimously found that there had been no violation of Article 5 § 3. Judges Bratza and Bonello expressed a concurring opinion and judge Mijovic expressed a partly dissenting opinion.

- **Right to fair trial**

**Stegarescu and Bahrin v. Portugal (no. 46194/06) (Importance 3) – 6 April 2010 – Violation of Article 6 § 1 – Lack of a clear and effective opportunity for the applicants to challenge their placement in high-security cells**

On 5 May 2006 the applicants were transferred from the prison in Coimbra to that of Paços de Ferreira, where they were placed in high-security cells of 8 sq.m. in solitary confinement and were only allowed one hour per day for outdoor walks. About ten days later they were informed that their placement was the result of an order issued by the deputy director general of the prison administration, but they were not shown the order. The applicants filed a complaint in June 2006 with the Inspectorate General of Justice to challenge their solitary confinement. No information was given to them about any subsequent proceedings. In September 2006 they sent a letter to the sentence execution judge in Oporto, alleging that the solitary confinement measure was illegal. They never received a reply. In mid-October they were informed that a new order had been made by the deputy director general of the prison administration, maintaining their placement in the high-security cell, but they were not shown that order either. The applicants applied to the governor of their prison in November 2006, in particular to find out whether there had been a quarterly review of the solitary confinement measure, as provided for by law. The governor did not reply. In early December 2006 the applicants were informed of the lifting of the solitary confinement measure that had been ordered on 30 November by the deputy director general of the prison administration. Once again, they were not given a copy of the decision. Since then the applicants have been imprisoned under the ordinary regime.

The applicants alleged that they had not been able to appeal effectively against their placement in the high-security cell. In addition they complained that they had been discriminated against on account of their Moldovan nationality.

The Court reiterated that whilst the criminal limb of Article 6 § 1 was not applicable to proceedings concerning prison conditions, its civil limb could be, depending on the circumstances of the case. In fact the applicants' placement in a high-security cell had had a number of consequences affecting their "civil rights and obligations": restriction on receiving visits to one hour a week and the first applicant's inability to continue his studies and take exams. The Court thus declared the application admissible under the civil limb of Article 6 § 1. In ascertaining whether there had been a violation of the Convention, the Court reiterated that the right to a court was not absolute. The exercise of that right was organised by States, which could limit access to a court if they had a legitimate aim and in so far as there was a relationship of proportionality between the means used and the aims pursued. In this case the Government contended that a "special administrative action" had been available to the

applicants before the administrative courts, allowing them to seek interim measures, the annulment of the solitary confinement measure or the adoption of new measures. The Court noted that in all there had been only two judicial decisions, subsequent to the relevant period, confirming the jurisdiction of the administrative courts in such matters. In addition, the applicants had never received the orders by which they were placed in solitary confinement. Thus, even supposing that the jurisdiction of the administrative courts had been sufficiently established at the time, the Court found that the applicants had not had a clear and full opportunity to challenge the measures against them. It accordingly held that there had been a violation of Article 6 § 1.

**CGIL and Cofferati v. Italy (no. 2) (no. 2/08) (Importance 3) – 6 April 2010 – Violation of Article 6 § 1 – Hindrance to the applicants' right of access to a court due to the impossibility of lodging an action against an MP on account of his Parliamentary immunity**

The applicants are an Italian national and the CGIL (*Confederazione Generale Italiana del Lavoro* – Italian General Confederation of Labour), an Italian trade-union federation of which Mr Cofferati was general secretary. On 19 March 2002 Mr Biagi, an adviser to the Minister of Labour and a supporter of greater flexibility in employment contracts, was murdered by the Red Brigades. During a debate in Parliament the following day, references were made to the alleged link between terrorism, social issues and trade-union campaigns concerning the reform of labour law. On the same day, a member of Parliament, Mr Taormina, told the ADNKronos press agency that "Cofferati and the communists [had created] favourable conditions for the terrorists to make themselves available" and that "Biagi's murderers [had] offered to act as enforcers for Cofferati and the communists". In March 2002 a demonstration organised by the CGIL was held in Rome to protest against the plan to repeal section 18 of the Workers' Charter, by which employees deemed to have been unfairly dismissed were entitled to apply for reinstatement. On 15 May 2002 the applicants brought an action for damages against Mr Taormina, arguing that his statements had harmed their reputation. They alleged that the article reporting his comments had suggested that there was a causal link between their trade-union activity and Mr Biagi's murder and had insinuated that the terrorists had come from a trade-union background. The Chamber of Deputies confirmed that Mr Taormina was entitled to immunity, since in its view he had expressed his opinions in the course of his duties as an MP. The Rome District Court, however, disagreed and raised a conflict of State powers before the Constitutional Court. In November 2007 the Constitutional Court declared the application inadmissible as having no factual basis.

The applicants complained that their right of access to a court had been infringed because it had been impossible for their action against an MP to succeed on account of his Parliamentary immunity.

The Court noted that since the Chamber of Deputies had declared that the statements by Mr Taormina were covered by Parliamentary immunity, the applicants had been prevented from pursuing any proceedings to establish the MP's liability and obtain redress. They had therefore suffered interference with their right of access to a court. The Court reiterated that that right was not absolute but could be subject to limitations provided that they pursued a legitimate aim and there was a reasonable relationship of proportionality between the means employed and the aim sought to be achieved. Since Parliamentary immunity was a long-standing practice which sought to enable free Parliamentary debate and to maintain the separation of powers between the legislature and the judiciary, the interference with the applicants' rights had pursued a legitimate aim. The offending statements by Mr Taormina had not, strictly speaking, been linked to the performance of his Parliamentary duties, having been made during press interviews and not in a legislative chamber. Furthermore, it did not appear that Mr Taormina had pointed to any moral or political responsibility on the applicants' part for Mr Biagi's murder. His statements to ADNKronos had suggested, rather, that they bore some responsibility for the climate of social tension that had led to the murder. However, to justify denying access to court on the ground that a quarrel might have political implications would amount to restricting the right of access to a court whenever allegedly defamatory statements had been made by a member of Parliament. The Court also attached weight to the fact that, following the Constitutional Court's judgment in 2007, the applicants had had no reasonable alternative means to protect effectively their rights under the Convention. Accordingly, by granting immunity to Mr Taormina, and thereby frustrating the action brought by the applicants to protect their reputation, the authorities had not struck a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. The Court held by five votes to two that there had been a violation of Article 6 § 1. Judges Sajó and Karakaş expressed a joint dissenting opinion.

**Poncelet v. Belgium (no. 44418/07) (Importance 1) – 30 March 2010 – Violation of Article 6 § 2 – Breach of senior civil servant's right to be presumed innocent in criminal proceedings**

As a senior civil servant in the Ministry for Civil Works, the applicant was assigned in 1980 to the administration of the Liège Electricity Board, one of his responsibilities being the management of public procurement contracts. An inquiry revealed anomalies in the performance of public procurement contracts. As a result, a judicial investigation was opened in March 1995 into the conduct of the applicant, who was charged with various offences: forgery of invoices and offers concerning public procurement contracts, embezzlement, fraud, bribery and bid rigging. In September 2006 the Liège Criminal Court declared that the criminal proceedings were time-barred on account of the excessive length of the judicial investigation and that the right of the accused to be presumed innocent had been breached more than once. The court found that the administrative investigator had, from the outset, shown evident bias against the applicant. In January 2007 the Liège Court of Appeal, on an appeal from the public prosecutor, dismissed two objections to admissibility submitted by the applicant, alleging that his right to be presumed innocent had been breached and that the length of the proceedings was unreasonable. The court found that the right of an accused to be presumed innocent was guaranteed by the impartiality with which the judge examined the evidential value of the material, even if it was unfavourable, that had been collected by the police or public prosecutor. It took the view that the length of the judicial investigation had in this case been justified by the complexity of the facts and an effort to gather as much evidence as possible, both for and against the accused. In any event, the court did not find that length to have been detrimental to the applicant, who had nevertheless been able to challenge the basis of the accusations against him and to develop his defense. The applicant appealed to the Court of Cassation but was unsuccessful. The case was remitted to the Liège Criminal Court, which, in a decision in June 2009, held that the trial had not been fair because the investigator's biased observations, which had led to the opening of the judicial investigation for forgery and bribery had breached the rights of the defense, and that the exceeding of a reasonable time (more than 10 years of proceedings) had prevented the accused from properly challenging the evidence against him. The Liège Court of Appeal, to which the public prosecutor again appealed, set that judgment aside on 10 June 2009. It declared the criminal proceedings against the applicant admissible and observed that any fresh examination of arguments about their inadmissibility was impossible because those arguments had already been assessed on the merits. However, the Court of Appeal also declared the prosecution time-barred.

The applicant complained that his right to be presumed innocent had not been respected by the administrative investigators or by the investigating judge, who had not reacted to the manner in which the administrative inquiry had been conducted. The applicant also complained of the excessive length of the proceedings.

Article 6 § 2

The Court reiterated that Article 6 § 2 of the Convention secured an individual's right not to be described or treated as guilty of an offence before being found guilty by a court of law. The Court took the view that it could not be determined whether there had been a breach of the right to be presumed innocent merely on the basis of an examination of the judicial investigation stage, without ascertaining the findings of the trial court. The Criminal Court, on 19 June 2008, had in fact found breaches of the right to be presumed innocent and of defence rights. That court had thus observed that the opening of a judicial investigation in respect of the forgery and bribery charges had been based on opinions that were biased against the accused from the beginning of the administrative inquiry. Whilst the judgment of the Court of Appeal had not in any way indicated that it considered Mr Poncelet to be guilty, the Court nevertheless found that by setting aside the judgment of 19 June 2008 it had crystallised the feeling that only the limitation period prevented the applicant's conviction. The Court of Appeal had in fact declared the criminal proceedings against him admissible, whilst finding that the prosecution had become time-barred. The Court held, by four votes to three, that there had been a breach of the applicant's right to be presumed innocent and therefore a violation of Article 6 § 2.

**Handölsdalen Sami Village and Others v. Sweden (no. 39013/04) (Importance 2) – 30 March 2010 – No violation of Article 6 § 1 – The applicant villages benefitted from an effective right of access to a court in proceedings concerning their right to use private land for reindeer grazing – Violation of Article 6 § 1 – Excessive length of proceedings (thirteen years and seven months)**

The applicants are four Swedish Sami villages: Handölsdalen, Mittådalen, Tåssåsen and Ruvhten Sijte, situated in the municipality of Härjedalen in northern Sweden. The case concerned the domestic proceedings about the disputed right of the Sami, inhabitants of the northern parts of Scandinavia and the Kola Peninsula, to use private land in Härjedalen for winter grazing of their reindeer. In 1990 a large number of Härjedalen landowners brought proceedings against five villages, including the applicants, seeking to obtain a judgment forbidding them from using land without concluding a contract with the respective owner. In November 1991, the Sami villages contested the action, claiming in particular that they had the right to winter grazing within their respective areas based on prescription

from time immemorial and custom as well as the relevant provisions of domestic law concerning reindeer grazing and reindeer husbandry. Between 1992 and 1995 the parties presented large amounts of material in support of their respective claims and made numerous submissions on the substance and on procedural issues. During the proceedings two similar actions brought by further landowners were joined to the case. The three joined cases eventually comprised property belonging to more than 500 persons. In February 1996, the district court found against the applicants, holding in particular that over the centuries the land in question had not been continuously used for reindeer winter grazing over a sufficiently long period to establish a right for the Sami to such grazing without a valid contract. The court ordered the applicants to pay the landowners' legal costs, amounting to approximately 400,000 euros. The applicants appealed. After numerous submissions from the parties, a number of decisions on procedural issues and the withdrawal of some of the landowners, the court of appeal upheld the district court's judgment in February 2002 and ordered the applicants to pay the landowners' legal costs in the appeal proceedings, amounting to approximately 290,000 euros. The applicants appealed to the Supreme Court, which in April 2004 refused their leave to appeal.

The applicants complained that, given the high costs of the proceedings for which they did not receive legal aid, they had not had an effective access to court and that the proceedings had been excessively long.

Regarding the question whether the applicants had had effective access to court, the Court first noted that the proceedings concerned an issue of considerable importance to the applicants. Further, the case had been very complex, as domestic legislation on reindeer husbandry left it to the courts to determine which pieces of land may be used for reindeer winter grazing where there was a dispute over this question. The Court did not find, however, that the domestic courts had handled the issue of legal costs unreasonably. The applicant villages were legal entities with a certain number of members, therefore their situation was not comparable to that of an individual litigant. They had been represented by legal counsel throughout the proceedings and had made numerous submissions. There was no indication that they had been unable to present their case properly. The judgments at issue had been pronounced following adversarial proceedings in which the district court and the court of appeal had held lengthy oral hearings. The Court therefore concluded, by six votes to one, that there had been no violation of Article 6 § 1 with regard to effective access to court. Concerning the applicants' complaint about the length of proceedings, the Court considered that the case had come before three levels of jurisdiction. It had involved the examination of extensive evidence on winter grazing during several centuries on a large area of land and it had had more than 500 parties, thus it had been of great complexity. Moreover some of the delays had been attributable to the parties, as they had made extensive submissions and procedural motions. The Court nevertheless found that the overall duration of about 13 years and 7 months indicated that the domestic courts had not conducted the proceedings expeditiously enough. Moreover, there had been unnecessary delays, in particular before the Supreme Court, which took more than a year to decide a procedural question, during which time the proceedings before the court of appeal were adjourned, and about two years to make its final decision in the case. The Court therefore unanimously concluded that there had been a violation of Article 6 § 1 with regard to the length of the proceedings.

