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("Peer-to-Peer II Project")

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

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Introduction

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

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

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

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

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

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

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

We invite you to read the INFORMATION NOTE No. 142 (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 June 2011 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**

Al-Jedda v. the United Kingdom (link to the judgment in French) (no. 27021/08) (Importance 1) – 7 July 2011 – Violation of Article 5 § 1 – Unlawful indefinite detention, without charge, in the absence of a binding obligation for the domestic authorities to use internment

The case concerned the internment of an Iraqi civilian for more than three years (2004- 2007) in a detention centre in Basrah, Iraq, run by British forces. The applicant's internment was maintained by the British authorities as being necessary for imperative reasons of security in Iraq. The applicant's a judicial review claim challenging the lawfulness of his continued detention and also the refusal of the UK Government to return him to the UK was eventually decided by the House of Lords; it rejected the UK Government's argument that the UN, and not the UK, was responsible for the internment under international law and held that UNSC Resolution 1546 placed the UK under an obligation to intern individuals considered to threaten the security of Iraq and that, in accordance with Article 103 of the UN Charter, that obligation to the UNSC had to take primacy over the UK's obligation under the Convention not to hold anyone in internment without charge. In December 2007 the Home Secretary signed an order depriving the applicant of British citizenship, claiming, among other things, that he had connections with violent Islamist groups, in Iraq and elsewhere, and had been responsible for recruiting terrorists outside Iraq and facilitating their travel and the smuggling of bomb parts into Iraq. The applicant was released on 30 December 2007 and travelled to Turkey. He appealed unsuccessfully against the loss of his British citizenship. The applicant complained that he was interned by UK armed forces in Iraq between October 2004 and December 2007.

The Court noted that that internment was not explicitly referred to in Resolution 1546, which authorised the Multi-National Force "to take all necessary measures to contribute to the maintenance of security and stability in Iraq". Internment was listed in a letter from United States Secretary of State Colin Powell annexed to the resolution, as an example of the "broad range of tasks" which the Multi-National Force was ready to undertake. In the Court's view, the terminology of the Resolution left open to the Member States within the Multi-National Force the choice of the means to be used to contribute to the maintenance of security and stability in Iraq. Moreover, in the Preamble to the Resolution, the commitment of all forces to act in accordance with international law was noted, and the Convention was part of international law. In the absence of clear provision to the contrary, the presumption had to be that the Security Council intended States within the Multi-National Force to contribute to the maintenance of security in Iraq while complying with their obligations under international human rights law. Furthermore, it was difficult to reconcile the argument that Resolution 1546 placed an obligation on member States to use internment with the objections repeatedly made by the UN Secretary General and the UN Assistance Mission for Iraq (UNAMI) to the use of internment by the Multi-National Force. Under Resolution 1546 the UNSC mandated both the Secretary General, through his Special Representative, and the UNAMI to "promote the protection of human rights … in Iraq". In his quarterly reports throughout the period of the applicant's internment, the UN Secretary General repeatedly described the extent to which security internment was being used by the Multi-National Force as "a pressing human rights concern". UNAMI reported on the human rights situation every few months during the same period. It also repeatedly expressed concern at the large number of people being held in indefinite internment without judicial oversight. In conclusion, **the Court considered that UNSC Resolution 1546 authorised the UK to take measures to contribute to the maintenance of security and stability in Iraq. However, neither Resolution 1546 nor any other UNSC Resolution explicitly or implicitly required the UK to place an individual whom its authorities considered to constitute a risk to the security of Iraq into indefinite detention without charge[*].** In those circumstances, in the absence of a binding obligation to use internment, there was no conflict between the UK's obligations under the UN Charter and its obligations under Article 5 § 1. Given that the provisions of Article 5 § 1 were not displaced and none of the grounds for detention set out in Article 5 § 1 applied, the applicant's detention was in violation of Article 5 § 1.

Al-Skeini and Others v. the United Kingdom (link to the judgment in French) (no. 55721/07) (Importance 1) – 7 July 2011 – Article 1 – In the exceptional circumstances deriving from the United Kingdom's assumption of authority for the maintenance of security in South East Iraq from May 2003 to June 2004, the UK had jurisdiction in respect of civilians killed during security operations carried out by UK soldiers in Basrah – Violation of Article 2 (procedural) – Domestic authorities' failure to conduct an independent and effective investigation into the deaths of the relatives of five of the six applicants

The case concerned the deaths of the applicants' six close relatives in Basrah in 2003 while the UK was an occupying power: three of the victims were shot dead or shot and fatally wounded by British soldiers; one was shot and fatally wounded during an exchange of fire between a British patrol and unknown gunmen; one was beaten by British soldiers and then forced into a river, where he drowned; and one died at a British military base, with 93 injuries identified on his body. The applicants alleged that their relatives were within the jurisdiction of the United Kingdom under Article 1 when they were killed through the acts of the British armed forces. They complained about the failure to carry out a full and independent investigation into the circumstances of each death.

The court noted that following the removal from power of the Ba'ath regime and until the accession of the Iraqi Interim Government, the United Kingdom (together with the United States) assumed in Iraq the exercise of some of the public powers normally to be exercised by a sovereign government. **In particular, the United Kingdom assumed authority and responsibility for the maintenance of security in South East Iraq. In those exceptional circumstances, a jurisdictional link existed between the United Kingdom and individuals killed in the course of security operations carried out by British soldiers during the period May 2003 to June 2004.** Since the applicants' relatives were killed in the course of United Kingdom security operations during that period, the United Kingdom was required to carry out an investigation into their deaths. The applicants complained that the UK Government had not fulfilled its duty to carry out an effective investigation into their relatives' deaths. The Court referred to its previous case law that the obligation to protect life required that there should be an effective official investigation when individuals had been killed as a result of the use of force by State agents. The Court noted that, it was clear that the investigations into the shooting of the first, second and third applicants' relatives failed to meet the requirements of Article 2, since the

[*] Internment without charge for security reasons and without effective judicial oversight was also discussed amongst the European NPM Network in April 2011 in the European NPM Newsletter Issue No. 13/14 February – March 2011. (See pages 20-26)

investigation process remained entirely within the military chain of command and was limited to taking statements from the soldiers involved. As regards the other applicants, although there was an investigation by the Royal Military Police (Special Investigations Branch) into the death of the fourth applicant's brother and the fifth applicant's son, the Court did not consider that that was sufficient to comply with the requirements of Article 2, since (as the Court of Appeal also found) the SIB was not, during the relevant period, operationally independent from the military chain of command. In contrast, a full, public inquiry was nearing completion into the circumstances of Baha Mousa's death. In the light of that inquiry, the sixth applicant was no longer a victim of any breach of the procedural obligation under Article 2. In conclusion, the Court found a violation of Article 2 concerning the lack of an effective investigation into the deaths of the relatives of the first, second, third, fourth and fifth applicants.

Bayatyan v. Armenia (link to the judgment in French) (no. 23459/03) (Importance 1) – 7 July 2011 – Violation of Article 9 – Imprisonment of conscientious objector in Armenia for refusing to do military service on the basis of his religious belief interfered with the applicant's right to freedom of religion

The case concerned the conviction in 2003 of a conscientious objector - a Jehovah's Witness - for his refusal to perform military service. He was imprisoned despite Armenia's undertaking, when joining the Council of Europe on 25 January 2001, to introduce civilian service as an alternative to compulsory military service within three years and to pardon all conscientious objectors sentenced to imprisonment. The applicant complained about his conviction for draft evasion, despite his objections on religious grounds.

The Grand Chamber considered that the applicant's failure to report for military service was a manifestation of his religious beliefs. His conviction for draft evasion therefore amounted to an interference with his freedom to manifest his religion. The Grand Chamber left open the question of whether his conviction was lawful. It was based on laws which were accessible and clear. However, the Armenian authorities had also undertaken to adopt a law on alternative service and, in the meantime, to pardon conscientious objectors sentenced to prison terms. The Grand Chamber noted that the applicant, as a Jehovah's Witness, wanted to be exempted from military service, not for personal benefit or convenience, but, because of his genuinely-held religious convictions. Since no alternative civilian service was available in Armenia at the time, he had had no choice but to refuse to be drafted into the army to stay faithful to his convictions and, by doing so, risk criminal sanctions. Such a system failed to strike a fair balance between the interests of society as a whole and those of the applicant. The Grand Chamber therefore considered that the imposition of a penalty on the applicant, in circumstances where no allowances were made for his conscience and beliefs, could not be considered a measure necessary in a democratic society. The applicant's prosecution and conviction also happened at a time when the Armenian authorities had already officially pledged to introduce alternative service. Their commitment not to convict conscientious objectors during that period was also implicit in their undertaking to pardon all conscientious objectors sentenced to imprisonment. Hence, the applicant's conviction for conscientious objection was in direct conflict with the official policy of reform and the legislative changes then being implemented in Armenia in line with its international commitment and could not be said to have been prompted by a pressing social need. In addition, the law on alternative service was adopted less than a year after the applicant's final conviction. The fact that he was later released on parole did not affect the situation. Nor did the adoption of the new law have any impact on his case. The Court therefore considered that the applicant's conviction constituted an interference with his right to freedom of religion which was not necessary in a democratic society, in violation of Article 9.

Sabeh El Leil v. France (link to the judgment in French) (no. 34869/05) (Importance 1) – 29 June 2011 – Violation of Article 6 § 1 – Interference with the applicant's right of access to a court on account of domestic authorities' failure to preserve a reasonable relationship of proportionality by upholding an objection based on State immunity and dismissing the applicant's claim, without giving relevant and sufficient reasons, and notwithstanding the applicable provisions of international law

The case concerned the complaint of an ex-employee of the Kuwaiti embassy in Paris, that he had been deprived of access to a court to sue his employer for having dismissed him from his job in 2000. The applicant complained that he had been deprived of his right of access to a court as a result of the French courts' finding that his employer enjoyed jurisdictional immunity.

The Court noted that the applicant, who had not been a diplomatic or consular agent of Kuwait, nor a national of that State, had not been covered by any of the exceptions enumerated in the 2004 UN Convention on Jurisdictional Immunities of States and their Property. In particular, he had not been

employed to officially act on behalf of the State of Kuwait, and it had not been established that there was any risk of interference with the security interests of the State of Kuwait. The Court further noted that, while France had not yet ratified the Convention on Jurisdictional Immunities of States and their Property, it had signed that convention in 2007 and ratification was pending before the French Parliament. In addition, the Court emphasised that the 2004 Convention was part of customary law, and as such it applied even to countries which had not ratified it, including France. On the other hand, the applicant had been hired and worked as an accountant until his dismissal in 2000 on economic grounds. Two documents concerning him, an official note of 1985 promoting him to head accountant and a certificate of 2000, only referred to him as an accountant, without mentioning any other role or function that might have been assigned to him. While the domestic courts had referred to certain additional responsibilities that the applicant had supposedly assumed, they had not specified why they had found that, through those activities, the applicant was officially acting on behalf of the State of Kuwait. The Court concluded that the French courts had dismissed the applicant's complaint without giving relevant and sufficient reasons, thus impairing the very essence of his right of access to a court, in violation of Article 6 § 1.

Stummer v. Austria (link to the judgment in French) (no. 37452/02) (Importance 1) – 7 July 2011 – No violation of Article 14 in conjunction with Article 1 of Protocol No. 1 – The non-affiliation of working prisoners to the old-age pension system to date, does not exceed the margin of appreciation afforded to member States in that matter – No violation of Article 4 – The work performed by the applicant in prison did not constitute "forced or compulsory labour"

The case concerned a former prisoner's complaint of his non-affiliation to the old-age pension system for work performed in prison and his consequent inability to receive pension benefits under that scheme. The applicant complained that the exemption of prison work from affiliation to the old-age pension system was discriminatory and deprived him of receiving pension benefits.

Article 14 in conjunction with Article 1 of Protocol No. 1

The Court found that in that respect the applicant was in a relevantly similar situation to ordinary employees, yet he was treated differently in that he was not affiliated to the old-age pension system under the General Social Security Act. The Court accepted that the aims of that difference in treatment relied on by the Austrian Government were legitimate ones. As regards the question whether the difference in treatment was proportionate to the legitimate aims pursued, the Court observed that the issue of working prisoners' affiliation to the old-age pension system was closely linked to the State's general choice of economic and social policy. In that area, States enjoyed a wide margin of appreciation, being better placed to decide what was in the public interest, and the Court generally respected the legislature's policy choice unless it was without reasonable foundation. The Court attached weight to the fact that at the time the applicant worked as a prisoner without being affiliated to the old-age pension system, that is, between the 1960s and the 1990s, there had been no common ground regarding the affiliation of working prisoners to domestic social security systems. While Austria was required to keep the issue raised by the applicant's case under review, the Court found that by not having affiliated working prisoners to the old-age pension system to date, it had not exceeded the margin of appreciation afforded to it in that matter. There had accordingly been no violation of Article 14 taken in conjunction with Article 1 of Protocol No. 1.

Article 4

Having regard to the current practice of the member States, the Court did not find a basis for the interpretation of Article 4 advocated by the applicant. According to the information available to the Court, while an absolute majority of Contracting States affiliate prisoners in some way to the national social security system or provide them with some specific insurance scheme, only a small majority affiliate working prisoners to the old-age pension system. Austrian law reflects the development of European law in that all prisoners are provided with health and accident care and working prisoners are affiliated to the unemployment insurance scheme but not to the old-age pension system. Thus, there was no sufficient consensus on the issue of the affiliation of working prisoners to the old-age pension system. **The obligatory work performed by the applicant as a prisoner without being affiliated to the old-age pension system has to be regarded as "work required to be done in the ordinary course of detention" within the meaning of Article 4 § 3 (a)**. Therefore, the work performed by the applicant was covered by the terms of Article 4 § 3 (a), and did not constitute "forced or compulsory labour" within the meaning of Article 4 § 2. Consequently, there had been no violation of Article 4.

- **Right to life**

Girard v. France (no. 22590/04) (Importance 2) – 30 June 2011 – Violation of Articles 2 and 8 – Domestic authorities' lack of diligence in investigating the disappearance of two adults and in returning to the applicants their daughter's remains in due time

The case concerned the French authorities' lack of diligence in conducting an investigation into the disappearance of a young woman and her partner, despite the numerous steps taken by the parents of the woman, who was eventually found murdered. The applicants complained of inaction on the authorities' part following the disappearance of their daughter. They also complained about the time taken by the authorities to return samples from their daughter's body.

Article 2 (right to life: effective investigation)

As a result of the applicants' enquiries, the authorities had then had sufficient information for their daughter's disappearance to be regarded as worrying and suspicious, and the Court found that they had then been under an obligation to investigate her disappearance. Despite that, the authorities had simply conducted an unsuccessful search for an address, in early May 1999, after which the case had been closed. The only person who purported to provide any news of the applicants' daughter and her partner and who had been using the latter's check book fraudulently, had never been questioned. The suspicious bank-account debits indicated by the first applicant and the use of his daughter's identity card had never been verified. The Court also observed that it was ultimately the applicants themselves who, after making their own enquiries, had elucidated the disappearance of their daughter and her partner, by informing the Evry gendarmerie of the place where the bodies were actually found. The Court concluded that, between November 1998 and July 1999, when the applicants' daughter's body was found, the authorities' reaction had not been adapted to the circumstances. They had failed in their duty to carry out an effective investigation, in breach of Article 2.

Article 8 (right to respect for private and family life)

The Court took the view that the right, invoked by the applicants, to give their daughter's remains a final burial place, was inherent in their right to respect for their private and family life. The Court observed that the conservation by the authorities of the samples taken from Nathalie's body until the judgment of the Val-de-Marne Assize Court of Appeal in March 2004 had not constituted interference with that right. However, the four-month period between the court's judgment ordering the immediate restitution of the remains and the actual restitution to the applicants had entailed a disproportionate interference with their right to respect for their private and family life, in breach of Article 8.

Matushevskyy and Matushevska v. Ukraine (no. 59461/08) (Importance 2) – 23 June 2011 – Two violations of Article 2 (substantive and procedural) – (i) Death of a detainee in pre-trial detention centre; and (ii) lack of an effective investigation – Violation of Article 3 (substantive) – Ill-treatment of the applicants' son in pre-trial detention centre

The case concerned the death of a detainee in a pre-trial detention centre and the authorities' failure to effectively investigate what happened. The applicants' son was detained in February 2008 on suspicion of a drugs-related offence. According to the medical protocol at the time, he was in good health when detained. On 28 May 2008, his cell mates alerted the prison guards that the applicants' son had fallen from an upper bunk bed and had fainted. A few minutes later a doctor arrived at the cell and injected several substances into the applicants' son, who died less than an hour later. The applicants alleged that their 30-year-old son had died after being ill-treated in pre-trial detention in February 2008 on suspicion of a drugs-related offence, and that the authorities had failed to carry out an effective investigation.

