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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 Council of Europe's Human Rights Trust Fund.

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

A. Judgments

1. Judgments deemed of particular interest to NHRSs

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

Some judgments are only available in French.

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

Note on the Importance Level:

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

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

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

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

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

- **Right to life**

Rantsev v. Cyprus and Russia (no. 25965/04) (Importance 1) – 7 January 2009 – No violation of Article 2 (positive obligation) by Cyprus – The applicant's daughter's death could not have been foreseen by the police officers – Violation of Article 2 (procedural limb) by Cyprus – Cypriot authorities' failure to conduct an effective investigation into the applicant's daughter's death – No violation of Article 2 (procedural limb) by Russia – Russian authorities' extensive use of opportunities presented by mutual legal assistance agreements to press for action by the Cypriot authorities – Violations of Article 4 (positive obligation) by Cyprus – Lack of an appropriate legal and administrative framework to combat human trafficking due to the existing regime of "artiste" visas – Police authorities' failure to take operational measures to protect the applicant's daughter – No violation of Article 4 (positive obligation to take protective measures) by Russia – Violation of Article 4 (procedural limb) by Russia – Russian authorities' failure to investigate the circumstances of the alleged trafficking – Violation of Article 5 by Cyprus – The applicant's daughter's unlawful and arbitrary detention at the police station and subsequent detention at the apartment where she was taken after being consigned in M.A.'s custody by the police officers

The applicant is the father of Ms Oxana Rantseva, who died in strange and un-established circumstances having fallen from a window of a private home in Cyprus in March 2001. Ms Rantseva arrived in Cyprus on 5 March 2001 on an "artiste" visa. She started work on 16 March 2001 as an artiste in a cabaret in Cyprus only to abandon her place of work and residence three days later leaving a note saying that she was going back to Russia. After finding her in a discotheque in Limassol at

around 4 a.m. on 28 March 2001, the manager of the cabaret where she had worked took her to the police asking them to declare her illegal in the country and to detain her, apparently with a view to expel her so that he could have her replaced in his cabaret. The police, after checking their database, concluded that Ms Rantseva did not appear to be illegal and refused to detain her. They asked the cabaret manager to collect her from the police station and to return with her later that morning to make further inquiries into her immigration status. The cabaret manager collected Ms Rantseva at around 5.20 a.m. Ms Rantseva was taken by the cabaret manager to the house of another employee of the cabaret, where she was taken to a room on the sixth floor of the apartment block. The cabaret manager remained in the apartment. At about 6.30 a.m. on 28 March 2001 Ms Rantseva was found dead in the street below the apartment. A bedspread was found looped through the railing of the apartment's balcony.

Following Ms Rantseva's death, those present in the apartment were interviewed. A neighbour who had seen Ms Rantseva's body fall to the ground was also interviewed, as were the police officers on duty at Limassol police station earlier that morning when the cabaret manager had brought Ms Rantseva from the discotheque. An autopsy was carried out which concluded that Ms Rantseva's injuries were the result of her fall and that the fall was the cause of her death. The applicant subsequently visited the police station in Limassol and requested to participate in the inquest proceedings. An inquest hearing was finally held on 27 December 2001 in the applicant's absence. The court decided that Ms Rantseva died in strange circumstances resembling an accident, in an attempt to escape from the apartment in which she was a guest, but that there was no evidence to suggest criminal liability for her death.

Upon a request by Ms Rantseva's father, after the body was repatriated from Cyprus to Russia, forensic medical experts in Russia carried out a separate autopsy. In their findings, the Russian authorities concluded that Ms Rantseva had died in strange and un-established circumstances requiring additional investigation and forwarded the findings to the Cypriot authorities in the form of a request for mutual legal assistance under treaties in which Cyprus and Russia were parties. The request asked, inter alia, that further investigation be carried out, that the institution of criminal proceedings in respect of Ms Rantseva's death be considered, and that the applicant be allowed to participate effectively in the proceedings.

In October 2006, Cyprus confirmed to the Russian Prosecution Service that the inquest into Ms Rantseva's death was completed on 27 December 2001 and that the verdict delivered by the court was final. The applicant has continued to press for an effective investigation into his daughter's death.

The Cypriot Ombudsman, the Council of Europe's Human Rights Commissioner and the United States State Department have published reports which refer to the prevalence of trafficking in human beings for commercial sexual exploitation in Cyprus and the role of the cabaret industry and "artiste" visas in facilitating trafficking in Cyprus.

Mr Rantsev complained about the investigation into the circumstances of the death of his daughter, about the failure of the Cypriot police to take measures to protect her while she was still alive and about the failure of the Cypriot authorities to take steps to punish those responsible for her death and ill-treatment. He also complained about the failure of the Russian authorities to investigate his daughter's alleged trafficking and subsequent death and to take steps to protect her from the risk of trafficking. Finally, he complained about the inquest proceedings and an alleged lack of access to a court in Cyprus.

Unilateral declaration by Cyprus

The Cypriot authorities made a unilateral declaration acknowledging that they had violated Articles 2, 3, 4, 5 and 6 of the Convention, offering to pay pecuniary and non-pecuniary damages to the applicant, and advising that on 5 February 2009 three independent experts had been appointed to investigate the circumstances of Ms Rantseva's death, employment and stay in Cyprus and the possible commission of any unlawful act against her.

The Court reiterated that as well as deciding on the particular case before it, its judgments served to elucidate, safeguard and develop the rules instituted by the Convention. It also emphasised its scarce case law on the question of the interpretation and application of Article 4 to trafficking in human beings. It concluded that, in light of the above and the serious nature of the allegations of trafficking in this case, respect for human rights in general required it to continue its examination of the case, notwithstanding the unilateral declaration of the Cypriot Government.

"291. […] as regards the general legal and administrative framework and the adequacy of Cypriot immigration policy, a number of weaknesses can be identified. The Council of Europe Commissioner for Human Rights noted in his 2003 report that the absence of an immigration policy and legislative shortcomings in this respect have encouraged the trafficking of women to Cyprus. He called for preventive control measures to be adopted to stem the flow of young women entering Cyprus to work

as cabaret artistes. In subsequent reports, the Commissioner reiterated his concerns regarding the legislative framework, and in particular criticised the system whereby cabaret managers were required to make the application for an entry permit for the artiste as rendering the artiste dependent on her employer or agent and increasing her risk of falling into the hands of traffickers. In his 2008 report, the Commissioner criticised the artiste visa regime as making it very difficult for law enforcement authorities to take the necessary steps to combat trafficking, noting that the artiste permit could be perceived as contradicting the measures taken against trafficking or at least as rendering them ineffective. The Commissioner expressed regret that, despite concerns raised in previous reports and the Government's commitment to abolish it, the artiste work permit was still in place. Similarly, the Ombudsman, in her 2003 report, blamed the artiste visa regime for the entry of thousands of young foreign women into Cyprus, where they were exploited by their employers under cruel living and working conditions." (See also Commissioner' reports published in 2006 and 2008)

Admissibility

The Court did not accept the Russian Government's submission that they had no jurisdiction over, and hence no responsibility for, the events to which the application pertained as it found that if trafficking occurred it had started in Russia and that a complaint existed against Russia's failure to investigate properly the events which occurred on Russian territory. It declared the applicant's complaints under Articles 2, 3, 4 and 5 admissible.

Right to life

As regards Cyprus, the Court considered that the chain of events leading to Ms Rantseva's death could not have been foreseen by the Cypriot authorities and, in the circumstances, they had therefore no obligation to take practical measures to prevent a risk to her life.

However, a number of flaws had occurred in the investigation carried out by the Cypriot authorities: there had been conflicting testimonies which had not been resolved; no steps to clarify the strange circumstances of Ms Rantseva's death had been made after the verdict of the court in the inquest proceedings; the applicant had not been advised of the date of the inquest and as a result had been absent from the hearing when the verdict had been handed down; and although the facts had occurred in 2001 there had not yet been a clear explanation as to what had happened. There had therefore been a violation of Article 2 as a result of the failure of the Cypriot authorities to investigate effectively Ms Rantseva's death.

As regards Russia, the Court concluded that it had not violated Article 2 as the Russian authorities were not obliged themselves to investigate Ms Rantseva's death, which had occurred outside their jurisdiction. The Court emphasised that the Russian authorities had requested several times that Cyprus carry out additional investigation and had cooperated with the Cypriot authorities.

Freedom from ill-treatment

The Court held that any ill-treatment which Ms Rantseva may have suffered before her death had been inherently linked to her alleged trafficking and exploitation and that it would consider this complaint under Article 4.

Failure to protect from trafficking

Two non-governmental organisations, Interights and the AIRE Centre, made submissions before the Court arguing that the modern day definition of slavery included situations such as the one arising in the present case, in which the victim was subjected to violence and coercion giving the perpetrator total control over the victim.

The Court noted that, like slavery, trafficking in human beings, by its very nature and aim of exploitation, was based on the exercise of powers attaching to the right of ownership; it treated human beings as commodities to be bought and sold and put to forced labour; it implied close surveillance of the activities of victims, whose movements were often circumscribed; and it involved the use of violence and threats against victims. Accordingly the Court held that trafficking itself was prohibited by Article 4. It concluded that there had been a violation by Cyprus of its positive obligations arising under that Article on two counts: first, its failure to put in place an appropriate legal and administrative framework to combat trafficking as a result of the existing regime of "artiste" visas, and second, the failure of the police to take operational measures to protect Ms Rantseva from trafficking, despite circumstances which had given rise to a credible suspicion that she might have been a victim of trafficking. In light of its findings as to the inadequacy of the Cypriot police investigation under Article 2, the Court did not consider it necessary to examine the effectiveness of the police investigation separately under Article 4.

There had also been a violation of this Article by Russia on account of its failure to investigate how and where Ms Rantseva had been recruited and, in particular, to take steps to identify those involved in Ms Rantseva's recruitment or the methods of recruitment used.

Deprivation of liberty

The Court found that the detention of Ms Rantseva for about an hour at the police station and her subsequent confinement to the private apartment, also for about an hour, did engage the responsibility of Cyprus. It held that the detention by the police of Ms Rantseva following the confirmation that she was not illegal had no basis in domestic law. It further held that her subsequent detention in the apartment had been both arbitrary and unlawful. There was therefore a violation of Article 5 § 1 by Cyprus.

Babat and Others v. Turkey (no. 44936/04) (Importance 3) – 12 January 2010 – No violation of Article 2 (substantial limb) – No evidence to conclude beyond all reasonable doubt that Önder Babat was killed by any State agent or person acting on behalf of the State authorities – Violation of Article 2 (procedural limb) – Lack of an effective investigation into the killing of Önder Babat

The applicants alleged that their 25-year old son and brother, Önder Babat, was shot and killed in the street by State agents, probably the victim of an extra-judicial killing, and that the Turkish authorities failed to carry out an effective investigation into his death.

The applicants made serious allegations about involvement of State agents in his death. In this connection, the applicants pointed out the existence of semi-official organisations in Turkey which were known to commit extra-judicial killings to suit their own purposes. They considered that their relative was a victim of such a killing. The Court did not find that the applicants' claims under this head were completely untenable but held that there was no cogent evidence before the Court concerning the supposed identity of the gunman who shot and killed the applicants' relative and that there was also no evidence to conclude with certainty that he was the ultimate target or that his killing was politically motivated. In this connection, the Court found that there had been no violation of Article 2 under its substantial limb.

Concerning the investigation following the applicants' relative's death, the Court found that the investigative authorities could be construed as having displayed a somewhat passive attitude in this respect as the search for evidence at the scene of the incident took place only once and at a time when the police had had no idea as to the cause of Önder Babat's collapse on the street. The next day, however, it became clear that he had been killed by a gunshot. Despite this new development, the prosecutor never asked the police to revisit the scene of the incident in order to reconstruct the events with a view to establishing where the shooter could have been positioned and, although the Court does not rule out that the scene was most likely contaminated in the meantime, at least to attempt to find additional forensic evidence, if any. The prosecutor was content to hear evidence only from Önder Babat's friends and a waiter who was present at the scene of the incident. No attempts were made to secure the testimonies of locals who worked or resided on that street. Nor were any calls made to the public to come forward if they had witnessed the incident that day. Finally, the Court observes that no significant steps have been taken in the investigation since January 2005. The Court thus concluded that the State authorities did not take all the measures which could be reasonably expected of them to carry out an effective investigation into the facts surrounding the killing of the applicants' relative and that therefore the State was in breach of its procedural obligation to protect the right to life. Accordingly, there had been a violation of Article 2 under its procedural limb.

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

Al-Agha v. Romania (no. 40933/02) (Importance 3) – 12 January 2010 – Violation of Article 3 – Conditions of detention from February 2000 until September 2002 – No violation of Article 3 – Lack of evidence to establish that the applicant's living conditions constituted a violation of this Article after September 2002 – Violation of Article 5 § 1 – Lack of legal basis for the detention – Violation of Article 5 § 4 – Lack of an effective remedy to challenge the lawfulness of the detention – Violation of Article 5 § 5 – Lack of an effective remedy to obtain compensation for unlawful detention

In 1962 the applicant left the Gaza Strip, then under Egyptian administration, with an Egyptian travel document, to study in Cairo. Following the 1973 Yom Kippur War, his travel document was not renewed by the Egyptian authorities, but he obtained an Iraqi passport for Palestinian refugees, issued by the Iraqi Embassy in Tripoli. In 1993 he arrived in Romania on that passport, together with a Romanian visa, and settled there as a businessman.

In an order (Order no. 779) of 31 July 1998, on the basis of the Law on the rules governing aliens in the Socialist Republic of Romania, the Ministry of the Interior revoked the applicant's right to reside in

Romania and declared him “undesirable”. The order was not served on him. In August 1998 he was asked to leave the country. As he did not have a passport, the applicant was unable to leave the Romanian territory within the prescribed time-limit. In February 2000 he was arrested and detained in the holding centre at Bucharest Otopeni Airport (“the centre”), for failure to comply with Order no. 779. In June 2001 the Bucharest Court of Appeal upheld an application by the applicant for his release, the annulment of Order no. 779 and an award of damages for unlawful detention. It noted that the applicant had not been informed that he had been declared “undesirable”, but only that his obligation to leave the country was due to the expiry of his residence permit. In a final judgment of 25 September 2003 the Supreme Court held that, although Order no. 779 had not been served on the applicant since it was a secret document, he had been officially notified of its effects. It observed that he had been informed of the order’s existence while in the holding centre, where he had been placed in accordance with the law.

