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and **the Office of the Commissioner for Human Rights**

The selection of the information contained on this Issue and deemed relevant to NHRSs is made under the joint responsibility of the NHRS Unit and the Office of the Commissioner for Human Rights

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Introduction

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

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

Unfortunately, the issues are available in English only for the time being due to the limited means. 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 NHRS Unit and the Office of the Commissioner for Human Rights. It is based on what is deemed relevant to the work of the NHRSs. A particular effort is made to render the selection as targeted and short as possible.

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

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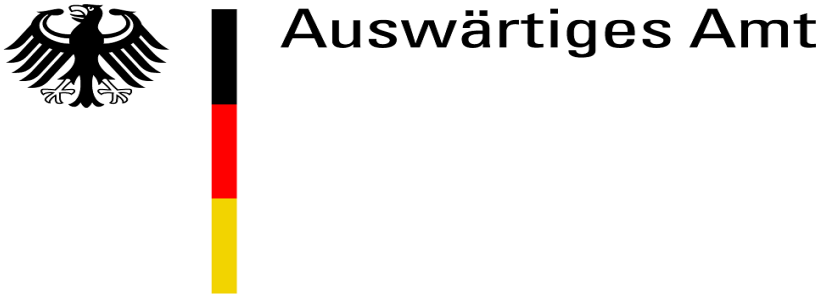

Part I : The activities of the European Court of Human Rights

A. Judgments

1. Judgments deemed of particular interest to NHRSs

The judgments presented under this heading are the ones for which a separate press release is issued by the Registry of the Court as well as other judgments considered relevant for the work of the NHRSs. They correspond also to the themes addressed in the Peer-to-Peer Workshops. The judgments are thematically grouped. The information, except for the comments drafted by the NHRS Unit and the Office of the Commissioner for Human Rights, 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.

- **Ill-treatment in detention**

Alexandru Marius Radu v. Romania (no. 34022/05) (Importance 3) – 21 July 2009 – Violation of Article 3 – National authorities' failure to protect the applicant against other detainees while in pre-trial detention

The applicant is currently detained in Ploieşti Penitentiary (Romania) after being sentenced in May 2006 for robbery with violence. He complained about the authorities' failure to protect him from physical abuse which he claimed he had suffered while in pre-trial detention in the Bucharest-Jilava Penitentiary. The Court held unanimously that there had been a violation of Article 3 on account of the fact that the authorities didn't intervene in a satisfactory manner to protect the applicant in spite of the fact that they had been aware of the fact that other detainees had ill-treated the applicant (see *Pantea v. Romania,* 3 June 2003*).*

- **Police misconduct**

Rachwalski and Ferenc v. Poland (no. 47709/99) (Importance 2) – 28 July 2009 – Violation of Article 3 – Unjustified heavy-handed police intervention – Violation of Article 8 – Disproportionate interference with the right to respect for home

The applicants complained of having been harassed and humiliated by the police during an unlawful entry into their house in June 1997. The Court held unanimously that there had been a violation of Article 3 on account of the applicants having experienced profound helplessness and humiliation as a result of the actions of the police officers, and a violation of Article 8 on account of the police officers' entry into the applicants' house.

Müdet Kömürcü v. Turkey (No. 2) (no. 40160/05) (Importance 3) – 21 July 2009 – Two violations of Article 3 – Ill-treatment while in police custody – Inadequate criminal proceedings against the police officers involved in the ill-treatment – Violation of Article 13 – Lack of an effective remedy

The applicant complained of having been tortured in late November 1997 while in police custody for suspicion of his involvement in a terrorist organisation. He also complained about the authorities' failure to carry out an effective investigation establishing the facts and punishing those responsible for torturing him. He also stressed that he had been denied the right to seek compensation before the civil courts as the criminal proceedings against the police officers had been dismissed for exceeding the statutory time-limit. The Court held unanimously that there had been two violations of Article 3 on account of the ill-treatment to which Mr Kömürcü had been subjected while in police custody and on account of the acquittal of the accused police officers by domestic courts due to statutory time-limitations (see *Yavuz v. Turkey*, 10 January 2006 and *Erdoğan Yılmaz and Others v. Turkey*, 14 October 2008). The Court also held unanimously that there had been a violation of Article 13 on account of the impossibility for the applicant to obtain compensation for the alleged violations.

Ersoy v. Turkey (no. 43279/04) (Importance 3) – 28 July 2009 – Violations of Article 3 – Ill-treatment by the police – Lack of an effective investigation

In September 2001 the applicant was arrested while on his way to a demonstration organised by a human rights association and allegedly ill-treated by the police. The applicant complained in particular that he had suffered ill-treatment in the hands of the police and that there had been no effective investigation into the matter. He also complained of an interference with his freedom of peaceful assembly. The Court held unanimously that there had been a violation of Article 3 in respect of both the treatment inflicted on Mr Ersoy, which it considered inhuman, and the lack of an effective investigation into the matter, the independence and impartiality of the investigators being open to doubt.

Terzi and Erkmen v. Turkey (no. 31300/05) (Importance 3) – 28 July 2009 – Violations of Article 3 – Ill-treatment while in police custody – Inadequate criminal proceedings against the police officers involved in the ill-treatment

The applicants complained of having been tortured in May 1997 during their detention in custody of security forces at the Mersin Security Headquarterson on suspicion of car theft and that the authorities had failed to establish the responsibility of the accused police officers. The Court considered that the applicants' complaints should be examined solely from the standpoint of Article 3. It held unanimously that there had been violations of Article 3 on account of the ill-treatment sustained by the applicants in police custody, and the acquittal of the accused police officers by domestic courts due to statutory time limitations.

Ananyin v. Russia (no. 13659/06) (Importance 3); Gladyshev v. Russia (no. 2807/04) (Importance 2); Pitalev v. Russia (no. 34393/03) (Importance 2); Vladimir Fedorov v. Russia (no. 19223/04) (Importance 3); Yevgeniy Kornev v. Russia (no. 30049/02) (Importance 3) – 30 July 2009 – Violation of Article 3

In all of these cases the Court concluded that there had been violation of Article 3.

In the case of Ananyin, the Court found the alleged violation on account of the conditions of detention in facility no. IZ-34/1 in Volgograd as well as a violation of Article 5 § 3 on account of the length of detention and of Article 5 § 4 on account of the failure to examine speedily an appeal the applicant had made against a decision rejecting his request to release the applicant.

In the case of Gladyshev, a violation of Article 3 was found on account of the ill-treatment of the applicant following his arrest and of the lack of an effective investigation in that respect.

In the case of Pitalev, the Court held unanimously that there had been a violation of Article 3 on account of the conditions of the applicant's detention in the prison hospital. It found no violation of this provision concerning the conditions of his detention in the correctional colony.

The Court held, in the case of Fedorov, that there had been a violation of Article 3 on account of his ill-treatment in the Rudnichniy District police station and of the lack of an effective investigation.

In the case of Yevgeniy Kornev, the Court held unanimously that there had been a violation of Article 3 in respect of both the ill-treatment of the applicant and the lack of an effective investigation into his complaint. It further held unanimously that there had been a violation of Article 6 §§ 1 and 3 (c) on account of the applicant's absence from the supervisory-review hearing.

Drozd v. Ukraine (no. 12174/03) (Importance 3) – 30 July 2009 – No violation of Article 3 – Lack of sufficient evidence to attribute the applicant's injuries to police officers – Violation of Article 3 – Lack of an effective investigation

The applicant alleges that in 1997 he was beaten up by police officers who had taken him from his house, and that the investigation undertaken by the domestic authorities into his complaints has been lengthy and insufficient. The Court held unanimously that there had been no violation of Article 3 concerning the applicant's allegation of ill-treatment. However, there has been a violation of this provision on account of the lack of an effective investigation into his complaint of ill-treatment.

- **Right to a fair trial**

Luka v. Romania (no. 34197/02) (Importance 2) – 21 July 2009 – Two violations of Article 6 § 1 – Lack of impartiality and independence of the tribunal – Failure to address the ground of appeal submitted by the applicant

After being dismissed in 1999 by the company for which the applicant had been working as one of the managers and head of the IT department, he brought an action to have that decision set aside, also seeking damages. The courts found in his favour in both respects in 2000, but there ensued several further sets of proceedings until 2003 relating to the calculation of the damages and the execution of the decision. In the course of those proceedings, the applicant referred on appeal to the case-law of the Constitutional Court in arguing that the composition of the tribunal examining his case was unconstitutional because it included lay judges ("judicial assistants"). He was reinstated on his post in September 2003 and apparently received the sums owed to him in 2000.

The applicant submitted that the courts hearing his case had been neither impartial nor independent because they had included lay judges. He also complained that his ground of appeal concerning the alleged unconstitutionality of the tribunal in his case had not been addressed.

Alleged lack of impartiality and independence of the courts

The Court did not deny the advantage of courts composed of a mixture of professional and lay judges in fields where the experience of the latter was necessary to determine specific questions that could arise in such matters. This system, which existed in a number of States Parties to the Convention, was not in itself contrary to the Convention. However, the role and duties of the "judicial assistants", as laid down in Romanian legislation at the relevant time, had made them vulnerable to outside pressure. The domestic law had not afforded sufficient guarantees as to their independence in the performance of their duties. Among other things, they had not been irremovable or protected against the premature termination of their duties, and they could discharge other functions and activities assigned to them by the organisations on whose behalf they had been elected (employers' associations and trade unions) (see in particular §§ 43- 46; see also *Langborger v. Sweden*).

Since Mr Luka's concerns about the tribunal's lack of independence and impartiality were objectively justified, the Court found a violation of Article 6 § 1.

Alleged failure to address the applicant's ground of appeal

The courts were required to undertake a careful examination of the parties' submissions, addressing those which were relevant and had an effect on the outcome of the case. The Court considered that the ground submitted by the applicant had been relevant to the outcome of the case as it had been based on a decision of the Constitutional Court (which was thus binding on all authorities) along the same lines. It could also have had an effect on the outcome of the case, as the Court of Appeal was

empowered to review all aspects of the case. The ground submitted had therefore required a specific and express reply. In the absence of such a reply, it was impossible to know whether the Court of Appeal had simply neglected the ground of appeal or decided not to examine it and, if so, why (see §§ 57-59).