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

**S. H. and Others v. Austria (no. 57813/00) (Importance 1) – 1 April 2010 – Violation of Article 14 in conjunction with Article 8 – Domestic authorities' failure to justify the prohibition in Austrian law to using sperm and ova from donors for in-vitro fertilisation**

The applicants, all Austrian nationals, are two married couples who live in Austria. Suffering from infertility, they wished to use medically assisted procreation techniques which are not allowed under Austrian law. S.H. suffers from fallopian-tube-related infertility and her husband D.H. is also infertile. Owing to their medical conditions only in-vitro fertilisation with the use of sperm from a donor would allow them to have a child of whom one of them is the genetic parent. H.E.-G. suffers from agonadism, which means that she does not produce ova, while her husband M.G. can produce sperm fit for procreation. Only in-vitro fertilisation with the use of ova from a donor would allow them to have a child of whom one of them is the genetic parent. However, both of these possibilities are ruled out by the Austrian Artificial Procreation Act, which prohibits the use of sperm from a donor for in-vitro fertilisation and ova donation in general. At the same time the Act allows other assisted procreation techniques, in particular in-vitro fertilisation with ova and sperm from the spouses or cohabitating partners themselves (homologous methods) and, in exceptional circumstances, donation of sperm when it is introduced into the reproductive organs of a woman. In May 1998, S.H and H.E.-G. lodged an application with the Constitutional Court for a review of the relevant provisions of the Artificial Procreation Act. In October 1999, the Constitutional Court found that there was an interference with the applicants' right to respect for family life, but that it was justified, as the provisions aimed to avoid

the forming of unusual personal relations such as a child having more than one biological mother (a genetic one and one carrying the child). They also aimed to avoid the risk of exploitation of women, as pressure might be put on a woman from an economically disadvantaged background to donate ova, who otherwise would not be in a position to afford an in-vitro fertilisation in order to have a child of her own.

The applicants complained that the prohibition of sperm and ova donation for in-vitro fertilisation violated their right to respect to family life, and that the difference in treatment compared to couples who wished to use medically assisted procreation techniques but did not need to use ova or sperm donation for in-vitro fertilisation amounted to a discriminatory treatment.

The Court noted that among the Council of Europe member States there was no uniform approach to medically assisted procreation and that States were under no obligation to allow it. However, once the decision had been taken to do so, the legal framework governing artificial procreation had to be shaped in a coherent manner, allowing the different legitimate interests involved to be taken into account. In the present case the applicants were subject to a difference in treatment in comparison with persons in a similar situation. In order to assess if in the present case the difference in treatment afforded to the applicants compared to persons in a similar situation was justified, the Court found it had to examine the situation of the two couples separately.

With regard to the situation of H.E.-G and M.G. and their wish to resort to in-vitro fertilisation with the use of ova from a donor, the Court was not convinced by the Austrian Government's argument that a complete prohibition was the only way to prevent the risks associated with this technique. The risk that women might be exploited and that the technique might be used for selective reproduction was an argument that could be used against other means of artificial procreation as well. Moreover, Austrian law did not allow remuneration for ovum donation. The argument that obtaining ova for the purpose of donation was a risky medical intervention could equally be raised with regard to in-vitro fertilisation where the ova are taken from the woman aspiring to be a mother herself, a technique allowed in Austria. Concerning the argument that using donor's ova for in-vitro fertilisation would create unusual family relationships, the Court noted that family relations which do not follow the typical parent-child relationship based on a direct biological link, were nothing new. They had existed since the institution of adoption, which created a family relationship not based on descent but on contract. The Court saw no insurmountable obstacles to bringing family relations resulting from a successful use of the artificial procreation techniques at issue into the general framework of family law. The Court therefore concluded, by five votes to two, that there had been a violation of Article 14 in conjunction with Article 8.

With regard to the situation of S.H and D.H. and their wish to resort to in-vitro fertilisation with the use of sperm from a donor, the Court observed first that this artificial procreation technique combined two techniques which taken alone were allowed under the Artificial Procreation Act, namely in-vitro fertilisation with ova and sperm of the couple itself on the one hand and sperm donation for non-in vitro conception on the other hand. A prohibition of the combination of these lawful techniques would thus have required particularly persuasive arguments. Most of the arguments brought forward by the Government were not specific to sperm donation for in-vitro fertilisation, however. As regards the Government's argument that non-in-vitro artificial insemination had been in use for some time, that it was easy to handle and its prohibition would therefore have been hard to monitor, the Court found that a question of mere efficiency carried less weight than one of principle based on moral and ethical convictions shared by society. Balancing these relatively weak arguments against the applicants' interest, their wish to conceive a child, the Court found that the difference in treatment at issue was not justified. It therefore concluded, by six votes to one, that there had been a violation of Article 14 in conjunction with Article 8.

**Băcilă v. Romania (no. 19234/04) (Importance 3) – 30 March 2010 – Violation of Article 8 – Domestic authorities' failure to take appropriate measures to prevent environmental pollution**

The applicant lives near a plant operated by the company Sometra, one of Europe's biggest producers of lead and zinc and at the time the biggest employer in the town. The plant discharged into the atmosphere significant amounts of sulphur dioxide and dust containing heavy metals, mainly lead and cadmium. The applicant filed a number of complaints alleging that the pollution was damaging her health and requesting that measures be taken to reduce it. Analyses carried out by public and private bodies established that heavy metals could be found in the town's waterways, in the air, in the soil and in vegetation, up to 20 times the maximum levels permitted. The rate of illness, particularly respiratory conditions, was seven times higher in Copşa Mică than in the rest of the country. In 2000 the Regional Environmental Protection Agency wrote to the applicant that the pollution had risen since 1998, when the company was privatised, and that the local authorities would not take short-term measures because they had proven ineffective in the past, and to shut the plant down would trigger social

problems. The air pollution could at that time reach 30 times the maximum level permitted. The company set up a system for hourly measurement of pollution – if the thresholds were exceeded the company had to reduce or stop production. Furthermore, in 2007 the Agency fined the company a total of 600,000 Romanian lei (about 180,000 euros) for exceeding the sulphur dioxide emission thresholds. The company had obtained an initial environmental permit from the Agency in 1998. After it expired in 2003, the company obtained a new permit that was valid until 2012. It was subject to a list of 51 conformity measures. In 2005 analyses indicated that the concentration of lead in the applicant's blood exceeded the permissible limit. She was admitted to hospital with frequent, irritant coughs, voice modification, asthenia and digestion disorders. In January 2009 the shareholders of the company's parent group decided to shut down the plant temporarily on account of the crisis in the international raw materials markets.

The applicant complained that the pollution generated by the Sometra plant had had severe detrimental effects on her health and her living environment. She also complained of the inaction of the local authorities in failing to take steps to address the pollution problem.

The Court reiterated that severe environmental pollution could affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely. States had a duty to regulate the authorisation, operation, safety and monitoring of hazardous activities and to guarantee the effective protection of citizens whose lives could be endangered by such activities. The damage to health caused by the Sometra plant's atmospheric emissions had been established by numerous reports from public and private bodies and by medical reports provided by the applicant. The municipal authorities of Copşa Mică had not been directly responsible for the harmful emissions. As regards the granting of environmental permits, the Court could not call into question the seriousness of the decision-making process. However, the applicant had not complained about an act but rather about inaction on the part of the State in failing to oblige the company to curb the pollution. The Court observed that no evidence had been produced of the effective and timely implementation of the measures attached to the environmental permits issued in 1998 and 2006. Furthermore, between 2003 and 2006 the Sometra plant had been operating without an environmental permit, even though the local authorities were aware of the pollution problems caused by its production. It was not for the Court to decide whether it would have been appropriate to shut down the plant. It observed, however, that the authorities had been reluctant to take measures against the company before 2007. Whilst the Court took into account the interest in maintaining the economic activity of the biggest employer of a town that had already suffered from the closure of other plants, it found that this argument should not have prevailed over the inhabitants' right to enjoy a healthy environment. In view of the serious and proven consequences of the pollution for their health, the State had a duty, in spite of the discretion afforded to States in such matters, to take measures to protect their well-being. The authorities had failed to strike a fair balance between the interest in ensuring the town's economic stability and the applicant's effective enjoyment of the right to respect for her home and for her private and family life. The Court held unanimously that there had been a violation of Article 8. Judge Zupančič expressed a concurring opinion.

**Petrenco v. Moldova (no. 20928/05) (Importance 2) – 30 March 2010 – Violation of Article 8 – Interference with the applicant's right to private life on account of domestic courts' dismissal of the applicant's complaints against a newspaper which had published an article stating, without any factual basis, that the applicant had collaborated with the Soviet secret services**

At the time of the events, the applicant was the Chairman of the Association of Historians of the Republic of Moldova and a university professor. In April 2002 the official newspaper of the Moldovan Government, *Moldova Suverană* ("Sovereign Moldova"), published an article written by a historian and former deputy minister for education, S.N. The article made negative remarks about the applicant's professional competence and suggested that he got his university place and subsequent career as a historian thanks to his cooperation with the Soviet secret services, the KGB. In April 2002, the applicant brought defamation proceedings against S.N. and the newspaper, seeking the publication of a retraction and compensation for non-pecuniary damage. The first instance court found that the reference to the applicant's links with the Soviet secret services did imply that he had collaborated with the KGB, that such collaboration was viewed as highly reprehensible by civil society and that it had not been proven that any collaboration had taken place. As a result, the court ordered the newspaper to publish a retraction of some of the statements in the April 2002 article. That judgment was quashed on appeal and, upon a fresh examination of the case, the Moldovan courts dismissed the applicant's complaints having found that S.N. could not be held responsible as he had only expressed his opinions.

The applicant complained that his reputation was damaged as a result of the publication of defamatory statements in the 4 April 2002 article.

The Court noted that the article had been published in the context of a lively debate of significant public interest. The applicant had been a public figure; therefore, he had had to tolerate higher public scrutiny and criticism than had he been a private citizen. In those circumstances, the general tone of the article and the insulting language had not in themselves breached the applicant's right to respect for his reputation. However, concerning the specific allegations implying that the applicant had collaborated with the Soviet secret services, the Court found that statements of that nature could not be considered mere value judgments the truthfulness of which could not be proven. Whether an individual had collaborated with the KGB was not a matter for speculation but a historical fact capable of being substantiated by relevant evidence. In addition, the first instance domestic court had found no proof that the applicant had been a KGB agent, and the higher domestic instances had not ruled otherwise. Accordingly, the Court held that the allegations of the applicant's collaboration with the KGB had constituted clear statements of fact which were likely to seriously discredit the applicant and his views on the question under discussion. As such, rather than contributing to the debate, the allegations had risked undermining its integrity and usefulness. By implying that the applicant had collaborated with the KGB as though it had been an established fact when it had been a mere speculation on the part of the author, the article had overstepped the limits of acceptable comments in the context of a debate of a general interest. Taking into account that the allegations had been particularly grave, the Court held that there had been a violation of the applicant's right to respect for their family life under Article 8. Judges Garlicki, Šikuta and Poalelungi expressed a joint concurring opinion and judge Björgvinsson expressed a dissenting opinion.

**Mustafa and Armağan Akin v. Turkey (no. 4694/03) (Importance 2) – 6 April 2010 – Violation of Article 8 – Domestic courts' failure to justify custody arrangements preventing a brother and sister from seeing each other**

The applicants are a father and son. When Mustafa Akın (the first applicant) and his wife divorced in 2000, the civil court awarded custody of their son (the second applicant) to him and custody of their daughter to the mother. By the same decision, the parents were to exchange the children during certain fixed periods of time. Mr Akın requested the court to grant an interim measure to the effect that he would have both children one weekend and his former wife would have them the next, arguing that this way the children would not lose contact with each other and he would have the opportunity to spend time with both of them together. The court rejected both this request and Mr Akın's appeal against the custody decision. In September 2001, Mr Akın brought proceedings against his former wife, requesting that the children be able to see each other every weekend. He claimed that the court's custody decision, preventing the two children from seeing each other and him from spending time with both of them, was causing irreversible psychological problems for the children. He also claimed that when the children saw each other in the street, their mother prevented them from speaking to each other. The request was refused in February 2002. A subsequent appeal to the Court of Cassation, in which the applicants referred to previous decisions by that court according to which access arrangements should not prevent children of divorced parents from seeing each other, was rejected in April 2002. The Court of Cassation also rejected the applicants' rectification request against this decision in July 2002.

The applicants complain that the brother and sister were prevented from seeing each other.

The Court first noted that the custody arrangements separating the two siblings had been determined by the domestic court of its own motion, as neither parent had requested such an arrangement and the mother had asked for the custody of both children. The absence of reasoning to justify the separation of the children was therefore striking. The Court was not convinced by the Turkish Government's argument that the children were not prevented from seeing each other, as they lived in the same neighbourhood. Maintaining the ties between the children was too important to be left to the parents' discretion, in particular since the mother had prevented the siblings from speaking to each other in the street. The Court could not concur with the reasoning that contact arrangements as requested by the applicants would confront Mr Akın's daughter with "variations in discipline", as the domestic court had not given any precise explanations in this regard. Even if those arrangements had been unsuitable, the domestic court could have considered finding another agreement to ensure the children would see each other on a regular basis. The Court further observed with regret that despite the significance of the case before it, the Court of Cassation had not addressed the detailed submissions by the applicants, which included references to its own decisions concerning the need for siblings to keep in contact. The Court concluded that the domestic courts' handling of the case had fallen short of the State's obligation to protect family life, in violation of Article 8.

