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("Peer-to-Peer II Project")

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

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Introduction

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

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

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

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

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

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

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

We invite you to read the INFORMATION NOTE No. 134 (provisional version) on the Court's case-law. This information note, compiled by the Registry's Case-Law Information and Publications Division, contains summaries of cases which the Jurisconsult, the Section Registrars and the Head of the aforementioned Division examined in October 2010 and sorted out as being of particular interest.

A. Judgments

1. Judgments deemed of particular interest to NHRSs

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

Some judgments are only available in French.

Please note that the Chamber judgments referred to hereunder become final in the circumstances set out in Article 44 § 2 of the Convention: "a) when the parties declare that they will not request that the case be referred to the Grand Chamber; or b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or c) when the panel of the Grand Chamber rejects the request to refer under Article 43".

Note on the Importance Level:

According to the explanation available on the Court's website, the following importance levels are given by the Court:

1 = High importance, Judgments which the Court considers make a significant contribution to the development, clarification or modification of its case-law, either generally or in relation to a particular **State.**

2 = Medium importance, Judgments which do not make a significant contribution to the case-law but nevertheless do not merely apply existing case-law.

3 = Low importance, Judgments with little legal interest - those applying existing case-law, friendly settlements and striking out judgments (unless these have any particular point of interest).

Each judgment presented in section 1 and 2 is accompanied by the indication of the importance level.

- **Grand Chamber judgments**

Serife Yigit v. Turkey (link to the judgment in French) (no. 3976/05) (Importance 1) – 2 November 2010 – No violation of Article 14 in conjunction with Article 1 of Protocol No. 1 – No violation of Article 8 – The Convention does not require a State to recognise an applicant as the heir of a man to whom she had been married on a purely religious basis

The case concerns the Turkish courts' refusal to award the applicant social-security benefits based on the entitlements of her deceased partner, with whom she had contracted a religious but not a civil marriage.

The applicant complained about the Turkish courts' refusal to transfer her deceased partner's social-security entitlements to her.

In its judgment of 20 January 2009 the Chamber examining the case held, by four votes to three, that there had been no violation of Article 8. It found that it was not unreasonable for special protection to be afforded only to civil marriages in Turkey, pointing out that marriage remained an institution widely recognised as conferring a particular status on those who entered into it. It considered that the difference in treatment between married and unmarried couples with regard to survivors' benefits was aimed at protecting the traditional family based on the bonds of marriage and was therefore legitimate and justified.

The Grand Chamber decided to examine the applicant's complaint not only from the standpoint of Article 8, but also under Article 14 taken in conjunction with Article 1 of Protocol No. 1. The last two Articles were applicable in this case because, although Article 1 of Protocol No. 1 did not include the right to receive a social-security payment of any kind, if a State did decide to create a benefits scheme, it had to do so in a manner compatible with Article 14.

The applicant, who had been married in a religious ceremony, alleged that she had been treated differently from a woman married in accordance with the Civil Code and claiming social-security benefits in respect of her late husband. The question for the Court to determine was whether, if there had been such a difference in treatment, it had been discriminatory or, on the contrary, reasonable and objective, and hence acceptable. The Court reiterated that Article 14 prohibited, within the ambit of the rights and freedoms guaranteed by the Convention, discrimination based on a personal characteristic by which persons or groups of persons were distinguishable from each other. The nature – civil or religious – of a marriage between two persons undoubtedly constituted such a characteristic. In examining whether there had been any objective and reasonable justification for the difference in treatment, the Court noted firstly that the decision taken by the Turkish authorities in this case had pursued the legitimate aims of protecting public order and protecting the rights and freedoms of others. In examining whether there had been a reasonable relationship of proportionality between the Turkish authorities' refusal to award the applicant social-security benefits on the basis of her late husband's entitlements and the aims pursued by the authorities, this, the Court considered it decisive that, in view of the relevant Turkish legal rules, the applicant could not have had any legitimate expectation of obtaining benefits on the basis of her partner's entitlement. The Civil Code was clear as to the pre-eminence of civil marriage and, being aware of her situation, the applicant had known that she needed to regularise her relationship in accordance with the Civil Code in order to be recognised as her partner's heir. That aspect clearly distinguished the present case from another recent case, in which a woman married solely in accordance with Roma rites had been recognised by the Spanish authorities as her partner's "spouse" (among other things, she had been awarded social-security benefits as a spouse and had been issued with a family record book). Lastly, the Court noted that the substantive and formal conditions governing civil marriage were clear and straightforward and did not place an excessive burden on the persons concerned. The applicant – who had had 26 years in which to contract a civil marriage – had no grounds for maintaining that the efforts she had made to regularise her situation had been hampered by cumbersome administrative procedures. Since there had been an objective and reasonable justification for the "difference in treatment" to which the applicant had been subjected, the Court held, unanimously, that there had been no violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1.

The Court reiterated the Chamber's finding that the applicant, her partner and their children had constituted a family (the applicant had entered into a religious marriage with Ö.K., had lived with him until his death and had six children with him, the first five of whom had been entered in the civil register under the father's name). She could therefore claim a right to respect for her "family life". The Court observed that the applicant and her partner had been able to live peacefully as a family, free from any interference with their family life by the domestic authorities. The fact that they had opted for the religious form of marriage and had not contracted a civil marriage had not entailed any penalties such as to prevent the applicant from leading an effective family life for the purposes of Article 8. The Court pointed out that Article 8 could not be interpreted as imposing an obligation on the State to recognise religious marriage; nor did it require the State to establish a special regime for a particular category of unmarried couples. For that reason, the fact that the applicant did not have the status of heir did not in itself imply that there had been a breach of her rights under Article 8. The Court therefore held, unanimously, that there had been no violation of Article 8. Judges Rozakis and Kovler each expressed a concurring opinion.

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

Darraj v. France (no. 34588/07) (Importance 2) – 4 November 2010 – Violation of Article 3 – Ill-treatment of a minor by police officers during an identity check

In July 2001 the applicant, a minor at the time of the events, was taken to the Asnières-sur-Seine police station for an identity check, after the police had noticed him and a friend get out of a car that was stopped in the middle of the road and that seemed to have been stolen. They had no identity papers on them. Less than two hours later the applicant was transferred to hospital, where an examination revealed bruising on his right eye, wrist, back and scalp, numerous cuts on his face and neck and a fractured right testicle with bruising. The doctor certified him as unfit for work for 21 days. The next day he underwent an emergency operation for the fractured testicle and, following his violent behaviour in hospital, was transferred to a psychiatric unit for assessment. The public prosecutor of Nanterre requested an internal investigation into the events. The versions of the applicant and of the

police differed. On his arrival at the police station, the applicant had refused to be handcuffed, and faced with his resistance and insults, five or six police officers had, according to him, hit and insulted him. He claimed that he had been kicked, especially in the genitals, while the officers were trying to put him into the sobering-up cell. The police officers claimed that, in order to overpower and handcuff him, they had been obliged to hold him down and had only struck him with their knees to protect themselves from his kicks. In a second version, they suggested that the applicant had accidentally fallen on a tap above a sink in the wall of the police station, thus causing the testicle fracture. The applicant filed a complaint as a civil party through his mother and a judicial investigation was opened.

The applicant complained that he had been ill-treated at the police station; he further alleged that he had been arbitrarily arrested and handcuffed without being charged with any offence.

The Court noted that the applicant's injuries, caused by a violent confrontation with police officers, had taken place in the police station while his identity was being checked, at a time when he was totally under the control of the officers, and being handcuffed he was thus in a vulnerable position. The blows inflicted on him had, in addition to bruising, resulted in a testicle fracture entailing hospital treatment, an emergency operation and unfitness for work for 21 days. Those injuries, which had caused the applicant pain and suffering, had reached a level of gravity that was sufficient to engage Article 3 of the Convention. The reasons justifying the handcuffing of the applicant, who had been calm until his arrival at the police station and had not formally been taken into police custody, remained unclear. Five police officers had had to intervene to restrain him, pushing him to the ground and pressing a knee into his back to handcuff him. The Court took into consideration the opinion of the National Commission for Ethics in matters of security, according to which the handcuffs could not really be justified after his arrival at the police station. The Court noted that the experts' opinions had been contradictory and that, in any event, the applicant had sustained a serious injury, which remained without a clear explanation, on police premises while in the hands of officers who were supposed to ensure his protection. The Court observed that the applicant, who was of medium build, had been handcuffed behind his back and had found himself alone with at least two officers of heavier build, that the lower court had considered the violence used to have exceeded a reasonable use of force in such circumstances, and that the Court of Appeal had recognised that the fractured testicle was not simply the result of an act of force majeure. Other methods could have been used to restrain the applicant. The acts in question had thus been such as to cause the applicant pain or physical and mental suffering and, in view of his age and his post-traumatic stress, to arouse in him feelings of fear, anguish and inferiority capable of humiliating and debasing him and possibly breaking his physical and moral resistance. Such treatment had thus been inhuman and degrading. The French Government had alleged that, following the domestic proceedings, the applicant was no longer a victim. The Court noted that no shortcoming could be found in the investigation by the domestic authorities. However, it could not be said that the Court of Appeal had recognised that the treatment sustained by the applicant was contrary to Article 3, because it had reduced the police officers' sentences, referring to mere "blunders and imprudence" on their part. Lastly, the Court observed that no disciplinary measures had been taken against the officers and that the "petty offence" fines imposed on them had been minimal, with little deterrent effect, and of a lower amount than that of the award usually granted by the Court where it found a violation of Article 3. In that connection, while the Court recognised that it was for the national courts to choose the appropriate sanctions to be imposed on State agents, it had to intervene in cases of manifest disproportion between the seriousness of the act and the punishment in question, failing which the States' duty to carry out an effective investigation would lose much of its meaning. Therefore the applicant could still claim to be a victim and the Court found that there had been a violation of Article 3.

Aleksandr Sokolov v. Russia (no 20364/05) (Importance 3) – 4 November 2010 – Violations of Articles 3 (substantive and procedural) – (i) Torture in police custody – (ii) Lack of an effective investigation – Violation of Article 5 – Unlawful detention

According to the applicant, at about 7 p.m. on 19 February 2004, police officers barged into his apartment and searched it in the presence of attesting witnesses. His wife, 15-year-old son, mother and sister-in-law were also there at the time. Having told him that he was a murder suspect, the police handcuffed him and took him away in a car. Once in the vehicle, they punched him in the head and body. After a short drive, they took him out of the car in the snow and continued beating him, periodically stopping to drink vodka. At about 10 p.m. the same day, the police took him by car to a district police station. Four officers beat him for about two hours urging him to confess to the murder of a woman. Whenever he fainted, they poured water over him. After they stopped beating him, they took him to a cell where he slit a vein open with a broken light bulb. The officers who had beaten him accompanied him to the trauma unit where a doctor sutured his wound. Upon his return to the cell, the beatings continued. The applicant was kicked in groin and his genitals were burnt with a lighter. An empty plastic bottle was inserted in his anus and a picture was taken of that. The officers threatened

to show it to the applicant's cell-mates and tell them he was a homosexual. They also stripped him naked, poured cold water on him and made him stand in front of an open window. The applicant agreed to confess at about 7 a.m. on 20 February. The officers brought him before an investigator and waited next to him until he wrote and signed a confession statement. The applicant told the investigator that he was beaten by some drunk people in the street the day before, when coming home from work. Feeling unwell, he asked the investigator to call a doctor. He was examined by medical specialists who discovered large bruises all over his upper body and head. He had broken ribs on both sides. The investigator drew up an arrest record at about 10 a.m. on 20 February entering 9.30 a.m. of 20 February 2004 as the moment of arrest. The applicant was treated in hospital for his injuries and then taken to a remand prison. On an unspecified date, he complained to the prosecutor that the confession statement enclosed in his criminal file had been forged. A graphologist report determined that the statement had not been written by the applicant. Following an initial refusal by an investigator to open a criminal investigation into the forgery, a district court instructed a prosecutor to take specific related action. The applicant complained to the head of the regional police office about his ill-treatment. A medical examination carried out on the next day identified numerous injuries on his body and concluded that they could have been caused by blows and kicks on 19 February 2004. Several witnesses were questioned; they all testified that they had not seen visible injuries on the applicant on 19 February 2004. The investigator before whom the applicant was brought by the police officers decided not to open criminal proceedings into the applicant's allegations of ill-treatment basing it on the police officers' submissions and concluding that the applicant had been beaten by unknown people in the street on the day preceding his arrest. The applicant appealed against it unsuccessfully. In January 2005, a district court found the applicant guilty of the murder with which he was charged and sentenced him to ten years in prison. The court specifically refused to examine whether his confession had been extracted under duress. In March of the same year, the sentence was upheld on appeal.

The applicant complained about having been ill-treated in police custody and about the absence of an effective investigation into his complaints.

Article 3

The Court observed that the applicant had been in good health before being taken to the police station on 19 February 2004 as many people had met him on that day but none of them had seen any injuries on him. On the following day, doctors had recorded large bruises on his body, head, face and arms and four broken ribs for which he had been treated in hospital for about two weeks. Given that the applicant had been in police custody at the time when his injuries had occurred, and the Russian Government had not plausibly explained those injuries, the Court found that he had been ill-treated by police officers in detention. Having had regard to the physical pain and suffering which the applicant had endured at the hands of the police officers, who had broken four of his ribs beating him with the intention to extract a confession, the Court concluded that he had been the victim of torture, in violation of Article 3. The Court then observed that the Russian authorities had never opened a criminal case into the applicant's allegations of ill-treatment, so he could not take part effectively in the investigation process. There had been an inquiry into his complaint. However, the most fundamental investigative measures had never been carried out. In particular, the scene where he had been allegedly beaten had not been inspected, material evidence had not been collected from it, nor had a face-to-face meeting been arranged between the applicant and the police officers of whom he had complained. In addition, the inquiry had not been independent, as the investigator in charge of the murder case against the applicant had been called upon to investigate his complaints of ill-treatment against the police officers. Consequently, there had been a violation of Article 3 for failure to carry out an effective criminal investigation.