The Court was not convinced by the explanation given by the Ukrainian authorities about the applicants' son's injuries and also found questionable the way those conclusions had been reached. In particular, it could not accept that any, no matter how unqualified, attempt lasting a few minutes and aiming at bringing someone back to consciousness could result in bruises behind both ears, and in hemorrhaging and patches of hair being torn from both temples. Further, it had been highly unlikely that the applicants' son would have hurt himself on the inner side of both thighs had he fallen from his bed as suggested by the authorities. In addition, given that the applicants' son had died in the medical unit in the presence of medical specialists attempting to resuscitate him, no further traumas to his dead body had ever been implied. Consequently, the Court found inexplicable the Government's findings that the hemorrhaging had been the result of trauma to the applicants' son's already dead body. Injections with various substances had been administered to him shortly before his death, yet some of the substances injected had not been found in his body according to a subsequent forensic report. That inconsistency had never been explained by the authorities. Finally, the authorities had not made any meaningful effort to identify who had made the anonymous call and written the anonymous

letter alleging that the applicants' son's death had been violent. About three years had passed since Igor's death and no effective investigation had been carried out into it. The Court concluded that there had been a violation of Article 2, both as regards his death and as regards the lack of an adequate investigation into it.

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

Gubacsi v. Hungary (no. 44686/07) (Importance 3) – 28 June 2011 – Violation of Article 3 (substantive) – Ill-treatment in police custody

The case concerned the applicant's allegation that he was severely ill-treated in August 2006 by police officers who had taken him into custody as they suspected that he was drunk and/or had taken drugs following a minor accident in a car park in the town of Siófok. The applicant complained about his ill-treatment by the police and the lack of an adequate investigation into that complaint.

The Court noted that the official records noted that the applicant had scratches on his leg and a swollen cheek on being taken into police custody. However, the day after his release, he was diagnosed with many more injuries. **The Court reiterated that, if an individual were taken into police custody in good health but found to be injured when released, it was for the State to provide a plausible explanation for how the injuries had occurred.** In the applicant's case, the Government had not proven that his injuries had been caused by treatment other than that meted out to him in police custody. Indeed, it had even been recognized in the decision to terminate the investigation – and then acknowledged by the Government in the proceedings before this Court – that his injury had been caused by ill-treatment which might have been inflicted on him during his custody. The Court therefore concluded that the applicant had been subjected to inhuman and degrading treatment, in violation of Article 3. As regards the applicant's complaint about the adequacy of the investigation, the Court observes that, against the background of the injuries the applicant had sustained, as recorded by a general practitioner and an urologist, a formal investigation was launched, in the course of which the applicant and numerous police officers were heard, an identification parade and a series of confrontations took place, and an expert opinion was obtained. The procedure was terminated essentially on account of the irreconcilable testimonies given by the protagonists and the fact that the applicant, heavily under the influence of drugs and alcohol at the time of the incident, had given contradictory statements. Because of this, no individual criminal responsibility of any particular police officer could be established. In these circumstances, the Court was satisfied that there had been an adequate investigation into the applicant's allegations.

Hellig v. Germany (no. 20999/05) (Importance 3) – 7 July 2011 – Violation of Article 3 – Domestic authorities' failure to submit sufficient reasons which could justify the ill-treatment of the applicant by depriving him of his clothes for seven days

The case concerned the applicant's complaint about being placed naked in a security cell in prison for seven days. Serving a sentence in Butzbach prison, the applicant was ordered by the prison authorities, in October 2000, to move from his single cell to a cell which he would have to share with two other inmates and which did not have a screen or curtain separating the toilet from the rest of the cell. In a letter to the head of prison, the applicant stated that he refused to move and that accommodation in such a cell would be unlawful. On 12 October 2000, the prison staff ordered him to vacate his single cell, announcing that they would use force if he refused. At the door of the multi-occupancy cell, the applicant again refused to move and a scuffle between him and prison staff ensued. It is disputed between the parties whether he was kicked and beaten by the prison staff while having merely passively resisted or whether the applicant himself kicked the prison staff.

The applicant complained of having been kicked and beaten by prison guards, and of his placement in the security cell and his detention there for seven days.

The Court noted that the applicant had not submitted any evidence to disprove the domestic courts' finding that he had used violence against the prison guards rather than them having used violence against him, and concluded that, in view of the minor extent of the injuries, the threshold for inhuman treatment was not reached in respect of his treatment during the transfer. As regards his complaint about his placement and detention in the security cell, the Court considered that the very basic facilities found in that cell had not been suitable for long-term accommodation. However, the applicant's placement there had not been intended as a long-term measure, which was demonstrated by the fact that the prison authorities and the psychological service tried to convince him to vacate that cell and eventually moved him to the prison hospital as apparently no other single cell had been available at the time. The Court considered that to deprive an inmate of clothing was capable of arousing feelings of fear, anguish and inferiority capable of humiliating and debasing him. It took note

of the fact that the practice of placing inmates in the security cell without clothes pursued the aim of preventing them from inflicting harm on themselves. However, the regional court had not established for certain whether there had been a serious danger of self-injury or suicide during the time of his placement in the cell, and there was no indication that the prison authorities had considered the use of less intrusive means, such as providing him with tear-proof clothing, a practice recommended by the European Committee for the Prevention of Torture (see for example report on Belgium 2009 (CPT/Inf (2010)24)). In view of these considerations, the Court concluded that while the seven-day placement in the security cell as such might have been justified by the particular circumstances of the case, there had not been sufficient reasons which could justify such harsh treatment. Depriving the applicant of his clothes during his entire stay in the security cell was therefore in violation of Article 3.

Shishkin v. Russia (no. 18280/04) (Importance 3) – 7 July 2011 – Three violations of Article 3 (substantive and procedural) – (i) Torture by the police; (ii) lack of an effective investigation into the applicant's allegations of torture; and (iii) lack of an effective investigation into the applicant's allegations of ill-treatment – Violation of Article 6 § 3 (c) – Lack of legal assistance during initial detention – Violation of Article 6 § 1 – Unfairness of robbery-related proceedings on account of the applicant's lack of legal assistance while being tortured during interrogation in parallel criminal proceedings against him

The case concerned the ill-treatment by the police of a detainee suspected of robbery and manslaughter. Two separate sets of criminal proceedings were opened against him in November 2000 and in January 2001 respectively, on suspicion of three incidents of robbery and theft and on suspicion of manslaughter and robbery. He was arrested on 23 January 2001 and told that he was suspected of manslaughter and robbery. Given that the applicant denied involvement in those crimes, he was severely beaten in police custody. Officers hit his soles with a rubber truncheon, suspended him by his arms which were tied behind his back, made him wear a gas mask filled with smoke and with a blocked air-vent, and applied electric shocks onto various parts of his body. As a result of the ill-treatment, the applicant confessed to the crimes of which he was suspected and waived his right to a lawyer. At the end of January 2001, his relatives hired a lawyer for him who tried unsuccessfully to see him on 30 and 31 January, and only managed to do so on 2 February 2001. The applicant complained that he was tortured in police custody and was ill-treated while being escorted to court, and that his related complaints had not been investigated properly. He further complained that he had not had access to a lawyer from the moment he had been arrested and that, when convicting him, the courts had relied on evidence obtained from him under duress.

Torture by the police (Article 3)

The Court noted that the Russian courts had acknowledged that the applicant had been repeatedly ill-treated. Given that he had been ill-treated with the purpose of making him confess to a crime he had not committed, and in view of the violence and cruelty to which he had been subjected, the Court concluded that the applicant had been tortured. As regards the compensation paid to the applicant, while the Court recalled that there was no monetary standard by which to assess people's suffering and mental distress, the 2,300 euros (EUR) compensation awarded to him for his prolonged suffering as a result of torture had been substantially lower than the amounts the Court awarded in comparable cases in respect of Russia. Consequently, there had been a violation of Article 3 as a result of the applicant's ill-treatment by the police and of the failure to investigate that effectively.

Lack of legal assistance (Article 6 § 3 (c))

The Government had not denied that the applicant had requested a lawyer during his detention by the police and that a lawyer had only met with him 10 days after his arrest. Given the importance of legal assistance from the very moment of a suspect's arrest, the Court found that having denied legal assistance to the applicant during his initial detention when he had been interrogated and tortured, had been unacceptable, in violation of Article 6 § 3 (c).

Evidence obtained under duress (Article 6 § 1)

The Court recalled that the use in criminal proceedings of evidence obtained by means found to be in violation of the Convention, always raised serious concerns about the fairness of the proceedings. Even if it had not been certain whether the applicant had made any self-incriminating statements in respect of the robbery charges of which he had finally been convicted, the very fact that he had not been assisted by a lawyer while being tortured during the interrogation in parallel criminal proceedings against him on charges of manslaughter and robbery, had tainted the robbery-related proceedings. Accordingly, there had been a violation of Article 6 § 1.

Fyodorov and Fyodorova v. Ukraine (no. 39229/03) (Importance 2) – 7 July 2011 – Violations of Article 3 (substantive and procedural) – (i) Excessive use of police force against the applicants; (ii) lack of an effective investigation – Violation of Article 8 – Unlawful impromptu psychiatric examination of the first applicant's mental health in his back yard, without his consent – Violation of Article 6 § 1 – Infringement of the principle of equality of arms on account of the first applicant's absence from the appeal hearing on his case

The applicants' case essentially concerned the allegation that they had been ill-treated by the police on 7 March 2003 when resisting the first applicant's psychiatric internment following complaints from neighbours that he was harassing them. The applicants alleged that they had been ill-treated by the police when resisting the first applicant's psychiatric internment and that the ensuing investigation into their allegations had been inadequate. The first applicant also complained about the impromptu psychiatric examination without his consent in his back yard and subsequent diagnosis of chronic delusional disorder. Lastly, he complained that he had not been notified of the appeal hearing on the case he had brought against the medical authorities complaining about the unlawfulness of the impromptu psychiatric examination and diagnosis and that the ensuing judgment lacked sufficient reasons for reversing the first-instance decision in his favour.

Article 3

The Court noted that the decision to have the first applicant hospitalised had been taken unilaterally by the head psychiatrist who had apparently never even met him in person. Indeed, there had been no urgent need to enforce the internment order. Furthermore, he had been informed of his internment by surprise without being given the minimum of procedures with which to defend his interests such as challenging the decision before a court or simply being able to contact the chief of the police department or a lawyer. The psychiatric professionals and the police, on the other hand, had had plenty of time to plan how to go about the operation and, outnumbering the applicants, were in a considerably superior position. Therefore the Court found that the violence used against the first applicant had been both degrading and, given the Government's failure to explain that his injuries had been caused by appropriate use of force, excessive, in violation of Article 3. Similarly, the Court found that there had been a violation of Article 3 as concerned the second applicant's injuries on account of the Government's failure to show that they had been the result of appropriate force. The Court noted that, despite the fact that the applicants had lodged their complaints within days of the incident and had identified those officials they accused of ill-treatment, the investigation had still not come to any decision about liability some seven years later. Moreover, although instructions were given on how to remedy the inadequacies of the investigation, the further investigations were again discontinued on essentially the same grounds as before, without the prosecution ever carrying out the authorities' recommendations. There had been a further violation of Article 3 on account of the ineffective investigation into the applicants' complaints about their ill-treatment.

Article 8 (right to respect for private and family life)

The Court found that it was not possible to establish the exact legal ground for the first applicant's psychiatric examination. He neither requested nor consented to it and no prior judicial authorisation was sought to carry it out. Nor did the domestic judicial authorities or the Government suggest that any of the neighbours' complaints had required such urgent action as to do without seeking consent or prior judicial authorisation. Furthermore, the manner in which the examination had been carried out – an informal, brief conversation in a back yard – had not been in conformity with medical guidelines. The Court therefore considered that the medical diagnosis concerning the first applicant's mental health had not been lawful, in violation of Article 8.

Article 6 § 1 (right to a fair trial)

Given the finding above under Article 8, the Court considered that it was not necessary to examine separately the same facts under Article 6 concerning the first applicant's complaint about the lack of reasons for reversing the first-instance decision which found that the impromptu psychiatric examination had been unlawful. As concerned the lack of notification of the appeal hearing on his case about the psychiatric examination, the Court, considering the general remark in the hearing record insufficient proof, noted that the Government had not provided any other evidence to prove when or how the first applicant or his lawyer had been notified of the hearing of April 2002. The opposing party had therefore been given a substantial opportunity during the appeal hearing to present their arguments and that had not been subsequently remedied by the courts as the first applicant's request for leave to appeal in cassation had been rejected without any further hearing being held. The Court therefore found that the first applicant's absence from the appeal hearing on his case had been in breach of the principle of equality of arms, in violation of Article 6 § 1.

Mađer v. Croatia (no. 56185/07) (Importance 3) – 21 June 2011 – Violations of Article 3 (substantive and procedural) – (i) Ill-treatment at police station; (ii) lack of an effective investigation – Violation of Article 6 §§ 1 and 3 – Lack of legal assistance during police questioning – No violation of Article 6 – The applicant had been duly represented by counsel during trial

The case concerned a prisoner's complaint of his treatment by the police during questioning and his criminal trial for murder. In the early morning of 1 June 2004, the applicant was taken to the Zagreb Police Department. While the documents submitted to the Court do not clarify his treatment during the initial 25 hours after his arrest, it is undisputed between the parties that he remained at the police station. In the morning of 2 June, he was formally arrested on suspicion of murdering a man, whose body was found the following day. According to the official police record, a lawyer was called in the late evening of 3 June to serve as the applicant's defence counsel; his police questioning started after midnight on 4 June after the lawyer had arrived. During the questioning, the applicant confessed to the murder. On the same day, criminal charges were brought against him, he was brought before the investigating judge in the presence of a defence lawyer he had chosen and was then transferred to prison; no injuries were noted in the prison medical record. During the ensuing proceedings, the applicant was represented by an officially appointed defence counsel. The applicant complained in particular of having been beaten by the police during the questioning, of having been forced to sit on a chair and having been deprived of sleep and food during the three days that he was questioned. He further complained that the criminal proceedings against him had been unfair, in particular as he had lacked legal assistance during the police questioning and as the services of his officially assigned legal counsel had fallen short of the requirements of a fair trial.

Article 3

The Court found that a number of facts added credibility to the applicant's submission. In particular, his initial questioning had taken place without the presence of a lawyer. His formal detention had only been registered one day after having been brought to the police department. Further, in his testimony before the trial court, the police officer who had questioned the applicant had not denied the allegations of ill-treatment. The Court also took note of the fact that the police kept no record of the time when the applicant had been interviewed or of when he was allowed to sleep or eat. Against that background and in the absence of any official record, the Court accepted the applicant's allegations as true. While the Court did not find sufficient evidence that he had also been beaten by the police, the treatment he had received was severe enough to be considered inhuman treatment. There had accordingly been a violation of Article 3. By complaining to the trial court, the applicant had complied with his duty to inform the relevant authorities of his allegations of ill-treatment. Although those allegations were serious and had called for a thorough examination, no official investigation had been opened. While the trial court had heard witnesses about the circumstances of the applicant's questioning by the police, their testimonies had only concerned the time after the defence lawyer had arrived. However, no assessment had been made as to the applicant's stay from 1 June until the late evening of 3 June. The Court concluded that there had also been a violation of Article 3 in its procedural aspect for failure to effectively investigate the applicant's allegation of ill-treatment.

Article 6

As regards the complaint concerning the lack of legal assistance during police questioning, the Court noted that the applicant was provided with the assistance of a lawyer from about 1 a.m. on 4 June 2004. Even if the Court based its considerations on the official record which had registered the applicant's arrest on 2 June, the fact remained that during the initial questioning by the police he did not have the assistance of a lawyer. His confession, made without consulting a lawyer, had been used in the proceedings and had been a significant basis for his conviction. While it was not for the Court to speculate on the impact which access to a lawyer during police custody would have had on the ensuing proceedings, it was clear that neither the assistance provided subsequently by a lawyer nor the adversarial nature of the proceedings could counteract the defects which had occurred during his initial questioning. The applicant had further not waived his right to legal assistance during his police questioning, as he had complained about the lack of that assistance from the initial stages of the proceedings. The Court therefore found that there had been a violation of Article 6 § 3 in conjunction with Article 6 § 1. As regards the complaint concerning the lack of legal assistance during trial, however, the Court noted that the officially-assigned defence counsel, who had represented the applicant during that stage of the proceedings, had attended all the hearings before the trial court and had actively participated by making relevant proposals and putting questions to the witnesses. He had requested that the police report containing the applicant's confession be excluded from the case file and had lodged an appeal against the decision refusing that request. He had also lodged an appeal against the first-instance judgment. The record containing the applicant's alleged confession had been part of the case file, so that his counsel had had the opportunity, even without consulting him in person, to study the file and prepare his defence on that basis. While at the appeal stage the applicant

had been represented by another lawyer, of his own choice, in his appeal he had not advanced new arguments which had not been previously submitted by the officially appointed defence counsel. The Court therefore concluded that there had been no violation of Article 6 in respect of the applicant's representation during the trial.

Saçilik and Others v. Turkey (no. 43044/05) (Importance 3) – 5 July 2011 – Violations of Article 3 (substantive and procedural) – Severe ill-treatment of 25 applicants during large-scale security operation carried-out in Burdur prison

The case concerned a complaint brought by the applicants, formerly detainees in Burdur Prison, about a large-scale security operation carried out in the prison on 5 July 2000. The applicants alleged that the force used against them during the operation had been unnecessary and excessive. On 4 July 2000 nine of the applicants had informed the prison authorities that they intended to refuse to attend a hearing the next day in protest at beatings and ill-treatment on their way to and from court hearings. The next day 415 gendarmes and soldiers were sent to the prison. They set fire to the prisoners' cells, leaving two of the applicants with burns, confined them to one part of the prison and used teargas and chemical gases against them. A criminal investigation, launched at the request of the applicants, was initially carried out by the military. The soldiers questioned all denied using force against the inmates, which was corroborated by the prison governor and gendarmerie commander. The preliminary investigation concluded in August 2000 that the soldiers had not ill-treated any of the inmates and that those allegations had been invented in order to damage the reputation of the armed forces. The same line of investigation was subsequently followed by the civilian prosecutors: notably it found that the security forces had had to use force against the resistance of terrorists and that the allegations of ill-treatment were unfounded and ill-intentioned. The applicants alleged that they had been subjected to systematic, disproportionate and unjustified violence during the incident in Burdur Prison and that their refusal to attend a hearing had been used as a pretext to carry out the operation. They further alleged that the ensuing investigations into their allegations had been inadequate and had simply been carried out for appearances' sake.