The Court noted that the Romanian legislation had been amended: in cases of this kind, professional judges were now assisted by "consultant judges", whose role was purely advisory. However, the change had taken place after the impugned judgment of the Court of Appeal, so that even if the applicant's appeal had been allowed, at the time that would not have been sufficient to grant a rehearing of his case in conformity with the Convention.

Osmanağaoğlu v. Turkey (no. 12769/02) (Importance 2) – 21 July 2009 – Violation of Article 6 §§ 1 and 3 (d) – Restriction of the rights of the defence

On 3 October 1978, during a spate of terrorist acts in Turkey, the president of the local branch of a right-wing party and his son were murdered in Istanbul. On 9 October 1978 seven young left-wing extremists were killed in a flat in Ankara, in what became known as the "Bahçelievler massacre", believed to have been organised by a secret nationalist group out of revenge for the murders committed on 3 October.

In the course of the investigations the military prosecutor's office identified fourteen persons, including the applicant, who were suspected of being involved in the killings; three successive sets of criminal proceedings were instituted in the case.

The first concerned nine of the fourteen persons identified, who were brought before the martial-law court. The applicant, however, had absconded. In a statement taken in December 1978 one of the suspects concerned, D.D., said that the applicant had been in the vehicle from which three individuals had got out and made their way to the flat on the evening of the killings. In June 1979 D.D. alleged that he had been interrogated under torture – producing a medical report in support of his assertion – and forced to sign records drawn up by the police. The judges discredited D.D.'s statements with the exception of the one given the day after the events, finding that they were intended to create a diversion.

The second set of proceedings, instituted in 1986, made no mention of any involvement of the applicant.

The third set of proceedings before the Assize Court, were instituted in 1995 against the applicant, who was arrested in 1999 after nineteen years on the run. The Assize Court found that the applicant had taken part in the massacre as the principal. It based its finding in particular on the incriminating statements by D.D. and also those by M.Y., who had been questioned at Mamak Military Prison in the context of his own trial and who likewise, had subsequently complained of ill-treatment, substantiated by medical evidence. On 15 February 2001 the applicant was given seven death sentences, one for each murder. This ruling was upheld by the Court of Cassation in June 2001.

Following the abolition of the death penalty in peacetime in Turkey in 2002, the applicant's sentence was commuted to life imprisonment, with ineligibility for parole during the first twenty-five years. His sentence was reduced to forty years in October 2007.

The applicant complained that he had been convicted on the basis of an arbitrary assessment of evidence extracted from two of his co-accused under torture, and that he had never been able to contest that evidence.

The statements in issue, on which the Court did not express an opinion, had been obtained in the applicant's absence, at the preliminary investigation stage. However, it had been of crucial importance for the applicant to be able to examine the witnesses against him, D.D. and M.Y., in view of the sentence he faced and the uncertain reliability of their statements.

The Court noted the discrepancies both in D.D.'s various statements and in the courts' interpretation of them, but observed above all that D.D. had been questioned while being held incommunicado in police custody for six days, and that M.Y. had given evidence from the military prison where he was being held pending his trial in the martial-law court. The Court further noted that, having implicated the applicant, the witnesses had later explicitly retracted their statements, alleging that they had been interrogated under torture and lodging criminal complaints on that account, supported by medical evidence (see §§ 49-52).

The judges had not assessed the effect of the admission of such statements on the fairness of the applicant's trial. They had failed to re-examine D.D. and M.Y. to assess their credibility and to hold an adversarial hearing at which the defence could have questioned their versions of events. The Court

concluded that this restriction of the rights of the defence had amounted to a violation of Article 6 §§ 1 and 3 (d), (see *Khan v. the United Kingdom*).

Lee Davies v. Belgium (no. 18704/05) (Importance 2) – 28 July 2009 – No violation of Article 6 § 1 – Fairness in examining the criminal charges against the applicant

The applicant, a British national, was in Belgium in 1998 when police officers entered private land, without a search warrant, and discovered the applicant and another person, the tenant of the site, as well as a large quantity of cannabis. On the basis of the evidence thus obtained, the applicant was charged of drug trafficking and conspiracy. He was acquitted at first instance in May 2001 because the evidence against him had been obtained illegally. The Ghent Court of Appeal convicted the applicant in June 2004, holding that although only part of the search had been lawful, the fairness of the trial, taken as a whole, had not been affected. An appeal on points of law lodged by the applicant was dismissed on 16 November 2004.

The applicant complained in particular that the evidence on the basis of which he had been prosecuted had been obtained illegally.

The question of admissibility of evidence was primarily a matter for national law. The Court's role was to ascertain whether the proceedings taken as a whole, including the way in which the evidence was collected, had been fair.

The Ghent Court of Appeal had found that the search had not been fully legal, but that this had not affected the value of the evidence collected, and no violation of the right to respect for private life and home had been established.

In considering whether the proceedings taken as a whole were fair, it was important to ascertain whether the rights of the defence had been respected and, in particular, whether the applicant had had an opportunity to challenge the authenticity of the illegally obtained evidence and to object to its use. When the quality of the evidence was very sound and admitted no doubt, the need for further evidence to support it decreased. In the applicant's case the circumstances in which the impugned evidence had been obtained shed no doubt whatsoever on its reliability or accuracy. Furthermore, he had had an opportunity to challenge the evidence at three levels of jurisdiction and to object to its use and to the resulting findings (see §§ 49-53, see also *Bykov v. Russia)*.

The merits of the criminal charges against the applicant had therefore been examined fairly, in keeping with the requirements of Article 6 § 1, and there had been no violation of that provision of the Convention.

Dattel v. Luxembourg (No. 2) (no. 18522/06) (Importance 2) – 30 July 2009 – Violation of Article 6 § 1 – The Court of Cassation's formalistic approach constituted a disproportionate restriction on the right of access to court – No violation of Article 1 of Protocol No. 1 – No arbitrariness in the domestic courts' conclusions

Dany Dattel's mother, R.F., invested in currency futures with the H.B. Luxembourg bank ("HBL"), a subsidiary of HBK in Cologne. HBL went into liquidation and, in a first set of proceedings, R.F. and subsequently the applicants, as her heirs, unsuccessfully sought an order for payment of the debt owed to them by the bank.

The bank argued that the debt was null and void. According to an expert report, money had been paid into R.F.'s account from another account credited through fraudulent transactions effected by Dany Dattel, the head of HBK's currency operations in Cologne. On that basis the County Court declared the debt null and void.

In August 2005 the Court, to which the applicants had applied, gave a judgment in which it found a violation of Article 6 (right to a fair hearing within a reasonable time) on account of the length of the proceedings.

In July 2001 the applicants instituted a second set of civil proceedings with a view to recovering their debt, but without success. On 30 October 2002 the County Court declared the application inadmissible because the court decisions pronounced in the first set of proceedings were *res judicata*.

On 10 November 2005 the Court of Cassation dismissed an appeal on points of law by the applicants on account of the vagueness of their grounds of appeal, which it considered were "a string of grounds for opening cassation proceedings, reproduced piecemeal in the different limbs, with no logical connection between them, making it impossible to grasp their meaning and scope".

The applicants alleged that the dismissal of their appeal on points of law had breached their right of access to a court and that the decisions against them had infringed their right to the peaceful enjoyment of their possessions.

Article 6 § 1

The requirement for clarity in the wording of grounds for appeal on points of law pursued the legitimate aim of enabling the Court of Cassation to perform its judicial review function.

The applicants' main complaint before the Court of Cassation was that the appellate courts had refused to examine their rights in respect of the first bank account because other judges had already examined their rights in respect of the second account.

The Court of Cassation had dismissed their appeal on points of law on account of the vagueness of their grounds of appeal. The Court found that the clarity required by the Court of Cassation was not absolutely essential in order for it to carry out its review function. Such a requirement considerably diminished the protection afforded by the Supreme Court.

In its overly formalistic approach, the dismissal of the applicants' appeal had prevented them from having the Court of Cassation examine the merits of their case. The Court unanimously found that the restriction imposed on their right of access to a court was not proportionate to the aim of guaranteeing legal certainty and the proper administration of justice, and held that there had been a violation of Article 6 § 1 (see in particular §§ 41-44).

Article 1 of Protocol No. 1

The Court saw nothing arbitrary in the manner in which the domestic courts had reached the conclusion that the debt in respect of both bank accounts had been illegal. The alleged debt had not been sufficiently established to qualify as an "asset" attracting the protection of Article 1 of Protocol No. 1. The applicants' complaint under this provision was therefore rejected.

Judge Vajić expressed a concurring opinion, which is annexed to the judgment.

- **Length of proceedings**

Svetlana Orlova v. Russia (no. 4487/04) (Importance 1) – 30 July 2009 – Violation of Article 6 – Excessive length of proceedings concerning the dismissal of the applicant during her maternity leave

The applicant worked at the Supreme Court of the Republic of Adygeya ("the Supreme Court of RA") as a consultant. While she was on maternity leave her position was converted to that of an assistant of the President of the Supreme Court of RA. Upon her return she was offered various posts but not the newly created position. She refused those offers and was dismissed, following which, in July 2001, she brought court proceedings against the Supreme Court of RA asking to be reinstated in her previous position and to be paid outstanding salaries, and compensation for damages.

The case was dismissed initially by the Town Court in August 2001 and finally by the Supreme Court of RA in September 2001. Between November 2002 and May 2008 the case was examined anew five more times as a result of supervisory review proceedings. Ultimately, in a decision which became final on 19 May 2008 the domestic court ordered that the applicant be reinstated in her position and be paid the salaries she would have collected had she not been dismissed from work.

She complained that the courts which had heard her case had not been impartial, that she had been deprived of access to a court and that her claim had not been examined within a reasonable time.

