COMMISSIONER FOR HUMAN RIGHTS

COMMISSAIRE AUX DROITS DE L'HOMME

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Regular Selective Information Flow (RSIF) from the Office of the Commissioner for Human Rights to the Contact Persons of the National Human Rights Structures (NHRSs)

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The selection of the information contained on this Issue and deemed relevant to NHRSs is made under the responsibility of the NHRSs Unit and the Legal Advice Unit of the Office of the Commissioner.

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Introduction

This issue is part or the "Regular Selective Information Flow" (RSIF) which Commissioner Hammarberg promised to establish at a round table with the heads of the national human rights structures (NHRSs) in April 2007 in Athens. The purpose of the RSIF is to keep the national structures permanently updated of Council of Europe norms and activities by way of regular transfer of information, which the Commissioner's Office 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 will cover two weeks and will be sent out by the Commissioner's Office a fortnight after the end of each observation period. This means that all information contained in any given issue will be between two and four weeks old.

Unfortunately, the issues will be available in English only for the time being due to the limited means of the Commissioner's Office. However, the majority of the documents referred to exists in English and French and can be consulted on the web sites that are indicated in the issues.

The selection of the information included in the issues is made by the Commissioner's Office under its responsibility. It is based on what the NHRSs and the Legal Advice Units believe could be 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 the Commissioner's Office any feed-back that may allow for the improvement of the format and the contents of this tool.

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

A. Judgments

1. Judgments deemed of particular interest to NHRSs

The judgments presented under this heading are the ones for which a separate press release is issued by the Registry of the Court as well as other judgments which the Office of the Commissioner considers 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 Office of the Commissioner, 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.

- **Structural problems - Article 46- Execution of judgments and measures required - Right to property**

Katz v. Romania (no. 29739/03) (Importance 3) - 20 January 2009- Widespread structural problem with regard to the Romanian legislation on restitution of nationalised immovable property sold by the State to third parties purchasing in good faith

The Court reaffirmed that, in the context of the Romanian legislation governing actions brought in relation to property nationalised under the communist regime, the sale by the State of another's property to a third party purchasing in good faith amounted to a deprivation of property.

It observed again that the *Proprietatea* fund, which was in charge of payment of compensation on the basis of Law no. 10/2001, did not operate effectively. The Court noted that the legislation, including the amending legislation, did not take into account the damage resulting from individuals' inability to make use of property returned to them by a final decision and from the failure to obtain compensation over a long period. The Court therefore held that the frustration of Mr. Katz's right of ownership, combined with the complete absence of compensation for over six years, had infringed his right to the peaceful enjoyment of his possessions in breach of Article 1 of Protocol No. 1.

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant 50,000 Euros (EUR) in respect of pecuniary damage and EUR 800 for costs and expenses.

Under Article 46, the Court observed the existence of a widespread structural problem with regard to the Romanian legislation on restitution of nationalised immovable property sold by the State to third parties purchasing in good faith. The Court noted that it had already dealt with around a hundred

similar cases, that many more were still pending before it and that this shortcoming on the part of the Romanian State posed a threat to the future effectiveness of the Convention machinery. It observed that the legislation needed to be changed at the earliest opportunity in order to prevent these situations from arising and to put an end, in accordance with Article 46 (binding force and execution of judgments), to the violation found by the Court (See also *Strain and others v. Romania*, 27 July 2005).

- **Structural problems - Conditions of detention for prisoners in need of special medical care**

Sławomir Musiał v. Poland (no. 28300/06) (Importance 1)- 20 January 2009- Legislative and administrative measures should be taken rapidly by the State in order to secure appropriate conditions of detention, in particular for prisoners who are in need of special care because of their state of health

The applicant alleged that the medical care and treatment with which he has been provided during his detention were inadequate in view of his epilepsy, schizophrenia and other mental disorders. He also complained of overcrowding and poor conditions in the detention facilities, relying on Articles 3 and 8 (right to respect for private and family life).

Admissibility

The Government argued that the applicant had not exhausted the domestic remedies available to him in that he had not complained to a penitentiary judge, had not pursued compensation proceedings, had not initiated proceeding for damages against the State Treasury, and had not made an application to the Constitutional Court. The Government provided an example of a decision of the Constitutional Court finding unconstitutional the placement of detainees for an indefinite period of time in cells below the limit authorised by law.

Mindful of the applicant's limited capacities as a person with psychiatric problems and held in custody, the Court observed that none of the remedies suggested by the Government could have realistically redressed his situation. Firstly, the penitentiary authorities had been sufficiently aware of the applicant's situation as he had complained of inadequate medical care and detention conditions in each of his numerous requests for release from pre-trial detention. Despite that, and while acknowledging overcrowding, the penitentiary authorities had decided to reduce further the authorised surface per person in detention. In addition, the applicant's complaint lodged with the Ombudsman had been dismissed as ill-founded and the domestic courts had rejected his applications for release for the same reason. Secondly, the civil law remedies could only have provided monetary compensation but not a change in detention conditions. And thirdly, an individual complaint to the Constitutional Court could not have been an effective remedy in the applicant's circumstances, as it could not have addressed his complaint in its integrity.

Article 3

The Court reiterated the general principles applied regarding detention and health care (§§ 85-87). "*There are three particular elements to be considered in relation to the compatibility of an applicant's health with his stay in detention: (a) the medical condition of the prisoner, (b) the adequacy of the medical assistance and care provided in detention, and (c) the advisability of maintaining the detention measure in view of the state of health of an applicant (see Mouisel, ibid., §§ 40-42; Melnik v. Ukraine, no. 72286/01, § 94, 28 March 2006; and Rivière v. France, no. 33834/03, § 63, 11 July 2006)*" (§88).

The Court noted that while maintaining the detention measure was not, in itself, incompatible with the applicant's state of health, having the applicant detained in establishments not suitable for incarceration of the mentally-ill, raised a serious issue under the Convention. The Court also expressed concerns about the living and sanitary conditions of the applicant's detention, considering it undisputed that all of those establishments, at the relevant time, had faced the problem of overcrowding. Moreover, the Court found that, despite the particular state of health of the applicant, he had mostly received the same attention as his other inmates, which showed the authorities' failure to make a commitment to improving the conditions of detention in compliance with the recommendations of the Council of Europe. In this connection the Court referred in particular to the judgment of the Constitutional Court which held that the overcrowding in itself could be qualified as inhuman and degrading treatment and, if combined with additional aggravating circumstances, as torture (see for the thorough argumentation § 96).

Having assessed in particular the cumulative effects of the inadequate medical care and inappropriate conditions in which the applicant had been held throughout his pre-trial detention, the Court found that these conditions had clearly had a detrimental effect on his health and well-being. The Court

concluded that the nature, duration and severity of the ill-treatment to which the applicant had been subjected were sufficient to be qualified as inhuman and degrading, in violation of Article 3.

The Court held that no separate issue arose under Article 8.

Article 46

"*The Court reiterates that, in accordance with Article 46 of the Convention, a finding of a violation imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction under Article 41, but also to select, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress so far as possible the effects (see Broniowski v. Poland [GC], no. 31443/96, § 192, ECHR 2004-V, and Dybeku, cited above, § 63).*

Mindful of the fact that the seriousness and the structural nature of the problem of overcrowding and resultant inadequate living and sanitary conditions in Polish detention facilities has been acknowledged by the Constitutional Court in its judgment of 28 May 2008 and by other State authorities (see paragraphs 27, 33, 37 and 61 above), the Court considers that necessary legislative and administrative measures should be taken rapidly in order to secure appropriate conditions of detention of detained persons, in particular, adequate conditions and medical treatment for prisoners, who, like the applicant, need special care owing to their state of health.

As regards the measures which the Polish State must take, subject to supervision by the Committee of Ministers, in order to put an end to the violation that has been found, the Court reiterates that it is primarily for the State concerned to choose the means to be used in its domestic legal order in order to discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment. This discretion as to the manner of execution of a judgment reflects the freedom of choice attached to the primary obligation of the Contracting States under the Convention to secure the rights and freedoms guaranteed (Article 1). However, by its very nature, the violation found in the instant case does not leave any real choice as to the individual measures required to remedy it (see, mutatis mutandis, Assanidze v. Georgia [GC], no. 71503/01, §§ 201-203, ECHR 2004-II).

In these conditions, having regard to the particular circumstances of the case and the urgent need to put an end to the violation of Article 3 of the Convention (see paragraph 96 above), the Court considers that the respondent State must secure, at the earliest possible date, the adequate conditions of the applicant's detention in an establishment capable of providing him with the necessary psychiatric treatment and constant medical supervision" (§§ 106-108).

- ## Juvenile justice

Güveç v. Turkey (no. 70337/01) (Importance 1) - 20 January 2009 - Detention of a juvenile in an adult prison - Length of pretrial detention - Review of lawfulness - Legal assistance- Violation of Articles 3, 5§3, 5§4 and 6§1 and 6§3c

The applicant, Oktay Güveç, is a Turkish national who was born in 1980. The case concerned in particular the applicant's complaint that, although a juvenile, he had been placed in an adult prison, where he had remained for the next five years, and which had resulted in his repeated suicide attempts. On 30 September 1995 the applicant, 15 years old, was arrested on suspicion of membership of the PKK (Kurdistan's Working Party). He was charged with undermining the territorial integrity of the State, an offence which was punishable by death at the time. In May 1997 that charge was modified and, following a retrial, in May 2001 the court found the applicant guilty of membership of an illegal organisation and sentenced him to eight years and four months in prison. In May 2002 the Court of Cassation upheld the applicant's conviction. When questioned by the police, and subsequently by the prosecutor and the judge, the applicant was not represented by a lawyer. During the retrial, both the applicant and his lawyer were absent from most of the hearings.

In August 2000 the prison doctor reported that the applicant had been suffering from serious psychiatric problems in prison and had attempted to commit suicide twice in 1999. The doctor concluded that the situation in the prison was not conducive to the applicant's treatment and that he needed to be placed in a specialised hospital. During his placement in a psychiatric hospital, another medical report was drawn up in April 2001; it noted that the applicant had made a third attempt to kill himself in September 1998 and had been treated for "major depression" at the hospital between June 2000 and July 2000. The report concluded that the applicant's psychological complaints had started and worsened during his detention.

In addition, the applicant alleged before the Court that, while detained in police custody, he had been given electric shocks, sprayed with pressurised water and beaten with a truncheon, including on the soles of his feet.

According to information provided by the applicant's lawyer to the Court, the applicant left Turkey in 2002 for Belgium where he has since been granted refugee status.

Article 3

Under the part "relevant international texts", reference is made to the UN Convention on the Rights of the Child, the Concluding Observations of the UN Committee on the Rights of the Child regarding Turkey, the ECSR conclusions on Turkey regarding Article 17 of the European Social Charter, relevant CPT reports as well as to the CM Recommendation (87) 20 on social reaction to juvenile delinquency.

The Court first observed that the applicant's detention in an adult prison had been in contravention of the applicable regulations in force in Turkey at the time namely the Regulations on Prison Administration and Execution of Sentences dated 5 July 1967 that stipulated that child detainees under the age of 18 were to be kept separately from other detainees, as well as in contravention with the country's obligations under international treaties (UN Convention on the Rights of the Child). It further noted that, according to the medical report of April 2001, the applicant's psychological problems had begun during his detention in prison and had worsened there.

Only 15 years old when he had been detained, the applicant had spent the next five years of his life together with adult prisoners. For the first six and a half months of that period he had had no access to legal advice; nor had he had adequate legal representation until some five years after he had first been detained Those circumstances, coupled with the fact that for a period of 18 months he had been tried for an offence carrying the death penalty, had to have created a situation of total uncertainty for him. The Court considered that those aspects of the applicant's detention had undoubtedly caused his psychological problems which, in turn, had tragically led to his repeated attempts to take his own life. What was more, the national authorities had not only directly been responsible for the applicant's problems, but had also manifestly failed to provide adequate medical care for him.

Consequently, given the applicant's age, the length of his detention in prison together with adults, the failure of the authorities to provide adequate medical care for his psychological problems, and, finally, the failure to take steps with a view to preventing his repeated suicide attempts, the Court entertained no doubts that the applicant had been subjected to inhuman and degrading treatment, in breach of Article 3.

Article 5 § 3 (length of pretrial detention)

The Court recalled that, in at least three judgments concerning Turkey (see *Selçuk v. Turkey*, no. 21768/02, § 35, 10 January 2006; *Koşti and Others v. Turkey*, no. 74321/01, § 30, 3 May 2007; the aforementioned case of *Nart v. Turkey*, § 34), it had previously criticised the practice of detaining children in pre-trial detention and had found violations of Article 5 § 3 for considerably shorter periods of detention than that spent by the applicant in his case. The Court thus concluded that the length of the applicant's detention on remand had been excessive, in violation of Article 5 § 3.

Article 5 § 4 (entitlement to challenge lawfulness of detention and to a speedy decision by a court)

The Court reiterated its findings in earlier cases, in which it had concluded that no real possibility for challenging the lawfulness of pre-trial detention existed in Turkey at the relevant time, and found no reason to depart from its previous findings, thus finding a violation of Article 5 § 4.

Article 6 § 1 (fair trial) in conjunction with Article 6 § 3 (c) (right to legal assistance)

In the present case the lawyer representing the applicant had not been appointed under the legal aid scheme. Nevertheless, the Court considers that the applicant's young age, the seriousness of the offences with which he was charged, the seemingly contradictory allegations leveled against him by the police and a prosecution witness, the manifest failure of his lawyer to represent him properly and, finally, his many absences from the hearings, should have led the trial court to consider that the applicant urgently required adequate legal representation. Indeed, an accused is entitled to have a lawyer assigned by the court of its own motion "when the interests of justice so require".

- **Deportation of an Iraqi national**

F.H. v. Sweden (no. 32621/06) (Importance 2) – 20 January 2009 - No violation of Articles 2 or 3 – Enforcement of the decision to deport the applicant to Iraq

The applicant arrived in Sweden in 1993 and applied to the Immigration Board (*Invandrarverket*) for asylum and a residence permit, claiming that he had left Iraq due to his fear of Saddam Hussein and his regime. In May 1995, before his asylum application had been determined, the applicant was convicted by the District Court of murdering his wife and sentenced to forensic psychiatric care. The court further ordered that the applicant should be expelled from Sweden with a life-time ban on return. Subsequently, the applicant requested unsuccessfully the Swedish Government to repeal the expulsion order against him.

The Court recognised the problematic security situation in Iraq and stressed the importance of information contained in recent reports from independent international human rights organisations or governmental sources: *inter alia* notes by the UN Secretary General, the UN Special Representative of the Secretary General for Iraq, the UNHCR, the International Organisation for Migration, information from the Iraq Office of the Swedish Embassy in Jordan, reports from the US Department of State, the International Center for Transitional Justice, Human Rights Watch, Amnesty International, the Christian Peace Association and other various newspapers and organisations. The Court had to establish whether the applicant's personal situation was such that his return to Iraq would be in breach of Articles 2 or 3.

As regards the applicant's claim that he would risk being killed because of his Christian faith, the Court takes into account that there have been several incidents directed against Christians in Iraq. However, Christians do still congregate there and, according to the general information available, the Iraqi Government has condemned all attacks against this group. In October 2008, when 12 Christians were killed in attacks in the town of Mosul, the police and military intervened. It was therefore clear that there was no State-sanctioned persecution of Christians and, since no one had accepted responsibility for those attacks, which had also been condemned by Islamic groups, it appeared that they had been carried out by individuals rather than by organised groups. Furthermore, the applicant had been a member of the Republican Guard and had served in the Iraq-Iran war and the First Gulf War. However, on the basis of the information submitted by the applicant, and, noting that some former Republican Guards had been integrated into the new Iraqi army, the Court found nothing to indicate that F.H. would risk being charged with any type of crime before the Iraqi courts for having served in the Republican Guard.