The applicant claimed that in the centre he had endured precarious conditions in terms of hygiene and that there had been a lack of healthy food and physical exercise. He had been examined twice by way of routine medical assistance and after going on hunger strikes, but on several occasions he refused the treatment recommended. In February 2003 he was admitted to hospital and underwent specialist consultations and general tests.

In July 2003, the applicant was released as the five-year period during which he had been declared undesirable had expired. Having been granted a refugee permit, he is now living in Romania in a centre managed by the National Refugee Office.

Article 3

The applicant's detention in the centre before September 2002

Mr Al-Agha’s allegations concerning the precarious conditions in the centre were corroborated by the report issued by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following its visit in 1999. The Court referred in particular to the access to showers only once a fortnight, the limited physical exercise and the CPT’s comment that the centre was not suitable for long stay. Furthermore, the applicant had received medical treatment only during his hunger strikes. Although there had been no intention on the part of the authorities to humiliate or debase the applicant, the Court considered that the living conditions he had endured from February 2000 to September 2002 had undermined his dignity and had caused him to feel degraded, in breach of Article 3.

The applicant's detention in the centre after September 2002

The Court noted that in September 2002 the CPT had found the material conditions in the centre to be satisfactory and that, moreover, the applicant had refused a specialist medical examination in January 2003. In those circumstances, it was not established that the applicant's living conditions in the centre after September 2002 had been sufficiently severe to breach Article 3.

Article 5 § 1

The Court held that the applicant’s stay in the centre for three years and five months, without any possibility of leaving except with the authorities' consent, had amounted to a deprivation of liberty. Detention in a holding centre with a view to deportation had a basis in Romanian law, and the relevant instrument satisfied the criteria of accessibility, having been published in the Official Gazette. However, although the Government had justified keeping the applicant in detention by citing a risk to national security, no proceedings had been brought against him on that account and the Romanian authorities had not referred to any specific accusations against him. The Court further noted that in any event, even where matters affecting national security were concerned, individuals could not be deprived of safeguards against risks of arbitrary conduct by public authorities. Since the applicant had not been afforded the minimum level of protection against such risks, his prolonged deprivation of liberty had had no legal basis satisfying the requirements of the Convention.

Article 5 § 4

With regard to the right of an arrested person to have the lawfulness of his deprivation of liberty reviewed by a court, as guaranteed by Article 5, the Court noted that the Romanian courts had found that it had been impossible for the applicant to challenge Order no. 779 as it had not been served on him. While welcoming subsequent legislative amendments concerning the status of persons declared “undesirable”, the Court observed that the applicant had been unable to benefit from them at the time of the events. It concluded that the applicant had not had an effective remedy to challenge the lawfulness of his deprivation of liberty, in breach of Article 5 § 4.

Article 5 § 5

Despite stating that it had been open to the applicant to obtain compensation by means of an action for damages under the Civil Code, the Government had not given any examples of relevant case-law. In addition, the applicant had unsuccessfully sought compensation in the national courts for unlawful detention. The Court thus held that it was not established that the applicant had had the possibility of obtaining compensation for his deprivation of liberty, and found a violation of Article 5 § 5.

Onoufriou v. Cyprus (no. 24407/04) (Importance 2) – 7 January 2010 – Violation of Article 3 – The applicant's stringent custodial regime during his period in solitary confinement – Violation of Article 8 – The suspension of the applicant's visitation rights and the monitoring of his correspondence were not in accordance with the law – Violation of Article 13 – Lack of an effective remedy

The applicant is currently detained in Nicosia Central Prison for two counts of attempted murder. In September 2003, when he did not return to prison after a 24-hour leave that he had been granted, he was arrested and placed in solitary confinement for 47 days. He complained of the conditions in which he had been detained during that period, of the prohibition on family visits during his period in solitary confinement and of the surveillance of his correspondence. He also alleged that he had had no effective remedy to challenge all the above.

The Court noted that, according to the prison logbook, the applicant was served food at irregular intervals, sometimes receiving only one full meal per day. The Court thus concluded that the stringent custodial regime, to which the applicant was subjected to during his period in solitary confinement, including the prohibition on visits and the material conditions in which he was detained, caused him suffering clearly exceeding the unavoidable level inherent in detention. His exposure to these conditions for a period of 47 days amounted to degrading treatment contrary to Article 3. Accordingly there has been a violation of Article 3.

The Court did not consider that the Prison Regulations stipulate an absolute prohibition on visits for those in solitary confinement. In short, the Prison Regulations do not indicate with reasonable clarity the scope and manner of the exercise of any discretion conferred on the relevant authorities to restrict visitation rights as well as in respect of screening prisoners' correspondence. Therefore the general reasons, for the interference with the applicant's correspondence in the present case are especially inadequate. The Court held that there have been violations of Article 8 due to the prohibition of family visits in prison and the monitoring of the applicant's correspondence.

The Court also held that the remedies in respect of above violations have not been "effective", and accordingly there has been a violation of Article 13.

Aharon Schwarz v. Romania (no. 28304/02) (Importance 2) – 12 January 2010 – Violation of Article 3 – Suffering from inadequate conditions of detention

The applicant complained about the conditions of his detention between 2001 and 2004 (when he was pardoned on humanitarian grounds) while serving a prison sentence for fraud and forgery of various documents. His main complaints were that the conditions of his detention were inappropriate in view of the various diseases from which he was suffering, and that the treatment he was given for scabies was ineffective.

The Court concluded that there has been a violation of Article 3 due to the lack of adequate medical treatment and to the conditions of detention in Bucureşti-Jilava Prison.

Melnikov v. Russia (no. 23610/03) (Importance 3) – 14 January 2010 – Violation of Article 3 – Conditions of pre-trial detention – Violation of Article 6 §§ 1 and 3 (d) – Hindrance to the applicant's right to examine a witness – No violation of Article 34 – No evidence to conclude that the Russian authorities interfered with the exercise of the applicant's right of individual petition

The applicant is currently in prison in the Ulyanovsk Region. Convicted in March 2003 of robbery and theft, the applicant complained about the conditions of his pre-trial detention during the criminal proceedings against him in Tver remand centre no. 69/1. He also complained that, at trial, he had not been able to examine or have examined a witness in relation to two of the theft charges. Finally, he complained that the authorities had tried to intimidate him as a result of his application to the Court: by interfering with his correspondence to the Court; by refusing him permission to have a meeting with his legal representative; and by detaining him in a punishment cell on numerous occasions.

The Court held that the conditions of the applicant's detention from 24 November 2003 to 8 December 2004 were inhuman and degrading in breach with Article 3. The Court also found that the defence rights were in the circumstances restricted to an extent that was incompatible with the guarantees provided by Article 6. Therefore there had been a violation of Article 6 §§ 1 and 3 (d). The Court also concluded that it had not been convincingly established that the authorities of the respondent State interfered with the exercise of the applicant's right of individual petition. Accordingly there had not been a violation of Article 34.

Moskalyuk v. Russia (no. 3267/03) (Importance 3) – 14 January 2010 – Violation of Article 3 – Conditions of detention – Lack of medical care in detention

Convicted in June 2002 for robbery and assault, the applicant complained about the appalling conditions in remand prisons nos. IZ-48/2 and 48/3 in Moscow and of the lack of adequate medical treatment for tuberculosis while in detention in the hospital of remand prison no. IZ-77/1 in Moscow and at medical correctional colony no. LIU-10 in the Omsk Region. Having regard to the responsibility owed by the state authorities to provide the requisite medical care for detained persons, the Court accepted the applicant's argument that the medical treatment he received for tuberculosis was not adequate. Despite the seriousness of his condition, the hospital at the remand prison and the medical correctional colony did not carry out proper monitoring of the applicant's condition and discontinued his treatment for extended periods of time in the absence of sufficient medical indications to do so.

The Court considered that there was no evidence showing that there was a positive intention to humiliate or debase the applicant. However, the absence of any such purpose cannot conclusively rule out a finding of a violation of Article 3. In the Court's opinion, the lack of adequate medical treatment during the period in question must have caused the applicant considerable mental and physical suffering diminishing his human dignity, which amounted to degrading treatment within the meaning of Article 3 of the Convention. Accordingly, the Court finds that there has been a violation of Article 3 of the Convention.

- **Police misconduct / Ill-treatment**

Pădureţ v. Moldova (no. 33134/03) (Importance 2) – 5 January 2010 – Violations of Article 3 (substantive and procedural) – Ill-treatment while in police custody – Lack of an effective investigation – Failure to ensure the preventive effect of the prohibition of ill-treatment

The applicant alleged that he was tortured when taken to Centru Police station in March 2000 for questioning in connection with a robbery; in particular he was kicked, punched, suspended on a metal bar with his feet and hands tied together behind his back, had a glass bottle repeatedly inserted into his anus. The criminal investigation against him was subsequently discontinued. He also alleged that the authorities failed to carry out an effective investigation into his ill-treatment, thus allowing the perpetrators to escape responsibility.

The Court noted that in Moldova torture was considered an "average-level crime", to be distinguished from more serious forms of crime and thus warranting reduced sentences. Such a position is absolutely incompatible with the obligations resulting from Article 3 of the Convention, given the extreme seriousness of the crime of torture. This confirms Moldovan authorities' failure to fully denounce the practice of ill-treatment by the law-enforcement agencies and adds to the impression that the legislation adopted to prevent and punish acts of ill-treatment is not given full preventive effect. As such, the case gives the impression not of preventing any future similar violations, but of being an example of virtually total impunity for ill-treatment by the law-enforcement agencies. The Court found that not only was the applicant subjected to torture while in police custody, but that the authorities had failed to offer sufficient redress by failing to properly investigate within a reasonable time his ill-treatment, as well as to ensure the preventive effect of the prohibition of ill-treatment. There has, accordingly, been a violation of Article 3 under both procedural and substantive limbs.

Sashov and Others v. Bulgaria (no. 14383/03) (Importance 2) – 7 January 2010 – Violations of Article 3 (substantive and procedural) – Ill-treatment by the police – Lack of an effective investigation

The applicants belong to the Roma ethnic and cultural group. They complained of police brutality during their arrest in 2001 (on suspicion of stealing metals) and of State authorities' failure to institute an effective criminal investigation into their allegations of ill-treatment.

The Court found that the applicants had been subjected to ill-treatment following their arrest and that the authorities had failed to carry out an effective investigation in respect of the alleged ill-treatment.

Therefore the Court held that there have been violations of Article 3 under the procedural as well as under the substantive limb.

Galotskin v. Greece (no. 2945/07) (Importance 3) – 14 January 2010 – Violations of Article 3 (substantive and procedural) – Ill-treatment by police officers – Lack of an effective investigation – Violation of Article 6 § 1 – Excessive length of criminal and administrative proceedings

Involved in an argument with the police in December 2001 when stopped in a car for an identity check, the applicant alleged that he had been subjected to police brutality both during his subsequent arrest and detention. He also alleged that the Greek authorities had failed to carry out an adequate investigation into the incident. The applicant also complained in particular about the excessive length of the criminal proceedings brought against the police officers concerned and of the administrative proceedings in which he had sought damages.

According to the applicant's allegations, which were corroborated by medical reports, to the aforementioned principles and the circumstances in which the applicant sustained the injuries, the Court considered that the Government had not furnished convincing or credible arguments providing a basis to explain or justify the degree of force used against the applicant at the time of his arrest and, subsequently, while he was in detention in the police station. The Court concluded also that the investigations in respect of above ill-treatments have not been "effective" and held that there have been violations of Article 3 under its substantive and procedural limbs.

The Court considered that in the present case the length of the criminal and administrative proceedings complained of was excessive and failed to satisfy the "reasonable time" requirement. There has accordingly been a violation of Article 6 § 1 in this respect.

- **Right to liberty and security**

Petyo Petkov v. Bulgaria (no. 32130/03) (Importance 2) – 7 January 2010 – Violation of Article 3 – Absence of legal basis and arbitrariness of the measure imposed on the applicant to wear a balaclava whenever he left his cell (for more than a year) – No violation of Article 3 – No evidence to conclude that the applicant's deprivation of access to activities with other prisoners had had significant adverse effects on his health – Violation of Article 13 – Lack of an effective remedy in respect of the claims under Article 3 – Violation of Article 5 § 1 – Unjustified delay in executing the decision to release the applicant – Violation of Article 5 § 3 – Unjustified and lengthy detention – Violation of Article 6 § 2 – Infringement of the principle of presumption of innocence on account of incriminating statements made by a senior prosecutor – Violation of Article 1 of Protocol No. 1 – Confiscation of the applicant's taxi and considerable delay in returning it

The applicant is a taxi driver. Following a sulphuric acid attack on the deputy director of the National Planning Directorate in Sofia, the applicant was arrested by the police in January 2002 on suspicion of being the perpetrator, was charged and detained pending trial; his detention was extended several times on the grounds that there was a reasonable suspicion that he had committed a criminal offence and/or that there was a risk of his absconding or committing further offences. In February 2002 the taxi belonging to the applicant (who maintained that at the time of the attack he had been working a long way from the scene) was seized as physical evidence.

From May 2002, by order of the district prosecutor's office, the applicant was required to wear a balaclava with eye-holes whenever he left his cell (for example, when moving about or outside the prison premises, at hearings or when receiving visits). He complained to the Chief Public Prosecutor and the Supreme Judicial Council but to no avail. On two different occasions he asked the District Court to have the measure discontinued, claiming that it was not provided for by domestic law. The prosecution cited the need to conceal Mr Petkov's face so as not to compromise future identity parades. The court took the prosecution's arguments into account but, having regard to the time that had elapsed since the measure had first been applied, ordered its discontinuation after the end of the hearing in May 2003, but the police officers continued to compel Mr Petkov to wear the balaclava outside the courtroom.

