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("Peer-to-Peer II Project")

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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.

- **Grand Chamber judgments**

Perdigão v. Portugal (link to the judgment in French) (no 24768/06) (Importance 1) – 16 November 2010 – Violation of Article 1 of Protocol No. 1 – Amount of compensation awarded to former owners of expropriated land was smaller than the court fees they had to pay in court proceedings in which they contested the compensation amount

A piece of land measuring nearly 130,000 m² which the applicants owned was expropriated in 1995 to build a motorway. As the applicants did not agree with the authorities on the amount of compensation to be paid to them, an arbitration committee decided they were to be given 177,987.17 euros (EUR) for the expropriated land. The applicants appealed against that decision in March 1997, claiming that they were entitled to receive over EUR 20 million in compensation, in exchange for their land and the potential profit they could have made by exploiting a quarry which existed on it. Subsequent expert assessments valued the land and the potential profit from the quarry at about EUR 4 million and EUR 9 million respectively. In June 2000, the court rejected the applicants' claim as it found that the potential profits from the quarry should not be taken into account. The court thus set, in June 2000, the compensation at just over EUR 197,000 and, in April 2005, the court fees at just over EUR 300,000. Once the compensation awarded to the applicants had been deducted, they still owed the State EUR 111,816.46. Following a claim submitted by the applicants to the Constitutional Court, in September 2007 it declared unconstitutional the provision of the then Court Fees Code, as interpreted by the lower courts, as it found that the sum, which the applicants were asked to pay, was large enough to have affected their right of access to a court. As the Constitutional Court did not decide on the amount of court fees finally owed by the applicants, they turned to the appeal court for clarification. In January 2008, the appeal court decided, without giving reasons, that the court fees the applicants owed should not exceed the compensation they were awarded by more than EUR 15,000. As a result, not only did

the amount awarded in compensation eventually revert to the State, but the applicants had to pay another EUR 15,000, which they did in February 2008.

The applicants complained that the compensation for expropriation awarded to them had ultimately been fully absorbed by the amount they had to pay to the State in court fees.

The Court first noted that the applicants' complaint concerned the way in which the Portuguese law regulations governing court fees had been applied in their case. It then confirmed the Chamber's finding that court fees had to be considered "contributions", under Article 1 of Protocol No 1, which the State was entitled to collect in accordance with its own legislation. Examining the question of whether the applicants' obligation to pay the court fees had been an interference with their right to the peaceful enjoyment of their possessions, the Court decided to examine their application under Article 1 of Protocol No 1 taken as a whole. The Court reiterated that for a measure to be compatible with Article 1 of Protocol No 1, it had to be lawful and not arbitrary. In addition, a fair balance had to be struck between the general interests of the community and the individual's fundamental right to protection of their property. The fair balance requirement meant that there always had to be a reasonable relationship of proportionality between the means employed by the authorities and the aim they pursued. If an individual had been made to bear an excessive burden as compared to the general interests of the community, the balance would not have been achieved. Notwithstanding the above, the Court held that, in general, States enjoyed a wide margin of appreciation, both in respect of the way they chose to interfere with someone's property rights and of assessing whether the consequences of their interference had been justified under Article 1 of Protocol No 1. The Court then observed that the applicants had seen the compensation awarded to them be fully absorbed by the court fees they had been asked to pay in the court proceedings in which they had contested the compensation. Having been awarded compensation in exchange for the expropriation of their land, the applicants had received nothing as a result of the amount which the Portuguese courts had asked them to pay in court fees. Further, the applicants had paid an additional EUR 15,000 to the State on the basis of the national court's decision. The Court noted that, while its task was not to examine the Portuguese method of calculating and fixing court fees, it had to consider how that method had been applied in the applicants' case. It found that, clearly, the intended outcome of protecting the applicants' property rights while expropriating their land had not been achieved, as they had had to pay to the State EUR 15,000 in addition to losing their land. The Court further remarked that it might appear paradoxical that a State should take away with one hand – in court fees – more than it had awarded with the other. While there was a difference in the legal nature of the obligation for the State to pay compensation for expropriation and the obligation of litigants to pay court fees, that was not an obstacle for the Court to examine - under Article 1 of Protocol No 1 - the question of whether the amount of court fees the applicants had to pay had been proportionate to the authorities' aim to expropriate their land in exchange for due compensation. The Court then noted that, according to Portuguese legislation, by claiming a large sum, the applicants had risked being asked to pay high court fees. However, their conduct or the procedural activity set in motion could not justify the imposition of such high court fees, especially in relation to the amount they had been awarded as compensation for the expropriation of their land. Accordingly, the applicants had had to bear an excessive burden and that had upset the fair balance which the Portuguese authorities had had to strike between the general interests and the fundamental property rights of the applicants. There had, therefore, been a violation of Article 1 of Protocol No 1. The Court held by fourteen votes to three that the respondent State was to pay the applicants, within three months, EUR 190,000 (one hundred and ninety thousand euros) in respect of all heads of damage, plus any tax that may be chargeable. Judges Ziemele and Villiger expressed a joint concurring opinion. Judges Lorenzen, Casadevall and Fura expressed a joint dissenting opinion.

Taxquet v. Belgium (link to the judgment in French) (no 926/05) (Importance 1) – 16 November 2010 – Violation of Article 6 § 1 – Unfairness of proceedings on account of Court of Cassation's failure to provide the applicant with adequate clarification of the reasons for his conviction

The applicant is currently serving a 20-year prison sentence in Lantin for the murder, in July 1991 in Liège, of a government minister and for the attempted murder of the minister's partner. Mr Taxquet was indicted in August 2003. The indictment contained a detailed sequence of the police and judicial investigations and mentioned each of the offences with which he was charged. It stated, among other things, that an anonymous witness had informed the investigators in June 1996 that the government minister's murder had been planned by six people, including the applicant and another leading politician. That witness was never interviewed by the investigating judge. The trial of the applicant and his seven co-defendants lasted from October 2003 to January 2004. Many witnesses and experts gave evidence. In order to reach a verdict, the jury had to answer 32 questions put by the President of the Liège Assize Court. The questions were succinctly worded and identical for all the defendants. Four of them concerned the applicant, namely: was he guilty of intentional homicide and attempted

intentional homicide and were each of those offences premeditated? The jury answered “yes” to all four questions. In January 2004, he was sentenced by the Assize court to 20 years’ imprisonment. His appeal on points of law against his conviction was rejected by the Court of Cassation.

The applicant complained that the criminal proceedings brought against him had been unfair since the ruling by the Assize court had not included a statement of reasons and could not be appealed against before a body competent to hear all aspects of the case. He also alleged that he had not been able at any stage of the proceedings to examine the anonymous witness or have him examined.

In June 2009 the case was referred to the Grand Chamber at the Government’s request. The Governments of France, Ireland and the United Kingdom were authorised to submit written observations as third parties.

The Court noted that several Council of Europe member States had a lay jury system, the defining feature of which was that professional judges were unable to take part in the jurors’ deliberations. The lay jury system was just one example among others of the variety of legal systems in Europe, and it was not the Court’s task to standardise them or to review the relevant legislation in the abstract but, as far as possible, to examine the issues raised by the specific case before it. In that context, the institution of the lay jury could not in itself be called into question. The Contracting States enjoyed considerable freedom in the choice of the means to ensure that their judicial systems were in compliance with the requirements of Article 6. In the applicant’s case, the Court’s task was therefore to consider whether the method adopted to that end had led to results which were compatible with the Convention. In previous cases before it, the Court has found that the absence of a reasoned verdict by a lay jury did not in itself constitute a breach of the accused’s right to a fair trial. Nevertheless, for the requirements of a fair trial to be satisfied, sufficient safeguards had to be in place to enable the accused to understand the verdict that had been given. In the applicant’s case, neither the indictment nor the questions to the jury had contained sufficient information as to his involvement in the offences of which he had been accused. The indictment, although having mentioned the offences of which he had been charged, had not indicated the prosecution’s items of evidence against him, no precise questions had been put to the jury, an indispensable requirement in order for the applicant to understand any guilty verdict reached against him. Even in conjunction, the indictment and questions had not enabled the applicant to ascertain which of the items of evidence and factual circumstances discussed at the trial had ultimately caused the jury to answer the four questions concerning him in the affirmative. He had been unable, for example, to make a clear distinction between the co-defendants as to their involvement in the commission of the offence; to ascertain the jury’s perception of his precise role in relation to the other defendants; to understand why the offence had been classified as premeditated murder (*assassinat*) rather than murder (*meurtre*); to determine what factors had prompted the jury to conclude that the involvement of two of the co-defendants in the alleged acts had been limited, carrying a lesser sentence; or, to discern why the aggravating factor of premeditation had been taken into account in his case as regards the attempted murder of the government minister’s partner. This shortcoming was all the more problematic because the case was both factually and legally complex and the trial had lasted more than two months during which time many witnesses and experts had given evidence. Lastly, the Belgian system made no provision for an ordinary appeal against judgments of the Assize Court. An appeal to the Court of Cassation concerned points of law alone and accordingly did not provide the applicant with adequate clarification of the reasons for his conviction. In conclusion, the applicant had not been afforded sufficient safeguards to enable him to understand why he had been found guilty and the proceedings were therefore unfair, in violation of Article 6 § 1. The Court held that the respondent State was to pay the applicant, within three months, the following amounts EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage; EUR 8,173.22 (eight thousand one hundred and seventy-three euros and twenty-two cents), plus any tax that may be chargeable to the applicant, in respect of costs and expenses. Judge Jebens expressed a concurring opinion.

- **Right to life**

Ölmez and Others v. Turkey (no. 22746/03) (Importance 2) – 9 November 2010 – Violation of Article 2 – Domestic authorities’ failure to protect the applicants’ relative’s right to life on account of the unjustified use of lethal force by Turkish gendarmes

At the relevant time the land surrounding the applicants’ village was used for grazing and the villagers moved across it frequently, despite the fact that it was a military zone closely monitored by the gendarmerie in order to prevent terrorists or smugglers crossing the border. According to the applicants, their relative Hacı Ölmez had been constantly harassed by the local military authorities, who believed that he was a PKK sympathiser. As a result, he had been removed from his duties as village guard and had become a shepherd. On 8 April 2003 Hacı and his nephew Mevlüt Ölmez took their cattle to grazing land 500 metres from the village and in the evening, they left the herd near the

village and retraced their steps in order to look for some lost goats. According to the official version, a gendarmerie sergeant, S.D., using powerful binoculars from about 1000-1300 metres, picked out their silhouettes near the border, moving in a suspect manner towards the village. The gendarmes set up an ambush. When they were about 250-300 metres from the men, they shouted “Stop! Gendarmes!”, at which Hacı and Mevlüt (one of the applicants) allegedly turned round and began to run towards Iraq. In spite of instructions to stop and warning shots, they kept going. S.D. ordered the gendarmes to fire in the direction in which the men were running. 65 gunshots were fired, one of which killed Hacı Ölmez. According to Mevlüt’s version, the gendarmes fired without warning, which was what caused them to start running. According to the official version, Mevlüt explained that Hacı and he had been engaged in smuggling; in fact, no smuggled goods were found in their possession. An investigation was opened. The fatal bullet was not recovered, which made it impossible to identify the weapon from which it had been fired. 50 cartons of cigarettes were found hidden 750 metres from the site of Hacı’s death and 190 metres from the border, but at some distance from the spot at which Hacı and Mevlüt had alleged crossed from Iraq into Turkey. Mevlüt denied having any link to those cartons. A parliamentary investigation committee was set up and concluded that there had been irregularities in the gendarmes’ actions. The applicants filed a complaint against the gendarmes. A finding that there was no case to answer was initially delivered by the Prosecutor of Uludere in December 2003, which was overturned by the Siirt Assize Court. The case was reopened and transferred to the Şırnak prosecutor’s office, which referred sergeant S.D. and 17 gendarmes to the Şırnak Assize Court on a charge of homicide. The court held that, at a time when war was being waged in Iraq, the gendarmes could sincerely have believed that the deceased man and Mevlüt were smugglers and were likely to pose a threat to national security. They also held that the gendarmes had complied with all the instructions and rules governing the use of firearms, but that the deceased man and Mevlüt had acted in an irresponsible manner by disregarding the warning shots, followed by at least one order to surrender. The applicants challenged the gendarmes’ acquittal before the Court of Cassation, where the proceedings are still pending. In 2003 Mevlüt Ölmez was found guilty of illegally crossing the border between Iraq and Turkey and of passive resistance to the security forces. In 2004 he was acquitted on a charge of trafficking smuggled goods.

