DIRECTORATE GENERAL OF HUMAN RIGHTS AND LEGAL AFFAIRS

LEGAL AND HUMAN RIGHTS CAPACITY BUILDING DEPARTMENT

NATIONAL HUMAN RIGHTS STRUCTURES
PRISONS AND POLICE DIVISION

**National Human Rights Structures Unit**

Strasbourg, 7 February 2011

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

## Issue n°56
## covering the period from 3 to 16 January 2011

**Council of Europe** **European Union**

**Conseil de l'Europe** **Union européenne**

"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*

***For any queries, please contact:***
***markus.jaeger@coe.int***

## 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**

**Paksas v. Lithuania (link to the judgment in French) (no. 34932/04) (Importance 1) – 6 January 2011 – Violation of Article 3 of Protocol No. 1 – The permanent and irreversible disqualification of the applicant, a former President, from standing for elections following impeachment proceedings, was a disproportionate means of satisfying the requirements of preserving democratic order**

In January 2003 the applicant was elected President of the Republic of Lithuania. Following impeachment proceedings against him, he was removed from office in April 2004 by the Seimas (the Lithuanian Parliament) for committing a gross violation of the Constitution and breaching the constitutional oath. The Constitutional Court found that, while in office as President, the applicant had, unlawfully and for his own personal ends, granted Lithuanian citizenship to a Russian businessman, disclosed a State secret to the latter by informing him that he was under investigation by the secret services, and exploited his own status to exert undue influence on a private company for the benefit of close acquaintances. The Central Electoral Committee (CEC) found that there was nothing to prevent the applicant from standing in the presidential election called as a result of his removal from office. In May 2004 the Seimas amended the Presidential Elections Act by inserting a provision to the effect that a person who had been removed from office in impeachment proceedings could not be elected President until a period of five years had expired (as a result of which the CEC ultimately refused to register the applicant as a candidate). The Constitutional Court ruled in May 2004 that such a disqualification was compatible with the Constitution, but that subjecting it to a time-limit was unconstitutional. In July 2004 the Seimas passed an amendment to the Seimas Elections Act, to the effect that anyone who had been removed from office following impeachment proceedings was disqualified from being a member of parliament. Criminal proceedings were brought against the applicant for disclosing information classified as a State secret, but he was eventually acquitted.

The applicant complained that the amendment of electoral law had been passed arbitrarily to bar him from holding office in future, and that his lifelong disqualification from being a member of parliament was contrary to the very essence of free elections.

The Court noted that, as a former President of Lithuania removed from office following impeachment proceedings, the applicant belonged to a category of people directly affected by the rule set forth in the Constitutional Court's rulings. Since he had been deprived of any possibility of running as a parliamentary candidate, he was entitled to claim that there had been interference with the exercise of his right to stand for election. The interference satisfied the requirements of lawfulness and pursued a legitimate aim for the purposes of Article 3 of Protocol No. 1, namely preservation of the democratic order. The Court observed on the one hand that, as it had previously held, Article 3 of Protocol No. 1 did not exclude the possibility of imposing restrictions on the electoral rights of a person who had, for example, seriously abused a public position or whose conduct had threatened to undermine the rule of law or democratic foundations. The applicant's case concerned circumstances of that kind, since his inability to serve as a member of parliament was the consequence of his removal from office by the Seimas in a decision taken in impeachment proceedings on the basis of the Constitutional Court's ruling that he had committed a gross violation of the Constitution and breached his constitutional oath. The Court further noted that, in the context of impeachment proceedings, which could result in senior officials being removed from office and barred from standing for election, Lithuanian law provided for a number of safeguards protecting those concerned from arbitrary treatment. On the other hand, while not wishing either to underplay the seriousness of the applicant's alleged conduct in relation to his constitutional obligations or to question the principle of his removal from office as President, the Court noted the extent of the consequences of his removal for the exercise of his rights under Article 3 of Protocol No. 1: he was permanently and irreversibly deprived of the opportunity to stand for election to Parliament. That appeared all the more severe since removal from office had the effect of barring the applicant not only from being a member of parliament but also from holding any other office for which it was necessary to take an oath in accordance with the Constitution. The Court found it understandable that a State should consider a gross violation of the Constitution or a breach of the constitutional oath to be a particularly serious matter requiring firm action when committed by a person holding an office such as that of President of Lithuania; however, that was not sufficient to persuade it that the applicant's permanent and irreversible disqualification from standing for election as a result of a general provision was a proportionate means of satisfying the requirements of preserving democratic order. The Court noted that Lithuania's position in that area constituted an exception in Europe. It then observed that not only was the restriction in question not subject to any time-limit, but the rule on which it was based was also set in constitutional stone, with the result that the applicant's disqualification from standing from election carried a connotation of immutability that was hard to reconcile with Article 3 of Protocol No. 1. Lastly, it found that, although the relevant legal provision was worded in general terms and was intended to apply in exactly the same manner to anyone whose situation corresponded to clearly defined criteria, it was the result of a rule-making process strongly influenced by the particular circumstances. Accordingly, and having regard especially to the permanent and irreversible nature of the applicant's disqualification from holding parliamentary office, the Court concluded that there had been a violation of Article 3 of Protocol No. 1.

By way of just satisfaction, the Court held unanimously that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant. Judge Costa, joined by Judges Tsotsoria and Baka, expressed a partly dissenting opinion.

- **Right to life**

**Mikhalkova and Others v. Ukraine (no. 10919/05) (Importance 2) – 13 January 2011 – Violations of Article 2 (substantive and procedural) – (i) Death of the applicants' close relative in a police sobering-up facility – (ii) Lack of an effective investigation – Violation of Article 3 – Ill-treatment of the applicants' close relative by police officers**

The applicants are the mother and siblings of Vasiliy Mikhalkov, who died in April 2003. Vasiliy's mother called the district police on 29 April 2003 asking them to take her son to a sobering-up facility because of his severe alcohol intoxication. According to her, upon arrival, the police officers mocked and kicked Vasiliy despite her protests, dragged him into their police car and took him to the police station. When she went to the police station on the following day, she discovered that he was dead. Criminal proceedings were opened into the circumstances of Vasiliy's death and the investigation is currently ongoing. According to the applicants, they have been denied access to the investigation file and had not had any meaningful opportunity to take part in the proceedings regardless of their numerous complaints to various authorities, including the prosecuting service. The Government provided no documents to the Court concerning the investigation, referring to the confidentiality of documents related to a pending investigation. A number of expertises were carried out into the

possible death of Vasiliy. Several of them concluded that the injuries found on his body may have been the result of many kicks, possibly by feet in boots and under the circumstances described by Vasiliy's mother who witnessed the events.

The applicants complained that their relative had died in a sobering-up facility as a result of police ill-treatment and that there had been no effective investigation into it.

Article 2

The Court observed that Vasiliy had died in a sobering-up facility run by the Ukrainian authorities. Both parties agreed that his death had been the result of an abdominal injury sustained on that date. According to Vasiliy's relatives, including his mother who had eye-witnessed the events, two police officers had been kicking Vasiliy before taking him to the sobering-up facility while he was intoxicated and helpless. That version had been consistent with the forensic expertise's' conclusions, which had found that Vasiliy had been hit strongly, possibly several times by feet in boots, and that his injury could not have been caused by an accidental single fall. The Government had not provided any plausible alternative explanation to Vasiliy's injuries; neither had they shown that they had not mistreated him upon taking him in custody. In addition, no information had been provided about whether Vasiliy had been medically assisted or supervised with a view to preventing his death. Accordingly, the Court found that the Ukrainian authorities had been responsible for Vasiliy's death, in breach of Article 2. The Court noted that the investigation into Vasiliy's death had been pending for more than seven years without any conclusion about how he had died or who had been responsible for it. Despite their submission that a number of investigative actions had been taken, the Ukrainian Government had refused to provide any related documents. The Court therefore could not infer that seven years had been necessary for those actions to be taken. In addition, the applicants had been repeatedly denied access to the case file and the opportunity to participate meaningfully in the proceedings. Consequently, the Court found that the Ukrainian investigative authorities had not carried out an effective investigation, in breach of Article 2.