Concerning the applicant's membership of the Ba'ath Party, it was not possible to establish whether or not the applicant had been a full member of the party or, if he had been, what exact level he had attained within it. However, given in particular the fact that the applicant had consistently held that he had never met Saddam Hussein or been involved in any political activities, the Court considered it highly unlikely that he had belonged to any of the higher levels of the Ba'ath Party. Moreover, the Court observed that the Accountability and Justice Act had opened the door for most former Ba'ath Party members to apply for reinstatement into the civil service. The Court further noted that the Iraqi parliament had adopted an Amnesty Law in February 2008 which had resulted in the release, so far, of over 120,000 detainees in Iraq. Accordingly, the Court considered that the applicant did not face a real risk of being persecuted, and even less of being sentenced to death, for having been a member of the Ba'ath Party.

As regards the applicant's allegation that he risked being killed extrajudicially by Shi'a militia groups, the Court observed, in particular, that the applicant had maintained all along that, from 1988 until he had left Iraq, he had been working in a transport division with logistics and that he had deserted from the army because he had not wanted to take part in the attacks against the Shi'as. Therefore, the applicant had not personally carried out any violent or criminal acts against the Shi'a population for which they would seek revenge. As concerned the applicant's fear of being convicted a second time in Iraq for the murder of his wife, the Court reiterated that the crime took place in Sweden and that the applicant had been convicted and purged his sentence in that country. The Court also noted that, despite some uncertainties surrounding its current status, the Iraqi Penal Code of 1969 prohibited retrial of a person who had been convicted by final judgment in another country.

Consequently, the Court found by fives to two that the implementation of the deportation order against the applicant would not give rise to a violation of Articles 2 or 3. The Court further considered that the indication made to the Swedish Government under Rule 39 of the Rules of Court had to remain in force until the Chamber judgment became final.

Judge Power expressed a dissenting opinion joined by Judge Zupančič.

- **Lack of effective investigation in allegations of ill-treatment**

Çelik v. Turkey (No. 1) (no. 39324/02) (Importance 3) - No violation of Article 3 (treatment) - Violation of Article 3 (investigation) – Lack of effective investigation

The applicant is a lawyer. He alleged that in February 1999 he was ill-treated by police officers. He relied *inter alia* on Article 3. Concerning the allegations of ill-treatment by police officers, the Court concluded that the material before it was not sufficient to find beyond any reasonable doubt that the applicant was subjected to treatment which amounted to a substantive breach of Article 3 of the Convention as alleged.

However the Court held, by five votes to two, that there had been a violation of that Article concerning the lack of an effective investigation into the allegations of ill-treatment. In this connection, the Court reiterated its earlier finding in a number of cases that the Turkish criminal law system has proved to be far from rigorous and has had no dissuasive effect capable of ensuring the effective prevention of unlawful acts perpetrated by State agents when criminal proceedings brought against the latter are suspended due to the application of Law no. 4616. A partly dissenting opinion of Judge András Sajó, joined by Judge Vladimiro Zagrebelsky, is annexed to the judgment. See also the case *Popov v. Bulgaria* under item 2 below.

- **Restrictions in the access of a detainee to medical documents**

Uslu v. Turkey (No. 2) (no. 23815/04) (Importance 2) – 20 January 2008 – Violation of Article 8 – Refusal of the authorities to provide the applicant, while he was in detention, with a copy of the results of a medical examination

The applicant was, at the relevant time, detained at Inebolu Prison. He complained about the Turkish authorities' refusal to provide him with a copy of the results of a medical examination he underwent in prison. It appears that this decision was taken on the basis of a practice - with reference to a Ministry of Justice circular - whereby no copies of official prison documents were to be given to detainees on grounds of security and public order. The Government have not submitted any observations on the legal basis and the manner in which this practice of restricting access to documents to detainees/prisoners was applied so as to enable the Court to weigh the relevant competing individual and public interests, or assess the proportionality of the restriction at issue. Nor have they submitted any particular justification for such a measure. In these circumstances and taking into account, particularly, the nature of the documents requested by the applicant, the Court did not find any security or public order considerations that would justify overriding the applicant's interest in having a copy of them. The Court held consequently that there has been a violation of Article 8 of the Convention (see §§ 26-28).

- **Conditions of detention – Right to liberty and security**

Ramishvili and Kokhreidze v. Georgia (no. 1704/06) (Importance 2) – 27 January 2009 - Violation of Article 3 (detention in a punishment cell; detention in an overcrowded cell at Tbilisi No. 5 Prison; placement in a metal cage during a court hearing); Violation of Article 5 § 1 (c) - Violation of Article 5 § 4

The Court noted that Mr. Ramishvili had been obliged to share a 120 cm bed with a stranger and could not even relieve himself in the so-called toilet without being observed by the latter. The conditions of his detention in the punishment cell had therefore obviously not allowed for even the most basic privacy. The Court also found that the sanitary conditions had been unacceptable and concluded that the applicant was held in inhuman and degrading conditions, in violation of Article 3. The Court stated that the overcrowding, described by Mr. Kokhreidze and not contested by the Government, had in itself been a breach of Article 3. The Court noted that, despite the applicants' status as public figures (the applicants are co-founders of and shareholders in a private media company which owned the television channel "TV 202"), without prior conviction, and the fact that they had behaved in an orderly manner during the criminal proceedings, the Government had failed to provide any justification for their having been placed in a caged dock on 2 September 2005 or for the use of "special forces" in the courthouse. Nothing in the case file suggested that there had been the slightest risk that the applicants, well-known and apparently quite harmless, might have absconded or resorted to violence during their transfer to the courthouse or at the hearing. The Court therefore concluded that the imposition of such stringent and humiliating measures upon the applicants could not be justified and that there had accordingly been a violation of Article 3.

The Court observed that between 27 November 2005 and 13 January 2006, that is to say for one month and 17 days, there had been no judicial decision authorising the applicants' detention, in violation of Article 5 § 1 (c).

Concerning the manner in which the hearing of 2 September 2005 had been conducted, the Court first deplored the manner in which the hearing of 2 September 2005 had been held. It considered that an oral hearing in such chaotic conditions could hardly be conducive to a sober judicial examination. The Court could not help but observe that the judge had obviously been aiding the prosecutor during the hearing. As to the requisite "independence", it had undoubtedly been tainted by the high number of under-cover government agents and even "special forces" who had been present during the hearing. The Court concluded that the judicial review of 2 September 2005 had lacked the fundamental requisites of a fair hearing, in violation of Article 5 § 4.

Concerning the lack of speediness in the examination of a complaint against detention lodged in December 2005, the Court noted that the competent domestic court had replied 38 days after the applicants had filed a complaint against their detention. As the government had not explained that delay, and nothing suggested that it could have been attributable to the applicants, the Court concluded that the judicial review of 13 January 2006 could not be regarded as a "speedy" reply to their complaint of 6 December 2005, in violation of Article 5 § 4.

Wenerski v. Poland (no. 44369/02) (Importance 2) – 20 January 2009 – Violation of Article 3 (treatment) - Violation of Article 8 – Lack of medical treatment during detention – Censorship of correspondence with the European Court of Human Rights

The applicant is currently serving prison sentences after conviction for various offences. Having lost his right eye in 1996, he suffers from severe ophthalmological problems. He complained that he had not received proper ophthalmological care during his detention. He further complained about censorship of his correspondence with the European Court of Human Rights.

The Court observes that the applicant was denied necessary and urgent treatment for at least six years. The Court further notes that the Government failed to provide valid reasons for the lack of necessary steps taken to ensure that the operation on the applicant's right eye socket was carried out without delay. The Court concluded that by leaving the applicant to suffer considerable pain for a prolonged period of time as a result of the failure to provide him with necessary and urgent treatment on his right eye socket, the custodial authorities acted in breach of their obligations to provide effective medical treatment and that the applicant was subjected to inhuman and degrading treatment in violation of Article 3 of the Convention. Concerning the alleged violation it appears that the envelope was opened and subsequently resealed. The Court has held on many occasions that as long as the Polish authorities continue the practice of marking detainees letters with the "censored" stamp, it has no alternative but to presume that those letters have been opened and their contents read. It held that there had also been a violation of Article 8.

Andreyevskiy v. Russia (application no. 1750/03) (Importance 3) - 29 January 2009 - Violations of Article 3 (conditions of detention)

Antropov v. Russia (no. 22107/03) (Importance 3) - 29 January 2009 - Violations of Article 3 (torture, investigation and conditions of detention)

Maltabar and Maltabar v. Russia (no. 6954/02) (Importance 2) - 29 January 2009 - Violation of Article 3 (conditions of detention)

The applicants are four Russian nationals who live in Russia. Relying on Article 3, all four applicants complained in particular of the conditions of their detention on charges of murder in the first two cases and of fraud in the third case.

The European Court of Human Rights held unanimously that, in the case of *Andreyevskiy,* there had been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention from 21 to 23 May 2002 at the Severnoye Medvedkovo police station in Moscow, where he had been held in a cell not intended for overnight stay, without food or drink or the opportunity to rest.

In the cases of *Andreyevskiy* and *Maltabar and Maltabar*, the Court found further violations of Article 3 on account of the conditions of the applicants' detention, respectively in remand centre IZ-77/1 in Moscow and in pre-trial detention centre IZ-69/1 in Tver. The Court noted in particular that the applicants had been obliged to live, sleep and use the toilet in the same cell with many other inmates, for two years and nine months in the case of Mr. Andreyevskiy, and for over seven months in the case of the Maltabar brothers, which had to have caused them hardship and aroused in them fear, anguish and inferiority capable of humiliating and debasing them. The Court finally held that there had been no violation of that Article on account of the conditions of the Maltabar brothers' transportation to and from the courthouse pending the criminal proceedings against them.

In the case of *Antropov*, the Court held unanimously that there had been a violation of Article 3 on account of the extreme pain and suffering, which it considered had attained the level of torture, that

had been inflicted on the applicant to extract a confession from him. The Court found a further violation of that Article on account of the authorities' failure to conduct an effective investigation into Mr. Antropov's complaints about his ill-treatment. Lastly, the Court held that there had been a violation of Article 3 on account of the conditions of Mr. Antropov's detention from 16 February 2001 to 5 March 2003 in facility no. IZ-25/5 in Ussuriysk, where he had been detained for more than two years in a severely overcrowded cell in unsanitary conditions, notably on account of it having been infested with insects and rodents.

- **Fair Trial – Statements from absent witnesses read at the criminal trial**

Al-Khawaja and Tahery v. the United Kingdom (nos. 26766/05 and 22228/06) (Importance 3) – 20 January 2009 - Violation of Article 6 § 1 in conjunction with Article 6 § 3 (d) - Decisions to allow statements from absent witnesses to be read at the applicants' trial

While working as a consultant physician in the field of rehabilitative medicine, Imad Al-Khawaja was charged on two counts of indecent assault on two female patients while they were allegedly under hypnosis. One of the complainants, S.T, committed suicide (taken to be unrelated to the assault) before the trial but, prior to her death, had made a statement to the police. On 22 March 2004 it was decided that her statement should be read to the jury.

The Court did not find that any of the factors relied on by the United Kingdom Government, taken alone or together, could have counterbalanced the prejudice to the defence by admitting S.T.'s statement. Firstly, had S.T.'s statement not been admitted, it was likely that Mr. Al-Khawaja would only have been tried on count two of indecent assault and would only have had to give evidence in respect of that count. Although there had been no suggestion of collusion between the complainants, the Court considered that the content of that statement, once admitted, had been evidence on count one that the applicant could not have effectively challenged. As to the judge's warning to the jury, the Court found that no direction could have effectively counterbalanced the effect of an untested statement which had been the only evidence against the applicant. The Court therefore found a violation of Article 6 §§ 1 read in conjunction with Article 6 § 3(d) in respect of Mr. Al-Khawaja.

On 19 May 2004 the second applicant, Ali Tahery, allegedly stabbed S. three times in the back and was subsequently charged with wounding with intent and attempting to pervert the course of justice by telling the police that he had seen two black men stab S. When witnesses were questioned at the scene, no one claimed to have seen the applicant stab S. Two days later however one of the witnesses, T., made a statement to police that he had seen the applicant stab S.. In S.'s statement to the police, it is clear that he did not see who stabbed him. On 26 April the prosecution successfully applied for leave to read T.'s statement under section 116(2) (e) and (4) of the Criminal Justice Act 2003 on the ground that T. was too frightened to appear in court. T.'s witness statement was then read to the jury in his absence. The applicant also gave evidence. The judge, in his summing up, warned the jury about the danger of relying on T.'s evidence.

The Court did not find that the factors relied on by the United Kingdom Government, whether considered individually or cumulatively, could have counterbalanced the grave handicap to the defence that arose from the admission of T.'s statement. The Government noted that alternative measures, which would have been less restrictive on the rights of the defence than admitting witness statements, had been considered and found inappropriate. The Court observed that that rejection of alternative measures did not absolve the domestic courts of their responsibility to ensure the rights of the defence; indeed, it implied an even greater duty to protect those rights. The Court also considered that T.'s statement could not have been effectively rebutted because there had been no other witnesses who were willing to testify. The applicant's right to give evidence himself to deny the charges could not be said to have counterbalanced the fact that there had been no opportunity to examine or cross-examine the only prosecution eye-witness against him. Finally, the Court did not find that the warning by the Court of Appeal, however clearly expressed, had been sufficient to counterbalance the fact that the only direct evidence against the applicant was from an absent witness's untested statement. The Court therefore also found a violation of Article 6 § 1 read in conjunction with Article 6 § 3(d) in respect of Mr. Tahery.

- **Right to enjoy a healthy environment**

Tătar v. Romania (no. 67021/01) (Importance 1) - 20 January 2009 - Violation of Article 8 - Romanian authorities' failure to protect the right of the applicants, who lived in the vicinity of a gold mine, to enjoy a healthy and protected environment

The company S.C. Aurul S.A., now operating as S.C. Transgold S.A., obtained a licence in 1998 to exploit the Baia Mare gold mine. The company's extraction process involved the use of sodium cyanide. Part of its activity was located in the vicinity of the applicants' home. On 30 January 2000 an

environmental accident occurred at the site. A United Nations study reported that a dam had breached, releasing about 100,000 m^3 of cyanide-contaminated tailings water into the environment. The report stated that S.C. Aurul S.A. had not halted its operations.

After the accident Vasile Gheorghe Tătar filed various administrative complaints concerning the risk incurred by him and his family as a result of the use of sodium cyanide by S.C. Aurul S.A. in its extraction process. He also questioned the validity of the company's operating licence. The Ministry of the Environment, in November 2003, informed him that the company's activities did not constitute a public health hazard and that the same extraction technology was used in other countries.

The first applicant also brought criminal proceedings, in 2000, complaining that the mining process was a health hazard for the inhabitants of Baia Mare, that it posed a threat to the environment and that it was aggravating his son's medical condition, namely asthma. By an order of 20 November 2001 the Romanian courts discontinued the criminal proceedings concerning the accident of 30 January 2000 on the ground that the facts complained of did not constitute offences. No judicial order or decision concerning the other complaints has been issued to date.

For the relevant International and European instruments referred to by the Court in the field of protection of environment, see part II B/ of the judgment.

The Court observed that pollution could interfere with a person's private and family life by harming his or her well-being, and that the State had a duty to ensure the protection of its citizens by regulating the authorising, setting-up, operating, safety and monitoring of industrial activities, especially activities that were dangerous for the environment and human health.