The Court observed that the domestic courts examined the case in six rounds of proceedings in total. Although the case was pending before the courts for one year and eleven months in all, the proceedings had been delayed by the repeated referrals of the case for fresh examination to the effect that they had been spread over almost seven years.

Furthermore, in the first three rounds of proceedings the case had been examined by courts which could not be considered impartial and independent. In addition, it had been heard in three more rounds of proceedings. The Court found that the failure of the domestic courts to promptly refer the applicant's case to an independent and impartial court and the repeated referrals of the case from one court to another had resulted in significant delays in the examination of the case.

The Court noted that the applicant had been in a particularly vulnerable position since she had been dismissed while on maternity leave. Therefore, special diligence had been required by the domestic courts in the examination of Ms Orlova's claims against her employer, something which the courts had not shown.

"49. [...] Although the Court is not in a position to analyse the juridical quality of the domestic courts' decisions, it considers that, since the remittal of cases for re-examination is frequently ordered as a result of errors committed by lower courts, the repetition of such orders within one set of proceedings may disclose a serious deficiency in the judicial system (see Wierciszewska v. Poland). The fact that the domestic courts heard the case several times did not absolve them from complying with the reasonable time requirement of Article 6 § 1.

50. Having regard to the above, the Court considers that the failure of the domestic courts to promptly refer the applicant's case to an independent and impartial court and repeated referrals of the case from one court to another resulted in significant delays in the examination of the applicant's case.

51. Regarding what was at stake for the applicant, the Court reiterates that an employee who considers that he or she has been wrongly suspended or dismissed by his or her employer has an important personal interest in securing a judicial decision on the lawfulness of that measure promptly, since employment disputes by their nature call for expeditious decision, in view of what is at stake for the person concerned, who through dismissal loses his or her means of subsistence. The Court observes that in the present case the applicant was in a particularly vulnerable position, since she was dismissed while she was on maternity leave. The Court considers that those circumstances required a particular diligence on the part of the domestic courts in the examination of the applicant's claims against her employer."

Accordingly, the Court held that the length of the proceedings had been excessive, in violation of Article 6 § 1.

Lesjak v. Slovenia (no. 33946/03) (Importance 2) – 21 July 2009 – Violation of Article 6 § 1 – Excessive length of proceedings – Violation of Article 13 – Lack of an effective remedy

In April 1995 the applicant was injured in a car accident. In October 1999 he brought civil proceedings against the perpetrator of the accident and their insurance company seeking compensation for the injuries sustained. The first interim judgment was delivered in September 2006, followed by a judgment delivered on appeal in May 2007. In June 2007 the insurance company appealed to the Supreme Court on points of law and the proceedings are still pending.

At the beginning of March 2007 Mr Lesjak lodged a supervisory appeal with the Celje District Court complaining that the proceeding were pending for over seven years and asking that they be expedited and a decision delivered immediately. Later that month, the President of the Celje District court, referring to the 2006 Act of the protection of the Right to a Trial without Undue Delay ("the 2006 Act") replied that the case has been transferred to the Celje Higher court.

The applicant complained of the excessive length of the civil proceedings and that he had no effective remedy in that respect under the new legislation concerning remedies for the length-of-proceedings complaints in Slovenia.

The Court first recalled the view it had taken in earlier case law in respect of Slovenia, namely that applicants had to exhaust the aggregate of remedies available under the 2006 Act, found on previous occasions to be effective as regards proceedings pending before first and second instance courts. This requirement for exhaustion of the remedies applied irrespective of whether applicants had lodged their application with the Court before the entry into force of the 2006 Act. The Court then noted that since June 2007 the case had been pending before the Supreme Court. While in proceedings before the regular courts the remedies under the 2006 Act meant in effect an appeal to a higher instance court, this was not the case for excessively lengthy proceedings before the Supreme Court, given that the appeals against those proceedings were decided by the same court. In addition, no compensation could be claimed in respect of the length of the proceedings before the Supreme Court. Having had regard to the nature of the acceleratory remedies provided in the 2006 Act, the Court found that they did not provide effective redress in respect of the length of the Supreme Court proceedings and therefore could not require the applicant to have used them (see also *Mifsud v. France or Scordino v. Italy* (no. 1)).

Furthermore, the Court observed that before the new legislation - the 2006 Act - had taken effect Mr Lejsak's case had been pending for more than seven years, most of the time before the first-instance court. The only way to remedy the situation had been to subsequently provide a compensatory remedy for the damage suffered as a result of the delays. However, having noted the conflicting position of the Government of the question of when a compensatory remedy had been available to the applicant and the lack of explicit provision in the 2006 Act addressing that issue, the Court found that the 2006 Act did not afford the applicant an effective remedy in respect of delays occurred in the proceedings so far. Finally, having observed that the proceedings had lasted in all over nine years and seven months, and were still pending, the Court considered that in the instant case the length of the

proceedings, in particular before the first-instance court, had been excessive, in breach of Article 6 § 1.

The Court noted that the Government had failed to show that the 2006 Act offered the applicant an effective remedy. As regards the remedies available prior to the implementation of the 2006 Act, the Government had also failed to submit anything that could lead the Court to a different conclusion from the one reached in earlier cases in which these remedies had been considered ineffective. Accordingly, the Court held that there had been a violation of Article 13 on account of the lack of a remedy under domestic law whereby the applicant could have obtained a ruling upholding his right to have his case heard within a reasonable time, as set forth in Article 6 § 1.

- **Enforcement of final domestic judgments**

Olaru and Others v. Moldova (nos. 476/07, 22539/05, 17911/08 and 13136/07) (Importance 1) – 23 July 2009 – Violation of Article 6 § 1 – Violation of Article 1 of Protocol No. 1 – State's failure to enforce a final domestic judgments in favour of the applicants concerning the systemic problem of social housing

The applicants complained of the authorities' failure to comply with final judicial decisions delivered by the domestic courts between 1998 and 2006 and ordering the respective municipal authorities to provide the applicants with social housing. The Court held unanimously that there had been a violation of Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention on account of the State's failure to enforce the final domestic judgments in favour of the applicants (see also *Prodan v. Moldova)*.

Furthermore, the Court observed the existence of a widespread structural problem originating in the relevant Moldovan legislation which bestowed social housing privileges on a very wide category of persons. Because of chronic lack of funds on the part of local governments, the cases from the social housing group were very rarely enforced; this had resulted in the State's recurrent failure to comply with final judgments awarding social housing in respect of which aggrieved parties had no effective domestic remedy. The Court held that, within six months from the date on which the judgment became final, the State had to set up an effective domestic remedy for non-enforcement or delayed enforcement of final domestic judgments concerning social housing, and, within one year, to grant such redress to all victims of related non-enforcement in cases lodged with the Court before the delivery of the present judgment. It further held that it would adjourn for one year from the date on which the judgment became final the proceedings in all cases concerning social housing.

Sutyazhnik v. Russia (no. 8269/02) (Importance 2) – 23 July 2009 – Violation of Article 6 § 1 – Domestic courts' disproportionate interference with the right to legal certainty by the quashing of a judgment in the applicant's favour

Following the entry into force of a new law of non-governmental organisations, the applicant association applied to the Regional Department of Justice in order to re-register as required by the law; however, its applications were refused. In June 1999 the regional commercial court ordered the Department to register the association, which decision was upheld in October 1999 by a higher level commercial court. However, in 2000 that decision was set aside by the Supreme Commercial Court on the ground that the dispute at issue was outside the jurisdiction of commercial courts and should have been decided by a court of general jurisdiction.

The applicant association complained of having been deprived of access to a court as a result of quashing, by way of supervisory review, of the earlier court decisions in its favour.

The Court first noted that, as a matter of principle, the rules of jurisdiction should be respected. It then recalled its earlier case law according to which jurisdictional errors, in principle, could be regarded as a "fundamental defect" susceptible to correction by way of supervisory review (see *Ryabykh v. Russia)*. However, it observed that in the present case the rules of jurisdiction had been ambiguous at best and only clarified in 2002 when the Supreme Commercial Court specified that disputes concerning registration of non-profit organisations fell outside the competence of the commercial courts.

The Court further acknowledged that the structural procedural problems which it had identified in previous cases, namely that, decisions of the lower courts in the commercial court system could be challenged indefinitely upon an application made by a State official without a request by a party, had also existed in the present case.

The absence of any time-limit in respect of the possible reopening of the case had created uncertainty for the parties; the fact that it had taken the authorities less than one year to instigate the review did not affect this fundamental problem of uncertainty.

Although the Court accepted that in certain circumstances legal certainty could be disturbed in order to correct a "fundamental defect" or a "miscarriage of justice," it maintained that in this instance, the Supreme Commercial Court's decision to quash the earlier judgments had been motivated by a sense of legal purism, rather than a need to rectify an error of fundamental importance to the judicial system. Accordingly, the Court held by five votes to two that there had been a violation of Article 6 § 1.

- **Freedom of expression**

Hachette Filipacchi Associés ("Ici Paris") v. France (no. 12268/03) (Importance 2) – 23 July 2009 – Violation of Article 10 – Domestic courts' disproportionate interference with journalistic freedom

The applicant, Hachette Filipacchi Associés, is a French commercial partnership with its registered office in Levallois-Perret (France). On 13 November 1996 the weekly magazine *Ici Paris*, published by the applicant company, carried an article entitled "What if he flops in Las Vegas? Panic stations, Johnny!". Among other things, the article referred to the supposed financial difficulties of the singer Johnny Hallyday (real name Mr Smet) and his extravagant tastes. The article was illustrated by four photographs of the singer, one showing him on stage and the others being advertising material for products with which he had allowed his name and image to be associated. On 4 March 1997 the singer brought proceedings against the publishing company, seeking a ruling that it had infringed his right to respect for his private life. His claims were dismissed almost in their entirety by the Paris *tribunal de grande instance* (2 July 1997) and subsequently the Paris Court of Appeal (6 March 1998), in particular on the ground that the magazine in question had simply mentioned aspects of Johnny Hallyday's property and financial lifestyle that were common knowledge and had been disclosed by him on numerous occasions, not least in his autobiography. After the Court of Cassation had quashed the lower court's decision, the case was referred to the Versailles Court of Appeal, which on 9 October 2002 ordered Hachette Filipacchi Associés to pay EUR 20,000 in damages, together with costs and expenses. The Court of Appeal considered, firstly, that the publication of the photographs had not been consistent with the purpose of advertising for which he had allowed his image to be used and, secondly, that the information provided about Johnny Hallyday's lifestyle breached his right to respect for his private life. On 23 September 2004 the Court of Cassation dismissed with final effect an appeal on points of law by the applicant company.