Article 3

The Court found that as no plausible explanation had been provided by the Government for the lethal abdominal trauma and other injuries found on Vasiliy's body, or at least any documents disproving the version of the applicants, the Ukrainian authorities had been responsible for treating him in breach of Article 3. Accordingly, there had been a violation of Article 3.

Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that Ukraine was to pay 50,000 euros (EUR) to Vasiliy's mother and EUR 20,000 to each of his siblings in respect of non-pecuniary damage and EUR 3,300 to the applicants jointly in respect of costs and expenses.

**Berü v. Turkey (no. 47304/07) (Importance 2) – 11 January 2011 – No violation of Article 2 – Lack of sufficient evidence to conclude that the authorities knew or should have known that there was an immediate risk to the applicants' relative's life because of a few stray dogs outside the village – Violation of Article 6 § 1 – Excessive length of proceedings**

In March 2001, the applicants' daughter or sister, then aged nine was fatally attacked by stray dogs around just outside their village. An investigation was immediately opened. In April 2001 the public prosecutor found that the commanding officer's liability might be engaged, in view of testimonies to the effect that the dogs belonged to the gendarmerie and requested the Karlıova provincial governor's office for authorisation to prosecute for gross negligence manslaughter. After conducting its investigation, the administrative board of the provincial governor's office decided not to authorise the prosecution on the ground that there was no causal link between the fatal attack by stray dogs and the commanding officer's liability. In April 2002 the public prosecutor discontinued the criminal proceedings. The child's father had in the meantime filed a complaint for intentional homicide, alleging that the gendarmes had knowingly ordered the dogs to attack and that the dogs belonged to them. The public prosecutor again issued a discontinuance order, upheld by the Muş Assize Court. The applicants claimed damages before the Malatya Administrative Court against the Ministry of the Interior and their application was dismissed, a decision upheld by the Supreme Administrative Court. The courts took the view that the dogs were strays and that the authorities could not be found liable for the tragic attack.

The applicants argued that the dogs belonged to the gendarmerie and that gendarmes had instigated the attack on children, or at least failed to prevent it. They further complained about the length of the examination of their application to an administrative court for damages in connection with the incident.

Article 2 (right to life)

The Court reiterated that the authorities' liability could be engaged (in respect of the right to life) if they knew or ought to have known of the existence of a real and immediate risk to the life of an individual and failed to take measures which, judged reasonably, might have been expected to avoid that risk. Examining the circumstances of the applicants' relative's death in the light of that principle, the Court first noted that the allegations according to which the dogs belonged to the gendarmes, who had failed to prevent the attack, were not based on any reliable evidence. The Turkish courts had established the facts of the case – finding that stray dogs had been involved – and the Court thus based its analysis on their assessment. The Court observed that a series of incidents had already taken place before the fatal attack (villagers and a gendarme injured, cattle killed, etc.). However, in the Court's view, those factors were not sufficient for it to find that the authorities had a "positive obligation" to take preventive measures. There was no evidence in the file that the authorities knew or should have known that there was an immediate risk to the applicants' relative's life because of a few stray dogs outside the village. The incident, admittedly a tragic one, had in reality happened by chance and Turkey's responsibility could not therefore be engaged without extending that responsibility in an excessive manner. The Court found, by six votes to one, that there had been no violation of Article 2.

Article 6 § 1

Like the applicants, the Court took the view that the length of the administrative proceedings they had brought (about five years for two levels of jurisdiction) had been excessive. It found, unanimously, that there had been a violation of Article 6 § 1.

Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that Turkey was to pay the applicants 3,000 euros (EUR) in respect of non-pecuniary damage. Judge Popović expressed a separate opinion, which is annexed to the judgment.

- **Right to liberty and security**

**Haidn v. Germany (no. 6587/04) (Importance 1) – 13 January 2011 – Violation of Article 5 § 1 – German courts should not have ordered prisoner's detention for preventive purposes retrospectively – No violation of Article 3 – The circumstances of the order and the duration of the applicant's detention for preventive purposes had not attained the minimum level of severity such as to amount to inhuman or degrading treatment or punishment**

The applicant is currently detained in a psychiatric hospital in Bayreuth. In March 1999, the Passau Regional Court convicted the applicant of two counts of rape and gave him a cumulative sentence of three years and six months' imprisonment. In April 2002, three days before he had served his full sentence, the Bayreuth Regional Court, sitting as a chamber responsible for the execution of sentences, ordered his placement in prison for an indefinite duration under the Bavarian Dangerous Offenders' Placement Act, in force since January 2002. Relying on reports by psychological and psychiatric experts, the court found that there was a high risk the applicant might re-offend, given that he had failed to participate in any therapeutic measure to address his sexual problems which had led to his offences and, by denying his offences in prison, had made any therapy pointless. Due to his organic personality disorder, which led to a continuous decomposition of his personality, he was, in the court's view, no longer able to reflect on his possibly deviant sexual behaviour and to discern limits. In February 2004, the Federal Constitutional Court partly allowed the applicant's constitutional complaint against the decision in finding unanimously that the Bavarian Dangerous Offenders' Placement Act was unconstitutional, as the German Länder did not have the power to enact legislation on the placement of criminals in detention. It also declared unconstitutional another comparable law, which had been enacted by the Land of Saxony-Anhalt. At the same time, the court by a majority decided that the Bavarian law was to remain applicable during a transitional period until September 2004, because there was a paramount interest in protecting the public against an offender who had been found by at least two experts and by the courts to pose a considerable danger, in particular to the sexual self-determination of others. In the meantime, in December 2003, the Bayreuth Regional Court suspended the applicant's placement in prison. He was placed in the psychiatric department of an old people's home and instructed not to leave without the permission of his custodian. In March 2004, the court revoked the suspension, finding that the applicant had repeatedly sexually harassed several old women suffering from dementia. He was again detained in prison. In July 2004, he was transferred to a psychiatric hospital on order of the court. In June 2005, the Passau Regional Court ordered the applicant's preventive detention under Article 66b § 1 of the Criminal Code, which had entered into force in July 2004 and allowed for preventive detention to be ordered retrospectively. His detention was to be executed in a psychiatric hospital. The order was quashed by the Federal Court of Justice and remitted to the Regional Court. The proceedings were subsequently discontinued, after the Hof Regional Court, in June 2007, had ordered that the applicant be placed in a psychiatric hospital under

Article 63 of the Criminal Code, which provides for such a placement in cases where a person commits an unlawful act without or with only diminished criminal responsibility.

The applicant complained that this continued detention in prison for preventive purposes after having fully served his sentence violated Article 5 § 1. He further claimed that his preventive detention violated Article 3.

Article 5 § 1

The Court was not convinced by the German Government's argument that the applicant's retrospective placement in prison was covered by Article 5 § 1 (a) as being detention "after conviction" by the sentencing court. In its judgment in the case of *M. v. Germany*, the Court had clarified that it was the judgment of a sentencing court finding a person guilty of an offence which met the requirements of a "conviction" for the purposes of that provision. By contrast, the decision of a court responsible for the execution of sentences to retain the person concerned in detention did not satisfy the requirement of a "conviction", as it no longer involved a finding that the person was guilty of an offence. In the applicant's case, it was thus only the judgment of the Passau Regional Court of March 1999 convicting him of two counts of rape which could be characterised as a "conviction". In that judgment, no order had been made for his detention for preventive purposes in addition to his prison sentence and would not even have been possible under the legal regime applicable at the time. There had thus not been a sufficient causal connection between the applicant's conviction and his detention for preventive purposes. The applicant's preventive detention was further not covered by Article 5 § 1 (c) as having been "reasonably considered necessary to prevent his committing an offence". It had not been ordered for him to be brought promptly before a judge and tried for potential offences and could thus not be considered pre-trial detention as permitted by Article 5. The potential offences the applicant might have committed if released were moreover not sufficiently concrete and specific to fulfil the requirements of the Court's case-law. The German courts had based their decision to place the applicant in detention for an unlimited period of time on objective medical expertise showing that he suffered from a personality disorder. However, the Court was not convinced that a mental disorder for the purposes of Article 5 § 1 (e), providing for detention "of persons of unsound mind", had been established. In the German legal system, a difference was made between the placement of dangerous offenders in a prison for preventive purposes and the placement of mentally ill persons in a psychiatric hospital. The applicant had initially not been placed in a psychiatric hospital under the relevant provisions (Article 63 of the German Criminal Code or the Bavarian Mentally Ill Persons' Placement Act), and until July 2004 he had been detained in an ordinary prison. The Court concluded that there had been a violation of Article 5 § 1.

