[Extract - Annual Report 2010 of the European Court of Human Rights]

Short survey of the main judgments and decisions delivered by the Court in 2010[1]

Introduction

In 2010 the Court delivered a total of 1,499 judgments[2], slightly down on the 1,625 judgments delivered in 2009. There was a 9% increase in the number of applications that resulted in a judgment compared to the previous year. 18 judgments, 1 admissibility decision and 1 advisory opinion 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[3] 1 or 2 in the Court's case-law database (HUDOC) represents 32.5% of all the judgments delivered in 2010.

The Convention provision which gave rise to the greatest number of violations was Article 6, firstly with regard to the right to a hearing within a reasonable time, then with regard to the right to a fair trial. This was followed by Article 5 (right to liberty and security) and Article 3 (prohibition of torture and of inhuman or degrading treatment or punishment). The highest number of judgments finding at least one violation was delivered in respect of Turkey (228), followed by Russia (204), Romania (135), Ukraine (107) and Poland (87).

On 1 June 2010 Protocol No. 14 to the Convention came into force with the aim of guaranteeing the Court's long-term effectiveness by optimising the screening and processing of applications. Among other matters covered, it established a new admissibility criterion (the existence of a "significant loss") and a new judicial formation – the single judge – to deal with inadmissible cases.

12,894 cases were declared inadmissible or struck out of the list by Committees of three judges and 22,260 by the single-judge formation.

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1. This is a selection of judgments and decisions which either raise new issues or important matters of general interest, establish new principles or develop or clarify the case-law.
2. One judgment may concern several applications and the total figure includes 116 judgments delivered by Committees of three judges.
3. Level 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.
Level 2 = Medium importance – judgments which do not make a significant contribution to the case-law but nevertheless do not merely apply existing case-law.
Level 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).

In Chamber and Grand Chamber compositions, 673 applications were declared inadmissible (compared with 597 in 2009) and 2,749 were struck out of the list (compared with 1,211 in 2009). In all, 38,576 cases were declared inadmissible or struck out of the list in 2010 (compared with 33,067 in 2009). The number of cases declared admissible was 2,474 (compared with 2,141 in 2009).

Jurisdiction and admissibility

General jurisdiction of the Court (Article 1)

The judgment in *Medvedyev and Others v. France*[1] raises the question of territorial jurisdiction during the boarding of a foreign vessel on the high seas. In this case the Court considered that, in view of the full and exclusive control exercised by the French authorities over the vessel and its crew, at least *de facto*, in a continuous and uninterrupted manner from the time of its interception, the crew members had been within France's jurisdiction for the purposes of Article 1.

The judgment in the case of *Kuzmin v. Russia*[2] raises the question of the State's responsibility for comments made by a candidate for the post of regional governor shortly before his election. Unlike the respondent Government, the Court considered that the individual in question – who, in addition to his status as candidate for the post of governor, was at the relevant time a retired army general and an important public figure who had occupied various senior posts and was a well-known politician – had not expressed his views on television as a private individual. Given *the very particular circumstances* in which the impugned remarks had been made, the Court found that *they amounted to declarations by a public official*.

Victim status (Article 34)

In its judgment in the case of *Sakhnovskiy v. Russia*[3], the Grand Chamber ruled on the issue of whether or not victim status was lost in the event of the reopening of proceedings, and on the concept of appropriate and sufficient *redress*.

Hindrance of the exercise of the right of individual application (Article 34)

In its judgment in the case of *Al-Saadoon and Mufdhi v. the United Kingdom*[4], the Court found a violation of the right of individual application after prisoners were handed over to foreign authorities in

1. [GC], no. 3394/03, 29 March 2010, to be reported in ECHR 2010.
2. No. 58939/00, 18 March 2010.
3. [GC], no. 21272/03, 2 November 2010, to be reported in ECHR 2010.
4. No. 61498/08, 2 March 2010, to be reported in ECHR 2010.

breach of an interim measure the Court had indicated under Rule 39 of its Rules. The Government had argued, unsuccessfully, that an *objective impediment* had made it impossible to comply with the measure.