The Court considered that the injuries – some life-threatening – recorded in the applicants' medical reports had been severe enough to come within the scope of Article 3. Regrettably the investigation had been conducted at the initial stage by governors and military officers, all of whom were hierarchical superiors of the soldiers allegedly responsible for the ill-treatment, who could not possibly be considered independent or impartial. The judicial authorities were therefore denied access to evidence at the crucial early stage of the investigation. However, even when they did subsequently take charge of the investigation, they did not take the applicants any the more seriously, referring to them repeatedly as "terrorists" and "ill-intentioned". Indeed, the independence and impartiality of the entire investigation had been tainted by the army colonel's letter urging the investigating prosecutor to bring the investigation to an end due to exorbitant compensation claims. Finally, the Court noted that the prosecutor's decision of March 2005 not to prosecute because the soldiers had had to resort to force to quell the riot had been in contradiction with the denials by all those involved in the operation – the soldiers, governor and gendarmerie commander alike – that no force had been used. The Court was therefore at a loss to understand on what basis exactly the prosecutor had come to his conclusion. The Court therefore concluded that the Government had failed to provide a plausible explanation as to how detainees in their custody, vulnerable by the very nature of their position, had sustained their injuries, in violation of Article 3. It also held that there had been a further violation of Article 3 on account of the ineffectiveness of the investigation into the allegations of ill-treatment.

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

Sufi and Elmi v. the United Kingdom (nos. 8319/07 and 11449/07) (Importance 1) – 28 June 2011 – Article 3 – The United Kingdom would violate this provision if it returned two Somali nationals to Mogadishu

The case concerned a complaint by two Somali nationals that they risked being ill-treated or killed if returned to Mogadishu. **There are currently 214 applications about returns to Somalia pending against the United Kingdom before the Court**. The applicants complained that their removal to Somalia would place their lives at risk and/or expose them to a real risk of ill-treatment.

The Court considered the applicants' complaints under Article 2 in the context of its examination of the related complaint under Article 3. The Court reiterated that the prohibition of torture and of inhuman or degrading treatment or punishment was absolute, irrespective of the victims' conduct. Consequently, the applicants' behaviour (convictions for a number of serious criminal offences – including burglary and threats to kill in Mr Sufi's case and robbery and supplying class A drugs (cocaine and heroine) in Mr Elmi's case), however undesirable or dangerous, could not be taken into account. In view of the

findings of the United Kingdom Asylum and Immigration Tribunal in AM (Somalia), it was not in dispute that toward the end of 2008 Mogadishu was not a safe place to live for the majority of its citizens. The Court accepted that it might be possible for a returnee to travel from Mogadishu International Airport to another part of southern and central Somalia without being exposed to a real risk of treatment proscribed by Article 3. **However, a returnee with no recent experience of living in Somalia would be at real risk of ill-treatment if his home area was in – or if he was required to travel through - an area controlled by al- Shabaab, as he would not be familiar with the strict Islamic codes imposed there and could therefore be subjected to punishments such as beating, flogging, stoning or amputation. If a returnee had no family connections, or could not travel safely to an area where he had such connections, the Court considered it likely that he would find himself in an IDP or refugee camp. The Court considered that conditions in both the Afgooye Corridor and the Dadaab camps were sufficiently dire to amount to treatment reaching the Article 3 threshold and any returnee forced to seek refuge there would be at real risk of being exposed to treatment in breach of Article 3**. As the first applicant's only family connections were in Qoryoley, an area under the control of al- Shabaab, the Court considered that, if returned, it was likely that he would end up in an IDP or refugee camp. Consequently, it considered that his removal would violate his rights under Article 3. Although the second applicant was born in Hargeisa, the Court considered that the fact he had been issued with removal directions to Mogadishu appeared to contradict the Government's assertion that he could gain access to Somaliland. In the past, people from Somaliland had been returned directly to Hargeisa. In the absence of any evidence of close family connections elsewhere in southern or central Somalia, the Court considered it likely that the second applicant would also end up in an IDP or refugee camp, where there would be a real risk of ill-treatment, in violation of Article 3.

Diallo v. the Czech Republic (no. 20493/07) (Importance 2) – 23 June 2011 – Violation of Article 13 in conjunction with Article 3 – Domestic authorities' failure to examine the merits of asylum seekers' arguable claim and lack of an effective remedy with automatic suspensive effect

The case concerned the complaint of two asylum seekers from Guinea that their asylum applications had been rejected by the Czech authorities without first examining their substance, resulting in their forced return to Guinea. The applicants complained that they had no effective remedy for their arguable claim that they would be ill-treated if returned to Guinea.

The Court considered that both applicants had had an arguable claim, for the purpose of Article 13, that upon their return to Guinea they risked being ill-treated in violation of Article 3. In particular, the Court took note of various reports that documented human rights violations in Guinea in 2006 and 2007, drawn up in particular by the UN Human Rights Council and the organisations Amnesty International and Human Rights Watch. The personal circumstances of the applicants made their fears well-founded, as they were sought by the police for their political activities, participating in strikes and demonstrations and presiding an opposition youth organisation respectively. As regards the asylum proceedings, the Court observed that the applicants' claims that they risked being ill-treated in Guinea had not been subjected to close and rigorous scrutiny by the Ministry of the Interior, as would have been required by the Convention, or in fact to any scrutiny at all, on the grounds that they had arrived from Portugal, which was considered a safe third country. While it was not the Court's task to interpret European Union law or domestic law to establish whether the Czech Republic or Portugal should have examined the asylum request, it was sufficient to note that the applicants had not been expelled to Portugal but to their country of origin, Guinea. At the same time, their requests for judicial review had not had an automatic suspensive effect. The first applicant could therefore not be faulted, as was suggested by the Czech Government, for not having exhausted the domestic review proceedings. In his case, the domestic courts had not reviewed his request at all. In the second applicant's case, the domestic court had not scrutinised his arguable claim under Article 3, but had confined itself to confirming the decision that his application was unjustified because he had arrived from a safe third country. In those circumstances, the asylum proceedings had not provided the applicants with an effective domestic remedy within the meaning of Article 13. As regards the administrative expulsion proceedings, the authorities had not examined the applicants' arguable claim under Article 3 either. In particular, the conclusion of the Ministry of the Interior that there were no hindrances to the expulsion had been based on the assumption that they were liable to be expelled to Portugal only. Lodging a request for judicial review of the administrative expulsion decision and a possible subsequent constitutional appeal would not have been an effective remedy, as the Constitutional Court would not have reviewed the merits of the claims under Article 3 but would have merely examined the question whether the applicable provisions of domestic law were in conformity with the Constitution. Furthermore, such proceedings would not have had a suspensive effect on the expulsion. The Court concluded that there had been a violation of Article 13 taken in conjunction with Article 3 on account of the fact that none of the domestic authorities had examined the merits of the applicants' arguable

claim under Article 3 and there had been no remedies with automatic suspensive effect available to them to challenge the decision not to grant them asylum and to expel them.

- **Right to liberty and security**

Shimovolos v. Russia (no. 30194/09) (Importance 1) – 21 June 2011 – Violation of Articles 5 § 1 – Arbitrary arrest and preventive detention of human rights activist – Violation of Article 8 – Domestic authorities' interference with the applicant's right to respect for private life on account of the collection and storing data about the applicant's movements by train or air on the basis of a ministerial order that was not published or accessible to the public

The case concerned the registration of a human rights activist in a secret surveillance security database and the tracking of his movements and his arrest. The applicant is the head of the Nizhniy Novgorod Human Rights Union. Thus in May 2007, when the applicant got on a train to travel to Samara in connection with an EU-Russia summit and a protest march organised there, three police officers checked his identity papers and asked him about the reason for his travel. His identity documents were checked twice more during his travel. When the applicant got off the train in Samara, the police stopped him, checked his identity yet again and threatened his that force would be used if he did not follow them to the police station. He was kept at the police station between about 12h15 and 13h00 on 14 May 2007. The police questioned him about the purpose of his trip and his acquaintances in Samara. The police report drawn up in connection with his questioning indicated that he had been stopped and taken to the police station in order to prevent him from committing administrative or criminal offences, after information had been received that the applicant intended to take part in an opposition rally and might be carrying extremist literature. At the police station, the applicant denied involvement in any extremist activities. It was clear that he did not carry extremist literature because he did not have any luggage. The applicant complained to the prosecution about his questioning by the police. The applicant complained that his arrest had been unlawful and that his name had been registered in the surveillance database as a result of which the police had collected personal data about him.

Right to liberty and security (Article 5)

The Court observed that the applicant had been taken to the police station under threat of force and had not been free to leave without permission, even though it was for no longer than 45 minutes. The police had not suspected the applicant of having committed an offence. He had been arrested, according to the Government submissions, in order to prevent him from committing offences of an extremist nature. It appeared that he had been stopped, questioned and escorted to the police station in Samara because his name had been registered in the surveillance database. The only reason for that registration had been his involvement as a human rights activist. **The Court recalled that Article 5 § 1 (c), did not allow detention, as a general policy of prevention, of people who were perceived by the authorities, rightly or wrongly, to be dangerous or likely to offend. The Government's explanation that the applicant could commit "offences of an extremist nature" was not specific enough to be acceptable under the Convention.** The only specific suspicion against him had been that he might have been carrying extremist literature, yet no evidence had been provided to support that suspicion. The Court noted with concern, the suspicion had been based on the mere fact that the applicant was a member of human rights organisations. **The Court emphasised that membership of human rights institutions could not justify a person's arrest. Thus, the applicant had been arrested arbitrarily, in violation of Article 5 § 1.**

Right to respect for private life (article 8)

The Court noted that, by collecting and storing data about the applicant's movements by train or air, the Russian authorities had interfered with his private life. The database in which the applicant's name had been registered had been created on the basis of a ministerial order which had not been published and was not accessible to the public. Therefore, people could not know why individuals were registered in it, for how long information was being kept about them, what type of information was included, how the information was stored and used and who had control over that. As a result, the scope and manner of collecting and using the data in the surveillance database had been not been clear or foreseeable, in violation of Article 8.

Adamov v. Switzerland (no. 3052/06) (Importance 2) – 21 June 2011 – No violation of Article 5 § 1 – The applicant's detention, which had been based on a valid arrest order issued for the purposes of inter-State cooperation to combat cross-border crime, had not infringed the safe-conduct clause or contravened the principle of good faith

The applicant is a Russian national who lives in Moscow. In 2004 criminal proceedings were opened against him in the United States on a charge of misappropriating funds that had been provided to Russia by the USA when he was the Russian Minister for Nuclear Energy. In February 2005 he obtained a four-month Swiss visa that he had applied for expressly in order to visit his daughter, who was living in Bern. In February 2002 criminal proceedings were opened in Switzerland against the applicant's daughter for money laundering. The applicant said that he was prepared to be questioned in Switzerland by the investigating judge and indicated the period in which he intended to be in Switzerland. In April 2005 the US Department of Justice sent the Swiss Federal Office of Justice a request for the provisional arrest of the applicant. On the same day the latter issued an urgent order for the applicant's arrest. On 2 May 2005 the applicant appeared before the investigating judge and after the hearing, the investigating judge notified him that he was under arrest and he was immediately taken by the police to Bern prison. The next day the Federal Office of Justice issued an order of provisional detention for purposes of extradition. In May 2005 Russia also applied for the applicant's extradition. In June 2005 the Federal Criminal Court upheld the applicant's appeal and lifted the extradition arrest order against him, taking the view that he had gone to Switzerland to give evidence as a witness in criminal proceedings and that it was therefore legally prohibited to restrict his liberty by virtue of the "safe-conduct" clause. According to that rule, any person habitually living abroad and entering any State accepting the rule, in this case Switzerland, in order to appear on summons in a criminal case, for example as a witness like the applicant, cannot be prosecuted or detained in respect of acts committed before their arrival in the country. Taking the view that the applicant had been visiting Switzerland for private purposes (to see his daughter) and for business, and not to give evidence as a witness in criminal proceedings, it overturned the decision and held that it was not appropriate to apply the "safe conduct" clause and that he could thus be detained. The applicant was held in custody until December 2005 and then finally extradited to Russia.

The Court noted that the applicant had been taken into custody for extradition purposes, this being covered by Article 5 § 1 (f). The fact that he had been detained with a view to extradition to the United States but was finally extradited to Russia did not make any difference (this not being related to a finding as to whether the detention was lawful). As to the question whether the applicant could rely on the "safe conduct" clause, the Court observed that the applicant had not travelled to Switzerland specially to testify in the criminal proceedings against his daughter. On the contrary, he had clearly indicated that he had freely chosen to go to Switzerland to visit his daughter and for business. In addition, no summons to appear before the Swiss authorities had been served on him in his State of residence, as required by the relevant national and international provisions for the "safe conduct" clause to be engaged. The summons to appear on 2 May 2005 had been served on him by the investigating judge at the private home of his daughter, at a time when the applicant was already in Switzerland. The Court thus accepted the Swiss Government's argument that the applicant, who frequently travelled outside Russia and had access to lawyers, must have been aware of the risks he was taking by going abroad, especially as criminal proceedings had been brought against him in the United States. By agreeing to go to Switzerland without relying on the safeguards provided for in the relevant international mutual assistance instruments, he had knowingly renounced the benefit of the immunity that arose from the safe-conduct clause. As regards the applicant's argument that the Swiss authorities had resorted to trickery with the aim of depriving him of immunity, the Court observed that it was on the basis of the information that the applicant was travelling to Switzerland for private and business reasons and that he was prepared to give evidence in the case concerning his daughter that the investigating judge had summoned him on one of the days originally proposed by the applicant himself. The judge had not therefore tricked him into coming to Switzerland. In addition, by informing the US authorities that the applicant was in Switzerland, the Swiss authorities had not shown any bad faith against him: they had simply acted in compliance with the cooperation agreements that the two States had entered into to combat cross-border crime. The applicant's detention, which had been based on a valid arrest order issued for the purposes of inter-State cooperation to combat cross-border crime, had thus not infringed the safe-conduct clause or contravened the principle of good faith. The Court held, by four votes to three, that Article 5 § 1 had not been breached.

- **Right to fair trial**

Ianos v. Romania (no. 8258/05) (Importance 3) – 12 July 2011 – Violation of Article 3 (substantive) – Ill-treatment by a police officer – Violation of Article 6 § 1 – lack of sufficient reasons to justify the quashing by way of extraordinary appeal of a final judgment convicting a police officer for assaulting the applicant

The case concerned the quashing by way of extraordinary appeal of a final judgment convicting a police officer for assaulting the applicant and granting him compensation. The applicant complained about the quashing by means of extraordinary appeal of the final court judgment awarding damages to

him and finding the police officer guilty. He also complained about being assaulted by the officer who had gone unpunished.

Quashing of final judgment (Article 6)

The Court recalled its earlier case law in which it had found that, if the proceedings had not been tainted with errors of jurisdiction or application of substantive law, serious breaches of procedure or abuse of power, the mere opinion that an investigation had been incomplete or one-sided, could not in itself be equated with a fundamental defect in the proceedings. There had been no discovery of new facts or serious procedural defects in the case against the police officer about whom the applicant had complained. Rather, the Prosecutor General had disagreed with the courts' findings that the police officer had assaulted the applicant. That had not been sufficient to justify challenging a final judgment by means of an extraordinary appeal. There had therefore been a violation of Article 6 § 1.

Assault (Article 3)

The applicant had lost an organ as a result of an injury which a forensic doctor had found he might have sustained on 12 May 2001. The Romanian courts had convicted a Special Forces police officer for hitting and injuring the applicant. In addition, the Court found that the quashing of the final domestic judgment convicting the officer had been contrary to the Convention. The Court finally observed that the Romanian Government had not satisfactorily established that the applicant's injuries had been caused otherwise than by the assault by a police officer, and concluded that those injuries had been the result of ill-treatment, in breach of Article 3.

Messier v. France (no. 25041/07) (Importance 3) – 30 June 2011 – No violation of Article 6 §§ 1 and 3 – Domestic authorities' failure to communicate to the applicant documents or the conditions in which the witnesses were heard, did not infringe the rights of the defence or the principle of equality of arms

The case concerned procedural aspects of the proceedings brought from 2002 against Jeanthe applicant, former chairman and chief executive of Vivendi Universal, before the Stock Exchange Regulatory Authority and subsequently the Financial Markets Authority. At the end of those proceedings the applicant was fined 500,000 euros for irregularities in his group's financial communication. The applicant complained that the proceedings in his case had not observed the principle of equality of arms and had not been adversarial on grounds of the authorities' failure to send him certain documents gathered in the course of the proceedings and the conditions in which certain witness evidence had been obtained (evidence of the Vivendi Universal press and public relations director heard only at the hearing of the AMF's sanctions commission; two further witness statements produced only in writing).

