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

("Peer-to-Peer II Project")

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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

We invite you to read the INFORMATION NOTE No. 135 (provisional version) on the Court's case-law. This information note, compiled by the Registry's Case-Law Information and Publications Division, contains summaries of cases which the Jurisconsult, the Section Registrars and the Head of the aforementioned Division examined in November 2010 and sorted out as being of particular interest.

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**

A, B, and C v. Ireland (link to the judgment in French) (no. 25579/05) (Importance 1) – 16 December 2010 – No violation of Article 8 (first and second applicants) – Fair balance between the right of the first and second applicants to respect for their private lives and the rights invoked on behalf of the unborn – Violation of Article 8 (third applicant) – Domestic authorities' failure to comply with their positive obligation to secure to the third applicant effective respect for her private life by reason of the absence of any implementing legislative or regulatory regime providing an accessible and effective procedure by which the third applicant could have established whether she qualified for a lawful abortion in Ireland

All three applicants travelled to the UK in 2005 to have an abortion after becoming pregnant unintentionally.

The first and the second applicant complained under Article 8 about the restrictions on lawful abortion in Ireland which meant that they could not obtain an abortion for health or well-being reasons and the third applicant complained under that Article about the absence in Ireland of laws implementing the Constitutional provision acknowledging the right to life of the future mother. The applicants claimed that the fact that women – provided they had sufficient resources – could travel outside Ireland to have an abortion defeated the aim of the restriction, and the fact that abortion was available in Ireland only in very limited circumstances was disproportionate and excessive.

The Court observed that all three applicants had travelled to England for abortion: the first two for reasons of health and well-being, and the third applicant given her fear that her pregnancy posed a risk to her life. The Court found that, apart from the psychological impact on the applicants of going abroad to do something which was a criminal offence in their own country, the criminal sanctions in Ireland applicable to abortion had had no direct relevance to the complaints of the first and second applicant. The Court held that, while Article 8 could not be interpreted as conferring a right to abortion, its prohibition in Ireland came within the scope of the applicants' right to respect for their physical and psychological integrity, hence within their private lives, and thus under Article 8.

First and second applicant

The Court found that the prohibition on the termination of the first and second applicants' pregnancies had represented an interference with their right to respect for their private lives. That interference had been in accordance with the law and had pursued the legitimate aim of protecting public morals as understood in Ireland. The Court observed that a consensus existed among the majority of the members States of the Council of Europe allowing broader access to abortion than under Irish law: abortion was available on request in some 30 European countries; it was available for health-related reasons in approximately 40 States; and it was available for well-being reasons in about 35 of those. Only three States had more restrictive access to abortion than Ireland, in which States abortion was prohibited regardless of the risk to a woman's life. Ireland was the only Council of Europe member State which allowed abortion only when the pregnancy posed a risk to the life of the expectant mother. However, the Court found that the undisputed consensus among the Council of Europe member States was not sufficient to narrow decisively the broad margin of appreciation the State enjoyed in that context. The Court had accepted in a prior case - *Vo v. France* - that the question of when life began came within the States' margin of appreciation. As there was no European consensus on the scientific and legal definition of the beginning of life and as the right of the foetus and mother were inextricably linked, a State's margin of appreciation concerning the question of when life began implied a similar margin of appreciation as regards the balancing of the conflicting interests of the foetus and the mother. Having regard to the first and second applicants' right to travel abroad to obtain an abortion and to appropriate pre- and post-abortion medical care in Ireland, as well as to the fact that the impugned prohibition in Ireland on abortion for health or well-being reasons was based on the profound moral values of the Irish people in respect of the right to life of the unborn, the Court concluded that, the existing prohibition on abortion in Ireland struck a fair balance between the right of the first and second applicants to respect of their private lives and the rights invoked on behalf of the unborn. There had been no violation of Article 8 as regards the first and the second applicants.

Third applicant

The Court noted that the third applicant had a rare form of cancer and she feared it might relapse as a result of her being pregnant. The only non-judicial means for determining such a risk on which the Government relied, the ordinary medical consultation between a woman and her doctor, was ineffective. Neither did the Court consider recourse by the third applicant to the courts to be effective. It was likewise inappropriate to ask women to pursue such complex constitutional proceedings when their right to have an abortion if pregnancy posed a threat to their life was not disputed. In any event, it was unclear how the courts were to enforce any mandatory order requiring doctors to carry out an abortion, given the lack of clear information from the Government to the Court as regards lawful abortions currently carried out in Ireland. The Court concluded that neither the medical consultation nor litigation options constituted effective and accessible procedures which allowed the third applicant to establish her right to a lawful abortion in Ireland. There was no explanation why the existing constitutional right had not been implemented to date. The Court concluded that Ireland had breached the third applicant's right to respect for her private life given the failure to implement the existing Constitutional right to a lawful abortion in Ireland, in violation of Article 8. Judge Lopez Guerra, joined by Judge Casadevall, and Judge Finlay Geoghegan expressed concurring opinions. Judges Rozakis, Tulkens, Fura, Hirvela, Malinverni and Poalelungi expressed a joint partly dissenting opinion. Under Article 41 (just satisfaction) of the Convention, the Court held that Ireland was to pay the third applicant 15,000 euros (EUR) in respect of non-pecuniary damage.

- **Right to life**

Mižigárová v. Slovakia (no. 74832/01) (Importance 1) – 14 December 2010 – Two violations of Article 2 (substantive and procedural) – (i) Death of the applicant's husband during interrogation in police custody – (ii) Lack of an effective investigation – No violation of Article 14 in conjunction with Article 2 – The authorities didn't have at their disposal sufficient information in order to bring into play their obligation to investigate possible racist motives on the part of the officers

In August 1999 police officers apprehended the applicant's husband and another person on suspicion of having stolen bicycles. At the time of his arrest, the applicant's husband was twenty-one years old and in good health. Following their arrest, the two suspects were driven to the District Police Department in Poprad. After four policemen questioned him, the applicant's husband was taken to another room for further interrogation by an off-duty officer with whom he had had previous encounters. At some point during the interrogation, the applicant's husband was shot in the abdomen. He died after four days in hospital as a result of the bullet wound sustained in the police station during his interrogation.

The applicant complained that the death of her husband in police custody and the subsequent failure of the Slovakian authorities to undertake an effective investigation into the circumstances surrounding his death amounted to a violation of Article 2. She also alleged, among other things, a violation of Article 14 in conjunction with Article 2, given that her husband was a Romani man, which, coupled with the legacy of widespread abuse of Roma in police custody, created an obligation on the State to investigate a possible racist motive behind his death, which the State had failed to meet.

For the Court, the facts of the present case disclose no justification whatsoever for allowing the police officer to remain in possession of the applicant's husband's firearm during his interrogation. Secondly, at the time of the applicant's husband's death there were regulations in force which required police officers to secure their service weapons in order to avoid any "undesired consequences". The domestic courts held that the police officer's failure properly to secure his service weapon amounted to negligence which resulted in the death of the applicant's husband. Consequently, the Court finds that even if the applicant's husband committed suicide in the manner described by the Government and the investigative authorities, the authorities were in violation of their obligation to take reasonable measures to protect his health and well-being while he was in police custody. There had accordingly been a violation of Article 2 of the Convention under its substantive limb. In light of the serious deficiencies submitted to it, the Court concluded that no meaningful investigation was conducted at the domestic level capable of establishing the true facts surrounding the death of the applicant's husband, in violation of the procedural limb of Article 2 of the Convention. Finally the Court did not consider that the authorities had before them information that was sufficient to bring into play their obligation to investigate possible racist motives on the part of the officers. It follows that there had been no violation of Article 14 of the Convention taken in conjunction with Article 2 in that respect.

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

Milanović v. Serbia (no. 44614/07) (Importance 2) – 14 December 2010 – Violation of Article 3 – Violation of Article 3 in conjunction with Article 14 – Domestic authorities' failure to take all reasonable measures to conduct an adequate investigation and to take effective steps in order to prevent the repeated ill-treatment of the applicant, targeted as a leading member of the Hare Krishna community

Since 1984, the applicant has been a leading member of the Hare Krishna Hindu community in Serbia. In 2000, he began receiving telephone threats and he informed the police of his impression that they came from members of a local branch of a far-right organisation called Obraz. He was repeatedly physically assaulted a number of times for several years by unidentified men who cut or stabbed him with a knife, starting in 2001, each time in the evening or at night time. On each occasion, the applicant or the hospital where he was provided with urgent care reported the incident to the police. The police failed to identify the perpetrators. Two months after an attack in 2005, the police filed a criminal complaint against unknown perpetrators. Having repeatedly requested an update on the status of the criminal complaints, the applicant was informed by the public prosecutor's office that the police had failed to provide it with any information in this respect. In 2008, the applicant further informed the judge in a preliminary investigation that he believed to have seen one of his attackers wearing a shirt with a reference to another far-right organisation. In September 2009, the Chief Public Prosecutor petitioned the Constitutional Court to ban the suspected organisations, in particular because of their incitement to racial and religious hatred throughout Serbia. In its records, the police noted on a number of occasions that the applicant was a member of a "religious sect" and had a "strange appearance". In a report of April 2010, the police further noted that most of the attacks had taken place around a major orthodox religious holiday and that the applicant had subsequently publicised these incidents in the media and thus "emphasised" his religious affiliation.

The applicant complained about the authorities' failure to prevent the repeated attacks on him and to investigate them properly.

The Court had jurisdiction to examine the complaints only in so far as they concerned events as of 3 March 2004, when Serbia ratified the Convention. For reasons of context and in order to examine the situation complained of as a whole, it decided to take into account all relevant events prior to that date.

Article 3

The Court considered that the injuries suffered by the applicant, consisting mostly of numerous cuts, combined with his feelings of fear and helplessness, were sufficiently serious to amount to ill-treatment within the meaning of Article 3. Many years after the attacks, the perpetrators had not been identified and brought to justice and the applicant appeared not to have been regularly updated of the course of the investigation or given an opportunity to possibly identify his attackers from among a number of persons questioned as witnesses and/or suspects by the police. There had been shortcomings in the cooperation between the police and the public prosecutor and the investigation seemed to have focused on Jagodina despite the fact that the suspected far-right organisations were known for operating throughout the country. The applicant's statement that one of his attackers, whom he identified in the street, may have been a member of another particular organisation did not seem to have been followed up at all. As from the second attack, it must have been clear to the police that the applicant, being a member of a vulnerable religious minority, was systematically targeted and that future attacks were likely to follow. However, nothing had been done to prevent such attacks. While the authorities had taken many investigative steps and had encountered significant difficulties, such as the apparent lack of eyewitnesses, the Court considered that they had not taken all reasonable measures to conduct an adequate investigation and they had failed to take effective steps in order to prevent the applicant's repeated ill-treatment. There had thus been a violation of Article 3.

Article 14 taken together with Article 3

The Court considered that treating religiously motivated violence on an equal footing with cases that had no such overtones meant turning a blind eye to the specific nature of acts that are particularly destructive of fundamental rights. It was unacceptable that, being aware that the applicant's attackers likely belonged to one or several far-right organisations, the authorities had allowed the investigation to last for many years without taking adequate action to identify or prosecute the perpetrators. The statements made by the police in their reports, referring to the applicant's beliefs, his appearance and the fact that he had publicised the incidents in the media, implied that they had doubts as to whether he was a genuine victim in respect of his religion. As a consequence, although the authorities had explored several leads proposed by the applicant concerning the motivation of his attackers these steps amounted to little more than a pro forma investigation. The Court therefore held that there had been a violation of Article 14 taken together with Article 3. Judge Raimondi expressed a partly dissenting opinion.

Article 41

Under Article 41 (just satisfaction), the Court held that Serbia was to pay the applicant 10,000 euros (EUR) in respect of non-pecuniary damage and EUR 1,200 in respect of costs and expenses.

Kozhokar v. Russia (no. 33099/08) (Importance 2) – 16 December 2010 – Two violations of Article 3 – (i) Poor conditions of detention in remand centre no. IZ-71/1 in Tula – (ii) Lack of adequate medical care in detention – Violation of Article 13 – Lack of an effective remedy

The applicant is currently serving a prison sentence in correctional colony no. 7 in the Tula Region.

He complained of having been remanded in overcrowded cells during criminal proceedings brought against him for drug trafficking, and that he had not had adequate remedies at his disposal to complain before Russian courts about the inhuman conditions of his detention. HIV-positive, he also complained of the allegedly inadequate medical assistance afforded to him during his detention in remand.

The Court noted that, the applicant was obliged to live, sleep and use the toilet in the same cell with so many other inmates was itself sufficient to cause distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, and arouse in him feelings of fear, anguish and inferiority, capable of humiliating and debasing him. The Court concluded that by keeping the applicant in overcrowded cells, the domestic authorities subjected him to inhuman and degrading treatment. There had therefore been a violation of Article 3 on account of the conditions of the applicant's detention in remand centre no. IZ-71/1 in Tula. The Court further observed that the Government did not provide sufficient evidence to enable the Court to conclude that the applicant has received comprehensive, effective and regular medical assistance in respect of his hepatitis C and HIV diseases during his detention in remand centre no. IZ-71/1 in Tula and in correctional colony no. 7 in the Tula Region. It does not appear from the evidence available that the applicant's condition has seriously deteriorated or that he was exposed to prolonged severe pain due to lack of adequate medical assistance. In such circumstances, the Court found that the suffering he may have endured did not amount to inhuman treatment. However, the Court considers that the lack of adequate medical treatment posed very serious risks to the applicant's health and must have caused him considerable

mental suffering diminishing his human dignity, which amounted to degrading treatment within the meaning of Article 3. Accordingly, there had been a violation of Article 3 of the Convention on account of the authorities' failure to comply with their responsibility to ensure adequate medical assistance to the applicant during his detention in the remand centre and in the correctional colony. The Court noted that the Government did not point to any effective domestic remedy by which the applicant could have obtained appropriate redress for the allegedly inhuman and degrading conditions of his detention. Accordingly, the Court concluded that there had been a violation of Article 13 of the Convention on account of the lack of an effective and accessible remedy under domestic law for the applicant to complain about the conditions of his detention in remand centre no. IZ-71/1. The Court awarded the applicant EUR 27,000 in respect of non-pecuniary damage. The applicant did not claim costs and expenses and there was no call to make an award under this head.

