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European Court of Human Rights]

SHORT SURVEY
OF THE MAIN JUDGMENTS AND DECISIONS DELIVERED BY THE COURT IN 2009

Introduction

In 2009 the Court delivered a total of 1,625 judgments, a figure that represents a slight increase compared with the 1,543 judgments delivered in 2008. 18 judgments were delivered by the Court in its composition as a Grand Chamber.

Many of the judgments concerned so-called "repetitive" cases: the number of judgments classed as importance level 1 or 2 in the Court's case-law database (HUDOC) represents 28% of all the judgments delivered in 2009*.

The number of cases declared admissible was 2,141 (compared with 1,671 in 2008). In Chamber and Grand Chamber compositions, 597 applications were declared inadmissible (compared with 693 in 2008) and 1,211 were struck out of the list (compared with 1,269).

Of the Chamber and Grand Chamber judgments and decisions adopted in 2009, a total of 90 judgments and decisions were accepted by the Court's Publications Committee with a view to publication in the *Reports of Judgments and Decisions* of the Court (ECHR) (figure on 10 March 2010, excluding the Chamber judgments subsequently referred to the Grand Chamber) compared with 78 for 2008.

The Convention provision which gave rise to the greatest number of violations was Article 6, firstly with regard to the right to a fair trial, then the right to a hearing within a reasonable time. This was followed by Article 1 of Protocol No. 1 (protection of property) and Article 5 of the Convention (right to liberty and security).

The highest number of judgments finding at least one violation was delivered in respect of Turkey (341), followed by Russia (210), Romania (153), Ukraine (126) and Poland (123).

* 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 a particular point of interest).

Jurisdiction and admissibility

General jurisdiction of the Court (Article 1)

The case of *Stephens v. Malta (no. 1)*[1] provides an unprecedented illustration of the possibilities regarding the Contracting States' extraterritorial jurisdiction. In its judgment, concerning the detention of a British national in Spain under an arrest warrant issued by a Maltese criminal court and subsequently rescinded by a civil court of the same State as having no legal basis, the Court held that the facts of the case engaged Malta's responsibility even though the applicant had been detained in Spain.

Victim status (Article 34)

In *Paladi v. Moldova*[2], the Court found a violation of Article 34 on account of the authorities' failure to comply with an interim measure indicated by the Court under Rule 39 of the Rules of Court, namely the continuation of the applicant's treatment in the Republican Neurology Centre of the Ministry of Health even though his transfer to a prison hospital had been ordered.

Six-month time-limit (Article 35 § 1)

The case of *Varnava and Others v. Turkey*[3] concerned the disappearance of nine Cypriot nationals during military operations conducted by the Turkish army in northern Cyprus in 1974. The Grand Chamber held that, in this exceptional situation of international conflict where no normal investigative procedures were available, it had been reasonable for the applicants to await the outcome of the initiatives taken by their government and the United Nations. Accordingly, although they had applied to the Court more than six months after the acceptance by the respondent State of the right of individual petition, the applicants, who were relatives of the disappeared persons, had acted with reasonable expedition.

Admissibility criteria (Article 35 § 2)

In the case of *Peraldi v. France*[4], the Court acknowledged for the first time that the United Nations Working Group on Arbitrary Detention, like the United Nations Human Rights Committee, was an "international investigation and settlement body", basing that finding on considerations such as the group's composition, the nature of its examinations and the procedure it followed. It therefore held that the application before it was "substantially the same" as the complaint brought by the applicant's brother before that institution. The Court further observed that the rule in Article 35 § 2 (b), aimed at avoiding a plurality of international proceedings relating to the same cases, applied notwithstanding the date on which the proceedings were brought, the criterion to be taken into consideration being the prior existence of a decision on the merits at the time when the Court examined the application.

1. No. 11956/07, 21 April 2009.
2. [GC], no. 39806/05, 10 March 2009, to be reported in ECHR 2009.
3. [GC], nos. 16064/90 et al., 18 September 2009, to be reported in ECHR 2009.
4. (dec.), no. 2096/05, 7 April 2009.

Furthermore, where the applicant's identity could not be established from any of the material in the case file, the Court found that the application was to be treated as anonymous. It declared the application in *"Blondje" v. the Netherlands*[1] inadmissible on that account.

Abuse of the right of application (Article 35 § 3)

In the case of *Miroļubovs and Others v. Latvia*[2], the Court for the first time gave a general definition of the concept of "abuse of the right of application" and defined the fundamental principles applicable in that regard. While stating that an intentional breach of the confidentiality rule amounted to an abuse of procedure, the Court nevertheless observed that the burden of proving that applicants were at fault for disclosing confidential information lay in principle with the Government, as a mere suspicion was not sufficient for an application to be declared an abuse of the right of petition.