With regard to the argument that some documents gathered during the proceedings had not been communicated, the Court noted that the COB and the AMF had highlighted the "exceptional volume of documents in the proceedings", amounting to "tens of thousands of pages". As the Court of Appeal had observed, documents having no bearing on the investigation were necessarily gathered and the AMF could not be blamed for not having included all the documents in its possession in the file. Concerning, in particular, the content of the electronic messages from Vivendi Universal (to which the applicant had said he no longer had access since his resignation), the Court noted, among other things, that in the domestic proceedings the applicant had not maintained that not all the messages had been printed out and included in the file. Furthermore, he had not indicated how the documents that had not been included in the file could have assisted his defence. Lastly, and even if that remedy had not served his purposes, he had had a remedy by which to request that the documents be included in the file (he had been able to assert his complaints before the Court of Appeal and then the Court of Cassation). With regard to the witness evidence, the Court pointed out that the applicant had not submitted any argument in support of his submission that hearing the Vivendi Universal press and public relations director only at the stage of the hearing before the Sanctions Commission of the AMF had harmed his defence. What was more, he had not sought to have her called to give evidence again on appeal, or indeed the other two witnesses who had given their evidence only in writing before the sanctions commission. It did not appear from the evidence before the Court that the failure to communicate documents or the conditions in which the witnesses were heard had infringed the rights of the defence or the principle of the equality of arms. There had accordingly been no violation of Article 6 §§ 1 and 3.

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

Avram and Others v. Moldova (no. 41588/05) (Importance 2) – 5 July 2011 – Violation of Article 8 – The amounts of compensation awarded to the applicants by the domestic courts had been

too low to be proportionate to such a serious interference with the applicants' right to respect for their private lives as a broadcast of intimate video footage of them on national television

Friends, the five applicants complained about the broadcasting on national television in May 2003 of intimate video footage of them in a sauna with five men, four of whom were police officers. At the time, three of the applicants were journalists, the first two for the investigative newspaper Accente, one was a French teacher and the other was a librarian. The women claim that they first had contact with the police officers in October 2002 when the editor in chief of Accente was arrested on charges of corruption and that, from that point on, the officers provided them with material for their articles. One of the applicants had even become romantically involved with one of the officers. The footage was used in a programme about corruption in journalism, and notably in the newspaper Accente. It showed the applicants, apparently intoxicated, in a sauna in their underwear, with two of them kissing and touching one of the men, and one of them performing an erotic dance. The men in the video had their faces blacked out. It also showed a document concerning the first applicant's collaboration with the Ministry of Internal Affairs. The applicants complained that the domestic authorities had failed to properly investigate the secret filming in the sauna and that the compensation awarded to them for the broadcasting was not proportionate to the severity of the breach of their right to respect for their private lives.

The Court noted that the interference with the applicants' right to privacy was not in dispute. It had been acknowledged by the national courts and the applicants awarded compensation. The principal issue then was whether the ensuing awards made had been proportionate to the damage the applicants had sustained and whether the Supreme Court had fulfilled its Convention obligations under Article 8 when applying domestic law, which limited the amount of compensation payable to victims of defamation. The Court was not persuaded that the Supreme Court had not any other possibility – other than under Article 7/1 of the old Civil Code – to decide on compensation. On the contrary, there were several examples of cases where the Supreme Court had relied on the Court's practice to compensate breaches of Convention rights and damages were given which were comparable to those awarded by this Court. In any case, the amounts awarded had been too low to be proportionate to such a serious interference with the applicants' right to respect for their private lives as a broadcast of intimate video footage of them on national television. Indeed, the Court saw no reason to doubt what a dramatic affect that had to have had on their private, family and social lives. The applicants could thus still claim the status of victim and, accordingly, held that there had been a violation of Article 8.

Krušković v. Croatia (no. 46185/08) (Importance 2) – 21 June 2011 – Violation of Article 8 – Interference with the applicant's right to respect for his family life on account of the legal void concerning his paternity rights following the deprivation of his legal capacity

This is the first case concerning recognition of paternity of a father who had lost legal capacity. In February 2003, the applicant, suffering from personality disorders following long-term drug abuse, was deprived of legal capacity on the recommendation of a psychiatrist. In August 2007 he made a statement at the Rijeka birth registry that he was the father of a baby girl, born in June the same year. He did this with the mother's consent. He was subsequently registered as the child's father on her birth certificate. Informed that the applicant no longer had legal capacity, the registry brought proceedings to annul the registration. In October 2007 the domestic courts ordered that the child's birth certificate be amended as a person who no longer had legal capacity did not have the right to recognise a child before the law. Proceedings brought by the welfare centre to establish paternity are currently still pending before the domestic courts. The applicant complained about being denied the right to be registered as the father of his biological child, born out of wedlock.

The Court noted that it was impossible for the applicant to have his paternity recognised under domestic law – either via a statement to the registry or via proceedings before the national courts – as he had lost legal capacity. The relevant authorities could have invited his legal guardian at the time to consent to the recognition of paternity. This was not, however, done. Nor did the welfare centre, on whom the applicant was entirely dependent, take any steps to assist him in his attempts to have his paternity recognised. The only possibility for the applicant to have paternity established was through civil proceedings which had to be brought by the welfare centre and in which he only had the status of defendant, even though it was actually him who wanted his paternity recognised. Indeed, there was no legal obligation under national law for the social services to bring such proceedings at all and no time-limit fixed. In the two and a half years between the moment when the applicant had made his statement to the registry and the launching of the proceedings before the national courts to establish paternity, he had been left in a legal void; his claim was ignored for no apparent reason. The Court could not accept that this was in the best interests of either the father, who had a vital interest in establishing the biological truth about an important aspect of his private life, or of the child to be informed about her personal identity. The Court held that there had been a violation of Article 8.

Nunez v. Norway (no. 55597/09) (Importance 1) – 28 June 2011 – Violation of Article 8 – Domestic authorities' failure to strike a fair balance between the public interest in ensuring effective immigration control and the applicant's need to remain in Norway in order to continue to have contact with her children

The applicant first arrived in Norway in January 1996. Fined for shop-lifting, she was deported from Norway in March 1996 with a two-year ban on her re-entry into the country. Four months later, she returned to Norway with a different passport bearing different names. In October the same year she married a Norwegian national and applied for a residence permit stating that she had never visited Norway before and had no previous criminal convictions. The applicant was granted first a work permit and then, in 2000, a settlement permit. Having split up with her husband, she started living with a national of the Dominican Republic in 2001 and together they had two daughters born respectively in 2002 and 2003. In December 2001, while the applicant was working at a hairdressing saloon, the police apprehended her, acting upon a tip off. The applicant confessed to having used the second passport deliberately in order to live in Norway despite the prohibition imposed by the authorities. In April 2005, the Directorate of Immigration revoked her permits and decided that she should be expelled and prohibited from re-entry for two years. In the meantime, in October 2005, the applicant and the father of her children separated. She was then given responsibility for the daily care of the children until, in May 2007, it was transferred to the father who was also granted sole parental responsibility until final judgment. The applicant unsuccessfully challenged in court her deportation order, the Supreme Court having delivered in April 2009 the final judgment upholding the decision to expel her and ban her from Norwegian territory for two years. The applicant complained that the order to deport her from Norway, which also precluded her re-entry for a period of two years, was in breach of her right to family life as it would result in separating her from her small children.

The Court recalled that the Convention did not impose a general obligation on States to respect immigrants' choice of country of residence and to authorise family reunion. Thus, States' obligations to admit on their territory relatives of people residing there varied according to the personal circumstances of the individuals concerned. Expulsion, too, was not as such contrary to the Convention. The applicant had breached the two-year ban on her re-entry into Norway by returning there four months after she had been expelled. She had intentionally given misleading information about her identity, previous stay in Norway and earlier convictions, and had thus managed to obtain residence and work permits to which she had not been entitled. She had therefore lived and worked in Norway unlawfully since she had re-entered the country and, therefore, had not been able to reasonably expect to remain lawfully there. Until her first entry into Norway, she had lived all her life in the Dominican Republic, and she had had two children born out of her relationship with another national of the Dominican Republic. Consequently, her links with her home country had remained strong and could not be outweighed by the links she had formed in Norway through unlawful stay and without any legitimate expectation to remain there. Examining the applicant's children's best interest, however, the Court noted that the applicant had been the one who had primarily cared for them since their birth until 2007 when their father had been granted custody. Further, in accordance with the domestic courts' decision, the children would have remained in Norway where they had lived all their life and where their father, a settled immigrant, lived. In addition, the children had certainly suffered as a result of their parents' separation, and from having been moved from their mother's home to that of their father, and of the threat of their mother being expelled. It would be difficult for them to understand the reasons if they were to be separated from their mother. Moreover, although the applicant had admitted to the police in December 2001 that she had entered Norway unlawfully, the authorities had ordered her expulsion almost four years later, which could not be seen as swift and efficient immigration control. In view of the children's long-lasting and strong bond to their mother, the decision granting their custody to their father, the stress they had experienced and the long time it had taken the authorities to decide to expel the applicant and ban her from re-entry into the country, the Court concluded that, in the concrete and exceptional circumstances of her case, if the applicant were expelled and prohibited from entering the country for two years, it would have an excessively negative impact on her children. Therefore, the authorities had not struck a fair balance between the public interest in ensuring effective immigration control and the applicant's need to remain in Norway in order to continue to have contact with her children, in violation of Article 8. The Court indicated to the Norwegian Government that it would be desirable not to expel the applicant during the period when the judgment was not yet final.

Šneersone and Kampanella v. Italy (no. 14737/09) (Importance 1) – 12 July 2011 – Violation of Article 8 – Interference with the applicants' right to respect for family life on account of domestic court order to return a young boy living with his mother in Latvia to his father in Italy

The applicants, Jeļizaveta Šneersone and her son Marko, are Latvian nationals who live in Riga. Marko was born in Italy the year before his parents separated. After the separation, in 2003, the first applicant moved with Marko Kampanella to a different residence. According to her, since Marko's birth, she has taken care of him and his father's involvement has been minimal. In September 2004, the Rome Youth Court granted custody of Marko to his mother allowing his father to see him periodically. The father's appeal against that decision was rejected, as the court found that the mother was unlikely to take the child abroad without the father's agreement. In June 2005, a judge authorised the issuing of a passport to Marko, and in February 2006 the court ordered his father to support him financially. Apparently, because of the failure of Marko's father to pay and Ms Šneersone's lack of resources, she and Marko left Italy for Latvia in April 2006. On an unspecified date, upon the father's request, the Rome Youth Court granted sole custody of Marko to the father and held that the child had to live with his father. In accordance with the Hague Convention concerning child abduction, the Italian Ministry of Justice asked the Latvian authorities to return Marko to Italy. The Latvian courts decided in 2007 that Marko's return to Italy would not be in his best interests. That decision was supported by the findings of a psychologist who concluded that separating Marko from his mother would inevitably negatively affect the child and might even provoke neurotic problems and illnesses. In April 2008, upon a request from Marko's father, the Rome Youth Court ordered Marko's return to Italy on the basis of the 2003 European Council Regulation No 2201/2003 concerning jurisdiction in matters of parental responsibility. In August that year, the Italian authorities asked Latvia to act upon the Rome Youth Court's decision and send Marko to Italy. The applicants complained that the Italian courts' decisions ordering Marko's return to Italy were contrary to his best interests and a violation of international and Latvian law, and that the first applicant had not been present at the hearing of the Rome Youth Court.

The Court recalled that it had previously developed, in the case of *Neulinger and Shuruk v. Switzerland*, a number of principles on the question of international abduction of children. It then noted that neither the Italian Government nor the applicants disputed that Marko's removal had been wrongful under the Hague Convention on international child abductions and that the Italian courts' decision to return him to Italy had the legitimate aim of protecting the right and freedoms of the child and his father. However, the Court observed that the Italian courts' decisions had provided little reasoning. Thus, despite the conclusions of the Latvian courts and the psychological reports drawn in respect of Marko, the Italian courts had not dealt with the risk that Marko's separation from his mother might leave him with neurotic problems or an illness. Neither had they paid any attention to the fact that Marko's father had not attempted to see his son since 2006. Further, the Italian courts had not tried to establish whether Marko's father's home was suitable for young children and had also imposed conditions, originally proposed by the father, according to which Marko's mother had to see her son for only a month every second year after a short initial period together. The Court held that those conditions were an inappropriate response to the psychological trauma that would inevitably follow a sudden and irreversible severance of the close ties between the mother and her child. Finally, the Italian courts had not considered any alternative solutions for ensuring contact between Marko and his father. Consequently, the Court concluded that there had been a violation of Article 8 as a result of the order to return Marko to Italy.

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

Association Les Témoins de Jéhovah v. France (no. 8916/05) (Importance 2) – 30 June 2011 – Violation of Article 9 – Interference of the applicant association's right to respect for its freedom of religion on account of the lack of forseeability of the tax law applicable to gifts

The applicant, Association Les Témoins de Jéhovah (Association of Jehovah's Witnesses), is a French association with its headquarters in Boulogne-Billancourt. Its main objective is to "support the maintenance and practice of the Jehovah's Witnesses movement". Their movement is financed by "donations". In a 1995 parliamentary report entitled "Sects in France", the Jehovah's Witnesses were classified as a sect. The applicant association alleges that, following that report, steps were taken to marginalise it. In particular, the tax authorities carried out an audit. On the basis of the information gathered in that audit, it was given notice to declare the gifts that it had received from 1993 to 1996. The association refused and asked that the tax exemption applicable to gifts and legacies to liturgical associations and authorised religious congregations be applied to it. As the applicant association had not submitted the declaration requested by the tax authorities, it was subjected to an automatic taxation procedure in respect of manual gifts which it had received and "which [had been] disclosed to the tax authorities in the course of the accounting audits to which it [had been] subjected" within the meaning of Article 757 of the CGI. In May 1998 it was notified of a supplementary tax assessment for the equivalent of about 45 million euros (about 23 million euros for the principal and 22 million in default interest and surcharges). The association stressed that the tax claimed concerned "donations" by 250,000 persons over four years (or an average of 4 euros per person per month for the period

1993-1996). In January 1999 the applicant association submitted an official complaint to the tax authorities, which was dismissed in September 1999. According to the most recent information submitted by the French Government, the amount claimed from the applicant Association was more than 57.5 million euros. The applicant association complained that the disputed tax proceedings had infringed its freedom of religion.

The Court recalled that it had already held in several cases that Article 9 protected the free exercise of the Jehovah's Witnesses' right to freedom of religion. With regard to the applicant association's case, the Court examined, firstly, whether the disputed supplementary tax assessment had amounted to interference in its right to freedom of religion, and, if so, whether that interference was acceptable in the light of the Convention. It noted that the supplementary tax assessment in question had concerned the entirety of the manual gifts received by the association, although they represented the main source of its funding. Its operating resources having thus been cut, it had no longer been able to guarantee to its followers the free exercise of their religion in practical terms, thus an interference with the applicant association's right to freedom of religion. For such interference to be acceptable from the perspective of Article 9, it had above all be "prescribed by law", and the law in question had to be formulated with sufficient clarity to be foreseeable: the citizen had to be able to regulate his or her conduct accordingly. The "law" under which the gifts to the applicant association were automatically taxed was Article 757 of the CGI, under which manual gifts "disclosed" to the tax authorities were subject to gift tax. The Court identified two reasons why that Article and its application to the case of the applicant association had not been sufficiently foreseeable. Firstly, the disputed Article gave no details about the targeted "donée"; as a result, it was impossible to know whether it was applicable to legal entities and thus to the applicant association. In the light of the relevant legislative history, the Court noted that the text in question had been drawn up to regulate the transmission of property within families and concerned only individuals. It was not until in 2005 that an instruction specified that, by virtue of a ministerial response in 2001, that Article was applicable to manual gifts to associations. Yet the supplementary assessment in respect of the applicant association predated that instruction. Secondly, with regard to the concept of the "disclosure" of gifts within the meaning of Article 757, the Court noted that the present case was the first in which it had been argued that submission of the required accounting records in the context of a tax audit was the equivalent of "disclosure". Such an interpretation of the Article would have been difficult for the association to foresee, in that manual gifts had until then been exempt from any obligation to declare them. As the taxation of manual gifts to the applicant association had depended on the conduct of a tax audit, the application of the tax law had not been foreseeable. In conclusion, the interference in the applicant association's right to respect for its freedom of religion had not been "prescribed by law", in violation of Article 9.

- **Freedom of expression**

Pinto Coelho v. Portugal (no. 28439/08) (Importance 2) – 28 June 2011 – Violation of Article 10 – Domestic courts' failure to strike a fair balance between the automatic nature of the application of criminal legislation and the applicant's right to freedom of expression, concerning a matter of public interest

The applicant is a well-known journalist and legal correspondent on the national television channel SIC. On 3 June 1999 the channel broadcast on the 1 o'clock and 8 o'clock news a report produced by the applicant showing that the former director-general of the criminal investigation department, who had recently been dismissed, had been charged with a breach of *segredo de justiça* (secrecy of judicial proceedings). For several months the press had been reporting that the director-general could have been responsible for leaking information about a case concerning the accounts of a private university and a commercial company. In her report the applicant showed viewers a facsimile copy of the indictment and the public prosecutor's document opening the investigation. Criminal proceedings were brought against the applicant. On 3 October 2006 the court of Oeiras found her guilty of disobedience for publishing "copies of documents in the file of proceedings prior to a first-instance judgment", an act which was prohibited and automatically punishable under Article 88 of the Code of Criminal Procedure as then worded (the *segredo de justiça* rule). The applicant was sentenced to a fine of 10 euros per day for 40 days and to the payment of court costs. Her appeals were dismissed. The applicant complained that her conviction had breached her right to freedom of expression.