Amid widespread media coverage, the Sofia District Court acquitted Mr Petkov in June 2003 and ordered the return of his personal effects, without mentioning his taxi. He was released the following afternoon. In September 2003 the Sofia district prosecutor said at a press conference that no judge could persuade him that the applicant was not guilty of the crime of which he had been accused. In March 2004 the Sofia City Court upheld the judgment given at first instance and the acquittal was

confirmed by the Supreme Court of Cassation in a judgment in January 2005. Not until April 2006, following proceedings he had to institute for this specific purpose, was Mr Petkov able to regain possession of his vehicle, which had certain parts missing and had broken down.

Mr Petkov complained that he had been forced to wear a balaclava and denied access to activities with other prisoners in Sofia Prison, and that he had had no remedy in respect of those complaints. He further complained that he had not been released immediately after being acquitted and that the length of his pre-trial detention had been excessive. Lastly, he complained about the district prosecutor's statements to the press, and about the confiscation of his taxi.

Article 3 (obligation to wear a balaclava)

Mr Petkov had been forced to wear a balaclava whenever he left his cell during a period of more than one year and one month, although this had not been permitted under Bulgarian law at the time. His awareness of that fact had given rise to a feeling of being treated arbitrarily. Admittedly, the Court accepted that the arguments that the measure had been necessary both to protect the applicant from reprisals following his trial, which had attracted substantial media coverage, and to avoid jeopardising ongoing criminal investigations were not entirely without foundation. However, the Court was not persuaded that the application of that measure during the hearings had been justified, since the applicant's anonymity could have been preserved by other means. Nor could the Court see any reason for requiring Mr Petkov to wear the balaclava during meetings with his lawyers and relatives or while moving about the prison. Lastly, despite the court's decision ordering the police officers to stop using the balaclava after 22 May 2003, the officers had arbitrarily continued to conceal Mr Petkov's face outside the courtroom until 18 June 2003. The measure in question had in fact served a punitive purpose. Having regard to the psychological effects of the measure on Mr Petkov, the Court held by six votes to one that there had been a violation of Article 3 on that account.

Article 3 (denial of access to activities with other prisoners)

The Court held that the period during which Mr Petkov had been denied access to activities with other prisoners had not been excessively long (five and a half months). He had not been in total segregation and had been able to meet his relatives and lawyers during his detention and had left his cell on several occasions to go to court. He had not complained that there had been any restrictions on his correspondence or that he had had no outdoor activities. There was no basis for the Court to determine whether the applicant's deprivation of access to activities with other prisoners had had significant adverse effects on his physical or psychological health. The Court held unanimously that there had been no violation of Article 3 on that account.

Article 13

The Court noted that the remedies used by Mr Petkov in seeking to discontinue the use of the balaclava had lacked the requisite effectiveness; no action had been taken on his complaints to the prosecution authorities and the Supreme Judicial Council, and the District Court's order to the police officers to stop using the balaclava had been only partially heeded. His complaint to the prison authorities on his segregation had likewise had no effect. Furthermore, it had not been established that any remedy could have enabled him to obtain compensation for the damage he had allegedly sustained, an essential feature of a remedy that should be available in respect of an alleged Article 3 violation. The Court held unanimously that there had been a violation of Article 13.

Article 5 § 1

The Court held that the Bulgarian authorities had not adduced any evidence capable of justifying the twenty-four hour delay in executing the decision to release the applicant. The Court held unanimously that there had been a violation of Article 5 § 1 as regards that period of detention.

Article 5 § 3

The Court noted that two decisions extending Mr Petkov's pre-trial detention had been taken solely on the basis of the seriousness of the charges against him (whereas several other decisions had been based on other grounds). That factor on its own could not justify continued detention for one year and five months. The overall period of the applicant's pre-trial detention had therefore not been based on "relevant and sufficient" grounds. The Court held unanimously that there had been a violation of Article 5 § 3.

Article 6 § 2

In the Court's opinion, in stating that no judge could persuade him that Mr Petkov was innocent, the public prosecutor had not denied that it was ultimately for the courts to say whether or not the applicant was guilty as charged. The Court noted, however, that that statement had been made by a senior prosecutor at a press conference, against a background of widespread media coverage, a relatively short time after the applicant had been acquitted at first instance and while the case was still

pending on an appeal by the prosecution. The statement in question had therefore been capable of creating a public perception that Mr Petkov was guilty of the offence of which he was accused. The Court held unanimously that there had been a violation of Article 6 § 2.

Article 1 of Protocol No.1

The Court held that what had been confiscated from the applicant for more than four years and returned to him damaged was not merely a means of transport but the main tool of his trade. The measure in question had therefore had a potential effect on his professional activities, particularly after his release. The Court accepted that the retention of Mr Petkov's vehicle as evidence for the duration of the criminal proceedings against him had been necessary. However, that had no longer been the case after the Supreme Court of Cassation's judgment of January 2005. The delay (one year and three months) in returning the applicant's taxi to him was attributable solely to an omission on the part of the Bulgarian courts. The Court held unanimously that there had been a violation of Article 1 of Protocol No.1.

- **Right to a fair trial**

Vera Fernández-Huidobro v. Spain (no. 74181/01) (Importance 1) – 6 January 2010 – No violation of Article 6 §§ 1 and 2 – No evidence to conclude to the partiality of the investigative judge – No infringement of the principle of presumption of innocence

At the time of the material events, the applicant held the post of State Secretary at the Ministry of the Interior.

Criminal proceedings were instituted in January 1988 by central investigating judge no. 5 at the *Audiencia Nacional* against the Anti-Terrorist Liberation Groups (Grupos Antiterroristas de Liberación – "the GAL"), suspected of being behind an illegal large-scale anti-terrorism action plan. In April 1993 central investigating judge no. 5 took leave of absence in order to stand in the June 1993 general election. He went on to occupy various posts within the Government, among which was that of State Secretary at the Ministry of the Interior with responsibility for coordinating the national security forces' efforts in combating drug trafficking and related money laundering by criminal organisations and other connected offences. For 28 days, in January 1994, he held a post of equal rank to that of Mr Vera Fernández-Huidobro. According to the applicant, there were manifest feelings of animosity between the two men, a situation that went so far as to prompt his resignation. The judge denied that there was any such animosity.

In May 1994, a few days after his own resignation from the Government, central investigating judge no. 5 resumed his previous duties as a judge at the *Audiencia nacional*, and in that capacity took over the investigation of the GAL case. From then on the investigation was actively pursued. In January and April 1995 central investigating judge no. 5 placed Mr Vera Fernández-Huidobro under formal investigation for presumed offences of misappropriation of public funds and false imprisonment; he was accused of having played a role in the organisation of the GAL. The applicant unsuccessfully challenged the judge for bias, citing both their hostile relations and the link between the subject matter of the proceedings and the judge's activities at the Ministry of the Interior. Mr Vera Fernández-Huidobro was held in pre-trial detention from February to July 1995, when he was released on payment of approximately 1.2 million Euros as bail.

From August 1995 the investigation was taken over at Supreme Court level by a judge designated from that court's Criminal Division, for reasons of jurisdiction on account of the Parliamentary immunity enjoyed by certain of the accused (in particular, the Prime Minister, the former Minister of the Interior, then serving as a member of parliament, and other members of parliament). The newly assigned judge conducted a fresh investigation, during which most of the investigative steps were carried out anew. He conducted a further examination of witnesses who had given evidence to central investigating judge no. 5 implicating the applicant, and of the applicant himself, in the presence of all the parties and their counsel. Where any statements differed from those initially given, explanations were demanded. Those giving evidence were also cross-examined by the parties' counsel and questions were put to them by the designated investigating judge. Directions were also given for additional evidence to be obtained. At the end of the investigation, the applicant was charged with the further offence of membership of an armed organisation.

The case was set down for hearing in the Supreme Court in May 1998. In July 1998 Mr Vera Fernández-Huidobro was sentenced to ten years' imprisonment for misappropriation of public funds and false imprisonment. The judgment was based, among other factors, on the testimony of co-defendants and contained detailed reasons as to why that evidence (including statements by co-defendants who had changed their version of events in the course of the proceedings) had been taken into account. The Supreme Court found that the evidence in question had not been guided by any

feelings of revenge or animosity or by the desire of those concerned to exculpate themselves or to secure advantages in the proceedings. An *amparo* appeal lodged by the applicant with the Constitutional Court was dismissed on 17 March 2001, in particular on the ground that the Supreme Court's decision was neither arbitrary nor unreasonable.

Mr Vera Fernández-Huidobro complained of a lack of independence and impartiality on the part of central investigating judge no. 5 and, more generally, of a violation of his right to a fair trial. He also alleged a violation of his right to presumption of innocence, complaining that the investigating judge had been biased and that statements made by co-defendants with a view to securing personal advantages had been taken into account by the investigating judge as evidence against him.

Whether the applicant's case was heard by an impartial tribunal

In accordance with its case-law (see *Piersack v. Belgium*), the Court examined this complaint by means of two approaches: a subjective approach, attempting to ascertain a judge's personal conviction or interest in a particular case, and an objective approach, determining whether he offered sufficient guarantees to exclude any legitimate doubt in that respect.

Applying the objective test, the Court examined in particular whether the post held by central investigating judge no. 5 within the Ministry of the Interior (where he would have had dealings with the persons concerned by the GAL case) could have raised an issue as to his impartiality once he had returned to his post as a judge and taken over the investigation of the pending criminal case. It considered that the applicant's concerns on that account were objectively justified. After he had left political office to resume the investigation in the present case, central investigating judge no. 5 did not satisfy the impartiality requirement of Article 6.

Applying the subjective test, the Court reiterated that a judge's personal impartiality was to be presumed until there was proof to the contrary. Here, it did not find sufficient evidence that central investigating judge no. 5 had demonstrated any personal bias against the applicant. Nevertheless, it did not consider it necessary to examine the issue any further, seeing that it had already found that the judge had not been objectively impartial.

Beyond that finding of a lack of impartiality on the part of the first investigating judge, however, the Court reiterated that a breach of the requirements of Article 6 § 1 attributable to a judicial body could be redressed at a subsequent stage of the proceedings. In the present case, the Supreme Court and, in particular, the investigating judge appointed from that court's Criminal Division, had cured the defect in question by conducting a fresh investigation from the outset. During that process, most of the investigative steps had been carried out anew and many further measures had been taken, and the parties had had the opportunity, both before the designated investigating judge and at the trial in the Supreme Court, to confirm or contradict the statements previously taken from them, in a procedure offering all the necessary guarantees. The Court concluded by four votes to three that there had been no violation of Article 6 § 1.

Complaint relating to the presumption of innocence

The Court noted that the Supreme Court had reached its finding on the basis of all the evidence produced during the investigation (not only before the central investigating judge but also before the designated judge of the Criminal Division of the Supreme Court) and at the trial and that the Supreme Court had given its ruling in a fully reasoned decision. The Court did not have jurisdiction to re-examine evidence or to revise the domestic courts' interpretation or replace it with its own opinion as to the evidence on which the conviction had been based. It therefore found that the court concerned had not been responsible for any infringement of the applicant's defence rights, having afforded the benefit of adversarial proceedings. The fact that the applicant had been convicted at the end of the proceedings was not sufficient for the Court to find a violation of the Convention provision he relied on. The Court concluded by four votes to three that there had been no violation of Article 6 § 2.

Tsonyo Tsonev v. Bulgaria (No. 2) (no. 2376/03) (Importance 3) – 14 January 2010 – No violation of Article 6 §§ 1 and 3 (b) and (c) – The late appointment of counsel in the proceedings before the Gabrovo Regional Court had no negative impact on the fairness of the proceedings – Violation of Article 6 §§ 1 and 3 (c) – Infringement of the principle of equality of arms on account of Supreme Court of Cassation's refusal to appoint a legal-aid lawyer – Violation of Article 4 of Protocol No 7 – Conviction for the same offence separately in administrative and criminal proceedings

In November 1999, the applicant and a friend got into a violent fight with a third person to whose apartment they had both gone. The police, having arrived upon a call from the neighbours, arrested the applicant. On the basis of the police report drawn in connection with that incident, a week later, the mayor of Gabrovo, applying a municipal by-law concerning public order, fined the applicant for having

broken into the home of a person and having beaten him up. That mayor's decision specified that it could be appealed in court within seven days of being served on the offender. As the applicant's address was unknown, it was not served on him and thus became final. Some time later, in relation to the same event, the prosecution charged the applicant with inflicting bodily harm and breaking into the home of another and found him guilty of inflicting bodily harm only and sentenced him to eighteen months imprisonment. On appeal, a new counsel was appointed to the applicant by the court as his old one failed to appear at the hearing and the applicant agreed to be represented by that new counsel, stating that she was sufficiently acquainted with his case. At the cassation appeal, despite the applicant's specific request, the Supreme Court refused to appoint him a counsel without giving specific reasons for its refusal.

The applicant complained that he was unable to defend himself effectively due to the late appointment of his counsel and the Supreme Court's refusal to appoint him counsel for the hearing before it. He also complained that the domestic courts had assessed the evidence and established the facts erroneously. The applicant also complained that he had been tried twice for the same offence.

Lack of fair trial

Late appointment of counsel

The Court observed that the applicant had explicitly stated that the new counsel was acquainted with the case and his arguments and had agreed to be defended by her and neither the applicant nor his lawyer had sought an adjournment in order to prepare the defence. In addition, in her closing speech, the applicant's counsel had raised a number of arguments in his defence. Accordingly, there had been no violation of Article 6 on this count.

Refusal to appoint a counsel

The Court recalled that the right to free legal assistance formed an element of fair trial in criminal proceedings on condition that the persons concerned could not afford to pay for a lawyer and that the interests of justice required such legal assistance. The applicant had not had the money to hire a lawyer and, where the accused risked deprivation of liberty, the interest of justice required in principle legal assistance. Accordingly, there had been a violation of Article 6 §§ 1 and 3 (c).

