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LEGISLATIVE SUPPORT AND NATIONAL HUMAN RIGHTS STRUCTURES DIVISION

**National Human Rights Structures Unit**

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

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

("Peer-to-Peer II Project")

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

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

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## TABLE OF CONTENTS

## Introduction

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

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

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

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

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

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

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

## A. Judgments

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

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

Some judgments are only available in French.

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

**Note on the Importance Level**:

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

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

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

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

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

## Grand Chamber judgments

**Sanoma Uitgevers B.V. v. the Netherlands (link to the judgment in French) (no. 38224/03) (Importance 1) – 14 September 2010 – Violation of Article 10 – Lack of adequate legal safeguards available to the applicant company to enable an independent assessment as to whether the interest of a criminal investigation overrode the public interest in the protection of journalistic sources**

The applicant, Sanoma Uitgevers B.V., is a Dutch magazine publishing company. The case concerned photographs, to be used for an article on illegal car racing, which the company was compelled to hand over to police investigating another crime, despite the journalists strong objections to being forced to divulge material capable of identifying confidential sources.

The applicant company complained that they had been compelled to disclose information to the police that would have revealed their journalists' sources.

In its Chamber judgment in the case, on 31 March 2009, the Court found that, although in principle a compulsory handover of journalistic material might have a chilling effect on the exercise of journalistic freedom of expression, the Netherlands authorities were not prevented from balancing the conflicting interests involved in the case. The Chamber held, by four votes to three, that there had been no violation of Article 10. Like the Chamber, the Grand Chamber saw no reason to disbelieve Sanoma Uitgevers B.V.'s claim that its journalists had promised not to identify the people involved in the illegal car race. The compulsory order to surrender of journalistic material which contained information capable of identifying journalistic sources sufficed for the Court to find that the order constituted, in itself, an interference with the company's freedom to receive and impart information under Article 10 § 1. Unlike the Chamber, however, the Grand Chamber found the interference was not "prescribed by law". All agreed that the interference in question had a statutory basis. Discussion centred on the quality of the law, in particular on the procedural guarantees required. The Court noted that orders to disclose sources potentially had a detrimental impact, not only on the source, whose identity might be revealed, but also on the newspaper or publication against which the order was directed, whose reputation might be negatively affected in the eyes of future potential sources by the disclosure, and on members of the public, who had an interest in receiving information imparted through anonymous sources. The most important safeguard was the guarantee of review by a judge or other independent and impartial decision-making body. It should be carried out by a body separate from the executive and other interested parties, invested with the power to determine whether a requirement in the public interest overriding the principle of protection of journalistic sources existed prior to the handing over of such material and to prevent unnecessary access to information capable of disclosing the sources' identity if it did not. For urgent orders or requests, an independent review carried out at the very least prior to the access and use of obtained materials should be sufficient to determine whether any issue of confidentiality arose and to weigh up the various interests involved. Any independent review that only took place subsequent to the handing over of material capable of revealing such sources would undermine the very essence of the right to confidentiality. The judge or other independent and impartial body had therefore to be in a position to weigh the potential risks and respective interests prior to any disclosure and with reference to the material in question. The decision to be taken should be governed by clear criteria, including whether a less intrusive measure could suffice. It should be open to the judge or other authority to refuse to make a disclosure order or to make a limited or qualified order so as to protect sources from being revealed. In urgent cases, a procedure should exist to identify and isolate, prior to the exploitation of the material by the authorities, information that could lead to the identification of sources from information that carried no such risk. In the Netherlands, that decision was entrusted to the public prosecutor rather than an independent judge. In terms of procedure the public prosecutor was a "party", who could hardly be seen as objective and impartial. Neither was the Court satisfied that the involvement of the investigating judge in the case could be considered to provide an adequate safeguard; the investigating judge had only an advisory role and one without any legal basis - as the judge in the case himself admitted. Thus it was not open to him to issue, reject or allow a request for an order, or to qualify or limit such an order as appropriate. Such a situation was scarcely compatible with the rule of law. And, the Court added, it would have reached that conclusion on each of the two grounds mentioned, taken separately. Those failings were not rectified by the Regional Court, which was likewise powerless to prevent the public prosecutor and the police from examining the photographs in question, the moment they were in their possession. The quality of the law in question was deficient in that there was no procedure with adequate legal safeguards available to the applicant company to enable an independent assessment as to whether the interest of the criminal investigation overrode the public interest in the protection of journalistic sources. There had therefore been a violation of Article 10 in that the interference complained of was not "prescribed by law". Judge Myjer, who had been one of the majority of the Chamber which had found no violation, expressed a separate concurring opinion.

### ☒ Right to life

**Dink v. Turkey (nos. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09) (Importance 1) – 14 September 2010 – Two violations of Article 2 (positive obligation and procedural) – (i) Domestic authorities' failure to protect the life of journalist Firat (Hrant) Dink – (ii) Lack of an effective investigation – Violation of Article 10 – Domestic authorities' failure to protect a journalist's freedom of expression concerning an issue of public interest – Violation of Article 13 in conjunction with Article 2 – Lack of an effective remedy**

The applicants are 6 Turkish nationals: Frat (Hrant) Dink, killed on 19 January 2007, and his close relatives. Between 2003 and 2004 Mr Dink published eight articles in *Agos* in which he expressed his views on the identity of Turkish citizens of Armenian origin. In 2004 a nationalist extremist lodged a criminal complaint against Mr Dink, alleging that the latter had insulted Turkish people with his use of the phrase "the purified blood that will replace the blood poisoned by the 'Turk' can be found in the noble vein linking Armenians to Armenia". The Şişli public prosecutor's office instituted criminal proceedings against Mr Dink under an article of the Turkish Criminal Code which made it an offence to denigrate "Turkishness" (Türklük: Turkish identity). An expert report concluded that the remarks had not insulted or denigrated anyone, since what he had described as "poison" was not Turkish blood, but rather Armenians' obsession with securing recognition that the events of 1915 amounted to genocide. In 2005 the Şişli Criminal Court found Mr Dink guilty of denigrating Turkish identity and sentenced him to six months' imprisonment, suspended. The following proceedings were discontinued on account of the death of Mr Dink, killed by three bullets to the head on 19 January 2007. The suspected perpetrator was arrested. In April 2007 the Istanbul public prosecutor's office instituted criminal proceedings against 18 accused. The proceedings are still pending. In February 2007 an investigation was opened in order to ascertain whether the gendarmerie had been negligent or had failed in their duty to prevent the killing, given that an informant claimed to have warned two non-commissioned officers (NCOs) of the gendarmerie about the intended crime. The gendarmes denied having been informed about the preparations for the killing. The Trabzon police authorities had made no attempt to thwart these plans but had confined themselves to officially informing the Istanbul police of the likelihood of an assassination attempt. The Istanbul public prosecutor added that one of the Trabzon police chiefs had openly voiced extreme nationalist views and supported the accused. In 2008 the Trabzon prosecuting authorities decided to take no further action against the Trabzon police. The prosecuting authorities were persuaded that the Trabzon police had not judged the information received to be credible. The investigation by the Istanbul public prosecutor's office confirmed that in February 2006 the Trabzon police had officially informed the Istanbul police of the likelihood that Mr Dink would be assassinated and had identified the suspects. Following the conclusions of three investigations into this failure to act, the management board of the Istanbul provincial governor's office decided to bring criminal proceedings for negligence against certain members of the Istanbul police authorities. Finally, following a complaint by the applicants, a criminal investigation was opened concerning members of the Samsun police and gendarmerie on charges of defending the crime. While the suspected perpetrator was in police custody the persons concerned had had their photograph taken with the suspect, who was seen holding a Turkish flag: on the wall behind them were the words "Our country is sacred – its future cannot be left to chance". In the Samsun public prosecutor's office decided to discontinue the proceedings against the officers in question, taking the view that defending a crime was only an offence if it was done in public. However, disciplinary action was taken against the officers.

The applicants other than Mr Dink complained that the State had failed in its obligation to protect the life of Mr Dink; they alleged that the criminal proceedings brought against the State agents for failing to protect the journalist's life had been ineffective; they further alleged that the fact that Mr Dink had been found guilty of denigrating Turkish identity had infringed his freedom of expression and made him a target for nationalist extremists.

Article 2 (positive obligation)

The Court took the view that the Turkish security forces could reasonably be considered to have been aware of the intense hostility towards Mr Dink in nationalist circles. In view of the circumstances, the threat of an assassination could be said to have been real and imminent. The Court considered that none of the three authorities informed of the planned assassination and its imminent realisation had taken action to prevent it. Admittedly, as stressed by the Turkish Government, Mr Dink had not requested police protection. However, he could not possibly have known about the plan to assassinate him. It had been for the Turkish authorities, who were informed of the plan, to take action to safeguard Mr Dink's life. There had therefore been a violation of Article 2.

Article 2 (procedural)

The Court examined the criminal proceedings instituted following the careful and detailed investigation into the way in which the Trabzon and Istanbul security forces had managed the information received on the planned assassination. It noted that the provincial governor's office had refused to authorise criminal proceedings against the Trabzon gendarmerie officers, with the exception of two NCOs. No judicial ruling had been given on the reasons why the officers competent to take the appropriate steps following transmission of the information by the NCOs had failed to take action. In addition, the NCOs had been forced to give false statements to the investigators. This was a case of a manifest breach of the duty to take steps to gather evidence concerning the events in question and of concerted action to hamper the capacity of the investigation to establish who was responsible. The Court observed that the public prosecutor had taken the view that the police officers had not judged the information received on the planned assassination to be credible, whereas in fact they had informed the Istanbul police that an assassination attempt was imminent. The decision not to proceed with the charges against the chief of police had not been based on any investigation. Taken overall, the prosecuting authorities' investigation had amounted to little more than a defence of the police officers concerned, without providing any answers to the question of their failure to take action vis-à-vis the suspected assassins. With regard to the failures imputed to the Istanbul police, the Court noted that no criminal proceedings had been started against them either, despite the findings of the Interior Ministry investigators to the effect that the police authorities had not taken the measures which the situation required. No explanation had been provided as to why the Istanbul police had not responded to the threat. The Court acknowledged that criminal proceedings were still in progress against the suspected perpetrators of the attack. However, it could not but note that all the proceedings in which the authorities were implicated had been discontinued (with the exception of the proceedings against two NCOs in Trabzon, although this did nothing to alter the Court's conclusion). Lastly, the Court observed that the investigations concerning the Trabzon gendarmerie and the Istanbul police had been conducted by officials belonging to the executive, and that the dead man's relatives had not been involved in the proceedings, a fact which served to undermine the investigations. The suspicion that one of the police chiefs had supported the actions of the accused did not appear to have been the subject of detailed investigation either. There had therefore been a breach of Article 2, as no effective investigation had been carried out into the failures which occurred in protecting the life of Mr Dink.

Article 10

The Turkish Government contended that there had been no breach of Mr Dink's right to freedom of expression since at the time of his death he had not been finally convicted. The Court stressed, however, that at the time Mr Dink died, the highest criminal court had upheld the finding that he was guilty of denigrating Turkish identity. This finding had made him a target for extreme nationalists, and the Turkish authorities, who had been informed of the plot to kill him, had not taken steps to protect him. There had therefore been interference with the exercise of Mr Dink's right to freedom of expression. According to the Court's case-law, such interference was acceptable if it was prescribed by law, pursued a "legitimate aim" and could be regarded as "necessary in a democratic society". The Court doubted whether it had satisfied the first two criteria, but concentrated its reasoning on the third criterion. The Court shared the view of Principal State Counsel at the Court of Cassation that an analysis of the full series of articles in which Mr Dink used the impugned expression showed clearly that what he described as "poison" had not been "Turkish blood", as held by the Court of Cassation, but the "perception of Turkish people" by Armenians and the obsessive nature of the Armenian diaspora's campaign to have Turkey recognise the events of 1915 as genocide. After analysing the manner in which the Court of Cassation had interpreted and given practical expression to the notion of Turkish identity, the Court concluded that, in reality, it had indirectly punished Mr Dink for criticising the State institutions' denial of the view that the events of 1915 amounted to genocide. The Court reiterated that Article 10 prohibited restrictions on freedom of expression in the sphere of political debate and issues of public interest, and that the limits of acceptable criticism were wider for the Government than for a private individual. It further observed that the author had been writing in his capacity as a journalist on an issue of public concern. Lastly, it reiterated that it was an integral part of freedom of expression to seek historical truth. The Court therefore concluded that Mr Dink's conviction for denigrating Turkish identity had not answered any "pressing social need". The Court also stressed that States were required to create a favourable environment for participation in public debate by all the persons concerned, enabling them to express their opinions and ideas without fear. In a case like the present one, the State must not just refrain from any interference with the individual's freedom of expression, but was also under a "positive obligation" to protect his or her right to freedom of expression against attack, including by private individuals. In view of its findings concerning the authorities' failure to protect Mr Dink against the attack by members of an extreme nationalist group and concerning the guilty verdict handed down in the absence of a "pressing social need", the Court concluded that Turkey's "positive obligations" with regard to Mr Dink's freedom of expression had not been complied with, in violation of Article 10.

