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

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Introduction

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

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

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

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

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

The preparation of the RSIF is 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.

- **Right to life**

Iordanovi v. Bulgaria (no. 10907/04) (Importance 2) – 27 January 2011 – Two violations of Article 2 (positive obligation and procedural) – (i) Death of the applicants' son, a young diabetic, due to the lack of adequate medical care while in police custody – (ii) Lack of an effective investigation

The case concerns the death of the applicants' son in police custody from a diabetes-related complication.

The applicants alleged that their son had died because of a lack of adequate medical care during his detention and that the Bulgarian authorities had failed to fulfil their obligation to carry out an effective investigation into the facts of the case. They added, among other things, that under Bulgarian law they did not have any remedies by which to seek redress for those violations.

The Court noted that as the applicants' son had died as a result of a medical problem while in temporary detention, it was for the Bulgarian authorities to provide an explanation on the medical treatment provided to the young man between 15 and 18 October 2003. None of the doctors who examined the applicants' son during that period had diagnosed the diabetes from which he was to die. The Bulgarian authorities had argued that the deceased youth had himself been responsible, because he had not informed the doctors about his illness. The Court could not speculate, however, as to whether that had been a conscious decision on his part or an omission resulting from the effects of his drug withdrawal. The Court observed, however, that the authorities had been informed by the applicants' son's lawyer about his health, but that this information had not been taken into account or registered in the young man's medical file. This had been a serious omission on the part of the officials involved, and one that had had serious consequences for the detainee. The last emergency doctor to have intervened had not had any information concerning the applicants' son's illness and, as

communication with him was hindered by his condition, the doctor had been unable to provide him with the appropriate medical care. In those circumstances Bulgaria had failed in its obligation to protect the life of the applicants' son, in violation of Article 2.

The Court noted the investigative measures that had been taken and did not call their independence into question. It observed that the Plovdiv Military Court had concluded that the death of the applicants' son was not attributable to agents of the State. However, the fact that the applicants' son had died as a result of his diabetes, when the detention centre doctor had been informed that he was suffering from that illness but had not entered the information in his medical file, had warranted reconsideration of the merits of the military prosecutor's findings and had called for closer scrutiny. However, the Military Court had failed to address the lawyer's question in that connection. The investigative bodies, for their part, had merely ascertained that the death had not been caused by acts of violence on the part of the military personnel, but had not looked into the allegation that the authorities had failed to take into account, note and communicate to the doctors the young man's serious diabetes-related problems. Finally, the prosecutor's discontinuance of proceedings and the Military Court's decision appeared hasty. The investigation conducted into the causes of the death had thus not been effective, in breach of Article 2.

By way of just satisfaction the Court held that Bulgaria was to pay the applicants 18,000 euros (EUR) for non-pecuniary damage. It also had to pay EUR 4,215.60 into their representatives' bank account for costs and expenses.

Iorga and Others v. Romania (no. 26246/05) (Importance 2) – 25 January 2011 – Two violations of Article 2 (positive obligation and procedural) – (i) Death of the applicants' relative in prison, after being attacked by fellow inmates, while serving a short sentence for not paying a fine – (ii) Lack of an effective investigation

The case concerned the death in the Police Inspectorate Prison in Prahova, after being assaulted by fellow inmates, of the applicants' relative, who had been given a short sentence for not paying a fine of about 20 euros and who was an alcoholic.

The applicants complained that the authorities had failed to take the necessary measures to protect the life of their relative, who died as a result of blows inflicted in his cell, and that they had failed to conduct an effective investigation into his death.

The Court noted that the authorities had always been aware of the applicants' relative's alcohol addiction and could therefore reasonably have foreseen the consequences of withdrawal. They had nevertheless placed him in a cell where a number of inmates were serving sentences for serious offences under the Criminal Code, in disregard of the rule that such prisoners were to be separated from those serving short sentences for minor offences. It was not in dispute that after the first three days of imprisonment the applicants' relative had numerous bruises on the thorax, buttocks and eyes as a result of blows inflicted by his cellmates. After the assaults, the applicants' relative had not been given a neurological examination as recommended by the doctor. The administration to the applicants' relative of his medication had been entrusted to his cellmates and the warders' supervision of him after his return to the cell had been deficient. The overcrowding of the custodial facility did not exempt the warders from their obligation to watch effectively over the applicants' relative, bearing in mind that another prisoner serving a short sentence had died a few years earlier in the same institution after being assaulted by his cellmates. The Court considered that the overcrowding of prisons was not capable of releasing States from their obligation to take, at national level, the measures necessary for compliance with Article 2 of the Convention, such as those recommended by the Committee of Ministers, for example the use of alternatives to imprisonment as far as possible. The Court noted in that connection that Romanian legislation which, at the material time, permitted the conversion of a fine into an immediate prison sentence, had been repealed. The Court thus found that there had been a violation of Article 2.

The Court noted that two investigations had been carried out in parallel by the civilian and military public prosecutors' offices. The first had led to sentencing the attacker to 16 years' imprisonment and the second to the discontinuance of proceedings against the prison staff. The latter investigation had been conducted exclusively by military prosecutors, whose independence at the material time could be called into question. The Court had previously found that both active military officers and military prosecutors enjoyed the same military grading system and associated privileges and were subject to military discipline and to the principle of subordination. In failing, whether or not deliberately, to provide the applicants with the result of the investigation by the military prosecutor's office, the authorities had prevented the use of remedies that could have proved effective for the purpose of challenging the outcome of that investigation concerning the warders, medical staff and cellmates. As a result, any appeal by the applicants in the context of the criminal proceedings against the attacker could concern

only the civil aspect. The Court noted in that connection that there was no evidence that the memorandum by the military prosecutor denouncing the shortcomings of the prison staff had actually been sent to the Minister of the Interior. As to the possibility for the applicants to bring an action for damages against the warders and senior officers of the custodial facility the chances of its success were very uncertain in view of the final judgment that had named the attacker as the only guilty party in connection with the applicants' relative's death. In addition, the Romanian Government had not produced any decision by a domestic court to show that a warder could have been ordered to pay damages even after a decision to discontinue criminal proceedings. The Court found that there had been a violation of Article 2 concerning the investigation into the applicants' relative's death.

Under Article 41 (just satisfaction) of the Convention, the Court held that Romania was to pay the applicants 35,000 euros (EUR) in respect of non pecuniary damage and EUR 3,600 in respect of costs and expenses.

Dimitrova and Others v. Bulgaria (no. 44862/04) (Importance 3) – 27 January 2011 – Violation of Article 2 (procedural) – Lack of an effective investigation into the applicants' relative's death following a group fight – No violation of Article 14 – It could not be established that the applicants' relative's death had been the result of racial prejudice

In May 2003, the applicants' relative and three other people of Roma origin were digging coal in an abandoned open coal mine. A person to whom one of the applicants' relative's companions apparently owed money, B.I., passed by and later came back accompanied by three friends. A fight broke out between the two groups. When the police arrived at the place of the incident, they found the applicants' relative lying on the ground, seriously injured, and took him to hospital. He was admitted in hospital in a coma with a severe cerebral contusion and four wounds to the head. He died a few days later. A criminal investigation was opened. B.I. confessed to killing the applicants' relative in a disproportionate reaction to an attack and accepted a suspended three years' sentence of imprisonment. The court approved the agreement and discontinued the criminal proceedings against him. Apparently, the applicants only learned about the termination of the proceedings from publications in the local media. The applicants' relative's mother asked that the proceedings be reopened but was informed that that was not possible for failure to respect the required time-limit.

The applicants complained that the Bulgarian authorities failed to carry out an impartial investigation into their relative's death.

The Court noted that the Bulgarian authorities had opened an investigation on the day the applicants' relative had been fatally injured. Witnesses had been examined, expert reports had been drawn up and evidence collected from the scene. However, the Court found that the investigation had been ineffective, in particular, because crucial evidence collected during the investigation had been disregarded. Consequently, the authorities had not carried out a thorough and objective analysis of the evidence collected during the investigation. A number of other deficiencies in the investigation were identified (in particular, B.I.'s companions had never been investigated; the prosecutor's decision to drop the initial charges against B.I. had been based on the witness statements favourable to him which had never been verified; no attempt had been made to explain inconsistencies in B.I.'s submissions; the applicants had not been given the opportunity to effectively participate in the investigation; they had not even been formally notified of its outcome). Consequently, the Bulgarian authorities had failed to investigate effectively the applicants' relative's death. There had, therefore, been a violation of Article 2. The Court held that there had been no violation of Article 14, as it could not establish that the Bulgarian authorities' failure to properly investigate the applicants' relative's death had been the result of racial prejudice.

Under Article 41 (just satisfaction) of the Convention, the Court held that Bulgaria was to pay to the mother and the wife of Georgi 10,000 euros (EUR) each; and to his brothers EUR 5,000 each in respect of non-pecuniary damage, as well as EUR 2,500 for costs and expenses.

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

El Shennawy v. France (no. 51246/08) (Importance 2) – 20 January 2011 – Violation of Article 3 – The applicant's repeated full body searches, recorded on video and conducted by law-enforcement officers wearing balaclavas, had not been duly based on pressing security needs or on the need to prevent disorder or crime and had been liable to arouse in the applicant feelings of arbitrariness, inferiority and anxiety, characteristic of a degree of humiliation going beyond the level which the strip-searching of prisoners inevitably entailed – Violation of Article 13 – Lack of an effective remedy

The applicant is currently held in Saint-Maur Prison. The applicant was transferred to Pau Prison, where he claimed to have been placed in solitary confinement under the supervision of officers of the regional security and intervention force (ERIS) throughout his trial. He stated that ERIS officers wearing balaclavas had subjected him to a particularly thorough strip-search routine, including visual examinations of the anus during which they had used force if he refused to bend over and cough. The searches had been video-recorded and most had been conducted in the presence of an officer from the national police intervention force (GIPN). In April 2008 the applicant applied to the urgent-applications judge seeking suspension of the routine of full body searches comprising between four to eight anal examinations a day recorded on video. The judge rejected the application, taking the view that the security measures implemented each time the prisoner was moved to and from the prison had formed an integral part of the assize court proceedings and that the application to have the full body searches suspended did not fall within the jurisdiction of the administrative court. Following his trial the applicant appealed on points of law against the order of April 2008. In a judgment of November 2008 the *Conseil d'Etat* set aside the order by the urgent-applications judge on the grounds that decisions by the prison authorities subjecting prisoners to full body searches formed part of the State's administration of the prison service and fell within the jurisdiction of the administrative court, including in cases where the search operations were carried out within the courthouse and during the trial. The *Conseil d'Etat* nevertheless dismissed the urgent application on grounds of lack of urgency (in particular, it had not been alleged that the applicant would be subjected to the search routine the next time he was moved from prison).

The applicant complained of the strip-searches carried out by the police and prison authorities during his assize court trial. He further complained of his inability to challenge these measures.

Article 3

The Court reiterated that strip-searches and even full body searches could be necessary on occasion to ensure prison security or to prevent disorder or crime. However, in addition to being "necessary" for the achievement of one of these aims, they also had to be conducted in an "appropriate manner". In addition to having to undress, the applicant had been required to bend over, something which did not normally form part of search routines at that time, and force had been used if he resisted. The applicant had undergone repeated searches by officers of the different law-enforcement agencies involved in supervising him despite the fact that a Ministry of Justice memorandum concerning ERIS searches had warned against unwarranted repetition of searches, in particular when a prisoner was being handed over to the GIPN. The Court noted that between 9 and 11 April the searches had been very frequent. As to the searches carried out by men wearing balaclavas, the Court reiterated that it had recently expressed concern at this "intimidating practice" which, while not intended to humiliate, was liable to cause feelings of anxiety (see *Ciupercescu v. Romania*). The searches had been recorded on video, at least during the opening days of the trial. The rules governing video-recording had not been clearly defined and a 2009 memorandum had stated that full body searches of prisoners "should not be video-recorded, as this could be construed as a violation of human dignity". The searches in question had not been duly based on pressing security needs or on the need to prevent disorder or crime. Although they had taken place over a short period of time they had been liable to arouse in the applicant feelings of arbitrariness, inferiority and anxiety characteristic of a degree of humiliation going beyond the level which the strip-searching of prisoners inevitably entailed. The Court therefore held that there had been a violation of Article 3 in the applicant's case.

Article 13

The applicant had not had any opportunity to challenge, by way of an urgent application for protection of a fundamental freedom, the strip-search routine to which he had been subjected. His case had in fact been the reason for the change in the case-law of the *Conseil d'Etat*, according to which decisions by the prison authorities subjecting prisoners to strip-searches in order to ensure security in prison or during temporary removals came within the jurisdiction of the administrative court, making use of the urgent-application procedure possible. Accordingly, the Court held that the applicant had not had an effective remedy by which to assert his Article 3 complaint.

Under Article 41 (just satisfaction), the Court held that France was to pay the applicant 8,000 euros (EUR) in respect of non-pecuniary damage and EUR 5,000 for costs and expenses.

Payet v. France (no. 19606/08) (Importance 1) – 20 January 2011 – Violation of Article 3 – Poor conditions of detention in the punishment wing – Violation of Article 13 – Lack of an effective remedy – No violation of Article 3 – In view of the applicant's profile, his dangerousness and his history, the prison authorities had struck a fair balance between the need to ensure security and the requirement to provide prisoners with humane conditions of detention concerning the applicant's security rotations

The applicant is currently in Châteauroux Prison, where he is serving a number of criminal sentences (for the murder of a cash courier, escape, organising the escape of accomplices, armed robbery and armed assault of police officers). In 2001, after he escaped by helicopter from Aix-en-Provence Prison, he was classified as a "high-risk prisoner". He was placed in solitary confinement and made subject to security rotations consisting of frequent changes of his place of detention in order to prevent any planned escape. The applicant made several other attempts to escape.