The applicants complained about the pointless use of lethal force by the security forces and the lack of an effective remedy by which to have that complaint examined in Turkey.

The Court noted firstly that both the official version of the facts and the criminal proceedings against the gendarmes had been centred from the outset on the premise that the latter had acted on the basis of a sincere conviction that they were in the presence of smugglers who were likely to endanger Turkey’s territorial security. However, several factors cast serious doubt on that premise. Firstly, the cartons of cigarettes were found at a clear distance from the route by which Hacı and Mevlüt had allegedly crossed from Iraq into Turkey. It was also unclear why they would have abandoned their goods when they did not yet know that they were being observed by the gendarmes. In addition, at the distance (250-300 metres) at which the gendarmes found themselves before intervening, equipped with powerful binoculars, they would have had no problems seeing what was going on. The Court further noted that all the smuggling charges had eventually been lifted. There was therefore uncertainty as to what had really happened once sergeant S.D. had spotted Hacı and Mevlüt, especially since, while alive, Hacı had had serious grounds for believing that the local military authorities held a grudge against him. The Court was prepared to accept, like the Turkish authorities, that the use of potentially lethal force was likely to have been based on an “honest and valid belief” at the time of the events; it was not a priori excluded that such use of force could have been justifiable under the Convention. However, it was not necessary for the Court to examine this issue in detail, since respect for a more general principle was in any event in doubt: that concerning Hacı Ölmez’s right to have his life “protected by law”. The Court reiterated that, under Turkish law as in force at the relevant time, in a security zone such as that which surrounded the village of Andaç, the security forces had been given carte blanche to open fire immediately on an individual on the basis of a criterion as vague as "the specific circumstances of each situation". Admittedly, the legislation had been significantly improved in 2003 and 2007, but that was after the shooting of Hacı Ölmez. Accordingly, the Court concluded unanimously that Hacı Ölmez’s right to life had not been protected by law, in violation of Article 2. The Court held that the respondent State was to pay the applicants, within three months, the following amounts 100 000 EUR (a hundred thousand euros) for all damages and 3 000 EUR (three thousand euros) for costs and expenses, plus any tax that may be chargeable to the applicants. Judges Sajó and Cabral Barreto expressed separate opinions.

Serdar Yigit and Others v. Turkey (no. 20245/05) (Importance 2) – 9 November 2010 – No violation of Article 2 (substantive) – The domestic authorities’ took sufficient measures to prevent the applicants’ relative’s suicide – Violation of Article 2 (procedural) – Lack of an effective investigation following the death of a young man during military service

In May 2003 the applicants' relative began his military service in Ovacık. He underwent the standard medical tests, including a psychological examination, which indicated that he had stated, among other things, that he did not smoke, drink or take drugs, did not have any family-related or other problems, was financially stable, was in good health and was fit to perform military service. In July 2003 he was found dead from a rifle shot in the head at point-blank range. An internal investigation and a criminal investigation were opened and showed that the weapon used in Mevlüt's death, and which was found near his body, was that of another soldier. The latter initially claimed that Mevlüt had ripped the weapon out of his hands; he subsequently explained that in fact he had handed it over himself, so that Mevlüt could continue guard duty in his place after Mevlüt had told him that the commandant wished to see him. The internal report drawn up by the administrative investigation committee found that, following an ambush in which Mevlüt Baysan and his unit had been caught in July 2003 and during which one of his close friends had been killed, Mevlüt had become depressed, had trouble sleeping and had become withdrawn. In addition, his pregnant girlfriend had almost suffered a miscarriage after a fall, but Mevlüt could not be authorised to return home immediately. To help him deal with those problems, Mevlüt's commandant had provided for his transfer to the dispensary, then to the kitchen, but he had refused those transfers because he wished to continue to conduct military tasks. Furthermore, the soldier who had handed over his weapon to Mevlüt had acted in violation of the rules. In December 2003 the military procurator concluded that Mevlüt had committed suicide and, finding that no negligence could be attributed to the military authorities, held that there was no case to answer. The applicants appealed against that order. The Malatya military court ordered an additional judicial investigation on the ground that there were various shortcomings in the investigation and that documents were missing from the case file. In October 2004, finding that those shortcomings had been corrected, the court dismissed the applicants' appeal against the order of December 2003 that there was no case to answer. The soldier who had provided the weapon was disciplined.

The applicants complained that the authorities had not taken any measures to prevent the suicide of their relative, assuming that it actually was the cause of death, and had not envisaged the hypothesis of murder. They also argued that the investigation into their relative's death had been insufficient.

Article 2 (substantive)

Firstly, the Court emphasised that there was no evidence in the case file to support the theory of murder and that such a theory was speculative. Any lack of rigour in the investigation was not in itself a sufficient basis for a presumption of any kind against the State. In other words, the Court found no reason to challenge the premise of suicide. Secondly, the Court noted that the results of the medical examination conducted at the beginning of Mevlüt's military service had been normal, and that it was not claimed that Mevlüt had been subjected to debasing treatment by his colleagues. The Court was not therefore convinced that he would have required special or strict monitoring, at least until July 2003, the date of a military operation during which the young man lost one of his close friends. That incident had resulted in a certain psychological fragility, and his commandant has responded by proposing measures which would remove him from military tasks, measures that Mevlüt had, however, refused. The Court considered that, while the military authorities had admittedly taken adequate measures, it would have been desirable had they verified the exact nature of Mevlüt's problems. Nonetheless, like the national authorities, the Court considered that it could accept that Mevlüt might have been pushed to commit suicide by a form of psychological depression that was unpredictable, since, when alive, he had apparently never behaved in a way that indicated a real and immediate risk that he would take his own life. In conclusion, the Court considered that criticising the authorities for not doing more to prevent Mevlüt Baysan's suicide would be tantamount to imposing an excessive burden on them in the light of the evidence in the case file and their obligations under Article 2 of the Convention. Accordingly, the Court held, by six votes to one, that there had been no violation of Article 2 concerning Turkey's responsibility for Mevlüt Baysan's death.

Article 2 (procedural)

The Court reiterated that an independent investigation should have been conducted, capable of determining the circumstances surrounding Mevlüt Baysan's death and establishing those responsible for it. A criminal investigation had been opened on the day of Mevlüt Baysan's death, as well as an internal administrative investigation. However, although there was no evidence of a lack of willingness on the part of the authorities to establish the facts, it remained the case that certain crucial factors seemed not to have been investigated. In particular, the case file contained no information as to whether the shortcomings in the investigation identified by the Malatya military court had been corrected by the prosecutor's office following the request for an additional judicial investigation. In addition, the applicants had been excluded from the investigation and had not had an opportunity to be heard by a judge prior to the finding that there was no case to answer; although the next of kin should always be associated with the investigation. The Court concluded unanimously that the investigation into Mevlüt Baysan's death had not been effective, in violation of Article 2. Judge Popović expressed a separate opinion. The Court held that the respondent State was to pay the applicants,

within three months, 18 000 EUR (eighteen thousand euros) for Sevil Yiğit and Serdar Yiğit, 12 000 EUR (twelve thousand euros) for Hanife Baysan and Mustafa Baysan, and 9 000 EUR for Mehmet Baysan, Ahmet Baysan, Menduh Baysan, Nihat Baysan, Engin Baysan, Özgür Baysan and Aynur Baysan, for non-pecuniary damage, plus any tax that may be chargeable to the applicants.

Seidova and Others v. Bulgaria (no. 310/04) (Importance 2) – 18 November 2010 – Violation of Article 2 (procedural) – Lack of an effective investigation into the death of the applicants' relative on account of the hindrance to their right to be involved in the proceedings

The applicants are the widow and daughters of Selyahtin Aliev Hasanov, who died in the circumstances detailed below. On 28 June 2001 Selyahtin Hasanov and 15 other men of Roma origin entered an onion field. At around 2.30 a.m., while they were filling the bags they had brought with them with onions, they were caught by wardens patrolling the field, one of whom was carrying a firearm. An altercation ensued, and Mr Hasanov was shot dead on the spot; one of his companions was wounded and died shortly afterwards. The next day the Yambol investigation department opened an investigation. The investigators visited the scene of the crime and found, among other things, a gun and Mr Hasanov's lifeless body. Criminal proceedings were opened against the warden suspected of firing the shots. An autopsy was performed. The same day, the investigators questioned witnesses: the wardens and the members of the group which had been digging the onions. The two groups gave differing versions of the events. The former maintained that they had tried to frighten the onion-diggers away by firing into the air, and had then been violently assaulted by the latter and forced to defend themselves; shots had been fired during the scuffle. The latter contended that the wardens had directed racist abuse at them concerning their Roma origins and had immediately fired in their direction. Two expert medical examinations carried out on the wardens revealed numerous injuries. In January 2002 the Yambol regional prosecutor's office recommended that the criminal proceedings be discontinued on the ground that the warden in question had acted in self-defence. In an order of February 2002 the Yambol regional prosecutor discontinued the proceedings, reiterating the reasons given by the investigator. In accordance with Bulgarian law, the applicants were unable to participate in the investigation because the warden who fired the shots had not been formally charged with an offence. The applicants appealed against the order in question to the Yambol Regional Court. The appeal was examined without a hearing and was dismissed in March 2002. The Regional Court's decision was upheld in July 2002 by the Bourgas Court of Appeal. The applicants appealed on points of law arguing that the investigators had been negligent because the victims were Roma. In a judgment of April 2003 the Supreme Court of Cassation quashed the lower courts' decisions on the grounds that the court of first instance should have examined the applicants' appeal at a public hearing. The case was remitted to the Yambol Regional Court. In a ruling of July 2003 the Yambol Regional Court dismissed the applicants' appeal on the same grounds as those set out in its first decision. As a result of amendments to the Code of Criminal Procedure adopted in the meantime, that decision was no longer open to appeal and became final. The applicants had no opportunity of consulting the investigation file at any stage in the proceedings.

The applicants contended that the authorities had not conducted an effective investigation into Mr Hasanov's death. They alleged that the investigation had not been sufficiently thorough and objective and that they had not had any form of involvement in the investigation.

The Court reiterated that the obligation to protect the right to life required by implication that there should be some form of effective official investigation when individuals had been killed as a result of the use of force. It noted that a criminal investigation had been opened on the day of Selyahtin Hasanov's death and that the steps taken to establish the circumstances of his death had resulted in a finding by the public prosecutor's office and the Bulgarian courts that the warden had acted in self-defence. In the absence of any indication that the findings of the domestic authorities had been arbitrary or had manifestly failed to take account of relevant facts, the Court could not substitute its own assessment for that of the authorities in question. Accordingly, the Court was not persuaded by the applicants' argument that the investigation had not been sufficiently thorough and objective. However, the Court considered for other reasons that the investigation into the circumstances surrounding Selyahtin Hasanov's death had not been effective. It observed that the applicants had complained at domestic level that they had not had access to the documents in the file either during or after the criminal investigation. In the absence of formal charges against the warden, domestic law did not require the authorities to involve the applicants in the investigation, nor could the latter apply to join the proceedings as civil parties. The proceedings to appeal against the order discontinuing the proceedings had not offered them any opportunity of consulting the investigation file. The Court pointed out that the rights of victims' close relatives featured among the essential procedural guarantees under Article 2 of the Convention. In view of the importance of the witness statements in establishing the facts and concluding that the warden had acted in self-defence, the Court considered that it had been essential for the applicants to be able to consult the investigation file. As domestic law

had not permitted the applicants to be involved in the investigation into the death of their husband and father, the Court held unanimously that there had been a violation of Article 2. The Court held that the respondent State was to pay the applicants, within three months 12 000 EUR for non-pecuniary damages and 3 000 EUR (three thousand euros) for costs and expenses, plus any tax that may be chargeable to the applicants.