Jurisdiction* ratione temporis *(Article 35 § 3)

In the case of *Šilih v. Slovenia*[3], the Grand Chamber clarified the Court's case-law concerning its temporal jurisdiction to examine complaints under the procedural aspect of Article 2 in cases where the death occurred before the entry into force of the Convention in respect of the respondent State. The procedural obligation to carry out an effective investigation has evolved into a separate and autonomous duty which, although triggered by acts concerning the substantive aspects of Article 2, can give rise to a finding of a separate and independent "interference". It may therefore be considered to be a detachable obligation capable of binding the State even when the death took place before the critical date. However, having regard to the principle of legal certainty, the Court stated that, where the death occurred before the critical date, only procedural acts and/or omissions occurring after that date could fall within its temporal jurisdiction. Furthermore, in order for the procedural obligations to take effect, there must be a genuine connection between the death and the entry into force of the Convention in respect of the respondent State.

The case of *Varnava and Others* (cited above) supplements this case-law by highlighting the importance of making a distinction between the obligation to investigate a suspicious death and the obligation to investigate a suspicious disappearance. The Grand Chamber found that where disappearances in life-threatening circumstances were concerned, the procedural obligation to investigate could hardly come to an end on discovery of the body or the presumption of death, since there generally remained an obligation to account for the disappearance and death and to identify and prosecute any perpetrator of unlawful acts in that regard. Accordingly, even though a lapse of over thirty-four years without any news of the missing persons could constitute strong evidence that they had died in the meantime, that did not remove the procedural obligation to investigate. The Grand Chamber pointed out that, in the case of suspicious disappearances, the procedural obligation under Article 2 could potentially persist as long as the person's fate was unaccounted for, even where the victim could be presumed dead. The approach adopted in *Šilih* (cited above), concerning the requirement of proximity of the death and investigative steps to the date of the Convention's entry into force, therefore applied only in the context of killings or suspicious deaths.

1. (dec.), no. 7245/09, 15 September 2009.
2. No. 798/05, 15 September 2009.
3. [GC], no. 71463/01, 9 April 2009.

Jurisdiction ratione personae *(Article 35 § 3)*

The Court extended to international tribunals the case-law developed in *Behrami v. France*[1] and *Berić and Others v. Bosnia and Herzegovina*[2] which hitherto had been applicable to armed forces and administrative authorities. In the cases of *Galić v. the Netherlands*[3] and *Blagojević v. the Netherlands*[4], it thus declared that it lacked jurisdiction *ratione personae* to deal with acts of the International Criminal Tribunal for the former Yugoslavia, notably on the grounds that it could not hinder the Security Council's effective fulfilment of its mission to ensure peace and security and that the provisions governing the ICTY's organisation and procedure were designed precisely to provide those indicted before it with all appropriate guarantees.

"Core" rights

Right to life (Article 2)

In the case of *Opuz v. Turkey*[5], the applicant's husband had committed a series of assaults on his wife and mother-in-law over several years culminating in the murder of the mother-in-law, despite several complaints by the victims and the institution of various sets of proceedings by the prosecuting authorities. The judgment is particularly noteworthy because the Court held that the violence endured by the applicant and her mother could be regarded as gender-based, constituting a form of discrimination against women, and for the first time found a violation of Article 14, in conjunction with Articles 2 and 3, in a case concerning domestic violence.

In its judgment in *G.N. and Others v. Italy*[6], the Court likewise held for the first time that there had been a violation of Article 14, in conjunction with Article 2 under its procedural head, on account of a difference in treatment based on a medical condition. The case concerned the fact that thalassaemics infected with HIV or hepatitis C following the transfusion or administration of infected blood or blood products supplied by public health facilities (or their heirs) were not entitled to the out-of-court settlements offered by the Ministry of Health to contaminated haemophiliacs who had brought compensation proceedings.

The judgment in *Branko Tomašić and Others v. Croatia*[7], meanwhile, supplemented the case-law concerning the preventive measures to be taken by the State to protect the lives of those at risk from the acts of private individuals. In this case, a man killed his former partner and their child and then committed suicide, having previously been sentenced to five months' imprisonment and ordered to follow a course of psychiatric treatment for threatening to kill them and having been released shortly before the killings. The Court found that the competent authorities had not taken adequate steps to protect the victims' lives and concluded that there had been a violation of the Convention.

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1. (dec.) [GC], no. 71412/01, 2 May 2007.
2. (dec.), no. 36357/04, 16 October 2007.
3. (dec.), no. 22617/07, 9 June 2009.
4. (dec.), no. 49032/07, 9 June 2009.
5. No. 33401/02, 9 June 2009, to be reported in ECHR 2009.
6. No. 43134/05, 1 December 2009, to be reported in ECHR 2009 (extracts).
7. No. 46598/06, 15 January 2009, to be reported in ECHR 2009 (extracts).

The Court also reached the innovative finding in *Maiorano and Others v. Italy*[1] that, in some cases, the procedural aspect of Article 2 required judges and prosecutors to be punished for their mistakes. The case concerned the semi-custodial regime granted to a life prisoner who took advantage of the regime to murder the wife and daughter of one of his former fellow inmates.

Lastly, in *Šilih* (cited above), the Court found that the State had breached its positive obligations on account of significant delays and frequent changes of judges in criminal and civil proceedings concerning a death allegedly resulting from medical negligence.

Prohibition of torture (Article 3)

The Court has had occasion to clarify its case-law concerning Article 3, and in particular the scope of that Article, in dealing with unprecedented cases relating especially to the situation of prisoners.