Hachette Filipacchi Associés submitted that the ruling against it for invasion of privacy had infringed its right to freedom of expression under Article 10 of the Convention.

The Court dismissed the Government's argument that the dispute was of a private nature and thus outside the State's jurisdiction, holding that the ruling against Hachette Filipacchi Associés had manifestly constituted interference by the public authorities with its right to freedom of expression. The interference had been prescribed by law and had pursued the legitimate aim of protecting the singer's right to respect for his private life. The Court was therefore called upon to settle a conflict of fundamental rights between that right and the publishing company's right to freedom of expression.

The Court attached particular importance to the fact that the photographs published had been derived from advertising material, which set this case apart from cases in which the photographs in issue had been obtained through contentious or undercover methods or had interfered with the privacy of the persons concerned.

The previous disclosure by Johnny Hallyday himself (in his autobiography) of the relevant information about the lavish way in which he managed and spent his money was also an essential element of the Court's analysis. The singer's disclosures weakened the degree of protection to which he was entitled as regards his private life. That decisive factor should have been taken into account by the French courts in their assessment of the publishing company's liability, but this had not been the case (see §§ 51-53).

Lastly, although the article might have appeared negative towards Johnny Hallyday, it did not contain any offensive expressions or harmful intent towards him. The limits attached to the exercise of journalistic freedom in a democratic society had not been overstepped (§ 54).

Since a fair balance had not been struck between the conflicting interests at stake, the Court concluded that there had been a violation of Article 10.

- **Prohibition of discrimination and trade union membership**

Danilenkov and Others v. Russia (no. 67336/01) (Importance 1) – 30 July 2009 – Violation of Article 14 in conjunction with Article 11 – State authorities' failure to adopt effective and clear judicial protection against discrimination on the ground of trade union membership

The applicants are members of the Kaliningrad branch of the Dockers' Union of Russia (DUR). On 14 October 1997, the DUR began a two-week strike over pay, better working conditions, and health and life insurance. The strike failed to achieve its goals and was discontinued on 28 October 1997. In the period following, DUR members found themselves reassigned to special work teams, transferred to part-time positions, and ultimately declared redundant and dismissed as a result of a structural reorganization of the seaport company in Kaliningrad.

The applicants responded to these and other actions by bringing a number of cases to the local courts in which they complained of being the object of unlawful and discriminatory treatment based on their union membership. In each instance, the civil courts ruled in favour of the applicants, reversing the seaport's decisions and ordering payment of compensation for lost wages. The charges of discrimination were repeatedly dismissed, however, on the grounds that the existence of discrimination could only be established in the framework of criminal proceedings. The civil courts, therefore, lacked the jurisdiction to examine the discrimination complaint.

Despite courts' repeated rulings overturning the seaport's anti-DUR policies, DUR membership decreased from 290 in 1999 to only 24 in 2001. The applicants complained in particular of the Government having tolerated the discriminatory policies of their employer and having refused to examine their discrimination complaint.

The Court observed that the Kaliningrad seaport company had used various techniques to encourage employees to relinquish their union membership, including their re-assignment to special work teams with limited opportunities, dismissals subsequently found unlawful by the courts, decrease of earnings, disciplinary sanctions, etc. In addition, despite the existence in domestic civil law at the time of a blanket prohibition against discrimination on the ground of trade-union membership or non-membership, the judicial authorities had refused to examine the applicants' discrimination complaints having held that discrimination could only be established in criminal proceedings.

As regards the criminal remedy, the Court found that "*[...] the principal deficiency of the criminal remedy is that, being based on the principle of personal liability, it requires proof "beyond reasonable doubts" of direct intent on the part of one of the company's key managers to discriminate against the trade-union members. Failure to establish such intent led to decisions not to institute criminal proceedings. Furthermore, the victims of discrimination have only a minor role in the institution and conduct of criminal proceedings. The Court is thus not persuaded that a criminal prosecution, which depended on the ability of the prosecuting authorities to unmask and prove direct intent to discriminate against the trade union members, could have provided adequate and practicable redress in respect of the alleged anti-union discrimination. Alternatively, the civil proceedings would allow fulfilling the far more delicate task of examining all elements of relationship between the applicants and their employer, including combined effect of various techniques used by the latter to induce dockers to relinquish DUR membership, and granting appropriate redress.*" (§ 134)

Accordingly, the Court held unanimously that the State had failed to provide effective and clear judicial protection against discrimination on the grounds of trade union membership, in violation of Article 14 of the Convention taken together with Article 11.

- **Protection of property**

Joubert v. France (no. 30345/05) (Importance 2) – 23 July 2009 – Violation of Article 1 of Protocol No. 1 – Disproportionate interference with the right to property by the enactment of a new Budget Law imposing a supplementary tax assessment

In 1990 the applicants sold all their shares in the M. company to the B. company. In the course of an audit of the B. company, the National and International Tax Audit Department (DVNI) of the Department of Revenue served the applicants with a supplementary tax demand in respect of the capital gains resulting from the transaction, finding that the gains had exceeded the sum declared by more than 4 million francs. Penalties for bad faith were also imposed on the applicants, at a rate of 40 %. In January 1995 the applicants applied to the tax authorities for an order cancelling the tax

surcharges and the penalties, but were unsuccessful. In September 1995 they applied to the Administrative Court, arguing that the DVNI had not been authorised to make the assessment.

On 31 December 1996 the Budget Act for 1997 was published in the Official Gazette. Section 122 provided that, inspections by the tax authorities that were challenged on the ground that the body carrying them out had not been authorised to do so were deemed to be lawful. The tax authorities submitted that this provision should apply in the applicants' case.

On 8 June 1999 the Administrative Court held that section 122 of the Budget Act for 1997 did not satisfy the public-interest requirement, the sole ground on which legislative measures with retrospective effect could be justified. It made an order cancelling the tax surcharges and related penalties, on the ground that the DVNI had not been empowered to investigate the applicants' tax affairs since they had not had any interest in the B. company, which was the subject of the DVNI's audit.

Both parties appealed and on 10 February 2004 the Administrative Court of Appeal reversed the Administrative Court's judgment. It applied section 122 of the Budget Act for 1997 to Mr and Mrs Joubert's case and held that the DVNI had been empowered to inspect their tax affairs, but granted them full relief from the penalties, finding them to be unjustified.

On 9 July 2004 the applicants paid the sum of EUR 121,140 in respect of their supplementary tax assessment. The *Conseil d'État* dismissed an appeal on points of law by them in February 2005.

The applicants complained that a legislative provision with retrospective effect had been introduced during the course of the proceedings, as a result of which the dispute had been decided in favour of the authorities.

Having regard to the decision of the Administrative Court of Appeal and the case-law of the administrative courts, the Court considered, contrary to the Government, that prior to the introduction of the Budget Act for 1997 the applicants had had a pecuniary interest amounting to a "possession" within the meaning of Article 1 of Protocol No. 1. They had had at least a "legitimate expectation" of being able to obtain the reimbursement of the sum at issue by raising their complaints with the administrative courts.

In determining the substance of the dispute once and for all, the Budget Act for 1997 had interfered with the applicants' exercise of their right to the peaceful enjoyment of their possessions, resulting in a deprivation of property. It was not disputed between the parties that the interference had been "provided for by law".

However, the Court considered that the enactment of section 122 of the Budget Act for 1997 had not been justified on public-interest grounds. The increase in the number of potential actions brought by taxpayers, which – according to the Government – the provision had sought to avoid, had been purely hypothetical at the time it was passed.

The introduction of the provision complained of had irrevocably prevented Mr and Mrs Joubert from raising their complaint that the DVNI had acted outside its powers, and had thus deprived them of a possession which they might have expected to have reimbursed. The Court therefore considered that the enactment of section 122 of the Budget Act for 1997 had interfered with their possession and that the balance between the general interest and the protection of their rights had been upset, in breach of Article 1 of Protocol No. 1.