The Court did not doubt the reality of the medical condition of Paul Tătar, who was diagnosed in 1996 and who required medical assistance, nor that of the toxicity of sodium cyanide and of the pollution detected, in excess of the authorised norms, by international organisations in the vicinity of the applicants' home following the environmental accident. The Court noted that, in the light of what was currently known about the subject, the applicants had failed to prove the existence of a causal link between exposure to sodium cyanide and asthma. It observed, however, that the existence of a serious and material risk for the applicants' health and well-being entailed a duty on the part of the State to assess the risks, both at the time it granted the operating permit and subsequent to the accident, and to take the appropriate measures.

The Court observed that a preliminary impact assessment conducted in 1993 by the Romanian Ministry of the Environment had highlighted the risks entailed by the activity for the environment and human health and that the operating conditions laid down by the Romanian authorities had been insufficient to preclude the possibility of serious harm. The Court further noted that the company had been able to continue its industrial operations after the January 2000 accident, in breach of the precautionary principle, according to which the absence of certainty with regard to current scientific and technical knowledge could not justify any delay on the part of the State in adopting effective and proportionate measures.

The Court also pointed out that authorities had to ensure public access to the conclusions of investigations and studies. It reiterated that the State had a duty to guarantee the right of members of the public to participate in the decision-making process concerning environmental issues. It stressed that the failure of the Romanian Government to inform the public, in particular by not making public the 1993 impact assessment on the basis of which the operating licence had been granted, had made it impossible for members of the public to challenge the results of that assessment. The Court further noted that this lack of information had continued after the accident of January 2000, despite the probable anxiety of the local people. The Court concluded that the Romanian authorities had failed in their duty to assess, to a satisfactory degree, the risks that the company's activity might entail, and to take suitable measures in order to protect the rights of those concerned to respect for their private lives and homes, within the meaning of Article 8, and more generally their right to enjoy a healthy and protected environment. Judge Zupančič, joined by Judge Gyulumyan, appended a partly dissenting opinion to the judgment of the Court.

See on that issue *inter alia* the judgments *López Ostra v. Spain*, *Hatton and others v. United Kingdom* (GC); *Guerra and others v. Italy* ; *Taşkin and others v. Turkey* (no 46117/99, § 119, CEDH 2004-X. See also on that topic the decision on the merits adopted by the European Committee of Social Rights in Collective Complaint **No. 30/2005 Marangopoulos Foundation for Human Rights (MFHR) v. Greece**.

- **Freedom of religion – Organisational autonomy of the Church**

Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) v. Bulgaria (nos. 412/03 and 35677/04) (Importance 2) – 22 January 2009 - Violation of Article 9 on account of the Bulgarian authorities forcing the divided Orthodox religious community to unite under one of its two rival leaderships - No violation of Article 6 – No violation of Article 1 of Protocol No. 1 – No violation of Article 13

The first applicant, the Holy Synod presided over by the Metropolitan Inokentiy ("the alternative Synod"), is one of the two rival leaderships of the divided Bulgarian Orthodox Church (the Church). The remaining applicants are six employees of the alternative Synod Soon after the democratic changes of 1989, a number of Christian Orthodox believers, who subsequently became popularly known as the "alternative Synod", sought to replace the existing leadership of the Bulgarian Orthodox Church. They considered that Patriarch Maxim, who had been leading the Church since 1971 and had been nominated by the Communist Party, had been proclaimed Patriarch in violation of traditional canons and the statute of the Church.

Following a change in Government, the majority's political leaders publicly supported Patriarch Maxim and declared their intention to unite the Church. A new law - the Religious Denominations Act 2002 - was introduced with a view to putting an end to the divisions in the Church. The law prohibited religious denominations from having the same name and stated that persons who had split from a registered religious institution were not entitled to use that institution's name or assets. The law also exempted the Church from a formal registration procedure of its central leadership. In 2003, the alternative Synod was refused registration of most of its local church councils throughout the country. The main argument of the courts for their refusal was that registration could only be granted if requested by the person representing the Church. In their view, this had not been the case. Following a complaint filed by Patriarch Maxim against the leader of the alternative Synod and his supporters, on 19 and 20 July 2004 local prosecutors throughout the country issued orders for the eviction of persons "unlawfully occupying" churches and religious institutions. As a result the police blocked more than 50 churches and monasteries in the country, evicted the religious ministers and staff who identified themselves with the alternative Synod, and formally transferred the possession of the buildings to representatives of the rival leadership.

The Court noted that the whole system of registrations of religious communities in Bulgaria had been influenced by political considerations for decades and that by 2002 the Church had been genuinely divided for more than ten years. The Court disagreed with the Government's view that the applicants had been nothing more than persons occupying churches unlawfully. The Court observed that the alternative Synod's leader had been nominated by a Church convention attended by a significant number of clergy and believers. Further still, believers, church councils and senior clergy members throughout the country had accepted the alternative Synod as the legitimate leadership of the Church.

The Court held that the need to remedy the unlawful doings of the governments in 1992 and the following years could not justify the excessive acts that had occurred in the present case, namely the suppression of the applicants' activities as an alternative leadership within the Church and their expulsion from temples, monasteries and other Church premises. While the Court accepted that in 2002 the Bulgarian authorities had had good reasons to consider action to help overcome the conflict in the Church, only neutral measures ensuring legal certainty and foreseeable procedures for the settling of disputes could have been justified. The Court criticised the fact that hundreds of clergy and believers were evicted from their temples in July 2004 without a proper legal basis. That had amounted to an intervention by the prosecutors and the police in a private law dispute which should have been examined by the courts.

The Court further considered that the relevant provisions of the Religious Denominations Act 2002 had been formulated with a false appearance of neutrality. The courts and prosecutors had in fact identified the "valid" leadership of the Church essentially on the basis of the view held by the majority in Parliament and the Government that Patriarch Maxim was the sole legitimate representative of the Church. The Court found that the 2002 Act had not met the Convention standards of quality of the law, in so far as it had left open to arbitrary interpretation the issue of legal representation of the Church and had the effect of forcing the believers to accept a single leadership against their will.

The Court took note of the Government's position about the historical importance of Church unity but stated that the case before it was not about the desirability of finding a solution. It concerned the fact that the authorities had decided to impose a solution through legislative intervention and wide ranging actions to eliminate one of the two opposing leaderships and force the believers to accept the other leadership. The Court's case-law in this respect was clear: in democratic societies it was not for the State to take measures to ensure that religious communities remained or were forced under a unified

leadership. The Court concluded that the sweeping measures which the state authorities had undertaken, namely forcing the religious community to unite under a single leadership had been unlawful and unnecessary, and had gone against the organisational autonomy of the Church, in violation of the applicants' rights under Article 9.

- **Refusal to grant social benefits to the survivor of spouses married in a religious ceremony**

Şerife Yiğit v. Turkey (no. 3976/05) (Importance 1) – 20 January 2009 – No violation of Article 8 - Refusal to transfer to the applicant her deceased partner's social security benefits, despite the fact that they had been married in a religious ceremony.

In 1976 the applicant married Ömer Koç (Ö.K.) in a religious ceremony (*imam nikah*). Ö.K. died on 10 September 2002. The youngest of their six children, Emine, was born in 1990. On 11 September 2003 the applicant brought an action, in her own name and that of Emine, seeking to have her marriage with Ö.K. recognised and to have Emine entered in the civil register as his daughter. The District Court allowed the second request but rejected the request concerning the marriage. The applicant further applied to the retirement pension fund (*Bağ-Kur*) to have Ö.K.'s retirement pension and health insurance benefits transferred to her and her daughter. The benefits were granted to Emine but not to her mother, on the ground that her marriage to Ö.K. had not been legally recognised. The applicant appealed unsuccessfully against that decision.

The Court noted that the applicant, her partner and their children constituted a family, as Şerife Yiğit had married Ö.K. in a religious ceremony, had lived with him until his death and had had six children with him, the first five of whom had been entered in the civil register as his children. The Court observed that the decisive element was whether or not a commitment had been entered into involving contractual rights and obligations. While the Court noted the current trend in some countries towards accepting and even recognising stable forms of cohabitation other than marriage, it observed that under Turkish law a religious marriage ceremony performed by an imam did not give rise to any commitments towards third parties or the State.

The Court considered it not unreasonable for protection to be afforded only to civil marriages in Turkey, reiterating that marriage remained an institution widely recognised as conferring a particular status on those who entered into it. In the applicant's case the Court considered that the difference in treatment between married and unmarried couples with regard to survivors' benefits was aimed at protecting the traditional family based on the bonds of marriage and was therefore legitimate and justified. Accordingly, the Court held by four votes to three that there had been no violation of Article 8.

Judges Tulkens, Zagrebelsky and Sajó expressed a joint dissenting opinion which is annexed to the judgment.

- **Freedom of expression**

Case of Csánics v. Hungary, (no. 12188/06) (Importance 1) - 20 January 2009 - Violation of Article 10 – Statement of the chairman of a trade union

The applicant is the chairman of the Trade Union of Value Transporters and Security Workers, which represents its members in numerous companies. The applicant was an employee of the security company G. In 1998 his employment was terminated, which measure was declared illegal by the competent courts in 2000.

In March 1999 the applicant lodged a private motion *(magánindítvány)* with the Pest Central District Court against S.K., the managing director of company G., alleging that the latter had committed defamation by saying at a company meeting that the applicant "had taken under his wing criminals who had worked in the company". In September 2003 the Budapest Regional Court, acting as a second-instance court, ultimately found S.K. guilty of defamation. In June 2002 the trade union became active in company D. In the second half of the same year, the trade union was informed of an intention to sell company D. and that one of the possible buyers was company G. The employees of company D. opposed the project and organised a protest demonstration. The applicant, as chairman of the trade union, gave interviews to several newspapers concerning the events. A daily newspaper Színes Mai Lap published an article about the interview of the applicant who made the statements that, because of the inhuman conduct of the management [of company G.] [the employees] should not have to stay in a place where they were called 'criminals'.

S.K. the managing director of company G. brought an action against the applicant before the Budaörs District Court, asking the court to establish that the applicant's statements had infringed his good

reputation, to order the applicant to refrain from such acts in the future and to arrange for a rectification to be published.

In fresh proceedings the District Court found, on 24 November 2004, that the applicant had tarnished the plaintiff's good reputation by the impugned statements and ordered him to publish a rectification and pay the plaintiff's court fees in the amount of HUF 82,000 (approximately EUR 300).

On 7 April 2005 the Pest County Regional Court upheld the first-instance decision. On 8 September 2005 a single judge of the Supreme Court declared the applicant's petition inadmissible.

The European Court of Human Rights considered that *"the present case concerns two interrelated assertions. Concerning the first one, namely, that in company G. the employees' rights had been trampled by the inhuman conduct of the management, the Court considers that the applicant was assessing company G.'s behaviour in general, and his declaration amounted to a value judgment. As to the second issue – namely that, according to the applicant, company G. considered him and his colleagues as criminals – the Court sees no reason to depart from the domestic courts' finding that this statement was essentially factual. For the Court, such utterances were, at least in part, susceptible of proof".*

The Court considered *inter alia* that the domestic authorities should have provided the applicant with an opportunity to substantiate his statements.

"The Court considers that the applicant, a trade union leader, formulated his statements in a manner commonly found in labour disputes. Then it can be concluded that the correct balance was not struck between the need to protect the applicant's freedom of expression and the need to protect the plaintiff's rights and reputation" (See §§ 16–18)

The Court held unanimously that there had been a violation of Article 10.

- **Freedom of assembly**

Samüt Karabulut v. Turkey (no. 16999/04) (Importance 3) - 27 January 2009 - Violation of Article 11 - Unlawful demonstration - Peaceful demonstration- Lack of proportionality - Violation of Article 3 - Lack of evidence justifying the head injury sustained by the applicant during his arrest, at the end of a peaceful demonstration

The applicant is a member of the Human Rights Association in Turkey. The case concerned Mr. Karabulut's complaint that the police had intervened at a peaceful, although unauthorised, demonstration in which he was taking part in Istanbul, and used excessive force when arresting him. On 8 April 2002, the applicant had joined about 30-35 demonstrators at Tünel Square in Istanbul to participate in the reading out of a press release issued by the Human Rights Association in protest against Israel's operations in Palestine. The demonstrators were carrying banners which stated, among other things, "An end to the occupation, freedom to Palestine". The police had asked the demonstrators to disperse. Most of them complied almost immediately, but the applicant remained at the Square shouting slogans.

Article 11

The Court noted that the demonstration had been unlawful but pointed out that that could not justify disproportionate interference with freedom of assembly: "*The Court considers that, in the absence of notification, the demonstration was unlawful. In this connection, the Court reiterates that any demonstration in a public place may cause a certain level of disruption to ordinary life and encounter hostility. Therefore, in order to enable the domestic authorities to take the necessary preventive security measures, associations and others organising demonstrations, as actors in the democratic process, should respect the rules governing that process by complying with the regulations in force (see Oya Ataman, cited above, §§ 38 and 39, and Balçık and Others v. Turkey, no. 25/02, § 49, 29 November 2007). However, it also points out that an unlawful situation does not justify an infringement of freedom of assembly and that regulations of this nature should not represent a hidden obstacle to freedom of peaceful assembly as protected by the Convention (ibid).*" (§35).

It further observed that the Government had not shown that the demonstrators had represented a danger to public order or public safety. The demonstrators had in fact dispersed fairly quickly following several police requests. The Court therefore concluded that, forced by the police to leave, the applicant had not had sufficient time to manifest his views, in violation of Article 11.

See in the same vein, the judgments in RSIF 3: **Éva Molnár v. Hungary**- **Saya and others v. Turkey**, **Patyi and others v. Hungary**

Article 3

The Government and the applicant provided diverging versions as to how the applicant had then been removed from the Square. The Court first noted the findings of the medical report drawn up on the evening of the events. It also observed that those findings had corresponded to the applicant's complaint of having been hit on the head during his arrest, and that the Government had not denied that it had used force during the arrest. The Court further observed that, after warnings, the group decided to disband and started to disperse, on its own accord, without a forceful intervention on the part of the police. Having regard to the documentary evidence, the Court found credible the Government's assertion that the applicant, despite the warnings and the dispersal of the crowd, continued to demonstrate and, as a result, was arrested. However, there was nothing in the case file to suggest that the police had encountered any violent or active physical resistance on the part of the applicant during the arrest which would explain the injury which he sustained and, particularly, its location. In these circumstances, the Court found by five votes to two that the Government have failed to furnish convincing or credible arguments which would provide a basis to explain or to justify the head injury sustained by the applicant during his arrest, at the end of a peaceful demonstration.

- **Confiscation of property**

Sud Fondi Srl and Others v. Italy (no. 75909/01) (Importance 2) – 20 January 2009 - Violation of Article 7 - Violation of Article 1 of Protocol No. 1 – The confiscation of the applicant companies' property could be considered as illegal and unjustified

The applicant companies have their head offices in Bari (Italy), where they own land and buildings. The applicant companies complained that their property had been illegally confiscated. The Court held unanimously that there had been a violation of Article 7 (no punishment without law) as the confiscation was not prescribed by law and could thus be considered as arbitrary within the meaning of Article 7. The Court held a further violation of Article 1 of Protocol No. 1 as the confiscation could be considered as unjustified.