- **Freedom of expression**

**Flinkkilä and Others v. Finland (no. 25576/04) (Importance 2), Jokitaipale and Others v. Finland (43349/05) (Importance 3), Iltalehti and Karhuvaara v. Finland (6372/06) (Importance 3), Soila v. Finland (6806/06) (Importance 3), Tuomela and Others v. Finland (25711/04) (Importance 3) – 6 April 2010 – Violation of Article 10 – Infringement of the applicants' right to freedom of expression on account of their criminal conviction for having disclosed the identity of a public figure's partner in several articles**

The applicants are Finnish nationals, journalists and editors-in-chief of different Finnish newspapers and magazines. All applicants were involved in the publishing, between January 1997 and March 1997, of a total of nine articles in the above-mentioned Finnish newspapers concerning A., the National Conciliator at the time, and B., his female partner. The articles focused primarily on the private and professional consequences for A. of an incident of 4 December 1996, when A. and B. entered A.'s home late at night while A.'s wife was there and, as a result of an ensuing fight, B. was sentenced to a fine and A. was sentenced to a conditional term in prison. All articles mentioned B. by name and gave separately other details about her, including her picture. In all cases, B.'s identity was previously revealed in Finnish magazine publications. In the spring of 1997 A. and B. asked that criminal investigation be conducted in respect of the journalists for having written about the 4 December 1996 incident and the surrounding circumstances. Between November 1999 and November 2001, criminal charges were brought against all applicants following which they were sentenced by the domestic courts to pay fines and damages for invasion of B.'s private life. The courts found in particular that since B. was not a public figure, the fact alone that she happened to be the girl-friend of a well-known person in society was not sufficient to justify revealing her identity to the public. In addition, the fact that her identity had been revealed previously in the media did not justify the subsequent invasions of her private life. The courts further held that even the mere dissemination of information about the private life of someone was sufficient to cause them damage or suffering. Therefore, the absence of intent on the part of the applicants to hurt B. was irrelevant. The courts thus concluded that the applicants had had no right to reveal facts relating to B.'s private life or to publish her picture.

All applicants complained under about the high amounts they had to pay as damages to B. The applicants in all cases with the exception of *Iltalehti* and *Karhuvaara* complained also that it had not been clear from the Criminal Code provision applied that their conduct would have been punishable as the provision had not defined the scope of private life. The applicants in the third and fourth cases also complained about the lack of reasoning in the domestic courts judgments with which they were criminally sentenced.

Having examined in earlier case law the domestic Criminal Code provision in question, the Court had found its contents quite clear: the spreading of information, an insinuation or an image depicting the private life of another person, which was conducive to causing suffering, qualified as invasion of privacy. In addition, even the exception stipulated in that provision - concerning persons in a public office or function, in professional life, in a political activity or in another comparable activity - was equally clearly worded. Even though there had been no precise definition of private life in the law, if the applicants had had any doubts about the remit of that term, they should have either sought advice about its content or refrained from disclosing B.'s identity. The applicants were professional journalists and therefore could not claim not to have known the boundaries of the said provision since the Finnish Guidelines for Journalists and the practice of the Council for Mass Media, provided even stricter rules than the Criminal Code. However, there had been no evidence, or allegation, of factual misrepresentation or bad faith on the part of the applicants; there had not been any suggestion that they had obtained information about B. by illicit means. While it had been clear that B. had not been a public figure, she had been involved in an incident which had caused public disturbance outside of the family home of A., a well-known public figure. Therefore, B. could have reasonably been taken to have entered the public domain. In addition, the disclosure of B.'s identity had been of clear public interest in view of A.'s conduct and his ability to continue in his post as a high-level public servant. The incident of December 1996 had been widely publicised in the media, including in a programme broadcast nationwide on prime-time television. Thus, the articles in question had not disclosed B.'s identity in this context for the first time. Finally, in view of the heavy financial sanctions imposed on the applicants, the Court noted that B. had already been paid a significant sum for damages by the television company for having exposed, in January 1997, her private life to the general public. Repeating a violation did not necessarily cause the same amount of damage and suffering as the initial violation. And, last but not least, the Court noted that similar damages had been ordered to be paid to her also in respect of other articles published in other magazines by the other applicants listed above, which all stemmed from the same facts. Accordingly, in view of the severe consequences for the applicants against the circumstances of the cases, the Court held that there had been a violation of Article 10 in all five cases: by six to one votes in the case of Jokitaipale and Others, and

unanimously in the other four cases. The Court held that there had been no violation of Article 6 § 1 and Article 7. Judge Garlicki expressed a dissenting opinion in the Jokitaipale and Others case.

**Bezymyannyy v. Russia (no. 10941/03) (Importance 2) – 8 April 2010 – Violation of Article 10 – Domestic courts' disproportionate and excessive ruling in convicting the applicant to pay a fine for having filed a criminal complaint against a judge**

The applicant is a businessman and a former controlling shareholder of a private company. According to him, in 1997 several people produced a fake sales contract in respect of his shares in the company, as well as a fake register of the shareholders. They then tried to gain control over the company. Thereafter the matter was brought before the domestic courts. In April 1998 the Oktyabrskiy District Court of Belgorod, presided by judge B., dismissed the applicant's action to have the sale of the shares annulled and the register of shareholders declared fake and illegal. The court refused to order a forensic examination of the evidence, including a copy of the register of shareholders and the registrar's book of records. An expert examination of the documents, which the applicant claimed fake, was completed in November 1998 as part of criminal proceedings against several people brought by an investigator at the request of the applicant. The expertise confirmed that the copy of the register of shareholders and the registrar's book of records had been tampered with and that some of the entries had been fraudulently deleted or altered. Apparently the criminal investigation was discontinued in November 2001. Thereafter the case was repeatedly suspended and resumed. In March and May 2000 the applicant wrote a letter to the Prosecutor of the Belgorod Region, to the President of the Belgorod Regional Court and the head of the Judiciary Qualification Board, with a copy to the Prosecutor General of Russia, alleging that in the course of the proceedings in his case in 1998 judge B. committed a crime by knowingly delivering an unjust decision. The letter set out the applicant's views on the circumstances of his case, referred to the outcome of forensic examinations carried out by the investigator in the criminal case and requested the responsible officials to bring criminal proceedings against judge B. In response to these letters, at the request of the President of the Belgorod Regional Court and judge B., criminal proceedings were brought against the applicant for libel. They were discontinued in May 2001 because of an amnesty law. On an unspecified date judge B. sued the applicant for defamation, claiming approximately 3,000 euros (EUR) in damages and seeking an order for the retraction of the impugned statements. The domestic courts granted the claims, reducing the damage award to EUR 800. By a final decision taken in November 2003 the Belgorod Regional Court rejected the applicant's action to annul the transfer of his property to a number of third persons. By a judgment delivered in February 2003 the Oktyabrskiy District Court rejected his application to annul a lease agreement between him and a certain commercial entity.

The applicant complained about the defamation proceedings brought by judge B. He alleged that the proceedings had been unfair, that his letter to the relevant authorities could not be regarded as disseminating defamatory information, and that the award in the case had been disproportionate and arbitrary.

The Court noted that, unlike in the vast majority of cases before it concerning defamation claims, the complaint in the present case had been born out of the applicant's request to institute criminal proceedings against judge B. rather than out of publication in the media. When writing his letters the applicant had acted in his personal capacity as a private individual, not as a journalist. The Court then reiterated that public servants should be protected from offensive, abusive and defamatory attacks calculated to affect them in the performance of their duties and to damage public confidence in them and the office they hold. It was even more important to protect judges since accusations against them might not only damage their personal reputation but could also undermine public confidence in the integrity of the judiciary as a whole. The applicant had merely reported what he believed had been unlawful to a body empowered to institute criminal proceedings. He had used wording that had not been abusive or offensive. In the Court's view, he had acted within the framework established by law for making complaints. The Court recalled in that connection that people had to be able to notify competent State officials about conduct of civil servants which appeared irregular or unlawful; this was one of the fundamental elements of the rule of law. The important role that the judiciary played in a democratic society could not in itself immunise judges against people's complaints. The content of the applicant's letters had not been made known to the general public; thus no press or other form of publicity had been involved. Therefore the negative impact, if any, of the applicant's words on Judge B.'s reputation had been quite limited. Lastly, considering the sanction imposed on the applicant, the Court held that an award of damages of approximately EUR 800 imposed for filing a request to bring criminal proceedings against a judge was disproportionately severe. Consequently, the Court found that the defamation proceedings brought against the applicant had resulted in an excessive and disproportionate burden being placed on him. There had therefore been a violation of Article 10.

**Ruokanen and Others v. Finland (no. 45130/06) (Importance 2) – 6 April 2010 – No violation of Article 10 – The applicants' conviction for publishing an article stating that members of a baseball team had committed rape, before a criminal investigation into the alleged rape, had been a proportionate measure and "necessary in a democratic society"**

The applicants are two Finnish nationals – an editor-in-chief and a journalist – and a Finnish limited liability publishing company based in Helsinki. The case concerned an article published on 11 May 2001 in *Suomen Kuvalehti* magazine announced on the cover page by "Baseball winning party ended in rape". The article stated that an adult student had been raped in September 2000 by members of a baseball team at a party to celebrate their victory in the Finnish championship. The article was based on a statement given by the victim to her folk high school and was corroborated by several witnesses interviewed by the applicants but who wished to remain anonymous. It was also mentioned that the young woman did not wish for the time being to report the incident to the police. A police investigation, launched after publication of the article, was suspended as the victim of the alleged rape could not identify the offender or offenders. In October 2002 the public prosecutor brought charges for aggravated defamation against Mr Ruokanen and Mr Pöntinen; a compensation claim brought by the baseball team was joined to those criminal charges. In March 2003 the applicants were found guilty as charged and were ordered to pay fines of 3,540 and 1,920 euros (EUR) and over EUR 80,000 in total in damages to compensate each member of the baseball team. The court found in particular that the statement made by the rape victim had not been reliable as she had not brought the issue to the police's attention and concluded that the accusations in the article had been of such a serious nature that the applicants should have verified their accuracy more carefully. On appeal the court upheld that decision also finding that the applicants had not been able to show that they had had sufficient reasons to believe that the accusations were true and, by not revealing their sources, had taken the risk of being convicted of defamation. In May 2006 the Supreme Court refused leave to appeal.

The applicants complained about their conviction of defamation.

The Court observed that what was essentially at stake in this case was whether the domestic authorities had struck the required balance between the applicants' right to freedom of expression and the right to reputation of the alleged perpetrators of a crime. The Court noted that the baseball players had been easily identifiable from the article and could thereby suffer damage to their reputation. Notably, they belonged to the local sports club which had been mentioned by name in the article and, as members of the winning team of the 2000 championship, they would be known in their home town, by baseball fans and by a larger public. Furthermore, the allegations had been of a serious nature and had been presented as statements of fact rather than value judgments. Moreover, the applicants had failed to verify whether their accusations had had a basis in fact, even though they could have clarified the issue by contacting the victim, the players and their team. The article, written before the criminal investigation into the alleged rape, had not only violated the players' right to be presumed innocent until proved guilty but had also defamed them by stating a fact which had not yet been established. Indeed, imperatives other than matters of public concern had to be weighed up before an incident was reported by the media to the public as fact. The right to presumption of innocence and reputation of third parties was of equal importance especially where serious accusations of sexual misconduct were concerned. In conclusion, the reasons relied on by the domestic courts had been sufficient to show that the interference with the applicants' right to freedom of expression had been "necessary in a democratic society". Also bearing in mind that the sanctions imposed, which fell within a State's discretion to respond to defamation, had been proportionate, the Court considered that the domestic courts had struck a fair balance between the competing interests involved. Accordingly, the Court held by five votes to two that there had been no violation of Article 10. Judges Bratza and Bianku expressed dissenting opinions.

- **Right to free elections**

**Namat Aliyev v. Azerbaijan (no. 18705/06) (Importance 1) – 8 April 2010 – Violation of Article 3 of Protocol No. 1 – Domestic authorities' failure to guarantee the applicant's right to stand for election**

The applicant stood for the elections to the Milli Majlis (Parliament) of 6 November 2005 as a candidate of the opposition bloc Azadliq. He was registered as a candidate for the single-mandate electoral constituency no. 93. According to the Constituency Electoral Commission ("the ConEC") protocol drawn up after Election Day, one of the applicant's opponents obtained the highest number of votes cast in constituency no. 93. The applicant came in second. In November 2005 the applicant submitted complaints before the ConEC and the Central Electoral Commission ("CEC") concerning alleged irregularities during the Election Day: unlawful interference in the election process by local executive authorities, undue influence on voter choice, several instances of ballot-box stuffing, harassment of observers, irregularities in electoral rolls and obvious discrepancies in electoral

protocols showing a possible failure to account for as many as thousands of "unused" blank ballots. He submitted to the CEC originals of more than 30 affidavits (akt) of election observers, audio tapes and other evidence documenting specific instances of irregularities. The ConEC rejected the applicant's complaint as unsubstantiated without further elaboration. On the same day, the CEC issued its final protocol approving the overall election results in the country. The applicant applied before the Court of Appeal, asking it to invalidate the CEC's final protocol in the part relating to the election results in his electoral constituency on account of the irregularities having occurred on Election Day. The Court of Appeal dismissed his claims as unsubstantiated. The applicant lodged a further appeal with the Supreme Court, noting that he had submitted the originals of the documentary evidence to the CEC in November 2005, which was dismissed on the same grounds as those of the Court of Appeal. The Supreme Court noted that the applicant had failed to submit any evidence proving that he had ever complained before the CEC. On the same day, the Constitutional Court confirmed the election results in the majority of the electoral constituencies, including Constituency no. 93. In February 2006, the OSCE/ODIHR published a report on their observation of the parliamentary elections signalling numerous instances of malfunctioning during the elections which undermined their fairness.