The applicant complained of the security rotations and of his conditions of detention in the punishment cell; he further complained of the disciplinary proceedings instituted following his second escape. Lastly, he complained about his inability to appeal against the security rotations and enforcement of the disciplinary measure.

Article 3

The Court noted that the applicant had been transferred 26 times (11 times under a court order and 15 times following an administrative decision). While the Court accepted that constant transfers could have a very negative impact on the prisoner concerned, it considered that the French Government's fears that the applicant might escape – which had been the reason for the security rotations – had not been unreasonable given that the applicant had escaped twice, an attempt had been made to help him escape and he himself had organised the escape of some of his accomplices. The Court further noted that the applicant had been detained in the same location since September 2008. Consequently, in view of the applicant's profile, his dangerousness and his history, the prison authorities had struck a fair balance between the need to ensure security and the requirement to provide prisoners with humane conditions of detention. Those conditions had not attained the minimum threshold of severity required to constitute inhuman treatment within the meaning of Article 3 of the Convention. There had therefore been no violation of Article 3 with regard to the security rotations to which the applicant had been subject. The applicant's allegations concerning the poor conditions of detention in the punishment wing (dirty and dilapidated premises, flooding, lack of sufficient light for reading and writing, etc.) appeared to be confirmed by several sources (a judgment of April 2008 of the *Conseil d'Etat;* Senator Campion's visit saying that she had been shocked by her visit to the wing, views shared by the architectural expert appointed by the Administrative Court). The Court considered that, even if the authorities had not had the intention to humiliate the applicant, his conditions of detention had been liable to cause him both mental and physical suffering and a feeling of gross violation of his human dignity. It held that there had been a violation of Article 3 in that regard.

Article 13

The Court examined whether the remedies available to the applicant under French law by which to complain of his conditions of detention in the punishment cell had been "effective", that is to say, capable of preventing the occurrence or continuation of the alleged violation. It observed that the remedy provided for by the Code of Criminal Procedure did not have suspensive effect, although placement in a punishment cell was usually immediate, and that an application to the administrative court had to be preceded by an appeal to the inter-regional director of the prison service. As a result of that procedure, the applicant had no longer been in the punishment cell by the time a judge was finally able to rule on his application. Given the serious repercussions of detention in a punishment cell it was essential for the prisoners concerned to have access to an effective remedy enabling them to appeal against both the form and the substance of such measures before a judicial body. As the applicant had had no such remedy available to him, the Court held that there had been a violation of Article 13.

Under Article 41 (just satisfaction) of the Convention, the Court held that France was to pay the applicant 9,000 euros (EUR) in respect of non-pecuniary damage and EUR 6,000 for costs and expenses.

Kashavelov v. Bulgaria (no. 891/05) (Importance 2) – 20 January 2011 – Violation of Article 3 – The routine handcuffing of a prisoner for a period of 13 years in a secure environment was not justified – No violation of Article 3 – The physical conditions of detention and the stringency of the applicant's prison regime did not reveal a violation of this provision – Violation of Article 6 § 1 – Excessive length of the criminal proceedings – Violation of Article 13 – Lack of an effective remedy

The applicant is currently serving a sentence of life imprisonment in Sofia Prison for, among other offences, the murder of three policemen. Arrested in August 1996, the applicant was subsequently charged and convicted in particular of aggravated murder, hooliganism and deprivation of liberty. It was ordered that he should begin his life sentence under the strictest prison regime. He was transferred in December 1997 to Sofia Prison where he has remained both throughout the criminal proceedings against him and since his final sentencing in November 2004. In December 1997 the governor of the prison, ordered that he be placed within an isolated group of prisoners subject to

stringent measures and deprived of the right to take part in communal activities. In May 1999 the governor further ordered that he be handcuffed each time he was separated from that group of prisoners. The applicant alleges, on the other hand, that he is handcuffed whenever he is taken out of his cell. He further claims that he is subject to serious isolation. For most of his detention he has had to take his walk in a concrete enclosure on his own, apart from a period between 1998 and 2001 when he was allowed to join a few other life prisoners but not to talk to them. The only other times when he is allowed out of his cell are to use the sanitary facilities for five to ten minutes twice a day. He also complains about the general conditions of his detention: his cell is cold and contains a bucket for excrement and his food and water are rationed.

The applicant complained about the physical conditions of his detention, the stringency of the prison regime to which he is subject and the systematic use of handcuffs whenever he is taken out of his cell. He also complained about the excessive length of the criminal proceedings against him.

Article 3

The applicant had not provided any evidence concerning his conditions of detention, for example a medical report of an impact on his physical or psychological well-being. Indeed, his allegations do not correlate with the findings of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") in its reports on Sofia Prison of 2006 and 2008, which said that the cells of life prisoners had integral sanitation, shower and permanent access to hot water. The Court was therefore not satisfied "beyond reasonable doubt" that the conditions of the applicant's detention could be described as inhuman or degrading and accordingly found that there had been no violation of Article 3. The Court noted that, although the applicant's detention had gradually become more flexible in recent years (according to the CPT reports), he had refused to take part in the activities available and communicate with prisoners from his group. There was no proof either that he had ever been prevented from having outside visitors or visiting the prison library. He has not requested to be placed under a less stringent prison regime, a possibility available to him under Bulgarian law after serving five years of his sentence. The Court considered that the applicant had not been subjected to inhuman and degrading treatment on account of the stringency of his prison regime and held that there had been no violation of Article 3. As concerned the handcuffing, however, the CPT reports fully confirm the applicant's allegations that he was indeed handcuffed each time he was taken out of his cell, and even when taking his daily walk. Although aware that the authorities had to be careful when dealing with prisoners convicted of violent offences who are hostile to prison staff and other inmates on account of their refusal to accept their very imprisonment, the Court had not been provided with any examples of the applicant attempting to flee or harm himself or others. The Court shared the CPT's opinion that such routine handcuffing of a prisoner for a period of 13 years in a secure environment was not justified and considered it to be degrading treatment, in violation of Article 3.

Article 6 § 1 and Article 13

The Court considered that the length of the proceedings in the applicant's case, which had lasted more than eight years, had been excessive, in violation of Article 6 § 1. Until 2003 Bulgarian law had not provided remedies allowing those accused of criminal offences to expedite the proceedings against them; nor had it provided an avenue by which the applicant could have obtained damages or any other redress in respect of the excessive length of the criminal proceedings against him. There had therefore also been a violation of Article 13. The Court held that Bulgaria was to pay the applicant 7,000 euros (EUR) in respect of non-pecuniary damage and EUR 33.23 for costs and expenses.

Kupczak v. Poland (no. 2627/09) (Importance 2) – 25 January 2011 – Violation of Article 3 – Lack of adequate medical care for a paraplegic prisoner suffering from severe chronic pain for over two and a half years

As a result of a car accident in 1998, the applicant became paraplegic and suffered continuously from severe back pain. To ease the pain, he had a morphine pump implanted in his body which infused morphine directly into his spinal fluids. The police arrested the applicant in October 2006 on suspicion of him leading an organised criminal gang dealing mostly with money laundering. A court authorised his custody on the following day. The applicant asked to be released as his state of health was incompatible with detention. His request was refused. Between November 2006 and May 2009, the applicant's detention awaiting trial was continuously extended and his appeals against it dismissed. Shortly after his detention in October 2006, the applicant's morphine pump ran out of morphine and the authorities had it refilled with a saline solution instead. Throughout his detention, save for one occasion, the pump was continuously refilled with saline solution. The applicant was being given painkillers orally, and at times in the form of injection, to control his pain. The applicant complained repeatedly that the pump was not functioning properly and that the pain-killers he was receiving were

addictive and not adapted to his needs. Only once, two years after he had been initially detained, the court examined properly the compatibility of his state of health with detention. The court recommended that there should be a serious examination of the possibility of making a morphine pump available to him in order to avoid his detention becoming inhumane. The court lifted the applicant's detention at a hearing in May 2009, as it found that keeping him in detention was no longer necessary. He was released and had a new morphine pump implanted in August 2009.

The applicant complained that his detention awaiting trial had caused him inhuman suffering.

The Court observed that the applicant had been suffering from a serious medical condition and that the only way to treat him had been to relieve him from chronic pain. The Court emphasised that there had been no obligation on the State to provide the applicant, or any other detainee, with a free morphine pump. The question raised by the applicant's case had been whether a possibility had been given to him to have a morphine pump implanted. The Court found that such a possibility had not been given to him during the entire period of his detention awaiting trial. In particular, despite the applicant's numerous requests for it, the Polish courts had not ordered an expert medical opinion in order to assess the adequacy of the medical treatment actually provided to him. Only two years after he had been detained had the courts properly examined for the first time the compatibility of his state of health with detention. Apart from that, the applicant's detention had been extended many times by the Polish courts on formalistic grounds, such as the reasonable suspicion against him, the severity of the penalty that might be imposed if he had been found guilty and the risk that he interfere with the proceedings. The Polish courts had failed to give serious consideration to the applicant's state of health. Throughout his detention awaiting trial, they had not provided him with the possibility of having a functioning morphine pump, as required by his condition. Accordingly, there had been a violation of Article 3.

Under Article 41 (just satisfaction) of the Convention, the Court held that Poland was to pay the applicant 10,000 euros (EUR) in respect of non-pecuniary damage. Judge De Gaetano expressed a dissenting opinion

Elefteriadis v. Romania (no. 38427/05) (Importance 2) – 25 January 2011 – Violation of Article 3 – Domestic authorities' failure to safeguard the health of the applicant, who had been exposed to fellow prisoners' tobacco smoke

The applicant is currently serving life imprisonment for murder in Poarta Albă Prison.

The applicant claimed that he had been obliged to share a cell with smokers, that he had contracted pulmonary illnesses for which he had received no treatment and that he had been transported and locked up with smokers prior to hearings before the domestic courts.

Article 3

The Court reiterated that it was incumbent on States to organise their prison systems in such a way as to ensure respect for prisoners' dignity, regardless of logistical or financial difficulties. From February to November 2005 the applicant had been detained in a cell together with prisoners who smoked, in spite of his repeated requests to be transferred to a no-smoking cell. While his health had stabilised between 2003 and 2005, the pulmonary fibrosis for which he had been under observation for several years was a chronic illness. The authorities had therefore been under an obligation to take measures to safeguard his health by separating him from prisoners who smoked; this could have been done, given that there was a cell in the prison containing only non-smokers. The overcrowding in Rahova Prison – confirmed by the CPT in the reports on its visits – in no way dispensed the authorities from their obligation to protect the applicant's health. The medical certificates issued by several doctors after 2005 testified to a deterioration in the applicant's respiratory condition and noted the emergence of a fresh illness in the form of chronic obstructive bronchitis, which the applicant claimed had been made worse by his exposure to other prisoners' smoke in the vehicles transporting him to court and in the waiting areas prior to his appearances before the domestic courts. While there were no precise indications that the applicant had been subjected to the effects of cigarette smoke during his journeys, the fact that he had been held in court waiting rooms with prisoners who smoked was amply confirmed by the Bucharest County Court judgment of June 2006. Although it was not known how often the applicant had been locked up in those rooms, it had undoubtedly occurred on several occasions when he had been summoned to appear before the domestic courts. The fact that the applicant had subsequently been placed in a cell with a non-smoker and was now in an individual cell in a different prison was not due to the objective criteria laid down in the legislation but to a combination of circumstances, and there was no indication that the applicant would continue to be held in such favourable conditions if the prison were to be overcrowded in the future. Lastly, the courts had rejected the applicant's claim for compensation on the grounds that he had not provided physical evidence of the alleged damage and that his conditions had improved following his transfer. The mere fact that the

situation complained of by the applicant had ceased to exist in the meantime on account of his transfer to a more favourable setting did not dispense the domestic courts from the obligation to examine whether that situation had had harmful effects on him. It was not reasonable to place the onus on the applicant to provide proof of the suffering caused. Adopting such a formalistic approach would mean excluding the possibility of compensation in numerous cases in which detention was not accompanied by an objectively measurable deterioration in the prisoner's physical or mental health. The Court therefore held that there had been a violation of Article 3.

Under Article 41 (just satisfaction) of the Convention, the Court held that Romania was to pay the applicant 4,000 euros (EUR) in respect of non-pecuniary damage.

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

T.N. v. Denmark (no. 20594/08), T.N. and S.N. v. Denmark (no. 36517/08), S.S. and Others v. Denmark (no. 54703/08), P.K. v. Denmark (no. 54705/08) and N.S. v. Denmark (no. 58359/08) (Importance 2) – 20 January 2011 – No violation of Article 3 – An implementation of the order to deport the applicants to Sri Lanka would not give rise to a violation of Article 3

The applicants are all of Tamil ethnicity and all had connections (directly or through their families) with the Liberation Tigers of Tamil Eelam, "Tamil Tigers" (LTTE), a separatist militant organisation involved in the Sri Lankan civil war from 1983 to 2009. All applicants have entered Denmark and requested asylum.

All the applicants alleged that, if deported to Sri Lanka, they would be at risk of persecution and ill-treatment by the Sri Lankan authorities, notably due to their connections with the LTTE. All the applicants (except those in the case *S.S. and Others)* also claimed that they risked ill-treatment at the hands of the LTTE if returned.

Following their request to the Court, the applicants were granted interim measures (under Rule 39 of the Rules of Court) whereby the Court indicated to the Danish Government that the applicants should not be deported pending the outcome of the proceedings before it.