In its examination of the case of *Güveç v. Turkey*[2], the Court found for the first time that the imprisonment of a minor in an adult prison amounted to inhuman and degrading treatment. The detention of the 15-year-old adolescent, in breach of domestic law, had lasted more than five years and had caused him severe physical and psychological problems resulting in three suicide attempts, without appropriate medical care being provided by the authorities.

The case of *S.D. v. Greece*[3] provided an opportunity for the Court's first ruling on the living conditions in a holding centre for aliens. Referring to the findings of international institutions and non-governmental organisations, the Court concluded that the conditions of the applicant's detention were unacceptable and amounted to degrading treatment. The applicant, an asylum-seeker who had fled from Turkey after being imprisoned and tortured there, had been detained in a prefabricated hut for two months without the possibility of going out or making telephone calls and without any blankets, clean sheets or adequate toiletries.

In *Khider v. France*[4], the Court likewise dealt for the first time with the issue of multiple transfers of a remand prisoner, in this case on fourteen occasions over a seven-year period. The Court held that the conditions of detention endured by the applicant, who was classified as a high-risk prisoner from the start of his detention and was subjected to repeated prison transfers, long-term solitary confinement and regular full-body searches, amounted to inhuman and degrading treatment within the meaning of Article 3 on account of their combined and repetitive effect.

In *Ramishvili and Kokhreidze v. Georgia*[5], the severe and humiliating measures imposed on defendants in a courtroom were for the first time found to constitute treatment in breach of Article 3. During the hearings relating to their applications for release, which were broadcast live on television, the two applicants were confined in a kind of metal cage and surrounded by large numbers of masked and heavily armed guards, even though there was no indication of the slightest risk that they might abscond or resort to violence.

1. No. 28634/06, 15 December 2009, to be reported in ECHR 2009 (extracts).
2. No. 70337/01, 20 January 2009, to be reported in ECHR 2009 (extracts).
3. No. 53541/07, 11 June 2009.
4. No. 39364/05, 9 July 2009.
5. No. 1704/06, 27 January 2009.

Lastly, the Court dealt for the first time with the conduct to be adopted by the police when arresting demonstrators who did not offer any violent or physical resistance in the case of *Samüt Karabulut v. Turkey*[1]. It found a violation of Article 3 on account of the beating of a demonstrator by the police during his arrest after the dispersal of an unauthorised but peaceful demonstration in a public place.

Right to liberty and security (Article 5)

The case of *Giorgi Nikolaishvili v. Georgia*[2] is an interesting development of the case-law concerning the notion of "security". Without excluding the possibility of recourse by the authorities to certain stratagems in order to fight crime more effectively, the Court stated that not every ruse – in this case, the arrest of a witness with a view to exerting pressure on his brother, who was sought by the judicial authorities – could be justified, especially one which was implemented in such a way that the principles of legal certainty were undermined.

In *M. v. Germany*[3], the Court dealt with the sensitive issue of preventive detention in relation to the indefinite extension of that measure for a prisoner who had served his sentence and had already been subjected to the measure for ten years but was still considered dangerous. It found that the extension of preventive detention was not justified by any of the paragraphs of Article 5 § 1.

Procedural rights

Right to a fair hearing (Article 6)

Applicability

In *Micallef v. Malta*[4], the Court departed from its previous case-law in finding that it was no longer justified for injunction proceedings to be automatically characterised as not involving the determination of civil rights and obligations. After noting that not all interim measures determined such rights and obligations, the Court set out the conditions which had to be satisfied for Article 6 to be applicable. Thus, the right at stake in both the main and the injunction proceedings had to be "civil", and the interim measure had to determine the "civil" right in question. The Court accepted, however, that in exceptional cases it might not be possible to comply with all the requirements of Article 6.

The Court also held that Article 6 was applicable in *L'Erablière A.S.B.L. v. Belgium*[5], which concerned the inadmissibility of an application by a local environmental-protection association for judicial review of planning permission. It found that the association's application was in the general interest and could therefore not be regarded as an *actio popularis*, particularly in view of the nature of the impugned measure, the status of the association and its founders, and the limited substantive and geographical aim it pursued. The

1. No. 16999/04, 27 January 2009.
2. No. 37048/04, 13 January 2009, to be reported in ECHR 2009 (extracts).
3. No. 19359/04, 17 December 2009, to be reported in ECHR 2009.
4. [GC], no. 17056/06, 15 October 2009, to be reported in ECHR 2009.
5. No. 49230/07, 24 February 2009, to be reported in ECHR 2009.

Court further held that there was a sufficient connection between the dispute ("*contestation*") raised by the association and a "right" that it could claim as a legal entity.

In *Gorou v. Greece (no. 2)*[1], the applicant, on the basis of an established judicial practice, asked the public prosecutor at the Court of Cassation to appeal on points of law against a judgment. The Court held that Article 6 § 1 was applicable because the proceedings in issue, concerning charges of perjury and defamation, had involved the right to a "good reputation" and had an economic aspect, however symbolic (a sum equivalent to about three euros). It found that the applicant's request to the public prosecutor had arisen from a real "dispute", since the request had formed an integral part of the whole of the proceedings.