Article 5

The Court noted that the only available arrest record in respect of the applicant's initial deprivation of liberty was dated 20 February 2004, when both parties had agreed that he had been arrested on the evening of 19 February. Therefore, the absence of an arrest record concerning the applicant's detention between 19 and 20 February 2004 had been in itself a most serious failing by the Russian authorities. It had been the Court's constant position in its case law that unrecorded detention was a complete negation of the fundamental guarantees of Article 5. There had been a violation of Article 5.

Rudakov v. Russia (no. 43239/04) (Importance 3) – 28 October 2010 – Violations of Article 3 (substantive and procedural) – (i) Ill-treatment by prison warders – (ii) Lack of an effective investigation

The applicant is currently serving a life sentence in a detention facility in Russia known as Vladimirskiy Tsentral.

The applicant alleged that he had been subjected to severe beatings by prison warders and that the authorities had failed to carry out an effective investigation into his allegation.

Having examined the parties' submissions and all the material presented by them, the Court found it established that on 17 June 2003, on the applicant's admission to Vladimirskiy Tsentral, a prison doctor examined him and found no injuries on his body. On 11 July 2003, immediately after the alleged confrontation between the officer of the special-purpose unit and the applicant, a prison nurse recorded an elongated bruise, fifteen centimetres long and five centimetres wide, on the applicant's hip. Later in the day a medical assistant, called to attend to the applicant, recorded abrasions and bruises on his stomach, waist and chest. On 14 July 2003, as a result of yet another medical examination by a prison doctor, a report was issued, recording numerous bruises, having approximately ten centimetres in diameter, on the applicant's torso, the upper part of his back and upper and middle parts of the right thigh. In addition, the prison doctor noted a swelling of the applicant's left cheek, hip and knee and a broken left upper corner tooth. In response to the findings of the medical reports the Government, while accepting that the applicant had been hit a number of times with a rubber truncheon on the buttocks and hips, remained silent on the origin of the remaining injuries discovered on his body during the medical examinations on 11 and 14 July 2003. The Court remarks that it was open to the Government to provide their own plausible explanation as to how the applicant had acquired numerous injuries on his chest, upper part of the back, stomach, knee and face and to submit, for instance, witness testimony and other evidence to corroborate their version. They did not however put forward any version of events which could have led to the applicant sustaining injuries in addition to those discovered on his hips. The Court stressed that it was struck by the fact that, despite the seriousness of the applicant's allegations, the investigating authority also did not advance any explanation as to the nature of the majority of the applicant's injuries, while declining to institute criminal proceedings against the warders. It apparently did not occur to the investigators that the applicant's injuries should be accounted for. The punitive violence to which the officer deliberately resorted was intended to arouse in the applicant feelings of fear and humiliation and to break his physical or moral resistance. The purpose of that treatment was to debase the applicant and drive him into submission. In addition, the Court found that the use of violence to which the applicant was subjected must have caused him mental and physical suffering, even though it did not apparently result in any long-term damage to his health. Accordingly, having regard to the nature and extent of the applicant's injuries, the Court concluded that the State was responsible under Article 3 on account of the inhuman and degrading treatment to which the applicant was subjected in prison and that there had been a violation of that provision.

The Court further observed that the investigating authorities did not make any meaningful attempt to bring to account those responsible for the ill-treatment. The inertia displayed by the authorities in response to the applicant's allegations was inconsistent with their procedural obligation under Article 3 of the Convention. It further appeared that the reaction of the investigating authorities to the applicant's ill-treatment complaints was no more than an attempt to find some justification for the officer's actions. Having regard to the above-mentioned failings of the Russian authorities, the Court found that the investigation of the applicant's allegations of ill-treatment was not thorough, adequate or effective, in violation of Article 3 under its procedural limb.

Kovalchuk v. Ukraine (no. 21958/05) (Importance 2) and Samardak v. Ukraine (no. 43109/05) (Importance 3) – 4 November 2010 – Violations of Article 3 (substantive and procedural) – (i) Ill-treatment by police officers – (ii) Lack of an effective investigation

The first applicant was arrested by the police in September 2002 and, convicted for disobeying a police officer, kept in detention for ten days. During this time, he was questioned as a witness concerning a murder. The applicant confessed to the murder, but retracted his confession a few days later, stating that he had given it under duress. On the same day that he participated in a reconstruction of the crime scene and gave a detailed explanation of his purported participation in the murder, he was taken to a detoxification centre on account of alcohol withdrawal symptoms. He was diagnosed with "psychotic and behavioral disorders" and found to have sustained injuries on his shoulders, legs and buttocks. Criminal proceedings against the applicant were discontinued for lack of evidence. The first applicant's mother complained to the regional prosecutor's office alleging that her son had been ill-treated by police officers in order to extract a confession. The ensuing investigation was closed on a number of occasions and reopened by administrative or court order, as the prosecutor's office had failed to employ all means available. The investigation, having lasted eight years, is still pending without having established the circumstances of the complaint.

The second applicant was taken to a police station for questioning after having been found playing with a knife at a bus stop in April 2002. He was released the same day without his detention having been recorded. Two days later, he complained to the district prosecutor's office that police officers had severely beaten him during the questioning, had handcuffed him without reason and had attempted to

hang him from a pipe. Medical experts found that he had several abrasions and numerous bruises on his head and different parts of his body. The district prosecutor initially refused to open criminal proceedings in respect of the complaints, referring primarily to the statements of two police officers that the second applicant might have been injured when they escorted him to the police station, as he had refused to follow them and they had applied martial arts techniques to subdue him. The investigation was discontinued and resumed on a number of occasions. It has lasted more than eight years, without having established the circumstances in which the second applicant sustained the injuries.

Both applicants complained of having been ill-treated by the police and of the lack of an effective investigation into their complaints of ill-treatment.

In the first applicant's case, the Court noted that the case file contained conflicting and incomplete information, making it impossible to determine the exact nature, gravity and timing of most of the bodily injuries complained about. Even assuming that they had not resulted from beatings but from the applicant's sudden fall, owing to his medical condition, as suggested by the police, the Court considered that, without a detailed account of the circumstances and without evidence that the State agents responsible for the applicant could not have reasonably foreseen and prevented them, the State remained responsible for the injuries. The fact that on the same day that the applicant gave a detailed explanation of his purported participation in the murder he was hospitalised in a delirious state gave rise to a strong suspicion that the police took advantage of his vulnerable emotional state and pressured him into giving a false confession. That suspicion was confirmed by the apparent lack of procedural guarantees surrounding the interrogation, as he was questioned as a witness rather than as a suspect and in the absence of a lawyer. **In the second case**, although there was no record of the applicant's state of health prior to and following the applicant's encounter with the police on the date of his questioning, in the light of the testimonies by police officers and in the absence of any alternative suggestions by the Government, the Court considered it established that the injuries had been sustained during his encounter with the police. As regards the question of whether he was beaten up while being questioned by the police, the Court found that a number of facts added credibility to his account. His questioning, which could potentially have led to his criminal prosecution for possession of an offensive weapon, had taken place in the absence of basic procedural guarantees. In particular, he had been questioned without a lawyer, his detention was not registered for unclear reasons and the police officers, who attempted to explain his injuries by his resistance to the arrest, never pressed insubordination charges against him following his arrest, and released him after the questioning about the knife. Further, while the applicant's account had been consistent throughout the investigation, the police officers had modified their statements. Viewed together, those factors gave rise to a strong suspicion that the injuries had been caused by the police during questioning. The failure to find the particular perpetrators of violence against the second applicant could not absolve the State of its responsibility under the Convention. In both cases, the Court unanimously concluded that there had been a violation of Article 3. The Court noted that, although the applicants had lodged their complaints of ill treatment shortly after the alleged incidents, the investigations, having lasted a number of years, had not established the circumstances surrounding the complaints and had not found those (if any) responsible for the applicants' injuries. The investigations had been discontinued or suspended on a number of occasions. Those decisions had subsequently been quashed by the supervising prosecutorial and judicial authorities, which referred to failures on the part of the investigating authorities to employ all the means at their disposal. It appeared from the material in the file in the second applicant's case that further collection of evidence was impeded on account of the lapse of time, in particular the witnesses could no longer recall details of the events. In the first case, relevant documents had been destroyed and the first applicant himself had died. The Court did not have any reason to believe that yet another round of inquiries in either of the two cases would redress the earlier shortcomings and render the investigation effective. The Court unanimously concluded in both cases that there had been a violation of Article 3 on account of the ineffective investigations.

Marcu v. Romania (no. 43079/02), Cucolaş v. Romania (no. 17044/03) and Coman v. Romania (no. 34619/04) (Importance 3) – 26 October 2010 – Violation of Article 3 (all cases) – Degrading conditions of detention – Violation of Article 8 and Article 13 in conjunction with Article 8 (first case) – Unjustified and automatic withdrawal of the applicant's parental rights in respect of his two children during his prison sentence – Violation of Article 13 in conjunction with Article 3 (first case) – Lack of an effective remedy in respect of the conditions of detention

In May 2000 the applicant in the first case was remanded in custody on suspicion of attempted murder with aggravating circumstances and was sentenced to 10 years' imprisonment, with, as a complementary sentence, the withdrawal of his parental rights in respect of his two children. Between 2000 and 2004 he was held mainly at Bucharest-Jilava Prison. During his detention he regularly enquired about his children (who were left alone by their mother for two years, when they were 10 and

11). In September 2002 the authorities informed him that the children had left Romania with their mother. He was released on licence in September 2006.

In the second case, the applicant was remanded in custody in April 2000, on suspicion of forgery in connection with the forging of customs receipts used for the fraudulent registration of vehicles and was sentenced in a final judgment to 13 years' imprisonment. Between 2000 and 2004 he was held mainly in the prisons of Botoşani, Bucharest Jilava and Poarta Albă and in the Suceava police remand centre. He was released on licence in December 2006.

In the third case in October 1997, the applicant was sentenced by Buzău County Court to 20 years' imprisonment. Since 2005 he has been in Focşani-Mândreşti Prison. He alleged that he has been harassed and insulted by other inmates and by prison staff on account of his Roma ethnic origin.

All applicants complained that in the above-mentioned custodial facilities they had been held in unacceptable conditions. Their allegations particularly concerned overcrowding and poor hygiene. They argued among other things – alternatively or cumulatively – that they had been held in cells with little space in which there were far too many prisoners for the number of beds, dirty mattresses, insects, little access to water (which was moreover unhealthy), one shower a week for a very short time, insufficient heating in winter and excessive heat in summer, cell-mates who smoked and/or who had contagious diseases, very limited access to light and fresh air, and poor quality food. The Government provided explanations which mainly challenged or relativised those complaints. However, the prison overcrowding appears to be confirmed by the documents they submitted. The applicants complained to the authorities a number of times, but without success, about the conditions of their detention. The applicants complained mainly about the conditions in which they were detained. In the first case the applicant also complained that his parental responsibility had been withdrawn and that he had had no effective remedy in Romania by which to lodge his complaints under Articles 3 and 8.

Article 3 (prohibition of inhuman or degrading treatment)

The Court reiterated that Article 3 required States to ensure that prisoners were detained in conditions which were compatible with respect for their human dignity, that the manner and method of the execution of the measure did not subject them to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, their health and well-being were adequately secured. Those requirements had not been met in any of the three cases. As regards the first applicant's detention in Bucharest-Jilava Prison, the Court based its examination both on the parties' arguments (which were in dispute) and on the reports available to it, describing the conditions of detention in that prison. It observed that the reports of visits by the Council of Europe's Committee for the Prevention of Torture (CPT) in February 1999 and by the Office of the Human Rights Commissioner in September 2004 had unanimously described the conditions as "squalid" or "alarming", with run-down installations. Like the CPT, the Court could not overlook the fact that the unhygienic conditions were made worse by significant overcrowding, as was also apparent from the information provided by the Government. Moreover the first applicant had been confined to his cell for most of the day, with only a very brief walk outside and access to a shower just once a week. That situation in itself raised an issue under Article 3. There was nothing to indicate an intention to humiliate or degrade the first applicant, but that did not rule out a violation of Article 3. As regards the second applicant, according to the information from the Government, he had had less than 2 sq.m. of personal space in the Suceava police remand centre and in Poarta Albă prison, and only 1.2 sq.m. in Bucharest-Jilava prison. In addition, he had had about 3 sq.m. of personal space in Botoşani prison. Between June 2000 and August 2002 he had been held in a cell where there were 54 beds for 65 to 70 inmates. Similarly, in Bucharest-Jilava prison, from August 2002 to February 2003, he had been held in a cell where there were 30 beds for 44 inmates, on average. As regards the third applicant's detention in Focşani-Mândreşti Prison, the Court observed that according to information in two reports by a local NGO and confirmed by the Government, he had been held for at least four years in a cell with less than 2 sq.m. of personal space. In the second and third cases the Court noted that the domestic courts had recognised the systemic nature of the problem of prison overcrowding in Romania for the period concerned, as had letters from the prison authorities, which contained the same findings in respect of two of the facilities concerned by the applicants' cases. The Court also took the view that the applicants' allegations about the deplorable hygiene, in particular concerning access to drinking water and showers, cell ventilation, dirty mattresses and poor-quality food, were most plausible and reflected the realities described by the CPT in its various reports on its visits to Romanian prisons. In each of those cases the Court found that there had been a violation of Article 3.

Other complaints by the first applicant

As to the question whether, under Romanian law, the first applicant had had a remedy by which he could obtain redress for the poor conditions in which he had been held, the Court found that the Romanian Government had not convincingly demonstrated that. Neither the provisions of domestic law nor the court decisions that they had presented had expressly concerned the issue of material

conditions of detention. There had therefore been a violation of Article 13 in conjunction with Article 3. Concerning the question whether the withdrawal of parental authority, as a complementary sentence, had infringed the first applicant's right to respect for his family life, and whether he had had an effective remedy by which to complain about that in Romania, the Court observed that it had already found that the automatic application of a total and absolute prohibition on the exercise of parental rights, under the relevant legislation, without any scrutiny by the courts in respect of the type of offence committed or the best interests of the children, was not admissible under the Convention. That measure had been imposed on the first applicant without any finding by the Romanian courts that the first applicant had been negligent in his duty to care for his minor children or that he had ill-treated them. Nor had the courts used the actual facts of the case to explain the application of the measure. They had not assessed the children's interests or the first applicant's alleged unworthiness when they prohibited him from exercising his parental rights. As regards the effects of that measure, the Court observed that in September 2002 the children had left Romania with his ex-wife without his being informed and certainly without his approval. There had therefore been a violation of Article 8 and of Article 13 in conjunction with Article 8.