Article 3

In all five cases the Court maintained its approach as set out in its lead judgment *N.A. v. the United Kingdom* that there was not a general risk of treatment contrary to Article 3 to Tamils returning to Sri Lanka. The protection of Article 3 would enter into play only where an applicant could establish that there were serious reasons to believe that s/he would be of sufficient interest to the authorities to warrant her/his detention and interrogation upon return. The assessment of whether there was a real risk had therefore still to be made on a case by case basis considering all relevant factors which might increase the risk of ill treatment. The Court reiterated that a number of individual factors might not, when considered separately, constitute a real risk, but might do so when taken cumulatively, depending on the overall situation in Sri Lanka at the relevant time. For those applicants complaining that they risked ill-treatment from the LTTE, the Court noted that the hostilities between the LTTE and the Sri Lankan Army ended on 19 May 2009. In all five cases, having regard to the current general situation in Sri Lanka taken cumulatively with the risk factors, the Court found that there were no substantial grounds for finding that any of the applicants would be of interest to the Sri Lankan authorities if returned. It therefore found that an implementation of the order to deport the applicants to Sri Lanka would not give rise to a violation of Article 3.

Article 39

The Court decided to continue to indicate to the Government under Rule 39 of the Rules of Court that it was desirable in the interests of the proper conduct of the proceedings not to deport the applicants until such time as the present judgments become final or further order.

- **Right to a fair trial**

Guadagnino v. Italy and France (no. 2555/03) (Importance 2) – 18 January 2011 – Violation of Article 6 § 1 (Italy) – Disproportionate limitation of the applicant's right of access to a court concerning the applicant's claims for retrospective adjustment of her job status

The applicant worked between 1969 and 1996 at the French school in Rome ("the School") as an assistant in the publications department, under individual contracts signed with the French Ministry of Education. Those contracts provided for Italian law to apply to the applicant's employment relationship. The applicant brought two sets of legal proceedings in Italy in connection with her employment. The first set of proceedings concerned retrospective adjustment of her job status. The

School responded that it was for the French rather than the Italian courts to deal with the dispute, confirmed by the Italian Court of Cassation. The second set of proceedings was brought by the applicant to challenge her dismissal in 1996 on the ground that she had reached the upper age limit of 60. Arguing that the age limit set by Italian law was 65, she brought an action against the School for her dismissal to be set aside, for reinstatement and for the payment of various pay awards. The Italian Court of Cassation again found that the Italian courts had no jurisdiction in relation to claims regarding the lawfulness of the dismissal. The Italian courts did have jurisdiction over the payment of pay awards but the applicant did not pursue the case in the Italian district court and applied to the French *Conseil d'Etat* for retrospective adjustment of her job status and for her dismissal to be declared null and void. The *Conseil d'Etat* dismissed her claims, holding that the French courts had no jurisdiction in such matters.

The applicant complained that neither the Italian nor the French courts had agreed to hear her claims for retrospective adjustment of her job status (including the payment of pay awards). She felt that she had been denied justice.

The Court observed that an effective remedy had been available to the applicant in France and that she had not used it and therefore the application was inadmissible in so far as it was brought against France.

The Court had to determine whether the applicant's right of access to a court had been violated as a result of the Italian Court of Cassation's finding that the Italian courts did not have jurisdiction to deal with her other claims. In accordance with its case-law, the Court sought to ascertain whether the restriction placed by the Court of Cassation on the right of access to a court had pursued a legitimate aim, and whether it was proportionate to the aim pursued. It considered that the first condition had been met, since the Italian Court of Cassation had refrained from dealing with the case in so far as it involved France for the purpose of complying with international law. As regards the second condition, the Court reiterated that it had already found that in reality, there was a trend in international law towards limiting States' "immunity from jurisdiction" in relation to employment-related disputes. In particular, according to the 2004 (United Nations) Convention on Jurisdictional Immunities of States and their Property, Italy was bound under international law to comply with procedures relating to contracts of employment between a State and an individual for work to be performed in another State not covered by the State immunity rule, provided that the best interests of the employer State were not affected. Italy had failed to comply with that rule and thus disproportionately limited the access to a court to which the applicant was entitled, in violation of Article 6 § 1.

Under Article 41 (just satisfaction) of the Convention, the Court held that Italy was to pay the applicant 15,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

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

Haas v. Switzerland (no. 31322/07) (Importance 2) – 20 January 2011 – No violation of Article 8 – The requirement under Swiss law for a medical prescription in order to obtain sodium pentobarbital had a legitimate aim, namely to protect people from taking hasty decisions and to prevent abuse, concerning the applicant's claim that the State had a "positive obligation" to create the conditions for suicide to be committed without the risk of failure and without pain

The applicant has been suffering from a serious bipolar affective disorder for around twenty years and considered that as a result, he could no longer live in a dignified manner. After having attempted suicide on two occasions, he undertook to obtain a substance (sodium pentobarbital), the administration of which in a sufficient quantity would have enabled him to end his life in a safe and dignified manner. He was unsuccessful in obtaining it. In June 2005 he approached various federal and cantonal authorities, seeking permission to obtain sodium pentobarbital from a pharmacy without a prescription. He argued that Article 8 imposed on the State a "positive obligation" to create the conditions for suicide to be committed without the risk of failure and without pain. The authorities rejected his application, as did the Federal Department of the Interior, the Zurich Administrative Court, and the Federal Court, the latter finding, among other things, that a distinction had to be made between the right to decide on one's own death and the right to commit suicide assisted by the State or a third party. The Federal Court was of the view that the second case could not be derived from the Convention, which did not guarantee the right to assisted suicide.

The applicant argued that his right to end his life in a safe and dignified manner had been violated in Switzerland as a result of the conditions that had to be met – and which he had not met – in order to be able to obtain sodium pentobarbital.

The Court acknowledged that the right of an individual to decide how and when to end his life, provided that said individual was in a position to make up his own mind in that respect and to take the

appropriate action, was one aspect of the right to respect for private life. **However, the dispute in the applicant's case concerned another matter: whether or not under Article 8 the State had the "positive obligation" to enable him to obtain, without a prescription, a substance enabling him to end his life without pain and without risk of failure**. **Council of Europe member States are far from having reached a consensus as regards the right of an individual to choose how and when to end his life.** In Switzerland, according to the Criminal Code, incitement to commit or assistance with suicide were only punishable where the perpetrator of such acts committed them for selfish motives. The vast majority of member States, however, appeared to place more weight on the protection of an individual's life than on the right to end one's life. The Court concluded that the States had a wide margin of discretion in that respect. Although the Court recognised that the applicant might have wished to commit suicide safely, with dignity and without excessive pain, it was nevertheless of the opinion that the requirement under Swiss law for a medical prescription in order to obtain sodium pentobarbital had a legitimate aim, namely to protect people from taking hasty decisions and to prevent abuse. That was all the more true in a country such as Switzerland, which readily allowed assisted suicide. The Court considered that the risk of abuse inherent in a system which facilitated assisted suicide could not be underestimated. The Court agreed with the Swiss Government's argument that the restriction on access to sodium pentobarbital was intended to protect health and public safety and to prevent crime. It also shared the view of the Federal Court that the right to life obliged States to put in place a procedure apt to ensure that a decision to end one's life did in fact reflect the free will of the party concerned. The Court considered that the need for a prescription, issued on the basis of a full psychiatric report, constituted a means of fulfilling that requirement. It remained to be settled whether the applicant had had effective access to a medical report that would have allowed him to obtain the sodium pentobarbital. However, the Court was not persuaded that he had been unable to find a specialist willing to assist him as he had claimed. Given the above considerations and having regard to the margin of appreciation enjoyed by the national authorities on this issue, the Court concluded, unanimously, that there had been no violation of Article 8.

- **Freedom of thought, conscience and religion**

Boychev and Others v. Bulgaria (no. 77185/01) (Importance 2) – 27 January 2011 – Violation of Article 9 – Unlawful police intervention during a religious meeting – Violation of Article 13 – Lack of an effective remedy

Followers of the "Moon" movement, the applicants were attending a religious meeting of approximately ten people at the home of Ms Sharova, in April 1997, when it was interrupted by a police identity check and search, authorised by the public prosecutor. Various objects and documents were seized. The evidence in the file shows that the aim of the police intervention and search was to interrupt the meeting, which was regarded as unlawful since the religious movement concerned was not registered as such in Bulgaria. Not all items were returned. The applicants brought a civil action against the Regional Home Affairs Directorate and the public prosecutor's office, arguing that the search and seizure had been unlawful and contrary to their freedom of religion, which was dismissed on the ground that the police officers had acted in accordance with the law. In a final judgment of April 2001, the Blagoevgrad Regional Court upheld that decision, except for the order to return the objects, which was annulled. It confirmed that the applicants had broken the law by taking part in a religious meeting in the absence of prior registration of their movement under the law on religious denominations. In the meantime the applicants had tried to have the Unification Church registered as a denomination in Bulgaria. In November 1998 34 founder members had set up the applicant association. An application for registration was lodged with the Council of Ministers, which replied asking for further details. The applicants decided to seek judicial review and did not respond to that letter. In May 2000 the Supreme Administrative Court declared the applicants' action inadmissible on the ground that there had not been any express or tacit rejection against which they could appeal. In January 2002 Mr Boychev applied for the registration of another association, the "Family Federation for World Peace and Unification", under a new law on non-profit legal entities. In January 2002 the Sofia City Court ordered the registration of that association.

The applicants complained about the police intervention during their meeting and also about the authorities' refusal to register their organisation as a religious denomination.

The Court noted that the authorities had not disputed the fact that the meeting was religious in nature. The police intervention had thus constituted interference with the exercise of the right to manifest one's religion. The decisions taken by the Bulgarian authorities had not clearly indicated the legal basis of the police intervention during the meeting in question. First of all, a number of documents in the impugned proceedings had referred to a criminal investigation and to the provisions of the Code of Criminal Procedure on offences in progress, but no criminal proceedings had actually been initiated concerning the facts in question or against those attending the meeting. Moreover, the police and

domestic courts had referred to the public prosecutor's jurisdiction in matters of crime prevention, but the provision mentioned was extremely vague; the Court observed that it had found in a previous case that, under that provision (Article 185 of the Code of Criminal Procedure), the public prosecutor had an almost unrestricted discretionary power, which was incompatible with the minimum degree of protection demanded by the rule of law. Lastly, Bulgarian law was unclear as to the possibility of holding a religious meeting when the organisation in question had not been registered (there was a discrepancy there between law and practice, such that the applicants could not have known what conduct to adopt). The interference in question had thus been without a legal basis meeting the requirements of Article 9 of the Convention. There had accordingly been a violation of Article 9. On examining the complaint of those applicants concerning the alleged absence of an effective remedy in Bulgaria by which to complain of a violation of Article 9, the Court noted that, in the context of their civil action against the State, the Bulgarian courts had failed to examine the complaint concerning freedom of religion. They had confined themselves to observing that the police intervention had been compliant with Bulgarian law. The authorities had not indicated any other remedies that could have been used by the applicants. There had therefore also been a violation of Article 13, taken together with Article 9.

By way of just satisfaction, the Court held that Bulgaria was to pay Mr Boychev, Mr Sergeev and Ms Sharova 2,000 euros each for non-pecuniary damage, and 2,500 euros in total for costs and expenses.

- **Freedom of expression**

Aydin v. Germany (no. 16637/07) (Importance 2) – 27 January 2011 – No violation of Article 10 – The applicant's criminal conviction for contravening a ban on the PKK's activities had aimed to protect public order and safety, pursued legitimate aims and was necessary in a democratic society

In July 2001, the applicant signed a declaration in support of the PKK, which had been banned in Germany since 1993. The declaration, which was part of a campaign initiated by the PKK's leadership, called for the recognition of the rights of the Kurds and a lifting of the ban on the PKK's activities. The applicant organised a collection of signatures together with other people and handed over two folders containing a few hundred signed declarations to the Berlin public prosecutor. She also made donations to a sub-organisation of the PKK, which was subject to the ban. In July 2003, the Berlin Regional Court convicted the applicant of contravening a ban imposed on an association's activity and sentenced her to a fine of 1,200 euros. It held that, while demanding freedom and self-determination for the Kurdish people and calling for an end of the ban on the PKK fell within her freedom of expression, she had flouted that ban by signing the declaration, by taking part in the campaign and by making donations to the party's sub-organisation. The Federal Court of Justice upheld the judgment and held in particular that the applicant's aim to hamper the criminal prosecution of the ban had been demonstrated by the fact that she and other campaigners had not addressed the Ministry of the Interior, which would have been competent to lift the ban, but had instead submitted a large number of declarations to the public prosecutor's office. The Federal Constitutional Court, in a decision of September 2006, refused to accept the applicant's complaint against the judgment. Both federal courts referred to a pilot judgment of the Federal Court of Justice of March 2003, in which it had confirmed its earlier case-law by holding that a person breached a prohibition of an association if his or her activity made reference to the association's banned activity and was conducive to that activity. It had found that the submission of the declarations within the framework of the large-scale campaign aimed to support the PKK's activities.

The applicant complained that her criminal conviction for signing the declaration violated her right to freedom of expression.