Sylenok and Tekhnoservis-Plus v. Ukraine (no. 20988/02) (Importance 3) – 9 December 2010 – Violations of Article 3 (first applicant) (substantive and procedural) – (i) Ill-treatment in police custody – (ii) Lack of an effective investigation – Violation of Article 6 § 1 (the applicant company) – Violation of Article 1 of Protocol No. 1 (the applicant company) –Violation of Article 13 (the applicant company) – Non-enforcement of a final judgment given in the applicant company's favour

The first applicant alleged that he had been beaten by the police during his arrest and subsequent detention at a police station in January 2001 and that, despite medical evidence of his injuries (including broken ribs and concussion), the authorities had failed to carry out an independent and effective investigation. The applicant company complained about the non-enforcement of a judgment given in its favour in June 2004.

The Court noted that the parties did not disagree on the fact that the police applied force against the applicant during his arrest in January 2001. It was not suggested at any point that prior to his arrest the applicant had demonstrated any violent behaviour that could have resulted in injuries. Despite the use of force against the applicant by the police, no medical examination was conducted upon his arrival at the police station. It was also observed that no plausible alternative version as to the origin of the applicant's injuries was advanced by the domestic authorities at any stage. Therefore, it could be assumed that the injuries sustained by the applicant were caused by the police. The applicant claimed that he had been beaten both during the arrest and later at the police station. The Government did not comment on these allegations, although the domestic authorities denied any ill-treatment of the applicant after his arrest. Even assuming that all of the applicant's injuries were caused during his arrest, the Court noted that the domestic authorities failed to establish the exact circumstances in which the applicant had received what was described in medical records as "numerous bruises resulting from application of force 45 to 50 times, a broken rib, chest trauma, pneumothorax and brain concussion" while in the hands of the police. Given the burden on the State to provide a plausible explanation for injuries sustained by a person under control of the police, the Court concluded that the Government have not satisfactorily established that the use of force against the applicant was lawful and absolutely necessary and that the applicant's injuries were wholly caused otherwise than by ill-treatment while in police custody, in violation of Article 3 under its substantive limb. In the light of the serious deficiencies submitted to it, the Court further considered that the domestic authorities did not fulfill their obligation to investigate the applicant's complaints of ill-treatment. Accordingly, there had also been a violation of Article 3 of the Convention under its procedural limb.

The Court further observed that the judgment given in the applicant company's favour remained unenforced. The Court reiterated that it is inappropriate to require an individual who has obtained a judgment against the State at the end of legal proceedings to then bring enforcement proceedings to obtain satisfaction. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising similar issues to those in the present case (see *Romashov v. Ukraine*). The Court considered that the Government had not put forward any argument capable of persuading it to reach a different conclusion in the present case. There had accordingly been a violation of Article 6 § 1. The Court reiterated also its case-law that impossibility for an applicant to obtain enforcement of a judgment in his or her favour constitutes an interference with the right to the peaceful enjoyment of possessions, as set out in Article 1 of Protocol No. 1 (see *Burdov v. Russia*). The Court found no ground to depart from its case-law in the present case. There had, accordingly, been a violation of Article 1 of Protocol No. 1. The Court concluded that the applicant company did not have an effective domestic remedy, as required by Article 13 of the Convention, whereby it could have obtained a ruling upholding its right to have its claims finally settled within a reasonable time, as guaranteed by Article 6 § 1 of the Convention. Accordingly, there had been a breach of this provision.

- **Right to liberty and security**

Maradverdiyev v. Azerbaijan (no 16966/06) (Importance 2) – 9 December 2010 – Violation of Article 5 § 3 – Unjustified continued pre-trial detention – Violation of Article 6 § 2 – Statements made by law enforcement officials violated the applicant's right to presumption of innocence

The applicant worked as the Head of the Administrative Department of the Office of the President of the Republic of Azerbaijan before the events described below. On 20 October 2005, he and the Minister of National Security agreed to meet to discuss the case of the attempted but failed *coup d'état*, allegedly planned by a number of incumbent and former high-ranking officials to be carried out immediately after the parliamentary elections of 6 November 2005. The next day the applicant arrived at the Ministry's building (MNS) and was questioned as a witness in relation to the suspected *coup d'etat*. He was detained as a suspect on the basis of an investigator's order. On 24 October 2005, he was charged with the attempted organisation of mass disorder and usurpation of State power by force. A judge placed him in pre-trial detention for three months. A joint statement was published on 26 October 2005 issued by the Prosecutor General's Office and the Ministries of Internal Affairs and National Security, informing people of the arrest and indictment of several high-placed officials, including the applicant. The statement asserted that it had been established that the applicant conspired to forcefully overturn the Government and usurp State power. The national courts extended twice his detention awaiting trial. During the trial proceedings, the court further extended the applicant's detention. In September 2006, the applicant was charged with new criminal offences being accused of embezzlement of public funds, abuse of official power, bribery and forgery of official documents. In January 2008, the Supreme Court found him guilty of those offences and sentenced him to a suspended five-year term in prison, following which he was released from prison.

The applicant complained about his pre-trial detention and about the breach of his presumption of innocence as a result of the joint statement made by the law enforcement authorities.

Article 5 § 3 (length of pre-trial detention)

The Court recalled that the presumption established in its case law was in favour of the suspect's release as soon as their continued pre-trial detention was no longer justified. The applicant had spent in pre-trial detention one year and nine days in total. The Court then observed that the judicial decisions extending his detention had used the same standardised formula listing grounds such as the gravity of the offence and potential punishment, and the risk of absconding, in order to justify his prolonged detention. However, the judges' decisions had failed to mention relevant case-specific facts and to monitor the situation so as to ascertain whether, with the passage of time, the initial grounds used by them to justify detention had remained valid. Consequently, the applicant's continued detention had not been justified, in violation of Article 5 § 3.

Article 6 § 2

The Court recalled that the Convention prohibited not only prejudicial statements by the courts examining criminal cases, but also statements made by any public official, which might encourage the public to believe the suspect guilty and prejudge the assessment of facts by the judiciary. The Court then noted that, while the joint statement had been made by the Azerbaijani law enforcement authorities with the purpose of informing the general public about the ongoing criminal investigation, which had been of public interest, the wording they had used should have been more cautiously selected. The Court concluded that the remarks in the authorities' statement, having been made without any reservation, had disregarded the presumption of innocence to which the applicant had been entitled at the time given that the criminal investigation in the case against him had only started, in violation of Article 6 § 2.

Article 41

Given that Mr Muradverdiyev had not submitted a request for just satisfaction, the Court did not award him any sum in that respect.

- **Right to a fair trial / Excessive length of proceedings**

Poyraz v. Turkey (no. 15966/06) (Importance 2) – 7 December 2010 – Violation of Article 6 § 1 – Excessive length of civil proceedings – No violation of Article 10 – The authorities' interference with the applicant's freedom of expression had been "necessary in a democratic society"

The applicant was responsible for conducting an inquiry into Judge Y.K.D., who was an adviser to the Minister and was in charge of the judges' lodgings in Ankara at the relevant time, further to allegations that, in his professional activities the judge gave preferential treatment to people sharing his religious beliefs and political opinions. In the report Y.K.D.'s professional conduct was severely criticised through witness accounts. In 1997, on the basis of the report, the Ministry of Justice sought to have

disciplinary proceedings instituted against Y.K.D., but no such action was taken since the Court of Cassation held that the Ministry was not authorised to pursue the inquiry. The report was leaked to the press and received widespread coverage on all television channels. The applicant issued a written statement to the press in response to articles attacking him in the media by accusing him of a political conspiracy against Y.K.D, observing that he had not named the harassment victims since to do so might have "resulted in deaths". Y.K.D. brought a civil action against the applicant, alleging "personal fault" on his part in conducting an inquiry motivated by personal hostility and resentment. In a decision of March 2002 it was found that the Ministry of Justice was not authorised to bring proceedings against Y.K.D. following his appointment to the Court of Cassation and that the report was therefore null and void. The court noted that in his statement to the press the applicant had disclosed confidential information and added his own comments on the matter. The applicant was ordered to pay damages amounting to 25 billion Turkish liras (approximately 15,000 euros). His appeal to the Court of Cassation was dismissed.

The applicant complained that the length of the civil proceedings against him had been excessive and that the judgment against him on the basis of both the report, drawn up in accordance with the regulations and in his capacity as an inspector, and his statement to the press, issued in his capacity as an official of the Ministry of Justice, had constituted unjustified and disproportionate interference with his right to freedom of expression.

Article 6 § 1

The Court noted that the civil proceedings against the applicant had lasted approximately seven years and seven months, involving five rounds of proceedings at two levels of jurisdiction. The Court had previously found violations of Article 6 § 1 in many similar cases and no evidence had been produced by the Turkish Government to lead the Court to reach a different conclusion in this case. The Court therefore held that there had been a violation of Article 6 § 1.

Article 10

The Court reiterated that the protection afforded by Article 10 extended to the professional sphere in general and civil servants in particular. Although it was legitimate for a State to impose a duty of discretion on civil servants, they were nevertheless individuals qualifying for protection under Article 10. The authorities' interference with the applicant's freedom of expression had been prescribed by law and pursued the legitimate aim of protecting the reputation or rights of others. The Court noted that the judgment had been given against the applicant in his personal and not his professional capacity. Although the general tone of his statements to the press had been neutral, they had nevertheless amounted to tacit agreement with the contents of the information disclosed. The applicant had made his own subjective comment on top of that information, namely that disclosing the names of the harassment victims might "result in deaths". Accordingly, he had not distanced himself from the report's contents to avoid damaging the honour of others and had not displayed the discretion required of a judicial authority. The report in question contained allegations of serious offences on the part of the judge, a member of the Court of Cassation, who needed to enjoy public confidence in order to be able to discharge his duties. People vested with public responsibilities, who were in a privileged position in terms of media access, had to exercise restraint in order not to create situations of inequality when they made public statements concerning ordinary citizens, whose access to the media was more limited. Increased vigilance was required of civil servants in charge of investigations involving information covered by an official secrecy clause designed to ensure the proper administration of justice. The authorities' interference with the applicant's freedom of expression had been "necessary in a democratic society" and the means employed had been proportionate to the aim pursued, namely "the protection of the reputation or rights of others". There had therefore been no violation of Article 10.

Article 41

The applicant had not submitted a claim for just satisfaction within the time allowed.

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

Ternovszky v. Hungary (no. 67545/09) (Importance 1) – 14 December 2010 – Violation of Article 8 – Absence of specific and comprehensive legislation and permanent threat posed to health professionals inclined to assist home births, prevented the applicant from delivering at home

The applicant was pregnant when she lodged her application with the Court. She intended to give birth at her home, rather than in a hospital or a birth home, but alleged she had not been able to do so because health professionals were effectively dissuaded by law from assisting her as they risked being convicted. It appeared that at least one such prosecution had taken place in recent years.

The applicant alleged that the fact that she had not been able to benefit from adequate professional assistance for a home birth in view of the relevant Hungarian legislation – and as opposed to those wishing to give birth in a health institution – had amounted to discrimination in the enjoyment of her right to respect for her private life.

The Court observed that "private life" incorporated aspects of an individual's physical and social identity including the right to respect for both the decisions to become and not to become a parent, hence the right of choosing the circumstances of becoming a parent. Although the applicant had not been prevented as such from giving birth at home, there had been an interference with the exercise of the right to respect for her private life given that legislation arguably dissuaded health professionals from providing the requisite assistance. The relevant legislation might reasonably be seen as contradictory. While the Health Care Act 1997 recognised patients' right to self-determination, including the right to reject certain interventions, a Government decree sanctioned health professionals carrying out activities within their qualifications in a manner incompatible with the law or their licence. The Hungarian Government recognised the necessity of regulating this matter; however no specific decree to that end had been enacted yet. It had moreover not been disputed that, in at least one case, proceedings had been instituted against a health professional for home birth assistance. The Court therefore concluded that the matter of health professionals assisting home births was surrounded by legal uncertainty prone to arbitrariness. Because of the absence of specific and comprehensive legislation and of the permanent threat posed to health professionals inclined to assist them, the applicant was effectively not free to choose to deliver at home. Consequently, there had been a violation of Article 8.

Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that Hungary was to pay the applicant 1,250 euros (EUR) in respect of costs and expenses.

