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

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Introduction

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

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

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

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

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

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

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

A. Judgments

1. Judgments deemed of particular interest to NHRSs

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

Some judgments are only available in French.

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

Note on the Importance Level:

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

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

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

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

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

- **Grand Chamber judgments**

Sejdić and Finci v. Bosnia and Herzegovina (link to the judgment in French) (nos. 27996/06 and 34836/06) (Importance 1) – 22 December 2009 – Violation of Article 14 taken in conjunction with Article 3 of Protocol No. 1– Lack of an objective and reasonable justification for the applicants' continued ineligibility to stand for election to the House of Peoples of Bosnia and Herzegovina – Violation of Article 1 of Protocol No. 12 – Discriminatory Constitutional provisions rendering the applicants ineligible for election to the state Presidency on grounds of their ethnic origin

The applicants are of Roma and Jewish origin and they are both prominent public figures. The Bosnian Constitution, in its Preamble, makes a distinction between two categories of citizens: the so-called "constituent peoples" (Bosniacs, Croats and Serbs) and "others" (Jews, Roma and other national minorities together with those who do not declare affiliation with any ethnic group). The House of Peoples of the Parliamentary Assembly (the second chamber) and the Presidency are composed only of persons belonging to these three constituent peoples. Mr Jakob Finci enquired with the Central Election Commission about his intentions to stand for election to the Presidency and the House of Peoples of the Parliamentary Assembly and received a written confirmation from the Central Election Commission that he was ineligible to stand to such elections because of his Jewish origin.

The applicants complained that, despite possessing experience comparable to that of the highest elected officials, they were prevented by the Constitution of Bosnia and Herzegovina, and the corresponding provisions of the Election Act 2001, from being candidates for the Presidency and the House of Peoples of the Parliamentary Assembly solely on the ground of their ethnic origin.

Admissibility

The Court first considered that, given the applicants' active participation in public life, it was entirely coherent that they would have considered running for the House of Peoples or the Presidency. The applicants could therefore claim to be victims of the alleged discrimination. The fact that the present case raised the question of the compatibility of the national Constitution with the Convention was irrelevant in this regard. The Court also noted that the Constitution of Bosnia and Herzegovina was an annex to the Dayton Peace Agreement, itself an international treaty. The power to amend it was, however, vested in the Parliamentary Assembly of Bosnia and Herzegovina, which was clearly a domestic body. In addition, the powers of the international administrator for Bosnia and Herzegovina (the High Representative) did not extend to the State Constitution. Accordingly, the contested provisions came under the responsibility of the respondent State.

Merits

The Court noted that although the House of Peoples of the Parliamentary Assembly was composed of indirectly elected members, it enjoyed very wide legislative powers. Article 14 taken in conjunction with Article 3 of Protocol No. 1 was therefore applicable. The Court reiterated that discrimination occurred every time persons in similar situations were treated differently, without an objective and reasonable justification. Where a difference in treatment was based on race or ethnicity, the notion of objective and reasonable justification had to be interpreted as strictly as possible. The Court had already held in its case-law that no difference in treatment which was based exclusively or to a decisive extent on a person's ethnic origin was capable of being objectively justified in a contemporary democratic society built on the principles of pluralism and respect for different cultures. In the present case, in order to be eligible to stand for election to the House of Peoples of Bosnia and Herzegovina, one had to declare affiliation with one of the "constituent peoples" of Bosnia and Herzegovina, which the applicants had not wished to do on account of their Roma and Jewish origins respectively.

Under the Constitution, Bosnia and Herzegovina is composed of two entities: the Federation of Bosnia and Herzegovina and the Republika Srpska. The rule limiting the applicants' eligibility rights was based on power-sharing mechanisms that made it impossible to adopt decisions against the will of the representatives of one of the "constituent peoples" of Bosnia and Herzegovina. Thus, relevant provisions included a "vital interest veto", a "veto of the Entities", a two-Chamber system (with a House of Peoples made five Bosniacs and five Croats from the Federation of Bosnia and Herzegovina and five Serbs from Republika Srpska) and a collective Presidency of three members, composed of a Bosniac and a Croat from the Federation of Bosnia and Herzegovina and a Serb from Republika Srpska. The Court acknowledged that this system, put in place at a time when a fragile ceasefire had been accepted by all the parties to the inter-ethnic conflict that had deeply affected the country, pursued the legitimate aim of restoring peace. It noted, however, that the situation in Bosnia and Herzegovina had improved considerably since the Dayton Peace Agreement and the adoption of the Constitution, as borne out by the fact that closure of the international administration of the country was now being envisaged.

The Court recognised the recent progress following the Dayton Peace Agreements and noted that, for the first time, Bosnia and Herzegovina had amended its Constitution in 2009 and that it had recently been elected a member of the United Nations Security Council for a two-year term. Nonetheless, the Court agreed with the Government that the time was perhaps still not ripe for a political system which abandoned the power-sharing mechanism in place and would be a simple reflection of majority rule. As the Venice Commission had clearly demonstrated in its Opinion of 11 March 2005, however, there existed mechanisms of power-sharing which did not automatically lead to the total exclusion of representatives of the communities which did not belong to the "constituent peoples". Furthermore, when it joined the Council of Europe in 2002, Bosnia and Herzegovina undertook to review the electoral legislation within one year, and it had ratified the Convention and the Protocols thereto without reservations. By ratifying a Stabilization and Association Agreement with the European Union in 2008, it had committed itself to amending electoral legislation regarding members of the Bosnia and Herzegovina Presidency and House of Peoples delegates to ensure full compliance with the Convention and the Council of Europe post-accession commitments within one to two years.

The Court concluded by 14 votes to 3 that the applicants' continued ineligibility to stand for election to the House of Peoples of Bosnia and Herzegovina lacked an objective and reasonable justification and had therefore breached Article 14 taken in conjunction with Article 3 of Protocol No. 1.

With regard to the eligibility to stand for the Presidency of Bosnia and Herzegovina the Court noted that whereas Article 14 of the Convention prohibited discrimination in the enjoyment of "the rights and freedoms set forth in ... the Convention", Article 1 of Protocol No. 12 extended the scope of protection to "any right set forth by law". It thus introduced a general prohibition of discrimination. The applicants contested the constitutional provisions rendering them ineligible to stand for election to the Presidency of Bosnia and Herzegovina. Consequently, whether or not elections to the Presidency fell within the

scope of Article 3 of Protocol No. 1, their complaint concerned a "right set forth by law", which made Article 1 of Protocol No. 12 applicable.

The Court reiterated that the concept of discrimination was to be interpreted in the same manner with regard to Article 14 and in the context of Article 1 of Protocol No. 12, although the latter provision had a different scope. It followed that, for the reasons put forward with regard to the elections to the House of Peoples, the constitutional provisions under which the applicants were ineligible for election to the Presidency had also to be considered discriminatory. Accordingly, the Court concluded by 16 votes to one that there had been a violation of Article 1 of Protocol No. 12.

The Court also considered, unanimously, that it was not necessary to examine the case under Article 3 of Protocol No. 1 taken alone or in conjunction with Article 1 of Protocol No. 12.

Guiso-Gallisay v. Italy (link to judgment in French) (no. 58858/00) (Importance 1) – 22 December 2009 – Application of Article 41 – Assessment of loss as a result of constructive expropriation

In 1977 the Italian Administration occupied the land that the applicants owned in Nuoro with a view to its expropriation and began to develop it. In the absence of any formal expropriation accompanied by compensation, the applicants brought proceedings seeking damages for the unlawful occupation of their land.

The applicants alleged that the occupation of their land had infringed their right to peaceful enjoyment of their possessions.

In a judgment of 8 December 2005, the Court held that the interference with the applicants' right to the peaceful enjoyment of their possessions through the constructive expropriation of their land was incompatible with the principle of legality and that there had been a violation of Article 1 of Protocol No. 1 to the Convention. It also held that the question of the application of Article 41 (just satisfaction) of the Convention was not ready for decision. The judgment on just satisfaction was delivered on 21 October 2008 when the Court decided to vary its case-law on application of Article 41 in the case of indirect expropriation. The method used hitherto was to compensate for losses that would not be covered by payment of a sum obtained by adding the market value of the property to the cost of loss of earnings from the property, by automatically assessing those losses as the gross value of the works carried out by the State then adding the value of the land in today's prices. However, the Court considered that this method of compensation was not justified and could lead to unequal treatment between applicants depending on the nature of the public works carried out by the public authorities, which was not necessarily linked to the potential of the land in its original state. In order to assess the loss sustained by the applicants, it therefore decided that the date on which they had established with legal certainty that they had lost the right of ownership over the property concerned should be taken into consideration. The total market value of the property fixed on that date by the national courts was then to be adjusted for inflation and increased by the amount of interest due on the date of the judgment's adoption by the Court. The sum paid to applicants by the authorities of the country concerned was to be deducted from the resulting amount. In the present case, the sum awarded for pecuniary damage amounted to 1,803,374 euros (EUR) for the three applicants jointly. The Court also awarded them EUR 45,000 for non-pecuniary damage and EUR 30,000 for costs and expenses.

The Grand Chamber confirmed the change in the case-law described above with regard to the application of Article 41 in cases of constructive expropriation.

It emphasised that the new principles laid down in its judgment could be applied by the national courts in the disputes which were currently pending before them and in future cases.

With regard to the application of those principles to the applicants' case, the Grand Chamber reached a different conclusion from the Chamber. The latter had held that the date from which the applicants had been certain, from a legal standpoint, of having lost their right of ownership to the disputed property (the date used as the basis for assessing the damage sustained) was 14 July 1997, when the Nuoro District Court declared that the expropriation of the applicants' land was unlawful. The Grand Chamber found, on the contrary, that the Nuoro District Court had held in its 1997 judgment that the applicants had lost part of their property in 1982 and another part in 1983. In consequence, it used those latter dates as the basis for assessing the just satisfaction to be awarded to the applicants.

- **Right to life**

Maiorano and Others v. Italy (no. 28634/06) (Importance 1) – 15 December 2009 – Violations of Article 2 (substantive and procedural) – Judicial system's failure to afford general protection to society against the potential danger from a person who had been convicted for a violent crime

– State's failure to fulfil its positive obligation to ascertain whether any responsibility could be imputed to its agents in respect of the double murder of the applicants' relatives

The applicants are relatives of Ms Maria Carmela Linciano and Ms Valentina Maiorano, who were murdered in 2005 by Mr Angelo Izzo, a prisoner on day release at the material time. In 1975 Mr Izzo and two accomplices, held two young women in illegal confinement and subjected them, for several days, to rape and brutal abuse. One of them, who had been left for dead in the boot of a car with the corpse of her friend, had managed to attract the attention of the police. Mr Izzo was quickly arrested and in 1976 was sentenced to life imprisonment. In 1992, in spite of the numerous incidents in which Mr Izzo had been involved during his time in prison, leading to further convictions, and in particular an escape attempt with hostage-taking, he began to benefit from periods of prison leave. He was arrested in France in 1993 with false identity documents and a large sum of money. The police authorities established that while he was on the run he had been helped by certain criminal organisations. He was sent back to Italy to serve the remainder of his prison sentences.

From 1999 onwards Angelo Izzo was again granted release on temporary licence, in particular for good conduct but other serious incidents occurred. In 2004 a fellow prisoner informed the police that Angelo Izzo had engaged him to kill the president of the sentence execution court of Campobasso; after monitoring calls the police discovered that Mr Izzo had re-established contacts with the criminal underworld. A second fellow prisoner informed the authorities about regular proposals he had received from Mr Izzo to participate in criminal activities. As it was waiting to ascertain whether Mr Izzo had actually re-offended, the public prosecutor's office did not forward this information to the sentence execution judge. The day release scheme was therefore maintained. While on day release Angelo Izzo planned and carried out, with the help of two accomplices, the double murder of Maria Carmela Linciano and Valentina Maiorano, the wife and daughter of the seventh applicant, Giovanni Maiorano, a prisoner Mr Izzo had known in Palermo prison. The victims' bodies were found buried in a garden. By his own admission, Izzo had murdered them without any particular motive. He was sentenced once again to life imprisonment.

In May 2005 the Minister of Justice opened an administrative inquiry to determine whether, in the procedure whereby Angelo Izzo had been granted day release, the judges of the sentence execution court of Palermo were accountable for disciplinary purposes. In March 2008 the National Legal Service Council issued the judges concerned with a "reprimand", taking the view that in assessing Angelo Izzo's behaviour they had not taken into account the fact that he had already breached some of the rules governing his release on temporary licence. In 20 September 2007 the applicants filed a criminal complaint against the public prosecutors of Campobasso and Bari, who, they alleged, should have forwarded to the sentence execution courts the information from Mr Izzo's two fellow prisoners about his suspicious behaviour and in particular his intention to commit a murder. That complaint was not acted upon.

The applicants alleged that by allowing Angelo Izzo to benefit from a day release scheme, the authorities had failed to protect the lives of Maria Carmela Linciano and Valentina Maiorano.

Substantive limb of Article 2

The Court reiterated that Article 2 of the Convention enjoined the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction. In some cases there might be a requirement of personal protection of one or more individuals identifiable in advance as the potential target of a lethal act. In other cases it might be necessary to afford general protection to society against the potential acts of persons serving a prison sentence for a violent crime and to determine the scope of that protection. In the present case, at the time Angelo Izzo was granted day release it had not been possible to identify Maria Carmela Linciano and Valentina Maiorano as potential targets of a lethal act on his part. The case thus concerned the obligation for the Italian judicial system to afford general protection to society against potential danger from a person who had been convicted for a violent crime.

In this connection, the Court could not find fault in general with the arrangements in Italy for the resettlement of prisoners. The system had a legitimate aim and provided for sufficient safeguards. However, the manner in which that system had been applied in Mr Izzo's precise case was questionable. Firstly, the Court noted that the positive factors which had led the Palermo sentence execution court to grant day release, in particular the favourable reports by probation officers and psychiatrists, had been counterbalanced by many indications to the contrary. Throughout his imprisonment Angelo Izzo had in fact regularly committed criminal offences and his behaviour had shown that he had a tendency to disrespect the law and authority. In view of the dangerousness of a repeat offender who had been convicted of exceptionally brutal crimes, those circumstances should have led the sentence execution court to be more prudent. Secondly, the Court noted that the public prosecutor of Campobasso had been promptly made aware of the fact that Angelo Izzo once granted day release, had re-established contacts with the criminal underworld and was actively planning

criminal acts. Despite the fact that it had taken this danger seriously, and had even ordered police surveillance, the public prosecutor's office had not informed the sentence execution judge with a view to the possible withdrawal of the day release scheme.

The Court took the view that the granting by the Palermo sentence execution court of day release to Angelo Izzo, despite his criminal record and behaviour in prison, together with the failure by the public prosecutor's office of Campobasso to forward information on his criminal activities to the sentence execution judge, had constituted a breach of the duty of care required by Article 2 of the Convention. The Court held unanimously that there had been a violation of Article 2 under its substantive head.

Procedural limb of Article 2

The Court reiterated that the positive obligations laid down in Article 2 of the Convention also required by implication that an efficient and independent judicial system be set in place by which the cause of a murder could be established and the guilty parties punished, including where State agents or authorities were allegedly responsible.

In the present case, a criminal investigation into the murder of Maria Carmela Linciano and Valentina Maiorano had been opened quickly and had led to the sentencing of Angelo Izzo to life imprisonment. A disciplinary inquiry had also been conducted in order to determine the responsibilities of the judiciary in respect of this double murder.

However, whilst the Minister of Justice had brought disciplinary proceedings against the judges of the Palermo sentence execution court, as a result of which they had been reprimanded, the applicants' criminal complaint against the public prosecutors of Campobasso had not been acted upon and no disciplinary action had been taken against those prosecutors. Therefore, the State had not entirely fulfilled its positive obligation to ascertain whether any responsibility could be imputed to its agents in respect of the murder of Maria Carmela Linciano and Valentina Maiorano. The Court thus also held, unanimously, that there had been a violation of Article 2 of the Convention under its procedural head.

Mikayil Mammadov v. Azerbaijan (no. 4762/05) (Importance 1) – 17 December 2009 – No violation of Article 2 (positive obligation) – Lack of evidence to conclude that the authorities had intentionally put the applicant's wife's life at risk – Violation of Article 2 (procedural) – Lack of an effective investigation as regards the assessment of the State's responsibility in the incident

Mr Mammadov and his family have been internally displaced persons since 1993 and lived in a room in a State-owned hostel in up until 2003 when they discovered that three rooms nearby, belonging to the local army recruitment office, were vacant. The applicant repaired those rooms and moved into them together with his family at the end of 2003. In March 2004, a group of local authorities' representatives and police officers turned up at the applicant's dwelling without a court order for eviction. Apparently distressed by the arrival of the authorities, who she feared had come to evict her family, the applicant's wife poured kerosene on herself and set it on fire, as a result of which she suffered multiple serious burns affecting half of her body and died from complications the same month. Mr Mammadov alleged that the police officers did not take his wife's threat seriously, but mockingly encouraged her to carry her threat through; this was denied by the authorities who submitted that at least one police officer tried to help Ms Mammadova put out the fire she had set on herself inside the dwelling. Following the incident, the police loaded the applicant's family possessions onto a truck and took them back to the hostel room where the family had resided previously.

A preliminary inquiry was carried out into the death of Ms Mammadova and a decision was taken by the investigator in May 2004 not to start criminal proceedings for lack of evidence that anyone had in any way provoked Ms Mammadova's act. That decision was confirmed by the prosecutors several times. In 2005, criminal proceedings were eventually brought into Ms Mammadova's death and investigative measures were ordered. A number of witnesses were questioned including the applicant's family members and representatives of the local authorities and the police who were at the scene. The investigation was subsequently suspended several times for failure to identify the person who had incited Ms Mammadova to commit suicide; it was finally terminated in September 2008.

Mr Mammadov complained that the Azerbaijani authorities had been responsible for his wife's death because, among other things, they had entered his dwelling unlawfully and failed to save his wife when she had set herself on fire.

The Court held that it had been undisputed that Ms Mammadova's death had been the result of suicide and not of force caused by another person. It had also been clear that the authorities had asked several times Mr Mammadov's family to vacate the dwelling they had been considered to occupy illegally. By conducting the operation to evict the applicant's family, the authorities could not be considered to have intentionally put the life of the applicant's wife at risk. Given the diverging versions

of the events presented by the Government and the applicant it was impossible to establish whether the authorities had become aware of the danger in time to prevent the fire or extinguish it as soon as possible. Consequently, there had been no violation in respect of the authorities' obligation to guarantee and protect the right to life.

The Court considered, however, that the investigation carried out into the death of the applicant's wife had been inadequate as it had not covered all the issues relevant for the assessment of the State's responsibility in the incident. In particular, the investigation had been limited to the question of whether the State agents incited Ms Mammadova to commit suicide, while it should have examined also whether the authorities had done everything necessary to prevent her death or minimise the injuries she received. The investigation had been marked by a number of other shortcomings, such as the failure to take immediate action, the fact that it had lasted over four years, the omission to reconstruct the sequence and duration of the events and to address the discrepancies in the witness statements. Therefore, there had been a violation of Article 2.

Kalender v. Turkey (no. 4314/02) (Importance 2) – 15 December 2009 – Violations of Article 2 (substantive and procedural) – Authorities' failure to take the appropriate measures to implement regulations for the purpose of protecting the lives of passengers – Lack of an effective investigation – Violation of Article 6 § 1 – Excessive length of the proceedings

Mrs Sevim Kalender's husband, Kadir Kalender, and his mother, Şükriye Kalender, were killed in an accident in a railway station in 1997. The victims had taken a TCDD (Turkish national railway company) train and on their arrival at the station they had been hit and killed by a goods train. A criminal investigation was opened immediately after the accident and liability was found to be shared between the TCDD – the safety measures in the station were insufficient – and the applicants' relatives, who had got off the train on the wrong side and had been attempting to cross the track by mistake. The train driver was acquitted of manslaughter and the Criminal Court then requested that a criminal investigation be opened into breaches of safety regulations on the part of the TCDD. However, the requested investigation was never opened.

The applicants brought civil proceedings against the TCDD seeking compensation for their pecuniary and non-pecuniary damage. The TCDD, for its part, claimed compensation for the pecuniary damage resulting from the delays caused by the accident. An expert appointed to assess the parties' respective liability concluded that Kadir and Şükriye Kalender were 60% liable and that the railway company was 40% liable. After enforcement proceedings brought by the applicants, they obtained full payment of the compensation in June 2006.

The applicants complained about the authorities' failure to protect their relatives' lives and also complained that the length of the proceedings had been excessive.

Article 2

The experts had concluded that the structure of the station and its management had failed to comply with minimum safety requirement, it could not therefore be said that any imprudent conduct on the part of the victims had been the decisive cause of the accident. The experts' reports and domestic courts had established a causal link between the shortcomings in railway safety and the deaths of Kadir and Şükriye Kalender. The authorities had thus failed in their duty to implement regulations for the purpose of protecting the lives of passengers. The Court therefore found that there had been a violation of Article 2.

Whilst the authorities had reacted speedily after the accident, having promptly opened a criminal investigation and proceedings against the train driver, the court's subsequent request for the opening of a criminal investigation concerning the TCDD had never been followed up. The Turkish criminal justice system had not therefore been in a position to determine the full extent to which the public servants and authorities were liable for the accident, and had not effectively implemented the provisions of domestic law that guaranteed the right to life. Accordingly, there had also been a violation of Article 2 in this respect.

Article 6 § 1

The Court noted that the proceedings had lasted eight years and seven months for two degrees of jurisdiction, whereas the case was not a particularly complex one and Mrs Kalender and her children had not delayed the proceedings. The enforcement had taken about three years, so payment of the compensation had been delayed accordingly. The Court therefore found that the length of the proceedings had not been reasonable and that there had been a violation of Article 6 § 1.