- **Right to liberty and security**

Farhad Aliyev v. Azerbaijan (no. 37138/06) (Importance 3) and Salayev v. Azerbaijan (no 40900/05) (Importance 3) – Violation of Article 5 § 1 – Unlawfulness of two periods of detention (first case) – Violation of Article 5 § 3 – Excessive length of pre-trial detention (more than two years) (first case) – Violation of Article 5 § 4 – Lack of a judicial reviews of the detention (first case) – Violation of Article 6 § 2 – Infringement of the applicant's right to be presumed innocent on account of statements by the Prosecutor General and the Ministers for National Security and Internal Affairs incriminating the applicant in press releases (first case) – Violation of Article 5 § 1 – Unlawfulness of detention (second case)

According to the applicant in the **first case**, in the afternoon of 19 October 2005, he was taken from his office in the Ministry for Economic Development to the Ministry for National Security (MNS) by two high level MNS officials who did not tell him the reasons for bringing him there. About an hour later, television channels broadcast news about the applicant's dismissal from ministerial office. On the following two days, two press releases were issued on behalf of the Prosecutor General and the Ministers for National Security and Internal Affairs, officially informing people about the applicant's arrest and providing lengthy reasons for it. For about 8 hours on 19 October 2005, he was not able to leave the MNS building or contact his family and did not know why he was being kept there. He was only told briefly that day, that he was suspected of organising a *coup d'état* together with several high-ranking State officials and was first questioned, for just over an hour, starting at 11.45 p.m. He was then told that he was being held as a suspect and was taken to the MNS detention facility. He was charged on 21 October 2005 with several criminal offences, including embezzlement in large amounts and trying to usurp State power. On the same day a judge authorised his continued detention on remand. His detention was continuously extended several times until 19 April 2007, on the basis of separate court decisions. The reasoning justifying the detention was almost identical each time, the judges referring to the gravity of his suspected actions, as well as the risk of him absconding or influencing witnesses. In April 2007 he was accused as charged and his case was sent to the court for trial. During a hearing on 21 May 2007, the court rejected the request for his release and authorised his continued detention pending trial. In October 2007, he was sentenced to ten years in prison.

The applicant in the **second case** had been a member and former president of the National Academy of Science of Azerbaijan and, at the time of the events, he was retired. The applicant was summoned on 27 October 2005 to the MNS as a witness in a criminal case concerning a suspected coup to overthrow State power, in which the authorities believed the then Minister of Economic Development had been involved. According to him, he arrived voluntarily at the MNS building at about 10 a.m. on 27 October 2005. He was then forcibly kept inside, not allowed to leave for lunch, contact his family or a lawyer. He was interrogated and was taken to a face-to-face meeting with an accused between. At about 8.15 p.m. that day an investigator drew up a record of the applicant's 48-hour detention as a suspect; that took place in his presence of him and of a State-appointed lawyer. On 29 October 2005, the applicant was formally charged by the prosecution and was placed in detention by a judge whose decision referred to the gravity of the acts of which he was suspected and to the risk of him absconding. He challenged that detention order unsuccessfully. On 16 November 2005, his detention was replaced by the preventive measure of police supervision. In May 2006, he was exceptionally granted permission by the Prosecution General to travel abroad for medical treatment as he risked going blind.

In both cases the applicants complained about their pre-trial detention.

Farhad Aliyev v. Azerbaijan

Article 5 § 1

Arrest and initial period of detention prior to the judicial order on remand in custody

The parties had disagreed about the exact timing when the applicant had been detained. The Court noted that at about 3 p.m. on 19 October 2005, an announcement about his dismissal from office had been disseminated by State-owned media, which would hardly have happened had he been free and working in his office until almost half past eight that evening. In addition, the Government had not submitted any reliable official record of the exact time of his arrest. Consequently, the Court concluded that the applicant had been arrested at about 2 p.m. on 19 October 2005 and deprived of his liberty

until around half past eight on 21 October 2005 in the absence of a judicial authorisation. He had been kept in detention for about six to seven hours in excess of the 48-hour period authorised in Azerbaijani law for detention not ordered by a judge, in violation of Article 5 § 1.

Detention between 19 April and 21 May 2007

The Court observed that the applicant had been kept in detention without a judicial order between 19 April 2007, which had been the last day of pre-trial detention "pending investigation" authorised by a judge, and 21 May 2007, the day of the preliminary trial hearing, when his continued detention was authorised anew by the trial court. Under the law, only judges could order or prolong pre-trial detention and no exception to that rule existed. Azerbaijani law required that, after the completion of pre-trial investigation and within 30 days of receipt of the case file, the trial court had to hold a preliminary hearing to determine whether a case was ready for trial, and if so, to set a date for it. At the same time, the trial court was also required to decide on the defendant's continued detention on remand during the trial. However, the Azerbaijani law had clearly lacked rules governing the situation of someone detained after the expiry of the last detention order issued by a judge at the investigation stage and before the trial court's preliminary hearing. That legal vacuum had created a situation whereby the applicant had been detained without a judicial authorisation, in breach of Article 5 § 1.

Article 5 § 3

The Court noted that the applicant had spent in pre-trial detention two years and six days. Each time his detention had been prolonged by the courts, they had used a stereotypical formula referring only to the gravity of his charges and the risk of him absconding. However, the courts had not examined his personal circumstances and how those might have evolved over time. Neither had they verified whether the initial grounds on which they had based their detention decisions had remained valid during the proceedings. Consequently, there had been a violation of Article 5 § 3.

Article 5 § 4

The Court observed that the applicant's detention pending investigation had been extended three times by the courts, each time in his or his lawyers' absence. During the examination of his related appeals, his lawyers had represented him, but he had been personally absent from the hearings. The Court found that the courts should have made sure that he was either heard in person, or that he had been effectively represented by counsel. However, the court hearings had been held as a matter of formality and had not been genuinely adversarial. The courts had not even addressed any of the specific arguments advanced by the applicant in his written submissions challenging his continued detention. The Court concluded that the Azerbaijani courts had failed to carry out a judicial review of the nature and scope required by Article 5 § 4, in violation of that Convention provision.

Article 6 § 2

The Court noted that the statements by the Prosecutor General and the Ministers for National Security and Internal Affairs in the press releases of 20 and 21 October 2005 had been made when the investigation in the criminal case against the applicant had only just started. It had been particularly important therefore, at that stage, not to make any statements that might have been interpreted or understood by people as confirming the applicant's guilt. However, the information provided in the press releases had been set out as though describing facts, and lay people could have found it difficult to distinguish between a description of established facts and mere allegations or suspicions. The remarks contained in those official statements had been in complete disregard of his presumption of innocence as they had been a straight forward declaration about him having committed criminal acts. Particular caution should have been used by the authorities in describing the pending criminal proceedings so as not to impinge upon his presumption of innocence. As, instead, the declarations made had prejudged the assessment of facts by the Azerbaijani judges, there had been a violation of Article 6 § 2. The Court held that the respondent State was to pay the applicant, within three months 16 000 EUR (sixteen thousand euros) for non-pecuniary damages and 25 000 EUR (twenty-five thousand euros) for costs and expenses, plus any tax that may be chargeable to the applicants.

Salayev v. Azerbaijan case

Article 5 § 1

The Court noted that the applicant and the Government had agreed that he had gone voluntarily to the MNS building on 27 October 2005, but disagreed as to whether he was considered to be under arrest once he came under the control of the authorities and as to the exact time of his arrest. In the absence of any official record of the exact time when he had entered the building, the Court accepted his submission. The Court further found that, once inside the MNS building, the applicant was not free to leave and was, in fact, deprived of his liberty within the meaning of Article 5 § 1 from the moment he entered the building. According to Azerbaijani law, within 48 hours of their arrest, people deprived of

their liberty had to be brought before a judge who had to either place them in custody or order their immediate release. In the absence of a judicial order authorising the continued detention on remand, the detained person had to be released upon the expiry of 48 hours from the moment of his or her arrest. No exceptions to that rule had existed. The applicant had been arrested at 10 a.m. on 27 October 2005 and the judicial hearing concerning his placement in custody had taken place at about 5.30 p.m. on 29 October. Consequently, for about seven hours, he had been kept in detention contrary to Azerbainaji law, and in breach of Article 5 § 1 which required, among other things, any detention to be based on law. There had therefore been a violation of Article 5 § 1.

- **Right to a fair trial**

Romańczyk v. France (no. 7618/05) (Importance 3) – 18 November 2010 – Violation of Article 6 § 1 – Non-enforcement of a Polish court judgment awarding the applicant maintenance following her divorce

The applicant lives in Poland and has two children. In 1999, she divorced the father of her children. Under the terms of the divorce decree, the applicant's ex-husband – living in France – was ordered to pay maintenance of 500 zlotys (PLN) per month (approximately 118 euros (EUR)). Having received no payment from her ex-husband, the applicant made an application under the Convention of New York of 20 June 1956 on the Recovery Abroad of Maintenance ("the New York Convention"). In accordance with that Convention, in December 1999 she sent a claim for recovery of maintenance to the French authorities (Ministry of Foreign Affairs) via the Polish authorities (Regional Court of Katowice). In the meantime the District Court of Sosnowiec had increased the amount of maintenance to PLN 450 per child (approximately EUR 254 in total). The applicant obtained no payment for several years. In February 2010 the children obtained full legal aid before the Perpignan *Tribunal de Grande Instance* to apply for an order enforcing the judgment of 2003 after reassessment of the maintenance due.

The applicant complained that she had been unable to obtain from the French authorities, to whom she had applied under the New York Convention, enforcement of the judgment awarding her maintenance. She also complained of the excessive length of the proceedings for recovery of maintenance.

The Court found that the applicant was in fact complaining of the authorities' lack of diligence in assisting her with the recovery of her maintenance debts. **The Court reiterated that the right of access to a court would be illusory if a State allowed a final, binding judicial decision to remain inoperative to the detriment of one party.** It also pointed out that the responsibility of a State regarding the enforcement of a judgment by a "private" debtor could be engaged if the public authorities involved in the enforcement proceedings failed to exercise the necessary diligence or hindered enforcement. In this case the French authorities were involved in the enforcement proceedings because, by bringing an application under the New York Convention, the applicant was entitled to have the judgment enforced with their assistance. The question which the Court had to examine here was therefore whether the measures taken by the French authorities to assist the applicant in executing the judgment had been adequate and sufficient, having regard only to the measures taken from July 2004, when the French authorities had received proof that the judgment awarding maintenance had been served on the applicant's ex-husband. It noted that the French authorities had heard the debtor in September 2004 and that he had given a written undertaking to pay the maintenance. They had not, however, followed up the letter in which the Polish authorities had informed them that the debtor was failing to honour his undertaking. In their submissions before the Court France had emphasised that the aim of the Convention was not to punish a State on the grounds that an administrative employee had failed to file a single letter properly and that a mere administrative oversight could not of itself constitute a violation of the Convention, without undermining the supreme function of the Convention and of the Court having the task of interpreting it. The Government also submitted that the applicant had herself been negligent by failing to take any steps to remedy the situation other than applying to the Court. However, with regard to the "administrative oversight" referred to by the Government, it had had the effect of impeding enforcement of the judgment and recovery of the maintenance, which was of particular importance for the applicant. Moreover, the error had been compounded by a lack of diligence on the part of the authorities: they could have observed for themselves that the debtor had defaulted on payment, or reminded the Polish authorities of the need to take action. Regarding the Government's allegation that the applicant had failed to show diligence, the Court noted that the applicant had regularly written to the Polish authorities complaining about the failure to pay her maintenance. The Court concluded, unanimously, that the French authorities had not made sufficient efforts to assist the applicant with the enforcement of the judgment and recovery of her maintenance payments, in violation of Article 6 § 1. The Court held that the respondent State was to pay the applicant, within three months 4 500 EUR for non-pecuniary damages plus any tax that may be chargeable to the applicant.

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

Losonci Rose and Rose v. Switzerland (no. 664/06) (Importance 2) – 9 November 2010 – Violation of Article 14 in conjunction with Article 8 – Discrimination between bi-national couples according to whether the man or the woman had Swiss nationality concerning the applicants' inability to keep their own surnames after marriage

The applicants are a Hungarian and a Swiss national residing in Switzerland. Intending to get married, they asked to keep their own surnames rather than choose a double-barrelled surname for one of them. They cited the difficulties in changing name in Hungarian and French law and the fact that the second applicant, who held an important post in the federal administration, was well known under her maiden name. They also pointed out that they intended to live together in Switzerland following their marriage. The first applicant accordingly expressed the wish for his surname to be governed by Hungarian law which entitled him to use his surname on its own. After their request and their subsequent appeal were rejected, the applicants decided that, in order to be able to marry, they would take the wife's surname as the "family name" for the purposes of Swiss law. Their surnames were entered in the register of births, deaths and marriages as "Rose" for the second applicant and "Losonci Rose, né Losonci" for the first applicant, who requested after the marriage that the double-barrelled surname he had "provisionally" chosen be replaced in the register by the single surname "Losonci", as permitted under Hungarian law, without any change to his wife's surname. In May 2005 the Federal Court held that the first applicant's request to use his wife's surname as his family name had rendered obsolete the option of having his name governed by Hungarian law. Furthermore, as to the applicants' argument that the refusal of their choice of name was unconstitutional, the Federal Court, while acknowledging that the legal provisions in question, taken as a whole, contravened the principle of equal treatment of the sexes, held that it was unable to introduce amendments that had already been rejected by the legislature to the law governing names. An amendment aimed at bringing the law in this area into line with the Constitution had been rejected on 22 June 2001 by the Federal Parliament.

