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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

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**

Oršuš and Others v. Croatia (link to the judgment in French) (no. 15766/03) (Importance 1) – 16 March 2010 – Violation of Article 6 §1 – Excessive length of proceedings – Violation of Article 14 taken in conjunction with Article 2 of Protocol No. 1 – The placement of the applicants in Roma-only classes during their primary education had not been justified and lacked adequate safeguards

The applicants are 15 Croatian nationals of Roma origin. The case concerned the applicants' complaint that they had been segregated at primary school because they were Roma. The applicants attended primary school in the villages of Macinec and Podutren at different times between the years 1996 and 2000. They participated in both Roma-only and mixed classes before leaving school at the age of 15. In April 2002 the applicants brought proceedings against their primary schools. They claimed that the Roma-only curriculum in their schools had 30 % less content than the official national curriculum. They alleged that that situation was racially discriminating and violated their right to education as well as their right to freedom from inhuman and degrading treatment. They also submitted a psychological study of Roma children who attended Roma-only classes in their region which reported that segregated education produced emotional and psychological harm in Roma children, both in terms of self-esteem and development of their identity.

In September 2002 Čakovec Municipal Court dismissed the applicants' complaint. It found that the reason why most Roma pupils were placed in separate classes was that they needed extra tuition in

Croatian. Furthermore, the curriculum at Podturen and Macinec Elementary schools was the same as that used in parallel classes in those schools. Consequently, the applicants had failed to substantiate their allegations concerning racial discrimination. The applicants' complaint was also subsequently dismissed on appeal. The applicants' constitutional complaint, lodged in November 2003, was dismissed on similar grounds in February 2007.

The applicants alleged that their segregation into Roma-only classes at school deprived them of their right to education in a multicultural environment and discriminated against them, and made them endure severe educational, psychological and emotional harm, and in particular feelings of alienation and lack of self-esteem. They also complained about the excessive length of the proceedings they brought before the domestic courts concerning those complaints.

In a judgment in July 2008, the Court held, unanimously, that there had been no violation of Article 2 of Protocol No. 1 taken alone or in conjunction with Article 14 of the Convention concerning the applicants' complaint that they were placed in Roma-only classes at primary school; and, a violation of Article 6 § 1 of the Convention concerning the excessive length of the proceedings brought by the applicants in particular before the Constitutional Court. In October 2008 the applicants requested that the case be referred to the Grand Chamber under Article 43 and in December 2008 the panel of the Grand Chamber accepted that request. In January and February 2009, the President of the Court gave the organisation "Greek Helsinki Monitor", the Government of the Slovak Republic and the organisation "Interights" leave to intervene as a third party in the Court's proceedings under Article 36 § 2 of the Convention and Rule 44 § 2 of the Rules of Court.

Article 6 § 1

The Court reiterated that the right to primary education is a civil right under Article 6 and therefore it had to apply in this case. It then found that the length of proceedings (more than four years) before the Constitutional Court in a case of such importance had been excessive and concluded unanimously that the right of the applicants to a fair trial within a reasonable time had not been respected, in violation of Article 6 § 1.

Article 14 taken together with Article 2 of Protocol No. 1

The Court found that this case raised primarily a discrimination issue. It recalled its findings from its earlier case law that, as a result of their history, the Roma had become a specific type of disadvantaged and vulnerable minority and therefore required special protection, including in the sphere of education. There had not been a general policy to automatically place Roma pupils in separate classes in the schools which the applicants had attended. However, only Roma children had been placed in separate classes in those primary schools. Consequently, there had been clearly a difference in treatment applied to Roma children, which the applicants were. The State therefore had to show that the practice of segregating Roma pupils had been objectively justified, appropriate and necessary. The Court noted the reasons given by the Government for the placement of the applicants in Roma-only classes, namely that they had lacked adequate command of the Croatian language. It considered that while temporary placement of children in a separate class on the grounds of language deficiency was not, as such, automatically contrary to Article 14 of the Convention, when this affected, as in the present case, exclusively the members of a specific ethnic group, specific safeguards had to be put in place. The Croatian laws at the time had not provided for separate classes for children lacking proficiency in the Croatian language. In addition, the tests applied for deciding whether to assign pupils to Roma-only classes had not been designed specifically to assess the children's command of the Croatian language, but had instead tested the children's general psycho-physical condition. While the applicants might have had some learning difficulties, as suggested by the fact that they had failed to go up a grade for the initial two years of their schooling, those difficulties had not been adequately addressed by simply placing them in Roma-only classes.

As regards the curriculum, once assigned to Roma-only classes the applicants had not been provided with a programme specifically designed to address their alleged linguistic deficiency. While additional Croatian classes had been offered to the applicants, it had not been sufficient. In any event, even such additional classes in Croatian could have at best only compensated in part the lack of a curriculum specifically designed to address the needs of pupils placed in separate classes on the grounds that they lacked an adequate command of Croatian. All applicants had spent a substantial period of their education in Roma-only classes. The eleventh to fifteenth applicants in particular had spent all eight years of their schooling in a Roma-only class. However, there had been no particular monitoring procedure and, although some of the applicants had attended mixed classes at times, the Government had failed to show that any individual reports had been drawn up in respect of each applicant and his or her progress in learning Croatian. The lack of a prescribed and transparent monitoring procedure had left a lot of room for arbitrariness. Furthermore, the statistics submitted by the applicants for the region in which the applicants lived, and not contested by the Government, had showed a drop-out rate of 84% for Roma pupils before completing primary education. The applicants, without exception,

had left school at the age of fifteen without completing primary education and their school reports evidenced poor attendance. Such a high drop-out rate of Roma pupils in that region had called for the implementation of positive measures in order to raise awareness of the importance of education among the Roma population and to assist the applicants with any difficulties they had encountered in following the school curriculum. However, according to the Government, the social services had been informed of the pupil's poor attendance only in the case of the fifth applicant and no precise information had been provided on any follow-up. As regards the parents' passivity and lack of objections in respect of the placement of their children in separate classes, the Court held that the parents, themselves members of a disadvantaged community and often poorly educated, had not been capable of weighing up all the aspects of the situation and the consequences of giving their consent. In addition, no waiver of the right not to be subjected to racial discrimination could be accepted, as it would be counter to an important public interest. The applicants could have attended the government-funded evening school in a nearby town. However, that had not been sufficient to repair the above-described deficiencies in the applicants' education.

While recognising the efforts made by the Croatian authorities to ensure that Roma children received schooling, the Court held that no adequate safeguards had been put in place at the relevant time to ensure sufficient care for the applicants' special needs as members of a disadvantaged group. Accordingly, the placement, at times, of the applicants in Roma-only classes during their primary education had not been justified, in violation of Article 14 taken together with Article 2 of Protocol No. 1. Judges Jungwiert, Vajić, Kovler, Gyulumyan, Jaeger, Myjer, Berro-Lefèvre and Vučinić expressed a joint partly dissenting opinion.

Carson and Others v. the United Kingdom (link to the judgment in French) (no. 42184/05) (Importance 1) – 16 March 2010 – No Violation of Article 14 taken in conjunction with Article 1 of Protocol No. 1 – Domestic authorities' justified refusal to index-link pensions of former British residents on account of the fact that the applicants were living outside the United Kingdom in countries which were not party to reciprocal social security agreements with the United Kingdom providing for pension up-rating

The applicants spent some of their working lives in the United Kingdom, paying National Insurance Contributions, before emigrating or returning to South Africa, Australia or Canada respectively.

In 2002, Ms Carson brought proceedings by way of judicial review in the United Kingdom to challenge the failure to index-link her pension. She claimed that she had been the victim of discrimination as British pensioners were treated differently depending on their country of residence. In particular, despite having spent the same amount of time working in the United Kingdom, having made the same contributions towards the National Insurance Fund and having the same need for a reasonable standard of living in her old age as British pensioners who were living in the United Kingdom or in other countries where up-rating was available through reciprocal agreements, her basic State pension was frozen at the rate payable on the date she left the United Kingdom. Her application for judicial review was dismissed in May 2002 and ultimately on appeal before the House of Lords in May 2005, on account of the fact that the situations were not analogous or relevantly similar. Social security benefits, including the State pension, were part of an intricate and interlocking system of social welfare and taxation which existed to ensure certain minimum standards of living for those in the United Kingdom. Contributions to the National Insurance Fund could not be equated to contributions to a private pension scheme, because the money was used, together with money provided from general taxation, to finance a range of different benefits and allowances. Quite different economic conditions applied in other countries: for example, in South Africa, where Ms Carson lived, although there was virtually no social security, the cost of living was much lower, and the value of the rand had dropped in recent years compared to sterling. The domestic courts further held that Ms Carson and those in her position had chosen to live in societies, or more pointedly economies, outside the United Kingdom; to accept her arguments would be to lead to judicial interference in the political decision as to the redeployment of public funds.

The applicants alleged, in particular, that the United Kingdom authorities' refusal to up-rate their pensions in line with inflation had been discriminatory and that some of them had had to choose between surrendering a large part of their pension entitlement or living far away from their families.

The application was lodged with the Court in November 2005. In a judgment of 4 November 2008, the Court held, by six votes to one, that there had been no violation of Article 14 in conjunction with Article 1 of Protocol No. 1 and that it was not necessary to examine the complaint under Article 8 taken in conjunction with Article 14. In April 2009 the case was referred to the Grand Chamber at the applicants' request. A public hearing was held in September 2009. Third party comments were received from Age Concern and Help the Aged.

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

The Court held that in order for an issue to arise under Article 14, there had to be a difference in the treatment of persons in relevantly similar situations. The Court did not consider that it sufficed for the applicants to have paid National Insurance contributions in the United Kingdom to place them in a relevantly similar position to all other pensioners, regardless of their country of residence. Claiming the contrary would be based on a misconception of the relationship between National Insurance contributions and the State pension. Unlike private pension schemes, National Insurance contributions had no exclusive link to retirement pensions. Instead, they formed a part of the revenue which paid for a whole range of social security benefits, including incapacity benefits, maternity allowances, widow's benefits, bereavement benefits and the National Health Service. The complex and interlocking system of the benefits and taxation systems made it impossible to isolate the payment of National Insurance contributions as a sufficient ground for equating the position of pensioners who received up-rating and those, like the applicants, who did not. Moreover, the pension system was primarily designed to serve the needs of and ensure certain minimum standards for those residing in the United Kingdom. Indeed, the essentially national character of the social security system was recognised both at domestic and international level.

The Court noted that it was hard to draw any genuine comparison with the position of pensioners living elsewhere, because of the range of economic and social variables which applied from country to country. Furthermore, as noted by the domestic courts, as non-residents the applicants did not contribute to the United Kingdom's economy; in particular, they paid no United Kingdom tax to offset the cost of any increase in the pension. Nor did the Court consider that the applicants were in a relevantly similar position to pensioners living in countries with which the United Kingdom had concluded a bilateral agreement providing for up-rating. Those living in reciprocal agreement countries were treated differently from those living elsewhere because an agreement had been entered into because the United Kingdom considered it to be in its interests. In that connection, States clearly had a right under international law to conclude bilateral social security treaties and indeed this was the preferred method used by the member States of the Council of Europe to secure reciprocity of welfare benefits. If entering into bilateral arrangements in the social security sphere obliged a State to confer the same advantages on all those living in all other countries, the right of States to enter into reciprocal agreements and their interest in so doing would effectively be undermined.

The Court did not consider that the applicants, who live outside the United Kingdom in countries which are not party to reciprocal social security agreements with the United Kingdom providing for pension up-rating, were in a relevantly similar position to residents of the United Kingdom or of countries which were party to such agreements. It held, by eleven votes to six, that there had been no discrimination and no violation of Article 14 taken in conjunction with Article 1 of Protocol No.1. Judges Tulkens, Vajić, Spielmann, Jaeger, Jočienė and López Guerra expressed a joint dissenting opinion which is annexed to the judgment.

Cudak v. Lithuania (link to the judgment in French) (no. 15869/02) (Importance 1) – 23 March 2010 – Violation of Article 6 § 1 – Domestic authorities' interference with the applicant's right of access to a court on account of their refusal to hear a sexual harassment complaint by the applicant, an employee of the Polish embassy in Vilnius, by applying the State immunity rule

In 1997, the applicant was hired as a secretary and switchboard operator by the Embassy of the Republic of Poland in Vilnius. Her duties corresponded to those habitually expected of such a post, and were stipulated in her employment contract. In 1999, the applicant complained to the Lithuanian Equal Opportunities Ombudsperson that she was being sexually harassed by one of her male colleagues as a result of which she had fallen ill. The Ombudsperson held an inquiry and recognised that she was indeed a victim of sexual harassment. The applicant, on sick leave for two months, was not allowed to enter the building upon her return in October 1999, and on two other occasions in the weeks that followed. She complained in writing to the ambassador and a few days later, in December 1999, was informed that she had been dismissed for failure to come to work during the last week of November 1999. She brought an action for unfair dismissal before the civil courts, which declined jurisdiction on the basis of the doctrine of State immunity from jurisdiction, invoked by the Polish Ministry of Foreign Affairs, and according to which one State could not be subject to the jurisdiction of another. The Lithuanian Supreme Court found in particular that the applicant had exercised a public-service function during her employment with the Polish Embassy in Vilnius and established that, merely from the title of her position, it could be concluded that her duties facilitated the exercise by the Republic of Poland of its sovereign functions and, therefore, justified the application of the State immunity rule.

The applicant lodged her application with the Court in December 2001 and in January 2009 the Chamber to which the case had been allocated relinquished jurisdiction in favour of the Grand Chamber, under Article 30 of the Convention.

The applicant alleged that she was denied access to a court.

The Court first noted that there was a trend in international law, confirmed with the adoption at the United Nations level of two international legal documents – the 1991 Draft Articles and the 2004 Convention on Jurisdictional Immunities of States and their Property – towards limiting the application of State immunity, notably by exempting contracts of staff employed in a State's diplomatic missions abroad from the immunity rule. Immunity still applied, however, to diplomatic and consular staff in cases where the subject of the dispute was the recruitment, renewal of employment or reinstatement of an individual, or where the employee was a national of the employer State, or there was a written agreement to that effect between the employer and the employee. The applicant had not been covered by any of those exceptions. She had not performed any particular functions closely related to the exercise of governmental authority. She had not been a diplomatic agent or consular officer, nor a national of the employer State, and, lastly, the subject matter of the dispute had had to do with the applicant's dismissal. In addition, it did not appear from the file that the applicant had performed in reality any functions related to the exercise of sovereignty by the Polish State and neither the Lithuanian Supreme Court nor the Government had shown how her ordinary duties could have objectively related to the sovereign interests of the Polish State.

The mere allegation that the applicant could have had access to certain documents or could have been privy to confidential telephone conversations in the course of her duties was not sufficient. Her dismissal and the ensuing legal proceedings had arisen originally from acts of sexual harassment that had been established by the Lithuanian Equal Opportunities Ombudsperson. Such acts could hardly be regarded as undermining Poland's security interests. By declining jurisdiction to hear the applicant's claim and accepting the Polish Government argument of State immunity, the Lithuanian courts' decisions had impaired the very essence of the applicant's right of access to a court in violation of Article 6 § 1.

- **Right to life**

Oyal v. Turkey (no. 4864/05) (Importance 2) – 23 March 2010 – Violation of Article 2 – Insufficient redress for the applicants' son's infection with HIV during a blood transfusion in hospital – Violation of Article 6 § 1 – Excessive length of administrative proceedings – Violation of Article 13 – Lack of an effective remedy

Yiğit Oyal was infected with the HIV virus when, born prematurely, he had to have a number of blood transfusions for an inguinal and umbilical hernia. His parents learnt of the infection when he was about four months old; they were also told that the virus could develop into the more severe Acquired Immune Deficiency Syndrome (AIDS). In May 1997 the applicants brought criminal proceedings for medical negligence against the doctors involved in the blood transfusions, the Director General of the Turkish Red Cross in Izmir (the "Kızılay", from where the transfused blood had been obtained) and the Minister of Health. Those proceedings were terminated on the ground that no fault could be attributed directly to those persons. In December 1997 the applicants brought civil proceedings against the Kızılay and the Ministry of Health and in October 1998 administrative proceedings against the Ministry of Health. Both the civil and administrative courts ruled that the Kızılay was at fault for supplying HIV-infected blood and that the Ministry of Health was to be held responsible for the negligence of its staff in the performance of their duties. Furthermore, the Ankara Civil Court of First Instance established that the HIV infected blood given to Yiğit had not been detected because the medical staff had not done the requisite test on the blood in question, considering that it would be too costly. That court found moreover that, prior to Yiğit's infection, there was no regulation requiring blood donors to give information about their sexual history which could help determine their eligibility to give blood. On account of these deficiencies, and the defendants' failure to comply with the already existing regulations, the civil and administrative courts awarded the applicants non-pecuniary damages plus statutory interest. Following those judgments the special card (the "green card"), issued by the Ministry of Health to provide those on borderline incomes with access to free health care and medicine was withdrawn from the applicants.