The applicant complained that, in the electoral constituency where he stood as a candidate in the Parliamentary elections, there had been a number of serious irregularities and breaches of electoral law which had made it impossible to determine the true opinion of voters and thus had infringed his right to stand as a candidate in free elections. He also alleged that the domestic authorities, including the electoral commissions and courts, had failed to duly examine his complaints and to investigate his allegations concerning the mentioned irregularities.

The Court noted that where complaints of election irregularities had been addressed at the domestic level, the Court's examination had to be limited to verifying whether any arbitrariness could be detected in the domestic court procedure and decisions. The Court noted that the ConEC contended itself with requesting written explanations from the relevant electoral commissions chairpersons and members. The ConEC appeared to have relied exclusively on the statements of the electoral officials in deciding to dismiss the applicant's complaint. Likewise, the ConEC had given no reasons in support of its finding that the applicant's claims had been "unsubstantiated". As for the applicant's complaint lodged directly with the CEC, the Court noted that he had submitted documentary evidence proving that his complaint had been received by the CEC on 8 November 2005, which ignored his complaint. The Court referred to the OSCE/ODIHR report, which stated that in a vast majority of cases the CEC had merely transmitted individual complaints to the relevant ConECs without examining or addressing them. The applicant's subsequent appeals lodged with the Court of Appeal and the Supreme Court had not been addressed adequately either. Both courts had relied on extremely formalistic reasons to avoid examining the substance of his complaints. The Court, recalling the Venice Commission's Code of Good Practices in Electoral Matters which cautioned against excessive formalism in the examination of election-related appeals, found that such a rigid and overly formalistic approach had not been justified. The domestic courts should have reacted by taking reasonable steps to investigate the alleged irregularities without imposing unreasonable and excessively strict procedural barriers on the applicant. The applicant's allegations had also referred to apparent inconsistencies in several electoral protocols disclosing potential large-scale tampering with ballots. The domestic courts should have requested the electoral commissions to submit those protocols to them for an independent examination, something which they failed to do. The Court concluded that the conduct of the electoral commissions and courts and their respective decisions had revealed a lack of any genuine concern for the protection of the applicant's right to stand for election, in violation of Article 3 of Protocol No. 1.

**Frodl v. Austria (no. 20201/04) (Importance 2) – 8 April 2010 – Violation of Article 3 of Protocol No. 1 – Domestic courts' failure to justify a convicted prisoner's disenfranchisement**

Sentenced to life imprisonment for murder in 1993, the applicant was not included in the local electoral register. In October 2002 he filed an objection with the local electoral authority complaining that this exclusion was unlawful. The authority dismissed the objection, referring to the relevant provisions of the National Assembly Election Act, by which a prisoner who serves a term of imprisonment of more than one year for an offence committed with intent is disenfranchised. The district electoral authority dismissed the applicant's appeal against this decision, finding that it was not the task of the electoral authorities to assess whether the law applied was constitutional. The applicant subsequently requested the Constitutional Court to grant him legal aid to lodge a complaint against the district electoral authority's decision. The request for legal aid was refused in December 2003. The Constitutional Court found that the applicant's complaint lacked any prospect of success, referring to a previous decision of November 2003 in which it had found that the relevant provisions of the National Assembly Election Act were not unconstitutional.

The applicant complained that his disenfranchisement violated his rights under Article 3 of Protocol No. 1.

The Court observed that the case had similarities with another case in which it had found a violation of Article 3 of Protocol No. 1 on account of the disenfranchisement of a prisoner (see *Hirst v. the United Kingdom (no. 2)*). In that case, it had set out several criteria which had to be respected by Contracting States to the Convention when imposing restrictions on prisoners' right to vote, namely that disenfranchisement could only be envisaged for a narrowly defined group of offenders serving lengthy terms of imprisonment, that there should be a direct link between the facts on which a conviction is based and the sanction of disenfranchisement, and that such a measure should preferably be imposed by the decision of a judge following judicial proceedings. In the present case, it followed from the Austrian Government's submissions that the provisions on disenfranchisement of prisoners pursued the aims of preventing crime by punishing the conduct of convicted prisoners and of enhancing civic responsibility and respect for the rule of law. The Court found no reason to regard these aims in themselves as incompatible with the Convention. It further agreed with the Government that the Austrian provisions on disenfranchisement were more narrowly defined than the rules applicable in the case mentioned above. Nonetheless, the relevant provisions of that Act did not meet all the criteria the Court had set out for a measure of disenfranchisement to be in conformity with the Convention, namely that the decision on disenfranchisement should be taken by a judge, taking into account the specific circumstances of the case, and that there must be a link between the offence committed and issues relating to elections and democratic institutions. These criteria served the purpose to establish disenfranchisement as an exception, even for convicted prisoners. The Court concluded, by six votes to one, that there had been a violation of Article 3 of Protocol No. 1.

- **Disappearance cases in Chechnya and in Ingushetia**

**Mutsolgova and Others v. Russia** (no. 2952/06) (Importance 3) – 1 April 2010 – Violations of Article 2 (substantive and procedural) – Disappearance and presumed death of the applicants' close relative – Lack of an effective investigation – Violation of Article 3 – The applicants' mental suffering caused by their relative's disappearance (in respect of the first, second, third and fourth applicants) – No violation of Article 3 (in respect of the fifth applicant) – Violation of Article 5 – Unacknowledged detention of the applicants' relative – Violation of Article 13 in conjunction with Article 2 – Lack of an effective remedy

**Abayeva and Others v. Russia** (no. 37542/05) (Importance 3) – 8 April 2010 – Violations of Article 2 (substantive and procedural) – Disappearance and presumed deaths of the applicants' relatives – Lack of an effective investigation – Violation of Article 3 – The applicants' mental suffering caused by their relatives' disappearance – Violation of Article 5 – Unacknowledged detention of the applicants' relatives – Violation of Article 13 in conjunction with Article 2 – Lack of an effective remedy

**Abdurashidova v. Russia** (no. 32968/05) (Importance 3) – 8 April 2010 – No violation of Article 2 – No direct State responsibility for the applicant's daughter's death – Violation of Article 2 (positive obligation) – Authorities' failure to take reasonable measures to prevent a real and immediate risk to the life of the applicant's daughter – Violation of Article 2 (procedural) – Lack of an effective investigation – Violation of Article 1 of Protocol No. 1 – Unlawful and disproportionate interference with the applicant's right to peaceful enjoyment of possessions on account of the damages caused by a security operation – Violation of Article 13 in conjunction with Article 2 and Article 1 of Protocol No. 1 – Lack of an effective remedy

**Mudayevy v. Russia** (no. 33105/05) (Importance 3) – 8 April 2010 – Violations of Article 2 (substantive and procedural) – Disappearance and presumed death of the applicants' close relatives – Lack of an effective investigation – Violation of Article 3 (procedural) – Lack of an effective investigation into the allegations of ill-treatment of the applicants' relatives – Violation of Article 5 – Unacknowledged detention of the applicants' relatives – Violation of Article 13 in conjunction with Article 2 – Lack of an effective remedy

**Sadulayeva v. Russia** (no. 38570/05) (Importance 3) – 8 April 2010 – Violations of Article 2 (substantive and procedural) – Disappearance and presumed death of the applicant's son – Lack of an effective investigation – Violation of Article 3 – The applicant's mental suffering due to the disappearance of her son – Violation of Article 5 – Unacknowledged detention of the applicant's son – Violation of Article 13 in conjunction with Article 2 – Lack of an effective remedy

**Seriyevy v. Russia** (no. 20201/05) (Importance 3) – 8 April 2010 – Violations of Article 2 (substantive and procedural) – Disappearance and presumed death of the applicants' sons – Lack of an effective investigation – Violation of Article 3 – The applicants' mental suffering due to the disappearance of their relative – Violation of Article 5 – Unacknowledged detention – Violation of Article 13 in conjunction with Article 2 – Lack of an effective remedy

**Tasatayevy v. Russia** (no. 37541/05) (Importance 3) – 8 April 2010 – Violations of Article 2 (substantive and procedural) – Disappearance and presumed death of the applicants' relatives – Lack of an effective investigation – Violation of Article 3 – The applicants' mental suffering due to the disappearance of their sons – Violation of Article 5 – Unacknowledged detention of the applicants' sons – Violation of Article 13 in conjunction with Article 2 – Lack of an effective remedy

**Umalatov and Others v. Russia** (no. 8345/05) (Importance 3) – 8 April 2010 – Violations of Article 2 (substantive and procedural) – Disappearance and presumed death of the applicants' relatives – Lack of an effective investigation – Violation of Article 3 – The applicants' mental suffering due to their relatives' disappearance – Violation of Article 5 – Unacknowledged detention of the applicants' relatives – Violation of Article 13 in conjunction with Article 2 – Lack of an effective remedy

## 2. Other judgments issued in the period under observation

You will find in the column "Key Words" of the table below a short description of the topics dealt with in the judgment*. For a more complete information, please refer to the following link:

- Press release by the Registrar concerning the Chamber judgments issued on 30 Mar. 2010: here
- Press release by the Registrar concerning the Chamber judgments issued on 01 Apr. 2010: here
- Press release by the Registrar concerning the Chamber judgments issued on 06 Apr. 2010: here
- Press release by the Registrar concerning the Chamber judgments issued on 08 Apr. 2010: 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 |
|---|---|---|---|---|---|
| Austria | 01 Apr. 2010 | Gabriel (no. 34821/06) Imp. | Violation of Art. 6 § 1 | Lack of a public hearing before the Administrative Court, even though the applicant had explicitly asked for one | Link |
| Bulgaria | 01 Apr. 2010 | Rangelov and Stefanov (no. 23240/04) Imp. 3<br><br>Stefanov and Yurukov (no. 25382/04) Imp. 3 | Violation of Art. 6 § 1<br><br>Violation of Art. 13 | Excessive length of criminal proceedings<br>Lack of an effective remedy | Link<br><br>Link |
| Croatia | 01 Apr. 2010 | Vrbica (no. 32540/05) Imp. 3 | Violation of Art. 1 of Prot. 1<br>Violation of Art. 6 § 1 | Domestic courts' refusal to allow the enforcement of a recognised foreign judgment, which had awarded to the applicant damages for injuries that he had sustained in a road traffic accident | Link |
| Croatia | 08 Apr. 2010 | Peša (no. 40523/08) Imp. 3 | Violation of Art. 5 § 3<br><br>No violation of Art. 5 § 4 (concerning a Supreme Court decision)<br><br>Violation of Art. 5 § 4 (concerning two Constitutional Court decisions)<br>Violation of Art. 6 § 2 (fairness) | Extension of the applicant's detention on insufficient grounds<br>Supreme Court's decision addressed the procedural and substantive conditions which were essential for the "lawfulness" of the applicant's further detention<br>Hindrance to the applicant's right to challenge the lawfulness of his detention<br><br>Infringement of the applicant's right to be presumed innocent on account of statements made to the media by high-ranking State officials | Link |

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

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| | | | | declaring the applicant guilty | |
| Germany | 01 Apr. 2010 | Buijen (no. 27804/05) Imp. 2<br><br>Smith (no. 27801/05) Imp. 2 | Violation of Art. 6 § 1 | The authorities' refusal to institute transfer proceedings to send the applicants to the Netherlands, contrary to earlier assurances given by the Public Prosecutor; hindrance to the applicants' right to challenge the judgments given by the Lübeck Regional Court, as they had waived their right to appeal in view of the assurance given to them to transfer them to their home country | Link<br><br>Link |
| Greece | 01 Apr. 2010 | Evgeniou-Hatzidimitriou (no. 26487/07) Imp. 3 | Violation of Art. 6 § 1 | Excessive length of criminal proceedings brought against the applicant for forgery, use of forged documents, fraud and the establishment of a criminal gang | Link |
| Hungary | 30 Mar. 2010 | Győző Nagy (no. 38891/06) Imp.3 | Violation of Art. 6 § 1 | Excessive length of criminal proceedings for fraud and forgery | Link |
| Moldova | 06 Apr. 2010 | Lungu (no. 17911/08) Imp. 3 | Just satisfaction<br>Friendly settlement | Just satisfaction following the Court's judgment of 28 July 2009, where it held that there had been a violation of Art. 6 § 1 and of Art. 1 of Prot. 1 as a result of the non-enforcement of a final judgment awarding the applicants social housing | Link |
| Romania | 06 Apr. 2010 | Pop (no. 63101/00) Imp. 2 | Violation of Art. 6 § 1<br><br>Violation of Art. 13 | Excessive length of compensation proceedings<br>Lack of an effective remedy | Link |
| Romania | 06 Apr. 2010 | Ştefan (no. 28319/03) Imp. 3 | Violation of Art. 6 § 1 | Quashing of a final judgment by the Prosecutor General, and imposing a harsher sentence on the applicant | Link |
| Russia | 01 Apr. 2010 | Denisova and Moiseyeva (no. 16903/03) Imp. 2 | Violation of Art. 1 of Prot. 1 | Domestic courts' refusal to lift charging orders – in respect of the spousal portion of the first applicant and of the computer owned by the second applicant – issued in 1998 during criminal proceedings brought against the applicants' husband and father for treason | Link |
| Russia | 01 Apr. 2010 | Nikolayevich Mikhaylov (no. 4543/04) Imp. 2 | Two violations of Art. 6 § 1 | Lack of access to an appeal court on account of district court's failure to provide the applicant with a finalised text of the judgment in a timely fashion; excessive length of civil proceedings | Link |
| Russia | 01 Apr. 2010 | Gultyayeva (no. 67413/01) Imp. 2 | Violation of Art. 3<br><br>Violation of Art. 5 §§ 1 (c) and 3 | Conditions of detention in the Yuzhno-Sakhalinsk IZ-62/1 remand centre<br>Unlawfulness and excessive length of pre-trial detention | Link |
| Russia | 01 Apr. 2010 | Korolev (No. 2) (no. 5447/03) Imp. 2 | Violation of Art. 6 § 1 | Infringement of the principle of equality of arms on account of the public prosecutor's participation in the appeal proceedings | Link |
| Russia | 01 Apr. 2010 | Margushin (no. 11989/03) Imp. 3 | Violation of Art. 6 § 1<br>Violation of Art. 1 of Prot. 1 | The applicant's inability to recover his money deposited in a private bank as a result of domestic authorities' discontinuing the enforcement of a judgment in his favour | Link |
| Russia | 01 Apr. 2010 | Pavlenko (no. 42371/02) Imp. 3 | No violation of Art. 3<br><br>Violation of Art. 13<br><br>Violation of Art. 6 §§ 1 | The material conditions in the remand centre did not amount to an inhuman or degrading treatment<br>Lack of an effective remedy to challenge the conditions of detention<br>Lack of justification of the pre-trial | Link |