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

Savez Crkava Riječ Života and Others v. Croatia (no. 7798/08) (Importance 1) – 9 December 2010 – Violation of Article 9 in conjunction with Article 14 – The difference in treatment between the applicant churches and those religious communities which had concluded agreements on issues of common interest with the Government and were therefore entitled to provide religious education in public schools and nurseries and to have religious marriages they performed recognised by the State did not have any "objective and reasonable justification"

The applicants are churches of a Reformist denomination, registered as religious communities under Croatian law and which have their seats in Zagreb (the first and second applicant churches) and Tenja (the third applicant church). In June 2004, the applicants submitted a request to the Commission for Relations with Religious Communities in order to conclude an agreement with the Government which would regulate their relations with the State, stating that without it they were unable to provide religious education in public schools and nurseries, to perform religious marriages with the effects of a civil marriage, or to provide pastoral care to their members in medical and social-welfare institutions and in prisons. In January 2005, the Commission informed the churches that they did not satisfy the criteria required from religious communities in order to conclude such an agreement, as set out in an instruction adopted by the Government in December 2004, in particular that that they had not been present in the territory of Croatia on 6 April 1941 and that the number of their adherents did not exceed 6,000. The Commission also pointed out that members of religious communities which had not concluded such an agreement with the Government had a right to receive pastoral care in medical and social-welfare institutions and prisons. The churches lodged a constitutional complaint, alleging a violation of their constitutional right to equality of all religious communities before the law, which was dismissed. The churches also filed petition with the Constitutional Court, asking for a review of the constitutionality and legality of the instruction of December 2004. The petition was declared inadmissible in June 2007.

The applicant churches complained that the authorities' refusal to conclude agreements with them regulating their legal status and their consequent inability to provide the religious services in question discriminated against them. They argued that certain religious communities, which did not satisfy the criteria set forth in the Government's instruction of December 2004, had nevertheless concluded such agreements with the State.

Article 14 in conjunction with Article 9

The Court first found that the applicant churches' complaints concerning pastoral care in medical and social-welfare institutions and prisons were inadmissible. It noted that the relevant provisions of the

Croatian Religious Communities Act guaranteed to all religious communities the right to provide pastoral care to their members in those institutions. According to the Government's explanations, this right applied irrespective of whether the community in question had concluded an agreement with the Government regulating their legal status. The churches had not provided examples to prove that the right to provide pastoral care had been denied to them. As regards the complaints concerning religious education in public schools and nurseries and the official recognition of religious marriages, the Court noted that it was not disputed between the parties that the applicant churches were treated differently from those religious communities which had concluded agreements with the Government. In another case concerning a religious community in a similar situation as the applicant churches, the Court had found that the imposition of criteria which a religious community had to satisfy in order to obtain a status entitling it to a number of privileges called for particular scrutiny, as the State had a duty to remain neutral in exercising its regulatory power in its relations with different religions and denominations. The applicant churches, which already had a legal personality, were refused the agreement with the Government entitling it to provide the religious services at issue while other religious communities, whose number of adherents did not exceed 6,000 either and which thus did not fulfill the numerical criterion set out in the relevant instruction, were granted such agreements. The Court did not see why the Government's argument that those other religious communities satisfied the alternative criterion of being "historical religious communities of the European cultural circle" could not equally be applied to the applicant churches, being of a Reformist denomination. The Court concluded that the criteria were not applied on an equal basis to all religious communities, and that this difference in treatment did not have an objective and reasonable justification, in violation of Article 14 in conjunction with Article 9.

Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that Croatia was to pay to each applicant church 9,000 euros (EUR) in respect of non-pecuniary damage and EUR 4,570 in respect of costs and expenses.

Jakóbski v. Poland (no. 18429/06) (Importance 1) – 7 December 2010 – Violation of Article 9 – Domestic authorities' failure to strike a fair balance between the interests of the prison authorities and those of the applicant, on account of the refusal to provide him with a meat-free diet in prison, contrary to the dietary rules of his faith

The applicant is currently detained in Nowogród Prison. Since 2003 the applicant has been serving an eight-year prison sentence imposed by the Poznan Regional Court following his conviction for rape. He was previously held in Goleniów Prison. On several occasions he requested to be served meat-free meals on account of his religious dietary requirements. He submitted that he was a Buddhist and that he adhered strictly to the Mahayana Buddhist dietary rules which required refraining from eating meat. His requests were refused. For some time he was granted a diet which did not include pork, but other meats and fish. In April 2006, the applicant brought criminal proceedings against the prison employees, complaining that he was receiving meals containing meat products and that he could not refuse them as this would have been regarded as a decision to start a hunger strike and would have entailed disciplinary punishment. The criminal proceedings were discontinued. Subsequently, the Buddhist Mission in Poland sent a letter to the prison authorities in support of the applicant, and he made another unsuccessful request. The applicant again asked the prosecutor to institute criminal proceedings against the prison employees, which were refused. The applicant's appeals against the prosecutor's decisions were dismissed. In the meantime, in reply to further complaints by the applicant, the Regional Prisons Inspector informed him that the only special diet available in the prison was the pork-free diet he had received earlier. The prisons inspector also underlined that the prison authorities were not obliged to provide an individual with special food in order to meet the specific requirements of his or her faith. The applicant's subsequent complaint to the Regional Court concerning the matter was dismissed as well. The court held in particular that in view of the technical conditions and understaffing in prison kitchens it was not possible to provide each prisoner individually with food in conformity with his or her religious dietary requirements. In 2009, the applicant was transferred to the Nowogród prison, where his requests for meat-free meals were also refused.

The applicant complained that the refusal to provide him with a meat-free diet in prison, contrary to the rules of his faith, violated his rights under Article 9.

Article 9

In response to the Government's argument that vegetarianism could not be considered an essential aspect of the practice of the applicant's religion, the Court underlined that the refusal of the prison authorities to provide him with a vegetarian diet did fall within the scope of Article 9. The applicant's decision to adhere to that diet could be regarded as motivated by a religion. In other cases, the Court had already held that observing dietary rules could be considered a direct expression of beliefs. While

the Court was prepared to accept that a decision to make special arrangements for one prisoner within the system could have financial implications for the custodial institution, it had to consider whether the State had struck a fair balance between the different interests involved. The Court noted that the applicant only asked to be granted a diet without meat products; his meals did not have to be prepared, cooked and served in a prescribed manner, nor did he require any special products. The Court was not convinced that the provision of a vegetarian diet would have entailed any disruption to the management of the prison or a decline in the standards of meals served to other prisoners. It further underlined that the Committee of Ministers of the Council of Europe in its recommendation on the European Prison Rules, had advised that prisoners should be provided with food that took into account their religion. The Court concluded that the authorities failed to strike a fair balance between the interests of the prison authorities and those of the applicant, in violation of Article 9.

Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that Poland was to pay Mr Jakóbski 3,000 euros in respect of non-pecuniary damage.

- **Freedom of expression**

Público - Comunicação Social, S.A. and Others v. Portugal (no. 39324/07) (Importance 2) – 7 December 2010 – Violation of Article 10 – The judgment ordering the applicant company to award a disproportionate amount of damages for publishing an article concerning one of Portugal's leading football clubs was not "necessary in a democratic society" and was likely to deter journalists from contributing to public discussion of issues affecting the life of the community

On 22 February 2001 *Público* published an article (which subsequently received widespread coverage through other media outlets), together with a front-page headline, claiming that Sporting Clube de Portugal owed approximately 2.3 million euros (EUR) in social-security contributions. Sporting Clube de Portugal, recognised as a public-interest association, is one of Portugal's leading football clubs. The article in question included a denial by "club representatives" that any such debt existed, together with the position of the Ministry of Finance, which simply noted that the relevant information was confidential under tax law. The following day, *Público* reported that a further formal denial had been issued by the club in relation to the disputed information. Alleging that the relevant article had damaged its honour, Sporting Clube de Portugal sued the applicants for damages. The Lisbon Court of First Instance, in a judgment of April 2005 upheld by the Lisbon Court of Appeal, found against it, holding that the applicants had simply exercised their right to freedom of expression. The courts found it established that João Ramos de Almeida had had access to a Ministry of Finance document substantiating the allegations made in the article, and noted that he also claimed to have received confirmation of the relevant information from an undisclosed source. In a judgment of March 2007 the Supreme Court quashed the Court of Appeal's judgment and ordered the applicants to pay EUR 75,000 to Sporting Clube de Portugal for defamation. A constitutional appeal by the applicants was dismissed by the Constitutional Court. The first applicant paid the sum awarded.

The applicants complained that the judgment ordering them to pay damages to Sporting Clube de Portugal breached their right to freedom of expression.

Article 10

The Court noted that it was not disputed that the award of damages against the applicants had had a legal basis in Portuguese law and had pursued the legitimate aim of protecting the reputation or rights of others. However, the Court had to determine whether the award had also been "necessary in a democratic society". In making its assessment, it first noted that the article in question had clearly been in the public interest (the subject under discussion, namely the possibility that certain taxpayers had failed to discharge their tax liabilities, being a matter on which the press had to be able to impart information). The Court then examined whether the applicants had fulfilled the "duties and responsibilities" inherent in the exercise of freedom of expression, and in particular whether they had acted in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism and it noted that the domestic courts' findings of fact indicated that one of the applicants had had access to a Ministry of Finance document showing that Sporting Clube de Portugal owed money to the Treasury, and that that information had been confirmed by a source which the journalist, exercising a right guaranteed by Article 10, had not disclosed. The Court further observed that before publishing their article, the applicants had obtained the views of representatives of the football club concerned and the tax authorities, and that they had also reported the following day on the formal denial issued by Sporting Clube de Portugal in response to the information in question. In the Court's view, the article published by the applicants had therefore had a sufficient factual basis, and there was nothing to suggest that they had failed to fulfil their "duties and responsibilities" or had not acted in

accordance with the ethics of journalism. The Court further reiterated that the nature and severity of the penalties imposed were also factors to be taken into account when assessing the proportionality of an interference. It considered that the award of EUR 75,000 in damages was disproportionate to the harm caused to the claimant's reputation. Such an award would inevitably be likely to deter journalists from contributing to public discussion of issues affecting the life of the community and was liable to hamper the media in performing their task as a purveyor of information and public watchdog. The Court thus concluded unanimously that the judgment against the applicants had not been "necessary in a democratic society" and had accordingly breached Article 10. Judge Sajó expressed a concurring opinion.

Article 41

By way of just satisfaction, the Court held that Portugal was to reimburse the first applicant the damages and legal costs it had paid, amounting to a total of EUR 83,619.75, in respect of pecuniary damage. Portugal was also ordered to pay the company EUR 6,000 in respect of costs and expenses.

MacKay & BBC Scotland v. the United Kingdom (no. 10734/05) (Importance 3) – 7 December 2010 – Violation of Article 13 in conjunction with Article 10 – Domestic authorities' failure to guarantee the applicants an effective remedy by which they could challenge the order not to publish reports of court proceedings

In the context of a September 2004 trial of two men accused of importing and supplying controlled drugs, the trial judge decided to stay the proceedings. The decision was prompted by a discovery that police officers and prosecutors may have overheard conversations between the accused and his legal representatives, which led the judge to believe that the accused would not have a fair trial. The judge's decision had the effect of bringing the prosecution case to an end so that the accused could not be reindicted. On 28 September 2004, the judge made an interim order preventing the publication of any report of the proceedings. Following an appearance by BBC Scotland before that judge on the following day, he varied the order to the effect that it prohibited publication of any report of the proceedings until the completion of any appeal and any further trial. The varied order was to become final on 1 October 2004 unless there was an application to recall it or vary it further. The Crown appealed against the decision of the trial judge to stay the proceedings. During the appeal hearing on 15 February 2005, the High Court of Justiciary, on an unopposed motion of the Crown, made an order prohibiting the publication of a report of any part of the appeal hearing until completion of the appeal. That order was to become final on 17 February 2005 unless an application was made to recall it or vary it. On the afternoon of that hearing, BBC Scotland sent a fax to the High Court asking to be heard on the order as soon as possible. They were told that that could not happen before 18 February 2005. According to the UK Government, given that no application against the order had been made before 17 February 2005, it became final on that date. The applicants disagree and argue that their fax of 15 February 2005 was meant to be such an application, thus preventing the entry into force of the order. In March and June 2005 respectively, the Appeal Court recalled both orders to prohibit publication of any report related to the trial.

The applicants complained that their right of access to a court had been violated by the refusal to hold a hearing at which they could challenge the High Court order of 15 February 2005.

Article 13 in conjunction with Article 10

The Court noted that the core issue was whether there was a failure to guarantee the applicants an effective remedy by which they could challenge the order not to publish reports of the court proceedings. Thus, the Court decided to examine whether there had been a violation of Article 13 read in conjunction with Article 10. A date had not been fixed for a hearing of the applicants' submissions challenging the order prohibiting reporting of the criminal appeal proceedings prior to those proceedings taking place. Their application to recall the court order had only been examined in June 2005, which was some three months after the appeal proceedings had been decided. By that time, the interest in any reporting the applicants might have wished to undertake would have been seriously undermined. Accordingly, the applicants had not been able to effectively challenge the judicial order. The Court noted also that, while the applicants could have had recourse to the *nobile officium* (a procedure used when there is no other legal remedy under Scots law) after the judicial order had become final on 17 February 2005, they had believed that their fax of 15 February 2005 had in effect served as an application against the order thus preventing it from becoming final. If the applicants had believed that the order had not become final, they were therefore entitled to conclude that the *nobile officium* remedy had not been available to them at the time. In the circumstances, the Court concluded that, even if the remedy could have been effective for the purposes of Article 13 in other cases, it had not been so for the applicants. In the light of the Court's conclusion in respect of the practice of the Scottish court and the *nobile officium*, the Court held that there had been a violation of Article 13 in conjunction with Article 10.

Article 41

As the applicants had not made a request for just satisfaction, the Court did not award them any.