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

Sultanov v. Russia (no. 15303/09) (Importance 2) – 4 November 2010 – Violation of Article 3 if the applicant were deported from Russia to Uzbekistan – Risk of being subjected to ill-treatment – Violation of Article 5 §§ 1 and 4 – Unlawful detention with a view to deportation – Lack of an effective remedy to challenge the lawfulness of the detention

The applicant is an Uzbek national who moved to Russia in March 2008. He was arrested there a few months later and placed in detention with a view to his extradition to Uzbekistan where he was on a wanted list for being a member of a radical extremist movement. He has since been released under house arrest.

The applicant alleged that his extradition from Russia to Uzbekistan, where he faces politically motivated persecution by local authorities, would expose him to a real risk of torture and ill-treatment and that his detention by the Russian authorities with a view to his extradition had been unlawful.

Given that the practice of torture in Uzbekistan is described by reputable international sources as systematic, the Court was not persuaded that assurances from the Uzbek authorities offer a reliable guarantee against the risk of ill-treatment. Accordingly, the applicant's forcible return to Uzbekistan would give rise to a violation of Article 3 as he would face a serious risk of being subjected to torture or inhuman or degrading treatment there. The Court observed that the applicant was detained pending extradition from 17 June 2008 until 23 April 2010 (more than twenty-two months). During that period no decision concerning his detention was taken by the prosecutor's office, nor were any requests for extension of his detention lodged with domestic courts. Thus, the national system failed to protect the applicant from arbitrary detention, and his detention cannot be considered "lawful" for the purposes of Article 5 § 1 of the Convention. In view of the above, the Court found that the applicant's detention during the period in question was unlawful and arbitrary, in violation of Article 5 § 1. The Court further noted that it was established that the applicant had no formal status under national criminal law because there was no criminal case against him in Russia, and he could not therefore have judicial review of the lawfulness of his detention pending extradition. It follows that throughout the term of the applicant's detention he did not have at his disposal any procedure through which the lawfulness of his detention could have been examined by a court, in violation of Article 5 § 4.

- **Right to liberty and security**

Knebl v. the Czech Republic (no. 20157/05) (Importance 1) – 28 October 2010 – No violation of Article 5 § 3 – Reasonable length of detention – Violation of Article 5 § 4 – Lack of personal hearing of the applicant in the course of judicial review

The applicant was placed in pre-trial detention in 2003 on suspicion of having committed fraud and criminal proceedings were brought against him.

He complained that his detention had been extended on insufficient grounds despite his having made ten applications to be released, all of which had been dismissed. He also complained of flaws in the judicial review of his detention.

The Court considered reasonable the national courts' findings that the applicant had already committed a second offence and that he was at risk of escaping. Accordingly, the applicant's pre-trial detention could not be considered unreasonable. There had therefore been no violation of Article 5 § 3. The Court further reiterated that Article 5 § 4 required the right to be heard by a judge concerning

the lawfulness of the detention. In the applicant's case, the proceedings regarding the applicant's detention were held in the applicant's absence, in violation of Article 5 § 4.

Vasilkoski & Others v. "the former Yugoslav Republic of Macedonia" (no. 28169/08) (Importance 3) – 28 November 2010 – Violation of Article 5 § 3 – Domestic authorities' failure to address concrete facts in extending the applicants' detention on grounds which, although "relevant", could not be regarded as "sufficient" and by relying essentially on the gravity of the charges and the potential penalty, with no regard to the applicants' individual circumstances

The applicants were all toll collectors, controllers or senior staff in a public roads enterprise. They were all detained in several police stations in Skopje in November 2007 on suspicion of having misappropriated over 5 million euros from toll charges collected between April and November 2007. Having heard their oral submissions, an investigating judge authorised, on 20 and 27 November 2007, their detention pending investigation. The detention decisions were based on the legal grounds enumerated in the Criminal Proceedings Act, namely the risk of absconding and reoffending, and of interfering with the investigation; in addition, the judge relied on the fact that they had acted as an organised group, and that the offence of which they were suspected was serious. The applicants' detention was extended several times between December 2007 and March 2008. However, some of the applicants appealed against the extensions, unsuccessfully. In their decisions dismissing the appeals, the courts reiterated consistently that the risk of the applicants' absconding was explained by the gravity of the offence, the charges brought against them and the penalty they could be given. Shortly after the start of the trial against the applicants, in April 2008, the court changed their prison custody to house arrest. In November 2008, the applicants were found guilty. However the appeal court quashed their sentence and sent the case for a fresh examination. The proceedings are apparently still pending.

The Court reiterated that the persistence of reasonable suspicion that the person arrested has committed an offence was a condition *sine qua non* for the lawfulness of the continued detention. However after a certain lapse of time it no longer sufficed. In such cases, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. The applicants had been arrested in November 2007 on suspicion of abuse of office and detained in view of the risk of absconding, reoffending and interfering with the investigation. Their detention had been extended several times on different grounds. However, after 15 February 2008, the only reason given by the courts for continuing to keep them in custody had been the potential risk of them absconding. The courts had not pointed to any specific aspect of the applicants' character or behaviour which could have demonstrated that they might abscond if released. Nor had they explained why alternatives to detention had not been applied, despite the law having provided such possibilities. The courts had limited their assessment of the applicants' situation to repeating the same brief formula, using identical words, when extending their detention. Hardly any regard to the personal situation of the applicants had been made, given that their detention had been extended by means of a collective decision. In view of the above, the Court found that, at least from 15 February 2008, the authorities had prolonged the applicants' detention without assessing their individual situation, in violation of Article 5 § 3.

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

Bannikova v. Russia (no 18757/06) (Importance 1) – 4 November 2010 – No violation of Article 6 § 1 – Domestic courts' reasonable and sufficient assessment of evidence concerning doubts as to whether the applicant had committed a drug-related offence as a result of incitement by an *agent provocateur*

The case concerned the applicant's claim that she had been incited by undercover police officers to sell cannabis. **The judgment also provides an over-view of the Court's case-law on *agents provocateurs***.

Between 23 and 27 January 2005 the applicant had a number of telephone conversations with a certain S., in which they arranged that he would supply her with cannabis, which she would then sell. In the course of those calls, which were recorded by the Federal Security Service ("FSB"), they discussed previous drug sales, unsold drugs, potential customers and the prospects of a future deal. On 28 January 2005 S. brought her the cannabis. The same day the acting chief of the Kursk Regional Department of the FSB authorised an undercover operation in the form of a test purchase. The following day an undercover FSB agent, B., acting as a buyer, met the applicant and bought 4,408 g of cannabis from her using marked banknotes. The FSB made a video and audio recording of the transaction. Afterwards the applicant was arrested and the marked money was found on her. At a subsequent search of her home she handed in another bag of cannabis weighing 28.6 g. In November

2005 the Leninskiy District Court of Kursk examined the case. The applicant pleaded guilty to having helped B. buy cannabis, but claimed she had been induced by B. to commit the offence and would not have done so otherwise. On the basis of witness testimonies, telephone transcripts, reports, forensic evidence and the applicant's partial confession, the national court found her guilty of having sold cannabis to B. She was convicted on a conspiracy charge involving plans to sell a particularly large consignment of narcotic drugs and sentenced to four years' imprisonment. Her accomplice S. was also convicted of the same offence. As regards the alleged incitement, the court considered that S.'s testimonies concerning the threats received by the applicant were an attempt to help her and there was insufficient evidence of any threats or pressure on the applicant to sell drugs. The applicant appealed, relying, among other things, on the decisive role of the incitement in her committing the crime and on her inability to access the evidence from the investigation. The Kursk Regional Court dismissed her appeal rejecting her argument concerning the incitement by State agents on the grounds that her participation in the drug deal had been established on the basis of multiple items of evidence and was not denied by her.

The applicant complained that her criminal conviction for drug dealing was unfair, as she had been incited to commit the offence by the police in an undercover operation. She also contended that she could not effectively plead incitement as her defence during her trial because she could not access the material from the preliminary investigation.

The Court first considered whether the police officers carrying out the undercover activity remained within the limits of "essentially passive" behaviour or went beyond those limits, acting as *agents provocateurs*. According to the applicant's own testimonies in court, her first encounter with the FSB undercover agent B. took place on 29 January 2005, immediately before the test purchase. By that stage the FSB already possessed recordings of her conversations with S. between 23 and 27 January 2005 concerning the drug deal. B. therefore became involved in the transaction when it was already under way; it was beyond doubt that he merely "joined in" the criminal acts rather than instigated them. However, the Court could not determine with certainty whether Vladimir's alleged involvement was part of the undercover operation, and if so, whether he exerted pressure on the applicant to commit the offence at issue. The Court therefore had to proceed to the second step of its assessment and examine whether the applicant was able to raise the issue of incitement effectively in the domestic proceedings, and also assess the manner in which the domestic court dealt with her plea. The Court reiterated that, for such a plea to be effectively addressed, the national court would have had to establish in adversarial proceedings the reasons why the operation had been mounted, the extent to which the police were involved in the offence and the nature of any incitement or pressure to which the applicant had been subjected. The Court agreed with the appeal court that it had not been necessary to call extra witnesses or examine further evidence in the case. It could already rule out incitement on the basis of the recordings of the applicant's conversations with S. (mentioning previous drug sales, unsold drugs, potential customers and the prospects of a future deal), which were highly relevant when it came to proving her pre-existing intent to sell drugs. The Court therefore considered that the applicant's plea of incitement was adequately addressed by the domestic courts, which took the necessary steps to uncover the truth and to eradicate the doubts as to whether she had committed the offence as a result of incitement by an *agent provocateur*. Their conclusion that there had been no entrapment was therefore based on a reasonable assessment of evidence that was relevant and sufficient. Having regard to the scope of the judicial review of the applicant's plea of incitement, the Court found that her trial had been fair and that there had been no violation of Article 6 § 1.

Vaquero Hernández and Others v. Spain (nos. 1883/03, 2723/03 and 4058/03) (Importance 2) – 2 November 2010 – No violation of Article 6 §§ 1, 2 and 3 – The applicants had adequate and sufficient opportunities to exercise their defence rights meaningfully

The applicants are Spanish nationals. The first four applicants held, or had held, various positions in the Civil Guard at the relevant time, and the fifth was Civil Governor of Guipúzcoa from 1982 to 1987 and, from 1987 to 1989, Government delegate to the Autonomous Community of the Basque Country. In January 1985, in Alicante, two bodies were found and identified ten years later further to information published in the press concerning the "Antiterrorist Liberation Group". The victims were identified as two presumed members of ETA (the Basque separatist group) who had disappeared in 1983, J.A.L. and J.I.Z. In that connection, criminal proceedings were opened against the applicants for premeditated murder, for belonging to an armed gang and for acts of wounding and torture. In his decision to charge the fifth applicant and Mr Vera (see *Vera Fernández-Huidobro v. Spain*), the investigating judge explained that in October 1983 the first and second applicant, officers of the Civil Guard, had arrested the victims in the south of France and had taken them to Spain by force. They informed the fourth applicant, who ordered the prisoners' transfer to a building in San Sebastián, where they were brutally interrogated, beaten and tortured for several days with the aim of obtaining information on members or associates of ETA, and by way of reprisal for the ETA's violent actions

against the Civil Guard and other Spanish security forces. In view of their state after the torture, the fourth applicant ordered that they be transferred to Alicante and eliminated. The fifth applicant, Civil Governor of Guipúzcoa, did nothing to counter those plans. The victims were stripped and laid on the ground next to a specially dug ditch, then shot in the head with three bullets and buried under 50 kg of quicklime. The "Antiterrorist Liberation Group" claimed responsibility for the murders in a telephone call to an Alicante radio station. The third applicant, suffering from a personality disorder and with suicidal tendencies, was authorised to give evidence in a closed hearing for one month. His statements incriminated the other applicants and he presented a tape recording of conversations between some of the applicants about the facts at issue. At the end of the judicial investigation the case was sent for trial before the *Audiencia Nacional*, which declared inadmissible, as worthless or repetitive; the applicants challenged that decision. During the oral hearings the third applicant retracted his previous statements, saying that he had made the accusations purely to secure his release. He refused to respond to the questions put by the prosecuting parties but did respond to those put by his own lawyer and by the other applicants. In April 2000, the *Audiencia Nacional* found each of the applicants guilty of two counts of premeditated murder by persons in a position of authority and two counts of unlawful imprisonment. The applicants lodged an appeal on points of law with the Supreme Court, then three *amparo* appeals with the Constitutional Court, which found them admissible, particularly on account of the fact that in convicting the applicants the court had taken into consideration statements given by the third applicant during the judicial investigation, without the other applicants' lawyers being present and in a closed hearing, and subsequently retracted. In a judgment of July 2002, the Constitutional Court dismissed the *amparo* appeal, taking the view, as to the alleged breach of the right to be presumed innocent, that its task was confined to ensuring that the evidence for the prosecution had been obtained in accordance with the Constitution, and finding the reasons given by the courts to be sufficient.

The applicants complained about a breach of their right to be presumed innocent and of their defence rights.