Despite promises made by the authorities to pay Yiğit's medical expenses, both the Kızılay and the Ministry of Health rejected the applicants' claims for healthcare and medication amounting to EUR 6,800 per month.

The applicants alleged that the national authorities were responsible for Yiğit's life-threatening condition as they had failed to sufficiently train, supervise and inspect the work of the medical staff involved in his blood transfusions. They also complained about the excessive length of the administrative proceedings they had brought for compensation and that the compensation finally awarded did not even cover the costs of Yiğit's medication.

Article 2

The applicants had had access to civil and administrative courts which established liability for Yiğit's infection with the HIV virus and awarded damages. The Court found, however, that that redress had been far from satisfactory. The compensation awarded only covered one year's healthcare and medication for Yiğit. The applicants' claims to the Kızılay and the Ministry of Health rejected and their green card, strikingly, withdrawn, the family – already in debt and living in poverty – had been left to their own devices to meet the high costs (EUR 6,800 per month) of Yiğit's continued treatment. Even though the national courts had adopted a sensitive and positive approach in determining the responsibility of the Kızılay and the Ministry of Health and in ordering them to pay damages to the applicants, the Court considered that the most appropriate remedy in the circumstances would have been to have ordered, in addition to the payment of non-pecuniary damages, lifetime payment of Yiğit's healthcare and medication expenses. Also bearing in mind the excessive length – nine years, four months and 17 days – of the administrative proceedings, which were of consequence to the more general considerations of public health and safety and the prevention of similar errors, the Court held unanimously that there had been a violation of Article 2.

Article 6 § 1 and Article 13

The Court considered that the case had not been complex, the issues at stake – negligence and liability – already having been established during the civil proceedings. Given the gravity of the situation and what was at stake for the applicants, the courts should have acted with "exceptional diligence" in deciding upon the case. The Court therefore held unanimously that the length of the administrative proceedings had been excessive, in violation of Article 6 § 1. The Court, recalling that it had already found in a previous case that the Turkish legal system had not provided an effective remedy whereby the length of proceedings could be successfully challenged, further found, unanimously, that there had also been a violation of Article 13.

Judge Sajó expressed a partly concurring and partly dissenting opinion which is annexed to the judgment.

Iorga v. Moldova (no. 12219/05) (Importance 3) – 23 March 2010 – Violation of Article 2 (procedural) – Lack of an effective investigation into the applicant's son's death while in military service

The applicant's son, a soldier performing his compulsory military service, disappeared from his unit in June 2001. A few days later, a dead body assumed to be his was found hanging from a tree near the unit. A subsequent criminal investigation into his death was closed by the military prosecutor in December 2001, finding that the applicant's son had committed suicide. In February 2002, the applicant was given access to the case file, which she had requested as she suspected that her son had been murdered and that the authorities were trying to cover up the case. She challenged the decision to close the case, complaining in particular that she was unsure whether the body – in an advanced state of decomposition – she had been asked to identify had been her son's. She also stated that she had been pressured into saying that the body was her son's and that the photos of the corpse suggested hanging from a tree after asphyxiation. Her request for an exhumation to verify the information was refused. In April 2003, the domestic courts found that there had been a number of shortcomings in the investigation, in particular that the applicant had not been informed of her procedural rights as the victim's representative, and ordered further investigation. One year later, the courts annulled a decision by the military prosecutor to discontinue parts of that investigation, finding that he had failed to verify press reports according to which a general held information relevant to the murder of the applicant's son. In June 2004, the military prosecutor discontinued the investigation entirely. The applicant challenged that decision, but missed the hearing before the district court, as she had not received the summons in time. The court upheld the decision to discontinue the investigation, stating it had been exhaustive. According to its provisions, the decision was final and a further complaint by the applicant was rejected in December 2004.

The applicant complained that there had not been an effective investigation into her son's death. She submitted press articles accusing an officer in her son's military unit of possible involvement in his murder.

The Court considered that, while it was for the domestic authorities to decide whether to carry out specific investigative measures, it had to be possible for the victim or his/her representative to request such measures, to be informed of the decision taken and to be able to challenge them in court. However, as found by the domestic courts, the applicant had been deprived of the possibility of exercising such procedural rights.

The applicant had only been given access to the case file just over a month after the end of the investigation and almost eight months after its start. Had she been kept informed during the initial phase of the investigation, the applicant could have raised her most serious objections regarding the

decisions taken. Indeed, the applicant had expressly emphasised the need for a quick decision on exhumation in order to dispel her doubts, which she had not been able to effectively request in the absence of any information concerning the case. Further, some crucial investigative measures such as an autopsy and a report concerning the samples taken from the scene, had been carried out only half a year after the body of the applicant's son had been discovered, without an explanation for this delay. Moreover, the applicant had been absent from what was apparently the first and only hearing held by the domestic courts to examine her challenge to the final decision to discontinue the investigation. Given the seriousness of the complaints, the courts would have had to verify whether the applicant had in fact waived her right not be heard before taking a final decision.

The Court therefore unanimously concluded that there had been a violation of Article 2 as concerned the ineffectiveness of the investigation into the death of the applicant's son.

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

Jiga v. Romania (no. 14352/04) (Importance 2) – 16 March 2010 – Violation of Article 3 – Conditions of detention – Violation of Article 5 § 3 – Excessive length of pre-trial detention – Violation of Article 6 § 2 – Infringement on the applicant's right to be presumed innocent on account of the obligation imposed on him to wear prison clothing in court

At the relevant time the applicant was Director General of the Economic and Budgetary Directorate at the Ministry of Agriculture and Food. D.F. was working in the same Ministry. In 2002 they were charged and remanded in custody. Mr Jiga was charged with trading in influence, accepting or soliciting bribes, and abuse of office to the detriment of public interests. He was suspected of taking a commission in connection with a privatisation procedure. The applicant was unsuccessful in challenging his remand in custody on the ground that the condition of a threat to public order, as required by the Code of Criminal Procedure, was not met. On five occasions his detention was extended by 30 days and all his appeals were dismissed. The courts referred to a threat to public order that would be posed by his release, the extent of the damage at issue, the organised nature of the criminal activity and the obstruction to the establishment of the truth caused by the conflicting attitudes of Mr Jiga and D.F. In addition, the Court of Appeal quashed a judgment in which the applicant's detention was replaced by an order not to leave the country. In February 2003 the two accused were committed for trial before Bucharest County Court on the above-mentioned charges. Between November 2002 and November 2004 the applicant was regularly taken to court in handcuffs and dressed in the prison clothing usually worn by convicts. Mr Jiga was held in Bucharest-Jilava prison in a cell measuring 14 m2 with nine beds. He had access to the showers once a week and was authorised to take a daily 60-minute walk.

Mr Jiga's case attracted wide media attention. Numerous articles were published in the press in 2002 and 2003 concerning the charges against him, the evidence in the case-file and the progress of the proceedings. In 2004, during an interview, the Principal Public Prosecutor of the prosecution service's national anti-corruption office, mentioning that Mr Jiga and D.F. had been "committed for trial for taking bribes of 190,000 US dollars", cited the case as a success story in the drive against corruption. The anti-corruption office explained in a subsequent interview that this was just one example of a major corruption case.

In January 2005 Mr Jiga was found guilty of taking bribes and abuse of office and sentenced to five years' imprisonment. The length of his pre-trial detention was deducted from the sentence to be served. He was acquitted of the charge of trading in influence. In a judgment in February 2006 he was released on parole.

The applicant complained that he had been held in poor conditions in Bucharest-Jilava prison, and of the length and unjustified prolongation of his detention on remand. The applicant also complained about a breach of his right to be presumed innocent, on account of statements by the Principal Public Prosecutor and the obligation to wear prison clothing in court.

Article 3

Mr Jiga was held for several months in a cell where the individual living space was about 1.55 m2 and even smaller when furniture was taken into account. It was well below the standard of 4 m2 recommended to the Romanian authorities in the report of the European Committee for the Prevention of Torture (CPT) following its last visit to Romanian prisons, including that of Jilava. The applicant was moreover confined for most of the day and had limited access to showers and walks. Although there was no evidence of an intention on the authorities' part to humiliate Mr Jiga, the conditions of his detention and the length of time he had had to endure them had subjected him to an ordeal of an intensity that exceeded the inevitable level of suffering inherent in detention. The Court found that there had been a violation of Article 3.

Article 5 § 3

The Court reiterated that the period covered by Article 5 § 3 generally ended on the date of the decision determining the charges against the detainee, already at the level of the trial court. In the case of Mr Jiga, the relevant period ran from 18 November 2002 to 10 November 2003, representing 11 months, three weeks and three days.

Whilst certain offences posed a particular threat to public order, such a danger necessarily decreased as time passed, thus requiring the authorities to give concrete reasons that were even more specific and in the general interest in order to show that the custodial measure continued to be justified. In Mr Jiga's case, no explanation had been given to demonstrate how, with the passage of time, his release would have had a negative impact on civil society or would have impeded the investigation, especially after the examination of the witnesses. That lack of reasoning had not been made good by the courts' brief reference to the seriousness of the charges, the prospect of a harsh sentence or the amount of the damage at issue. That reference had in fact raised more questions than answers with regard to the potential threat to public order. In addition, the decision to refuse the proposed alternative measure (an order restraining him from leaving the country) had not contained concrete reasoning. As the authorities had not given "relevant and sufficient reasons" for maintaining Mr Jiga in pre-trial detention, the Court found that there had been a violation of Article 5 § 3.

Article 6 § 2

Whilst States had no obligation to ensure separate treatment for convicted and accused persons in prisons, any measures concerning remand prisoners had to avoid breaching their right to be presumed innocent. The applicant's public appearance in prison clothing was contrary to the legislation in force and had not been justified by the authorities. The damage for Mr Jiga had been increased by the fact that his co-accused, D.F., appeared at the hearings in civilian clothing, such difference being likely to reinforce the impression that Mr Jiga was guilty. The Court found that there had been a violation of the right to be presumed innocent, as guaranteed by Article 6 § 2.

Aşıcı v. Turkey (no. 26625/04) (Importance 2) – 16 March 2010 – Violations of Article 3 (substantive and procedural) – Ill-treatment during a violent dispersal of a demonstration by the police – Lack of an effective investigation

The applicant complained about acts of violence by the police when they clashed with students during a demonstration over an increase in university canteen charges in 2001; he also complained about the lack of a criminal investigation into those acts. The Court noted that excessive use of police force when it isn't considered necessary is in breach with Article 3 of the Convention. In the light of the medical reports submitted to the Court, it sees that the applicant has been subjected to ill-treatment during the dispersal of civil protest action and during his arrest. The Court held that there has been a violation of Article 3 in that connection. Concerning the procedural limb of the case, the Court didn't consider the investigation conducted by the authorities into the alleged ill-treatment "effective". Therefore it held that there had also been a violation of Article 3 under the procedural limb.

Maksimov v. Russia (no. 43233/02) (Importance 2) – 18 March 2010 – No violation of Article 13 – The applicant had had recourse to effective remedies at the domestic level – No violation of Article 3 (substantive) – Lack of sufficient evidence to prove the alleged ill-treatment – Violation of Article 3 (procedural) – Lack of an effective investigation

The applicant alleged that he had been ill-treated by the police in April 2000 – when the police broke into his house following a tip-off about an unregistered weapon – and in December 2001 – when arrested for refusing to be searched in the street. He complained in particular about the fact that, following the first incident, the domestic courts had refused to award him compensation for damage; and, following the second incident, the authorities had failed to carry out an effective investigation into his allegation.

The Court observed that, quite apart from the criminal proceedings to which he was a civil party, the applicant had the right to seek damages from the State, by either lodging a tort action in parallel with the criminal investigation, although not within the criminal proceedings themselves, or by bringing such an action after the criminal proceedings were completed. There was nothing to stop the applicant bringing such an action at the appropriate moment and arguing that the State should be held liable for ill-treatment and should pay compensation for the injury sustained. The Court is of the opinion that, had the applicant chosen that avenue instead of introducing an action against the police officer within the criminal case, he could have excluded the risk of obtaining an award against an insolvent defendant. However, the applicant made the legal choice of introducing the action against the police officer and should therefore bear the legal consequences, including the defendant's insolvency and

the loss of standing to sue the State. Accordingly the Court held that there has been no violation of Article 13.

The Court held further that the material in the case file does not provide an evidentiary basis sufficient to enable the Court to find "beyond reasonable doubt" that the applicant was subjected to the alleged ill-treatment. Accordingly there has been no violation of Article 3 under substantive limb.

The Court found that neither the district nor the regional courts manifested any interest in identifying and personally questioning witnesses of the applicant's alleged beating or hearing evidence from the officers involved in the incidents. Therefore it concluded that there has been a violation of Article 3 under the procedural limb.

Kuzmin v. Russia (no. 58939/00) (Importance 2) – 18 March 2010 – Violation of Article 3 – Conditions of detention in SIZO-24/1 – Violation of Article 6 § 2 – Infringement of the applicant's right to be presumed innocent on account of public statements declaring the applicant guilty made by a senior official – No violation of Article 6 § 2 – The terms used by the regional prosecutor in the application for the applicant's dismissal had formed part of a reasoned decision, for internal use within the prosecution service – No violation of Article 6 §§ 1 and 3 (d) – The applicant had had the opportunity to defend his position when confronted with the police officers involved and the investigator dealing with the case

In 1998, while the applicant was serving as district prosecutor in Motygino, criminal proceedings were brought against him for the rape of a 17-year-old girl. Shortly after the opening of the proceedings in April 1998, Alexander Lebed, a candidate for election to the post of governor of the Krasnoyarsk region and a well-known public figure, declared in three television interviews in May 1998 that the applicant was a "criminal" who should have been in the "nick" for some time, insulting the applicant and promising that he would soon be "rotting in jail". In May 1998 Mr Lebed was elected as regional governor and the same month the applicant was remanded in custody and charged with the rape of a minor; in June 1998 he was dismissed from the prosecution service. Both the application and the order for his dismissal stated that he had "committed a rape". He was admitted to remand prison 24/1 in the city of Krasnoyarsk ("SIZO-24/1") and held in solitary confinement – at his request, according to the Government. Following a complaint by the applicant about the conditions of his detention, an investigation found that the toilets amongst other things that the surface area of the cell was 3.7 sq. m, in breach of the standards prescribed by law. The applicant also complained to the court of first instance about the conditions of his detention in a disciplinary cell, by personal order of the prison governor, and subsequently in a cell on the "special corridor" for prisoners sentenced to death. In September 2001 the court held that there had been no justification for placing the applicant in disciplinary cells as the necessity of such measures had not been proved, and also that the law requiring officials of the prosecution service and other law-enforcement authorities to be separated from other prisoners had not been observed. The applicant was awarded 3,000 roubles (approximately 109 euros) for non-pecuniary damage. In November 1998, after the preliminary investigation had been completed, the indictment was served on the applicant, who maintained that he had not had access to the full version of the document. During the trial, witnesses were examined, including the rape victim's mother, the police officers who had received her complaint, the investigator dealing with the case, a medical expert and a friend of the victim. The applicant, the public prosecutor and the victim put questions to each of the witnesses. The applicant was convicted in 1999 and released in 2000 after being granted an amnesty.

The applicant complained about the conditions of his detention from 31 May to 16 December 1998 in SIZO-24/1. He also complained that the comments by Mr Lebed and the language used in the application and order for his dismissal had infringed his right to presumption of innocence. Lastly, he alleged that before the start of the trial he had not received the full bill of indictment with a list of the witnesses to be called.