Article 13 in conjunction with Article 2

The Court recalled that in cases concerning the right to life, Article 13 required not only the payment of compensation where appropriate, but also an in-depth and effective investigation capable of leading to the identification and punishment of those responsible and encompassing effective access for the family to the investigation. The lack of an effective criminal investigation in this case therefore led the Court to find that there had also been a violation of Article 13 taken in conjunction with Article 2, as the applicants had thereby been denied access to other remedies available in theory, such as a claim for damages. Judge Sajó, joined by Judge Tsotsoria, expressed a separate opinion.

**Altun v. Turkey (no. 22932/02) (Importance 2) – 21 September 2010 – Two violations of Article 2 (substantive and procedural) – (i) Unjustified use of lethal force against the applicant during a prison riot – (ii) Lack of an effective investigation**

At the relevant time the applicant was in detention in Bayrampaşa Prison awaiting trial for attempted armed attack on the constitutional order. On 19 December 2000 the security forces intervened simultaneously in 20 Turkish prisons where prisoners had been on hunger strike in protest at plans to create F-type prisons with living units for one to three inmates. The operation was carried out with the aim of putting an end to a hunger strike by 83 prisoners whose health was deteriorating. During the operation 12 prisoners died and around 50 were injured, some, like the applicant, by firearms. The clashes between the security forces and the prisoners went on from morning to night. On the same day the applicant was admitted to Bayrampaşa Hospital suffering from four bullet injuries and underwent an operation for a perforated stomach and a ruptured pancreas. When a pancreatic fistula developed a few days later, he was transferred to Cerrahpaşa University Hospital. In January 2001 the applicant was transferred to Edirne F-type Prison. The medical report drawn up on his arrival did not refer to any marks from blows or injuries and did not record any allegation by the applicant that he had been ill-treated on his arrival. A report drawn up by an institute of forensic medicine in February 2001 indicated that the wounds sustained by the applicant on 19 December had been life-threatening and required 25 days' rest. Following a report that the applicant's state of health was incompatible with his further detention, the applicant was released in October 2001. In 2003 and 2005 the Governor of Istanbul refused to authorize proceedings against the security forces who had participated in the operation at Bayrampaşa Prison. In April 2006, the Governor repeated his refusal, stating that the operation had been carried out to put an end to the hunger strikes and restore the State's authority after the prison dormitories had become training centres for illegal organisations. In his opinion, the use of force had been legitimate and proportionate considering the determination of the rioters. The public prosecutor nonetheless repeated his request for leave to institute criminal proceedings by applying to the Administrative Court, which set aside the decision of April 2006 on the grounds that it was not necessary to obtain leave from the hierarchal superiors in order to institute criminal proceedings for the offences of torture and ill-treatment. The investigation then began and is still pending. In the meantime the public prosecutor had instituted criminal proceedings in July 2001 against the prison supervisory staff for abuse of their powers on the ground that they had allowed firearms to be brought into the premises and against the gendarmes involved in the operation for ill-treatment of the detainees. The Criminal Court discontinued the proceedings on the grounds that they had become time-barred. In January 2001 the Human Rights Investigation Committee of the Turkish National Assembly established a five-member sub-committee to carry out investigations in the prisons that had been the subject of the operation called "Return to Life" and in the F-type prisons to which the prisoners had been transferred. However, it limited its investigations to the conditions of detention in the prisons to which the detainees had been transferred in view of the time that had elapsed since and the fact that the premises concerned by the operation had been destroyed. (Read the CPT's report concerning the events of 19 December 2010).

The applicant complained of having been wounded by bullet; he alleged that he had not received appropriate treatment for his injuries and that he had been beaten when transferred to Edirne Prison; he also complained of the length of his pre-trial detention and alleged that his lawyer had not been informed of his state of health and had been unable to visit him.

The Court reiterated that where the force used was potentially lethal, as had been the case regarding the applicant because the situation had been deemed life-threatening, Article 2 applied even if the victim had not died as a result. While the reaction of the security forces in the case could be justified as being "absolutely necessary", the force used had to have been strictly proportionate nonetheless. In the applicant's case, the loss of control of Bayrampaşa Prison did not relieve the State of its responsibility because it had happened as a result of a flaw in the public service. The Court noted that many question marks remained as to exactly how the operation had been conducted and the circumstances in which the applicant had been injured. While being aware that the operation in question had been a difficult undertaking, which had met with violent resistance, the Court noted that 12 prisoners had died and around 50 others had been injured as a result. The security forces had had the necessary time to prepare the operation, because it had been preceded by a long phase of negotiation. There was no evidence to demonstrate that the security forces had been trained to deal with that sort of situation, and the Court had already identified in other cases against Turkey a manifest lack of strict rules for the protection of detainees. There was no evidence that the applicant had behaved violently during the riot in such a way as to render the use of lethal force against him absolutely necessary. The Turkish Government had been unable to provide an adequate explanation for the cause of his injuries or how the use of force had been legitimate. The Court therefore held that there had been a violation of Article 2. Article 2 also required that an effective investigation be carried out in order to determine whether the force used was or was not justified and to punish those responsible. In the applicant's case the public prosecutor had requested leave to prosecute the security forces around two and a half years after the operation. The Governor's intervention had prevented an effective criminal investigation from being opened for several years. More than nine years after the events, the investigation was still pending and no criminal proceedings had been instituted. Regarding the administrative investigation, the Court had already expressed doubts regarding the independence of the administrative bodies from the executive. It also regretted that the parliamentary sub-committee had not undertaken a full inquiry into the operation carried out in Bayrampaşa Prison despite having been established for that purpose. The Court held that there had been a violation of Article 2 as the investigation conducted by the authorities could not be regarded as effective.

### Conditions of detention / Ill-treatment

**Florea v. Romania (no. 37186/03) (Importance 2) – 14 September 2010 – Violation of Article 3 – Inhuman treatment on account of the applicant's subjection to passive smoking while in detention**

At the time of his imprisonment the applicant suffered from chronic hepatitis and arterial hypertension. In Botoşani Prison he had to share a cell for approximately eight or nine months with between 110 and 120 other prisoners, with only 35 beds. According to the applicant, 90% of his cellmates were smokers. In January 2005 the applicant was advised by his doctor to avoid smoking. In response to the complaints made by the applicant the Ministry of Justice acknowledged that due to overcrowding two prisoners sometimes had to share one bed and that it was impossible to separate smoking and non-smoking prisoners because of the lack of space. The applicant was granted conditional release in February 2005. According to the National Prisons Authority, his condition had remained stable during his detention. In April 2004 the applicant lodged a claim for compensation on account of the deterioration of his health caused by being detained in cells together with prisoners who smoked and by the poor conditions of detention. His claim was dismissed by the County Court in 2006 on the ground that no causal link had been established.

The applicant complained in particular of overcrowding and poor hygiene conditions, including having been detained together with smokers in his prison cell and in the prison hospital and being provided with a diet which was unsuited to his various medical conditions.

The Court observed that, far from depriving persons of their rights under the Convention, imprisonment in some cases called for enhanced protection of vulnerable individuals. The State had to ensure that all prisoners were detained in conditions which respected their human dignity, that they were not subjected to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that their health was not compromised. In cases concerning prisoners' living space, the Court had established a minimum threshold of 3 sq. m of personal space. Where the space provided was above that threshold the Court took other factors, such as standards of hygiene, into consideration. In the applicant's case, given the total surface area in relation to the number of prisoners, it was clear that he had had between 1.57 sq. m and 2.36 sq. m of personal space in prison and between 1.89 sq. m and 3.63 sq. m in hospital. The Court noted that the Ministry of Justice had acknowledged that the capacity of Botoşani Prison had been exceeded and, like the Romanian courts, that there existed a systemic problem of overcrowding in the country's prisons. The applicant had therefore spent approximately three years living in very cramped conditions, with an area of personal space falling below the European standard. The Court noted, however, that the standard for personal space in communal cells in Romania had been increased in the meantime to 4 sq. m. As to the other factors, the Court noted that the applicant had been confined to his cell for 23 hours a day in deplorable hygiene conditions, with the same room being used for sleeping and eating. As to the issue of passive smoking raised by the applicant, the Court observed that no consensus existed among the member States of the Council of Europe with regard to protection against passive smoking in prisons. Unlike the applicants in some other cases, the applicant had never had an individual cell and had to put up with his fellow prisoners' smoking even in the Botoşani prison infirmary and on the wards for chronically ill patients of the prison hospital, against his doctor's advice. However, a law enacted in June 2002 prohibited smoking in hospitals and the Romanian courts had frequently held that smokers and non-smokers should be detained separately. Accordingly, the conditions of detention to which the applicant had been subjected were in breach of Article 3.

**Üzer v. Turkey (no. 9203/03) (Importance 3) – 21 September 2010 – Two violations of Article 3 – (i) Ill-treatment in police custody of three youths, two of them minors, in order to extract confessions – (ii) Lack of an effective investigation**

In January 2002 the applicants (two of them minors) were arrested by officers from the Yenimahalle police station for stealing electric cables containing copper, which belonged to Telecom Turkey. The next morning they were examined by a forensic medical examiner, who did not record any injuries and later that morning the applicants agreed to cooperate with the police and to show them other places where they had previously stolen cables. They were not assisted by a lawyer. Every time they made a confession, a police record was drawn up stipulating the time it was drafted, the approximate date and time of the offence and the length of the cables stolen. The applicants denounced a scrap dealer as the purchaser of the copper. They underwent a fresh medical examination on 1 February 2002, probably at the request of the lawyer who had been called upon in the meantime by their relatives. A police record stipulated that red patches and marks resembling "scratches made by fingernails" were noticed on their bodies, adding that "when questioned in that connection, the individuals confessed that the marks were self-inflicted scratches". The forensic examination report also noted various lesions of which the cause had apparently been suggested by the applicants themselves, namely an allergic reaction and/or rubbing against a hot radiator. In the evening, the scrap dealer, and later his apprentice, confirmed that they had seen red patches on the applicants' bodies, "as if they had scratched themselves or as if they had an allergy". On 3 February, at the end of the police custody period, another medical examination supported that hypothesis. On being brought before a public prosecutor the applicants disputed the evidence adduced against them, alleging that they had given their statements under duress. They were remanded in custody and committed for trial on theft charges before the Assize Court of Ankara. On 8 February 2002 the applicants were examined by another doctor, who noted various injuries that were mainly about ten days old. The lawyer filed a complaint with the Ankara public prosecutor's office, pointing out that none of the applicants had allergies and that the injuries could not be explained as the result of rubbing against radiators. The public prosecutor's office opened two separate investigations, the first concerning only Erdinç Üzer and Ergin Üzer, the second concerning all three applicants. All three were charged with bringing false accusations against State officials. On being questioned again, the scrap dealer retracted his previous statements and explained that he had seen two of the applicants being beaten up by police officers and that he had given his statements under duress, a police officer having insinuated that if he refused to cooperate he would be tortured like the applicants. The applicants' first lawyer also declared that her clients had told her they had been tortured and that the police had tried to use her to cover it up. In April 2002 the first set of proceedings against State officials was discontinued, as the public prosecutor regarded it as established that the complainants had "leaned against radiators to keep warm". The applicants identified their alleged torturers from photographs. In May 2002 a second set of proceedings was also discontinued. Following the publication of newspaper articles on the case, an internal investigation was opened by the police but was also discontinued. The applicants also filed a complaint with the Ankara Medical Association against the forensic medical examiners who had examined them and had supported the theory that they had allergies or had rubbed themselves against radiators. Two applicants were re-examined. The Medical Association imposed disciplinary sanctions on the doctors concerned, for acting contrary to medical ethics and the rules of forensic medicine. The applicants were also diagnosed as suffering from acute post-traumatic stress disorder, which was consistent with their version of the facts and with the alleged forms of trauma. In 2003 all three applicants were acquitted in the proceedings for false accusations.

The applicants complained that they had been ill-treated during their detention in police custody and that no effective investigation into their allegations had been carried out.

Allegations of ill-treatment (Article 3)

The Court took the view that the circumstances surrounding the applicants' detention in police custody revealed a determined effort on the part of the police officers to cover up wrongdoing, with the connivance of pressurised witnesses and unscrupulous doctors. It could be regarded as established that, after their first medical examination, the applicants had been subjected to duress and treatment that had caused them injuries, as observed by the Medical Association, which appeared to have been provoked by "an external force exerted by one or more third parties" using "blunt objects". Those injuries, which had appeared during the police custody period, gave rise to strong presumptions of fact to be rebutted by the Government. It was therefore for the Government to provide an explanation and convincing evidence to show that the applicants' allegations were questionable. They had not adduced any such evidence. In view of the sufficiently strong, clear and concordant inferences, the Court took the view that the injuries found on the applicants' bodies had been the result of "inhuman or degrading treatment" intentionally inflicted in order to extract confessions or information about a series of thefts, in violation of Article 3.