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| | | | and 3 (c) | restriction to the applicant's right to legal assistance | |
| Russia | 08 Apr. 2010 | Lutokhin (no. 12008/03) Imp. 3 | Violation of Art. 3 | Conditions of pre-trial detention amounted to inhuman and degrading treatment | Link |
| Russia | 08 Apr. 2010 | Sabayev (no. 11994/03) Imp. 2 | Violation of Art. 6 § 1 | Unfairness of supervisory review proceedings before the Supreme Court on account of the failure to notify the applicant or his defence lawyer of the contents of the prosecution's supervisory review request and the date and place of the hearing | Link |
| Russia | 08 Apr. 2010 | Sinichkin (no. 20508/03) Imp. 2 | Violation of Art. 6 § 1 in conjunction with Art. 6 § 3 (c) | Unfairness of the appeal hearing, held in the applicant's absence; lack of free legal assistance | Link |
| Turkey | 30 Mar. 2010 | Ayhan Işık (no. 33102/04) Imp. 3 | Violation of Art. 6 § 3 (c) in conjunction with Art. 6 § 1 | Lack of legal assistance during detention in police custody | Link |
| Turkey | 06 Apr. 2010 | Orhan Adıyaman (no. 32254/05) Imp. 3 | Violation of Art. 6 § 1 | Excessive length of criminal proceedings | Link |
| Ukraine | 08 Apr. 2010 | Bugayev (no. 7516/03) Imp. 3 | Violation of Art. 6 § 1 | Idem. | Link |
| Ukraine | 08 Apr. 2010 | Feldman (nos. 76556/01 and 38779/04) Imp. 3 | Violation of Art. 5 §§ 1, 3 and 4<br><br>Violation of Art. 6 § 1 | Unlawfulness and excessive length of the applicants' pre-trial detention; failure to speedily examine the lawfulness of the detention orders<br>Lack of impartiality and independence of the domestic courts | Link |
| Ukraine | 08 Apr. 2010 | Gurepka (No. 2) (no. 38789/04) Imp. 3 | Violation of Art. 6 § 1<br><br>Violation of Art. 2 of Prot. 7 | Failure to duly notify the applicant of the court proceedings against him<br>Lack of an ordinary appeal procedure against decisions of first-instance courts on administrative offences | Link |
| Ukraine | 08 Apr. 2010 | Menshakova (no. 377/02) Imp. 2 | Violation of Art. 6 § 1 (length)<br>No violation of Art. 6 § 1 (fairness) | Excessive length of compensation proceedings<br>No unfairness or arbitrariness; the procedural limitations on the applicant's access to the courts were not applied disproportionately | 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 | 30 Mar. 2010 | Buică (no. 14001/06) link | Violation of Art. 1 of Prot. 1 | Deprivation of property and total lack of compensation in respect of the applicant's action to recover title deeds for a plot of land |
| Romania | 30 Mar. 2010 | Trofim (no. 1193/08) link | Violation of Art. 6 § 1<br>Violation of Art. 1 of Prot. 1 | Non-enforcement of a final judgment in the applicant's favour |
| Romania | 30 Mar. 2010 | Țurcanu (no. 4520/08) link | Violation of Art. 1 of Prot. 1 | Non-enforcement of a final judgment in the applicant's favour providing compensation for nationalisation of the applicant's property |
| Romania | 06 | Nita (no. | Violation of Art. 1 of Prot. | Quashing of a final judgment in the |

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|---|---|---|---|---|
| | Apr. 2010 | 9410/04) link | 1 | applicant's favour by way of supervisory review |
| Romania | 06 Apr. 2010 | Ursan (no. 35852/04) link | Violation of Art. 6 § 1<br>Violation of Art. 1 of Prot. 1 | Non-enforcement of a final judgment in the applicant's favour |
| Russia | 01 Apr. 2010 | Panasenko (no. 9549/05) link | Violation of Art. 1 of Prot. 1 | Quashing of final judgments in the applicant's favour by way of supervisory review |
| Russia | 01 Apr. 2010 | Tsareva (no. 43327/02) link | Violation of Art. 6 § 1 | Quashing of a final judgment in the applicant's favour by way of supervisory review |
| Russia | 08 Apr. 2010 | Bulychevy (no. 24086/04) link<br><br>Yershova (no. 1387/04) link | Violation of Art. 6 § 1<br>Violation of Art. 1 of Prot. 1 | Non-enforcement of final judgments in the applicants' favour |
| Russia | 08 Apr. 2010 | Sizintseva and Others (nos. 38585/04, 2795/05, 18590/05, 24012/07 and 55283/07) link | Violation of Art. 6 § 1<br>Violation of Art. 1 of Prot. 1 | Quashing of final judgments in the applicants' favour by way of supervisory review (all cases)<br>Non-enforcement of final judgment in the applicants' favour (concerning the case of Mr Titov, Mrs Gladkova, Mrs V. Plotnikova and Mrs I. Plotnikova) |
| Turkey | 30 Mar. 2010 | Gurbet Er (no. 9459/05) link | Violation of Art. 6 § 1 | Domestic court's refusal to grant the applicant legal aid<br>(See *Bakan v. Turkey*) |
| Turkey | 06 Apr. 2010 | Fatih Yürük (no. 4930/05) link | Violation of Art. 6 § 1 | Idem. |

## 4. Length of proceedings cases

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

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

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

| **State** | **Date** | **Case Title** | **Link to the judgment** |
|---|---|---|---|
| Croatia | 01 Apr. 2010 | Lonza (no. 14062/07) | Link |
| Germany | 30 Mar. 2010 | Ritter-Coulais (no. 32338/07) | Link |
| Germany | 30 Mar. 2010 | Volkmer (no. 54188/07) | Link |
| Germany | 30 Mar. 2010 | Sinkovec (no. 46682/07) | Link |
| Germany | 01 Apr. 2010 | Niedzwiecki (No. 2) (no. 12852/08) | Link |
| Greece | 01 Apr. 2010 | Galanis (no. 8725/08) | Link |
| Greece | 01 Apr. 2010 | Karanikolas (no. 12879/08) | Link |
| Hungary | 30 Mar. 2010 | Belényesi (no. 9269/08) | Link |
| Italy | 06 Apr. 2010 | Falco and Others (nos. 34375/02, 34708/02 etc.) | Link |
| Italy | 06 Apr. 2010 | Ghirotti and Benassi (nos. 28104/02 and 28217/02) | Link |
| Turkey | 30 Mar. 2010 | Şerefli and Others (No. 2) (no. 14015/05) | Link |
| Turkey | 06 Apr. 2010 | Soylu and Others (no. 37532/02) | Link |
| Ukraine | 08 Apr. 2010 | Belous (no. 22580/04) | Link |
| Ukraine | 08 Apr. 2010 | Gutka (no. 45846/05) | Link |
| Ukraine | 08 Apr. 2010 | Kostychev (no. 27820/04) | Link |
| Ukraine | 08 Apr. 2010 | Khurava (no. 8503/05) | Link |
| Ukraine | 08 Apr. 2010 | Shaposhnikov (no. 30853/04) | Link |

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| Ukraine | 08 Apr. 2010 | Shapoval (no. 7411/05) | Link |
| Ukraine | 08 Apr. 2010 | Voyt (no. 22149/05) | Link |

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

Those decisions are published with a slight delay of two to three weeks on the Court's Website. Therefore the decisions listed below cover **the period from 8 to 21 March 2010**.

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

| ***State*** | ***Date*** | ***Case Title*** | ***Alleged violations (Key Words)*** | ***Decision*** |
|---|---|---|---|---|
| Austria | 11 Mar. 2010 | Burgstaller (no 3809/06) link | Alleged violation of Art. 6 § 1 (excessive length of criminal proceedings | Inadmissible (the applicant was afforded adequate redress by the national authorities and can no longer claim to be a victim) |
| Croatia | 11 Mar. 2010 | Kovač (no 49910/06) link | Alleged violation of Art. 6 § 1 and Art. 10 (unfair procedure and outcome in proceedings for contempt of court, unfairness of criminal proceedings), Art. 6 § 1 (excessive length of civil proceedings), Art. 13 (lack of an effective remedy), Art. 3 (subjected to torture and degrading treatment), Art. 14 (discrimination on grounds of sex) | Partly adjourned (concerning unfair procedure and outcome of contempt of court proceedings), partly inadmissible for non-exhaustion of domestic remedies (concerning the civil proceedings and manifestly ill-founded concerning the lack of an effective remedy, and inadmissible as manifestly ill-founded and incompatible *ratione materiae* (concerning the remainder of the application) |
| Cyprus | 11 Mar. 2010 | Papakokkinou (II) (no 52814/08) link | Alleged violation of Art. 6 § 1 (excessive length and unfairness of proceedings), Art. 1 of Prot. 1 (expenses due to the Supreme Court's judgment), Articles 17 and 3 | Partly struck out of the list (unilateral declaration of the Government concerning the length of proceedings), partly inadmissible (no violation of the rights and freedoms protected by the Convention concerning the remainder of the application) |
| Cyprus | 11 Mar. 2010 | Papakokkinou (no 35686/08) link | Alleged violation of Art. 6 § 1 (excessive length and unfairness of proceedings), Art. 1 of Prot. 1 (expenses due to the Supreme Court's judgment), Art. 17 | Idem. |
| Denmark | 09 Mar. 2010 | Wulff (no 35016/07) link | Alleged violation of Art. 8 (Danish authorities' refusal to re-open paternity case) | Inadmissible as manifestly ill-founded (domestic courts struck a fair balance between the general interest of the protection of legal certainty of family relationships and the applicant's right to have the legal presumption of his paternity reviewed in the light of the biological evidence) |
| Denmark | 09 Mar. 2010 | Santos Hansen (no 17949/07) link | Alleged violation of Art. 14 in conjunction with Art. 8 and with Art. 1 of Prot. 1 (refusal to grant the applicant the special child subsidy) | Inadmissible as manifestly ill-founded (no elements found which could suggest that the Supreme Court's judgment was arbitrary or disproportionate to the legitimate aim pursued) |
| Germany | 09 Mar. 2010 | Petuhovs (no 60705/08) link | Alleged violation of Art. 6 § 3 (a) and (b) (domestic courts' failure to provide the applicant with a translation of the indictment before | Inadmissible as manifestly ill-founded (the absence of a written translation of the indictment neither prevented the applicant |

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| | | | his trial and the subsequent refusal of the trial court to stay the proceedings in order to allow for additional time for the preparation of his defence) | from preparing his defence and defending himself nor denied him a fair trial, in particular since neither before the national courts nor before this Court did he explain in what way the lack of a translation allegedly interfered with his defence rights) |
| Germany | 09 Mar. 2010 | Mielke (no 37142/07) link | Alleged violation of Art. 1 of Prot. 1 (expropriation of property and lack of an adequate compensation for this expropriation and the non-restitution of the property), Art. 1 of Prot. 12 (the German Democratic Republic authorities had lifted the expropriation order in parallel proceedings concerning an owner that had resided in the GDR) and Art. 6 (unfairness of proceedings) | Partly incompatible *ratione temporis* (concerning the expropriation and compensation by GDR authorities), partly incompatible *ratione materiae* (as regards the refusal to return the property), partly incompatible *ratione personae* (concerning claims under Art. 1 of Prot. 12), and partly inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention (concerning claims under Art. 6) |
| Germany | 09 Mar. 2010 | Ammdjadi (no 51625/08) link | Alleged violation of Articles 8 and 12 and Art. 1 of Prot. 1, taken alone and in conjunction with Art. 14 (refusal to award the applicant compensation of pension rights under German law) | Partly inadmissible as manifestly ill-founded (the notion of "respect [...] for family life" does not entail an obligation on the part of the Contracting State to grant a pecuniary privilege to one spouse, which moreover corresponds to a pecuniary disadvantage to the other spouse concerning claims under Art. 8), partly incompatible *ratione materiae* (concerning claims under Art. 12 and Art. 1 of Prot. 1), and partly inadmissible as manifestly ill-founded (the applicant had been free to choose the application of German law, together with her husband, by notarial certification concerning claims under Art. 14) |
| Greece | 11 Mar. 2010 | Filippou Domika Erga A.E. (no 45064/07) link | Alleged violation of Art. 6 § 1 (unfairness and excessive length of proceedings), Art. 1 of Prot. 1 (loss of property due to the length of proceedings) | Struck out of the list (applicant company no longer wished to pursue its application) |
| Hungary | 09 Mar. 2010 | Szentey (no 3221/06) link | Alleged violation of Art. 6 § 1 (excessive length of civil proceedings) | Struck out of the list (friendly settlement reached) |
| Hungary | 09 Mar. 2010 | Kocsár (no 7053/06) link | Alleged violation of Art. 6 § 1 (outcome and excessive length of proceedings) and Art. 13 (lack of an effective remedy) | Inadmissible as manifestly ill-founded (no undue delay concerning the length of proceedings and no violation of the rights and freedoms protected by the Convention) |
| Hungary | 09 Mar. 2010 | Király (no 358/06) link | Alleged violation of Art. 6 § 1 (excessive length of administrative proceedings) | Struck out of the list (friendly settlement reached) |
| Hungary | 09 Mar. 2010 | Panyik (no 12748/06) link | Alleged violation of Art. 6 § 1 (outcome, unfairness and excessive length of civil and criminal proceedings) and Art. 13 (lack of an effective remedy) | Partly adjourned (concerning the impartiality of the court), partly inadmissible as manifestly ill-founded (the applicant's submissions do not disclose any elements of arbitrariness concerning the length and outcome of the civil proceedings), partly incompatible *ratione materiae* (concerning the the outcome and length of the criminal proceedings), partly inadmissible for non respect of the six-month requirement (concerning the |