Competence ratione materiae *(Article 35 § 3)*

Where a Government are estopped from raising a preliminary objection on the ground that the application is inadmissible *ratione materiae*, the Court must nonetheless examine this question, which concerns its jurisdiction, the scope of which is determined by the Convention itself and not by the observations submitted by the parties (*Medvedyev and Others*, cited above).

Absence of significant disadvantage (Article 35 § 3 (b))

With the entry into force of Protocol No. 14 to the Convention on 1 June 2010, a new admissibility criterion is to be applied to all pending applications, with the exception of those that have already been declared admissible.

Thus, in application of Article 35 § 3 (b) of the Convention as amended by this Protocol, an application is declared inadmissible where the applicant has not suffered a significant disadvantage, if respect for human rights as defined in the Convention and the Protocols thereto does not require an examination of the application on the merits and if the case has been duly considered by a domestic court. This new provision may be applied by the Court *proprio motu* even where the application under consideration is neither incompatible with the provisions of the Convention or its Protocols, nor manifestly ill-founded or an abuse of the right of application.

Noting for the first time that these three conditions of the new criterion had been met, the Court in its decision *Ionescu v. Romania*[1] dismissed this application, which concerned damages amounting to 90 euros (EUR). The second decision concerned the payment of a sum of less than one euro (*Korolev v. Russia*[2]). Nonetheless, a violation of the Convention may concern an important point of principle, and thus cause significant disadvantage without however having pecuniary implications. The decision in *Rinck v. France*[3] (alleged damages of EUR 172 and the deduction of one driving-licence point) subsequently developed further the case-law on the concept of *significant disadvantage*, the assessment of which must take account both of the applicant's subjective perception and of what was objectively at stake in the dispute. For the first time, the Court dismissed a preliminary objection raised by

1. (dec.), no. 36659/04, 1 June 2010.
2. (dec.), no. 25551/05, 1 July 2010, to be reported in ECHR 2010.
3. (dec.), no. 18774/09, 19 October 2010.

a respondent Government on the ground of Article 35 § 3 (b) in its judgment in *Gaglione and Others v. Italy*[1] (not final).

"Core" rights

Right to life (Article 2)

The interest of the *Al-Saadoon and Mufdhi* judgment (cited above) lies primarily in the fact that the Court reiterated and clarified its case-law with regard to capital punishment, particularly in the light of Protocol No. 13, and with regard to conflicts between international obligations (see also Article 3).

Persons in police custody are vulnerable and the authorities have a duty to protect them. The judgment in *Jasinskis v. Latvia*[2] spelled out the domestic authorities' obligations, including under international law, regarding the treatment in police custody of deaf mute persons.

Prohibition of torture and inhuman and degrading treatment and punishment (Article 3)

The *Gäfgen v. Germany*[3] judgment, which dealt with the sensitive subject of a threat of police violence against a man suspected of having kidnapped a child, specified that the prohibition of ill-treatment applied irrespective of the victim's conduct or the motivation of the authorities, and admitted no exceptions, not even in the event of danger that threatens an individual's life.

The withdrawal of a pair of glasses from a short-sighted prisoner who could neither read nor write normally without them resulted, for the first time, in the finding of a violation. The long period during which the applicant was deprived of his glasses, giving rise for several months to feelings of insecurity and helplessness that were largely imputable to the authorities, was described as degrading treatment in the case of *Slyusarev v. Russia*[4].

The *Al-Saadoon and Mufdhi* judgment (cited above) concerned the risk of being sentenced to death and executed in Iraq. The Court noted that the domestic authorities' actions and failure to act had imposed on the applicants – prisoners who were handed over to the Iraqi authorities, contrary to an interim measure – psychological suffering arising from the fear of execution, which amounted to inhuman treatment within the meaning of Article 3.

1. Nos. 45867/07 et al., 21 December 2010.
2. No. 45744/08, 21 December 2010, to be reported in ECHR 2010 (extracts).
3. [GC], no. 22978/05, 1 June 2010, to be reported in ECHR 2010.
4. No. 60333/00, 20 April 2010, to be reported in ECHR 2010.