The applicants complained that they had been discriminated against on grounds of sex in the enjoyment of their right to respect for their private and family life. They argued that, if their sexes had been reversed, the husband's surname would automatically have become the family name and the wife would have been able to have her choice of name governed by her national law.

The Swiss courts had held that the first applicant could not have his choice of name governed by his national law, which would have enabled him to keep his own surname after marriage. The applicants could claim to be the victims of a difference in treatment between people in similar situations since, in the case of a Swiss man and a woman of foreign origin, Swiss law allowed the woman's surname to be governed by her national law. The Swiss authorities claimed to have pursued the legitimate aim of reflecting family unity by means of a single "family name". Although the Court emphasised the discretion enjoyed by the States which had ratified the Convention in taking measures to reflect family unity, it reiterated that only compelling reasons could justify a difference in treatment on the ground of sex alone. **A consensus was emerging within the Council of Europe's member States as regards equality between spouses in the choice of family name, and the activities of the United Nations were heading towards recognition of the right of each married partner to keep his or her own surname or to have an equal say in the choice of a new family name**. However, the first applicant had been prevented from keeping his own surname after marriage, which he could have done had the applicants' sexes been reversed. The Court considered that the Federal Court's finding that it was unable to introduce amendments that had previously been rejected by Parliament could not have any bearing on Switzerland's international responsibility under the Convention. Nor did the Court share the Government's view that the first applicant had not suffered any serious disadvantage. It reiterated that a person's name, as the main means of personal identification within society, was one of the core aspects to be taken into consideration in relation to the right to respect for private and family life. Accordingly, since the justification put forward by the Government did not appear reasonable and the difference in treatment had been discriminatory, the Court concluded that the rules in force in Switzerland gave rise to discrimination between bi-national couples according to whether the man or the woman had Swiss nationality, and that there had therefore been a violation of Article 14 read in conjunction with Article 8. The Court held that the respondent State was to pay the applicant, within three months 4 515 EUR (four thousand five hundred and fifteen euros) for costs and expenses.

Deés v. Hungary (no 2345/06) (Importance 2) – 9 November 2010 – Violation of Article 8 – Serious nuisance had affected the street in which the applicant lived and had prevented him from enjoying his right to respect for private life – Violation of Article 6 § 1 – Excessive length of proceedings

The applicant submitted that, in order to avoid a toll introduced in early 1997 on a privatised motorway outside Alsónémedi, many trucks chose alternative routes including the street (on a section of a national road) in which he lived. In 1999 he brought proceedings for compensation against the Pest County State Public Road Maintenance Company. He claimed that, due to the increased freight traffic in his street, the walls of his house had cracked. Ultimately, on 15 November 2005 his claims were dismissed on appeal. The domestic courts found in particular that, although the noise exceeded the statutory limit of 60 dB(A) by 15% and 12%, the vibration or noise caused by the traffic was not substantial enough to cause damage to the applicant' house. In the meantime, the authorities made efforts from 1998 to slow down and reorganise the traffic in the area: notably they constructed three bypass roads, introduced a speed limit of 40 km/hr at night and provided two nearby intersections with traffic lights. In 2001 road signs prohibiting the access of vehicles over 6 tons and re-oreintating traffic were put up.

The applicant complained that, because of the noise, pollution and smell caused by the heavy traffic in his street, his home had become almost uninhabitable. He further complained that the length of the court proceedings he had brought on the matter had been excessive.

Article 8

The Court recalled that the Convention protected an individual's right not only to the actual physical area of his home (for example against such breaches as unauthorised entry) but also to the quiet enjoyment, within reasonable limits, of that area from interferences such as noise, emissions or smells. In particular, it acknowledged the complexity of the authorities' task in the applicant' case in handling infrastructure issues – involving measures which required considerable time and resources – and in striking a balance between road users' and residents' interests. However, despite the efforts to limit and reorganise the traffic, the measures had consistently proved to be insufficient, resulting in the applicant having been exposed to excessive noise over a substantial period of time (and at least until May 2003 when the expert had assessed the level of noise and found it in excess of the statutory limit). In conclusion, at the relevant time a direct and serious nuisance had affected the street in which the applicant lived and had prevented him from enjoying his home and private life, a right which the State had an obligation to guarantee. There had therefore been a violation of Article 8.

Article 6 § 1

The Court found that the length of the proceedings, having lasted six years and nine months for two levels of jurisdiction, had been excessive, in violation of Article 6 § 1. The Court held that the respondent State was to pay the applicant, within three months EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage

Zubaľ v. Slovakia (no. 44065/06) (Importance 2) – 9 November 2010 – Violation of Article 8 – The search of the applicant's house, carried out without sufficient grounds, and in his absence, when the applicant was not suspected of any criminal offence but was an injured party in the criminal case in issue, was not "necessary in a democratic society"

The applicant complained of a violation of his rights under Article 8 by a judicial order for the search of his house in criminal proceedings against several people suspected of having produced and sold forged paintings, one of which had been bought by the applicant. The police conducted the search in his absence without having heard him. The applicant maintained that there had been no justification for the search, as he had had no reason for refusing to cooperate with the police, being an injured party, and could have put the painting at their disposal.

The Court observed that in the present case the search was carried out in the context of criminal proceedings concerning the suspected forgery of works of art. The applicant was in the position of an injured party as he was the owner of the painting. There is no indication that the authorities suspected him at any time of involvement in any unlawful action in that context. The search was considered necessary with a view to securing the painting for the purposes of further criminal proceedings. In particular, the authorities presumed that the applicant might deny possession of the painting out of fear that he would be unable to obtain damages from the perpetrators of the crime. The Court is not persuaded by such an argument. The applicant, who is a collector of works of art, had bought the painting at an auction. The way in which he had acquired it was therefore easily verifiable. He had a genuine interest in having the matter elucidated and, as appropriate, claiming compensation for damage from those liable. The applicant had no apparent reason for refusing to co-operate with the prosecuting authorities and thus exposing himself to the risk of a sanction, possibly a criminal one. The Court noted also that, it is true that the scope of the search was, reasonably, limited to a visual examination of the premises, and that it was carried out in the presence of a third person who was not involved in the case. The Court nevertheless considered relevant the applicant's argument that the presence of the police at his house at 6 a.m. had repercussions for his reputation. At the relevant time

the applicant was abroad. His holiday was disturbed by the news of the search and the immediate arrangements which he considered it necessary to make with a view to protecting his rights. The Court considered that the search of the applicant's house, carried out without sufficient grounds, when the applicant was not suspected of any criminal offence but was an injured party in the criminal case in issue, was not “necessary in a democratic society”. There has accordingly been a violation of Article 8 of the Convention. The Court held that the respondent State was to pay the applicant, within three months EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage.

- **Protection of property**

Richet and Le Ber v. France (no. 18990/07 and 23905/07) (Importance 3) – 18 November 2010 – Violation of Article 1 of Protocol no. 1 – Deprivation of an effective enjoyment of rights and of the opportunity either to renegotiate the deeds of sale of an island or to receive compensation for the damage sustained concerning the island of Porquerolles' sale to the State

The applicants are the heirs of Mr Fournier, who in 1912 acquired the island of Porquerolles, situated off Hyères. In 1969 the State expressed an interest in purchasing the island from the Fournier family, who were looking to sell part of their land. The State wanted to acquire the island in order to prevent the dividing-up and rapid deterioration of the site. During the negotiations the State allegedly made it clear to the owners that it could not compete with private purchase bids or even offer an amount corresponding to the valuation made by the Property Department, but that it could guarantee the value of the part of the property not being sold by fixing and guaranteeing the building rights. At the conclusion of the negotiations, undertakings to sell the land were signed in 1970. It was agreed that the first applicant could retain a small area of land and build dwellings on it, and that the second applicant could keep her land, extend her hotel and restaurant and build dwellings and an institution for the disabled. In 1971 the National Real Property Transactions and Architectural Commission (“the CNOIA”) issued a favourable opinion on the transaction and specified that the area of land which could be built on should remain static and should not be affected by changes within the Maures urban planning area. The sales were concluded in 1971. In 1978 a draft land-use plan for the municipality of Hyères-Les-Palmiers was drawn up with a view to preventing all new building on the island. Observing that the plan took no account, or only partial account, of the State's undertakings arising out of the deeds of sale, the applicants appealed to the authorities, and in particular the prefect, without success. The land-use plan was approved in 1985 and the island was designated as unsuitable for building development owing to its environmental value. Under these new planning regulations the applications for planning permission made by the Richet family and by the second applicant were turned down. They appealed unsuccessfully to the administrative authorities, who took the view that the second applicant's appeal could only be dealt with by the ordinary courts. In 1994 and 1995 the Richet family and the second applicant therefore brought proceedings before the ordinary courts. In the second applicant's case, the Court of Cassation reaffirmed that the State had granted permission to build in accordance with the rules as they applied at the time the agreements had been entered into, but had not guaranteed a permanent right to build regardless of subsequent changes in the urban planning regulations. As to the first applicant's appeal, the Toulon *tribunal de Grande instance* held that the State could not undertake to guarantee her a finally acquired right to build simply on the basis of a private-law contract. The appeal on points of law lodged by members of the Richet family who pursued the proceedings after the first applicant's death was not admitted. In 2009 the action brought by the Richet family alleging malfunctioning of the State judicial service was also dismissed. The case is currently pending before the Paris Court of Appeal.

The applicants complained that the State had failed to comply with its contractual undertakings, arguing that the condition for selling their land to the State at a price far below its real value had been the guarantee given to them that they would be able to exercise their right to build on it.

The Court noted that the guarantee given to the applicants that they would be able to continue to farm their land and would retain the right to erect certain buildings on it had been a crucial part of the negotiations and of the deeds of sale; nowhere had it been indicated that the option to build was contingent upon the urban planning rules. Furthermore, the CNOIA had specified that the building rights granted to the applicants were fixed and not tied to the urban planning regulations. There had been interference with the applicants' right to the peaceful enjoyment of their possessions since the authorities had prevented them from making use, in accordance with the deeds of sale, of their right to build on the plots of land they had retained. In so doing, the State had pursued a legitimate aim in the public interest, namely the protection of the environment and, in particular, the conservation of the island of Porquerolles. All the applicants' efforts to have the building rights granted by the State recognised, and to exercise them effectively, had been to no avail. The administrative courts to which they applied had held that they did not have jurisdiction, taking the view that the contracts entered into

with the State came within the ambit of private law, while the ordinary courts ruled that the applicants did not have finally acquired rights. The State had taken no steps to honor its contractual undertakings although it had been aware at the highest level of their scope and their impact on the environment of the island of Porquerolles. Furthermore, the authorities had not attempted to reach a compromise or proposed compensation to the applicants, nor had they acted to implement the specific proposals to relocate or substitute the building projects, set out in the assessment conducted in 1977 on the impact of the agreements between the State and the applicants. The authorities had deprived the applicants of effective enjoyment of their rights and of the opportunity either to renegotiate the deeds of sale or to receive compensation for the damage sustained. They had therefore had to bear an excessive burden, which had upset the fair balance between the protection of their property and the demands of the general interest. The Court held that the respondent State was to pay to Mr and Mrs Richet 800 000 EUR (eight hundred thousand euros) and 700 000 EUR (seven hundred thousand euros) to Mrs Le Ber, for non-pecuniary damage, plus any tax that may be chargeable.