- **Cases concerning disappearances in Chechnya**

Dolsayev and Others v. Russia (no. 10700/04) (Importance 3) – 22 January 2009 - Violations of Article 2 (right to life and lack of effective investigation) - Violation of Article 3 (inhuman treatment in respect of the applicants) - Violation of Article 5 (unacknowledged detention) - Violation of Article 13 in conjunction with Article 2 (lack of an effective remedy)

Sambiyev and Pokayeva v. Russia (no. 38693/04) (Importance 3) - 22 January 2009 - Violations of Article 2 (right to life and lack of effective investigation) - No violation of Article 3 (inhuman treatment in respect of the applicants) - Violation of Article 5 (unacknowledged detention) - Violation of Article 13 in conjunction with Article 2 (lack of an effective remedy)

Zaurbekova and Zaurbekova v. Russia (no. 27183/03) (Importance 3) 22January 2009 - Violations of Article 2 (right to life and lack of effective investigation) - Violation of Article 3 (inhuman treatment in respect of the applicants) - Violation of Article 5 (unacknowledged detention) - Violation of Article 8 (right to respect for home) and of Article 1 of Protocol No. 1 as regards the search of Isa Zaurbekov's and his sister's flat and seizure of their belongings - Violation of Article 13 in conjunction with Article 2 (lack of an effective remedy) - Violation of Article 13 in conjunction with Article 8 and Article 1 of Protocol No. 1 in respect of Isa Zaurbekov's sister - Violation of Article 38 § 1 (a) (refusal to submit documents requested by the Court)

In the three abovementionned cases, the applicants alleged that their relatives disappeared after being abducted by Russian servicemen. In the case of *Sambiyev and Pokayeva*, the applicants further alleged that their son, found dead the day after his disappearance, had also been killed by Russian servicemen. All the applicants complained that the domestic authorities failed to carry out an effective investigation into their allegations.

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 a more complete information, please refer to the following link:

- press release by the Registrar concerning the Chamber judgments issued on 20 January 2009 : here.
- press release by the Registrar concerning the Chamber judgments issued on 22 January 2009 : here.

- press release by the Registrar concerning the Chamber judgments issued on 27 January 2009 : here.
- press release by the Registrar concerning the Chamber judgments issued on 29 January 2009 : here.

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

State	Date	Case Title and Importance of the case	Conclusion	Key Words by the Office of the Commissioner	Link to the case
Bulgaria	22 Jan. 2009	Bulves AD (no. 3991/03) Imp 2.	Violation of Art. 1 of Prot. No. 1	The Bulgarian authorities had deprived the applicant company of the right to deduct the input VAT it had paid to its supplier, who had been late in complying with its own VAT reporting obligations and the applicant company should not have been required to bear the full consequences of its supplier's failure to discharge its VAT reporting obligations in timely fashion	link
Bulgaria	22 Jan. 2009	Dinchev (no. 23057/03) Imp 3.	Violation of Art. 6 § 1 (fairness)	The discontinuation of criminal proceedings against an individual who had caused the applicant bodily harm deprived the latter of an effective access to a court for the examination of his civil-party claim. The applicant did not have the possibility of bringing a fresh action in the civil courts	link
Bulgaria	22 Jan. 2009	Popov (no. 75022/01) Imp 2.	No violation of Art. 3 Violation of Art. 6 § 1 (fairness)	Concerning the allegations of ill-treatment it was impossible to establish whether the injuries the applicant had sustained corresponded to the necessary and proportionate use of force at the time of his arrest. Moreover the failure of the investigation was mostly attributable to the applicant's delay in lodging his complaint. However the examination of the applicant's case without him being present at the hearing was incompatible with the principle of equality of arms.	link
Germany	22 Jan. 2009	Kaemena and Thöneböhn (nos. 45749/06 and 51115/06) Imp 2.	Violation of Art. 6 § 1 (length) and of Art. 13	Excessive length (ten years and almost two months) of criminal proceedings on suspicion of murder and lack of effective remedy	link
Hungary	20 Jan. 2009	Borsódy and Others (no. 16054/06) Imp. 3.	Violation of Art. 6 § 1 (length)	Excessive length (ten years and eight months) of criminal proceedings for procuring, which ended with an acquittal	link

Italy	20 Jan. 2009	Zara (no. 24424/03) Imp. 3.	Violation of Art. 8	Failure to respect the correspondence of the applicant while in detention	link
Lithuania	20 Jan. 2009	Norkūnas (no. 302/05) Imp.3.	Violation of Art. 6 § 1 (length)	Excessive length (nearly seven years and five months) of criminal proceedings for embezzlement	link
Poland	20 Jan. 2009	Czarnowski (no. 28586/03) Imp.3	Violation of Art. 8	Refusal to grant to the applicant a compassionate leave from prison to attend his father's funeral	link
Poland	20 Jan. 2009	Pakos (no. 3252/04) Imp 3.	Violation of Art. 5 § 3	Excessive length (over six years and nine months) of pre-trial detention on suspicion of drug trafficking as a member of an organised criminal group	link
Poland	20 Jan. 2009	Palewski v. (no. 32971/03) Imp 3.	Violation of Art. 6 § 1 (fairness)	Refusal to exempt the applicant - an insolvent businessman - from court fees in proceedings in which he sued an insurance company	link
Poland	20 Jan. 2009	Żywicki (no. 27992/06) Imp.3.	Violation of Art. 5 §§ 3 and 4	Excessive length (two years and almost nine months) of the applicant's detention on suspicion of drug trafficking, and failure to examine "speedily" the lawfulness of the detention	link
Poland	27 Jan 2009	Sandowycz (no. 37274/06) Imp 3.	Violation of Art. 5 § 3.	Excessive length (about five years) of the applicant's pre-trial detention	link
Romania	27 Jan 2009	Burghelea (no. 26985/03) Imp 2.	Violation of Art. 1 of Prot. No. 1	The authorities had not properly complied with the rules governing expropriation	link
Romania	27 Jan 2009	Precup (no. 17771/03) Imp 3.	Violation of Art. 6 § 1 (fairness)	The quashing of an acquittal (in a manslaughter case) by the Supreme Court and the extraordinary remedy used for that purpose had failed to strike a fair balance between the applicant's interests and the need to guarantee the efficiency of criminal justice	link
Romania	27 Jan 2009	Ştefan and Ştef (nos. 24428/03 and 26977/03) Imp 3.	Violation of Art. 6 § 1 (fairness)	The Court found that the uncertainty in the case-law, which had given rise to the dismissal of the appeal of the applicants, combined with inconsistencies in the practice of the highest domestic court, had deprived the applicants of the right to be admitted to the Bar Association without an examination, whereas that right had been granted to others in a similar situation	link
Russia	22 Jan. 2009	Borzhonov (no. 18274/04) Imp. 2.	Violation of Art. 6 § 1 (length) and of Art. 13 in conjunction with Art. 6 § 1	Excessive length of criminal proceedings. Continued retention of the applicant's bus (that was seized	link

			(length) Violation of Art. 1 of Prot. No. 1 and of Art. 13 in conjunction with Art. 1 of Prot. No. 1	during the proceedings) even after the annulment of the charging order.	
Russia	29 Jan. 2009	Chervonenko (no. 54882/00) Imp 2 Kiselev (no. 75469/01) Imp 3.	Violations of Art. 6 § 1 (fairness)	Unfair criminal proceedings against the applicants	link link
Russia	29 Jan. 2009	Lenskaya (no. 28730/03) Imp 1.	No violation of Art. 6 § 1 No violation of Art. 1 of Prot. No. 1	The Court found that the supervisory review procedure had not been unreasonable or arbitrary, as it had quashed judgments which had been flawed and had balanced well the different competing interests	link
Russia	29 Jan. 2009	Polyakov (no. 77018/01) Imp 2.	Violation of Art. 6 § 3 (d)	Domestic courts' refusal, without reasons, to examine witnesses in the applicant's favour	link
Slovakia	27 Jan 2009	Urbárska Obec Trenčianske Biskupice (no. 74258/01) Imp 3.	Just satisfaction	Just satisfaction following a violation of Art. 1 of Prot. No. 1.	link
Turkey	20 Jan. 2009	Elğay (no. 18992/03) Imp 3.	Violation of Art. 5 §§ 4 and 5	Lack of a domestic remedy to challenge the lawfulness of the applicant's detention and lack of an enforceable right to compensation	link
Turkey	20 Jan. 2009	İmza (no. 24748/03) Imp.3.	Violation of Art. 10	The criminal conviction of the applicant for having published statements made by the PKK and the suspension of the publication of the magazine had not been justified, particularly in this context of debate on an important matter of public interest	link
Turkey	20 Jan. 2009	Mahmut Yaman (no. 33631/04) Imp 3.	Violation of Art. 5 § 3 and of Art. 6 § 1 (length)	Excessive length (more than nine years) of the applicant's detention pending trial and of criminal proceedings on suspicion of undermining the territorial integrity of the State (the proceedings are still pending)	link
Turkey	27 Jan 2009	Mehmet Ali Çelik (no. 42296/07) Imp 3.	Violation of Art. 5 §§ 3 and 4,of Art. 6 § 1 (length) and of Art. 13	Excessive length (almost ten years and four months) of pre-trial detention; unlawfulness of the detention; length of criminal proceedings and lack of effective remedy	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 by the Office of the Commissioner**
Bosnia and Herzegovina	27 Jan. 2009	Pralica (no. 38945/05) link	Violation of Art. 6 § 1 (fairness) and of Art. 1 of Prot No. 1	Domestic authorities' failure to enforce final judgments in the applicants' favour
Finland	27 Jan. 2009	A.L. (no. 23220/04) link	Violation of Article 6 §§ 1 and 3 (d)	Applicant unable to examine or have examined a prosecution witness.
Italy	20 Jan 2009	Pierotti (no. 15581/05) link	Violation of Art 1 of Prot No. 1	Inadequacy of the expropriation compensation awarded to the applicants.
Moldova	27 Jan. 2009	Cebotari and Others (nos. 37763/04 and al.) link	Violation of Art. 6 § 1 (fairness) and of Art. 1 of Prot No. 1	Domestic authorities' failure to enforce final judgments in the applicants' favour
Romania	27 Jan. 2009	Bizău (no. 26852/03) link Gologuş (no. 26845/03) link	Violation of Article 1 of Prot. No. 1 and of Art. 14 in conjunction with Art. 1 of Prot. No. 1.	The Court held a violation of the Convention following the levying of tax on allowances received by the applicants on their retirement and taking into account the fact that other people in the same situation had benefited from such allowances.
Romania	27 Jan. 2009	Daniel and Niculina Georgescu (no. 2367/04) link	Violation of Article 6 § 1 (fairness)	Quashing of a final judicial decision on an application by the Procurator General.
Romania	20 Jan 2009	Dimitriu and Dumitrache (no. 35823/03) link Hîrgău and Arsinte (no. 252/04) link Nicolescu (no. 31153/03) link	Violation of Art. 6 § 1 (fairness) and of Art. 1 of Prot. No. 1	Failure of domestic authorities' to enforce final judgments in the applicants' favour.
Romania	27 Jan. 2009	Ionescu and Istrate (no 10788/06) link	Violation of Art. 1 of Prot. No. 1	Violations in the framework of actions for recovery of possession of property nationalised by the communist regime.

		Ionescu and Maftei (no. 36128/04) link		
Russia	29 Jan. 2009	Kotsar (no. 25971/03) link Levishchev (no. 34672/03) link	Violation of Art. 6 § 1 (fairness) and of Art. 1 of Protocol No. 1	State's failure to enforce final judgments in the applicants' favour
Russia	22 Jan. 2009	Lotorevich (no. 16048/06) link	Violation of Art. 6 § 1 (fairness) and of Art. 1 of Prot. No. 1	State's failure to enforce a final judgment in the applicant's favour
Turkey	20 Jan 2009	Alexandrou (no. 16162/90) link Solomonides (no. 16161/90) link	Violation of Art 1 of Prot. No. 1	The Court found the violations in these cases concerning the applicants' right of access to their property in the northern part of Cyprus. The Court held that the question of the application of Article 41 (just satisfaction) was not ready for decision in any of the cases.
Turkey	20 Jan 2009	Gavriel (no. 41355/98) link Orphanides (no. 36705/97) link	Violation of Art 1 of Prot No. 1and of Art. 8	Ibid.
Turkey	27 Jan. 2009	Duman (no. 17149/03) link	Violation of Article 6 § 1 (fairness)	The Court found a violation on account of the fact that the applicant had not been given a copy of the opinion submitted to the Court of Cassation by the Principal Public Prosecutor and had thus been unable to respond to that opinion.
Turkey	27 Jan. 2009	Economou (no. 18405/91) link Nicolaides (no. 18406/91) link	Violation of Art. 1 of Prot. No. 1	The Court found the violations in these cases concerning the applicants' right of access to their property in the northern part of Cyprus. The Court held that the question of the application of Article 41 (just satisfaction) was not ready for decision in any of the cases.
Turkey	27 Jan. 2009	Evagorou Christou (no. 18403/91) link Ioannou (no. 18364/91) link Kyriacou (no. 18407/91) link Michael (no. 18361/91) link Nicola (no.	Violation of Art. 1 of Prot. No. 1 and of Art 8	Ibid.

		18404/91) link Sophia Andreou (no. 18360/91) link		

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
Denmark	22 Jan 2009	Christensen (no. 247/07)	Link
Estonia	29 Jan 2009	Missenjov (no. 43276/06)	Link
Finland	27 Jan 2009	G. (no. 33173/05)	Link
Finland	27 Jan 2009	Petikon Oy and Parviainen (no. 26189/06)	Link
Italy	27 Jan 2009	Luigi Serino (No. 2) (no. 680/03)	Link
Lithuania	20 Jan 2009	Četvertakas and Others (no. 16013/02)	Link
Poland	20 Jan 2009	Romuald Kozłowski (no. 46601/06)	Link
Serbia	27 Jan 2009	Dorić (no. 33029/05)	Link
Slovakia	20 Jan 2009	Martikán (no. 30036/06)	Link
Turkey	20 Jan 2009	Hamiye Karaduman and Others (no. 9437/04)	Link
Turkey	20 Jan 2009	Özoğuz (no. 17533/04)	Link
Turkey	20 Jan 2009	Şerefli and Others (no. 1533/03)	Link
Turkey	27 Jan 2009	Çayğan (no. 61/04)	Link

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

Those decisions are published with a slight delay of two to three weeks on the Court's Website. Therefore the decisions listed below cover **the period from 5 to 18 January 2009**.

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.