Double trial and punishment

The applicant had been fined in proceedings regarded under domestic law as "administrative" rather than "criminal". However, the offence for which the applicant had been fined fell within the sphere protected by criminal law, given that it had the characteristic features attaching to criminal offences, as it aimed to punish and deter socially unacceptable conduct. The Court noted that the same facts – breaking into someone's apartment and beating a person up – had been at the centre both of the fine imposed by the mayor and the charges brought by the prosecution. As it had not been appealed, the fine had become final. The domestic courts had not terminated the subsequent criminal proceedings, given that the Supreme Court had consistently ruled that criminal proceedings could be opened against persons already punished in administrative proceedings. Accordingly, the Court found that the applicant had been convicted – separately in administrative and criminal proceedings – for the same conduct, the same facts and the same offence, in violation of Article 4 of Protocol No 7.

Atanasovski v. "the former Yugoslav Republic of Macedonia" (no. 36815/03) (Importance 3) – 14 January 2010 – Violations of Article 6 § 1 – Excessive length of proceedings – Supreme Court's failure to give substantial reasons justifying a departure from well-established case-law

After having worked for a socially-owned company for 30 years, the applicant was reassigned to the post of technologist in 1997. He subsequently brought a civil claim in which he sought to have his reassignment annulled, as he had never worked in that function. The lower courts granted his claim, but the Supreme Court rejected it in May 2003, holding that the employer had been entitled to assess the need for reassignment and that, in their reasoning, it had been sufficient to refer to the relevant provisions of national labour law.

The applicant complained of the excessive length of the proceedings and he also complained that, in deciding on his case, the Supreme Court departed from previously established practice – according to which employers were required to provide concrete reasons for reassignment – without providing reasons.

The Court noted that the length of proceedings was more than six years and one month for three levels of jurisdiction. It considered that the case had not required examination of complex issues and that contrary to the submissions of the Government, no evidence had been presented to show that the proceedings had been suspended at the applicant's request with a view to a separate court action he

had brought against his dismissal from work. The Court therefore held unanimously that the overall length of the proceedings had been excessive, in breach of Article 6 § 1.

Regarding the second complaint, the Court observed that in the applicant's case the national Supreme Court had departed for the first time from its previous case law in holding that employers were not required to give specific reasons for the reassignment of an employee. The Court noted that case-law development was not in itself contrary to the proper administration of justice. However, the well-established case-law on this question had imposed a duty on the Supreme Court to give substantial reasons justifying a departure from that case-law. A mere statement that employers were no longer required to provide concrete reasons for reassignment had been insufficient. Accordingly, the Court held by six votes to one that there had been a violation of Article 6 § 1 also in respect of the applicant's right to receive an adequately reasoned decision.

Sâmbata Bihor Greek Catholic Parish v. Romania (no. 48107/99) (Importance 1) – 12 January 2010 – Violation of Article 6 § 1 – Infringement of the right of access to a court on account of domestic courts' refusal to determine the applicant parish's right to use a place of worship – Violation of Article 14 in conjunction with Article 6 § 1 – Domestic courts' inconsistency in accepting or declining jurisdiction to deal with cases brought before them by the Uniate Church

The applicant, the Sâmbata Bihor Greek Catholic Parish, is an Eastern-rite Catholic church (Greek Catholic or Uniate) of the Sâmbata parish. In 1948, following the dissolution of the Uniate Church, the church building in which the Sâmbata Uniate priest officiated was transferred to the Orthodox Church. After the Uniate Church was granted recognition in 1990, Legislative Decree no. 126/1990 provided that joint committees of Uniate and Orthodox representatives were to settle the status of any disputed property, such as the church building in Sâmbata. An attempt to set up a joint committee in Sâmbata failed and the Orthodox representatives opposed the proposal for the two denominations to hold alternate religious services in the church in question asserting that the building in question had been their property for years and that the Greek Catholic Church would build a church if they needed one. In 1996 the applicant parish applied to a court for an order requiring the Sâmbata Orthodox parish to allow it to hold services in the parish church. The court, observing that, according to the 1991 census, almost 28% of the population of Sâmbăta belonged to the Uniate Church, held that in the absence of a place of worship for Uniate adherents, the Orthodox parish's refusal was unreasonable and ordered it to arrange alternate services in an equitable manner. On an appeal by the Orthodox parish, the applicant parish's application was declared inadmissible on the ground that, pursuant to Legislative Decree no. 126/1990, disputes concerning the ownership and use of religious buildings came within the exclusive jurisdiction of the joint committees and not of the courts. The Uniate adherents had a new church built from their own resources.

The applicant parish alleged in particular that its right of access to a court had been infringed as a result of the national courts' refusal to determine its right to use a place of worship. It also alleged a breach of its right to peaceful enjoyment of its possessions, its freedom of religion and the principle of prohibition of discrimination.

Article 6 § 1

The Court held that the restriction of the applicant parish's access to a court – in that it had to bring its case before a joint committee – had pursued the legitimate aim of preserving social harmony. However, the law had not laid down any rules on either the procedure for convening the joint committee or its decision-making process. Those legislative shortcomings had helped to create a drawn-out preliminary procedure capable of hindering the applicant parish's right of access to a court.

Conferring the power to determine certain civil rights on a non-judicial body – in this instance, the joint committees adjudicating on property matters – did not in itself infringe the Convention if that body was subject to subsequent control by a judicial body with full jurisdiction.

Judicial control of the committee had been limited to ensuring that its decisions reflected the majority view. However, for the determination of civil rights by a "tribunal" to satisfy Article 6 § 1, the "tribunal" in question must have jurisdiction to examine all questions of fact and law.

Although recent legislative changes – making it possible to bring an ordinary legal action in the competent domestic courts in relation to places of worship – were to be welcomed, the applicant parish had not benefited from them as they had been made at a later stage. It had therefore not enjoyed effective access to a court, in breach of Article 6 § 1.

Article 14 in conjunction with Article 6 § 1

The Court noted that the difference in treatment affecting the applicant parish's enjoyment of its right of access to court had been based on its adherence to the Greek Catholic Church.

Even assuming that the difference in treatment could have been justified by the socially sensitive nature of the issue of restitution of the former property of the Uniate Church, the courts had nevertheless been inconsistent in their approach, sometimes accepting and sometimes declining jurisdiction to deal with cases brought before them by that church.

Accordingly, the applicant parish had been treated differently from other parishes involved in similar disputes, without any objective and reasonable justification. There had therefore been a violation of Article 14 in conjunction with Article 6 § 1.

Penev v. Bulgaria (no. 20494/04) (Importance 2) – 7 January 2010 – Violation of Article 6 § 3 (a) and (b) taken together with Article 6 § 1 – Infringement of the right to a fair trial on account of the hindrance to the applicant's right to defend himself against new charges

In 1999, the applicant was appointed insolvency trustee of a joint stock company ("Plama"). Later in the same year, an investigation was opened into certain actions he had carried out as a trustee, notably the hearing of a lawyer to represent Plama in proceedings that were terminated soon after the appointment of the representative in question. In December 2001, the Pleven District Court sentenced the applicant to four years' imprisonment for having exceeded his powers, under Article 282 § 2 of the Criminal Code, as he had retained a lawyer before obtaining the insolvency court's authorisation to pay the fee agreed upon, and had ordered the payment of that fee even though he had by then ceased to act as an insolvency trustee of Plama. This verdict was upheld on appeal. The Supreme Court of Cassation acquitted the applicant in 2003, considering that retaining a lawyer had been within his powers and that Article 282 of the Criminal Code was not applicable to offences against the interests of a private company, but only to offences against the proper exercise of State power, but nevertheless, it sentenced the applicant to a suspended term of one year's imprisonment, as it found he was guilty of an offence under Article 220 § 1 of the Criminal Code, having deliberately entered into a contract which was disadvantageous to the company. That judgment was final.

The applicant complained that he had not been given the opportunity to defend himself against the charge under Article 220 of the Criminal Code, after the Supreme Court of Cassation adopted a new legal characterisation of the facts of the case.

The Court noted that in criminal matters, the provision of full, detailed information concerning the charges against a defendant, and consequently the legal characterisation by the domestic courts in the matter, was an essential prerequisite for ensuring that the proceedings were fair. The applicant was indicted under Article 282 § 2 of the Criminal Code of having exceeded his powers and there had been no indication that the domestic courts had in the initial stages of the proceedings considered a charge under Article 220 § 1 of the Criminal Code (charge of deliberately entering into a disadvantageous contract for the company). Under Bulgarian law, offences of acting in excess of power and of deliberately entering into a disadvantageous contract were different. Therefore the charges under Article 282 § 2 and Article 220 § 1 required the preparation of distinct defences. The Court did not accept the Government's contention that the legal characterisation of the offence had been of little importance as long as the alternative conviction had been based on the same facts. The Supreme Court of Cassation should have given the applicant an opportunity to defend himself against the new charge.

Considering that the applicant had not been informed in detail of the nature and the cause of the accusation against him, that he had not been afforded adequate time and facilities for the preparation of his defence, and had not received a fair trial, the Court concluded, unanimously, that there had been a violation of Article 6 § 3 (a) and (b), taken together with Article 6 § 1.

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

Gillan and Quinton v. the United Kingdom (no. 4158/05) (Importance 1) – 12 January 2010 – Violation of Article 8 – Failure to adequately safeguard police stop and search powers under anti-terrorism legislation against abuse

The case concerned the police power in the United Kingdom under sections 44-47 of the Terrorism Act 2000 ("the 2000 Act") to stop and search individuals without reasonable suspicion of wrongdoing.

The applicants, Kevin Gillan and Pennie Quinton, are British nationals. In September 2003 they were both stopped and searched by the police, acting under sections 44-47 of the 2000 Act, while on their way to a demonstration close to an arms fair. Mr Gillan was riding a bicycle and carrying a rucksack when stopped and searched by two police officers. Ms Quinton, a journalist, was stopped and searched by a police officer and ordered to stop filming in spite of the fact that she showed her press cards. Mr Gillan was allowed to go on his way after having been detained for about 20 minutes. The

applicants applied for judicial review. In October 2003 the High Court dismissed the application. The Court of Appeal, in July 2004, made no order on the applicants' claims against the Commissioner of the Metropolitan Police and dismissed the claim against the Secretary of State. In 2006 the House of Lords unanimously dismissed the applicants' appeals. In particular, the Law Lords were doubtful whether an ordinary superficial search of the person could be said to show a lack of respect for private life, so as to bring Article 8 of the Convention into operation. Even if Article 8 did apply, the procedure was in accordance with the law and it would be impossible to regard a proper exercise of the power as other than proportionate when seeking to counter the great danger of terrorism.

The applicants complained that the use of the section 44 power to stop and search each of them breached their rights under Articles 5, 8, 10 and 11.

Article 8

In the Court's view, the wide discretion conferred on the police under the 2000 Act, both in terms of the authorisation of the power to stop and search and its application in practice had not been curbed by adequate legal safeguards so as to offer the individual adequate protection against arbitrary interference. Firstly, at the authorisation stage there was no requirement that the stop and search power be considered "necessary", only "expedient". The authorisation was subject to confirmation by the Secretary of State within 48 hours and was renewable after 28 days. The Secretary of State could not alter the geographical coverage of an authorisation and although he or she could refuse confirmation or substitute an earlier time of expiry, it appeared that in practice this had never been done. Indeed, the temporal and geographical restrictions provided by Parliament had failed to act as any real check on the issuing of authorisations by the executive, demonstrated by the fact that an authorisation for the Metropolitan Police District had been continuously renewed in a "rolling programme" since the powers had first been granted. An additional safeguard was provided by the Independent Reviewer appointed under the 2000 Act. However, his powers were confined to reporting on the general operation of the statutory provisions and he had no right to cancel or alter authorisations.

Of still further concern was the breadth of the discretion conferred on the individual police officer. The officer's decision to stop and search an individual was one based exclusively on the "hunch" or "professional intuition"; it was unnecessary for him to demonstrate the existence of any reasonable suspicion; he was not required even subjectively to suspect anything about the person stopped and searched. The sole proviso was that the search had to be for the purpose of looking for articles which could be used in connection with terrorism, a very wide category which covering many articles commonly carried by people in the streets. Provided the person concerned was stopped for the purpose of searching for such articles, the police officer did not even have to have grounds for suspecting the presence of such articles.

The Court was struck by the statistical and other evidence showing the extent to which police officers resorted to the powers of stop and search under section 44 of the Act and found that there was a clear risk of arbitrariness in granting such broad discretion to the police officer. While the present cases did not concern black applicants or those of Asian origin, the risks of the discriminatory use of the powers against such persons was a very real consideration and the statistics showed that black and Asian persons were disproportionately affected by the powers. There was, furthermore, a risk that such a widely framed power could be misused against demonstrators and protestors in breach of Article 10 and/or 11 of the Convention. Although the powers of authorisation and confirmation exercised by the senior police officer and the Secretary of State respectively were subject to judicial review, the breadth of the discretion involved meant that applicants faced formidable obstacles in showing that any authorisation and confirmation were *ultra vires* or an abuse of power. Similarly, as shown in the applicants' case, judicial review or an action in damages to challenge the exercise of the stop and search powers by a police officer in an individual case were unlikely to succeed. The absence of any obligation on the part of the officer to show a reasonable suspicion made it almost impossible to prove that that power had been improperly exercised.

The Court considered that the powers of authorisation and confirmation as well as those of stop and search under sections 44 and 45 of the 2000 Act were neither sufficiently circumscribed nor subject to adequate legal safeguards against abuse. They were not, therefore, "in accordance with the law", in violation of Article 8.

A.W. Khan v. United Kingdom (no. 47486/06) (Importance 2) – 12 January 2010 – Violation of Article 8 – Disproportionate interference with the right to family life if expelled to Pakistan

The applicant is a Pakistani national who has been living in the United Kingdom since the age of three. He was sentenced to seven years' imprisonment in 2003 for importing a significant quantity of heroin. Released in 2006 for good conduct, he was served with a deportation order due to the seriousness of

his offence. The applicant complained about the decision to deport him since, as a settled immigrant in the United Kingdom for almost his entire life, he has no family or other ties in Pakistan, his mother, brothers, British girlfriend and daughter all residing in the United Kingdom.