Alleged lack of effective investigation into the ill-treatment (Article 3)

The Court noted that two sets of criminal proceedings had been opened against the applicants' alleged torturers. The first had been discontinued, as the public prosecutor had found it established that the complainants had "leaned against radiators to warm themselves up", thereby espousing an argument based on the official version of the origin of the injuries. The second set had also been discontinued, on the ground that those concerned by the proceedings were the same as those in the first set that had already been concluded. The Court was not convinced by those arguments: the public prosecutor had accepted the official explanation as to the origin of the injuries without looking into the matter further, even though that version had not been confirmed by subsequent medical examinations. Between the discontinuance of the first and second sets of criminal proceedings, the applicants had identified their assailants from photographs, but that new evidence had not been examined in the second proceedings. In addition, there had not been a precise overlap between the people concerned by the two sets of criminal proceedings (one of the applicants had not been concerned by the first set, only by the second; four policemen had been implicated only in the second). The administrative inquiry launched later had in no way made up for those shortcomings. There was therefore no indication that the competent authorities had demonstrated the requisite diligence or willingness to establish, first, the facts in a context corresponding to the applicants' complaints, and second the possible responsibilities, not even those of the police officers who had been unanimously identified to them. There had thus been a violation of Article 3.

**Tigran Ayrapetyan v. Russia (no. 75472/01) (Importance 3) – 16 September 2010 – Two violations of Article 3 – (i) Torture by the police of an 18 year-old – (ii) Lack of an effective investigation – Failure to comply with Article 38 § 1 a – Domestic authorities' failure to comply with their obligation to furnish the necessary facilities for the examination of the case**

Seen by the police while receiving money from another student in a school yard, the applicant was arrested in February 2001 on suspicion of extortion. According to the applicant, he was taken to a police cell where he was beaten repeatedly in order to confess. Kicked in the chest and face, and on the verge of losing consciousness, he signed all papers he was asked to. On the same evening, he was taken to a casualty department in a clinic where a doctor found he had a broken jaw and recommended his urgent in-patient examination by a surgeon. The applicant was then escorted back to a police cell and released on 11 February. On the day of his release, he was taken to a city hospital where he underwent surgery of his dislocated and broken jaw. Criminal proceedings were instituted against him for extortion and discontinued in December 2001 on the basis of an amnesty act passed by the State Duma in November that year. The applicant's mother complained to various authorities, including the police and prosecution, about her son's ill-treatment. As a result, criminal proceedings were started and a forensic medical examination was carried out. It was discovered that the medical file of the applicant established after his visit to the clinic was lost. Despite his specific requests, the applicant received only limited information about the progress of the investigation and was not allowed access to the file. The criminal proceedings were terminated for lack of evidence that a crime had been committed. They were reopened in June 2002, as a result of which a police officer was charged with abuse of office. The proceedings were ultimately terminated with an acquittal for the officer as the courts found the evidence too confusing and contradictory to enable them to conclude with certainty that the officer was guilty.

The applicant complained that he had been ill-treated by the police and that the authorities had failed to carry out a proper investigation in that connection.

Article 3

The Court noted that it was undisputed that a doctor had concluded on the evening that the applicant had a fractured jaw and needed in-patient treatment; that no satisfactory and convincing explanation about the origin of his injuries had been provided by the Russian Government, and therefore accepted the description of events as submitted by the applicant. Having regard to the fact that he had been only 18 years old when severely beaten in detention, which had caused him significant physical and mental suffering, the Court concluded that the applicant had been tortured by the police, in violation of Article 3. The Court noted that the investigation had been started three months after the mother of the applicant brought the complaints. The authorities thus had failed to react sufficiently promptly, which had had a serious negative impact on the quality and effectiveness of the investigation. The Court deplored the loss by the investigative authorities of the original medical file of the applicant from the clinic, its loss having seriously compromised the possibility of properly investigating the cause of the injuries. Finally, the applicant had had limited access to information about the progress of the investigation and had not been able to participate in the proceedings. The Court concluded that the investigative authorities had acted negligently and not investigated properly, in violation of Article 3.

Article 38

The Court held that the Russian Government fell short of their obligations to cooperate with the Court as it did not submit copies of the documents requested in respect of the events on 10 February 2001.

**Gülizar Tuncer v. Turkey (no. 23708/05) (Importance 3) – Two violations of Article 3 – (i) Disproportionate use of police force used to disperse a demonstration – (ii) Lack of an effective investigation**

On 22 December 2001 the applicant took part in a gathering organised outside a post office in Istanbul to send postcards to women detainees in F-type prisons and make a statement to the press. The police dispersed the gathering, with violence, according to the applicant. An official medical report drawn up that same evening indicated that the applicant had a small cut on her upper lip and a sore head and neck. The applicant lodged a complaint, but the public prosecutor decided not to prosecute the police officers concerned, on the grounds that in spite of police warnings, the applicant had joined in an illegal gathering and that the police had merely used the force they were legally entitled to use under the law governing public meetings and demonstrations. The applicant appealed unsuccessfully against that decision, alleging that she had been dragged on the ground, pulled by the hair, beaten and insulted, and that the police had intervened without any warning. She argued that the prosecution had not gathered any evidence, or taken any notice of the medical report, or carried out an investigation to determine exactly what had happened even though, according to the applicant, the police intervention had been filmed. In January 2002 the applicant and 36 others were charged with having taken part in an illegal demonstration. The applicant was acquitted in June 2002 on the grounds that she had committed no offence.

The applicant complained about the violence used by the police to disperse the gathering and the lack of an effective investigation into the matter; she further complained that she had not had an opportunity to prove her allegations, her complaint against the police having been dismissed.

The Court noted that the applicant had been acquitted of the charge of participating in an illegal demonstration, that she was not a dangerous person and had not been armed, and that the demonstration had been a peaceful one. There was no indication that the applicant had behaved so aggressively as to warrant the use of force to control her. The Court reiterated that dispersing a crowd was not a sufficient reason in itself to explain violent blows to the heads and faces of demonstrators, and that the public nature of such treatment was enough to make the victim feel deeply humiliated. The Turkish Government had therefore not demonstrated that the applicant's behaviour had made the use of force strictly necessary or that such force had been necessary to disperse the crowd. This use of force had indubitably caused the applicant suffering that amounted to inhuman treatment for which the State was responsible. The Court found a violation of Article 3. The Court further noted that the public prosecutor had dismissed the case without even questioning the applicant or the police officers, or viewing the video recordings made by the national television channels. The courts had simply referred to the relevant law, without examining the proportionality of the force used and without attempting to explain the origin of the wound on the applicant's face, even though she claimed that she had not resisted the police. The Court pointed out, however, that it had already found that, in view of the key role, the prosecuting authorities played in instituting proceedings they could legitimately have been expected to verify the conformity of the offending intervention with the other legal provisions applicable in the matter. The Court found that there had also been a violation of Article 3 concerning the insufficient and ineffective investigation.

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

**Iskandarov v. Russia (no. 17185/05) (Importance 1) – 23 September 2010 – Violation of Article 3 – The applicant's removal from Russia to Tajikistan had been in breach of the obligation of the Russian authorities to protect him against risks of ill-treatment – Violation of Article 5 – Unlawful detention in view of deportation**

The applicant is a Tajikistani national. As one of the leaders of the United Tajik Opposition during the 1990s, the applicant openly criticised the President of Tajikistan some time before he moved to Russia in December 2004. Having been charged in Tajikistan and in his absence with terrorism and various other offences, he was placed on an international "wanted" list and, in December 2004, the Russian Prosecutor General received an extradition request for him. He was arrested in Russia pending extradition, which was however refused in April 2005 in view of his pending asylum application. He was released in April 2005 and thereafter stayed in the Moscow Region. In the applicant's submission, while taking a walk in April 2005, he was approached by two men wearing traffic police officers' uniforms, who - assisted by several men with Slavic features who had surrounded the area – handcuffed him, placed him in a car and drove off. Detained and beaten overnight in a sauna in an unknown location, he was taken to a forest where his abductors spoke in unaccented Russian to other men, whom he concluded were Russian law-enforcement officers. He was then taken to an airport, blindfolded. His identity papers were not checked, on the plane he did not hear any instructions or other information usually conveyed on a civil aircraft. He remained blindfolded throughout the flight at the end of which he was handed over to the Tajik law-enforcement agencies upon landing at Dushanbe airport. Detained under a false name for the first 10 days after his arrival, the applicant claimed that he was regularly beaten, kept in a tiny dirty cell, not allowed to go for walks or to wash, and was hardly fed at all. He made a self-incriminating statement under threat of losing his life. He saw his lawyer for the first time only 13 days after his arrival in Tajikistan and his meetings with him took place in the presence of prison officials. In October 2005, he was sentenced to 23 years in prison. Following that, he sent numerous complaints to the Russian authorities related to his unlawful detention and transfer to Tajikistan, all of which either remained unanswered or were dismissed. Various institutions, such as the European Union, Human Rights Watch, Amnesty International and the United States Department of State, reported on the detention of the applicant as well as on the general human rights situation in Tajikistan up to 15 April 2005.

The applicant complained that he had been unlawfully detained and removed to Tajikistan, as a result of which he had been ill-treated and persecuted for his political views.

The Court pointed out that the applicant had provided a generally clear and coherent description of his removal from Russia to Tajikistan. His allegations that he had been unlawfully extradited by the Russian authorities had been supported by the reports of the US Department of State. The Russian Government had provided no explanation about how he, who had last been seen in the Moscow region in the evening of 15 April 2005, had arrived in Tajikistan. Given that the shortest road between Korolev and Dushanbe was 3,660 kilometres long and passed through two sovereign States - Kazakhstan and Uzbekistan - the Court found it implausible that the applicant could have been illegally transferred by his kidnappers to Tajikistan in less than two days by any means of transport other than aircraft. Consequently, the Court accepted the applicant's allegations that he had been arrested and put on a plane by Russian State agents who transferred him to Tajikistan without having to go through the regular cross-border controls.

Article 3

The Court first considered the general political climate in Tajikistan at the time, looking at evidence from a number of objective sources. It found that the overall human rights situation in Tajikistan, including the treatment of detainees, had given rise to serious concerns. In particular, reports had showed that torture by State officials had been common practice and that perpetrators had enjoyed immunity. Prison conditions had been harsh, even life-threatening, a number of prisoners having died of hunger. Examining the personal situation of the applicant, the Court noted that he had been one of the possible challengers to the Tajik President in the presidential race at the time. When the applicant had been removed from Russian territory, reports had shown that another prominent opposition leader critical of the regime, Mr Shamsiddinov, had been ill-treated. Consequently, even though it had not been possible to establish whether the applicant had actually been ill-treated in Tajikistan, the special distinguishing features of his profile and situation should have enabled the Russian authorities to foresee that he might be ill-treated in Tajikistan. As there had not been an extradition order concerning him, the applicant could not appeal before a court against his removal. Accordingly, his removal to Tajikistan had been in breach of the obligation of the Russian authorities to protect him against risks of ill-treatment, and thus in violation of Article 3.

Article 5 § 1

The Court found it deeply regrettable that opaque methods had been used by State agents in respect of the applicant. It emphasised that his detention had not been carried out on the basis of a decision issued in accordance with national laws and concluded that he had been unlawfully removed in order to circumvent the Russian Prosecutor General's Office dismissal of the extradition request. The applicant's detention had neither been acknowledged nor logged in any arrest or detention records and had thus constituted a complete negation of right to liberty and security of people, in violation of Article 5 § 1.

### Right to respect for private and family life

**Obst v. Germany (no. 425/03) (Importance 2), Schüth v. Germany (no. 1620/03) (Importance 2) – 23 September 2010 – No violation of Article 8 (first case) – The applicant's dismissal amounted to a necessary measure aimed at preserving the Church's credibility – Violation of Article 8 (second case) – Domestic courts' failure to weigh the applicant's rights against those of the Church employer**

Both cases concerned the applicants' dismissal from a Church for engaging in an extra-marital relationship. **The Court for the first time addressed the dismissal of Church employees on grounds of conduct falling within the sphere of their private lives**.

Mr Obst and Mr Schüth complained of the refusal of the courts to overturn their dismissal.

In both cases, the Court had to examine whether the balance struck by the German labour courts, between the applicants' right to respect for their private life under Article 8 on the one hand and the Convention rights of the Catholic and the Mormon Church on the other, had afforded the applicants sufficient protection. The Court reiterated that the autonomy of religious communities was protected against undue interference by the State under Article 9 read in the light of Article 11. By putting in place a system of labour courts and a constitutional court having jurisdiction to review the former courts' decisions, Germany had in principle complied with its positive obligations towards litigants in the area of employment law. The applicants had been able to bring their cases before a labour court with jurisdiction to determine whether the dismissal had been lawful under State labour law while having regard to ecclesiastical labour law. In both cases, the Federal Labour Court had found that the requirements of the Mormon Church and the Catholic Church, respectively, regarding marital fidelity did not conflict with the fundamental principles of the legal order.