- ***Decisions deemed of particular interest for the work of the NHRS :***

State	Date	Case title	Alleged violations (Key Words by the Office of the Commissioner)	Decision
France	13 Jan. 2009	Daoudi N° 19576/08 link	The applicant, an Algerian national convicted for having planned terrorist attacks and banned at the same time from the French territory, complains about a risk of violation of Art. 3 and 8 in case of return to Algeria.	Admissible as this complaint raises serious issues of fact and law
Turkey	6 Jan. 2009	Cahide Orak (Hazar) and others N° 10248/04 Link	Alleged violations of Art. 5 (lawfulness and length of custody), Art. 2 and 3 (ill-treatment and subsequent death of the applicants' relative during custody) and of Art. 13 (lack of effective remedy)	Struck out of the list (friendly settlement reached)

- ***Other decisions***

State	Date	Case title	Alleged violations (Key Words by the Office of the Commissioner)	Decision
Austria	8 Jan. 2009	Kleindienst n° 11873/05 link	Alleged violation of Art 10 (following restrictions related to the publication by the applicant of a book "I confess" giving an insight into his experience as a police officer and referring to a "snitcher affair").	Struck out of the list (applicant no longer wishing to pursue his application)
Austria	8 Jan. 2009	Frodl N° 20201/04 link	Alleged violation of Art. 3 of Prot. No. 1 (concerning the applicant's disenfranchisement on grounds of his criminal conviction to life imprisonment).	Admissible as the complaint raises serious issues of fact and law (concerning the compatibility of section 22 of the of the National Assembly Election Act pertaining to disenfranchisement with Art. 3 of Prot. No. 1)
Bulgaria	6 Jan. 2009	Gerdjikov N° 41008/04 link	Alleged violation of Art. 3, 6 § 1, 8 and 17 (excessive length of criminal proceedings), of Art. 2 § 2 of Prot. No. 4 (unlawful ban to leave the country) and of Art. 13 (lack of effective remedy regarding the length of proceedings and the ban to leave the country)	Partly adjourned (concerning the excessive length of proceedings and the lack of effective remedy) Partly inadmissible (no appearance of violation for the remainder of the application)
Bulgaria	6 Jan. 2009	Filipov N° 9351/03 link	Alleged violation of Art. 3 (conditions of detention in Varna Prison)	Struck out of the list (applicant no longer wishing to pursue his application)
Bulgaria	6 Jan. 2009	Ivanov N° 33551/04 link	Alleged violation of Art. 6 § 1 and 13 (length of criminal proceedings and lack of an effective remedy in that respect) Alleged violations of Art. 6 (fairness of the proceedings) and of Art. 2 of Prot. n°4 (applicant prevented from leaving the country for an excessive period of time)	Partly adjourned (concerning the excessive length of proceedings and the lack of effective remedy) Partly inadmissible (no appearance of violation for the remainder of the application)
Bulgaria	6 Jan. 2009	Petev (ii) N° 30216/07 link	The applicant challenges *inter alia* the compatibility of the 1997 Law on special intelligence means with Art. Art 8 and 13.	Partly adjourned (concerning the compatibility of the 1997 Law on special intelligence means) Partly inadmissible as manifestly ill-founded (for the remainder of the application)
Bulgaria	6 Jan. 2009	Drilska N° 1826/04 link	Alleged violation of Art. 5, §§ 3 et 4 (*inter alia* excessive length of pre-trial detention), and of Art. 6 § 1	Struck out of the list (friendly settlement reached)

			(excessive length of criminal proceedings)	
Croatia	15 Jan. 2009	Popovic N° 23551/07 link	Alleged violation of Art. 6 § 1 (challenging the rejection of their claim for compensation and the rejection of their appeal and constitutionnal complaint) and of Art. 1 of Prot. 1 (the applicants had received no compensation for the use of their property by local authorities)	Struck out of the list (friendly settlement reached)
Croatia	15 Jan. 2009	Miljenko Kovac N° 39739/06 link	Alleged violation of Art. 1 of Prot. No. 1 (the applicant had been deprived of his shares by a governmental decision without receiving any compensation), of Art. 6 § 1 (concerning the rejection of the applicant's complaint to obtain compensation) and Art. 13 (lack of effective remedy at his disposal)	Partly inadmissible for non-exhaustion of domestic remedies (concerning Art. 1 of Prot. 1 and Art. 13), and partly as manifestly ill-founded (concerning Art. 6)
Estonia	6 Jan. 2009	Kangur N° 17789/07 link	*Inter alia* alleged violation of Art. 6§§ 1 and 2 (presumption of innocence, equality of arms), of Art. 5 (lawfulness of detention), of Art. 13 and of Art. 2	Inadmissible as manifestly ill-founded (no appearance of violation of the rights and freedoms set out in the Convention or its Protocols)
Finland	6 Jan. 2009	Viinikanoja n° 20532/05 link	Alleged violations of Art. 6 § 1 (length and fairness of proceedings)	Partly struck out of the list (following the unilateral declaration of the Government concerning the length of proceedings), partly inadmissible as manifestly ill-founded (for the remainder of the application)
Finland	6 Jan. 2009	Flemming N° 47521/06 link	Alleged violation of Art. 6 § 1 (excessive length of compensation proceedings)	Struck out of the list (friendly settlement reached)
Finland	6 Jan. 2009	Urmas N° 47523/06 link	Ibid.	Ibid.
Finland	6 Jan. 2009	Kossila N° 37531/05 link	Alleged violation of Art. 6 § 1 (excessive length of the compensation proceedings) and of Art. 13 (lack of an effective remedy for excessive length of civil proceedings)	Ibid.
Finland	6 Jan. 2009	Retva N° 47522/06 link	Ibid.	Ibid.
France	13 Jan. 2009	Le Maou and 14 others N° 49484/07 et al link	Alleged violation of Art. 6§1, Art. 1of Prot. No. 1 and Art.1 of Prot.12 (concerning inter alia the grant of a residence allowance to contractual public servants and the application of Art. 127 of the law of 30 December 2005 to cases pending before French courts)	Inadmissible as partly incompatible *ratione personae* (the applicant cannot claim to be a victim of violation of Art. 6§1 and France has not ratified the Prot. No. 12) and as partly incompatible *ratione materiae* (concerning the allegation of Art. 1 of Prot. 1)
France	13 Jan. 2009	Gadi N° 45533/05 link	Alleged violation of Art. 3 (ill-treatment during arrest and custody).	Inadmissible *ratione temporis*
France	13 Jan. 2009	Lesne N° 1306/05 link	Alleged violation of Art. 3 (lack of medical treatment during detention ; and complaint of being kept in detention after being amputated)	Inadmissible as manifestly ill-founded (concerning the alleged lack of medical treatment) Inadmissible for non exhaustion of domestic remedies (concerning the continued detention after the amputation)
Greece	8 Jan. 2009	Lido A.E. N° 41407/06 link	Alleged violation of Art 1 of Prot. No. 1 (alleged insufficient compensation following the expropriation of the applicant company's property)	Inadmissible as ill-founded (the Court finds that the compensation afforded could not be regarded as disproportionate)

Greece	8 Jan. 2009	Antoniou N° 46956/06 link	Alleged violation of Art. 6, 3 and 14 (concerning *inter alia* the fairness of criminal proceedings, the conditions of detention, and an alleged discrimination among detainees)	Struck out of the list (applicant no longer wishing to pursue his application)
Moldova	6 Jan. 2009	Bejan N° 5822/04 link	Alleged violation of Art. 6 § 1 (right of access to court) and Art. 1 of Prot. No. 1 (protection of property) due to the belated enforcement of a judgment in the applicant's favour	Struck out of the list (following the unilateral declaration of the Government)
Poland	13 Jan. 2009	Wieslaw Gil N° 10251/03 link	Alleged violation Art. 8 (refusal to allow the applicant to attend his father's funeral)	Struck out of the list (friendly settlement reached)*
Poland	13 Jan. 2009	Janek N° 47401/07 link	Alleged violation of Art. 6 § 1 (unreasonable length of proceedings), of Art. 3 (due to the length of proceedings), of Art. 13 (lack of an effective remedy) and of Art. 2 of Prot. No. 1 (the applicant complains that he was unable to continue his education and obtain a profession due to his detention)	Struck out of the list (friendly settlement reached)
Poland	13 Jan. 2009	Bartosiak N° 46170/07 link	Alleged violations of Art. 6 § 1 (length of proceedings)	Struck out of the list (friendly settlement reached)
Poland	13 Jan. 2009	Stramska N° 24021/06 link	Alleged violations of Art. 6 § 1 (the proceedings to obtain a social assistance benefit had exceeded a reasonable time; deprivation of access to a court as the legal-aid lawyer had refused to submit a cassation appeal)	Struck out of the list (applicant no longer wishing to pursue his application)
Poland	6 Jan. 2009	Waruszynska N° 74175/01 link	Alleged violations of Art. 6 § 1 (length of proceedings) and of Art. 1 of Prot. 1 (alleged violation of the applicant's right to property following the unfair proceedings)	Partly struck out of the list (following the unilateral declaration of the Government concerning the length of proceedings), partly inadmissible (for non exhaustion of domestic remedies)
Romania	6 Jan. 2009	Ördög N° 3057/04 link	Alleged violation of Art 6 (unreasonable delay of proceedings, complaint about the outcome of the proceedings), Art. 1 of Prot. No. 1 (violation of right to property)	Struck out of the list (friendly settlement reached)
Romania	6 Jan. 2009	Cristea N° 7629/04 link	Alleged violation of Art 6§1, of Art. 13, 14 and 1 of Prot. No. 1 (following the quashing of a final decision in the applicant's favour due to an extraordinary appeal of the Procurator General)	Struck out of the list (friendly settlement reached)
Romania	6 Jan. 2009	Codrul Impex SRL N° 27886/03 link	Alleged violation of Art 1 of Prot. No. 1 (concerning the non payment of rents by the occupants of the applicant's flat)	Struck out of the list (applicant no longer wishing to pursue his application)
Romania	6 Jan. 2009	Rață N° 24821/03 link	Alleged violations of Art. 1, 2, 6, 8, 13, 17, 3 of Prot. No. 7 and 1 Prot. No. 12 (concerning the non execution of a judgment granting to the applicant pension rights)	Inadmissible as ill-founded (no appearance of violation of the rights and freedoms set out in the Convention or its Protocols: the applicant did not submit any evidence concerning his application)
Romania	6 Jan. 2009	Panzaru N° 20528/04 link	Alleged violation of Art 6§1 (fair trial) and Art. 1 of Prot. No. 1 (violation of right to property) following the quashing of a final decision in the applicant's favour	Struck out of the list (applicant no longer wishing to pursue his application)
Romania	6 Jan. 2009	Grefner N° 38836/04 link	Alleged violation of Art 6§1 and of Art. 1 of Prot. No. 1 concerning the non execution of a judgment in the applicant's favour and the	Struck out of the list (friendly settlement reached)

* See also the case *Czarnowski v Poland* under item 1.2 above

			impossibility to obtain compensation for the applicant's nationalised property	
Romania	13 Jan. 2009	Condrache N° 43686/02 link	Alleged violation of Art 6§1 and of Art. 1 of Prot. No. 1 concerning the non execution of a judgment in the applicant's favour and the cancellation of the applicant's property title	Inadmissible *ratione temporis*
Romania	13 Jan. 2009	Pamfil N° 25503/02 link	Alleged violations of Art. 6 § 1 (excessive length of proceedings)	Struck out of the list (following the unilateral declaration of the Government concerning the length of proceedings)
Romania	13 Jan. 2009	Manole N° 19586/02 link	Alleged violation of Art. 6 § 1, 10 and 13 concerning the conviction of the applicant to a fine and to pay damages because of the publication of an article in a local newspaper	Struck out of the list (applicant no longer wishing to pursue his application)
Romania	13 Jan. 2009	Cliveț N° 13723/04 link	Alleged violation of Art 6§1, Art. 1 of Prot. No. 1 (violation of right to property), and Art 14 following the quashing of a final decision in the applicant's favour	Struck out of the list (friendly settlement reached)
Russia	8 Jan. 2009	Melnik N° 2062/03 link	Alleged violations of *inter alia* Art. 6 § 1 (impossibility to attend the appeal hearings, lack of independent and impartial tribunal established by law), and of Art. 13, 14 and 1 of Prot. 1 (the applicant was not allowed to acquire the title to his flat)	Inadmissible as incompatible *ratione materiae* (concerning Art. 6) and as manifestly ill-founded (no appearance of violation concerning the remainder of the application)
Russia	8 Jan. 2009	Bolotin N° 14923/04 link	Alleged violation of Art. 3 (ill-treatment by police officers), of Art 5 § 3 (unlawful detention) and of Art. 6 (unfair proceedings)	Struck out of the list (applicant no longer wishing to pursue his application)
Russia	8 Jan. 2009	Babkin N° 14899/04 Link	Alleged violations of Art. 6 §§ 1 and 3 (unfair proceedings in particular concerning the impossibility to question prosecution witnesses)	Inadmissible as manifestly ill-founded (in particular the inability to question the witnesses did not deprive the applicant of a fair trial, as the way in which evidence was dealt with, taken as a whole, was fair)
Russia	8 Jan. 2009	Komyakov N° 7100/02 Link	Alleged violations of Art. 3, Art. 5, Art. 6 and 13 and Art. 10 (*inter alia* concerning the conditions of detention, the lawfulness and length of pre-trial detention and the fairness and length of criminal proceedings)	Inadmissible for non exhaustion of domestic remedies (concerning Art. 5) and manifestly ill-founded (no appearance of violation)
Russia	8 Jan. 2009	Kozlov N° 25249/03 Link	Alleged violations of Art. 3 (conditions of detention), of Art. 5 (lawfulness of detention), of Art. 6 (fairness) and of Art. 8, 13 and 17	Struck out of the list (friendly settlement reached)
Russia	8 Jan. 2009	Novogorodskiy N° 24541/03 Link	Alleged violations of Art. 6 and Art. 1 of Prot. 1 (non-enforcement of a judgment in the applicant's favour)	Struck out of the list (applicant no longer wishing to pursue his application)
Russia	15 Jan. 2009	Faizov N° 19820/04 Link	Alleged violations of Art. 9 and of Art. 14, read in conjunction with Art. 6 § 1 and Art. 9 (the applicant alleges that he was criminally convicted because of a legitimate exercise of his right to alternative civilian service, and that the domestic courts discriminated against him on account of his religious affiliation with Jehovah's Witnesses)	Struck out of the list (applicant no longer wishing to pursue his application)
Russia	15 Jan. 2009	Abakarov N° 35313/04 Link	Alleged violation of Art. 6 (various shortcomings in criminal proceedings)	Struck out of the list (applicant no longer wishing to pursue his application)
Russia	6 Jan. 2009	Romashkin n° 31732/03 Link	Alleged violations of Art. 6 and Art. 1 of Prot. 1 (non enforcement of a judgment in the applicant's favour)	Struck out of the list (applicant no longer wishing to pursue his application)

Russia	8 Jan. 2009	Gousseva n° 27046/04 Link	Alleged violations of Art. 6, 8, 13, 14 and 1 of Prot. 1 (non enforcement of a judgment in the applicant's favour)	Struck out of the list (friendly settlement reached)
Russia	8 Jan. 2009	Choubine N° 5720/04 Link	Alleged violations of Art. 6 and 1 of Prot. 1 (delay in the enforcement of a judgment in the applicant's favour)	Struck out of the list (friendly settlement reached)
Slovenia	6 Jan. 2009	Glas-Metal Trust Reg. n° 42121/04 Link	Alleged violation of Art. 6 [excessive length (30 years) of proceedings in which the applicant is seeking compensation for confiscated goods and for loss of profit], of Art. 13, of Art. 6 (partiality of the tribunal) and of Art. 1 of Prot. 1	Partly struck out of the list (friendly settlement reached concerning the length of proceedings) Partly inadmissible as manifestly ill-founded (concerning the remainder of the application)
Slovenia	6 Jan. 2009	Mustic N° 9761/03 Link	Alleged violation of Art. 6 (excessive length of civil proceedings) and of Art. 13 (lack of an effective remedy)	Struck out of the list (friendly settlement reached)
The Czech Republic	6 Jan. 2009	Dosoudil and Chytrackova N° 5297/03 Link	Alleged violation of Art. 6§1, Art. 13 and of Art. 1 of Prot. 1 (delays in the restitution proceedings and inexecution of a judgment, lack of effective remedy)	Inadmissible *inter alia* for failure to exhaust domestic remedies (concerning the length of proceedings and Art. 1 of Prot. 1); manifestly ill-founded (the final judgment adopted in the restitution proceedings was executed); incompatible *ratione personae* (concerning the second applicant)
Turkey	6 Jan. 2009	Bozlak and others N° 5031/04 Link	Alleged violations of Art. 6, 7, 9, 10, 11 and 14, as well as Art. 3 of Prot. No. 1 [concerning various proceedings brought against the People's Democracy Party (*Halkın Demokrasi Partisi,* "HADEP") and its members and concerning the dissolution of this party]	Struck out of the list (applicants no longer wishing to pursue his application)
Turkey	6 Jan. 2009	Turhan N° 4750/04 Link	Ibid.	Ibid.
Turkey	6 Jan. 2009	Doganer N° 6482/04 Link	Ibid.	Ibid.
Turkey	13 Jan. 2009	Oztekin N° 21249/03 et al. Link	Alleged violation of Art. 5§3 (detention in police custody for seven days)	Struck out of the list (friendly settlement reached)
Turkey	6 Jan. 2009	Yildirim N° 4300/05 Link	Alleged violation of Art. 6 (length of proceedings, lack of justification, lack of impartiality), of Art. 13 and of Art. 8 (dissemination of information concerning the applicant published in a newspaper article and in the decisions of the domestic courts)	Partly adjourned (concerning Art. 8) Partly inadmissible as manifestly ill-founded (no appearance of violation concerning the remainder of the application)
Turkey	6 Jan. 2009	Tokmak N° 65354/01 Link	Alleged violations of Art. 3 (ill-treatment of the applicant and his son by police officers), Art. 5 (lawfulness and length of detention), of Art. 6 (fair trial) and Art. 14	Inadmissible as manifestly ill-founded (*inter alia* because, on ground of Art. 3, there is no appearance of violation and the investigation could be considered as effective) and partly as inadmissible for non exhaustion of domestic remedies
Turkey	13 Jan. 2009	Ceven N° 41746/04 Link	Alleged violation of Art. 3 (ill-treatment while in custody), of Art. 5 (length and lawfulness of detention), of Art. 6 (fairness and length of proceedings) and of Art. 13	Partly adjourned (concerning the length of detention, the lack of effective remedy to challenge the lawfulness of detention, the impossibility to obtain compensation for an unlawful detention, but also concerning the length of criminal proceedings and the lack of an effective remedy) Partly inadmissible as manifestly ill-founded (concerning the remainder of the application)