Article 3

The applicant's relatively advanced, but not particularly old age, combined with his state of health, which could not be considered as critical for detention purposes, had not as such attained a minimum level of severity so as to fall within the scope of Article 3. The circumstances in which he was detained after having fully served his prison sentence must have generated in him feelings of humiliation and uncertainty as to the future, going beyond the inevitable element of suffering connected with any imprisonment. However, in view of the fact that the Bavarian (Dangerous Offenders') Placement Act had entered into force only shortly before the court's order to detain him further, it could not be said that the authorities deliberately wished to debase the applicant by ordering his continued detention three days before his scheduled release from prison. Under that Act, the German courts had to review at least every two years whether the placement in prison of the person concerned was still necessary, and they had indeed suspended his placement in prison. The Court concluded that the circumstances of the order and the duration of the applicant's detention for preventive purposes had not attained the minimum level of severity such as to amount to inhuman or degrading treatment or punishment. There had therefore been no violation of Article 3.

**Kallweit v. Germany (no. 17792/07) (Importance 3), Mautes v. Germany (no. 20008/07) (Importance 3) and Schummer v. Germany (nos. 27360/04 and 42225/07) (Importance 2) – 13 January 2011 – Violation of Article 5 § 1 – Retroactive extension of prisoners' preventive detention beyond the maximum period of ten years permissible at the time of their offence – Violation of Article 7 § 1 – Additional penalty imposed on the applicants retrospectively**

All three of the applicants were given prison sentences for serious offences after a history of previous convictions: Mr Kallweit was convicted of sexual assault and sexual abuse of a minor and was sentenced to three years and six months' imprisonment; Mr Mautes was convicted of dangerous assault combined with joint coercion, with sexual coercion, with joint extortion and coercion and with attempted sexual assault and was sentenced to six years' imprisonment. Mr Schummer was convicted of two counts of rape and abduction and of one count of attempted rape and deprivation of liberty and was sentenced to five years' imprisonment. In all three cases, the sentencing courts, together with the

applicants' respective conviction, ordered their placement in preventive detention. After having served their full prison sentence, all three applicants were placed in preventive detention, the continuation of which was ordered by the courts on several occasions. The courts relied on Article 67 d § 3 of the Criminal Code; under that provision, applicable also to prisoners whose preventive detention had been ordered prior to the amendment of 1998, the duration of a convicted person's first period of preventive detention could be extended to an unlimited period of time. Under the version of the Article in force at the time of the applicant's offence and conviction, a first period of preventive detention could not exceed ten years. All three applicants lodged constitutional complaints against the courts' decisions, which the Federal Constitutional Court declined to consider. In the cases of Mr Schummer and Mr Kallweit, the court, in 2004 and 2007 respectively, referred to its leading judgment of 5 February 2004 in which it had found that Article 67 d § 3 of the Criminal Code was constitutional. In subsequent judgments, the Cologne Court of Appeal in July and August 2010 respectively, refused to declare the preventive detention of Mr Mautes and Mr Kallweit terminated in view of the Court's judgment in the case of *M. v. Germany*, in which it had found that the retroactive extension of the applicant's preventive detention beyond the maximum period of ten years permissible at the time of his offence violated Article 5 § 1 and 7 § 1. The Cologne Court of Appeal in Mr Mautes' and Mr Kallweit's case found that German law as it stood at present could not be interpreted in compliance with that judgment and that it was therefore up to the legislator to execute its findings. By contrast, the Karlsruhe Court of Appeal in September 2010 declared Mr Schummer's preventive detention terminated and ordered his supervision of conduct. It argued that it was possible to interpret the German Criminal Code so as to comply with the judgment in the case of *M. v. Germany*. Accordingly, in relation to preventive detention, the application of a new legal provision retrospectively to the detriment of the person concerned was prohibited and the law in force at the time of the offence had to be applied. Mr Schummer was released on the same day and has since been under constant police surveillance.

All three applicants complained of their preventive detention after having served their full sentences and of the retrospective extension of their preventive detention beyond the maximum period permissible at the time of their offences.

Article 5 § 1

All three cases were follow-up cases, in terms of the temporal course of events, to the application of *M. v. Germany*. The Court therefore saw no reason to depart from its findings in that judgment. As in the case of *M. v. Germany*, the applicants' preventive detention before expiry of the ten-year-period was covered by Article 5 § 1 (a) as being detention "after conviction" by the sentencing court. As regards their preventive detention beyond the ten-year period, however, the Court found that there was no sufficient causal connection between the applicants' conviction and their continued deprivation of liberty to satisfy Article 5 § 1 (a). At the time the sentencing courts ordered their preventive detention, those decisions meant that they could be kept in that form of detention for a clearly-defined maximum period. Without the amendment of the Criminal Code in 1998 the courts responsible for the execution of sentences would not have had jurisdiction to extend the duration of the detention. The applicants' continued detention had not been justified under any of the other sub- paragraphs of Article 5 § 1. In particular, it had not been justified by the risk that they could commit further serious offences if released, as those potential offences were not sufficiently concrete and specific so as to fall under sub-paragraph (c) of Article 5 § 1. There had accordingly been a violation of Article 5 § 1 in all three cases in so far as the applicants' preventive detention beyond the ten-year period was concerned. The Court welcomed the fact that the domestic courts in the case of Mr Schummer had terminated the preventive detention in compliance with the Convention as interpreted by the Court's case-law. His release did not, however, alter the fact that, as regards his preventive detention beyond the ten-year period until his release, he might claim to have been a victim of a breach of Article 5.

Article 7 § 1

As regards the complaint under Article 7 § 1, the Court equally referred to its findings in *M. v. Germany*. In that judgment, the Court had concluded that preventive detention was to be qualified as a penalty for the purpose of Article 7 § 1. Like a prison sentence, preventive detention entailed a deprivation of liberty. In practice in Germany, people subject to preventive detention were detained in ordinary prisons. There were minor alterations to the detention regime, but no substantial difference could be discerned between the execution of a prison sentence and that of a preventive detention order. Following the amendment of the German Criminal Code in 1998, preventive detention no longer had a maximum duration and the condition for its suspension on probation – there being no danger the detainee would re-offend – was difficult to fulfil. The measure was therefore among the severest which could be imposed under the German law. Given that at the time of their offences the applicants could have been kept in preventive detention only for a maximum of ten years, the extension constituted an additional penalty which had been imposed on them retrospectively. There had accordingly been a violation of Article 7 § 1 in all three cases.

Article 46 (Binding force and execution of judgments)

The Court noted that the Cologne Court of Appeal had prolonged the preventive detention of Mr Mautes and Mr Kallweit although being aware, in view of the judgment in *M. v. Germany*, that that detention was in breach of the Convention. In contrast, in other cases, several German courts of appeal and the Federal Court of Justice had considered it possible to interpret German law in compliance with the judgment in *M. v. Germany*, and in its submissions in Mr Mautes' and Mr Kallweit's case, the German Government had agreed with that view. In the light of that, the Court did not consider it necessary to indicate any specific or general measures Germany had to take in the execution of the judgments in Mr Mautes' and Mr Kallweit's case. However, **the Court urged the national authorities, in particular the courts, to assume their responsibility for speedily implementing and enforcing the two men's right to liberty, a core right guaranteed by the Convention.**

Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that Germany was to pay Mr Kallweit 30,000 euros (EUR), Mr Mautes EUR 25,000 and Mr Schummer EUR 70,000 in respect of non pecuniary damage.