The case of *Cooperatieve Producentenorganisatie van de Nederlandse Kokkelvisserij U.A. v. the Netherlands*[2] concerned the refusal by the Court of Justice of the European Communities to authorise a third party to respond to the opinion of the Advocate General. The Court, presuming Article 6 § 1 to be applicable to the preliminary ruling procedure before the ECJ, found that that procedure offered equivalent protection to that afforded by Article 6 § 1, and that the protection thus afforded to the applicant association was not manifestly deficient, seeing that the ECJ could reopen the oral proceedings after hearing the Advocate General's opinion, either on its own initiative or at the request of one of the parties.

Access to a court

In *Kart v. Turkey*[3], the applicant, a member of parliament, challenged the decision to stay criminal proceedings against him until the end of his term of parliamentary office. The Court considered that, in standing for election, the applicant had been aware that his special status would delay the outcome of the criminal proceedings against him. He had also known that because of his status he would not be able to waive his inviolability or have it lifted merely at his request. Thus, while the delay inherent in the parliamentary procedure had been capable of affecting the applicant's right to have his case heard by a court by delaying the exercise of that right, it had not impaired the very essence of that right in his case.

The case of *K.H. and Others v. Slovakia*[4] concerned the inability of eight women of Roma origin to obtain photocopies of their medical records from hospitals where they suspected that they might have been sterilised without their knowledge after giving birth. The Court found that, although the applicants had not been entirely barred from bringing a civil action, the strict application of national legislation had imposed a disproportionate limitation on their ability to present their cases effectively to a court.

In *Kulikowski v. Poland*[5], the Court held that Article 6 did not confer on the State an obligation to ensure assistance by successive lawyers for the purposes of pursuing legal remedies that had already been found not to offer reasonable prospects of success. However, it found a violation in that the courts' failure to inform the defendant that he had a new time-limit for lodging a cassation appeal had denied him the right of access to the Supreme Court.

1. [GC], no. 12686/03, 20 March 2009, to be reported in ECHR 2009.
2. (dec.), no. 13645/05, 20 January 2009, to be reported in ECHR 2009.
3. [GC], no. 8917/05, 3 December 2009, to be reported in ECHR 2009.
4. No. 32881/04, 28 April 2009, to be reported in ECHR 2009 (extracts).
5. No. 18353/03, 19 May 2009, to be reported in ECHR 2009 (extracts).

Lastly, the Court broke new ground in dealing with a "technical" impediment to access to a court in *Lawyer Partners, a.s., v. Slovakia*[1], which concerned the refusal by a number of courts to register civil actions on the ground that they had been submitted in the form of a DVD and the courts did not have the necessary equipment. The Court found, however, that the procedure used by the claimants was entirely appropriate to the volume of cases, since 70,000 actions for recovery of debt were concerned and the data saved on DVD corresponded to 43,800,000 pages.

Length of proceedings

In *Simaldone v. Italy*[2], the Court ruled on the issue of delayed payment of compensation awarded by a court for the excessive length of proceedings. The finding of a violation of the right to the execution of judicial decisions in Italy is nevertheless of interest for all Contracting States which have introduced compensatory remedies in respect of the excessive length of proceedings.

Defence rights

In *Dayanan v. Turkey*[3], the Court held that systematically depriving a person in police custody of the assistance of a lawyer on the basis of the relevant legal provisions was a sufficient basis for finding a breach of the requirements of Article 6, notwithstanding the fact that the applicant had remained silent throughout his time in police custody. It further held that for proceedings to be fair, the accused had to be able to obtain the whole range of services specifically associated with legal assistance and that, to that end, discussion of the case, organisation of the defence, collection of evidence in the accused's favour, preparation for questioning, support to an accused in distress, and inspection of detention conditions were fundamental aspects of the defence which the lawyer must be free to conduct.

No punishment without law (Article 7)

The Court held for the first time in *Gurguchiani v. Spain*[4] that deportation of an alien constituted a "penalty" where it replaced a custodial sentence imposed on the accused. Observing that the applicant had been given a heavier sentence than the one carried by the offence of which he had been found guilty, it found a violation of Article 7.

In *M. v. Germany* (cited above), the Court found a violation of Article 7, holding that the extension of preventive detention constituted an additional "penalty" imposed retroactively under a law that had come into force after the offence had been committed. The judgment is not final.

The Court reached the opposite finding in *Gardel v. France*[5], which concerned the registration of a convicted person in a national judicial database of sex offenders, for a maximum period of thirty years from the expiry of the prison sentence, in accordance with a

1. Nos. 54252/07, 3274/08, 3377/08, 3505/08, 3526/08, 3741/08, 3786/08, 3807/08, 3824/08, 15055/08, 29548/08, 29551/08, 29552/08, 29555/08 and 29557/08, 16 June 2009, to be reported in ECHR 2009.
2. No. 22644/03, 31 March 2009, to be reported in ECHR 2009 (extracts).
3. No. 7377/03, 13 October 2009.
4. No. 16012/06, 15 December 2009, to be reported in ECHR 2009.
5. No. 16428/05, 17 December 2009, to be reported in ECHR 2009.

law that had come into force after the accused had been convicted with final effect. In the Court's view, such registration and the resulting obligations pursued a purely preventive and deterrent aim, that of preventing reoffending and facilitating police investigations, so that the principle that laws should not be retroactive did not apply.