- **Freedom of assembly**

HADEP and Demir v. Turkey (no. 28003/03) (Importance 2) – 14 December 2010 – Violation of Article 11 – The dissolution of a Turkish political opposition party advocating a solution to the Kurdish problem, was not "necessary in a democratic society"

A smaller opposition party, which according to its programme advocated "a democratic solution to the Kurdish problem", HADEP had been subjected to raids of its premises from 1996/97, and some of its members had been attacked or killed. Criminal proceedings were brought against a number of HADEP members, and some of them were convicted of offences under the Prevention of Terrorism Act and the criminal code, in particular of spreading "separatist propaganda" and of lending assistance to the illegal Workers Party of Kurdistan (PKK). In January 1999, the chief prosecutor brought proceedings before the Constitutional Court and demanded that HADEP be dissolved, arguing that it had become a "centre of illegal activities against the integrity of Turkey". In further submissions, the prosecutor maintained that the party had close ties with the PKK. In its decision of March 2003, which became final in July 2003, the Constitutional Court decided to dissolve HADEP, concluding that it had become a centre of illegal activities which included aiding and abetting the PKK. The court banned a number of party members from becoming founders or members of any other political party for five years.

The applicants complained that the dissolution of the HADEP party was in breach of Article 11.

Article 11

The Court had hesitations as to whether the interference could be said to have pursued the legitimate aims of preventing disorder, protecting the rights of others and protecting territorial integrity and thus preserving national security, as argued by the Turkish Government. It observed that the party had been dissolved on the basis of activities and statements of some of its members which, according to the Turkish Constitutional Court, made it a centre of illegal activities. As regards the question whether the conclusion that HADEP was guilty of aiding and abetting the PKK had been based on an acceptable assessment of the relevant facts, the Court noted that the Turkish court's decision had referred to statements made by party members, in which the actions of the Turkish security forces in south-east Turkey in their fight against terrorism were referred to as a "dirty war". In the present case the statements made by HADEP members, did not encourage violence, armed resistance or insurrection and could not in themselves constitute sufficient evidence to equate the party with armed groups carrying out acts of violence. The Turkish court had further referred to the fact that visitors of HADEP premises had been allowed to watch MED TV, a private television channel considered to be the media organ of the PKK. The Court had equally examined this issue in previous judgments and had found that freedom of expression required that a distinction was made between the personal views of a person and information that others wished or might be willing to impart to him or her. No such distinction appeared to have been made by the Turkish court in its decision on HADEP. It had further relied on allegations that some party members had been involved in illegal activities, even though a number of the criminal proceedings against them had been suspended. The Court considered that statements by HADEP members which considered the Kurdish nation as distinct from the Turkish nation had to be read together with the party's aims as set out in its program, namely that it had been established to solve the country's problems in a democratic manner. In view of these considerations, the Court concluded that the interference with the applicants' freedom of association had not been necessary in a democratic society, in violation of Article 11.

Article 41

Under Article 41 (just satisfaction), the Court held that Turkey was to pay Mr Demir 24,000 euros (EUR) in respect of non-pecuniary damage, to be held by him for members and leaders of HADEP, and EUR 2,200 to the applicants jointly, in respect of costs and expenses.

- **Prohibition of discrimination**

O'Donoghue and Others v. the United Kingdom (no. 34848/07) (Importance 1) – 14 December 2010 – Violation of Article 12 – Violation of the applicant couple's right to marry because the second applicant had not been eligible for a certificate of approval and because that right had been breached by the level of the fee charged – Violation of Article 14 in conjunction with Articles 9 and 12 – Difference in treatment under the UK immigration law between the second applicant and a person who was willing and able to marry in the Church of England

The applicants are practising Roman Catholics. The first applicant has both Irish and British nationality. She is married to the second applicant, who is a Nigerian national of Biafran ethnic origin. The second applicant arrived in Northern Ireland in 2004 and claimed asylum in 2006. In November 2009 he was granted "discretionary leave to remain". He is not entitled to work. The first applicant has disabled parents and receives benefits and income support. Under a scheme of 2005, the second applicant had to have either entry clearance expressly granted for the purpose of enabling him to marry or a certificate of approval granted under the Asylum and Immigration Act 2004. In order to obtain such a certificate he had to submit an application with an application fee of 295 British pounds (GBP). Only those foreign nationals with sufficient leave to enter or remain could qualify for a certificate. The scheme did not apply to those couples seeking to marry in accordance with the rites of the Church of England. In April 2006 the first version of the scheme was amended and under the new procedure those who had insufficient leave to enter or remain could be asked to submit further information to satisfy the Home Office that the proposed marriage was genuine. The applicants could not marry under that second version of the scheme as the second applicant, who had no leave to remain in the UK at the time, did not qualify for a certificate of approval. In June 2007 a third version of the scheme extended the possibility of qualifying for a certificate of approval to those who were awaiting the outcome of an application for leave to remain. Although the second applicant qualified for a certificate from then on, he could not afford the application fee. He submitted an application requesting exemption from the fee, explaining that he was not allowed to work and therefore destitute and that his partner survived on a carer's allowance. That application was refused for non-payment of the fee, it being considered that an exception could not be applied in his case. The couple obtained a certificate of approval in 2008 after friends helped them to pay the fee and married in October 2008.

The applicants complained about the Certificate of Approval Scheme, which required people subject to immigration control to pay a fee in order to marry, and about how that scheme had been applied to them. The applicants also complained that they had not been able to marry, unless they did so in an Anglican church.

Article 12

The Court recalled that a contracting State would not necessarily be acting in violation of Article 12 by imposing reasonable conditions on a foreign national's ability to marry. However, the Court had a number of concerns about the scheme operating in the UK. First, the decision whether or not to grant a certificate of approval had not been, and continued not to be, based solely on the genuineness of the proposed marriage. Indeed, under all three versions of the scheme applicants with "sufficient" leave to remain qualified for certificates of approval without any apparent requirement that they submit information concerning the genuineness of the proposed marriage. Secondly, the Court was especially concerned that the first and second versions of the scheme imposed a blanket prohibition on the exercise of the right to marry on all persons in a specified category, regardless of whether the proposed marriage was one of convenience or not. Thirdly, the Court found, like the House of Lords in the domestic judgments on the matter, that a fee fixed at a level which a needy applicant could not afford could impair the essence of the right to marry, especially given that many of those subject to immigration control would either be unable to work in the UK or would fall into the lower income bracket. The system of refunding fees to needy applicants, introduced in July 2010, was not an effective means of removing any breach of Article 12 as the very requirement to pay a fee acted as a powerful disincentive to marriage. In conclusion, the right to marry of the applicant couple, clearly in a longstanding and permanent relationship, had been breached from May 2006 (the date from which they formed the intention marry) to June 2007 (when the third version of the domestic scheme was introduced), because the second applicant had not been eligible for a certificate of approval and, from 19 June 2007 to 8 July 2008, that right had been breached by the level of the fee charged. There had accordingly been a violation of Article 12.

Article 14 in conjunction with Articles 9 and 12

The Court recalled that in order for an issue to arise under Article 14 there had to be a difference in treatment of persons in relevantly similar situations. A person without leave to remain who was willing and able to marry in the Church of England was free to marry unhindered. The second applicant, in a relatively similar position to such a person, was however both unwilling and unable to enter into such a marriage. Consequently he was initially prohibited from marrying at all in the UK and, following amendments to the scheme, was unable to marry due to the sizeable fee required to obtain authorisation. There had therefore been a clear difference in treatment between the second applicant and a person who was willing and able to marry in the Church of England. As the Government had not reasonably or objectively justified such a difference in treatment, the Court held that there had been a violation of Article 14 in conjunction with Article 12. As concerned discrimination on the ground of religion, the Court noted that the Government had conceded that there had been a breach of the second applicant's Convention rights as he had been subject to a regime to which those wishing to

marry in the Church of England would not have been subject. It therefore held that there had also been a violation of Article 14 in conjunction with Article 9.

Article 41 (just satisfaction)

The Court held that the United Kingdom was to pay the applicant 8,500 euros (EUR) in respect of non pecuniary damage, 295 British pounds (GBP) in respect of pecuniary damage and EUR 16,000 for costs and expenses.

- **Disappearance cases in Chechnya**

Tumayeva and Others v. Russia (no. 9960/05) (Importance 3) – 16 December 2010 – Violations of Article 2 (substantive and procedural) – (i) Disappearance and presumed death of the applicants' close relative, Shamkhan Tumayev – (ii) Lack of an effective investigation – Violation of Article 3 – Mental suffering in respect of the applicants – Violation of Article 5 – Unacknowledged detention of the applicants' close relative – Violation of Article 13 in conjunction with Article 2 – Lack of an effective remedy

Taymuskhanovy v. Russia (no. 11528/07) (Importance 2) – 16 December 2010 – Violations of Article 2 (substantive and procedural) – (i) Disappearance and presumed death of the applicants' close relative, Ruslan Taymuskhanov – (ii) Lack of an effective investigation – Violation of Article 3 – Mental suffering in respect of the first applicant – Violation of Article 5 – Unacknowledged detention of the applicants' close relative – Violation of Article 13 in conjunction with Article 2 – Lack of an effective remedy

2. Other judgments issued in the period under observation

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

- Press release by the Registrar concerning the Chamber judgments issued on 07 Dec. 2010: here
- Press release by the Registrar concerning the Chamber judgments issued on 09 Dec. 2010: here
- Press release by the Registrar concerning the Chamber judgments issued on 14 Dec. 2010: here
- Press release by the Registrar concerning the Chamber judgments issued on 16 Dec. 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
Albania	07 Dec. 2010	Gjyli (no. 32907/07) Imp. 3	Just satisfaction	Judgment on just satisfaction in respect of the judgment of 29 December 2009	Link
Albania	07 Dec. 2010	Mishgjoni (no. 18381/05) Imp. 3	Violation of Art. 6 § 1 Violation of Art. 13	Excessive length of proceedings (more than eight years) and Lack of an effective remedy	Link
Albania and Italy	07 Dec. 2010	Vrioni and Others (nos. 35720/04 and 42832/06) Imp. 3	Just satisfaction	Judgment on just satisfaction in respect of the judgment of 29 December 2009	Link
Austria	09 Dec. 2010	Urbanek v. (no. 35123/05) Imp. 2	No violation of Art. 6 § 1	The conduct of the proceedings did not depend on the payment of court fees and the system provided for a certain degree of flexibility, respecting the applicant's right of access to a court	Link
Luxembourg	14 Dec. 2010	Boulois (no. 37575/04) Imp. 2	Violation of Art. 6 § 1	Unfairness of criminal proceedings concerning the applicant's requests for temporary leave of absence from prison	Link
Poland	07	Piotr Nowak	Violation of Art. 5 § 3	Domestic authorities' failure to bring	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

	Dec. 2010	(no. 7337/05) Imp. 3		the applicant promptly before a judge	
Poland	07 Dec. 2010	Tarnawczyk (no. 27480/02) Imp. 2	Violation of Art. 1 of Prot. 1	Lack of an adequate compensation in tort for the long-term effects of the undisputed physical damage caused to the applicant's property by a State-owned enterprise in the context of the planned expropriation	Link
Romania	07 Dec. 2010	Marian Niţă (no. 28162/05) Imp. 3	Violation of Art. 6 § 1 (fairness) No violation Art. 6 § 1 (length)	Unfairness of proceedings Reasonable length of proceedings	Link
Romania	07 Dec. 2010	Porumb (no. 19832/04) Imp. 3	Violation of Art. 3	Conditions of detention in Gherla and Galaţi prisons	Link
Romania	14 Dec. 2010	Dobri (no. 25153/04) Imp. 2	Violation of Art. 3	Conditions of detention; the applicant contracted tuberculosis during detention	Link
Russia	16 Dec. 2010	Aleksey Ovchinnikov (no. 24061/04) Imp. 3	No violation of Art. 10	The applicant's conviction for a disseminating a statement concerning the rape of a boy by his twelve-year-old roommates and accusing the high-ranking parents of one of the minor rapists of interfering with the investigation, was "necessary in a democratic society"	Link
Russia	16 Dec. 2010	Eldar Imanov and Azhdar Imanov (no. 6887/02) Imp. 3	Violations of Art. 3 (both applicants) (substantive and procedural)	Ill-treatment by the police, lack of an effective investigation, poor conditions of detention in the temporary detention centre in Nizhnevartovsk	Link
Russia	16 Dec. 2010	Romokhov (no. 4532/04) Imp. 3	Violations of Art. 3 Violation of Art. 6 § 1 and Art. 1 of Prot. 1	Poor conditions of detention in IZ-77/2 and IZ-77/3 and lack of adequate medical assistance causing the applicant to lose his eyesight (See the **2nd General Report on the CPT's Activities (1991)**, **7th General Report on the CPT's Activities (1996)** and **11th General Report on the CPT's Activities (2000)**) Delayed non-enforcement of a judgment in the applicant's favour	Link
Russia	16 Dec. 2010	Trepashkin (No. 2) (no. 14248/05) Imp. 3	Four violations of Art. 3 No violation of Art. 3 Violation of Art. 5 § 4 No violation of Article 5 § 4 No violation of Art. 6 §§ 1 and 3 (b) and (c) No violation of Art. 34	Poor conditions of detention in three remand prison/detention centres, and poor conditions of transportation to and from the courtroom (See the CPT's reports above) Conditions of detention from 29 April 2005 onwards Belated examination of the applicant's appeal against the detention order The applicant was absent from the courtroom on the day of the appeal hearing The applicant was able to study the case file, to prepare for the trial and to discuss the case with his lawyers in private The Government have not breached their obligations under Article 34	Link
Slovenia	07 Dec. 2010	Trdan and Ć. (no. 28708/06) Imp. 3	No violation of Art. 8	The enforcement of the contact orders and the conduct of the court proceedings concerning contact and custody rights were conducted effectively and promptly enough	Link
Spain	07	Eusko	(Both applications)	Domestic authorities' annulment of	Link