The Court reiterated that it was not its function to substitute its own assessment of the facts and evidence for that of the domestic courts, but to ascertain that the proceedings in their entirety, including the way in which evidence was taken, had been fair. While it would certainly have been better if the other parties had examined the third applicant in person and in adversarial proceedings at the time of the confessions and statements he had given in private during the judicial investigation, the Court observed that no new statement had been sought from him by the other applicants, neither when the investigation ceased to be secret nor after it ended. The Court noted that the charge order had been issued by the judge on the basis of evidence other than the statements in question. The *Audiencia Nacional* had found the applicants guilty based on various concordant evidence, namely the statements by the third applicant, the various face-to-face meetings, statements by other applicants, the tape-recording and the testimony of numerous witnesses. In addition, the inclusion in the case file of statements made by the third applicant in private hearings during the investigation had been consistent with the relevant domestic law, the statements in question having been read out at the hearing and the third applicant having been given the opportunity to explain any discrepancies between his previous statements and that which he gave at the public hearing. He had also been examined during oral proceedings that respected the adversarial principle. The other applicants had thus had an adequate and sufficient opportunity to exercise their defence rights meaningfully. The Court noted that, concerning the applicants' conviction for premeditated murder, the Constitutional Court had examined how the *Audiencia Nacional*, based on established facts, had concluded that the applicants were the perpetrators of the murders and had taken the view that such reasoning could not be regarded as unreasonable or illogical. The decisions by the Spanish courts had thus contained sufficient reasoning and the Court did not find any breach of the applicants' defence rights. There had therefore been no violation of Article 6 §§ 1, 2 and 3.

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

Aune v. Norway (no 52502/07) (Importance 1) – 28 October 2010 – No violation of Article 8 – Domestic courts' decision to deprive the applicant of parental responsibilities and to authorise the adoption of her son had been supported by relevant and sufficient reasons and had been proportionate to the legitimate aim of protecting the child's best interests

The case concerned the applicant's complaint about the Norwegian courts depriving her of parental responsibilities and authorising her son's adoption by his foster parents. Her son A, born in February 1998, was first taken into compulsory foster care in August 1998 as an emergency measure, then as a permanent measure in December 1998. The authorities, aware that A's parents had a history of drug abuse, suspected that he had been ill-treated. Notably in July 1998 A had been taken unconscious to hospital and, placed in intensive care, was treated for a brain haemorrhage. In April 2005 the local

social authorities board deprived the applicant of her parental responsibilities with respect to A and authorised his adoption by his foster parents. That decision was ultimately upheld on appeal by the Supreme Court, holding that that the conditions required under the Child Welfare Act 1992 for deprivation of parental responsibilities had been fulfilled. Furthermore, it found that A, although well adjusted in his new family, remained vulnerable, and needed reassurance that he would stay with his foster parents. Indeed, his need for absolute emotional security was likely to increase as he grew up as he became aware of the fact that both his mother and father had been heavy drug abusers and that he had been exposed to serious ill-treatment. Nor could the Court ignore that the biological family, particularly the applicant's father and his partner, had protested about A's placement as they had fostered the applicant's other son, A's half-brother, and considered that the two boys should be together. A, who is now 12, has been in foster care practically all his life, having lived with the applicant only for the first six months of his life. During the five years which followed those first six months, they saw one another on six of the 15 opportunities offered. For approximately a year contact was interrupted because of a relapse in the applicant's drug abuse. In 2003 contact resumed and in 2004 it became regular. They met once in 2005, and then twice in 2006, 2007 (before and after the Supreme Court's judgment of 20 April 2007), 2008 and 2009. This included overnight visits to A's home and the applicant's home, which took place several times in the presence of his half-brother and the applicant's mother. The applicant has spent periods in detoxification centres since 2000. Since taking part in a rehabilitation scheme (with methadone treatment) in the autumn of 2005, she has been drug-free.

The applicant complained about the decision by the Norwegian Supreme Court, which deprived her of her parental responsibilities in respect of her son and authorised his adoption.

The Court noted that the interference with the applicant's private and family life had had a legal basis, namely the Child Welfare Act 1992, and that that interference had pursued the legitimate aim of protecting the best interests of her son. For formal reasons, the Court had no jurisdiction under the Convention to examine the justification for the compulsory public care measures, which in any case continued to be permanent. The only question that the Court could examine was whether it had been necessary to replace the foster care arrangement with a more far-reaching type of measure, namely deprivation of parental responsibilities and authorisation of adoption, with the consequence that the applicant's legal ties with A would be broken. Bearing in mind that authorisation of adoption against the will of the parents should be granted only in exceptional circumstances, the Court was satisfied that such circumstances did exist in the applicant's case to justify those more far reaching measures. The applicant had not questioned the social authority and national court findings concerning the suitability of her son's foster parents or his attachment to them. Furthermore, nothing had come to light in the proceedings before this Court which would make it differ from the Supreme Court's conclusion that the applicant was unable to provide proper care for her son. A had no real attachment to his biological parents and the social ties between the applicant and A have been very limited. Indeed, A's particular need for security had been significantly challenged by the applicant's wish for A to live with the applicant's father and by the conflict around A's placement in foster care. The applicant had stated clearly before this Court that there was no risk that the earlier conflicts would resume as she would not seek to have A returned to live with her and that she considered it was in his best interest to grow up with his foster parents. However, the Court considered that, from the material submitted to it and the pleadings of the applicant's lawyer, there was still a latent conflict which could challenge A's particular vulnerability and need for security. Adoption would counter such an eventuality. Moreover, from what the Court understood, the disputed measures corresponded to A's wishes. As to the doubt raised by the applicant about whether the foster parents would continue to be open to contact (in the event of adoption it no longer being the applicant's legal right to have such contact), the Court observed that, after the Supreme Court judgment, the number of visits remained the same, which clearly confirmed that the national courts had been correct in their assessment of the foster parents' good will. The disputed measures had not in fact prevented the applicant from continuing to have a personal relationship with A and had not "cut him off from his roots". The Court was therefore satisfied that the decision to deprive the applicant of parental responsibilities and to authorise the adoption had been supported by relevant and sufficient reasons and had been proportionate to the legitimate aim of protecting A's best interests. Accordingly, there had been no violation of Article 8.

Fawsie v. Greece (no. 40080/07) (Importance 2) and Saidoun v. Greece (no. 40083/07) (Importance 3) – 28 October 2010 – Violation of Article 8 in conjunction with Article 14 – Domestic authorities' unjustified refusal to award a "large family" allowance to political refugees

The applicants have both been officially recognised as political refugees, together with their children, since 1998 and 1995, and are legal residents in Athens. In January 2005 the family allowance branch of a farmer's social security organisation rejected the applicants' requests for the allowance paid to

mothers of large families. The rejection decision explained that the applicants did not have the status of "mothers of a large family" within the meaning of the legislation, as neither they nor their children had Greek nationality or the nationality of one of the member States of the European Union or were refugees of Greek origin. The applicants' appeals against that decision were unsuccessful. The Supreme Administrative Court found that the legislation laid down objective conditions for the award of the allowance and had not had the effect of disrupting family ties or impeding the building of a family, and therefore had not been in breach of Article 8 of the Convention. That court added that there had not been a violation of Article 14 of the Convention either, because the distinction between foreigners and nationals was based on the reasonable and objective criterion of nationality. In January 2008 the legislature amended the law in question and it now provides that people officially recognised as refugees, together with their families, are included among the beneficiaries of the "large family" allowance.

The applicants alleged that the authorities' refusal to grant them a "large family" allowance represented discrimination on grounds of nationality.

While the Court did not call into question the desire of the Greek legislature, in awarding the family allowance to people who were unlikely to leave the country, to address the country's demographic problem that seemed to be worsening, it did not agree with the criterion chosen, being based mainly on Greek nationality or origin, especially as it was not uniformly applied at the relevant time. The Court reiterated that only very strong considerations could lead it to consider a difference in treatment exclusively based on nationality to be compatible with the Convention. It noted moreover that the Supreme Administrative Court had, in 2000, found in favour of a person in a similar situation to that of the applicants. In addition, from 1997 onwards, the status of beneficiary of the allowance had been granted to nationals of European Union member States, then from 2000 to nationals of States Parties to the European Economic Area, and finally, from 2008, to refugees such as the applicants. Lastly, under the Geneva Convention on the Status of Refugees, to which Greece was a party, States had to grant to refugees staying lawfully in their territory the same treatment with respect to public relief and assistance as was accorded to their own nationals. Therefore, the refusal of the authorities to award a large family allowance to the applicants had not been reasonably justified. The Court held unanimously that there had been a violation of Articles 8 and 14 of the Convention taken together.

- **Protection of property**

Tarkoev and Others v. Estonia (no 14480/08) (Importance 2) – 4 November 2010 – No violation of Article 14 in conjunction with Article 1 of Protocol No. 1 – Domestic' authorities' refusal to pay Russian army servicemen living in Estonia old-age pensions unless they gave up the pensions paid to them by the Russian Federation, was not discriminatory as the applicants were not in a comparable situation with any other group of pensioners

The case concerned the complaint by a group of former Russian (Soviet) army servicemen living in Estonia about not being able to receive a pension from the Estonian authorities unless they gave up the pension paid to them by the Russian Federation. In January 2006, the applicants were granted an Estonian old-age pension for life, in particular, as they had worked for more than 15 years in Estonia. However, a few months later, the Estonian social insurance authorities learned from the Russian Embassy that the Russian Federation was continuing to pay the applicants a Russian military pension. As a result, the Estonian authorities stopped the payment of the old-age pension to the applicants and informed them that if they wished to have it restored, they had to prove that the Russian Federation was no longer paying them military pensions. According to the Estonian Government, the average monthly military pension paid by Russia in 2008 was higher than the average old-age pension in Estonia at the time. Even though the average old-age pension in Estonia had increased since 1994, the average Russian military pension remained higher than the minimum Estonian old-age pension. The amount of the minimum old-age Estonian pension was almost half that of the average Russian military pension. On the basis of an agreement, concluded between Russia and Estonia on 26 July 1994 and covering social security guarantees to retired Russian military personnel residing in Estonia, the applicants had been guaranteed a minimum old-age pension in Estonia on condition that they did not receive a Russian military pension at the same time. If they opted for a Russian military pension, their Estonian old-pension would be suspended, and vice versa. The applicants contested some of the figures provided by the Estonian Government.

The applicants complained about having been deprived of their property and discriminated against by the failure of the Estonian authorities to pay them pensions.

The Court noted that only a difference in treatment based on identifiable characteristics could amount to discrimination within the meaning of Article 14. In addition, in order for an issue under that Article to arise, a difference had to exist in the treatment of people in analogous or relevantly similar situations.

States had, in general, wide discretion in the choice of measures they wished to adopt of an economic or socially strategic nature. The Court then recalled that the applicants had been former Russian (Soviet) servicemen who had remained in Estonia after the withdrawal of the Russian troops in 1994. The applicants had been receiving a Russian military pension on the basis of an agreement concluded between the two countries at that time. The applicants' difference in treatment, as compared to other people who had completed at least 15 years of employment in Estonia, had been explained with the fact that they had been receiving another pension, on the basis of a bilateral agreement between Estonia and Russia. Further, the applicants, like all the other Russian military pensioners who had remained in Estonia after the Russian troops withdrawal in 1994, had been fully aware that if they received a Russian military pension, they would not be entitled to an old-age Estonian pension even if they had worked in the civil sphere in Estonia for the requisite number of years required under Estonian legislation. The Court also noted that, according to the agreement between the two countries, the applicants had had the guarantee of receiving at least the minimum Estonian old-age pension. At the same time, the amount of the average Russian military pension had been comparable in size to the average Estonian old-age pension. Finally, the applicants had the right to apply for an Estonian old-age pension, if, among other things, they were not receiving a Russian military pension. While it had been true that in such a case their years of service in the Russian (Soviet) army would not have been taken into account for the calculation of their Estonian pension, Estonia could not be considered responsible for any pension payment for such service. Given that service in the Russian army was not a type of employment which created pension rights in Estonia under Estonian legislation, there had been no difference in treatment of the applicants in that respect. The Court concluded that the applicants were not in a comparable situation with any other group of pensioners, such as, for example, military or civil pensioners of other countries or Estonian civil pensioners. There had, therefore, not been a violation of Article 14 in conjunction with Article 1 of Protocol No 1.

- **Disappearances cases in Chechnya**

Sasita Israilova and Others v. Russia (no 35079/04) (Importance 3) – 28 October 2010 – Violations of Article 2 (substantive and procedural) – (i) Disappearance and presumed death of the applicants' close relatives, Ilyas and Isa Yansuyev – (ii) Lack of an effective investigation – Violation of Article 3 – The applicants' mental suffering – Violations of Article 5 – Unacknowledged detention of the applicants' close relatives – Violation of Article 13 in conjunction with Article 2 – Lack of an effective remedy – Violation of Article 38 – Domestic authorities' failure to comply with their obligation to furnish the necessary facilities for the examination of the case on account of their failure to submit copies of the documents requested in respect of the disappearance of the applicants' relatives

2. Judgments referring to the NHRss

Gillberg v. Sweden (no. 41723/06) (Importance 3) – 2 November 2010 – No violation of Article 8 – No violation of Article 10 – Justified criminal conviction of a university professor on account of his intentional refusal to comply with his obligations as a public official arising from judgments ordering him to hand over research on hyperactive children

The case concerned the applicant's criminal conviction for refusing to comply with a court decision granting access to his research on hyperactivity and attention-deficit disorders in children to other researchers. The applicant is a well-known professor and former Head of Department of Child and Adolescent Psychiatry at the University of Gothenburg. For several years, he was responsible for a long-term research project on hyperactivity and attention-deficit disorders in children, carried out at that university between 1977 and 1992. Parents of a group of 141 pre-school children volunteered to participate in the study, which was followed up every third year. Certain assurances were made to the children's parents and later to the young people themselves concerning confidentiality. According to the applicant, the university's ethics committee had made it a precondition for the project that sensitive information about the participants would be accessible only to him and his staff, and he had therefore promised absolute confidentiality to the patients and their parents. In 2002, a sociological researcher from another university requested access to the research material, submitting that she had no interest in the personal data as such but in the method used and the evidence the researchers had for their conclusions. In the same year, a paediatrician requested access to the material, submitting that he needed to keep up with current research. Both requests were refused by the University of Gothenburg, and both researchers appealed against the decisions. In February 2003, the Administrative Court of Appeal found that the researchers should be granted access to the material, as they had shown a legitimate interest and could be assumed to be well acquainted with the handling of confidential data. The university was to specify the conditions for access in order to protect the interests of the

individuals concerned. In August 2003, the Administrative Court of Appeal in two judgments lifted some of the conditions imposed by the university and subsequently a new list of conditions was set for each of the two researchers, which included restrictions on the use of the material and the prohibition to remove copies from the university premises. Notified by the university's vice-chancellor that the two researchers were entitled to immediate access by virtue of the judgments, the applicant refused to hand over the material. Following discussions about the matter, the university in January and February 2004 decided to refuse access to the sociological researcher and to impose a new condition on the paediatrician, asking him to demonstrate that his duties required access to the research material in question. Those university decisions were annulled by two judgments of the Administrative Court of Appeal. A few days later, the research material was destroyed by a few colleagues of the applicant. In all sets of proceedings before the Administrative Court of Appeal the applicant requested relief for substantive defects of the judgments before the Supreme Administrative Court, which was refused because he was not considered to be party to the case. **In January 2005, the Swedish Parliamentary Ombudsman brought criminal proceedings against the applicant**, and in June he was convicted of misuse of office. He was given a suspended sentence and a fine of the equivalent of 4,000 euros. The university's vice president and the officials who had destroyed the research material were also convicted. The applicant's conviction was upheld in February 2006 by the Court of Appeal, which held in particular that he had wilfully disregarded the obligations of his office by failing to comply with the judgments of the Administrative Court of Appeal. It further held that the assurances of confidentiality given to the participants in the study went in some respects further than permitted by the Secrecy Act, a domestic law aiming to protect individuals from the disclosure of information about their personal circumstances. In April 2006, leave to appeal to the Supreme Court was refused.