- **Disappearances cases in Chechnya**

Mutsayeva. v. Russia (no. 24297/05) (Importance 3) - 23 July 2009 - Two violations of Article 2 – Lack of a plausible explanation by the Government for the disappearance of the applicant's son and for the lack of an effective investigation - Violation of Article 3 - Psychological suffering of the applicant, as a result of the disappearance of her son - Violation of Article 5 - The unacknowledged detention of the applicant's son - Violation of Article 13 in conjunction with Article 2 - Impossibility for the applicant to obtain the identification and punishment of those responsible

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[1]. For a more complete information, please refer to the following link:

- press release by the Registrar concerning the Chamber judgments issued on 21 July 2009 : here.
- press release by the Registrar concerning the Chamber judgments issued on 23 July 2009 : here.
- press release by the Registrar concerning the Chamber judgments issued on 28 July 2009 : here.
- press release by the Registrar concerning the Chamber judgments issued on 30 July 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	Link to the case
France	23 Jul. 2009	Bowler International Unit (no. 1946/06) Imp. 2	Violation of Article 1 of Protocol No. 1	Infringement of the right to peaceful enjoyment of possessions on account of the lack of an effective remedy to challenge the payment of the value of the seized goods	Link
Lithuania	21 Jul. 2009	Aleksa (no. 27576/05) Imp. 3 Igarienė and Petrauskienė (no. 26892/05) Imp. 3	Violation of Article 6§1 Violation of Article 1 of Protocol No. 1	Excessive length of civil proceedings (both cases) Disproportionate interference with the applicants' right to peaceful enjoyment of their possessions	Link Link
Poland	21 Jul. 2009	Kacprzyk (no. 50020/06) Imp. 3	Violation of Article 5 § 3	Excessive length of pre-trial detention (almost two years)	Link
Poland	21 Jul. 2009	Seliwiak (no. 3818/04) Imp. 2	Violation of Article 6§1 in conjunction with Article 6 § 3 (c) (fairness)	Infringement of the right to a fair trial on account of the applicant's inability to address the court personally or in writing, to submit comments on the observations made by the prosecution or on matters he regarded as relevant to the outcome of his case	Link
Poland	28 Jul. 2009	Białas (no. 29761/03) Imp. 2	Violation of Article 6§1 (fairness)	Lack of an effective civil remedy for an "uniformed officer" to obtain the payment of a benefit to which he was entitled as a prison officer	Link
Poland	28 Jul. 2009	Smyk (no. 8958/04) Imp. 3	No violation of Article 6 § 1 (fairness)	The refusal of a legal-aid lawyer to represent the applicant in proceedings before the highest court did not amount to a denial of legal assistance on account of the fact that there had been sufficient time for the applicant to file his cassation appeal with the help of a privately hired lawyer	Link
Russia	30 Jul. 2009	Alekhin (no. 10638/08) Imp. 3	Violation of Article 5 §§ 3, 4 and 5	Excessive length of pre-trial detention (two years and seven months) Infringement of the right to a speedy judicial decision concerning the lawfulness of the applicant's detention Lack of an enforceable right to compensation	Link

[1] The "Key Words" in the various tables of the RSIF are elaborated under the sole responsibility of the NHRS Unit of the DG-HL and the Office of the Commissioner for Human Rights.

Russia	30 Jul. 2009	Ananyev (no. 20292/04) Imp. 3	Violation of Article 6 §§ 1 and 3 (c) and (d)	Infringement of the right to a fair trial on account of the lack of an effective legal representation before the appeal court	Link
Russia	30 Jul. 2009	Lamazhyk (no. 20571/04) Imp. 3	Violation of Article 5 §§ 1 (c), 3 and 4 Violation of Article 6§1	Unlawfulness of detention Excessive length of pre-trial detention (nearly three years and ten months) Lack of an effective remedy Excessive length of criminal proceedings (approximately four years and seven months)	Link
Russia	30 Jul. 2009	Sergey Medvedev (no. 3194/08) Imp. 3 Sorokin (no. 7739/06) Imp. 3	Violation of Article 5§3	Excessive length of pre-trial detention (more than one year and ten months) (more than five years and nine months)	Link Link
Serbia	21 Jul. 2009	Grišević and Others (nos. 16909/06, 38989/06 and 39235/06) Imp. 3	Violation of Article 6§1 (length) Violation of Article 1 of Protocol No. 1	State's failure to enforce final judgments in the applicants' favour in good time *(*See *Crnišanin and Others v. Serbia)*	Link
Slovakia	28 Jul. 2009	Dvořáček and Dvořáčková (no. 30754/04) Imp. 2	Violation of Article 2 (investigation) Violation of Article 6 § 1 (length)	Lack of promptness and reasonable expedition of the judicial proceedings concerning medical negligence leading to the death of the applicants' daughter	Link
Slovenia	21 Jul. 2009	Gaspari (no. 21055/03) Imp. 2	Violation of Article 6§1	Infringement of the right to a fair hearing on account of the Constitutional Court's failure to communicate two constitutional appeals to the applicant	Link
Turkey	21 Jul. 2009	Dün (no. 17727/02) Imp. 3	Violation of Article 5§3	Excessive length of detention in police custody (five days)	Link
Turkey	21 Jul. 2009	Koç and Yürek (no. 15179/02) Imp. 3 Pehlivanoğlu (no. 45873/05) Imp. 3	Violation of Article 6§1	Excessive length of criminal proceedings (approximately eight years and seven months) (seven years and eleven months)	Link Link
Turkey	21 Jul. 2009	Okçu (no. 39515/03) Imp. 2	Violation of Article 6§1 Violation of Article 1 of Protocol No. 1 Two violations of Article 13	Excessive length of administrative proceedings (more than fifteen years before five tribunals at two levels of jurisdiction) Infringement of the right to property on account of the considerable loss in value of the compensation after more than fifteen years of proceedings Lack of an effective remedy	Link
Turkey	28 Jul. 2009	Gök and Güler (no. 74307/01) Imp. 2	No violation of Article 3 Violation of Article 3 Violation of Article 6§1	Insufficient evidence for the complaint about ill-treatment Lack of an effective investigation into the complaint of ill-treatment Infringement of the right to a fair trial on account of the presence of a military judge on the bench of the Istanbul State Security Court	Link

			Violation of Article 6§1 in conjunction with Article 6 § 3 (c) (fairness)	Lack of effective legal assistance during the applicants' detention in police custody	
Turkey	28 Jul. 2009	İzzet Özcan (no. 10324/05) Imp. 3	Violation of Article 6§1 Violation of Article 6 § 3(c) in conjunction with Article 6 § 1 (fairness)	Length of criminal proceedings (about six years and nine months) Lack of an effective legal assistance while in police custody	Link
Turkey	28 Jul. 2009	Seyithan Demir (no. 25381/02) Imp. 2	Violation of Article 6§1 in conjunction with Article 6 § 3 (c) (fairness)	Infringement of the right to a fair hearing before the first-instance court in the applicant's absence	Link
Turkey	28 Jul. 2009	Zeki Bayhan (no. 6318/02) Imp. 3	Violation of Article 6§1 in conjunction with Article 6 § 3 (c) Violation of Article 6§1	Infringement of the right to a fair trial on account of the lack of an effective legal assistance while in police custody Infringement of the right to a fair trial on account of the court's failure to communicate the opinion of the Principal State Counsel at the Court of Cassation to the applicant (see *Göç c. Turquie)*	Link
Ukraine	30 Jul. 2009	Yefanov and Others (no. 13404/02) Imp. 3	Violation of Article 6§1	Excessive length of criminal proceedings (six years and almost ten months in respect of Mr Yefanov, four years and nine months in respect of Mrs Yefanova, about six years and eleven months in respect of Mr Boyev, and about five years and two months in respect of Mrs Boyeva)	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**
Romania	21 Jul. 2009	Brezeanu (no. 10097/05) link	Violation of Art. 6 § 1 (fairness)	Infringement of the right of access to court on account of the annulment by the domestic courts of an appeal lodged by the applicant because she had not paid stamp duty (see *Weissman and Others v. Romania)*
Romania	21 Jul. 2009	Cernitu (no. 11474/04) link	Violation of Art. 1 of Prot. No. 1	Deprivation of property on account of total lack of compensation further to illegal nationalisation (see *Străin and Others c. Romania)*
Romania	21 Jul. 2009	Ciornei (no. 6098/05) link	Violation of Art. 6 § 1 (fairness) Violation of Art. 1 of Prot. No. 1	Infringement of the right to court and of the right to property on account of the domestic authorities' failure to enforce a final judgment in the applicant's favour

Romania	21 Jul. 2009	Naghi (no. 31139/03) link Simionescu-Râmniceanu (no. 16272/03) link Ştefănescu and Others (no. 34741/07) link	Violation of Art. 1 of Prot. No. 1	Deprivation of property on account of the lack of compensation further to illegal nationalisation
Romania	28 Jul. 2009	Colceru (no. 4321/03) link	Violation of Art. 6 § 1 (fairness) Violation of Art. 1 of Prot. No. 1	Infringement of the right to court and of the right to property on account of the quashing of a final judicial decision
Romania	28 Jul. 2009	Dumitraş (no. 17979/05) link	Violation of Art. 1 of Prot. No. 1	Deprivation of property on account of total lack of compensation further to illegal nationalisation
Russia	23 Jul. 2009	Klimenko and Ostapenko (nos. 30709/03 and 30727/03) link	(Both applicants) Violation of Art. 6 § 1 (fairness) (1st applicant) Violation of Art. 1 of Prot. No. 1	Infringement of the right to court on account of the quashing of final judgments in favour of the applicants by way of supervisory review (see *Boris Vasilyev v. Russia)*
Russia	23 Jul. 2009	Markovtsi and Selivanov (nos. 756/05 and 25761/05) link	Two violations of Art. 6 § 1 (fairness) Two violations of Art. 1 of Prot. No. 1	Idem.
Russia	23 Jul. 2009	Molodyka and Others (nos. 3447/05, 15560/05 and 21613/05) link	Violation of Art. 6 § 1 (fairness) Violation of Art. 1 of Prot. No. 1	Idem.
Russia	30 Jul. 2009	Khotuleva (no. 27114/04) link	Violation of Art. 6 § 1 (fairness) Violation of Art. 1 of Prot. No. 1	Infringement of the right to court and of the right to property on account of the quashing by way of supervisory review of a final judgment in the applicant's favour
Turkey	21 Jul. 2009	Giç (no. 8126/02) link	Violations of Art. 6 §§ 1	Infringement of the right to a fair trial on account of the presence of the military judge on the bench of the State Security Court in the criminal proceedings against the applicant Length of criminal proceedings
Turkey	21 Jul. 2009	Üçpınar (no. 41479/05) link	Violation of Art. 1 of Prot. No. 1	Infringement of the right to property on account of insufficient compensation due to inflation awarded for the expropriation of property (see *Aka v. Turkey)*
Turkey	28 Jul. 2009	Alexandrou (no. 16162/90) link	Just satisfaction Friendly settlement	Restitution of one of the properties and compensation following the judgment of 20 January 2009, in which the Court has found a violation of Art. 1 of Prot. 1
Turkey	28 Jul. 2009	Arga (no. 27803/02) link	Violation of Art. 6 § 1	Infringement of the right to a fair trial on account of the applicant's inability to respond to the opinion submitted to the Court of Cassation by the Principal Public Prosecutor
Ukraine	30 Jul. 2009	Prokopyeva (no. 48771/06) link Solonskiy (no. 39760/05) link Sorokina and Goncharenko	Violation of Art. 6 § 1 (fairness) Violation of Art. 1 of Prot. No. 1	Infringement of the right to court and the right to property on account of the non-enforcement of judgments in the applicants' favour (See *Romashov v. Ukraine)*