- **Right to a fair trial**

**Hoffer and Annen v. Germany (nos. 397/07 and 2322/07) (Importance 2) – 13 January 2011 – No violation of Article 10 – The domestic courts' conclusion that the applicants' statement comparing abortion to the Holocaust and the doctor practising it "a killing specialist" constituted a very serious violation of the physician's reputation – Violation of Article 6 § 1 – Excessive length of proceedings**

In October 1997, the applicants distributed pamphlets outside a Nuremberg medical centre, which contained information about abortion and called a doctor at that centre a "killing specialist". The pamphlets called for stopping "the murder of children in their mother's womb" at the medical centre and included the phrase "then: Holocaust / today: Babycaust". On behalf of the medical centre and the doctor, the City of Nuremberg brought criminal charges against the applicants for defamation. They were acquitted by the district court in July 1998, but in 1999 the Nuremberg-Fürth Regional Court quashed the judgment and convicted them of defamation to the detriment of the medical centre and the doctor. The court held that that statement, seen in the context of the other statements made in the pamphlet, put the lawful activity performed by the physician on a level with the Holocaust, a synonym for the most abhorrent and unjustifiable crimes against humanity. While the two defendants were allowed, in the court's view, to pursue their political aim by using exaggerated criticism, that statement was not covered by their right to freedom of expression, as it debased the doctor in a way which had not been necessary in order to express their opinion and thus amounted to unjustifiable abusive insult. The court imposed a fine on both defendants, a judgment upheld by the Bavarian Court of Appeal; the applicants lodged complaints in January 2000 with the Federal Constitutional Court. In May 2006, the Federal Constitutional Court quashed the regional court's judgment as regards the conviction of defamation to the detriment of the medical centre and dismissed the remainder of the complaints. According to the court, the applicants had not confined themselves generally to criticising the performance of abortions – which they remained free to do – but had directed their statements directly against the doctor. The court considered that while the statement about the Holocaust infringed the physician's personality rights. Following the remittal of the case, the regional court re-assessed the fines and eventually imposed fines of 150 and 100 euros (EUR) respectively.

The applicants complained that their criminal convictions for distributing the pamphlets had violated their right to freedom of expression and that the length of the proceedings before the Federal Constitutional Court had been incompatible with Article 6 § 1.

Article 10

The Court noted that the applicants' convictions, which indisputably amounted to an interference with their right to freedom of expression, were based on the German Criminal Code and thus "prescribed by law" for the purpose of Article 10. They were further designed to protect "the reputation or rights of others", namely the physician's reputation and personality rights. As regards the remaining question whether the interference had been "necessary in a democratic society" for the purpose of Article 10, the Court noted that the German courts had been prepared to accept that all statements in the pamphlet except for the one "then: Holocaust / today: Babycaust" constituted an acceptable element of a public debate falling within the scope of freedom of expression. The Court further observed that the impact an expression of opinion had on another person's personality rights could not be detached from the historical and social context in which it had been made; the reference to the Holocaust thus had to be seen in the specific context of the German past. The Court therefore accepted the German

courts' conclusion that the statement in question constituted a very serious violation of the physician's personality rights. They had duly balanced the applicants' right to freedom of expression against the physician's personality rights. Moreover, the relatively modest criminal sanctions imposed had been proportionate. There had accordingly been no violation of Article 10.

Article 6 § 1

The Court considered that the length of the proceedings before the Federal Constitutional Court in the applicants' case, which had lasted almost six and a half years for one level of jurisdiction, had been excessive and failed to meet the "reasonable time" requirement, in violation of Article 6 § 1.

Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that Germany was to pay each applicant EUR 4,000 in respect of non-pecuniary damage and EUR 1,000 in respect of costs and expenses.

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

**Nuri Özen and Others v. Turkey (no. 15672/08, 24462/08, 27559/08, 28302/08, 28312/08, 34823/08, 40738/08, 41124/08, 43197/08, 51938/08 and 58170/08) (Importance 1) – 11 January 2011 – Violation of Article 8 – Lack of any legal framework for the refusal to dispatch prisoners' letters written in a language other than Turkish**

The applicants are ten Turkish nationals who, at the time they lodged their applications, were serving their sentences in high-security facilities (the type F prison in Tekirdağ and high-security Bolu prison). The disciplinary boards in those facilities refused to dispatch the applicants' letters to their families or other prisoners on the ground that, as they were written in Kurdish, they could not be checked to ascertain that their content was not "troublesome", as provided for by the regulations. Appeals by the applicants were rejected by the post-sentencing judge, who found that there were no procedural or legal reasons to uphold them, taking the view in particular that no statutory provision required custodial facilities to provide for the translation of letters, as they had neither the budget nor the staff for that purpose. The judge explained that the refusal to dispatch the letters was not because they were written in Kurdish but because their content was incomprehensible and therefore impossible to check, having regard especially to the requirements of order and security.

The applicants complained about the refusal by the prison authorities to dispatch letters that they had written in a language other than Turkish. They all alleged that they had suffered a breach of their right to freedom of correspondence and some of the applicants criticised the related fact that the authorities could not cover the cost of translating their letters into Turkish.

The Court noted that it was not in dispute that the prison authorities had refused to dispatch the applicants' letters, those refusals having been approved by the judicial authorities to which the applicants had complained. Such refusal constituted interference with the applicants' freedom of correspondence, since the authorities had interfered with private communication – the Court pointed out in that connection that the question of the letters' content did not come into play. The Court reiterated that a certain scrutiny of prisoners' correspondence was acceptable and not in itself in breach of the Convention, having regard to the normal and reasonable demands of imprisonment. It noted nevertheless that, under Turkish legislation and the regulations in question, a decision not to dispatch correspondence could be taken only when its content was capable of undermining security and order in the prison, when serving officials were designated as targets, when it enabled communication between terrorist or other criminal organisations, or when it contained untruths and false information that might cause panic among individuals or institutions, or threats and insults. The decisions taken concerning the applicants had not, however, been based on any such grounds. While under domestic law the attribution to custodial facilities of a power of scrutiny and censorship of correspondence concerned only its content, in the applicants' case the decisions had been taken regardless of content. The Court inferred from that that the interference with the applicants' correspondence had not been in "accordance with the law". The Court observed that no statutory provision envisaged the use of a language other than Turkish in prisoners' letters and no restrictions or prohibitions were provided for in that connection. The Court noted that, in the absence of any legal framework clarifying the processing of correspondence written in a language other than Turkish, the prison authorities had developed a practice which consisted of imposing a prior obligation of translation at the prisoner's own expense. Such a practice, as implemented, was incompatible with Article 8 because it automatically excluded from the protection under that provision an entire category of private correspondence from which prisoners could expect to benefit. The Court observed that a ministerial circular of 2009 seemed to be aimed at removing any restriction on letters written in a language other than Turkish, but that its adoption post-dated the facts of the case. The Court thus held

that there had been a violation of Article 8. Under Article 41 (just satisfaction) of the Convention, the Court held that Turkey had to pay a total of 2,000 euros to the applicants in respect of costs and expenses.

- **Freedom of expression**

**Mouvement Raëlien Suisse v. Switzerland (no. 16354/06) (Importance 2) – 13 January 2011 – No violation of Article 10 – The domestic authorities had not overstepped the wide margin of appreciation afforded to them with regard to extended use of public space and had given sufficient reasons for their decisions, concerning the prohibition of the applicant association's poster campaign**

The applicant association is a non-profit association registered in Rennaz. It is the national branch of the Raelian Movement, an organisation with the stated aim of making initial contact and developing good relations with extraterrestrials. In 2001 it requested permission from the Neuchâtel police to conduct a poster campaign. The poster it intended to put up featured the faces of extraterrestrials and a flying saucer, the Raelian Movement's Internet address and telephone number. Permission to put up the posters was denied on the ground that the Raelian Movement ("the Movement") had engaged in activities that were immoral and contrary to public order. An appeal by the applicant association was dismissed. While acknowledging that the poster did not contain anything shocking, the Department highlighted the Movement's promotion of "geniocracy" – a political model based on intellectual coefficient – and of human cloning. It also relied on a finding by the Fribourg Cantonal Court that the Movement also "theoretically" advocated paedophilia and incest, particularly in publications by its founder Rael himself. Lastly, the Clonaid website, accessible from the Movement's site, offered specific services relating to cloning and eugenics. The Department accordingly held that the poster campaign entailed threats to morals and the rights of others and that the Movement had other means available for disseminating its views. In a judgment of April 2005 the Administrative Court dismissed an application by the applicant association for judicial review, although it accepted that the association was entitled both to freedom to hold opinions and to religious freedom. The court noted that in certain publications on "geniocracy" and "sensual meditation", children were described as a "primary sexual object", and pointed out that the Movement had been the subject of criminal complaints about certain sexual practices involving children. The statements about "geniocracy" and criticisms of contemporary democracies were also, in the court's view, capable of undermining public order, safety and morals. An appeal by the applicant association was dismissed by the Federal Court, which held in particular that making public space available for a poster campaign of this kind might have given the impression that the State tolerated or approved of such conduct.