	Dec. 2010	Abertzale Ekintza– Acción Nacionalista Vasca (EAE-ANV) (nos. 51762/07 and 51882/07) Imp. 2	No violation of Art. 3 of Prot. 1 (2nd application) No violation of Articles 10 and 11 (Both applications) No violation of Art. 13	electoral lists was proportionate to the aim pursued The Spanish authorities did not exceed their margin of appreciation in deciding the annulment of electoral lists Existence of an effective domestic remedy	
Sweden	07 Dec. 2010	Andersson (no. 17202/04) Imp. 3	Violation of Art. 6 § 1	Lack of an oral hearing in compensation proceedings	Link
Switzerland	16 Dec. 2010	Ellès and Others (no. 12573/06) Imp. 3	Violation of Art. 6 § 1	Infringement of the principle of equality of arms on account of the hindrance on the applicants' right to present observations on new evidence before the Federal Tribunal	Link
Switzerland	09 Dec. 2010	Gezginci (no. 16327/05) Imp. 2	No violation of Art. 8	Domestic authorities' justified refusal of the applicant's request for residence taking into account the applicant's criminal convictions, illegal stay for several years on Swiss territory and lack of respect for national rules	Link
the Czech Republic	09 Dec. 2010	Rodinná Záložna, Spořitelní a Úvěrní Družstvo (no. 74152/01) Imp. 3	(1st applicant) Violation of Art. 1 of Prot. 1 and Art. 6 § 1 (fairness)	Frequent prohibitions and restrictions on the activities of the applicant cooperative, in breach of its right to peaceful enjoyment of possessions	Link
the United Kingdom	07 Dec. 2010	Seal (no. 50330/07) Imp. 2	No violation of Art. 6 § 1	The decision to strike out the applicant's claim against the police for assault and false imprisonment did not impair the very essence of the applicant's right of access to court and was not disproportionate	Link
Turkey	07 Dec. 2010	Alp and Others (nos. 34396/05, 8753/06, 37432 etc.) Imp. 3 Orman and Others (nos. 9462/05, 20369/05, etc.) Imp. 3 Ulu and Others (nos. 29545/06, 15306/07) Imp. 3 Yer and Güngör (nos. 21521/06 and 48581/07) Imp. 3	(All applications) except Heval Öztürk) Violation of Art. 5 § 3 (2 applications)) Violation of Art. 5 § 4 (2 applications) Violation of Art. 5 § 5 (6 applications) Violation of Art. 6 § 1 (length) (1 application) Violation of Art. 13	Excessive length of pre-trial detention (the shortest duration of pre-trial detention in the present case is already over four years and six months) Lack of an effective remedy to challenge the lawfulness of the detention Lack of an enforceable right to compensation in respect of the prolonged detention Excessive length of proceedings (the shortest duration of the criminal proceedings in the present case is already over nine years) Lack of an effective remedy	Link Link Link Link
Turkey	07 Dec. 2010	Ergen and Others (nos. 35364/05, 41169/05, etc.) Imp. 3	Violation of Art. 1 of Prot. 1	Lack of adequate compensation following unlawful expropriation	Link
Turkey	14 Dec. 2010	Kılıçgedik and Others (no. 4517/04, 4527/04, etc.) Imp. 3	Violation of Art. 3 of Prot. 1	Unjustified ban prevented the applicants from making use of their political rights and from becoming members of political parties	Link
Turkey	14 Dec. 2010	Öner (no. 43504/04) Imp. 3	Violation of Art. 3	Ill-treatment and rape in police custody and lack of an effective investigation	Link

Ukraine	09 Dec. 2010	Bulanov and Kupchik (nos. 7714/06 and 23654/08) Imp. 3	Violation of Art. 6 § 1	Lack of access to a court on account of the Higher Administrative Court's refusal to follow the rulings of the Supreme Court determining jurisdiction over the applicants' cases	Link
Ukraine	09 Dec. 2010	Zhupnik (no. 20792/05) Imp. 3	Violation of Art. 6 § 1 (length) No violation of Art. 6 §§ 1 and 3 (a) and (b) (fairness)	Excessive length of criminal proceedings (eight years and eight months) The applicant's rights to be informed in detail of the nature and cause of the accusation against him and to have adequate time and facilities for the preparation of his defence were not infringed	Link
Ukraine	16 Dec. 2010	Borotyuk (no. 33579/04) Imp. 3	Violation of Art. 5 § 3 Violation of Art. 6 §§ 1 and 3 (c) (fairness)	Excessive length of pre-trial detention (two years and eleven months) Lack of legal assistance in police custody	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**
Azerbaijan	09 Dec. 2010	Ismayilova (no. 18696/08) link	Violation of Art. 6 § 1 (fairness) and Art. 1 of Prot. 1	Non-enforcement of a final judgment in the applicant's favour
Bulgaria	09 Dec. 2010	Petkov (no. 1399/04) link	Violation of Art. 8	Monitoring of the applicant's correspondence with the Court by prison authorities
Bulgaria Ukraine	09 Dec. 2010	Atanasov (no. 19315/04) link Kostakov (no. 32568/05) link	Violation of Art. 6 § 1 (length)	Excessive length of criminal proceedings (six years and five months for the first case and almost seven years for the second case)
Italy	14 Dec. 2010	Capoccia (no. 30227/03) link Capozzi (no. 3528/03) link De Nigris (No. 1) (no. 41248/04) link Gautieri and Others (no. 68610/01) link Grossi and Others (no. 18791/03) link	Just satisfaction	Just satisfaction following the judgments of 5 January 2007, 3 November 2006, 5 January 2007, 19 January 2007 and 6 October 2006

Turkey	07 Dec. 2010	Hüseyin Ak and Others (nos. 15523/04 and 15891/04) link	Violation of Art. 1 of Prot. 1	Deprivation of property without compensation
Turkey	07 Dec. 2010	Köse (no. 37616/02) link	Violation of Art. 1 of Prot. 1	Financial loss due to the insufficient interest rates applied on the additional compensation received following the expropriation of the applicants' properties and authorities' failure to pay them the relevant amounts in good time
Turkey	14 Dec. 2010	Arslantay (no. 9548/06) link	Violation of Art. 6 § 1 (fairness)	Domestic authorities' failure to communicate the written opinion of the principal public prosecutor to the applicant

4. Length of proceedings cases

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

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

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

State	**Date**	**Case Title**	**Link to the judgment**
Bulgaria	16 Dec. 2010	Kostov and Others (no. 35549/04)	Link
Germany	16 Dec. 2010	Dudek v. (nos. 39778/07, 11171/08, 43336/08, 52719/08, 15895/09, 16123/09, 16127/09, 16129/09, 27529/09, 27533/09 and 27596/09)	Link
Italy	07 Dec. 2010	Berretta and Ciarcia (nos. 37904/03 and 11332/04)	Link
Italy	07 Dec. 2010	Bonalzoo S.R.L. (nos. 19876/03, 32239/03 and 32240/03)	Link
Italy	07 Dec. 2010	De Rosa and Others (nos. 3666/03, 11966/03 and 11969/03)	Link
Italy	07 Dec. 2010	Ge.Pa.F and Others (nos. 30403/03, 32231/03, 32232/03 and 32259/03)	Link
Italy	07 Dec. 2010	G.M.P. Impianti (no. 19268/04)	Link
Luxembourg	09 Dec. 2010	Costacurta (no. 51848/07)	Link
Poland	07 Dec. 2010	Głowacka and Królicka (no. 1730/08)	Link
Poland	07 Dec. 2010	Iwankiewicz (no. 6433/09)	Link
Poland	07 Dec. 2010	Klik (no. 39836/09)	Link
Poland	14 Dec. 2010	Kosińska (no. 42797/06)	Link
Poland	14 Dec. 2010	Zjednoczone Browary Warszawskie Haberbusch i Schiele S.A. (no. 35965/03)	Link
Slovakia	14 Dec. 2010	Bartl (no. 50360/08)	Link
Slovakia	14 Dec. 2010	Ivan (no. 49362/06)	Link
Slovakia	14 Dec. 2010	Kántorová (no. 44286/06)	Link
Slovakia	14 Dec. 2010	Pintér (no. 18148/05)	Link
Turkey	07 Dec. 2010	Kapusız (no. 4753/07)	Link
Ukraine	09 Dec. 2010	Mayster (no. 18951/04)	Link
Ukraine	09 Dec. 2010	Sokor (no. 49009/07)	Link
Ukraine	16 Dec. 2010	Lygun v. (no. 50165/06)	Link
Ukraine	16 Dec. 2010	Yefremov (no. 43799/05)	Link

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

Those decisions are published with a slight delay of two to three weeks on the Court's Website. Therefore the decisions listed below cover **the period from 29 November 2010 to 12 December 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***
Finland	30 Nov. 2010	Silvasti (no 84/10) link	Alleged violation of Art. 6 § 1 (excessive length of criminal proceedings)	Struck out of the list (friendly settlement reached)
France	30 Nov. 2010	Creantor (no 59915/08) link	Alleged violation of Art. 14 in conjunction with Art. 1 of Prot. 1 (different treatment between pensioners from overseas and from the mainland)	Incompatible *ratione materiae*
Germany	07 Dec. 2010	Sude (no 38102/04) link	Alleged violation of Art. 8 (refusal to grant the applicant the custody of his daughter and alleged discrimination against unmarried fathers on the grounds of sex and in comparison with divorced fathers)	Struck out of the list (it is no longer justified to continue the examination of the application)
Germany	09 Dec. 2010	Oberländer (no 9643/04) link	Alleged violation of Articles 5 § 1 and 3 (retrospective detention for preventive purposes after the applicant had fully served his prison sentence on the basis of the unconstitutional Saxony-Anhalt)	Struck out of the list (the applicant no longer wished to pursue his application)
Greece	07 Dec. 2010	Topalidou (no 15928/09) link	The application concerned a complaint under Art. 6 § 2	Struck out of the list (the applicants no longer wished to pursue their application)
Latvia	30 Nov. 2010	Zablackis and Pimčenkova (no 5032/02) link	In particular alleged violation of Articles 3, 8 and 13 (unlawful home search carried out with disregard for the interests of the applicants' children, miscarriage with complications due to the manner in which the search was conducted), Art. 5 § 1 (c) (unlawful detention), Articles 1, 3, 4, 5, 8 and 13, Articles 1, 6, 8 and 13 (the applicant's name mentioned in the public media in relation to the criminal proceedings about the judge's murder and he had been beaten up by police officers)	Partly adjourned (concerning the legality of the search, its disregard for the interests of their children and the miscarriage of a child), partly inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention concerning the remainder of the application)
Moldova	07 Dec. 2010	Eparhia Moldovei De Est A Bisericii Ortodoxe Din Ucraina and Others (no 46157/07) link	Alleged violation of Articles 6, 9, 11 and 13 (the authorities' failure to comply with a final judgment within a reasonable time ordering the Government to register the applicant church)	Struck out of the list (friendly settlement reached)
Poland	30 Nov. 2010	Antoniak (no 15868/10) link	Alleged violation of Art. 6 § 1 (lack of access to the Supreme Court)	Idem.
Poland	30 Nov. 2010	Voigt (no 30618/09) link	Alleged violation of Art. 6 § 1 (excessive length of criminal proceedings which commenced on 31 May 2001 and are still pending before the first-instance court)	Idem.
Poland	30 Nov. 2010	Karpiński (no 15031/06) link	Alleged violation of Art. 6 § 1 (excessive length of civil proceedings: eleven years and four months)	Idem.
Romania	07 Dec. 2010	Konya (no 4398/07) link	Alleged violation of Articles 6 § 1, 13 and 1 of Prot. 1 (non-enforcement of a final judgment in the applicant's favour, lack of an effective remedy and non-receipt of compensation	Struck out of the list ((the applicant no longer wished to pursue hisapplication)

			awarded by the authorities)	
Romania	07 Dec. 2010	Ţarălungă (no 2694/04) link	Alleged violation of Art. 6 § 1 and Art. 1 of Prot. 1 (non-enforcement of a final judgment in the applicant's favour), Art. 14 (the applicants had allegedly been discriminated in their attempts to enforce the final decision against their neighbor as their neighbor had close relationships with members of the domestic courts)	Inadmissible (for non-respect of the six-month requirement)
Romania	07 Dec. 2010	Vasile and Bacruban (no 38369/05) link	Alleged violation of Art. 1 of Prot. 1 (the applicants' inability to enjoy their property after its sale to a third-party)	Struck out of the list (the applicants no longer wished to pursue their application)
Romania	07 Dec. 2010	Ianopol (no 9861/05) link	Alleged violation of Art. 11 (annulment of the applicant's hunting licence)	Inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention)
Russia	02 Dec. 2010	Brekhov and Tyurin (no 8074/06; 729/07) link	Alleged violation of Art. 6 § 1 and Art. 1 of Prot. 1 (delayed enforcement of a final and enforceable judgment in the applicants' favour)	Struck out of the list (it is no longer justified to continue the examination of the application)
Russia	09 Dec. 2010	Larina (no 58060/08) link	The applicant's complaint concerned the quashing of a binding judgment in her favour	Struck out of the list (the applicant no longer wished to pursue her application)
Slovakia	30 Nov. 2010	Ziegler (no 1817/07) link	Alleged violation of Articles 6 § 1 and 13 (excessive length of civil proceedings which started on 27 November 2002 and which are still pending and lack of an effective remedy)	Struck out of the list (friendly settlement reached)
Slovenia	07 Dec. 2010	Rabuza and Others (no 16116/06; 30160/06; 47396/06) link	Alleged violation of Articles 6 § 1 and 13 (excessive length of civil proceedings and lack of an effective remedy)	Struck out of the list (the matter has been resolved at the domestic level and applicants no longer wished to pursue their application)
Slovenia	07 Dec. 2010	Džajić and Ahmetovič (no 30710/06; 31451/06) link	Idem.	Idem.
the Czech Republic	07 Dec. 2010	Haškovcová and Veríšová (no 43905/04) link	Alleged violation of Art. 1 of Prot. 1 (deprivation of property without any compensation)	Inadmissible (the member State's struck a fair balance between the interests at stake within their national margin of appreciation)

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 13 December 2010 : link
- on 20 December 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 13 December 2010 on the Court's Website and selected by the NHRS Unit

The batch of 13 December 2010 concerns the following States (some cases are however not selected in the table below): Armenia, Azerbaijan, Bulgaria, Croatia, Greece, Italy, Latvia, Lithuania, Romania, Russia, Serbia, Spain, Switzerland, the United Kingdom, Turkey and Ukraine.