The main question that the Court had to address was whether the applicant's conviction constituted a breach of her right to freedom of expression that could be regarded as "necessary in a democratic society". On that point the Court first reiterated that, while the press had the task of imparting information and ideas on all matters of public interest, it had to be careful not to overstep certain bounds, regarding in particular the protection of the reputation and rights of others, or the need to prevent the disclosure of confidential information. There was nothing to prevent the press taking part in a discussion on a question pending before the courts, but in such cases it had to refrain from

publishing anything that might prejudice the chances of a person receiving a fair trial or undermine the confidence of the public in the role of the courts. Turning to the situation of the applicant, the Court pointed out that the report in question clearly dealt with a matter of public interest, because the person concerned was the director-general of the judicial police. The public thus had, in the applicant's case, a right of scrutiny as regards the functioning of the judicial system. The Court then observed that the domestic courts had not balanced the interest of the applicant's conviction against her right to freedom of expression. Under Portuguese law, as in force at the material time, the applicant's conviction had been automatic once she had displayed on television facsimiles of documents from proceedings covered by the *segredo de justiça* rule. The authorities, moreover, had not stated the reason why the broadcasting of two facsimiles of documents from the file had prejudiced the investigation in progress, or how, as a result, the defendant's right to be presumed innocent had been breached. The Court pointed out that, on the contrary, the fact of displaying facsimile copies of the documents in question during the report had been relevant not only to the subject matter but also to the credibility of the information supplied, providing evidence of its accuracy and authenticity. In conclusion, the Court took the view that the applicant's conviction had constituted a disproportionate interference in her right to freedom of expression. It noted, more broadly, that a general and absolute ban on the publication of any kind of information was difficult to reconcile with the right to freedom of expression. The automatic nature of the application of the criminal legislation in question had prevented the courts from balancing it against the interests protected by Article 10. There had thus been a violation of Article 10.

Wizerkaniuk v. Poland (no. 18990/05) (Importance 2) – 5 July 2011 – Violation of Article 10 – Disproportionate interference with a journalist's right to freedom of expression on account of his conviction for publishing an interview with a politician without the latter's consent

The applicant was the editor-in-chief and a co-owner of a local newspaper, *Gazeta Kościańska*. In February 2003, two journalists working for that newspaper interviewed a member of parliament. The interview, which took place in the parliamentarian's office, was tape-recorded and lasted for about two hours. Having seen the text of the interview before it was printed in the newspaper, the parliamentarian refused to authorise its publication. About two months after the interview had taken place, the newspaper published parts of it, word for word as recorded on the tape. The text specified that the parliamentarian had refused to authorise the publication. The applicant complained about his criminal conviction for publishing an interview with a member of parliament without his authorisation.

The Court noted that the Polish courts had applied the relevant law, the 1984 Press Act, and as a result had convicted the applicant for publishing an interview without the prior consent of the interviewed individual. The Court emphasised that an obligation to verify that quotations were accurate was journalists' professional duty. However, it warned that the existence of a threat of criminal sanctions for journalists because of their work would inevitably have a chilling effect on the exercise of journalistic freedom of expression, which in turn would have a detrimental effect on society as a whole. The Court then recalled that politicians, because of the role they assumed in society, had knowingly opened themselves to public scrutiny and therefore had to display a greater degree of tolerance to criticism than private individuals. The applicant had interviewed the parliamentarian about his political and business activities, a matter of general public interest which the applicant had been entitled to publicise and about which the local community had been entitled to be informed. The Polish courts had imposed a criminal sanction on the applicant as an automatic punishment for publishing an interview without authorisation. The politician had not been obliged to give any reasons for refusing to authorise the publication of his interview. In addition, the criminal sanction had been entirely unrelated to the content of the article as the publication had not distorted in any way the words of the politician during the interview. The courts had not been required by domestic law to consider the fact that the interviewed person was a politician. The law had allowed interviewees to prevent journalists from publishing any interview they regarded as embarrassing or unflattering, regardless of how truthful or accurate it was. Consequently, the law could have resulted in dissuading journalists from putting probing questions for fear that their interlocutors might later block the publication of the entire interview by refusing to grant an authorisation. The Court had accepted in its earlier case law that damages, awarded after an article had been published, to people whose private life rights had suffered as a result of publications, were an adequate remedy for such violations. The Press Act had been published almost three decades ago, before the collapse of the communist system in Poland and at a time when all media had been subjected to preventive censorship. The Court found that the way the law had been applied in respect of the applicant, had not been compatible with freedom of expression in a democratic society. Finally, the Court acknowledged the unanimous agreement of the other legal authorities in the country, which had considered that the Press Act had been incompatible with the Constitution. It also found paradoxical the fact that the more accurately journalists presented a piece of information, by providing citations during interviews, the higher the risk they ran of being criminally prosecuted if no authorisation was obtained. The Court concluded that the criminal sanctions imposed on the applicant had been in violation of Article 10.

- **Prohibition of discrimination**

Anatoliy Ponomaryov and Vitaliy Ponomaryov v. Bulgaria (no. 5335/05) (Importance 1) – 21 June 2011 – Violation of Article 14 in conjunction with Article 2 of Protocol No. 1 – Lack of justification for domestic authorities' decision to impose school fees on non-Bulgarian nationals for attending secondary education

The case concerned the requirement that two Russian boys, living in Bulgaria with their mother who was married to a Bulgarian, pay school fees for their secondary education, unlike Bulgarian nationals and aliens with permanent residence permits. The applicants complained that they had been discriminated against because, unlike Bulgarian nationals and aliens having permanent residence permits, they had been required to pay fees for part of their secondary education.

The Court emphasised that its role was not to decide whether States were allowed to charge fees for education, but only whether, once a State had voluntarily decided to provide free education, it could exclude a group of people without justification. It was true that education was an expensive and complex activity. Given that State resources were inevitably limited, States had to strike a balance between the educational needs of people and States' limited capacity to meet those needs. At the same time, education enjoyed direct protection under the Convention, as part of Protocol No. 1. It was not only beneficial for individuals but also for society as a whole which needed to integrate minorities if it were to be pluralistic and democratic. In general terms, States were free to ask for fees for university education, which was optional. On the other hand, they had to ensure accessible primary education providing basic literacy and numeracy. Mindful of the fact that more and more countries were moving towards putting the notion of "knowledge-based" society in practice, the Court observed that secondary education was of ever-growing importance for individual development and society as a whole. The applicants had been living lawfully in Bulgaria. The authorities had had no objection to them remaining in the country nor had they ever seriously intended to deport them. In addition, at the time the boys had taken steps to obtain permanent residence permits. They had not attempted to abuse the Bulgarian educational system in any way, given that they had ended up living and studying in Bulgaria because they had followed their mother who had married there. They were fully integrated into Bulgarian society and spoke fluent Bulgarian. The Bulgarian authorities had not taken any of the above elements into account when deciding to impose school fees on the boys. Indeed, the relevant law did not allow for an exemption from the payment of school fees. Consequently, the Court found that there had been a violation of Article 14 read in conjunction with Article 2 of Protocol No. 1 as there had been no justification for the school fees imposed on the applicants.

- **Protection of property**

Ruspoli Morenes v. Spain (no. 28979/07) (Importance 2) – 28 June 2011 – No violation of Article 1 of Protocol No. 1 – The applicants did not bear a disproportionate or excessive burden following the purchase of a Goya painting by the Spanish Government

The case concerns the conditions of the Spanish Government's purchase from the applicants of Goya's painting "La Condesa de Chinchón". The State had exercised its right of pre-emption over an item of cultural interest. The painting is now on display in the Prado Museum, Madrid. The applicants complained of the conditions in which their painting was purchased by Spain. In particular, they complained of delays in the payment and submitted that the final price should have been revised accordingly.

The Court noted that in exercising its right of pre-emption when the painting "La Condesa de Chinchón" was up for sale, the Spanish Government had "controlled the use" of the work within the meaning of Article 1 of Protocol No. 1. Such interference was compliant with that Article if it was provided for by law and pursued a legitimate aim and if a fair balance was struck between the requirements of the general interest and the fundamental rights of the individuals affected. The Court first noted that the right of pre-emption as exercised in today's case was provided for by the National Historic Heritage Act, whose provisions were accessible, precise and foreseeable. The Court then emphasised that control of the art market had an interest for the State's heritage and was a legitimate aim in the context of protecting a country's cultural and artistic heritage. It remained for the Court to examine the conditions in which the right of pre-emption had been exercised in the case of the sale of the applicants' painting. It began by reiterating that States had a very broad margin of appreciation in controlling the use of property declared as being of cultural interest or listed among the country's historical heritage. One of the main effects of such restrictions was, in the case of the sale of a work such as "La Condesa de Chinchón", to oblige the vendor to notify the authorities of his intention to sell the painting so that they could exercise their right of pre-emption. Once the authorities had expressed their interest in the property, the transaction had to take place in accordance with the applicable rules

in such matters, and the vendor could not fix the conditions of sale unilaterally. Those restrictions could be explained by the authorities' concern to centralise, as far as possible, the conservation and display of works of art, as the preferential acquisition by the State of works of art was for the benefit of a larger proportion of the general public. The general interest of the community was thus favoured. That being said, it was necessary in any event to determine whether the pecuniary damage alleged by the applicants constituted a disproportionate burden. The Court found, on that point, that the applicants had received the full amount of the painting's sale price, which had been paid before the end of the time-limit of two accounting periods provided for under the National Historic Heritage Act. That Act did not provide for any revision of the price in the event of deferred payment. The applicants could not therefore reasonably expect such revision. The Court accordingly found that the applicants had not had to bear a disproportionate or excessive burden and that there had thus been no violation of Article 1 of Protocol No. 1.

- **Cases concerning Chechnya and Ingushetia**

Isayev and Others v. Russia (no. 43368/04) (Importance 3) – 21 June 2011 – Two violations of Article 2 (substantive and procedural) – (i) Death of the applicants' close relative in detention; (ii) lack of an effective investigation – Two violations of Article 3 (substantive and procedural) – (i) Torture by State agents in detention of the applicants' close relative; (ii) lack of an effective investigation – Violation of Article 13 – Lack of an effective remedy

Nakayev v. Russia (no. 29846/05) (Importance 3) – 21 June 2011 – Violation of Article 2 (procedural) – Domestic authorities' failure to conduct an effective investigation into the circumstances of the applicant's injured during a military attack – No violation of Article 2 (substantive) – Lack of definitive answers explaining the origins of the explosion

Velkhiyev and Others v. Russia (no. 34085/06) (Importance 3) – 5 July 2011 – Two violations of Article 2 (substantive and procedural) – (i) Death of the applicants' close relatives in Ingushetia; (ii) lack of an effective investigation – Two violations of Article 3 (substantive and procedural) – (i) Torture of the first applicant and of the applicants' close relative in detention; (ii) lack of an effective investigation – Violation of Article 5 § 1 – Unlawful detention of the first applicant and of the applicants' close relative – No violation of Article 3 – In respect of the second to the seventh applicants

Giriyeva and Others v. Russia (no. 17879/08) (Importance 3) – 21 June 2011 – Violation of Article 2 (substantive and procedural) – (i) Disappearance and presumed death of the applicants' close relative; (ii) lack of an effective investigation – Violation of Article 3 – The applicants' mental suffering – 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

Makharbiyeva and Others v. Russia (no. 26595/08) (Importance 3) – 21 June 2011 – Violation of Article 2 (substantive and procedural) – (i) Disappearance and presumed death of the applicants' close relative; (ii) lack of an effective investigation – Violation of Article 3 – The applicants' mental suffering (first, second and third applicants) – No violation of Article 3 (in respect of the fourth and fifth applicants) – Violation of Article 5 – Unacknowledged detention – 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 21 Jun. 2011: here
- Press release by the Registrar concerning the Chamber judgments issued on 23 Jun. 2011: here
- Press release by the Registrar concerning the Chamber judgments issued on 28 Jun. 2011: here
- Press release by the Registrar concerning the Chamber judgments issued on 30 Jun. 2011: here
- Press release by the Registrar concerning the Chamber judgments issued on 05 Jul. 2011: here
- Press release by the Registrar concerning the Chamber judgments issued on 07 Jul. 2011: here
- Press release by the Registrar concerning the Chamber judgments issued on 12 Jul. 2011: here

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

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

State	Date	Case Title and Importance of the case	Conclusion	Key Words	Link to the case
Bulgaria	21 Jun. 2011	Idakiev (no. 33681/05) Imp. 3	Violation of Article 6 § 1 (fairness)	Supreme Administrative Court's quashing of a judgment following an appeal which had been time-barred; it had failed to respond to the applicant's argument that the appeal was time-barred and the said judgment had already become final	Link
Bulgaria	23 Jun. 2011	Zdravko Petrov (no. 20024/04) Imp. 2	Violation of Article 34	Domestic court's refusal to provide the applicant with copies of certain documents in support of his application to the Court	Link
Bulgaria	12 Jul. 2011	Baltaji (no. 12919/04) Imp. 2	Violation of Article 8 and Article 1 of Protocol No. 7 Violation of Article 13	Unlawful expulsion of the applicant on account of the lack of legal and procedural safeguards against arbitrariness in the law the expulsion was based on Lack of an effective remedy	Link
Croatia	21 Jun. 2011	Bernobić (no. 57180/09) Imp. 3	No violation of Article 5 §§ 1 and 3 Violation of Article 5 § 4	Lawfulness of the applicant's detention Lack of an effective remedy to challenge the lawfulness of the detention	Link
Croatia	21 Jun. 2011	Bulfracht LTD (no. 53261/08) Imp. 3	Violation of Article 6 § 1 (fairness)	Infringement of the right to a fair hearing on account of the manner in which the Supreme Court had calculated the value of the subject matter of the dispute for the purposes of determining whether or not it had jurisdiction *ratione valoris* to examine the merits of an appeal on points of law in the proceedings, which had lasted a long time and where the plaintiff had sought payment of a relatively high amount of foreign currency	Link
Croatia	21 Jun. 2011	Orlić (no. 48833/07) Imp. 2	Violation of Article 8	Domestic authorities' failure to provide the applicant with adequate procedural safeguards concerning his eviction from a flat	Link
Croatia	28 Jun. 2011	Krnjak (no. 11228/10) Imp. 3	No violation of Article 5 § 1 Violation of Article 5 § 4	Relevant and sufficient reasons given for the applicant's detention Lack of an effective remedy to challenge the lawfulness of the detention	Link
Croatia	28 Jun. 2011	Šebalj (no. 4429/09) Imp. 3	Violation of Article 5 § 1 Two violations of Article 5 § 4 Violation of Article 6 §§ 1 and 3 (c) Violation of Article 6 § 1 (fairness)	Unlawful detention on account of the applicant's detention after the maximum statutory period for his detention has expired, on the basis of a detention order issued in parallel criminal proceedings, without such detention being based on a specific statutory provision or clear judicial practice of the rule of law Lack of an effective remedy to challenge the lawfulness of the detention Questioning by the police without the presence of defence lawyer Admission of evidence given by the applicant to the police without the presence of defence counsel and the reliance on that evidence for the applicant's conviction	Link
France	30 Jun. 2011	de Souza Ribeiro (no. 22689/07)	No violation of Article 13 in conjunction with Article 8	The applicant has the opportunity to challenge the validity of the expulsion order against him	Link