The Court noted that the applicant's criminal conviction was not based on the fact that she had expressed a certain opinion, as the domestic courts had acknowledged that it fell within her freedom of expression to demand freedom and self-determination for the Kurdish people and to call to end the ban on the PKK. They had considered, however, that the declaration she had signed had to be understood as a commitment not to respect the ban on PKK activities in the future. Accordingly, the Court's task was limited to examining whether the applicant's criminal conviction for lending support to an illegal organisation violated her right to freedom of expression under Article 10. It was undisputed by the German Government that the applicant's conviction had amounted to an interference with her right to freedom of expression. As regards the question whether that interference had been justified, the Court was satisfied that her conviction was prescribed by law for the purpose of Article 10. While the relevant provisions of the domestic Law on Associations, imposing criminal liability on anyone contravening the enforceable prohibition of an association, was phrased in broad terms, the case-law of the Federal Court of Justice was sufficiently precise to make the consequences of her action

foreseeable to the applicant. Her conviction had further aimed to protect public order and safety and thus pursued legitimate aims. As regards the question whether the interference had been necessary in a democratic society, the Court observed that the prohibition order imposed on the PKK's activities would be ineffective if its followers were de facto free to pursue the banned organisation's activities. It was not disputed between the parties that the prohibition order was subject to review and could be lifted by the Interior Ministry. The applicant thus would have remained free to address that Ministry and to demand the lifting of the prohibition without risking criminal prosecution. The domestic courts had further thoroughly examined the content of the declaration, taking into account the fact that it had been made as part of a large-scale campaign initiated by the PKK leadership and the fact that the applicant had made a donation to one of the party's sub-organisations. Moreover, the sanction imposed did not appear disproportionate to the aim pursued. In the light of those considerations, the Court concluded that there had been no violation of Article 10. Judge Kalaydjieva expressed a dissenting opinion.

Reinboth and Others v. Finland (no. 30865/08) (Importance 2) – 25 January 2011 – Violation of Article 10 – Domestic courts' failure to strike a fair balance between a public figure's right to respect for private life and the applicants' right to freedom of expression – No violation of Article 7

The case concerned the applicants' conviction and order to pay damages for publishing information in 2002 about the private life (contained in a court judgment) of the communications manager of Esko Aho, O.T, one of the presidential candidates during the 2000 election campaign.

The Court has taken into account the severity of the sanctions imposed on the applicants. The first and second applicants were convicted under criminal law and were ordered to pay ten day-fines, amounting to EUR 740 and EUR 1,140 respectively. In addition, they were, together with the applicant company, ordered to pay damages jointly and severally to O.T. in a total amount of EUR 6,000 plus interest and her legal fees amounting to total EUR 27,150.08. The amounts of compensation must be regarded as substantial, given that the maximum compensation afforded to victims of serious violence was approximately FIM 100,000 (EUR 17,000) at the time. The Court considered that such severe consequences, viewed against the background of the circumstances resulting in the interference with the right to respect for her private life, were disproportionate having regard to the competing interest of freedom of expression. In conclusion, in the Court's opinion the reasons relied on by the domestic courts, although relevant, were not sufficient to show that the interference complained of was "necessary in a democratic society". Moreover, the totality of the sanctions imposed, were disproportionate. Having regard to all the foregoing factors, and notwithstanding the margin of appreciation afforded to the State in this area, the Court considers that the domestic courts failed to strike a fair balance between the competing interests at stake. There has therefore been a violation of Article 10. In view of the finding under Article 10 that the interference was in accordance with the law, the Court finds that there has been no violation of Article 7 in the present case.

Mgn Limited v. the United Kingdom (no. 39401/04) (Importance 3) – 18 January 2011 – No violation of Article 10 – A lower level of protection of freedom of expression existed concerning matters whose sole purpose is to satisfy the curiosity of a particular readership about the details of a public figure's private life, without contributing to any debate of general interest to society – Violation of Article 10 – The requirement imposed on the applicant company to pay "success fees, was disproportionate to the aim sought to be achieved by the introduction of the "success fee" system

The applicant, Mgn Limited, is the publisher of the British national daily newspaper *The Daily Mirror*. In February 2001 it published an article on its front page entitled "Naomi: I am a drug addict" and another longer article inside the newspaper elaborating on Ms Campbell's addition treatment, accompanied by photos. Ms Campbell's lawyer wrote to Mgn Limited complaining that those publications breached her privacy and asking the publisher to undertake that it would not publish further private information. The Daily Mirror responded by publishing another two articles about Ms Campbell containing further details on the treatment as well as critics concerning her complaints that her privacy had been breached by the newspaper. Ms Campbell successfully sued the newspaper for breach of confidence and compensation. The House of Lords concluded that the publication of the pictures, in combination with the articles, had been offensive and distressing for her and had breached her right to respect for her private life. As well as Pounds Sterling (GBP) 3500, the courts also ordered Mgn Limited to pay Ms Campbell's legal costs. Those costs amounted to over GBP 1,000,000 in total and included "success fees" agreed between Ms Campbell and her lawyers as part of a conditional fee agreement. Mgn Limited contested the "success fees" before the House of Lords and the latter dismissed the complaint, finding that the existing legal regime governing the conditional fee agreements was

compatible with the Convention. A subsequent appeal of Mgn Limited before the House of Lords was dismissed.

Mgn Limited complained about the finding that it had breached Ms Campbell's privacy and, further, about the requirement to pay disproportionately high success fees agreed between Ms Campbell and her lawyers.

The Court recalled the pre-eminent role of the press in a State governed by the rule of law. It then observed that a balance had to be made between the public interest in the publication of the articles and photographs of Ms Campbell, and the need to protect her private life. Given that the sole purpose of the publication of the photographs and articles had been to satisfy the curiosity of a particular readership about the details of a public figure's private life, those publications had not contributed to any debate of general interest to society. In such a context, there was a lower level of protection of freedom of expression. Three separate UK courts had given detailed judgments. The domestic courts had agreed on the precise aspects of the articles which were relevant to the privacy case and on the correct case law of the Court; the courts had applied those principles in some detail and had disagreed. The House of Lords had given convincing reasons for their decision. In particular, the identified published information had been private and harmful to Ms Campbell, and the photographs added to the content of the articles, had been taken covertly and had caused her distress. Finally, the impugned publication had not been necessary to ensure the credibility of the story published about her: the public interest had been already satisfied by the publication in the articles of the core facts about her addiction and treatment and adding the photographs was therefore a disproportionate breach of Ms Campbell's right to respect for her private life. There had therefore been no violation of Article 10 in respect of Mgn Limited. The Court observed that Mgn Limited had been asked to pay the "success fees" which Ms Campbell had negotiated with her lawyers. As to the pressure on defendants to settle cases which could have been defended, that represented a risk to media reporting and thus – possibly – to freedom of expression. The Ministry of Justice had acknowledged following those consultations that recoverable "success fees" rendered the costs' burden in civil litigation excessive and that the balance had swung too far in favour of claimants and against the interests of defendants, particularly in defamation and privacy cases. Ms Campbell had been wealthy and therefore not someone who risked not having access to a court on financial grounds and for whom the "success fees" scheme had been initially set up. While the proceedings had been lengthy and somewhat complex, the "success fees" claimed in respect of the two appeals before the House of Lords alone had amounted to more than GBP 365,000. The Court concluded that the requirement on Mgn Limited to pay the "success fees", was disproportionate to the aim sought to be achieved by the introduction of the "success fee" system. Accordingly, there had been a violation of Article 10. Judge Björgvinsson expressed a separate partly dissenting opinion.

- **Right to free elections**

Scoppola v. Italy (no. 3) (no. 126/05) (Importance 2) – 18 January 2011 – Violation of Article 3 of Protocol No. 1 – The automatic nature of the ban on voting and its indiscriminate application imposed on the applicant following a criminal conviction was unjustified

The applicant was sentenced in 2002 by the Assize Court to life imprisonment for murder, attempted murder, ill-treatment of members of his family and unauthorised possession of a firearm. Under Italian law, his life sentence entailed a lifetime ban from public office, amounting to permanent forfeiture of his right to vote. Appeals by the applicant against the ban were unsuccessful. The Court of Cassation dismissed his appeal in 2006, pointing out that, only prison sentences of at least five years or life sentences entailed a permanent ban on the right to vote – voting rights being forfeited for only five years in the case of prison sentences of less than five years. In 2010, his sentence was reduced to 30 years' imprisonment by a judgment of the Court of Cassation setting aside the judgment of the Assize Court, by way of executing the judgment of the Court of 17 September 2009. In that judgment, the Court held that there had been a violation of Articles 6 and 7 and had indicated the urgent need to put an end to those violations by replacing life imprisonment by a sentence not exceeding 30 years' imprisonment.

The applicant complained that the ban on public office imposed as a result of his life sentence had amounted to a permanent forfeiture of his entitlement to vote.

The Court reiterated that a blanket ban on the right of prisoners to vote during their detention constituted an "automatic and indiscriminate restriction on a vitally important Convention right ... falling outside any acceptable margin of appreciation, however wide that margin may be". It had held that a decision on disenfranchisement should be taken by a court and should be duly reasoned. While it was not disputed that the permanent voting ban imposed on the applicant had a legal basis in Italian law, the application of that measure was automatic since it derived as a matter of

course from the main penalty imposed on him (life imprisonment). That general measure had been applied indiscriminately, having been taken irrespective of the offence committed and with no consideration by the lower court of the nature and seriousness of that offence. The possibility that the applicant might one day be rehabilitated by a decision of a court did not in any way alter that finding. Thus, having regard to the automatic nature of the ban on voting and its indiscriminate application, the Court concluded that there had been a violation of Article 3 of Protocol No. 1. The Court held that the finding of a violation of Article 3 of Protocol No. 1 provided sufficient just satisfaction for any non-pecuniary damage.

- **Disappearance cases in Chechnya**

Gisayev v. Russia (no. 14811/04) (Importance 2) – 20 January 2011 – Two violations of Article 3 (substantive and procedural) – (i) Abduction and torture of the applicant by State agents – (ii) Lack of an effective investigation – Violation of Article 5 – Unacknowledged detention of the applicant – Violation of Article 13 in conjunction with Article 3 – Lack of an effective remedy – No violation of Article 34 – Lack of sufficient evidence to establish whether the alleged occasions of pressure put on the applicant and his relatives had been connected to the applicant's application before the Court

2. Judgments referring to the NHRSs

- **Grand Chamber judgments**

M.S.S. v. Belgium and Greece (link to the judgment in French) (no. 30696/09) (Importance 1) – 21 January 2011 – Two violations of Article 3 (Greece) – The applicant's poor conditions of detention in a holding centre and his poor living conditions in Greece – Violation of Article 13 taken together with Articles 2 and 3 (Greece) – Major structural deficiencies in the applicant's asylum procedure – Violation of Article 3 (Belgium) – The Belgian authorities' decision to expose the applicant to the detention and living conditions in Greece – Violation of Article 13 taken together with Article 3 (Belgium) – Lack of an effective remedy against the applicant's expulsion order – Article 46 – It was incumbent on Greece, without delay, to proceed with an examination of the merits of the applicant's asylum request that met the requirements of the Convention and, pending the outcome of that examination, to refrain from deporting the applicant

The applicant left Kabul early in 2008 and entered the European Union (EU) through Greece. In February 2009, he arrived in Belgium, where he applied for asylum. By virtue of the "Dublin II" Regulation, the Belgian Aliens Office submitted a request for the Greek authorities to take charge of the asylum application. While the case was pending, the UNHCR sent a letter to the Belgian Minister for Migration and Asylum Policy criticising the deficiencies in the asylum procedure and the conditions of reception of asylum seekers in Greece and recommending the suspension of transfers to Greece. In late May 2009, the Aliens Office nevertheless ordered the applicant to leave the country for Greece, where he would be able to submit an application for asylum. The Aliens Office received no answer from the Greek authorities within the two-month period provided for by the Regulation, which it treated as a tacit acceptance of its request. The applicant lodged an appeal with the Aliens Appeals Board, arguing that he ran the risk of detention in Greece in appalling conditions, that there were deficiencies in the asylum system in Greece and that he feared ultimately being sent back to Afghanistan without any examination of the reasons why he had fled that country, where he claimed he had escaped a murder attempt by the Taliban in reprisal for his having worked as an interpreter for the air force troops stationed in Kabul. The applicant was transferred to Greece in June 2009, where he was immediately placed in detention in an adjacent building to the airport, where, according to his reports, he was locked up in a small space with 20 other detainees, access to the toilets was restricted, detainees were not allowed out into the open air, were given very little to eat and had to sleep on dirty mattresses or on the bare floor. Following his release and issuance of an asylum seeker's card in June 2009, he lived in the street, with no means of subsistence. Having subsequently attempted to leave Greece with a false identity card, the applicant was arrested and again placed in the detention facility next to the airport for one week, where he alleges he was beaten by the police. After his release, he continued to live in the street, occasionally receiving aid from local residents and the church. On renewal of his asylum seeker's card in December 2009, steps were taken to find him accommodation, but according to his submissions no housing was ever offered to him.

The applicant alleged that the conditions of his detention and his living conditions in Greece amounted to inhuman and degrading treatment and that he had no effective remedy in Greek law in respect of his complaints under Articles 2 and 3. He further complained that Belgium had exposed him to the risks arising from the deficiencies in the asylum procedure in Greece and to the poor detention and

living conditions to which asylum seekers were subjected there. He further maintained that there was no effective remedy under Belgian law in respect of those complaints.

Article 3: detention conditions in Greece

Following the parliamentary elections held in Greece in October 2009, the new Government set up an expert committee to give an opinion on the reform of the asylum system in Greece. Composed of experts from the Ministries of Civil Protection, the Interior and Health, and from the UNHCR, the Greek Council for refugees and the Ombudsman's office, as well as academics, the committee was asked to propose amendments to the current law and practice and make suggestions concerning the composition and modus operandi of a new civil authority to deal with applications for asylum, composed not of police officers, like today, but of public servants. It is also envisaged to restore the appellate role of the refugee advisory committees.