		(nos. 41313/06 and 42206/06) link		
Ukraine	30 Jul. 2009	Semenovych (no. 9480/06) link	Violation of Art. 6 § 1 (fairness) Violation of Art. 1 of Prot. No. 1 Violation of Art. 13	Idem.
Ukraine	30 Jul. 2009	Shventkovskiy (no. 27589/05) link	Violation of Art. 6 § 1 (fairness)	Infringement of the right to a fair trial on account of the delayed enforcement of a judgement in the applicant's favour
Ukraine	30 Jul. 2009	Tereshchenko (no. 33959/05) link	Violation of Art. 1 of Prot. No. 1	Infringement of the right to property on account of the delayed enforcement of a judgement in the applicant's favour

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
Poland	21 Jul. 2009	Kania (no. 12605/03)	Link
"the former Yugoslav Republic of Macedonia"	23 Jul. 2009	Veljanoska (no. 35640/04)	Link
Ukraine	30 Jul. 2009	Sebova (no. 4430/04)	Link
Ukraine	30 Jul. 2009	Shastkiv and Valitska (no. 3638/04)	Link
Ukraine	30 Jul. 2009	Smirnov (no. 1409/03)	Link
Ukraine	30 Jul. 2009	Yakubovych (no. 29025/05)	Link

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

Those decisions are published with a slight delay of two to three weeks on the Court's Website. Therefore the decisions listed below cover **the period from 26 June to 9 August 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:***

Hacquemand v. France (no. 17215/06) (Importance 3) – 16 July 2009 – Inadmissible as manifestly ill-founded – Partly for a proportionate interference with the applicant's right to freedom of expression – Partly for non-exhaustion of domestic remedies (Article 6 §§ 1 and 2)

The applicant is a journalist. On 15 April 2000 the daily newspaper *Le Parisien* published an article by him in its local edition *Seine-et-Marne Matin*. The article, illustrated by the photograph of an individual in police custody, E.C., concerned the charges against him, for theft of car, cheques and banker's

cards, making off without payment and illegal work. E.C. filed a criminal complaint which led to the applicant's conviction on 10 February 2004 by the Meaux Criminal Court – upheld on 21 February 2005 by the Paris Court of Appeal – for making use of property obtained through a breach of the confidentiality of a judicial or police investigation. He was ordered to pay 1,000 euros (EUR) in damages and a fine of EUR 1,500. The domestic courts found in particular that the disputed photograph could only have come from an investigator, that it had been taken in connection with criminal proceedings and that it was therefore covered by the confidentiality of the investigation. An appeal on points of law by the applicant was finally dismissed by a judgment of the Court of Cassation on 25 October 2005.

The application, setting out the following complaints about the conviction in question, was lodged with the European Court of Human Rights on 25 April 2006.

The applicant argued that his conviction constituted an interference with his freedom of expression that was particularly unjustified because the published photograph was an appropriate illustration for a news item published by a newspaper. He also complained that the French law in such matters was not sufficiently foreseeable to ensure that information was imparted freely. The Court dealt with those two complaints together, in connection with its examination concerning interference with freedom of expression. It found that the applicant's conviction had certainly constituted such interference but that the reasons given by the French courts to justify the interference were relevant and sufficient for the purposes of Article 10. There had been a sufficiently clear and foreseeable legal basis for the conviction and it had been "necessary" to fulfil a legitimate aim: to protect the reputation or rights of others. There might be good reasons to prohibit publication of a suspect's photograph, depending on the nature of the offence in question and the circumstances of the case. The Court identified such reasons in the present case: the offending photograph was not part of a debate in the general interest; the specific context of the case had been duly considered by the French courts; and the publication of the photograph had in particular disregarded E.C.'s right to be presumed innocent. In addition, there had been no issue concerning the applicant's right not to disclose his sources and the sums that he had been ordered to pay remained moderate. The Court accordingly held that the applicant's complaint was manifestly ill-founded and declared it inadmissible.

The applicant also relied on Article 6 §§ 1 and 2. He first challenged the French courts' findings about the confidential nature of the photograph. On that point the Court considered that it was not appropriate for it to re-examine the facts of the case. The applicant also complained that the domestic courts had presumed him guilty: the Court noted that this complaint had not been substantiated and that, in any event, the applicant had not raised it before the domestic courts. This part of the application was therefore also manifestly ill-founded and the Court declared it inadmissible.

Schneider v. France (application no. 49852/06) (Importance 3) – 30 June 2009 – Inadmissible as manifestly ill-founded – Legitimate fines imposed to the applicant by the police – Failure to demonstrate that the sum of fines imposed on the applicant were excessive

In 2005 the applicant was twice ordered to pay fines for exceeding the speed limit, following automatic speed checks. The notices requesting her to pay the fines stated that unless payment was made within a specified period, proceedings would be instituted to seize her property, and that the sums due had to be deposited before any appeal could be lodged. The applicant initially addressed appeals to the public prosecutor's office, refusing to deposit the sums due in advance. She claimed to have received no reply, an assertion contested by the Government. She eventually paid the fines – with interest – in mid-2006 and subsequently lodged further appeals, to which she received no reply.

The applicant lodged an application with the Court on 7 December 2006. She complained in particular of being required to deposit the sums concerned in order to gain access to a court; she submitted that, in view of her household income (350 euros (EUR) per person per month), it had been impossible for her to deposit the sums demanded (totalling EUR 555). She argued that, having been unable to gain access to a court, she had been improperly obliged to pay the fines.

The Court considered that the applicant's complaints overlapped and pointed out that it had already ruled, in *Thomas v. France* (inadmissibility decision of 29 April 2008, no. 14279/05), that the rules governing the formal steps to be taken in lodging an appeal were undoubtedly aimed at ensuring the proper administration of justice and that, in the sphere of road traffic offences, which concerned the entire population and were the subject of frequent appeals, the aim pursued by the requirement to deposit the sums in question (to prevent dilatory or vexatious appeals and overloading of the Police Court's list) was legitimate. Unlike the applicant in *Thomas*, Ms Schneider alleged that she had insufficient funds to deposit the sums required. However, the Court took the view that the applicant had failed to demonstrate that her household income had been inadequate to enable her to deposit EUR 555; moreover, she had eventually paid a higher overall sum, comprising the fines together with interest and bailiffs' fees. In view of the margin of appreciation left to States with regard to the

conditions of admissibility of appeals and the circumstances of the case, the Court considered that the applicant's complaints were manifestly ill-founded and declared the application inadmissible.

- ***Other decisions***

State	***Date***	***Case Title***	***Alleged violations (Key Words)***	***Decision***
Azerbaijan	07 Jul. 2009	Gaziyev (no. 2758/05) link	Alleged violation of Art. 6 § 1 (infringement of the right to a public hearing on account of the fact that the appeal hearings were held in the high-security Gobustan Prison, subject to a limited access regime)	Inadmissible for non-exhaustion of domestic remedies
Azerbaijan	07 Jul. 2009	Mammadov and Beylerov (no. 29607/07) link	Alleged violation of Art. 6 and Art. 1 of Prot. 1 (continued non-enforcement of judgments in the applicants' favour)	Struck out of the list (applicants no longer wishing to pursue their application)
Azerbaijan	07 Jul. 2009	Abdulov (no. 40668/05) link	Alleged violation of Art. 3 of Prot. 1 (cancellation in an arbitrary manner of the applicant's candidacy for parliamentary elections on account of his religious activities)	Struck out of the list (applicant no longer wishing to pursue his application)
Bulgaria Ukraine and Russia	30 Jun. 2009	Protzenko (no. 8462/05) link	Alleged violation of Art. 5 § 1(f) (unlawful arrest in Ukraine, transport to Russia and extradition to Bulgaria), Art. 3 (ill-treatment during detention in Russia) Alleged violation of Art. 3 (conditions of detention in Sofia Prison), Art. 5 (unlawfulness and length of detention), Art. 6§1 (unlawfulness of proceedings and length of the two sets of the criminal proceedings)	Partly adjourned (concerning the length of the two sets of criminal proceedings), partly inadmissible for no appearance of violation (concerning the remainder of the application)
Bulgaria	30 Jun. 2009	Kashavelov (no. 891/05) link	Alleged violation of Art. 3 (conditions of detention), Art. 6 § 1 and 13 (length of criminal proceedings and lack of an effective remedy), Art. 4, 5 §§ 1 (a) and (c), 2, 3 and 4, 6 §§ 1, 2, 3 (a), (c) and (d), 10, 13, 14, 17, 18 and Art. 1 of Prot. 1 (length and lawfulness of detention, unfairness of criminal proceedings, restriction of the applicant's right to freedom of expression, discrimination and seizure of property)	Partly adjourned (concerning the conditions of detention, the length of criminal proceedings and the lack of effective remedies in that regard), partly inadmissible (concerning the remainder of the application)
Bulgaria	30 Jun. 2009	Ivanov (no. 33551/04) link	Length of criminal proceedings and lack of an effective remedy in that regard	Struck out of the list (applicant no longer wishing to pursue his application)
Bulgaria	07 Jul. 2009	Trifonovi (no. 24435/05) link	Alleged violation of Art. 13, 14 and 1 of Prot. 1 (deprivation of property), Art. 6 §1 and 13 (unfairness and length of the *rei vindicatio* proceedings and of the proceedings against the municipality and the Ministry of Finance; lack of an effective remedy in that regard)	Partly adjourned (concerning the length of the *rei vindicatio* proceedings and the proceedings against the Plovdiv municipality and the Ministry of Finance and the alleged lack of effective remedies in that respect), partly inadmissible (concerning the remainder of the application)
Croatia	07 Jul. 2009	Dupin (no. 36868/03) link	Alleged violation of Art. 1 of Prot. 1 (domestic courts' refusal to acknowledge the ownership of the applicant's plot of land) and Art. 6 § 1	Inadmissible *ratione personae*
Cyprus	07 Jul. 2009	Eleourghia Pettemeridi LTD. (no. 22224/07) link	Alleged violation of Art. 6 (length of administrative proceedings), Art. 6, 13 and 14, 1 of Prot. 1 and Art. 1 and 2 of Prot. 12	Struck out of the list (friendly settlement reached)