As regards Mr Obst, the Court observed that the German labour courts had taken into account all the relevant factors and undertaken a careful and thorough balancing exercise regarding the interests involved. They had pointed out that the Mormon Church had only been able to base Mr Obst's dismissal on his adultery because he had informed the Church of it by his own initiative. According to the German courts' findings, his dismissal amounted to a necessary measure aimed at preserving the Church's credibility, having regard in particular to the nature of his post. The courts had explained why the Church had not been obliged to inflict a less severe penalty, such as a warning, and they had underlined that the injury suffered by Mr Obst as a result of his dismissal was limited, having regard among other things to his relatively young age. The fact that, after a thorough balancing exercise, the German courts had given more weight to the interests of the Mormon Church than to those of Mr Obst, did not itself raise an issue under the Convention. The conclusion that Mr Obst had not been subject to unacceptable obligations was reasonable, given that, having grown up in the Mormon Church, he had been or should have been aware when signing the employment contract of the importance of marital fidelity for his employer and of the incompatibility of his extra-marital relationship with the increased duties of loyalty he had contracted towards the Church as director for Europe of the public relations department.

As regards Mr Schüth, in contrast, the Court observed that the labour court of appeal had confined itself to stating that while his functions as organist and choirmaster did not fall within the group of employees who in case of serious misconduct had to be dismissed, his functions were nonetheless so closely connected to the Catholic Church's mission that the parish could not continue employing him without losing all credibility. That court appeared to have simply reproduced the opinion of the Church employer on this point. The labour courts had moreover made no mention of Mr Schüth's *de facto* family life or of the legal protection afforded to it. The interests of the Church employer had thus not been balanced against Mr Schüth's right to respect for his private and family life, but only against his interest in keeping his post. A more detailed examination would have been required when weighing the competing rights and interests at stake. While the Court accepted that in signing the employment contract, Mr Schüth had entered into a duty of loyalty towards the Catholic Church which limited his right to respect for his private life to a certain degree, his signature on the contract could not be interpreted as an unequivocal undertaking to live a life of abstinence in the event of separation or divorce. The German labour courts had given only marginal consideration to the fact that Mr Schüth's case had not received media coverage and that, after 14 years of service for the parish, he did not appear to have challenged the position of the Catholic Church. The fact that an employee who had been dismissed by a Church employer had only limited opportunities of finding another job was of particular importance. This was all the more so where the dismissed employee had special qualifications that made it difficult, or even impossible, to find a new job outside the Church, as was the case with Mr Schüth, who now worked part-time in a Protestant parish. In that connection the Court noted that the rules of the Protestant Church relating to Church musicians stipulated that non-members of the Protestant Church might only be employed in exceptional cases and solely in the context of an additional job. The Court found that the German labour courts had failed to weigh Mr Schüth's rights against those of the Church employer in a manner compatible with the Convention. The Court unanimously concluded that there had been no violation of Article 8 in Mr Obst's case and that there had been a violation of Article 8 in Mr Schüth's case.

**Polanco Torres and Movilla Polanco v. Spain (no. 34147/06) (Importance 2) – 21 September 2010 – No violation of Article 8 – A journalist's right to impart information on a matter of public interest had to be given more weight than the applicants' right to the protection of their reputation and honour**

The applicants are the wife and daughter of C.M., who died in 1998. C.M. was President of the Civil and Criminal Division of the Cantabria Higher Court of Justice. In May 1994 an article in the national daily newspaper *El Mundo* accused Elisa Polanco Torres (identified by name as the wife of C.M.) of involvement in unlawful dealings with the company Intra, basing its report on floppy disks received from an anonymous source and purportedly containing Intra's accounting data. The data had disappeared from the company, which had brought criminal proceedings against its accountant and had dismissed him. *El Mundo* had verified with that accountant who confirmed that the financial transactions at issue had been unlawful and that transfers of funds had not been declared by the company to the tax authorities. The full article also appeared the same day in the newspaper *Alerta*. C.M. and his wife brought proceedings for the protection of their honour against the company that published the article. In a judgment of May 1996 the Madrid District Court no. 17 found that there had been an unlawful interference with the right of C.M. and his wife to respect for their honour. The publishers were ordered to pay 4,000,000 pesetas (24,040.50 euros) in damages and to publish the judgment in the newspaper. The Supreme Court upheld the judgment. *El Mundo*'s publisher and director, together with the journalist who had written the article, lodged an *amparo* appeal with the Constitutional Court. The Constitutional Court upheld that appeal and quashed the judgments of the courts below. It found that the journalist had used all "effective" possibilities to verify the information. Departing from the decisions it set aside, it observed that the accountant's dismissal did not cast doubt on his reliability and that the question whether the information had been obtained lawfully did not arise in those proceedings. The lower courts also found against the newspaper *Alerta* for breaching the fundamental rights of C.M. and his wife, but the *amparo* appeal lodged by the publishing company was, by contrast, declared inadmissible. The Constitutional Court based this decision in particular on the fact that, unlike the journalist from *El Mundo*, *Alerta* had not made any efforts to verify the information it reported but had simply copied it.

The applicants alleged that in finding in favour of *El Mundo* the Spanish courts had infringed their right to protection of their honour and good reputation. They further alleged a breach of Article 14 taken in conjunction with Article 8, on account of the fact that the *amparo* appeal lodged by *El Mundo* had been allowed, whereas *Alerta*'s appeal had been dismissed.

In view of the gravity of the allegations in the article, concerning unlawful transactions involving “dirty money”, the Court had to ascertain whether Spain had fulfilled its “positive obligation” to protect the honour and reputation of the applicant and her husband. To that end it had to take into account not only their right to respect for their private life, but also the right of journalists to freedom of expression. The Court first noted that the article undoubtedly concerned a subject of general interest for its Spanish readers: Mrs Polanco Torres was referred to as the wife of a senior judge, who was precisely identified in the article. In view of the fact that precisely designated individuals were directly targeted in the article, the journalist who wrote it had a duty to ensure that it had a sufficient factual basis. In that connection the Court first noted that the article had the characteristics of a neutral report (especially as the accounting data had been verified with the accountant and as a denial by the person accused was published, thus presenting readers with the two opposing versions of the facts). The Court then noted that the journalist, by verifying the authenticity of the accounting data with the former accountant of the company Intra, had used all “effective” possibilities to verify his information. In addition, before publishing the article, he had contacted Mrs Polanco Torres to give her the opportunity to comment on the information at issue. As the Constitutional Court had rightly observed, that showed that the journalist had fulfilled his obligation of diligence. The Court accepted, like the Constitutional Court, that the accountant’s dismissal and the criminal proceedings against him had not called into question the reliability of his statements. Lastly, the Court took the view that the journalist from *El Mundo* had sufficiently verified the veracity of the factual allegations contained in his article. The Constitutional Court had put forward sufficient grounds in finding that the journalist’s right to impart information in the general interest had to be given more weight, than the applicants’ right to the protection of their reputation and honour. By six votes to one, the Court held that there had been no violation of Article 8.

### ☒ Freedom of assembly

**Hyde Park and Others v. Moldova (Nos. 5 and 6) (nos. 6991/08 and 15084/08) (Importance 2) – 14 September 2010 – Violation of Article 11 – Domestic authorities’ failure to show the requisite level of tolerance to be expected of authorities in a democratic society during three NGO protests**

The applicants are Hyde Park, formerly a registered non-governmental organisation lobbying for freedom of expression and the right to free assembly, and four of its members. Hyde Park’s members decided to discontinue the registration of the organisation in 2007 on grounds of alleged State intimidation, including the authorities’ refusal to register amendments to Hyde Park’s articles of association, repeated freezing of its bank account, arbitrary arrest of its members and attempts to shut down its newspaper. The case concerned the police’s suppression of – as well as the arrests made during – three demonstrations held by the applicants in August and September 2007 in Chişinău in front of the Ministry of Internal Affairs and the Prosecutor General’s Office about the authorities’ alleged harassment of Hyde Park. The police immediately intervened and, arguing that the protest’s authorisation was not valid, arrested the applicants and took them to a police station for questioning. They were released a few hours later. In protest of the suppression of that first demonstration, the applicants staged another demonstration on 4 September 2007, this time not authorised by the Municipality. Again arrested and taken to a police station, they were released after five hours. They were subsequently found guilty of organising an unauthorised demonstration and fined 800 Moldovan lei (approximately 48 euros (EUR)). The applicants started their third demonstration – authorised a few days earlier and were once again immediately arrested, this time on the ground that the authorisation did not contain the names of all the persons involved in the protest. Released after questioning, they had administrative proceedings brought against them, which were subsequently discontinued.

The applicants complained about the police’s suppression of – as well as the arrests made during – their three demonstrations. They also complained about the courts’ failure, in the ensuing proceedings against the applicants concerning the demonstrations, to give sufficient reasons for their decisions.

As concerned the first and third demonstrations, which were given prior authorisation, the Court was not persuaded by the Government's argument that it had been necessary to arrest the applicants in order to check their authorisation or their identities. Indeed, a video submitted by the applicants of the third demonstration clearly showed them being questioned by the police and them providing proof of their authorisation. It was wholly unclear what further enquiries could have been necessary at the police station. Furthermore, it was of little relevance that aspects of the first demonstration were provocative. The choice of location, chants and slogans insulting the Minister were clearly appropriate given the context of the demonstration (which aimed at criticising the alleged harassment of Hyde Park by the Ministry of Internal Affairs). Nor was the third demonstration violent, as suggested by the Government: the video submitted clearly showed that the protest took place in the most peaceful manner possible with minimal disruption to the public. As concerned the second demonstration, although unauthorised, the Court noted that the police could have asked the applicants to disperse and reassemble once they had obtained authorisation. Instead, the two applicants concerned had simply been arrested. Nor had there been a security zone, which could have given an explanation for why the demonstration had to be broken up prematurely. Moreover, the Court was particularly struck by the high amount of the ensuing fines, which represented 80% of the maximum that could have been imposed. The Court concluded that, as concerned all three demonstrations, the police had failed to show the tolerance to be expected of the authorities in a democratic society. The applicants' arrests, and particularly the fines imposed as a result of the third demonstration, had therefore been disproportionate, in violation of Article 11.

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

You will find in the column "Key Words" of the table below a short description of the topics dealt with in the judgment[1]. For more detailed information, please refer to the following links:

- Press release by the Registrar concerning the Chamber judgments issued on 14 Sept. 2010: here
- Press release by the Registrar concerning the Chamber judgments issued on 16 Sept. 2010: here
- Press release by the Registrar concerning the Chamber judgments issued on 21 Sept. 2010: here
- Press release by the Registrar concerning the Chamber judgments issued on 23 Sept. 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.

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

| State | Date | Case Title and Importance of the case | Conclusion | Key Words | Link to the case |
|---|---|---|---|---|---|
| Austria | 23 Sept. 2010 | Fragner (no. 18283/06) Imp. 3 | Violation of Art. 6 § 1 | Excessive length of proceedings (more than nine years) | Link |
| Bulgaria | 16 Sept. 2010 | Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and Others (nos. 412/03 and 35677/04) Imp. 2 | Just satisfaction | Judgment concerning the satisfaction following a judgment of 5 June 2009 that found a violation of Art. 9 | Link |
| France | 21 Sept. 2010 | Bousarra (no. 25672/07) Imp. 3 | Violation of Art. 8 | Disproportionate interference with the applicant's right to private and family life on account of his deportation to Morocco for a drugs-related offence, extortion, kidnapping and possession of an illegal weapon | Link |
| Greece | 16 Sept. 2010 | Anagnostou-Dedouli (no 24779/08) Imp. 3 | No violation of Art. 6 § 1 (fairness) access to a court<br><br>Violation of Art. 6 § 1 (fairness) enforcement | The restrictions imposed on the applicant's right of access to a court concerning compensation did not breach her right of access to a court and were proportionate<br><br>Parliament's refusal to enforce the execution of a domestic decision in the applicant's favour | Link |
| Montenegro | 21 Sept. 2010 | Garzičič (no. 17931/07) Imp. 2 | Violation of Art. 6 § 1 | Interference with the applicant's right of access to a court on account of the Supreme Court's rejection of her appeal on points of law concerning a property-related claim as it considered that the court fees she had paid did not correspond to the established values of her claim | Link |
| Montenegro | 21 Sept. 2010 | Mijušković (no. 49337/07) Imp. 2 | Violation of Art. 8 | Domestic authorities' failure to enforce a final judgment awarding the applicant custody of her children following her ex-husband's refusal to return the children to her | Link |
| Poland | 14 Sept. 2010 | Kuczera (no. 275/02) Imp. 3 | No violation of Art. 6 § 1 | Reasonable court fees required of the applicant in order to proceed with a claim against his brother regarding a dispute over profits from crops and agricultural machines that they co-owned | Link |
| Poland | 14 Sept. 2010 | Subicka (no. 29342/06) Imp. 2 | Violation of Art. 6 § 1 | Interference with the applicant's right of access to a court on account of the legal aid lawyer's refusal to prepare a cassation appeal | Link |
| Poland | 21 Sept. 2010 | Deeg (no. 39489/08) Imp. 3 | Violation of Art. 6 § 1 | Excessive length of criminal proceedings (ten years and seven months) | Link |
| Portugal | 21 Sept. 2010 | Santos Couto (no. 31874/07) Imp. 2 | No violation of Art. 14 in conjunction with Art. 8 | The applicant's conviction for homosexual activities with minors was based on the same conditions as convictions of heterosexual activities with minors | Link |
| Romania | 21 Sept. 2010 | Băjănaru (no. 884/04) Imp. 3 | Violation of Art. 6 § 1<br>Violation of Art. 1 of Prot. 1 | Lengthy non-enforcement of a final judgment in the applicant's favour concerning the recovery of the possession of a plot of land | Link |
| Romania | 21 Sept. 2010 | Ballai (no. 37188/06) Imp. 3 | Violation of Art. 6 § 1 | Excessive length of criminal proceedings (eleven years and nine months) | Link |