Article 3

By placing the applicant in a cubicle measuring 3.7 sq. m, the authorities had not complied with Russian law, which required a minimum cell area of 4 sq. m per prisoner, and even less so with the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), which advocated a minimum of 7 sq. m. The Court noted that improvements to the cells, in particular the installation of a ventilation system, had been carried out six months after the applicant had left. Having regard to the overcrowded conditions in which the applicant was detained, coupled with his solitary confinement and the lack of a ventilation system, water and natural light in his cell, the Court held unanimously that during his detention in SIZO-24/1 he had been subjected to degrading treatment, in breach of Article 3.

Article 6 § 2

The Court noted that the authorities were entitled to inform the public about ongoing criminal investigations, while ensuring the circumspection necessary for the presumption of innocence to be observed and paying particular attention to their choice of words. Unlike the Government, the Court did not consider that Mr Lebed, a very well-known politician, had expressed his views on television as a private individual. His comments, including a promise to arrest the applicant, could have been construed as confirming his belief that the applicant was guilty of the alleged offence. Moreover, several days after the interviews in question, Mr Lebed had been elected governor and the applicant had been arrested and charged with the rape of a minor. It had been particularly important at that early stage of the proceedings – before the indictment – not to make any public allegations which could have given the impression that certain senior officials believed the applicant to be guilty. Given the very particular circumstances in which Mr Lebed had made the statements in question, the Court considered that they amounted to declarations by a public official which had served to encourage the public to believe the applicant guilty and prejudged the assessment of the facts by the competent judicial authority. The Court concluded by four votes to three that there had been a violation of Article 6 § 2 on that account.

The Court noted that although the assertive tone adopted by the regional prosecutor in the application for the applicant's dismissal raised some concerns, that document did not contain a finding that the applicant was guilty but instead described a "state of suspicion". The terms used – unfortunately without any qualification – in the order for the applicant's dismissal had to be seen in their specific context; their purpose had not been to declare the applicant guilty but to relieve him of his duties. They had formed part of a reasoned decision, for internal use within the prosecution service, by the Prosecutor General in his capacity as the applicant's superior and the head of the Russian Federation's prosecution system, and not by a senior official informing the public about the criminal case in question. The Court therefore held unanimously that there had been no violation of Article 6 § 2 on that account.

Article 6 §§ 1 and 3 (d)

The Court noted that even if the applicant had received the indictment without a list of the witnesses to be called, there had been nothing to prevent the applicant from seeking to have witnesses called if he thought that their testimony would be decisive. Yet he had not taken any such steps and had not explained why their evidence might be useful. After three witnesses for the defence had failed to appear at the trial, the applicant had not asked the court to order their attendance. In their absence, the judges had relied on the statements which they had given during the investigation and which the applicant had not challenged. With regard to the victim's sister and the persons present at the scene of the crime, the applicant had not asked to have them examined either. The Court could only presume that he had wished to have certain witnesses examined in order to show that the victim's mother had been pressured into lodging a complaint and that, after forging certain documents, the authorities had managed to secure his imprisonment for rape. However, those allegations had been examined at the trial and the applicant had had the opportunity to defend his position when confronted with the police officers involved and the investigator dealing with the case. Accordingly, there had been no violation of Article 6 §§ 1 and 3 (d).

Döndü Erdoğan v. Turkey (no. 32505/02) (Importance 3) – 23 March 2010 – No violation of Article 3 (substantive) – Lack of sufficient evidence to prove the alleged ill-treatment – Violation of Article 3 (procedural) – Lack of an effective investigation

Stopped in the street for an identity check in April 2001 and arrested, the applicant alleged that, while in police custody, she had been beaten with a truncheon, hosed down with cold water and banged against walls. On her release she attempted to commit suicide.

She complained about that ill-treatment, especially bearing in mind that she had been just 15 years old at the time, and that the domestic authorities had failed to carry out an effective investigation into her allegations.

The Court observed that there was no evidence in the case file, such as medical reports, corroborating the applicant's claims. The parties, moreover, made entirely conflicting submissions on the events in question without presenting satisfactory documentary evidence, which severely hampered the Court's ability to make an assessment of the facts. In these circumstances the Court cannot but conclude that there was an insufficient factual and evidentiary basis on which to find "beyond reasonable doubt" that the applicant was ill-treated in police custody. This finding moreover precludes the Court from making any assessment as to whether the State authorities could be held accountable for the applicant's subsequent suicide attempt. The Court therefore found no violation of Article 3 under its substantive limb.

The Court noted that the applicant was at no point asked to provide a statement regarding her allegations of ill-treatment during the preliminary investigation, not even after she was released from intensive care. In the absence of a satisfactory justification by the Government, the Court concluded that this omission likewise seriously prejudiced the effectiveness of the investigation. The Court therefore concluded that the domestic authorities failed to conduct an effective investigation into the applicant's allegations of ill-treatment. It held that there had been a violation of Article 3 under its procedural limb.

Özgür Uyanık v. Turkey (no. 11068/04) (Importance 3) – 23 March 2010 – Violations of Article 3 (substantive and procedural) – Ill-treatment in police custody – Lack of an effective investigation

Detained in May 1996 in connection with an investigation into an illegal organisation, the applicant alleged that he had been stripped, blindfolded, suspended from the arms, electrocuted and beaten during his police custody. He further alleged that the domestic authorities had failed to carry out an effective investigation into his allegations.

In the instant case, the Court observed that the applicant was detained in police custody for at least fourteen days. It noted that the ill-treatment complained of by the applicant consisted mainly of being blindfolded, hanged, electrocuted, stripped and beaten. In this connection, it considered that the applicant's version of events has been consistent both before the Court and the domestic authorities. As regards medical evidence, the Court noted that the applicant was not examined medically following his arrest. It further observes that the medical report drawn up at the end of his stay in police custody found that the applicant had pain and difficulty in hearing in his right ear and numbness in his left arm. A second report issued the very same day established that the applicant's left arm presented symptoms of brachial plexitis (nerve damage). The findings regarding the applicant's left arm, in the Court's opinion supports the applicant's allegations that he suffered damage to this limb. In this connection the Court observed that the Government failed to provide an explanation as to the manner in which this injury was sustained by the applicant. Considering the circumstances of the case as a whole, and the absence of a plausible explanation from the Government as to the cause of this injury to the applicant, who was throughout this whole time under the control of the State authorities, the Court found that it was the result of treatment for which the Government bore responsibility. The Court considered that there was no serious attempt on the part of the public prosecutor to elucidate the identities of the police officers involved, who are referred to in his decision only as “police officers at the Anti-Terrorist Branch of the Istanbul Security Headquarters”. In the course of his investigation the prosecutor appears to have failed to examine any police officers or potential eyewitnesses, such as other persons held in the same detention unit as the applicant. There had therefore been both a substantive and a procedural violation of Article 3.

Shishkovi v. Bulgaria (no. 17322/04) (Importance 3), Angel Vaskov Angelov v. Bulgaria (no. 34805/02) (Importance 3) – 25 March 2010 – Violations of Article 3 (substantive and procedural) – Ill-treatment by the police – Lack of an effective investigation

All three applicants brought proceedings alleging that they had been subjected to violence at the hands of the police. Mr Angelov, who had been arrested and taken into police custody in 1998, claimed that he had confessed to the theft of which he was suspected only after being beaten by police officers. A medical report dated the day of his release recorded injuries resulting from blows with a blunt instrument, which could have been administered in the preceding 48 hours. Svetlyu and Slaveyko Shishkovi alleged that they had been beaten in 1999 by men in police uniform who had attacked them without warning while they were boating by the shores of a lake and had fired shots at their boat. Criminal proceedings were instituted against seven police officers accused of having ill-treated Mr Shishkov and his son. In 2004, on the basis of a new provision of the Code of Criminal Procedure, the accused requested that their case be brought to court or terminated. The Military Regional Court terminated the proceedings after finding that there had been procedural shortcomings, in particular as it had not been established whether the accused had been armed with sub-machine or automatic guns, and some of the signatures were missing on various documents. Mr Angelov, for his part, made several complaints concerning the failure of the Varna military prosecutor’s office to take action in his case. In 2003 the prosecutor had refused to institute criminal proceedings against the police officers concerned, on the basis of a police report which stated that no physical force had been used against the applicant. Mr Angelov appealed against that decision and an additional investigation was ordered in May 2003. The police officers claimed that they had been previously unaware that Mr Angelov had been beaten and had not observed any traces of assault on him at the police station. On the basis of this testimony the military prosecutor decided in August 2004 not to open criminal proceedings against the two officers in question and found that there was no case to answer.

The applicants alleged that they had been subjected to police brutality and that the authorities had not conducted an effective investigation into the events in question.

The Court noted that the Bulgarian authorities had not disputed the fact that the applicants in the Shishkovi case had been beaten by police officers. The Court reiterated that the prohibition of inhuman and degrading treatment was absolute and that in a democratic society the authorities could not respond to breaches of the law by assaulting citizens. In the case of Mr Angelov, since the criminal investigation had been closed without the case going to court, the Court had to make its own assessment of the facts. The findings of the medical report compiled on the day of Mr Angelov's release had been backed up by the medical expert report ordered by the first-instance court. This evidence served to corroborate the applicant's account, particularly since the Government had not furnished any satisfactory explanation as to the origin of his injuries. The Court therefore concluded that the three applicants had been subjected to inhuman and degrading treatment at the hands of the police, in breach of Article 3. In the Angelov case, the Court observed the authorities' inaction, noting that the military prosecutor's office had not commenced its investigation until nearly four and a half years after the events, despite repeated requests from the applicant and although the authorities had had a medical expert report suggesting that the applicant had been ill-treated by the police. The Court also noted the slowness of the investigation, with some witnesses being questioned six years after the events. The military prosecutor's decision not to institute criminal proceedings against the police officers had also been based on questionable grounds, namely the statements of the officers themselves and of witnesses who claimed not to have seen the applicant's injuries. The decision not to prosecute had not offered any explanation for those injuries, despite the fact that they had been recorded in the expert medical report. In Shishkovi, the Court took the view that the authorities had displayed excessive formalism, terminating the proceedings against the persons responsible on account of "material procedural breaches" which were in fact of little consequence for the proceedings, like the failure to establish whether the accused had been armed with sub-machine or automatic guns and alleged defects in the taking of some of the evidence. The Court considered that these did not amount to "material breaches" within the meaning of the relevant domestic legislation. In considering them as such and terminating the proceedings, the authorities had not brought the persons responsible to trial which had secured their impunity. The Court concluded that none of the three applicants had had the benefit of an effective and thorough investigation into their allegations of ill-treatment, in breach of Article 3.

- **Right to liberty and security**

Ümit Isik v. Turkey (no. 10317/03) (Importance 3) – 16 March 2010 – Violation of Article 5 § 3 – Excessive length of pre-trial detention – Violation of Article 6 § 1 – Excessive length of proceedings

The applicant was being held in Batman Prison at the time of his application to the Court. He suffers from a severe form of epilepsy. In June 1994 he was arrested and taken into police custody in connection with an investigation into the activities of the PKK (the Workers' Party of Kurdistan, an illegal organisation). When subsequently questioned, he indicated the site of five crimes committed on behalf of the PKK and acknowledged his involvement in several of the party's operations. After the questioning sessions, a forensic medical report was drawn up; it did not mention any signs of violence on his body. In July 1994, however, when interviewed by the Tatvan public prosecutor, Mr Işık retracted his statements, alleging that they had been obtained through torture. He repeated those allegations when interviewed later that day by the Tatvan magistrate, who placed him in pre-trial detention. In February 1998 the applicant was found guilty of attempting to undermine the integrity of national territory for separatist purposes and was sentenced to death by the Fourth Division of the Diyarbakır State Security Court; his sentence was later commuted to life imprisonment. The judges based their verdict on evidence including the applicant's initial statements, without addressing his claims (which he raised again during the trial) that they had been obtained through torture. In March 1999 the Court of Cassation quashed the judgment, finding that the investigation had been incomplete and the reasoning insufficient. The Third Division of the State Security Court, to which the case was remitted, again sentenced the applicant to life imprisonment. On 13 June 2001 that judgment was itself quashed by the Court of Cassation, which, in view of the applicant's severe epilepsy, asked for the issue of whether he could be held criminally responsible to be determined before the case was reheard. On the basis of expert medical reports, the Assize Court ordered the applicant's release on medical grounds in December 2004. His release had previously been refused several times in view of the "alleged offence and the state of the evidence". The proceedings are still pending before the Sixth Division of the Diyarbakır Assize Court (to which the case was referred following the abolition of the State security courts).

It appears from the substantial medical evidence in the file that during his detention the applicant received regular medical treatment on the prison premises and was admitted to hospital on several occasions for neurological examinations.

The applicant complained that he had been tortured in prison and that his detention had continued despite his illness and the lack of appropriate treatment. He complained that his pre-trial detention had been based on a confession obtained through torture and had lasted an excessively long time. Lastly, he complained that his trial had been unfair and that the length of the proceedings against him had been excessive.

The Court declared inadmissible as manifestly ill-founded or for no respect of the six-month requirement the applicant's complaint of torture and the lack of appropriate medical treatment.

Complaint concerning the allegedly excessive length of pre-trial detention (Article 5 § 3)

The applicant's pre-trial detention had lasted almost 8 years and 10 months. The Government's argument that there had been a risk that the applicant might evade trial or destroy the evidence against him if released was insufficient to justify such a lengthy period of detention. Indeed, the stereotyped wording used repeatedly by the trial courts to refuse the applicant's release had not referred to any such risks. The Court therefore found a violation of Article 5 § 3.

Complaint concerning the allegedly excessive length of the criminal proceedings (Article 6 § 1)

The criminal proceedings against the applicant had already lasted 15 years, 8 months and 15 days and were still pending. On the face of it, such a period appeared excessive. Admittedly, as the Government argued, some delays could have been justified by the complexity of the case and the concern to ensure the proper administration of justice. However, those imperatives had prevailed to an undue extent over the requirement of expedition, which had been particularly pressing as the applicant had been deprived of his liberty until 16 December 2004. The Court therefore found a violation of Article 6 § 1 on account of the excessive length of the proceedings.

- **Right to a fair trial**

Paraskeva Todorova v. Bulgaria (no. 37193/07) (Importance 3) – 25 March 2010 – Violation of Article 14 in conjunction with Article 6 § 1 – Discriminatory nature of the domestic courts' reasoning in considering the suspension of the applicant's prison sentence on account of her Roma origin

The applicant belongs to the Roma minority. In 2005, criminal proceedings were brought against the applicant for fraud. The prosecution recommended that the applicant be given a suspended sentence in view of several extenuating circumstances and her state of health. In May 2006 the Plovdiv District Court sentenced the applicant to three years' imprisonment. The judgment mentioned her ethnic origin among the personal details used to identify her. As to the execution of her sentence, the court refused to suspend it, in particular on the ground that there was "an impression of impunity, especially among members of minority groups, who consider that a suspended sentence is not a sentence". The applicant brought a complaint alleging discrimination before the higher courts, which did not respond to her allegations in that regard. In October 2006 the Plovdiv Regional Court upheld the first-instance judgment, stating that it "subscribed fully" to the latter's conclusions regarding the refusal to suspend the sentence. The Supreme Court of Cassation upheld the sentence and the refusal to suspend it.

The applicant complained that she had been discriminated against on the ground of her membership to the Roma minority as a result of the reasons given for the domestic courts' refusal to suspend her prison sentence. She further maintained that the Bulgarian courts had not been impartial as they had taken into account her ethnic origin when determining her sentence.

Allegedly discriminatory nature of the courts' reasons

The Court pointed to its case-law, according to which, where the reasoning of the domestic courts introduced a "difference in treatment" based solely on, for instance, ethnic origin, it was incumbent upon the respondent State to justify that difference in treatment. It would otherwise be held in breach of Articles 14 and 6 § 1. In the case of the applicant, the Court was of the view that she had indeed been subjected to a "difference in treatment". The first-instance judgment had made mention at the outset of her ethnic origin. The court's remark concerning the existence of an impression of impunity (which was directed at minority groups and hence at the applicant herself), taken together with her ethnic and cultural origin, had been liable to engender a sense that the court was seeking to impose a sentence that would serve as an example to the Roma community. The impression that there had been a "difference in treatment" to the detriment of the applicant was further reinforced by the district court's failure to reply to the prosecutor's argument concerning the applicant's health (on the basis of which he requested a suspended sentence) and the failure of the higher courts to respond to the

allegations of discrimination. Before the Court, the Bulgarian authorities had simply endeavoured to prove that they had not subjected the applicant to any "difference in treatment", without adducing any evidence that might justify the difference in treatment observed in this case. The Court was of the view that, in any event, that difference could not be justified on objective grounds. It stressed the seriousness of the situation complained of by the applicant given that, in the multicultural societies of present-day Europe, stamping out racism had become a priority goal for all the Contracting States. It further observed that the principle of equality of citizens before the law was enshrined in the Bulgarian Constitution and that the Code of Criminal Procedure required the courts to apply the criminal law uniformly in respect of all citizens. The Court could not but observe that the reasons given by the courts in the present case appeared to be at variance with those principles. The Court held that there had been a violation of Article 14 taken in conjunction with Article 6 § 1.