While the Court did not underestimate the burden currently placed on the States forming the external borders of the EU by the increasing influx of migrants and asylum seekers and the difficulties involved in receiving them at major international airports, that situation could not absolve Greece of its obligations under Article 3, given the absolute character of that provision. When the applicant arrived in Athens from Belgium, the Greek authorities had been aware of his identity and of the fact that he was a potential asylum seeker. In spite of that, he was immediately placed in detention, without any explanation being given. **The Court noted that various reports by international bodies and non-governmental organisations of recent years confirmed that the systematic placement of asylum seekers in detention without informing them of the reasons was a widespread practice of the Greek authorities**. **The applicant's allegations that he was subjected to brutality by the police during his second period of detention were equally consistent with numerous accounts collected from witnesses by international organisations, in particular the European Committee for the Prevention of Torture (CPT). Findings by the CPT** (Report to the Government of Greece on the visit to Greece carried out by the CPT from 27 August to 9 September 2005 and Report to the Government of Greece on the visit to Greece carried out by the CPT from 23 to 29 September 2008), **and the UNHCR also confirmed the applicant's allegations about the unsanitary conditions and the overcrowding in the detention centre next to Athens international airport.**

Despite the fact that he was kept in detention for a relatively short period of time, the Court considered that the conditions of detention experienced by the applicant in the holding centre had been unacceptable. It found that, taken together, the feeling of arbitrariness, inferiority and anxiety he must have experienced, as well as the profound effect such detention conditions indubitably had on a person's dignity, constituted degrading treatment. In addition, as an asylum seeker he was particularly vulnerable, because of his migration and the traumatic experiences he was likely to have endured. The Court concluded that there had been a violation of Article 3.

Article 3: living conditions in Greece

The Court recalled that Article 3 did not generally oblige member States to give refugees financial assistance to secure for them a certain standard of living. However, the Court considered that the situation in which the applicant had found himself was particularly serious. In spite of the obligations incumbent on the Greek authorities under their own legislation and the EU Reception Directive, he spent months living in extreme poverty, unable to cater for his most basic needs, while in fear of being attacked and robbed. The applicant's account was supported by the reports of a number of international bodies and organisations, in particular the Council of Europe Commissioner for Human Rights and the UNHCR. The authorities had not duly informed the applicant of any accommodation possibilities. A document notifying him of the obligation to go to the police headquarters to register his address could not reasonably be understood as an instruction to let the authorities know that he had nowhere to stay. In any event, the Court did not see how the authorities could have failed to assume that the applicant was homeless. The Government themselves acknowledged that there were fewer than 1,000 places in reception centres to accommodate tens of thousands of asylum seekers. That data considerably reduced the weight of the Greek Government's argument that the applicant's situation was a consequence of his inaction. The situation of which the applicant complained had lasted since his transfer to Greece in June 2009 and was linked to his status as an asylum seeker. Had the authorities examined his asylum request promptly, they could have substantially alleviated his suffering. It followed that through their fault he had found himself in a situation incompatible with Article 3. There had accordingly been a violation of that provision.

Article 13 taken together with Article 2 and 3 (Greece)

The Court's primary concern was whether effective guarantees existed to protect the applicant against arbitrary removal. For a few years the UNHCR, the European Commissioner for Human Rights and other organisations had repeatedly and consistently revealed that the relevant legislation was not being applied in practice and that the asylum procedure was marked by major structural deficiencies.

The Court was not convinced by the Greek Government's argument that the applicant was responsible for the inaction of the authorities because he had not reported to the police headquarters within a three-day time-limit. Like many other asylum-seekers, as revealed by the reports, he had misinterpreted that convocation to the effect that its only purpose was to declare an address, which he did not have. The authorities had not offered the applicant a real and adequate opportunity to defend his application for asylum. The Court considered that the authorities' failure to ensure communication with the applicant and the difficulty in contacting a person without a known address made it very uncertain whether he would learn the outcome of his asylum application in time to react within the prescribed time-limit. Further, the applicant had received no information concerning access to organisations offering legal advice. The average duration of appeals to the Supreme Administrative Court was more than five years, which was additional evidence that such an appeal was not accessible enough and did not remedy the lack of guarantees in the asylum procedure. In view of those deficiencies, the Court concluded that there had been a violation of Article 13 taken in conjunction with Article 3.

Article 2 and 3: The Belgian authorities' decision to expose the applicant to the asylum procedure in Greece

The Court considered that the deficiencies of the asylum procedure in Greece must have been known to the Belgian authorities when they issued the expulsion order against the applicant and he should therefore not have been expected to bear the entire burden of proof as regards the risks he faced by being exposed to that procedure. The UNHCR had alerted the Belgian Government to that situation while the applicant's case was pending. While the Court in 2008 had found in another case that removing an asylum seeker to Greece under the Dublin II Regulation did not violate the Convention,3 numerous reports and materials had been compiled by international bodies and organisations since then which agreed as to the practical difficulties involved in the application of the Dublin system in Greece. Belgium had initially issued the expulsion order solely on the basis of a tacit agreement by the Greek authorities and had proceeded to execute that order without any individual guarantee given by those authorities at a later stage, although under the Regulation Belgium could have made an exception and refused the applicant's transfer. Against that background, it had been up to the Belgian authorities not merely to assume that the applicant would be treated in conformity with the Convention standards but to verify how the Greek authorities applied their legislation on asylum in practice, which they had failed to do. The applicant's transfer by Belgium to Greece had thus given rise to a violation of Article 3.

Article 3: The Belgian authorities' decision to expose the applicant to the detention and living conditions in Greece

The Court had already found the applicant's conditions of detention and living conditions in Greece to be degrading. These facts had been well known and freely ascertainable from a wide number of sources before the transfer of the applicant. In that view, the Court considered that by transferring the applicant to Greece, the Belgian authorities knowingly exposed him to detention and living conditions that amounted to degrading treatment, in violation of Article 3.

Article 13 taken together with Article 2 and 3 (Belgium)

As regards the complaint that there was no effective remedy under Belgian law by which the applicant could have complained against the expulsion order, the Belgian Government had argued that a request for a stay of execution could be lodged before the Aliens Appeals Board "under the extremely urgent procedure". That procedure suspended the execution of an expulsion measure for a maximum of 72 hours until the Board had reached a decision. However, the Court found that the procedure did not meet the requirements of the Court's case-law that any complaint that expulsion to another country would expose an individual to treatment prohibited by Article 3 be closely and rigorously scrutinised, and that the competent body had to be able to examine the substance of the complaint and afford proper redress. Having regard to the Aliens Appeals Board's examination of cases, which was mostly limited to verifying whether those concerned had produced concrete proof of the damage that might result from the alleged potential violation of Article 3, the applicant would have had no chance of success. There had accordingly been a violation of Article 13 taken in conjunction with Article 3.

Article 46 (Binding force and execution of judgments)

The Court considered it necessary to indicate some individual measures required for the execution of the judgment in respect of the applicant, without prejudice to the general measures required to prevent other similar violations in the future. **It was incumbent on Greece, without delay, to proceed with an examination of the merits of the applicant's asylum request that met the requirements of the Convention and, pending the outcome of that examination, to refrain from deporting the applicant**.

Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that Greece was to pay the applicant 1,000 euros (EUR) in respect of non-pecuniary damage and EUR 4,725 in respect of costs and expenses. It further held that Belgium was to pay the applicant EUR 24,900 in respect of non-pecuniary damage and EUR 7,350 in respect of costs and expenses. Judges Rozakis and Villiger each expressed a concurring opinion. Judge Sajó expressed a partly concurring and partly dissenting opinion. Judge Bratza expressed a partly dissenting opinion.

3. 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 18 Jan. 2011: here
- Press release by the Registrar concerning the Chamber judgments issued on 20 Jan. 2011: here
- Press release by the Registrar concerning the Chamber judgments issued on 25 Jan. 2011: here
- Press release by the Registrar concerning the Chamber judgments issued on 27 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
Bulgaria	20 Jan. 2010	Basarba Ood (no. 77660/01) Imp. 2	Just satisfaction	Just satisfaction due to the judgment of 7 April 2010	Link
Bulgaria	20 Jan. 2010	Makedonski (no. 36036/04) Imp. 2	Violation of Art. 2 § 2 of Prot. 4 Violation of Art. 6 § 1 (length) Violation of Art. 13 in conjunction with Art. 6 § 1	Unjustified and disproportionate prohibition on the applicant's ability to leave the country imposed on him in 1994 Excessive length of criminal proceedings (approximately twelve years) Lack of an effective remedy and lack of adequate compensation	Link
France	20 Jan. 2010	Vernes (no. 30183/06) Imp. 2	Three violations of Art. 6 § 1 (fairness)	Lack of a public hearing before the Stock Exchange Regulatory Authority, lack of impartiality of that body and presence of the Government's commissioner before the *Conseil d'Etat*	Link
Hungary	25 Jan. 2010	Block (no. 56282/09) Imp. 2	Violation of Art. 6 § 3 (a) and (b) in conjunction with Art. 6 § 1 (fairness)	Infringement of the applicant's right to be informed in detail of the nature and cause of the accusation against him and his right to have adequate time and facilities for the preparation of his defence	Link
Luxembourg	20 Jan. 2010	Haxhishabani (no. 52131/07) Imp. 2	No violation of Art. 6	The domestic authorities did not breach the applicant's right to be presumed innocent	Link
Moldova	25 Jan. 2010	Lipencov (no. 27763/05) Imp. 2	Violations of Art. 3 (substantive and procedural, first applicant) Violation of Art. 5 § 1 (c)	Ill-treatment by police officers and lack of an effective investigation Unlawful detention (See the Report to the Moldovan Government on the visit to Moldova carried out by the CPT from 27 to 31 July 2009)	Link
Poland	18 Jan. 2010	Rogala (no. 40176/08) Imp. 3	No violation of Art. 5 § 3	Reasonable length of pre-trial detention	Link
Poland	25	Płaza (no.	No violation of Art. 8	The domestic courts' struck a fair	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

	Jan. 2010	18830/07) Imp. 2		balance between the child's best interests and preferences and her father's rights, concerning the applicant's claim to have contact with his daughter enforced	
Romania	18 Jan. 2010	Silviu Marin (no. 35482/06) Imp. 2	Just satisfaction	Just satisfaction due to the judgment of 2 September 2009	Link
Russia	20 Jan. 2010	Petrenko (no. 30112/04) Imp. 2	Violation of Art. 3 Violation of Art. 6 § 1 (length)	Inhuman conditions of detention in remand centre IZ-47/1 of St Petersburg Excessive length of the criminal proceedings (more than two years and eight months)	Link
Russia	20 Jan. 2010	Rytchenko (no. 22266/04) Imp. 2	No violation of Art. 8	Having regard to the circumstances of the case and to the respondent State's margin of appreciation, the Court is satisfied that the domestic courts' procedural approach was reasonable and provided sufficient material to reach a reasoned decision on the question of access of the applicant to his child	Link
Russia	27 Jan. 2010	Karpacheva and Karpachev (no. 34861/04) Imp. 3	Violation of Art. 2 of Prot. 4	The authorities' rejection of the second applicant's application for permanent residence in Ozersk constituted an unlawful interference with his right to freedom to choose his own place of residence	Link
Russia	27 Jan. 2010	Krivoshapkin v. (no. 42224/02) Imp. 2	Violation of Art. 6 § 1 Violation of Art. 6 §§ 1 and 3 (d)	The examination of the applicant's appeal was held in the prosecutor's absence Failure to provide the applicant with the opportunity to question witnesses whose incriminating depositions had been used as a basis to convict him	Link
Russia	27 Jan. 2010	Kononov (no. 41938/04) Imp. 3	Violation of Art. 6 §§ 1 and 3 (c) No violation of Art. 6 §§ 1 and 3 (c)	Domestic authorities' failure to ensure the applicant's right to take part in the appeal hearing The absence of any legal representative for the applicant in the appeal hearing was not imputable to the national authorities	Link
Russia	27 Jan. 2010	Shanin (no. 24460/04) Imp. 3	Violations of Art. 3 (substantive and procedural)	Ill-treatment by police officers and lack of an effective investigation	Link
Russia	27 Jan. 2010	Yevgeniy Alekseyenko (no. 41833/04) Imp. 3	Violation of Art. 3 (substantive) No violation of Art. 3 Violation of Art. 6 § 1 No violation of Art. 34	Poor conditions of detention in facility no. IZ-18/1 in Izhevsk Lack of sufficient evidence to establish a violation in respect of the applicant's ill-treatment by warders and domestic authorities' effective investigation in that regard Excessive length of criminal proceedings (three years and eight months) Lack of sufficient evidence to indicate that the applicant was hindered in the exercise of his right of individual application to any significant degree; the Government have not breached their obligations under Article 34 of the Convention as regards their contact with the applicant for the purpose of securing a friendly-settlement agreement (See the 3rd General Report on the CPT's Activities (1992), the 11th General Report on the CPT's	Link

				Activities (2000) and the Report to the Russian Government on the visit to the Russian Federation carried out by the CPT from 2 to 17 December 2001)	
Slovakia	18 Jan. 2010	Mikolajová (no. 4479/03) Imp. 2	Violation of Art. 8	Domestic authorities' failure to strike a fair balance between the applicant's right to protection of reputation and any interests relied on by the Government to justify the terms of the police decision concerning the applicant's guilt and its disclosure to a third party	Link
the Netherlands	18 Jan. 2010	Bok (no. 45482/06) Imp. 2	No violation of Art. 6 § 2	The domestic courts did not infringe the applicant's right to be presumed innocent on account of the use of expressions stating the lack of any appearance of the applicant's "innocence"	Link
Turkey	25 Jan. 2010	Ekdal and Others (no. 6990/04) Imp. 2	Violation of Art. 6 § 1 (length)	Excessive length of proceedings concerning property rights (more than sixteen years)	Link
Turkey	25 Jan. 2010	Elawa (no. 36772/02) Imp. 2	Violation of Art. 6 § 1 (length) Violation of Art. 6 § 3 (c) in conjunction with Art. 6 § 1 (fairness)	Excessive length of criminal proceedings (more than four years and nine months) Failure to provide the applicant with legal assistance during the initial stages of the criminal proceedings	Link
Turkey	25 Jan. 2010	Menteş (No. 2) (no. 33347/04) Imp. 2	Violation of Art. 10	Infringement of the applicant's right to freedom of expression on account of her criminal conviction for attempting to read a declaration concerning "F-type" prisons to the press	Link
Turkey	25 Jan. 2010	Şafak (no. 38879/03) Imp. 2	Violations of Art. 3 (substantive and procedural)	Ill-treatment by police officers and lack of an effective investigation	Link
Ukraine	27 Jan. 2010	Bortnik (no. 39582/04) Imp. 3	Violation of Art. 6 § 3 (c) (fairness)	Failure to provide the applicant with legal assistance	Link