2. Other judgments issued in the period under observation

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

- Press release by the Registrar concerning the Chamber judgments issued on 09 Nov. 2010: here
- Press release by the Registrar concerning the Chamber judgments issued on 16 Nov. 2010: here
- Press release by the Registrar concerning the Chamber judgments issued on 18 Nov. 2010: here

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

State	Date	Case Title and Importance of the case	Conclusion	Key Words	Link to the case
Bulgaria	09 Nov. 2010	Stoyanovi (no. 42980/04) Imp. 3	No violation of Art. 2	No failure on the part of the State to comply with its positive obligation to respect the right to life under Article 2	Link
France	18 Nov. 2010	Baudoin (no. 35935/03) Imp. 3	Violation of Art. 5 § 1 (e) Two violations of Art. 5 § 4	Continued involuntary confinement in the difficult patients' unit at Plouguernével Specialist Hospital Ineffectiveness of the remedies to challenge the confinement, lack of a speedy examination of the applicant's applications in respect of the above mentioned confinement	Link
France	18 Nov. 2010	Boutagni (no. 42360/08) Imp. 3	No violation of Art. 3 No violation of Art. 8	The French Government decided that the applicant would not be deported to Morocco	Link
France	18 Nov. 2010	Tunnel Report Limited (no. 27940/07) Imp. 3	No violation of Art. 1 of Prot. 1	No evidence to conclude that the domestic authorities failed in their positive obligation to ensure the applicant company's right to respect for property	Link
Romania	09 Nov. 2010	Agvps-Bacău (no. 19750/03) Imp. 2	Violation of Art. 6 § 1 (fairness) No violation of Art. 11	Lack of public hearings during civil proceedings The authorities' reasons to dissolve the applicant federation were relevant and sufficient	Link
Romania	09 Nov. 2010	Ali (no. 20307/02) Imp. 2	Violation of Art. 3 Violation of Art. 6 § 1	Conditions of detention in Rahova Prison Lack of a fair trial on account of domestic authorities' failure to sufficiently investigate the applicant's allegations of entrapment	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

				(See the CPT Report to the Romanian Government on the visits carried out to Romania from 16 to 25 September 2002 and from 9 to 11 February 2003)	
Spain	16 Nov. 2010	Garcia Hernandez (no. 15256/07) Imp. 3	Violation of Art. 6 § 1	Lack of a public hearing before the Murcia *Audiencia Provincial*	Link
Turkey	09 Nov. 2010	Timtik (no. 12503/06) Imp. 2	Two violations of Art. 3 (substantive and procedural)	Ill-treatment by the police during arrest and lack of an effective investigation	Link
Ukraine	09 Nov. 2010	Krivova (no. 25732/05) Imp. 3	Violation of Art. 6 § 1	Excessive length of compensation proceedings (over nine years for three levels of jurisdiction and still pending)	Link
Ukraine	09 Nov. 2010	Osypenko (no. 4634/04) Imp. 3	Violation of Art. 5 § 1 No violation of Art. 5 § 1 Violation of Art. 5 § 3	Unlawfulness of the applicant's detention concerning the first period of detention Lawfulness of the applicant's detention concerning the second period of detention Excessive length of detention (more than two years and four months)	Link
Ukraine	18 Nov. 2010	Mushta (no. 8863/06) Imp. 3	Violation of Art. 6 § 1 (fairness)	Domestic court's application of procedural limitations for access to the court of cassation were not clear and foreseeable from the applicant's point of view	Link

3. Repetitive cases

The judgments listed below are based on a classification which figures in the Registry's press release: "*In which the Court has reached the same findings as in similar cases raising the same issues under the Convention*". The role of the NHRSs may be of particular importance in this respect: they could check whether the circumstances which led to the said repetitive cases have changed or whether the necessary execution measures have been adopted.

State	Date	Case Title	Conclusion	Key words
Poland	09 Nov. 2010	Antczak (no. 3360/09) link	Violation of Art. 6 § 1	Excessive length of criminal proceedings (nearly five years for one level of jurisdiction)
Poland	09 Nov. 2010	Baranowski (no. 40153/09) link	Violation of Art. 5 § 3	Excessive length of pre-trial detention (more than three years and three months) on suspicion of offences committed as a member of an organised criminal gang

4. Length of proceedings cases

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

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

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

State	Date	Case Title	Link to the judgment

Germany	18 Nov. 2010	Wagner v. (no. 38187/08)	Link
Italy	09 Nov. 2010	Coppola and Others (nos. 24593/03, 24596/03, 24614/03, 24618/03, 24620/03 and 24684/03)	Link
Italy	09 Nov. 2010	Strega Alberti Benevento S.P.A. (nos. 44031/02 and 44032/02)	Link
Italy	09 Nov. 2010	Tangredi and Iuliano (nos. 6604/03 and 16769/03)	Link
Poland	09 Nov. 2010	Krystyna Misiak and Jan Misiak (no. 31193/04)	Link
Slovakia	09 Nov. 2010	Majtas (no. 21076/06)	Link
Turkey	09 Nov. 2010	Suna (no. 1058/06)	Link
Ukraine	18 Nov. 2010	Bratchenko (no. 27234/04)	Link
Ukraine	18 Nov. 2010	Pustovit (no. 34332/03)	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 1 to 14 November 2010**.

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

State	***Date***	***Case Title***	***Alleged violations (Key Words)***	***Decision***
Bulgaria	02 Nov. 2010	Aleksey Petrov (no 27103/04) link	In particular alleged violation of Art. 3 (alleged ill-treatment on account of the authorities' rejection of his criminal complaints and compensation claims), Art. 6 § 1 (unfairness of proceedings), Articles 8 and 10 § 2 (domestic courts' failure to explain why they had taken into account the photocopy of Mr G.T.'s statement and to assess whether Mr E.S. had complied with his duty to verify the information which he had disseminated through the media), Art. 13 (lack of an effective remedy), Art. 14 (different treatment before the domestic courts)	Inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention)
Croatia	04 Nov. 2010	Koščak (no 47814/08) link	Alleged violation of Art. 6 § 1 (unfairness and excessive length of Constitutional Court proceedings, lack of impartiality of the lower courts) Art. 1 of Prot. 1 (infringement of the right to respect for property on account of domestic courts' order for the applicant to pay the telephone services in question in the proceedings)	Partly inadmissible for non-exhaustion of domestic remedies (concerning claims under Art. 6 § 1), partly inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention concerning the remainder of the application)
Germany	02 Nov. 2010	Sakewitz (no 21369/07) link	Alleged violation of Articles 6 and 8 (conduct, length and outcome of the domestic custody and access proceedings, Art. 5 of Prot. 7 and Art. 14 (discrimination in comparison with other fathers and parents as, due to the withdrawal of his parental rights, the applicant was unable to exercise custody rights; and more generally about fathers being discriminated against in German child custody proceedings)	Partly adjourned (concerning the length of the main proceedings), partly inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention concerning the remainder of the application)
Greece	04 Nov. 2010	Leonidou-Kritikou (no 6574/09) link	Alleged violation of Art. 6 § 1 (excessive length of proceedings), Art. 13 (lack of an effective remedy)	Struck out of the list (friendly settlement reached)
Greece	04	Stathopoulos	Alleged violation of Art. 6 § 1	Struck out of the list (the applicant

	Nov. 2010	(no 19915/08) link	(excessive length and unfairness of proceedings), Art. 6 § 2 (infringement of the principle of presumption of innocence), Art. 3 (treatment contrary to this Article on account of the applicant's incarceration despite his state of health)	no longer wished to pursue his application)
Greece	04 Nov. 2010	Theodorakopoulou (no 2985/09) link	Alleged violation of Art. 6 § 1 (excessive length of proceedings)	Struck out of the list (friendly settlement reached)
Greece	04 Nov. 2010	Chatzigiannakou (no 3527/09) link	Idem.	Idem.
Greece	04 Nov. 2010	Papageorgopoulou (no 53199/09) link	Alleged violation of Art. 6 § 1 (excessive length of proceedings), Art. 1 of Prot. 1 (infringement of the applicant's right to respect for property on account of the excessive length of proceedings)	Idem.
Greece	04 Nov. 2010	Bliachou and Others (no 27654/08) link	Idem.	Idem.
Hungary	09 Nov. 2010	Horváth and Vadászi (no 2351/06) link	Alleged violation of Art. 3 and Art. 2 of Prot. 1 in conjunction with Articles 13 and 14 (the applicants' placement in a special class in school which in their view had been a discriminatory measure due to their Roma origin)	Inadmissible for non-exhaustion of domestic remedies
Moldova	02 Nov. 2010	Nacu (no 42374/07) link	Alleged violation of art. 6 § 1 and Art. 1 of Prot. 1 (non-enforcement of a judgment in the applicants' favour)	Struck out of the list (friendly settlement reached)
Moldova	02 Nov. 2010	*Asociatia Pentru Lichidarea Consecintelor Pactului Molotov-Ribbentrop* (no 32118/06) link	The applicant is an organisation advocating for the eradication of the consequences of the Molotov-Ribbentrop treaty concluded between the Soviet Union and Nazi Germany in 1939 according to which, *inter alia*, the present day territory of the Republic of Moldova was annexed by the Soviet Union from Romania Alleged violation of Articles 6, 10 and 11 on account of the authorities' decision to change the place of the applicant organisation's demonstration	Struck out of the list (unilateral declaration of Government)
Moldova	02 Nov. 2010	Grosu (no 36170/05) link	Alleged violation of Art. 3 (poor conditions of pre-trial detention and lack of adequate medical care), Art. 6 § 1 (lack of legal assistance), Art. 10 (refusal of the prison authorities to provide the applicant with legal literature)	Partly struck out of the list (unilateral declaration of the Government concerning claims under Art. 3), partly inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention concerning the remainder of the application)
Moldova	02 Nov. 2010	Cogan (no 12218/05) link	Alleged violation of 6 § 1 (failure to inform the applicant about the hearing in her case)	Struck out of the list (unilateral declaration of Government)
Poland	02 Nov. 2010	Jankowski (no 37330/08) link	Alleged violation of Art. 6 § 1 (excessive length of criminal proceedings), Art. 6 § 3 (d) (hindrance to the applicant's right to question witnesses), Art. 6 § 3 (a) and (b) (the applicant had been served with the bill of indictment more than seven years after it had been issued)	Partly struck out of the list (unilateral declaration of the Government concerning claims under Article 6 §§ 1 and 3), partly inadmissible as manifestly ill-founded (although the applicant was served with the bill of indictment with unjustified delay, he was given by the domestic

				courts three months before the first hearing to prepare his defence concerning the remainder of the application)
Poland	02 Nov. 2010	Bachowski (no 32463/06) link	Alleged violation of Art. 3 of Prot. 7 (hindrance to the applicant's right to obtain compensation for a manifestly unjustified conviction), Art. 6 (unfairness of proceedings)	Partly incompatible *ratione materiae* (concerning claims under Art. 3 of Prot. 7), partly inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention concerning the remainder of the application)
Poland	02 Nov. 2010	Winiarski (no 20715/09) link	Alleged violation of Articles 3 and 6 §§ 1 and 3 (c) (excessive length of the applicant's detention on remand)	Struck out of the list (unilateral declaration of Government)
Romania	02 Nov. 2010	Dinischiotu and Others (no 6479/04) link	Alleged violation of Articles 6 § 1 and Art. 1 of Prot. 1 (domestic courts' dismissal of the applicants' claims)	Struck out of the list (the applicants no longer wished to pursue their application)
Slovenia	02 Nov. 2010	Softič and Others (no 17292/06; 18825/06 etc.) link	Alleged violation of Art. 6 § 1 (excessive length of civil proceedings), Art. 13 (lack of an effective remedy)	Partly struck out of the list (friendly settlement reached concerning the length of civil proceedings and the lack of an effective remedy concerning the first set of proceedings), partly inadmissible for non-exhaustion of domestic remedies (concerning the remainder of the application about the second set of the proceedings)
Slovenia	02 Nov. 2010	Petek (no 8441/06) link	Alleged violation of Art. 6 § 1 (excessive length of proceedings), Art. 13 (lack of an effective remedy)	Struck out of the list (friendly settlement reached)
"the Former Yugoslav Republic Of Macedonia"	02 Nov. 2010	Golubovik and Vojdinoska (no 41111/07) link	Alleged violation of Art. 6 § 1 (excessive length of proceedings; domestic courts' failure to provide sufficient reasoning for their decisions), Art. 13 (lack of an effective remedy)	Partly struck out of the list (unilateral declaration of the Government concerning the length of proceedings), partly inadmissible (failure to substantiate complaints concerning the remainder of the application)
"the Former Yugoslav Republic Of Macedonia"	02 Nov. 2010	Trajčevski (no 27240/07) link	Alleged violation of Art. 6 § 1 (excessive length of proceedings concerning a pension dispute)	Struck out of the list (friendly settlement reached)
"the Former Yugoslav Republic Of Macedonia"	02 Nov. 2010	Efremovski (no 4541/07) link	Alleged violation of Art. 6 § 1 (unfairness and excessive length of administrative proceedings)	Partly struck out of the list (unilateral declaration of the Government concerning the length of proceedings), partly inadmissible (failure to substantiate complaints concerning the remainder of the application)
"the Former Yugoslav Republic Of Macedonia"	02 Nov. 2010	Pavleska (no 50666/06) link	Alleged violation of Art. 6 § 1 (excessive length of civil proceedings)	Struck out of the list (unilateral declaration of Government)
"the Former Yugoslav Republic Of Macedonia"	02 Nov. 2010	Belja (no 21354/05) link	Alleged violation of Art. 6 § 1 (excessive length of proceedings concerning the lawfulness of the applicant's deprivation of liberty)	Struck out of the list (friendly settlement reached)
the United Kingdom	02 Nov. 2010	Macritchie (no 19298/08) link	Alleged violation of Articles 2, 6 and 13 (the applicant's husband's death was allegedly caused by the acts or omissions of the Government and inability to obtain compensation in that respect)	Struck out of the list (the applicant no longer wished to pursue her application)
Turkey	02 Nov. 2010	Durmuş (no 25151/07) link	Alleged violation of Art. 2 (excessive use of lethal force against the applicants' close relative), Art. 3 (treatment contrary to this Article on	Inadmissible (non-respect of the six-month requirement)