Golubeva v. Russia (no. 1062/03) (Importance 2) – 17 December 2009 – No violation of Article 2 (procedural) – Domestic authorities' satisfied, independent, impartial and careful investigation – Violation of Article 2 (substantive) – Arrest operation was not organised so as to minimise to the greatest extent possible recourse to lethal force and any risk to the life of the applicant's partner

The applicant alleged that her partner had been killed by the police following an altercation with some teenagers outside their block of flats and that the authorities' ensuing investigation into his death had been inadequate. The Court held that there has been a violation of Article 2 on account of the State's responsibility into the applicant's partner's death. It further held that there has no violation of Article 2, in respect of the investigation into the death.

Sandru and Others v. Romania (no. 22465/03) (Importance 3) – 8 December 2009 – Violation of Article 2 (procedural) – Lack of an effective investigation into the murder or injuries of the applicants' relatives during the December 1989 anti-communist demonstrations in Timisoara

On 16 December 1989 demonstrations against the communist regime broke out in Timişoara. On 17 December 1989, on the orders of Nicolae Ceauşescu, President of the Republic at the material time, several high-ranking military officers, including Generals Victor Atanasie Stănculescu and Mihai Chițac, were sent to Timişoara to re-establish order. There followed violent repressions which resulted in numerous victims. The first two applicants and the husband of the third applicant, Mr Trofin Benea, who were taking part in the demonstrations, were seriously injured by gunshots. The brother of the fourth applicant, Mr Alexandru Grama, was shot dead. The demonstrations continued until the fall of the communist regime on 22 December 1989. The above-mentioned generals rallied to the new authorities and in 1990 and 1991 they became Minister of Defence and Minister of the Interior respectively.

The applicants alleged that the investigation had failed to determine promptly the responsibilities for the death and injuries of the applicants' relatives. The proceedings had not been conducted correctly since, given the positions held by the accused in the new post-1989 regime in Romania, the authorities had been reticent to investigate the case.

In a partial decision on admissibility in 2006, the Court held that it did not have jurisdiction to determine whether the authorities at the relevant time had "materially" interfered with the right to life of the applicants or their relatives, since the Convention had not yet entered into force with respect to Romania at the time of the 1989 events.

The Court reiterated that the obligation to protect the right to life under Article 2 required that there should be some form of effective official investigation when the use of lethal force against an individual had placed the latter's life in danger. In this case, an investigation was opened on the authorities' own motion as early as January 1990. The vast majority of the procedural measures were taken after the ratification of the Convention by Romania in 1994 and the Court therefore had jurisdiction to assess whether, from that date, they amounted to an effective investigation as required by Article 2. In this connection, the Court noted that the proceedings opened in January 1990 ended only in October 2008. It noted that the investigation phase was entrusted to military prosecutors who, like the defendants themselves, were servicemen, subject to the principle of subordination to their hierarchy - and therefore to the defendants themselves, who, in 1990-1991, were Ministers of the Interior and Defence. In addition, the Court noted a total lack of activity by the prosecutor's office between April 1990 and March 1996. With regard to the proceedings before the courts, the Court observed that there had been repeated adjournments and long periods between the hearings. Although the first set of proceedings ended with the Supreme Court of Justice's judgment of 25 February 2000, the proceedings as a whole were subsequently nullified by the Prosecutor-General's application to have the judgment set aside in favour of the convicted men, thus delaying final resolution of the case for a further eight years and several months.

Finally, while the Court recognised the undoubted complexity of the case, it considered that the political and social implications could not justify the length of the investigation, as alleged by the Government. On the contrary, its importance for Romanian society ought to have prompted the domestic authorities to deal with the case speedily and without unnecessary delay, in order to prevent any appearance of tolerance of or collusion in unlawful acts.

The Court concluded unanimously that there had been a violation of Article 2 in its procedural aspect.

Dudnyk v. Ukraine (no. 17985/04) (Importance 3) – 10 December 2009 – Violation of Article 2 (procedural) – Lack of an effective investigation into the applicant's son's death

In May 2000 an unidentified individual broke the skull of the applicant's son, who died nine days later without regaining consciousness, inside Cherkasy Technological University (the University). In June 2000 criminal proceedings were brought by the police into a suspected offence of inflicting grievous bodily harm resulting in death. Between September 2000 and October 2004 the investigation was suspended several times for failure to identify the perpetrator; specific investigative steps were ordered by the prosecution service but not carried out, fully or partially, by the investigators. Representatives of the prosecution and the police acknowledged a few times to the applicant that the investigation into the death of her son had been inadequate. In all, the authorities submitted that they carried out 47 interviews, one confrontation and two line-ups; two medical assessments were also ordered. The criminal proceedings are currently pending. In 2003 the applicant brought civil proceedings for damages against the University. The courts found that her son was injured through no fault of the University and dismissed her claims.

The applicant complained of the authorities' failure to find and punish those responsible for her son's wounding and subsequent death.

The Court first noted that the investigation was still pending. Furthermore, apart from information about the number of interviews, line-ups and expert assessments, the authorities had not provided any pertinent document about who had been questioned, what investigative versions had been examined and what information had been obtained as a result of the measures taken. In addition, the instructions given by the prosecutors had not always been followed and the delays in the investigation had diminished significantly the prospects of its successful completion. The Court also noted that the authorities had themselves acknowledged several times that the investigation had been seriously flawed. The Court concluded that the Ukranian authorities had failed to do everything necessary and possible in order to identify those responsible for the wounding and death of the applicant's son, in violation of Article 2.

Abdulhadi Yıldırım v. Turkey (no. 13694/04) (Importance 3) – 15 December 2009 – Violations of Article 2 (substantive and procedural) – Domestic authorities' failure to protect the life of a young person suffering from schizophrenia in prison – Lack of an effective investigation

The applicant complained of the authorities' negligence in protecting the life of his son, who suffered from schizophrenia and who committed suicide in prison when, as a young conscript convicted for desertion, he begun to serve his sentence. He further complained of the impossibility of identifying and punishing those responsible. The Court found a violation of Article 2 on account of the lack of a complete protection in prison. It further held that the investigation in connection to the applicant's son's suicide has been ineffective and found a violation of Article 2 on the procedural aspect.

- **Conditions of detention / Ill-treatment**

Denis Vasilyev v. Russia (no. 32704/04) (Importance 1) – 17 December 2009 – Violations of Article 3 – Police officers' failure to assist a victim of an assault, failure to provide adequate medical care and lack of an effective investigation – Violation of Article 13 – Structural problem of the Russian legal system in which a civil claim for damages has limited chances for success when criminal proceedings against the State officials were discontinued or ended in an acquittal

Late at night on 29 June 2001 the applicant and his friend were attacked for robbery and hit on the head, as a result of which they fainted and collapsed. Neighbours called the police who arrived at the scene shortly after 1.30 a.m.; according to their submission they believed that the two friends were drunk, dragged them by the armpits and left them alone not far from the nearby rubbish bins; they then went to check on a signal by a private-security coordinator alerting them that a property alarm had gone off elsewhere. The two friends were found lying on the ground by the building janitors on the following morning. Ambulances were called and the applicant and his friend taken to two different hospitals: the applicant unconscious, his friend having regained consciousness. Upon arrival at the hospital at about 9 a.m. Mr Vasilyev was diagnosed with alcohol intoxication and was examined by a neurosurgeon two hours later. Between the time of his arrival and 5 p.m. on the following day, he was left lying unconscious and undressed on a trolley in the hospital's corridor. His state deteriorated to the point where emergency surgery was required. Nine days later he was transferred in a state of coma to another hospital. Between July 2001 and June 2003, several life-saving operations were carried out on him; he was given second category disability in October 2001.

The day following the attack the police received hospital reports concerning bodily injuries on the applicant and his friend. An internal inquiry into the event was opened only twenty days later and then discontinued after two months. The criminal proceedings were resumed and suspended many times

after that, the investigators finding that the perpetrator of the assault could not be identified. In January 2002, following a complaint by Mr Vasilyev's mother, a separate inquiry was opened in which the two police officers who had seen and abandoned the applicant and his friend on the night of the incident were ultimately acquitted, the courts finding unproven that they had known that the lives of the two young boys lying on the ground had been in danger. Another criminal inquiry was opened in March 2003 in which two medical studies were carried out to examine whether medical negligence had taken place in the process of treating the applicant. The inquiry was suspended and resumed several times. The two medical studies issued diverging findings: the first one, based on the original medical file, concluded that the applicant was not diligently examined or treated upon his arrival at the hospital which led to drastic deterioration of his condition; the second one, based only on partial copies of the file which had in the meantime been lost, found that the diagnosis and surgery had been carried out in a timely fashion. As of late November 2006, the investigation was still pending and no charges had been brought.

Mr Vasilyev complained about the police officers' not having assisted him when they found him unconscious on the ground, about the inadequate medical care he was given in the hospital, as well as about the ineffective investigation carried out into his assault, into the actions of the police and into the medical negligence.

Article 3

Lack of assistance from the police

The Court noted that under Russian law, the police had a duty to assist all persons and especially victims of attacks. The Convention also imposed the obligation on the State to protect the physical well-being of persons who find themselves in a vulnerable position by virtue of being within the control of the authorities. The two officers who had found Mr Vasilyev, had not examined him, had not called an ambulance, but instead had dragged him by the armpits although that had been contrary both to the law and to the most basic requirements of first-aid. As regards the police officers' precipitated departure from the scene, the fact that there had existed an arrangement under which orders of private-security co-ordinators took precedence over the orders of the officers-on-duty at the police stations, was found by the Court to be a flagrant perversion of priorities, as it had the effect of putting the protection of private property before that of the applicant's life. Consequently, there had been a violation of Article 3 as a result of the failure of the police officers to assist the applicant.

Lack of adequate medical care in the Moscow hospital

The Court noted that the applicant had been left lying undressed and unconscious in the hospital's corridor for almost two days without medical attention, the hospital having failed to carry out the most basic procedures in case of a new patient. The Court gave greater credence to the findings of the first medical study given that it had been conducted using the original medical file and by a medical panel working for the Ministry of Defence which, unlike the second panel affiliated with the Moscow authorities, had been an institution unrelated to both the hospital and the investigative authority. The Court held that there had been a violation of Article 3 on account of the inadequate medical care provided to the applicant.

Lack of an effective investigation

The Court noted that the local residents had informed the police immediately of the brutal attack on the applicant and despite that, the police officers who had arrived at the scene had not drawn up any report nor opened an inquiry into the circumstances in the days that followed. Further, although criminal proceedings were ultimately brought, the prosecution authorities had themselves acknowledged that a number of major investigative steps had not been taken, like reporting on the crime scene and interviewing of neighbourhood residents. The responsibility for the investigation was transferred to a different police or prosecution authority at least three times and within five years no less than twelve decisions to discontinue criminal proceedings were issued, only to be subsequently set aside by supervising prosecutors. Consequently, there had been a violation of Article 3 as a result of the serious shortcomings in the investigation carried out into the assault of the applicant.

The Court also found two violations of Article 3 on account of the ineffective investigations carried out into the actions of the police and into the medical negligence by the staff at the hospital. In particular, the Court held that the authorities had been rather late with the opening of criminal investigations into the applicant's complaints as these had been brought respectively six months and almost two years after the events. In addition the investigation concerning the actions of the police had been incomplete and the prosecution had failed to collect the necessary evidence which had led to the collapse of the case against the police officers in court. As regards the investigation into the medical negligence, the investigative authorities had demonstrated determination to get rid of the case in a hasty manner; as a result, several investigators had been reprimanded or disciplined. In addition a crucial piece of

evidence, the original medical record, had been lost rendering impossible the determination of whether the alleged inadequate medical assistance had led to damage to his health.

Article 13

The Court also held that there had been a violation of Article 13 on account of a structural problem of the Russian legal system in which a civil claim for damages has limited chances for success when criminal proceedings against the State officials were discontinued or ended in an acquittal.

Gavrilovici v. Moldova (no. 25464/05) (Importance 2) – 15 December 2009 – Violation of Article 3 – Conditions of detention – Violation of Article 10 – Lack of a "pressing social need" to send the applicant to prison for having criticised a county President

The applicant's wife and son suffer from chronic renal failure and have to travel to Chişinău for dialysis. From early 2004 the applicant's wife and son had to apply to the regional council for financial aid with their transportation costs; in November 2004 the council met to discuss their case. Mr Gavrilovici attended and there was a heated exchange between him and the county President, I.M. Proceedings were subsequently brought against the applicant for insulting I.M. at that meeting; at a hearing in January 2005 he was convicted and sentenced to five days' administrative detention which he immediately had to serve. He complained about the inhuman conditions of his detention. He also alleged that the real aim of the sanction imposed on him was not to protect I.M.'s reputation but was to punish him for criticising the region's leadership, in breach of Article 10.

The Court considered that the particularly harsh conditions of the applicant's detention, combined with the added suffering from his inability to meet ill members of his family and to go to church to honour his recently deceased, attained a minimum level of severity so as to constitute treatment contrary to Article 3 of the Convention. Accordingly, there has been a violation of Article 3.

The Court further considered that by summarily convicting the applicant without attempting to verify the circumstances of the case and by failing to examine the context in which the applicant's alleged statement had been made, and without any analysis of the need to send the applicant to prison, the domestic courts did not establish a "pressing social need" for the interference with his right to freedom of expression. Article 10 of the Convention has therefore been violated in the present case.

Shilbergs v. Russia (no. 20075/03) (Importance 2) – 17 December 2009 – Two violations of Article 3 – Conditions of pre-trial detention – Violation of Article 6 § 1 – Unfairness of proceedings – Violation of Article 6 § 1 in conjunction with Article 6 § 3 (c) – Lack of legal aid at the appeal stage

The applicant is currently serving a nine-year prison sentence in a correctional colony for aggravated robbery. He complained about the conditions of his pre-trial detention in two facilities and about the unfairness of three sets of civil proceedings – two concerning his conditions of detention and one a defamation action – he had brought in that the domestic courts had failed to secure his attendance or ensure representation, as well as of the criminal case against him due to the lack of legal aid at the appeal stage. The Court held that there had been a violation of Article 3 on account of the applicant's detention in the Neman town detention unit, which it considered to be inhuman and degrading within the meaning of this provision. It further concluded that there has been a violation of Article 3 because the applicant was subjected to inhuman and degrading treatment on account of the conditions of his detention in facility no. IZ-39/1 in Kaliningrad.

The Court also found that the principle of equality of arms was not observed in the three sets of civil proceedings under consideration, owing to the domestic courts' repeated refusal to secure the applicant's attendance at the proceedings concerning the conditions of his detention and their failure to ensure the effective representation of his interests in the proceedings pertaining to the defamation action. Therefore there has been a violation of Article 6 § 1.

Finally the Court held that there has been a violation of Article 6 § 3 (c) due to the lack of legal aid at the appeal stage.

Palushi v. Austria (no. 27900/04) (Importance 3) – 22 December 2009 – Two violations of Article 3 – Ill-treatment by prison officers – Ill-treatment on account of the lack of medical care while in solitary confinement of a hunger-striker

The applicant, previously a national of the former Socialist Federal Republic of Yugoslavia, is now an Austrian national and lives in Vienna. In April 1994, his request for asylum was refused and Mr Palushi was detained and held in custody in the Vienna Police Prison with a view to his expulsion for illegal

stay. Two days later he went on hunger strike. He alleged that on 21 May 1994, three weeks into his hunger strike, prison officers had pulled him out of his cell by his feet, kicked him and stabbed him behind the ears with ballpoint pens. He had then been dragged down some stairs – causing injuries to his back – and was placed in solitary confinement. He claimed that his requests to see a doctor were refused until 24 May 1994 when a representative of an NGO, a journalist and a friend visited him and, noticing abrasions on his back and hip and small bruises behind his ears, insisted that he be taken to the prison doctor. The doctor's report of the same day noted several abrasions in the middle and lower parts of the applicant's back; one of the abrasions, being substantial, was treated with a spray and bandaged.

In June 1994 Mr Palushi filed a complaint with the Vienna Administrative Panel (Unabhängiger Verwaltungssenat) about his ill-treatment while in detention. His case was heard in July 1994 and January 1995. The officers denied the applicant's allegations stating that, on the day in question, the applicant had been causing unrest and when called to the cell by the other inmates, the paramedic prison officer ascertained that the applicant was pretending to be unconscious. They had therefore had no other choice but to take him to an individual cell as a disciplinary measure and, as he could not be made to walk on his own, had to be dragged there. In March 1995 the Administrative Panel dismissed the case as it concerned a disciplinary measure and was a matter for the Police Prison Internal Rules. The Constitutional Court subsequently quashed that decision and remitted the case to the Administrative Panel. Further hearings were held during which the NGO representative, journalist and applicant's friend testified that they had seen injuries behind the applicant's ears and abrasions on his back. The Panel dismissed, however, the applicant's complaint in 1999 and concluded that the applicant's submissions as a whole had been inconsistent and that the police officers' actions had been justified by his recalcitrant behaviour and it further dismissed the applicant's claims about being denied medical assistance as both during his hunger strike and while in solitary confinement the applicant had been under the constant supervision of a qualified paramedic. In the meantime, Mr Palushi, found unfit for detention, had been released on 28 May 1994. His request for asylum was subsequently granted.

Mr Palushi complained about the ill-treatment to which he had been subjected by prison officers and the ensuing lack of medical care in solitary confinement.

Article 3

Firstly, the Court found that it could not be established beyond reasonable doubt that the applicant had been kicked and beaten by prison officers. However, as concerned the allegations with regard to the stabbing with ballpoint pens and the back injuries caused by the applicant being dragged down some steps, the Court found that his injuries were established beyond reasonable doubt and in the absence of any other explanation as to how the applicant could have sustained such injuries, other than having been stabbed with pens and improperly carried down the stairs, the Court concluded that they had been caused by ill-treatment as alleged. Referring to a report by the Council of Europe's European Committee for the Prevention of Torture and Inhuman or degrading Treatment or Punishment (the "CPT") following a visit to the Vienna Police Prison in 1994, the Court underlined that it was for the respondent State to ensure that prison staff were properly trained to deal with difficult prisoners and/or supervise detainees held under aliens legislation without resorting to excessive physical force. The Court considered that the treatment to which the applicant, on hunger strike for three weeks and in a physically and mentally weakened state, had been subjected to, had to have caused him physical and mental pain and suffering and had been such as to arouse in him feelings of fear, anguish and inferiority capable of debasing him and possibly breaking his physical and moral resistance. That treatment had to be considered inhuman and degrading in violation of Article 3.

The applicant, a hunger-striker, had been placed in solitary confinement based on the assessment of a paramedic, who, according to the 1994 CPT report received only basic training, and had been refused access to a doctor until 24 May 1994. Taken together, those factors had to have caused him suffering and humiliation going beyond what had been inevitable in a situation of detention. In the Court's view the applicant had therefore been subjected to degrading treatment on account of the lack of medical care provided in solitary confinement until 24 May 1994, in further violation of Article 3.

Turan and Turfan v. Turkey (no. 1413/03) (Importance 3) – 15 December 2009 – Violations of Article 3 (substantive and procedural) – Ill-treatment in police custody – Lack of an effective investigation – Violation of Article 6 §§ 1 and 3 (c) – Lack of legal assistance while in detention

The applicants were arrested in possession of false identity papers and placed in police custody. They alleged that they had been subjected to ill-treatment in the police station and complained that they had been convicted on the basis of statements obtained from them under torture and that they had not been assisted by a lawyer. The Court held that there has been two violation of Article 3, due to the

applicants' ill-treatment in police custody and a violation of Article 6 §§ 1 and 3 (c) due to the fact that the applicants have not been assisted by a lawyer while in detention.

Skorobogatykh v. Russia (no. 4871/03) (Importance 3) – 22 December 2009 – Violation of Article 3 – Conditions of detention – Violation of Article 13 – Lack of an effective remedy – Violation of Article 6 § 1 – Deprivation of the right to attend hearing

The applicant is serving a prison sentence for possession of illegal drugs. He complained about the conditions of his detention on remand pending investigation and trial and about the domestic courts' failure to ensure the applicant's presence at a hearing concerning his compensation claims with regard to the detention conditions. The Court held that there had been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in remand prison no. IZ-39/1 in Kaliningrad, which it considers to have been inhuman and degrading within the meaning of this provision and violation of Article 13 of the Convention on account of the lack of an effective remedy under domestic law for the applicant to complain about the conditions of his detention.

The Court also held that there has therefore been a violation of Article 6 § 1 of the Convention on account of the applicant's absence before the domestic courts in the civil proceedings in his case.

- **Police misconduct**

Aytaş and Others v. Turkey (no. 6758/05) (Importance 2) – 8 December 2009 – Violation of Article 3 (10 applicants) – Violation of Article 11– Disproportionate use of police force to break up a peaceful demonstration

The applicants complained that in 2004 the police violently broke up a demonstration in which they were taking part in protest at a government bill on higher education. The Court held that the force used by the police to break up the demonstration had been disproportionate and excessive and that there had been a violation of Article 3 in the cases of the 10 applicants. In the light of the evidences the Court held further that, above motioned demonstrations didn't present any public danger and the excessive use of police force wasn't necessary in this case. Therefore there has been a violation of Article 11.