4. 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**
Moldova	25 Jan. 2010	Muhin (no. 30599/05) link	Violation of Art. 6 § 1 (fairness) Violation of Art. 13	Domestic authorities' failure to enforce a final judgment in the applicant's favour
Poland	25 Jan. 2010	Henryk Sikorski (no. 10041/09) link Jęczmieniowski (no. 747/09) link Zdziarski (no. 14239/09) link	Violation of Art. 5 § 3 – all cases	Excessive length of pre-trial detention on suspicion of, among other offences, drug trafficking committed as members of an organised criminal gang (three years and four months; five years; and five years respectively)

Poland	18 Jan. 2010	Grochulski (no. 33004/07) link	Violation of Art. 5 § 3	Excessive length of pre-trial detention on suspicion of fraud, money laundering, counterfeiting and forgery committed as a member of an organised criminal gang (more than two years and ten months)
Portugal	18 Jan. 2010	Sancho Cruz and 14 other "agrarian reform cases" (nos. 8851/07, 8854/07 etc.) link	Violation of Art. 1 of Prot. 1	Lack of adequate compensation following expropriation
Serbia	18 Jan. 2010	Milošević (no. 32484/03) link	Violation of Art. 8	Monitoring of the applicant's correspondence with the Court as well as with other various domestic bodies by prison authorities
Turkey	25 Jan. 2010	Bora (no. 14719/03) link	Just satisfaction	Just satisfaction due to the judgment of 9 May 2010
Ukraine	20 Jan. 2010	Boldyrev (no. 27889/03) link Prokopenko (no. 5522/04) link	Violation of Art. 5 § 3 Violation of Art. 6 § 1	Excessive length of pre-trial detention (more than three years and four months and three years and two months respectively) Excessive length of criminal proceedings (around five years and three months for both applications)

5. 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**
Cyprus	20 Jan. 2010	Panayiotou (no. 20009/06)	Link
Germany	20 Jan. 2010	Kuhlen-Rafsandjani (nos. 21980/06, 26944/07 and 36948/08)	Link
Italy	18 Jan. 2010	Salvatore and Others (nos. 27036/03, 34885/03, 37903/03 and 37905/03)	Link
Lithuania	18 Jan. 2010	Kravtas (no. 12717/06)	Link
Lithuania	18 Jan. 2010	Maneikas (no. 21987/07)	Link
Lithuania	18 Jan. 2010	Stasevičius (no. 43222/04)	Link
Lithuania	18 Jan. 2010	Zabulėnas (no. 44438/04)	Link
Lithuania	18 Jan. 2010	Rikoma Ltd(no. 9668/06)	Link
Poland	18 Jan. 2010	Gut (no. 32440/08)	Link
Portugal	18 Jan. 2010	Sociedade de Construções Martins & Vieira, Lda. and Others (No. 2) (no. 55544/08)	Link
Portugal	18 Jan. 2010	Sociedade de Construções Martins & Vieira, Lda. and Others (No. 3) (no. 57004/08)	Link
Serbia	18 Jan. 2010	Ristić (no. 32181/08)	Link
Slovakia	18 Jan. 2010	Varnavcin (no. 41877/05)	Link
Slovakia	18 Jan. 2010	Sýkora (no. 26077/03)	Link
Slovenia	18 Jan. 2010	Mramor (no. 31391/05)	Link
Slovenia	18 Jan. 2010	Simončič (no. 7531/04)	Link
Turkey	18 Jan. 2010	Mavitan (no. 41613/05)	Link
Turkey	18 Jan. 2010	Vedat Arslan (no. 37927/04)	Link
Turkey	25 Jan. 2010	Çetinkaya (No. 2) (no. 17860/07)	Link

Turkey	25 Jan. 2010	Dedeoğlu (no. 16444/07)	Link
Turkey	25 Jan. 2010	Terzi (no. 23086/07)	Link
Turkey	25 Jan. 2010	Zaman (no. 17839/07)	Link
Ukraine	20 Jan. 2010	Kotyay . (no. 33645/07)	Link
Ukraine	20 Jan. 2010	Andrenko (no. 50138/07)	Link
Ukraine	20 Jan. 2010	Kaduk (no. 21798/05)	Link
Ukraine	20 Jan. 2010	Musiyenko (no. 26976/06)	Link
Ukraine	20 Jan. 2010	Pavliv (no. 35176/08)	Link
Ukraine	20 Jan. 2010	Rusnakova (no. 7575/05)	Link
Ukraine	20 Jan. 2010	Semenyuk (no. 9476/06)	Link
Ukraine	20 Jan. 2010	Vasyliv (no. 8008/05)	Link

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

Those decisions are published with a slight delay of two to three weeks on the Court's Website. Therefore the decisions listed below cover **the period from 10 to 23 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***
Azerbaijan	18 Jan. 2011	Nizami Karimov (no 50430/06) link	Alleged violation of Art. 6 and Art. 1 of Prot. 1 (lengthy non-enforcement of a final judgment in the applicant's favour and unfairness of proceedings)	Partly struck out of the list (the applicant no longer wished to pursue his application concerning the non-enforcement of a judgement in his favour), partly inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention concerning the remainder of the application)
Azerbaijan	18 Jan. 2011	Amirov (no 25512/06) link	Alleged violation of Art. 6 (unfairness of proceedings and lack of impartiality of the domestic courts)	Partly inadmissible for non-exhaustion of domestic remedies (concerning the alleged violation of the applicant's right to adversarial proceedings), partly inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention concerning the remainder of the application)
Croatia	13 Jan. 2011	Katavić (no 38392/08) link	Alleged violation of Art. 3 (handcuffing during hearings and poor conditions of detention) and Art. 5 (grounds and duration of the applicant's pre-trial detention)	Struck out of the list (the applicant no longer wished to pursue his application)
Croatia	13 Jan. 2011	Barišić (no 11861/08) link	Alleged violation of Articles 6 § 1 and 13 (excessive length of inheritance proceedings and lack of an effective remedy)	Struck out of the list (friendly settlement reached)
Croatia	13 Jan. 2011	Ujdurović (no 4129/10) link	Alleged violation of Articles 6 § 1 (excessive length of civil proceedings)	Idem.
Croatia	13 Jan. 2011	Petrina (no 30097/10) link	Alleged violation of Articles 6 § 1 (excessive length of criminal proceedings)	Idem.
Greece	13 Jan. 2011	Raptis and Others (no 12777/09) link	Alleged violation of Articles 6 § 1 (excessive length of proceedings) and Art. 1 of Prot. 1 (deprivation of the prime awarded by the hospital administration)	Idem.
Greece	18 Jan. 2011	Dilintas and Others (no 51734/08) link	Alleged violation of Art. 6 (lack of access to a court), Art. 1 of Prot. 1 (the domestic courts' refusal to award the applicants research funding)	Inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention)

Greece	18 Jan. 2011	Papandreopoulos (no 33388/08) link	Alleged violation of Ar. 6 (excessive length and unfairness of proceedings), Art. 13 (lack of an effective remedy in respect of the length of proceedings), Art. 1 of Prot. 1 (the courts' alleged interference with the applicant's right to receive honoraries)	Idem.
Greece	13 Jan. 2011	Vryzas (no 12731/09) link	Alleged violation of Articles 6 § 1 (excessive length of proceedings), Art. 1 of Prot. 1 (failure to provide the applicant with additional allowance)	Struck out of the list (friendly settlement reached)
Hungary	18 Jan. 2011	Vajnai (II) (no 44438/08) link	Alleged violation of Art. 10 (criminal conviction for having worn a totalitarian symbol in public)	Inadmissible for non-exhaustion of domestic remedies
Hungary	18 Jan. 2011	Horváth (no 44073/08) link	Idem.	Idem.
Italy	18 Jan. 2011	Chircus and Others (no 35914/04) link	Alleged violation of Articles 3, 5, 6, 13 and 14 and Art. 4 of Prot. 4 concerning the applicants' deportation	Struck out of the list (the applicants no longer wished to pursue their application)
Poland	18 Jan. 2011	Piekarz (no 28198/07) link	Alleged violation of Art. 5 § 1 (unlawful arrest and detention), Art. 2 § 1 (lack of adequate medical care in a sobering-up centre), Art. 6 § 1 (unfairness of proceedings)	Struck out of the list (friendly settlement reached)
Russia	13 Jan. 2011	Savelyev and Others (no 8092/02) link	Alleged violation of Articles 6, 13 and Art. 1 of Prot. 1 (delayed enforcement of final domestic court awards in the applicants' favour)	Struck out of the list (unilateral declaration of the Government)
Russia	13 Jan. 2011	Lunina and Others (nos 7120/03; 34436/04 etc.) link	The applicants complained about the delayed enforcement of the judgments in their favour, and, in certain cases, of assorted faults that allegedly accompanied the judicial or enforcement proceedings	Partly struck out of the list (unilateral declaration of Government concerning the non-enforcement of the judgments in the applicants' favour: following the *Burdov (no. 2)* pilot judgment the Government informed the Court of the payment of the domestic court awards in the applicants' favour and submitted unilateral declarations aimed at resolving the issues raised by the applications. By these declarations the Russian authorities acknowledged in various but very similar terms that judgments in the applicants' favour were not enforced in a timely manner (*e.g.* "the excessive duration of the enforcement", "the delay in the enforcement" or "the lengthy enforcement"). They also declared that they were ready to pay the applicants *ex gratia* the sums mentioned in the judgment), partly inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected b the Convention concerning the remainder of the application)
Russia	18 Jan. 2011	Shubin (no 37032/03) link	Alleged violation of Art. 6 and Art. 1 of Prot. 1 (non-enforcement of a final judgment in the applicant's favour)	Inadmissible (the applicant can no longer claim to be a victim of any violation)
the Netherlands	18 Jan. 2011	Güler (no 8257/07) link	Alleged violation of Art. 8 (the obligation imposed on the applicant by the Dutch authorities to return to Turkey to apply for, and await the issuance of, a provisional residence visa allegedly violated her right to	Struck out of the list (the applicant no longer wished to pursue her application)

			respect for her family life)	
the United Kingdom	18 Jan. 2011	Tucka (no 34586/10) link	Alleged violation of Art. 6 § 1 (lack of a fair trial)	Inadmissible (for non-respect of the six-month requirement)
the United Kingdom	18 Jan. 2011	Zuluaga and Others (no 20443/08) link	Alleged violation of Art. 8 (interference with the applicants' right to respect for their family and private life on account of the first applicant's removal)	Inadmissible as manifestly ill-founded (the interference with the applicants' family life was proportionate to the legitimate aims pursued, namely the maintenance of an effective system of immigration control, the prevention of disorder and crime and the protection of health and morals)

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 24 January 2011: link
- on 31 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 24 January 2011 on the Court's Website and selected by the NHRS Unit

The batch of 24 January 2011 concerns the following States (some cases are however not selected in the table below): Azerbaijan, Finland, France, Hungary, Italy, Poland, Romania, Russia, Serbia, Slovenia, Switzerland, "the former Yugoslav Republic of Macedonia", the United Kingdom, Turkey and Ukraine.

State	Date of Decision to Communicate	Case Title	Key Words of questions submitted to the parties
Azerbaijan	04 Jan. 2011	Garayev no 24685/08	Alleged violations of Art. 3 (substantive and procedural) – (i) Alleged ill-treatment by the police during a demonstration – (ii) Lack of an effective investigation – Alleged violation of Art. 5 § 1 – Alleged unlawfulness of detention – Alleged violation of 5 § 2 – Failure to inform the applicant promptly of the reasons for his arrest – Alleged violation of Art. 5 § 4 – Lack of an effective remedy to challenge the lawfulness of the detention – Alleged violation of Art. 11 § 1 – Excessive use of police force during the dispersal of a demonstration
Romania	04 Jan. 2011	Harco no 1454/09	Alleged violations of Art. 3 (substantive and procedural) – (i) Alleged ill-treatment by the police – (ii) Lack of an effective investigation – Alleged violation of Art. 6 §

			1 – Excessive length of proceedings against the police officer having allegedly ill-treated the applicant
Russia	04 Jan. 2011	Kasparov and Others no 21613/07	Alleged violations of Articles 10 and 11 – The authorities refused the rally that the applicants intended to attend and barred them from taking part in the authorised meeting – Alleged violation of Art. 6 § 1 – Unfairness of proceedings
the United Kingdom	03 Jan. 2011	B.G. no 23584/10	Alleged violation of Art. 3 – Alleged risk of being subjected to ill-treatment if expelled to Iran, having regard in particular to the heightened repression of political dissidents and human rights activists in Iran since the elections of June 2009
the United Kingdom	03 Jan. 2011	S.H.H. no 60367/10	Alleged violation of Art. 3 – Alleged risk of being subjected to ill-treatment if expelled to Afghanistan, having particular regard to the applicant's disabilities
the United Kingdom	03 Jan. 2011	S.S., F.A., H.B., E.M. and A.L.F. nos. 40356/10 and 54466/10	Alleged violation of Art. 14 in conjunction with Art. 1 of Prot. 1 – Alleged discrimination in the enjoyment of property rights on the ground of the applicants' prisoner status and/or their disabilities
Turkey	05 Jan. 2011	Bartan no 2737/06	Alleged violations of Art. 2 (positive obligation and procedural) – (i) Domestic authorities' alleged failure to protect the life of the applicant's son, by taking him in an unsafe zone – (ii) Lack of an effective investigation – Alleged violation of Art. 5 § 1 – Unlawfulness of the applicant's son's detention

Communicated cases published on 31 January 2011 on the Court's Website and selected by the NHRS Unit

The batch of 31 January 2011 concerns the following States (some cases are however not selected in the table below): Azerbaijan, Bulgaria, France, Georgia, Greece, Latvia, Moldova, Poland, Romania, Russia, Slovakia, Slovenia, Spain, the Czech Republic, the United Kingdom, Turkey and Ukraine.