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| | | | | remainder of the application) |
| Poland | 09 Mar. 2010 | Łyskawa (no 51090/07) link | Alleged violation of Art. 5 § 3 (excessive length of pre-trial detention) and Art. 6 § 2 (breach of presumption of innocence) | Struck out of the list (friendly settlement reached) |
| Poland | 09 Mar. 2010 | Biziuk (no 29145/06) link | Alleged violation of Art. 6 (refusal to appoint a lawyer for the applicant with a view to filing a cassation appeal) | Idem. |
| Poland | 09 Mar. 2010 | Kostrzewa (no 44901/08) link | Alleged violation of Art. 3 (conditions of detention in Iława Prison) | Idem. |
| Poland | 09 Mar. 2010 | Lorbiecki (no 50178/08) link | The applicant complained about the refusal of the his request for release from the hospital, excessive length and outcome of criminal proceedings | Partly struck out of the list (unilateral declaration of the Government concerning the refusal of the applicant's request for release from the hospital), partly inadmissible for non respect of the six-month requirement (concerning the remainder of the application) |
| Poland | 09 Mar. 2010 | Lidzba (no 7404/05) link | Alleged violation of Art. 8 (non enforcement of the applicant's visiting rights in respect of his daughter) | Struck out of the list (the applicant no longer wished to pursue his application) |
| Poland | 09 Mar. 2010 | Kuras (no 46829/07) link | Alleged violation of Art. 6 § 1 (excessive length of criminal proceedings) | Struck out of the list (friendly settlement reached) |
| Poland | 09 Mar. 2010 | Trafankowski (no 41768/02) link | Alleged violation of Art. 3 (conditions of detention) | Idem. |
| Romania | 09 Mar. 2010 | SC EDF Asro SRL (no 2488/03) link | Alleged violation of Articles 6 and 13 (unfairness of proceedings and lack of an effective remedy), Art. 1 of Prot. 1 (the applicant society forced to stop its activities), Articles 11, 8 and 14 | Partly adjourned (concerning the unfairness of proceedings and property rights), partly incompatible *ratione personae* (concerning claims under Art. 11), partly inadmissible as manifestly ill-founded (no evidence to conclude discriminatory treatment concerning claims under Art. 14) |
| Romania | 09 Mar. 2010 | Bucşa (no 1023/06) link | Alleged violations of Art. 3 (the applicant infected with tuberculosis in prison and lack of an effected investigation ) | Struck out of the list (the applicant no longer wished to pursue his application) |
| Romania | 09 Mar. 2010 | Serafim (no 38568/03) link | Alleged violation of Art. 6 § 1 (unfairness of proceedings) and Art. 1 of Prot. 1 (domestic authorities' refusal to allow the applicant's action infringed her right to peaceful enjoyment of possessions) | Partly inadmissible as manifestly ill-founded (no evidence to conclude unfairness of proceedings), partly incompatible *ratione materiae* (concerning the remainder of the application) |
| Romania | 09 Mar. 2010 | Coşcodar (no 36020/06) link | Alleged violation of Art. 3 (conditions of detention and ill-treatment in Timişoara prison), Art. 8 (monitoring of telephone conversation), Articles 5 and 6 (outcome of criminal proceedings) | Inadmissible as manifestly ill-founded (failure to substantiate complaints and no evidence to conclude to a violation concerning claims under Art. 3, no evidence to conclude to a violation concerning claims under Art. 5 and 6, and the monitoring of telephone calls was "necessary" and proportionate concerning claims under Art. 8) |
| Russia | 11 Mar. 2010 | Danilina (no 5727/04) link | Alleged violation of Art. 6 § 1 (excessive length and outcome of proceedings) and Art. 13 (lack of an effective remedy), Articles 4, 6, and 13 | Inadmissible as manifestly ill-founded ("reasonable time" requirement had been met concerning the length of proceedings; lack of an arguable claim concerning claims under Art. 13 and no violation of the rights and freedoms protected by the Convention concerning the outcome of proceedings) |
| Slovenia | 09 | Polanc (no | Alleged violation of Art. 6 § 1 | 1st set of proceedings: Struck out |

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| | Mar. 2010 | 29811/06) link | (excessive length of proceedings) and Art. 13 (lack of an effective remedy) | of the list (the matter had been resolved at the domestic level) 2nd set of proceedings: inadmissible for non-exhaustion of domestic remedies |
| Slovenia | 09 Mar. 2010 | Železnik (no 22050/06) link | Alleged violation of Art. 6 § 1 (unfairness and excessive length of proceedings) and Art. 13 (lack of an effective remedy) | Partly struck out of the list (the matter has been resolved in domestic level concerning the length of proceedings and the and lack of an effective remedy), partly inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention concerning the remainder of the application) |
| Slovenia | 09 Mar. 2010 | Stepišnik (no 3386/06) link | Alleged violation of Art. 6 § 1 (excessive length of civil proceedings) and Art. 13 (lack of an effective remedy) | Struck out of the list (friendly settlement reached) |
| Slovenia | 09 Mar. 2010 | Tratar (no 2460/04) link | Alleged violation of Art. 6 § 1 (excessive length of proceedings) and Art. 13 (lack of an effective remedy) | 1st set of proceedings: Struck out of the list (the matter had been resolved at the domestic level) 2nd set of proceedings: inadmissible for being essentially the same as the matter examined in 1st set of proceedings |
| the Czech Republic | 09 Mar. 2010 | Hartman (no 44720/06) link | Alleged violation of Art. 5 § 5 (lack of compensation for unlawful detention), Art. 6 (excessive length and unfairness of proceedings), Articles 3, 5 § 1 a), 6 and 7 (unlawful detention, unfairness of the proceedings) and infringement of the applicant's right to personal dignity and reputation | Partly inadmissible for non-exhaustion of domestic remedies (concerning claims under Art. 5 § 5), partly inadmissible as manifestly ill-founded ("reasonable time" requirement met concerning the length of proceedings), partly incompatible *ratione temportis* (concerning the unlawful detention and the unfairness of proceedings), partly inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention concerning the remainder of the application) |
| "the former Yugoslav Republic of Macedonia" | 09 Mar. 2010 | Jovanov (no 36117/04) link | Alleged violation of Art. 6 § 1 (unfairness of proceedings on account of the applicant's entrapment) | Inadmissible as manifestly ill-founded (domestic courts' refusal to examine the *agent provocateur* did not lead to a limitation of the defence rights incompatible with the guarantees of a fair trial enshrined in Article 6 of the Convention) |
| the United Kingdom | 09 Mar. 2010 | Jain (no 39598/09) link | Alleged violation of Art. 1 of Prot. 1 (cancellation of the Certificate of Registration of the applicants' registered nursing home), Art. 13 (lack of an effective remedy) and Art. 6 (*ex parte* nature of the application for a section 30 Order) | Struck out of the list (friendly settlement reached) |
| the United Kingdom | 09 Mar. 2010 | Nilsen (no 36882/05) link | Alleged violation of Articles 10, 8 and 1 of Prot. 1 (refusal of the prison Governor to return the applicant's manuscript containing graphic descriptions of the applicant's murders to him) | Inadmissible as manifestly ill-founded (the interference was necessary in that it corresponded to a pressing social need and was proportionate to the legitimate aims pursued) |
| Turkey | 09 Mar. 2010 | Aydinlar and Others (no 3575/05) link | Alleged violation of Art. 2 (disappearance of the applicants' relative), Art. 3 (the applicants' mental suffering due the alleged disappearance), Art. 5 (unacknowledged detention of the applicants' relative), Art. 13 (lack of an effective remedy) and Articles 14 and 18 | Inadmissible (no respect of the six-month requirement) |

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| Turkey | 09 Mar. 2010 | Tarim (no 54948/07) link | Alleged violation of Art. 1 of Prot. 1 (refusal to provide the applicant with a construction permit on account of the applicant's plots of land being classified as a natural reserve) | Inadmissible for non respect of the six-month requirement concerning one plot of land, for non exhaustion of domestic remedies concerning another plot of land, partly inadmissible as manifestly ill-founded (proportionate measure to the legitimate aim pursued) |

## 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 22 March 2010 : link
- on 29 March 2010 : link

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

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

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

**Communicated cases published on 22 March 2010 on the Court's Website and selected by the NHRS Unit**

*The batch of 22 March 2010 concerns the following States (some cases are however not selected in the table below): Belgium, Bosnia and Herzegovina, Bulgaria, France, Germany, Latvia, Lithuania, Moldova, Romania, Russia, Serbia, Slovakia, Sweden, Switzerland, "the former Yugoslav Republic of Macedonia", the United Kingdom, Turkey and Ukraine.*

| State | Date of communication | Case Title | Key Words of questions submitted to the parties |
|---|---|---|---|
| Belgium | 04 Mar. 2010 | S. P. no 12572/08 | Alleged risk of being subjected to ill-treatment, unlawful detention and unfair proceedings if expelled to Sri-Lanka – Lack of an effective remedy against alleged unlawful detention by the Belgian authorities in a closed centre for foreigners |
| Bulgaria | 04 Mar. 2010 | Hristov and Others no. 42697/05 | Alleged violation of Art. 3 (substantive and procedural) – Ill-treatment by the police in detention – Lack of an effective investigation – Alleged violation of Art.13 – Lack of an effective remedy |
| France | 01 Mar. 2010 | S. K. no 66826/09 | Alleged violations of Articles 2 and 3 – Risk of being executed or subjected to ill-treatment if expelled to the applicant's country of origin – Alleged violation of Art. 13 – Lack of an effective remedy |
| Russia | 05 Mar. 2010 | Avdyukov no 33373/07 | Alleged violation of Art. 3 (substantive and procedural) – Torture in police custody on several occasions – Lack of an effective investigation – Alleged |

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| | | | violation of Art. 2 – Excessive use of force during the alleged torture – Alleged violation of Art. 13 – Lack of an effective remedy in respect of Articles 2 and 3 – Alleged violation of Art. 5 § 1 – Unlawful deprivation of liberty – Alleged violation of Art. 5 § 3 – Failure to bring the applicant promptly before a judge |
| Russia | 05 Mar. 2010 | Moskalenko no 34382/04 and Nitsov no 35389/04 | Alleged violation of Art. 3 (substantive and procedural) – Ill-treatment by the police in detention – Lack of an effective investigation – Alleged violation of Art. 13 – Lack of an effective remedy – Question as to whether the applicant was afforded an effective opportunity to obtain judicial review of the decisions discontinuing the criminal proceedings in respect of the allegations of ill-treatment by the police as well as a remedy for compensation |
| Russia | 05 Mar. 2010 | Khatayev no 56994/09 | Alleged violations of Art. 3 – Lack of adequate medical assistance in prison hospital – Ill-treatment by wardens in prison hospital – Lack of an effective investigation |
| Sweden | 04 Mar. 2010 | E.S. and Others no 24682/09 | Alleged violation of Articles 2 and 3 – Risk of being executed or subjected to ill-treatment if expelled to Libya (first applicant) – Alleged violation of Art. 8 – If removed to Morocco, the first applicant would not be able to obtain a residence permit in that country and risk of further removal to Libya (both applicants) |
| the United Kingdom | 04 Mar. 2010 | Balogun no 60286/09 | Alleged violations of Articles 2, 3 and 8 – Have sufficient measures been put in place to ensure that the applicant's removal to Nigeria would not breach Art. 3 given that the applicant represents a suicide risk? |
| Turkey | 01 Mar. 2010 | Avci no 43461/04 | Alleged violation of Art. 3 – Ill-treatment during arrest – Alleged violation of Art. 5 § 1 – Unlawful detention – Alleged violation of Art. 5 § 3 – Failure to bring the applicant promptly before a judge – Alleged violation of Art. 8 – Seizure of the applicant's correspondence in detention – Alleged violation of Art.13 – Lack of an effective remedy to obtain compensation |
| Turkey | 01 Mar. 2010 | Boyraz no 61960/08 | Alleged violation of Art. 6 § 1 – Excessive length and unfairness of administrative proceedings – Alleged violation of Art. 14 in conjunction with Art. 8 – Domestic authorities' refusal to appoint the applicant to a post of security officer on the ground of her sex |
| Ukraine | 01 Mar. 2010 | Kondratyev no 5203/09 | Alleged violation of Art. 3 – Conditions of detention – Lack of adequate medical care in detention in respect of the applicant's tuberculosis and knee injury – Alleged violation of Art. 5 § 1 (c) – Unlawful pre-trial detention – Alleged violation of Art. 5 § 3 – Excessive length of pre-trial detention – Alleged violation of Art. 6 § 1 – Excessive length of proceedings – Alleged violation of Art. 13 – Lack of an effective remedy as regards the length of proceedings |