Prohibition of slavery and forced labour (Article 4)

In its judgment in the case of *Rantsev v. Cyprus and Russia*[1], the Court developed its case-law concerning Article 4. In particular, it decided that trafficking in human beings was prohibited by this Article. It set out the positive obligations on States to prevent trafficking in human beings, protect actual and potential victims, and prosecute and punish those responsible. In addition, noting that, in many cases, a particular feature of this form of trafficking was that it was not limited to the territory of a single State, the Court stressed the duty of States to cooperate effectively with each other.

The Court laid down the criteria defining the concept of *forced or compulsory labour* in the decision in *Steindel v. Germany*[2]. A doctor in private practice complained of the obligation to participate in the emergency medical service, entailing six days on duty over a three-month period. The Court concluded that there had not been *forced or compulsory labour*, given that the services in question, which were remunerated, did not differ from a doctor's ordinary professional duties, did not require the physician to be available outside consultation hours and to provide night-time and weekend consultation services, and left ample time to take care of patients in private practice.

Right to liberty and security of person (Article 5)

Deprivation of liberty and lawfulness

The judgment in *Medvedyev and Others* (cited above) concerned the international effort to combat drug trafficking on the high seas. The fact that servicemen had boarded a foreign cargo ship suspected of transporting drugs, obliged it to change course and confined the crew to their quarters had constituted in this case a deprivation of liberty, which could not have been considered foreseeable within the meaning of Article 5 § 1. The Grand Chamber considered that developments in public international law which embraced the principle that all States had jurisdiction whatever the flag State, in line with what already existed in respect of piracy, would be a significant step forward in the fight against this illegal activity, given the seriousness and international scale of the problem.

Detention for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law

In its judgment in *Gatt v. Malta*[3], the Court examined for the first time under Article 5 § 1 (b) a system that is widespread in Europe, namely detention for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law. An

1. No. 25965/04, 7 January 2010, to be reported in ECHR 2010 (extracts).
2. (dec.), no. 29878/07, 14 September 2010.
3. No. 28221/08, 27 July 2010, to be reported in ECHR 2010.

individual facing drug-trafficking proceedings failed to comply with the curfew hours imposed on him; since he was unable to pay the sum (EUR 23,300) in guarantee for his bail, this amount was converted into 2,000 days' imprisonment. The Court emphasised the importance of the proportionality of the measure. The authorities must take account of circumstances such as the purpose of the order, the practical possibility of complying with it and the length of the detention.

"Educational supervision" of minors (Article 5 § 1 (d))

In the case of *Ichin and Others v. Ukraine*[1], the Court examined the lawfulness, under Article 5 § 1 of the Convention, of the detention of adolescents who had not yet reached the age of criminal responsibility.

Right to be brought promptly before a judge or other officer authorised by law to exercise judicial power

In its judgment in *Medvedyev and Others* (cited above), the Grand Chamber reiterated the importance of the guarantees provided by Article 5 § 3 for the arrested person. In addition, while the Court had already noted that terrorist offences presented the authorities with special problems, this did not give them *carte blanche*, under Article 5, to place suspects in police custody, free from effective control. The same applied to the fight against drug trafficking on the high seas.

Release during the proceedings – Guarantee to appear for trial

While release may be conditioned by guarantees to appear for trial, the authorities had to take as much care in fixing appropriate bail as in deciding whether or not the accused's continued detention was indispensable. In interpreting the requirements of Article 5 § 3 in the area of pre-trial detention, the *Mangouras v. Spain*[2] judgment added that it was appropriate to take into consideration the growing concern in relation to environmental offences. Thus, it was permissible to adjust the amount of bail required for the release on bail of the captain of a vessel carrying fuel oil which had caused an ecological disaster in line with the seriousness of the offences in question and the amount of loss imputed to the applicant. More generally, the Grand Chamber indicated that, although the amount of bail was to be assessed primarily in relation to the accused and his resources, it was not unreasonable, in certain circumstances, to take account also of the level of liability incurred.