The applicant complained in particular that his criminal conviction breached his rights under Articles 8 and 10, because his promise of confidentiality to the participants in the research was allegedly imposed on him by the university's ethics committee, as a precondition for carrying out his research.

While on the face of it the case raised important ethical issues involving, among other things, the interest of the children participating in the research, medical research in general and public access to information, the Court was only in a position to examine whether the applicant's criminal conviction was compatible with the Convention, since his complaints concerning the outcome of the civil proceedings had been lodged out of time.

Article 8

The Court left it open whether there had been an interference with the applicant's right to respect for his private life for the purpose of Article 8, because even assuming that there had been such an interference, it found that there had been no violation of that provision for the following reasons. Convention States had to ensure in their domestic legal systems that a final binding judicial decision did not remain inoperative to the detriment of one party; the execution of a judgment was an integral part of a trial. The Swedish State therefore had to react to the applicant's refusal to execute the judgments granting the two external researchers access to the material. The Court noted the applicant's argument that the conviction and sentence were disproportionate to the aim of ensuring the protection of the rights and freedoms of others, because the university's ethics committee had required an absolute promise of confidentiality as a precondition for carrying out his research. However, the two permits by the committee he had submitted to the Court did not constitute evidence of such a requirement. The Swedish courts had moreover found that the assurances of confidentiality given to the participants in the study went further than permitted by the Secrecy Act and had noted that no domestic law provided for greater secrecy than that Act. In the Court's view, it had been legitimate for the Swedish courts to conclude that the assurances of confidentiality therefore did not take precedence over the law as it stood. As regards the applicant's argument that the Swedish courts should have taken into account as a mitigating circumstance the fact that he had attempted to protect the integrity of the participants in the research, the Court agreed with the criminal courts that the question of whether the documents were to be released had been settled in the civil proceedings. Whether or not the university considered that they were based on erroneous or insufficient grounds had no significance for the validity of the administrative court's judgments. It had thus been incumbent on the university administration to release the documents and the applicant had intentionally failed to comply with his obligations as a public official arising from the judgments. The Court therefore did not find that his conviction or sentence was arbitrary or disproportionate to the legitimate aims pursued. It concluded, by five votes to two, that there had been no violation of Article 8.

Article 10

The Court noted that the applicant was not prevented from exercising his "positive" right to freedom of expression under Article 10, but that he invoked his "negative right" to remain silent. The Court accepted that some professional groups might have a legitimate interest in protecting professional secrecy as regards clients or sources. However, the applicant had been convicted for misuse of office for refusing to make documents available in accordance with the instructions he received from the

university administration; he was thus part of the university that had to comply with the judgments of the administrative courts. Moreover, his conviction did not as such concern the university's or his own interest in protecting professional secrecy with clients or the participants in the research. That part had been settled by the administrative courts' judgments, in relation to which the Court was prevented from examining any alleged violation of the Convention. The Court unanimously concluded that there had been no violation of Article 10. Judge Power expressed a concurring opinion and Judge Ziemele expressed a dissenting opinion.

3. 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 more detailed information, please refer to the following link:

- Press release by the Registrar concerning the Chamber judgments issued on 26 Oct. 2010: here
- Press release by the Registrar concerning the Chamber judgments issued on 28 Oct. 2010: here
- Press release by the Registrar concerning the Chamber judgments issued on 02 Nov. 2010: here
- Press release by the Registrar concerning the Chamber judgments issued on 04 Nov. 2010: here

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

State	Date	Case Title and Importance of the case	Conclusion	Key Words	Link to the case
Austria	28 Oct. 2010	Von Pezold (no. 5339/07) Imp. 3	Violation of Art. 6 § 1 (length)	Excessive length of proceedings (seven years and eleven months for three levels of jurisdiction) with regard to a dispute over social security contributions	Link
Bulgaria	04 Nov. 2010	Angelov and Others (no. 43586/04) Imp. 3	Violation of Art. 6 § 1 (length) Violation of Art. 13	Excessive length of criminal proceedings (eleven years and nine months for one level of jurisdiction) for the theft of sheep and goats Lack of an effective remedy	Link
France	04 Nov. 2010	Dervaux (no. 40975/07) Imp. 2	No violation of Art. 1 of Prot. 1	Adequate amount of compensation paid to the applicant following the expropriation of a plot of farmland	Link
France	04 Nov. 2010	Katritsch (no. 22575/08) Imp. 2	No violation of Art. 6 § 3 (e) Violation of Art. 6 § 3 (b) and (c)	The applicant had declared that he spoke French, and he had benefitted from the assistance of an interpreter during the investigation stage Lack of legal assistance and lack of adequate time and facilities for the preparation of the defence	Link
Greece	28 Oct. 2010	Bubullima (no. 41533/08) Imp. 3	(First applicant) Violation of Art. 5 § 4	Domestic authorities' failure to decide "speedily" on the applicant's request for release from detention with a view for deportation	Link
Greece	28 Oct. 2010	Karapanagiotou and Others (no. 1571/08) Imp. 3	Violation of Art. 6 § 1 (access to a court)	Infringement of the principle of equality of arms on account of the State's preferential treatment concerning the delay in which it could introduce an application before the Court of Appeal concerning compensation amounts following expropriation	Link
Greece	28 Oct. 2010	Vlastos and Others (no. 36218/08) Imp. 3	Violation of Article 6 § 1 (fairness) Violation of Article 1 of Prot. 1	Lengthy non-enforcement of judgments in the applicants' favour concerning unpaid salaries	Link
Hungary	02 Nov. 2010	Lánchíd Hitel és Faktor Zrt. (no. 40381/05)	Violation of Article 1 of Prot. 1	Domestic authorities' failure to strike a "fair balance" between the demands of the general interests of	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

		Imp. 2		the community (namely, the integrity of the treasury) and the requirements of the individual's fundamental rights (the applicant company's collection of its debt)	
Italy	02 Nov. 2010	Piazzi (no. 36168/09) Imp. 2	Violation of Art. 8	Domestic authorities' failure to enforce the judgments securing the applicant's right of access in respect of his son for more than seven years	Link
Latvia	26 Oct. 2010	Marina (no. 46040/07) Imp. 2	Violation of Art. 6 § 1 (fairness)	Interference of the applicant's right of access to a court on account of the excessive amount of court fees requested from the applicant	Link
Moldova	02 Nov. 2010	Mătăsaru and Saviţchi (no. 38281/08) Imp. 3	(Mr Mătăsaru) Violation of Art. 3 (procedural)	Lack of an effective investigation into the first applicant's allegation of ill-treatment	Link
Poland	02 Nov. 2010	Serghides (no. 31515/04) Imp. 2	No violation of Art. 8	The annulment of the decision ordering the applicant's daughter's return from Poland to the United Kingdom, was not attributable to the authorities	Link
Romania	02 Nov. 2010	Bujac (no. 37217/03) Imp. 2	Violation of Art. 5 § 1 No violation of Art. 5 § 3	Unlawful detention Justified rejection of the applicant's request for release on licence	Link
Romania	02 Nov. 2010	Grozavu (no. 24419/04) Imp. 3	Violation of Art. 3	Poor conditions of detention in Bucharest-Jilava Prison	Link
Romania	02 Nov. 2010	Nistor (no. 14565/05) Imp. 2	Violation of Art. 8	Non-enforcement of a judgment in the applicants' favour awarding the applicants visitation right for the first applicant's child	Link
Romania	02 Nov. 2010	S.C. Apron Dynamics SRL Baia Mare (no. 21199/03) Imp. 3	Violation of Art. 6 § 1 (fairness) Violation of Art. 6 § 1 (length)	Excessive length of proceedings – twelve years) and excessive amount of court fees in proceedings that the applicant company had brought in order to recover its debt	Link
Romania	02 Nov. 2010	Ştefănică and Others (no. 38155/02) Imp. 3	Violation of Art. 6 § 1 (fairness)	Infringement of the applicants' right to a fair hearing on account of domestic courts' inconsistent adjudication of claims brought by many persons in similar situations	Link
Romania	26 Oct. 2010	Raban (no. 25437/08) Imp. 2	No violation of Art. 8	Having particular regard to the State's margin of appreciation, in the matter and to the *in concreto* approach required for the handling of cases involving child-related matters, the Bucharest Court of Appeal's refusal to order the return of the applicant's children from Romania to Israel in the light of the Hague Convention requirements, did not amount to a violation of Article 8, as it was proportionate to the legitimate aim pursued, namely the children's best interest	Link
Russia	04 Nov. 2010	Arefyev (no. 29464/03) Imp. 2	Violation of Art. 3 (inhuman or degrading treatment) Violation of Art. 5 § 1 (c)	Conditions of detention in facility no. IZ-37/1 in Ivanovo (See the Report to the Russian Government on the visit to the Russian Federation carried out by the CPT from 2 to 17 December 2001) Unlawfulness of detention	Link
Russia	04 Nov. 2010	Muminov (no. 42502/06) Imp. 2	Just satisfaction	Just satisfaction following the judgment of 4 May 2009	Link

Russia	28 Oct. 2010	Boris Popov (no. 23284/04) Imp. 2	No violation of Art. 3 Violation of Art. 5 §§ 1 and 5 Violation of Art. 8	The decision of the national authorities to apply handcuffs to the applicant was not incompatible with respect for human dignity Unlawful detention and lack of adequate compensation in that regard Monitoring of the applicant's correspondence by prison authorities	Link
Russia	28 Oct. 2010	Krestovskiy (no. 14040/03) Imp. 2	Violation of Art. 6 § 1 (fairness)	Unfairness of criminal proceedings on account of the lack of a public hearing	Link
Slovakia	26 Oct. 2010	Rosselet-Christ (no. 25329/05) Imp. 2	Violation of Art. 5 § 3	Excessive length of pre-trial detention (more than ten months)	Link
Spain	26 Oct. 2010	Cardona Serrat (no. 38715/06) Imp. 3	Violation of Art. 6 § 1 (fairness)	Unfairness of criminal proceedings on account of the court's lack of impartiality	Link
Switzerland	28 Oct. 2010	Schaller-Bossert (no. 41718/05) Imp. 3	Violation of Art. 6 § 1 (fairness)	Hindrance to the applicant's right to reply to the observations submitted by the opposing party before the Government of the Canton of Lucerne and the Federal Court during civil proceedings	Link
the Czech Republic	28 Oct. 2010	Suda (no. 1643/06) Imp. 2	Violation of Art. 6 § 1 (fairness)	Unfairness of proceedings	Link
Turkey	26 Oct. 2010	Adıyaman and Erman (nos. 38372/06 and 24572/08) Imp. 3	(Both applicants) Violation of Art. 5 §§ 3 and 4 (First applicant) Violation of Art. 6 § 1 (length) (First applicant) Violation of Art. 13	Excessive length of pre-trial detention (over ten years and three months concerning the first applicant and over seven years and six months concerning the second applicant and still pending) and lack of an effective remedy to challenge the lawfulness of that detention Excessive length of detention Lack of an effective remedy	Link
Turkey	26 Oct. 2010	Mehmet Özcan and Others v. (nos. 4018/07, 4019/07) Imp. 3	(Seven applicants) Violation of Art. 5 §§ 3 and 4 (All applicants) Violation of Art. 6 § 1 (length) (All applicants) Violation of Art. 13	Excessive length of pre-trial detention and lack of an effective remedy to challenge the lawfulness of that detention Excessive length of detention Lack of an effective remedy concerning the length of detention	Link
Turkey	26 Oct. 2010	Vardar (no. 35150/06) Imp. 3	Violation of Art. 6 § 1 (length)	Excessive length of several sets of criminal proceedings (from more than four years to more than six years)	Link
Ukraine	28 Oct. 2010	Leonid Lazarenko (no. 22313/04) Imp. 2	Violation of Art. 6 § 1 in conjunction with Art. 6 § 3 c) (fairness)	The applicant's conviction for murder on the basis of self-incriminating statements obtained under duress and in the absence of a lawyer	Link
Ukraine	28 Oct. 2010	Molodorych (no. 2161/02) Imp. 3	Violation of Art. 5 §§ 3 and 4	Excessive length of pre-trial detention (two years and ten months); lack of an effective remedy to challenge the lawfulness of the detention	Link
Ukraine	28 Oct. 2010	Trofimchuk (no. 4241/03) Imp. 2	No violation of Art. 11	The applicant's dismissal for systematic breach of her employment duties was a proportionate measure	Link

4. Repetitive cases

The judgments listed below are based on a classification which figures in the Registry's press release: "*In which the Court has reached the same findings as in similar cases raising the same issues under the Convention*".

The role of the NHRSs may be of particular importance in this respect: they could check whether the circumstances which led to the said repetitive cases have changed or whether the necessary execution measures have been adopted.