The applicant association complained about the Swiss authorities' refusal to allow it to put up its posters.

**The Court noted that this was the first time it had examined whether the domestic authorities should allow an association to impart its ideas through a poster campaign using public space made available to it**. The Court shared the Swiss Government's view that to allow the posters to be displayed might have given the impression that the authorities approved of or tolerated the opinions and conduct in question. It accepted that the authorities had a wide discretion in assessing whether it was necessary to ban the campaign. Although it was undisputed that the poster in question did not contain anything unlawful or shocking, it nevertheless featured the association's website address, which linked to the Clonaid site, where specific cloning services were on offer. The Court considered that it had to take into account the overall context in which the poster was to be viewed, in particular the ideas imparted by these websites and by the association's publications. Consideration had to be given to modern means of disseminating information and to the fact that the websites in question were accessible to everyone, including children, and would have amplified the impact of a poster campaign. The Court further observed that the Swiss authorities had given carefully reasoned decisions, taking into account the cloning services offered by the Clonaid company, the possible existence of sexually deviant practices involving under-age children and the threats to public order, safety and morals posed by "geniocracy" and the criticism of contemporary democracies. It considered that the accusations levelled by the Swiss authorities against certain members of the applicant association, concerning their sexual activities with minors, appeared particularly disturbing, and that the authorities had had sufficient grounds to deem it necessary to refuse permission to put up the posters. They had also found in good faith that it was essential for the protection of health and morals and for the prevention of crime to ban the poster campaign in the light of the applicant association's views in favour of cloning, an activity prohibited by the Swiss Federal Constitution. The Court observed that the ban was strictly limited to the display of posters in public places – the Federal Court had emphasised that the applicant association could express its beliefs through the many other means of communication available to it – and that there had never been any question of banning the association itself or its

website. Accordingly, since the Swiss authorities had not overstepped the wide margin of appreciation afforded to them with regard to extended use of public space, and had given sufficient reasons for their decisions, the prohibition of the poster campaign had not impaired the very essence of the applicant association's freedom of expression. The Court concluded that there had been no violation of Article 10. Judges Rozakis and Vajić expressed a joint dissenting opinion, which is appended to the judgment.

**Barata Monteiro da Costa Nogueira and Patrício Pereira v. Portugal (no. 4035/08) (Importance 2) – 11 January 2011 – No violation of Article 10 – The conviction of the applicants, politicians who publicly accused an opponent of serious criminal conduct with the sole aim to attack the opponent, was a proportionate measure**

Speaking at a press conference in January 2003, as *Bloco de Esquerda* local party leaders, the applicants accused a doctor and local politician of abuse of authority with acquisition of a prohibited interest. According to them, he had used his influence in a public hospital to let the ophthalmology ward deteriorate with a view to diverting patients and transferring equipment to a private clinic in which he was an associate. The applicants also announced that they had lodged a criminal complaint against him. The doctor and political opponent sued them for defamation. In February 2006, the court in Castelo Branco found that the applicants had shown their accusations to be well-founded, and acquitted them. In July 2007, the Coimbra Court of Appeal set that judgment aside and found the applicants guilty of defamation. It considered that the applicants' allegations had not been substantiated and that the applicants had knowingly broken the law in making the offending accusations. In its judgment, which became final, the Court of Appeal sentenced them each to 180 day-fines, that is, 1,800 euros (EUR).

The applicants claimed mainly that their conviction was in breach of Article 10.

The Court noted that the main issue was whether the applicants' conviction, which was based on the Criminal Code and pursued the legitimate aim of protecting the reputation and rights of others, could also be considered "necessary in a democratic society". The Court based its reasoning on the facts as established by the Coimbra Court of Appeal in its final judgment of July 2007. It noted that the offending statements had been made by political opponents of the person concerned (not by journalists). They did concern a matter of general interest, namely the allegedly criminal conduct of a political figure, but the applicant's real intention had been solely to attack their political opponent. The statements, clearly accusing their target of criminal conduct involving abuse of authority for personal gain, were extremely serious charges. As the Court of Appeal noted, they were not supported by any convincing factual evidence, as was confirmed by the fact that the criminal proceedings brought by the applicants had been dropped. In addition, they had not been spontaneous but, rather, carefully planned, in so far as they had been made at a press conference organised for that purpose. As to the EUR 1,800 fine paid by each applicant, the sum was certainly not negligible, but in view of the circumstances of the case, nor was it excessive or likely to have a chilling effect on freedom of expression. The Court found by four votes to three that there had been no violation of Article 10. Judges Tulkens, Popović and Sajó expressed a joint separate opinion.

- **Right to education**

**Ali v. the United Kingdom (no. 40385/06) (Importance 2) – 11 January 2011 – No violation of Article 2 of Protocol No. 1 – The temporary exclusion from secondary school of a student suspected of having started a fire in a classroom had been proportionate to the legitimate aim pursued and had not interfered with his right to education**

After a fire was started in a waste paper basket in the applicant's school in March 2001, the fire brigade called to deal with it informed the police that the fire had been started deliberately. Given that the applicant had been in the vicinity of the classroom at the time the fire had been started, he was excluded from school until the police investigation was completed. At the time, no specific time-limit was placed on the exclusion. The school wrote to the applicant's parents on several separate occasions informing them that his exclusion was prolonged and indicating for how long. He was allowed to return to school in May 2001 to sit the standard assessment tests (SATs) required from all students, which he did. Up until the SATs, the school was sending him revision-based, self-assessing work so that he could continue studying, although the work sent did not cover the entire mandatory curriculum. As the applicant's parents did not contact the school to arrange to collect further work, no work was set after 14 May 2001. The relevant national legal provision set the standard maximum period for fixed-term exclusions as no longer than 45 days. In the applicant's case that period expired on 6 June 2001. On 19 June 2001, the criminal proceedings against the applicant in connection with

the school fire were discontinued for lack of sufficient evidence. On the same day, unaware that the proceedings had ended, the Local Educational Authority access panel recommended that tuition be provided to the applicant until a decision was taken on his future at the school. The Head Teacher wrote to his parents inviting them to a meeting on 13 July 2001 with a view to facilitating his re-integration. Given that the parents did not attend that meeting, the Head Teacher informed them in writing that she was removing the applicant from the school roll. The applicant did not return to school in September 2001 and in mid-October 2001 his parents were still unsure whether they wanted him to return to the school. The school advised them to decide quickly. The applicant did not receive any education during that period. By the time that the applicant's father wrote to the school, on 6 November 2001, asking for the applicant's reinstatement, the school had removed his name from the roll and allocated his place to another student.

The applicant complained that his exclusion from school violated his right to education.

The Court noted that the right to education under the Convention comprised access to an educational institution as well as the right to obtain, in conformity with the rules in each State, official recognition of the studies completed. Any restriction imposed on it had to be foreseeable for those concerned and pursue a legitimate aim. At the same time, the right to education did not necessarily entail the right of access to a particular educational institution and it did not in principle exclude disciplinary measures such as suspension or expulsion in order to comply with internal rules. The Court found that the exclusion of the applicant had not amounted to a denial of the right to education. In particular, it had been the result of an ongoing criminal investigation and as such had pursued a legitimate aim. It had also been done in accordance with the 1998 Act and had thus been foreseeable. In addition, the applicant had only been excluded temporarily, until the termination of the criminal investigation into the fire in one of the school's bins. His parents had been invited to a meeting with a view to facilitating his reintegration, yet they had not attended. Had the parents done so, their son's reintegration would have been likely. However, they had not attempted to contact the school until mid-October 2001, when the applicant's name had been taken from the school's roll and given to another student on the waiting list. Further, the applicant had been offered alternative education during the exclusion period, but did not take up the offer. Accordingly, the Court was satisfied that the applicant's exclusion had been proportionate to the legitimate aim pursued and had not interfered with his right to education. There had, therefore, been no violation of Article 2 of Protocol No. 1.