Estonia	07 Jul. 2009	Glükmann (no. 45659/08) link	Alleged violation of Art. 5 § 3 and 6 § 1 (length of detention and length of criminal proceedings)	Struck out of the list (applicant no longer wishing to pursue his application)
France	30 Jun. 2009	*Union Federale Des Consommateurs Que Choisir De Cote D'or* (no. 39699/03) link	Alleged violation of Art. 6 §1 (lack of notification concerning the proceedings before the Conseil d'Etat and unfairness of hearings) and Art. 1 of Prot. 1 (infringement of the right to property on account of illegal expropriations)	Partly struck out of the list (applicant association no longer wishing to pursue its claims concerning the lack of the notification), partly inadmissible (no appearance of violation concerning the claims about the unfairness of proceedings) and incompatible *ratione personae* (concerning the claims about the expropriations)
France	30 Jun. 2009	Fonfrede (no. 8099/05) link	Alleged violation of Art. 5 (unlawfulness of detention), Art. 6 § 1 (in particular lack of notification to the applicant of the conclusions of the general advocate and of the notification about the hearing before the Court of Cassation) and Art. 6 § 3 (lack of sufficient information about the accusations brought against the applicant)	Inadmissible for non exhaustion of domestic remedies concerning the claim about the unlawful detention and manifestly ill-founded (concerning the remainder of the application)
Georgia	07 Jul. 2009	Nazaretian (no. 13909/06) link	Alleged violation of Art. 6 § 1, 13 and Art. 1 of Prot. 1 (bailiffs' failure regarding the enforcement proceedings of the judgment in the applicant's favour; outcome of the second set of child allowance proceedings)	Inadmissible (for non-exhaustion of domestic remedies) and manifestly ill-founded (concerning the second set of child allowance proceedings)
Georgia	07 Jul. 2009	Komarov (no. 18619/06) link	Alleged violation of Art. 6 §§ 1 and 3 (use of unlawfully obtained evidence against the applicant and his alleged inability to confront the victim)	Struck out of the list (applicant no longer wishing to pursue his application)
Georgia	07 Jul. 2009	Nikolaishvili (no. 30272/04) link	Alleged violation of Art. 1, 17 and Art. 1 of Prot. 1 (misappropriation of company shares on account of an arbitrary court resolution)	Inadmissible (incompatible *ratione temporis* concerning the claims under Art. 1 of Prot. 1) and no appearance of any violation (concerning the remainder of the application)
Germany	07 Jul. 2009	Stein (no. 12895/05) link	Alleged violation of Art. 6 § 1 (excessive length of proceedings), Art. 5 § 1 (unlawfulness of detention), Art. 5 § 2 (lack of access for the applicant's counsel to the relevant files for the first nine months of the pre-trial detention), Art. 5 § 3 (length of detention) and Art. 5 § 4 (lack of adversarial proceedings)	Inadmissible (acknowledgement of the violation of Art. 6 § 1 by the authorities and sufficient redress by reducing the prison sentence), no respect of the six-month requirement (concerning the claims under Art. 5)
Spain	07 Jul. 2009	Lopez Cifuentes (no. 18754/06) link	Alleged violation of Art. 6 (unfairness of disciplinary proceedings before the *Conseil oléicole international* on account of the infringement of the principle of equality of arms and of the right to legal assistance)	Inadmissible (incompatible *ratione personae* on account of the fact that the *Conseil oléicole international* is an international organization, not a member of the Convention)

C. The communicated cases

The European Court of Human Rights publishes on a weekly basis a list of the communicated cases on its Website. These are cases concerning individual applications which are pending before the Court. They are communicated by the Court to the respondent State's Government with a statement of facts, the applicant's complaints and the questions put by the Court to the Government concerned. The decision to communicate a case lies with one of the Court's Chamber which is in charge of the case.

There is in general a gap of three weeks between the date of the communication and the date of the publication of the batch on the Website. Below you will find the links to the lists of the weekly communicated cases which were published on the Court's Website:

- on 27 July 2009 : link
- on 3 August 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 NHRS Unit and the Office of the Commissioner for Human Rights.

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 27 July 2009 on the Court's Website and selected by the NHRS Unit and the Office of the Commissioner for Human Rights

The batch of 27 July 2009 concerns the following States (some cases are however not selected in the table below): Bulgaria, France, Georgia, Italy, Moldova, Poland, Romania, Russia, Sweden, the Czech Republic, the Netherlands, the United Kingdom, Turkey and Ukraine.

State	**Date of communication**	**Case Title**	**Key Words**
France	10 Jul. 2009	*Association Des Chevaliers Du Lotus d'or* no. 50615/07	The applicant associations claim to be victims of violations on account of the distinction made by the State between declared associations and authorised associations Alleged violations of Art. 9, 10, 14 and 1 of Prot. 1 in the two first cases – Alleged violations of Art. 6 §1, Art. 7 § 1, Art. 9 §1, Art. 11 §1 and Art. 14
France	10 Jul. 2009	*Association Cultuelle Du Temple Pyramide* no. 50471/07	
France	10 Jul. 2009	*Eglise evangelique missionnaire* and Salaûn no. 25502/07	
Georgia	6 Jul. 2009	Razmadze no. 5478/09	Alleged violation of Art. 3 – The applicant is a physically disabled person – Lack of adequate medical treatment in Tbilisi no. 3 and 5 Prison (case Melikishvili) – Conditions of detention in Prison no. 7, incompatible with the health situation of the applicant – Intervention of the Ombudsman in order to help transfer the applicant to hospital (case of Zedelachvili) – Conditions of detention in Prison no. 6 Rustavi (case of Razmadze)
Georgia	7 Jul. 2009	Zedelachvili no. 34782/09	
Georgia	7 Jul. 2009	Melikishvili no. 35424/09	
Italy	6 Jul. 2009	Sessa no. 28790/08	Alleged violation of Art. 9 – The applicant is of Jewish confession – Judges' refusal to set the applicant's hearing dates outside Jewish festivity dates
Greece and the Netherlands	8 Jul. 2009	Habibi and Ali Zadeh no. 30703/09	Alleged violation of Art. 3 – Risk to be subjected to torture if returned to Afghanistan – Alleged violation of Art. 6§1 (only in the case of Barakzai) and Art. 13 – Lack of an effective remedy for the asylum application – Reference to the Report of 4 February 2009 by the Commissioner for Human Rights, following his visit to Greece on 8 - 10 December 2008
Greece and the	8 Jul. 2009	Barakzai no.	

Netherlands		30457/09	
Moldova	8 Jul. 2009	Popa no. 29837/09	Alleged violation of Art. 5 § 1 (c) and 18 – Unlawfulness of arrest and detention The complaint is related to the April 2009 events
Romania	9 Jul. 2009	Marchiş no. 38197/03	Alleged violation of Art. 8 – Infringement of the applicants' right to respect for private and family life on account of the functioning of an alcohol distillery
Sweden	7 Jul. 2009	Yusuf no. 33716/09	Alleged violation of Art. 3 – Risk to be submitted to persecution if expelled to Somalia
Case concerning Chechnya, Dagestan and Ingushetia			
Russia	8 Jul. 2009	Shamsayeva no. 30396/09	The applicant represented by lawyers of the Memorial Human Rights Centre – Alleged violation of Art. 2 - Procedural protection of the right to life and obligation to carry out an effective investigation (see questions of the Court) – Alleged violation of Art. 3 – The applicant's mental suffering caused by the abduction of her son (Idem.) – Alleged violation of Art. 5 § 1 –Unlawful detention

Communicated cases published on 3 August 2009 on the Court's Website and selected by the NHRS Unit and the Office of the Commissioner for Human Rights

The batch of 3 August 2009 concerns the following States (some cases are however not selected in the table below): Finland, Moldova, Poland, the Netherlands and Ukraine.

State	**Date of communication**	**Case Title**	**Key Words**
Moldova	13 Jul. 2009	Ghimp and Others no. 32520/09	Alleged violation of Art. 2 – Death of the applicants' relative further to his ill-treatment by the police – Authorities' failure to effectively investigate into the death of their relative
Moldova	13 Jul. 2009	I.D. no. 47203/06	Alleged violation of Art. 3 – Ill-treatment by the police during detention – Lack of adequate medical treatment
Moldova	13 Jul. 2009	I.G. no. 53519/07	Alleged violation of Art. 3 and Art. 8 – State's failure to observe its positive obligations to effectively investigate and prosecute crimes of sexual violence – Domestic courts' failure to assess effectively the issue of consent of a minor – State's failure to observe its positive obligation to enact criminal law provisions effectively punishing the crimes of sexual assault of minors
Moldova	13 Jul. 2009	Netanyahu no. 23270/09	Alleged violation of Art. 3 – Ill-treatment in police custody – Alleged violation of Art. 5 § 2 – Absence of information about the reasons for the applicant's arrest and charges – Alleged violation of Art. 5§3 The complaint is related to the April 2009 events
Moldova	13 Jul. 2009	Parnov no. 35208/06	Alleged violation of Art. 3 – Ill-treatment by the police – Lack of an effective investigation – Alleged violation of Art. 13 – Lack of an effective remedy
the Netherlands	13 Jul. 2009	A.K.C. no. 36953/09	Alleged violation of Art. 3 – Risk to be subjected to torture if expelled to Afghanistan

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

Interlaken Conference on the future of the Court 07.08.2009

A conference on the future of the Court will be organised by Switzerland in February 2010 in Interlaken, during the Swiss Chairmanship of the Committee of Ministers of the Council of Europe.