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

A.D. and O.D. v. United Kingdom (no. 28680/06) (Importance 2) – 16 March 2010 – Violation of Article 8 – Several fundamental errors committed by local authority in assessing the risk posed to the second applicant, a one-year old child, by his parents and his placement in foster care for a year – Violation of Article 13 (concerning the first applicant) – Lack of an effective remedy – No violation of Article 13 (concerning the second applicant) – No evidence to show that the second applicant had suffered justiciable damage

The applicants, A.D. and her son O.D., are two British nationals. During medical examinations a few months after O.D.'s birth, physicians noticed several fractures to his ribs. Given the nature of the fractures and the lack of any clear explanation for them, a paediatrician concluded that they were sustained "non-accidentally". The paediatrician dismissed the possibility, raised by A.D., that O.D. might have Osteogenesis Imperfecta (brittle bone disease). The local authority placed O.D. on a register for children considered to be "at risk". The local authority applied to the county court for an interim care order, granted in May 1997. The same day A.D., her partner and O.D. were required to relocate to a family resource centre so that an assessment could be made of this risk posed to O.D. The instructions given to the centre were ambiguous, and during the family's 12-week stay a parenting assessment was conducted instead of a risk assessment. In the absence of a risk assessment, the local authority believed that O.D. could not safely be placed with his parents. In August 1997 it obtained a second interim care order. O.D. was placed with foster parents while a risk assessment was carried out by the National Society for the Prevention of Cruelty to Children (NSPCC). While O.D. was in foster care, A.D. and her partner had daily contact with him. In October the NSPCC informed the local authority that O.D. should be returned to his parents without delay. In November, while still in foster care, O.D. fell and was taken to hospital. An x-ray showed his bones to be thin and osteopenic. In November 1997 the NSPCC submitted their risk assessment, recommending that O.D. be returned quickly to his parents' care, with a short period of prior increased contact. In December O.D. was returned to his parents' care. While subsequent examinations by several physicians led to differing assessments, a senior expert took the view that O.D. had brittle bone disease and that his fractures might have been caused by normal handling. Following a report prepared jointly by several physicians, the interim care order was discharged in July 1998. A.D. subsequently complained to the local authority about the handling of the case and, following an investigation which found some of the authority's practices to have been deficient, brought an action for damages against the authority on behalf of herself and O.D. The claims were rejected and the applicants' appeal against this decision was dismissed in January 2006. The court of appeal held that A.D. had not been owed a duty of care by the local authority and that there was no evidence that O.D. had suffered any "justiciable" damage.

The applicants complained that the decision to take O.D. into local authority care had violated their rights under Article 8 and that they had no effective remedy for their complaints, contrary to Article 13.

The Court first reiterated that mistaken assessments by professionals did not automatically render childcare measures incompatible with the requirements of Article 8. It also observed that brittle bone disease was difficult to diagnose in small children and that although experts later found that O.D. had suffered from the disease from birth, it did not follow that the medical evidence relied on at an earlier stage had been inadequate, confused or inconclusive. The Court therefore considered that the authorities could not be blamed for not reaching an earlier diagnosis of the disease. The Court was not satisfied, however, that it had been necessary to relocate the family far from their home for the purpose of conducting a risk assessment. Moreover, the Court noted that there had been a number of fundamental errors by the local authority in handling the case. It was evident and undisputed by the Government that the failure to conduct a risk assessment during the applicants' stay in the family centre was a relevant factor in the decision to place O.D. in foster care. When finally produced, the risk assessment report recommended a speedy return of the child to his parents. There was therefore a real chance that, had the proper assessment been conducted earlier, O.D. might never have been

placed in foster care. Furthermore, the Court was not satisfied that less intrusive measures had not been available for conducting a risk assessment, such as placement with relatives, and it found that the local authority had dismissed these possibilities too quickly. Finally, the Court found that the delay in returning O.D. to his parents after the NSPCC's recommendation had not been reasonable. The Court therefore unanimously concluded that, while there had been sufficient reasons for the authorities to take initial protective measures, the subsequent interference with the applicants' right to respect for their family life had not been proportionate, in violation of Article 8.

With regard to the complaints under Article 13, the Court noted that A.D. was in a comparable position to the applicants in another case, in which the Court had held that prior to the introduction of the Human Rights Act in the United Kingdom in 1998 there had been no effective means of claiming damages for negligence by the local authority and that this had amounted to a violation of Article 13 (See *R.K. and A.K. v. the United Kingdom*). In the present case, there were no reasons to depart from those findings. The Court thus unanimously found that there had been a violation of A.D.'s rights under Article 13. O.D. had been in a different situation, however. Given that the local authority had a duty of care for him, he had been entitled to bring a claim in negligence against the authority, and he had done so. The right of bringing such a claim and to appeal against an unfavourable decision normally constituted an effective domestic remedy, even if it does not always produce the outcome that the applicant hopes for. In the present case the second applicant's claim was not successful because there was no evidence to suggest that he suffered from a recognised psychiatric disorder which had been caused by the period of separation from his parents and he could not, therefore, show that he had suffered justiciable damage. By definition, the domestic courts were not in a position to assess non-justiciable damage and the Court considers that it is reasonable for claims to be rejected on that ground. The Court therefore finds that there had been no violation of the second applicant's rights under Article 13 of the Convention.

M.A.K. and R.K. v. the United Kingdom (no. 45901/05 and 40146/06) (Importance 2) – 23 March 2010 – Violation of Article 8 – Unjustified decision of hospital paediatrician to take a blood test and intimate photographs of the applicants' nine year old girl, against the express wishes of both her parents – Violation of Article 13 – Lack of an effective remedy

On two occasions, in September 1997 and February 1998, M.A.K. took his daughter to their family doctor of concerns about what appeared to be bruising on her legs. They followed it up by a visit to a paediatrician in a public hospital who had blood samples and pictures of the girl taken in the absence of either of the parents and despite the father's indication that any tests should be done in the mother's presence or with her explicit consent. The paediatrician concluded that she had been sexually abused and informed the social workers. When the girl's parents attempted to visit their daughter in hospital later, a nurse prevented it. The following day, hospital staff were informed that there could be no restrictions on visitors. The father was permitted to visit his daughter, although all visits were supervised. On the day after admitting the girl into hospital, her mother told the paediatrician of an incident when her daughter had complained that she hurt herself when riding her bike. The doctor ignored that information. A few days later, after noticing marks on the girl's hands, her mother arranged for her to be seen by a dermatologist. Following this, R.K. was diagnosed with a rare skin disease. The paediatrician wrote a letter stating that, as there was insufficient evidence to consider that the girl had been abused, her father should no longer be considered to be implicated in the sexual abuse of his daughter. M.A.K. and R.K. complained before the NHS Trust. An Independent Panel set up by the Trust found, that while the paediatrician was not to be blamed for misdiagnosing the bruises, she should have sought a dermatologist's opinion as a matter of urgency and the girl should have been interviewed about the marks on her skin. The applicants then brought proceedings for negligence against the local authority and hospital trust claiming compensation for personal injury and financial loss. Both M.A.K. and R.K. were legally aided during the first instance proceedings, but R.K. had her legal aid withdrawn during the subsequent appeals. The final domestic judicial instance, the House of Lords, found against the applicants.

M.A.K. alleged that he suffered distress and humiliation as a result of the accusations against him. The applicants also complained, under Article 8, about the visiting restrictions during the ten days that R.K. was in hospital and that a blood sample and photographs were taken without parental consent. R.K. further complained that legal aid was withdrawn from her during the appeal proceedings against the local authority and hospital for compensation. Lastly, M.A.K. complained that he could not claim compensation for damage caused by the local authority's handling of his daughter's case on account of the domestic courts' finding that there was no common law duty of care owed to parents.

Article 8

The Court noted that the authorities, both medical and social, had duties to protect children and could not be held liable every time genuine and reasonably held concerns about the safety of children

vis-à-vis members of their family were proved, retrospectively, to have been misguided. In view of the available evidence in this case, it had been reasonable for the paediatrician to suspect abuse and consequently to contact social services. The Court found that while it had been justified for the authorities to suspect abuse at the time of R.K.'s admission in hospital, the delay in consulting a dermatologist had undermined their efforts to protect R.K. from harm. In addition, domestic law and practice clearly required the consent of parents or those exercising parental responsibility before any medical intervention could take place. The Court found no justification for the decision to take a blood test and intimate photographs of a nine-year old girl, against the express wishes of both her parents, while she had been alone in the hospital. The Court held that there had been a violation of the applicants' right to respect for their family life under Article 8.

Article 13

M.A.K. should have had available means of claiming that the local authority had been responsible for any damage which he had suffered and of obtaining compensation for that damage. As such redress had not been available at the relevant time, the Court held that there had been a violation of Article 13.

- **Freedom of expression**

Görkan v. Turkey (no. 13002/05) (Importance 2) – 16 March 2010 – Violation of Article 10 – Unjustified interference with the applicant's freedom to impart information on account of the unjustified identity check at the police station of a distributor of a legally published daily newspaper

In June 2004, while selling copies of the daily newspaper *Evrensel* in a café, the applicant was asked for his identity papers by the police. According to the applicant, after checking with the police headquarters that he was not on the wanted persons list and that no order had been made for the seizure of the newspaper in question, the police officers nevertheless confiscated his ten copies of *Evrensel*. According to the police, only one copy of the newspaper was taken and the superintendent invited the applicant to the police station for inquiries and an interview, having previously been alerted by telephone that the newspaper was being sold in the café and fearing that this might cause an incident. The applicant was escorted to the police station. He subsequently lodged a criminal complaint, alleging that his detention in police custody for nearly three hours had been unlawful and arbitrary. The superintendent stated that the applicant had not been held in police custody and had not offered any resistance. In September 2004 the public prosecutor discontinued the proceedings on the ground that the essential elements of the alleged offence had not been made out, noting that the applicant had complied with the invitation to an interview at the police station and had been released once the checks had been completed. An appeal by the applicant was dismissed.

The applicant complained that he had been unable to distribute the daily newspaper he was responsible for selling because he had been deprived of his liberty.

The Court noted that *Evrensel* was a newspaper which was published, distributed and sold legally and that the parties' versions of events differed. The Court considered that the check which the police had wished to carry out on the applicant at the police station had not been justified, since the necessity of performing such checks for distributors of all legally published newspapers was neither realistic nor established. The Government's argument that there had been a suspicion of an offence, in view of the many previous occasions on which the distribution of *Evrensel* had been prohibited, thus justifying an unlimited police check, was clearly incompatible with the right to freedom to impart information. Furthermore, the "invitation to the police station", which could be regarded as a restriction of liberty on account of its coercive nature and had not been based on any plausible or reasonable grounds, had likewise constituted interference with the applicant's freedom to impart information. The Court reiterated that even a slight interference with freedom of expression could create the risk of a chilling effect on the exercise of that freedom. Since the interference had not been justified by any legitimate aims or any pressing social need and had therefore not been necessary in a democratic society, the Court held by five votes to two that there had been a violation of Article 10. The Court dismissed as ill-founded the applicant's complaint that the Turkish courts were neither independent nor impartial, finding that complaint to be general and imprecise. Judges Jočienė and Karakaş expressed a separate opinion.

Papaianopol v. Romania (no. 17590/02) (Importance 3) – 16 March 2010 – Violation of Article 10 – Infringement of a journalist and trade-union leader's freedom of expression on account of an order to pay damages to a school's headmaster for publishing a defamatory article

In addition to being the leader of a teachers' union, the applicant worked as a journalist for *Şcoala românească*, a national publication specialising in the teaching profession. In March 1999 he

published an article entitled “Terror at D. High School in Câmpulung Muscel” about the school’s headmaster. Based mainly on complaints by teachers, it portrayed the headmaster as using dictatorial methods in his school, taking measures in his own interest, obstructing reforms, using threats and physical violence, etc. It explained that he had been assigned to the school as a teacher by the communist regime before 1989 and that he had been promoted to headmaster in 1989 after joining the majority political party. The article also criticised the Schools Inspectorate for not taking firm action against him. Following that article, in May 1999 the headmaster filed a criminal complaint for defamation against Mr Papaianopol and joining the proceedings as a civil party he claimed 50,000,000 old Romanian lei (ROL) for the non-pecuniary damage caused to his reputation. In his defence Mr Papaianopol pointed out that the article’s content was based on numerous statements and letters from teachers (some of whom were called as witnesses at the trial) that he had checked and was willing to produce in the proceedings. In March 2000 the Câmpulung District Court acquitted the applicant of criminal libel and dismissed the compensation claim. The court had particular regard to the fact that the limits of acceptable criticism were broader as regards a person holding a public office and that Mr Papaianopol had simply reported complaints by teachers, duly indicating his source. On appeal, in a final judgment in September 2000, the Argeş County Court, accepting that the applicant had reproduced information from the teachers’ statements, upheld his acquittal of the libel charge. Finding, however, that the article had nevertheless caused non-pecuniary damage to the headmaster, the court awarded him ROL 15,000,000 in damages. The payment order was enforced against Mr Papaianopol in 2001.

Mr Papaianopol alleged that the award of damages against him had breached his freedom of expression as journalist and trade-union leader.

The Court noted that for a restriction of freedom of expression to comply with the Convention it had to be prescribed by law and to pursue a legitimate aim such as the protection of the reputation or rights of others. It was not in dispute between the parties that those two conditions had been fulfilled in the present case. Such restriction also had to be based on relevant and sufficient reasons and to be proportionate to the aim pursued. The Court first observed that the necessity of the restriction on the applicant’s freedom of expression had not been established convincingly: the appellate court had only justified its finding against him by the non-pecuniary damage that the headmaster claimed to have sustained on account of the publication at issue (without indicating how Mr Papaianopol had actually committed a breach of duty as a journalist). Such reasoning would be tantamount to saying that the courts could find against any article capable of triggering the slightest concern and that would be contrary to the role of the press in a democratic society to alert public opinion when alleged shortcomings in public institutions came to its attention. The Court then reiterated that freedom of expression entailed duties and responsibilities and observed that in the present case Mr Papaianopol, whose article had directly impugned an individual giving his name and position, had a duty to ensure that his article had a sufficient factual basis. This requirement had clearly been met. The Court further noted that the applicant had participated actively in his trial and had constantly offered to prove the veracity of his comments. His conduct, as a whole, showed that he had acted in good faith, being convinced that he was informing the public about a debate of general interest. Lastly, the Court found that the amount of the award against Mr Papaianopol had been relatively high. To impose such penalties on investigative journalists without showing that they had breached their duties or responsibilities was likely to dissuade them from expressing themselves on matters of public interest such as alleged malpractice in the running of public institutions. The Court thus found that there had been a violation of Article 10.

- **Protection of property**

Di Belmonte v. Italy (no. 72638/01) (Importance 2) – 16 March 2010 – Violation of Article 1 of Protocol No. 1 – Domestic authorities’ delay in executing a judgment awarding the applicant compensation for expropriation had had a decisive impact on the application of a new tax system on the applicant, since that compensation would not have been subject to the new tax legislation if the judgment had been executed in good time

The applicant died on 27 June 2004 and his sole heir, his cousin Francesco Bruno di Belmonte, pursued the proceedings before the Court. The applicant owned a plot of building land in Ispica. In 1983 the district council expropriated more than 50,000 sq. m of the land with a view to building low-rent housing on it. The applicant brought proceedings against the district council, seeking compensation for the expropriation. In a judgment in February 1990, which became final in May 1991, the Catania Court of Appeal held that he was entitled to compensation corresponding to the market value of the land, together with interest for late payment. It awarded him approximately 1.85 million euros (EUR) for the land, plus statutory interest and further compensation to offset the effects of inflation. In June 1991 the applicant formally requested payment of the sums due, but to no avail. One

month later he applied to the Sicily Regional Administrative Court (RAC) for the enforcement of the judgment. In May 1992 he received a first instalment of about EUR 795,500. Not until January 1995, after a series of applications to the RAC, did he receive the outstanding amount of approximately EUR 2.63 million. However, that amount was reduced by about EUR 526,000 by virtue of a law of 30 December 1991 which provided that tax at a rate of 20% was to be deducted at source from compensation for expropriation. Prior to the introduction of the law, compensation for expropriation had not been taxable at source. The applicant applied to the tax authorities for reimbursement of the tax in question, as the expropriation had been carried out before the new tax law had come into force. After his application was rejected, he appealed and his claim was upheld, first in May 1998 by the Provincial Tax Commission and subsequently in December 1999 by the Regional Tax Commission. The Court of Cassation, however, found in favour of the authorities, holding that the 1991 law had been correctly applied and that the decisive factor for its applicability was the time at which the compensation had been paid and not the time at which ownership of the land had been transferred.