Having particular regard to the length of time that the applicant has been in the United Kingdom and his very young age at the time of his entry, the lack of any continuing ties to Pakistan, the strength of his ties with the United Kingdom, and the fact that the applicant has not reoffended following his release from prison in 2006, the Court found that the applicant's deportation from the United Kingdom would not be proportionate to the legitimate aim pursued and would therefore not be necessary in a democratic society. There would accordingly be a violation of Article 8 of the Convention if the applicant were deported to Pakistan.

- **Right to marry and to found a family**

Frasik v. Poland (no 22933/02) and Jaremowicz v. Poland (no 24023/03) (Importance 1) – 5 January 2010 – Violations of Articles 12 and 13 – Domestic courts' refusal to allow prison inmates to marry their respective partners and lack of an effective remedy – Violation of Article 5 § 4 – Appeal against the decision prolonging the detention lodged after the expiration of contested decision (1st case)

The applicants were both serving prison sentences - Mr Frasik for rape and for uttering threats to his long-term partner I.K., and Mr Jaremowicz for attempted burglary - when they asked, in April 2001 and June 2003 respectively, the competent courts to allow them to marry in prison. Their requests were refused. Mr Frasik was detained in September 2000 following a complaint by I.K. who submitted that he had raped and battered her. A few months later, both he and I.K. asked several times, unsuccessfully, the prosecutor that Mr Frasik be released under police supervision as they had been reconciled as a couple and wanted to marry and live together. In July 2001, the trial court refused Mr Frasik's request to marry I.K. in prison and sentenced him, in November 2001, to a term in prison for rape and uttering threats. Following his cassation appeal, the Supreme Court held in a judgment in 2003 that although the refusal to let Mr Frasik marry in prison clearly violated Article 12 of the Convention, it did not have an effect on his conviction and therefore could not be quashed.

Mr Jaremowicz asked in June 2003 the competent regional court a permission to marry in prison M.H. The court refused on the grounds that they had become "acquainted illegally in prison" and in any event their relationship had represented nothing but "a very superficial and unworthy contact" given that they had mostly communicated by means of sending kites and writing messages on their hands, often without seeing each other. In November 2003 the prison governor issued a certificate addressed to the civil status office confirming that Mr Jaremowicz had obtained leave to marry M.H. in prison.

Both applicants complained that the refusals to marry were arbitrary and unjustified. Mr Frasik also complained about having been detained for too long awaiting trial and about his appeals against that detention not having been examined quickly.

Right to marry

The Court first noted that the exercise of the right to marry was not conditioned upon whether a person was free or in prison. While imprisonment deprived people of their liberty and certain civil rights and privileges that did not mean that those detained could not marry. As provided for in the European Prison Rules, restrictions placed on persons in detention had to be the minimum necessary and proportionate to the legitimate objective for which they had been imposed. It considered that the Polish authorities had not justified their refusal to allow the applicants to marry with considerations such as existing danger to security in prison or the prevention of crime and disorder. Instead, their assessment had been limited to the nature and quality of the applicants' relationships both of which had been found by the authorities unsuitable for marriage. The Court emphasised in this respect that the choice of partner and the decision to marry them, at liberty and in detention alike, was a strictly private and personal matter. Except for overriding security considerations the authorities were not allowed, under Article 12, to interfere with a prisoner's decision to marry with a person of their choice, especially - as had been the situation in the present cases - on the grounds that the relationships were not acceptable to the authorities and deviated from prevailing social conventions and norms. The Court did not accept the argument of the Polish Government that Mr Fraski had been at liberty to marry after his release and that Mr that Jaremowicz had been allowed to marry five months after he had asked the authorities, or that he too could have married after his release. It emphasised that a delay imposed before entering into a marriage to persons of full age and otherwise fulfilling the conditions for marriage under the national law, could not be considered justified under Article 12. The refusals had resulted in impairing the very essence of the applicants' right to marry, and there had, therefore, been a violation of that Article in both cases.

Right to an effective remedy

As regards the case of Mr Frasik, the Government had admitted that there had been no procedure through which the applicant could challenge effectively the decision denying him his right to marry in detention. In respect of Mr Jaremowicz, although he could and had indeed challenged the initial refusal by the prison authorities before the penitentiary court, the procedure had lasted for nearly five months without a decision being given and, consequently, it had had no meaningful effect. The belated permission Mr Jaremowicz had been granted had not offered the redress required by Article 13 either. The Court concluded that there had been a violation of this Article in both cases.

Detention

The Court further noted that Mr Frasik's appeal against the decision prolonging his detention had been examined by the domestic court 46 days after it had been lodged and 11 days after the contested decision had expired, thus having rendered its examination purposeless. This delayed examination could not be considered sufficiently speedy as required by Article 5 § 4 and therefore there had been a violation of that Article.

- **Protection of property**

Kotov v. Russia (no. 54522/00) (Importance 3) – 14 January 2010 – Violation of Article 1 of Protocol No. 1 – The applicant's permanent inability to obtain reimbursement of the sum owed to him on account of the unlawful distribution of the bank's assets

In April 1994 the applicant deposited a sum of money in a savings account with the Yurak commercial bank, with an interest rate of 200%. In August 1994 the applicant sought to close the account after the bank changed the rate of interest, but the bank informed him that due to a lack of funds it could not return the original deposit and the interest due on it. Mr Kotov commenced proceedings against the bank and in April 1996 the Oktyabrskiy District Court of Krasnodar made a final order fixing the sum owed to the applicant by the bank at 17,983 roubles (RUR). In the meantime, in June 1995, the Krasnodar Regional Arbitration Court had made a winding-up order in respect of the bank and had appointed a liquidator to oversee its liquidation. The total of the bank's debts exceeded its available assets. In such cases, Russian law provided for a "principle of proportionality" which meant that the assets had to be shared out among creditors who had the same ranking in proportion to the amount of their claim. It also provided that where a bank went into liquidation, the claims of individual deposit-holders – like the applicant – had first priority.

Following Yurak's collapse the creditors' committee decided, notwithstanding the legislation, to give priority in sharing out the bank's assets to certain categories of persons: disabled persons, Second World War veterans, the needy and persons who had participated actively in the winding-up operation. The liquidator implemented this decision, which resulted in 700 persons receiving full reimbursement, and the applicant received only RUR 140 (0.78% of the amount owed to him, which in turn was equal to 0.78% of the bank's assets on liquidation). He lodged a complaint with the liquidator and subsequently with the courts alleging a breach of the law, according to which he was a first-ranking creditor and should have been given priority when it came to payment. His complaint was rejected at first instance. On appeal the Regional Arbitration Court found in his favour, finding in August 1998 that the liquidator had not ensured compliance with the law and directing the latter to remedy the situation. This decision, which was upheld following an appeal on points of law, remained unenforced as the bank had no remaining assets. In a new round of proceedings before the same arbitration courts, the applicant applied unsuccessfully for an order requiring the liquidator to pay the sum due to him out of his own funds. The insolvency proceedings were terminated in June 1999 for lack of any further assets to distribute.

The applicant complained of his inability to obtain effective repayment of the debt owed to him on account of the unlawful distribution of the bank's assets.

The Court accepted that the State could not be held liable for the obligations of a private institution which was unable to pay its debts following its collapse. However, the Court, unlike the Government, took the view that the liquidator could be considered as a representative of the State, particularly in view of his status. Liquidators were appointed by the courts to conduct insolvency proceedings under their supervision, and thus exercised public authority. Their actions were therefore capable of engaging the responsibility of the State. The Court also observed that in the present case the bank's assets would have been sufficient to meet the applicant's claim (or at least a substantial proportion of it) had the liquidator treated him as a priority creditor in accordance with the law. The applicant's permanent inability to recover more than RUR 140 of the sum owed to him had stemmed directly from the abuse of authority committed by the liquidator. The abuse had been twofold: not only had there been a breach of the legal principle of proportionality governing the distribution of assets between

creditors with the same ranking but, in addition, Russian law made no provision for the categories of creditors (disabled persons, Second World War veterans, persons in need, etc.) who had received repayment in full from the liquidator, plus interest and index-linking. Moreover, the legal basis on which these creditors had been fully reimbursed - while the applicant had been deprived of the sum which should have been due to him - remained unknown.

The Court therefore concluded that the interference by the public authorities with the exercise of the applicant's right to peaceful enjoyment of his possessions had lacked any legal basis. It held unanimously that there had been a violation of Article 1 of Protocol No. 1.

2. Other judgments issued in the period under observation

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

- Press release by the Registrar concerning the Chamber judgments issued on 05 Jan. 2010: here
- Press release by the Registrar concerning the Chamber judgments issued on 07 Jan. 2010: here
- Press release by the Registrar concerning the Chamber judgments issued on 12 Jan. 2010: here
- Press release by the Registrar concerning the Chamber judgments issued on 14 Jan. 2010: here

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

State	Date	Case Title and Importance of the case	Conclusion	Key Words	Link to the case
Bulgaria	07 Jan 2010	Dimitrov (no. 36552/03) Imp.3	Violation of Art. 6 § 1	Excessive length of criminal proceedings concerning fraud	Link
Bulgaria	07 Jan 2010	Stoyan Mitev (no. 60922/00) Imp. 3	No violation of Art. 3	No evidence to conclude to the fact that the applicant was subjected to ill-treatment that attained a sufficient level of severity to fall within the scope of Art. 3	Link
Bulgaria	07 Jan 2010	Zvezdev (no. 47719/07) Imp. 3	Violation of Art. 5 §§ 3, 4 and 5	Failure to bring the applicant "promptly" before a judge, lack of an effective remedy for challenging the lawfulness of the detention and for obtaining compensation in that connection	Link
Croatia	14 Jan 2010	Vanjak (no. 29889/04) Imp. 3	Violation of Art. 6 § 1 (fairness) No violation of Art. 6 § 2	Unfairness of disciplinary proceedings on account of illegally obtained statements used as evidence No infringement of the principle of presumption of innocence due to the fact that the constitutive elements of the disciplinary and the criminal offences that the applicant had been accused of were not identical	Link
Finland	12 Jan 2010	Suuripää (no. 43151/02) Imp. 3	Violations of Art. 6 § 1 (length and fairness)	Excessive length of proceedings and unfairness of proceedings on account of the lack of an oral hearing	Link
Greece	07 Jan 2010	Dimopoulos (no. 34198/07) Imp. 3	Violation of Art. 6 § 1	Infringement of the right of access to a court on account of the dismissal of the applicant's cassation appeal on points of law	Link
Greece	14 Jan 2010	Popovitsi (no. 53451/07) Imp. 3	Violation of Art. 6 §§ 1 and 3 (fairness)	Unfairness of proceedings on account of domestic courts' unjustified refusal to declare the annulment of a judgment convicting	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

				the applicant of theft *in absentia*	
Italy	05 Jan 2010	Bongiorno and Others (no. 4514/07) Imp. 3	Violation of Art. 6 § 1 (fairness)	Proceedings concerning the application of preventive measures (placement under police supervision, confiscation of properties) on the applicants' relative, suspected of belonging to a Mafia-type organisation, had not been held in public (See *Bocellari and Rizza v. Italy*)	Link
Italy	12 Jan 2010	Mole (no. 24421/03) Imp. 3	Violation of Art. 6 § 1 (fairness)	Domestic courts' refusal to examine the applicant's complaint lodged against a ministerial decree on the merits	Link
Lithuania	05 Jan 2010	Impar Ltd. (no. 13102/04) Imp. 3	Violation of Art. 6 § 1	Excessive length of tax litigation proceedings	Link
Lithuania	05 Jan 2010	Šulcas (no. 35624/04) Imp. 3	Violation of Art. 6 § 1 (length) Violation of Art. 13	Excessive length of criminal proceedings for fraud and forgery Lack of an effective remedy	Link
Luxembourg	05 Jan 2010	Aribaud (no. 41923/06) Imp. 2	No violation of Art. 5 § 1 (f)	Reasonable length of several periods of detention in the context of different sets of criminal proceedings	Link
Moldova	05 Jan 2010	Bucuria (no. 10758/05) Imp. 3	Violation of Art. 6 § 1 (fairness) No violation of Art. 1 of Prot. 1	Domestic courts' failure to summon the applicant company to a hearing in proceedings brought against it No evidence to conclude that a different outcome would have occurred in the proceedings had the Supreme Court of Justice heard the applicant company	Link
Moldova	05 Jan 2010	Railean (no. 23401/04) Imp. 3	Violation of Art. 2 (procedural)	Domestic authorities' failure to carry out an effective investigation into the applicant's son's death, killed in a hit and run accident	Link
Poland	05 Jan 2010	Kulik (no. 40909/08) Imp. 3	Violation of Art. 6 § 1	Excessive length of criminal proceedings	Link
Poland	05 Jan 2010	Wrona (no. 23119/05) Imp. 3	Violation of Art. 6 §§ 1 and 3	Infringement of the principle of equality of arms on account of the applicant's inability to take notes of the case file	Link
Poland	12 Jan 2010	Bąkowska (no. 33539/02) Imp. 2	No violation of Art. 6 § 1	No infringement of the right of access to a court on account of the applicant's failure to lodge a cassation appeal in good time	Link
Poland	12 Jan 2010	Biśta (no. 22807/07) Imp. 3	Violation of Art. 5 § 3	Excessive length of pre-trial detention on suspicion of revealing State secrets and bribery	Link
Poland	12 Jan 2010	Gęśla (no. 15915/07) Imp. 3	Violation of Art. 6 § 1 (length)	Excessive length of criminal proceedings on suspicion of drug dealing and making threats	Link
Romania	12 Jan 2010	Boloş (no. 33078/03) Imp. 2	Violations of Art. 5 § 4	Extension of the applicant's pre-trial detention in hearings held *in absentia* Supreme Court of Justice's refusal to examine the applicant's appeal against his detention	Link
Romania	12 Jan 2010	Gottfried Schwarz and Martin Schwarz (no. 39740/03) Imp. 3	Violation of Art. 6 § 1 (fairness) Violation of Art. 1 of Prot. 1	Unfairness of the proceedings instituted by the applicants in 2001 for the recovery of property confiscated by the State	Link
Russia	14 Jan 2010	Shugayev (no. 11020/03) Imp. 3	Violation of Art. 6 §§ 1 and 3 (c) (fairness) Violation of Art. 34	Failure to provide the applicant with legal assistance Domestic authorities' failure to deliver the Court's correspondence to the applicant	Link
Russia	14	Mastepan (no.	No violation of Art. 8	Interference with the applicant's	Link