State	Date	Case Title	Conclusion	Key words
Poland	26 Oct. 2010	Bator (no. 6544/08) link Kowalenko (no. 26144/05) link	No violation of Art. 5 § 3 –both cases No violation of Art. 6 § 1 – 2nd case	Reasonable length of detention Reasonable length of criminal proceedings
Poland	26 Oct. 2010	Kocurek (no. 20520/08) link	Violation of Art. 6 § 1 (fairness)	Infringement of the applicant's right of access to a court on account of the legal-aid lawyer's refusal to prepare a cassation appeal before the Supreme Court
Romania	02 Nov. 2010	Vitcovschi (no. 24193/07) link	Violation of Art. 6 § 1	Excessive length of criminal proceedings (more than five years and four months)
Russia	04 Nov. 2010	Eydelman and 11 other "Emigrant Pensioners" cases (nos. 7319/05, 9992/07 etc.) link Pugach and Others (nos. 31799/08, 53657/08 etc.) link	Violation of Art. 6 § 1 (fairness) – both cases Violation of Art. 1 of Prot. 1 – both cases	Quashing of final judgments in the applicants' favour by way of supervisory review
Turkey	02 Nov. 2010	Lordos and Others (no. 15973/90) link	(Eight of the applicants) Violation of Art. 1 of Prot. 1 (Four of the applicants) No violation of Art. 8 (Seven of the applicants) Violation of Art. 8	Lack of access to and control, use and enjoyment of the applicants' properties as well as lack of compensation for the interference with their property rights during the Turkish occupation of the northern part of Cyprus following the 1974 conflict No violation of the rights and freedoms protected by the Convention Continuing violation of Article 8 on account of the complete denial of the right of applicants nos. 1, 2, 3, 5, 6, 12 and 13 to respect for their homes
Turkey	26 Oct. 2010	Andreou Papi (no. 16094/90) link Christodoulidou (no. 16085/90) link Diogenous and Tseriotis (no. 16259/90) link Epiphaniou and Others (no. 19900/92) link Hadjiprocopiou and Others (no. 37395/97) link Hadjithomas and Others (no. 39970/98) link	Just satisfaction	These cases concerned the applicants' complaints that the Turkish occupation of the northern part of Cyprus following the 1974 conflict deprived them of their homes and properties. In judgments of 1 March 2010 the Court held in particular that there had been a continuing violation of Art. 1 of Prot. 1 in all 19 cases and of Art. 8 in 11 of them

		Hapeshis and Hapeshi-Michaelidou (no. 35214/97) link Hapeshis and Others (no. 38179/97) link Iordanis Iordanou (no. 43685/98) link Josephides (no. 21887/93) link Loizou and Others (no. 16682/90) link Olymbiou (no. 16091/90) link Ramon (no. 29092/95) link Rock Ruby Hotels Ltd. (no. 46159/99) link Saveriades (no. 16160/90) link Skyropiia Yialias Ltd. (no. 47884/99) link Strati (no. 16082/90) link Vrahimi (no. 16078/90) link Zavou and Others (no. 16654/90) link		
Turkey	26 Oct. 2010	Erbey (no. 29188/02) link	Just satisfaction	Just satisfaction following the judgment of 14 September 2009
Turkey	26 Oct. 2010	Nicola (no. 18404/91) link	Revision	Decision of revision of the case on the basis of the fact that the Government informed the Court that they had learned that the applicant was not the owner of the property concerned in the initial application, by that judgment at the date of the introduction of the application, and therefore requested its revision
Turkey	26 Oct. 2010	Osman Erden (no. 1520/06) link	Violation of Art. 6 § 1 (fairness) Violation of Art. 1 of Prot. 1	Lengthy non-enforcement of judgments in the applicant's favour resulting in financial loss due to high inflation rates

5. 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
Austria	28 Oct. 2010	Bachmayer (no. 36650/05)	Link
Italy	02 Nov. 2010	Filippelli (no. 1287/04)	Link
Italy	02 Nov. 2010	Tiziano Bianchi (no. 18477/03)	Link

Italy	26 Oct. 2010	Ciambriello and Others (nos. 23745/03, 23749/03, 23746/03 and 1280/04)	Link
Italy	26 Oct. 2010	Fornoni and Others (nos. 22471/03, 24825/03, 26444/03 and 34566/03)	Link
Luxembourg	04 Nov. 2010	Kuhn (no. 53869/07)	Link
Slovakia	26 Oct. 2010	Komar (no. 25951/06)	Link
Turkey	26 Oct. 2010	Yusuf Karataş (no. 31953/05)	Link
Ukraine	28 Oct. 2010	Denisov (no. 7822/06)	Link
Ukraine	28 Oct. 2010	Litvinova (no. 36223/06)	Link
Ukraine	28 Oct. 2010	Nekhanchenko (no. 18255/05)	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 18 to 31 October 2010**.

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

State	***Date***	***Case Title***	***Alleged violations (Key Words)***	***Decision***
Croatia	18 Oct. 2010	Delić (no 35838/08) link	Alleged violation of Art. 6 § 1 (outcome and unfairness of the civil proceedings concerning the applicant's dismissal, lack of an access to the Constitutional Court, which had allegedly wrongly found the applicant's constitutional complaint to have been lodged out of time)	Partly inadmissible as manifestly ill-founded (the Court considers that the State cannot be held responsible for the applicant's failure to lodge a Constitutional Court request, which she can still do because it may be lodged at any time), partly inadmissible as premature pursuant to Article 35 § 4 (concerning claims under Art. 6 § 1)
France	19 Oct. 2010	Societe TOP SA c. (no 45033/08) link	Alleged violation of Art. 6 § 1 (unfairness of proceedings) and Art. 1 of Prot. 1 (excessive restriction on the use of properties)	Inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention)
France	19 Oct. 2010	Corblet De Fallerans (no 50166/08) link	Alleged violation of Articles 6 § 1, 14 and Art. 1 of Prot. 1 (refusal to grant the applicant adequate compensation)	Incompatible *ratione materiae*
France	19 Oct. 2010	Weiland-Beloued (no 2687/08) link	Alleged violation of Art. 6 § 1 (lack of access to a cassation court)	Inadmissible as manifestly ill-founded (fairness of proceedings)
France	19 Oct. 2010	Roussin (no 44674/08) link	Alleged violation of Art. 6 § 1 (unfairness of proceedings on account of the alleged lack of impartiality of a judge)	Inadmissible (for non-exhaustion of domestic remedies)
France and Greece	19 Oct. 2010	Ah.M. (no 59672/09) link	In particular alleged violation of Art. 3 (risk of being ill-treated if expelled to Greece, poor conditions of detention in Greece, alleged ill-treatment by Greek police officers), Articles 3 and 13 (the applicant's inability to apply for asylum)	Struck out of the list (the applicant no longer wished to pursue his application as he had been granted refugee status by the French authorities)
France	19 Oct. 2010	Rinck (no 18774/09) link	Alleged violation of Art. 6 § 1 (unfairness of proceedings before the Court of Cassation, infringement of the principle of equality of arms, lack of sufficient reasoning of the Court of Cassation's decisions)	Partly inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention concerning the lack of sufficient reasoning of the Court of Cassation's decisions), partly inadmissible pursuant to Article 35 § 3 b) amended by Prot. 14 (concerning the remainder of the application)
Germany	19 Oct.	Hauth (no 29496/09)	Alleged violation of Art. 8 (dismissal of the applicant's claim for	Inadmissible as manifestly ill-founded (the German legal system

	2010	link	compensation against a surgeon following the illegal removal of his gall bladder)	in the present case provided adequate redress for acts of medical malpractice; it also provided sufficient individual redress for the applicant by unequivocally establishing the illegality of the surgeon's actions. The requirements for non-pecuniary damages in cases of medical practice under German law – namely suffering from after-effects or especially grave violation of the patient's free will to determine the scope of surgery – were within the margin of appreciation to be accorded to Contracting States under Art. 8; therefore the refusal of the applicant's request for an order for damages did not amount to a violation of the positive obligations under Art. 8)
Hungary	20 Oct. 2010	Gregorics (no 36711/05) link	Alleged violation of Art. 6 § 1 (excessive length and unfairness of criminal proceedings)	Struck out of the list (the applicant no longer wished to pursue his application)
Moldova	19 Oct. 2010	Smolei (no 246/05) link	Alleged violation of Art. 6 § 1 (lack of access to a court, lack of impartiality of the court), Art. 1 of Prot. 1 (violation of the applicant's right to property as a result of the rejection of his pecuniary claims)	Partly struck out of the list (unilateral declaration of the Government concerning the lack of access to a court), partly inadmissible as manifestly ill-founded (failure to substantiate the claim concerning the alleged lack of impartiality of the court), and the alleged violation of the applicant's right to respect for property)
Poland	20 Oct. 2010	Mamilov (no 18358/07) link	Alleged violation of Art. 3 (risk of being subjected to ill-treatment if expelled to Russia), Art. 6 (risk of having an unfair trial if deported), Art. 5 § 1 (f) in connection with Article 5 § 4 (lack of legal assistance during the first set of the extradition proceedings)	Partly struck out of the list (it is no longer justified to continue the examination of the application concerning the claims under Articles 3 and 6 as the applicant wished to withdraw this part of the application), partly incompatible *ratione materiae* (concerning the remainder of the application)
Poland	18 Oct. 2010	Tarasiewicz (no 11586/09) link	Alleged violation of Art. 6 § 1 (excessive length of civil proceedings: almost four years and still pending)	Struck out of the list (friendly settlement reached)
Poland	18 Oct. 2010	Gworek (no 34838/08) link	Alleged violation of Art. 5 § 3 (excessive length of pre-trial detention)	Idem.
Poland	18 Oct. 2010	Wężyk (no 27664/09) link	Alleged violation of Art. 6 § 1 (excessive length of criminal proceedings, which commenced on 3 March 1995 and are still pending before the second-instance court)	Idem.
Poland	18 Oct. 2010	Sokołowski (no 7156/05) link	Alleged violation of Articles 3, 5 § 3, 6 § 1 and 8 (in particular excessive length of pre-trial detention, excessive length and unfairness of proceedings, monitoring of the correspondence with the Court and Helsinki Foundation in Warsaw)	Idem.
the Czech Republic	18 Oct. 2010	Semeráková (no 30809/10) link	Alleged violation of Articles 6 and 17 (in particular lack of access to the Cassation Court, unfairness of proceedings and lack of an access to the Constitutional Court)	Partly adjourned (concerning the lack of access to the Constitutional Court), partly inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention concerning the unfairness of proceedings), partly inadmissible for non-respect of the six-month

				requirement (concerning the remainder of the application)
the Czech Republic	18 Oct. 2010	Soudek (no 28071/06) link	Alleged violation of Art. 6 § 1 (unfairness of proceedings), Articles 6 § 1 and 13 (refusal to examine the applicant's constitutional application on grounds of tardiness)	Partly adjourned (concerning the lack of access to the Constitutional Court), partly inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention concerning the remainder of the application)
the Czech Republic	18 Oct. 2010	Šurý (no 16299/10) link	Idem.	Idem.
Russia	18 Oct. 2010	Maryenko (no 11970/04) link	Alleged violation of Articles 3, 5 and 6 (lack of an opportunity to study the documents submitted by the prosecutor in support of the latter's request to extend the applicant's pre-trial detention)	Struck out of the list (the applicant no longer wished to pursue his application)
Slovakia	20 Oct. 2010	Herzogová (no 38688/06) link	Alleged violation of Art. 8 (unlawful decision to enter the applicant's name on a list of wanted persons and labelling her as a person subject to a "well-founded suspicion of having committed a criminal offence"), Art. 5 (unlawful detention), Art. 6 § 1 (unfairness of proceedings)	Struck out of the list (the applicant no longer wished to pursue her application)
Slovakia	20 Oct. 2010	Poštová banka, a.s (no 22736/06) link	Alleged violation of Art. 6 § 1 and Art. 1 of Prot. 1 (the applicant company complained that the decision to set the case aside had not been served on its representative, that the latter had not been allowed to consult the file, and that the Constitutional Court had dismissed its complaint depriving the applicant company of an effective remedy in respect of a procedure in which its property rights were at stake)	Partly struck out of the list in respect of RFSRO (following its dissolution, RFSRO acquired no legal successor), partly incompatible *ratione personae* (concerning Profit real Žilina, s.r.o.)
Slovakia	20 Oct. 2010	RF spol. s r.o. ("RFSRO") (no 9926/03) link	Alleged violation of Art. 6 § 1 and Art. 1 of Prot. 1 (the Ministry had failed to pay the sum in issue to it and that by its conduct the Ministry had prevented the enforcement of the relevant judicial decisions)	Inadmissible as manifestly ill-founded (the applicant company can no longer claim to be a "victim" within the meaning of Art. 34 concerning claims under Art. 6 § 1 and lack of an arguable claim under Art. 13)
Ukraine	19 Oct. 2010	Vasylenko (no 36136/05) link	Alleged violation of Art. 6 §§ 1 and 3 (c) (lack of legal assistance during criminal proceedings)	Struck out of the list (the applicant no longer wished to pursue his application)

C. The communicated cases

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

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

- on 2 November 2010 : link
- on 8 November 2010 : link

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

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

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

Communicated cases published on 2 November 2010 on the Court's Website and selected by the NHRS Unit

The batch of 2 November 2010 concerns the following States (some cases are however not selected in the table below): Bosnia and Herzegovina, Bulgaria, France, Italy, Moldova, Poland, Portugal, Romania, Russia, Slovenia, Sweden, Switzerland, Turkey and Ukraine.