**Communicated cases published on 29 March 2010 on the Court's Website and selected by the NHRS Unit**

*The batch of 29 March 2010 concerns the following States (some cases are however not selected in the table below): Austria, Belgium, Bulgaria, Croatia, Estonia, Greece, Hungary, Latvia, Moldova, Poland, Portugal, Romania, Russia, Slovakia, the Czech Republic, the Netherlands, the United Kingdom, Turkey and Ukraine.*

| **State** | **Date of communication** | **Case Title** | **Key Words of questions submitted to the parties** |
|---|---|---|---|
| Belgium | 08 Mar. 2010 | Noori no 17182/09 and 6 other applications | Alleged violations of Articles 2 and 3 – Real reasons to believe that if deported to Greece, the applicants faced a real risk of being expelled to their countries of origin without having the applicants' risks of being executed or subjected to ill-treatment examined – Alleged violation of Art. 13 – Lack of an effective remedy – The Belgian and the Greek Government were requested to provide more information on the asylum, as well as on the deportation procedures guarantees |
| Croatia | 08 Mar. 2010 | Gladović no 28847/08 | Alleged violations of Art. 3 (substantive and procedural) – Ill-treatment by prison guards in detention – Lack of an effective investigation into the alleged ill-treatment |
| Greece | 08 Mar. 2010 | Taggatidis and Others no 2889/09 | Alleged violations of Art. 3 – Question as to inhuman or degrading treatment on account of the conditions of detention of 47 prisoners in the prison of Ioannina |
| Latvia | 08 Mar. 2010 | Cēsnieks no 9278/06 | Alleged violation of Art. 3 (substantive and procedural) – Ill-treatment in police custody – Lack of an effective investigation – Alleged violation of Art. 13 – Lack of an effective remedy – Alleged violation of Art. 6 § 1 – Unfairness of proceedings (the applicant's guilt was allegedly established on the basis of inadmissible evidence, namely a confession obtained in breach of Article 3 of the Convention; lack of sufficient reasoning of the Supreme Court) |
| Moldova | 10 Mar. 2010 | Graur no 13119/08 | Alleged violation of Art. 3 – Domestic authorities' failure to properly identify and punish those responsible for the applicant's alleged rape and ill-treatment – Question as to whether the sentence imposed on the applicant's rapist have a sufficiently deterrent effect so as to prevent the occurrence of similar crimes in |

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| | | | the future |
| Moldova | 08 Mar. 2010 | Talmazan no 13605/08 | Alleged violations of Art. 3 – Conditions of detention – Lack of adequate medical care in detention – Alleged violation of Art. 6 § 1 – Excessive length of proceedings – Alleged violation of Art. 6 § 3 b) – Failure to provide the applicant with sufficient time and facilities to prepare his defense |
| Romania | 09 Mar. 2010 | Retunscaia no 25251/04 | Alleged violation of Art. 3 – Ill treatment during detention at a Bucharest police station and during transportation from Rahova Prison to the Bucharest County Court – Conditions of detention – Alleged violation of Art. 6 § 1 – Unfairness of proceedings – Alleged violation of Art. 6 § 3 (b) and (c) – Failure to provide the applicant with sufficient time and facilities to prepare her defense and lack of effective legal assistance |
| Russia | 10 Mar. 2010 | Vasilyadi no 49106/09 | Alleged violations of Art. 3 – Lack of medical assistance in detention (in particular, has the applicant's the lung surgery become impossible because of the failure to perform it in a timely manner? Does the applicant's illness at its current stage threaten his life? Was the applicant's continued detention in penitentiary facilities lacking the recommended medical treatment compatible with this provision?) – Alleged violation of Art. 5 § 3 – Excessive length of pre-trial detention – Alleged violation of Art. 6 § 1 – Excessive length of proceedings |
| Turkey | 11 Mar. 2010 | Athary no 50372/09 | Alleged violation of Articles 2 and 3 – Risk of being executed or subjected to ill-treatment if expelled to Iran – With reference to the information from the Government that the deportation order did not mention a specific country, where did the authorities intend to deport the applicant? – Alleged violation of Art. 13 – Lack of an effective remedy to challenge the deportation order – Alleged violation of Art. 5 § 1 – Unlawful detention – Alleged violation of Art. 5 § 2 – Failure to inform the applicant promptly, in a language which he understood, of the reasons for his deprivation of liberty – Alleged violation of Art. 5 § 4 – Lack of an effective remedy to challenge the lawfulness of his deprivation of liberty |
| Ukraine | 10 Mar. 2010 | Beley no 34199/09 and Savin no 34725/08 | Alleged violation of Art. 3 (substantive and procedural) – Ill-treatment by the police – Lack of an effective investigation – Alleged violation of Art. 5 § 1 (c) – Unlawful detention |
| Ukraine | 10 Mar. 2010 | Teslenko no 55528/08 | Alleged violation of Art. 3 (substantive and procedural) – Torture in police custody – Lack of an effective investigation |
| Ukraine | 08 Mar. 2010 | Klishiyn no 30671/04 | Alleged violation of Art. 3 – Ill-treatment by traffic police officers and police officers – Lack of an effective investigation – Alleged violation of Art. 5 § 1 – Unlawful detention – Alleged violation of Art. 5 § 3 – Excessive length of pre-trial detention – Alleged violation of Art. 5 § 4 – Excessive length of proceedings by which the applicant sought to challenge the lawfulness of his pre-trial detention – Alleged violation of Art. 5 § 5 – Lack of an effective remedy to obtain compensation in respect of the unlawful detention |

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

**The Convention belongs to you! (01.04.2010)**

To mark the sixtieth anniversary of the European Convention on Human Rights, the European Court of Human Rights has produced a 3-minute video-clip presenting the 15 main rights and freedoms in the Convention and its Protocols. Aimed at a wide range of viewers, especially in the 15-25 age bracket, the video-clip is currently available in English and French, with versions in other official languages of member States to be developed during the year. The Court wishes to encourage initiatives aimed at including this video-clip in civic education programs. Video clip

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

## A. New information

The Council of Europe's Committee of Ministers will hold its next "human rights" meeting from 1 to 3 June 2010 (the 1086th meeting of the Ministers' deputies).

## B. General and consolidated information

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

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

For more information on the specific question of the execution of judgments including the Committee of Ministers' annual report for 2008 on its supervision of judgments, please refer to the Council of Europe's web site dedicated to the execution of judgments of the European Court of Human Rights: http://www.coe.int/t/dghl/monitoring/execution/default_en.asp

The simplified global database with all pending cases for execution control (Excel document containing all the basic information on all the cases currently pending before the Committee of Ministers) can be consulted at the following address:

http://www.coe.int/t/e/human_rights/execution/02_Documents/PPIndex.asp#TopOfPage

# Part III : The work of other Council of Europe monitoring mechanisms

## A. European Social Charter (ESC)

**Bulgaria amends its Health Insurance and Social Assistance Acts to comply with the Revised Social Charter (31.03.2010)**

At the 1081st meeting of the Ministers' Deputies, two resolutions were adopted (CM/ResChS(2010) 1 and CM/ResChS(2010) 2) taking note of the measures implemented by the Bulgarian government to bring its situation into conformity with the provisions of the Revised European Social Charter.
Summary of Complaint no. 46/2007
Summary of Complaint no. 48/2008
Further information on collective complaints

**The Committee of Ministers adopts resolutions on the implementation of the European Social Charter (2005-2006) (31.03.2010)**

On 31 March 2010 at their 1081st meeting the Ministers' Deputies adopted Resolution CM/ResChS (2010) 4 on the implementation of the ESC (revised) and Resolution CM/ResChS (2010) 3 on the implementation of the ESC, during the period 2005-2006 (concerning the provisions relating to employment, training and equal opportunity). The resolutions were adopted on the basis of abridged reports submitted by the Governmental Committee of the ESC, relating to Conclusions XIX-1 (2008) (ESC) and Conclusions 2008 (Revised European Social Charter).

**Seminar on the Revised Social Charter in Skopje**

In order to provide comprehensive information on the Revised Charter and its case-law to the authorities of "the Former Yugoslav Republic of Macedonia" with a view to the ratification of this instrument, a seminar was held in Skopje on 16 April 2010. This seminar was attended by two members of the European Committee of Social Rights, Mr Luis JIMENA QUESADA and Ms Jarna PETMAN, as well as two administrators from the Department of the European Social Charter, Ms Nino CHITASHVILI and Ms Rovena DEMIRAJ. Programme

An electronic newsletter is now available to provide updates on the latest developments in the work of the Committee:

http://www.coe.int/t/dghl/monitoring/socialcharter/Newsletter/NewsletterNo2Jan2010_en.asp

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

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

The 243rd session of the European Committee of Social Rights will be held from 26-30 April 2010

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

**Council of Europe anti-torture Committee visits the Channel Islands (29.03.2010)**

A delegation of the CPT carried out a visit to the Bailiwicks of Guernsey and Jersey from 15 to 22 March 2010. This was the CPT's first visit to the Channel Islands. The CPT's delegation consisted of Wolfgang HEINZ, Head of delegation and member of the CPT in respect of Germany, and two experts, Veronica PIMENOFF, Expert for psychiatry at Kuopio Administrative Court (Finland), and Jurgen VAN POECKE, Director of Bruges Prison (Belgium), supported by Hugh CHETWYND, Head of Division, and Caterina BOLOGNESE, of the CPT's Secretariat.

In Guernsey, the CPT's delegation met Lyndon TROTT, Chief Minister, Hunter ADAMS, Minister of Health and Social Services, Francis QUIN, Deputy Minister of the Home Department, Howard

ROBERTS QC, Attorney General, Mike BROWN, Chief Executive of the States of Guernsey, as well as senior officials from relevant departments.

In Jersey, the CPT's delegation met Jackie HILTON, Assistant Minister for Home Affairs, Judith MARTIN, Assistant Minister for Health and Social Services, as well as senior officials from relevant departments. It also met William BAILHACHE QC, Deputy Bailiff, Howard SHARP, Solicitor General, and members of the Police Complaints Authority and of the Prison Board of Visitors. The CPT's delegation also met officials from the Ministry of Justice in London.

The CPT's delegation also visited the United Kingdom, where it examined the treatment and conditions of detention of three persons convicted by the International Criminal Tribunal for the former Yugoslavia (ICTY) and who are serving their sentences at Belmarsh, Shotts and Wakefield Prisons. This visit was carried out from 22 to 26 March 2010.

**Council of Europe anti-torture Committee publishes report on Bosnia and Herzegovina (31.02.2010)**

The CPT published on 31 March the CPT's visit report on its ad hoc May 2009 visit to Bosnia and Herzegovina, together with the response of the Government of Bosnia and Herzegovina.

The May 2009 visit provided an opportunity to assess the progress made since the periodic visit in March/April 2007. The CPT's delegation examined in detail various issues related to Sarajevo and Zenica Prisons, including the regime and treatment of remand prisoners as well as of prisoners placed in administrative and disciplinary isolation and in the high-security unit.

Particular concern was expressed in the report about Zenica Prison still not being under the effective control of prison staff, due to a combination of overcrowding, large dormitories (kolektivi) and the extremely low staffing levels. Further, a number of recommendations are made to improve the provision of health care in prisons in the Federation of Bosnia and Herzegovina. The report also recommends that juveniles deprived of their liberty should not be held in institutions for adults but instead in specially designed facilities; where juveniles are held in institutions for adults, they must be accommodated separately and offered an appropriate regime.

The visit also focused on the situation of forensic psychiatric patients. The CPT recommends that the living conditions of patients at Sokolac Psychiatric Clinic be improved, and that measures be taken to reinforce the staffing levels and to introduce individual treatment plans for each patient. As regards Zenica Prison Forensic Psychiatric Annexe, the CPT calls upon the authorities to take the necessary steps to improve material conditions, patient treatment and staffing levels in the annexe, as well as to carry out a review of the clinical needs of all the patients.

In their response, the authorities make reference to various measures taken to improve the situation in the light of the recommendations made by the CPT. As regards Zenica Prison, information is provided on steps taken to make the prison safe, including the recruitment of an additional 50 prison officers. Reference is also made to the introduction of a legal provision to permit juveniles to serve their sentences in a dedicated juvenile facility located in another Entity of the State. Particular emphasis is placed in the response on a national strategy for combating drug abuse, which includes the provision of assistance to prisoners with drug abuse problems.

As regards Sokolac Psychiatric Clinic, the authorities provide information on the ongoing measures being taken to improve living conditions and state that all patients do have an individual treatment plan. They also provide information on the inter-Entity agreement on the placement and funding of patients in the Sokolac Special Hospital for Forensic Psychiatry, and state that the facility will now be renovated with funds donated by Switzerland.

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

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

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

**UK: receipt of the third cycle State Report (30.03.2010)**

The UK submitted on 23 March 2010 its third state report in English, pursuant to Article 25, paragraph 1, of the Framework Convention for the Protection of National Minorities. It is now up to the Advisory Committee to consider it and adopt an opinion intended for the Committee of Ministers.

**Liechtenstein: Publication of the third cycle opinion (09.04.2010)**

Read the third cycle opinion

## 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)

**Participation in the EU Asset Recovery Offices' Platform (29.03.2010)**

MONEYVAL participated in the 4th meeting of the informal platform of the EU Asset Recovery Offices, which took place in Brussels from 25 to 26 March 2010. This platform gathers representatives from Asset Recovery Offices established in EU member States, in order to ensure effective exchange of information, coordination and co-operation. The Secretariat of MONEYVAL presented at this meeting the results of the survey on the enforcement of non-conviction based confiscation orders in MONEYVAL member States and the state of play on the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198).