		Imp. 2			
France	28 Jun. 2011	Klouvi (no. 30754/03) Imp. 2	Violation of Article 6 §§ 1 and 2 (fairness)	Unfairness of proceedings and interference with the applicant's right to being presumed innocent	Link
Finland	12 Jul. 2011	Backlund (no. 36498/05) Imp. 2 Grönmark (no. 17038/04) Imp. 2	Just satisfaction	Just satisfaction following the judgments of 6 October 2010 and 6 October 2010 respectively	Link Link
Greece	12 Jul. 2011	Fix (no. 1001/09) Imp. 3	Violation of Article 6 § 1 Violation of Article 13	Excessive length of the proceedings (five years and eleven months for one level of jurisdiction) Lack of an effective remedy	Link
Greece	12 Jul. 2011	Thanopoulou (no. 65155/09) Imp. 3	Violation of Article 6 § 1	Lengthy non-enforcement of a final judgment in the applicant's favour	Link
Greece	05 Jul. 2011	Venios (no. 33055/08) Imp. 3	Violation of Article 5 § 1	Unlawful internment in psychiatric hospital	Link
Greece	21 Jun. 2011	Efraimidi (no. 33225/08) Imp. 3	Violation of Article 3 Violation of Article 5 §§ 1 and 4	Poor conditions of detention on the premises of the Thermi border police Unlawfulness of detention; lack of an effective remedy to challenge the lawfulness of the detention	Link
Hungary	12 Jul. 2011	Panyik (no. 12748/06) Imp. 3	Violation of Article 6 § 1	Lack of impartiality of the regional Court	Link
Italy	12 Jul. 2011	Maioli (no. 18290/02) Imp. 2	Violation of Article 1 of Protocol No. 1	Infringement of the applicants' right to peaceful enjoyment of possessions and lack of compensation	Link
Latvia	05 Jul. 2011	Karņejevs (no. 14749/03) Imp. 3	Violation of Article 5 § 4	Lack of an effective remedy to challenge the lawfulness of the detention	Link
Malta	21 Jun. 2011	Bellizzi (no. 46575/09) Imp. 2	No violation of Article 6	The constitutional proceedings had been impartial	Link
Moldova	05 Jul. 2011	Dan (no. 8999/07) Imp. 3	Violation of Article 6 § 1	Court of Appeal's failure to hear the witnesses on the basis of whose testimonies it found the applicant guilty	Link
Moldova	05 Jul. 2011	Haritonov (no. 15868/07) Imp. 3	Violation of Article 3	Poor conditions of detention	Link
Moldova	21 Jun. 2011	Ipate (no. 23750/07) Imp. 3	Violation of Article 3 (substantive and procedural)	Ill-treatment by prison staff; lack of an effective investigation	Link
Poland	21 Jun. 2011	Kania and Kittel (no. 35105/04) Imp. 2	No violation of Article 10	The authorities struck a fair balance between the interests of, on the one hand, the protection of the plaintiff's reputation and, on the other, the applicants' right to exercise their freedom of expression where issues of public interest are concerned	Link
Portugal	05 Jul. 2011	Moreira Ferreira (no. 19808/08) Imp. 3	Violation of Article 6 § 1 (fairness)	Lack of a public hearing	Link
Romania	21 Jun. 2011	Giuran (no. 24360/04) Imp. 2	No violation of Article 6 No violation of Article 1 of Protocol No. 1	The proceedings had been reopened for the purposes of correcting a fundamental judicial error which could not have been neutralised or corrected by any other means, save by the quashing of the final judgment which was grossly prejudicial to the convicted person	Link
Romania	21 Jun.	Goh (no. 9643/03)	Violation of Article 3	Poor conditions of detention	Link

	2011	Imp. 3			
Romania	21 Jun. 2011	Sbârnea (no. 2040/06) Imp. 2	No violation of Article 8	In the very difficult circumstances of the instant case, the authorities struck a fair balance between the competing interests and did not fail in their responsibilities to protect the applicant's right to family life with his daughter	Link
Romania	21 Jun. 2011	SC Placebo Consult SRL (no. 28529/04) Imp. 2	Revision	Judgment ordering the revision of the judgment of 21 December 2010	Link
Romania	05 Jul. 2011	Csiki (no. 11273/05) Imp. 2	No violation of Article 2 Violation of Article 6 § 1 (length) Violation of Article 13	The applicant had another domestic remedy to challenge the alleged ineffective investigation Excessive length of the criminal proceedings (five years) Lack of an effective remedy	Link
Romania	12 Jul. 2011	Antochi (no. 36632/04) Imp. 3	Violation of Article 3 (substantive and procedural)	Ill-treatment by fellow prisoners at Târgu Ocna prison hospital; lack of an effective investigation	Link
Russia	05 Jul. 2011	Gadamauri and Kadyrbekov (no. 41550/02) Imp. 3	Violation of Article 3	Ill-treatment on account of the police's inaction, leaving the applicant suffering acute physical pain resulting from his appendicitis and failing to follow up in a timely manner the doctors' recommendation for urgent hospitalisation	Link
Russia	21 Jun. 2011	Chudun (no. 20641/04) Imp. 3	Violation of Article 3 Violation of Article 5 §§ 1 and 3 Violation of Article 6 § 1 (length)	Poor conditions of detention in remand prison IZ-17/01 of Kyzyl, Tyva Republic Unlawfulness and excessive length of detention on remand Excessive length of criminal proceedings (four years, seven months and four days)	Link
Russia	21 Jun. 2011	Orlov (no. 29652/04) Imp. 2	Violation of Article 3 No violation of Article 3 Violation of Article 13 in conjunction with Article 3 Violation of Article 6 §§ 1 and 3 (b) and (c) (fairness) No violation of Article 34	Poor conditions of detention in punishment cells of Rubtsovsk Prison in 2005 and 2006 As regards the remaining period of detention in Rubtsovsk Prison Lack of an effective remedy Lack of effective legal assistance during appeal proceedings The respondent State has complied with its obligations under Article 34	Link
Russia	21 Jun. 2011	Zylkov (no. 5613/04) Imp. 2	Violation of Article 6 § 1 (fairness)	Infringement of the applicant's right of access to a court on account of domestic courts' refusal to consider the applicant's claim	Link
Russia	28 Jun. 2011	Kamaliyevy (no. 52812/07) Imp. 3	Just satisfaction	Just satisfaction following the judgment of 3 September 2010	Link
Russia	28 Jun. 2011	Miminoshvili (no. 20197/03) Imp. 2	Two violations of Article 5 § 1 No violation of Article 5 § 1 Violation of Article 5 § 3 Two violations of Article 5 § 4 No violation of Article 6 § 1 No violation of Article 6 § 3 (b)	Unlawfulness of two periods of detention Lawfulness of one period of detention Excessive length of detention Lack of an effective remedy to challenge the lawfulness of the detention Impartiality of the court Domestic court's refusal to summon witnesses that had already been	Link

			Violation of Article 6 §§ 1 and 3 (d) () No violation of Article 6 § 3 (b)	questioned was not arbitrary Domestic court's failure to summon and examine key witness Adequate time given to the defence to prepare final submissions	
Serbia	21 Jun. 2011	Dobrić (no. 2611/07 and 15276/07) Imp. 2	No violation of Article 6 § 1	No arbitrariness in the Supreme Court's rejection of the applicants' cassation appeal	Link
Slovakia	05 Jul. 2011	Mihal (no. 22006/07) Imp. 3	Violation of Article 6 § 1	The applicant's right to appeal to a judge against decisions taken by senior court officers was denied, without reference to any specific aim or considerations of proportionality	Link
Slovakia	21 Jun. 2011	Fruni (no. 8014/07) Imp. 2	No violation of Article 6 § 1	The courts dealing with the applicant's proceedings had been compatible with the requirement of "independence"	Link
Slovakia	28 Jun. 2011	Karlin (no. 41238/05) Imp. 3	Violation of Article 5 §§ 4 and 5	Lack of a speedy determination of the applicant's request for release and lack of enforceable right to compensation	Link
Slovenia	07 Jul. 2011	K. (no. 41293/05) Imp. 3	Violation of Article 8	Domestic authorities' failure to meet their positive obligations arising from Article 8, as a result of which the applicant's contact with his daughter was severely restricted for three years	Link
Spain	28 Jun. 2011	Tendam (no. 25720/05) Imp. 3	Just satisfaction	Just satisfaction following the judgment of 13 October 2010	Link
Turkey	21 Jun. 2011	Akar (no. 28505/04) Imp. 3	Violation of Article 8	Prison authorities' refusal to send the applicant's correspondence	Link
Turkey	21 Jun. 2011	Cingil (no. 29672/02) Imp. 3	Violation of Article 6 § 1 (length) Violation of Article 1 of Protocol No. 1	Excessive length of proceedings (more than eight years and nine months for two levels of jurisdiction) Insufficient amount of compensation awarded and insufficient level of statutory interest due to the inflation rate	Link
Turkey	21 Jun. 2011	Günaydın Turizm ve İnşaat Ticaret Anonim Şirketi (no. 71831/01) Imp. 2	Just satisfaction	Judgment on just satisfaction following the judgment of 2 September 2009	Link
Turkey	21 Jun. 2011	Havva Dudu Albayrak and Others (no. 24470/09) Imp. 3	Violation of Article 2 (positive obligation)	Domestic authorities' failure to comply with their positive obligation to protect the life of the applicants' close relative	Link
Turkey	21 Jun. 2011	Uğur and Abi (no. 28234/06) Imp. 3	Violations of Article 3 (substantive and procedural) (in respect of Mr. Uğur)	Ill-treatment by police officers; lack of an effective investigation	Link
Turkey	21 Jun. 2011	Ziya Çevik (no. 19145/08) Imp. 3	Violation of Article 1 of Protocol No. 1	Infringement of the applicant's right to peaceful enjoyment of possessions on account of the municipality's earmarking of the applicant's land as a children's playground without compensation	Link
Turkey	05 Jul. 2011	Metin (no. 26773/05) Imp. 2	Violation of Article 2 (substantive) No violation of Article 2	Domestic authorities' failure to comply with their positive obligation to protect the life of the applicants' son Effective investigation into the circumstances of the applicants' son's death	Link
Turkey	12	Hıdır Durmaz	Violation of Article 5	Unlawful detention; lack of adequate	Link

	Jul. 2011	no. 2 (no. 26291/05) Imp. 3	§§ 1 and 5	compensation	
Ukraine	07 Jul. 2011	Serkov (no. 39766/05) Imp. 3	Violation of Article 1 of Protocol No. 1	Interference with the applicant's peaceful enjoyment of possessions on account of the authorities' less favourable interpretation of domestic law, resulting in the applicant being charged VAT	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
Italy	28 Jun. 2011	De Caterina and Others (no. 65278/01) link	Violation of Article 1 of Protocol No. 1	Unlawful deprivation of property without any formal expropriation or compensation
Italy	07 Jul. 2011	Macrì and Others (no. 14130/02) link	Violation of Article 1 of Protocol No. 1	Idem.
Poland	21 Jun. 2011	Subicka No. 2 (nos. 34043/05 and 15792/06) link	No violation of Article 6 § 1 (first and third sets of proceedings) Violation of Article 6 § 1 (second set of proceedings)	Legal aid lawyer's refusal to bring a cassation appeal in the applicant's case
Romania	28 Jun. 2011	Moşoiu and Păsărin (no. 10245/02) link	Revision	Revision of the judgment of 7 May 2008
Romania	28 Jun. 2011	Nistor (no. 49182/06) link	Violation of Article 6 § 1 (fairness) Violation of Article 1 of Protocol No. 1	Domestic authorities' failure to enforce final judgments in the applicant's favour
Turkey	12 Jul. 2011	Şahide Korkmaz (no. 31462/07) link	Violation of Article 6 § 1 Violation of Article 1 of Protocol No. 1	Delayed compensation for expropriation of land owned by the applicant and for the financial loss incurred by this delay due to high inflation and low interest rates on State debts

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	05 Jul. 2011	Rositsa Georgieva (no. 32455/05)	Link
Croatia	21 Jun. 2011	Jovicic (no. 23253/07)	Link

France	28 Jun. 2011	Gouttard (no. 57435/08)	Link
Germany	28 Jun. 2011	Kempe (no. 11811/10)	Link
Latvia	28 Jun. 2011	Liģeres (no. 17/02)	Link
Moldova	28 Jun. 2011	Oculist and Imas (no. 44964/05)	Link
Poland	28 Jun. 2011	Sikorska (no. 19616/08)	Link
Poland	05 Jul. 2011	Jurewicz (no. 18500/10)	Link
Poland	21 Jun. 2011	Winerowicz (no. 4382/10)	Link
Portugal	12 Jul. 2011	Arede Ruivo (no. 26655/09)	Link
Portugal	12 Jul. 2011	Soares (no. 42925/09)	Link
Romania	28 Jun. 2011	Boţog and Potcoava (no. 25499/06)	Link
Romania	28 Jun. 2011	Moscu (no. 24921/07)	Link
Romania	05 Jul. 2011	Glasberg and Others (nos. 29292/02, 32538/05, 24265/07 and 21985/08)	Link
Romania	05 Jul. 2011	Cojocaru and Others (nos. 27269/07, 48668/07 and 20729/09)	Link
Romania	05 Jul. 2011	Velcescu and Others (nos. 29190/04, 25966/05, 1781/07, 16270/07, 20277/07 and 57610/08)	Link
Turkey	12 Jul. 2011	Karanfilli (no. 29064/06)	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 13 June to 10 July 2011**.

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

State	***Date***	***Case Title***	***Alleged violations (Key Words)***	***Decision***
Austria	05 July 2011	Ali Zada and Others (no 17127/10; 51191/10 etc.) link	In particular alleged violation of Articles 2, 3 and 8 (if expelled to Greece, risk of being sent to countries of origin where the applicants risk being killed or subjected to ill-treatment), Art. 13 (lack of an effective remedy), Art. 14	Struck out of the list (the matter has been resolved at the domestic level: the applicants will not be returned to Greece or any other country without a full examination of their asylum claims by the Austrian authorities)
Bulgaria	05 July 2011	Tsenovi (no 36823/07) link	In particular alleged violation of Articles 6 § 1, 13 and 17 (domestic authorities' delayed non-enforcement of final judgment awarding the applicants compensation), Art. 6 § 1 (excessive length of compensation proceedings)	Partly struck out of the list (unilateral declaration of Government concerning claims under Art. 6 § 1 and Art. 1 of Prot. 1), partly inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention concerning the remainder of the application)
Bulgaria	05 July 2011	Radomirov and Radomirova-Ereshtenko (no 101/06) link	The application concerned claims under Article 6 § 1 and Article 1 of Protocol No. 1 to	Struck out of the list (friendly settlement reached)
Bulgaria	05 July 2011	Sotirov and Others (no 13999/05) link	Alleged violation of Art. 9 (the applicants' priest and their church council were allegedly removed in an unlawful manner resulting in an arbitrary intervention in their religious life), Art. 1 of Prot. 1 (the applicants were allegedly deprived of the possibility to use and govern their temple), Art. 13 (lack of an effective remedy)	Partly incompatible *ratione materiae* (concerning claims under Art. 1 of Prot. 1 and Art. 13), partly inadmissible for non-respect of the six-month requirement (concerning the State authorities' alleged refusal to provide protection against the "occupiers"), partly incompatible *ratione personae* (concerning the authorities' alleged failure to provide assistance to the applicants)
Montenegro	05 July 2011	Krstović and Kučinar (no 60765/09; 63509/09) link	Alleged violation of Art. 6 § 1 (length and outcome of civil proceedings)	Struck out of the list (the applicants no longer wished to pursue their application)

Poland	05 July 2011	Słoński (no 26244/09) link	Alleged violation of Art. 3 (poor conditions of detention in Wronki Prison)	Struck out of the list (friendly settlement reached)
Poland	05 July 2011	Rydzewski (no 30801/09) link	Alleged violation of Art. 3 (poor conditions of detention in Świdnica Remand Centre)	Idem.
Poland	05 July 2011	Łatacha (no 36954/09) link	Alleged violation of Art. 3 (poor conditions of detention)	Idem.
Poland	05 July 2011	Jasiński (no 33444/09) link	Alleged violation of Art. 3 (poor conditions of detention in Wronki Prison	Idem.
Poland	05 July 2011	Wanat (no 20840/10) link	Alleged violation of Art. 6 § 1 (excessive length of criminal proceedings)	Idem.
Poland	05 July 2011	Hruszka (no 52380/07) link	Alleged violation of Art. 3 (poor conditions of detention)	Idem.
Poland	05 July 2011	Augustynek (no 24570/08) link	Alleged violation of Art. 3 (poor conditions of detention in Tarnów-Mościce Prison)	Idem.
Poland	05 July 2011	Szymański (no 3849/05) link	Alleged violation of Art. 3 (overcrowding and inadequate conditions of detention)	Struck out of the list (the applicant no longer wished to pursue his application)
Poland	05 July 2011	Mikołowski (no 12544/07) link	Alleged violation of Art. 3 (inadequate conditions and medical care during detention)	Idem.
Poland	05 July 2011	Winklewski (no 26715/10) link	Alleged violation of Art. 3 (poor conditions of his detention)	Struck out of the list (friendly settlement reached)
Poland	05 July 2011	Osuch (no 30073/10) link	Alleged violation of Art. 3 (poor conditions of detention in remand centres in Świdnica and in Prudnik, as well as in prisons in Wrocław, Nowy Wiśnicz and Herby)	Idem.
Poland	05 July 2011	Bojar (no 42972/09) link	Alleged violation of Art. 3 (poor conditions of detention in Strzelce Opolskie Prison and in Kędzierzyn-Koźle Prison)	Idem.
Poland	05 July 2011	Zoń (no 53329/09) link	Alleged violation of Art. 3 (poor conditions of detention in Bielsko-Biała Remand Centre and in Cieszyn Prison)	Idem.
Poland	05 July 2011	Jordan (no 59320/09) link	Alleged violation of Art. 6 § 1 (excessive length of criminal proceedings), Art. 5 § 3 (excessive length of pre-trial detention)	Idem.
Poland	05 July 2011	Dudziak (no 55168/09) link	Alleged violation of Art. 3 (poor conditions of detention)	Idem.
Poland	05 July 2011	Zahorodny (no 65750/09) link	Idem.	Idem.
Poland	05 July 2011	Barański (no 6417/10) link	Alleged violation of Art. 3 (poor conditions of detention in Wronki Prison)	Idem.
Russia	05 July 2011	Janowiec and Others (no 55508/07; 29520/09) link	The case concerned the death of the applicants' relatives at the hands of the USSR authorities in 1940 and concern the investigation into their death and the proceedings for their rehabilitation Alleged violation of Art. 2 (lack of an effective investigation into the deaths of the applicants' close relatives), Art. 3 (mental suffering in respect of the applicants), Art. 6 (unfairness of proceedings), Art. 8 (the Russian authorities' alleged refusal to rehabilitate their relatives and their refusal to give the	Partly admissible (concerning claims under Articles 2 and 3), partly inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention concerning the remainder of the application)