State	Date of Decision to Communicate	Case Title	Key Words of questions submitted to the parties
Azerbaijan	25 Nov. 2010	Abbasov and Others no 36609/08	Alleged violations of Art. 3 (substantive and procedural) – (i) Excessive use of police force during the dispersal of a demonstration – (ii) Lack of an effective investigation – Alleged violations of Art. 6 § 1 – Were the applicants required by the domestic law to pay a court fee for the type of claims they raised before the domestic courts? What was the specific amount of the court fee required by the domestic law and did it depend on the number of claimants in a particular case? Were the reasoning and conclusions in the Sabail District Court's decision based on the correct application of the procedural requirements concerning court fees? – Alleged violation of Art. 11 § 1 – The obstacles created by the Baku City Executive Authority to hold a demonstration and the dispersal of the demonstration by the police using excessive force
Lithuania	25 Nov. 2010	Lekavičienė no 48427/09	Alleged violation of Art. 8 – Interference with the applicant's right to respect for her "private life" on account of the prohibition on the applicant hindering the exercise of the professional activity of advocate, after the courts' finding that she had not regained high moral character – Alleged violation of Art. 14 – Different treatment in comparison to other legal professions
Romania	25 Nov. 2010	Rusu no 25721/04	Alleged violation of Art. 10 – Conviction of the applicant and order to pay damages for publishing an article concerning a wanted person
Russia	25 Nov. 2010	Ivanov no 12311/06	Alleged violations of Art. 3 (substantive and procedural) – (i) Alleged ill-treatment of the applicant during his detention in St Petersburg remand prison IZ-47/1 by cellmates with the alleged consent of prison officials – (ii) Lack of an effective investigation
Turkey	23 Nov. 2010	Abik no 34783/07	Alleged violations of Art. 2 (substantive and procedural) – (i) Death of the applicant's son after being shot for allegedly distributing illegal pamphlets in favour of the PKK – (ii) Lack of an effective investigation – Alleged violation of Art. 13 – Lack of an effective remedy

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

The batch of 20 December 2010 concerns the following States (some cases are however not selected in the table below): Armenia, Austria, Azerbaijan, Bulgaria, Finland, Georgia, Greece, Latvia, Moldova, Poland, Romania, Russia, Serbia, Slovenia, Switzerland, the United Kingdom, Turkey and Ukraine.

State	Date of Decision to Communicate	Case Title	Key Words of questions submitted to the parties
Armenia	30 Nov. 2010	Saghatelyan no 23086/08	Alleged violations of Art. 3 (substantive and procedural) – (i) Alleged ill-treatment by the police – (ii) Lack of an effective investigation – Alleged violation of Art. 5 § 1 – Unlawful detention – Alleged violation of Art. 5 § 2 – Failure to inform the applicant promptly of the reasons for his detention – Alleged violation of Art. 5 § 3 – Lack of relevant and sufficient reasons for detention – Alleged violation of Art. 6 § 1 – Unfairness of proceedings – Alleged violation of Art. 6 § 3 (d) – The applicant's inability to obtain the attendance of witnesses on his behalf – Alleged

			violation of Articles 10 and 11 – Violent dispersal by the police of a peaceful demonstration
Austria	01 Dec. 2010	Barnic no 54845/10	Alleged violation of Art. 3 – Real risk of being subjected to ill-treatment if expelled to Syria
Azerbaijan	02 Dec. 2010	Guliyev no 4276/07	Alleged violations of Art. 3 (substantive and procedural) – (i) Ill-treatment in police custody – (ii) Lack of an effective investigation – Alleged violation of Art. 6 §§ 1 and 3 – Unfairness of proceedings in particular as regards the applicants' plea of police entrapment
Finland	29 Nov. 2010	Nieminen no 67120/09	Alleged violation of Art. 8 § 1 – Search of the applicant's home without any consent or supervision by a court – Alleged violation of Art. 13 – Lack of an effective remedy
Russia	01 Dec. 2010	Lobanov no 54504/07	Alleged violation of Art. 3 (substantive and procedural) – (i) Ill-treatment by the police – (ii) Lack of an effective investigation
the United Kingdom	01 Dec. 2010	Stokoe no 9909/10	Alleged violation of Art. 8 – Domestic authorities' refusal to allow the applicant's son to visit him in prison – Question as to whether there existed any policy which prohibited minors from visiting sex offenders' in prison?

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

Referrals to the Grand Chamber (13.12.2010)

The cases of *Sitaropoulos and Others v. Greece*, *Creangă v. Romania* and *Aksu v. Turkey* have been referred to the Grand Chamber. Press Release

Practical guide on admissibility criteria (13.12.2010)

The Registry published a comprehensive Practical Guide on Admissibility Criteria for lawyers to try to stem the flow of obviously inadmissible applications which are "flooding" the European Court. The handbook, which explains in detail the Court's admissibility criteria, is at the moment available in English and French and will later be available in other languages, in particular Russian and Turkish. Press Release, Practical guide

Factsheets (10.12.2010)

The Court's Registry launched ten new factsheets on its case-law for International Human Rights Day. Press release, Factsheets

Part II: The execution of the judgments of the Court

A. New information

The Council of Europe's Committee of Ministers will hold its next "human rights" meeting from 8 to 10 March 2010 (the 1108DH meeting of the Ministers' deputies).

B. General and consolidated information

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

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

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

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

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

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

A. European Social Charter (ESC)

Seminar on non-accepted provisions of the Revised Charter in Malta (06.12.2010)

A seminar was held in Malta on to allow an exchange of views and information on the provisions of the Revised Charter which have not been accepted by Malta. It was attended by two members of the European Committee of Social Rights, Mr Andrezj Swiatkowski and Ms Jarna Petman, as well as two administrators from the Department of the European Social Charter, Ms Niamh Casey and Mr Gerald Dunn. Programme

The decision on admissibility in the case International Federation for Human Rights (FIDH) v. Belgium has been adopted (13.12.2010)

The decision of admissibility of the European Committee on Social Rights in the case *International Federation for Human Rights v. Belgium* (no. 62/2010) is now available on line. In this case the complainant organisation alleges that the situation in Belgium is not in conformity with Articles 16 (the right of the family to social, legal and economic protection) and 30 (right to protection against poverty and social exclusion) of the Revised European Social Charter as well as the non discrimination clause (Article E). Decision on admissibility

Conclusions XIX-3 of the European Committee of Social Rights are on line (17.12.2010)

Following the publication of Conclusions 2010 (Revised European Social Charter), the Committee has made public its Conclusions XIX-3 in respect of the States Parties which are still bound by the 1961 European Social Charter. These conclusions contain the Committee's assessment of the conformity of national situations with the labour rights provisions of this instrument. General Introduction to Conclusions XIX-3; Conclusions 2010 and XIX-3

The December 2010 issue of the European Committee of Social Rights Newsletter can be found here.

The next session of the European Committee of Social Rights will be held from 24 to 28 January 2011.

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

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

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

States to be visited by the Council of Europe anti-torture Committee in 2011 (09.12.2010)

In 2011, as part of its programme of periodic visits, the CPT intends to examine the treatment of persons deprived of their liberty in the following ten countries: Andorra; Azerbaijan; Bosnia and Herzegovina; Latvia; Moldova; The Netherlands; Norway; Serbia; Spain; Switzerland

Persons in possession of information concerning deprivation of liberty in any of these countries which they believe could assist the CPT are invited to bring it to the Committee's attention. The CPT will also organise *ad hoc* visits whenever it considers this is required by the circumstances. The CPT's field of operations covers all 47 member States of the Council of Europe.

Council of Europe anti-torture Committee visits Germany (13.12.2010)

A delegation of the CPT carried out a periodic visit to Germany from 25 November to 7 December 2010. During the visit, the CPT's delegation reviewed the measures taken by the German authorities

following the recommendations made by the Committee after its previous visits. In this connection, particular attention was paid to the fundamental safeguards against ill-treatment offered to persons deprived of their liberty by the police and the conditions of detention in units for immigration detainees in various prisons. The delegation also examined in detail the situation of persons subject to preventive detention (*Sicherungsverwahrung)* and of juvenile offenders held in penitentiary establishments. Further, for the first time in Germany, the delegation visited a prison for women.

In one of the *Länder* visited, namely Berlin, the delegation collected information on the surgical castration of sexual offenders who are deprived of their liberty, under the Law on Voluntary Castration and Other Treatment Methods. The delegation had fruitful consultations with Ms Sabine Leutheusser-Schnarrenberger, Federal Minister of Justice, Ms Birgit Grundmann, State Secretary of the Federal Ministry of Justice, Mr Jürgen Martens, Minister of Justice of Saxony, Mr Wilfried Bernhardt, State Secretary of Justice of Saxony, Ms Brigitte Mandt, State Secretary of Justice of North Rhine-Westphalia, and Mr Michael Steindorfner, Permanent Representative of the Minister of Justice of Baden-Württemberg, as well as with senior officials from the Federal Ministries of Justice and the Interior and various ministries of the *Länder* visited. It also met the Heads of the Federal Agency for the Prevention of Torture and the Joint *Länder* Commission for the Prevention of Torture, both of which form part of the National Preventive Mechanism (NPM) established under the Optional Protocol to the United Nations Convention against Torture (OPCAT). Moreover, the delegation held meetings with representatives of the German Institute of Human Rights and non-governmental organisations active in areas of concern to the CPT. At the end of the visit, the delegation presented its preliminary observations to the German authorities.

Council of Europe anti-torture Committee visits France (15.12.2010)

A delegation of the CPT carried out a periodic visit to France from 28 November to 10 December 2010. During the visit, the delegation examined, among other matters, the measures taken by the French authorities following the recommendations made by the Committee after its previous visits. In this connection, it reviewed the treatment of persons detained by law enforcement agencies and of foreign nationals held under aliens legislation, as well as conditions of detention in prisons. The delegation also paid particular attention to the situation of patients placed involuntarily in psychiatric establishments. The delegation had consultations with François MOLINS, Director of the Private Office of the Minister of Justice and Liberties, Marguerite BERARD-ANDRIEU, Director of the Private Office of the Minister of Labour, Employment and Health, and Guillaume LARRIVE, Deputy Director of the Private Office of the Minister of the Interior and Immigration, as well as with other senior officials from these ministries. Further, the delegation met Jean-Marie DELARUE, General Controller of Places of Deprivation of Liberty, as well as members of the National Consultative Commission on Human Rights and the National Ethics and Security Commission, and representatives of the Ombudsman of the Republic. Discussions were also held with members of non-governmental organisations active in areas of interest to the CPT. At the end of the visit, the delegation presented its preliminary observations to the French authorities.

C. European Commission against Racism and Intolerance (ECRI)

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

Protection of national minorities: Council of Europe monitoring body publishes report on Croatia (06.12.2010)

The Council of Europe Advisory Committee on the CNM published on 6 December an Opinion on Croatia, together with the government's Comments. Since ratifying the convention in 1997, Croatia has continued its efforts to protect national minorities. In 2002 it adopted the Constitutional Act on the Rights of National Minorities and in 2008 the Discrimination Prevention Act. This law creates a clear legal basis for protection against discrimination on racial, ethnic, national or religious grounds, and sets up a judicial procedure for its enforcement. Croatia has created a well-developed system of minority language education, permitting students belonging to national minorities to receive instruction in or of their languages. Textbooks in minority languages have been made available at primary schools but the same step still should be taken in secondary education. The authorities have increased efforts to combat discrimination and integrate Roma into society. The National Action Plan for the Decade of Roma Inclusion 2005-2015 has already yielded some results, especially through

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

increased inclusion of Roma children into the educational system, improved access to health care for the Roma population, and sustained efforts to resolve housing issues. Despite these positive developments, Roma continue to face persistent discrimination and difficulties in different sectors, in particular in employment, education, access to healthcare and housing. In some settlements the inhabitants face deplorable living conditions, without proper roofing, electricity, running water, sewage treatment, and roads. The Advisory Committee expresses its concern about the lack of respect of the right to proportional representation of persons belonging to national minorities in the public administration, the judiciary, local government and public enterprises, and stresses the need to review the procedures applicable to the implementation of this right.

Ethnically-motivated incidents - in particular against Serbs and Roma - continue to be a serious problem as well as the continued impunity of the perpetrators. Many attacks are not reported due to a lack of trust in the police and justice systems. Racism and anti-Semitism plague Croatian football stadiums. The functioning of the councils of national minorities is unsatisfactory in many self-government units. Their legal provisions and administrative practice should be revised to improve their representativity, funding and cooperation with local authorities.

The FCNM provides for a monitoring system whereby the Council of Europe Committee of Ministers, assisted by the Advisory Committee, composed of independent experts, evaluates the implementation of the convention.