State	Date of Decision to Communicate	Case Title	Key Words of questions submitted to the parties
Bosnia and Herzegovina	12 Oct. 2010	Al Husin no. 3727/08	Alleged violation of Art. 3 – Risk of being subjected to ill-treatment if deported to Syria – Alleged violation of Art. 8 – Interference with the applicant's right to respect for family life if deported – Alleged violation of Art. 5 § 1 – Unlawfulness of detention – Alleged violation of Art. 5 § 4 – Lack of an effective remedy to challenge the lawfulness of the detention
Romania	15 Oct. 2010	Nicorici no 648/05	Alleged violations of Art. 3 (substantive and procedural) – (i) Alleged ill-treatment by police officers – (ii) Lack of an effective investigation
Romania	14 Oct. 2010	Cârdei no 47059/06	Question as to whether the applicant had exhausted all effective domestic remedies, as required by Article 35 § 1 – In particular, was Law no. 275/2006 an effective remedy within the meaning of this provision in respect of the applicant's complaint concerning the lack of adequate medical treatment and transport conditions? – Alleged violation of Art. 3 – Lack of adequate medical care in Jilava Prison Hospital
Romania	14 Oct. 2010	Neagu no 66345/09	Alleged violation of Art. 3 of Prot. 1 – Interference with the applicant's right to participate to the European Parliament elections as an independent candidate – The Government has been requested to submit information concerning the number of signatures requested for an independent candidate for the European Parliament elections
Romania	14 Oct. 2010	Şerban no 45066/06	Alleged violations of Art. 2 (positive obligation) – The applicant's daughter's death in a public hospital after several abdominal surgeries – Lack of an effective investigation
Romania	14 Oct. 2010	Ulariu no 19267/05	Alleged violation of Art. 8 – Interception of the applicant's phone calls and meetings – Alleged violation of Art. 6 §§ 1 and 3 – Alleged entrapment – Alleged unfairness of proceedings on account of the use of intercepted communications as evidence in the proceedings against the applicant
Russia	15 Oct. 2010	OOO Gazeta Molva no 44291/06	Alleged violation of Art. 10 – The applicant company's conviction for publishing an article concerning the management of premises belonging to a secondary school –The Court asked for clarification as to whether the domestic courts respected the distinction between statements of facts and value-judgment and carried out a reasonable, proportionate and non-arbitrary assessment of the evidence in the case
Ukraine	11 Oct. 2010	Vislinskiy no 40037/06	Alleged violation of Art. 3 – Lack of adequate medical treatment and assistance during the applicant's detention
Disappearance cases in Dagestan			
Russia	15 Oct. 2010	Abdurakhmanova and Abdulgamidova no 41437/10	Alleged violation of Art. 2 (substantive and procedural) – (i) Disappearance and presumed death of the applicants' close relative – (ii) Lack of an effective investigation – Alleged violation of Article 3 – The applicants' mental suffering – Alleged violation of Article 5 – Unacknowledged detention of the applicants' close relative – Violation of Article 13 in conjunction with Article 2 – Lack of an effective remedy

Communicated cases published on 8 November 2010 on the Court's Website and selected by the NHRS Unit

The batch of 8 November 2010 concerns the following States (some cases are however not selected in the table below): Armenia, France, Georgia, Iceland, Latvia, Malta, Moldova, Poland, Romania, Sweden, "the Former Yugoslav Republic of Macedonia" and Turkey.

State	Date of Decision to Communicate	Case Title	Key Words of questions submitted to the parties
France	20 Oct. 2010	Z.Sa. no 33384/10	Alleged violation of Art. 3 – Risk of being subjected to ill-treatment if expelled to Russia on account of the applicant's Chechen origins
Moldova	18 Oct. 2010	Feodorov no 42434/06	Alleged violations of Art. 3 (substantive and procedural) – (i) Alleged ill-treatment by police officers at the Buiucani police station – (ii) Lack of an effective investigation – Alleged violation of Art. 13 – Lack of an effective remedy
Romania	20 Oct. 2010	Cobzaru no 6978/08	Alleged violations of Art. 2 (substantive and procedural) – (i) Alleged killing of the applicant's son by police forces – (ii) Lack of an effective investigation – Alleged violation of Art. 14 – Discrimination on account of the applicant's son's Roma origins
Sweden	21 Oct. 2010	S.F. and Others no 52077/10	Alleged violation of Art. 3 – Risk of being subjected to ill-treatment if deported to Iran
Turkey	22 Oct. 2010	Çakir no 13889/10	Alleged violations of Art. 3 (substantive and procedural) – (i) Alleged ill-treatment in Samsun detention centre – (ii) Lack of an effective investigation
Turkey	20 Oct. 2010	Demir and Others no 60304/09	Alleged violation of Art. 2 (substantive and procedural) – (i) The applicants' relative's death during military service – (ii) Lack of an effective investigation

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

The Convention turns 60 (29.10.2010)

Since its adoption on 4 November 1950, the European Convention on Human Rights has been supplemented by several Protocols which have added to the rights and freedoms laid down in the original text. Through its case-law, the Court has had the opportunity to interpret the rights and freedoms defined in the Convention. In doing so, it has made the Convention a living instrument capable of applying to situations that did not exist or were inconceivable at the time it was drafted. As a result of the Court's interpretation, the Convention is a resolutely modern treaty that can adapt to contemporary social issues. Video on the Convention, Video clip, more information

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 2 to 3 December 2010 (the 1100th meeting of the Ministers' deputies).

B. General and consolidated information

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

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

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

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

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

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

A. European Social Charter (ESC)

Round Table on the protection of social rights in Ankara (05.11.2010)

In the framework of a joint project on enhancing the role of the supreme judicial authorities in respect of European standards, a Round Table was held in Ankara from 8 to 10 November 2010. Programme

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

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

The next session of the European Committee of Social Rights will be held from 29 November to 3 December 2010.

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

Council of Europe anti-torture Committee calls for strict regulation of electrical discharge weapons (26.10.2010)

The CPT has called for the use of electrical discharge weapons (EDW) to be strictly regulated. In its annual report, which was published on 26 October, the CPT states that it understands the wish of national authorities to provide law enforcement officials with means enabling them to give a more graduated response to dangerous situations. The CPT acknowledges that the possession of less lethal weapons such as EDW may in some cases make it possible to avoid the use of firearms. However, it stresses that these weapons are open to abuse. “It is becoming increasingly common for police officers and other law enforcement officials to be issued with electrical discharge weapons, and these weapons are being used more and more during arrests. Authorities must ensure that their use is strictly regulated and that they are used only when this is really necessary”, said Mauro Palma, President of the CPT. In the Committee’s view, the use of EDW should be limited to situations where there is a real and immediate threat to life or risk of serious injury. It is inadmissible to use them solely with the purpose of ensuring compliance with an order. The Committee also stresses the importance of adequately training public officials who may use EDW. The CPT expresses strong reservations about the use of EDW in prison and closed psychiatric settings. Only very exceptional circumstances, such as a hostage-taking situation, might justify their use in these settings. The CPT also makes clear that it opposes the use of electric stun belts for controlling the movement of detained persons, whether inside or outside places of deprivation of liberty. Such equipment is inherently degrading for the person to whom it is applied, and the scope for misuse is particularly high. The CPT states that before EDW are made available they should go through a technical authorisation procedure. During the period covered by its 20th annual report – between August 2009 and July 2010 – the CPT made 20 visits to examine the conditions of detention in a broad range of institutions throughout Europe. During its periodic visits, the CPT is paying increased attention to social care facilities for the mentally and/or physically disabled, and the treatment of persons under aliens legislation. The CPT’s ad hoc visits dealt with a variety of issues, ranging from isolation and surgical castration to alleged secret detention facilities.

Council of Europe anti-torture Committee publishes report on Luxembourg (28.10.2010)

The CPT published on 28 October the report on its periodic visit to Luxembourg in April 2009, together with the Luxembourg Government's response. These documents have been made public at the request of the Luxembourg authorities. During the 2009 visit, the CPT’s delegation reviewed the measures taken by the Luxembourg authorities to implement recommendations made by the Committee after its previous visits. It focused in particular on the safeguards afforded to persons deprived of their liberty by the police, and the situation at Luxembourg Prison and the State Socio-Educational Centre at Dreiborn.

In addition, the delegation visited the Neuro-Psychiatric Hospital at Ettelbruck, where it paid particular attention to the living conditions and treatment of patients placed in closed units for minors and adults. The legal safeguards in the context of the procedure for involuntary placement of mentally ill persons were also examined. In their response, the Luxembourg authorities make reference to various measures being taken to improve the situation in the light of the recommendations made by the CPT.

Council of Europe anti-torture Committee visits Bulgaria (03.11.2010)

A delegation of the CPT carried out a periodic visit to Bulgaria from 18 to 29 October 2010. During the visit, the delegation reviewed the measures taken by the Bulgarian authorities following the recommendations made by the Committee after its previous visits, in particular in the areas of initial detention by the police, the situation of foreign nationals deprived of their liberty, conditions of detention in investigation detention facilities and prisons, and the treatment of psychiatric patients and social care home residents. In the course of the visit, the CPT's delegation held meetings with Margarita POPOVA, Minister of Justice, Hristo ANGELOV, Deputy Minister of Justice, Petar VASSILEV, Director of the Main Directorate for the Execution of Sanctions, as well as with senior officials from the Ministries of Internal Affairs, Justice, Health, and Labour and Social Policy, and the Supreme Cassation Prosecutor's Office. It also met the outgoing Ombudsman, Ginyo GANEV, and members of his office. Discussions were held with the UNHCR Representation to Bulgaria and members of non-governmental organisations active in areas of concern to the CPT. At the end of the visit the delegation presented its preliminary observations to the Bulgarian authorities.

C. European Commission against Racism and Intolerance (ECRI)

[1]

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

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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)

FATF Plenary in Paris, 20-22 October 2010 (02.11.2010)

MONEYVAL participated in the first FATF Plenary - XXII held under the Mexican Presidency. The Chairman's summary provides an overview of the major outcomes of the Plenary. Also, as part of its on-going action to identify and work with jurisdictions with strategic AML/CFT deficiencies, the FATF has updated its two public documents issued in June 2010: FATF Public Statement; Improving AML/CFT Compliance: On-going Process.

Azerbaijan is no longer subject to FATF's monitoring process under its ongoing global AML/CFT compliance process. At this Plenary meeting, the FATF welcomed Azerbaijan's significant progress in improving its AML/CFT regime and noted that Azerbaijan has met its commitments in its Action Plan regarding the strategic AML/CFT deficiencies that the FATF had identified in February 2010. Azerbaijan will work with MONEYVAL as it continues to address the full range of AML/CFT issues identified in its Mutual Evaluation Report, particularly compliance with SRIII (adequate procedures to identify and freeze terrorist assets).

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

5th meeting of the Committee of the Parties – election of two new GRETA members

The 5th meeting of the Committee of the Parties of the Council of Europe Convention on Action against Trafficking in Human Beings will be held in Strasbourg on Monday, 6 December 2010. At this meeting the Committee of the Parties shall elect two new members for GRETA. Candidates have been nominated by the governments of the following parties: Austria, Azerbaijan, Belgium, Netherlands and Serbia.

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

Part IV: The inter-governmental work

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

27 October 2010

Andorra signed the European Charter of Local Self-Government (ETS No. 122).

3 November 2010

Georgia signed the Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters (CETS No. 208).

B. Recommendations and Resolutions adopted by the Committee of Ministers

[1]

C. Other news of the Committee of Ministers

Skopje launch seeks "soft security" through greater social cohesion (29.10.2010)

The Council of Europe launched its new action plan for social cohesion at a meeting in Skopje, designed to involve citizens in setting priorities at national, regional and local levels. The current Chairmanship of the Committee of Ministers has set promotion of greater social cohesion in Europe as one of the main priorities for its six-month term in office.

Committee of Ministers Chairman Miloshoski pays official visit to Bosnia and Herzegovina (02.11.2010)

The Chairman of the Committee of Ministers Antonio Miloshoski visited Bosnia and Herzegovina on 2 November where he was to meet with the members of the Presidency of Bosnia and Herzegovina, as well as with representatives of the major political parties. The purpose of the visit was to discuss the role of the Council of Europe in the constitutional reforms in Bosnia and Herzegovina.

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

Part V: The parliamentary work

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

[1]

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

- *Countries*

Statement of the PACE pre-electoral mission to Moldova (27.10.2010)

A pre-electoral delegation from PACE ended a visit to Chisinau to evaluate the election campaign on the eve of the 28 November 2010 parliamentary elections in Moldova. The delegation held meetings with the Acting President of Moldova and Speaker of the Parliament, the leaders of the main political parties participating in the elections, the Chair and members of the Central Election Commission (CEC), the President of the Constitutional Court and the Chairman of the Audiovisual Co-ordinating Council, as well as representatives of the international community, NGOs and the media. The pre-election delegation noted with satisfaction the confidence of political stakeholders in the transparent functioning of the Central Election Commission. The delegation also highlighted the improvement in media coverage of the election campaign, including by public broadcasters which in the past had shown a tendency to give predominantly favourable coverage to the ruling parties, regardless of their political tendency – a phenomenon which has been continually criticised by the Parliamentary Assembly. However, the delegation stressed that private TV channels, whatever their sympathy, should be balanced in their coverage to avoid becoming a platform for propaganda.

The pre-election delegation stressed that a number of concerns have subsisted throughout this election campaign. The delegation was informed about recurrent problems concerning the quality of the voters' lists, and therefore urges the CEC, as well as local authorities, to take all the necessary steps between now and 28 November to improve the quality of these lists. The delegation also expressed its concern over information it received regarding a lack of transparency in the financing of the election campaign. A number of interlocutors expressed concern about the risk of misuse of administrative resources by the authorities, and a rise in tension in the run-up to the elections The delegation calls on the political stakeholders of Moldova to abstain from any aggressive rhetoric as well as attempts to put pressure on political opponents, or any other actions contrary to the principles of the Code of Good Practice in Electoral Matters of the Council of Europe's Venice Commission. The pre-election delegation recalls that since the parliamentary elections on 5 April 2009, Moldova has entered a spiral of political and institutional crisis. In this regard, the delegation stresses the crucial importance of the early parliamentary elections on 28 November 2010, the results of which should allow, at last, the formation of functional state institutions in conformity with the Constitution and permit the state authorities to concentrate their efforts on resolving the urgent problems of the citizens. After the elections, the leaders of the main political parties should immediately enter into a constructive, responsible dialogue in order to achieve the broadest possible consensus to resolve the crisis.