- **Risk of being subjected to ill-treatment / Deportation cases**

Koktysh v. Ukraine (no. 43707/07) (Importance 3) – 10 December 2009 – Violation of Article 3 if the applicant were to be extradited to Belarus – Conditions of detention – Violation of Article 5 §§ 1, 4 and 5 – Violation of Article 13 in conjunction with Article 3 – Lack of an effective remedy

The applicant is a Belarus national currently detained in Pre-Trial Detention Centre No. 15 in Ukraine. In December 2001 he was acquitted of murder and robbery by the Belarusian courts which found that a confession had been extricated from him using force during interrogations. Upon appeal by the prosecutor, the acquittal was quashed under extraordinary review procedure in May 2002 and the criminal proceedings against Mr Koktysh resumed. In June 2002, the applicant moved to Ukraine. An international warrant was issued for his arrest, leading to his apprehension in June 2007 in Sevastopol. He was remanded in custody with a view to his extradition to Belarus. In July 2007, the Chief Public Prosecutor of Belarus requested that the applicant be extradited offering assurances that Mr Koktysh would not be sentenced to death; these assurances were reiterated three months later and broadened to the effect that the applicant would not be tortured, otherwise ill-treated or discriminated against, and would be given a fair trial and, if necessary, would receive medical care. Under Rule 39 of the Rules of Court, in October 2007, the Court indicated to Ukraine that Mr Koktysh should not be extradited to Belarus. In May 2008, the competent Sevastopol court informed the applicant that, in the absence of legal provisions to the effect, his request for release pending extradition could not be considered.

Since 6 July 2007, the applicant has been detained in the Pre-Trial Detention Centre No. 15 in Simferopol after spending 10 days in Sevastopol Temporary Detention Centre. According to Mr Koktysh, in both establishments, his conditions of detention were inadequate, as were the conditions under which he was transported between them. Mr Koktysh complained that, if extradited to Belarus, he could be sentenced to death, tortured and tried unfairly. He complained of the conditions of his detention, transport and inadequate medical care. Further he complained of his unlawful detention which he could not challenge in court.

Article 3 (extradition)

The Court noted that it could not speculate about the possible outcome of the applicant's criminal case in Belarus but observed that international organisations had reported numerous human rights violations, including ill-treatment and torture, and serious problems concerning the Belarusian authorities' international cooperation in the field of human rights. The Belarusian courts had themselves found that the applicant had been ill-treated while detained in Belarus. The above rendered insufficient the Belarusian assurances that Mr Koktysh would not be ill-treated or face the death penalty. Therefore the Court unanimously found that Ukraine would violate Article 3 should it extradite the applicant to Belarus.

Article 3 (conditions of detention, transportation and medical care)

The Court noted that it had already found a violation in respect of the conditions in the Sevastopol Temporary Detention Centre in its earlier case law. Further, the Government had not provided evidence in support of their submissions about the conditions in the Pre-Trial Detention Centre No. 15 in Simferopol. The Court also relied on the findings of the Ukrainian Commissioner for Human Rights and of the Council of Europe's anti-torture watchdog (the CPT) to accord credibility to the applicant's allegations as regards conditions of transport and detention. Consequently, it found unanimously that there had been a violation of Article 3. The Court found no violation related to medical care.

Article 5 (unlawful detention and no compensation)

The Court recalled its earlier case law on these matters (*Svetlorusov v. Ukraine* and *Soldatenko v. Ukraine)* and found no reason to reach a different conclusion in the case of Mr Koktysh. It found unanimously a violation of Article 5 §§ 1, 4 and 5.

Article 13 (right to an effective remedy)

The Court found unanimously that no effective or accessible remedy had been available to Mr Koktysh in respect of his complaints about the conditions of his detention, in violation of Article 13.

- **Right to liberty and security**

M. v. Germany (application no. 19359/04) (Importance 1) – 17 December 2009 – Violation of Article 5 § 1 – Unlawful extension of the applicant's preventive detention – Violation of Article 7 § 1 – Unlawful extension of a prisoner's preventive detention on account of the extension constituting an additional penalty imposed on the applicant retrospectively

After several previous convictions, the Marburg Regional Court convicted the applicant of attempted murder and robbery and sentenced him to five years' imprisonment in November 1986. At the same time it ordered his placement in preventive detention, relying on the report of a neurological and psychiatric expert, who found that the applicant had a strong tendency to commit offences which seriously harmed his victims' physical integrity, that it was likely he would commit further acts of violence and that he was therefore dangerous to the public. After having served his full prison sentence, the applicant's repeated requests between 1992 and 1998 for a suspension on probation of his preventive detention were dismissed by two regional courts, respectively relying on an expert report and taking into consideration the applicant's violent and aggressive conduct in prison. In April 2001 the Marburg Regional Court again refused to suspend on probation the applicant's preventive detention and ordered its extension beyond September 2001, when he would have served ten years in this form of detention. This decision was upheld by the Frankfurt am Main Court of Appeal in October 2001, finding, as had the lower court, that the applicant's dangerousness necessitated his continued detention.

Both Courts relied on Article 67 d § 3 of the Criminal Code, as amended in 1998. Under that provision, applicable also to prisoners whose preventive detention had been ordered prior to the amendment, the duration of a convicted person's first period of preventive detention could be extended to an unlimited period of time. Under the version of the Article in force at the time of the applicant's offence and conviction, a first period of preventive detention could not exceed ten years. In February 2004 the Federal Constitutional Court dismissed the applicant's constitutional complaint against these decisions in a leading judgment, holding that the prohibition of retrospective punishment under the German Basic Law did not extend to measures such as preventive detention, which had always been understood as differing from penalties under the Criminal Code's twin-track system of penalties on the one hand and measures of correction and prevention on the other.

The applicant complained under Article 5 § 1 that his continued preventive detention violated his right to liberty. In particular he alleged that there was not a sufficient causal connection between his conviction in 1986 and his continued detention after the completion of ten years in preventive detention. He further complained under Article 7 § 1 that the retrospective extension of his detention

from a maximum of ten years to an unlimited period of time violated his right not to have a heavier penalty imposed on him than the one applicable at the time of his offence.

Article 5 § 1

The Court first confirmed that the applicant's preventive detention before expiry of the ten-year-period was covered by Article 5 § 1 (a) as being detention "after conviction" by the sentencing court.

As regards his preventive detention beyond the ten-year period, however, the Court found that there was no sufficient causal connection between his conviction and his continued deprivation of liberty. When the sentencing court ordered the applicant's preventive detention in 1986 this decision meant that he could be kept in this form of detention for a clearly defined maximum period. Without the amendment of the Criminal Code in 1998 the courts responsible for the execution of sentences would not have had jurisdiction to extend the duration of the detention.

The Court moreover found that the applicant's continued detention had not been justified by the risk that he could commit further serious offences if released, as these potential offences were not sufficiently concrete and specific so as to fall under sub-paragraph (c) of Article 5 § 1. Furthermore, the applicant could not have been kept as a "person of unsound mind" within the meaning of Article 5 § 1 (e). The Frankfurt am Main Court of Appeal had found that he no longer suffered from a serious mental disorder, which had been established earlier by the lower courts.

The Court therefore unanimously concluded that the applicant's preventive detention beyond the ten-year period amounted to a violation of Article 5 § 1.

Article 7 § 1

The Court principally had to determine whether preventive detention was to be qualified as a penalty for the purpose of Article 7 § 1. Like a prison sentence, preventive detention entailed a deprivation of liberty. In practice in Germany, persons subject to preventive detention were detained in ordinary prisons. There were minor alterations to the detention regime, but no substantial difference could be discerned between the execution of a prison sentence and that of a preventive detention order. Moreover, pursuant to the Execution of Sentences Act both forms of detention served the aim of protecting the public and helping the detainee to become capable of leading a responsible life outside prison.

The Court further noted, agreeing with the findings of the Council of Europe's Commissioner for Human Rights and the European Committee for the Prevention of Torture about preventive detention in Germany, that there was currently no sufficient psychological support specifically aimed at prisoners in preventive detention that would distinguish their condition of detention from that of ordinary long-term prisoners.

As to the severity of preventive detention, the Court noted that following the change in law in 1998 the measure no longer had a maximum duration and that the condition for its suspension on probation – there being no danger the detainee would re-offend – was difficult to fulfil. The measure was therefore among the severest which could be imposed under the German Criminal Code. The Court therefore concluded that preventive detention was indeed to be qualified as a penalty.

The Court was further not convinced by the Government's argument that the extension of the applicant's detention merely concerned the execution of the penalty imposed on the applicant by the sentencing court. Given that at the time of the offence the applicant could have been kept in preventive detention only for a maximum of ten years, the extension constituted an additional penalty which had been imposed on the applicant retrospectively.

The Court therefore unanimously concluded that there had been a violation of Article 7 § 1.

- **Right to a fair trial**

Koottummel v. Austria (no. 49616/06) (Importance 3) – 10 December 2009 – Violation of Article 6 § 1 – Deprivation of an oral hearing before an administrative tribunal concerning a work permit

The applicant was born in India and lives in Lustenau where she runs an Indian restaurant with Ayurvedic cuisine. She requested an employment permit as a key worker for a specific person from the South of India whom she wanted to hire as a cook (Ayurvedic chef) in her restaurant. The Dornbirn Labour Market Sevice refused her request finding that the chef did not meet the legal requirements to be a key worker in Austria. Ms Koottummel appealed before the administrative court and requested an oral hearing. She submitted that the authorities had failed to assess the evidence properly and to give appropriate reasons for their refusal. The administrative court dismissed both her complaints: the one on the merits and the one requesting an oral hearing; as regards the latter it held that an oral hearing was not likely to help clarify her case.

Ms Koottummel complained about the lack of an oral hearing before the administrative court.

The Court noted that the administrative court which had decided on Ms Koottummel's complaints had been the first and only tribunal dealing with her case; she had therefore been entitled, as a matter of principle, to a public oral hearing unless the proceedings had concerned exclusively legal or highly technical questions. As this had not been the case in the proceedings brought by Ms Koottummel, the administrative court had been obliged to hold a hearing. Given that it had not done so, the Court held unanimously that there had been a violation of Article 6 § 1.

Wieczorek v. Poland (no. 18176/05) (Importance 2) – 8 December 2009 – No violation of Article 1 of Protocol No. 1 – Disability pension reassessment did not breach the applicant's property rights – Violation of Article 6 § 1 – Refusal to grant the applicant legal assistance

Ms Wieczorek received a disability pension from 1985 to 2000 when the Social Insurance Authority brought proceedings to reassess her medical condition in which it was decided that she was no longer entitled to such a pension on account of being fit to work. The Cracow Regional Court, by a judgment of 24 September 2002, partly amended that decision and granted the applicant a disability pension for a fixed period, namely from 1 January 2001 until 1 January 2003. In September 2004 Ms Wieczorek's appeal was dismissed – she claimed that in view of her condition she was entitled to a permanent disability pension. The Court of Appeal examined her complaint concerning the allegedly incorrect assessment of the evidence and concluded that the first-instance court had been thorough in its assessment. The court further observed that her pension had been maintained for the period from 1 January 2001 until 1 January 2003 and that, when that period had expired, the applicant had failed to submit a request to have her entitlement to the pension prolonged. On 13 October 2004 the Court of Appeal considered legal assistance was unnecessary in Ms Wieczorek's case and refused to grant her legal aid to lodge a cassation appeal.

Ms Wieczorek complained in particular that the refusal to grant her legal assistance in connection with the cassation proceedings had infringed her right to a fair hearing guaranteed by Article 6 § 1; she further complained that she had been deprived of a disability pension which she had been receiving for 15 years.

Article 6 § 1

The Court held that if legal representation was mandatory before the Supreme Court, the Court of Appeal's conclusion that legal assistance would be unnecessary, in particular in the absence of any analysis of whether the applicant's appeal to the Supreme Court offered reasonable prospects of success, was not justified. The domestic courts had therefore failed in their duty to give proper examination to the applicant's request for legal assistance, in violation of Article 6 § 1.

Article 1 of Protocol No. 1

Entitlement to a disability pension was based essentially on the claimant's inability to continue paid employment on grounds of ill-health. The initial medical condition could improve or deteriorate over time and the Court could not accept Ms Wieczorek's suggestion that her pension entitlements should remain unaltered once they had been granted, regardless of any changes in her condition. States could take measures to reassess the medical condition of those receiving disability pensions to establish whether they were still unfit to work. Maintaining such pensions when those entitled ceased to comply with the legal requirements would result in their unjust enrichment and would be unfair to contributors to the social insurance system.

The Court also observed that the decisions of the Social Insurance Authority had been subjected to judicial review. In addition, Ms Wieczorek had not been totally divested of her only means of subsistence, as she had been granted a two-year pension and she had not been obliged to pay back any amounts received by her prior to the date when she was found to no longer meet the applicable legal requirements. The Court concluded that a fair balance had been struck between the general interest of the public and the protection of the individual's fundamental rights and that the burden on the applicant had not been disproportionate or excessive. Therefore, there had been no violation of Article 1 of Protocol No. 1.

- **Quality of law**

Gurguchiani v. Spain (no. 16012/06) (Importance 1) – 15 December 2009 – Violation of Article 7 – Harsher sentence imposed retroactively on a convicted illegal immigrant

The applicant, a Georgian national, was living illegally in Spain at the relevant time. In a judgment in 2002, upheld on appeal, Barcelona Criminal Court no. 20 sentenced him to 18 months' imprisonment

for an attempted burglary. In 2003 the police administration's Deportation Department, under Article 89 of the Criminal Code as it read at the time, requested that the applicant be deported instead of serving his prison sentence. The Article provided that a criminal court enforcing a judgment in which a foreign national living illegally in Spain was given a prison sentence of up to six years had the possibility (there being no obligation) of replacing that sentence by deportation with exclusion from Spanish territory for between three and ten years. In July 2003 Barcelona Criminal Court no. 21 decided, after Mr Gurguchiani had appeared before it, not to deport him as it found that the enforcement of his prison sentence would be more appropriate. The public prosecutor appealed against that decision. In April 2004 the Barcelona Audiencia Provincial upheld the appeal and ordered that Mr Gurguchiani be deported and prevented from re-entering Spain for ten years. It took the view that, with the new wording of Article 89 of the Criminal Code there was an obligation, where an illegal immigrant in Spain was given a prison sentence of up to six years, to replace that sentence by deportation. In accordance with the new Article 89, the Audiencia Provincial took its decision after hearing submissions from the public prosecutor alone. An amparo appeal lodged by the applicant against that decision was dismissed by the Constitutional Court.

Mr Gurguchiani complained that he had been unable to challenge his deportation at the appeal stage as there had been no public hearing, and that there had been a retroactive application of the new Article 89 of the Criminal Code, which, he alleged, was less favourable than the legislation in force at the time of the offence.

As regards the complaint under Article 7 to the effect that in Mr Gurguchiani's case there had been a retroactive application of new criminal legislation that was less favourable than that in force at the time of the offence, the Court first noted that the 18-month prison sentence given to him had been consistent with the Criminal Code in force in 2002, at the time of the attempted burglary. For the enforcement of such a prison sentence, the then Article 89 of the Criminal Code had left two possibilities open to the criminal court enforcing the judgment: the convicted person could either be imprisoned and not deported (as the court had decided on 11 July 2003) or be deported and prohibited from re-entering the country for between three and ten years, instead of going to prison. In the Court's view, the replacement of Mr Gurguchiani's prison sentence by his deportation and his exclusion from Spain for ten years, as decided on appeal on 6 April 2004, meant that he had been given not only a new sentence but one that was harsher than the sentence provided for by law at the time he committed his offence. The decision had been based on a virtually automatic application of the new Article 89 (which had entered into force after the applicant's conviction), which had meant that the enforcing court no longer had a choice between maintaining the prison sentence and deporting the foreign national concerned. The new legislation had also prevented the applicant from being able to appear before the court on the same footing as the public prosecutor, in order to challenge his deportation if he so wished. Lastly, the provision at issue, in its 2003 version, required that the deported foreign national be prohibited from re-entering the country for a period of ten years, thus imposing a much harsher sentence than that provided for by the former Article 89 of the Criminal Code.

The Court found, unanimously, that there had been a violation of Article 7, as Mr Gurguchiani had been given a harsher sentence than that which had originally been provided for in respect of the offence for which he was convicted. Having regard to the reasons for the Court's finding of a violation, it decided that it did not need to examine separately the complaint under Article 6 § 1 concerning the lack of a public hearing on appeal.

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

Gardel v. France (no 16428/05) (Importance 1), Bouchacourt v. France (no 5335/06) (Importance 2), M.B. v. France (no 22115/06) (Importance 2) – 17 December 2009 – No Violation of Article 8 – The applicants' registration in national sex offender database did not infringe their right to respect for private life

The applicants were sentenced, in 1996, 2003 and 2001 respectively, to terms of imprisonment for rape of 15 year old minors by a person in a position of authority. On 9 March 2004 Law no. 2004-204 created a national judicial database of sex offenders (later extended to include violent offenders). The provisions of the Code of Criminal Procedure concerning this Sex Offender Database entered into force on 30 June 2005. The applicants were notified of their inclusion in this database on account of their convictions and on the basis of the transitional provisions of the Law of 9 March 2004.

The applicants complained, in particular, about their inclusion in the Sex Offender Database and the retroactive application of the legislation under which it was created.

Article 8

The protection of personal data was of fundamental importance to a person's enjoyment of respect for his or her private and family life, all the more so where such data underwent automatic processing, not least when such data were used for police purposes. The Court could not call into question the prevention-related objectives of the database. Sexual offences were clearly a particularly reprehensible form of criminal activity from which children and other vulnerable people had the right to be protected effectively by the State.

Moreover, as the applicants had an effective possibility of submitting a request for the deletion of the data, the Court took the view that the length of the data conservation – thirty years maximum – was not disproportionate in relation to the aim pursued by the retention of the information.

Lastly, the consultation of such data by the court, police and administrative authorities, was subject to a duty of confidentiality and was restricted to precisely determined circumstances.

The Court concluded that the system of inclusion in the national judicial database of sex offenders, as applied to the applicants, had struck a fair balance between the competing private and public interests at stake, and held unanimously that there had been no violation of Article 8.

Mikhaylyuk and Petrov v. Ukraine (no. 11932/02) (Importance 2) – 10 December 2009 – Violation of Article 8 § 1 – Unjustified interference with the applicants' right to respect for correspondence

From 1976 until 1996 the second applicant worked for the Chernomorska Penitentiary Institution no. 74 ("the colony"). He was provided with a room in a hall of residence, which was situated on the site of the colony and had the same postal address. He resided there until 1991. Afterwards, the applicants lived together in the first applicant's flat. The second applicant is still entitled to reside in the colony and it remains his registered place of residence.

The applicants complained about the authorities having opened the letters addressed to them and sent to that penitentiary colony. The Court noted that legislative provisions provided for the screening of correspondence of a particular category of persons, namely, persons held in pre-trial detention or serving their sentences in penitentiary institutions. In this context, the Court observed that the applicant did not belong to that category of persons. Given the purpose and wording of the above legislative provisions, they were not applicable to the applicants, having regard to the mere fact that the applicants were not detained in the colony. The domestic courts' conclusions to the contrary were not supported by any reasonable explanation. Therefore there has been a violation of Article 8 § 1.

- **Right to freedom of thought, conscience and religion**

Koppi v. Austria (no. 33001/03) (Importance 2) – 10 December 2009 – No violation of Article 14 taken in conjunction with Article 9 – Refusal to exempt a religious community preacher from civilian service was not discriminatory

The applicant is a member and student of the "Bund Evangelikaler Gemeinden in Österreich", a registered religious community and has been working as a municipal preacher (Prediger) for the community since 2001. Recognised in November 2000 by the Ministry of Internal Affairs as a conscientious objector and, as such, exempt from military service, Mr Koppi was still liable to perform civilian service. He subsequently requested the Ministry to be exempted from civilian service claiming that he held a comparable clerical position to members of recognised religious societies who, because they performed specific services relating to worship or religious instruction, were exempt. The Ministry dismissed his request on the ground that, under section 13a of the Civilian Service Act, exemption only applied to members of recognised religious societies and not registered religious communities.

Mr Koppi's complaints to the Constitutional Court and Administrative Court were also ultimately dismissed.

Mr Koppi complained about not being exempt from the obligation to perform civil service duties, while members of recognised religious societies holding religious functions comparable to his own were exempt.

Article 14 in conjunction with Article 9

The Court held firstly that the criterion of belonging to a recognised religious society, on which the Austrian authorities had relied in refusing the applicant's request for exemption from civilian service was not, as such, discriminatory. A difference in treatment between religious groups resulting from their being granted a specific status in law – to which substantial privileges were attached – was compatible with the requirements of Article 14 read in conjunction with Article 9 as long as the State

had set up a framework for conferring legal personality on those groups and as long as each group had had a fair opportunity to apply for the specific status, using established criteria in a non-discriminatory manner. However, there was no indication that Mr Koppi's religious community had applied for recognition as a religious society or that such a request had been refused, let alone refused on grounds incompatible with the requirements of Article 9 of the Convention.

The Court therefore considered that Mr Koppi, as a member of a registered religious community applying for exemption from civilian service under section 13a (1) of the Civilian Service Act, had not been in a relevantly similar or analogous situation to a member of a recognised religious society. There had therefore been no violation of Article 14 taken in conjunction with Article 9.

Others

Given the above finding, there was no need to examine separately the issue under Article 9 alone or from the point of view of Article 14 read in conjunction with Article 4.

- **Freedom of expression**

Financial times ltd and Others v. the United Kingdom (no. 821/03) (Importance 1) – 15 December 2009 – Violation of Article 10 – Domestic court's order to the applicants to disclose documents of interest and thus eliminate the threat of damage through future dissemination of confidential information is insufficient to outweigh the public interest in the protection of journalists' sources

The applicants are four newspapers and a news agency. The applicants complained that they had been ordered to disclose documents to Interbrew, a Belgian brewing company, which could lead to the identification of journalistic sources at the origin of a leak to the press about a takeover bid. In November 2001 a journalist at The Financial Times ("FT") received a copy of a leaked document from X concerning Interbrew's possible takeover bid for South African Breweries ("SAB"). That day the FT journalist telephoned Goldman Sachs, Interbrew's investment bank advisers, to advise them that he had received the leaked document and intended to publish it. The article was published at about 10 p.m. on the FT's website and, referring to the leaked document, stated that Interbrew had been plotting a bid for SAB. The Times, Reuters, The Guardian and The Independent, also referring to the leaked document and the possible bid, published articles on the same and following days. Following a statement by Interbrew to the press, they continued to report on the issue, adding that the leaked documents had possibly been doctored. The impact of the press coverage on the market shares of Interbrew and SAB was significant: notably SAB's shares traded went from less than 2 million to more than 44 million in the space of two days. Kroll, Interbrew's security and risk consultants, tried to identify X, without success.