Compensation

The judgment in *Danev v. Bulgaria*[3] concerned the refusal by an appeal court to award compensation to the victim of pre-trial detention that had been acknowledged to be unlawful, on the ground that he had not proved that he had suffered any non-pecuniary damage. The Court

1. Nos. 28189/04 and 28192/04, 21 December 2010, to be reported in ECHR 2010.
2. [GC], no. 12050/04, 28 September 2010, to be reported in ECHR 2010.
3. No. 9411/05, 2 September 2010.

dismissed, under Article 5 § 5, the excessively formalistic approach adopted by the national courts with regard to the establishment of non-pecuniary damage, which "meant that the award of any compensation was unlikely in the large number of cases where an unlawful detention lasted a short time and did not result in an objectively perceptible deterioration in the detainee's physical or psychological condition". Furthermore, the Court emphasised that the adverse effects of unlawful detention on a person's psychological condition could persist even after release.

Procedural Rights

Right to a fair hearing (Article 6)

Applicability

In its judgment in *Oršuš and Others v. Croatia*[1], the Grand Chamber reaffirmed that the right to education is a civil right.

The judgment in *Vera Fernández-Huidobro v. Spain*[2] concerned the applicability of Article 6 § 1 to investigation proceedings. In so far as the acts performed by the investigating judge had a direct and inescapable influence on the conduct and, as a result, the fairness of the subsequent proceedings, including the actual trial itself, the Court considered that, although some of the procedural guarantees envisaged by Article 6 § 1 could be inapplicable at the investigation stage, the requirements of the right to a fair hearing in the wider sense necessarily implied that the investigating judge be impartial.

Fairness

The Court has established in its case-law that the use in a trial of physical evidence obtained through methods that are contrary to Article 3 raises serious issues concerning the fairness of the proceedings. In the *Gäfgen* judgment (cited above), the Grand Chamber decided that the effective protection of individuals against such methods and the fairness of a criminal trial were, however, only at stake if it was shown that the violation of Article 3 of the Convention had influenced the outcome of the proceedings against the accused, in other words, if it had had an impact on the guilty verdict or the sentence.

The *Taxquet v. Belgium*[3] judgment concerned those States which had a lay jury system. That system arose from the legitimate desire to involve citizens in the administration of justice, particularly in relation to the most serious offences. The Court noted that in assize courts with participation by a lay jury, the jurors were usually not required – or were

1. [GC], no. 15766/03, 16 March 2010, to be reported in ECHR 2010.
2. No. 74181/01, 6 January 2010, to be reported in ECHR 2010.
3. [GC], no. 926/05, 16 November 2010, to be reported in ECHR 2010.

unable – to give reasons for their verdict. In those circumstances, Article 6 made it necessary to ensure that the accused had benefited from sufficient safeguards to avoid any risk of arbitrariness and to enable him or her to understand the reasons for a conviction. Such procedural guarantees could include, for example, directions or guidance provided by the presiding judge to the jurors on the legal issues at stake or the evidence given, and precise, unequivocal questions put to the jury by the judge, forming a framework on which the verdict could be based or sufficiently offsetting the fact that no reasons were given for the jury's answers. In this case, which concerned more than one defendant, the Court noted that the questions should have been individualised in so far as possible. Finally, where it exists, the possibility for the accused to lodge an appeal was to be taken into account.

The case of *Aleksandr Zaichenko v. Russia*[1] is interesting in that it concerns the exercise of the privilege against self-incrimination and of the right to remain silent in a location other than premises for police custody – in this instance, by the side of a road.

Impartiality

The judgment in *Vera Fernández-Huidobro* (cited above) is also noteworthy in that the Court found that the shortcomings in the investigation, arising from the judge's lack of objective impartiality, could have been remedied by a fresh investigation conducted by another judge from a different court.