			applicants access to the case file), Art. 9 (the applicants' inability to pay their respects to their relatives in accordance with their religion), Art. 13 (lack of an effective remedy)	
Serbia	05 July 2011	Filipović (no 37852/06) link	Alleged violation of Art. 6 § 1 (the failure of the respondent Party to enforce the judgment of 11 April 1997)	Struck out of the list (unilateral declaration of the Government)
Serbia	05 July 2011	Lekpek (no 45378/06) link	Alleged violation of Art. 6 § 1 and Art. 1 of Prot. 1 (authorities' failure to decide on the merits while enforcing provisional measures)	Idem.
Serbia	05 July 2011	Milošević (no 20037/07) link	Alleged violation of Art. 6 § 3 (domestic authorities' failure to enforce a partial judgment in the applicant's favour)	Inadmissible (abuse of the right of individual petition)
Sweden	05 July 2011	B. (no 62448/09) link	Alleged violation of Articles 2 and 3 (due to the poor conditions for asylum seekers in Greece, alleged risk of being killed or subjected to ill-treatment if expelled to Iran)	Struck out of the list (the matter has been resolved at the domestic level)
the United Kingdom	05 July 2011	Roberts and Roberts (no 38681/08) link	Alleged violation of Art. 6 § 1 (unfairness of proceedings), Art. 8 (the publication of an article without verification of the truth of the allegations contained in it)	Partly inadmissible for non-exhaustion of domestic remedies (concerning claims under Art. 6 § 1), partly inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention concerning claims under Art. 8)
the United Kingdom	05 July 2011	D'angibau (no 23199/10) link	Alleged violation of Art. 6 § 2 (Court of Appeal's refusal to grant a defendant's costs order allegedly violated the presumption of innocence)	Inadmissible for non-exhaustion of domestic remedies
the United Kingdom	05 July 2011	X, Y and Z (no 32666/10) link	Alleged violations of Articles 3 and 8 (domestic authorities' alleged failure to take the necessary measures to protect the applicants from serious harm: the first and second applicants, both of whom have learning disabilities, were effectively imprisoned in their council flat over a weekend, during which time they were physically and sexually abused by a gang of local youths in the presence of the second applicant's two children), Art. 6 § 1 (unfairness of proceedings), Art. 13 (lack of an effective remedy)	Struck out of the list (friendly settlement reached)
Turkey	05 July 2011	Çevikbay (no 3798/10) link	Alleged violation of Art. 6 (failure to provide the applicant with the written submissions made by the principal public prosecutor to the Court of Cassation; lack of an oral hearing)	Idem.
Turkey	05 July 2011	Tilki (no 39420/08) link	Alleged violation of Art. 6 § 1 (excessive length of criminal proceedings)	Struck out of the list (unilateral declaration of the Government)
Turkey	05 July 2011	Sünbül and Others (no 19430/05) link	Alleged violation of Art. 6 § 1 (excessive length of criminal proceedings), Art. 6 § 3 c) (lack of legal assistance in police custody), Art. 13 (lack of an effective remedy)	Struck out of the list (friendly settlement reached)
Turkey	05 July 2011	Kaynak (no 34451/08) link	Alleged violation of Art. 6 and Art. 1 of Prot. 1 (partial execution of domestic court judgments)	Idem.
Ukraine	05 July 2011	Arakelyan and 3 other applications (no 44405/07;	The application concerned delayed enforcement of judgments in the applicants' favour	Struck out of the list (having examined the terms of the Government's declaration, the Court understands it as intending

		44853/07 etc.) link		to give the applicants redress in line with the pilot judgment (see *Yuriy Nikolayevich Ivanov v. Ukraine*))
Ukraine	05 July 2011	Stetsyuk and 5 other applications (no 42019/07; 12497/09 etc.) link	The application concerned delayed enforcement of judgments in the applicants' favour, and complaints concerning faults that allegedly accompanied the judicial or enforcement proceedings	Partly struck out of list (unilateral declaration of Government concerning lengthy non-enforcement of judgments in the applicants' favour), partly inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention concerning the remainder of the application)
Ukraine	05 July 2011	Susarov (no 31857/07) link	Alleged violation of Art. 5 § 1 (alleged unlawful detention pending extradition proceedings)	Struck out of the list (friendly settlement reached)
Ukraine	05 July 2011	Kushch and 2 other applications (no 42562/06; 30044/08; 30113/09) link	The application concerned delayed non-enforcement of judgments in the applicants' favour	Struck out of the list (the applicants no longer wished to pursue their application)
Ukraine	05 July 2011	Kazakov and 7 other applications (no 7680/07; 19451/09 etc.) link	Idem.	Partly struck out of list (unilateral declaration of Government concerning lengthy non-enforcement of judgments in the applicants' favour in line with the pilot judgment (see *Yuriy Nikolayevich Ivanov v. Ukraine*)), partly inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention concerning the remainder of the application)
Ukraine	05 July 2011	Zhiakova and 9 other applications (no 32707/05; 13011/07) link	Idem.	Struck out of the list (unilateral declaration of the Government in line with the pilot judgment (see *Yuriy Nikolayevich Ivanov v. Ukraine*))

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 30 June 2011: link
- on 04 July 2011: link
- on 11 July 2011: link
- on 18 July 2011: link

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

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

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

Communicated cases published on 30 June 2011 on the Court's Website and selected by the NHRS Unit

The batch of 30 June 2011 concerns the following States (some cases are however not selected in the table below): Belgium, Croatia, Estonia, France, Italy, Moldova, Norway, Romania, Russia, Serbia, Slovenia, the Czech Republic, "the former Yugoslav Republic of Macedonia", the United Kingdom, Turkey and Ukraine.

State	Date of Decision to Communicate	Case Title	Key Words of questions submitted to the parties
Croatia	09 Jun. 2011	Habulinec and Filipović no 51166/10	Alleged violation of Art. 8 – Alleged violation of the applicants' right to respect for their private and family life on account of the impossibility to register the first applicant as A.'s father – Alleged violation of Art. 13 – Lack of an effective remedy – Alleged violation of Art. 14 – Alleged discrimination on grounds of marital status
France	06 Jun. 2011	Henri Kismoun no 32265/10	Alleged violation of Art. 8 – Domestic authorities' refusal to change the applicant's name in his civil status
Russia	07 Jun. 2011	Panovy no 21024/08	Alleged violations of Art. 2 (substantive and procedural) – (i) The applicants' son's death during military service and (ii) lack of an effective investigation
Turkey	07 Jun. 2011	Adigüzel no 7442/08	Alleged violation of Art. 4 § 2 – The applicant is a doctor working for the Istanbul town hall – Alleged risk of being dismissed if the applicant refuses to work outside legal working hours

Communicated cases published on 04 July 2011 on the Court's Website and selected by the NHRS Unit

The batch of 04 July 2011 concerns the following States (some cases are however not selected in the table below): Albania, Italy, Latvia, Lithuania, Poland, Russia, the Netherlands, Turkey and Ukraine.

State	Date of Decision to Communicate	Case Title	Key Words of questions submitted to the parties
Lithuania	14 Jun. 2011	Banel no 14326/11	Alleged violations of Art. 2 (positive obligation and procedural) – (i) Domestic authorities' alleged failure to take all necessary measures to safeguard the lives of those in its jurisdiction, in particular a duty to inspect buildings in order to ensure that they would be in a safe state – (ii) Lack of an effective investigation into the applicant's son's death during the collapse of part of a wall he was playing next to
Poland	14 Jun. 2011	Lozowska no 62716/09	Alleged violation of Art. 6 § 1 – Alleged lack of impartiality of domestic court – Alleged violation of Art. 10 – Alleged disproportionate interference with the applicant's right to freedom of expression on account of her conviction for defamation for a published article concerning a judge's involvement in a criminal case
Russia	15 Jun. 2011	Zakharova and Others no 12736/10	Alleged violation of Art. 14 In conjunction with Art. 11 – Alleged discrimination on account of the applicants' trade union membership – Question as to whether any other employees of the municipal educational institution "The Youth Creativity Centre" in Ostrov, the Pskov Region, members or non-members of the independent trade union, been affected by staff reduction policy in the course of 2008
Russia	14 Jun. 2011	Stomakhin no 52273/07	Alleged violation of Articles 10 and 11 – The applicant's conviction and heavy sentence imposed on him during criminal proceedings for statements concerning events in the Chechen Republic – Question as to whether the domestic courts, referring to the applicant's membership in *Revolyutsionnoye Kontaktnoye Obyedineniye* (Revolutionary Contact Union, "RKO") and to his participation in unauthorised meetings in convicting the applicant, interfered with his rights under Article 11– Alleged violation of Art. 6 § 1 – Unfairness of proceedings
the Netherlands	16 Jun. 2011	A.S. no 16247/11	Alleged violation of Art. 3 – Risk of being subjected to ill-treatment if expelled to Iran – Alleged violation of Art. 13 – Lack of an effective remedy

Communicated cases published on 11 July 2011 on the Court's Website and selected by the NHRS Unit

The batch of 11 July 2011 concerns the following States (some cases are however not selected in the table below): Armenia, Azerbaijan, Bulgaria, Croatia, France, Germany, Ireland, Italy, Poland, Romania, Russia, the Czech Republic, Turkey and Ukraine.

State	Date of Decision to Communicate	Case Title	Key Words of questions submitted to the parties
Armenia	21 Jun. 2011	Movsesyan no 27524/09	Alleged violation of Art. 2 (procedural) – Domestic authorities' alleged failure to conduct an effective investigation into the applicant's daughter's death
France	23 Jun. 2011	I.J. and M.S. no 38124/11 and 38127/11	Alleged violation of Art. 3 – Risk of being subjected to ill-treatment if expelled to Serbia
France	21 Jun. 2011	S.S no 37229/11	Alleged violation of Art. 3 – Risk of being subjected to ill-treatment if expelled to Armenia
Poland	21 Jun. 2011	Łopuch no 43587/09	Alleged violation of Art. 10 – Interference with the applicant's right to freedom of expression on account of her criminal conviction for defamation for statements made during trial pleadings

Communicated cases published on 18 July 2011 on the Court's Website and selected by the NHRS Unit

The batch of 18 July 2011 concerns the following States (some cases are however not selected in the table below): Croatia, France, Georgia, Moldova, Portugal, Romania, Russia, Serbia, Sweden, the Czech Republic, Turkey and Ukraine.

State	Date of Decision to Communicate	Case Title	Key Words of questions submitted to the parties
France	30 Jun. 2011	Z.M. no 40042/11	Alleged violation of Art. 3 – Real risk of being subjected to ill-treatment if expelled to the Democratic Republic of Congo
Moldova	01 Jul. 2011	Kommersant Moldovy no 10661/08	Alleged violation of Art. 10 – The applicant newspaper was found to have breached the territorial integrity and national security of Moldova and was ordered to close as a result – Does the Court have jurisdiction ratione materie to examine the applicant newspaper's complaints (see *Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland* (no. 2)? – Alleged violation of Art. 6 § 1 – Unfairness of proceedings
Sweden	29 Jun. 2011	A.H.H. no. 4401/11	Alleged violation of Articles 2 and 3 – Real risk of being killed or subjected to ill-treatment if expelled to Iraq
Sweden	29 Jun. 2011	D.N.M no 28379/11	Idem.
Sweden	29 Jun. 2011	S.A.S. no 3503/11	Idem.

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

Referral to the Grand Chamber (13.07.2011)
The Court has accepted the referral to the Grand Chamber of the cases *Scoppola v. Italy (no. 3), Mouvement Raëlien Suisse v. Switzerland* and *Herrmann v. Germany* (Press release).

Communication (27.06.2011)
For the first time, the Court is examining a case concerning access to embryo screening in Italy for couples carrying a genetic illness. Press Release

Election of the President of the Court (04.07.2011)
Sir Nicolas Bratza, judge in respect of the United Kingdom, has been elected as new President of the Court. He succeeds Jean-Paul Costa, whose mandate will come to an end on 3 November 2011. Press release

Elections of new Judges (22.06.2011)
PACE has elected André Potocki as judge to the Court in respect of France. Press release

Part II: The execution of the judgments of the Court

A. New information

The Council of Europe's Committee of Ministers will hold its next "human rights" meeting from 13 to 14 September 2011 (the 1120DH 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/dghl/monitoring/execution/Reports/pendingCases_en.asp

For more information on the specific question of the execution of judgments including the Committee of Ministers' annual report for 2010 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/Source/Publications/CM_annreport2010_en.pdf

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

A. European Social Charter (ESC)

Seminar on the provisions of the Revised Social Charter which have not been accepted by Lithuania (20.06.2011)

http://www.coe.int/t/dghl/monitoring/socialcharter/Images/LithuaniaNonAccProvJune2011.JPGA seminar on the provisions of the Revised Charter, which have not yet been accepted by Lithuania, was held in Vilnius on 21 June 2011. This seminar provided the occasion for an exchange of views and information on these provisions, as well as for a ceremony in honour of the 50th anniversary of the Social Charter and the 10th anniversary of its ratification by Lithuania. Programme ; Table of non-accepted provisions

Forum of social workers on the modernisation of social services in Khabarovsk (Russia) (20.06.2011)

A forum entitled "Modernising social services will help us improve the quality of life" was held in Khabarovsk from 21-22 June 2011 and it was devoted to collaboration between the government and public organisations with the goal of modernising social services. An analysis of relevant texts of the Social Charter formed a basis for this exchange of views and experiences. Mr Régis Brillat, Head of the Department of the ESC participated in this event. Programme (Russian only)

Decision of admissibility (11.07.2011)

The decisions of admissibility of the European Committee on Social Rights in the cases *General Federation of employees of the national electric power corporation (GENOP-DEI)* and *Confederation of Greek Civil Servants' Trade Unions (ADEDY)*, Complaints No. 65/2011 and No. 66/2011 are now available on line. Decision on admissibility (Complaint No. 65/2011); Decision on admissibility (Complaint No. 66/2011)

A message from the President of the European Committee of Social Rights following Austria's ratification of the Revised Charter (30.06.2011)

The President of the European Committee of Social Rights, Mr. Luis Jimena Quesada, expressed his satisfaction at Austria's ratification of the Revised Charter, which made it the 31st State Party to this Council of Europe treaty, which safeguards social rights. (more information)

Study session on the protection of social rights at the International Institute of Human Rights (15.07.2011)

A study session entitled "The effectiveness of the international protection of human rights" is being held from 4 to 29 July 2011 at the International Institute of Human Rights in Strasbourg. Programme

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

Council of Europe anti-torture Committee publishes report on Poland (12.07.2011)

The CPT has published on 12 July the report on its fourth periodic visit to Poland in November/December 2009, together with the response of the Polish authorities. These documents have been made public at the request of the Polish authorities.

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

Croatia, Hungary, Kosovo* **and the Slovak Republic**: adoption of Committee of Ministers' resolutions on 6 July 2011 **(11.07.2011)**

Lithuania: publication of the 2nd cycle ACFC Opinion together with the government comments **(04.07.2011)**

41st Meeting of the Advisory Committee: adoption of Opinions on Austria, the UK, Norway and the Czech Republic **(27.06.2011-01.07.2011)**

D. Group of States against Corruption (GRECO)

GRECO publishes its annual report, GRECO Chair Drago Kos calls for more resources to fight corruption (29.06.2011)

Drago Kos, Chair of GRECO, called for more resources – time and effort, and ultimately funding – for fighting corruption in Europe, and at global level. When presenting GRECO's annual report to the Committee of Ministers, he said GRECO had observed "occasional slumps in political determination or even backtracking on previous achievements" in the fight against corruption. Link to the report

Group of States against Corruption publishes report on Georgia (01.07.2011)

GRECO published its Third Round Evaluation Report on Georgia, in which it finds significant progress in legislation on transparency of political funding, but also stresses the need for a mechanism to supervise it is effectively applied. The report focuses on two distinct themes: criminalisation of corruption and transparency of party funding. Link to the report: Incriminations / Transparency of Party Funding; Link to Council of Europe Office in Georgia

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

FATF Working Groups and Plenary Meeting (Mexico, 19-24 June 2011)

MONEYVAL participated in the working groups meetings and the first joint FATF- GAFISUD Plenary meeting held under the Mexican Presidency. The Chairman's summary provides an overview of the major outcomes of the Plenary. At this meeting, the FATF has updated its public statement issued in February 2011, which identifies jurisdictions with strategic anti-money laundering and countering the financing of terrorism (AML/CFT) deficiencies. FATF Public Statement; Also, as part of its on-going review of compliance with the AML/CFT standards, the FATF has identified jurisdictions which have strategic AML/CFT deficiencies for which they have developed an action plan with the FATF. Improving AML/CFT Compliance: On-going Process

MONEYVAL report on the 4th assessment visit of Albania public (07.07.2011)

The mutual evaluation report on the 4th assessment visit of Albania, as adopted at MONEYVAL's 35th plenary meeting, is now available for consultation. Links to: Press release; Executive Summary ; http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round4/HUN-MERMONEYVAL(2010)26_en.pdfReport ; Addendum - Compliance with the EU Directives

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

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* "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."