Turkey	13 Jan. 2009	Baykal N° 9540/05 Link	Alleged violation of Art. 6 (length and fairness of administrative proceedings), of Art. 1 of Prot. 1 (following the insufficient compensation received for the destruction of the applicant's stolen car in a terrorist attack), of Art. 5 and of Art. 2	Partly adjourned (concerning the length of administrative proceedings and insufficient compensation received namely on ground that the interests did not reflect the Turkish inflation at the relevant time)
Turkey	6 Jan. 2009	Murat Korkmaz N° 3151/04 Link	Alleged violations of Art. 3, 6, 13 and 14 (ill-treatment in police custody) and of Art. 2 of Prot. 1 (right to education)	Struck out of the list (applicant no longer wishing to pursue his application)
Turkey	6 Jan. 2009	Cemile Celik n° 7885/02 Link	Alleged violations of Art. 1 of Prot. 1, Art. 6, 13, 14 and 18 (following the lack of payment by the administrative authorities to a debt due to the applicant's late husband)	Inadmissible as the applicant can no longer claim the status of victim since a friendly settlement was reached at domestic level
Turkey	13 Jan. 2009	Kalkanli N° 2600/04 Link	Alleged violation of Art. 2 of Prot. n° 1 and Art. 14 following the refusal of the elementary school ENKA to admit the applicant due to his blindness	Inadmissible as manifestly ill-founded (the refusal of only one school can not amount to a violation by the State of the right to education)
Turkey	13 Jan. 2009	Ozturk N° 11106/05 Link	Alleged violations of Art. 6 and 13 (length of proceedings, non execution, and lack of remedy)	Struck out of the list (friendly settlement reached)

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 2 February 2009 : link
- on 9 February 2009: 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 Office of the Commissioner.

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 2 February 2009 on the Court's Website and selected by the Office of the Commissioner

State	Date of communication	Case Title	Key Words by the Office of the Commissioner
Azerbaijan	15 Jan. 2009	Ilham HUSEYN N° 36105/06	Alleged violations of Art. 3 of Prot. 1 (concerning alleged various breaches of law and other irregularities before and during the repeat elections to the Parliament of 13 May 2006; concerning the process of examination of the applicant's complaint; concerning the rules of composition of election commissions), of Art. 13, and of Art. 14 (alleged discrimination on ground of political affiliation)
Belgium	12 Jan. 2009	EL HASKI N° 649/08	Alleged violations of Art. 6 §§ 1 and 3 d) [on the ground that the conviction of the applicant (*inter alia* on suspicion of participation in terrorist activities) by Belgian Courts was based on evidences deriving from proceedings in France and Morocco in which the applicant did not take part and obtained in violation of the Convention], of Art. 6 § 1 (on other grounds), of Art. 8.
Bulgaria	15 Jan. 2009	KADZOEV N° 56437/07	Alleged violations of Art. 3 (risk of ill treatment in case of deportation of the applicant, a Chechen national, to the Russian Federation), of Art. 13 (lack of effective remedy to challenge the deportation order), of Art. 5§§1 f and 4 (lawfulness of detention, possibility to challenge the legality of the detention), of Art. 3 and 13 (concerning the conditions of detention in solitary confinement) and of Art. 8 (concerning the presence of a video camera in the solitary confinement cell)
Bulgaria	12 Jan. 2009	KURDOV and IVANOV n°7739/04	Alleged violations of Art. 6§1 and Art. 13 (length of criminal proceedings and lack of effective remedy) and of Art. 4 of Prot. 7 (right not to be tried or punished twice)
Bulgaria	12 Jan. 2009	SABEVA n° 44290/07	Alleged violations of Art. 3 (conditions of detention of the applicant, placed in compulsory confinement in a mental hospital), and of Art. 5 (lawfulness of detention, possibility to challenge the detention and right to receive compensation for an unlawful detention)
France	14 Jan. 2009	SOUGNOUX n°16721/07	Alleged violation of Art 3 (the applicant is at risk of being detained although his health could be considered as incompatible with detention; the applicant complains as well that he did not benefit from two medical expertises as prescribed by French law)
Georgia	15 Jan. 2009	SCHRADE n° 9289/08	In the framework of the proceedings pertaining to the alleged illegal use of the applicant's photographs by a Georgian company, the applicant complains about alleged violations of Art. 6 (length of proceedings), of Art. 13 and of Art. 1 of Prot. 1 (lack of effective remedy and right to receive compensation of the use of the photographs)

Latvia	15 Jan. 2009	TALMANE n°47938/07	Alleged violations of Art. 6 §§ 1 and 2 (concerning the refusal of the Senate of the Supreme Court to examine the applicant's cassation appeal on its merits and concerning a distinction in the Supreme Court's practice between inadmissible appeals and those that do not disclose a fundamental breach of procedure)
Moldova	12 Jan. 2009	NEGURA and 86 Others N° 16602/06	Alleged violation of Art. 6 (concerning the right of access to a court and the decision of the appeal court to leave the applicants' court action without examination because of an allegedly wrong choice of the addressee of their preliminary complaint) and of Art. 1 of Prot. 1 (the authorities are allegedly protecting the interests of a State-owned company to the detriment of fair competition)
Poland	12 Jan. 2009	GLOGOWSKI n° 39531/08	Alleged violation of Art. 6 and 13 (concerning *inter alia* the refusal to appoint a legal-aid lawyer with a view to filing a cassation appeal)
Poland	12 Jan. 2009	POLANOWSKI n° 16381/05	Alleged violation of Art. 3 concerning the alleged ill-treatment inflicted on the applicant during his arrest by four police officers and concerning the lack of appropriate investigation into those allegations
Romania	15 Jan. 2009	ANDREESCU n° 19452/02	Alleged violation of Art. 10 (following the criminal conviction of the applicant for defamation for questioning during a press conference the collaboration of a high official to the *Securitate*, the former communist political police) and of Art. 6 (the applicant was convicted without having participated in the hearing)
Romania	15 Jan. 2009	NECULA n°31470/04	Alleged violation of Art. 3 (conditions of detention in the penitentiary center of Mărgineni)
Romania	15 Jan. 2009	ROSCA n°36110/03	Complaints about the fairness of the criminal proceedings (concerning *inter alia* the impossibility for the applicant to question or to have questioned key witnesses in the case) and about the poor conditions of detention in the prisons of Rahova and Târgşor
Russia	12 Jan. 2009	DIBIROVA n°18545/04	Complaints that an air strike during a counter-terrorist operation in the Chechen Republic put the life of the applicant at risk in violation of Art. 2. The applicant further complains about the lack of effective investigation into those allegations, and about a violation of Art. 8 and Art. 1 of Prot. 1 due to the destruction of the applicant's property during the air strike.
Spain	15 Jan. 2009	SAN ARGIMIRO ISASA n° 2507/07	Alleged violation of Art. 3 due to ill-treatment of the applicant by police officers during his arrest and detention in San Sebastian and Madrid. The applicant further complains about the lack of effective investigation and effective remedy.
United Kingdom	15 Jan. 2009	BEGGS n°25133/06	Alleged violations of Art. 6 (concerning *inter alia* the length of appeal criminal proceedings for murder) and of Art. 13 (lack of effective remedy regarding the length of proceedings)

Ukraine	15 Jan. 2009	KUROCHKIN N° 42276/08	The applicant complains about the annulment of the adoption of a child by the applicant and his wife (partly because of the divorce of the applicant and his wife) and about the subsequent placement of the child in a specialised institution. The applicant complains about violations of Art. 6, 8 and 13
Ukraine	12 Jan. 2009	LOGVINENKO N° 13448/07	The case concerns *inter alia* a complaint about poor conditions of detention of the applicant (in Pre-Trial Detention Centre n°15, in Sokalsky Penitentiary n°47, and in Kherson Penitentiary n° 61); the lack of prompt and sufficient medical assistance; debasing treatment by the officers of the Penitentiary n°47; and the lack of an effective remedy

Communicated cases published on 9 February 2009 on the Court's Website and selected by the Office of the Commissioner

State	**Date of communication**	**Case Title**	**Key Words by the Office of the Commissioner**
Armenia	23 Jan. 2009	KIRAKOSYAN (no. 2) no. 24723/05	*Inter alia* alleged violations of Article 8 (concerning especially both the grounds of the search warrant and its manner of execution) of the applicant's right to respect for home (concerning namely the alleged use of specially trained dogs during the search of the applicant's home), and alleged violation of the right to a fair hearing (concerning the admission of evidences that allegedly impair the fairness of the criminal proceedings) The Court refers also to the **2004 *Annual Report of the Republic of Armenia's Human Rights Defender***
Austria	20 Jan. 2009	JEHOVAS ZEUGEN no. 27540/05	Alleged violation of Article 14 read in conjunction with Article 9 of the Convention because of the refusal of the Labour Market Service to issue a declaratory decision under the Employment of Aliens Act; of Article 14 read in conjunction with Article 9 of the Convention because of the refusal of the tax authorities to apply the exemption from inheritance and gift tax under Section 15 § 1 of the Inheritance and Gifts Act 1955; Alleged violation of Article 14 read in conjunction with Article 1 of Protocol No. 1 to the Convention on the same grounds.
Germany	28 Jan. 2009	Several applications	The retrospective extension of the first period of preventive detention from a maximum period of ten years to an unlimited period of time owing to the amendment in 1998 of Article 67d §§ 1 and 3 of the Criminal Code, read in conjunction with section 1a § 3 of the Introductory Act to the Criminal Code, breached the applicants' right not to have a heavier penalty imposed on them than the one applicable at the time of their offence.
Moldova	22 Jan. 2009	POPA no. 8968/06	Non enforcement of domestic judgment; lack of domestic remedy.
Poland	27 Jan. 2009	GÓRNY no. 50399/07	The application deals with the Polish Lustration Act (see judgment *Matyjek v. Poland* of 24 April 2007); see questions to the parties.

Poland	21 Jan. 2009	WŁOCH no. 33475/08	The applicant complains under Article 5 § 5 of the Convention that he was deprived of the right to obtain compensation in spite of the fact that the domestic courts considered that his detention had been undoubtedly illegal. He submits that the domestic courts' practice of crediting a period of deprivation of liberty towards a fine was unfair and did not compensate for the damage sustained by him.
Ukraine	23 Jan. 2009	KUKHAR no. 26947/05	The applicant complains under Article 6 § 1 of the Convention that the proceedings in his case were unfair; that the hearings were not held publicly and that the judgments were not pronounced publicly. He further complains under Article 6 § 3 (c) of the Convention that his rights of defence were infringed in so far as (i) he did not participate personally in the hearing before the court of appeal; and (ii) that neither he nor his lawyer were notified of the hearing before the court of cassation, which took place without their attendance.

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

Annual report of the Court and annual table of violations per country

We invite you to consult the Annual Report of the Court for the year 2008.

Also you may find of particular interest the Court's annual table of violations per country was published for 2008.

Press conference with the President of the European Court of Human Rights (29.01.09)

At a press conference in Strasbourg the President of the Court, Jean-Paul Costa, said that on the occasion of the Court's 50th anniversary this year a very positive assessment could be made of the Court's impact over the last fifty years. Looking to the future, he called upon the member States of the Council of Europe to reaffirm their commitment to human rights and their support for the Court's work, while at the same time reflecting with the Court on how to adapt the protection mechanism to the needs of the 21st century.

He stressed the size of the current caseload (nearly 100,000 cases pending), which is constantly increasing, and noted that, regrettably, the various reform proposals had reached an apparent impasse, even if he remained hopeful that the different obstacles could be surmounted. At the same time the Court could not simply go on increasing its staff and resources indefinitely, although it would still be necessary to provide the Court with additional means in the short to medium term.

Mr. Costa said that something had to be done to safeguard the long-term effectiveness of the system. The main lines of the reform were clear: comprehensive implementation of the Convention standards at domestic level; effective execution of the Court's judgments by Member States to ensure that the Court was not overloaded with large numbers of similar cases and a re-structured protection mechanism allowing the Court's efforts to be concentrated as a matter of priority on the important well-founded cases.

The President stated that the Court had delivered 1,543 judgments in 2008, 3% up on 2007, and 30,163 decisions, 11% up. He explained that this considerable activity had not reduced the backlog, as some 50,000 new applications had been allocated to a judicial formation in 2008, 20% more than in 2007.

He also pointed out that 57% of applications had been lodged against just four States (the Russian Federation, Turkey, Romania and Ukraine), with the remaining 43% covering the other 43 Member States.

While this high caseload showed the confidence that the European public placed in the Court, it carried with it a risk of saturation. The Court had to work together with the Council of Europe and national authorities on improving the information available to the public with a view to getting across to them a clearer message about what the Convention and therefore the Court could do for them and what fell outside their reach.

Opening of the judicial year of the European Court of Human Rights (30.01.09)

The judicial year of the European Court of Human Rights opened on 30 January 2009, officially marking the start of the Strasbourg Court's 50th anniversary year. One hundred and fifty eminent figures from the European judicial scene attended a seminar organised for the occasion.

The seminar was followed by the official opening ceremony, in the course of which Mr. Jean-Paul Costa, President of the Court, and Dame Rosalyn Higgins, President of the International Court of Justice, addressed a 250-strong audience representing the judicial world and local and national authorities. The French Government was represented at the official opening ceremony by the Minister of Justice, Ms Rachida Dati.

The theme of the seminar is "50 years of the European Court of Human Rights viewed by its fellow international Courts". It was opened by Mr. Jean-Paul Costa, with an introduction by Mme Françoise Tulkens, Section President and judge elected to the European Court of Human Rights in respect of Belgium. Mr. Patrick Robinson, President of the International Criminal Tribunal for the former Yugoslavia, Mr. Vassilios Skouris, President of the Court of Justice of the European Communities, and Mr. Paolo G. Carozza, Chairman of the Inter-American Commission on Human Rights, also addressed the seminar.
Watch the ceremony (original language, English, French)
Speech of President Costa
Speech of Dame Rosalyn Higgins
Address of Rachida Dati (in French only)

Webcast of hearings:

The Court holds a Grand Chamber hearing in the cases of *Depalle v. France* and *Brosset-Triboulet and Others v. France* on Wednesday 11 February 2009. The cases concern injunctions issued against the applicants, ordering them, at their own cost and without compensation, to demolish their homes, which were built on plots of land in the maritime public property. See Press release

Official visits:

- Visit from the Georgian Minister of Justice (29.01.09)
- Visit from the Spanish Minister of Foreign Affairs and Co-operation (28.01.09)
- Visit from the France's Minister of State responsible for European Affairs (27.01.09)
- Visit to the Brussels Bar (23.01.09)

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 17 to 19 March 2009 (the 1051st meeting of the Ministers' deputies).