			account of the fact that the local press named the applicant as the "wife of the robber of the bank"), Art. 6 § 1 (unfairness of proceedings)	
Turkey	02 Nov. 2010	Karaman (no 8415/09) link	Alleged violation of Articles 2, 3, 6 and 17 in conjunction with Articles 13 and 14 (the applicants' close relative's death due to the lethal force used by the gendarmes, unfairness and excessive length of proceedings, lack of an effective remedy, and discrimination on the basis of the applicants' Kurdish origin)	Idem.
Turkey	02 Nov. 2010	Aşın (no 47702/08) link	Alleged violation of Art. 2 (the applicant's son's death due to insufficient medical care) Art. 6 § 1 (excessive length of proceedings), Art. 13 (lack of an effective remedy)	Inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention)
Ukraine	09 Nov. 2010	Kravchenko (no 46673/06) link	Alleged violation of Art. 6 § 1 (excessive length and unfairness of proceedings), Articles 6 § 1 and 13 (the courts' failure to examine the applicant's case on the merits in the third and fourth sets of proceedings and of the appeal court's refusal to examine his appeal against the ruling of June 2006 in the third set of proceedings), Art. 1 of Prot. 1 (the State authorities' failure to protect the applicant's property rights)	Partly adjourned (concerning the length of the proceedings and the lack of access to a court), partly inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention)

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 15 November 2010: link
- on 22 November 2010: link

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

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

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

Communicated cases published on 15 November 2010 on the Court's Website and selected by the NHRS Unit

The batch of 15 November 2010 concerns Poland. No cases were selected by the NHRSs Unit for this period

Communicated cases published on 22 November 2010 on the Court's Website and selected by the NHRS Unit

The batch of 22 November 2010 concerns the following States (some cases are however not selected in the table below): Bulgaria, France, Italy, Serbia, the United Kingdom, Turkey and Ukraine.

State	Date of communication	Case Title	Key Words of questions submitted to the parties
France	03 Nov. 2010	N.M. no 31721/10	Alleged violation of Art. 3 – Risk of being subjected to ill-treatment if expelled to Algeria
Italy	02 Nov. 2010	Torreggiani and 33 other applications no 43517/09	Alleged violation of Art. 3 – Poor conditions of detention in Busto Arsizio prison
the United Kingdom	03 Nov. 2010	Hayes no 47997/10	Alleged violation of Art. 8 in conjunction with Art. 14 – Alleged discrimination on the grounds of the applicant's age, physical disability and/or on account of the fact that he was retired concerning his access to home care services
the United Kingdom	02 Nov. 2010	F.I. no 8655/10	Alleged violation of Article 8 – Would the first applicant's removal to Jamaica pending the outcome of the ongoing domestic childcare proceedings at Birmingham & Sutton Family Proceedings Court in relation to the second applicant, T, violate their rights to family and/or private life having regard to both the procedural requirements and negative obligations under this Article ? – Would the first applicant's removal to Jamaica be in accordance with the law having regard to *MS (Ivory Coast) v. the Secretary of State for the Home Department* [2007] EWCA Civ 133 and the then unpublished Criminal Casework Directorate's Children and Family Cases Process Instruction? – Alleged violation of Article 6 § 1 – Would the first applicant's removal to Jamaica during the course of the ongoing childcare proceedings at Birmingham & Sutton Family Proceedings Court in relation to the second applicant be compatible with his right of access to court under Article 6 § 1 of the Convention?
the United Kingdom	02 Nov. 2010	Richardson no 26252/08	Alleged violation of Art. 14 in conjunction with Art. 1 of Prot. 1 – Alleged discrimination on grounds of age and sex on account of the fact that that the age at which women are eligible for a State pension had been increased from 60 to 65, the same age at which a man born in 1955 would become eligible for a pension
Turkey	04 Nov. 2010	Elinç no 50388/06	Alleged violation of Art. 2 – The applicants' child's death after the explosion of a grenade found in a trash bin – Alleged violation of Articles 6 § 1 and Art. 13 – Lack of an effective remedy
Turkey	04 Nov. 2010	Turgut and Yildiz no 48497/07	Idem.
Turkey	04 Nov. 2010	Seyhan no 13865/10	Alleged violation of Art. 10 § 1 in conjunction with Art. 14 – The applicant's conviction for speaking in Kurdish during an election campaign
Ukraine	04 Nov. 2010	Burda-Ukrayina, DP no 386/05	Alleged violation of Art. 10 – Infringement of the applicant company's right to freedom of expression due to the unfair competition procedure and applied sanctions concerning the publication of the results of an examination of different brands of sparkling wine
Ukraine	02 Nov. 2010	Shapovalov no 45835/05	The applicant is a journalist and a human rights activist – Alleged violation of Art. 6 § 1 – Lack of access to a court – Alleged violation of Art. 10 – The applicant prevented from receiving information about the Territorial Election Commission's activities – Alleged violation of Art. 13 – Lack of an effective remedy

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

Priority policy (09.11.2010)

The Court has adopted a new policy concerning the order in which it deals with cases. From now on, the Court will take into consideration the importance and urgency of the issues raised when deciding the order in which cases are to be dealt with. Thus, the most serious cases and cases which disclose the existence of widespread problems will be dealt with more rapidly. Document

Elections at the Court (16.11.2010)

The Court has elected Françoise Tulkens (Belgian) as Vice-President. It has also re-elected Josep Casadevall (Andorran) as a Section President and has elected Nina Vajić (Croatian) and Dean Spielmann (Luxemburger) as Section Presidents. Press Release

Part II: The execution of the judgments of the Court

A. New information

The Council of Europe's Committee of Ministers held the 1100th meeting of the Ministers' deputies from 2 to 3 December 2010.

B. General and consolidated information

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

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

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

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

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

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

A. European Social Charter (ESC)

The decision on the merits of the complaint COHRE v. Croatia is public (08.11.2010)

The decision on the merits of the European Committee of Social Rights with regard to the case *Centre on Housing Rights and Evictions (COHRE) v. Croatia* (Complaint no. 52/2008) became public on 8 November. In its decision, the Committee concluded that there was a violation of Article 16 (Right of the family to social, legal and economic protection) read in the light of the non discrimination clause of the Preamble of the Charter, for displaced families wishing to return to Croatia for whom the absence of effective and timely offer of housing has for a long period of time constituted a serious obstacle to return. Summary of Complaint n° 52/2008

Election of members of the European Committee of Social Rights (10.11.2010)

Following the adoption of Resolution CM/ResChS(2010)9 at the 1097th meeting of the Ministers' Deputies on 10 November, the following five members have been elected with effect from 1 January 2011, for a term of office which will expire on 31 December 2016: Mr Lauri LEPPIK (Estonian); Ms Karin LUKAS (Austrian); Mr Colm O'CINNEIDE (Irish); Ms Elena MACHULSKAYA (Russian); Mr Giuseppe PALMISANO (Italian).

Seminar on the Revised Charter in Vologda, Russian Federation (15.11.2010)

A seminar was held in Vologda from 17 to 18 November 2010 with the aim of providing training of governmental officials and other legal professionals in the legal requirements of the Revised Charter, as well as providing assistance in the drafting of the first report on the application of the Revised Charter by Russia. This seminar was attended by Mr Matti MIKKOLA, former President of the European Committee of Social Rights and Mr Régis BRILLAT, Head of the Department of the ESC. Programme

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

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

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

Council of Europe anti-torture Committee publishes report on Greece (17.11.2010)

The CPT has published on 17 November the report on its fifth periodic visit to Greece in September 2009, together with the response of the Greek Government. These documents have been made public at the request of the Greek authorities. In the course of the 2009 visit, the CPT's delegation reviewed the measures taken by the Greek authorities to implement recommendations made by the Committee after its previous visits. It focused in particular on the treatment and safeguards afforded to persons deprived of their liberty by law enforcement officials, and examined the conditions of detention in police and border guard stations, coast guard posts and in special facilities for irregular migrants. The CPT's delegation also visited a number of prisons, examining the treatment and conditions of detention of inmates, including the activities offered to them and health care provision. In their response to the various recommendations made in the CPT's visit report, the Greek authorities provide information on the measures being taken to address the concerns raised by the Committee.

Council of Europe anti-torture Committee publishes reports on the Channel Islands (19.11.2010)

The CPT has published on 19 November the reports on its visit to the Channel Islands (Bailiwicks of Guernsey and Jersey) in March 2010, together with the responses of the States of Jersey and the States of Guernsey. These documents have been made public at the request of the United Kingdom authorities. The CPT's delegation gathered no evidence of the ill-treatment of persons in police custody. However, in both Bailiwicks, a few allegations were received of excessive use of force at the time of arrest. The CPT comments in its reports that police officers need to be reminded regularly that no more force than is strictly necessary should be used when effecting an arrest. Conditions of detention at the Police Headquarters in St. Peter Port, Guernsey, were on the whole adequate. In contrast, they were not satisfactory at the Police Headquarters in Rouge Bouillon, Jersey; in their response, the Jersey authorities refer to plans for a new police station which will incorporate a modern custody facility. The CPT's delegation received no allegations of ill treatment of prisoners by staff at La Moye Prison in Jersey and, with one exception, the same was true of Guernsey Prison. Positive staff-prisoner relations were in evidence in both establishments. Material conditions of detention were generally of a good standard in both Guernsey and La Moye Prisons. However, efforts should continue to be made to improve activities for prisoners, in particular those subject to the "standard" regime; in their responses, the authorities highlight the action being taken in this connection. The CPT expresses concern about the current practice of holding juveniles (i.e. persons under the age of 18) in the two prisons. It emphasises that juveniles who have to be deprived of their liberty should be held in facilities specifically designed for persons of this age. The Committee recommends that for as long as juveniles continue to be held at Guernsey and La Moye Prisons, particular attention be paid to their education (including physical education) and to offering them a wide range of opportunities to develop their life skills. In their responses, the authorities recognise the drawbacks of the present situation and highlight efforts to overcome them. In the light of the information gathered during the visit, the CPT also recommends that the Guernsey and Jersey authorities take the necessary steps to ensure that all prisoners suffering from a severe mental health disorder are cared for, without delay, in an adequately equipped hospital environment.

C. European Commission against Racism and Intolerance (ECRI)

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

Ireland: Follow-up Seminar (11.11.2010)

Slovenia: visit of the Advisory Committee on the Framework Convention for the Protection of National Minorities (15-18. 11. 2010)

E. Group of States against Corruption (GRECO)

Group of States against Corruption publishes report on Bulgaria (10.11.2010)

GRECO published on 10 November its Third Round Evaluation Report on Bulgaria, in which it expresses the urgent need to increase consistency and effective implementation of the rules on party financing and identifies some desirable legal improvements in the criminalisation of corruption. The report focuses on two distinct themes: criminalisation of corruption and transparency of party funding. Regarding the criminalisation of corruption [theme I], Bulgaria has ratified the Criminal Law Convention on Corruption (ETS 173) and its Additional Protocol (ETS 191). Obvious efforts have been made to implement these conventions and to keep the legal framework on incriminations consistent. Nevertheless, there is a need to clearly incriminate bribery and trading in influence in the various situations where the beneficiary of the undue advantage is a third person (whether a natural person or a legal entity). Moreover, despite legal changes introduced in 2002, the concept of undue advantage is interpreted too narrowly in practice as implying a material benefit which has a discernible market value. As for party financing [theme II], Bulgaria has managed to introduce essential measures for the transparency and supervision of party financing and election campaigns with the adoption of the 2005 Political Parties Act and other acts regulating the parliamentary, European Parliament, local and presidential elections. However, the situation calls for improvements, including a comprehensive harmonisation of legislation, to ensure that the financial statements of parties and candidates adequately reflect their financial activity and are accessible to the public in a timely manner.