	Jan 2010	3708/03) Imp. 2		right to respect for his home, proportionate to the legitimate aim pursued on suspicion of counterfeiting	
Slovakia	05 Jan 2010	Lexa (no. 2) (no. 34761/03) Imp. 2	No violation of Art. 5 § 1 Violation of Art. 5 § 4	The applicant's detention on remand was due to reasonable suspicion Unfairness of the proceedings concerning the review of the lawfulness of the applicant's detention	Link
"the Former Yugoslav Republic of Macedonia"	07 Jan 2010	Jovanoski (no. 31731/03) Imp. 3	Violation of Art. 6 § 1 (fairness)	Non-enforcement of a claim against a Croatian company for payment of a debt	Link
Turkey	05 Jan 2010	Kaya (no. 28069/07) Imp. 3 Garip Özer and Others (nos. 9603/07, 9894/07 and 16474/07) Imp. 3 Sevim and Others (nos. 7540/07, 7859/07 and 11979/07) Imp. 3	(1st and 2nd case) Violation of Art. 5 § 3 (3rd case) Violation of Art. 5 §§ 3 and 4 (2nd and 3rd case) Violation of Art. 6 § 1 (length) (3rd case) Violation of Art. 13	Length of detention, lack of an effective remedy to challenge the detention, length of criminal proceedings and lack of an effective remedy	Link Link Link
Turkey	05 Jan 2010	Karataş (no. 63315/00) Imp. 3	Violation of Art. 6 § 1 in conjunction with Art. 6 § 3 (c) (fairness)	The applicant's inability to consult his lawyer at the initial stages of the criminal proceedings	Link
Turkey	05 Jan 2010	Aydın (no. 33735/02) Imp. 3	Violations of Art. 6 § 1 (length and fairness) Violation of Art. 6 §§ 1 and 3 (c) (fairness)	Excessive length of proceedings, unfairness of proceedings on account of the failure to provide the applicant with a copy of the written opinion of the Chief Prosecutor and of the deprivation of the right to a lawyer during the preliminary investigation	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**
Bulgaria	07 Jan. 2010	Bachvarovi (no. 24186/04) link	Violation of Art. 1 of Prot.1	Deprivation of property without adequate compensation
Bulgaria	07 Jan. 2010	(1st applicant) Georgievi (no. 10913/04) link	Idem.	Idem.
Bulgaria	07 Jan. 2010	(1st and 2nd applicant) Kayriakovi (no. 30945/04) link	Idem.	Idem.

Bulgaria	07 Jan. 2010	Parvanov and Others (no. 74787/01) link	Idem.	Idem.
Bulgaria	07 Jan. 2010	Basarba OOD (no. 77660/01) link	Violation of Art. 6 § 1 Violation of Art. 1 of Prot.1	Deprivation of property as a result of the non-enforcement of final judicial decisions in the applicant company's favour
Bulgaria	07 Jan. 2010	Popov (no. 69855/01) link	Two violations of Art. 1 of Prot. 1	Deprivation of property as a result of the delay in awarding compensation for collectivised agricultural land
Romania	12 Jan. 2010	Chelu (no. 40274/04) link	Violation of Art. 6 § 1	Non-enforcement of a judgment in the applicant's favour
Romania	12 Jan. 2010	Georgescu and Georgescu (nos. 30995/03 and 31003/03) link	Violation of Art. 1 of Prot.1	State's failure to ensure the applicants' right to peaceful enjoyment of properties on account of the existence of two titles of property on the same land
Romania	12 Jan. 2010	Ioan (no. 31005/03) link	Just satisfaction	Just satisfaction concerning an action to recover property, the Court found a violation in its judgment of 1 July 2008
Romania	12 Jan. 2010	Popescu (no. 9684/04) link	Violation of Art. 1 of Prot.1	The applicant's inability to recover possession of property that had been nationalised and subsequently sold by the State without compensation
Romania	12 Jan. 2010	Seceleanu and Others (no. 2915/02) link	Violation of Art. 1 of Prot.1	Deprivation of the applicants' possessions and total lack of compensation
Romania	12 Jan. 2010	Ştefănescu (no. 35018/03) link	Violation of Art. 6 § 1 Violation of Art. 1 of Prot. 1	Non-enforcement of a judgment in the applicant's favour
Russia	14 Jan. 2010	Kazakevich and nine other "army pensioners" cases (nos. 14290/03, 19089/04 etc.) link	Violation of Art. 6 § 1 Violation of Art. 1 of Prot.1	Quashing of binding and enforceable judgments in the applicants' favour by way of supervisory review (all applicants) Prolonged non-enforcement of judgments in the applicants' favour (Mr Kazakevich, Mr Osipov and Mr Zamakhayev)
Turkey	12 Jan. 2010	Güçlü (no. 44307/04) link	Violation of Art. 6 § 1	Unfairness of proceedings on account of the lack of a public hearing in proceedings brought against the applicant
Turkey	12 Jan. 2010	Kaya and Others (no. 21313/05) link	Violation of Art. 1 of Prot.1	Deprivation of plot of land, designated as forest area, without compensation

4. Length of proceedings cases

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

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

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

State	Date	Case Title	Link to the judgment
Bulgaria	07 Jan. 2010	Ivanovi (no. 14226/04)	Link
Bulgaria	14 Jan. 2010	Pavlova (no. 39855/03)	Link
Germany	07 Jan. 2010	Von Koester (No. 1) (no. 40009/04)	Link
Greece	07 Jan. 2010	Gargasoulas (no. 51500/07)	Link

Greece	07 Jan. 2010	Pikoula and Others (no. 1545/08)	Link
Greece	07 Jan. 2010	Karokis (no. 17461/08)	Link
Greece	07 Jan. 2010	Mageiras no. 9893/08)	Link
Greece	14 Jan. 2010	Tsasnik and Kaonis (no. 3142/08)	Link
Poland	05 Jan. 2010	Cudowscy (no. 34591/04)	Link
Poland	05 Jan. 2010	Śliwiński (no. 40063/06)	Link
Poland	12 Jan. 2010	Paliga (no. 7975/07)	Link
Turkey	12 Jan. 2010	Doğru Avşar (no. 14310/05)	Link
Turkey	05 Jan. 2010	Mustafa Gürbüs (no. 6016/04)	Link
Turkey	05 Jan. 2010	Yardımcı (no. 25266/05)	Link

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

Those decisions are published with a slight delay of two to three weeks on the Court's Website. Therefore the decisions listed below cover **the period from 30 November to 24 December 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	01 Dec 2009	Jakupi (no 11186/03) link	Alleged violation of Art. 6 § 1 (unfairness of proceedings, lack of sufficient reasoning of the decisions on appeal), Art. 1 of Prot. 1 (loss of the equipment from the applicant's café-bar)	Partly inadmissible for no respect of the six-month requirement (concerning Art. 1 of Prot. 1), partly inadmissible as manifestly ill-founded (the applicant failed to raise one of the points of law provided for in the relevant domestic provision concerning Art. 6 § 1)
Bulgaria	01 Dec 2009	Yordanov (no 37596/04) link	Alleged violation of Art. 6 § 1 (excessive length and unfairness of proceedings)	Partly struck out of the list (unilateral declaration of the Government concerning the length of proceedings), partly inadmissible as manifestly ill-founded for no violation of the rights and freedoms protected by the Convention (concerning the remainder of the application)
Bulgaria	01 Dec 2009	Jeleva and Others (no 274/04) link	Alleged violation of Art. 6 § 1 (excessive length of proceedings)	Struck out of the list (unilateral declaration of the Government)
Bulgaria	12 Dec 2009	Slavcheva (no 26907/09) link	Alleged violation of Art. 1 of Prot. 1 (domestic courts' dismissal of the applicant's *rei vindication* action)	Inadmissible for non-exhaustion of domestic remedies
Bulgaria	08 Dec 2009	TPK Mebel (no 22263/05) link	Alleged violation of Art. 6 § 1 and Art. 1 of Prot. 1 (excessive length of civil proceedings)	Struck out of the list (applicant company no longer wished to pursue its application)
Bulgaria	08 Dec 2009	Sabinov (no 34692/05) link	Not available	Struck out of the list
Bulgaria	08 Dec 2009	Manolov (no 23810/05) link	Alleged violation of Art. 3 (conditions of detention in Bobov Dol Prison, in the investigation detention facilities in Kjustendil and Sofia and in Pazardzhik Prison, lack of adequate and timely medical care), Art. 5 § 3 (failure to bring the applicant promptly before a judge after arrest), Art. 6 § 1 (unfairness of criminal proceedings) and Art. 3 (inhuman treatment due to the ongoing detention under a sentence	Partly adjourned (concerning the conditions of detention in Bobov Dol Prison and the sentence to 'life imprisonment without commutation'), partly inadmissible as manifestly ill-founded for no violation of the rights and freedoms protected by the Convention (concerning the remainder of the application)

			of 'life imprisonment without commutation')	
Bulgaria	08 Dec 2009	Anna Todorova (no 23302/03) link	Alleged violation of Art. 2 (lack of an effective investigation into the applicant's son's death) and Art. 6 § 1 (length of proceedings)	Admissible
Bulgaria	01 Dec 2009	Kancheva (no 43009/04) link	Alleged violation of Art. 6 § 1 (length of criminal proceedings)	Struck out of the list (unilateral declaration of the Government)
Bulgaria	01 Dec 2009	Velikin and Others (no 28936/03) link	Alleged violation of Art. 1 of Prot. 1 (refusal to restore the applicants' property rights on plot of land, and lack of any compensation), Art. 14 (different treatment between the same cases) and Art. 6 § 1 (length of proceedings and insufficient reasoning of the courts' decisions)	Partly incompatible *ratione materiae* (concerning Art. 1 of Prot. 1 and Art. 14), partly admissible (concerning the length of proceedings), partly inadmissible as manifestly ill-founded (concerning the remainder of the application)
Bulgaria	01 Dec 2009	Ivanova and Others (no 66467/01) link	Alleged violation of Art. 1 of Prot. 1 (refusal to restore the applicants' property rights on plot of land)	Incompatible *ratione materiae*
Bulgaria	08 Dec 2009	Mihalev (no 18738/05) link	Alleged violation of Art. 1 of Prot. 1 and Art. 13 (deprivation of property due to the former owner's debts)	Struck out of the list (the applicant no longer wished to pursue his application)
Croatia	10 Dec 2009	Skoko (no 56211/07) link	Not available	Struck out of the list
Croatia	10 Dec 2009	Bogunovic (no 29707/08) link	Idem.	Idem.
Finland	01 Dec 2009	Lindholm and Venäläinen (no 5795/08) link	Alleged violation of Art. 6 § 1 (excessive length of proceedings)	Struck out of the list (unilateral declaration of the Government)
France	15 Dec 2009	Tardieu De Maleissye and Others (no 51854/07) link	Alleged violation of Art. 1 of Prot. 1 and Art. 14 (unlawful taxation of trust and different treatment in the payment of taxes)	Inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention)
Germany	08 Dec 2009	Grimm (no 38961/07) link	Alleged violation of Art. 6 § 1 (excessive length of divorce proceedings)	Inadmissible as manifestly ill-founded (reasonable length of proceedings)
Germany	08 Dec 2009	Dzankovic (no 6190/09) link	Alleged violation of Art. 6 §§ 1 and 3 (refusal of the applicant's request to appoint the defence counsel of his choice in preliminary investigation proceedings)	Inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention)
Germany	08 Dec 2009	Herma (no 54193/07) link	Alleged violation of Art. 6 § 1 (domestic courts' failure to grant the applicants legal aid)	Inadmissible as manifestly ill-founded (the refusal to grant the applicants legal aid did not amount to a disproportionate interference with their right of access to a court)
Greece	12 Dec 2009	Paschali and Others (no 25265/08) link	Not available	Struck out of the list
Greece	10 Dec 2009	Emexizova and Others (no 27138/08) link	Idem.	Idem.
Greece	10 Dec 2009	Lazikidou (no 23414/08) link	Idem.	Idem.
Italy	01 Dec 2009	Dell'anna (no 16702/04) link	Alleged violation of Art. 3 (inhuman and degrading treatment on account of the applicant's submission to the *41bis* special regime in prison), Art. 8 (interference with the right to family visits and the applicant's right to respect for correspondence), Art.	Inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention and for lack of evidence to establish a violation of the rights and freedoms protected by the Convention)