Following Kroll's advice that access to the originals of the leaked documents might vitally assist the investigation, Interbrew brought proceedings in December 2001 against the applicants in the High Court. That court found in favour of Interbrew and ordered the applicants to disclose the leaked documents. It was found in particular that X had deliberately leaked a lethal concoction of confidential and false information, with serious consequences for the integrity of the share market and that there was an overriding need for disclosure of the documents in the interests of justice and for the prevention of crime. That decision was upheld on appeal. It was concluded that the public interest in protecting the source of a leak was not sufficient to withstand the prevailing public interest in allowing Interbrew to seek justice against the source, the critical point being X's evident aim "to do harm whether for profit or for spite…".

In July 2002 the House of Lords refused the applicants' leave to appeal. To date, the applicants have not delivered up the documents and the disclosure order has not been enforced against them.

The applicants complained about the court order to disclose the leaked documents which could lead to the identification of journalistic sources. The applicants also complained about the unfairness of the civil proceedings in which Interbrew had claimed damages against the source of the leaked documents and sought to prevent further leaks.

Article 10

The disclosure order against the applicants had constituted an interference with their right to freedom of expression. That interference, authorised by a principle of common law (the *Norwich Pharmacal* principle whereby if a person through no fault of his own becomes involved in the wrongdoing of others so as to facilitate that wrongdoing, he comes under a duty to assist the person who has been wronged by giving him full information and disclosing the identity of the wrongdoer) and section 10 of the Contempt of Court Act 1981, were "prescribed by law" and pursued the legitimate aims of protecting the rights of others and preventing the disclosure of information received in confidence.

Firstly, the Court considered that X's alleged harmful intent and the doubts surrounding the authenticity of the leaked document were not important factors in the applicants' case, as neither factor had been ascertained with the necessary degree of certainty in the legal proceedings against the applicants. Furthermore, although Interbrew had received prior warning that FT's article would contain allegedly confidential and sensitive commercial information, it had not sought an injunction to prevent its publication. Moreover, ordering disclosure to prevent further leaks would only be justified in exceptional circumstances where no reasonable and less invasive alternative means were available to discover the source. However, although Kroll had failed to identify X, it was apparent from the judgments of the domestic courts that Interbrew's evidence had not given full details of the inquiries made. Indeed, the Court of Appeal's conclusion that Kroll had done as much as it could at that time to trace the source had been based on inferences.

Emphasising the chilling effect of journalists being seen to assist in the identification of anonymous sources, the Court found that Interbrew's interests in eliminating, by proceedings against X, the threat of damage through future dissemination of confidential information and in obtaining damages for past breaches of confidence had been insufficient to outweigh the public interest in the protection of journalists' sources. In conclusion, the Court found that there had been a violation of Article 10.

Aguilera Jiménez and Others v. Spain (nos. 28389/06, 28955/06 etc.) (Importance 3) – 8 December 2009 – No violation of Article 10 – Dismissal of trade unionists for an offensive and humiliating publication was not contrary to their freedom of expression

The applicants worked as delivery men for a company against which they had instituted several sets of proceedings before the labour courts. In 2001 they set up a trade union to defend their interests and those of other delivery staff, and joined the union's management structure. The cover of an information bulletin published by the trade union in April 2002 showed a caricature of the director of human resources and inside the bulletin, two articles, worded in crude and vulgar terms, criticised the fact that two individuals had testified in favour of the company during proceedings brought by the applicants against it. The bulletin was distributed among the company's employees and pinned up on the trade union's notice board, located inside the company's premises.

In June 2002 the company dismissed the applicants for serious misconduct. They challenged that decision before the courts and in November 2002 Barcelona labour no. 17 dismissed their complaints, considering that their dismissal had had a genuine and serious basis, in that the drawing and articles that had prompted the measure were offensive, tarnished the honour and dignity of the individuals in question and exceeded the limits of freedom of expression. In May 2003 the Catalonia Higher Court of Justice upheld that decision in respect of four of the applicants. The dismissal of Mr Aguilera Jiménez and Mr Beltrán Lafulla was, however, held to be unlawful, in the absence of evidence that they had been directly involved in the disputed actions, and the company was ordered to reinstate them or pay compensation. An appeal on points of law by the applicants was dismissed by the Supreme Court in March 2004. Their *amparo* appeal was declared inadmissible by the Constitutional Court in January 2006. That court held, in particular, that freedom of expression did not protect vexatious, offensive or ignominious statements that were irrelevant for the expression of opinions or information.

The applicants alleged that their dismissal, based on the content of the information bulletin in question, had infringed their freedom of expression and that the real reason for their dismissal had been their trade-union activities, in violation of their right to freedom of assembly and association. Only the applications from those applicants who had not been successful before the Spanish courts were admissible and examined on the merits.

The dismissal of these applicants, endorsed by the judicial authorities, represented an interference with their right to freedom of expression; it was provided for by Spanish law and pursued the legitimate aim of protection of the reputation or rights of others. The Court noted that a trade union which did not have the possibility of expressing its ideas freely would be deprived of its content and purpose. It reiterated, however, that freedom of debate was undoubtedly not absolute in nature, that freedom of expression as set out in Article 10 carried with it duties and responsibilities and that a Contracting State could subject it to restrictions or sanctions. In the present case, the Spanish courts had analysed in detail the events complained of, and had concluded that, on account of their seriousness and tone, the drawing and articles amounted to personal attacks that were offensive, intemperate, gratuitous and in no way necessary for the legitimate defence of the applicants' interests; the latter had exceeded the acceptable limits of the rights of criticism. In so finding, the courts had weighed up the competing interests under national law and their decisions could not be considered unreasonable or arbitrary.

The Court concluded, by six votes to one, that the authorities had not exceeded their discretion to penalise the applicants and that there had been no violation of Article 10.

In the light of its finding under Article 10 and in the absence of evidence indicating that the applicants' dismissal had been an act of reprisal by their employer for their trade-union activities, the Court was of the opinion that no separate question arose under Article 11.

- **Protection of property**

Muñoz Díaz v. Spain (no. 49151/07) (Importance 2) – Violation of Article 14 in conjunction with Article 1 of Protocol No. 1 – Domestic authorities' refusal to grant a survivor's pension to a person married according to the Roma community rites was discriminatory

The applicant is a Spanish national belonging to the Roma community. In November 1971 she married M.D., who also belonged to the Roma community, in a marriage solemnised according to the rites of that community. They had six children, who were all listed in a family record book issued by the Spanish authorities. In 1986 they were granted "large family" status. M.D. died on in 2000. He had worked as a builder and had paid social security contributions for over 19 years. Mrs Muñoz Díaz applied for a survivor's pension but it was refused by the National Social Security Institute on the ground that her marriage to M.D. had not been registered in the Civil Register. That decision was confirmed in May 2001. The applicant applied to the Labour Court and, in a judgment in May 2002, was recognised as being entitled to a survivor's pension. The court held that the National Social Security Institute's decision represented discriminatory treatment based on ethnic identity. On an appeal by the other party, the Madrid Higher Court of Justice quashed that judgment in November 2002, on the ground that the couple had not been married according to the applicable law but in a customary form that produced no civil effects. The applicant lodged an *amparo* appeal but it was dismissed by a Constitutional Court judgment in April 2007. The court found that Mrs Muñoz Díaz and M.D. had chosen not to get married in a statutory or other recognised form whilst being free to do, as anyone could enter into a civil marriage regardless of ethnic considerations. The court further pointed out the importance of limiting the survivor's pension to marital relationships, in a context of limited social security resources that had to cater for a wide variety of needs.

The applicant complained that the refusal to grant her a survivor's pension on the ground that her marriage had no civil effects contravened the principle of non-discrimination. Mrs Muñoz Díaz further complained that the Spanish authorities' failure to recognise Roma marriage – the only valid form of marriage in her community – as having civil effects, even though the community had been in Spain for at least five hundred years, breached her right to marry.

Article 14 taken together with Article 1 of Protocol No. 1

The Court noted that Mrs Muñoz Díaz had had six children with M.D. and they had lived together until his death. The civil registration authorities had issued them with a family record book and they had obtained the administrative status of large family, for which the parents had to be "spouses". Moreover, M.D. had been covered by social security for more than 19 years and his benefit card had indicated that he supported the applicant, as his wife, and his six children. The Court noted that this card was an official document as it had been stamped by the National Social Security Institute. The Court emphasised the importance of the beliefs that the applicant had derived from belonging to the Roma community, which had its own values that were well established and deeply rooted in Spanish society. The applicant could not have been required, without infringing her right to religious freedom, to marry under canon law – the only possibility in 1971 – when she expressed her wish to marry according to Roma rites.

The Court observed that there was an emerging international consensus amongst European States recognising the special needs of minorities and an obligation to protect their security, identity and lifestyle, to safeguard their interests and preserve cultural diversity.

The applicant had believed in good faith that the marriage solemnised according to Roma rites and traditions had produced all the effects inherent in the institution of marriage, especially as official documents showed her as a wife, and had thus had a legitimate expectation that she would be entitled to a survivor's pension. In their refusal the authorities had not taken account of her good faith or of her social and cultural specificities.

It was disproportionate for the Spanish State, which had granted large-family status, had provided health coverage to M.D.'s family and had collected M.D.'s social security contributions for over 19 years, then to have refused to recognise the effects of Mrs Muñoz Díaz's Roma marriage when it came to the survivor's pension. The Court could not accept the Government's argument that the applicant could have avoided the discrimination by entering into a civil marriage: to accept that a victim could have avoided discrimination by altering one of the factors at issue would render Article 14 devoid of substance.

The Court thus found, by six votes to one, that there had been a violation of Article 14 of the Convention taken together with Article 1 of Protocol No.

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 08 Dec. 2009: here
- Press release by the Registrar concerning the Chamber judgments issued on 10 Dec. 2009: here
- Press release by the Registrar concerning the Chamber judgments issued on 15 Dec. 2009: here
- Press release by the Registrar concerning the Chamber judgments issued on 17 Dec. 2009: here
- Press release by the Registrar concerning the Chamber judgments issued on 22 Dec. 2009: here

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

State	Date	Case Title and Importance of the case	Conclusion	Key Words	Link to the case
Albania	08 Dec 2009	Bushati and 2 Others (no. 6397/04) Imp. 2	Violation of Article 6 § 1 (fairness) Violation of Article 1 of Protocol No. 1	Non-enforcement of a judgment in the applicants' favour with regard to a plot of land on the Albanian cost	Link
Albania	08 Dec 2009	Caka (no. 44023/02) Imp. 2	No violation of Article 6 § 1 in conjunction with Article 6 § 3 (c) No violation of Article 6 § 1 in conjunction with Article 6 § 3 (d) Three violations of Article 6 § 1 in conjunction with Article 6 § 3 (d)	Adequate legal representation Domestic court's refusal to allow the cross-examination of witness M. did not breach the applicant's right to a fair trial Omission of defence witnesses' testimonies before the Berat District Court	Link
Austria	10 Dec 2009	Almesberger (no. 13471/06) Imp. 3	Violation of Art. 6 § 1	Excessive length of criminal proceedings	Link
Croatia	22 Dec 2009	Parlov-Tkalčić (no. 24810/06) Imp. 3	Violation of Article 6 § 1 (length) No violation of Article 6 § 1 (fairness)	Excessive length of civil proceedings brought against the applicant by an insurance company No evidence to ascertain the partiality of the tribunal	Link
Finland	08 Dec 2009	Janatuinen (no. 28552/05) Imp. 3	Violation of Article 6 § 1 taken together with Article 6 § 3 (b)	Infringement of the right to a fair trial on account of the destruction of recordings of telephone conversations relevant to the applicant's defence (See also *Natunen v. Finland)*	Link
Finland	08 Dec 2009	Taavitsainen (no. 25597/07) Imp. 3	Violation of Article 6 § 1 Violation of Article 13	Excessive length of criminal proceedings Lack of an effective remedy	Link
France	10 Dec 2009	Grifhorst (no. 28336/02) Imp. 3	Just satisfaction	Struck out (friendly settlement between the parties)	Link
Greece	17 Dec 2009	Georginis-Giorginis (no. 3271/08) Imp. 3	Violation of Article 6 § 1	Excessive length of proceedings concerning drugs-related charges	Link
Italy	08 Dec 2009	Micciché and Guerrera (no. 28987/04) Imp. 3	Violation of Article 6 § 1 (1st, 4th, 5th and 6th applicant)	Excessive length of compensation proceedings	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

Moldova	15 Dec 2009	Leva (no. 12444/05) Imp. 2	(Both applicants) Violation of Article 5 §§ 1 and 2 and no violation of Article 13 (1st applicant) Violation of Article 5 § 4 (2nd applicant) No violation of Article 5 § 4	Unlawfulness of the applicants' arrests and failure to inform the applicants of the reasons for their arrest Lack of sufficient time and facilities to prepare the defence No evidence to ascertain the violation of the 2nd applicant's right to be represented by a lawyer	Link
Poland	08 Dec 2009	Goliszewski (no. 14148/05) Imp. 3	Violation of Article 5 § 3	Excessive length of pre-trial detention	Link
Poland	15 Dec 2009	Bugajny and Others (no. 22531/05) Imp. 2	Rejection of the Government's request for revision	Authorities' refusal to expropriate the applicants' land, which had been used for roads accessible to the general public, and award them compensation	Link
Poland	15 Dec 2009	Zapadka (no. 2619/05) Imp. 3	Violation of Article 6 § 1 (fairness)	Appointed legal aid lawyer's refusal to lodge a cassation appeal with the Supreme Court in compensation proceedings for being infected with Hepatitis B while treated for lung cancer	Link
Russia	17 Dec 2009	Dzhurayev (no. 38124/07) Imp. 2	Violation of Article 5 §§ 1 and 4	Unlawfulness of detention pending extradition to Uzbekistan and lack of any procedure for the judicial review of the lawfulness of the detention	Link
Russia	17 Dec 2009	Kolchinayev (no. 28961/03) Imp. 3	Violation of Article 6 § 1	Excessive length of criminal proceedings	Link
Russia	17 Dec 2009	Kunashko (no. 36337/03) Imp. 3	Violation of Article 6 § 1 (fairness)	Partial execution of a judgment in the applicant's favour	Link
Russia	22 Dec 2009	Bezymyannaya (no. 21851/03) Imp. 3 Sergey Smirnov (no. 14085/04) Imp. 3	Violation of Article 6 § 1 (fairness)	Unjustified infringement of the applicants' right of access to a court on account of domestic courts' refusal to examine the merits of their civil claims	Link Link
Russia	22 Dec 2009	Butusov (no. 7923/04) Imp. 3	Two violations of Article 5 § 4	The appeal hearing to review the applicant's detention on remand during criminal proceedings had been delayed and examined in his and his counsel's absence	Link
Russia	22 Dec 2009	Makarenko (no. 5962/03) Imp. 3	No violation of Article 5 § 1 Violation of Article 5 §§ 3 and 4 No violation of Article 6 § 3 (c) in conjunction with Article 6 § 1 (fairness) No violation of Art. 10	The applicant was arrested and detained on "reasonable suspicion" of a criminal offence Excessive length of the applicant's pre-trial detention and delays in examining his applications for release and failure to examine his appeals against his detention orders Fairness of proceedings The applicant's conviction for disseminating false information to one year probation constituted a proportionate measure	Link
Serbia	08 Dec 2009	Molnar Gabor (no. 22762/05) Imp. 2	No violation of Article 6 § 1 No violation of Article 1 of Protocol No. 1	Authorities' justified refusal to release to the applicant all of his foreign currency savings deposited in a bank and, in particular, the non-enforcement of a domestic judicial decision rendered on this question,	Link
Spain	15 Dec 2009	Llavador Carretero (no. 21937/06)	Violation of Article 6 § 1 (fairness)	Domestic court's refusal to examine the applicant's cassation appeal	Link

		Imp. 3			
Spain	22 Dec 2009	Tapia Gasca and D. (no. 20272/06) Imp. 2	No violation of Art. 8	Proportionate measures taken by domestic authorities regarding the return of the applicant's child to her	Link
Switzerland	17 Dec 2009	Werz (no. 22015/05) Imp. 3	Two violations of Article 6 § 1	Excessive length and unfairness of criminal proceedings	Link
"the former Yugoslav Republic of Macedonia"	17 Dec 2009	Kalanoski (no. 31391/03) Imp. 3	Violation of Art. 6 § 1	Lengthy non-enforcement of a compensation claim	Link
Turkey	15 Dec 2009	Hun (no. 17570/04) Imp. 3	Violation of Art. 6 § 1	Unfairness of the applicant's arrest and conviction for buying and selling drugs on account of this offence being committed after the intervention of an "agent provocateur"	Link
Turkey	15 Dec 2009	Narin (no. 18907/02) Imp. 2	Violation of Art. 6 § 1	Excessive length of administrative proceedings	Link
Turkey	15 Dec 2009	Sabri Aslan and Others (no. 37952/04) Imp. 3	(Ist and 8th applicants) Violation of Article 6 § 1 (fairness)	Infringement of the right of access to a court on account of the excessive amount of court fees in administrative proceedings and refusal to award the applicants legal aid	Link
Turkey	08 Dec 2009	Bilgin (no. 37912/04) Imp. 3	Violation of Art. 5 § 3 Violation of Art. 6 § 1	Excessive length of pre-trial detention and of criminal proceedings	Link
Turkey	08 Dec 2009	Engin (no. 60683/00) Imp. 3	Violation of Art. 6 § 1 (fairness) Violation of Art. 6 § 3 (c) in conjunction with Art. 6 § 1 (fairness)	Participation of a military judge in the proceedings before the Istanbul National Security Court and lack of legal assistance while in police custody	Link
Turkey	08 Dec 2009	Yılmaz (no. 18896/05) Imp. 2	Violation of Art. 6 § 1 (fairness)	Failure to enforce a judgment in the applicant's favour	Link
Turkey	08 Dec 2009	Savaş (no. 9762/03) Imp. 2	Violation of Art. 6 § 3 (c) in conjunction with Art. 6 § 1 (fairness) Violation of Art. 6 § 1 (fairness)	Failure to communicate to the applicant a copy of the written submissions of the Principal Public Prosecutor at the Court of Cassation on the merits of his appeals Deprivation of access to a lawyer while in police custody	Link
Turkey	08 Dec 2009	Şayık and Others (nos. 1966/07, 9965/07, 35245/07, 35250/07 etc.) Imp. 3	Violation of Art. 5 §§ 3 and 4 Violation of Art. 6 § 1 (length) Violation of Art. 13	Excessive length of pre-trial detention and lack of an effective remedy to seek judicial review of the lawfulness of the detention; excessive length of proceedings Lack of an effective remedy	Link
Turkey	08 Dec 2009	Yeşilkaya (no. 59780/00) Imp. 3	Violation of Art. 6 § 3 (c) in conjunction with Art. 6 § 1	Lack of a legal assistance while in police custody	Link
Ukraine	10 Dec 2009	Kreydich (no. 48495/07) Imp. 3	Violation of Art. 5 §§ 1, 4 and 5	Unlawful detention pending extradition, the applicant's inability to challenge his arrest and his subsequent detention before the national courts, and lack of compensation	Link
Ukraine	10 Dec 2009	Matsyuk (no. 1751/03) Imp. 2	Violation of Art. 6 § 1	Deprivation of the right of access to a court as a result of the domestic courts' refusal to examine the applicant's complaint	Link
Ukraine	10 Dec 2009	Mironenko and Martenko (no. 4785/02) Imp. 3	Violation of Art. 5 §§ 3, 4 and 5 Violation of Art. 6 § 1 (fairness)	Unlawfulness of arrest and detention Unfairness of criminal proceedings	Link
Ukraine	10 Dec	Panchenko (no. 10911/05)	Violation of Art. 6 § 1 (fairness)	Unfairness of civil proceedings, non-enforcement of a judgment in the	Link

	2009	Imp. 3	Violation of Art. 1 of Prot. 1 Violation of Art. 13	applicant's favour Lack of an effective remedy to challenge the non-enforcement of the judgment	
Ukraine	10 Dec 2009	Shagin (no. 20437/05) Imp. 3	Violation of Art. 6 §§ 1 and 2 (fairness)	Lack of a public hearing and infringement of the principle of presumption of innocence on account of certain public officials' statements in the media concerning the applicant's case	Link

3. Repetitive cases

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

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

State	**Date**	**Case Title**	**Conclusion**	**Key words**
Italy	08 Dec. 2009	Bortesi and Others (no. 71399/01) link	Revision	Inadequate compensation after expropriation
Italy	08 Dec. 2009	Gennari (no. 32550/03) link	Violation of Art. 1 of Prot. 1	Idem.
Italy	08 Dec. 2009	Vacca (no. 8061/05) link	Violation of Art. 6 § 1 (fairness) Violation of Art. 1 of Prot. 1	Unfairness of proceedings Inadequate compensation after expropriation
Moldova	15 Dec 2009	Fedotov (no. 6484/05) link	Violation of Art. 6 § 1 (fairness) Violation of Art. 13 Violation of Art. 1 of Prot. 1	Domestic authorities' failure to enforce a final judgment in the applicant's favour in good time
Portugal	15 Dec 2009	Companhia Agrícola do Vale de Água, S.A. (no. 11019/06) link Sampaio de Lemos and 22 other "agrarian reform" cases (nos. 41954/05, 42843/05 etc.) link Vilhena Peres Santos Lanca Themudo, Melo and Others (no. 1408/06) link	Violation of Art. 1 of Prot. 1	Inadequate compensation for an expropriated land
Romania	08 Dec. 2009	Darnai (no. 36297/02) link	Violation of Article 6 § 1 (fairness) Violation of Article 1 of Protocol No. 1	The domestic authorities' failure to enforce a final judgment in the applicant's favour in good time
Romania	08 Dec. 2009	Gherghiceanu and Others (no. 21227/03, 18377/05 and 18730/05)	Violation of Article 1 of Protocol No. 1	The applicant's inability to recover possession of property that had been nationalised and subsequently sold by the State

		link		
Russia	15 Dec 2009	Kraynova and Kraynov and nine other "Yakut pensioners" cases (nos. 7306/07, 8555/07 etc.) link Ryabov and 151 other "Privileged pensions" cases (nos. 4563/07, 19923/08, 29853/08 etc.) link	Violation of Article 6 § 1 (fairness) Violation of Article 1 of Protocol No. 1	Quashing of final judgments in the applicants' favour by way of supervisory review
Russia	17 Dec 2009	Volnykh (no. 10856/03) link	No violation of Article 1 of Protocol No. 1	Justified non-enforcement of a judgment in the applicant's favour
Russia	22 Dec 2009	Gudkov (no. 13173/03) link Talysheva (no. 24559/04) link	Violation of Article 6 § 1 (fairness) Violation of Article 1 of Protocol No. 1	Quashing of final judgments in the applicants' favour by way of supervisory review
Russia	22 Dec 2009	Ignatyeva (no. 10277/05) link	Just satisfaction	Just satisfaction following a judgment finding a violation of Article 6 § 1 and Article 1 of Protocol No. 1
Turkey	08 Dec. 2009	Öztok (no. 42082/02) link	Violation of Article 1 of Protocol No. 1	Restriction from the property, designated as a public forest area, without compensation
Turkey	15 Dec 2009	Akyazici (no. 43452/02) link	Violation of Article 6 § 1 (fairness)	Failure to provide the applicant with a copy of the written opinion of the Principal Public Prosecutor submitted to the Court of Cassation
Ukraine	10 Dec 2009	Biletskaya (no. 25003/06) link Kasyanchuk (no. 4187/05) link	Violation of Article 1 of Protocol No. 1	The Ukrainian authorities' failure to enforce a final judgment or decision in the applicants' favour in good time or at all
Ukraine	10 Dec 2009	Gimadulina and Others (nos. 30675/06, 30785/06, 32818/06 etc.) link Kutsenko (no. 41936/05) link Len and Kuzmich Len (no. 825/05) link	Violation of Article 6 § 1 (fairness) Violation of Article 13 Violation of Article 1 of Protocol No. 1	Idem.
Ukraine	10 Dec 2009	Ilchyshyn and Others (nos. 8802/07, 8729/07 etc.) link Karpukhan and Others (nos. 45524/05, 39316/07 etc.) link Khrypko and Others (nos. 43507/07, 45747/07 etc.) link Lyudmyla Naumenko (no.	Violation of Article 6 § 1 (fairness) Violation of Article 1 of Protocol No. 1	Idem.