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

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

- Press release by the Registrar concerning the Chamber judgments issued on 11 Jan. 2011: here
- Press release by the Registrar concerning the Chamber judgments issued on 13 Jan. 2011: here

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

| State | Date | Case Title and Importance of the case | Conclusion | Key Words | Link to the case |
|---|---|---|---|---|---|
| Azerbaijan | 13 Jan. 2011 | Soltanov (no. 41177/08, 41224/08, etc.) Imp. 3 | Violation of Art. 6 § 1 (fairness) Violation of Art. 1 of Prot. 1 | Non-enforcement of final judgments in the applicants' favour | Link |
| Bulgaria | 13 Jan. 2011 | Svetoslav Hristov (no. 36794/03) Imp. 2 | Violation of Art. 5 §§ 1, 3, 4 and 5 | Unlawfulness of detention; failure to bring the applicant promptly before a judge; lack of an effective remedy to challenge the lawfulness of the detention; lack of any compensation in respect of the unlawful detention | Link |
| Germany | 13 Jan. 2011 | Kubler (no. 32715/06) Imp. 2 | Violation of Art. 6 § 1 | Interference with the applicant's right to access to a court on account of the Ministry of Justice's failure to comply with an interim order concerning his claim to be | Link |

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

| | | | | | |
|---|---|---|---|---|---|
| | | | No violation of Art. 6 § 1 | appointed as advocate notary<br>It had not been established that the lower courts had failed to execute the Federal Constitutional Court's decision | |
| Greece | 13 Jan. 2011 | Drakos (no. 48289/07) Imp. 3 | Violation of Art. 6 § 1 (length)<br><br>Violation of Art. 13 | Excessive length of proceedings (more than ten years and four months)<br>Lack of an effective remedy | Link |
| Greece | 13 Jan. 2011 | Evaggelou (no. 44078/07) Imp. 3 | Violations of Art. 6 § 1 (fairness and length)<br><br>Violation of Art. 13 | Hindrance to the applicant's right to present a cassation appeal and excessive length of proceedings (more than eight years)<br>Lack of an effective remedy concerning the length of proceedings | Link |
| Greece | 13 Jan. 2011 | Klithropiia Ipirou Evva Hellas A.E. (no. 27620/08) Imp. 3 | Violation of Art. 6 § 1<br><br>Violation of Art. 13 | Excessive length of proceedings (ten years and eleven months)<br>Lack of an effective remedy | Link |
| Hungary | 11 Jan. 2011 | Darvas (no. 19547/07) Imp. 3 | Violation of Art. 5 § 1 | The authorities' formally valid decisions prolonging the applicant's detention with reference to the danger of absconding did not as such suffice to secure protection from arbitrariness, notably because the underlying reasons were not supported by adequate factual elements | Link |
| Hungary | 11 Jan. 2011 | Somogyi (no 5770/05) Imp. 2 | Violation of Art. 5 §§ 1 (a) and 5 | Unlawful detention and lack of adequate compensation in that respect | Link |
| Moldova | 11 Jan. 2011 | Bordeianu (no. 49868/08) Imp. 2 | Violation of Art. 8 | Domestic authorities' failure to take the necessary measures to enforce a final judgment granting the applicant custody of her daughter | Link |
| Poland | 11 Jan. 2011 | Jędrzejczak (no. 56334/08) Imp. 3 | Violation of Art. 6 § 1 (fairness) | The delayed communication to the applicant, of the legal-aid lawyer's refusal to submit a cassation appeal infringed his right of access to a court | Link |
| Romania | 11 Jan. 2011 | Hacioglu (no. 2573/03) Imp. 3 | Violation of Art. 3 | Poor conditions of detention in Poarta Albă and Rahova Prisons | Link |
| Romania | 11 Jan. 2011 | Vergu (no 8209/06) Imp. 2 | Violation of Art. 1 of Prot. 1 | Unlawful deprivation of property | Link |
| the United Kingdom | 11 Jan. 2011 | McKeown (no. 6684/05) Imp. 2 | No violation of Art. 6 § 1 | Fairness of criminal proceedings against the applicant | Link |
| Turkey | 11 Jan. 2011 | Çahit Aydin (no. 12838/05) Imp. 3 | Violation of Art. 6 § 1 (length)<br>Violation of Art. 6 § 3 (c) in conjunction with Art. 6 § 1 (fairness) | Excessive length of criminal proceedings (more than ten years and six months) and lack of legal assistance during police custody | Link |
| Turkey | 11 Jan. 2011 | Hakan Arı (no. 13331/07) Imp. 3 | Violation of Art. 1 of Prot. 1 | Deprivation of property without compensation | Link |
| Turkey | 11 Jan. 2011 | Servet Gündüz and Others (no. 4611/05) Imp. 2 | Violation of Art. 2 (positive obligation) | Military authorities' failure to take into account the applicants' relative's fragile psychological state, which led to his suicide | 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 |
|---|---|---|---|---|
| Portugal | 11 Jan. 2011 | Silva Barreira Júnior (nos. 38317/06 and 38319/06) link<br><br>Sociedade Agrícola do Ameixal, S.A. (no. 10143/07) link<br><br>Sociedade Agrícola Vale de Ouro, S.A. (no. 44051/07) link | Violation of Art. 1 of Prot. 1 | Lack of adequate compensation following expropriation<br><br>(See *Almeida Garrett, Mascarenhas Falcão and Others v. Portugal*) |
| Romania | 11 Jan. 2011 | Rednic and Others (no. 123/08) link | Violation of Art. 6 § 1<br>Violation of Art. 1 of Prot. 1 | Non-enforcement of final judgments in the applicants' favour |
| Russia | 13 Jan. 2011 | Kazmin (no. 42538/02) link | Two violations of Art. 6 § 1 (fairness)<br>Two violations of Art. 1 of Prot. 1 | Quashing by way of supervisory review of a final judgment in the applicant's favour and non-enforcement of a judgment in the applicant's favour |
| Russia<br><br>Ukraine | 13 Jan. 2011 | Tokazov (no. 19440/05) link<br><br>Chuykina v. (no. 28924/04) link | Violations of Art. 6 § 1 | Excessive length of proceedings and non-enforcement of final judgments in the applicants' favour |
| Turkey | 11 Jan. 2011 | Anthousa Iordanou (no. 46755/99) link | Just satisfaction | Just satisfaction due to the judgment of 10 May 2010 |

## 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 | 13 Jan. 2011 | Iliya Kolev (no. 21205/04) | Link |
| Croatia | 13 Jan. 2011 | Jeans (no. 45190/07) | Link |
| Finland | 11 Jan. 2011 | Seppälä (no. 45981/08) | Link |
| Germany | 13 Jan. 2011 | Popovic (no. 34236/06) | Link |
| Greece | 13 Jan. 2011 | Lorandou (no. 5716/08) | Link |
| Greece | 13 Jan. 2011 | Pagonis (no. 23916/08) | Link |
| Greece | 13 Jan. 2011 | Tsivelis (no. 41762/08) | Link |
| Greece | 13 Jan. 2011 | Anastasopoulos (no. 57072/08) | Link |

| | | | |
|---|---|---|---|
| Greece | 13 Jan. 2011 | Glentzes (no. 28627/08) | Link |
| Greece | 13 Jan. 2011 | Kallitsis (no. 5179/09) | Link |
| Greece | 13 Jan. 2011 | Siakapeti and Others (no. 23929/08) | Link |
| Greece | 13 Jan. 2011 | Stamatis (no. 41582/08) | Link |
| Greece | 13 Jan. 2011 | Stasinopoulou (no. 50581/08) | Link |
| Hungary | 11 Jan. 2011 | Baráti (no 44413/05) | Link |
| Hungary | 11 Jan. 2011 | János Lakatos (no 35701/05) | Link |
| Poland | 11 Jan. 2011 | Gawlik (no. 26764/08) | Link |
| Poland | 11 Jan. 2011 | Mazurek (no. 41265/05) | Link |
| Slovakia | 11 Jan. 2011 | Košický and Others (no. 11051/06) | Link |
| Slovakia | 11 Jan. 2011 | Radvák and Radváková (no. 25657/08) | Link |
| Slovakia | 11 Jan. 2011 | Özer Öner and Others (nos. 9508/06, 26255/06 and 35853/06) | Link |
| Russia | 13 Jan. 2011 | Kartashev (no. 10994/05) | Link |
| Russia | 13 Jan. 2011 | Kolkova (no. 20785/04) | Link |
| Russia | 13 Jan. 2011 | Kozyak (no. 25224/04) | Link |
| Russia | 13 Jan. 2011 | Rubtsova (no. 22554/04) | Link |
| Russia | 13 Jan. 2011 | Zhukovskiye (no. 23166/04) | 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 27 December 2010 to 9 January 2011**.