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

GRECO addresses 20 recommendations to Bulgaria. In the second half of 2012, it will assess the implementation of these recommendations through its specific compliance procedure. Report: Theme I / Theme II

Group of States against Corruption publishes report on Azerbaijan (18.11.2010)

GRECO published on 18 November its Third Round Evaluation Report on Azerbaijan, which concludes that there are major shortcomings concerning the legislation on corruption and transparency in party funding. Regarding the criminalisation of corruption [theme I], the country's legal framework contains several important deficiencies in relation to the requirements established under the Council of Europe's Criminal Law Convention on Corruption. For example, the concept of "official" used by the relevant bribery provisions does not cover all civil servants and public employees. The offer and the promise of a bribe as well as the acceptance of an offer or a promise do not constitute completed crimes. Moreover, bribery of foreign and international officials, domestic and foreign jurors and arbitrators as well as bribery in the private sector and trading in influence are not fully addressed by the country's legislation. GRECO regrets that Azerbaijan is one of the member States to have entered nearly the maximum number of reservations allowed under the Convention. It furthermore calls upon Azerbaijan to become a Party to the Additional Protocol to the Convention. Above all, Azerbaijan should be more proactive in detecting, investigating and prosecuting corruption cases. Concerning transparency of party funding [theme II], GRECO stresses that the transparency standards established by Recommendation Rec(2003)4 of the Committee of Ministers of the Council of Europe on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns are difficult to apply to a country which lacks a truly pluralistic party landscape, where most political parties are not active between elections and no political party except for the ruling party has significant resources. The report addresses 17 recommendations to Azerbaijan. GRECO will assess the implementation of these recommendations in the first half of 2012 through its specific compliance procedure.

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

Joint Typologies Meeting of the Eurasian Group and MONEYVAL (11.11.2010)

EAG and MONEYVAL members, observers, international organisations and private sector representatives gathered for the first time in a joint typologies exercise, which was held in Moscow from 9 to 10 November 2010. The meeting was opened with addresses by Vladimir Nechaev, MONEYVAL Chairman, and Yury Chikhanchin, Head of Rosfinmonitoring. During the two day meeting, participants from 29 countries examined a number of emerging money laundering and terrorist financing methods and trends in the context of the following typology research projects: Criminal Money Flows on the Internet (led by the Russian Federation, the Cybercrime project and MONEYVAL); Risks of misuse of E-money in ML/FT schemes (led by the Russian Federation); Risks of misuse of non-traditional financial institutions in ML schemes (led by the Russian Federation and Belarus); ML/FT using Alternative Remittance Systems (led by United States); Risks of money laundering via foreign trade operations (led by Ukraine). Each year, MONEYVAL undertakes regularly typologies researches to better understand the money laundering and terrorist financing environment in the European region and to assist through its findings decision makers and operational experts with up-to-date information in order that they may develop policies and strategies to combat these threats. The annual typologies workshop brings together financial intelligence units, law enforcement experts and regulatory authorities in order to exchange information on significant cases and operations. It also provides a vital opportunity for operational experts to identify and describe effective AML/CFT counter-measures. The final report on "Criminal Money Flows on the Internet" is expected to be available in the first half of 2011.

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

1st Evaluation Round: GRETA visits Austria (16-19.11.2010)

A delegation of GRETA carried out a country visit to Austria from 16 to 19 November 2010, in order to prepare its first monitoring report on the fight against human trafficking in Austria. This was the third country visit carried out in the context of the first round of evaluation of implementation of the *Council of Europe Convention on Action against Trafficking in Human Beings.* This round was launched in February 2010 when GRETA addressed a questionnaire to the first 10 Parties to the Convention: Albania, Austria, Bulgaria, Croatia, Cyprus, Denmark, Georgia, Moldova, Romania and the Slovak Republic. During the visit, the GRETA delegation held meetings in Vienna with representatives of

relevant ministries and other public bodies. It also held meetings with members of non-governmental organisations active in combating trafficking in human beings and human rights protection, as well as with other members of civil society dealing with issues of concern to GRETA. The visit was carried out by Ms Hanne Sophie GREVE, President of GRETA and Mr Vladimir GILCA, member of GRETA, who were accompanied by Ms Claudia LAM from the Anti-Trafficking Secretariat.

On the basis of the information gathered during the visit and the reply to the questionnaire by the Austrian Government, GRETA will prepare a draft report containing its analysis of the implementation of the Convention by Austria, as well as suggestions concerning the way in which Austria may deal with the problems which have been identified. This draft report shall be transmitted to the Austrian Government for comments before GRETA prepares its final report, which will be made public along with any final comments by the Government.

Part IV: The inter-governmental work

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

10 November 2010

Albania, **Austria**, **Bulgaria**, **Finland**, **Latvia**, **Portugal**, **Serbia**, **Slovenia** and **"the former Yugoslav Republic of Macedonia"** have signed the Third Additional Protocol to the European Convention on Extradition (CETS No. 209).

Turkey signed the Additional Protocol to the Convention on the Transfer of Sentenced Persons (ETS No. 167), and the Convention on Cybercrime (ETS No. 185).

17 November 2010

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

18 November 2010

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

B. Recommendations and Resolutions adopted by the Committee of Ministers

CM/Res(2010)25E / 10 November 2010: Resolution on member States' duty to respect and protect the right of individual application to the European Court of Human Rights (Adopted by the Committee of Ministers on 10 November 2010 at the 1097th meeting of the Ministers' Deputies)

CM/Res(2010)26E / 10 November 2010: Resolution on the establishment of an Advisory Panel of Experts on Candidates for Election as Judge to the European Court of Human Rights (Adopted by the Committee of Ministers on 10 November 2010 at the 1097bis meeting of the Ministers' Deputies)

CM/ResCMN(2010)12E / 17 November 2010: Framework Convention for the Protection of National Minorities – Election of an expert to the list of experts eligible to serve on the Advisory Committee in respect of Austria (Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies)

CM/ResChS(2010)9E / 10 November 2010: Resolution - European Social Charter - European Committee of Social Rights (ECSR) - Election of members (Adopted by the Committee of Ministers on 10 November 2010 at the 1097th meeting of the Ministers' Deputies)

CM/Rec(2010)12E / 17 November 2010: Recommendation of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities (Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies)

C. Other news of the Committee of Ministers

Turkey presents its priorities for Committee of Ministers' Chairmanship (10.11.2010)

On 10 November, Turkey assumed chairmanship of the Committee of Ministers for a period of six months. Its programme focuses on five priorities: reform of the Council of Europe, reform of the European Court of Human Rights, strengthening independent monitoring mechanisms, EU accession to the European Convention on Human Rights, meeting the challenges of multicultural societies in Europe. The overall aim is to reinforce the political role, visibility and influence of the oldest pan-European organisation in Europe and internationally. Full programme and draft timetable of activities; Chairmanship website; Photo gallery: Video of the press conference

International Day for Tolerance: Statement by Ahmet Davutoglu (15.11.2010)

"Tolerant societies are those that uphold the human rights of individuals on the basis of respect for each person's distinct identity", declared the Chairman of the Committee of Ministers. "Council of Europe member States are guided in their action towards achieving this ideal by their obligations

under the European Convention on Human Rights whose 60th anniversary we celebrate this year," he added.

New Council of Europe guidelines on child-friendly justice (17.11.2010)

The Committee of Ministers of the Council of Europe has adopted new guidelines on child-friendly justice which give European governments guidance to enhance children's access to and treatment in justice, in any sphere – civil, administrative or criminal.

Ministers' Deputies meeting: efficiency in judicial systems, child-friendly justice

At their 17 November meeting, the Ministers' Deputies of the Council of Europe adopted a recommendation to member States on judges' independence, efficiency and responsibilities. It updates a 1994 recommendation on the same subject, taking into account significant changes that have occurred since then. In particular, it places emphasis on efficiency in judicial systems.

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, acting on behalf of the Assembly on 12 November 2010)

Recommendation 1941: Roma asylum seekers in Europe

Resolution 1768: Roma asylum seekers in Europe

Recommendation 1942: A balanced approach to the rescuing of archaeological finds from development projects

Recommendation 1943: Strengthening measures to protect and revive highly endangered languages

Resolution 1769: Strengthening measures to protect and revive highly endangered languages

Recommendation 1944: The European Charter for Regional or Minority Languages

Resolution 1770: The European Charter for Regional or Minority Languages

Recommendation 1945: An internationally recognised status of election observers

Resolution 1771: An internationally recognised status of election observers

Recommendation 1946: Military waste and the environment

Resolution 1775: Military waste and the environment

Recommendation 1947: Noise and light pollution

Resolution 1776: Noise and light pollution

Recommendation 1948: Promoting volunteering in Europe

Resolution 1778: Promoting volunteering in Europe

Recommendation 1949: Promoting the most favourable gender equality laws in Europe

Resolution 1780: Promoting the most favourable gender equality laws in Europe

Resolution 1767: The demographic future of Europe and migration

Resolution 1772: Re-engaging in parliamentary dialogue with the United States

Resolution 1773: Promoting parliamentary diplomacy

Resolution 1774: Enhancing Europe's energy security through greater use of liquefied natural gas

Resolution 1777: Promoting a prevention policy on online gambling addiction

Resolution 1779: Co-operation between the Council of Europe and the Maghreb countries in the field of social cohesion

Resolution 1781: A minimum of 30% of representatives of the under-represented sex in Assembly national delegations

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

- *Countries*

Azerbaijan's elections, though peaceful with opposition participation, did not mark meaningful progress in democratic development (08.11.2010)

7 November's parliamentary elections in Azerbaijan were characterised by a peaceful atmosphere and all opposition parties participated in the political process, but the conduct of these elections overall was not sufficient to constitute meaningful progress in the democratic development of the country, international observers said in a statement issued on 8 November. The observers noted that the

Central Election Commission overall administered the technical aspects of the electoral process well. But limitations of media freedom and freedom of assembly, and a deficient candidate registration process, further weakened the opposition and made vibrant political discourse almost impossible. This and a restricted competitive environment created an uneven playing field for candidates, making it difficult for voters to make an informed choice. On the positive side, voters had the opportunity to check the centralised voter register and request correction or inclusion, and the CEC conducted a voter education campaign, including in the media. Voting on election day was assessed positively in almost 90 per cent of the polling stations visited. Counting deteriorated, with almost a third of polling stations observed rated bad or very bad, with worrying problems like ballot box stuffing noted in a number of places. "It is never easy to do justice to a country which is developing its democratic institutions, especially in a difficult environment. However, despite all the efforts made, the country needs to do much more to make progress in developing a truly pluralist democracy," said Wolfgang Grossruck, who led the short-term OSCE observer mission and headed the delegation of the OSCE Parliamentary Assembly. "Regrettably, our observation of the overall process shows that the conditions necessary for a meaningful democratic election were not established. We are particularly concerned about restrictions of fundamental freedoms, media bias, the dominance of public life by one party, and serious violations on election day. We stand ready to assist the authorities in moving Azerbaijan's elections towards meeting OSCE commitments," said Ambassador Audrey Glover, Head of the OSCE/ODIHR long-term election observation mission.

Chairman of PACE Sub-Committee on the Media condemned violent attacks on two Russian journalists (15.11.2010)

Markku Laukkanen, Chairman of PACE Sub-Committee on the Media, strongly condemned the recent violent attacks on two Russian journalists, Oleg Kashin of the newspaper Kommersant and Anatoly Adamchuk of the newspaper Zhukovskie Vesti. "It is an alarming sign that two critical journalists are attacked physically in Russia within one week", said Mr Laukkanen, "and I welcome the declaration by the Russian President, Dimitry Medvedev, that whoever is responsible for this crime will be punished regardless of their position. I really hope that the Russian authorities will seriously investigate these incidents." "Freedom of expression in the media is an essential tool for the people to make informed decisions in a democracy and to hold their elected representatives politically accountable. When journalists are attacked physically for their work, any member State of the Council of Europe must make sure that the perpetrators are investigated and tried by a court of law. This is an obligation under the European Convention on Human Rights. The Russian judiciary still has to shed light on the murders of Paul Klebnikov in 2004, Anna Politkovskaya in 2006 and Natalia Estemirova in 2009 as well as the brutal attack against Mikhail Beketov in 2008, which left him severely injured for life and bound to a wheelchair", said Mr Laukkanen. "It is undermining the rule of law in Russia, if impunity reigns de facto for severe assaults on politically critical journalists."