		14728/07) link Ramus and Others (nos. 11867/08, 11868/08 etc.) link Sergeyeva (no. 43798/05) link		
Ukraine	10 Dec 2009	Logachova and Others (nos. 4510/05, 13273/05 etc.) link Osokin and Osokina (nos. 8437/06 and 8470/06) link Shastin and Shastina (no. 12381/04) link Yangolenko (no. 14077/05) link	Violation of Article 6 § 1	Idem.
Ukraine	10 Dec 2009	Panov (no. 21231/05) link	Violation of Article 1 of Protocol No. 1 Violation of Article 13	Idem. No remedy exists under Ukrainian law against non-enforcement of domestic court judgments given against state authorities

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
Austria	10 Dec 2009	Goriany. 31356/04)	Link
Germany	22 Dec 2009	Jesse (no. 10053/08)	Link
Germany	22 Dec 2009	Kressin (no. 21061/06)	Link
Poland	08 Dec. 2009	Kucharczyk (no. 3464/06)	Link
Poland	08 Dec. 2009	Puczyński (no. 32622/03)	Link
Russia	22 Dec 2009	Gorovaya (no. 20882/04)	Link
Russia	22 Dec 2009	Lekhanova (no. 43372/06)	Link
Russia	22 Dec 2009	MP Kineskop (no. 16141/05)	Link
Russia	22 Dec 2009	Makarova (no. 20886/04)	Link
Serbia	08 Dec 2009	Nemet (no. 22543/05)	Link
Slovakia	08 Dec. 2009	Petrincová (no. 11395/06)	Link
Slovakia	08 Dec. 2009	Rošková (no. 36818/06)	Link
Slovakia	15 Dec 2009	Kučera (no. 29749/05)	Link
Slovakia	15 Dec 2009	Paldan (no. 18968/05)	Link
Slovakia	15 Dec 2009	Špatka (no. 36528/05)	Link
Turkey	15 Dec 2009	Bilgeç (no. 28578/05)	Link
Ukraine	10 Dec 2009	Bendryt (no. 1661/04)	Link
Ukraine	10 Dec 2009	Goncharov (no. 7867/06)	Link

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

Those decisions are published with a slight delay of two to three weeks on the Court's Website. Therefore the decisions listed below cover **the period from 11 to 29 November 2009**.

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

State	***Date***	***Case Title***	***Alleged violations (Key Words)***	***Decision***
Albania	17 Nov 2009	Telhai (No 2) (no 58915/08) link	Alleged violation of Art. 1 of Prot. 1 (deprivation of the right to compensation on account of the State's alleged failure to adopt relevant domestic laws)	Inadmissible (incompatible *ratione materiae*)
Azerbaijan	19 Nov 2009	Insanov (no 16133/08) link	Alleged violation of Art. 3 and 6 (conditions of detention, lack of adequate medical treatment, lack of an effective investigation, inability to attend proceedings), Art. 5 §§ 1 and 3 (c) (unlawfulness and length of detention), Art. 6 §§ 1 and 3 (b), (c) and (d) Art. 7 (lack of adequate time and facilities to prepare his defence, length and unfairness of civil and criminal proceedings), Art. 1 of Prot. 1 (confiscation of property), Art. 6 § 1 (infringement of the principle of presumption of innocence due to expulsion from membership of the Azerbaijan National Academy of Sciences)	Partly adjourned (concerning the conditions of pre-trial detention and the lack of adequate medical treatment and unfairness of criminal and civil proceedings and confiscation of property), partly inadmissible for non respect of the six-month requirement (concerning the lawfulness and length of pre-trial detention), partly inadmissible as manifestly ill-founded (concerning the remainder of the application)
Azerbaijan	18 Nov 2009	Mirzayev (no 36122/06) link	Alleged violation of Art. 3 (conditions of detention and lack of adequate medical treatment in Bayil Prison and Gobustan Prison), Art. 6 (the applicant's absence in the civil proceedings concerning his detention), Art. 6 and Art. 2 of Prot. 7 (unfairness of criminal proceedings held in the applicant's absence), Art. 6 (length of proceedings and deprivation of an independent and impartial tribunal), Art. 7 (retroactive application of the sentence to life imprisonment)	Partly adjourned (concerning the conditions of detention, the lack of adequate medical treatment and the unfairness of civil proceedings), partly inadmissible as manifestly ill-founded (concerning the remainder of the application)
Azerbaijan	26 Nov 2009	Rzakhanov (no 4242/07) link	Alleged violation of Art. 3 (ill-treatment by prison guards and lack of an effective investigation, conditions of detention in Bayil Prison and Gobustan Prison), Art. 6 (hindrance to the applicant's right to attend the proceedings concerning the lawfulness of the commutation of his sentence from death penalty to life imprisonment), Art. 7 (retroactive application of the sentence to life imprisonment)	Partly adjourned (concerning ill-treatment by prison guards and the conditions of detention), partly inadmissible (concerning the remainder of the application)
Croatia	19 Nov 2009	Tomašić (no 39867/07) link	Alleged violation of Art. 1 of Prot. 1 (annulment of the contract of sale on the basis of which the applicants had brought their flat) and Art. 6 § 1 outcome of proceedings)	Inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention)
Finland	24 Nov 2009	Parviainen (no 26034/08) link	Alleged violation of Art. 6 § 1 (lack of an oral hearing, unfairness and length of proceedings, failure to communicate to the applicant new	Partly struck out of the list as matter had been resolved at domestic level (concerning the non-communication of

			evidence obtained by the Insurance Court), Art. 6 § 2 (infringement of the principle of presumption of innocence)	documents), partly inadmissible as manifestly ill-founded (concerning the remainder of the application)
Finland	17 Nov 2009	Niemela (no 1434/09) link	Alleged violation of Art. 6 § 1 (excessive length of criminal proceedings)	Struck out of the list (friendly settlement reached)
Finland	17 Nov 2009	Landgren (no 11459/07) link	Alleged violation of Art. 6 § 1 (excessive length of proceedings), Articles 6 § 1 and 6 § 3 (a) taken together (unfairness of proceedings), Art. 2 of Prot. 7 (deprivation of the right to appeal)	Partly struck out of the list (friendly settlement reached concerning the length of proceedings), party inadmissible as manifestly ill-founded (concerning the remainder of the application)
France	24 Nov 2009	J.H. and Others (no 49637/09; 49644/09) link	Alleged violation of Art. 1 of Prot. 1 (inadequate compensation for damage caused by the death of their parents killed in concentration camps during World War II), Art. 1 in conjunction with Art. 14 (discriminatory treatment on account of the payment of the same amount of compensation to orphans who lost one or both their parents), Art. 6 and 13 (delayed payment of the compensation)	Inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention)
France	24 Nov 2009	Hautin (no 6930/06) link	Alleged violation of Art. 7 § 1 (registration of the applicant in the sex offenders' national database as a result of the retroactive application of the law on the basis of which the applicant had been convicted)	Inadmissible (incompatible *ratione materiae*)
Georgia	17 Nov 2009	Katcheishvili (no 55793/09) link	Alleged violation of Art. 3 (lack of adequate medical care and conditions of detention in Rustavi No. 2 Prison)	Partly adjourned (concerning the conditions of detention), partly inadmissible as manifestly ill-founded (concerning the remainder of the application)
Georgia	17 Nov 2009	Avetisyan (no 19358/09) link	Alleged violation of Art. 6 § 1, Art. 13 and Art. 1 of Prot. 1 (dispute with the State over retirement pension arrears)	Struck out of the list (friendly settlement reached)
Georgia	24 Nov 2009	Berishvili (no 14127/05) link	Alleged violation of Art. 2 and 13 (the State's positive obligation to protect the life and health of the applicant's minor child who had had difficulty in surviving after an attack by a venomous snake)	Struck out of the list (applicant no longer wished to pursue her application)
Georgia	24 Nov 2009	Seidova (no 16956/09) link	Alleged violation of Art. 3 (lack of treatment of the applicant's cardio-vascular problems in prison)	Struck out of the list (applicant no longer wished to pursue her application)
Georgia	24 Nov 2009	Khubulava and Others (no 32553/04) link	Alleged violation of Art. 5 §§ 1 and 3 (unlawful arrest and length of pre-trial detention)	Struck out of the list (applicants no longer wished to pursue their application)
Georgia	24 Nov 2009	Mindadze and Nemsitsveridze (no 21571/05) link	Alleged violation of Art. 3 (ill-treatment in detention (1st applicant) and conditions of detention), Art. 5 § 1 (unlawfulness of proceedings), Art. 5 § 3 (length of detention), Art. 5 § 4 and 13 (lack of an effective remedy to challenge the length of detention), Art. 6 § 3 c) and d), Art. 5 §§ 1, 3, 4, 6 § 3 b), c) and d) and 13	Struck out of the list (concerning the application of the 3rd applicant, concerning the 1st applicant's complaint of ill-treatment and the lack of an effective investigation and concerning the 1st and 2nd applicants' complaint regarding the conditions of detention, the unlawfulness of detention, the lack of sufficient reasoning in the judgments, the non-communication of the applicant's notification concerning the prolongation of detention, unfairness of proceedings), partly inadmissible for non respect of the six-month requirement, partly inadmissible as manifestly ill-

				founded (concerning the remainder of the application)
Germany	24 Nov 2009	Koester Von (no 17019/08) link	Alleged violation of Art. 6 § 1, Art. 13 and Art. 1 of Prot. 1 (excessive length and unfairness of proceedings)	Partly adjourned (concerning the unfairness and the length of proceedings), partly inadmissible as manifestly ill-founded (concerning the remainder of the application)
Hungary	24 Nov 2009	Weinhardt (no 39174/05) link	Alleged violation of Art. 6 § 1 (excessive length of civil proceedings)	Struck out of the list (friendly settlement reached)
Hungary	24 Nov 2009	Von Handel (no 28392/05) link	Idem.	Idem.
Hungary	24 Nov 2009	Dobos (no 45069/05) link	Alleged violation of Art. 1 of Prot. 1 in conjunction with Art. 14	Struck out of the list (applicant no longer wished to pursue his application)
Italy	17 Nov 2009	La Valle (no 13991/07) link	Alleged violation of Art. 1 of Prot. 1 (deprivation of property)	Struck out of the list (applicant no longer wished to pursue her application)
Italy	17 Nov 2009	Giugliano (no 35194/04) link	Alleged violation of Art. 3, 8, 5 §§ 4 and 5, 6 § 1, 6 §§ 2 and 3 a) and b) and 13 on account of the applicant's detention in a special regime	Struck out of the list (applicant no longer wished to pursue his application)
Italy	17 Nov 2009	Cordi' (no 37936/04) link	Alleged violation of Art. 3 and 2 (the applicant's submission to a special detention regime), Art. 5 §§ 4 et 5, 6 § 1 and 13 (the applicant's inability to challenge the above detention), Art. 8 (restrictions to family visits) and Art. 6 §§ 2 and 3 a) and b) (infringement of the principle of presumption of innocence due to the special regime in detention)	Partly inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention), partly incompatible *ratione materiae*
Lithuania	17 Nov 2009	Šiktorovas (no 32120/06) link	Alleged violation of Art. 3 (conditions of detention)	Struck out of the list (applicant no longer wished to pursue his application)
Luxembourg	19 Nov 2009	Macedo Da Costa (no 26619/07) link	Alleged violation of Art. 6 § 1 and 13 (unfairness and length of proceedings and lack of an effective remedy), Art. 5 § 4 (the applicant's inability to challenge speedily the lawfulness of his detention) and Art. 14 (difference of treatment between prisoners)	Partly adjourned (concerning the unfairness and the length of proceedings and lack of an effective remedy in that respect), partly inadmissible as manifestly ill-founded (concerning the remainder of the application)
Moldova	24 Nov 2009	Hmelevschi (no 43546/05) link	Alleged violation of Art. 6 § 1 (domestic courts' failure to summon the applicant to the hearing before the Buiucani District Court) and Art. 11 § 1 (infringement of the right to freedom of assembly)	Struck out of the list (friendly settlement reached)
Moldova	24 Nov 2009	Bogdanov (no 30173/06) link	Alleged violation of Art. 6 § 1, 13 and Art. 1 of Prot. 1 (Government's failure to fully enforce the final judgment in the applicant's favour within a reasonable time)	Idem.
Poland	17 Nov 2009	Darmoń (no 7802/05) link	Alleged violation of Art. 6 and Art. 8 (infringement of the right of access to a court on account of the lack of legal avenues open to the applicant to contest his paternity)	Inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention)
Poland	17 Nov 2009	Nowocień (no 44261/04) link	Alleged violation of Art. 5 § 3 (length of pre-trial detention) and Art. 6 § 1 (length of criminal proceedings)	Struck out of the list (friendly settlement reached)
Poland	17 Nov 2009	Hajduk (no 47317/06) link	Alleged violation of Art. 6 (length of civil proceedings)	Idem.
Poland	17 Nov 2009	Perliński (no 33043/08) link	Alleged violation of Art. 6 § 1 (length of criminal proceedings)	Idem.
Poland	17	Cyrocki (no	Alleged violation of Art. 5 § 3 (length	Idem.

	Nov 2009	36031/06) link	of pre-trial detention)	
Poland	17 Nov 2009	Iwańczuk (no 39279/05) link	Alleged violation of Art. 6 § 1 (the applicant complained about not being tried by a "tribunal established by law" and unfairness of proceedings)	Inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention)
Poland	24 Nov 2009	Zgoła (no 41367/02) link	Alleged violation of Art. 6 § 1 (lack of access to a court in respect for claims raised before the Polish Foundation)	Incompatible *ratione materiae*
Poland	24 Nov 2009	Jurdziak (no 28361/08) link	Alleged violation of Art. 6 (length of civil proceedings concerning the division of inheritance)	Struck out of the list (friendly settlement reached)
Poland	24 Nov 2009	Lissowski (no 31143/08) link	Alleged violation of Art. 6 (length of civil proceedings)	Idem.
Poland	24 Nov 2009	Paciej (no 38180/02) link	Alleged violation of Art. 13 and 34 (failure to inform the applicant about the authority which could review the Polish Foundation's decisions), Art. 6 § 1 (deprivation of access to a court)	Incompatible *ratione materiae*
Poland	24 Nov 2009	Łoniewska (no 2962/08) link	The applicant complained about having been detained and questioned by the police for 36 hours, of being denied effective access to a court, of the unfairness of proceedings and of the legal-aid lawyer's refusal to prepare a cassation complaint with the Supreme Court	Struck out of the list (friendly settlement reached)
Poland	24 Nov 2009	Więckowski (no 5318/07) link	Alleged violation of Art. 6 § 1 (excessive length of proceedings), Art. 13 (lack of an effective remedy)	Struck out of the list (unilateral declaration of the Government)
Poland	24 Nov 2009	Magnuszewski (no 16172/07) link	Alleged violation of Art. 6 § 1 (legal-aid lawyer's refusal to prepare and a cassation appeal with the Supreme Court)	Struck out of the list (friendly settlement reached)
Poland	24 Nov 2009	Giziński (no 40373/07) link	The applicant complained about the unfairness and outcome of proceedings and the lack of effective access to a court as the legal-aid lawyer had refused to prepare a cassation appeal with the Supreme Court	Partly struck out of the list (unilateral declaration of the Government concerning outcome of proceedings), partly inadmissible as manifestly ill-founded (concerning the remainder of the application)
Poland	24 Nov 2009	Kwiatkowska (no 6831/08) link	Idem.	Idem.
Poland	24 Nov 2009	Kuria Generalna Zgromadzenia Sióstr Matki Bożej Miłosierdzia (no 18785/07) link	Alleged violation of Art. 6 § 1 (length of proceedings), Art. 1 of Prot. 1 (refusal of restitution of the applicant's property)	Partly struck out of the list (unilateral declaration of the Government concerning the length of proceedings), partly incompatible *ratione materiae*
Poland	24 Nov 2009	Szymoński (no 16772/08) link	Alleged violation of Art. 6 § 1 (lack of an independent and impartial court, unfairness of proceedings), Art. 13 (lack of an effective remedy)	Struck out of the list (friendly settlement reached)
Portugal	24 Nov 2009	Menezes Giao Toscano Rico Patricio Amorim and Others (no 25162/06; 25176/06 etc.) link	Alleged violation of Art. 1 of Prot. 1 (inadequate compensation for expropriated property)	Struck out of the list (applicants no longer wished to pursue their application)
Romania	17 Nov	Vera Dumitrescu (no	Alleged violation of Art. 1 of Prot. 1 (infringement of the right to peaceful	Struck out of the list (friendly settlement reached)

	2009	9340/02) link	enjoyment of possessions)	
Romania	17 Nov 2009	Alexiu (no 25977/04) link	Application concerning Art. 1 of Prot. 1 in conjunction with Art. 14	Idem.
Russia	12 Nov 2009	Baryshnikova (no 37390/04) link	Alleged violation of Art. 6 § 1 and Art. 13 (length of civil proceedings and lack of an effective remedy)	Partly inadmissible for no respect of the six-month requirement and partly inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention)
Russia	12 Nov 2009	Berlizeva and Others and 20 other "Yakut pensioners" cases (no 50437/06; 50978/06)* link	Alleged violation of Art. 6, Art. 13 and Art. 1 of Prot. 1 (quashing of judgments in the applicants' favour)	Struck out of the list (applicants no longer wished to pursue their application)
Russia	12 Nov 2009	Uskov and 17 other applications (no 6394/05) link	The complaint concerned the delayed enforcement of the judgments and assorted faults that accompanied the proceedings without referring to any specific provision of the Convention	Struck out of the list (unilateral declaration of Government)
Russia	26 Nov 2009	Makhanov (no 30927/05) link	Alleged violation of Art. 4 of Prot. 7 (the applicant's conviction for the offence for which he had been previously acquitted), Articles 5, 6 and 13	Struck out of the list (applicant no longer wished to pursue his application)
Russia	26 Nov 2009	Gedich (no 44966/04) link	Alleged violation of Art. 6 § 1 (length of civil proceedings)	Struck out of the list (applicant no longer wished to pursue her application)
Russia	26 Nov 2009	Belskiy (no 23593/03) link	Alleged violation of Art. 6 § 1 (supervisory review proceedings in civil case concerning a private loan agreement and the authorities' alleged failure to afford the applicant with an opportunity to be present at his hearing)	Struck out of the list (it is no longer justified to continue the examination of the application as after the applicant's death, the applicant's daughter failed to submit any document to confirm her status as an heir in order to pursue the proceedings)
Serbia	17 Nov 2009	Marković (no 14344/08) link	The complaint concerned the length of civil proceedings without referring to any specific provision of the Convention	Struck out of the list (friendly settlement reached)
Serbia	17 Nov 2009	Stojković (no 5956/08) link	Idem.	Idem.
Serbia	17 Nov 2009	Miloševski (no 8961/08) link	Idem.	Idem.
Serbia	24 Nov 2009	Nikolić (no 3339/08) link	Facts not listed	Idem.
Slovakia	17 Nov 2009	Leško (no 49941/06) link	Alleged violation of Art. 6 § 1 and 13 (length of proceedings concerning the applicant's pension and lack of an effective remedy)	Inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention)
Slovakia	24 Nov 2009	Horňák (no 43527/04) link	Alleged violation of Art. 6 § 1 (length of proceedings)	Partly inadmissible as manifestly ill-founded and partly inadmissible for non-exhaustion of domestic remedies
Slovakia	24 Nov 2009	Becová (no 23076/09) link	Alleged violation of Art. 6 and 13 (length of insolvency proceedings and lack of an effective remedy)	Struck out of the list (friendly settlement reached)
Slovakia	24 Nov 2009	Riša (no 47677/06) link	Alleged violation of Art. 6 § 1 (length of civil proceedings)	Idem.