B. General and consolidated information

Please note that useful and updated information (including developments occurred between the various Human Rights meetings) on the state of execution of the cases classified by country is provided :
http://www.coe.int/t/e/human%5Frights/execution/03%5FCases/

For more information on the specific question of the execution of judgments including the Committee of Ministers' annual report for 2007 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/E/Human_Rights/execution/

The simplified global database with all pending cases for execution control (Excel document containing all the basic information on all the cases currently pending before the Committee of Ministers) can be consulted at the following address :
http://www.coe.int/t/e/human_rights/execution/02_Documents/PPIndex.asp#TopOfPage

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

A. European Social Charter (ESC)

Decisions on the merits made public for two collective complaints lodged against Portugal (21.01.09)

At its 1046th meeting the Committee of Ministers adopted Resolutions CM/ResChS(2009) 1 and CM/ResChS(2009) 2 with regard to two complaints lodged against Portugal. In the first complaint, *European Council of Police Trade Unions (CESP) v. Portugal*, 40/2007, the ECPTU alleged that, in Portugal police, staff of the Public Security Police is denied the right to bargain collectively (Articles 6 §§ 1 and 2 of the Revised Charter), the right to information and consultation (Article 21 of the Revised Charter) and the right to take part in the determination and improvement of the working conditions and working environment (Article 22 of the Revised Charter). It argued that even though the national legal framework, in particular Law n° 14/2002 of 19 February 2002, provides for these rights, in practice the Government systematically refuses to consult and to bargain collectively with the representative trade union organisation of the PSP police staff, the Union Association of Police Professionals of the Public Security Police (Associação Sindical dos Profissionais de Polícia da Polícia de Segurança Pública - "ASPP/PSP"), on matters of mutual interest.

The ECSR noted that "*even though the Ministry may not have responded to all of the meeting requests or proposals made by the ASPP/PSP with respect to matters falling within the scope of Article 35 or Article 38, the ECPTU does not adduce sufficient evidence to demonstrate that the Government has systematically refused to consult the ASPP/PSP on matters of mutual interest or to grant it the right to participate in the processes that are directly relevant for the determination of the working conditions applicable to PSP police staff. It further considers that the ECPTU does not establish that the amendments introduced by Legislative Decree 157/2005 were of such a scope that a lack of consultation in this respect would amount to a violation of Article 6 §§ 1 and 2 of the Revised Charter. As regards the failure of the Government to issue a regulation determining the regular working hours of police staff pursuant to Article 69 paragraph 2 of Legislative Decree 511/99 of 24 November 1999 pertaining to the Statute of the Public Security Police Staff, the Committee finds that this does not constitute in itself a violation of the obligations resulting from Articles 6 §§ 1 and 2 of the Revised Charter."* (See §§ 38 and 39 of the Decision on the merits). The ECSR concluded that there is no violation of Articles 6§§1-2 (the right to bargain collectively). Furthermore the right of PSP police staff to information, consultation and participation did not fall within the scope of application of Articles 21 (the right to information and consultation) and 22 (the right to take part in the determination and improvement of the working conditions and working environment) of the Revised Charter and the Committee therefore held unanimously that there is no violation of these articles.

In the second complaint *Sindicato dos Magistrados do Ministério Publico (SMMP) v. Portugal*, 43/2007, the SMMP asked the Committee to find that there is a violation of Article 12§§1, 2 and 3 (right to social security) of the Revised Charter because of reduction of the standard of social security and health protection system applicable to members of the Public Prosecutor's Office resulting from implementation of the Legislative Decree No. 212/2005 of 9 December 2005. The Committee held that as long as the State Officials Sickness Insurance Scheme (ADSE) and the National Health Service (SNS) provide a level of social security which is sufficiently extensive to comply with the Revised Charter, the transfer of the members of the Public Prosecutor's Office from the personal scope of Social Services of the Ministry of Justice (SSMJ) to ADSE did not violate the right to social security for the members of the Public Prosecutor's Office. The ECSR concluded by 14 votes against 1 that there was no violation of Article 12§3 of the Revised Charter.
40/2007 Decision on the merits
43/2007 Decision on the merits
Collective Complaints

The European Committee of Social Rights will hold its next session from 16 to 20 February 2009. You may find relevant information on the sessions using the following link :
http://www.coe.int/t/dghl/monitoring/socialcharter/default_en.asp.

You may find relevant information on the implementation of the Charter in States Parties using the following country factsheets:
http://www.coe.int/t/dghl/monitoring/socialcharter/CountryFactsheets/CountryTable_en.asp

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

Council of Europe anti-torture Committee publishes report on Finland (20.01.09)

At the request of the Finnish authorities, the CPT has published the report on its fourth visit to Finland, carried out in April 2008. During the visit, the CPT's delegation examined, in particular, the safeguards offered to persons detained by the police, and the situation of remand prisoners held in police detention facilities. The visit report contains recommendations aimed at eliminating the practice of holding remand prisoners in police cells. In this context, the Finnish authorities have informed the Committee of plans to adopt measures to decrease the number of remand prisoners in police establishments and to shorten the periods spent by them in police custody.

The CPT's delegation also found that persons detained under the Aliens Act were still frequently held in police establishments. In this context, the Committee has recommended that the Finnish authorities consider the possibility of opening a second specialised holding facility for aliens, like the one opened in Metsälä.

The report also addresses in detail various issues related to prisons, in particular the phenomenon of inter-prisoner violence and intimidation as well as the situation of prisoners held in high security and closed units. The CPT has recommended that a national approach be developed to address the issue of "fearful" prisoners, and that a suitable programme of purposeful activities be provided to prisoners held in conditions of high security or segregated by court order.

The Committee was impressed by the high quality of the prisoner accommodation at Vantaa Prison; however, the original concept of a modern remand prison offering a variety of regimes while taking into account the interests of justice was compromised by overcrowding. Further, the CPT has called upon the Finnish authorities to end the practice of "slopping out" at Helsinki Prison, as well as elsewhere in the Finnish prison system. Particular attention was also paid to the treatment of prisoners suspected of concealing unlawful substances in their body ("body packers").

In addition, the CPT's delegation visited a State psychiatric hospital for forensic patients and civil patients considered dangerous or otherwise challenging (Vanha Vaasa Hospital) and, for the first time in Finland, a psychiatric unit for adolescent intensive care (the EVA Unit in Pitkäniemi).

As regards the latter establishment, the CPT's delegation noted with concern that some of the juvenile patients were prevented from taking outdoor exercise, on occasion for weeks on end; the Committee has recommended that steps be taken to ensure that all juvenile patients are offered the possibility to take daily outdoor exercise. The delegation also requested that a detailed action plan be drawn up to reduce significantly recourse to seclusion at Vanha Vaasa Hospital; the Finnish authorities subsequently informed the CPT of steps to be taken in this regard and also indicated that procedures and methods used in all psychiatric facilities (such as seclusion) would be subject to review in the context of legislative reforms to be launched in the course of 2009.

Council of Europe anti-torture Committee publishes report on Kosovo[*] (20.01.09)

The CPT has published the report on its first visit to Kosovo in March 2007, together with the response of the United Nations Interim Administration in Kosovo (UNMIK). Both documents have been made public at the request of UNMIK.

In the course of the visit, the CPT received a number of allegations of physical ill-treatment of persons held by officers of the Kosovo Police Service (KPS) in police stations throughout Kosovo. The CPT has recommended that a formal statement be delivered from the highest level to all KPS officers, reminding them that they should be respectful of the rights of detained persons and that the ill-

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

treatment of such persons will be the subject of severe sanctions. The Committee has also made specific recommendations concerning the implementation in practice of the fundamental safeguards against ill-treatment (in particular, as regards the right of detained persons to have access to a lawyer).

Material conditions of detention were poor in almost all the police stations visited. Many cells were too small for the number of persons being held there, lacked natural light and/or artificial lighting, and were in a poor state of cleanliness.

The CPT visited Dubrava Prison, Lipjan/Lipljan Correctional Centre (the only penitentiary establishment in Kosovo for women and juveniles) and four pre-trial detention centres throughout Kosovo. At Dubrava Prison, the Committee received a number of allegations of physical ill-treatment and/or excessive use of force by members of the establishment's Intervention Unit (so-called "Delta Bravo"). Many prisoners also complained about brutal and provocative behaviour by members of that unit in the context of cell searches. In addition, some allegations of physical ill-treatment by custodial staff were received at Dubrava Prison and Lipjan/Lipljan Correctional Centre; no such allegations were heard in any of the detention centres visited.

Material conditions of detention were generally satisfactory at Lipjan/Lipljan Correctional Centre and the detention centres in Gjilan/Gnjilane and Mitrovica/Mitrovicë; however, they were very poor in some parts of Dubrava Prison and in the entire Pejë/Peć Detention Centre (advanced level of dilapidation, poor standards of hygiene, overcrowding, etc.).

The CPT has welcomed the initial efforts made by the prison administration to develop a programme of activities for prisoners (in particular, as regards female and juvenile prisoners). The Committee gained a generally favourable impression of the detention regime in the high-security block of Dubrava Prison. However, it is a matter of concern that many sentenced prisoners and almost all remand prisoners in the penitentiary establishments visited did not benefit from any regular out-of-cell activities other than outdoor exercise. Further, the Committee has expressed its concern about the frequent allegations of favouritism and corruption at Dubrava Prison.

As regards psychiatric/social welfare establishments, no allegations of ill-treatment by staff were received from patients at the Psychiatric Clinic in Prishtinë/Priština and the Regional Hospital in Mitrovica/Mitrovicë, but some allegations of physical ill-treatment (such as slaps) by orderlies were received at the Shtime/Štimlje "Special Institute". In addition, a number of patients/residents, mostly women, met at Shtime/Štimlje claimed that they had been subjected to violence and/or intimidation by other patients/residents. No such allegations were received in the other psychiatric establishments visited.

Living conditions of patients were very good in the emergency/intensive care unit at the Psychiatric Clinic in Prishtinë/Priština and generally satisfactory at the Regional Hospital in Mitrovica/Mitrovicë. However, the CPT has expressed its serious concern about the fact that patients in the forensic psychiatric unit in Prishtinë/Priština were being kept, often for months on end, in a state of total idleness: they did not have any possibility to go into the open air, nor were they provided with reading material or a radio or TV, and they had no possibility to make telephone calls.

At the Shtime/Štimlje "Special Institute", the CPT gained a favourable impression of the living conditions in the new institution for persons with mental disabilities, both in terms of material conditions and socio-rehabilitative and recreational activities offered to residents. In contrast, conditions for patients in the Integration Centre for Mental Health were very poor. Many rooms were dilapidated and in a poor state of hygiene. In addition, the Centre lacked the necessary funds to ensure even the basic needs of patients (such as adequate clothing and shoes).

In its substantial response addressing all the issues raised by the CPT, UNMIK provides detailed information on the concrete measures taken by the relevant authorities to improve the situation in the light of the recommendations made by the Committee. For instance, to combat ill-treatment by the police, a directive has been issued to police officers and draft legislation has been prepared to aggravate sanctions against police officers who use force unnecessarily and/or in a disproportionate manner. In addition, steps have been taken to intensify the training of police officers and to strengthen the legal safeguards for persons detained by the police.

Council of Europe anti-torture Committee publishes report on Albania (21.01.09)

The CPT has published its report on the June 2008 ad hoc visit to Albania. The report has been made public at the request of the Albanian Government.

The main objective of the visit was to review progress made as regards the implementation of the recommendations made by the CPT following its previous visits to Albania. Particular attention was paid to the treatment of persons detained by the police and conditions of detention in remand prisons and pre-trial detention centres.

In the course of the visit, the CPT observed improvements in various areas. In particular, in contrast to the findings made during previous visits, the majority of persons interviewed by its delegation stated that they had been treated correctly whilst in police custody; nevertheless, a number of credible allegations of recent physical ill-treatment were received. As regards conditions of detention in pre-trial detention centres, the CPT found that significant progress had been made.

The CPT has recommended that the Albanian authorities redouble their efforts to combat ill-treatment by the police and to improve, as a matter of urgency, conditions of detention in police stations, which remained unsatisfactory.

C. European Commission against Racism and Intolerance (ECRI)

The ECRI launched, on Monday 9 February, its **new website**.

General and consolidated information on the country-by-country monitoring reports established by the ECRI may be consulted using the following link:
http://www.coe.int/t/e/human_rights/ecri/1-ECRI/2-Country-by-country_approach/default.asp#TopOfPage

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

Follow-up Seminar in "the former Yugoslav Republic of Macedonia" (26.01.09)
The authorities and the Council of Europe organised a follow-up seminar to discuss how the findings of the monitoring bodies of the FCNM are being implemented in "the former Yugoslav Republic of Macedonia".

Montenegro: adoption of Committee of Ministers' recommendations on minority protection (19.01.09)
The Committee of Ministers has adopted a resolution on the protection of national minorities in Montenegro. The resolution contains conclusions and recommendations, highlighting positive developments but also a number of areas where further measures are needed to advance the implementation of the Framework Convention for the Protection of National Minorities.

Portugal submits its second Report pursuant to the Framework Convention for the Protection of National Minorities (14.01.09)
Portugal has just submitted its second state report in French and Portuguese, pursuant to Article 25, paragraph 1, of the Framework Convention for the Protection of National Minorities. It is now up to the Advisory Committee to consider it and adopt an opinion intended for the Committee of Ministers.

E. Group of States against Corruption (GRECO)

41st Plenary Meeting - Strasbourg, 16-19 February 2009
GRECO will examine for adoption, in the framework of its Second and Third Evaluation rounds:
- draft Third Round Evaluation Reports on France, Norway and Sweden
- a draft Joint First and Second Round Compliance Report on Andorra
- a draft Second Round Compliance Report on Bosnia and Herzegovina
- draft Addenda to the Second Round Compliance Reports on Iceland, Latvia and the United Kingdom.

GRECO will also examine and adopt its Ninth General Activity Report for 2008.
Finally, the composition of Evaluation Teams for Third Round Evaluation visits to Cyprus, Greece and Romania will be established.

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

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

Part IV : The intergovernmental work

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

Cyprus ratified on 23 January 2009 the Council of Europe Convention on the Prevention of Terrorism (CETS No. 196).

Moldova ratified on 27 January 2009 the Anti-Doping Convention (ETS No. 135), and the Additional Protocol to the Anti-Doping Convention (ETS No. 188).

Monaco signed and ratified on 30 January 2009 the European Convention on Extradition (ETS No. 024), the Additional Protocol to the European Convention on Extradition (ETS No. 086) and the Second Additional Protocol to the European Convention on Extradition (ETS No. 098).

Montenegro ratified on 22 January 2009 the European Landscape Convention (ETS No. 176).

Russia signed on 26 January 2009 the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198).

B. Recommendations and Resolutions adopted by the Committee of Ministers

See the resolutions concerning the European Social Charter under item III A.

C. Other news of the Committee of Ministers

4th meeting of the Reflection Group (DH-S-GDR) of the Steering Committee for Human Rights (CDDH) (28-30 January 2009)

The Reflection Group of the Steering Committee for Human Rights, in particular:

- considered the issue of inviting the Court to put into practice certain procedures to increase its case-processing capacity and made requests for the provision of information necessary to completion of the final opinion of the CDDH;
- supported and made suggestions for further work towards a Committee of Ministers' recommendation on domestic remedies for excessive length of proceedings;
- noted the Court President's view that the Court could help address its caseload problems through interpretation of certain articles of the Convention *à droit constant*;
- considered that further work on extending the Court's competence to give advisory opinions was justified but should take place in the context of a wider review;
- agreed on the need for practical steps to encourage the use of third party interventions, notably creation of a network of Government Agents;
- decided to hold a hearing with representatives of civil society at its next meeting.