State	**Date of Decision to Communicate**	**Case Title**	**Key Words of questions submitted to the parties**
Bulgaria	14 Jan. 2011	Hasan no 4374/05	Alleged violation of Articles 3 and 13 – Conditions of the applicant's continued detention in Lovech Prison and Varna Prison, including the special regime for the execution of the sentence of life imprisonment – Did the applicant have at his disposal an effective remedy capable to lead to an improvement of the conditions of his detention? – Alleged violation of Art. 3 in conjunction with Art. 14 – Alleged discriminatory insults against the applicant made by prison authorities on the ground of the applicant's ethnic origin and religious beliefs – Alleged violation of Art. 8 – Systematic control of the applicant's correspondence by the prison authorities
France	13 Jan. 2011	M.L. no 24201/10	Alleged violation of Art. 3 – Alleged risk of being subjected to ill-treatment if expelled to his country of origin
Latvia	14 Jan. 2011	Maļinovskis no 48435/07	Alleged violations of Art. 3 (substantive and procedural) – (i) Alleged ill-treatment by prison staff – (ii) Lack of an effective investigation
Poland	10 Jan. 2011	Lewandowski no 66484/09	Alleged violation of Art. 10 – The applicant's placement in solitary confinement for criticising a judge – Alleged violation of Art. 6 § 1 – Unfairness of proceedings and alleged lack of impartiality of the court
Ukraine	10 Jan. 2011	Chernetskiy no 44316/07	Alleged violation of Articles 12 and 8 – Hindrance to the applicant's right to remarry in prison and establishing a family with his partner – Alleged violation of Art. 14 – Discrimination on ground of the applicant's divorced prisoner status – **The Ombudsman's Office informed the applicant that his issue was well known and that amendments to the domestic legislation had been prepared by the Ministry of Justice** – The Government were invited to provide examples of domestic practice on registering remarriages at the prisoners' requests in the period after the legislative amendments of 2008 and 2010
Disappearance case in Ingushetiya			
Russia	13 Jan. 2011	Bekova no 53679/07	Alleged violations of Article 2 (substantive and procedural) – (i) Disappearance of the applicant's son, following his unacknowledged detention by State servicemen – (ii) Lack of an effective investigation – Violation of Article 3 – Mental suffering in respect of the applicant – Violation of Article 5 – Unacknowledged detention of the applicant's son – Violation of Article 13 in conjunction with Articles 2 and 3 – Lack of an effective remedy

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

Press Conference (20.01.2011)

The Court held its annual press conference on Thursday 27 January 2011. On this occasion, Jean-Paul Costa, the President of the Court, presented a summary of the Court's activities and its statistics for 2010 and gave an overview of the reforms that have been implemented since the Interlaken conference in 2010. Press Release, Annual report 2010, Statistics, Table of violations, More information

During the press conference, President Costa made public the first joint declaration of the Presidents of the European Court of Human Rights and the Court of Justice of the European Union concerning the European Union's forthcoming accession to the European Convention on Human Rights. Press Release, Text of joint

Opening of the judicial year (28.01.2011)

The Court's judicial year was formally opened on Friday 28 January 2011. Some 200 leading judicial figures from across Europe were invited to participate in a seminar on the topic "What are the limits to the evolutive interpretation of the Convention?". More information

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/dghl/monitoring/execution/Documents/Doc_ref_en.asp

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

A. European Social Charter (ESC)

The decision on the merits on the complaint European Council of Police Trade Unions (CESP) v. France is public (19.01.2011)

Following the adoption of Resolution Res CM/ChS (2011)1 by the Committee of Ministers at its 1103rd meeting, the decision on the merits adopted by the European Committee of Social rights is now public. In its decision, the Committee concluded that there was no violation of Articles 2§1 (reasonable working time) and 4 § 2 (increased remuneration for overtime work) of the Revised Charter. Decision; Summary of decision

Election of the Bureau (24.01.2011)

Pursuant to Article 8 of the Rules, the Committee elected its Bureau. The results are as follows: Mr Luis JIMENA QUESADA, **President;** Mr Colm O'CINNEIDE, **Vice President;** Mrs Monika SCHLACHTER, **Vice President;** Mr Jean-Michel BELORGEY, **General Rapporteur.**

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

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

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

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C. European Commission against Racism and Intolerance (ECRI)

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

Protection of national minorities: Council of Europe monitoring body publishes report on the Slovak Republic (18.01.2011)

The Slovak Republic should adopt more comprehensive legislation on minority languages in order to ensure an appropriate balance between the promotion of the State language and the right to use minority languages. Further action is needed to prevent discrimination, in particular in relation to Roma and efforts must be made to eliminate discrimination and segregation of Roma in the field of education. These are the key recommendations of the third Opinion on the Slovak Republic of the Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities, which was published today, together with the government's Comments. In its Opinion the Advisory Committee concluded that: In recent years the Slovak authorities have developed further legislation for protecting national minorities, for example by amending the Anti-Discrimination Law, which provides a clear legal basis for protection against discrimination, including the possibility to devise positive measures. Support has been allocated to national minority organisations for preserving and developing their cultures, although the procedure for distributing funds needs to be improved. Negative attitudes against persons belonging to certain groups such as the Roma continue to be reported. Resolute measures are needed to fight intolerance based on ethnic origin, such as effective sanctioning of discrimination, the application of positive measures and awareness-raising of discrimination-related issues in society. Many Roma face discrimination in employment, access to housing and healthcare. A considerable number of Roma children are still placed in 'special' schools for pupils with learning difficulties. Authorities should ensure that appropriate measures are adopted to

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

help integrate Roma children into mainstream education. The State Language Law, which has been amended to reinforce the use of Slovak should strike the adequate balance between the legitimate promotion of the state language and the right to use minority languages in private and public life. The Committee is concerned about some aspects of the law, such as the imposition of fines in case of violations of the law, which are not in line with the Framework Convention.

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)

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

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Part IV: The inter-governmental work

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

17 January 2011

Spain ratified the Additional Protocol to the Criminal Law Convention on Corruption (ETS No. 191).

20 January 2011

Albania signed the European Convention on the Legal Status of Children born out of Wedlock (ETS No. 85), and the European Convention on the Exercise of Children's Rights (ETS No. 160).

27 January 2011

Moldova signed the Convention on Mutual Administrative Assistance in Tax Matters (ETS No. 127), and the Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters (CETS No. 208).

28 January 2011

Denmark approved the Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters (CETS No. 208).

31 January 2011

Slovenia ratified the Convention on Mutual Administrative Assistance in Tax Matters (ETS No. 127), and the Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters (CETS No. 208).

Germany signed the Third Additional Protocol to the European Convention on Extradition (CETS No. 209).

B. Recommendations and Resolutions adopted by the Committee of Ministers (Adopted by the Committee of Ministers on 19 January 2011 at the 1103rd meeting of the Ministers' Deputies)

CM/Rec(2011)2E / 19 January 2011: Recommendation of the Committee of Ministers to member States on validating migrants' skills

CM/Rec(2011)1E / 19 January 2011: Recommendation of the Committee of Ministers to member Sates on interaction between migrants and receiving societies

CM/Res(2011)2E / 19 January 2011: Statutory Resolution relating to the Congress of Local and Regional Authorities of the Council of Europe and the revised charter appended thereto

CM/ResAP(2011)1E / 19 January 2011: Resolution on quality and safety assurance requirements for medicinal products prepared in pharmacies for the special needs of patients

CM/ResChS(2011)1E / 19 January 2011: Resolution - Collective complaint No. 54/2008 by the European Council of Police Trade Unions (the CESP) against France

C. Other news of the Committee of Ministers

Council of Europe defends religious freedom (21.01.2011)

The Committee of Ministers of the 47 member States of the Council of Europe yesterday unanimously adopted a Declaration on religious freedom: “As recent tragic events have shown, individuals of all religious confessions are increasingly victims of discrimination and aggression – sometimes at the cost of their lives – only because of their religious beliefs. We, the 47 member States of the Council of Europe, strongly condemn such acts and all forms of incitement to religious hatred and violence. Freedom of thought, conscience and religion is an inalienable right enshrined in the UN Universal Declaration of Human Rights and guaranteed by Article 18 of the 1966 International Covenant on Civil

and Political Rights and by Article 9 of the European Convention on Human Rights, of which the Council of Europe is the custodian. There can be no democratic society based on mutual understanding and tolerance without respect for freedom of thought, conscience and religion. Its enjoyment is an essential precondition for living together."

Meeting of the Ministers' Deputies (19.01.2011)

During their meeting on Wednesday 19 January 2011, the Ministers' Deputies of the Council of Europe adopted two recommendations of the Committee of Ministers to member Sates which aim to strengthen the integration of migrant populations. The first recommendation on interaction between migrants and receiving societies advocates that member Sates should take all necessary actions to facilitate diverse and positive interactions, with a view to going beyond the simple tolerance of difference and to achieving full recognition of migrants' human dignity and building a sense of their belonging to the receiving society. The second recommendation calls on member Sates to review the effectiveness of all relevant policy and practice concerning the validation of migrants' skills and to introduce, where necessary, measures based on the general principles and guidelines set out in the recommendation. The Deputies also adopted a resolution on quality and safety assurance requirements for medicinal products prepared in pharmacies for the special needs of patients. Furthermore, they decided at the same meeting to transmit the draft Council of Europe Convention on preventing and combating violence against women and domestic violence to the Parliamentary Assembly for an opinion. Finally, following the reform of the Congress' structures and activities they adopted a new Statutory Resolution on the Congress of Local and Regional Authorities of the Council of Europe and its revised Charter.

Part V: The parliamentary work

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A. Resolutions and Recommendations of the Parliamentary Assembly of the Council of Europe (adopted by the Standing Committee on 17-30 January 2011)

Recommendation 1951: Follow-up to the reform of the Council of Europe

Resolution 1783: Follow-up to the reform of the Council of Europe

Recommendation 1950: The protection of journalists' sources

Resolution 1782: Investigation of allegations of inhuman treatment of people and illicit trafficking in human organs in Kosovo*

Recommendation 1956: Preventing harm to refugees and migrants in extradition and expulsion cases: Rule 39 indications by the European Court of Human Rights

Resolution 1788: Preventing harm to refugees and migrants in extradition and expulsion cases: Rule 39 indications by the European Court of Human Rights

Recommendation 1955: Implementation of judgments of the European Court of Human Rights

Resolution 1787: Implementation of judgments of the European Court of Human Rights

Resolution 1789: Challenge on procedural grounds of the still unratified credentials of the parliamentary delegations of Montenegro, San Marino and Serbia

Recommendation 1954: Reconciliation and political dialogue between the countries of the former Yugoslavia

Resolution 1786: Reconciliation and political dialogue between the countries of the former Yugoslavia

Recommendation 1953: The obligation of member and observer States of the Council of Europe to co-operate in the prosecution of war crimes

Resolution 1785: The obligation of member and observer States of the Council of Europe to co-operate in the prosecution of war crimes

Recommendation 1952: The protection of witnesses as a cornerstone for justice and reconciliation in the Balkans

Resolution 1784: The protection of witnesses as a cornerstone for justice and reconciliation in the Balkans

Resolution 1791: The situation in Tunisia

Resolution 1790: The situation in Belarus in the aftermath of the presidential election

Recommendation 1957: Violence against Christians in the Middle East

Recommendation 1958: Monitoring of commitments concerning social rights

Resolution 1792: Monitoring of commitments concerning social rights

Resolution 1793: Promoting active ageing – capitalising on older people's working potential

Recommendation 1959: Preventive health care policies in the Council of Europe member States

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

- *Countries*

Ukraine: PACE co-rapporteurs welcome adoption of Law on Access to Public Information (17.01.2011)

* 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.

PACE co-rapporteurs for Ukraine Mailis Reps (ALDE, Estonia) and Marietta Pourbaix–Lundin (EPP/CD, Sweden), welcomed the adoption by the Verkhovna Rada of the Law on Access to Public Information. “The adoption of this law, which was called for by the Assembly, takes into account recommendations made by the international community and civil society, and will increase the transparency of governance and will be an important tool in the fight against corruption”, they said. They also expressed their hope that the law will now soon be signed into force by President Yanukovich. The co-rapporteurs intend to make a visit to Ukraine in the first half of April 2011.

Hearing on the current situation with regard to “the consequences of the war between Georgia and Russia” (18.01.2011)

At the opening of a hearing on the current situation with regard to “the consequences of the war between Georgia and Russia”, organised by the PACE Monitoring Committee in Paris on 18 January, President Mevlüt Çavusoglu said: "We should not argue about the past any more - we need to discuss the future. The cornerstone of building the future is of course a lasting political settlement of the conflict in conformity with international law and guaranteeing security and the freedoms and rights of the populations concerned. Until this lasting settlement is found, the conflict will continue to compromise both the stability and the economic development of the whole region," he added. We must, first of all, deal with the living conditions, human rights and perspectives of the populations directly affected by these conflicts. I am persuaded that, if we are really determined and concerted, we can and must achieve concrete results on this 'humanitarian dimension' of the consequences of the war without further delay," he concluded.