Tribunal established by law

The judgment in *DMD Group, a.s., v. Slovakia*[2] concerned a lack of transparency in the assignment of cases within a court. The president of a court had decided, acting in his administrative capacity, to assign himself a case and to rule on it on the same day. In addition to the absence of adequate rules, the reassignment of the case resulted from an individual decision rather than a general measure; no appeal lay against the decision and it was impossible to apply for the judge's withdrawal. The Court stressed the importance of guaranteeing judicial independence and impartiality. Thus, where the functioning of a court implied the taking of decisions that had both administrative and judicial aspects, the rules governing such decisions ought to be particularly clear and safeguards were to be put in place to prevent abuse. In the instant case, there had been a violation of the right to have a hearing before a tribunal established by law.

Presumption of innocence

The judgment in *Kuzmin* (cited above) emphasised that it is particularly important, already at an early stage, and even before an

1. No. 39660/02, 18 February 2010.
2. No. 19334/03, 5 October 2010.

indictment in the context of criminal proceedings, not to make public allegations that could be construed as confirming that certain senior officials consider the individual concerned to be guilty.

Rights of the defence

The importance attached to the rights of the defence is such that the right to effective legal assistance must be respected in all circumstances. In the *Sakhnovskiy* case (cited above), the defendant, imprisoned more than 3,000 km from the site of his trial, was able to communicate by videoconference with his new court-appointed lawyer for fifteen minutes, immediately before the opening of the hearing; he had been obliged either to accept the lawyer who had just been assigned to him or to continue the proceedings without legal assistance. The Court examined whether, given the geographical difficulties, the State had taken measures which had sufficiently offset the restrictions placed on the applicant's rights. It concluded that the measures put in place had not been sufficient and had not ensured that the applicant had had effective legal assistance. With regard to the issue of waiver of the right to legal assistance, the Grand Chamber observed that a lay-person with no legal training could not be expected to take procedural measures that normally required a certain amount of legal knowledge and skill.

Certain cases provided an opportunity to clarify the safeguards provided under Article 6 §§ 3 (c) and (e) of the Convention with regard to the initial phases of criminal proceedings: in contrast to situations already examined by the Court, the case in *Aleksandr Zaichenko* (cited above) concerned the fact that statements made by the applicant during a roadside inspection, including a vehicle search, and before he had been formally arrested or questioned in police premises, had been taken into account by the courts.

The decision in *Diallo v. Sweden*[1] concerned the conviction of a foreigner without her having benefited from the assistance of a registered interpreter during her first interview. The Court indicated that the investigation phase was of crucial importance for the preparation of the criminal proceedings, as the evidence obtained during this stage determines the framework in which the offence charged will be considered. The Court applied to interpreters the principle which it had identified with regard to lawyers in the *Salduz v. Turkey*[2] judgment (assistance to be provided to the person placed in police custody from the first interview): the assistance of an interpreter should be provided during the investigating stage unless it is demonstrated that there are compelling reasons to restrict this right.

1. (dec.), no. 13205/07, 5 January 2010.
2. [GC], no. 36391/02, 27 November 2008, to be reported in ECHR 2008.

Civil and political rights

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

Applicability

With regard to the scope of the concept of *private life*, the Court commented on police measures which affect the individual in his or her public movements.

In its judgment *Gillan and Quinton v. the United Kingdom*[1], the Court raised the sensitive subject of the power conferred on the police to stop and search individuals in public without plausible reasons for suspecting them of having committed an offence. To authorise the stopping of any individual anywhere and at any time, without prior warning and without leaving him or her the choice of whether or not to submit to a detailed search, amounted to an interference with the right to respect for private life. The public nature of the search, with the discomfort of having personal information exposed to public view, might even in certain cases compound the seriousness of the interference because of an element of humiliation and embarrassment.

In the *Uzun v. Germany*[2] judgment, the question of the existence of interference in private life on account of surveillance of movements in public places via a global positioning system (GPS), installed in a vehicle by police, was examined for the first time.

In addition, the decision in *Köpke v. Germany*[3] concluded that Article 8 was applicable to surveillance at an employer's request by private detectives of a supermarket check-out assistant at her place of work and without her knowledge in an area that was open to the public; the video had then been used in public proceedings.