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

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

# Part IV: The inter-governmental work

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

**6 April 2010**

**Croatia** ratified the European Convention on the Exercise of Children's Rights (ETS No. 160).

**8 April 2010**

**Czech Republic** signed the Agreement on the Transfer of Corpses (ETS No. 80).

**Georgia** ratified the Additional Protocol to the Convention on Human Rights and Biomedicine, concerning Biomedical Research (CETS No. 195).

**9 April 2010**

**France** approved the European Convention for the protection of the Audiovisual Heritage (ETS No. 183), and the Protocol to the European Convention for the protection of the Audiovisual Heritage, on the protection of Television Productions (ETS No. 184).

**Bosnia and Herzegovina** signed the European Landscape Convention (ETS No. 176), and the European Convention for the protection of the Audiovisual Heritage (ETS No. 183).

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

CM/Rec(2010)6E / 31 March 2010

Recommendation of the Committee of Ministers to member States on good governance in health systems (Adopted by the Committee of Ministers on 31 March 2010 at the 1081st meeting of the Ministers' Deputies)

CM/Rec(2010)5E / 31 March 2010

Recommendation of the Committee of Ministers to member States on measures to combat discrimination on grounds of sexual orientation or gender identity (Adopted by the Committee of Ministers on 31 March 2010 at the 1081st meeting of the Ministers' Deputies)

## C. Other news of the Committee of Ministers

**The Council of Europe deplores the terrorist attacks in Russia: Declaration by the Chairperson of the Committee of Ministers, Micheline Calmy-Rey (29.03.2010)**

“I am deeply saddened by the deadly explosions which took place this morning in two metro stations in Moscow. I wish to express my sincere condolences to the families and friends of the victims and solidarity with the population and authorities of the Russian Federation. There is no justification for such horrendous acts, which I condemn most firmly. These terrible attacks remind us of the absolute necessity to continue our efforts to combat terrorism through means which are respectful of human rights and democratic values.”

**Micheline Calmy-Rey calls for release of Swedish-Eritrean journalist Dawit Isaak (30.02.2010)**

"Since 23 September 2001 the journalist and playwright Dawit Isaak has been detained in Eritrea without being the subject of legal proceedings or sentencing", says the Chair of the Committee of Ministers and Head of Switzerland's Federal Department of Foreign Affairs in her statement published on 30 March. "I wish to add my voice to the many calls already made for Mr Isaak's release", she added.

**Council of Europe condemns bombings in Dagestan (31.03.2010)**

"The Council of Europe strongly condemns the explosions in Dagestan in the Russian Federation, which come only two day after the terrorist attacks in Moscow. We reiterate our message of support for and solidarity with the Russian Federation at this very difficult moment", says the joint statement by the Chair of the Committee of Ministers, Micheline Calmy-Rey, the President of the Parliamentary Assembly, Mevlüt Çavusoglu and the Secretary General of the Council of Europe, Thorbjørn Jagland.

**Meeting of the Ministers' Deputies (01.04.2010)**

At their 1081st meeting on 31 March, the Deputies adopted a recommendation on measures to combat discrimination on grounds of sexual orientation or gender identity, recommending that member States examine existing legislative and other measures, keep them under review, and collect and analyse relevant data, in order to monitor and redress any direct or indirect discrimination on grounds of sexual orientation or gender identity; ensure that legislative and other measures are adopted and effectively implemented to combat discrimination on grounds of sexual orientation or gender identity, to ensure respect for the human rights of lesbian, gay, bisexual and transgender persons and to promote tolerance towards them; ensure that victims of discrimination are aware of and have access to effective legal remedies before a national authority, and that measures to combat discrimination include, where appropriate, sanctions for infringements and the provision of adequate reparation for victims of discrimination; be guided in their legislation, policies and practices by the principles and measures contained in the appendix to this recommendation; ensure by appropriate means and action that this recommendation, including its appendix, is translated and disseminated as widely as possible. The Deputies also adopted a recommendation on good governance in health care systems.

Recommendation on measures to combat discrimination on grounds of sexual orientation or gender identity; Recommendation on good governance in health systems

**8 April: International Roma Day Council of Europe supports Roma community (08.04.2010)**

"Roma are full citizens of Europe. Yet their situation within our society raises serious human rights issues," said Micheline Calmy-Rey, Chair of the Committee of Ministers, and Mevlüt Çavusoglu, President of the Parliamentary Assembly, in a statement to mark International Roma Day. "Within the Council of Europe we have the necessary legal framework to combat discrimination against Roma and promote their integration. But we also have to change opinions and attitudes since discrimination is often based on ignorance," they added.

**Secretary General to visit "the former Yugoslav Republic of Macedonia" (09.04.2010)**

Secretary General Thorbjørn Jagland held consultative meetings in Skopje from 12-13 April, to prepare the country's chairmanship of the Committee of Ministers which starts next month. He held talks with President of the Republic Gjorgje Ivanov, Foreign Affairs Minister Antonio Milososki, Assembly President Trajko Veljanoski and Government President Nikola Gruevski.

**Tragic death of Polish President - Declaration by the Chairperson of the Committee of Ministers, Micheline Calmy-Rey (11.04.2010)**

The Chair of the Committee of Ministers of the Council of Europe, Micheline Calmy-Rey, Head of Switzerland's Federal Department of Foreign Affairs, addresses a message of condolences and solidarity following the plane crash which has plunged Poland into mourning : "I am profoundly shocked and saddened by the plane crash that cost the life of President Kaczynski, of several high officials of Poland, including Andrzej Kremer, Deputy Minister of Foreign Affairs, and of members of their respective families. This tragedy plunges Poland as well as the whole of the Council of Europe into mourning. I would like, in my own name as well as in my capacity as Chair of the Committee of Ministers of the Council of Europe, to extend my condolences to the families and relatives of those who died. I would also like to address a message of solidarity to all Polish citizens in this tragic time".

# Part V: The parliamentary work

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

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

- *Countries*

**PACE President condemns terrorist attacks in Moscow (29.03.2010)**

Following the two bomb attacks on the Moscow Metro, PACE President Mevlüt Çavusoglu made the following statement: "I wish to express my most sincere condolences to the families of those who lost their lives as a result of these horrendous attacks, and my solidarity with those injured. In our societies there is no place for those who use bombs to kill innocent people. Such acts will achieve nothing, but will sow only terror and grief. The Russian authorities can count on the full support of the Parliamentary Assembly in combating those who were behind this atrocity."

**The Council of Europe condemns the bombings in Dagestan (31.03.2010)**

Joint statement by the Chair of the Committee of Ministers, Micheline Calmy-Rey, the President of the Parliamentary Assembly, Mevlüt Çavusoglu and the Secretary General of the Council of Europe, Thorbjørn Jagland: "The Council of Europe strongly condemns the explosions in Dagestan, which come only two days after the terrorist attacks in Moscow. We reiterate our message of support for and solidarity with the Russian Federation at this very difficult moment. We also wish to convey our condolences to the families of those killed and our solidarity with the persons injured in today's attacks".

**Monitoring visit by PACE co-rapporteurs to Moldova (01.04.2010)**

Josette Durrieu (France, SOC) and Egidijus Vareikis (Lithuania, EPP/CD), co-rapporteurs of PACE for monitoring the honouring of obligations and commitments by Moldova made a fact-finding visit to Chisinau on 5-6 April. During this visit, the co-rapporteurs were due to meet the Acting President of the Republic and Speaker of Parliament Mihai Ghimpu, the Prime Minister Vlad Filat and the leaders of the parliamentary parties. Meetings were also scheduled with the Prosecutor General, the parliamentary enquiry committee on the events of April 2009, the working group on constitutional reform and the parliamentary committee on amendments to Article 78 of the Constitution.

**PACE rapporteur welcomes 'step towards reconciliation' in Serbia (01.04.2010)**

Pietro Marcenaro (Italy, SOC), who is preparing a report on "reconciliation and political dialogue between the countries of the former Yugoslavia" for PACE, has welcomed the vote on 30 March in the Serbian Parliament: "I welcome the official condemnation of the Srebrenica massacre, declared by the Serbian Parliament, as a major step forward in the process of reconciliation taking place in the former Yugoslavia. This is a sign of present-day Serbia's willingness to turn away from the past and to reinforce its place in a Europe which cherishes peace and shares common values."

Mr Marcenaro will shortly be making fact-finding visits to Brussels, Bosnia and Herzegovina, Croatia and Serbia. Motion by Mr Marcenaro

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

**Monitoring visit by PACE co-rapporteurs to Bosnia and Herzegovina (09.04.2010)**

Kimmo Sasi (Finland, EPP/CD) and Karin Woldseth (Norway, EDG), co-rapporteurs of PACE for monitoring the honouring of obligations and commitments by Bosnia and Herzegovina, made a fact-finding visit to Sarajevo on 12-13 April. During this visit, they examined the progress of the constitutional reform and the execution of the judgment of the European Court of Human Rights in the case Sejdić and Finci v. Bosnia and Herzegovina, in the light of the 17 March decision of the PACE Monitoring Committee to authorise the Chair of the committee to request a debate under urgent procedure on this issue during the April part-session of the Assembly, depending on the developments in the country. The co-rapporteurs were to meet, among others, the Speakers of both Chambers of Parliament, the Minister of Justice, the leaders of all parliamentary groups as well as the representatives of international organisations.

**PACE President reacts to 'national tragedy' of plane crash in Smolensk (10.04.2010)**

"I was deeply shocked to learn of this morning's crash, which is both a terrible personal tragedy and a national tragedy," said PACE President Mevlüt Çavusoglu in a statement. "I want to extend my most heartfelt condolences to the families of those who died so suddenly in Smolensk, but also to the authorities and the people of Poland. Poland has lost a great President, a man of profound values who served his country with conviction and determination in a time of change."

- *Themes*

**After two wars, the Council of Europe has created a 'common language' of reconciliation (07.04.2010)**

PACE President Mevlüt Çavusoglu recalled on 7 April that the Council of Europe has twice led a process of post-war reconciliation – after the Second World War and the Cold War – and pledged that it will do so again. Addressing parliamentarians at a conference in St Petersburg to mark the 65th anniversary of the Second World War, the President described the city as "a City of Heroes" for its heroic resistance against the Nazis, but continued: "Today we should not only celebrate the anniversary of a great victory. There is one more reason to celebrate: the fact that we have achieved a reconciliation process and have a common language of human rights and democracy... We must use this common language to prevent any more military conflict from happening on our continent, and elsewhere." Full speech

**PACE President recalls the value of 'soft security' (08.04.2010)**

Common values such as democracy, human rights and the rule of law are a form of "soft security" that promote prosperity and peace, PACE President Mevlüt Çavusoglu has stressed at a joint parliamentary conference in St Petersburg on the future of European security. "Our countries increasingly look at common problems through the same prism, or from the same vantage point," he pointed out, referring to the work of PACE and the CIS Interparliamentary Assembly. But there should be "no slackening" in joint efforts to deal with common threats such as terrorism or nuclear proliferation, he added. Full speech

**Ahead of Roma Day, PACE rapporteur denounces growing 'anti-Gypsyism' in Europe (06.04.2010)**

On the eve of International Roma Day, József Berényi (Slovak Republic, EPP/CD), rapporteur of PACE on the situation of Roma in Europe, has denounced "an increasing trend towards anti-Gypsyism of the worst kind" and called for an urgent probe into why efforts to help Roma over the last 20 years have all but failed. "I am shocked by the very often deplorable, not to say scandalous situation faced by Roma in terms of access to education, employment, health services and housing, as well as in terms of social integration," Mr Berényi says in a report due to be debated shortly by the Assembly. "It is a shamefully poor record considering the amount of paper – and money – dedicated to improving the situation of Roma at all levels."

Despite these efforts, the Roma continue to face "deep-seated prejudice" in many European countries, he pointed out, where they are used as scapegoats by extremists capitalising on the economic uncertainty of the financial crisis and fears that they are involved in criminality.

Better access for Roma to school and university, as well as housing, were essential first steps in order to break "the vicious circle of discrimination" in which most Roma were locked, he said. Governments

should also start collecting, subject to safeguards to prevent abuse, statistics based on ethnicity – which would make it easier to evaluate the effectiveness of national strategies to help Roma – and take positive measures to increase the participation of Roma in public and political life, including within the Parliamentary Assembly. Mr Berényi's report (PDF)

**The Council of Europe supports the Roma community (08.04.2010)**

"Roma are full citizens of Europe. Yet their situation within our society raises serious human rights issues," say Micheline Calmy-Rey, Chair of the Committee of Ministers, and Mevlüt Çavusoglu, President of the Parliamentary Assembly, in a statement to mark International Roma Day. "There are approximately 10 million Roma in Europe and their communities continue to suffer discrimination, poverty and social exclusion. In many cases they do not even have guaranteed access to such fundamental rights as education, employment, health and housing. This is an unacceptable situation which we must all strive to change. Within the Council of Europe we have the necessary legal framework to combat discrimination against Roma and promote their integration. But we also have to change opinions and attitudes since discrimination is often based on ignorance. This is why the Council of Europe launched the *Dosta!* campaign, which aims to make the public more aware of Roma lifestyles, culture and language. International Roma Day is an opportunity for all concerned – the authorities, the media, non-governmental organisations and Roma themselves – to discuss together what steps should be taken to make equal opportunities and non-discrimination a reality for all the Roma communities of Europe."

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

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

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

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

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