In *Sud Fondi S.r.l. and Others v. Italy*[1], the Court accepted the idea that for a punishment to be justified, and therefore lawful, there must be "an intellectual link revealing an element of responsibility in the conduct of the person who actually committed the offence". Land on which the applicant companies had illegally built housing estates had been confiscated from them despite the fact that the courts had not convicted them of a criminal offence and had acknowledged that the companies had committed an unavoidable and excusable error in their interpretation of the provisions that had been breached.

Furthermore, the Court dealt with the question of universal jurisdiction in the case of *Ould Dah v. France*[2], concerning the prosecution and conviction in France of a Mauritanian army officer for acts of torture and barbarity committed in his own country against fellow Mauritanian servicemen. The Court found, as did the United Nations Human Rights Committee and the International Criminal Tribunal for the former Yugoslavia, that an amnesty was generally incompatible with the duty on States to investigate acts of torture. It also noted that international law did not preclude the trial by another State of a person who had been granted an amnesty before being tried in his country of origin.

Right to an effective remedy (Article 13)

The issue dealt with by the Court in *Petkov and Others v. Bulgaria*[3] was the failure by the electoral authorities to restore to the lists of candidates in a general election the names of three persons who had been struck off at the request of their party, despite final judgments in which the Supreme Administrative Court had set aside the decisions striking them off. The Court held that only remedies whereby aggrieved persons could challenge decisions or, in certain circumstances, election results could qualify as effective within the meaning of the Convention. It also laid down the requirement of direct access for aggrieved persons to the body responsible for reviewing the lawfulness of elections.

Right not to be tried or punished twice (Article 4 of Protocol No. 7)

The case of *Sergey Zolotukhin v. Russia*[4] provided an opportunity for the Court to clarify its case-law, in particular as regards the Convention meaning of the term "same offence". The Court held that Article 4 of Protocol No. 7 must be understood as prohibiting the prosecution or trial of a second offence in so far as it arose from identical facts or facts which were "substantially" the same as those which had given rise to the first offence. That guarantee became relevant on commencement of a new prosecution, where a prior acquittal or conviction had already become *res judicata*.

1. No. 75909/01, 20 January 2009.
2. (dec.), no. 13113/03, 17 March 2009, to be reported in ECHR 2009.
3. Nos. 77568/01, 178/02 and 505/02, 11 June 2009, to be reported in ECHR 2009.
4. [GC], no. 14939/03, 10 February 2009, to be reported in ECHR 2009.

Civil and political rights

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

Private life

The Court clarified the relationship between the notions of "private life" and "reputation" in *Karakó v. Hungary*[1], concerning the refusal of the public prosecutor and a court to act on complaints lodged by a member of parliament against a political opponent who had allegedly defamed him in a leaflet distributed between two rounds of an election. It held that the personal integrity rights falling within the ambit of Article 8 were unrelated to the "external" evaluation of the individual, whereas in matters of reputation that evaluation was decisive because one could lose the esteem of society but not one's integrity, which remained inalienable.

In *Bykov v. Russia*[2], the Court observed that the use of a remote radio-transmitting device to record a conversation was similar to telephone tapping in terms of the nature and degree of the invasion of privacy. It found, however, that in the absence of specific and detailed regulations, the use of that surveillance technique as part of an "operative experiment" was not accompanied by adequate safeguards against various possible abuses. Accordingly, its use was open to arbitrariness and was inconsistent with the requirement of lawfulness.

Correspondence

The Court dealt for the first time with medical confidentiality in prison in *Szuluk v. the United Kingdom*[3], concerning the monitoring by a prison medical officer of "medical" correspondence between a convicted prisoner, who had undergone brain surgery twice, and a neuroradiology specialist, who was supervising his hospital treatment. The judgment is important in that the Court refused, in substance, to make a distinction in this connection between patients who were in prison and those who were at liberty. It also accepted that a prisoner with a life-threatening medical condition might wish to seek confirmation outside the prison that he was receiving adequate medical treatment.

Positive obligations

The Court has also developed its case-law concerning the positive obligations arising from Article 8.

In *K.H. and Others v. Slovakia* (cited above), it found that the State's positive obligation to allow individuals access to information concerning them personally, in this case medical records, included the obligation to let them have copies of such information.

The case of *Sandra Janković v. Croatia*[4] involved the positive obligations on the State to protect physical integrity. In this case, which concerned the passive attitude of the authorities in dealing with a complaint concerning an alleged physical and verbal assault by individuals,

1. No. 39311/05, 28 April 2009.
2. [GC], no. 4378/02, 10 March 2009, to be reported in ECHR 2009.
3. No. 36936/05, 2 June 2009, to be reported in ECHR 2009.
4. No. 38478/05, 5 March 2009, to be reported in ECHR 2009 (extracts).

the Court accepted that in this sphere the Convention did not always require a State-assisted prosecution and that the possibility of the injured party acting as a subsidiary prosecutor could be sufficient.