The applicant complained of the retrospective application of the law by which the compensation payable to him for the expropriation was subject to tax.

The Court reiterated that States had a wide discretion in determining the types of taxes or contributions to be levied. They alone were competent to assess the political, economic and social issues to be taken into account in this regard. The 1991 tax law to which the present case related fell within the State's margin of appreciation in such matters.

The 1991 law had come into force between the final assessment of the compensation payable to Mr di Belmonte for the expropriation of his land and the payment of the sums due. The Court observed, however, that the possibility of retrospective application of the law would not in itself have raised an issue under the Convention, since Article 1 of Protocol No. 1 did not prohibit as such the retrospective application of a law on taxation. The question arising was whether, in the circumstances of the case, the application of the 1991 law had imposed an excessive burden on the applicant. In that connection, the Court noted that the law had come into force more than seven months after the final assessment, by the Catania Court of Appeal, of the amount of compensation for the expropriation. Accordingly, the delay by the authorities in executing that judgment had had a decisive impact on the application of the new tax system, since the compensation awarded to the applicant would not have been subject to the tax provided for by the new tax legislation if the judgment had been executed properly and punctually. The Court concluded unanimously that there had been a violation of Article 1 of Protocol No. 1. The Court lastly reiterated that a judgment in which it found a violation imposed on the respondent State a legal obligation to put an end to the violation and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the violation. In the present case, the Court had sufficient evidence to make its own assessment of the financial losses sustained by the applicant as a result of the violation of the Convention. Judge Sajó expressed a concurring opinion.

2. Other judgments issued in the period under observation

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

- Press release by the Registrar concerning the Chamber judgments issued on 16 Mar. 2010: here
- Press release by the Registrar concerning the Chamber judgments issued on 18 Mar. 2010: here
- Press release by the Registrar concerning the Chamber judgments issued on 23 Mar. 2010: here
- Press release by the Registrar concerning the Chamber judgments issued on 25 Mar. 2010: here

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

State	Date	Case Title and Importance of the case	Conclusion	Key Words	Link to the case
Albania	23 Mar. 2010	Mullai and Others (no. 9074/07) Imp. 3	Violation of Article 6 § 1 (fairness) Violation of Article 1 of Protocol No. 1	Breach of the principle of legal certainty and of the applicants' right to peaceful enjoyment of possessions on account of the lack of consistent reasoning in the	Link

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

				domestic courts' decisions about the lawfulness of a building permit	
Armenia	16 Mar. 2010	Mamikonyan (no. 25083/05) Imp. 2	Violation of Article 6 § 1 (fairness)	Disproportionate restriction of the applicant's right of access to a court on account of the refusal by the Court of Cassation to examine the applicant's additional submissions	Link
Austria	18 Mar. 2010	Krumpholz (no. 13201/05) Imp. 2	Violation of Article 6 §§ 1 and 2 (fairness)	Infringement of the applicant's right to be presumed innocent on account of his conviction for speeding after refusing to disclose the identity of the person driving the car at the material time	Link
Bulgaria	18 Mar. 2010	Business Support Centre (no. 6689/03) Imp. 3	Violation of Article 1 of Protocol No. 1	The domestic authorities had deprived the applicant company of the right to deduct its VAT it had paid on a supply only because the supplier had failed to comply with its own VAT reporting and payment obligations, in spite of its full compliance with its statutory VAT reporting obligations	Link
Bulgaria	25 Mar. 2010	Popnikolov (no. 30388/02) Imp. 2	Violation of Article 6 § 1 (fairness) Violation of Article 1 of Protocol No. 1	Domestic authorities' failure to enforce a final court judgment in the applicant's favour Deprivation of the legitimate expectation of acquiring a facility under the preferential privatisation procedure for lessees of State-owned properties	Link
Germany	25 Mar. 2010	Mutlag (no. 40601/05) Imp. 3	No violation of Article 8	The applicant's expulsion order was justified by the seriousness of the offences committed violently and repeatedly by the applicant	Link
Germany	25 Mar. 2010	Wetjen (no. 30175/07) Imp. 3	Violation of Article 6 § 1 (length) Violation of Article 13	Excessive length of criminal proceedings Lack of an effective remedy	Link
Italy	23 Mar. 2010	Calabrò (no. 17426/02) Imp. 2	No violation of Article 6 § 1	The fact that Court of Cassation had not taken into account the submissions the applicant filed to challenge an application by State Counsel did not amount to a violation of his rights under Art. 6 § 1	Link
Romania	16 Mar. 2010	Marariu (no. 23957/03) Imp. 2	Violation of Article 6 § 1 (fairness)	Domestic authorities' refusal to examine the applicant's request for reimbursement of court fees in connection with proceedings brought against him by a tenants' association for non-payment of additional rental fees	Link
Russia	18 Mar. 2010	SPK Dimskiy (no. 27191/02) Imp. 3 Tronin (no. 24461/02) Imp. 3	Violation of Article 1 of Protocol No. 1 No violation of Article 6 (1st case)	Domestic authorities' continued failure to legislate on the procedure for redeeming the applicants' *Urozhay-90* bonds introduced by the Government in the 1990s to encourage agricultural workers to sell produce to the State in exchange for the right to priority purchasing of consumer goods in high demand at the time The applicant had been fully aware of the new hearing date but had not appeared at court	Link Link
"the former Yugoslav Republic of Macedonia"	25 Mar. 2010	Mitreski (no. 11621/09) Imp. 3	Two violations of Article 5 § 4	Domestic authorities' failure to serve on the applicant the panel's decision which quashed the decision ordering the applicant's house arrest and replacing it with detention in prison; hindrance to the applicant's right to present his	Link

				arguments orally before the panel	
Turkey	16 Mar. 2010	Yiğitdoğan (no. 20827/08) Imp. 2	Violation of Article 5 §§ 3 and 4	Excessive length of pre-trial detention (nine years and one month) and lack of an effective remedy in that connection	Link
Turkey	23 Mar. 2010	Hakan Duman (no. 28439/03) Imp. 2	Violation of Article 6 § 1 (fairness)	The applicant's conviction on the basis of statements obtained from him in the absence of a lawyer; failure to provide the applicant with the written opinion of the principal public prosecutor at the Court of Cassation	Link
Turkey	23 Mar. 2010	Orhan Çaçan (no. 26437/04) Imp. 2	Violation of Article 6 §§ 1 and 3 (d) (fairness)	Domestic court's failure to re-examine a witness whose testimony was crucial to the applicant's conviction despite the fact that he had changed his version of the facts in the course of the proceedings	Link
Turkey	23 Mar. 2010	S.S. Göller Bölgesi Konut Yapı Koop (no. 35802/02) Imp. 3	Violation of Article 1 of Protocol No. 1	Deprivation of property and total lack of compensation	Link
Turkey	23 Mar. 2010	Süleyman Baba (no. 2150/05) Imp. 3	Violation of Article 1 of Protocol No. 1	Idem.	Link

3. Repetitive cases

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

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

State	Date	Case Title	Conclusion	Key words
Portugal	16 Mar. 2010	Companhia Agrícola das Polvorosas S.A. (no. 12883/06) link	Violation of Art. 1 of Prot. 1	Delay in calculating and paying the compensation awarded to the applicant company for expropriation by the State
Romania	16 Mar. 2010	Pavel (no. 4503/06) link Copaci (no. 6946/03) link	Violation of Art. 6 § 1 Violation of Art. 1 of Prot. 1	Domestic authorities' failure to enforce final judgments in the applicants' favour
Romania	16 Mar. 2010	Sarchizian (no. 3439/07) link	Violation of Art. 6 § 1	Idem.
Romania	18 Mar. 2010	Geta Stanciu and Others (no. 29755/06) link Barbu (no. 14332/03) link Tomescu (no. 35999/07) link	Violation of Art. 1 of Prot. 1 Violation of Art. 6 § 1 (fairness)	Domestic authorities' failure to enforce final judgments in the applicants' favour
Romania	18 Mar.	I.D. (no. 3271/04)	Two violations of Art. 6 § 1 (fairness and length)	Domestic authorities' failure to enforce final judgments in the applicant's favour and

	2010	link		excessive length of proceedings
Romania	18 Mar. 2010	Popa and Alecsandru (no. 2617/04) link	Violation of Art. 1 of Prot. 1	Lengthy non-enforcement of final judgments in the applicants' favour concerning one plot of land and non-enforcement of a final judgment in the applicants' favour concerning a second plot of land
Romania	18 Mar. 2010	SC Vălie Prod SRL (no. 23507/04) link	Violation of Art. 6 § 1	Quashing of a final decision in the applicant company's favour by means of an extraordinary appeal
Turkey	16 Mar. 2010	Erkmen and Others (no. 6950/05) link	Violation of Art. 1 of Prot. 1	Deprivation of property and total lack of compensation
Turkey		Arif Erdem (no. 37171/04) link	Violation of Art. 1 of Prot. 1	Idem.

4. Length of proceedings cases

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

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

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

State	**Date**	**Case Title**	**Link to the judgment**
Bulgaria	18 Mar. 2010	Maria Ivanova (no. 10905/04)	Link
Germany	25 Mar. 2010	Petermann (no. 901/05)	Link
Germany	25 Mar. 2010	Reinhard (no. 485/09)	Link
Greece	18 Mar. 2010	Kamilleri (no. 9842/08)	Link
Greece	18 Mar. 2010	Nikolaos Kopsidis (no. 2920/08)	Link
Italy	16 Mar. 2010	Atzei (no. 11978/03)	Link
Italy	16 Mar. 2010	Briganti and Canella (nos. 32860/02 and 32917/02)	Link
Italy	16 Mar. 2010	Landino (no. 11213/04)	Link
Italy	16 Mar. 2010	Marzola Centri di Fisiokinesiterapia S.A.S. (no 32810/02)	Link
Italy	16 Mar. 2010	Natale (no. 25872/02)	Link
Italy	16 Mar. 2010	Sanchirico and Lamorte (nos. 11013/04 and 11080/04)	Link
Italy	16 Mar. 2010	Volta and Others (no. 43674/02)	Link
"the former Yugoslav Republic of Macedonia"	25 Mar. 2010	Jovanovski (no. 40233/03)	Link
Turkey	23 Mar. 2010	Bostan (no. 43945/04)	Link
Turkey	23 Mar. 2010	Merter and Others (no. 2249/03)	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 22 February 2010 to 7 March 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***
Belgium	02 Mar. 2010	Bouglame (no 16147/08) link	Alleged violation of Art. 6 § 3 c) (hindrance to the applicant's right to legal assistance in police custody)	Inadmissible as manifestly ill-founded (the lack of legal assistance in police custody did not breach the applicant's right to a fair hearing)
Bulgaria	23 Feb. 2010	Finger (no 37346/05) link	Alleged violation of Art. 6 § 1 (excessive length and unfairness of proceedings), Art. 1 of Prot. 1 (negative effect on the peaceful enjoyment and use of possessions due to the excessive length of proceedings), Art. 13 (lack of an effective remedy in respect of the length of proceedings and deprivation of property)	Partly adjourned (concerning the length of the proceedings, the resultant alleged interference with the peaceful enjoyment of possessions, and the lack of effective remedies), partly inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention concerning the remainder of the application)
Bulgaria	23 Feb. 2010	Dimitrov and Hamanov (no 48059/06; 2708/09) link	Alleged violation of Art. 6 § 1 (excessive length of criminal proceedings), Art. 13 (lack of an effective remedy), Art. 6 §§ 1, 2 and 3 and Art. 7 (the applicant found guilty of an offence with which he had not been charged and his conviction in spite of the applicable limitation period having expired concerning Mr. Hamanov)	Partly adjourned (concerning the length of the proceedings and the lack of effective remedies in that respect), partly inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention concerning the remainder of the application)
Cyprus	25 Feb. 2010	Charalambides (no 43249/08) link	Alleged violation of Art. 6 § 1 (excessive length and unfairness of proceedings), Art. 1 of Prot. 1 (domestic court's failure to strike a fair balance between the interests of the plaintiff company and the applicant concerning two contracts of sale), Art. 14	Partly struck out of the list (unilateral declaration of the Government concerning the length of proceedings), partly inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention concerning the remainder of the application)
Finland	23 Feb. 2010	Koivusaari and Others (no 20690/06) link	Alleged violation of Art. 1 of Prot. 1 (retroactive enactment of legislation allegedly designed to deprive the applicants of their rights, the misuse of the power vested in the owner of the shipwreck to refuse salvage in order to safeguard the archaeological heritage so as to deprive the applicants completely of their rights and the refusal to pay fair compensation), Art. 13 (lack of an effective remedy), Art. 6 (the law amendment had allegedly been designed to deprive the applicants, with retroactive effect, of rights that they had enjoyed at the time and unfairness of proceedings) and Art. 14 and/or Art. 1 of Prot. 12 (discrimination against the applicants by favouring the interests of the Maritime Museum at the expense of the applicants)	Partly inadmissible for non-exhaustion of domestic remedies (concerning the ownership of the shipwreck), partly incompatible *ratione materiae* (concerning the right to salvage remuneration), partly inadmissible as manifestly ill-founded (the applicants cannot in the circumstances of the present case justifiably complain that they were denied the right to a fair hearing in the determination of their property interests concerning claims under Art. 6), partly inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention concerning the remainder of the application)
Germany	23 Feb. 2010	Hofmann (no 1289/09) link	Alleged violation of Articles 8 and 14 (dismissing of the applicant's claim for damages on the basis of the fact that he had only been engaged to, and not married with, the deceased)	Inadmissible (the applicant's claim for damages did not concern the existing ties between himself and his late fiancée, but only concerned his relationship with the respondent physician. The latter relationship did not raise issues of