The pre-electoral delegation has been assured by the authorities of Moldova, as well as by the Central Electoral Commission, that all measures will be taken to eradicate the problems identified in order to guarantee the democratic character of these elections. The Parliamentary Assembly will send a 30-member delegation to observe the elections on 28 November 2010.

PACE President calls for more progress in the Cyprus negotiations (02.11.2010)

Mevlüt Çavusoglu, President of PACE, has welcomed the continued negotiations between the leaders of the two Cypriot communities under UN auspices, and called on both parties to show "political courage and firm determination to find a fair, lasting and comprehensive solution for a peaceful and united Cyprus", one which would guarantee the legitimate rights of both Greek and Turkish Cypriots in full compliance with the values and principles of the Council of Europe. Speaking at the end of a three-day visit to the island, the President said both parties must be ready to make compromises to achieve progress, in particular on the most difficult questions, such as the property issue. There are urgent

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

humanitarian issues which should not be politicised, such as the search for missing persons, the President said: “The families of those who went missing many years ago deserve to know what happened to their loved ones.” He called on European states and international organisations to provide more financial support for the work of the Committee on Missing Persons (CMP). Mr Çavusoglu also called on all political forces and civil society in both Cypriot communities to multiply bi-communal activities, to build confidence and trust between them. He said the Council of Europe and its Parliamentary Assembly could make a useful contribution to this, in particular through promoting people-to-people contacts. He cited the example of the European Forum Cyprus, a joint Council of Europe-EU programme, which brings together young leaders from both communities. The contribution of churches to the creation of an atmosphere of tolerance was highlighted during the joint meeting with religious leaders, the Primate of the Orthodox Church of Cyprus, the Archbishop of Nova Justiniana and All Cyprus Chrysostomos II and the head of religious affairs of the Turkish Cypriot community Mehmet Emin Yeltekin. The President invited both leaders to take further steps to promote respect for places of worship in all parts of the island. He also called on politicians and religious leaders to refrain from incitation to intolerance and hate. During his visit, Mr Çavusoglu met President Demetris Christofias, the Speaker of the House of Representatives Marios Garoyan, and Foreign Minister Markos Kyprianou, among others. In the northern part of the island he met Dervis Eroglu, leader of the Turkish Cypriot community, and elected representatives of the Turkish Cypriot community, as well as representatives of political forces.

PACE President responds to criticism following his recent visit to Cyprus (04.11.2010)

Mevlüt Çavusoglu, the President of PACE, has written to the Speaker of the Cyprus House of Representatives Marios Garoyian expressing surprise at his reported suggestion that he was “misled” over the President’s planned visit to the northern part of the island. Mr Çavusoglu was in Cyprus from 31 October to 2 November, meeting President Demetris Christofias and Foreign Minister Markos Kyprianou, as well as Mr Garoyian. In the northern part of the island he met Dervis Eroglu, leader of the Turkish Cypriot community, and elected representatives of the Turkish Cypriot community. In his letter to Mr Garoyian, the President wrote: “As you, and the members of the Cypriot delegation to the Parliamentary Assembly, are well aware, my visit to the north was planned from the very outset, and was announced [...] before I left for Cyprus. Indeed, we personally spoke about it during our meetings on Sunday and Monday before I went there.” Mr Çavusoglu pointed out that previous PACE Presidents have visited the northern part of the island during official visits, adding: “In the search for peaceful solutions, the Assembly has always believed in hearing from all parties.” He also responded to the reported comment that he had acted as a Turkish official rather than as PACE President: “As you are well aware, I strictly kept to and promoted the positions of the Parliamentary Assembly, as set out in resolutions from 2004 and 2008, in all my meetings during my visit, including when in the northern part of the island. This is underscored in the press statement issued at the end of my visit.” The suggestion that he stayed in a hotel built on the land of Greek Cypriots while in the north was also “completely unfounded”, he wrote.

In his letter, the President reiterated his message that “a great deal of political courage” would be needed to solve the Cyprus issue. He concluded: “In my opinion, it is our duty as politicians to show responsibility and not to mislead our citizens on such important issues and, in particular, to resist the temptation to use and abuse such topics during election campaigns.”

PACE Standing Committee meets in Antalya (05.11.2010)

The Standing Committee of PACE met in Antalya on Friday 12 November 2010 as Turkey took over the chairmanship of the Council of Europe Committee of Ministers. PACE President Mevlüt Çavusoglu opened the meeting, followed by welcome addresses from Deputy Speaker of the Turkish Grand National Assembly Sadik Yakut and the Governor of Antalya Ahmet Altiparmak. The parliamentarians then held an exchange of views with Turkish Foreign Minister Ahmet Davutoglu, who is chairing the Council of Europe’s executive body for six months from 10 November 2010, on Turkey’s priorities during its chairmanship and other issues as part of the Assembly’s ongoing political dialogue with the Committee of Ministers. The Standing committee was also due to debate and approve 16 reports, including on Roma asylum seekers in Europe, on strengthening measures to protect and revive highly endangered languages, and on the European Charter for Regional or Minority Languages. Other topics to be discussed included military waste and the environment, promoting a prevention policy on online gambling addiction and re-engaging in parliamentary dialogue with the United States.

PACE to observe parliamentary elections in Azerbaijan (04.11.2010)

A 30-member delegation of PACE, led by Paul Wille (Belgium, ALDE), was in Azerbaijan from 5 to 8 November to observe the holding of the parliamentary elections, alongside observers from the OSCE Parliamentary Assembly, the European Parliament and the OSCE's Office for Democratic Institutions and Human Rights (ODIHR). The delegation met representatives of the authorities and of various political parties, the Chair of the Central Election Commission, domestic observer organisations, as well as civil society and media representatives before observing the ballot on 7 November. A PACE pre-electoral delegation, visiting Baku from 18 to 21 October, welcomed "an overall calm atmosphere in the run-up to the elections", and "improvements in the work of the Central Election Commission, the voter education programme launched by it, and greater attention to the quality of the voters' lists". In addition, the pre-electoral delegation noted that the Azerbaijani opposition was actively involved in the electoral race. Yet, it regretted the lack of any public debate and harassment of some journalists and bloggers, and was concerned about "allegations that the pre-electoral situation was characterised by administrative pressures and difficulties relating to candidate registration".

- *Themes*

PACE President: 'Discrimination against Roma is just the tip of the iceberg' (25.10.2010)

"The issue of discrimination against Roma is just the tip of the iceberg. Extremist populist parties have sought to capitalise on society's security concerns by simply equating immigration with crime and insecurity. In an attempt to regain the support of the electorate, mainstream political parties are picking up some of the radical, xenophobic and discriminatory language of extremist parties. This is an extremely worrying trend. We should not hide behind populist rhetoric," said Mevlüt Çavusoglu on 25 October, addressing the students of the Maastricht School of Management during his visit to the Netherlands. Speech

PACE President urges Congress to continue work on environment and good governance (27.10.2010)

In his speech before the Congress of Local and Regional Authorities in Strasbourg on 27 October, the PACE President stressed once again the need for reform of the Council of Europe. "Our Organisation needs to become more pro-active, more relevant and closer to the needs and aspirations of our fellow Europeans," he said. With regard to the reform of the Congress he added that he hoped that despite the reduction of the number of permanent committees to three the Congress would continue to work on matters such as environment and good governance. "Environmental matters are very important at local level, especially when it comes to their implementation. That is also the case for protection of minorities, the fight against discrimination, integration, cultural and religious dialogue, social rights and sustainable development," he said. He urged participants to address root causes of extremism in order to fight the recent upsurge of racism, xenophobia and all sorts of manifestations of intolerance against people of different religious beliefs. "These manifestations can be flagrant or subtle, but the result is the same: discrimination, social alienation and exclusion, tension between communities and fomentation of political extremism," he said. "Resolute action against discrimination, emphasis on civic education and inter-cultural as well as inter-religious dialogue, involvement of civil society and non-governmental organisations – especially those representing segments of society which are excluded from ordinary channels – in consultation or decision-making processes are key instruments in reducing the potential attraction of extremist groups and movements," the PACE President stressed. He announced that PACE intended to make its own contribution by holding in April 2011 a major debate on the religious dimension of inter-cultural dialogue. Speech

PACE President hails 60 years of Human Rights Convention, looks to the future (03.11.2010)

The European Convention on Human Rights has helped to build a Europe united from the Atlantic to the Pacific, and from the Arctic to the Mediterranean, and now faces a new chapter in its history with EU accession and reform of the Court, PACE President Mevlüt Çavusoglu has said. Speaking at a conference in Rome to mark the 60th anniversary of the Convention, he pledged PACE's support for these changes, adding that he would "spare no effort" to promote ratification of Protocol 12 to the Convention, which prohibits discrimination. But the President also warned that the European Court of Human Rights should be a "last resort measure", and that the main responsibility for protecting human rights lies with national institutions. While the Court could help to identify systemic problems in member States, it was the task of national bodies to ensure citizens' rights under the Convention are fully protected, he said.

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

A. Country work

France: Dialogue between Commissioner Hammarberg and Minister Hortefeux on the desecration of cemeteries (02.11.2010)

"I was deeply disturbed to learn of the desecration of 37 graves in the Muslim section of Strasbourg cemetery on 24 September. Sadly, this despicable act is not the only one of its kind. Four Jewish or Muslim cemeteries have been vandalised this year in the greater Strasbourg area alone", said Council of Europe Commissioner for Human Rights Thomas Hammarberg in a letter, published on 2 November, to Brice Hortefeux, French Minister of the Interior, Overseas France and Local Authorities. Read the letter to the French Minister of the Interior, Overseas France and Local Authorities (*in French only*); Read the Minister's reply (*in French only*)

Bulgaria: Commissioner Hammarberg calls for more respect of minority rights (04.11.2010)

The Council of Europe Commissioner for Human Rights, Thomas Hammarberg, published on 4 November a letter addressed to the Prime Minister of Bulgaria, Boyko Borisov, on human rights of national and religious minorities. Commissioner Hammarberg highlights the need for the Bulgarian authorities to improve the living conditions of Roma and invites them to assess the effectiveness of Roma-related action plans on a regular basis. The Commissioner also requests information on the current living conditions of the Roma community that he visited in the Republika district of Sofia in November 2009. Press release in Bulgarian; Read the letter to the Prime Minister of Bulgaria; Read the Prime Minister's reply

B. Thematic work

Freedom to demonstrate is a human right – even when the message is critical (26.10.2010)

“Sunday 31 October will be a test for the effectiveness in practice of the right to peaceful assembly, which is enshrined in Article 31 of the Russian Constitution” says the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, in his Human Rights Comment published on 26 October. For more than a year “Strategy 31” rallies have been held in Moscow, St Petersburg and some other Russian cities on months with that date. The plight of these rallies so far has illustrated the limitations to the right to assembly in practice. This problem is not unique to Russia. Read the comment

European Muslims are stigmatised by populist rhetoric

"European countries appear to face another crisis beyond budget deficits – the disintegration of human values. One symptom is the increasing expression of intolerance towards Muslims", says the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, in his Human Rights Comment published on 28 October. The Swiss referendum banning the building of minarets was no exception: opinion polls in several European countries reflect fear, suspicion and negative opinions of Muslims and Islamic culture. Read the comment

The prohibition of torture is absolute and no exceptions allowed, ever (30.10.2010)

“Despite a clear and absolute ban of torture in international and national laws, detainees are exposed or subjected to torture and other forms of ill-treatment in many European states. A solid underpinning of this legal requirement is now needed more than ever”, said Commissioner Hammarberg today at the 20th Anniversary Conference of the Human Rights Foundation of Turkey. “Governments must make clear that nothing but zero tolerance towards such practices is acceptable. [...]" Read the speech in English and in Turkish

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

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

European NPM Project: 3rd NPM On-site Visit and Exchange of Experiences: "Organising, carrying out and reporting on preventive visits to various types of places of deprivation of liberty: an exchange of experiences between the National Preventive Mechanism against torture (NPM) of Spain and experts from the SPT, former members of the CPT and the APT", Madrid, Spain 2 - 5 November 2010

This third On-site Exchange of Experiences was organised by the NHRS Unit of the Council of Europe, European NPM Project Team and the NPM of Spain – DEFENSOR DEL PUEBLO – as part of the so-called "European NPM Project" and funded by a joint European Commission – Council of Europe project: "the Peer-to-Peer II Project" and by the Human Rights Trust Fund[1]. The Association for the Prevention of Torture (APT, Geneva) helped as the Council of Europe's implementing partner.

The overall aim of the four-day On-site Exchange was to foster an exchange of experiences and cooperation between members and former members of the SPT, CPT and NPM in order to build and enhance capacity to carry out detention monitoring for the prevention of torture. The specific objectives were: Analyze the strengths, weaknesses, opportunities and challenges of the NPM, as regards its mandate and functioning; Exchange on the practice of preventive monitoring, particularly with regards the methodology of conducting visits and following-up on monitoring visits; Prepare a preventive monitoring Visiting Exercise to a place of deprivation of liberty chosen by the Spanish NPM; Carry out preventive monitoring visits; Debrief jointly on the findings and methodology of the visiting exercise.

The exchange of experiences in Madrid involved 15 participants from the NPM of Spain, including the Head of the NPM and with an opening and closing speech by Ms. Maria Luisa Cava de Llano y Carrio, Defensora del Pueblo, on the one side, and on the other side members, or former members, of the SPT, the CPT and the APT. Two members of the NHRS Unit served as facilitators.

On the first day of the meeting the designation, composition, functioning and general working methods of the Spanish NPM in the light of the OPCAT[2] prescriptions were examined and the joint preparation for a common on-site visiting exercise to a place of deprivation of liberty for which participants split in small groups was undertaken on the second day. On the third and fourth days, the international experts presented their observations on the working methods of the national experts and these observations were discussed in plenary.

A confidential debriefing paper for the benefit of all participants in the exchange is under preparation.

[1] The Human Rights Trust Fund (HRTF) was established in March 2008 as an agreement between the Ministry of Foreign Affairs of Norway as founding contributor, the Council of Europe and the Council of Europe Development Bank. Germany and the Netherlands have joined in as contributors.

[2] The Optional Protocol to the UN Convention Against Torture (OPCAT) obliges states Parties to set up an NPM within one year of ratification.