Protection of national minorities: Council of Europe monitoring body publishes report on Germany (06.12.2010)

The Council of Europe Advisory Committee on the FCNM published on 6 December its Third Opinion on Germany, and the government's Comments. Its key conclusions are the following: The German authorities have continued to support the development of the languages and cultures of persons belonging to national minorities. A range of mechanisms enable minorities to participate in the decision-making process on issues of relevance to them. The legal framework for the protection of minority cultures and languages is well developed. However, further action is needed to create an environment more likely to encourage the use of minority languages in daily life.

In 2006 Germany adopted the General Equal Treatment Act and set up a Federal Anti-Discrimination Agency. However, this Agency is limited to providing advice to potential victims but cannot instigate proceedings. It seems that potential victims of discrimination are still unfamiliar with the Act's provisions and that too little use is made of them in cases of ethnically-motivated discrimination. The authorities should raise public awareness of the General Equal Treatment Act so that persons most vulnerable to discrimination be fully informed of the legal remedies available to them. Participation in public life by the Roma and Sinti is very low. Cases of discrimination against them in the education system continue to be reported, as well as instances of their being denied access to public places and of ethnic profiling by the police. The Committee underlines the need for measures to increase the participation of the Roma and Sinti in social and political life and to promote equal opportunities for Roma and Sinti pupils in the educational system. In the last years there has been no decrease in the number of racist, xenophobic or anti-Semitic offences, despite efforts made by the authorities. Measures to combat racism are mainly focused on extreme right-wing movements and do not provide an adequate response to the many dimensions and manifestations of racism. The Advisory Committee calls on the German authorities to adopt targeted measures to prevent the spread of prejudice and racist language through certain media, on the Internet and in sports stadiums. It also requests the adoption of specific legislation punishing racist motivation as an aggravating factor of any offence.

Election of an expert in respect of Finland, Slovenia and Austria to the list of experts eligible to serve on the Advisory Committee (14.12.2010)

Mr Eero J. AARNIO, in respect of Finland on 29 September 2010 (Resolution CM/ResCMN(2010)11)
Mrs Petra ROTER, in respect of Slovenia on 29 September 2010 (Resolution CM/ResCMN(2010)10)
Ms Brigitta BUSCH, in respect of Austria on 17 November 2010 (Resolution CM/ResCMN(2010)12).

E. Group of States against Corruption (GRECO)

Group of States against Corruption publishes report on Serbia (06.12.2010)

GRECO published on 6 December its Third Round Evaluation Report on Serbia, in which it acknowledges the authorities´ efforts to comply with Council of Europe standards, but points out the

need to fight corruption more actively and to strengthen the supervision of party funding (read more). Report: Theme I and Theme II

Group of States against Corruption publishes report on Portugal (08.12.2010)

GRECO published on 8 December its Third Round Evaluation Report on Portugal, according to which although criminal legislation in respect of domestic bribery complies with Council of Europe standards, it needs to be amended to better cover such offences in the international context. GRECO also calls for more transparency in relation to political financing, in particular if the system is to allow more private based funding in the future (read more). Report: Theme I and Theme II

GRECO President Drago Kos: "We need further cooperation with the EU in the fight against corruption" (09.12.2010)

Drago Kos, President of GRECO issued on 9 December the following statement to mark the International Anti-Corruption Day: "Many citizens in Europe and elsewhere in the world experience the scourge of corruption in their everyday lives – and it hits the vulnerable particularly hard. However, the consequences of corruption reach far beyond the individual. For democracy and the rule of law to operate properly, citizens must be able to trust their politicians, judges, police officers and others exercising authority. Trust – along with the fairness of competition – is also the basis of a well functioning economy. Corruption undermines this trust and gives rise to predatory behaviour and cynicism (read more).

Group of States against Corruption publishes report on Montenegro (14.12.2010)

GRECO published on 14 December its Third Round Evaluation Report on Montenegro, in which it concludes that anti corruption legislation is not effectively applied and that there is a pressing need to establish an independent monitoring mechanism of political financing (read more). Report: Theme I and Theme II (English); Report: Theme I and Theme II (French); Report: Theme I and Theme II (Montenegrin)

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

Effective global AML/CFT system depends on work of regional groups (09.12.2010)

FATF President Luis Urrutia Corral stressed the need to reinforce the global AML/CFT Network during his speech before the MONEYVAL delegations at the 34th Plenary meeting. He noted in particular that MONEYVAL has strong processes for monitoring the progress in implementing AML/CFT measures (including its compliance enhancing procedures) which are not only applied but also continuously refined over time. Read the speech

Outcome of the 34th Plenary Meeting 7-10 December 2010 (15.12.2010)

MONEYVAL, at its 34th plenary meeting, achieved several significant results: examined and adopted the first progress report submitted by Serbia (report / annexes) as well as the second progress reports submitted by Liechtenstein (report), Malta (report/ annexes) and the Principality of Andorra; examined the state of compliance on all non compliant and partially compliant ratings in the 3rd round in respect of 3 countries; examined action taken by 2 countries currently under step (i) of the Compliance Enhancing Procedures to address the issues of concerns raised by MONEYVAL; adopted the horizontal review of MONEYVAL's third round of mutual evaluation reports. The publication of these reports will take place shortly.

Moldova presented its progress report and, following its examination, they have been invited to provide further information to the next Plenary before a decision is taken on adoption. Bosnia and Herzegovina presented its progress report, and following its examination it was concluded that it raises significant concerns about the extent of or speed of progress overall to rectify deficiencies identified in the mutual evaluation report pursuant to paragraph 43 of the Rules of Procedure. The next plenary meeting is scheduled from 11 to 15 April 2011.

MONEYVAL report on the 4th assessment visit of Hungary public (17.12.2010)

The mutual evaluation report on the 4th assessment visit of Hungary, as adopted at MONEYVAL's 33rd plenary meeting (27 September 2010) is now available for consultation. Links to: Executive Summary; Report; Annexes

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

GRETA - 8th meeting (7-10.12.2010)

GRETA held its 8th meeting on 7-10 December 2010 at the Council of Europe in Strasbourg. A major part of this meeting was devoted to the examination of the preliminary draft report on Cyprus. Further, GRETA considered the feedback from its country visits to Austria and the Slovak Republic, which took place in November 2010. GRETA also approved a timetable for the preparation, examination and adoption of draft and final reports concerning the 1st Group of ten parties to the Convention. At the meeting, GRETA elected its new Bureau. Nicolas Le Coz, a lawyer and senior officer in the French National Gendarmerie, was elected as President for a term of office of two years starting on 1 January 2011. Gulnara Shahinian, an Armenian specialist in migration policy and action against trafficking in human beings, was elected First Vice-President. Davor Derencinovic, a Croatian professor in criminal law and criminology, became the new Second Vice-President.

GRETA urged the Council of Europe member States which had not already done so and the European Union to sign and/or ratify the Council of Europe Convention on Action against Trafficking in Human Beings. In addition, GRETA called on non-member States to accede to the Convention. List of decisions

Part IV: The inter-governmental work

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

6 December 2010

Montenegro ratified the European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes (ETS No. 082).

Switzerland signed Protocol No. 3 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning Euroregional Co-operation Groupings (ECGs) (CETS No. 206).

8 December 2010

Montenegro ratified the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 106), the Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 159), the Additional Protocol to the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, on the Prohibition of Cloning Human Beings (ETS No. 168), and Protocol No. 2 to the European Outline Convention on Transfronfier Co-operation between Territorial Communities or Authorities concerning interterritorial co-operation (ETS No. 169).

Armenia ratified the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (ETS No. 182).

13 December 2010

The **Netherlands** accepted the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207).

14 December 2010

Bosnia and Herzegovina ratified the European Convention on the Protection of the Archaelogical Heritage (Revised) (ETS No. 143), and denounced the European Convention on the Protection of the Archaeological Heritage (ETS No. 66).

B. Recommendations and Resolutions adopted by the Committee of Ministers (Adopted by the Committee of Ministers on 8 December 2010 at the 1101st meeting of the Ministers' Deputies)

CM/Res(2010)52E / 08 December 2010: Resolution on the rules for the award of the “Cultural Route of the Council of Europe” certification

CM/Res(2010)53E / 08 December 2010: Resolution establishing an Enlarged Partial Agreement on Cultural Routes

CM/ResCSS(2010)20E / 08 December 2010: Resolution on the application of the European Code of Social Security and its Protocol by the Netherlands (Period from 1 July 2008 to 30 June 2009)

CM/RecChL(2010)8E / 08 December 2010: Recommendation of the Committee of Ministers on the application of the European Charter for Regional or Minority Languages by Croatia

CM/RecChL(2010)7E / 08 December 2010: Recommendation of the Committee of Ministers on the application of the European Charter for Regional or Minority Languages by Switzerland

C. Other news of the Committee of Ministers

Council of Europe publishes report on minority languages in Croatia (08.12.2010)

The Committee of Ministers has made public the fourth report on the application of the European Charter for Regional or Minority Languages in Croatia. The report has been drawn up by a committee of independent experts, which monitors the application of the Charter.

Council of Europe publishes report on minority languages in Switzerland (08.12.2010)

The Committee of Ministers has made public the fourth report on the application of the European Charter for Regional or Minority Languages in Switzerland. The report has been drawn up by a committee of independent experts, which monitors the application of the Charter.

Ministers' Deputies meeting (09.12.2010)

At their meeting on 8 December, the Ministers' Deputies decided on the composition of the Advisory Panel of Experts on Candidates for Election as Judge to the European Court of Human Rights. They also created an Enlarged Partial Agreement on Cultural Routes and adopted a Convention on Counterfeiting of Medical Products and Similar Crimes Involving Threats to Public Health.

Istanbul conference refocuses European work to integrate people with disabilities (10.12.2010)

Governments face new priorities in their work to fully integrate people with disabilities, a Council of Europe conference in Istanbul, Turkey, has heard. The Conference, organised under the aegis of the Turkish Chairmanship of the Committee of Ministers, was called to review the Organisation's Disability Action Plan, which reached its halfway stage at the end of 2010.

Human Rights Day: "We must strengthen tolerance as an essential value in Europe to protect human rights" (10.12.2010)

"2010 is the year of the 60th anniversary of the European Convention on Human Rights but also the year of consolidation and expansion of its unique mechanism for the protection fundamental rights and freedoms. The reform of the European Court of Human Rights is well under way", Ahmet Davutoglu, Minister for Foreign Affairs of Turkey and Chairman of the Committee of Ministers, and Secretary General Thorbjørn Jagland say in their statement marking Human Rights Day on 10 December. In parallel, the negotiations on the accession of the European Union to the European Convention on Human Rights are progressing, which will be a historic step forward in the struggle to promote and protect human rights throughout Europe.

International Migrants Day, 18 December (16.12.2010)

On the occasion of International Migrants' Day, Ahmet Davutoglu, Minister for Foreign Affairs of Turkey and Chairman of the Committee of Ministers, called on member States to be vigilant in upholding the core values of the Organisation when addressing migration issues. He expressed hope that the important works carried out so far by the Council of Europe on migrants would be reinforced in the period ahead. File "Migration"

Part V: The parliamentary work

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

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

- *Countries*

PACE President welcomes Bulgaria's strong determination to fight corruption (09.12.2010)

PACE President Mevlüt Çavusoglu has welcomed the strong determination of Bulgarian authorities to fight corruption and organised crime, an outstanding issue in the Parliamentary Assembly's "post-monitoring dialogue" with Bulgaria. The President was speaking mid-way through a three-day official visit to the country (8-10 December), during which he met the country's President, Speaker of Parliament and Foreign Affairs and Justice Ministers, among others. The President described Bulgaria as a "contructive, active and reliable" partner for the Council of Europe, pointing out that its democratic transformation had enabled it to rapidly integrate into the EU and NATO. Mr Çavusoglu expressed appreciation for the Parliament's efforts to amend the Criminal Code and Code of Criminal Procedure in collaboration with the Council of Europe's group of independent legal experts, the Venice Commission. However only full implementation of these laws would be a successful outcome, he stressed. The President also encouraged further work on a new election law, pointing out that this would require a wide consensus among different political forces. Other issues discussed included reform of the Council of Europe, the accession of the EU to the European Convention on Human Rights, the fight against discrimination and the rights of minorities, including religious and ethnic groups.Mr Çavusoglu concluded by expressing his conviction that the determination of the authorities to intensify reforms would create the conditions for the closing of the Assembly's post-monitoring dialogue.

PACE President condemns terrorist attack in Stockholm (12.12.2010)

Following the two explosions in Stockholm, PACE President Mevlüt Çavusoglu made the following statement: "I am shocked and angered by the two explosions in Stockholm in what appears to have been a terrorist attack on Sweden." Mr Çavusoglu went on to state: "There is no justification for terrorism and no space for it in a civilised society. It is a slap in the face of the human values of the Council of Europe and our attempts to defend the rights of all. This incident, unfortunately reminds us that terrorism, across the globe, remains one of the major threats facing our society."

PACE committee adopts measures to enhance reconciliation and political dialogue between the countries of the former Yugoslavia[†] (15.12.2010)

In a resolution on reconciliation and political dialogue between the countries of the former Yugoslavia adopted unanimously in Paris on 15 December, the Political Affairs Committee says it supported the efforts of the countries of the former Yugoslavia to reconcile and reconstruct a new relationship among themselves and welcomed their commitment to regional co-operation, which indicated a greater willingness to overcome the legacy of the past. It noted with satisfaction a number of positive examples of people and leaders from the region working together for change. However, renewed efforts were needed by all governments in the region with a view to their full reconciliation and Euro-Atlantic integration, the committee said. On the basis of a report by Pietro Marcenaro (Italy, SOC), it stressed the need for capable and determined leadership, visionary in its commitment to peace. It said that public discourse on the war and its long-term legacy varied from one country to another and could be a potential source of hatred and conflict. "In the same way in which ethnic conflict and civil war are not natural, but man-made disasters, their prevention and settlement do not happen automatically either," Mr Marcenaro stressed.