				"family life" within the meaning of Article 8)
Greece	25 Feb. 2010	Chorozidis (no 34015/08) link	Alleged violation of Art. 6 § 1 (excessive length of proceedings)	Struck out of the list (applicant no longer wished to pursue his application)
Greece	25 Feb. 2010	Lorentzatou (no 2947/08) link	Alleged violation of Art. 6 § 1 (unfairness and excessive length of proceedings)	Incompatible *ratione materiae*
Italy	23 Feb. 2010	Mariano (no 35086/02) link	Alleged violation of Art. 3 (inhuman or degrading treatment on account of the conditions of detention in special regime of detention), Art. 8 (restrictions on family visits and violation of the right to respect for correspondence due to the special regime of detention)	Inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention)
Italy	23 Feb. 2010	Mangano (no 22410/07) link	Alleged violation of Art. 6 § 2 (infringement of right to be presumed innocent) and Art. 6 §§ 1 and 3 (unfairness of proceedings)	Partly inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention concerning claims under Art. 6 § 2), partly incompatible *ratione materiae* (concerning the remainder of the application)
Lithuania	23 Feb. 2010	Petraitis (no 34937/06) link	Alleged violation of Art. 6 § 1 (unfairness and excessive length of criminal proceedings)	Struck out of the list (applicant no longer wished to pursue his application)
Lithuania	23 Feb. 2010	Šedbarienė (no 27925/08) link	Alleged procedural violation of Art. 2 (domestic authorities' failure to properly investigate the cause of the applicant's son's death)	Inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention)
Moldova	23 Feb. 2010	Coslet (no 42365/07) link	Alleged violation of Art. 6 § 1 (failure to enforce a final judgment in the applicant's favour)	Idem.
Poland	23 Feb. 2010	Gurgul (no 9200/09) link	Alleged violation of Art. 5 § 3 (excessive length of pre-trial detention)	Struck out of the list (unilateral declaration of the Government)
Poland	23 Feb. 2010	Sibilski (no 35363/08) link	Alleged violation of Art. 6 § 1 (excessive length of criminal proceedings) and Art. 13 (lack of an effective remedy)	Struck out of the list (friendly settlement reached)
Poland	23 Feb. 2010	Mariusz Pawlak (no 34756/08) link	Alleged violation of Art. 5 § 3 (excessive length of pre-trial detention) and Art. 6 § 1 (excessive length of proceedings)	Partly struck out of the list (unilateral declaration of the Government concerning the length of pre-trial detention), partly inadmissible for non-exhaustion of domestic remedies (concerning the remainder of the application)
Poland	02 Mar. 2010	Wach (no 14283/09) link	Alleged violation of Art. 6 § 1 (excessive length of criminal proceedings)	Struck out of the list (friendly settlement reached)
Poland	23 Feb. 2010	Antosiuk (no 32545/09) link	Alleged violation of Art. 5 § 3 (excessive length of pre-trial detention) and Art. 6 § 1 (excessive length of criminal proceedings)	Idem.
Portugal	23 Feb. 2010	Ferreira Alves (no 30316/09) link	Alleged violation of Art. 6 § 1 (excessive length of proceedings)	Idem.
Romania	23 Feb. 2010	Rupa (no 37971/02) link	Alleged violation of Art. 3 (ill-treatment by police officers and prosecutor), Art. 5 §§ 1 – 5 (unlawful detention, failure to inform the applicant about the reasons for his arrest, excessive length of pre-trial detention, lack of legal assistance and lack of an effective remedy for compensation), Art. 6 § 1 (unfairness of proceedings), Art. 13 (lack of an effective remedy), Art. 34 (infringement of the applicant's right to individual petition)	Partly adjourned (concerning the ill-treatment by the prosecutor and lack of an effective remedy, and claims under Art. 6 § 1), partly inadmissible for non-respect of the six-month requirement (concerning claims under Art. 5 §§ 1-4), partly inadmissible as manifestly ill-founded (concerning the remainder of the application)

Romania	23 Feb. 2010	Tanase and Others (no 3754/06) link	Alleged violation of Art. 6 § 1 (unfairness of proceedings), Art. 1 of Prot. 1 (annulment by the Court of Cassation of a decision recognizing the applicants' property rights)	Incompatible *ratione personae*
Romania	23 Feb. 2010	Ener Construction and Industry SA and Others (no 28977/06) link	Idem.	Inadmissible (non respect of the six-month requirement)
Romania	23 Feb. 2010	Daia (no 12947/03) link	Alleged violation of Art. 1 of Prot. 1 (use of the applicant's plot of land by a private firm without compensation)	Idem.
Serbia	02 Mar. 2010	Mirkov (no 46809/06) link	Alleged violation of Art. 6 § 1 (procedural delay in the applicant's proceedings regarding his request for a pension), Art. 8 and Art. 1 of Prot. 1	Partly struck out of the list (applicant no longer wished to pursue his application concerning Art. 6 § 1), partly inadmissible (for non-exhaustion of domestic remedies concerning the remainder of the application)
Slovakia	23 Feb. 2010	Šupák (no 4973/03) link	Alleged violation of Art. 6 §§ 2 and 3 (a), (b), (c) and (d) (the applicant complained of being allegedly unlawfully tried and arbitrarily convicted *in absentia*, that he had been deprived of his defence rights, that his *ex officio* lawyer had not defended him properly and that it had been impossible for him to obtain a retrial)	Inadmissible (non-exhaustion of domestic remedies)
"the Former Yugoslav Republic of Macedonia"	23 Feb. 2010	Popovski (no 51709/07) link	Alleged violation of Art. 5 § 3 (excessive length of pre-trial detention and unlawfulness of the detention)	Struck out of the list (applicant no longer wished to pursue his application)
the United Kingdom	02 Mar. 2010	El Sayed Eliwa (no 21061/05) link	Alleged violation of Art. 5 § 1 taken alone and in conjunction with Art. 14 (unlawful and discriminatory detention)	Struck out of the list (friendly settlement reached)
Turkey	23 Feb. 2010	Taşdemir (no 38841/07) link	Alleged violation of Articles 9 and 10 (conviction for shouting slogans)	Inadmissible as manifestly ill-founded (the interference in question was compatible, necessary and proportionate with Article 10 § 2 for the prevention of disorder or crime)
Turkey	02 Mar. 2010	Oral (no 33307/05) link	Alleged violation of Art. 6 (excessive length of administrative proceedings) and Art. 1 of Prot. 1	Struck out of the list (applicant no longer wished to pursue his application)
Turkey	02 Mar. 2010	Tarlak (no 16846/05) link	Alleged violation of Articles 3, 9 and 11	Idem.
Turkey	01 Mar. 2010	Demir (no 54614/07) link	Alleged violation of Art. 3 (alleged torture while in police custody in order to sign self-incriminating statements), Art. 5 (excessive length of pre-trial detention (5 years and two months) and lack of an effective remedy to challenge the lawfulness of the detention), Art. 6 § 1 (unfairness of proceedings and lack of an effective remedy), Art. 8 (hindrance to the applicant's right to have family visits due to the distance - 100 kms - between the prison and his family compounded by illness of his wife)	Partly adjourned (concerning the length of pre-trial detention), partly inadmissible as manifestly ill-founded (the applicant failed to substantiate his complaints concerning the remainder of the application)
Turkey	23 Feb. 2010	Demopoulos and Others (no 46113/99)	Alleged violation of Art. 8 and Art. 1 of Prot. 1 (deprivation of property and/or access to their homes in	Partly inadmissible for non-exhaustion of domestic remedies (concerning claims under Art. 1 of

		link	Northern Cyprus), Art. 14 (discrimination on the basis of ethnic origin), Art. 13 (lack of an effective remedy) and Art. 18 (continuous violation of the alleged Articles)	Prot. 1), partly inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention)
Turkey	23 Feb. 2010	Aşıcı (no 6778/04) link	Alleged violation of Art. 3 (use of excessive police force during the dispersal of a demonstration), Art. 5 § 1 (excessive length of pre-trial detention), Art. 10 (the applicant detained without having the possibility to express himself), Art. 11 (the civil protest action dispersed by the police)	Inadmissible (non-respect of the six-month requirement)
Turkey	23 Feb. 2010	Karan (no 20192/04) link	Alleged violations of Art. 2 (the applicant's son's death due to ill-treatment by a police officer, lack of an effective investigation), Art. 3 (ill-treatment by the police officer), Art. 6 (unfairness of proceedings), Art. 7 (the applicant's son sanctioned without any legal basis)	Inadmissible as manifestly ill-founded (lack of quality of "victim" and no violation of the rights and freedoms protected by the Convention)
Turkey	02 Mar. 2010	Öztürk (no 38848/08) link	Alleged violation of Art. 2 (threats to the applicant by police officers), Art. 3 (ill-treatment by the police officers), Art. 5 (unlawful detention), Art. 6 (unfairness of criminal proceedings and excessive length of administrative proceedings), Art. 13 (lack of an effective remedy in respect of ill-treatment)	Partly adjourned (concerning the length of administrative proceedings), partly inadmissible (non respect of the six-month requirement (concerning the unlawfulness of the detention), partly inadmissible for non-exhaustion of domestic remedies (concerning claims under Art. 6), partly inadmissible (concerning the remainder of the application)
Turkey	23 Feb. 2010	Tastan and Others (no 28243/06; 28507/06 etc.) link	Alleged violation of Art. 5 §§ 3, 4 and 5 (conditions and excessive length of pre-trial detention, lack of an effective remedy to challenge the length of detention and the lack of adequate compensation), Art. 6 § 1 (excessive length and unfairness of criminal proceedings)	Partly adjourned (concerning the length of criminal proceedings), partly inadmissible for non-respect of the six-month requirement (concerning claims under Art. 5) and partly inadmissible for non-exhaustion of domestic remedies (concerning the remainder of the 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 8 March 2010 : link
- on 9 March 2010 : link
- on 15 March 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 8 March 2010 on the Court's Website and selected by the NHRS Unit

The batch of 8 March 2010 concerns the following States (some cases are however not selected in the table below): Georgia and Lithuania.

State	Date of communication	Case Title	Key Words of questions submitted to the parties
Georgia	16 Feb. 2010	Abzianidze no 23715/09	Alleged violation of Art. 3 – Lack of adequate medical treatment in respect of the applicant's contracted tuberculosis and hepatitis B and C in prison no. 5 of Tbilisi – Conditions of detention

Communicated cases published on 9 March 2010 on the Court's Website and selected by the NHRS Unit

The batch of 9 March 2010 concerns the following States (some cases are however not selected in the table below): Belgium, Italy and Sweden.

State	Date of communication	Case Title	Key Words of questions submitted to the parties
Sweden	11 Feb. 2010	Biraga and Others no. 1722/10	Alleged violations of Articles 3 and 8 – Would there be an infringement of the applicants' right to respect for family life if the first applicant were deported to Ethiopia – Question relating to whether the ensuing separation of the first applicant from the third applicant would amount to a violation of Art. 3 having regard in particular to her very young age, if the deportation order were to be enforced

Communicated cases published on 15 March 2010 on the Court's Website and selected by the NHRS Unit

The batch of 15 March 2010 concerns the following States (some cases are however not selected in the table below): Austria, Bosnia and Herzegovina, Bulgaria, France, Georgia, Greece, Luxembourg, Romania, Russia, Slovakia, the Czech Republic, Turkey and Ukraine.

State	Date of communication	Case Title	Key Words of questions submitted to the parties
France	24 Feb. 2010	A. H. no 43705/09	Alleged violation of Art. 3 – Risk of being subjected to ill-treatment if expelled to Greece whose authorities might then deport the applicant to Sudan – Alleged violation of Art. 13 – Lack of an effective remedy
Georgia	25 Feb. 2010	Archaia no 6643/10	Alleged violation of Art. 3 – Lack of adequate medical treatment in respect of the applicant's illnesses in prison no 2 of Rustavi – Was the applicant's state of health incompatible with the conditions of detention – Ill-treatment during the hearing of 7/08/2009 and subsequent transfer to Rustavi – Questions as to whether the applicant has exhausted all domestic remedies concerning the complaint of ill-treatment
Georgia	25 Feb. 2010	Baratashvili and Baratashvili no 30968/08	Alleged violation of Art. 3 – The first applicant's infection with tuberculosis in prison – Lack of adequate medical care in detention
Georgia	25 Feb. 2010	Todua no 6024/10	Alleged violations of Articles 2 and 3 – Was the applicant infected with viral neurological diseases in prison – Was there lack of adequate medical care in

			prison – Was the applicant's current condition incompatible with the purposes of his detention – Question as to whether the domestic courts' decisions in the proceedings concerning the suspension of the applicant's sentence compatible with the requirements of Articles 2 and 3 of the Convention
Greece	23 Feb. 2010	Zontul no 12294/07	Alleged violation of Art. 3 – Ill-treatment in refugee camps on account of the applicant's rape as well as inadequate conditions in the two camps – Lack of an effective investigation in regard of the rape
Russia	26 Feb. 2010	Dudchenko no 37717/05	Alleged violation of Art. 3 – Conditions of detention in various detention centers in Murmansk, Vologda and Moscow and conditions of transportations between the centers – Alleged violation of Art. 5 § 3 – Excessive length of detention on remand – Excessive length of criminal proceedings – Alleged violation of Art. 6 § 3 (c) – The applicant unable to defend himself in person or through legal assistance of his own choosing – Alleged violation of Art. 8 – Interception and recording of the applicant's telephone conversations on his mobile telephone
Russia	26 Feb. 2010	Liu and Others no 29157/09	Question relating to whether, given that in its judgment of 6 December 2007 the Court has already found a violation of the applicants' rights under Article 8 of the Convention (see *Liu v. Russia*, no. 42086/05, 6 December 2007) and that the judgment is now pending before the Committee of Ministers which oversees its execution the Court has jurisdiction *ratione materiae* to examine the new complaint under Article 8 – The refusal of a residence permit to the first applicant and the decision to deport him to China – Alleged violation of Art. 13 – Lack of an effective remedy
Russia	26 Feb. 2010	Shlychkov no 40852/05	Alleged violation of Art. 3 – Ill-treatment by police officers – Lack of an effective investigation – Alleged violation of Art. 13 – Lack of an effective remedy – Alleged violation of Art. 6 § 1 – Unfairness of criminal proceedings – Alleged violation of Art. 6 §§ 1 and 3 (c) – Lack of a legal assistance from the moment of the applicant's arrest
Turkey	25 Feb. 2010	Aksin and Others no 4447/05	Alleged violation of Art. 3 – Ill-treatment while in police custody – Lack of an effective investigation – Alleged violation of Art. 6 § 3 c) – Lack of legal assistance in police custody
Ukraine	24 Feb. 2010	Kravchenko no 6140/05	Alleged violation of Art. 10 – Violation of the applicant's right to freedom of expression, in particular her right to impart information and ideas, on account of her writing a series of complaints to various public authorities about alleged mismanagement at the hospital where she was working

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

Forthcoming Grand Chamber judgments (24.03.2010)

The Court will deliver its Grand Chamber judgments in the cases of *Depalle v. France*, *Brosset-Triboulet and Others v. France* and *Medvedyev and Others v. France* in a public hearing on Monday 29 March 2010. Press Release

Visit by the President of the French National Advisory Committee on Human Rights (24.03.2010)

On 25 March 2010 President Costa will meet Yves Repiquet, President of the French National Advisory Committee on Human Rights (CNCDH), a national institution for the promotion and protection of human rights. Deputy Registrar Michael O'Boyle will also attend the meeting.

Series of lectures (24.03.2010)

In partnership with the French *Conseil d'Etat*, the European Court of Human Rights is launching a series of lectures on human rights protection. Programme

Cassin competition 2010 (24.03.2010)

The René Cassin competition, which consists of mock legal proceedings in French based on the European Convention on Human Rights and is open to students of law and political science, is celebrating its 25th anniversary in 2010. Press Release, attend the final

Messaging service in several languages (24.03.2010)

In order to manage as efficiently as possible the numerous telephone calls it receives every day, the Court has installed a messaging service in several languages (English, French, German, Italian, Polish, Romanian, Russian and Turkish). The Court reminds members of the public that the proceedings before it are written and that any correspondence concerning applications should be conducted by post or by fax. Contacting the Court

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 1 to 3 June 2010 (the 1086th 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)

Exchange of views between the European Committee of Social Rights and Mr Skouris, President of the Court of Justice of the European Union (15.03.2010)

At its 242nd session, the European Committee of Social Rights (ECSR) held an exchange of views with the President of the Court of Justice of the European Union, Mr Vassilios Skouris in the presence of the President of the European Court of Human Rights, Mr Jean-Paul Costa. The discussion concerned in particular the links between the ESC and the Charter of Fundamental Rights, the role of the ESC within the legal order of the European Union (Preamble of the Treaty on European Union and Article 151 of the Treaty on the Functioning of the European Union), the material influence of the case law of the ECSR on the interpretation of the EU Charter by the Court of Justice and the impact of EU legislation on the implementation of the ESC by the States Parties.

Seminar on the European Social Charter in Belgrade, Serbia (24.03.2010)

Following Serbia's ratification of the Revised Charter in September, a seminar was held in Belgrade on 24 March with the aim of providing information and assistance to Serbian authorities to allow for a wider application of this instrument. This seminar was attended by two members of the European Committee of Social Rights, Mr Rüçhan IŞIK and Ms Jarna PETMAN, as well as two administrators from the Department of the ESC, Ms Niamh CASEY and Mr Gerald DUNN.
Programme; Serbian factsheet

An electronic newsletter is now available to provide updates on the latest developments in the work of the Committee:

http://www.coe.int/t/dghl/monitoring/socialcharter/Newsletter/NewsletterNo2Jan2010_en.asp

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 243rd session of the European Committee of Social Rights will be held from 26-30 April 2010

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

Council of Europe anti-torture Committee publishes report on Armenia (19.03.2010)

The CPT has published on 19 March the report on its ad hoc visit to Armenia in March 2008, together with the Armenian Government's response. Both documents have been made public at the request of the Armenian authorities.