* For a similar complaint please see page 29 and the repetitive case regarding the "Yakut pensioners"

Slovenia	24 Nov 2009	Nosan And 7 Others (nos. 3224/06; 8125/06 etc.) link	Alleged violation of Art. 6 § 1 and 13 (length of proceedings and lack of an effective remedy)	Struck out of the list (it is no longer justified to continue the examination of the application level)
Slovenia	24 Nov 2009	Lampreht and 12 Others (no 39002/05; 15884/06 etc.) link	Idem.	Idem.
Spain	24 Nov 2009	Gómez López (no 43146/05) link	Alleged violation of Art. 8 § 1 (interference with the applicants' right to respect for private life), Art. 6 § 1 (lack of impartiality of the judges' in *amparo* proceedings)	Inadmissible as manifestly ill-founded (for the lack of criteria to meet "victim" status and for no violation of the rights and freedoms protected by the Convention)
Spain	24 Nov 2009	Garcés-Ramón (no 21715/05) link	Alleged violation of Art. 13 and Art. 1 of Prot. 1 (lack of an effective remedy to challenge the authorities' failure to notify the applicant of a judgment affecting his commercial activity)	Inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention)
Spain	24 Nov 2009	C.M.V.M.C. O Limo (no 33732/05) link	Alleged violation of Art. 6 and 13 (deprivation of the right of access to a court), Art. 14 (discrimination on the basis of fortune)	Inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention)
Switzerland	12 Nov 2009	Perera (no 18880/09) link	Alleged violation of Art. 3 (risk of being subjected to ill-treatment if expelled to Sri-Lanka)	Struck out of the list (applicants no longer wished to pursue their application)
Switzerland	12 Nov 2009	Bostani and Others (no 31530/07) link	Alleged violation of Art. 3, 8 and 13 (lack of an effective remedy to challenge the domestic courts' refusal to allow the first applicant to remain in Switzerland until the end of family reunification proceedings)	Struck out of the list (the matter resolved at domestic level)
Switzerland	12 Nov 2009	Polgasdeniya (no 14385/09) link	Alleged violation of Art. 3 (lack of adequate medical care associated with the applicant's state of health if expelled to Sri Lanka)	Struck out of the list (applicant no longer wished to pursue his application as he had been granted temporary stay in Switzerland)
the Czech Republic	24 Nov 2009	Svoboda (no 7419/03) link	Alleged violation of Art. 1 of Prot. 1 and Art. 8 (unlawful deprivation of possessions), Art. 10 (applicant's reputation besmirched by the judgment of the District Court)	Partly struck out of the list (unilateral declaration of the Government concerning the unlawful deprivation of the applicant's possessions), partly inadmissible as manifestly ill-founded (concerning the remainder of the application)
"the Former Yugoslav Republic Of Macedonia"	24 Nov 2009	Smakovik (no 11641/05) link	Alleged violation of Art. 3 (infringement of the right to a fair trial on account of the defendants' initial statement being obtained under duress)	Struck out of the list (applicant no longer wished to pursue his application)
"the Former Yugoslav Republic Of Macedonia"	24 Nov 2009	Jankovic and Mandic (no 28402/06) link	Alleged violation of Art. 6 (length and unfairness of proceedings, the lawyer has not represented the applicants correctly and lack of an interpreter in the proceedings)	Inadmissible for no respect of the six-month requirement
the Netherlands	17 Nov 2009	O. (no 37755/06) link	Alleged violation of Art. 3 and 13 (real risk of being subjected to ill-treatment if expelled to Mauritania and lack of an effective remedy in respect of the proceedings concerning the applicant's asylum request)	Inadmissible as manifestly ill-founded (lack of an "arguable claim" under Art. 3)
the Netherlands	17 Nov 2009	A. (no 4900/06) link	Alleged violation of Art. 3 and 13 (real risk of being subjected to ill-treatment if expelled to Libya and lack of an effective remedy in respect of the exclusion order)	Admissible
the United	17	Rai and Evans	Alleged violation of Art. 10 and 11	Inadmissible as manifestly ill-

Kingdom	Nov 2009	(no 26258/07; 26255/07) link	(the applicants' arrest, detention, charges and conviction were unjustified interferences with their rights to assemble and protest peacefully on matters of important political concern in a public place)	founded (proportionate interference with the applicants' rights)
the United Kingdom	24 Nov 2009	Friend and Countryside Alliance and Others (no 16072/06; 27809/08) link	Alleged violation of Art. 8, 9, 11 in conjunction with Art. 14, Art. 17 in conjunction with Art. 3 of Prot. 7 and Art. 10 (hunting ban in England and Wales), Art. 1 of Prot. 1	Inadmissible as manifestly ill-founded
the United Kingdom	24 Nov 2009	J.N. and Others (no 58043/08) link	Alleged violation of Art. 8 (the first applicant's removal from the United Kingdom to Uganda would amount to a disproportionate interference with the right to respect for family life)	Struck out of the list (applicants no longer wished to pursue their application as the first applicant had been granted indefinite leave to remain)
the United Kingdom	24 Nov 2009	Hamza (no 33291/06) link	The application concerned Art. 6 § 2	Struck out of the list (applicants no longer wished to pursue their application)
Turkey	17 Nov 2009	Yurtsever and Others (no 37363/05) link	Alleged violation of Art. 3 (ill-treatment while in police custody), Art. 5 § 3 (length of detention) and Art. 6 (lack of legal assistance, failure to communicate to the applicant the submissions of the Principal Public Prosecutor to the Court of Cassation)	Partly adjourned (concerning the non-communication to the applicant of the submissions of the Principal Public Prosecutor to the Court of Cassation), partly inadmissible for non respect of the six-month requirement (concerning the ill-treatment while in police custody), partly inadmissible as manifestly ill-founded (concerning the remainder of the application)
Turkey	17 Nov 2009	Ateş and Altinok (no 2694/06; 31610/08) link	Alleged violation of Art. 5 § 3 and 6 § 2 (excessive length of detention and infringement of the principle of presumption of innocence), Art. 5 § 4 and 13 (lack of an effective remedy to challenge the lawfulness of the pre-trial detention), Art. 5 § 5 (lack of an enforceable right to compensation for the alleged detention), Art. 6 § 1 and 13 (length of criminal proceedings and lack of an effective remedy)	Partly adjourned (concerning right to challenge the lawfulness of pre-trial detention, the right of Altınok to have an enforceable right to compensation and the right of Ateş to have a fair trial within a reasonable time), partly inadmissible as manifestly ill-founded (concerning the remainder of the application)
Turkey	17 Nov 2009	Tarhan (no 39861/06) link	Alleged violation of Art. 4 (the applicant's forced labour on account of his work in another city without his consent), Art. 6 § 1 (length and unfairness of proceedings)	Partly adjourned (concerning the length of proceedings), partly inadmissible as manifestly ill-founded (concerning the remainder of the application)
Turkey	17 Nov 2009	Uçan and Others (no 37377/05) link	Alleged violation of Art. 5 § 3 (length of detention), Art. 5 § 4 (the applicants' inability to challenge their detention), Art. 5 § 5 (lack of a compensation), Art. 6 (unfairness and length of proceedings)	Partly adjourned (concerning the length of detention, the lack of a compensation and the length of proceedings), partly inadmissible as manifestly ill-founded (concerning the remainder of the application)
Turkey	17 Nov 2009	Erdem and Egin-Erdem (no 28431/06; 55559/07) link	Alleged violation of Art. 6 § 1 and Art. 13 (length of administrative proceedings and lack of an effective remedy), Art. 6 § 1 (non-communication of the opinion of the Principal Public Prosecutor to the *Conseil d'Etat*) and Articles 3, 6, 7, 13, 14 and Art. 1 of Prot. 1	Partly adjourned (concerning the length of detention, the lack of an effective remedy and the non-communication of the opinion of the Principal Public Prosecutor to the *Conseil d'Etat*), partly inadmissible as manifestly ill-founded (concerning the remainder of the application)
Turkey	24 Nov 2009	Demir (no 13097/05) link	Alleged violation of Art. 5 § 3, Art. 6 §§ 1 and 2 and Art. 14 (excessive length of proceedings and of the pre-trial detention)	Struck out of the list friendly settlement reached)
Ukraine	17	Rybka (no	Alleged violation of Art. 3 (ill-	Inadmissible as manifestly ill-

	Nov 2009	10544/03) link	treatment by the police and lack of an effective investigation in that respect), Art. 5 § 1 (unlawful detention), Art. 6 § 1 and Art. 13 (unfairness of proceedings, deprivation of the right to a public hearing, lack of an effective remedy)	founded (no violation of the rights and freedoms protected by the Convention)
Ukraine	17 Nov 2009	Gapeyev (no 21659/06) link	Alleged violation of Art. 1 and Art. 1 of Prot 1 (lengthy non-enforcement of the judgment in the applicant's favour), Art. 6 § 1 (the decision taken in the applicant's absence and length of proceedings)	Idem.
Ukraine	17 Nov 2009	Tereshchenko (no 29822/05) link	Alleged violation of Art. 1, Art. 6 § 1 and Art. 1 of Prot. 1 (non-enforcement of the judgment in the applicant's favour)	Struck out of the list (applicant no longer wished to pursue his application)
Ukraine	17 Nov 2009	Kin (no 19451/04) link	Alleged violation of Art. 6 § 1 and Art. 13 (unfairness and length of proceedings and lack of an effective remedy), Art. 9 (unlawful seizure of the applicant's religious literature and other items of a religious nature), Art. 1 of Prot. 1 (seizure, retention and sale of the applicant's property)	Partly adjourned (concerning the length of proceedings), partly inadmissible as manifestly ill-founded (concerning the remainder of the application)
Ukraine	17 Nov 2009	Devdera (no 33654/03) link	Alleged violation of Art. 3 (ill-treatment by the police and lack of an effective investigation)	Struck out of the list (the applicant's son no longer wished to pursue the application following the death of his father)
Ukraine	17 Nov 2009	Burnus (no 16305/04) link	Alleged violation of Art. 2 (lack of effective investigation into the death of the applicant's son)	Struck out of the list (applicant no longer wished to pursue her application)
Ukraine	17 Nov 2009	Gavrylovych (no 4409/04) link	Alleged violation of Art. 5 §§ 1 (c) and 4 (unlawfulness of the applicant's pre-trial detention and the lack of appropriate judicial review of such detention)	Struck out of the list (applicant no longer wished to pursue his application)
Ukraine	17 Nov 2009	Gurskyy (no 13862/06) link	Alleged violation of Art. 6 § 1 (non-enforcement of the judgment in the applicant's favour)	Idem.
Ukraine	17 Nov 2009	Fedosova (no 39607/07) link	Alleged violation of Art. 6 § 1, Art. 13 and Art. 1 of Prot. 1 (non-enforcement of a judgment in the applicant's favour)	Struck out of the list (applicant no longer wished to pursue her application)
Ukraine	17 Nov 2009	Yurchenko (no 22678/05) link	Alleged violation of Art. 6 § 1 (non-enforcement of the judgment in the applicant's favour)	Struck out of the list (applicant no longer wished to pursue his application)
Ukraine	17 Nov 2009	Shemelynets (no 33359/07) link	Alleged violation of Art. 6 § 1, Art. 13 and Art. 1 of Prot. 1 (non-enforcement of the judgment in the applicant's favour)	Idem.
Ukraine	17 Nov 2009	Larionov (no 34081/07) link	Alleged violation of Art. 6 § 1 (non-enforcement of the judgment in the applicant's favour)	Idem.
Ukraine	17 Nov 2009	Myronchuk (no 9611/07) link	Alleged violation of Art. 6 § 1 and Art. 1 of Prot. 1 (non-enforcement of the judgment in the applicant's favour)	Idem.
Ukraine	17 Nov 2009	Parshakov (no 34092/07) link	Alleged violation of Art. 6 § 1 (non-enforcement of the judgment in the applicant's favour)	Idem.
Ukraine	17 Nov 2009	Shapoval (no 3943/04) link	Alleged violation of Art. 6 § 1 and Art. 13 (length of criminal proceedings and lack of an effective remedy), Art. 6 §§ 1, 2 and 3 (a) and (d) (procedural violations and unfairness of criminal proceedings), Art. 3 (ill-treatment while in detention), 5 §§ 1, 2, 4 and 5 (violations of rights in connection	Inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention)

			with the arrest and detention)	

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 14 December 2009 : link
- on 21 December 2009 : link

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

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

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

Communicated cases published on 14 December 2009 on the Court's Website and selected by the NHRS Unit

The batch of 14 December 2009 concerns the following States (some cases are however not selected in the table below): Azerbaijan, Belgium, Bulgaria, Denmark, France, Georgia, Germany, Italy, Moldova, Norway, Poland, Romania, Russia, Spain, Switzerland, 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
Azerbaijan	26 Nov. 2009	Mirzayev no 36122/06	Alleged violation of Art. 3 – Conditions of detention and lack of medical care in Gobustan Prison – Alleged violation of Art. 6 § 1 – Unfairness of civil proceedings against the administration of Bayil Prison – Hindrance of the applicant's right to participate in hearings – A partial decision on admissibility is available on HUDOC
Azerbaijan	26 Nov. 2009	Rzakhanov no 4242/07	Alleged violation of Art. 3 – Ill-treatment in detention – Conditions of detention in Gobustan Prison – A partial decision on admissibility is available on HUDOC*
Belgium	25 Nov. 2009	Kanagaratnam and Others no 15297/09	Alleged violation of Art. 3 – Ill-treatment on account of the continuous detention of an immigrant family for 4 months in an administrative center for foreigners – Alleged violation of Art. 5 § 1 f) – Unlawfulness of detention
Bulgaria	25 Nov. 2009	Iliniovi no 23590/06	Alleged violation of Art. 2 – State's failure to protect the applicants' son's life – Lack of an effective investigation – Lack of an effective remedy
Denmark	25 Nov. 2009	Mikkelsen and Christensen no 22918/08	Alleged violation of Art. 10 § 1 – Conviction for having purchased illegal fireworks for the purpose of a documentary
France	25 Nov. 2009	M.E.G. no 42101/09	Alleged violation of Art. 3 – Risk of being deported to Sudan, where the applicant risks being subjected to ill-treatment, if expelled to Greece, and risk of indirect refoulement – Alleged violation of Art. 13 – Lack of an effective remedy to challenge the decision of deportation to Greece
Georgia	25 Nov. 2009	Gouldedava no 61370/09	Alleged violation of Art. 3 – Lack of adequate medical care in detention in Rustavi no. 2 Prison and the applicant's detention was incompatible with his

* Also please see page 31 and decision on admissibility concerning Rzakhanov

			state of health
Georgia	24 Nov. 2009	Katcheishvili no 55793/09	Alleged violation of Art. 3 – Conditions of detention in Rustavi no. 2 Prison – Lack of basic items for personal hygiene – A partial decision on admissibility is available on HUDOC*
Norway	24 Nov. 2009	Bernh Larsen Holding As and Others no 24117/08	Alleged violation of Art. 8 – Interference with the right to respect for private life, for home and for correspondence as a result of the Norwegian Supreme Court's judgment confirming the local tax authorities' order on the applicant company to make a copy of a server containing personal and sensitive data available for review in the tax authorities' office
Romania	23 Nov. 2009	Buca and Olariu nos 1927/07 and 12845/08	Alleged violation of Art. 3 – Ill-treatment on account of the conditions of detention in Margineni and Iasi prisons
Russia	25 Nov. 2009	Dikin no. 52295/07	Alleged violation of Art. 3 – Conditions of detention in SIZO no. 1 of Nizhniy Novgorod – Alleged violation of Art. 6 §§ 1 and 3 (d) – Infringement of the right to a fair trial in account of the applicant's inability to examine witness K.
Russia	24 Nov. 2009	Dzhabbarov no 29926/08	Alleged violation of Art. 3 – Ill-treatment by Federal Security Service officers – Lack of an effective investigation
Russia	24 Nov. 2009	Kozhokar no 33099/08	Alleged violation of Art. 3 – Lack of medical care for HIV-infected detainees and conditions of detention in remand centre no. IZ-71/1 in Tula – Alleged violation of Art. 13 – Lack of an effective remedy in respect to alleged inhuman conditions in remand centre no. IZ-71/1
Russia	24 Nov. 2009	Polukhin no 15336/08	Alleged violation of Art. 3 – Lack of medical care and conditions of detention in remand prison SIZO-1 in Krasnoyarsk – Alleged violation of Art. 5 § 3 – Length of pre-trial detention – Alleged violation of Art. 6 § 1 – Length of criminal proceedings
Switzerland	24 Nov. 2009	K. A. no 30352/09	Alleged violation of Art. 3 – Risk of being subjected to ill-treatment if expelled to Tunisia
Turkey	24 Nov. 2009	Altuğ and Others no 32086/07	Alleged violation of Art. 2 – State's responsibility in relation to the applicants' relative's death in the hospital, a patient allergic to penicillin
Turkey	24 Nov. 2009	Maraş and Maraş no 45847/05	Alleged violation of Art. 2 – State's responsibility in the applicants' relative's death on account of the lack of specialized doctors and the necessary medical equipment available when she gave birth in SSK hospital in Aydin – Alleged violation of Art. 13 – Lack of an effective remedy – Alleged violation of Art. 6 § 1 – Length of proceedings
Ukraine	25 Nov. 2009	Rodzevillo no 38771/05	Alleged violation of Art. 3 – Conditions of detention in the Dnipropetrovsk no. 3 SIZO and in Ladyzhynska Correctional Colony – Ill-treatment by SIZO officers – Lack of an effective investigation – Alleged violation of Art. 13 – Lack of an effective remedy
Ukraine	24 Nov. 2009	Dobrov no 42409/09	Alleged violation of Art. 3 – Risk of being subjected to torture if expelled to Belarus – Alleged violation of Art. 6 § 1 – Risk of suffering a flagrant denial of a fair trial in case of deportation – Alleged violation of Art. 13 – Lack of an effective remedy to challenge a possible decision on the extradition

Communicated cases published on 21 December 2009 on the Court's Website and selected by the NHRS Unit

The batch of 21 December 2009 concerns the following States (some cases are however not selected in the table below): Austria, Azerbaijan, Bulgaria, Finland, France, Germany, Hungary, Moldova, Montenegro, Poland, Portugal, Romania, Russia, Spain, Sweden, Switzerland, the Netherlands, Turkey and Ukraine.

State	Date of communication	Case Title	Key Words of questions submitted to the parties
Austria	02 Dec. 2009	Print Zeitungsverlag GMBH no 26547/07	Alleged violation of Art. 10 – Conviction of the applicant company for having published an article concerning two public figures
Germany	30 Nov. 2009	Aydin no 16637/07	Alleged violation of Art. 10 – Freedom of expression allegedly infringed, particularly the applicant's right to impart ideas and information
Germany	30 Nov. 2009	Gossmann and Schwabe	Alleged violation of Art. 5 § 1 – Unlawfulness of detention following demonstrations against the G-8 summit – Alleged violation of Art. 10 § 1 and Art. 11 § 1 – The applicants' inability to participate in and express their views during

* Also please see page 32 and decision on admissibility concerning Katcheishvili

		no 8080/08 and no 8577/08	demonstrations due to their detention
Moldova	30 Nov. 2009	Sirbu no 44200/06	Alleged violation of Art. 3 – Inhuman conditions in detention facilities
Russia	02 Dec. 2009	Grigoryev no 22663/06	Alleged violation of Art. 3 – Ill-treatment by police officers upon arrest – Lack of an effective investigation – Alleged violation of Art. 6 § 1 – Excessive length of criminal proceedings
Russia	30 Nov. 2009	Borisov no 12543/09	Alleged violation of Art. 3 – Conditions of detention in IZ-66/1 – Alleged violation of Art. 6 §§ 1 and 3 (c) – The applicant's inability to take a part in appeal hearings
Turkey	01 Dec. 2009	Bakirhan and Others no 40029/05	Alleged violation of Art. 10 – Decision imposing special police supervision on the applicants, members of the People's Democratic Party at the material time, for expressing their political opinions
Turkey	01 Dec. 2009	Dicle no 9858/04	Alleged violation of Art. 10 – The applicant's conviction for publishing an article related to the Kurdish issue – Alleged violation of Art. 6 § 1 and 6 § 3 c) – Unfairness of proceedings

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

Referral to the Grand Chamber (04.01.10)

The case of *Perdigão v. Portugal* has been referred to the Grand Chamber. Press Release

Visit by the Armenian Ombudsman (18.12.09)

On 17 December 2009 Armen Harutyunyan, the Armenian Ombudsman, visited the Court and was received by President Costa. Alvina Gyulumyan, the judge elected in respect of Armenia, and Roderick Liddell, Director of Common Services, also attended the meeting.

Visit by a delegation from the Supreme Court of "the former Yugoslav Republic of Macedonia" (16.12.09)

On 14 and 15 December 2009 a delegation from the Supreme Court of "the former Yugoslav Republic of Macedonia", led by its President, Jovo Vangelovski, visited the Court. It was received by, among others, President Costa and Mirjana Lazarova Trajkovska, the judge elected in respect of "the former Yugoslav Republic of Macedonia".