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

[†] The Rapporteur uses the term "the former Yugoslavia" to describe the territory that up until 25 June 1991 was known as the Socialist Federal Republic of Yugoslavia (SFRY).

The committee particularly welcomed the initiative recently taken by a coalition of non-governmental organisations from Bosnia and Herzegovina, Croatia and Serbia to create a Regional Commission for Establishing the Facts about the War Crimes in the former Yugoslavia (RECOM) to document all crimes committed during the wars in order to honour and acknowledge all victims. With regard to the situation in Bosnia and Herzegovina, the committee regretted that the general elections held on 3 October 2010 were once again conducted with ethnicity and residence-based limitations to active and passive suffrage rights, and stressed that the constitutional deadlock continued to be an obstacle impeding the country from moving ahead towards a fully-fledged democracy. The committee said it was convinced that inter-parliamentary dialogue at regional level should be supported and stressed the importance of strengthening the role of the national parliaments of the countries of the former Yugoslavia in any endeavours aimed at full reconciliation in the region. The committee considers that the Assembly should offer a platform for such a dialogue, where appropriate in co-operation with the European Parliament. The report by Mr Marcenaro will be discussed during the PACE January session in Strasbourg (24-28 January 2011).

Serbia: roadmap for the completion of commitments and implementation of statutory obligations (17.12.2010)

"Undoubtedly, Serbia has made significant progress in many areas and is heading towards the full completion of its commitments. However, some key issues remain unsolved or incomplete such as the reform of the justice system, the revision of the electoral law, the elimination of the party-administered system and blank resignations, as well as full compliance with the laws on freedom of speech, association etc. in conformity with Council of Europe standards, " the co-rapporteurs on Serbia said on 17 December at a meeting of the PACE Monitoring Committee in Paris. In their information note on a fact-finding visit to Belgrade and Novi Pazar (28 November-2 December), Davit Harutyunyan (Armenia, EDG) and Sinikka Hurskainen (Finland, SOC) stressed that in order to measure the achievements made and progress yet to be accomplished, the Serbian delegation should submit a roadmap for the completion of commitments and implementation of statutory obligations. This roadmap, they said, was meant to be a strategic policy document, which represented the authorities' vision of key reform processes as well as the criteria and benchmarks these reforms must comply with, in the view of the Assembly. Information note by the rapporteurs on their fact-finding visit to Belgrade and Novi Pazar (28 November – 2 December 2010)

- *Themes*

Christopher Chope new head of PACE Migration Committee (08.12.2010)

Christopher Chope (United Kingdom, EDG) has been elected Chair of the Parliamentary Assembly's Committee on Migration, Refugees and Population. A member of PACE since 2005, Mr Chope is a barrister and former British Minister for Roads and Traffic. He replaces John Greenway (United Kingdom, EDG).

'Dublin Regulation: unfair, expensive and ineffective' says new Chair of PACE Migration Committee (08.12.2010)

"The Dublin Regulation is an unfair system both for asylum seekers and for states. It is expensive and ineffective and sometimes infringes the 1951 Geneva Convention relating to the Status of Refugees," the newly elected Chair of the PACE Committee on Migration stressed on 8 December when summing up the committee hearing on "Dealing with Dublin: ensuring fairness for asylum seekers and member States". Pending the preparation of a report on this subject on the basis of its discussions, the committee, he said, already calls on the Council of the European Union to revise the Dublin system so as to establish a more effective system in full accordance with the 1951 Geneva Convention and ensure a fairer apportionment of responsibilities for asylum in Europe. According to Mr Chope, the committee also calls on the states parties to the Dublin system to support the reform of the asylum procedure envisaged in Greece and to provide the necessary expertise to Greece to ensure that it can determine in reasonable time applications for asylum and reduce the need for detention. Administrative detention of the asylum seekers sent back under the Dublin system should only take place in circumstances prescribed by international law and in keeping with the principles of expediency and proportionality. The states parties should also consider availing themselves of the sovereignty clause embodied in the Dublin system to avoid any transfer to an inoperative asylum system. Summing-up by the Chair

Reinforced protection of the rights of migrant women (08.12.2010)

Participants at a round table on the rights of migrant women, organised by the PACE Migration Committee in Paris on 8 December, have called for reinforced protection through legal means and improved practices. “214 million international migrants are women. Whereas earlier the presence of women was attached to family reunification, the current trend shows that women are migrating independently,” the rapporteur Pernille Frahm (Denmark, UEL) stressed. “However, for far too many women, and notably those working in poorly regulated sectors such as domestic service, migration presents risks of exploitation and harsh conditions. It is therefore important to recognise domestic work as work under labour law and to allow more flexibility for domestic workers to change employers or type of employment as well as to promote decent, dignified and remunerative employment of migrant women in general,” the rapporteur concluded. Participants said it was crucial to provide migrant women, who may be victims of trafficking, but also of discrimination, abuse, exploitation and violence with access to the legal and judicial system. They agreed that migrant women entering Council of Europe member states should be granted an independent and autonomous right of legal residence as well as the right to a work permit independently of their family situation. Migrant women in irregular status should also have full access to their fundamental rights, including to healthcare and education, fair working conditions, exposure to and ability to report violence and exploitation.

Participants at PACE hearing call for lowering of voting age to 16 (14.12.2010)

At a hearing in Paris on the expansion of democracy by lowering the voting age to 16, the rapporteur of the PACE Political Affairs Committee on this issue, Miloš Aligrudic (Serbia, EPP/CD), said that lowering the voting age from 18 to 16 should be strongly encouraged as the period of adolescence was of paramount importance for the future citizen. “Those who are below 18 and wish to vote should register on Voting Registers on their own. This is aimed at solving the problems related to the turnout of young voters, and participation of the young,” the rapporteur stressed. He added that this step would make young people more aware of their responsibilities. “This would not only bring new blood into the electorate and thus give greater expression to young people’s concerns, but it would also be an effective means of facilitating their integration into the structures of society,” he said. A debate on this topic is scheduled at the PACE plenary session in April 2011.

Terrorism should be combated by means that fully respect human rights (16.12.2010)

“All Council of Europe member States are under the obligation to protect the public against terrorist attacks […] and all perpetrators of terrorist acts, but also the instigators and organisers, must be held to account for their actions,” stressed PACE Vice-President Andres Herkel (Estonia, EPP/CD), speaking on behalf of the PACE President at the opening of a conference on the prevention of terrorism held by the Council of Europe in Istanbul. However, eradicating impunity also implies that law enforcement agencies and security services only use means compatible with the standards of the European Convention of Human Rights, Mr Herkel recalled. He added that prevention of terrorism – which complements prosecution and sanctions – also means the creation of conditions in our societies in which terrorism simply cannot develop. In this respect, he mentioned the importance of promoting inter-cultural dialogue including its inter-religious dimension, and implementing socio-economic policies contributing to the eradication of racism, xenophobia and intolerance within society. Address by Andres Herkel

PACE committee demands investigations into organ-trafficking and disappearances in Kosovo* and Albania (16.12.2010)

The Legal Affairs Committee of the PACE has called for a series of international and national investigations into evidence of disappearances, organ trafficking, corruption and collusion between organised criminal groups and political circles in Kosovo revealed this week in a report by Dick Marty (Switzerland, ALDE). According to a draft resolution unanimously approved in Paris on 16 December, based on Mr Marty’s report, the committee said there were “numerous concrete and convergent indications” confirming that Serbian and Albanian Kosovars were held prisoner in secret places of detention under Kosovo Liberation Army (KLA) control in northern Albania and were subjected to inhuman and degrading treatment, before ultimately disappearing. The committee added: “Numerous indications seem to confirm that, during the period immediately after the end of the armed conflict […], organs were removed from some prisoners at a clinic in Albanian territory, near Fushë-Kruje, to be

* 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

taken abroad for transplantation". "The international organisations in place in Kosovo favoured a pragmatic political approach, taking the view that they needed to promote short-term stability at any price, thereby sacrificing some important principles of justice," the parliamentarians said. The committee called on EULEX, the EU mission in Kosovo, to persevere with its investigative work into these crimes, and on the EU and other contributing states to give the Mission the resources and political support it needed. It also called on the Serbian and Albanian authorities, and the Kosovo administration, to fully co-operate with all investigations on the subject.

The Parliamentary Assembly is due to debate the report during its winter plenary session (24-28 January 2011). Video of Mr Marty's press conference (English); Video of Mr Marty's press conference (original languages); Draft resolution and explanatory memorandum (PDF); Appendix to the report: a map (PDF); Dick Marty makes public his report

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

A. Country work

Montenegro: Commissioner Hammarberg continues dialogue with the authorities on the protection of the human rights of LGBT persons (08.12.2010)

Commissioner Hammarberg has published on 8 December a letter addressed to the Prime Minister of Montenegro, Milo Djukanovic, calling for further improvements in fighting against discrimination towards Lesbian, Gay, Bisexual and Transgender (LGBT) persons. In particular, the Commissioner encourages the authorities to broadly raise awareness on the principles contained in the Law on Anti-Discrimination adopted in July 2010 by Montenegro, which also includes a ban on discrimination on grounds of sexual orientation and gender identity. The letter is a follow up to the Commissioner's report on Montenegro published in 2008, in which he recommended that the government ensure that LGBT persons enjoy the same human rights and fundamental freedoms as other members of society. Read the letter addressed to the Prime Minister of Montenegro; Read the reply from the Prime Minister of Montenegro

Germany: Commissioner Hammarberg continues dialogue with authorities on refugees from Kosovo[*] and police conduct (09.12.2010)

"The German government should avoid any further forced returns to Kosovo. The infrastructure and resources available there are in fact not adequate for the sustainable integration of returnees. Many of them, in particular Roma, Ashkali and Egyptian families with children, have been severely affected, not least because of discrimination, marginalisation and fear for their safety" said the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, publishing a letter addressed to the German Federal Minister of the Interior, Thomas De Maizière. (read more); Read the letter addressed to the German Federal Minister of the Interior

Countries of the former Yugoslavia[†] need to step up their efforts to resolve cases of missing persons (14.12.2010)

The presidents of Serbia and Croatia have met on several occasions recently and the issue of missing persons has been high on their agenda It has been reported that the president of Serbia, Mr Boris Tadic, brought with him important documents to the latest meeting concerning persons who have been missing since the siege of the Croatian city of Vukovar in 1991. These developments are very encouraging, says the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, in his latest Human Rights Comment published on 14 December. Read the Comment; Zemlje bivše Jugoslavije trebaju pojačati napore na rješavanju slučajeva nestalih osoba

"Romania needs to step up efforts to eliminate discrimination and improve Roma inclusion", says Commissioner Hammarberg (16.12.2010)

"Roma continue to face persistent poverty and discrimination in Romania. Political determination and comprehensive action are urgently needed to improve their situation" said on 16 December the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, publishing a letter addressed to the Prime Minister of Romania, Emil Boc, following the Commissioner's visit to Romania last October. The Commissioner is concerned about the anti-Roma rhetoric expressed by some public figures and media, as well as about the weak implementation of anti-discrimination legislation. Read the Letter addressed to the Prime Minister of Romania; Read the Prime Minister's reply

[*] "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 (1999) and without prejudice to the status of Kosovo."

[†] The term "the former Yugoslavia" is used to describe the territory that up until 25 June 1991 was known as the Socialist Federal Republic of Yugoslavia (SFRY).

B. Thematic work

Renewed political will needed to strengthen human rights protection in Europe (10.12.2010)

"Fear-mongering, xenophobia and austerity budgets threaten the protection of human rights in Europe today. The very absolute nature of human rights is questioned" said the Commissioner Hammarberg in a broad-ranging speech delivered at the London School of Economics on December 9. The Commissioner observes systemic problems in several countries and singles out major trends which undermine human rights protection, including counter-terrorism measures, corruption in the justice system, xenophobic tendencies and economic crisis. "The political backing for human rights has weakened. When confronted with security or economic interests, human rights tend now to be seen just as idealism – or even as obstacles." Commissioner Hammarberg concludes by calling on political leaders to "take their potential role as opinion-makers and teachers more seriously".

Andrei Sakharov's human rights legacy (15.12.2010)

The book "Andrei Sakharov and human rights" sets out to capture the significance of Sakharov for Europe today. Released on 15 December by the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, the book contains selected Sakharov's writings which have a deeper significance for human rights and the fight for a peaceful and just world. "Andrei Dmitrievich Sakharov, the eminent Russian physicist and Nobel peace laureate, was a leading human rights activist in the Soviet Union, and a visionary thinker on world affairs. His principled messages contributed to the non-violent, revolutionary changes of 1989, and continue to influence work in favour of justice and human rights today" said Commissioner Hammarberg in launching the book.

"More than six hundred thousand Europeans are stateless and denied their right to citizenship", says Commissioner Hammarberg (17.12.2010)

"A large number of the stateless persons in Europe are living in precarious circumstances", said Commissioner Thomas Hammarberg in a speech to the Council of Europe Conference on Nationality in Strasbourg on 17 December. They are estimated to number at least 640 000. Stateless persons tend to be marginalised. Their exclusion from participation in the political process undermines the reciprocal relationship between duties and rights. Many of them face discrimination in their daily lives; they are disadvantaged in relation to employment, housing, education and health care. Many of them, in particular Roma, have no personal identification documents that are valid and are therefore further excluded from common services. It is urgent that their rights now are finally restored, said Commissioner Hammarberg. Read the speech: The rights of stateless persons must be protected; Council of Europe website on nationality

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