Freedom of religion (Article 9)

The Court added to its case-law concerning the recognition or registration of religious bodies in *Kimlya and Others v. Russia*[1]. It ruled for the first time on a lengthy waiting period imposed by the legislation itself on "emerging" religious groups wishing to acquire legal personality, as opposed to religious groups that formed part of a hierarchical church structure.

The case of *Miroļubovs and Others* (cited above) concerned the intervention by a body attached to the Ministry of Justice in a conflict between two groups of members of an Old Orthodox community, resulting in withdrawal of the recognition formerly granted to the authorities of a parish and registration of a rival group from the same parish. The judgment is innovative in that the Court applied the standard case-law on conflicts within a religious community to a religion with no internal hierarchical organisation which operated in the form of completely independent entities. It observed that it was impossible to adopt a uniform approach to all religious denominations and stressed the obligation for authorities to give particularly sound reasons for decisions settling internal disputes within a religious community.

In *Bayatyan v. Armenia*[2], the Court ruled that Article 9, interpreted in the light of Article 4 § 3 (b), did not guarantee the right to refuse to perform military service on conscientious grounds. It held that there had been no violation of Article 9 on account of the two-and-a-half-year prison sentence received by a conscientious objector who was a Jehovah's Witness for refusing to perform military service. The judgment is not final.

Lastly, the Court dealt for the first time in *Lautsi v. Italy*[3] with the display of a religious symbol in a public place, namely a crucifix in the classrooms of a State school. The Court found that the symbol in question had a multitude of different meanings, among which the religious meaning was predominant, and that it was reasonable to associate it with Catholicism. After holding that the State had an obligation to refrain from imposing particular beliefs, even indirectly, in premises where individuals were dependent on it or were particularly vulnerable, it concluded that the compulsory display of a symbol of a particular faith in the exercise of public authority in specific situations subject to government control, especially in classrooms, restricted the right of schoolchildren to believe or not to believe. The case was referred to the Grand Chamber on 1 March 2010.

Freedom of expression (Article 10)

This year the Court has dealt with the question of freedom of expression through various media.

1. Nos. 76836/01 and 32788/03, 1 October 2009.
2. No. 23459/03, 27 October 2009.
3. No. 30814/06, 3 November 2009.

In *Manole and Others v. Moldova*[1], which concerned the censorship and political pressure to which journalists working for the State broadcasting company were subjected, it held that the State was under an obligation to ensure that the public had access to a balanced, informative and pluralistic broadcasting service. It further observed that if the State decided to set up or maintain a public broadcasting service, especially if the service enjoyed a *de facto* monopoly, it was essential for it to be structurally independent and not politically biased.

The Court also addressed various problems raised by the Internet as a new medium of communication in connection with the publication of a daily newspaper's archives on its website, exposing it indefinitely to libel actions. Although the Court, examining these issues for the first time in *Times Newspapers Ltd v. the United Kingdom (nos. 1 and 2)*[2], found that there had been no violation in that case, it nevertheless held that libel proceedings brought after a significant lapse of time might well, in the absence of exceptional circumstances, give rise to a disproportionate interference with freedom of the press under Article 10.

Without dealing with a particular medium of communication as such, the Court acknowledged in *Társaság a Szabadságjogokért v. Hungary*[3] that non-governmental organisations had an essential "watchdog" role and that their activities should be protected by the Convention in the same way as those of the press. It further held that it would be fatal for freedom of expression if political figures could censor the press and public debate by contending that their opinions on matters of public interest constituted personal data which could not be disclosed without their consent.

In *Kenedi v. Hungary*[4], the Court clarified the scope of the exercise of freedom of expression by finding in substance that access to original documentary sources for legitimate historical research, in this case documents concerning the Hungarian State Security Service during the communist era, was an essential element of the exercise of that right.

The Court has also had occasion to develop its case-law concerning both the procedural aspect of Article 10 and the ensuing positive obligations.

For example, the case of *Lombardi Vallauri v. Italy*[5] raised the issue of freedom of academic expression at a denominational university in connection with a faculty's refusal to consider a job application by a non-tenured lecturer, on the ground that an authority of the Holy See had not given its approval and had noted that certain statements by the applicant were "in clear opposition to Catholic doctrine". After examining the conduct of the proceedings within the faculty and the effectiveness of judicial review of the administrative procedure, the Court concluded that the university's interest in providing an education based on Catholic doctrine could not extend so far as to impair the very essence of the procedural safeguards inherent in Article 10.

In *Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland (no. 2)*[6], the Court held that the Swiss authorities had failed to comply with their positive obligation under Article 10 on

1. No. 13936/02, 17 September 2009, to be reported in ECHR 2009 (extracts).
2. Nos. 3002/03 and 23676/03, 10 March 2009, to be reported in ECHR 2009.
3. No. 37374/05, 14 April 2009, to be reported in ECHR 2009.
4. No. 31475/05, 26 May 2009, to be reported in ECHR 2009 (extracts).
5. No. 39128/05, 20 October 2009, to be reported in ECHR 2009 (extracts).
6. [GC], no. 32772/02, 30 June 2009, to be reported in ECHR 2009.

account of the continued prohibition on broadcasting a television commercial despite the Court's previous finding of a breach of freedom of expression.