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*** |
|---|---|---|---|---|
| Bulgaria | 06 Jan. 2011 | Kamburov (no 14336/05 link | Alleged violation of Art. 8 (the Ministry of the Interior continued storage of personal information about the applicant which was false and defamatory), Art. 13 (lack of an effective remedy) | Partly inadmissible for non-exhaustion of domestic remedies (concerning claims under Art. 8) and partly inadmissible as manifestly ill-founded (concerning claims under Art.13) |
| Croatia | 06 Jan. 2011 | Ptičar (no 24088/07) link | Alleged violation of Art. 6 § 1 and Art. 1 of Prot. 1 (unfairness and excessive length of administrative proceedings), Art. 13 (lack of an effective remedy), Articles 3 and 8 (the applicant's inability to live in his house for a long time because of the hostile behaviour of his neighbours) | Partly incompatible *ratione materiae* (concerning the applicant's petition for reopening), partly inadmissible for non-respect of the six-month requirement (concerning the alleged illegal construction), partly inadmissible as manifestly ill-founded (concerning the unfairness of proceedings and the lack of an effective remedy), and partly inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention concerning claims under Articles 3 and 8) |
| Denmark | 06 Jan. 2011 | N.H.S. and 32 Others (no 54298/10) link | The applicants complained about their expulsion to Greece | Struck out of the list as regards the applicants listed as nos. 13, 15, 16, 19, 20, 21, 22, 23, 27, 31 and 32 in the application (the applicants wanted to withdraw their complaints against Denmark because they were not being returned to Greece as stated in the original application, but to respectively Sweden, Switzerland, Norway, France, Malta, Italy and Hungary); The remainder of the applications are to be pursued by the Court |
| Finland | 04 Jan. | Sormunen (no 38864/08) | Alleged violation of Art. 4 of Prot. 7 (the applicant complained about | Inadmissible for non-exhaustion of domestic remedies |

| | | | | |
|---|---|---|---|---|
| | 2011 | link | having been tried twice for allegedly essentially the same offence) | |
| Poland | 04 Jan. 2011 | Wilewski (no 27581/09) link | The application concerned the applicant's conditions of detention and the system of managing the salary which he had obtained for his work in the remand centre | Struck out of the list (the applicant no longer wished to pursue his application) |
| Russia | 06 Jan. 2011 | Grigoryeva (no 18720/05) link | Alleged violation of Art. 7 (the applicant convicted of an act that did not constitute a criminal offence because Article 188 of the Criminal Code allegedly concerned only the smuggling of goods, whereas she had transported foreign currency), Art.1 of Prot. 1 (the decision on reverting the applicant's money to the State had not had a legal basis) | Inadmissible as manifestly ill-founded (the Court noted that there existed long-standing case-law of Russian courts which interpreted Article 188 of the Criminal Code as including the smuggling of foreign currency concerning claims under Art. 7 and the applicant could no longer claim to be a "victim" within the meaning of Art. 34 concerning claims under Art. 1 of Prot. 1) |
| Russia | 06 Jan. 2011 | Lashin (no 33117/02) link | Alleged violation of Art. 5 §§ 1 and 4 (unlawful confinement in a psychiatric hospital and lack of an effective remedy to challenge the continuing confinement), Art. 8 (the applicant's incapacitation and the inability for him to have obtained an effective review of his status), Articles 2, 3, 4, 9, 10, 12, 13, 14 and Art. 2 and 3 of Prot. 4 (complaints related to the previous hospitalisation of the applicant, the alleged unfairness and outcome of the court proceedings initiated by the applicant and his relatives in connection with his treatment and his legal status, and about various limitations connected to his incapacitation and hospitalisations) | Partly admissible (concerning Articles 5 §§ 1 and 4, 8, and Art.12 taken in conjunction with Art. 13) and partly inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention concerning the remainder of the application) |
| Slovakia | 04 Jan. 2011 | Príbelský (no 16696/10) link | Alleged violation of Art. 6 § 1 (excessive length of civil proceedings) | Struck out of the list (the applicant no longer wished to pursue his application) |
| the Czech Republic | 06 Jan. 2011 | Masokombinát Příbram, a.s. (no 41493/04) link | Alleged violation of Art. 1 of Prot. 1 (deprivation of property) | Incompatible *ratione materiae* |
| the United Kingdom | 04 Jan. 2011 | Dowsett (no 8559/08) link | Alleged violation of Art. 6 (unfairness of proceedings) and Art. 13 (lack of an effective remedy for the alleged on-going violation of Art. 6) | Idem. |
| Turkey | 04 Jan. 2011 | Özdemir (no 48053/08) link | Alleged violation of Art. 6 (the applicant's inability to access the classified documents submitted by the Ministry of Defence to the Supreme Military Administrative Court during the proceedings before that court) | Struck out of the list (friendly settlement reached) |
| Turkey | 04 Jan. 2011 | Saygili (no 51653/07) link | Alleged violation of Articles 3 and 6 (ill-treatment in police custody, lack of an effective investigation) | Inadmissible as manifestly ill-founded (lack of sufficient evidence to conclude that the applicant was subjected to ill-treatment) |

## 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 10 January 2011 : 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 10 January 2011 on the Court's Website and selected by the NHRS Unit**

*The batch of 10 January 2011 concerns the following States (some cases are however not selected in the table below): Albania, Belgium, Bosnia and Herzegovina, Bulgaria, Estonia, Georgia, Latvia, Malta, Moldova, Montenegro, Poland, Romania, Slovenia, Spain, Sweden, the Netherlands, the United Kingdom and Ukraine.*

| State | Date of Decision to Communicate | Case Title | Key Words of questions submitted to the parties |
|---|---|---|---|
| Albania | 16 Dec. 2010 | Rrapo no 58555/10 | Alleged violations of Articles 1, 3 and Art. 1 of Prot. 13 – Would the applicant's extradition to the United States of America give rise to a breach of these Articles? – Did the domestic courts examine a risk to the applicant's life as a result of the possible imposition of the death penalty upon his extradition to the United States of America? Is there a possibility of the imposition of an irreducible life sentence in the event of the applicant's conviction and, if so, would that be consistent with the requirements of Art. 3 (see *Kafkaris v. Cyprus*)? – Alleged violation of Art. 5 § 1 – Unlawful detention – Alleged violation of Art. 34 – The applicant was expelled from Albania notwithstanding an interim measure issued under Rule 39 of the Rules of Court – Was there an objective impediment which prevented compliance with the Court's Rule 39 measure? Did the Government take all reasonable steps to remove the impediment and to keep the Court informed of the situation (see *Paladi v. Moldova*) |
| Belgique | 16 Dec. 2010 | Josef no 70055/10 | Alleged violation of Art. 3 – Risk of being ill-treated if expelled to Nigeria – Alleged violation 8 – Alleged interference with the applicant's right to respect for private and family life if deported – Alleged violation of Art. 13 – Lack of an effective remedy |
| Bosnia and Herzegovina | 16 Dec. 2010 | Al Hamdani no 31098/10 | Alleged violation of Art. 3 – Risk of being subjected to ill-treatment if deported to Iraq – Alleged violation 8 – Alleged interference with the applicant's right to respect for private and family life if deported – Alleged violation of Art. 5 §§ 1 and 4 – Excessive length of detention and lack of an effective remedy to challenge the lawfulness of that detention – Alleged violation of Art. 13 – Lack of an effective remedy in respect of Art. 5 § 1 |
| Latvia | 16 Dec. 2010 | Gvozdeckis no 25460/04 | Alleged violations of Art. 3 (substantive and procedural) – Did the applicant exhaust all available domestic remedies concerning his complaint under Art. 3? Where the remedies effective and accessible? – (i) Alleged ill-treatment by police |

| | | | |
|---|---|---|---|
| | | | officers – (ii) Lack of an effective investigation |
| Poland | 16 Dec. 2010 | Łochińska-Stawikowska and Stawikowski no 8731/10 | Alleged violation of Art. 2 (procedural) – Lack of an effective investigation into the doctors' alleged failure to comply with their professional obligations, concerning the medical care the first applicant received before and after the birth of the applicants' child |
| the United Kingdom | 16 Dec. 2010 | P.T.B. and Others no 5470/09 | Alleged violation of Art. 8 – Alleged interference with the applicants' right to respect for private and family life if expelled to Jamaica – Alleged violation of Art. 14 in conjunction with Art. 8 – Difference of treatment between the second and third applicants, as children living with their great aunt, and other children who lived with their parents and would thus benefit from the "7 year policy" |