Case-law in non-official languages (21.12.09)

The Court is making available judgments in non-official languages of the Council of Europe. Press release

Part II : The execution of the judgments of the Court

A. New information

The Council of Europe's Committee of Ministers held its last "human rights" meeting from 1 to 4 December 2009 (the 1072th meeting of the Ministers' deputies).

You are kindly invited to find the documents listed below, issued of this meeting.

➢ Annotated agenda with decisions

- CM/Del/OJ/DH(2009)1072genpublicE / 21 December 2009

  1072nd meeting (DH), 1-3 December 2009 - Annotated Agenda - Decisions - General questions - public information version

- CM/Del/OJ/DH(2009)1072section1publicE / 21 December 2009

  1072nd meeting (DH), 1-3 December 2009 - Annotated Agenda - Decisions - Section 1 - public information version

- CM/Del/OJ/DH(2009)1072section2.1publicE / 21 December 2009

  1072nd meeting (DH), 1-3 December 2009 - Annotated Agenda - Decisions - Section 2.1 - public information version

- CM/Del/OJ/DH(2009)1072section2.2publicE / 21 December 2009

  1072nd meeting (DH), 1-3 December 2009 - Annotated Agenda - Decisions - Section 2.2 - public information version

- CM/Del/OJ/DH(2009)1072section4.1publicE / 21 December 2009

  1072nd meeting (DH), 1-3 December 2009 - Annotated Agenda - Decisions - Section 4.1 - public information version

- CM/Del/OJ/DH(2009)1072section4.2publicE / 21 December 2009

  1072nd meeting (DH), 1-3 December 2009 - Annotated Agenda - Decisions - Section 4.2 - public information version

- CM/Del/OJ/DH(2009)1072section4.3publicE / 21 December 2009

  1072nd meeting (DH), 1-3 December 2009 - Annotated Agenda - Decisions - Section 4.3 - public information version

- CM/Del/OJ/DH(2009)1072section5publicE / 21 December 2009

  1072nd meeting (DH), 1-3 December 2009 - Annotated Agenda - Decisions - Section 5 - public information version

- CM/Del/OJ/DH(2009)1072section6.1publicE / 21 December 2009

  1072nd meeting (DH), 1-3 December 2009 - Annotated Agenda - Decisions - Section 6.1 - public information version

- CM/Del/OJ/DH(2009)1072section6.2publicE / 21 December 2009

  1072nd meeting (DH), 1-3 December 2009 - Annotated Agenda - Decisions - Section 6.2 - public information version

- CM/Del/OJ/DH(2009)1072statpublic / 21 December 2009

  1072nd meeting (DH), 1-3 December 2009 - Annotated Agenda - Statistics - Public information version

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)

Two collective complaints declared admissible by the European Committee of Social Rights (16.12.09)

It is now possible to consult the decisions on admissibility for *Centre on Housing Rights and Evictions (COHRE) v. Italy*, no. 58/2009 and for *European Trade Union Confederation (ETUC)/ Centrale Générale des Syndicats Libéraux de Belgique (CGSLB)/ Confédération des Syndicats chrétiens de Belgique (CSC)/ Fédération Générale du Travail de Belgique (FGTB) v. Belgium*, no. 59/2009, on line.
In the first complaint it is alleged that Italy is in violation of Articles 16 (the right of the family to social, legal and economic protection), 19 (right of migrant workers and their families to protection and assistance), 30 (right to protection against poverty and social exclusion) and 31 (right to housing), read alone or in conjunction with Article E (non discrimination) of the Revised Charter.
In the second complaint it is alleged that the situation in Belgium is not in conformity with the rights laid down in Article 6 § 4 (right to strike) of the Revised Charter.
Complaint no. 58/2009
Complaint no. 59/2009
Please consult the page on Collective Complaints for further information.

Action Plan Seminar held in Krasnador (03.12.09)

Following the recent ratification of the Revised Charter by the Russian Federation, a seminar took place in Krasnador from 15-16 December 2009, in order to provide comprehensive information to the authorities of the Russian Federation with a view to a wider application of the ESC. Mr Colm O'CINNEIDE, Vice President of the European Committee of Social Rights and Mr Régis BRILLAT, Head of the Department of the ESC attended this seminar, as well as Ms Elena VOKACH-BOLDYREVA, Department for International Cooperation, Ministry of Health and Social Development of the Russian Federation.
Draft programme

Round Table on the Social Rights of Persons of Concern to UNHCR (08.12.09)

A Round Table entitled "The Social Rights of Refugees, Asylum Seekers and International Displaced Persons: a comparative perspective (1951 Convention relating to the Status of Refugees, European Convention of Human Rights, European Social Charter)" organised by the UNHCR Representation to the European Institutions in Strasbourg and the Department of the European Social Charter (Directorate General of Human Rights and Legal Affairs) was held in Strasbourg on 7 December 2009.
More information
Background note on the colloquy
Programme

The next session of the European Committee of Social Rights will be held on 25-27 January 2010.

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

http://www.coe.int/t/dghl/monitoring/socialcharter/newsletter/newsletterno1sept2009_en.asp

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

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

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

Council of Europe anti-torture Committee publishes report on the United Kingdom (08.12.09)

The CPT has published on 8 December the report on its sixth periodic visit to the United Kingdom in November/December 2008, together with the response of the United Kingdom Government. These documents have been made public at the request of the United Kingdom authorities.

In England, the CPT delegation examined the safeguards afforded to persons deprived of their liberty by the police as well as the treatment of inmates and conditions of detention in three local prisons (Manchester, Wandsworth and Woodhill) and a juvenile young offender institution (Huntercombe). In Northern Ireland, the delegation looked at developments as regards policing in the two adult male prisons (Maghaberry and Magilligan) since the Committee's last visit there in 1999. In both these parts of the country, the situation of immigration detainees was also examined, including through a visit to an immigration removal centre (Harmondsworth).

Council of Europe anti-torture Committee visits Poland (10.12.09)

A delegation of CPT carried out a visit to Poland from 26 November to 8 December 2009 within the framework of CPT's programme of periodic visits for 2009 and it was the Committee's fourth periodic visit to Poland.

The CPT's delegation assessed progress made since the previous visit in 2004 and the extent to which the Committee's recommendations have been implemented, in particular in the areas of police custody, imprisonment (with a focus on prisoners classified as "dangerous") and the detention of foreign nationals under aliens legislation. It also visited a social care home for the first time in Poland.

During the course of the visit, the delegation met Krysztof KWIATKOWSKI, Minister of Justice, as well as senior officials from the Ministries of Internal Affairs and Administration, Justice, Health, and Labour and Social Policy. Meetings were also held with representatives of the Office of the Commissioner for Civil Rights Protection, the Head of the UNHCR Office in Warsaw and members of non-governmental organisations active in areas of concern to the CPT.

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

Council of Europe anti-torture Committee visits Latvia (10.12.09)

A delegation of the CPT carried out an ad hoc visit to Latvia from 3 to 8 December 2009. The main objective of the visit was to review progress made as regards the treatment and conditions of detention of prisoners, in the light of the recommendations made by the Committee after the 2007 visit to Latvia. To that end, the CPT's delegation visited Jēkabpils Prison and the units for life-sentenced prisoners at Daugavgrīvas and Jelgava Prisons.

During the course of the visit, the delegation had consultations with Mareks SEGLIŅŠ, Minister of Justice, Mārtiņš LAZDOVSKIS, State Secretary of the Ministry of Justice, Visvaldis PUĶĪTE, Head of the Latvian Prison Administration, as well as other senior officials from the Ministry of Justice and the Prosecution Office. It also met Romāns APSĪTIS, Ombudsman of Latvia.

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

Council of Europe anti-torture Committee publishes report on Latvia (15.12.09)

The CPT has published on 15 December the report on its visit to Latvia, carried out in November/December 2007, together with the responses of the Latvian Government. These documents have been made public at the request of the Latvian authorities.

During the 2007 visit, the CPT reviewed the measures taken by the Latvian authorities following the recommendations made by the Committee after its previous visits. In this connection, particular attention was paid to the fundamental safeguards against ill-treatment offered to persons deprived of their liberty by the police and to conditions of detention in police "short-term isolators".

The Committee also examined in detail various issues related to prisons, in particular the situation of juvenile and female prisoners as well as the regime and security measures applied to life-sentenced prisoners. In addition, the CPT visited a psychiatric hospital and a social welfare institution, where it

examined the treatment and living conditions of patients and residents and the legal safeguards in the context of admission procedures.

In their responses to the visit report, the Latvian authorities provided information on the measures being taken to implement the CPT's recommendations.

Council of Europe anti-torture Committee publishes report on French Guyana (10.12.09)

The CPT has published on 10 December the report on its ad hoc visit to French Guyana in November/December 2008, together with the French Government's response. These documents have been made public with the agreement of the French authorities.

The main objectives of this visit were to examine the situation of prisoners at Rémire-Montjoly Prison, the only prison in this French administrative region, as well as the treatment of foreign nationals deprived of their liberty under aliens' legislation. The CPT also reviewed the conditions of detention of persons in police custody and the implementation of fundamental safeguards against ill-treatment.

In their response, the French authorities provided information on the measures being taken or envisaged to address the issues raised in the CPT's report.

Council of Europe anti-torture Committee publishes report on Sweden (11.12.09)

The CPT has published on 11 December the report on its fourth periodic visit to Sweden, which took place in June 2009. The report has been made public at the request of the Swedish Government.

The overwhelming majority of the persons met by the CPT's delegation during the 2009 visit who were or had recently been detained by the police, indicated that they had been correctly treated. Nevertheless, the delegation heard a few allegations of physical ill-treatment by police officers. The report concludes that further action is required in order to bring the law and practice in this area into line with the Committee's standards and invites the Swedish authorities to further develop the system of investigating complaints of police ill-treatment, with a view to ensuring that it is independent, impartial and effective.

The CPT once again expresses concern about the procedure for the application of restrictions to remand prisoners and the impact of such measures on their mental health. At the time of the visit to Gothenburg Remand Prison, restrictions were being applied to 46% of the prisoners, some of them having been subject to long periods of isolation (up to 18 months). The majority of the prisoners met had been given no explanation of the reasons for the restrictions imposed on them. The CPT has made a number of recommendations aimed at ensuring that the imposition of restrictions on remand prisoners is an exceptional measure rather than the rule.

The situation of prisoners held in high-security units and segregated for administrative reasons was another focal point of the visit. The report stresses that a move towards a more intensive security provision in prisons – unless it is justified on the basis of an objective, case-by-case assessment – can render the complex task of safely managing prisons more rather than less difficult, and would be corrosive rather than protective of human rights. The CPT has recommended that the Swedish authorities establish a clear distinction between segregation for administrative reasons and segregation on disciplinary grounds, and review the regime for prisoners placed in administrative segregation.

Material conditions in the prisons visited were generally of a good standard, and genuine efforts were being made at Hall and Kumla Prisons to engage prisoners in a range of purposeful activities. However, the regime for inmates subject to restrictions remained impoverished.

The continuing practice of holding immigration detainees in prisons is another issue of concern for the CPT. The Committee has recommended that urgent steps be taken to ensure that persons detained under aliens' legislation are not held on prison premises. As regards the two Migration Board centres visited, in Märsta and Gävle, the report gives an overall positive assessment of the situation there. However, the CPT has made a number of recommendations designed to improve the provision of health care to immigration detainees.

At the two psychiatric establishments visited – the Department for Forensic Psychiatric Assessment in Huddinge and the Psychiatric Clinic South-West in Huddinge – the atmosphere was relaxed and material conditions were of a very high standard. However, at the Psychiatric Clinic, there was a lack of staff in charge of rehabilitative and occupational activities and, as a result, treatment relied exclusively on pharmacotherapy. The report draws attention to allegations received at the Fagareds Home for Young Persons of excessive use of force by staff to control violent and/or recalcitrant residents. Further, the CPT has recommended that a system for the systematic recording of episodes

of segregation be set up at the Fagareds Home, as well as in all other institutions for young persons in Sweden.

The Swedish Government is currently preparing its response to the issues raised by the Committee.

Council of Europe anti-torture Committee publishes report on Moldova (14.12.09)

The CPT published on 14 December the report on its ad hoc visit to Moldova, carried out in July 2009. This report has been made public with the agreement of the Moldovan Government.

During the visit, the CPT's delegation heard a remarkably large number of credible and consistent allegations of police ill-treatment in the context of the post-election events in April 2009. In its report, the CPT recommends, together with other measures, that the methods used by members of the Special-Purpose Police Force "Fulger" and other police forces involved in the apprehension of persons in the context of crowd-control situations be subject to closer and more effective independent supervision.

As regards investigations into cases possibly involving ill-treatment in the context of the post-election events, the delegation examined the overall investigative approach as well as a number of specific cases, with a view to assessing the effectiveness of the action taken by the competent authorities and concluded that in many cases prosecutors had not taken all reasonable steps in good time to secure evidence and had failed to make genuine efforts to identify those responsible. The CPT recommends that the competent authorities adopt a more proactive, co-ordinated and comprehensive approach in order to meet the criteria of an "effective" investigation as established by the Court. The CPT also recommends, in the medium term, the setting-up of an agency specialised in the investigation of cases possibly involving ill-treatment by law enforcement officials, which is fully independent of both law enforcement and prosecuting authorities.

Council of Europe anti-torture Committee publishes report on visit to Abkhazia, Georgia (23.12.09)

The CPT has published on 23 December the report on its visit to Abkhazia, Georgia, carried out in April/May 2009. The report has been made public at the request of the Georgian authorities. During the visit, which began in Sukhumi on 27 April 2009, the CPT's delegation was granted access to all places of deprivation of liberty which it wished to visit and was able to interview in private persons deprived of their liberty.

C. European Commission against Racism and Intolerance (ECRI)

ECRI's 50th Plenary Session (21.12.09)

ECRI held its 50th plenary session from 15 to 18 December 2009 in Strasbourg. On this occasion, it organised an exchange of views with the new Secretary General of the Council of Europe, Thorbjørn Jagland, who expressed support for its work and stressed the importance of its contribution to the fight against racism and all related forms of discrimination and intolerance in Europe. All three former Chairs, Frank Orton, Nikos Frangakis and Michael Head, attended a special brainstorming meeting during which they made concrete suggestions for the future based on their experience at the helm of this unique monitoring body. On 17 December 2009 ECRI elected a new Chair, Nils Muiznieks, who assumed office on 1 January 2010. The 50th plenary session coincided with the publication of a book entitled "The European Commission against Racism and Intolerance, its first 15 years", written by Lanna Hollo, a specialist in equality legislation and minorities issues.

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

Bosnia and Herzegovina: adoption of Committee of Ministers' recommendations on minority protection (09.12.09)

The Committee of Ministers adopted a resolution on the protection of national minorities in Bosnia and Herzegovina on 9 December. The resolution contains conclusions and recommendations, highlighting positive developments but also a number of areas where further measures are needed to advance the implementation of the Framework Convention for the Protection of National Minorities.

Poland: early publication of the second cycle opinion (16.12.09)

The Second Opinion of the Council of Europe Advisory Committee on the FCNM on Poland has been made public by the Government. The Advisory Committee adopted this Opinion in March 2009 following a country visit in December 2008. The government comments on the Opinion have also been made public.

Protection of National Minorities: San Marino facilitates immigrants' integration (18.12.09)

San Marino demonstrates a constructive approach towards a correct implementation of the Framework Convention for the Protection of National Minorities of the Council of Europe. According to the Third Opinion of the Advisory Committee published on 18 December, important legal measures have been adopted against discrimination as well as initiatives to facilitate immigrants' integration.

The Advisory Committee welcomes the general climate of dialogue and tolerance in the country, with no record of any overt form of discrimination and intolerance. In order to contribute to the preservation of an atmosphere of mutual understanding in San Marino, it points out that further efforts are needed to increase awareness of the relevance of fighting racism. The Committee also recommends setting-up an independent institution to monitor racism and discrimination.

E. Group of States against Corruption (GRECO)

Group of States against Corruption publishes report on Germany (09.12.09)

GRECO published on 9 December its Third Round Evaluation Report on Germany, following the authorisation by the German authorities. It focuses on two distinct themes: criminalisation of corruption and transparency of party funding.

Link to the report: Theme I and Theme II

Group of States against Corruption publishes report on Croatia (09.12.09)

GRECO has published on 9 December its Third Round Evaluation Report on Croatia. It focuses on two distinct themes: criminalisation of corruption and transparency of party funding.

Regarding the criminalisation of corruption [theme I], GRECO recognises that – following legal reforms of the Criminal Code in 2000, 2004 and 2006 – the criminal law of Croatia complies to a large extent with the relevant provisions of the Council of Europe Criminal Law Convention on Corruption (ETS 173). Nonetheless, some inconsistencies and deficiencies in current legislation remain, including the lack of an explicit reference to bribes intended for a third person instead of the official him/herself; the narrow range of possible perpetrators of private sector bribery; the low sanctions prescribed for active bribery offences both in the public and private sectors; and the potential for misuse involved in the defence of 'effective regret', which can be invoked when an offender reports a crime after its commission.

Concerning transparency of party funding [theme II], the report acknowledges the recent adoption of the Act on the financing of political parties, independent lists and candidates, in force since January 2007, which is in many respects in line with the standards established by Recommendation Rec(2003)4 of the Committee of Ministers of the Council of Europe on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns. However, it appears that the system of political financing suffers from a lack of substantial and pro-active monitoring which would go beyond the formal examination of submitted information. Moreover, GRECO calls upon the authorities of Croatia to harmonise the provisions on election campaign funding contained in the various election laws and to align these provisions with the standards set by the above-mentioned Act as regards transparency, supervision and sanctions. Furthermore, current legislation needs to be upgraded in some areas in order to increase the level of disclosure obligations and to extend the control of political financing to individual party candidates and to entities related to a political party or under its control.

Given that a revision of the Criminal Code is currently under way, and that an interdepartmental working group with the mandate to analyse existing legislation on political financing and suggest further amendments has recently been established, GRECO's report and its recommendations should be seen as a timely contribution to the ongoing reform process. The report as a whole addresses 11 recommendations to Croatia. GRECO will assess the implementation of these recommendations, towards the middle of 2011, through its specific compliance procedure.

Link to the report: Theme I and Theme II

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

Outcome of the 31st Plenary Meeting (14.12.09)

MONEYVAL, at its 31st plenary meeting, achieved several significant results: the adoption of the mutual evaluation reports of Serbia and of Bosnia and Herzegovina; the adoption of the first progress reports submitted by Azerbaijan and Estonia; the adoption of the second progress reports submitted by Latvia; the adoption on 11 December, under Step VI of the Compliance Enhancing Procedures, of a fourth statement in respect of Azerbaijan and the withdrawal of previous public statements and the adoption of a questionnaire on enforcement of civil confiscation orders.

With the adoption of these two mutual evaluation reports, MONEYVAL concluded its third round of mutual evaluations. The publication of the executive summaries of these reports as well as of the above-mentioned progress reports will take place shortly.

MONEYVAL also held exchanges of views on the impact of the global economic crisis on AML/CFT and on policy options for combating proliferation financing.

At this plenary, MONEYVAL elected for a mandate of two years its President, Mr Vladimir Nechaev (Russian Federation), its Vice-President, Mr Anton Bartolo (Malta), and three bureau members, Mr Damir Bolta (Croatia), Mr Alexandru Codescu (Romania) and Mr Armen Malkhasyan (Armenia).

Furthermore, MONEYVAL welcomed a new member of the Secretariat, Mr Sener Dalyan, kindly seconded by the Ministry of Justice of Turkey.

The next plenary meeting is scheduled for 15-19 March 2010.

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

GRETA - fourth meeting (8-11.12.09)

GRETA held its fourth meeting on 8-11 December 2009 at the Council of Europe in Strasbourg, where it examined and adopted the questionnaire for the first round of evaluation of the implementation by the Parties of the Council of Europe Convention on Action against Trafficking in Human Beings.

Part IV: The inter-governmental work

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

14 December 2009

Portugal signed the European Convention on the Adoption of Children (Revised) (CETS No. 202).

15 December 2009

Austria ratified the Council of Europe Convention on the Prevention of Terrorism (CETS No. 196).

16 December 2009

Norway approved the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207).

Spain ratified the Civil Law Convention on Corruption (ETS No. 174), and Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances (ETS No. 187).

Cyprus signed Protocol No. 14bis to the Convention for the Protection of Human Rights and Fundamental Freedoms (CETS No. 204).

Germany signed the Council of Europe Convention on the avoidance of statelessness in relation to State succession (CETS No. 200).

18 December 2009

Slovenia ratified the Council of Europe Convention on the Prevention of Terrorism (CETS No. 196).

22 December 2009

The **Netherlands** accepted the Europe Code of Social Security (Revised) (ETS No. 139).

23 December 2009

Sweden ratified Protocol No. 14bis to the Convention for the Protection of Human Rights and Fundamental Freedoms (CETS No. 204).

B. Recommendations and Resolutions adopted by the Committee of Ministers

CM/Res(2009)47E / 09 December 2009

Resolution on the Partial Agreement on the Council of Europe Development Bank - 2010 Budget (Adopted by the Committee of Ministers on 9 December 2009 at the 1073rd meeting of the Ministers' Deputies)

CM/Res(2009)46E / 09 December 2009

Resolution on the adjustment of the scale of contributions to the budget of the Partial Agreement on the Council of Europe Development Bank with effect from 1 January 2010 (Adopted by the Committee of Ministers on 9 December 2009 at the 1073rd meeting of the Ministers' Deputies)

CM/ResCMN(2009)6E / 09 December 2009

Resolution on the implementation of the Framework Convention for the Protection of National Minorities by Bosnia and Herzegovina (Adopted by the Committee of Ministers on 9 December 2009 at the 1073rd meeting of the Ministers' Deputies)

CM/ResChS(2009)8E / 09 December 2009

Resolution - Collective complaint No. 50/2008 by the *Confédération française démocratique du travail* (CFDT) against France (Adopted by the Committee of Ministers on 9 December 2009 at the 1073rd meeting of the Ministers' Deputies)

C. Other news of the Committee of Ministers

Ukraine asked to address non-enforcement of domestic court decisions (08.12.09)

The Committee of Ministers adopted a second Interim Resolution in response to a number of cases against Ukraine concerning the failure or serious delay in abiding by final domestic courts' decisions delivered against the state.