Freedom of assembly and association (Article 11)

A number of cases before the Court this year have concerned the dissolution of associations or political parties.

The case of *Tebieti Mühafize Cemiyyeti and Israfilov v. Azerbaijan*[1] concerned a court's dissolution of an environmental-protection association for failure to observe its own charter. While also noting that alternative sanctions less radical than dissolution were available, the Court considered that, in the absence of complaints or disputes between members of the same association, the authorities should not intervene in its internal functioning in such a way as to ensure its observance of every single formality provided by its charter. The judgment is not final.

The case of *Herri Batasuna and Batasuna v. Spain*[2] concerned the dissolution of political parties linked to a terrorist organisation. The Court endorsed the position of the domestic courts in finding that a refusal to condemn violence amounted to an attitude of tacit support for terrorism, in the context of terrorism that had existed for more than thirty years and that was condemned by all the other political parties. With regard to the foreseeability of the impugned dissolution, the Court found that no Convention provision ruled out the possibility of basing a decision on facts occurring prior to the enactment of a law.

The Court has also devoted attention to the question of the exercise of the rights guaranteed by Article 11 of the Convention.

Thus, in *Barraco v. France*[3], the Court applied its case-law concerning freedom to demonstrate in a public place to the obstruction of traffic by lorries.

Similarly, the Court considered the exercise of the right of civil servants to strike in *Enerji Yapı-Yol Sen v. Turkey*[4], observing that strike action provided a trade union with an opportunity to make its voice heard and was an important aspect of the protection of its members' interests. It acknowledged that the principle of trade-union freedom could be compatible with denying the right to strike to civil servants exercising authority on the State's behalf, provided that the statutory restrictions on that right defined as clearly and as narrowly as possible the categories of civil servants concerned.

Lastly, in *Danilenkov and Others v. Russia*[5], the Court ruled that the State had a positive obligation to establish a judicial system that provided effective and clear protection against any discrimination based on membership of a trade union; the case concerned an employer's use of various means to compel its employees to relinquish their trade-union membership.

1. No. 37083/03, 8 October 2009, to be reported in ECHR 2009.
2. Nos. 25803/04 and 25817/04, 30 June 2009, to be reported in ECHR 2009.
3. No. 31684/05, 5 March 2009, to be reported in ECHR 2009.
4. No. 68959/01, 21 April 2009.
5. No. 67336/01, 30 July 2009, to be reported in ECHR 2009 (extracts).

Right to education (Article 2 of Protocol No. 1)

The Court clarified the principles governing the State's duty of neutrality as regards school teaching in *Appel-Irrgang and Others v. Germany*[1]. It declared inadmissible an application concerning the introduction of compulsory ethics classes for all pupils in State secondary schools in the *Land* of Berlin, with no possibility of an exemption for those attending optional religious-education classes taught at their school by representatives of religious or philosophical communities and groups.

In *İrfan Temel and Others v. Turkey*[2], the Court found a violation of Article 2 of Protocol No. 1 on account of a disciplinary measure, namely the suspension from university of students who had requested the introduction of optional Kurdish language classes.

The Court also held in *Lautsi* (cited above) that the compulsory display of a religious symbol such as a crucifix in classrooms restricted the right of parents to educate their children in accordance with their beliefs. The case was referred to the Grand Chamber on 1 March 2010.

Right to free elections (Article 3 of Protocol No. 1)

The case of *Sejdić and Finci v. Bosnia and Herzegovina*[3] concerned the ineligibility of the applicants, who identified themselves as being of Roma and Jewish origin respectively, to stand for election to the House of Peoples and the State Presidency because they had not declared affiliation to any of the "constituent peoples" (Bosniacs, Croats and Serbs) as required by a provision of the Constitution. The Court concluded that the applicants' continued ineligibility to stand for election to the House of Peoples, after ratification by Bosnia and Herzegovina of the Convention and of Protocol No. 1, had no objective and reasonable justification and therefore breached Article 14 of the Convention in conjunction with Article 3 of Protocol No. 1.

The Court also reaffirmed the need for legal certainty in electoral matters in the case of *Petkov and Others* (cited above), emphasising the necessity to avoid last-minute changes to electoral legislation.

In *Seyidzade v. Azerbaijan*[4], it dealt for the first time with a constitutional and legislative restriction of the right of members of the clergy to stand for election and be elected to Parliament. It found that the legal definition of the category of persons affected by the restriction in question was not only too broad or imprecise but could be regarded as entirely non-existent.

Protection of property (Article 1 of Protocol No. 1)

This Article of Protocol No. 1 has provided the Court with an opportunity to examine a wide range of areas.

1. (dec.), no. 45216/07, 6 October 2009.
2. No. 36458/02, 3 March 2009, to be reported in ECHR 2009 (extracts).
3. [GC], nos. 27996/06 and 34836/06, 22 December 2009, to be reported in ECHR 2009.
4. No. 37700/05, 3 December 2009.