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| Romania | 21 Sept. 2010 | SC Placebo Consult SRL (no. 28529/04) Imp. 3 | Two violations of Art. 6 § 1 (length and fairness) | Excessive length of proceedings and infringement of the principle of legal certainty due to the setting-aside of the final judgment of the Supreme Court of Justice by the High Court of Cassation and Justice | Link |
| Russia | 16 Sept. 2010 | Chernichkin (no. 39874/03) Imp. 2 | Violation of Art. 6 § 1 | Infringement of the right of access to a court on account of Moscow courts' refusal to examine a claim against the Ministry of Finance for excessive length of proceedings on the grounds that the legislature had not yet determined jurisdiction over such claims | Link |
| Russia | 16 Sept. 2010 | Danilin (no. 4176/03) Imp. 3 | Violation of Art. 3 | Conditions of detention in SIZO no. 3 and SIZO no. 5 in Moscow (Please see 2nd General Report on the CPT's Activities (1991); 7th General Report on the CPT's Activities (1996); 11th General Report on the CPT's Activities (2000)) | Link |
| Russia | 16 Sept. 2010 | Dmitrachkov (no. 18825/02) Imp. 3 | Two violations of Art. 3 (substantive and procedural) | Ill-treatment in police custody and lack of an effective investigation | Link |
| Russia | 23 Sept. 2010 | Ivanov (no. 33929/03) Imp. 3 | Violation of Art. 3 | Conditions of detention in Omsk remand centre no. 55/1 | Link |
| Russia | 23 Sept. 2010 | Isayev (no. 24490/03) Imp. 3 | Violation of Art. 6 § 1 | Excessive length of criminal proceedings | Link |
| Russia | 23 Sept. 2010 | Vasilchenko (no. 34784/02) Imp. 3 | No violation of Art. 6 § 1 | Reasonable length of proceedings and overall diligence displayed by the authorities concerning the applicant's case in which he sought reinstatement to his job as an army colonel | Link |
| Spain | 21 Sept. 2010 | Marcos Barrios (no. 17122/07) Imp. 2 | Violation of Art. 6 § 1 | Unfairness of proceedings on account of the lack of a public hearing before the *Audiencia Provincial* | Link |
| the United Kingdom | 21 Sept. 2010 | Kay and Others (no. 37341/06) Imp. 2 | Violation of Art. 8 | The applicants were dispossessed of their homes without any possibility to have the proportionality of the measure determined by an independent tribunal | Link |
| the United Kingdom | 21 Sept. 2010 | Kevin O'Dowd (no. 7390/07) Imp. 2 | No violation of Art. 5 § 3 | The length of the applicant's pre-trial detention during the proceedings for rape was substantially due to his own conduct and his choices of legal representation | Link |
| the United Kingdom | 21 Sept. 2010 | Szypusz (no. 8400/07) Imp. 2 | No violation of Art. 6 § 1 | Sufficient safeguards existed to exclude any objectively justified or legitimate doubts as to the impartiality of the jury | Link |
| Turkey | 14 Sept. 2010 | Taylan and Others (nos. 9209/04, 40056/04 and 22412/05) Imp. 3 | Violation of Art. 6 § 1 | Excessive length of compensation proceedings | Link |
| Turkey | 21 Sept. 2010 | Tuksal and Others (nos. 57711/08, 59325/08, etc.) Imp. 3 | Violation of Art. 6 § 1 | Failure to provide the applicants with the opinion of the public prosecutor at the Supreme Administrative Court during administrative proceedings | Link |
| Ukraine | 16 Sept. 2010 | Baloga (no. 620/05) Imp. 3 | Violation of Art. 6 § 1 | Excessive length of criminal proceedings (five years and six months) for abuse of authority and forgery | Link |

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| Ukraine | 16 Sept. 2010 | Vitruk (no. 26127/03) Imp. 3 | Violation of Art. 5 §§ 1, 3 and 4<br><br>Violation of Art. 6 § 1 | Unlawfulness and excessive length of pre-trial detention (more than five years); lack of review of the lawfulness of that detention Excessive length of criminal proceedings | Link |

## 3. Repetitive cases

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

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

| State | Date | Case Title | Conclusion | Key words |
|---|---|---|---|---|
| Romania | 14 Sept. 2010 | Chiş (no. 3360/03) link<br><br>Şerban (no. 36446/04) link | Violation of Art. 6 § 1 | Domestic authorities' failure to enforce final judgments in the applicants' favour in due time |
| Russia | 16 Sept. 2010 | Kravchenko and 23 Other "military accommodation" cases (nos. 11609/05, 12516/05, etc.) link | Violation of Art. 6 § 1<br>Violation of Art. 1 of Prot. 1 | Lengthy non-enforcement of final judgments in the applicants' favour ordering that they be awarded housing |
| Russia | 23 Sept. 2010 | Davletkhanov and other "Chernobyl pensioners" v. Russia (nos. 7182/03, 10115/04, etc.) link | Violation of Art. 6 § 1 (fairness)<br>Violation of Art. 1 of Prot. 1 | Quashing of final judgments in the applicants' favour by way of supervisory review |
| Russia | 23 Sept. 2010 | Konenkova and other "privileged pensioners" v. Russia (nos. 59704/08, 59706/08, etc.) link | Idem. | Idem. |
| Russia | 23 Sept. 2010 | Popova and other "Privileged pensioners" v. Russia (32310/08, 33191/08, etc) link | Idem. | Idem. |
| Russia | 23 Sept. 2010 | Tyrtova and other "Privileged pensioners" v. Russia (38126/08, 38341/08, etc.) link | Idem. | Idem. |
| Turkey | 14 Sept. 2010 | Akın Şahin (no. 9871/05) link | Violation of Art. 6 § 1 | Hindrance to the applicant's right to access classified documents submitted to the Supreme Military Administrative Court |
| Turkey | 14 Sept. 2010 | Bozak (no. 32697/02) link<br><br>Temel Conta Sanayi Ve Ticaret A.Ş. (no. 45651/04) link | Just satisfaction | Judgment concerning just satisfaction following the judgments of respectively 20 January 2010 and 10 June 2009 |

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|---|---|---|---|---|
| Turkey | 21 Sept. 2010 | Turgay and Others (Nos. 2, 3, 4 and 5) (nos. 13710/08, 16345/08, etc.) link | Violation of Art. 10 | Unjustified and disproportionate interference with the applicants' right to freedom of expression on account of the suspension of the publication and distribution of their newspapers |

## 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 | 23 Sept. 2010 | Yankov and Others v. (no. 4570/05) | Link |
| Germany | 16 Sept. 2010 | Breiler (no. 16386/07) | Link |
| Greece | 16 Sept. 2010 | Koukouris (no. 24089/08) | Link |
| Greece | 16 Sept. 2010 | Kyriazis and Others (no. 51382/08) | Link |
| Greece | 16 Sept. 2010 | Papadopoulou (no. 53311/08) | Link |
| Italy | 21 Sept. 2010 | Conceria mandera SRL (no. 3978/03) | Link |
| Poland | 14 Sept. 2010 | Iskrzyccy (no. 9261/02) | Link |
| Poland | 21 Sept. 2010 | Pastuszenia (no. 46074/07) | Link |
| Romania | 21 Sept. 2010 | Vasiliu (no. 29248/04) | Link |
| Russia | 23 Sept. 2010 | Antyushina v. (no. 23204/03) | Link |
| Slovakia | 21 Sept. 2010 | Mošať (no. 27452/05) | Link |

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|---|---|---|---|
| Turkey | 21 Sept. 2010 | Şenyürek and Şahin and 17 other applications (nos. 34986/05, 34987/05, etc) | Link |

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

Those decisions are published with a slight delay of two to three weeks on the Court's Website. Therefore the decisions listed below cover **the period from 6 to 19 September 2010**.

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

| ***State*** | ***Date*** | ***Case Title*** | ***Alleged violations (Key Words)*** | ***Decision*** |
|---|---|---|---|---|
| Germany | 14 Sept. 2010 | Müller (no 43829/07) link | Alleged violation of Art. 8 (the Appeal Court's refusal to award the applicants compensation for the unauthorized publication of their deceased son's picture in a newspaper) | Inadmissible as manifestly ill-founded (the Court considered that the domestic authorities ensured sufficient protection for the applicants based on its national margin of appreciation) |
| Romania | 14 Sept. 2010 | Farcaş (no 32596/04) link | Alleged violation of Articles 6, 8, 14 and 34 (in particular, infringement of the right of access to a court and of the right to respect for private life on account of administration and court buildings' lack of facilities for disabled persons) | Partly inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention concerning claims under Articles 6 § 1 and 34, taken separately or in conjunction with Article 14), partly incompatible *ratione materiae* (concerning the remainder of the application) |
| Slovakia | 07 Sept. 2010 | Banykó (no 32523/07) link | The application concerned the allegedly excessive length of insolvency proceedings (which started in October 1990 and are still pending) brought against the applicant's debtor | Struck out of the list (friendly settlement reached) |
| Slovakia | 07 Sept. 2010 | Ollarek (no 58135/09) link | Alleged violation of Art. 6 § 1 (excessive length of civil proceedings (which started in May 1993 and are still pending) and Art. 13 (lack of an effective remedy) | Idem. |
| Slovakia | 07 Sept. 2010 | Slivka (no 47881/09) link | Alleged violation of Art. 6 § 1 (excessive length of civil proceedings (which started in December 1998 and are still pending) | Idem. |
| Slovakia | 07 Sept. 2010 | Obšitošová (no 21647/09) link | Idem. | Idem. |

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|---|---|---|---|---|
| Slovakia | 07 Sept. 2010 | B a r t l ( n o 43795/07) link | Idem. | Idem. |

## C. The communicated cases

The European Court of Human Rights publishes on a weekly basis a list of the communicated cases on its Website. These are cases concerning individual applications which are pending before the Court. They are communicated by the Court to the respondent State's Government with a statement of facts, the applicant's complaints and the questions put by the Court to the Government concerned. The decision to communicate a case lies with one of the Court's Chamber which is in charge of the case.

There is in general a gap of three weeks between the date of the communication and the date of the publication of the batch on the Website. Below you will find the links to the lists of the weekly communicated cases which were published on the Court's Website:

- on 20 September 2010 : link
- on 27 September 2010 : link

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

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

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

**Communicated cases published on 20 September 2010 on the Court's Website and selected by the NHRS Unit**

*The batch of 20 September 2010 concerns the following States (some cases are however not selected in the table below): Austria, Bosnia and Herzegovina, Bulgaria, Cyprus, Denmark, France, Georgia, Moldova, Poland, Romania, Russia, Serbia, the Czech Republic, the Netherlands, the United Kingdom, Turkey and Ukraine.*