Preliminary assessment of proposals for DNA retention in UK case (08.12.09)

The Committee of Ministers made a preliminary examination of the revised proposals for the retention of fingerprints, cellular samples and DNA profiles of persons arrested but not convicted of offences.

First report on situation of minority languages in Czech Republic (10.12.09)

The report was issued on 10 December and was drawn up by a committee of independent experts which monitors the application of the European Charter for Regional or Minority Languages.

Ministers' Deputies exchange of views on the forthcoming Interlaken conference on the future of the European Court of Human Rights (15.12.09)

The Deputies held an exchange of views with the Commissioner for Human Rights on his contribution at the high-level Conference on the future of the Court to be held in Interlaken, on 18-19 February 2010. In this connection, they also considered the opinion of the Steering Committee for Human Rights (CDDH) on the issues to be covered at the conference.

File "Reform of the European Court of Human Rights"

Statement by Micheline Calmy-Rey, Chairperson of the Committee of Ministers of the Council of Europe on the release of teenagers in South Ossetia (21.12.09)

In her statement on 21 December, Micheline Calmy-Rey, Chairperson of the Committee of Ministers, welcomed the release of three Georgian teenagers who were detained in Tskhinvali by the de facto authorities in the Georgian region of South Ossetia. She highlighted the crucial role of Human Rights Commissioner Thomas Hammerberg in achieving this first positive outcome.

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*

Moldova: Changes to the Constitution are essential say PACE co-rapporteurs (07.12.09)

Josette Durrieu (France, SOC) and Egidijus Vareikis (Lithuania, EPP/CD), co-rapporteurs of PACE for the monitoring of the obligations and commitments of Moldova, made the following statement on 7 December: "We have taken note of the results of the second round of the presidential election in Moldova, which took place today, and we note that the institutional deadlock continues. Clearly, in pursuance of the legislation in force, parliament must be dissolved and parliamentary elections held in 2010. In the meantime, the Speaker of Parliament carries out the duties of the President of the Republic. This is a temporary situation which must not endure.

Furthermore, constitutional changes are now essential in the interests of the country and of its progress towards genuine democracy. The Council of Europe confirms its readiness to give the requisite assistance to the Moldovan authorities in this step. We therefore call on the authorities to refer this matter with the utmost urgency to the Venice Commission, so as to start work on the various options for constitutional changes. It should be noted that it is parliament's role to decide on any changes which are to be made."

Legal reforms should be adopted without further delay, says PACE co-rapporteur for Ukraine (11.12.09)

Renate Wohlwend (Liechtenstein, EPP/CD), co-rapporteur of PACE for the monitoring of Ukraine, announced an agreement on the establishment of a clear roadmap for the adoption of the legal reforms demanded by the Council of Europe.

Speaking to journalists at the end of a two-day visit to Ukraine, Mrs Wohlwend said: “In my meeting with the speaker of the Verkhovna Rada, Mr Volodymyr Lytvyn, we agreed that, immediately after the Presidential elections, the Rada would establish, in close consultation with the Monitoring Committee of the Assembly, a specific roadmap, including realistic timetables, for the adoption of the legal reforms that are part of Ukraine’s commitments to the Council of Europe.” However, she stressed that the adoption of these legal reforms alone would not imply that Ukraine’s monitoring could be ended. “For that, it is also necessary that these reforms are implemented and that the country in general lives up to its obligations as a member state of the Council of Europe,” said the co-rapporteur.

Mrs Wohlwend also expressed her concern about recent challenges to the coming into force, on 1 January 2010, of the anti-corruption laws that were recently adopted by the Verkhovna Rada. Ms Wohlwend was informed by the Supreme Court about the concerns of judges that the provisions that prohibit funding for the court system other than from the state budget would undermine the functioning of many courts in Ukraine. However, Mrs Wohlwend stressed that such a prohibition was essential for the efficient fight against corruption, which continues to be a major problem in Ukraine. At the same time, she also recognised the challenges facing the courts, and called upon the authorities to ensure that sufficient funding is made available to ensure the efficient functioning of the court system.

The co-rapporteur also expressed her disappointment and deep regret over the failure of the Verkhovna Rada to adopt a package of amendments that were intended to address the concerns of the Venice Commission about the heavily-criticised changes to the Law on the Election of the President of Ukraine that were adopted in August 2009, as well as to ensure the implementation of the

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

Constitutional Court ruling that declared a number of the August 2009 changes unconstitutional. "I understand that there will still be an attempt to adopt these amendments in the coming week, and I call upon all political forces not to obstruct their adoption as they are important to ensure a democratic election process in January," Mrs Wohlwend said.

PACE committee raises alarm over 'deadlock' in Bosnia and Herzegovina, again calls for dialogue over urgent Constitutional changes (17.12.09)

Only urgently-needed Constitutional reforms can unblock the "deadlock" within the state institutions of Bosnia and Herzegovina, a committee of PACE said in a draft report approved in Paris on 17 December.

PACE's Monitoring Committee said "perpetual confrontation and obstructionism" by Entities and parties meant Bosnia and Herzegovina was lagging behind its neighbours in Euro-Atlantic integration and less able to fulfil its Council of Europe commitments. The report – by Mevlüt Çavusoglu (Turkey, EDG) and Kimmo Sasi (Finland, EPP/CD) – demanded "meaningful and constructive dialogue" between all domestic stakeholders on concrete proposals to amend the Constitution ahead of the autumn 2010 elections. The parliamentarians added that, while supporting initiatives by various stakeholders to come to an agreement, fourteen years after Dayton it was high time for "a wide discussion", involving local stakeholders, the EU and neighbouring countries, on how Bosnia and Herzegovina could face new challenges to its stability.

The committee also strongly condemned statements and actions by politicians at the highest level of Republika Srpska which undermine State institutions and challenge the authority of the High Representative. PACE is due to debate the report on the afternoon of Tuesday 26 January during its winter plenary session in Strasbourg (25-29 January 2010).

Monitoring Committee urges Albanian government and opposition to end political crisis (17.12.09)

In a draft resolution adopted in Paris on 17 December, PACE Monitoring Committee urges the Albanian government and opposition to put an end to the current political crisis and assume their responsibilities in order to proceed with vital reforms.

The government should set up, without further delay, a parliamentary committee of inquiry into the June 2009 elections and the opposition should return to parliament and fully participate in its work, the committee said. The Albanian authorities should also improve the legislative electoral framework, in close co-operation with the Venice Commission.

PACE's Presidential Committee, together with the co-rapporteurs for Albania, Jaakko Laakso (Finland, UEL) and David Wilshire (United Kingdom, EDG), should visit the country as soon as possible after the PACE winter session, during which the Assembly will discuss the functioning of democratic institutions in Albania.
Report (PDF)

Recommendations of Armenian parliamentary committee provide 'a comprehensive although incomplete' response to March 2008 crisis (22.12.09)

The recommendations of the ad hoc Committee of the National Assembly of Armenia into the events of 1 and 2 March 2008 provide "a comprehensive, although not complete" response to the political crisis, according to an information note by the co-rapporteurs for the monitoring of Armenia of PACE made public on 22 December.

In their note, Georges Colombier (France, EPP/CD) and John Prescott (United Kingdom, SOC) said the recommendations were regrettably not complemented by a comprehensive analysis of the events of 1 and 2 March, which they felt was rather one-sided, and gave the impression that the committee wanted to avoid criticising the authorities. They strongly regretted the almost total lack of analysis of developments that followed these events, and expressed concern at the lack of concrete results from the inquiry into the 10 fatalities that occurred.

The co-rapporteurs recommended the continuation of a special body of the parliament to oversee implementation of the report's recommendations and conduct further inquiries where necessary. They said they would closely follow this matter in the framework of the regular monitoring of Armenia and report back to PACE's Monitoring Committee at a future meeting.
Information note (PDF)

PACE co-rapporteurs urge authorities of Bosnia and Herzegovina to change the constitution in order to comply with the European Court of Human Rights' recent judgment (23.12.09)

"We have taken note of the final judgment by the Grand Chamber of the European Court of Human Rights which says that prohibiting a Rom and a Jew from standing for election to the House of Peoples of the Parliamentary Assembly and for the State Presidency in Bosnia and Herzegovina amounts to discrimination and breaches their electoral rights," PACE co-rapporteurs on the functioning of democratic institutions in Bosnia and Herzegovina, Mevlüt Çavusoglu (Turkey, EDG) and Kimmo Sasi (Finland, EPP/CD), said on 23 December.*

"The Court thereby confirms that the rules governing the elections to the Parliamentary Assembly of Bosnia and Herzegovina and to the Presidency of the country violate the European Convention on Human Rights and its additional protocols.

In order to comply with the Court's judgments, Bosnia and Herzegovina urgently has to change the constitution. We urge the authorities to immediately take all the necessary steps, especially in the light of the forthcoming elections scheduled for October 2010," the co-rapporteurs concluded.
Judgment of the Grand Chamber of the Court of Strasbourg - *Case of Sejdic and Finci v. Bosnia and Herzegovina*
Press release issued by the Court
Media alert: PACE committee raises alarm over 'deadlock' in Bosnia and Herzegovina, again calls for dialogue over urgent Constitutional changes

- *Themes*

No exclusive protection for copyright (08.12.09)

"We cannot continue to offer exclusive protection for copyright in an open and global society, where the new opportunities afforded by the Internet have led to the wide dissemination of creative works," said José Luis Arnaut (Portugal, EPP/CD), rapporteur of the Parliamentary Assembly's Committee on Culture on 8 December. "We now have to strike a balance between an adequate level of remuneration for the creative effort, the right to privacy, freedom of expression and access to information," he added.

In his report on rethinking creative rights for the Internet age, which was adopted on 8 December by the Committee, Mr Arnaut described recent developments in legislation and called for a debate on the necessary changes to the law to enable copyright to adapt to the new digital environment.

'At least twenty journalists have been killed since 2007 in Europe,' according to PACE rapporteur (08.12.09)

Andrew McIntosh (United Kingdom, SOC), rapporteur of PACE Committee on Culture, on respect for media freedom, said he was shocked by the increase in attacks on journalists and media – at least twenty journalists have been killed since 2007 in Europe, including thirteen in Russia.

In his report, adopted on 8 December in Paris by the committee, Mr McIntosh takes stock of the situation in the member States, using three categories of violations: the most severe violations of media freedom – such as physical assaults, murders, intimidation, or impunity for crime targeting journalists – , violations arising from the misuse of governmental power to direct the media, and finally, threats linked to the "fusion" of media ownership or to the absence of professional or ethical misconduct.

"It is important to collate information on violations of media freedom on a continuing basis, to analyse this information systematically country by country and disseminate it to the governments of member states and to the media," said Andrew McIntosh. "We need to draw as much attention as possible to these violations," he added.

Paris Conference on the violence faced by migrant women in Europe (08.12.09)

Should women facing gender-based violence in their home countries be entitled to seek asylum in Europe? What types of persecution do women, in particular face, which cause them to seek asylum? How can traffickers be stopped from exploiting them? Are Council of Europe member States accountable, beyond their borders, for the violations of fundamental rights of migrant women living in Europe?

* Please see page 5 for a summary of the judgment

These and other questions were debated at a parliamentary conference on “Migration and violence against women in Europe” in Paris on 10 and 11 December 2009, attended by some 80 parliamentarians and experts from around 25 countries.

The event was jointly organised by PACE and the Inter-Parliamentary Union (IPU), and formed a European regional conference within the framework of the UN Secretary General’s campaign to end violence against women and girls.

This conference also addressed the effective protection of migrant women living in Europe and exposed to gender-based violence and domestic violence, an issue currently discussed by the Council of Europe expert committee which will draft a convention on preventing and combating violence against women and domestic violence.

Other topics discussed included how women normally residing in Europe can be protected from violence they may suffer in their country of origin, the special case of women migrant workers, and the help available to migrant women who are victims of violence.

Property issues perpetuate displacement of some 2,5 million refugees and IDPs in Europe (09.12.09)

“Not solving property issues of some 2,5 million refugees and internally displaced persons (IDPs) in Europe means perpetuating their displacement and complicating peace-building efforts,” Jorgen Poulsen (Denmark, ALDE) explained when presenting his report on this issue on 9 December to the PACE Migration Committee in Paris.

The restoration of legal rights and physical possession of properties through restitution, or the provision of equivalent properties or value through compensation, are essential forms of redress.

A study examining European standards and practice related to restitution of the property of displaced persons in European post-conflict settings should be undertaken by the Council of Europe helping to set guidelines on how to provide effective redress for conflict-related loss of access and rights to housing, land and property in Europe.

PACE Committee concerned by mass and needless detention of asylum seekers and irregular immigrants (09.12.09)

The use of detention as a response to the arrival of asylum seekers and irregular immigrants has significantly increased in Council of Europe member States and resulted in mass and needless detention. According to a report adopted by the PACE Migration Committee in Paris on 9 December, capacity had risen 10-fold since the early 1990s in the United Kingdom, France had increased it from 739 in 2003 to 1724 in 2007, Italy’s Lampedusa centre counted 1800 detainees instead of the 800 it has capacity for.

The Committee said it was concerned by the excessive use of detention as it should only be used as a last resort and not as a deterrent. It said it was unacceptable that conditions and safeguards afforded to immigration detainees who have committed no crime, were worse than those of criminal detainees. The Committee will therefore present 10 guiding principles on the legality of detention and 15 rules governing minimum standards of conditions in detention centres at the PACE winter session in Strasbourg (25-29 January 2010).

Immigrant women victims of a ‘triple penalty’ (10.12.09)

Immigrant women are victims of a “triple penalty”, that of being a woman and an immigrant, and the fact that they are often there illegally, according to Jean-Claude Mignon (France, EPP/DC), speaking at the opening of a conference on migration and violence against women in Europe, in Paris on 10 December. “Fear of being forced to leave a country where they have found at least a precarious refuge is not an incentive to seek the protection of the law, for fear that they will once again find themselves on the move,” he said.

Their almost total absence of rights made their situation still more insecure. In these circumstances, he said, the only possible guarantors of their physical and psychological integrity were the state and the law, so that they did not become the prisoners of their communities of origin, or of those who sought to exploit their current weakness.
Conference on the violence faced by migrant women in Europe
Speech (French only)

Recalling the plight of people on the move because of the economic crisis and changes in the environment (18.12.09)

On the occasion of International Migrants Day, Corien Jonker (Netherlands, EPP/CD), Chair of the Migration Committee of PACE, made the following statement on 18 December:

"Migrants are a vital source of economic growth for all our countries. However, far too many of the 200 million migrants all over the world continue to experience assaults on their rights, abominable labour conditions, discrimination, exploitation and even violence. This should not be tolerated. In the current economic crisis, where states are imposing tighter restrictions on immigration and harsher measures to combat irregular migration, migrants are in a particularly vulnerable position: they are the hardest hit by the loss of jobs, which can affect their legal residence status and their ability to send remittances. The loss of legal status puts an increasing number of well-integrated migrants into an irregular situation and makes them even more vulnerable to trafficking, exploitation, detention and deportation. Migrants are also increasingly subject to scapegoating, increasing anti-immigrant and xenophobic attitudes in our societies.

I am particularly concerned about the growing number of female migrants in an irregular situation. A significant number of these women are hidden within private households, vulnerable to sexual abuse, rape and slave-like working conditions. They have no means for protection as they cannot turn to the authorities out of fear of detention and expulsion. International Migrants Day is an occasion to recall the importance of recognising and respecting the human rights and dignity of all migrants, regardless of their status, and to renew our call on European states to ratify the UN Migrant Workers Convention as well as the Council of Europe Convention on the Legal Status of Migrant Workers.

This year's International Migrants Day coincides with the United Nations Climate Summit in Copenhagen. It is estimated that 25 million people around the world have suffered from forced displacement due to the devastating effects of climate change, more than those fleeing from war. This number is expected to go up to 250 million in less than 50 years. The movements of persons who are compelled to move as a consequence of natural disasters and other environmental events caused by global warming will be among the major challenges facing countries in the decades to come. This is an unprecedented global challenge which requires innovative responses and human-rights-based policies. We have to make sure that the protection of the rights of those compelled to move due to environmental degradation will become the heart of global policy and action commitments."

'Nothing justifies violence against women' (10.12.09)

As the Parliamentary Assembly and the Council of Europe have never ceased to emphasise, violence against women, including domestic violence, is a serious violation of human rights incompatible with the Council's norms and standards, Paul Wille (Belgium, ALDE), Vice-President of the Assembly, told on 10 December at the opening session of a conference in Paris on migration and violence against women in Europe. "Action must be taken to prevent and punish such violations. Cultural relativism or references to culture, religion or customary practices can never be invoked to justify them," he stressed.
Speech (French only)

Children witnessing domestic violence (11.12.09)

Children witnessing violence against their mother are far too often neglected as victims of psychological trauma, as possible future victims and as links in a chain of violence, when they could help identify potentially violent situations and avoid new violence in the future. The rates of overlap between domestic violence and child abuse vary between 45% and 70% in different studies.

Adopting a report by Carina Ohlsson (Sweden, SOC) in Paris on 11 December, PACE Social Affairs Committee agreed on a list of measures to be taken by national parliaments and governments. The committee would like to see this issue included in the future Convention on violence against women, including domestic violence.

Electoral systems: call to decrease legal thresholds over 3 per cent (15.12.09)

PACE's Political Affairs Committee, meeting in Paris on 15 December, said that Council of Europe member States should consider decreasing legal electoral thresholds that are higher than 3 per cent and removing other obstacles, including high financial deposits, which bar minor parties or independent candidates from being represented on elected bodies.

Henrik Daems (Belgium, ALDE), presenting a report on "thresholds and other features of electoral systems which may have an impact on representativity of national parliaments", presented a set of measures aimed at increasing confidence in electoral systems.

These included further regulatory action, sharing of good practices as well as improved control and follow-up, all of which should contribute to an enhanced interest in the political process and to overcoming the feeling of political disaffection.

Copenhagen political declaration lacks ambition, regrets PACE President (20.12.09)

"The political declaration negotiated after the Copenhagen conference lacks ambition and does not provide any answer to climate change, based on solidarity and equity," said PACE President Lluís Maria de Puig. "Despite some progress, the failure to take concrete decisions in Copenhagen is a missed opportunity, given the size of the problem. I regret that the final result is so far from the proposals contained in the resolution adopted by the Assembly ahead of the conference," he added.

PACE resolution on challenges posed by climate change

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

A. Country work

Migrants' rights: Commissioner Hammarberg publishes two letters to Italy and Malta (10.12.09)

The Council of Europe Commissioner for Human Rights, Thomas Hammarberg, published on 10 December two letters he sent last August to the Minister of Interior of Italy, Roberto Maroni, and to the Minister for Justice and Home Affairs, of Malta Carmelo Mifsud Bonnici. The Commissioner's letters refer to that month's incident involving a boat which set off from Libya with more than 70 people on board, mainly Eritreans. The boat was adrift in the Mediterranean Sea for twenty days, apparently without any help from several passing vessels. There were only five survivors.
Read the Letter to Italy
Read the Letter to Malta

Germany: Commissioner Hammarberg stresses need to halt returns to Kosovo[*] (15.12.09)

"The forced return to Kosovo of people who have found shelter in European states should be halted", said the Council of Europe Commissioner for Human Rights publishing on 15 December a letter to the Chancellor of Germany, Dr. Angela Merkel. He notes that Kosovo lacks infrastructures allowing refugees' sustainable reintegration. The Commissioner is particularly worried by the fact that Roma expelled from European states had to return to the lead-contaminated camps of Česmin Lug and Osterode in northern Mitrovica, where the exposure to lead has already caused serious illnesses to members of Roma families living there, including children.

Read the Letter to Germany

Georgia: Commissioner Hammarberg brings process of releases forward (21.12.09)

Three detained minors were released on 19 December following the intervention of Thomas Hammarberg in Tskhinvali. "These young people were reunited with their families, two of them after more than a month in detention; the third one had been held more than five months. This process must continue, and more needs to be done to resolve the remaining cases on both sides. This includes ensuring the protection and release of detainees and conducting effective investigations to clarify the fate of missing persons. I appeal to the sides to take decisive steps so that other families can be reunited with their loved ones or at least be given the opportunity to know the full truth about their fate."

B. Thematic work

"Systematic work is necessary to prevent human rights violations" (09.12.09)

"There is an urgent need to prevent and remedy human rights violations at national level through systematic work for the implementation of existing standards" said Commissioner Hammarberg publishing on 9 December his Memorandum in view of the High-Level Conference on the "Future of the European Court of Human Rights" which will take place in Interlaken, Switzerland, on 18-19 February 2010. The Commissioner called on member States to adopt national action plans founded on baseline studies, high-level political support and the participation of all stakeholders, including civil society and local authorities. "Such a process will better empower national authorities to bridge the gap between human rights standards and reality" he concluded.
Read the Memorandum

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

Commissioner Hammarberg: Andrei Sakharov still an inspiration for human rights activists (14.12.09)

“The example and thoughts of Andrei Sakharov remain acutely relevant” said Thomas Hammarberg, Council of Europe Commissioner for Human Rights, in his Viewpoint published on 14 December, twenty years after Andrei Sakharov’s death on December 14, 1989. “Sakharov presented a universal vision for a peaceful and progressive society based on human rights standards.” Commissioner Hammarberg also participated in the conference ‘Andrei Sakharov’s Ideas Today’ which was held in Moscow on 14-15 December.
Read the Viewpoint
Read the Viewpoint in Russian (.pdf or .doc)
Read the speech

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)

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