Marietta de Pourbaix-Lundin new co-rapporteur for the monitoring of Ukraine (16.11.2010)

PACE Monitoring Committee appointed Marietta de Pourbaix-Lundin (Sweden, EPP/CD) as new co-rapporteur for the monitoring of Ukraine. She is replacing Renate Wohlwend (Liechtenstein, EPP/CD), whose term expires in line with the provisions of Resolution 1710 (2010). PACE resolution 1710 (2010)

The countries of the former Yugoslavia show greater willingness to overcome the legacy of the past, according to PACE rapporteur (19.11.2010)

Presenting his memorandum on reconciliation and political dialogue between the countries of the former Yugoslavia*, made public during a meeting of the Political Affairs Committee meeting in Paris on 18 November, PACE rapporteur Pietro Marcenaro (Italy, SOC) pointed out that since the committee had embarked on this report in January 2009 the governments concerned had made many positive steps, indicating a greater willingness to overcome the legacy of the past. According to the rapporteur, major remaining problems include the constitutional deadlock which continues to be an obstacle to Bosnia and Herzegovina's progress towards a fully-fledged democracy, the existence of almost half a million refugees and internally displaced persons, who remain the most visible reminder of the conflict, as well as determining the fate of some 17,000 missing persons. Other issues to be discussed in his report are the investigation and prosecution of war crimes, public discourse concerning the war, history teaching about the war and the proposal of a truth and reconciliation commission, the wider

* This term is used to describe the territory that up until 25 June 1991 was known as the Socialist Federal Republic of Yugoslavia (SFRY)

context of EU integration, inter-parliamentary dialogue and regional integration. After his visits to Serbia and Croatia, and a visit to Bosnia and Herzegovina scheduled for 22-23 November and to Brussels on 29-30 November, Mr Marcenaro will finalise his report, with a view to an Assembly debate at the next PACE plenary session in Strasbourg (24-28 January 2011). It is due to be discussed together with reports on the protection of witnesses as a cornerstone for justice and reconciliation in the Balkans (by Jean-Charles Gardetto, Monaco, EPP/DC) and the obligation of Council of Europe member states to co-operate in the prosecution of war crimes (by Miljenko Doric, Croatia, ALDE). Revised memorandum from Pietro Marcenaro

- *Themes*

More efforts needed to reduce violence at school (08.11.2010)

The PACE Committee on Culture, Science and Education meeting in Paris, called for renewed efforts by European governments to reduce acts of violence in schools throughout Europe. Alarmed by "attacks by pupils with or without weapons, bullying and harassment among pupils, acts of hostility and even aggression by pupils against teachers," the committee unanimously adopted a draft resolution which, as proposed by the rapporteur, Gvozden Srecko Flego (Croatia, SOC), sets out a range of guiding principles covering the relevant legal framework and administrative practices, preventive and supportive measures, awareness-raising and training, the involvement of pupils and their families and monitoring and assessment of the measures proposed. The PACE will vote on the text at its plenary session in January 2011. Report

Combating violence against women: a Council of Europe treaty on its way (11.11.2010)

Experts negotiating a forthcoming Council of Europe treaty to combat violence against women and domestic violence are "four-fifths" of the way through their work and the convention could be ready before the end of Turkey's six-month chairmanship of the Council of Europe, parliamentarians were told on 11 November during a meeting in Antalya. PACE's Sub-committee on violence against women, chaired by Gisela Wurm (Austria, SOC), was meeting ahead of the International Day for the Elimination of Violence against Women (25 November) to take stock of progress since the end of the Council of Europe's campaign against domestic violence against women, which ended two years ago. The Chair of PACE's Equal Opportunities Committee José Mendes Bota (Portugal, EPP/CD), who represented PACE at the drafting negotiations, said the convention would have a strong monitoring mechanism including, for the first time, a parliamentary monitoring procedure. But he outlined concerns about the way migrant women would be treated – many of whom might not speak up about their mistreatment for fear of being deported – and said the possibility for states to make broad reservations could result in an "à la carte" convention. The convention would criminalise many forms of violence against women, including forced marriages, so-called "honour crimes" and female genital mutilation. The provisions on domestic violence could also apply to men or children, Council of Europe Deputy Secretary General Maud de Boer-Buquicchio explained. She said the chances were good that the convention could be opened for signature before the end of Turkey's six-month chairmanship. The sub-committee was also briefed on Turkey's efforts to combat violence against women in the last five years. Sengül Altan-Arslan from Turkey's Directorate General for the Status of Women outlined changes to Turkey's constitution enshrining the obligation to ensure equality, an overhaul of the country's laws and the Prime Minister's initiative to tackle so-called "honour" crimes. She noted that according to recent government research, 39 per cent of all women in Turkey say they have experienced domestic violence at least once. The head of Turkey's PACE delegation Erol Aslan Cebeci (Turkey, EPP/CD) said his country had made "major improvements" on this issue in the last five or six years, of which he was proud. Agenda of the meeting (PDF)

Planned returns of Roma to Kosovo* should be suspended, says PACE (12.11.2010)

PACE has called on European governments to suspend planned returns of Roma to Kosovo* "until they can be shown to be safe and sustainable". Approving a report on "Roma asylum seekers in Europe" by Milorad Pupovac (Croatia, SOC) today in Antalya, PACE's Standing Committee – which acts in the name of the Assembly – said these Roma faced "an unsustainable social situation with little chance of reintegration upon return, as well as serious threats to their personal security".

Around 100,000 Roma who fled the conflict in Kosovo have been living in other parts of Europe with some form of temporary protection or as "tolerated", but several countries are now preparing to return

* *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*

sizeable numbers, the committee pointed out. As of May 2010, in Germany for example, around 10,000 Roma from Kosovo are facing return, half of them under the age of 18. Kosovo did not have the resources to successfully re-integrate these people, the committee said, adding that up to three-quarters of Roma already forcibly returned to Kosovo had moved on or gone back to the deporting countries. “Enforcing returns is thus not only producing great human suffering, but is also wasting economic resources.” Report

Poverty produces human rights violations (15.11.2010)

There is a vicious circle in which extreme poverty equates with the denial of all human rights. Human rights are interdependent and interconnected. The loss of one leads to the loss of others. Conversely access to one human right offers access to others. Examples of this interdependence are a precarious financial situation, bad housing, poor education, job insecurity and almost non-existent social and family support networks. Poverty leads to social exclusion and vice versa. These are some of the conclusions of a hearing on "combating poverty", organised by the Social Affairs Committee in Paris on 15 November. It should culminate in a report by Luca Volontè (Italy, EPP/CD) to the next session of the PACE. According to those taking part, if we really want to eliminate extreme poverty, we need to be guided by the concept of human rights and universal respect for human dignity. It is no longer enough to rely on statistics and charity. Our approach now must be to focus on rights and access to these rights without discrimination. In line with this principle, they sounded a warning about the EU's goal of reducing by 20 million the number of poor in Europe by 2020. This was tantamount to abandoning millions of persons. Such an objective could reinforce exclusion by concealing inequalities and encouraging member States to concentrate on those who were most easily reached and best equipped to escape poverty, at the expense of the poorest and most marginalised members of the community. Governments should really set objectives such as ensuring that within ten years no one lacked decent housing and that within five years not a single young person left the education system without proper schooling. **Participants stressed the importance of a system in which the victims of human rights violations could hold those responsible to account for their actions, or their unwillingness to act, not least through the machinery of the European Court of Human Rights**. “Clearly, financial poverty is one of the most dramatic aspects of the problem. However my report will also reflect other aspects of poverty, such as capacity for inclusion in society – through the strengthening of family ties and more general participation in public life – and a whole raft of measures already available to prevent it from arising in the first place”, concluded the rapporteur, Luca Volontè. PACE hearing on ‘Combating poverty’

Surveillance, interception, hearing of anonymous witnesses (17.11.2010)

“The case-law of the European Court of Human Rights shows that there sometimes exists a temptation to respond to terrorism with a strong-armed approach that gives public security precedence over the respect for human rights,” Lord John E. Tomlinson (United Kingdom, SOC), rapporteur on human rights and the fight against terrorism, said at the opening of a hearing on the subject organised by the Legal Affairs Committee in Paris on 17 November. The purpose of his report, he said, was to examine the compatibility of counter-terrorism legislation and its application with Council of Europe standards in the field of human rights. Participants in the hearing discussed in which way member states may encroach upon the human rights of suspected terrorists or even of journalists or members of the public at large, who suffer restrictions of different kinds in the name of the fight against terrorism. The rapporteur warned there was a danger that temporary measures, provided for under the European Convention on Human Rights, which allow restrictions or suspensions of specific rigths become permanent even when the circumstances have changed. “It is extremely difficult to reinstate human rights protections once they have been abolished or reduced in scope,” Lord Tomlinson concluded. Participants tried to determine to if, and to what extent, states can lawfully curtail and prevent terrorism via measures such as surveillance, interception, hearing of anonymous witnesses, the installation and use of closed-circuit television and the monitoring of monetary movements as well as the use of information obtained by secret services as legally admissible evidence, or the resort to data from, for example, ID cards and SWIFT operations.

PACE Legal Affairs Committee calls for swift action in nine countries (17.11.2010)

Unanimously adopting its 7th report on the implementation of judgments of the European Court of Human Rights on 17 November during a meeting in Paris, PACE Legal Affairs **Committee has urged nine countries where major structural problems have led to many repeat violations – Bulgaria, Greece, Italy, Moldova, Poland, Romania, the Russian Federation, Turkey and Ukraine – to take swift action**. “Our Assembly, as well as national parliaments, must now play a much more pro-active

role in helping the Committee of Ministers and member States to supervise the execution of the Strasbourg Court's judgments," said the rapporteur Christos Pourgourides (Cyprus, EPP/CD). "If this is not done, the key role of the Convention and its supervisory mechanisms in guaranteeing the effective protection of human rights in Europe will be put in jeopardy." According to the committee, **the main problems continue to be the excessive length of judicial proceedings (endemic notably in Italy)**, **chronic non-enforcement of domestic judicial decisions (widespread, in particular, in Russia and Ukraine)**, **deaths and ill-treatment by law enforcement officials and lack of effective investigations into them (particularly apparent in Russia and Moldova) and unlawful or over-long detention on remand (a problem notably in Moldova, Poland, Russia and Ukraine)**.

The committee considers that these problems are a matter for concern, seriously undermining the rule of law in the states concerned, and makes a series of recommendations to each state concerned. The committee also urges those national parliaments which have not yet done so to introduce specific mechanisms and procedures for effective parliamentary oversight of the implementation of Court judgments. The report will be discussed during the forthcoming winter Parliamentary Assembly Session (24-28 January 2011). Report (PDF)

The impact of the Lisbon Treaty on PACE and the European Parliament (18.11.2010)

Co-operation between PACE and the European Parliament should focus on how to create a common European space in terms of human rights, democracy and the rule of law, avoiding the creation of new borders within Europe, participants concluded at a hearing on the impact of the Lisbon Treaty on PACE and the European Parliament, organised by the PACE Political Affairs Committee in Paris on 18 November. "We therefore have to ensure the coherence of standards between the Council of Europe and EU law, and avoid duplication and lowering of standards," said Kerstin Lundgren (Sweden, ALDE), rapporteur on the issue. "With EU accession to the European Convention on Human Rights, the EU will be subjecting itself to external control in terms of human rights. This will enhance the credibility of the EU's commitment to fundamental rights," Heidi Hautala, Chair of the Sub-Committee on Human Rights of the European Parliament, added. Participants called for closer institutional co-operation in order to avoid unnecessary duplication, waste of funds and confusion about respective roles through increased dialogue, transparency and information sharing. Information note

PACE Committee calls for visible progress in the conduct of Presidential elections in Belarus (19.11.2010)

During an exchange of views with representatives from Belarus, organised by the Political Affairs Committee in Paris on 18 November, parliamentarians called for visible progress in the conduct of the forthcoming Presidential elections on 19 December 2010, and in particular with regard to the freedom of the media. They took note with interest of information according to which positive developments with regard to the abolition of the death penalty might be expected in the near future. PACE's rapporteur on the situation in Belarus, Sinikka Hurskainen (Finland, SOC), has reiterated the Assembly's readiness to engage in a progressive dialogue with the Belarusian authorities in response to future positive developments, but underscored that "there cannot be progress on dialogue without progress towards Council of Europe standards proved by consistent actions". She said she would continue to follow closely developments in the run-up to the elections and would submit a comprehensive report in spring 2011. In an information note on her visit to Minsk in August 2010, made public on the occasion of the exchange of views, Mrs Hurskainen reports on recent initiatives relating to the possible abolition of capital punishment in the country and preparations for the forthcoming Presidential elections as well as the question of disappeared persons, allegations of political prisoners and restrictions on media freedoms and freedom of association. Information note

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

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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