### ☒ *Communicated cases referring to the NHRSs*

**Červeňáková v. the Czech Republic** – 30 August 2010 – Alleged violation of Articles 3, 5 and Art. 1 of Prot. 1 – The applicant's forced sterilisation in a public hospital – Lack of an effective investigation – Question as to whether there been a violation of the applicant's right to respect for her private and family life, contrary to Article 8 of the Convention? – "***On 22 September 2004 the applicant complained to the Ombudsman of her involuntary sterilisation. On 17 January 2006 he concluded that the sterilisation was illegal, having been performed without the applicant's legally valid consent and without an approval by the sterilisation committee. In 2005 the Ombudsman referred the applicant's case to the police for investigation".***

| State | Date of Decision to communicate | Case Title | Key Words of questions submitted to the parties |
|---|---|---|---|
| Austria | 30 Aug. 2010 | Omeredo no 8969/10 | Alleged violation of Art. 3 – Risk of being subjected to ill-treatment (female genital mutilation) if expelled to Nigeria |
| Denmark | 02 Sept. 2010 | S.S. no 38522/10 | Alleged violation of Art. 3 – If expelled to Greece, risk of being deported to Afghanistan, where the applicant risks being subjected to ill-treatment – Alleged violation of Art. 13 – Lack of an effective remedy |
| France | 01 Sept. 2010 | J.K. no 7466/10 | Alleged violation of Art. 3 – Risk of being subjected to ill-treatment if expelled to Sri Lanka – Alleged violation of Art. 13 – Lack of an effective remedy |
| France | 01 Sept. 2010 | W.M. no 13134/10 | Alleged violation of Art. 3 – Risk of being subjected to ill-treatment if expelled to Afghanistan |
| France | 31 Aug. 2010 | De Lesquen no 54216/09 | Alleged violation of Art. 10 – The applicant's criminal conviction for statements against his opponent during municipal elections |
| France | 31 Aug. 2010 | Sh. V. no 16233/10 | Alleged violation of Art. 3 – If expelled to Greece, risk of being deported to Afghanistan, where the applicant risks being subjected to ill-treatment – Alleged violation of Art. 13 – Lack of an effective remedy – Alleged violation of Art. 5 § 1 – Unlawful detention – Alleged violation of Art. 5 § 2 – Failure to inform the applicant of the reasons for his arrest in a language he understood |
| Georgia | 30 Aug. 2010 | Bregadze no 21785/10 | Alleged violation of Art. 3 – Lack of adequate medical care in detention |
| Romania | 02 Sept. 2010 | Tudor no 43543/09 | Alleged violation of Art. 3 – Poor conditions of detention in Jilava Prison – Question as to whether Law no. 275/2006 was an effective remedy within the meaning of this provision in respect of the applicant's complaint concerning the material conditions of detention? – Lack of adequate medical care |
| Russia | 31 Aug. 2010 | Ponomarev and Others no 4718/07 | Alleged violation of Articles 10 and 11 – Interference with the applicants' freedom of expression and freedom of assembly on account of the authorities' suggestion to postpone their assembly until a later date, the dispersal of the assembly, the applicants' arrest and the administrative proceedings against them – Question as to whether Russian law gives the authorities power to suggest that the organisers change the date of the assembly? |
| Russia | 30 Aug. 2010 | Khayrullina no 29729/09 | Alleged violation of Articles 2 and 3 (substantive and procedural) – (i) The applicant's husband's ill-treatment and death in police custody – (ii) Lack of an effective investigation – Alleged violation of Art. 13 – Lack of an effective remedy – Alleged violation of Art. 5 § 1 – Unlawful detention of the applicant's husband – Alleged violation of Art. 5 § 5 – Lack of adequate compensation in respect of the unlawful detention – Alleged violation of Art. 2 of Prot. 4 – Restriction on the applicant's husband's right to movement |
| Russia | 30 Aug. 2010 | OOO Yezhenedelnaya Gazeta Inter no 40562/05 | Alleged violation of Art. 10 – Conviction of the applicant company for an article criticising the leader of the local branch of the Russian Communist Party |
| Serbia | 30 Aug. 2010 | Đekić and Others no 32277/07<br><br>Otašević no 32198/07 | Alleged violation of Art. 3 (substantive and procedural) – (i) Ill-treatment in police detention – (ii) Lack of an effective investigation – Alleged violation of Art. 13 – Lack of an effective remedy |
| Serbia | 30 Aug. 2010 | Habimi and Others no 19072/08 | Alleged violation of Art. 3 (substantive and procedural) – (i) Ill-treatment during a special police operation – (ii) Lack of an effective investigation |
| the Czech Republic | 30 Aug. 2010 | Ferenčíková no 21826/10 | Alleged violation of Articles 3, 5 and Art. 1 of Prot. 1 – The applicant's forced sterilisation in a public hospital – Lack of an effective investigation – Alleged violation of Art. 14 – Discrimination on the basis of the applicant's Roma origins – Alleged violation of Art. 13 – Lack of an effective remedy – Question as to whether there been a violation of the applicant's right to respect for her private and family life, contrary to Article 8 of the Convention? Did the Czech authorities comply with their positive obligation under Article 8 to provide the applicant with information about ways of protecting the applicant's reproductive health, including information on the characteristics and consequences of sterilisation and alternative methods of contraception? |
| Turkey | 01 Sept. 2010 | X. no 24626/09 | Alleged violation of Art. 3 (substantive and procedural) – (i) Conditions of detention – (ii) Lack of an effective investigation – Alleged violation of Art. 6 § 1 – Failure to provide the applicant with the written opinion of the public prosecutor – Alleged violation of Art. 7 – Detention without legal basis – Alleged violation of Art. 14 – Discrimination on grounds of sexual orientation |

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| Ukraine | 30 Aug. 2010 | Kardava no 19886/09 | Alleged violation of Art. 2 – State's failure to protect the welfare of persons in custody – Alleged violation of Art. 3 – Conditions of detention – Lack of adequate medical treatment – Ill-treatment in police custody – Lack of an effective investigation – Alleged violation of Art. 5 § 3 – Failure to bring the applicant promptly before a judge – Alleged violation of Art. 5 § 4 – Lack of an effective remedy to challenge the applicant's detention – Alleged violation of Art. 14 in conjunction with Art. 3 – Discrimination on grounds of the applicant's Georgian origins |

**Communicated cases published on 27 September 2010 on the Court's Website and selected by the NHRS Unit**

*The batch of 27 September 2010 concerns the following States (some cases are however not selected in the table below): Bulgaria, Croatia, France, Poland, Portugal, Russia, Spain, Switzerland, the Czech Republic, Turkey and Ukraine.*

| State | Date of Decision to communicate | Case Title | Key Words of questions submitted to the parties |
|---|---|---|---|
| Bulgaria | 09 Sept. 2010 | Abdu no 26827/08 | Alleged violation of Art. 3 – Ill-treatment of the applicant – Lack of an effective investigation – Alleged violation of Art. 14 in conjunction with Art. 3 – Racial motivated attack |
| France | 06 Sept. 2010 | A.W. no 32939/10 | Alleged violation of Art. 3 – Risk of being subjected to ill-treatment if expelled to the Democratic Republic of Congo |
| France | 06 Sept. 2010 | B.M. no 7305/10 | Alleged violation of Articles 3 and 4 – Risk of being subjected to ill-treatment and forced labour if expelled to Nigeria – Alleged violation of Art. 13 – Lack of an effective remedy |
| France | 06 Sept. 2010 | Mo.M. no 18372/10 | Alleged violation of Art. 3 – Risk of being subjected to ill-treatment if expelled to Chad |
| France | 06 Sept. 2010 | V.F. no 7196/10 | Alleged violation of Articles 3 and 4 – Risk of being subjected to ill-treatment and forced labour if expelled to Nigeria – Alleged violation of Art. 13 – Lack of an effective remedy |
| Poland | 06 Sept. 2010 | Stachowska no 49545/07 | Alleged violation of Articles 2 and 3 – Question as to whether the applicant's son's death occurred as a result of the conditions of detention and lack of adequate medical treatment – Lack of an effective investigation |
| Poland | 06 Sept. 2010 | Ziembiński no 8754/10 | Alleged violation of Art. 10 – The applicant's conviction for publishing an article about a high-ranking district official's connection with prostitutes |
| Switzerland | 10 Sept. 2010 | Michel no 3235/09 | Alleged violation of Art. 8 – Domestic authorities' failure to validate the applicant's adoption in Brazil and name her the heir of her adoptive parent – Alleged violation of Art. 14 – Different treatment regarding to the other people in the same situation |
| Switzerland | 06 Sept. 2010 | Perinçek no 27510/08 | Alleged violation of Art. 10 – The applicant's criminal conviction for stating in public that there was "no Armenian genocide" |
| the Czech Republic | 09 Sept. 2010 | Isaka no 36919/10 | Alleged violation of Articles 2 and 3 – Risk of being killed or subjected to ill-treatment if expelled to the Democratic Republic of Congo – Alleged violation of Art. 13 – Lack of an effective remedy |
| Turkey | 08 Sept. 2010 | Izci no 42606/05 | Alleged violation of Articles 3 and 11 – Use of excessive police force during the dispersal of the demonstration – Lack of an effective remedy |

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|---|---|---|---|
| Turkey | 08 Sept. 2010 | Yaman no 14018/10 | Alleged violation of Art. 2 – Disappearance of the applicant's son – Lack of an effective investigation – Alleged violation of Art. 3 – The applicant's mental suffering – Alleged violation of Art. 5 – The applicant's son's unacknowledged detention – Alleged violation of Art. 13 in conjunction with Art. 2 – Lack of an effective remedy – Question as to whether the investigating prosecutors questionned directly and in person any military personnel, including, in particular, the Şırnak Regiment Commander at the time? |

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

**HUDOC: searching made easier (24.09.2010)**

To make it easier to search the HUDOC database, which contains all the Court's judgments amongst other things, a list of keywords by Convention and Protocol Article is now available in the Lookup. Tips on searching the database are also given in the HUDOC user manuals. HUDOC database, user manuals

**Visit of the President of the German Constitutional Court (22.09.2010)**

On 21 September 2010 Andreas Voßkuhle, President of the Constitutional Court of Germany, visited the Court, where he was received by President Costa. Erik Fribergh, the Court's Registrar, also attended the meeting.

**Visit of the French Minister of Justice (21.09.2010)**

On 20 September 2010 France's Minister of Justice and Liberties and Keeper of the Seals, Michèle Alliot-Marie, made an official visit to the Court, where she was received by President Costa. Erik Fribergh, the Court's Registrar, also attended the meeting. During her visit Mrs Alliot-Marie met some of the Court's judges and staff members.

## 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 3 December 2010 (the 1100th 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)

**The Secretary General highlights the indivisibility of human rights (13.09.2010)**

Mr Thorbørn Jagland, Secretary General of the Council of Europe, participated in a fruitful exchange of views with the members of the European Committee of Social Rights, during which he emphasised the indivisibility of human rights and the complementarities of the ESC and the European Convention on Human Rights. Mr Jagland recognised the importance of increasing awareness of the collective complaints procedure and the Revised European Social Charter, with a view to encouraging further ratification of these instruments by States Parties.

**A resolution is adopted by the Committee of Ministers in the case Mental Disability Advocacy Centre (MDAC) against Bulgaria (20.09.2010)**

Following a decision on the merits of the European Committee on Social Rights in which the Committee ruled that children residing in homes for the mentally disabled were victims of discrimination as a result of the low number of such children receiving any type of education when compared to other children, the Committee of Ministers has adopted Resolution Res/CM/ChS(2010)7 on 20 September 2010. This resolution lays down the progress made by Bulgaria to bring its situation into conformity with the provisions of the Revised Charter with regard to the education of children and pupils residing in HMDCs. All of the documents relating to this complaint may be consulted on the Collective Complaint webpage.

**Meeting on non-accepted provisions held in Tallinn (20.09.2010)**

Mrs Polonca KONCAR, President of the European Committee of Social Rights and Mr Lauri Leppik, member of the Committee, as well as Mr Henrik Kristensen, Deputy Head of the Department of the ESC met with Estonian authorities in Tallinn in the framework of the procedure on non-accepted provisions. Programme

**International Colloquy on Social Rights in Seville (21-24.09.2010)**

An international colloquy on social rights was held from 21 to 24 September including presentations by three members of the European Committee of Social Rights, Mssrs. Jean-Michel BELORGEY, Luis JIMENA QUESADA, Petros STANGOS, and two administrators from the Department of the ESC, Mr Régis BRILLAT, Head of Department, and Mrs Isabelle CHABLAIS. Programme

The next session of the European Committee of Social Rights will be held from 18 to 22 October 2010.

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

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

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

**Council of Europe anti-torture Committee visits the Czech Republic (21.09.2010)**

A delegation of the CPT carried out a periodic visit to the Czech Republic from 7 to 16 September 2010. It was the CPT's sixth visit to this country. In the course of the visit, particular attention was paid to the treatment of persons detained by the police and the implementation in practice of fundamental safeguards for the prevention of ill-treatment during police custody. The delegation also examined in detail various issues related to prison establishments, including health-care services provided to prisoners and the situation of juveniles. In addition, the delegation visited a psychiatric hospital and an educational institute for youth and children. The delegation had consultations with Marek ŽENÍŠEK, Deputy Minister of Justice, Martin PLÍŠEK, Deputy Minister of Health, David KAFKA, Deputy Minister of Labour and Social Affairs, as well as with other senior officials of the relevant ministries. It also met Michael KOCÁB, Government Commissioner for Human Rights, members of the Governmental Committee against Torture, Jitka SEITLOVÁ, Deputy Public Defender of Rights, and representatives of the Prague Office of the United Nations High Commissioner for Refugees and non-governmental organisations active in areas of concern to the CPT. At the end of the visit, the delegation presented its preliminary observations to the Czech authorities.

**Council of Europe anti-torture Committee publishes report on Georgia (21.09.2010)**

The CPT has published on 21 September the report on its 4th periodic visit to Georgia, carried out in February 2010. The report has been made public at the request of the Georgian authorities. The findings from the visit confirmed that the situation as regards the treatment of persons detained by the police in Georgia has considerably improved in recent years, and the CPT has welcomed the determined action taken by the Georgian authorities to prevent ill-treatment. Nevertheless, the persistence of some allegations clearly indicates that they must remain vigilant. The CPT has recommended that the Georgian authorities continue to deliver a firm message of "zero tolerance" of ill-treatment, including through ongoing training activities, to all police staff. As part of this message, it should be made clear that the perpetrators of ill-treatment and those condoning or encouraging such acts will be subject to severe sanctions. Further, police officers must be trained in preventing and minimising violence in the context of an apprehension. In its report, the CPT also looks at the issue of investigations into complaints of ill-treatment by the police and recommends that steps be taken to ensure that such investigations fully meet the criteria of an "effective" investigation as established by the European Court of Human Rights. Turning to prisons, overcrowding was rife in several of the establishments visited. Despite a massive prison-building programme, the continuing increase in the prisoner population undermines the efforts made to create a humane penitentiary system. The CPT has called upon the Georgian authorities to redouble their efforts to combat prison overcrowding by adopting policies designed to limit or modulate the number of persons sent to prison. The Committee has also recommended that the authorities review as soon as possible the norms fixed by legislation for living space per prisoner, so as to ensure at least 4 m² per inmate in multi-occupancy cells in all penitentiary establishments.