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

Part IV: The inter-governmental work

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

5 July 2011: **Ukraine** signed the European Convention for the Protection of Pet Animals (ETS No. 125).

6 July 2011: **San Marino** signed the Convention on the Recognition of Qualifications concerning Higher Education in the European Region (ETS No. 165).

7 July 2011: **Norway** signed the Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No. 210).

8 July 2011: **"The former Yugoslav Republic of Macedonia"** signed the Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No. 210), and ratified the Council of Europe Framework Convention on the Value of Cultural Heritage for Society (CETS No. 199).

13 July 2011: **Germany** ratified the Protocol amending the European Convention on the Suppression of Terrorism (ETS No. 190).

B. Recommendations and Resolutions adopted by the Committee of Ministers (adopted by the Committee of Ministers on 6 July 2011 at the 1118th meeting of the Ministers' Deputies)

CM/Rec(2011)6E / 06 July 2011: Recommendation of the Committee of Ministers to member States on intercultural dialogue and the image of the other in history teaching

CM/Res(2011)8E / 29 June 2011 :Resolution on the Partial Agreement on the Co-operation Group to combat drug abuse and illicit trafficking in drugs (Pompidou Group)

CM/ResCMN(2011)15E / 06 July 2011 :Resolution on the implementation of the FCNM by the Slovak Republic

CM/ResCMN(2011)14E / 06 July 2011: Resolution on the implementation of the FCNM in Kosovo*

CM/ResCMN(2011)13E / 06 July 2011 : Resolution on the implementation of the FCNM by Hungary

CM/ResCMN(2011)12E / 06 July 2011: Resolution on the implementation of the FCNM by Croatia

CM/ResCPT(2011)3E / 06 July 2011 : Election of a member of the CPT in respect of Spain

CM/ResChS(2011)8E / 06 July 2011 : Resolution - Collective Complaint No. 49/2008 by the International Centre for the Legal Protection of Human Rights (INTERIGHTS) against Greece

C. Other news of the Committee of Ministers

Ukraine Foreign Minister highlights "Common values – joint efforts" (20.06.2011)

Kostyantyn Gryshchenko, currently Chairman of the Committee of Ministers, says that Ukraine wants to see tolerant, open and mutually supportive societies based on respect for human rights, democracy and the rule of law, thrive across Europe. Speech; Video recording of the speech; Report by the Chair of the Committee of Ministers

Integration with Europe remains an absolute priority for Ukraine (21.06.2011)

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

In his third address to the Assembly, President Viktor Yanukovych of Ukraine recalled the importance for the unity of Ukrainian society to pursue European integration while strengthening relations with neighbouring countries, especially Russia. Speech; Video of the speech

Part V: The parliamentary work

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A. Resolutions and Recommendations of the Parliamentary Assembly of the Council of Europe (PACE)

Opinion 281: Budgets and priorities of the Council of Europe for the financial years 2012-2013

Resolution 1817: Expenditure of the Parliamentary Assembly for the financial years 2012-2013

Recommendation 1974: The interception and rescue at sea of asylum seekers, refugees and irregular migrants;

Resolution 1821: The interception and rescue at sea of asylum seekers, refugees and irregular migrants

Recommendation 1973: Asylum seekers and refugees: sharing responsibilities in Europe;

Resolution 1820: Asylum seekers and refugees: sharing responsibilities in Europe

Resolution 1819: The situation in Tunisia;

Recommendation 1972: The situation in Tunisia

Resolution 1818: Request for Partner for Democracy status with the Parliamentary Assembly submitted by the Parliament of Morocco

Recommendation 1975: Living together in 21st-century Europe: follow-up to the report of the Group of Eminent Persons of the Council of Europe

Resolution 1822: Reform of the Parliamentary Assembly

Recommendation 1977: More women in economic and social decision-making bodies;

Resolution 1825: More women in economic and social decision-making bodies

Resolution 1826: Expansion of democracy by lowering the voting age to 16

Recommendation 1976: The role of parliaments in the consolidation and development of social rights in Europe;

Resolution 1824: The role of parliaments in the consolidation and development of social rights in Europe

Resolution 1823: National parliaments: guarantors of human rights in Europe

Recommendation 1978: Towards a European framework convention on youth rights

Resolution 1827: The progress of the Assembly's monitoring procedure (June 2010 – May 2011)

Resolution 1828: Reversing the sharp decline in youth employment

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

- *Countries*

PACE elects its Vice-President with respect to Finland PACE elected Krista Kiuru (Finland, SOC) Vice-President of the Assembly with respect to Finland.

Montenegro: progress needs to be made in key areas to continue the reforms under way (28.06.2011)

In an information note declassified by the Monitoring Committee PACE on 21 June 2011, the co-rapporteurs for the monitoring of Montenegro, Jean-Charles Gardetto (Monaco, EPP/CD) and Serhiy

Holovaty (Ukraine, ALDE), welcomed Montenegro's willingness to honour its commitments and obligations and meet the requirements of the European Union in the field of human rights, the rule of law and democracy in order to begin the EU accession negotiation process. Montenegro needs to address 'serious remaining issues' to meet its Council of Europe commitments and obligations; Information note by the co-rapporteurs on their fact-finding visit to Podgorica

Georgia: PACE co-rapporteurs welcome introduction of legal status for minority religions (11.07.2011)

The co-rapporteurs of the PACE's Monitoring Committee for Georgia, Michael Aastrup Jensen (Denmark, ALDE) and Kastriot Islami (Albania, SOC), hailed the adoption of the amendments to the civil code that allows for other faiths and denominations than the Georgian Orthodox Church to be registered as legal entities of public law.

- *Themes*

Council of Europe member States should help to resettle asylum seekers and refugees arriving on Europe's southern shores (21.06.2011)

Adopted text; Video of full debate

Swedish prosecutor: 'grooming' should be considered as a serious crime (22.06.2011)

"Preparing for a sexual offence against a child is a serious crime, particularly when the preparation has gone so far that the offender has scheduled a meeting with the child and the purpose of the meeting is that the offender will abuse the child sexually," Ulrika Rogland, public prosecutor in Malmö (Sweden) said in Strasbourg on the occasion of the 3rd meeting of the Network of Contact Parliamentarians to stop sexual violence against children. (read more)

PACE rapporteur on Belarus condemns new wave of repressions (05.07.2011)

PACE rapporteur on the situation in Belarus, Andres Herkel (Estonia, EPP/CD), has condemned the new wave of violence against peaceful protesters, journalists and human rights defenders in Belarus. (read more)

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

A. Country work

Georgia: "Human rights must be better protected in the justice system" (05.07.2011)

"More efforts are needed to address serious shortcomings in the judiciary and increase its transparency and fairness" said the Council of Europe Commissioner for Human Rights, in his report on the visit to Georgia on 18-20 April 2011. Read the report; Report in Georgian

Respect and protection of freedom of expression vital for the progress of democracy in Turkey (12.07.2011)

"Despite the progress made by Turkey in recent years regarding free and open debates on previously sensitive issues, the situation of freedom of expression and media freedom remains particularly worrying", said the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, releasing a report on Turkey. Read the report; Report in Turkish

Time to make justice on the murder of Natalia Estemirova (13.07.2011)

Two years have passed since the human rights defender Natalia Estemirova was murdered. She was abducted on 15 July 2009 near her house in Grozny, Chechnya, pushed into a car by four assailants and driven away. Some hours later her body was found in a forest in Ingushetia. She had been shot in the head and chest. Natalia Estemirova had been a leading member of the human rights organisation Memorial, and was known as a principled and courageous human rights researcher. Her assassination had a chilling effect on civil society activities throughout the Caucasus. I have raised this case repeatedly with authorities in Russia. It is important that no further time is wasted before this crime is solved.

B. Thematic work

Lesbian, gay, bisexual and transgender persons still face discrimination in Europe (23.06.2011)

"Millions of people in Europe are discriminated, stigmatised and even victims of violence because of their actual or perceived sexual orientation or gender identity. There is an urgent need for all European governments to remedy this situation and take policy and legislative measures to combat homophobia and transphobia", said the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, publishing a report on discrimination on grounds of sexual orientation and gender identity. Read the report on discrimination on grounds of sexual orientation and gender identity

Politicians using anti-Roma rhetoric are spreading hate (28.06.2011)

Posters displayed in Milan during the recent municipal election campaign warned against the risk of the city turning into a "Gypsy town". Though this was an extreme display of xenophobia, anti-Roma statements by politicians are in fact commonplace in several countries in Europe, says Commissioner Hammarberg in his Human Rights Comment of 28 June. Read the Comment; (read also "European media and anti-Gypsy stereotypes)

"Pluralism within the media is the hallmark of a healthy democracy" (08.07.2011)

"If too few voices are heard and too little meaningful information is circulated, it will be hard for a public debate to take place and for citizens to form their own opinions. This is also true for New Media", said the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, speaking on pluralism in New Media at an OSCE conference in Vienna, 7-8 July 2011. Read the speech

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

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

Visit of Belarus civil society representatives Strasbourg, 20-22 June 2011

A group of Belarus civil society representatives visited the Council of Europe from 20 to 22 June 2011. This visit was organised by the Judiciary Division of the Legal and Human Rights Capacity Building Department with the aim to discuss possible ways of cooperation. The areas in which cooperation could be established or reinforced include the abolition of the death penalty, trafficking of human beings and the judiciary. The participation of the Civil Society Forum in the project on the reform of the judiciary under Eastern Partnership was discussed. This visit was part of the support provided to the civil society of Belarus with the aim to prepare it for the time when the country will fulfill the criteria to join the Council of Europe.

Visit of Trainee Judges from the Judicial Academy of Serbia to the Council of Europe including the European Court of Human Rights Strasbourg, 21-22 June 2011

The Judiciary Division of the Legal and Human Rights Capacity Building Department has organised the study visit for the group of 25 participants, composed of the trainee judges and prosecutors from the Republic of Serbia, to the Secretariat of the Council of Europe and the European Court of Human Rights. The participants met with judges of the Court and attended the Grand Chamber hearing in the case: *Hirsi and others v. Ital* and *Nada v. Switzerland* and had the opportunity to speak with the lawyer in the case *Nada v. Switzerland*. Download: Agenda in English; Agenda in Serbian

Final Steering Committee Meeting of the Joint Programme between the European Union and the Council of Europe entitled "Combating Ill-treatment and Impunity" Kyiv, 23 June 2011

National delegations from five beneficiary countries of the Joint Programme, including Armenia, Azerbaijan, Georgia, Moldova and Ukraine, as well as representatives of the European Union participated in this meeting. All national delegations emphasised the importance of long-term efforts to combat ill-treatment and impunity and expressed their full support to the continuation of the project activities during the follow-up Joint Programme between the European Union and the Council of Europe entitled "Reinforcing the Fight against Ill-treatment and Impunity" (1 July 2011 – 31 December 2013). In particular, the new element of combating ill-treatment in pre-trial detention facilities and penitentiary institutions, which is included in the follow-up project, was considered as very important.

TEJSU Project Steering Committee Meeting Kyiv, 24 June 2011

The Joint Programme between the European Union and the Council of Europe on "Transparency and Efficiency of the Judicial System of Ukraine" (TEJSU Project) has been extended until December 2011 at no cost. It held its 6th Steering Committee meeting in Kyiv on 24 June 2011. During the meeting, the 5th TEJSU Project Interim Progress Report and the new work plan of activities were presented. In addition, the meeting summed up the activities and results carried out by the TEJSU Project in the last six months and discussed further steps and additional activities that should be implemented during the extension period. Agenda

European NPM Project Onsite exchange of experiences, Tirana, Albania, 28 June – 1 July 2011

The fourth On-site Exchange of Experiences was held in Tirana with the Albanian NPM on 28 June – 1 July 2011. It involved 15 participants from the NPM of Albania working together with members of the United Nations Sub-Committee on Prevention (SPT), the European Committee against Torture (CPT), the Association for the Prevention of Torture (NGO) and the European NPM Project Team. On the first day of the meeting the general working methods of the Albanian NPM in the light of the OPCAT prescriptions were examined, as well as preparation undertaken for a common on-site visiting exercise on the second day to two places of deprivation of liberty at which the participants split in small groups and the international experts 'shadowed' their respective monitoring teams. On the third and fourth days the international and national NPM experts jointly discussed observations on the working methods of the national experts and these observations were discussed in plenary. A confidential Debriefing Paper has been prepared by the Project Team and the international experts and will be addressed to the Head of the Albanian NPM.

Last meeting of the working group on the training programme/curricula and materials Ankara, 27-28 June 2011

Within the framework of the Joint Programme between the European Union and the Council of Europe entitled "Training of Military Judges and Prosecutors on Human Rights Issues", the last meeting of a group of Turkish and international experts working on the training programme/ curricula and materials for military judges and prosecutors in Turkey was convened with a view to adopt course outlines, scenarios and a training manual for the forthcoming training-of-trainers seminars, for the same beneficiaries under the project.

Study Visit of the Turkish Court of Cassation to Luxemburg and Strasbourg Luxembourg and Strasbourg, 27-30 June 2011

A study visit in the scope of the Project "Enhancing the Role of the Supreme Judicial Authorities in respect of European standards" was organised for the group of 30 participants, composed of presidents and members of chambers, deputy secretary general, reporter judges and public prosecutors from the Court of Cassation of Turkey, to the European Court of Justice (ECJ) in Luxembourg and the Council of Europe and the European Court of Human Rights in Strasbourg. In Luxembourg, the delegation met the judges and lawyers from different chambers and the Registry of the ECJ, and was informed about the organisation, tasks and procedures of the ECJ and the General Court. The visit in Strasbourg was hosted by the Directorate General of Human Rights. Separate sessions for specific topics of the ECHR were also planned, where the delegation was informed about the recent case law of the ECtHR on the right to liberty and security, and discussed the issues relevant to Turkish cases in these sessions.

A study visit of students of High School of Justice Strasbourg, 30 June-1 July 2011

A study visit of students of High School of Justice (HSoJ) to the headquarters of the Council of Europe in Strasbourg took place on 30 June to 1 July 2011, in the framework of Denmark's Georgia Programme 2010-2013 "Promotion of Judicial Reform, Human and Minority Rights". During the visit, students of the HSoJ learnt about the latest developments in the case-law of the ECtHR and the work of the different bodies of the Council of Europe.

Conference on the application of the case law of the European Court of Human Rights in the legal system of Ukraine, Kyiv, 1 July 2011

The Council of Europe/European Union's Joint Programme entitled "Transparency and Efficiency of the Judicial System of Ukraine" organised, in co-operation with the Supreme Court of Ukraine, the Ministry of Justice of Ukraine, the National Academy of Legal Sciences of Ukraine, the Council of Judges of Ukraine, the Legal Journal "Law of Ukraine" and the Centre for Judicial Studies, an International conference on the application of the case law of the ECtHR in the legal system of Ukraine to be held on 1 July 2011 in Kyiv. Aiming at raising awareness about the role of the ECtHR in the development of fundamental human rights, the conference will also discuss on the problems of application of the ECtHR's practice by the judicial bodies of Ukraine and the execution of the ECtHR judgments and its case law as regards the activities of law enforcement agencies, advocacy and human rights organisations. Mr Jean-Paul Costa, President of the ECtHR, and other key speakers from both the European Court of Human Rights and from the Ukrainian national institutions, will

participate at the conference. Programme (in English); Press release (in English); Press release (in Ukrainian)

A delegation from Armenia on a study visit to Italy, Naples, 11-15 July 2011

Within the framework of the Joint Programme between the European Union and the Council of Europe entitled "Access to Justice in Armenia", a study visit was held, with the participation of 10 lawyers from the Chamber of Advocates of Armenia to the Naples Bar Association. After a visit to Hamburg (Germany), this is the second such additional visit for lawyers from Armenia at their request in the framework of the project to learn about general principles of organisation of the Bar Associations in Europe. The Chamber of Advocates of Armenia signed the Statute of the Union of Lawyers' Associations in the Mediterranean, with an observer status.

Eastern Partnership: second meeting on independent judicial systems Strasbourg, 11-13 July 2011

The Joint Programme between the Council of Europe and the European Union entitled "Enhancing Judicial Reform in the Eastern Partnership (EaP) Countries" organised on 11-13 July 2011 the second meeting of the Working group on "Independent Judicial Systems", which gathered judges, members of judicial self-governing bodies and representatives of ministries of justice from Armenia, Azerbaijan, Georgia, Moldova and Ukraine. The meeting was focused on the identification of gaps between European standards and national legislation in EaP participating states with regard to the composition of judicial self-governing bodies, including the nomination procedures of their members. A report summarising the conclusions of the meeting will be available by the end of August and will be widely disseminated in the EaP countries. Programme

Inter-NPM discussion on monitoring of deportation flights, London, United Kingdom (UK), 12 July 2011

An additional activity within the framework of the European NPM Project, the first small inter-NPM meeting, hosted and prepared by the NPM of the UK, took place on 12 July 2011 in London between five NPMs (France, Germany, Spain Switzerland and the UK) on the monitoring of deportation flights, along with two thematic experts, an APT delegate and a member of the European NPM Project team. Discussions concerned the extension of some NPMs' mandates in practice to monitoring flight deportations during the actual flight and the consequent risks involved, especially the use of restraints and control positions on such flights. The morning session entailed a discussion on the key challenges faced and monitoring approaches recommended amongst the participants. The afternoon session saw a UK government and practitioner's perspective on planning and conducting removals of detainees.