The main purpose of the visit was to examine the treatment of persons detained in relation to events which followed the Presidential election of 19 February 2008. In the aftermath of the election, on 1 March 2008, a police operation took place aimed at dispersing opposition rallies in Yerevan. Dozens of persons were arrested in the course of and following that operation, hundreds were injured and a number of persons died. The delegation carried out individual interviews with most of the persons remanded in custody on charges related to the post-election events. Practically all the persons who had been detained on 1 March 2008 alleged that they had been physically ill-treated at the time of their apprehension, even though they apparently had not offered resistance. The delegation also received a few allegations of physical ill-treatment at the time of questioning by the police.

The CPT has recommended that the investigation into the events of 1 March 2008 be conducted in accordance with the criteria of an effective investigation, and that its results be used to provide

guidance for future police operations in terms of planning, training and police tactics in crowd-control situations. The visit report also contains other recommendations aimed at combating ill-treatment by law enforcement officials, including through strengthening the formal safeguards against ill-treatment which are offered to persons deprived of their liberty by the police (i.e. the rights of notification of custody, access to a lawyer and access to a doctor).

Council of Europe anti-torture Committee publishes response of the Moldovan authorities (26.03.2010)

The CPT has published on 26 March the response of the Moldovan Government to the report on the CPT's most recent visit to Moldova, in July 2009. The response has been made public at the request of the Moldovan authorities.

C. European Commission against Racism and Intolerance (ECRI)

Joint statement on the occasion of the International Day for the Elimination of Racial Discrimination (21.03.2010)

In a joint statement ahead of the International Day for the Elimination of Racial Discrimination, the OSCE's Office for Democratic Institutions and Human Rights (ODIHR), ECRI and the European Union Agency for Fundamental Rights (FRA) strongly condemn manifestations of racism and xenophobia, with a particular focus on the Internet. Read the statement

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

Advisory Committee: adoption of three opinions (19.03.2010)

The Advisory Committee on the FCNM adopted three country-specific opinions under the second and third cycles of monitoring the implementation of this convention in States Parties.

The opinions on Bulgaria and Hungary were adopted on 18 March; the Opinion on Cyprus on 19 March. They are restricted for the time-being. These three opinions will now be submitted to the Committee of Ministers, which is to adopt conclusions and recommendations.

E. Group of States against Corruption (GRECO)

Outcome of the 46th Plenary Meeting in Strasbourg (22-26.03.2010)

Link to the Decisions

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

Outcome of the 32nd Plenary Meeting on15-18 March 2010 (27.03.2010)

MONEYVAL, at its 32nd plenary meeting, achieved several significant results: revised its rules of procedure regarding the examination of follow up reports, the application of compliance enhancing procedures and decision-making processes; adopted the mutual evaluation report on the 4th assessment visit of Slovenia; examined the first progress reports submitted by Ukraine and Montenegro and adopted the latter; examined and adopted the second progress reports submitted by Lithuania and Georgia; adopted its 2009 Annual Report; adopted in the context of the typologies project on Money laundering through private pensions funds and the insurance sector a report on red flags and indicators.

The publication of these reports will take place shortly. At this plenary, MONEYVAL welcomed two news members of the Secretariat, Ms Natalia Voutova and Mr Fabio Baiardi (kindly seconded by Switzerland).

The next plenary meeting is scheduled from 27 September – 1 October 2010.

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

The fifth meeting of GRETA was held on 16-19 March 2010 at the Council of Europe in Strasbourg. At this meeting GRETA held an exchange of views concerning the structure and preparation of GRETA reports and concerning the preparation of country visits, in the framework of the first round of evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the parties.

See the list of items discussed and decisions taken.

Next GRETA meetings are scheduled as follows: 6th meeting: 1-4 June 2010; 7th meeting: 14- 17 September 2010; 8th meeting: 7-10 December 2010.

Part IV: The inter-governmental work

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

18 March 2010

Armenia signed Protocol No. 3 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning Euroregional Co-operation Groupings (ECGs) (CETS No. 206), and the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207).

Poland signed the Convention for the Protection of the Architectural Heritage of Europe (ETS No. 121).

19 March 2010

Montenegro ratified the European Convention on the International Validity of Criminal Judgments (ETS No. 70), the European Convention on the Compensation of Victims of Violent Crimes (ETS No. 116), the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine-Convention on Human Rights and Biomedicine (ETS No. 164), and the Additional Protocol to the Convention on Human Rights and Biomedicine concerning Transplantation of Organs and Tissues of Human Origin (ETS No. 186).

22 March 2010

San Marino ratified the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201).

Montenegro signed the Additional Protocol to the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, on the Prohibition of Cloning Human Beings (ETS No. 168).

Moldova ratified the Convention on information and legal co-operation concerning "Information Society Services" (ETS No. 180).

23 March 2010

"The former Yugoslav Republic of Macedonia" ratified the Council of Europe Convention on the Prevention of Terrorism (CETS No. 196).

24 March 2010

Portugal ratified the Convention on Cybercrime (ETS No. 185), and the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (ETS No. 189).

26 March 2010

Spain ratified the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198).

B. Recommendations and Resolutions adopted by the Committee of Ministers

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C. Other news of the Committee of Ministers

Committee of Ministers - Assembly Presidential Committee: discussion on enhancing dialogue and co-operation (18.03.2010)

Assembly Presidential Committee, headed by its President Mevlüt Çavusoglu, in the presence of Council of Europe Secretary General Thorbjørn Jagland, on 18 March met in Paris with Swiss Foreign Minister Micheline Calmy-Rey, the current Chair of the Committee of Ministers, and its next Chair the

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

Foreign Minister of “the former Yugoslav Republic of Macedonia' Antonio Milososki, as well as members of the Bureau of the Committee of Ministers.

Racial discrimination, unacceptable violation of human rights (19.03.2010)

"Racial discrimination is one of the scourges of our contemporary societies and must be combated resolutely and relentlessly", said Micheline Calmy-Rey, Chair of the Committee of Ministers of the Council of Europe, on the occasion of the International Day for the Elimination of Racial Discrimination. The European human rights bodies also call for decisive action against racism and xenophobia, especially with regard to the Internet. "Our organisations are alarmed by patterns and manifestations of racism such as the ever-increasing use of the Internet by racist groups for recruitment, radicalisation, command and control, as well as for the intimidation and harassment of opponents", says the statement by the European Commission against Racism and Intolerance (ECRI), the OSCE’s Office for Democratic Institutions and Human Rights (ODIHR), and the European Union Agency for Fundamental Rights (FRA).

Statement by Micheline Calmy-Rey; European human rights bodies call for action against racism

Council of Europe condemns executions in Belarus (23.03.2010)

"Death penalty is barbaric and degrading, and this is why it has been abolished by the Council of Europe through Protocol 6 to the European Convention on Human Rights," the Chair of the Committee of Ministers Micheline Calmy-Rey, the President of the Assembly Mevlüt Çavusoglu and the Secretary General Thorbjørn Jagland said in a joint declaration on 23 March, after the execution of Andrei Zhuk and of Vasily Yuzepchuk in Belarus. "The authorities of Belarus are the only remaining ones in Europe who execute people. The recent executions, if confirmed, are a serious setback to our aspiration to bringing Belarus closer to European values," they added.

Meeting of the Ministers’ Deputies (25.03.2010)

At their 1080th meeting, 24 March, the Deputies marked their involvement in the follow-up process to the Interlaken Conference on the future of the European Court of Human Rights by establishing a working group to steer, under their authority, the Interlaken process as a whole.

File: Conference on the future of the European Court of Human Rights

Part V: The parliamentary work

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A. Resolutions and Recommendations of the Parliamentary Assembly of the Council of Europe (adopted by the Standing Committee on 16-17 March 2010)

Resolution 1713: Minority protection in Europe: best practices and deficiencies in implementation of common standards

Resolution 1712: Change in the composition of the Bureau of the Parliamentary Assembly

Resolution 1710: The term of office of co-rapporteurs of the Monitoring Committee

Resolution 1711: Rules and procedures for the future elections of the Secretary General of the Council of Europe - Draft joint (Committee of Ministers / Parliamentary Assembly) interpretative statement

Recommendation 1904: Minority protection in Europe: best practices and deficiencies in implementation of common standards

Resolution 1715: The wage gap between women and men

Recommendation 1907: The wage gap between women and men

Recommendation 1906: Rethinking creative rights for the Internet age

Resolution 1714: Children who witness domestic violence

Recommendation 1905: Children who witness domestic violence

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

- *Countries*

PACE President in favour of strengthening relations with Kazakhstan (16.03.2010)

"I came to Kazakhstan with an offer to upgrade co-operation with PACE, and I am very glad that we found full understanding with the highest authorities of the country on this matter," declared the Assembly's President Mevlüt Çavusoglu at the end of an official visit to Kazakhstan on 15-16 March 2010.

The main subject of the discussion was the perspective for Kazakhstan to apply for "partner for democracy" status with PACE, which would enable a more active participation of the Kazakh Parliament in the Assembly's activities, including plenary debates and the work of the Assembly's committees and political groups. Obtaining this status would be fully in line with the efforts of Kazakhstan to intensify co-operation with Europe and European institutions.

The PACE President encouraged the authorities to pursue democratic reforms with a view to reinforcing political plurality and fundamental freedoms in the country. "Partner for democracy" status was established by the Parliamentary Assembly in 2009 for the parliaments of neighbouring states of the Council of Europe to upgrade their relations with the Assembly and place them on an institutional basis.

Karin Woldseth new co-rapporteur for monitoring of Bosnia and Herzegovina (17.03.2010)

Karin Woldseth (Norway, EDG) was appointed as co-rapporteur for the Assembly's monitoring of Bosnia and Herzegovina, alongside Kimmo Sasi (Finland, EPP/CD). She replaces Mevlüt Çavusoglu, who was recently elected as President of the Assembly.

PACE Monitoring Committee asks Montenegro to maintain the reform dynamic so as to 'catch up with deadlines' (17.03.2010)

While welcoming Montenegro's substantial progress in implementing its commitments since accession to the Council of Europe in 2007, the Parliamentary Assembly's Monitoring Committee called on the Montenegrin authorities to "maintain the current reform dynamic in order to catch up with the deadlines" and complete the implementation of the remaining post-accession commitments. In the meantime it proposes that the monitoring procedure with regard to Montenegro be continued.

The unanimously approved text, drawn up by the co-rapporteurs Jean-Charles Gardetto (Monaco, EPP/CD) and Serhiy Holovaty (Ukraine, ALDE), notes that Montenegro actively co-operates with the Council of Europe and "regularly asks the advice of the European Commission for Democracy through Law in the course of preparation of legislation" and that the 2008 presidential election and 2009 parliamentary elections met almost all international standards. Montenegro has signed and ratified 67 Council of Europe conventions, thus fulfilling almost all the formal post-accession commitments. The text also welcomes the progress Montenegro has achieved in the process of European integration and its good relations with neighbouring countries. The committee nonetheless asks the authorities to make an effort with regard to the reform of electoral law, of legislation on political parties, of the judiciary and of the prosecutor's office and in the field of training judges in the case law of the European Court of Human Rights. It also calls for efforts regarding the effective implementation of guarantees concerning minority rights and regrets that a law prohibiting discrimination has not yet been passed. It points out that some groups in Montenegrin society, especially the lesbian, gay, bi-sexual and transgender (LGBT) community, are frequently "subjected to discrimination and are targets of intimidation and physical violence".

The text will be debated by the Assembly at its spring plenary session (26-30 April 2010). Report (provisional version)

Bulgaria: PACE Monitoring Committee welcomes progress but notes 'worrying trends' (19.03.2010)

The Monitoring Committee of PACE has welcomed the progress made by Bulgaria since the last Assembly debate concerning that country in January 2000. The text adopted on 18 March in the framework of post-monitoring dialogue states that the ruling centre-right movement GERB (Citizens for the European Development of Bulgaria) "has set ambitious objectives and committed itself to continue democratic reforms", in particular to guarantee the proper functioning of justice and combat corruption and organised crime.

Pointing out that the whole reform process in Bulgaria has been geared towards introducing European standards which allowed it to join the EU, the committee deplored the fact that, to enable the country to meet the strict deadlines set for that accession, some of the reforms "involved cosmetic changes that pushed them in an undesired direction". These included the amendments to the Law on the Judicial System and amendments to the Constitution adopted in 2007.

At the proposal of the rapporteur, Serhiy Holovaty (Ukraine, ALDE), the committee members call on the Bulgarian authorities to "consult systematically" the Venice Commission on important draft legislation, "address the structure of the Supreme Judicial Council with a view to ensuring the independence of the judiciary vis-à-vis the executive authorities" and set up a transparent system for evaluating the competencies of judges "to help dispel the widespread perception of corruption". In addition, they should address human rights violations by the police forces, guarantee a greater diversity of opinion on national television, guarantee the independence of the media and improve the rights of persons belonging to minorities and ensure their respect. Adopted report

PACE rapporteurs welcome pardon decree in Azerbaijan (22.03.2010)

Three PACE rapporteurs have welcomed the decision by President Ilham Aliyev of Azerbaijan to pardon 70 prisoners, including Ganimat Zahidov, the editor-in-chief of the opposition newspaper *Azadlig*. However, they regretted that Eynulla Fatullayev, another opposition editor, was not among those released. The Assembly has repeatedly called for the release of both men, along with others it considers political prisoners or whose cases it has been following closely, and its rapporteurs have visited them in prison. "Every step made by Azerbaijan in this direction helps bring the Council of Europe closer to its aspiration of being an area free of political prisoners," said Andres Herkel (Estonia, EPP/CD) and Joseph Debono Grech (Malta, SOC), co-rapporteurs for the monitoring of Azerbaijan, and Christoph Strässer (Germany, SOC), rapporteur on the follow-up to the issue of political prisoners in Azerbaijan.

They pointed out that President Aliyev had already pardoned 99 prisoners by decree on Christmas Day 2009, including some whose cases had been raised by the Assembly, or who appeared on the lists of alleged political prisoners drawn up by local human rights NGOs. "Together with the latest

pardon, this reveals an encouraging trend, and we sincerely hope that Azerbaijan will make further progress on fulfilling the key promise it made when it joined the Council of Europe: to release all political prisoners," the rapporteurs said.
Resolution 1614; The Assembly's last monitoring report on Azerbaijan; Rapporteurs' statement following the pardon decree on Christmas Day 2009

PACE President urges political forces in Moldova to continue dialogue over the Constitution (24.03.2010)

Mevlüt Çavusoglu, the President of PACE, has warmly welcomed the imminent setting up of a parliamentary committee in Moldova to revise Article 78 of the Constitution – concerning the election of the President of the Republic – and said it was "encouraging" that all political forces, including the opposition, have designated representatives to it. Speaking at the end of a three-day official visit to Chisinau, the President said the present deadlock over the election of the President could not continue, and warned that it was "unthinkable" to hold yet another election with the present constitutional provisions regulating the election of the President. He appealed to the "political responsibility" of all political forces, urging them to engage in constructive dialogue over the Constitution, rather than be guided by "narrow political pre-electoral interests". He said he appreciated the presence of the opposition in parliament during his earlier address, and appealed to it to stay on: "People elected their representatives because they trusted in their ability to contribute to the parliamentary debate with their ideas and principles. They cannot do this by being absent."

The President also offered the help of the Council of Europe, and PACE in particular, in promoting dialogue, mediating if necessary and guaranteeing any future agreement, but he pointed out that the "final decision" on which way to go in order to overcome the deadlock rested with the Moldovan people. "I dare leave the country with some hope that the spirit of dialogue and compromise will prevail over petty political calculations," he concluded.
Speech by Mevlüt Çavusoglu

PACE co-rapporteurs welcome willingness of Armenian authorities to draw up reform 'roadmap' (25.03.2010)

The co-rapporteurs for the monitoring of Armenia of PACE have welcomed the prompt response of the Armenian authorities to their call for a "roadmap" to put into effect the reforms recommended in the aftermath of the March 2008 election violence. "We welcome the wide range of reforms announced in the preliminary response of the authorities to our recommendation, but we would also like to stress that, in the end, it will be the content of these reforms, and their implementation, that counts," said John Prescott (United Kingdom, SOC) and Georges Colombier (France, EPP/CD).

"We now await the promised details from the authorities, as well as the opinions of the different departments of the Council of Europe that were solicited by the Armenian authorities," they continued. "Following that, and after hearing the opinions of the different political forces in Armenia, we hope to agree – together with the National Assembly of Armenia – on a clear, detailed and specific roadmap, including deadlines, for the implementation of these essential reforms, which are in the long-term interest of all Armenians. Nobody wants a recurrence of what happened in March of 2008."