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

**Applications against Georgia (10.01.2011)**

The Court struck out 1,549 applications belonging to a group of more than 3,300 individual applications against Georgia. The applications concerned, in particular, hostilities on the territory of South Ossetia, in which the armed forces of Georgia and Russia as well as members of South-Ossetia militia had been involved in August 2008. Press Release

# 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 8 to 10 March 2011 (the 1108 DH 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 decision on the complaint *Confédération française de l'Encadrement (CFE-CGC) v. France* is public (14.01.2011)**

The decision on the merits of the European Committee of Social Rights with regard to the case *Confédération française de l'Encadrement (CFE-CGC) v. France* (Complaint No. 56/2009) became public on 14 January. In its decision, the Committee concluded unanimously that there was a violation of Article 2 § 1 (Reasonable working time) of the Revised Charter. (read more) Decision; Summary of decision; Further information on collective complaints

The next session of the Committee will be held on 14-18 March 2011

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)

**Publication of follow-up responses of the Portuguese Government (07.01.2011)**

**Publication of an addendum to the Response of the Government of the Slovak Republic (07.01.2011)**

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

–*

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

**The Netherlands: Adoption of the Committee of Ministers' 1st cycle resolution (12.01.2011)**

The Committee of Ministers has adopted a resolution on the protection of national minorities in the Netherlands.

**Albania: receipt of the third cycle State Report (10.01.2011)**

Albania submitted on 10 January 2011 its third state report in English, pursuant to Article 25, paragraph 1, of the Framework Convention for the Protection of National Minorities. It is now up to the Advisory Committee to consider it and adopt an opinion intended for the Committee of Ministers.

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

–*

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

–*

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

The next GRETA meeting will be held on 15-18 March 2011

* 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

**14 January 2011**

**Norway** ratified the European Convention on the Adoption of Children (Revised) (CETS No. 202).

**5 January 2011**

**Sweden** ratified the European Landscape Convention (ETS No. 176).

## B. Recommendations and Resolutions adopted by the Committee of Ministers (Adopted by the Committee of Ministers on 12 January 2011 at the 1102nd meeting of the Ministers' Deputies)

CM/Res(2011)1E / 12 January 2011 : Resolution - Revised terms of reference of the Audit Committee

CM/ResCMN(2011)1E / 12 January 2011 : Framework Convention for the Protection of National Minorities – Election of an expert to the list of experts eligible to serve on the Advisory Committee in respect of Cyprus

CM/ResCMN(2011)2E / 12 January 2011: Framework Convention for the Protection of National Minorities – Election of an expert to the list of experts eligible to serve on the Advisory Committee on the Framework Convention for the Protection of National Minorities, and appointment of an ordinary member of the Advisory Committee in respect of a casual vacancy in respect of Ukraine

CM/ResCMN(2011)3E / 12 January 2011 : Resolution on the implementation of the Framework Convention for the Protection of National Minorities by the Netherlands

## C. Other news of the Committee of Ministers

**Fighting discrimination: seminar in Turkey (05.012.2011)**

The Ministry of Foreign Affairs of the Republic of Turkey, in the framework of the Turkish Chairmanship of the Committee of Ministers of the Council of Europe, and the European Commission against Racism and Intolerance (ECRI) organised a seminar in Ankara, from 10 to 11 January. The seminar brought together national and international experts to discuss implementation of ECRI's recommendations to combat discrimination based on racial, ethnic, religious or other bias. The seminar focused on issues such as freedom of speech and the fight against racism, and on new challenges in combating discrimination.

**Committee of Ministers reacts to the situation in Belarus (12.01.2011)**

"The worrying developments that took place in Belarus following the Presidential elections held on 19 December 2010 raise a number of questions, in particular for the Council of Europe", says the statement published by the Council of Europe Committee of Ministers, on 12 January. The Committee of Ministers asks the Belarus authorities to provide additional information on what basis the presidential candidates, journalists and human rights activists were arrested in the wake of the elections, and demands their immediate release.

# Part V: The parliamentary work

.

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

*

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

- *Countries*

**Turkey's dilatoriness in complying with Strasbourg Court judgments is most regrettable, says PACE rapporteur (11.01.2011)**

Christos Pourgourides (Cyprus, EPP/CD), rapporteur of PACE on the implementation of judgments of the European Court of Human Rights, has ended a two-day visit to Ankara(10-11 January 2011) with a call for the Turkish authorities to make a more concerted effort to comply with Strasbourg Court judgments. "The Turkish authorities, presently chairing the Council of Europe Committee of Ministers, must lead by example and take urgent and decisive action to abide by Strasbourg Court judgments," said Mr Pourgourides. "I count on my fellow parliamentarians, in particular, to effectively monitor and rapidly enact legislation to counter a certain dilatoriness in this respect," added the rapporteur. During his visit, Mr Pourgourides met judges from the Constitutional and Cassation Courts, high-ranking officials from the Prosecutor General's office, the Ministries of Justice, Interior and Foreign Affairs, as well as leading parliamentarians. In discussions he stressed, in particular, the need for appropriate legislative and other initiatives to extract Turkey from the group of states against which most cases are pending in Strasbourg. The urgent need to overhaul the lamentable state of the functioning of the judicial system, excessive length of detention, disproportionate use of force by law enforcement officials and the still unresolved issues arising from the case of *Cyprus v.Turkey*, with particular emphasis on disappeared persons, were among the topics on which discussions focussed.

**PACE rapporteur calls on Turkey to continue its democratic reforms, including in South-East Turkey (13.01.2011)**

“The implementation of reforms by Turkey will be closely monitored,” said Josette Durrieu (France, SOC), PACE rapporteur for the post-monitoring dialogue with Turkey, at the end of her initial fact-finding visit to Turkey from 8 to 12 January 2011. "There are positive trends and real progress has been made. However, there are still major problems with regard to the length of detention on remand and court proceedings, the functioning of the judicial system, freedom of expression and the execution of the judgments of the Court, as well as all problems relating to national minorities and to their use of their language." The Kurdish problem was at the centre of discussions just as the trial of 151 human rights activitists, elected representatives and journalists was being resumed in Diyarbakir. Ms Durrieu said that Europe was fully aware of the tragic events which had taken place in South-East Turkey and of the fact that terrorist acts had caused 40 000 deaths. “It is however time to address the issue of national minorities’ right to maintain, develop and express their identity in Turkey – as established in Parliamentary Assembly Resolution 1380 (2004) – calmly and peacefully. The Council of Europe is the watchdog of human rights and, of course, of the rights of national minorities", she said. "After the elections in June 2011, and in light of the steps taken to reform the Constitution, it will be necessary to study the situation in Turkey and the objectives that need to be fixed. In continuing its democratic reforms, in keeping with European standards, Turkey will have the opportunity not only to prove its determination to become a member of the European Union but also to strengthen its vital role in the Middle East,” Mrs Durrieu concluded. During her visit to Istanbul, Diyarbakir and Ankara, Mrs Durrieu held talks with the Ministers of Justice and National Education, representatives of the Ministry of the Interior and the Ministry of Foreign Affairs, the Presidents of the Constitutional Court and the Supreme Court of Cassation, the Head of the Turkish delegation to PACE and the leaders of the main political parties, as well as religious leaders, the heads of NGOs and the media. Resolution 1380 (2004)

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

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

–[*]

[*] 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)

–[*]

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