The purpose of the conference is to reaffirm States' commitment to the protection of human rights in Europe and to draw up a roadmap for the future development of the Court, which celebrates its 50th anniversary this year. With a view to the Interlaken Conference, the President of the Court, Jean-Paul Costa, addressed a Memorandum to the States Parties to the Convention.
Read the Memorandum

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 15 to 16 September 2009 (the 1065th meeting of the Ministers' deputies).
See the Preliminary list of items for consideration

B. General and consolidated information

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

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

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

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

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

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

A. European Social Charter (ESC)

The complaint *Confédération Française de l'Encadrement «CFE-CGC» v. France* (no. 56/2009) has been declared admissible

The complaint, registered on 4 May 2009, relates to Articles 1 (the right to work), 2 (the right to just conditions of work), 3 (the right to safe and healthy working conditions), 4 (right to a fair remuneration), 20 (right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex), and 27 (right of workers with family responsibilities to equal opportunities and equal treatment), read alone or in conjunction with Article E (non discrimination), of the Revised Charter. The CFE-CGC claims that the new regulations on working time introduced in France on 20 August 2008 (Act N°2008-789) violate these provisions.

Read the Decision on admissibility 56/2009

European Roma Rights Centre (ERRC) v. Bulgaria (Complaint no. 48/2008) (01.08.09)

In a decision which became public on 1 August, the European Committee of Social Rights found that the Bulgarian Social Assistance Act following amendments introduced in 2006 and 2008 does not respect the right to social assistance of unemployed persons with insufficient resources within the meaning of Article 13§1 of the Revised Charter.

Whilst the Committee acknowledges that the Bulgarian Government has taken measures to improve the education and training of unemployed persons, as well as measures to encourage the reintegration into the labour market of persons that will be losing social assistance as a result of the contested legislative amendments, it also considers probable that only a limited number of persons affected by the social assistance cuts will actually obtain employment.

The serious risk that persons affected by the denial of continued social assistance will be deprived of adequate resources therefore constitutes a breach of Article 13§1. Although many Roma will be affected by the changes to the Act, the Committee did not find it necessary to examine the allegations of indirect discrimination against Roma, as their situation could be subsumed into the overall breach of Article 13§1.

Summary of 48/2008
Decision on the merits 48/2008

The 238th Session of the European Committee of Social Rights will be held in Strasbourg from 7-11 September 2009. See the agenda of the 238th session and the reports to be examined.

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)

Preliminary observations by Council of Europe anti-torture Committee (CPT) after visit to Sweden in June 2009 (23.07.09)

The CPT's fourth periodic visit to Sweden, carried out from 9 to 18 June 2009, provided an opportunity to review the measures taken by the Swedish authorities in response to recommendations made by the Committee after previous visits. The CPT's delegation paid particular attention to the safeguards offered to persons detained by the police, the restrictions imposed on remand prisoners, and the situation of sentenced prisoners held under conditions of isolation and in high-security units. The conditions of detention of foreign nationals held in immigration centres and in prisons were also

examined. In addition, the delegation visited two psychiatric establishments and a home for young persons.

The preliminary observations made by the CPT's delegation at the end of the visit are published with the agreement of the Swedish authorities.

C. European Commission against Racism and Intolerance (ECRI)

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

Slovak Republic: receipt of the 3rd cycle State Report (22.07.09)

The Slovak Republic has submitted its third state report in English and Slovak, 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)

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

MONEYVAL's 30th Plenary meeting will take place in Strasbourg on 21-24 September 2009.

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

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Part IV: The intergovernmental work

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

Belgium ratified on 22 July 2009 the Convention on the Recognition of Qualifications concerning Higher Education in the European Region (ETS No. 165).

Estonia ratified on 28 July 2009 the Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, regarding supervisory authorities and transborder data flows (ETS No. 181).

Belgium has accepted on 29 July 2009 the provisional application in its respect of certain provisions of Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention (CETS No. 194).

Estonia has accepted on 30 July 2009 the provisional application in its respect of certain provisions of Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention (CETS No. 194).

B. Recommendations and Resolutions adopted by the Committee of Ministers

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C. Other news of the Committee of Ministers

Parliamentary elections in Moldova: statement by Samuel Žbogar (31.07.09)

Samuel Žbogar, Slovenian Foreign Minister and Chairman of the Committee of Ministers, welcomed the preliminary assessment of the International election observation mission stating that the parliamentary elections in Moldova on 29 July met many international standards and were run overall professionally and efficiently. "The remaining challenges, such as lack of trust among the country's political parties and voters, accuracy of voters lists, unbalanced media coverage, clearly defined complaints and appeals procedure are to be overcome in the future," he concluded.

Part V: The parliamentary work

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

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

- *Countries*

Visit by PACE co-rapporteurs to Monaco (23.07.09)

Pedro Agramunt (Spain, EPP/CD) and Leonid Slutsky (Russian Federation, SOC), co-rapporteurs of the Parliamentary Assembly of the Council of Europe (PACE) Monitoring Committee on Monaco made a fact-finding visit to the Principality on 27 and 28 July, to take stock of the honouring of its obligations and commitments to the Council of Europe and finalise the report to be debated during the autumn PACE session (28 September – 2 October 2009).

They were scheduled to have discussions with HSH the Crown Prince, Albert II, the President of the National Council, the Minister of State, the Government Counsellor for the Interior, the Government Counsellor for External Relations, Economic and International Financial Affairs, the Government Counsellor for Finances and Economy, as well as the Government Counsellor for Social Affairs and Health. The co-rapporteurs also met the First Substitute of the Prosecutor General, the Vice-President of the Court of First Instance, and representatives of the different political groups.

PACE rapporteur reacts to arrest of two activists in Azerbaijan (28.07.09)

Christoph Strässer (Germany, SOC), PACE rapporteur on the follow-up to the issue of political prisoners in Azerbaijan, is disturbed by the arrest in controversial circumstances of Emin Milli and Adnan Hajizade, two activist members of civil society who studied in Germany. "These arrests will draw the international community's attention to the cases of journalists and NGO activists convicted on the basis of dubious allegations of vandalism and slander", said Mr Strässer. "I shall, when preparing my report, pay great attention to the arrest and conviction of opposition activists and representatives of civil society."

Moldova's parliamentary elections met many standards, but underscore need for democratic reform to restore trust (30.07.09)

29 July 2009 parliamentary elections in Moldova met many international standards, but the process underscored the need for continued democratic reforms to restore public trust, the international election observation mission concluded in a preliminary statement issued on 30 July.

The election was overall well-administered, allowing for competition of political parties representing a plurality of views. The observers stressed that the campaign was negatively affected by subtle intimidation and media bias. "I am encouraged by the conduct of these elections. Many OSCE commitments were met, but important challenges remain if the lack of trust among the country's political parties and voters is to be overcome so that Moldova's democracy can continue to improve," said Petros Efthymiou, head of the delegation Parliamentary Assembly (OSCE PA) and special co-ordinator of the OSCE short-term observers.

"We cannot say, unfortunately, that these elections complied with all international criteria. However, the overall assessment of election day is positive. Yet, without structural democratic change, Moldova will not be able to meet its challenges. The way forward is not less but more democracy. On this road, the EU will be on the side of Moldova," said Marian-Jean Marinescu, head of the delegation of the European Parliament.

- *Themes*

Gongadze case: PACE rapporteur welcomes the arrest of Oleksiy Pukach (22.07.09)

Sabine Leutheusser-Schnarrenberger (Germany, ALDE), former PACE rapporteur on the Gongadze case and co-rapporteur on Ukraine welcomed the arrest of former general and top Ukrainian Interior Ministry official Oleksiy Pukach, who had been in hiding since 2003. He was charged in absentia with having participated in the murder of journalist Giorgiy Gongadze, for which three policemen were sentenced to prison terms last year. "The arrest of Oleksiy Pukach provides the Ukrainian law enforcement authorities with a unique opportunity of shedding light on who ordered the gruesome murder of journalist Giorgiy Gongadze", Mrs. Leutheusser-Schnarrenberger said.

See also [27.01.2009]: PACE wants action to bring to justice those who ordered murder of Georgiy Gongadze
Recommendation 1856
Resolution 1645

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

A. Country work

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B. Thematic work

"Ethnic and religious profiling clashes with human rights standards" says Commissioner Hammarberg (20.07.09)

In his Viewpoint published on 20 July, the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, states that "members of minorities are more often that others stopped by the police, asked for identity papers, questioned and searched. They are victims of 'ethnic profiling', a form of discrimination which is widespread in today's Europe. Such methods clash with agreed human rights standards. They tend also to be counter-productive as they discourage people from cooperating with police efforts to detect real crimes."

Read the Viewpoint
Read the Viewpoint in Russian (.pdf or .doc)

"Transgender persons should have their human rights fully respected" says Commissioner Hammarberg (29.07.09)

"Council of Europe member states should do more to stop transphobia and discrimination against transgender people. The situation of transgender persons has long been ignored and neglected, although the problems they face are very real and often specific to this group alone. They experience a high degree of discrimination and intolerance in all fields of life, as well as outright violence. Transgender persons have been the victims of brutal hate crimes, including murder, in some European countries" said the Council of Europe's Commissioner for Human Rights, Thomas Hammarberg, publishing on 29 July an expert Issue Paper on "Human rights and gender identity."

The Issue Paper makes the point that agreed international human rights standards, such as the right to life, physical integrity and the right to health care, apply equally to all people, including transgender persons. Likewise, they have the right to be protected against discrimination on the labour market.

The Commissioner's document also describes positive steps which have been taken in some countries in order to protect the rights of transgender people. However, transphobia as well as genuine ignorance in this area are widespread. The Issue Paper recommends that Member states of the Council of Europe take further action to prevent discrimination, including through training of health personnel. The Issue Paper also maintains that it should not be necessary to undergo sterilisation or other medical treatment as a compulsory requirement for a person's gender identity to be recognised.

C. Miscellaneous (newsletter, agenda…)

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