- *Themes*

Discrimination on the basis of sexual orientation and gender identity (15.03.2010)

During its meeting on 16 March in Paris, PACE's Committee on Legal Affairs and Human Rights was due to adopt the report by Andreas Gross (Switzerland, SOC) on discrimination on the basis of sexual orientation and gender identity. Draft agenda

PACE Legal Affairs Committee again demands legal recognition of same-sex couples (16.03.2010)

The PACE Committee on Legal Affairs and Human Rights, meeting on 16 March in Paris, again called on European governments to guarantee "legal recognition of same-sex partnerships" and provide for the possibility of "joint parental responsibility" for each partner's children. The committee had submitted an initial text on discrimination on the basis of sexual orientation and gender identity at the Assembly's last plenary session in January 2010, but, following a debate and at the rapporteur's proposal, the parliamentarians had voted to refer the report back to the committee.

While pointing out that the eradication of homophobia and transphobia "requires political will" in member States, the new document drawn up by Andreas Gross (Switzerland, SOC) also asks that legislation and practice guarantee the right of transgender persons to "official documents that reflect their preferred gender role" and the right of access to gender reassignment treatment. The members of the committee also voiced concerns about violations of the freedom of association and of expression of lesbian, gay, bisexual and transgender (LGBT) persons in a number of Council of Europe member States and about "hate speech by certain politicians, religious leaders and other civil society representatives".

The text adopted on 16 March will be debated at the next plenary session (26-30 April).
Mr Gross's new report (PDF)

For a Europe-wide sex offenders register (17.03.2010)

While noting that current national systems for dealing with sex offenders vary greatly between member States, the PACE Committee on Legal Affairs and Human Rights, convinced that the management of sex offenders requires international co-operation, called on European governments to introduce a sex offenders register containing information on persons convicted of such offences in order to produce a central file "allowing an exchange of information between entitled authorities, as strictly defined by law". The Committee considered that a register of this kind can fulfil a key role in the supervision of offenders, especially when employed as part of a comprehensive sex offenders management programme. The information in the register can be used to assess the risk that the offender poses to the community and therefore manage that risk.

As proposed by the rapporteur, Marietta de Pourbaix-Lundin (Sweden, EPP/CD), the parliamentarians urged member States to increase the quality, quantity and frequency of the information (including confidential information) they share with other member States on sex offenders in order to effectively monitor the movements of offenders who travel abroad. Report (provisional version)

Council of Europe and EU must 'join forces' to combat violence against women in Europe (17.03.2010)

The Council of Europe and the European Union must "join forces and speak out together" to combat violence against women in Europe, Carmen Quintanilla Barba (Spain, EPP/CD), a member of PACE's Equal Opportunities Committee, told a European Parliament conference in Brussels on 17 March. "We need your determination, your commitment and your support to make progress with legislation and to change attitudes," she said, expressing the hope that the EU would accede to the future Council of Europe convention to prevent and combat violence against women and domestic violence, and help with data collection as part of the convention's monitoring procedure. Remarks by Mrs Quintanilla Barba

The Council of Europe should strengthen its involvement in Kosovo*, says PACE rapporteur (18.03.2010)

The Council of Europe should strengthen its involvement in Kosovo," said Björn von Sydow (Sweden, SOC), rapporteur for the Political Affairs Committee of PACE, addressing the committee on 18 March in Paris. "Our Organisation should play a pro-active role in offering its expertise in its areas of excellence: democracy, the rule of law and human rights, with absolute priority being given to the rule of law," he said. According to Mr von Sydow, the poor record of respect for the rule of law is the main cause of concern in Kosovo, which affects the quality of life, governance and the prospects for economic development. In particular, he said, corruption is "an endemic phenomenon and a huge challenge to eradicate".PACE's rapporteur was presenting to the committee an information note which summarises the key findings of his last visit and focuses on a number of proposals, including that the Assembly establish a dialogue with representatives of the political forces elected to the Kosovo Assembly. Information note by the rapporteur on his fact-finding visit to Kosovo (21-26 February 2010)

'Dialogue with the Belarusian authorities does not mean refraining from criticism' (18.03.2010)

"I am for dialogue with all the relevant parties, including with the Belarusian authorities. However, I do not believe that the Assembly should refrain from raising criticism or imposing conditions. A state which genuinely wants to engage with the Council of Europe cannot do so without accepting the rules

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

of the game, and conditionality is one of them", said Sinikka Hurskainen (Finland, SOC) PACE rapporteur on Belarus, speaking on 18 March in Paris.

Addressing PACE's Political Affairs Committee, Mrs Hurskainen recalled that in June 2009 the Assembly recommended restoring the Special Guest Status of the Parliament of Belarus, provided that an immediate moratorium on the death penalty was introduced. "The authorities did not avail themselves of this opportunity; on the contrary, last summer two more people were sentenced to death," she pointed out. However, the rapporteur also welcomed the establishment of a working group on the issue of the death penalty in the Belarusian parliament and announced her intention to pay a fact-finding visit to the country, if possible before the summer, with a view to preparing a seminar in Minsk on the introduction of a moratorium on capital executions. The Political Affairs Committee also decided to ask the Venice Commission to carry out a comprehensive analysis of the amendments introduced into the Belarusian electoral code in 2009 in order to assess if the electoral legislation has been brought into line with European standards.

The committee declassified Mrs Hurskainen's memorandum on the situation in the country. Mrs Hurskainen's memorandum

Council of Europe condemns executions in Belarus (23.03.2010)

Joint statement by the Chair of the Committee of Ministers, Micheline Calmy-Rey, the President of the Parliamentary Assembly, Mevlüt Çavusoglu and the Secretary General of the Council of Europe, Thorbjørn Jagland

"The Council of Europe strongly condemns the executions of Andrei Zhuk and Vasily Yuzepchuk in Belarus. The death penalty is barbaric and degrading, and this is why it has been abolished by the Council of Europe through Protocol No. 6 to the European Convention on Human Rights. The authorities of Belarus are the only remaining ones in Europe who execute people. The recent executions, if confirmed, are a serious setback to our aspiration to bring Belarus closer to European values. The Council of Europe is ready to help Belarus end its self-imposed isolation in Europe, but when it comes to the values of human rights and democracy, one cannot have it both ways. We therefore call for an immediate end to the use of the death penalty."

Measures for combating piracy, a crime and a challenge for democracies (19.03.2010)

Concerned at the upsurge of piracy, PACE's Political Affairs Committee has encouraged Council of Europe member States to provide naval escorts to ships crossing areas at risk and asked NATO, the EU and countries concerned to renew and strengthen their anti-piracy operations off the coast of Somalia. Following proposals by rapporteur Birgen Keles (Turkey, SOC), the committee called for a common and more relevant domestic legal framework in order to criminalise the act of piracy wherever it takes place. The Assembly will debate this question during its Spring Session (26-30 April 2010). Draft resolution

EU should accede to the European Convention on Human Rights 'within two years' (19.03.2010)

The EU should accede to the European Convention on Human Rights "within a couple of years", with negotiations beginning no later than July this year, a Vice-Chair of PACE's Legal Affairs Committee has told a European Parliament hearing in Brussels. Serhiy Holovaty (Ukraine, ALDE) said the urgency for accession became greater as the Union took on more and more of the powers that had traditionally belonged to its 27 member States. It was necessary to put right the "artificiality" of the present situation, in which the victim of a contested EU act had no guarantee of remedy from the EU as it was a third party and not part of the Convention system.

The European Court of Justice in Luxembourg should continue to have primary responsibility for ensuring respect for the European Convention on Human Rights within the EU area, applying the Charter of Fundamental Rights, whereas the Strasbourg Court would act only as "an external restraint and check on EU activities", he said. Full text of Mr Holovaty's remarks

PACE Committee suggests measures securing decent pensions for women (25.03.2010)

"Women continue to be discriminated against in manifold ways: they have less access to the labour market, they earn less and have lower pension incomes than men," Anna Curdová (Czech Republic,

SOC), rapporteur of the Committee on Equal Opportunities for Women and Men on "decent pensions for women" said at a meeting in Paris on 25 March.

Following an exchange of views with experts on the subject, the committee stressed that a mix of social and pension policies, as well as legal provisions creating a positive duty to prevent discrimination and to promote equality, was indispensable to guarantee decent pensions for women. Inclusive state pensions, with credits for caring, contribute to equalising women's and men's independent pension income whereas closely linking pensions to contributions, as in private pensions, reinforces the gender gap in pensions, the committee agreed.

It also called for better childcare and elderly care facilities and adequate shared parental leave in order to allow women to keep full time jobs and thus contribute to securing decent pensions.

No rural development without active participation of women (26.03.2010)

"Rural development, sustainable agriculture, food security, environment and the protection of cultural heritage cannot be achieved through efforts that ignore or exclude more than half of the rural population - women," participants agreed at a hearing on "the real situation of rural women in Europe", organised by PACE Equality Committee in Paris.

There is a great need for a systematic gender analysis and improvement of the laws and politics related to rural development, including infrastructure, housing, health and education, and support for gender-aware macro-economic policies in agriculture as well as women's representation in governance of agricultural development programmes and of local government in rural areas.

Women should also be offered additional support to overcome existing inequalities in access to land, technology, know-how and credit, participants said. Training and capacity-building, including through e-learning, should focus on business management skills, micro-finance projects for poverty reduction and projects to create jobs in rural areas.

In order to assess the situation and the specific needs of rural women in Europe and the Euro-Mediterranean region, presentations at the hearing included experts' views on the situation in Morocco, Russia and Germany. A report on "the real situation of rural women in Europe" will be prepared by Carmen Quintanilla Barba (Spain, EPP/CD) and is due for debate by PACE before the end of the year.

The role of parliaments in political reconciliation and good governance (26.03.2010)

PACE President Mevlüt Çavusoglu will be attending the 122nd Assembly of the Inter-Parliamentary Union, which will be looking at the role of parliaments in political reconciliation and good governance, inter-parliamentary co-operation in the global fight against organised crime and trafficking in human beings, and the participation of young people in the democratic process.

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

A. Country work

Commissioner Hammarberg continues dialogue on human rights with Portuguese authorities (15.03.2010)

The Council of Europe Commissioner for Human Rights published on 15 March a letter sent to the Deputy Minister of Justice of Portugal, José Magalhães, on the fight against discrimination, migration policy, the situation of minorities and police behaviour. The letter follows the Commissioner's visit to Lisbon on 12-13 November 2009 during which he held discussions with the Deputy Minister of Justice, the Secretary of State of European Affairs and the High Commissioner for Immigration and Intercultural Dialogue, as well as with NGOs and the Portuguese Bar Association. He also visited the only asylum seekers and refugees reception centre in Portugal and met with migrant communities in the *Vale da Amoreira* neighbourhood. Read the Letter

Commissioner Hammarberg intervenes before the Strasbourg Court in asylum cases concerning the Netherlands and Greece (16.03.2010)

The Council of Europe Commissioner for Human Rights made public on 16 March his third party intervention submitted to the European Court of Human Rights, following an invitation by the Court, in a group of cases concerning return of asylum seekers from the Netherlands to Greece by virtue of the EC 'Dublin Regulation'. Commissioner Hammarberg's written submission was based on his visits to Greece in December 2008 and February 2010 as well as on continuous country monitoring. He provided the Court with his observations on major issues concerning the asylum procedure in Greece and human rights safeguards, as well as asylum seekers' reception and detention conditions. Third party intervention by the Council of Europe Commissioner for Human Rights under Article 36, paragraph 2, of the European Convention on Human Rights

B. Thematic work

"Set history free from political distortions" says Commissioner Hammarberg (22.03.2010)

"Historical controversies should not hold human rights hostage. One-sided interpretations or distortions of historical events have sometimes led to discrimination of minorities, xenophobia and renewal of conflict. It is crucial to establish an honest search for the truth" said Thomas Hammarberg, Council of Europe Commissioner for Human Rights, in his Viewpoint published on 22 March. Gross human rights violations in the past continue to affect relations in today's Europe. In some cases, genuine knowledge of history has facilitated understanding, tolerance and trust between individuals and peoples. However, some serious atrocities are denied or trivialised, which has created new tensions. Read the Viewpoint; Read in Russian (.pdf or .doc)

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)

24-25/03/2010: First Thematic Workshop of the European NPM Project: the role of NPMs in preventing ill-treatment in psychiatric institutions

This was first of six scheduled NPM thematic workshops over 2010 and 2011. The objective was to create a forum to enable the NPM experts and representatives to discuss their experiences, issues and best practices regarding the role of NPMs in preventing ill-treatment in psychiatric institutions.

18 NPM designated staff experts of 16 the 20 then operating NPMs of the Council of Europe region participated in the workshop. Denmark, Germany, Armenia and Moldova were excused.

The United Nations Sub-Committee for the Prevention of Torture (SPT) – Bureau and Secretariat, Association for the Prevention of Torture (APT), Mental Disability Advocacy Center (MDAC) (NGOs), former experts from the CPT, individual external medical and legal experts, Padua University, and OSCE representatives also attended and participated in the workshop.

One key question underpinning the workshop was how much NPMs can do within the scope of the NPM OPCAT mandate for preventing ill-treatment in psychiatric institutions. In this regard, best practices and experiences from the NPMs were discussed in depth. In this respect, there was an underlying emphasis on the scope of the NPM mandate.

The first sessions also explored *de facto* and *de jure* detention and the legal status of patients, as well as other specific guarantees such as consent to treatment, information of rights, review of placement decisions and involuntary placement procedures and guarantees. Living conditions conducive to a positive therapeutic environment as well as other key indicators to be borne in mind when conducting an NPM visit were also explored.

Key presentations were made by external experts, the UN SPT and NPM experts and ensuing discussions outlined, from a medical approach, the range, and use of, and regulations concerning different restraints. It was concluded that restraint measures should only be used as a means of last resort and then only if proportionate and contextual. Further they must be either expressed authorised by a doctor or immediately brought to the attention of a doctor with a view to seeking their approval. A register and patents' medical files should accurately record the date, time and background of any use of restraint.

In both the first and second working sessions medical (as well a legal) approach were highlighted in the context of this theme and in the context of the NPMs' mandate. Further, monitoring methodologies and best practices from the NPM, as well as from the external experts', perspectives were discussed.

There was additionally a specific focus on mental health issues relating to certain vulnerable groups, such as juveniles – in particular social welfare homes - and migrants, in mental health facilities, with its consequent complicating factors. In addition, factors were explored for the NPMs to take into consideration when monitoring places outside traditional psychiatric institutions but where mental health issues could be rife, such as immigration removal centres. Further, the need for qualified medical experts within the NPM staff was discussed.

Lastly, the topics and locations for the Second NPM Thematic Workshop and First NPM On-Site Visit and exchange of experiences was highlighted and will be held in Tirana, Albania on the 9-10 June and Warsaw, Poland on the 4-7 May respectively.

A debriefing paper is currently being drafted, which summarises the key outputs of the meeting, and will be sent to all participants of the Workshop.

26/03/2010: Consultation meeting on "Prospects for the ratification of the OPCAT and the setting-up of an NPM in Italy"

Italy signed OPCAT in 2003. Since then there have been various initiatives to promote ratification and implementation of OPCAT in Italy. A legislative initiative has also been undertaken in this connection. The consultation aimed at discussing the current prospects of OPCAT ratification and its implementation.

Italian politicians, Italian civil society representatives and Italian government officials participated in this Colloquy as well as many representatives of the European NPM Network. Further the United Nations Sub-Committee for the Prevention of Torture (SPT) – Bureau and Secretariat, Association for the Prevention of Torture (APT), former experts from the CPT, Padua University, and OSCE representatives also participated.

Certain key outputs, including a "road map" to prepare for the future implementation of OPCAT in Italy, were proposed by participants and by the University of Padua (co-organisers).

Various following additions were suggested by the participants including suggestions to: put the process in Italy under ongoing international observation, namely by way of reflecting any progress or non-progress in a specific section of the European NPM Newsletter that is to be sent regularly inter alia to the Italian authorities' representatives; Hold at relatively short intervals working meetings to consult between the leading Italian actors, the SPT Bureau/Secretariat and the Council of Europe and explore the issue further – a proposal was made for the first such meeting to be held in June in Padua to make a decision, in the light of the fate of the bill presently discussed for setting up an National Institution.