			6 § 1 and 13 (lack of an effective remedy to challenge the special regime), Art. 6 § 3 c) (the applicant's inability to defend himself before the courts) and Art. 2 of Prot. 1 (the applicant's inability to follow foreign language and computer courses due to the special regime)	
Italy	01 Dec 2009	Izzo and 3 Others (no 7392/05) link	Application concerning Articles 6 § 1 and Art. 1 of Prot. 1 (inadequate compensation)	Struck out of the list (the applicants no longer wished to pursue their application)
Italy	08 Dec 2009	Previti (no 45291/06) link	Alleged violation of Art. 6 (unfairness of proceedings), Art. 7 and Art. 14 (retroactivity of law in the case), Art. 8 (interception of telephone conversation) and Art. 2 of Prot. 7 (deprivation of the right to appeal)	Inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention)
Lithuania	01 Dec 2009	Rinkūnienė (no 55779/08) link	Alleged violation of Art. 6 § 1 (lack of an effective investigation on account of domestic courts' refusal to order a supplementary medical expert examination concerning the death of the applicant's husband)	Idem.
Luxembourg	10 Dec 2009	Montabone (no 16881/07; 41581/07) link	Alleged violation of Art. 6 (unfairness of proceedings)	Inadmissble for non-exhaustion of domestic remedies
Moldova	01 Dec 2009	Turchin (no 32808/07) link	Alleged violation of Art. 6 § 1 and Art. 1 of Prot. 1 (failure to enforce a final judgment in the applicant's favour)	Inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention)
Moldova	01 Dec 2009	Netanyahu (no 23270/09) link	Alleged violation of Art. 3 (lack of medical treatment in detention), Art. 5 § 2 (failure to inform the applicant of the reasons for his arrest) and Art. 5 § 3 (extention of detention without sufficient reasoning)	Struck out of the list (friendly settlement reached)
Moldova	01 Dec 2009	Helsinki Committee For Human Rights Moldova (no 67300/01) link	Alleged violation of Art. 8 (interception of telephone conversation and lack of sufficient safeguards against abusive interception of telephone communications in Moldovan legislation)	Struck out of the list (unilateral declaration of the Government)
Poland	30 Nov. 2009	Drogosz (no 49246/08) link	Alleged violation of Art. 6 § 1 (excessive length of proceedings)	Struck out of the list (friendly settlement reached)
Poland	30 Nov. 2009	Kowalczyk (no 11235/08) link	Alleged violation of Art. 5 § 3 (unreasonable length of pre-trial detention and unfairness of proceedings)	Idem.
Poland	01 Dec 2009	Łukasik-Kowalska (no 41298/07) link	Alleged violation of Art. 6 § 1 (length of proceedings)	Struck out of the list (unilateral declaration of the Government)
Poland	01 Dec 2009	Sarkisjan (no 50289/07) link	Alleged violations not listed	Struck out of the list (friendly settlement reached)
Poland	01 Dec 2009	Wachowicz (no 11262/08) link	Alleged violation of Art. 5 § 3 (excessive length of pre-trial detention)	Struck out of the list (unilateral declaration of the Government)
Poland	01 Dec 2009	Gorzkowska (no 6442/09) link	Alleged violation of Art. 6 § 1 (length of civil proceedings)	Struck out of the list (friendly settlement reached)
Poland	01 Dec 2009	Motyl (no 22803/08) link	Alleged violation of Art. 6 § 1 (excessive length of criminal proceedings)	Idem.
Poland	08 Dec	Pyzel and Others (no	Alleged violation of Art. 6 § 1 (non-enforcement of a judgment in the	Partly inadmissible for non respect of the six-month requirement

	2009	29460/04) link	applicants' favour, unfairness and length of proceedings) and Art. 1 of Prot. 1 (deprivation of any possibility to develop the property, *de facto* expropriation)	(concerning Art. 1 of Prot. 1), partly inadmissible as manifestly ill-founded (concerning the remainder of the application)
Poland	08 Dec 2009	Perlinski (no. 2) (no 2475/09) link	Not available	Struck out of the list. Article 37 § 1
Poland	08 Dec 2009	Zak (no 42753/05) link	Alleged violation of Art. 1 of Prot. 1	Inadmissible. No further details listed
Poland	08 Dec 2009	Dlugiewicz (no 33778/06) link	Alleged violation of Art. 5 § 3	Idem.
Poland	08 Dec 2009	Janusz (no 627/09) link	Not available	Struck out of the list. Article 37 § 1
Poland	15 Dec 2009	Ostrowski (no 27224/09) link	Alleged violation of Art. 6 of the ECHR and Art. 56 of the Polish Family and Custody Code (unfairness of proceedings and violation of the principle of equality of arms), Art. 8 (the applicant, prohibited to establish a new family) and Art. 14 in conjunction with Art. 8 (discrimination on grounds of age)	Partly inadmissible for non-exhaustion of domestic remedies (concerning the breach of the principle of equality of arms, partly adjourned (concerning the complaint under Art. 8 and 14), partly inadmissible as manifestly ill-founded for failure to substantiate the complaint (concerning the remainder of the application)
Poland	01 Dec 2009	Szustak (no 11699/07) link	Alleged violation of Art. 5 § 3 (length of pre-trial detention)	Struck out of the list (unilateral declaration of the Government)
Poland	01 Dec 2009	Rusiecki (no 36650/07) link	Alleged violation of Art. 5 § 3 (length of pre-trial detention), Art. 6 § 1 (unfairness of proceedings), Art. 13 (lack of an effective remedy)	Partly struck out of the list (unilateral declaration of the Government concerning the length of the pre-trial detention), partly inadmissible as manifestly ill-founded (concerning the remainder of the application)
Poland	01 Dec 2009	Piotrkowicz (no 6304/07) link	Alleged violations not listed	Struck out of the list (friendly settlement reached)
Poland	01 Dec 2009	Raunmiagi (no 39567/04) link	The application concerned the applicant's conditions of detention and lack of medical care in detention	Idem.
Poland	08 Dec 2009	Bobinet (no 13348/07) link	Alleged violations of Article 5 §§1 and 3 and Art. 8	Inadmissible. No further details listed
Poland	08 Dec 2009	Wojda (no 20424/07) link	Not available	Struck out of the list. Article 37 § 1
Romania and Germany	01 Dec 2009	Huc (no 7269/05) link	Romania and Germany: Alleged violation of Art. 6 § 1 and Art. 1 of Prot. 1 (inability to obtain total payment of alimony) Romania: Alleged violation of Art. 6 § 1 (unfairness of proceedings) and Art. 2 (insufficient income)	Inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention)
Romania	08 Dec 2009	Tocoian (no 15946/05) link	Alleged violations of Art. 6 and Art. 1 of Prot. 1	Inadmissible. No further details listed
Romania	15 Dec 2009	Reiz (no 45047/07) link	Non-enforcement of a judgment in the applicant's favour	Struck out of the list (applicant no longer wished to pursue her application)
Russia	03 Dec 2009	Shamsayeva (no 30396/09) link	Alleged violation of Art. 5 (unlawful detention of the applicant's son) and Art. 13 (lack of an effective remedy)	Struck out of the list (applicant no longer wished to pursue her application on account of the applicant's son objection to having the application examined)
Russia	03 Dec	Skugar and Others (no	Alleged violation of Art. 9 (State authorities' method of organisation	Inadmissible as manifestly ill-founded (no violation of the rights

	2009	40010/04) link	of taxation database involving the use of taxpayers' individual identification numbers)	and freedoms protected by the Convention)
Russia	03 Dec 2009	Kogol (no 9539/05) link	Alleged violation of Art. 1 of Prot. 1 and Art. 13 (quashing of a judgment in the applicant's favour by way of supervisory review)	Struck out of the list (the applicant no longer wished to pursue his application)
Russia	03 Dec 2009	Pirogova (no 19963/05) link	Alleged violation of Art. 6 and Art. 1 of Prot. 1 (quashing of a judgment in the applicant's favour by way of supervisory review)	Struck out of the list (the applicant no longer wished to pursue her application)
Russia	08 Dec 2009	Suchkov (no 24371/02) link	Alleged violation of Art. 6 and Art. 13 (non-enforcement of a judgment in the applicant's favour on account of bailiff's conduct)	Inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention)
Russia	08 Dec 2009	Rapoport (no 18813/03) link	Alleged violation of Art. 6 (lack of impartiality of the tribunal and unfairness of proceedings)	Struck out of the list (applicant no longer wished to pursue his application)
Russia	03 Dec 2009	Repina (no 34030/05) link	Alleged violation of Articles 1 and 13 and Art. 1 of Prot. 1 (non-enforcement of a judgment in the applicant's favour)	Struck out of the list (friendly settlement reached)
Russia	15 Dec 2009	Samodurov and Vasilovskaya (no 3007/06) link	Alleged violation of Art. 6 §§ 1 and 3 (a) and (b) (unfairness of proceedings), Art. 7 (retrospective effect of a provision of the Criminal Code) and Art. 10 (infringement of the right to freedom of artistic expression)	Partly adjourned (concerning the complaint under Art. 10), partly inadmissible as manifestly ill-founded for no violation of the rights and freedoms protected by the Convention (concerning the remainder of the application)
Russia	03 Dec 2009	Sorochinskiy (no 7166/05) link	Alleged violation of Art. 6 and Art. 14 (annulment of a judgment in the applicant's favour, length of proceedings) and Art. 14	Struck out of the list (applicant no longer wished to pursue his application)
Russia	03 Dec 2009	Sherstobitov (no 23267/04) link	Alleged violation of Art. 1 of Prot. 1 (delayed execution of a judgment in the applicant's favour)	Struck out of the list (friendly settlement reached)
Slovakia	01 Dec 2009	Antalová and Antal (no 9177/07) link	Alleged violation of Art. 6 § 1 (excessive length of civil proceedings)	Struck out of the list (friendly settlement reached)
Spain	01 Dec 2009	Keita and Others (no 38393/05) link	Alleged violation of Art. 1 and Art. 3 (ill-treatment by Moroccan authorities following the applicants' removal from Spain)	Struck out of the list (applicants no longer wished to pursue their application)
Sweden	08 Dec 2009	Nduwayezu (no 15009/09) link	Alleged violation of Art. 2 and Art. 3 (risk of being killed or subjected to ill-treatment if expelled to Burundi, ill-treatment by Swedish police) and Art. 6 (unfairness of proceedings)	Partly inadmissible for no violation of the rights and freedoms protected by the Convention (concerning complaints under Art. 2 and Art. 3), partly incompatible *ratione materiae* (concerning the ill-treatment by the Swedish police)
the Czech Republic	08 Dec 2009	Lávková (no 28772/04) link	The complaint concerned the length of alimony proceedings and the partial non-execution of a judgment in the applicant's favour	Struck out of the list (applicant no longer wished to pursue her application)
"the Former Yugoslav Republic of Macedonia"	08 Dec 2009	Gosevski and Fidanovski (no 22011/07) link	The complaint concerned the length and outcome of civil proceedings in which the applicants claimed damages for unlawful dismissal, the lack of impartiality of the judges and the lack of an effective remedy	Struck out of the list (friendly settlement reached)
"the Former Yugoslav Republic of Macedonia"	08 Dec 2009	Tanevski (no 4906/07) link	The complaint concerned the length of civil proceedings concerning compensation and unlawful enrichment	Idem.
"the Former Yugoslav Republic of Macedonia"	08 Dec 2009	Konukovi (no 31061/06) link	The complaint concerned the length of civil proceedings concerning compensation	Idem.
the United	01	Neale (no	Alleged violation of Art. 6 and Art. 8	Idem.

Kingdom	Dec 2009	52771/08) link	(unlawful interception of telecommunications and ineffective regulation and independent oversight of the interception of communications on the Isle of Man) and Art. 13 (lack of an effective remedy)	
the United Kingdom	08 Dec 2009	B. and Others (no 20721/05) link	Alleged violation of Art. 5 and Art. 14 (the applicants' detention under section 23 of the Anti-Terrorism Crime and Security Act 2001)	Struck out of the list (friendly settlement reached between the Government and the second applicant, and first and third applicant can be considered as no longer wishing to pursue their applications)
the United Kingdom	08 Dec 2009	Khan Manwar (no 19641/07) link	Alleged violation of Art. 8 (deportation to Pakistan)	Inadmissible as manifestly ill-founded (proportionate interference with the applicant's family life for the maintenance of an effective system of immigration control)
the United Kingdom	01 Dec 2009	M. (no 16081/08) link	Alleged violation of Articles 3, 4 and 8 (as an alleged victim of trafficking, the applicant claimed that a real risk of being subjected to ill-treatment and forced sexual labor existed if expelled to Uganda)	Struck out of the list (friendly settlement reached: the applicant had been granted three years' leave to remain in the United Kingdom)
Turkey	01 Dec 2009	Orphanou and 48 other applications (no 43422/04; 4568/05 etc.) link	The applicants are all relatives of persons who have been missing since the Turkish military operations in northern Cyprus in July and August 1974 Alleged violation of Articles 1 to 3, 5 to 6, 8 to 14 and 17 and Article 1 of Prot. 1 (the events surrounding the disappearance of their relatives, the consequences of the disappearances and the fact that the fates of the missing persons were still unknown)	Inadmissible (no respect of the six month requirement)
Turkey	01 Dec 2009	Karefyllides and Others (no 45503/99) link	Alleged violation of Articles 2, 3, 4, 5, 8, 12 and 14 in connection with the disappearance of the first applicant in 1974 in Cyprus	Partly severed (concerning the lack of access to their home), partly inadmissible for non respect of the six-month requirement (concerning the remainder of the application)
Turkey	08 Dec 2009	Yapan (no 36459/06) link	Alleged violations of Articles 5, 6 §§ 1 and 2, 13, and Art. 1 of Prot. 1	Partly inadmissible. No further details listed.
Turkey	15 Dec 2009	Belice and Others (no 1372/03) link	Alleged violation of Art. 1 of Prot. 1 (non-payment of initial expropriation compensation and insufficiency of the additional expropriation compensation awarded by domestic courts)	Partly adjourned (concerning the non-payment of the initial expropriation compensation), partly inadmissible for non respect of the six-month requirement (concerning the additional compensation), partly inadmissible as manifestly ill-founded (concerning the remainder of the application)
Turkey	01 Dec 2009	Miçooğulları and Others (no 5008/04) link	Alleged violation of Art. 1 of Prot.1 (annulment of title of property without any compensation)	Struck out of the list (applicants no longer wished to pursue their application)
Turkey	01 Dec 2009	Sedef (no 15840/04; 15883/04) link	Not available	Struck out of the list. Article 37 § 1
Turkey	08 Dec 2009	Sinmaz (no 19593/06) link	Idem.	Idem.
Turkey	08 Dec	Başer and Others (no	Alleged violation of Art. 1 of Prot.1, Art. 17 and Art. 18 (non-	Partly struck out of the list (applicant no longer wished to

	2009	32024/06) link	enforcement of a judgment in the applicants' favour)	pursue his application concerning the case of Acihan), partly adjourned (concerning other applicants)
Turkey	15 Dec 2009	Çetinkaya (no 18930/03) link	The applicant complained about the delayed non-enforcement of a judgment in his favour	Struck out of the list (applicant no longer wished to pursue his application)

C. The communicated cases

No communicated cases were published during the observation period.