In the light of information received during the visit, the CPT has recommended that the management of Prison No. 8 in Tbilisi (Gldani), Penitentiary establishment No. 7 in Ksani and Penitentiary establishment No. 8 in Geguti take appropriate steps to ensure that prison staff do not abuse their authority and resort to ill-treatment. No allegations of ill-treatment of patients by staff were received during the follow-up visit to the hospital facility of Asatiani Psychiatric Institute in Tbilisi. However, the ever-deteriorating state of the hospital made it unfit for accommodating patients and created conditions which could easily be described as inhuman and degrading. While awaiting the implementation of projects for the transformation of the Asatiani Psychiatric Institute, the CPT has called upon the Georgian authorities to address the most urgent deficiencies as regards patients' living conditions, and in particular to improve heating throughout the hospital. At the Institution for persons with mental and physical disabilities in Dzevri, the CPT's delegation received no allegations of ill-treatment of residents by staff and gained a generally positive impression of residents' living conditions. However, the Committee has recommended that a systematic and regular evaluation of the residents' state of health be organised with a view to offering psycho-social rehabilitative activities adapted to their needs. The report also includes an assessment of the legal safeguards applicable to persons placed in a specialised institution. The Georgian Government is currently preparing its response to the issues raised by the Committee.

**Council of Europe anti-torture Committee visits Romania (23.09.2010)**

A delegation of the CPT carried out a periodic visit to Romania from 5 to 16 September 2010. In the course of the visit, the CPT's delegation reviewed the measures taken by the Romanian authorities to implement the recommendations made by the Committee after previous visits, in particular in the areas of detention by law enforcement agencies and imprisonment. The delegation also examined in detail the system and procedures in place to investigate cases of alleged ill-treatment by members of the police or prison staff of persons arrested or imprisoned. The delegation held consultations with Adrian STREINU-CERCEL, Secretary of State at the Ministry of Health, Radu Constantin RAGEA and Gabriel TĂNĂSESCU, respectively Under Secretary of State and Secretary General at the Ministry of Justice, Marian TUTILESCU, Head of Department at the Ministry of the Administration and the Interior, Dumitru PÂRVU, Deputy Inspector General of the Romanian Police, and Lăcrămioara CORCHEŞ, Director General at the Ministry of Labour, Family and Social Protection, as well as with other senior officials of these ministries. It also held consultations with Tiberiu NIŢU, First Deputy Prosecutor General, and other members of the Public Prosecutor's Office. Further, the delegation met deputies of the People's Advocate (Romanian Ombudsman). Discussions were also held with representatives of non-governmental organisations active in areas of concern to the CPT. In addition, the delegation had a meeting with Teodor Viorel MELEŞCANU, Vice-President of the Senate, in order to discuss the issue of the alleged existence some years ago of secret detention facilities on Romanian territory operated by the Central Intelligence Agency of the United States of America. At the end of the visit, the delegation presented its preliminary observations to the Romanian authorities.

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

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

**Estonia: visit of the Advisory Committee on the Framework Convention for the Protection of National Minorities (14.09.2010)**

A delegation of the Advisory Committee on the FCNM visited Tallinn, Ida-Viru County and Narva, from 14 - 17 September 2010 in the context of the monitoring of the implementation of this convention in Estonia. This was the third visit of the Advisory Committee to Estonia. The Delegation had meetings with the representatives of all relevant ministries, public officials, NGOs, as well as national minority organisations. The Delegation included Mr Rainer HOFMANN (member of the Advisory Committee elected in respect of Germany and President of the Advisory Committee a.I.), Ms Athanasia SPILIOPOULOU ÅKERMARK (member of the Advisory Committee elected in respect of Sweden) and Ms Marieke J. SANDERS-TEN HOLTE (member of the Advisory Committee elected in respect of the Netherlands). They were accompanied by Ms Charlotte ALTENHÖNER-DION of the Secretariat of the Framework Convention for the Protection of National Minorities.

*Note: Estonia submitted its third State Report under the Framework Convention in April 2010. Following its visit, the Advisory Committee will adopt its own report (called Opinion), which will be sent to the Estonian Government for comments. The Committee of Ministers of the Council of Europe will then adopt conclusions and recommendations in respect of Estonia.*

**Council of Europe monitoring body publishes report on Hungary (17.09.2010)**

The Council of Europe Advisory Committee on the FCNM has published its third Opinion on Hungary, together with the government's Comments following the authorities' agreement to early publication. Its key conclusions are the following: Hungary has made considerable efforts to improve the legal protection of persons belonging to national minorities in the last years. The scope of anti-discrimination legislation has been extended and the Equal Treatment Authority has sanctioned discrimination against persons belonging to national minorities. However, in spite of these positive developments, Roma are confronted with discrimination and are the victims of racially-motivated offences. Cases of ill-treatment by police officers have also been reported. Given the climate of intolerance that is developing in some segments of the Hungarian society, the Committee called on the authorities to act vigorously to promote intercultural dialogue and to combat all forms of intolerance, including in the media and in political discourse. Authorities must also prevent, investigate and sanction all forms of discrimination by police officers. The Committee recommends reviewing anti-discrimination legislation to sanction racist and hate speech while ensuring freedom of expression. The authorities have launched an ambitious action plan aimed at improving the situation of the Roma in several spheres such as housing, employment, education and health. However, further efforts are needed, in particular in the field of education. The reform of minority self-governments guarantees that they are financially and operationally independent, particularly in the fields of culture and education. Despite the fact that there is a highly developed system for the representation of minorities, the institutional framework needs to be rapidly adjusted to ensure that national minorities are adequately represented in the Hungarian Parliament.

## E. Group of States against Corruption (GRECO)

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

**On-site evaluation visit to the Republic of San Marino (13.09.2010)**

A MONEYVAL team of evaluators visited the Republic of San Marino from 6 to 11 September 2010, under the fourth evaluation round. The visit was coordinated the Financial Intelligent Unit of San Marino (Agenzia d'Informazione Finanziaria) and the Ministry of Foreign Affairs. The evaluation team had an audience with the two Capitani Reggenti, Mr Glauco Sansovini and Mr Marco Conti and met with the Secretaries of State for Foreign Affairs – Ms Antonella Mularoni; for Finance – Mr Pasquale Valentini; for Justice – Mr Augusto Casali; for Industry – Mr Marco Arzilli; for Education and Culture – Mr Romeo Morri; and for Tourism – Mr Fabio Berardi. Furthermore, the team met with officials and representatives of all relevant government agencies, of specialised agencies, with judicial and law enforcement authorities as well as with representatives of professional associations and the private sector. A key findings document was discussed with the San Marino authorities and left with them at the conclusion of the mission. The draft report will now be prepared for review and adoption by MONEYVAL at its 35th Plenary meeting (May 2011). MONEYVAL`s fourth round evaluations are more focussed and primarily follow up the recommendations made in the 3rd round. Evaluation teams in the fourth round examine all Financial Action Task Force (FATF) key and core Recommendations as well as other Recommendations which were previously rated "non compliant" or "partially compliant". Evaluations are complemented by issues linked to the Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing in accordance with MONEYVAL's terms of reference.

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

**GRETA - 7th meeting (14-17.09.2010)**

GRETA held its 7th meeting on 14-17 September 2010 at the Council of Europe in Strasbourg. At this meeting, GRETA finalised preparations for the first round of evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the parties, in particular the preparation of its Reports, the organisation of country visits and requests for information addressed to civil society. GRETA also held a preliminary exchange of views concerning the practical organisation of its work with a view to drawing up a timetable for the evaluation of the 1st group of 10 parties. List of items discussed and decisions taken

The next GRETA meeting will take place from 7-10 December 2010.

**Committee of the Parties: 4th meeting and Thematic debate on Partnerships among international organisations active in the field of trafficking in human beings: need for co-ordinated action (13.09.2010)**

The 4th meeting of the Committee of the Parties of the Council of Europe Convention on Action against Trafficking in Human Beings was held in Strasbourg on Monday, 13 September 2010. The major part of this meeting was devoted to a thematic debate on *Partnerships among international organisations active in the field of trafficking in human beings: need for co-ordinated action*. The aim of the debate was to determine the actions to be taken to strengthen partnerships and improve co-ordination between the different international organisations active in the field of preventing and combating trafficking in human beings and protecting its victims. The European Commission and the following international governmental and non-governmental organisations which all have observer status with the Committee of the Parties were invited to participate in this debate: UNODC, ILO, UNICEF, OHCHR, UNHCR, IOM, OSCE, Interpol, Europol, Amnesty International, Anti-Slavery International, La Strada International and the International Federation Terre des Hommes - IFTDH. List of items discussed and decisions taken during the meeting

[1] 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

**15 September 2010**

**Georgia** signed the European Convention on the International Effects of Deprivation of the Right to Drive a Motor Vehicle (ETS No. 088), and approved the European Landscape Convention (ETS No. 176), and the European Convention for the protection of the Audiovisual Heritage (ETS No. 183).

**16 September 2010**

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

**21 September 2010**

**Bosnia and Herzegovina** ratified the European Charter for Regional or Minority Languages (ETS No. 148).

**23 September 2010**

**Austria** ratified the Council of Europe Convention on the avoidance of statelessness in relation to State succession (CETS No. 200).

**24 September 2010**

**"The former Yugoslav Republic of Macedonia"** signed the Council of Europe Framework Convention on the Value of Cultural Heritage for Society (CETS No. 199).

## B. Recommendations and Resolutions adopted by the Committee of Ministers (Adopted by the Committee of Ministers on 16 September 2010 at the 1091st meeting of the Ministers' Deputies)

CM/ResChS(2010)7E / 16 September 2010
Collective complaint No. 41/2007 by the Mental Disability Advocacy Centre (MDAC) against Bulgaria

CM/ResDip(2010)1E / 16 September 2010
Resolution on the renewal of the European Diploma of Protected Areas awarded to the Teberda National Biosphere Reserve (Russian Federation)

CM/ResDip(2010)2E / 16 September 2010
Resolution on the renewal of the European Diploma of Protected Areas awarded to the Oka National Biosphere Reserve (Russian Federation)

CM/ResDip(2010)3E / 16 September 2010
Resolution on the renewal of the European Diploma of Protected Areas awarded to the Regional Park of Migliarino, San Rossore and Massaciuccoli (Italy)

CM/ResDip(2010)4E / 16 September 2010
Resolution on the renewal of the European Diploma of Protected Areas awarded to the Podyjí National Park (Czech Republic)

CM/ResDip(2010)5E / 16 September 2010
Resolution on the renewal of the European Diploma of Protected Areas awarded to the Karlštejn National Nature Reserve (Czech Republic)

CM/ResDip(2010)6E / 16 September 2010
Resolution on the renewal of the European Diploma of Protected Areas awarded to the Berezinsky State Biosphere Reserve (Belarus)

CM/ResDip(2010)7E / 16 September 2010
Resolution on the renewal of the European Diploma of Protected Areas awarded to the Berchtesgaden National Park (Germany)

CM/ResDip(2010)8E / 16 September 2010
Resolution on the renewal of the European Diploma of Protected Areas awarded to the De Weerribben Nature Reserve (Netherlands) and to its extension to the De Wieden Nature Reserve

CM/ResDip(2010)9E / 16 September 2010
Resolution on the renewal of the European Diploma of Protected Areas awarded to the Boschplaat Nature Reserve (Netherlands)

CM/ResDip(2010)10E / 16 September 2010
Resolution on the renewal of the European Diploma of Protected Areas awarded to the Fair Isle National Scenic Area (United Kingdom)

CM/ResDip(2010)11E / 16 September 2010
Resolution on the renewal of the European Diploma of Protected Areas awarded to the Scandola Nature Reserve (France)

CM/ResDip(2010)12E / 16 September 2010
Resolution on the renewal of the European Diploma of Protected Areas awarded to the Sasso Fratino Integral Nature Reserve (Italy)

CM/ResDip(2010)13E / 16 September 2010
Resolution on the renewal of the European Diploma of Protected Areas awarded to the Doñana National Park (Spain)

CM/ResDip(2010)14E / 16 September 2010
Resolution on the renewal of the European Diploma of Protected Areas awarded to the Ecrins National Park (France)

CM/ResDip(2010)15E / 16 September 2010
Resolution on the renewal of the European Diploma of Protected Areas awarded to the Ipolytarnóc Protected Area (Hungary)

CM/ResDip(2010)16E / 16 September 2010
Resolution on the renewal of the European Diploma of Protected Areas awarded to the Szénás Hills Protected Area (Hungary)
CM/ResDip(2010)17E / 16 September 2010
Resolution on the renewal of the European Diploma of Protected Areas awarded to the Danube Delta Biosphere Reserve (Romania)

## C. Other news of the Committee of Ministers

**Committee of Ministers to supervise execution of European Court of Human Rights judgments (15.09.2010)**

The Committee of Ministers held its third "human rights" meeting of 2010 from 14 to 15 September. A preliminary list of items/cases to be examined at the 1092nd meeting of the Ministers' deputies is available on the website www.coe.int/execution.