For example, it ruled for the first time in *Faccio v. Italy*[1] on the nature of the television licence fee in a Contracting State, finding that it was a tax intended to fund the public radio and television broadcasting service. It further accepted that the mere possession of a television set entailed the obligation to pay the licence fee, which was not the price paid in consideration for reception of a particular channel.

In *Andrejeva v. Latvia*[2], the Court found a violation of Article 14 in conjunction with Article 1 of Protocol No. 1 on account of the domestic courts' refusal to take into account the applicant's periods of employment in the former Soviet Union in calculating her retirement pension, on the ground that she did not have Latvian citizenship.

The case of *Kozacıoğlu v. Turkey*[3], meanwhile, gave the Court an opportunity to clarify that, in order to satisfy the requirements of proportionality between deprivation of property and the public interest pursued, it was appropriate, in the event of expropriation of a listed building, to take account, to a reasonable degree, of the property's specific features, such as its rarity or architectural and historical aspects, in determining the compensation due to the owner.

Lastly, the Court ruled for the first time on the effects of Roma marriage, more specifically as regards survivors' pensions, in the case of *Muñoz Díaz v. Spain*[4]. It found that it was disproportionate for the Spanish State, which had issued the applicant and her Roma family with a family record book, granted them large-family status, afforded health-care assistance to her and her six children and collected social-security contributions from her Roma husband for over nineteen years, now to refuse to recognise the effects of Roma marriage in relation to a survivor's pension. The Court further held that "the prohibition of discrimination enshrined in Article 14 of the Convention is meaningful only if, in each particular case, the applicant's personal situation in relation to the criteria listed in that provision is taken into account exactly as it stands"; it thus dismissed the Government's argument that it would have been sufficient for the applicant to enter into a civil marriage in order to obtain the pension claimed.

Protocol No. 12

Article 14 of the Convention, which prohibits discrimination, complements the other substantive provisions of the Convention and the Protocols thereto. It has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. Article 1 of Protocol No. 12, however, extends the scope of protection to "any right set forth by law". It thus introduces a general prohibition of discrimination.

The Court found a violation of this provision for the first time this year in *Sejdić and Finci* (cited above). It held that the constitutional provisions which rendered the applicants ineligible for election to the State Presidency should also be considered discriminatory, finding that there was no pertinent distinction to be drawn in this regard between the House of Peoples and the Presidency of Bosnia and Herzegovina.

1. (dec.), no. 33/04, 31 March 2009.
2. [GC], no. 55707/00, 18 February 2009, to be reported in ECHR 2009.
3. [GC], no. 2334/03, 19 February 2009, to be reported in ECHR 2009.
4. No. 49151/07, 8 December 2009, to be reported in ECHR 2009.

Derogation (Article 15)

The Court was also called upon to consider the validity of a derogation from the obligations arising under Article 5 § 1 in the case of *A. and Others v. the United Kingdom*[1]. Following the attacks of 11 September 2001 on the United States of America, the British government created an extended power to detain foreign nationals who were suspected of being "international terrorists" but could not be deported because there was a risk that they would be ill-treated in their country of origin. Since the government considered that this detention scheme might not be consistent with Article 5 § 1, they issued a notice of derogation under Article 15. The Court observed that States could not be required to wait for disaster to strike before taking measures to deal with it and that they had a wide margin of appreciation in assessing the threat on the basis of the information at their disposal. It further considered that the approach under Article 15 was necessarily focused on the general situation in the country concerned. The Court concluded in this case that the derogating measures were disproportionate in that they discriminated unjustifiably between nationals and non-nationals.

Execution of judgments (Article 46)

In *Manole and Others* (cited above), which concerned the censorship and political pressure to which journalists working for the State broadcasting company were subjected, the Court for the first time called upon a State to take general measures as soon as possible, including legislative reform, to remedy the situation that had given rise to a violation of Article 10. It added that the legal framework to be instituted must be in conformity with the recommendations of the Committee of Ministers of the Council of Europe and those of an expert appointed following an agreement between the Moldovan authorities and the Secretary General of the Council of Europe.

The Court has also had to deal with cases disclosing systemic problems in relation to medical care in prison.

For example, in *Poghosyan v. Georgia*[2], the Court noted the systemic nature of the lack of medical care in Georgian prisons, particularly with regard to the treatment of hepatitis C, and urged Georgia to take legislative and administrative measures "rapidly" in order to prevent the transmission of the disease in prisons, to introduce a testing programme and to guarantee the provision of care for those suffering from the disease.

The case of *Sławomir Musiał v. Poland*[3], meanwhile, concerned the inadequate medical care provided to an accused person suffering from epilepsy and various mental disorders who was detained in a succession of ordinary prisons. The Court considered that, in view of the seriousness and the systemic nature of the problem of overcrowding and the poor living and sanitary conditions in Polish detention facilities, the necessary legislative and administrative measures should be taken rapidly to ensure appropriate conditions of detention, particularly for prisoners who needed special care owing to their state of health.

1. [GC], no. 3455/05, 19 February 2009, to be reported in ECHR 2009.
2. No. 9870/07, 24 February 2009.
3. No. 28300/06, 20 January 2009, to be reported in ECHR 2009 (extracts).