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

Ratification of Protocol No. 14 to the Convention (15.01.2010)

The State Duma of the Russian Federation has voted in favour of the draft law ratifying Protocol No. 14 to the European Convention on Human Rights. The vote clears the way once and for all for the Protocol, already ratified by the other 46 States Parties, to enter into force. The President of the European Court of Human Rights, Jean-Paul Costa, welcomed the decision and expressed satisfaction that Protocol No. 14 would be able to take effect in respect of all States. Press Release, Read the Protocole no. 14

Part II : The execution of the judgments of the Court

A. New information

The Council of Europe's Committee of Ministers will hold its next "human rights" meeting from 2 to 4 March 2010 (the 1078th meeting of the Ministers' deputies).

B. General and consolidated information

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

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

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

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

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

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

A. European Social Charter (ESC)

Hearing on the European Social Charter held at the Council of States in Bern (14.01.2010)

At its session of 11 January 2009, the Foreign Affairs Committee of the Council of States held a hearing on the European Social Charter. On this occasion, Mr Régis BRILLAT, Head of the Department of the European Social Charter, was invited to present the Revised Charter.

Presentation of Mr Brillat (French only)

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)

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C. European Commission against Racism and Intolerance (ECRI)

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

Moldova: publication of the third cycle opinion (08.01.2010)

The 3rd Advisory Committee Opinion on Moldova, adopted on 26 June 2009, was made public on 11 December 2009, together with the comments of the Moldovan Government. Since the ratification of the Framework Convention, Moldova has pursued its efforts to develop a system of protection of minority rights and implement existing legislation in this regard. The following points have been highlighted as requiring prompt action from the authorities: adopt as a matter of priority a comprehensive anti-discrimination legislation; carry out, on a regular basis, monitoring of discrimination, as well as of racially-motivated or anti-semitic acts; take more resolute measures to combat all forms of intolerance, including in the media and in political life, and promote mutual respect and understanding; effectively investigate and sanction all forms of misbehaviour by the police; take more resolute measures to ensure that the implementation of the Action Plan for Roma results in substantial and lasting improvement in the situation of the Roma in all areas, including by allocating adequate resources to its implementation; take steps to promote a better representation of the Roma at all levels.

The Committee of Ministers will now prepare and adopt a resolution containing conclusions and recommendations, highlighting positive developments but also a number of areas where further measures are needed to advance the implementation of the FCNM in Moldova.

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

Italy: receipt of the third cycle State Report (08.01.2010)

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

E. Group of States against Corruption (GRECO)

Liechtenstein joins the Group of States against Corruption (12.01.2010)

On 1 January 2010, Liechtenstein became a member of GRECO. On 17 November 2009 Liechtenstein signed the Criminal Law Convention on Corruption, although it has not ratified it yet.

By joining on an equal footing the other 46 GRECO members Liechtenstein has accepted to actively commit itself to fighting corruption. An evaluation team will soon carry out an on-site visit to Liechtenstein to examine issues related notably to the capability of institutions to deal with corruption cases, preventive measures taken within the public administration and mechanisms in place to target the proceeds of corruption. This is a "catch-up" evaluation since all the other members have already been evaluated in those areas since the creation of GRECO in 1999.

Next year, GRECO will produce a report summing up the findings and containing possible recommendations for improvement. A further evaluation visit will be organised at a later stage, in the framework of GRECO's current working areas, which will deal with incriminations of corruption and transparency of party funding.

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

Mutual evaluation report on Armenia public (11.01.2010)

The 3rd round evaluation report on Armenia, as adopted at MONEYVAL's 30th Plenary meeting (21-24 September 2009), is now available for consultation. The report was prepared by the International Monetary Fund under co-operation agreements between IMF and MONEYVAL. MONEYVAL was additionally responsible for evaluation of compliance with the European Union directives, which are part of MONEYVAL's specific mandate.
Executive Summary
Mutual evaluation report
Report on compliance with the EU directives

MONEYVAL's 32nd Plenary meeting will take place in Strasbourg on 15-19 March 2010.

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

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

Part IV: The inter-governmental work

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

5 January 2010
Hungary ratified the Council of Europe Convention on Access to Official Documents (CETS No. 205).

B. Recommendations and Resolutions adopted by the Committee of Ministers

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C. Other news of the Committee of Ministers

Approval of Protocol No. 14 by Russia - Statement by Micheline Calmy-Rey and Lluís Maria de Puig (15.01.2010)

"We welcome the approval, for ratification, of Protocol No. 14 to the European Convention on Human Rights by the Russian State Duma. The improvements made by the Protocol to the supervisory mechanism of the Convention will further enhance the protection of the fundamental rights of all individuals within the jurisdiction of the 47 Council of Europe member States" declared the Chairperson of the Committee of Ministers and the President of the Assembly.

Micheline Calmy-Rey visits Slovenia, Georgia and Russia (12.01.2010)

Federal Councillor and head of the Federal Department of Foreign Affairs Micheline Calmy-Rey travelled to Ljubljana on 15 January for a bilateral meeting with the Slovenian Foreign Minister Samuel Zbogar. On 16 and 17 January she held talks in Tbilisi in her capacity as president of the Committee of Ministers of the Council of Europe. She also held a working meeting with the Russian Foreign Minister Sergei Lavrov in Moscow.

Micheline Calmy-Rey in Tbilisi for discussions (17.01.2010)

Federal Councillor Micheline Calmy-Rey, Chair of the Committee of Ministers, was in Georgia on 16 and 17 January for discussions with representatives of the authorities, political parties and civil society. Her main purpose was to obtain first-hand information about the progress of reforms and the consequences of the August 2008 conflict.

Meeting of the Ministers' Deputies (14.01.2010)

On 13 January, the Committee of Ministers adopted a Declaration on measures to promote the respect of Article 10 of the European Convention on Human Rights, recalling that freedom of expression and information, including freedom of the media, are indispensable for genuine democracy and democratic processes.
Declaration

Post-2010 biodiversity vision and target (16.01.2010)

In the framework of the Swiss Presidency of the Committee of Ministers of the Council of Europe and the Spanish Presidency of the European Union, a Conference "Post-2010 Biodiversity Vision and Target: the role of protected areas and ecological networks in Europe" took place in Madrid from 26 to 27 January.
Conference website

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

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

The Council of Europe welcomes approval, for ratification, by the Russian State Duma of Protocol No. 14 to the European Convention on Human Rights (15.01.2010)

Statement by Micheline Calmy-Rey, Chairperson of the Committee of Ministers and Lluís Maria de Puig, President of the Parliamentary Assembly: "We welcome the approval, for ratification, of Protocol No. 14 to the European Convention on Human Rights by the Russian State Duma. This decision clears the way for its entry into force. The improvements made by the Protocol to the supervisory mechanism of the Convention will further enhance the protection of the fundamental rights of all individuals within the jurisdiction of the 47 Council of Europe member states. Protocol No. 14 also enables the European Union to accede to the Convention, following the entry into force of the Lisbon Treaty, thus enlarging the scope of this essential instrument."

Azerbaijan: PACE rapporteurs welcome pardoning decree (05.01.2010)

Andres Herkel (Estonia, EPP/CD) and Joseph Debono Grech (Malta, SOC), co-rapporteurs for the monitoring of Azerbaijan, and Christoph Strässer (Germany, SOC), rapporteur on the follow-up to the issue of political prisoners in Azerbaijan by the PACE, welcomed on 5 January the decision by Azerbaijan President Ilham Aliyev on 25 December 2009 to pardon 99 prisoners. Some of these prisoners are on the lists of alleged political prisoners of local human rights NGOs. The pardoning decree also includes opposition Bizim Yol newspaper correspondent Mushvig Huseynov, who has been mentioned in PACE reports. "The Assembly has stressed many times that there can be no political prisoners in Council of Europe member States," the rapporteurs said. They trust that Azerbaijan will further progress in fulfilling a key commitment taken when joining the Council of Europe.
The functioning of democratic institutions in Azerbaijan
The follow-up to the issue of political prisoners in Azerbaijan

PACE to observe the presidential election in Ukraine (08.01.2010)

A 39-member delegation of PACE, led by Mátyás Eörsi (Hungary, ALDE), was in Ukraine from 14 to 18 January to observe the presidential election, alongside observers from the OSCE and NATO Parliamentary Assemblies, the European Parliament and the OSCE's Office for Democratic Institutions and Human Rights (ODIHR).

The delegation met the leading candidates, election officials, civil society and media representatives before observing the ballot on 17 January in a sample of polling stations across the country.

A PACE pre-electoral delegation, visiting Kyiv from 24 to 26 November, noted an "overall free and competitive atmosphere", as well as improved freedom for the media, but expressed concern at the dwindling confidence of the electorate in politics and the interconnectedness of politics and finance. Ukraine's electoral legislation, while flawed, could still provide a functioning framework for the election but should be improved as soon as possible after it, the pre-electoral delegation said. The delegation was accompanied by a member of the Venice Commission, the Council of Europe's group of independent legal experts, which adopted – together with OSCE/ODIHR – an opinion on recent changes to the electoral framework in Ukraine.

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

Italy and Europe must learn lessons from the 'cauldron of racist violence, xenophobia and exploitation' in Rosarno (11.01.2010)

Italy and Europe must learn lessons from the "cauldron of racist violence, xenophobia and exploitation" that boiled over in the Italian town of Rosarno over the weekend, according to Corien Jonker (Netherlands, EPP/CD), Chair of the Migration Committee of PACE.

"The fire under the cauldron was lit by the drive-by shootings of migrants with air-guns," said Mrs Jonker. "The causes were cumulative, however, with exploitation of both regular and irregular migrants, involvement of criminal gangs and xenophobia, leading ultimately to the riots, injuries, death and the transfer of a large number of the migrants to reception centres away from Rosarno."

Mrs Jonker emphasised that Europe has a responsibility towards its migrants whether they are in a regular or irregular situation. "Irregular migrants have rights which include the right to human dignity, physical integrity as well as safety and freedom from racism and discrimination. They also share with us all the right not be exploited. States cannot put their heads in the sand and say 'these persons do not exist, or they should not be here'. These persons are here and while they are here in Europe, we all have a responsibility towards them." She also urged the authorities, in the aftermath of the riots, to take a humane approach to the migrants, who should not find themselves in the fire after the boiling cauldron. "Some of the migrants may face expulsion because of their irregular situation, some may have asylum claims, and some have humanitarian claims. The authorities need to take all these considerations into account in dealing with the aftermath of this unhappy episode."

The legacy of party closures in Turkey remains a source of concern, says PACE President (11.01.2010)

"The legacy of party closures in Turkey remains a source of concern," the President of PACE, Lluís Maria de Puig stressed, referring to the recent closure of the Democratic Society Party (DTP) following a decision of the Turkish Constitutional Court.

The President expressed the hope that this decision would not undermine the authorities' positive steps in favour of reconciliation. "We very much welcome and support these initiatives and encourage the government to pursue its activities in support of the democratic functioning of Turkey's institutions and the consolidation of its modernisation and reform process," he said. He encouraged all political actors in Turkey to pursue peaceful reconciliation and democratic modernization of the country.

Mr de Puig re-iterated PACE's call that the Turkish authorities speed up the preparation of amendments to the Constitution, as well as the review of the law on political parties, to bring these into line with the recommendations of the Council of Europe's Venice Commission and the case law of the Court. He concluded by stressing that PACE would closely monitor further developments in that respect.

Implementation of judgments of the European Court of Human Rights: PACE rapporteur to visit Greece (15.01.2010)

Christos Pourgourides (Cyprus, EPP/CD), rapporteur of the Committee on Legal Affairs and Human Rights of PACE, made a fact-finding visit to Athens on 18 and 19 January as part of the preparation of his report on the implementation of judgments of the European Court of Human Rights.

The judgments considered by Mr Pourgourides cover those not fully implemented more than five years after final delivery, or raising important implementation issues, particularly where they concern human rights violations of extreme gravity. Mr Pourgourides called on the representatives of the Greek authorities to co-ordinate more effectively the different state bodies responsible for the execution of the European Court's judgments. He also invited Greek parliamentarians to monitor the implementation of these judgments within the Parliament, and has been assured that they will do so.

During his visit, Mr Pourgourides met the President of the Supreme Court, the President of the Council of State, the Prosecutor General, the deputy Minister for Citizens' Protection and the Secretary General of the Ministry of Justice, as well as a number of other officials, to discuss in particular the problems of excessive length of judicial proceedings and abusive use of force by police officers.

This is the fourth in a series of visits aimed at applying parliamentary pressure on states where delays or difficulties in implementing the European Court's judgments have arisen. The rapporteur has previously undertaken visits to Bulgaria, Italy and Ukraine, and will later travel to Moldova, Romania, the Russian Federation and Turkey.
Progress report
Addendum to the progress report

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

A. Country work

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B. Thematic work

"Rape crimes must be prosecuted more effectively" says Commissioner Hammarberg (11.01.2010)

"Sexual assault of women is one of the most serious and widespread human rights problems of our time. More needs to be done both to prevent and punish such crimes", said Thomas Hammarberg, Council of Europe Commissioner for Human Rights, in his latest Viewpoint published today. The Commissioner stresses that though the legislation on sexual assault has improved considerably in European countries, the court proceedings are generally not sufficiently adapted to the seriousness of this crime and to its psychological impact upon the victims. He therefore recommends that protecting women from this threat be a political priority and that a fairer justice be granted to the cases brought to court.

Read the Viewpoint

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

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

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

Dr Silvia Casale, the European NPM Project Advisor, was appointed to the Order of St Michael and St George Companion for her services to the prevention of torture and prison reform, during her work as Chairperson of the Sub-Committee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), and President of the European Committee for the Prevention of Torture (CPT). The distinguished Order, one of the highest in the British honours system, is used to honour individuals who have rendered important services in relation to Commonwealth or foreign nations.