**Conference in Ohrid: Media, beliefs and religion (15.09.2010)**

The role of the media in fostering intercultural dialogue, tolerance and mutual understanding, freedom of expression of the media and respect towards cultural and religious diversity were at the centre of exchange organised by the Council of Europe and the Chairmanship of its Committee of Ministers on 13 and 14 September in Ohrid.

**Committee of Ministers: Decisions on the execution of judgments of the Court (17.09.2010)**

The Committee of Ministers concluded on 15 September 2010 its third special human rights meeting devoted to the supervision of the execution of the judgments of the European Court of Human Rights. The Committee furthermore continued its examination of measures to improve the efficiency and transparency of the supervision process, in accordance with the Interlaken Declaration and Action Plan.

**Meeting of the Ministers' Deputies (17.09.2010)**

At their meeting of 16 September, the Ministers' Deputies welcomed the initiative of the Secretary General to organise in the near future a high level meeting on Roma and encouraged him to continue his consultations with a view to preparing this meeting.

**Antonio Miloshoski highlights synergies between Council of Europe and Alliance of Civilisations (24.09.2010)**

Read the speech

**Linguistic intolerance is best countered through language learning (25.09.2010)**

"Respect for others' languages, cultures and identities is a precondition for creating a European space for mutual respect and cooperation in Europe", said Minister Miloshoski, Chair of the Committee of Ministers of the Council of Europe, on the occasion of the annual European Day of Languages celebrated throughout the Council of Europe's 47 member States. File

**Conference on "The Social Value of Cultural Heritage in Europe" (25.09.2010)**

The Conference, organised within the Chairmanship of the Committee of Ministers, took place on 24-25 September in Skopje. It aimed at contributing to the "soft security" of Europe, based on the respect for human and social rights emphasising the great potential of heritage for promoting intercultural understanding and the improvement of the quality of life.

# Part V: The parliamentary work

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

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

➢ *Countries*

**PACE President welcomes referendum result in Turkey (13.09.2010)**

Mevlüt Çavusoglu, President of PACE, made the following statement on 13 September: "I warmly welcome the positive result of the referendum on constitutional change in Turkey – as well as the high turnout, which showed how strongly the Turkish people are attached to their democratic rights and freedoms, and to a future in Europe. This marks an important new stage in Turkey's democratic progress, and paves the way for further reforms soon, including a new civilian Constitution. The possibility for a citizen to bring a complaint directly to the Constitutional Court is particularly welcome, as it provides an additional human rights safeguard, and may help to reduce Turkey's caseload before the European Court of Human Rights. Sixty-one years after Turkey joined the Council of Europe, and on the eve of its chairmanship of the organisation, Turkey's attachment to its fundamental values has been made stronger by Sunday's vote."

**Russia: information note from the co-rapporteurs (14.09.2010)**

In an information note published on their fact-finding visits to Moscow and Murmansk in March and July 2010, the PACE co-rapporteurs on Russia, György Frunda (Romania, EPP/CD) and Andreas Gross (Switzerland, SOC), welcomed the tangible progress made in some areas since the last monitoring report in 2005. They were concerned, however, about a failure to liberalise electoral legislation sufficiently and considered that more progress was needed to strengthen pluralist democracy and speed up the reform of justice. They welcomed the Russian authorities' clear political will to co-operate with the Assembly and engage in open dialogue on Russia's obligations and commitments. The co-rapporteurs will prepare a report by the end of 2010 for plenary debate in spring or summer 2011. Information note

**Bosnia and Herzegovina: declaration of the PACE pre-electoral mission (15.09.2010)**

A pre-electoral delegation from PACE visited Sarajevo and Banja Luka in order to evaluate the political and campaign environment in the run-up to the general elections in Bosnia and Herzegovina on 3 October 2010. The delegation met representatives of the main political forces participating in the elections, the Central Election Commission and the Communication Regulatory Agency, as well as representatives of the international community and NGO activists. The delegation welcomes the peaceful environment of the campaign and commends the Central Election Commission for managing well an extremely complex electoral process. The delegation notes with satisfaction that the CEC is respected and trusted by all political stakeholders and encourages the Commission to continue its work in close co-operation with the Council of Europe. However, the delegation is concerned by the fact that divisive rhetoric is still strong in this campaign. The delegation gained the impression that key political parties are not engaged enough in a real debate on the main issues of concern for ordinary citizens: economic development and unemployment, and the fight against corruption and organised crime. Debates should focus on concrete reforms which will motivate citizens to vote. Moreover, the delegation stresses that the rules governing campaign financing are obscure, which does not increase citizens' confidence in the democratic electoral process. Fair access to broadcast media, particularly public service broadcasting, should be considerably improved, especially when it comes to news programmes and campaign reporting. Many interlocutors drew the attention of the delegation to the risks of irregularities during the counting process, taking into consideration the complexity of the electoral system. In this respect, the delegation regrets that the network of domestic non-partisan observers is not well developed in Bosnia and Herzegovina. The presence of impartial domestic

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

observers will contribute to building trust between political forces and reinforce citizens' confidence in the electoral process. The delegation is seriously concerned that, contrary to several recommendations of the Parliamentary Assembly as well as in violation of a legally-binding judgment of the European Court of Human Rights, the authorities failed to amend the State Constitution. Consequently, the elections to the Presidency of Bosnia and Herzegovina, and to the House of Peoples of the Bosnia and Herzegovina Parliamentary Assembly, will be organised according to rules which do not comply with the European Convention on Human Rights and its additional Protocols Nos. 1 and 12. It expects the authorities to do their utmost after the elections to urgently resolve this problem.

**PACE President congratulates Ukrainian President on reform programme but calls for different political forces to be involved (21.09.2010)**

"After years of political instability, the holding of a democratic presidential election and the creation of the new governing coalition gives Ukraine a unique chance to carry out the reforms which the country urgently needs," PACE President Mevlüt Çavusoglu stressed on 21 September at a press conference in Kyiv. On an official visit to the country from 20 to 22 September, Mr Çavusoglu said he had congratulated the President on his ambitious reform programme and reiterated the support and assistance of the Council of Europe for these reforms. He stressed that the quality of the adopted legislation, which must be based on international legal standards and expertise, was paramount. "In this connection, I urged the authorities to systematically seek the opinion of the Venice Commission before draft laws are adopted," he said. Stressing that the role of the opposition was extremely important, the President added that he had invited the authorities to associate different political forces in the country with the reform process and to resist the temptation of excessive concentration of power. "It is important to ensure a long-standing political stability based on political pluralism," he concluded. Other issues raised during his official visit were the freedom of the media, the rights of minorities, measures to integrate the Tatars of Crimea, and the integration of Ukraine in the European Union. During his visit, the PACE President met with President Viktor Yanukovych, the Speaker of the Verkhovna Rada Volodymyr Lytvyn, Prime Minister Mykola Azarov, Foreign Minister Kostyantyn Gryshchenko, former Prime Minister Yulia Timoshenko and the leadership of coalition and opposition factions, as well as NGO representatives.

- *Themes*

**Parliamentarians united against trafficking in human beings (13.09.2010)**

"The Assembly will organise a conference on 3 December in Paris, aimed at strengthening co-operation between international parliamentary assemblies involved in action against trafficking in human beings," announced on 13 September Doris Stump (Switzerland, SOC) at a debate in Strasbourg on partnerships among parliaments, intergovernmental organisations and NGO's active in this field. This forthcoming event will also "discuss the contribution that national parliaments can give in monitoring the implementation of the CoE Trafficking Convention at national level," she added. The debate was held in the framework of the 4th meeting of the Committee of the Parties to the CoE Convention on Action against Trafficking in Human Beings. Resolution 1702 (2010); Recommendation 1895 (2010); Statement by Doris Stump

**PACE hearing in Skopje on human trafficking for labour exploitation purposes (16.09.2010)**

The Committee on Migration, Refugees and Population of PACE held a hearing in Skopje on 20 September on human smuggling and trafficking for labour exploitation purposes, followed by a hearing on the topic of migration and demographic challenges for "the former Yugoslav Republic of Macedonia". The committee is due to adopt a report by Milorad Pupovac (Croatia, SOC) on the situation of Roma asylum seekers in member States. The issue of preventing harm to refugees and migrants in extradition and expulsion cases were also on the agenda, along with the adoption of a report on the subject by David Darchiashvili (Georgia, EPP/CD). Programme of the hearings

**'Citizens must be able to trust those they elect' (15.09.2010)**

Citizens must be able to trust those they have elected to office, the Bureau of PACE has said in a declaration to mark the third UN International Day of Democracy, celebrated each year on 15 September. "The people can only place trust in representatives they feel have been properly elected, and those who govern must know that they have duly earned that trust," said the Bureau, a 35-

member body of parliamentarians which prepares the work of the Assembly, in a declaration approved in Rome on 8 September. The Bureau pointed to three Assembly activities which directly promote democracy: it holds annual debates on the state of democracy in Europe, it observes elections in Council of Europe member States, and it sponsors a Forum which reflects on the future of democracy. The International Day of Democracy was declared by the UN General Assembly in 2007 and is promoted by the Inter-Parliamentary Union. Full declaration of the Bureau

**Strict policies to curb the degradation of the Mediterranean environment (17.09.2010)**

In its draft resolution on preserving the environment in the Mediterranean, the PACE Environment Committee regrets the fact that, despite various initiatives at international level, the Mediterranean "still faces very serious environmental problems", which are chiefly the result of factors such as overfishing, rampant coastal development and inadequate controls over waste and wastewater disposal. The text, adopted on the basis of a report by Joseph Falzon (Malta, EPP/CD), calls on European governments to implement "strict policies designed to prevent and reduce environmental degradation", and enhance national and international environmental legislation and ensure that it is implemented. The parliamentarians hope that the various projects managed by the Union for the Mediterranean that are currently under way will start yielding practical results soon and propose that co-operation with various international parliamentary assemblies should be stepped up so that joint activities can be launched.

**PACE Migration Committee: planned returns of Roma to Kosovo[1] should be suspended (22.09.2010)**

The Migration Committee of PACE has called on European governments to suspend planned returns of Roma to Kosovo "until they can be shown to be safe and sustainable". Approving a report on "Roma asylum seekers in Europe" in Skopje on 22 September, the committee said these Roma faced "an unsustainable social situation with little chance of reintegration upon return, as well as serious threats to their personal security". Around 100,000 Roma who fled the conflict in Kosovo have been living in other parts of Europe with some form of temporary protection or as "tolerated", but several countries are now preparing to return sizeable numbers, the committee pointed out. As of May 2010, in Germany for example, around 10,000 Roma from Kosovo are facing return, half of them under the age of 18. Kosovo did not have the resources to successfully re-integrate these people, the committee said, adding that up to three-quarters of Roma already forcibly returned to Kosovo had moved on or gone back to the deporting countries. "Enforcing returns is thus not only producing great human suffering, but is also wasting economic resources." The committee's recommendation, based on a report by Milorad Pupovac (Croatia, SOC) now goes forward for debate by the Assembly, which brings together parliamentarians from the 47 Council of Europe member States. Full text of report (provisional version) (PDF)

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

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

## A. Country work

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## B. Thematic work

**Do not stigmatise Roma (15.09.2010)**

Repatriation of Roma EU citizens is now common in several European countries. France's crackdown on crime has specifically targeted Roma from Romania and Bulgaria. And France is not alone. Italy, for instance, has arrested and deported a considerable number of Romanian Roma in the last few years. Recently, Roma have also been sent back to their home countries by Denmark and Sweden. Pushing Roma families between EU member States offers no solutions to any problems. It has to be recognised that there are reasons why members of the Roma minority seek a future in other countries and that these concrete problems must be addressed. Read the Comment

**Rights of migrants in France: Commissioner Hammarberg calls on the authorities to comply fully with European standards (21.09.2010)**

"Improvements need to be made to uphold migrants' rights in France", said the Council of Europe's Commissioner for Human Rights, Thomas Hammarberg, as he published a letter sent to the French Minister for Immigration, Integration, National Identity and Development Solidarity, Eric Besson. "There is a need for reform not only as far as the reception of migrants and asylum are concerned, but also with particular regard to detention and returns". The letter comes following the visit made on 19 May to Calais and the surrounding area, when the Commissioner met migrants, civil society representatives and the local authorities. Read the Letter and the reply from the French Minister for Immigration, Integration, National Identity and Development Solidarity (*French only*)

**The 'Dublin Regulation' undermines refugee rights (22.09.2010)**

The asylum procedures of European countries are still flawed – they need to be improved and better harmonised. One of the necessary reforms is to overhaul the dysfunctional so-called Dublin Regulation within the European Union. Under the Dublin system, the responsibility for examining asylum applications is shouldered by the EU border states, through which most asylum seekers enter. This has not been successful in practice. Read the Comment

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

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

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

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