- *Themes*

‘European Court explodes myth that Europe is able to protect the rights of refugees’, says PACE President (21.01.2011)

"The European Court of Human Rights delivered on 21 January a milestone judgment damning how Europe is protecting its refugees, asylum seekers and irregular migrants,” said PACE President Mevlüt Çavusoglu. “While the *M.S.S. v. Belgium and Greece* judgment is only against two member States, the implications of the judgment will be rippling through the capitals of Europe,” he added. “The myth that European Union member States are safe places to return asylum seekers has been exploded by the European Court of Human Rights.” The President stated that the Court had found massive deficiencies in detention conditions in Greece and in the procedures and remedies designed to safeguard the rights of asylum seekers, refugees and irregular migrants in Europe. He commented that Greece was not alone in failing on detention safeguards and that the Assembly had recently addressed recommendations to all member States on steps to improve detention facilities in Europe. “What is also clear from this judgment is that the so-called EU ‘Dublin system’ for determining the state responsible for deciding an asylum decision has to be changed as a matter of urgency. It is based on the false premise that EU member States are all safe and able to cope. They are not, and the ‘Dublin system’ creates enormous burdens on front-line states, such as Greece,” the President declared. He called on the EU to work with the Council of Europe, UNHCR and others, to solve the problem of returns under the “Dublin system” and reiterated a concern repeatedly highlighted by the Assembly that Europe needs to make its asylum systems fairer (see PACE Resolution 1695 (2009)) and needs clear rules on detention of irregular migrants and asylum seekers (see PACE Resolution 1707 (2010)). **“Europe has European Prison Rules applying to criminals, but we still do not have similar rules for irregular migrants and asylum seekers who have committed no crime,**” he concluded.

Thorbjørn Jagland: "The great European project cannot go forward without the Council of Europe" (24.01.2011)

In his speech to the parliamentary Assembly on 24 January, the Secretary General highlighted the pivotal role of the Council of Europe and the relevance of its ongoing reform, aiming at political action on a pan-European level. "A cold wind is blowing over Europe", he said. "Our mandate is to safeguard the moral and legal ground for European unity, not only between states, but more importantly between peoples, cultures, religions". He also said there should be "no second class citizens" in Europe and underlined the organisation’s commitment to the work of the Eminent Person’s Group for improving intercultural and religious dialogue. In a wide-ranging speech, the Secretary General also focused on 2010 achievements and on the principles of the institution’s reform, that is, Council of Europe’s role in implementing the rule of law, based on democratic and human rights’ standards throughout the continent; its role in building a culture of living together; need for broadening interaction with

neighbours, and exploiting the full potential of co-operation with international partners such as the European Union, the OSCE and United Nations.

PACE President recalls that human rights and freedoms must be the same for all (24.01.2011)

In his opening speech at the January session of PACE, the President of the Assembly Mevlüt Çavusoglu regretted that in some member States, confrontations between the government and the opposition were seriously hampering the functioning of democratic institutions. “People must not die as a result of political struggles. This is clearly unacceptable,” the President said, referring to the situation in Albania, where existing tensions degenerated last week, resulting in the deaths of several persons. “We have to be more active in supporting democratic changes through peaceful evolution. Therefore, we need to be more present in Tunisia. The people in the streets are sending a clear message – assist us to build a democratic society based on more equality and social justice,” he said. Having been re-elected for another one-year mandate at the opening of the session, the President made a positive assessment of his first year in office, but regretted that “we could not achieve satisfactory results in some of our undertakings. In this connection, I think mainly about frozen conflicts in Europe. Negotiations concerning the settlement of these conflicts are mostly in the hands of career diplomats, but parliamentary diplomacy plays an important role in creating a climate of trust and confidence, necessary for lasting solutions. Be it in Abkhazia, Transnistria, Nagorno-Karabakh, South Ossetia or on the island of Cyprus, it is difficult to see any meaningful progress in confidence-building over the last year. But we must and will continue our efforts because there is simply no other alternative.”

Journalists' lives and freedom of expression still under threat in Europe (25.01.2011)

“More still needs to be done to secure full respect for freedom of the media, guarantee journalists' safety and protect their sources,” said Arne König, President of the European Federation of Journalists (EFJ), speaking at an exchange of views on the state of media freedom in Europe organised by the Parliamentary Assembly's Committee on Culture, Science and Education. “Many journalists are regularly the victims of harassment, threats and physical violence in the exercise of their profession,” he continued, “and they do not enjoy the same respect they once did”. He deplored the murder of six journalists in Europe in 2010 out of 94 worldwide. The President of the EFJ also criticised the entry into force on 1 January of a new Hungarian media law. It reflected, he said, the emergence of a "totalitarian" approach to the media on the part of certain governments. He referred to the report of Morgan Johansson (Sweden, SOC) on the protection of journalists’ sources and also advocated improvements to journalists' working methods to enable them to communicate in secret with their sources. Another participant in the exchange of views, Dunja Mijatovic, OSCE representative on Freedom of the Media, spoke of the need to ensure that member states' legislation was designed to encourage media freedom, so that they could operate in a safe environment. Too often governments invoked the fight against terrorism and national security as grounds for restrictive legislation. Ms Mijatovic also encouraged member states to promote the decriminalisation of defamation – which only 11 of the 56 OSCE states had done – and to regulate the Internet.

The disclosure of journalists’ sources should be limited to cases where ‘vital interests’ are at stake, says PACE (25.01.2011)

Following a debate on the protection of journalists’ sources, PACE declared that the disclosure of information identifying a source should be “limited to exceptional circumstances” where vital public or individual interests are at stake. In specific cases, the competent authorities should state why the vital interests of disclosure outweigh the interests of non-disclosure. “If sources are protected against their disclosure under national law, their disclosure must not be requested,” the Assembly said in a recommendation. Members of the Assembly believe that the protection of journalists’ sources “is a basic condition for both the full exercise of journalistic work and the right of the public to be informed on matters of public concern”. They expressed their concern at the large number of cases in Europe in which “public authorities have forced, or attempted to force, journalists to disclose their sources”, despite the clear standards set by the European Court of Human Rights and the Committee of Ministers. Referring to a new Hungarian law on the press and the media, the Assembly called on the government and parliamentarians to amend the legislation in question, ensuring that its enactment did not restrict the right enshrined in Article 10 of the European Convention on Human Rights. The Assembly called on member states to analyse and improve their legislation on the protection of the confidentiality of journalists’ sources, in particular by supporting the review of their national laws on surveillance, anti-terrorism, data retention and access to telecommunications records. Member States which did not have legislation specifying the right of journalists not to disclose their sources of

information should, according to the text, “pass such legislation in accordance with the case-law of the European Court of Human Rights” and the recommendations of the Committee of Ministers.

PACE names nine states with ‘worrying delays’ in implementing judgments of the European Court of Human Rights (26.01.2011)

PACE has named nine states with “major systemic deficiencies” which are causing repeated violations of the European Convention on Human Rights. In a resolution adopted on 26 January, based on a report by Christos Pourgourides (Cyprus, EPP/CD), **the Assembly said structural problems in Bulgaria, Greece, Italy, Moldova, Poland, Romania, Russia, Turkey and Ukraine were causing “extremely worrying delays” in implementing judgments of the European Court of Human Rights. The main problems were deaths or ill-treatment caused by law-enforcement officials, unlawful or over-long detention, legal proceedings which take too long and court judgments which are not enforced.** Resolving these issues at national level would reduce the number of cases coming to the Strasbourg Court, the parliamentarians pointed out. **Other states with outstanding problems include Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia and Serbia**. In a separate resolution, **the Assembly also denounced “blatant disregard” of the Court by some states which had ignored its clear instructions not to deport individuals who might be at risk of torture or ill-treatment. Such “interim measures”, usually involving failed asylum seekers or irregular migrants whose expulsion is imminent, are intended to give the Court time to consider their complaints. States should “fully comply with the letter and spirit” of these requests.** The Assembly also expressed concern at the rapid increase in the number of applications for interim measures, putting pressure on governments and the Court – especially given the Court’s recent ruling, in the case *M.S.S. v. Belgium and Greece*, that not all EU states can be considered safe for returns. States should improve their asylum procedures to avoid the need for such requests, the parliamentarians said.

Parliamentarians launch action to combat sexual abuse against children (26.01.2011)

A network of PACE parliamentarians held its first meeting on 26 January in Strasbourg to launch the parliamentary dimension of the Council of Europe’s “One in five” campaign to combat sexual violence against children. The group – which will eventually bring together “contact parliamentarians” from each of the Council of Europe’s 47 parliaments – will be pressing for better laws to protect children, spread good practice and organise awareness-raising events across the continent.

Boris Tadic calls for collective action on organised crime (26.01.2011)

Organised crime is perverting democracy, and European countries must act together to stamp it out, Serbian President Boris Tadic warned parliamentarians on 26 January in Strasbourg. Tadic called for a "strategic alliance", with governments of the Western Balkans prioritising their work to beat the criminals. Turning to alleged crimes of organ trafficking revealed by the Assembly, Tadic called for an immediate, full and independent criminal investigation of the charges.

International Holocaust Remembrance Day (27.01.2011)

In his speech at a commemoration ceremony on the occasion of International Holocaust Remembrance Day held at the Council of Europe on 27 January, the PACE President Mevlüt Çavusoglu stressed the importance of the event “to keep alive the memory of millions of innocent victims”. “All forms of intolerance towards those considered ‘different’ are on the rise again – be it anti-Semitism, Islamophobia or racism and xenophobia in general. Ethnic, religious or cultural differences between people are being artificially exacerbated and manipulated in political discourse, to divert attention from the real problems and real solutions. Politicians and parties reverting to such discourse have now been democratically elected in many national parliaments,” the PACE President warned. He also announced his participation on 1 February in a visit to Auschwitz, organised by UNESCO, the City of Paris and the Aladdin Project, a foundation promoting better understanding between Jews and Muslims.

Traian Băsescu: National minorities and Roma should be further protected in Europe (27.01.2011)

The protection of the rights and the integration of the nomad Roma cannot be the only responsibility of countries of origin, it requires international cooperation and support from pan European institutions

such as the Council of Europe, said Traian Băsescu, President of Romania on 27 January at the Parliamentary Assembly. Băsescu stressed the need to improve the protection of national minorities in some European countries and offered Romania's experience in this field. He warned against the tendency in Europe of transferring the responsibility of problems to migrants. Council of Europe monitoring bodies can play an essential role, he said, in detecting problems at an early stage in order to combat them more effectively.

Belarus: PACE calls for the immediate release of detainees and maintains its suspension of special guest status (27.01.2001)

Dismayed by the unprecedented wave of violence and persecution which followed the announcement of the results of the presidential election in Belarus in December 2010, PACE called on the Belarus authorities to "release immediately" all opposition candidates, journalists and human rights activists detained on political grounds and to put an end to all acts of harassment and intimidation. At the end of an emergency debate, and in line with the proposals put forward by the rapporteur, Sinikka Hurskainen (Finland, SOC), the members of the Assembly called for a transparent investigation into "the abusive and disproportionate use of force" by the police against the demonstrators. They also urged the authorities to stop expelling students from universities and dismissing people from their workplace on account of their participation in the protests. In view of the "current additional serious setbacks", the Assembly reaffirmed its decision to put on hold its activities involving high-level contacts with the Belarusian authorities. It further called on the Bureau of the Assembly not to lift the suspension of special guest status for the Parliament of Belarus until a moratorium on the execution of the death penalty has been decreed and until there is substantial, tangible and verifiable progress in terms of respect for the democratic values and principles upheld by the Council of Europe. The Assembly considered that any sanctions relating to contacts with those responsible for these events should not lead to "further isolation of the Belarusian people", but called on member States to sign up to the EU's sanctions against the country's senior officials. Accordingly, it resolved to strengthen dialogue with the democratic forces in the country, civil society, opposition groups, the free media and human rights activists.

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

A. Country work

Armenia: "Greater efforts must be made to heal the wounds of March 2008 and strengthen the protection of human rights" (21.01.2011)

Issues related to the events of March 2008, freedom of expression and of the media, and human rights in the army were the main themes of the visit to Armenia from 18 to 21 January 2011 by the Council of Europe Commissioner for Human Rights, Thomas Hammarberg. The effects of the tragic events of March 2008 can still be felt in Armenian society. A major problem is the continuing lack of clarity as regards the responsibility for the ten deaths which occurred at during the demonstrations. The Commissioner urged that the responsibility for these deaths be established; this presupposes a thorough, impartial and credible analysis of the methods used by the police as well as the command responsibility. The Commissioner has recommended concrete measures to address the needs of the families of the victims. The Armenian National Congress indicated to the Commissioner that nine persons affiliated with them remain imprisoned, most of them in connection with the events of March 2008. The Commissioner discussed this issue with the Armenian authorities. The ad hoc parliamentary inquiry committee, which was established to examine the March 2008 events and identify ways to prevent the recurrence of a similar tragedy, formulated certain recommendations of a systemic nature. Moreover, the OSCE/ODIHR Trial Monitoring Report identified several shortcomings in the conduct of the trials related to the March 2008 events. A thorough follow-up of the recommendations made by the ad hoc parliamentary inquiry committee and by OSCE/ODIHR should be ensured, in particular with regard to ongoing reform of the police (including the use of force by the police), ensuring that the judiciary is independent and competent, and guaranteeing the right to liberty and to a fair trial. In addition, the legislation and practice on freedom of assembly should be brought fully in line with international human rights principles.

The Commissioner will further discuss and assess the issues tackled during his visit. A report will be published in the coming months. (more)

B. Thematic work

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

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

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

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