The European Group of National Human Rights Institutions represented by the French National Human Rights Commission attended the meeting. The European Group confirmed on this occasion that it will participate to the hearing with representatives of civil society in March and submit comments on the proposals. It shall focus on their role on third party interventions in the light of their 2008 intervention in *DD v. Lithuania* as well as on the drafting of the new Recommendation on domestic remedies for excessive length of proceedings. For any further information on the activities of the European Group of National Human Rights Institutions on this matter, you may contact Noémie Bienvenu (noemie.bienvenu@cncdh.pm.gouv.fr) from the French National Human Rights Commission.

Miguel Angel Moratinos calls for Protocol 14 to enter into force (28.01.09)
Miguel Angel Moratinos, Minister of Foreign Affairs and Cooperation of Spain and Chairman of the Committee of Ministers of the Council of Europe, emphasised the priority the Spanish Chairmanship

attaches to the entry into force of Protocol No.14, so the European Court of Human Rights can improve its efficiency. Addressing the Parliamentary Assembly on 28 January, he said the role of the Council of Europe must be strengthened and described it "as a cornerstone of European architecture and a guarantee of fundamental values". He also expressed his support to the American government's decision to close Guantánamo prison and to end practices which breach humanitarian principles.
Speech, Communication on the activities of the Committee of Ministers, Video of the speech

1046th Meeting of the Ministers' Deputies (21.01.09)

During their meeting on 21 January 2009, the Ministers' Deputies pursued their discussions on the Council of Europe and the conflict between the Russian Federation and Georgia.

They also held an in-depth exchange of views with Thomas Hammerberg, the Council of Europe Commissioner for Human Rights. They noted in particular that the Commissioner, having completed the cycle of initial state assessment visits begun by his predecessor, intended in 2009 to re-centre his activities. Thus, whilst maintaining the ongoing dialogue with states on the basis of the Commissioner's assessments and recommendations, the Commissioner's Office will be devoting more attention to a number of thematic topics such as the systematic implementation of human rights, anti-discrimination, migrants and refugees and juvenile justice. The Deputies welcomed the Commissioner's continuing activities concerning the support for and protection of human rights defenders. In this context a number of delegations referred to the recent murders of Stanislav Markelov and Anastasia Baburova in Moscow and to the need for the Russian authorities to shed full light on this matter.

In the light of the Declaration of Intention adopted in Faro on 27 October 2005, the Deputies took note of the declaration by the Council of Europe and UNESCO setting up an open platform of inter-institutional co-operation for intercultural dialogue ("Faro Platform"). They also took note of the accession of the Alliance of Civilizations Initiative of the United Nations to the Faro Platform and of the request of the Arab League Educational, Cultural and Scientific Organisation (ALECSO) to join the Faro Platform. In this context, they authorised the Secretary General to sign the Act of accession of the ALECSO, it being understood that accession shall take effect at the moment of the acceptance of the request also by UNESCO.

The Deputies took note of the declaration adopted at the Conference of Ministers responsible for Culture on "Intercultural dialogue as a basis for peace and sustainable development in Europe and its neighbouring regions" held on 2 and 3 December 2008 in Baku, Azerbaijan (DD(2009)3) and gave instructions to one of its sub-committees to consider a possible follow-up.

A number of replies to Parliamentary Assembly Recommendations were adopted, including Recommendation 1832 (2008) on "Abuse of the criminal justice system in Belarus" and Recommendation 1825 (2008) on "Strengthening co-operation with the Maghreb countries".

Part V : The parliamentary work

The Parliamentary Assembly held its Winter session between 26 and 30 January 2009. The main outcomes of this session are described below.

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

1. COUNTRIES

- **Resolution 1647 : The implementation of Resolution 1633 (2008) on the consequences of the war between Georgia and Russia**
- **Resolution 1648 and Recommendation 1857: The humanitarian consequences of the war between Georgia and Russia Recommendation 1857**

PACE called on both Russia and Georgia to allow unhindered and unconditional access for humanitarian organisations and aid to South Ossetia and Abkhazia – and said it was unacceptable that people living there should not be effectively covered by Council of Europe human rights protection mechanisms.

It called for a Council of Europe action-plan for these people, which could include the establishment of a field presence and ombudsman in the two break-away regions to investigate and document human rights violations committed during and in the aftermath of the war.

Debating the consequences of the war between Georgia and Russia for the second time, as well as a report on the humanitarian consequences of the war, the Assembly said in a resolution that Georgia has complied with "many but not all" of the demands made by the Assembly in October, whereas Russia has "not yet complied with the majority" of demands made.

The parliamentarians condemned the recognition by Russia of the independence of South Ossetia and Abkhazia as "a violation of international law and of the Council of Europe's statutory principles" and again called on Russia to withdraw it. Russia should also implement the EU-brokered ceasefire agreement, allow OSCE and EU monitors into the two break-away regions and work towards the creation of a new peacekeeping format and an internationalised peacekeeping force, they said.

Based on a report by Luc van den Brande (Belgium, EPP/CD) and Mátyás Eörsi (Hungary, ALDE), the parliamentarians also expressed their serious concern that the escalation of tensions and provocations along the borders of the break-away regions "could lead to renewed clashes or an outbreak of hostilities", and called on all parties to refrain from any provocative actions.

In a separate debate on the humanitarian consequences of the war, based on a report by Corien W. A. Jonker (Netherlands, EPP/CD), the parliamentarians also called for investigations into, and where appropriate prosecutions of, all human rights violations and violations of humanitarian law, and said reparations should be provided, including restitution of property and payment of compensation.

- **Resolution 1650 (2009) : Challenge on procedural grounds of the still unratified credentials of the Parliamentary delegation of Albania**

At the opening of the Assembly 2009 session, on 26 January 2009, the still unratified credentials of the delegation of Albania to the Parliamentary Assembly were contested on procedural grounds as there were reasons to believe that one member of that delegation for the 2008 session had been removed from the delegation for the 2009 session in breach of the relevant provisions of rules of procedure.

After examining the various objections made, PACE has found that there was no indication that the principles guaranteed by the Assembly's Rules of Procedures were not respected in the nomination of the members of the parliamentary delegation of Albania and therefore decided, in a resolution unanimously adopted, to ratify their credentials.

- **Resolution 1643: The implementation by Armenia of Assembly Resolutions 1609 (2008) and 1620 (2008)**

PACE still seriously concerned by the situation of detainees in Armenia but will not apply sanctions to the Armenian delegation: at the end of the winter session debate and following the proposals of the monitoring co-rapporteurs for Armenia, Georges Colombier (France, EPP/CD) and John Prescott (United Kingdom, SOC), the Parliamentary Assembly of the Council of Europe (PACE) decided not to suspend the voting rights of the members of the Armenian delegation to the Assembly at this stage, viewing the recent initiatives of the Armenian authorities as an indication of their readiness to address the demands made by PACE in its Resolutions 1609 (2008) and 1620 (2008).

- **Recommendation 1856 and Resolution 1645 : Investigation of crimes allegedly committed by high officials during the Kuchma rule in Ukraine – the Gongadze case as an emblematic example**

2. THEMES

- **Recommendation 1855 : The regulation of audiovisual media services**

During a debate on the regulation of audiovisual media services, based on a report by Andrew McIntosh (United Kingdom, SOC), PACE reiterated that "all media regulation in Europe must respect the right to freedom of expression and information … regardless of frontiers".

Having noted the current progress in drafting an amending protocol to the European Convention on Transfrontier Television (ECTT) in order to transform it into a new Council of Europe convention, the Assembly puts forward a number of considerations that should be taken into account

It proposed that the current revision of the ECTT should respect this freedom, define the "public service mission" of audiovisual media services and re-examine the role of the Standing Committee with regard to its supervisory function over compliance with convention obligations and arbitration.

PACE also proposed that measures should be taken to address the allocation of radio-frequency spectrum following the analogue switch-off of broadcasting in many countries as well as the independence of national regulators for the audiovisual media sector.

- **Resolution 1644: Co-operation with the International Criminal Court (ICC) and its universality**

Dick Marty calls for prompt ratification of the Rome Statute by the United States (27.01.09)

Philippe Kirsch, President of the International Criminal Court: ICC needs to be more universal (27.01.09)

- **Resolution 1646 : Nomination of candidates and election of judges to the European Court of Human Rights**

PACE calls for appropriate national selection procedures to make the European Court of Human Rights more efficient

PACE marks 50 years of electing judges to the European Court of Human Rights (21.01.09)

- **Recommendation 1854 and Resolution 1642 : Access to rights for people with disabilities and their full and active participation in society**

PACE asked member states to include disability issues in all areas of policy-making and allocate sufficient funds to them. To speed up the integration of people with disabilities into society and respect for their rights, the Assembly called on governments to give them equal access to education, sustainable employment and health care, and to facilitate access to public areas and transport.

In line with the conclusions of the rapporteur for the Social, Health and Family Affairs Committee, Bernard Marquet (Monaco, ALDE), the Assembly asked member states to promote and carry out the Council of Europe Disability Action Plan for 2006-2015, which aims to provide practical answers to the day-to-day problems facing people with disabilities by encouraging equal opportunities. According to Mr Marquet, "this action plan should be a reference for all new policies and activities carried out in the area of disability".

- **Recommendation 1862 : Environmentally induced migration and displacement: a 21st century challenge**

- **Resolution 1651 : The consequences of the global financial crisis**

Financial crisis: PACE calls for protection of social rights (29.01.09)

- **Recommendation 1858 : Private military and security firms and the erosion of the state monopoly on the use of force**

The Parliamentary Assembly recommends that the Committee of Ministers draw up a Council of Europe instrument aimed at regulating the relations of its member states with private military and security firms and laying down minimum standards for the activity of these private companies. PACE indicates the elements that such an instrument should, as a minimum, contain.

- **Resolution 1649 : Palliative care: a model for innovative health and social policies**
- **Recommendation 1860 and Resolution 1653 : Electronic democracy**

PACE notes key role of e-tools in strengthening representative democracy (30.01.09)

- **Resolution 1654 and Recommendation 1861 : Feminicides**

Mexico must pursue efforts to combat feminicides, says PACE (30.01.09)

- **Recommendation 1859 and Resolution 1652: Attitude to memorials exposed to different historical interpretations in Council of Europe member states**

B. News of the Parliamentary Assembly of the Council of Europe

- ***COUNTRIES***

- **Parliamentarians want experts' opinion on constitutional changes in Azerbaijan (29.01.09)**

The Monitoring Committee of the Parliamentary Assembly of the Council of Europe (PACE), meeting in Strasbourg, examined recent developments in Azerbaijan and decided to request the opinion of the Venice Commission – the Council of Europe's group of experts on constitutional law – on the package of constitutional amendments to be submitted to a nation-wide referendum on 18 March 2009.

These amendments, adopted by the Azerbaijani Parliament on 25 December 2008, would abolish the limit on the number of consecutive terms of office for the President of the Republic, extend the term of office of the President and the Parliament in a time of war, as well as grant the right to introduce a legislative initiative if it has the support of 40,000 voters.

The committee will consider the opinion of the Venice Commission during a meeting in March.

Venice Commission website

- **PACE rapporteur visits Kosovo (30.01.09)**

Björn von Sydow (Sweden, SOC), who is preparing a report for the Council of Europe Parliamentary Assembly (PACE) on the situation in Kosovo, is to visit Kosovo from 2 to 5 February 2009.

Opening a current affairs debate in the Assembly in January 2008, Mr. von Sydow said: "Irrespective of its status, the Parliamentary Assembly wants people in Kosovo to enjoy the same rights and freedoms and have the same opportunities".

In Pristina (2-4 February) he is to meet the head of UNMIK and Special Representative of the UN Secretary General Lamberto Zannier, the head of EULEX Yves de Kermabon and the head of the OSCE mission Ambassador Werner Almhofer.

He is also to meet the Speaker of Parliament Jakup Krasniqi, President Fatmir Sejdiu and Prime Minister Hashim Thaci as well as several ministers and representatives of political parties. He is to visit the Mitrovica district, Gjilan and Gracanica (4-5 February).

- **PACE President makes official visit to Bosnia and Herzegovina (30.01.09)**
- **Chechnya: PACE committee demands full elucidation of the recent spate of murders (27.01.09)**
- **President welcomes frank discussions with Russian authorities on PACE demands (21.01.09)**
- **Statement by Dick Marty, PACE rapporteur on the human rights situation in the north Caucasus, on the murder of Stanislav Markelov (20.01.09)**

- ***THEMES***

➢ **Miguel Angel Moratinos, Minister of Foreign Affairs and Cooperation of Spain and Chairman of the Committee of Ministers of the Council of Europe, calls for Protocol 14 to enter into force (28.01.09)**

C. Miscellaneous

➢ **PACE current affairs debate: the situation in Gaza** (28.01.09)

➢ **PACE re-elected Mr. de Puig as its President, and also elected its Vice-Presidents (26.01.09)**

➢ **PACE President congratulates President Obama on his inauguration, welcomes his request to suspend tribunals at Guantanamo (21.01.09)**

➢ **Guantanamo: PACE President calls on the '47' to take in the detainees who have been cleared (26.01.09)**

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

A. Country work

Commissioner Hammarberg met Russian Foreign Minister Lavrov (19.01.09)

In the context of his visit to St Petersburg and Moscow on 18-20 January, Commissioner Hammarberg met Foreign Minister of the Russian Federation, Sergey Lavrov, the head of the Russian delegation to the Parliamentary Assembly of the Council of Europe, Konstantin Kosachev, and the Prosecutor General, Yury Chaika. The Commissioner also had meetings with the Ombudsman of the Russian Federation, Vladimir Lukin, and representatives of human rights organisations, including Oleg Orlov of Memorial.

Commissioner Hammarberg welcomes the court decision on the case of "Memorial" (22.01.09)

Commissioner Hammarberg welcomes the judgment passed by the Dzherzhinsky district court of St Petersburg on 20 January 2009 in the case of the Scientific Information Center "Memorial".

The Office of Memorial information center was searched by personnel from the Investigative Committee of the Prosecutor's Office of the Russian Federation in St Petersburg on 4 December 2008. The search, which was carried out without the presence of a lawyer, resulted in the seizure of 11 hard discs of computers, containing unique historical research on political repression during the Soviet era.

The St Petersburg court declared that the search of "Memorial" premises on 4 December 2008 was illegal and ordered that all seized material be returned to the organisation.

"I welcome the court's ruling as it strives to uphold human rights safeguards against unlawful and insufficiently substantiated searches as well as unjustified broad and sweeping seizures of private property, in relation to criminal investigations" says Thomas Hammarberg.

"I also interpret the court's ruling as freeing this well respected and highly professional human rights NGO from any suspicion of wrong doing or criminal activity" he concluded.

B. Thematic work

Commissioner asks European countries to help Obama close Guantanamo (19.01.09)

While the United States has created the Guantanamo problem and has the primary responsibility for correcting the injustices, there are strong arguments for European assistance in closing Guantanamo Bay, writes Commissioner Hammarberg in his latest Viewpoint. To achieve this goal, Council of Europe member states should stand ready to receive some of those remaining detainees who cannot go back home for fear of persecution and torture if returned. Giving such an offer would be both the right thing to do, and of critical importance in our attempts to push for the prompt closure of Guantanamo Bay.

Read the Viewpoint

Read in Russian (PDF)

C. Miscellaneous (newsletter, agenda…)

The Commissioner - CommDH(2009)1 / 21 January 2009

4th quarterly activity report 2008 by Thomas Hammarberg, Council of Europe Commissioner for Human Rights (1st October to 31 December 2008)