The Court has already laid down the principle that the existence or otherwise of a *family life* is primarily a question of fact, which depends on the existence of close personal ties.

The decision in *Gas and Dubois v. France*[4] took the above-mentioned principle as its basis and drew consequences with regard to the applicability of Article 8 to a homosexual couple raising a child conceived by artificial insemination with sperm from an anonymous donor.

In its *Moretti and Benedetti v. Italy*[5] judgment, the Court recognised for the first time the existence of a *family life* between a host family and

1. No. 4158/05, 12 January 2010, to be reported in ECHR 2010 (extracts).
2. No. 35623/05, 2 September 2010, to be reported in ECHR 2010 (extracts).
3. (dec.), no. 420/07, 5 October 2010.
4. (dec.), no. 25951/07, 31 August 2010.
5. No. 16318/07, 27 April 2010, to be reported in ECHR 2010 (extracts).

a foster child. The determination of the familial nature of relationships had to take account of a number of factors, such as the length of time the persons in question had been living together, the quality of the relationship and the adult's role in respect of the child.

Noting that over the past decade society's attitude with regard to same-sex couples had changed rapidly in many member States, a considerable number of which had granted them legal recognition, the Court concluded that a homosexual couple in a stable relationship qualified as *family life* in the same way that the relationship between a couple of the opposite sex in the same situation does (judgment in *Schalk and Kopf v. Austria*[1]).

Private life

For the first time, the *Dalea v. France* decision[2] developed this concept with regard to inclusion in the Schengen information system register and its consequences for private and professional life. Such inclusion prohibits entry not only to the territory of a single State, but to all of the countries which apply the provisions of the Schengen Agreement. The applicant had been unable to challenge the precise ground for his inclusion on the register, which was classed as a matter of national security. In the area of entry to a territory, the Court allows the States a wide margin of appreciation with regard to the measures adopted to safeguard against arbitrariness, and thus differentiated this case from previous cases, which had concerned deportations.

For the first time, the Court examined, on the one hand, police surveillance of suspects via satellite and, on the other, video surveillance of an employee in the workplace.

With regard to surveillance by GPS, the Court considered that the use of this form of surveillance in the context of a criminal investigation differed, by its very nature, from other methods of surveillance by visual or acoustic means, and interfered less in private life. Thus, it held that it was not necessary to apply the same strict safeguards against abuse that it had established in the area of monitoring of telecommunications (*Uzun*, cited above).

The new issue of video surveillance of an employee at the request of her employers, who suspected her of theft, was examined in the *Köpke* case (cited above). Reiterating the State's positive obligations in the area of respect for private life, the Court identified safeguards, namely the prior existence of serious suspicions that the employee had committed an offence and the proportionality of the surveillance in relation to the investigation of that offence. This had been the case here: the surveillance

1. No. 30141/04, 24 June 2010, to be reported in ECHR 2010.
2. (dec.), no. 964/07, 2 February 2010, to be reported in ECHR 2010.

had been limited in time and space, and had provided data that was handled by a restricted number of people.

The judgment in *Özpınar v. Turkey*[1] dealt, for the first time, with the private life of a judge. It concerned a decision to dismiss a judge at the end of a disciplinary investigation for conduct that had occurred partly in the workplace and partly in her private life. The Court accepted that the ethical duties of judges might encroach upon their private life when their conduct, even in private, tarnished the image or reputation of the judiciary. Nonetheless, Article 8 required that any judge who faced dismissal on grounds related to private or family life must have guarantees against arbitrariness.

The judgment in *Hajduová v. Slovakia*[2] is an important one with regard to domestic violence. For the first time, the Court found a failure by the State to fulfil a positive obligation under Article 8 in the absence of concrete physical violence. Given a convicted ex-husband's history of violence and threatening behaviour, his new threats against his ex-wife had sufficed to affect the latter's psychological integrity and well-being. The lack of sufficient measures by the authorities in response to the ex-wife's well-founded fears that these threats might be carried out had breached her right to respect for private life.

In a case concerning the criteria for access to abortion, the Court examined the legitimate aim of protecting public morals (judgment in *A, B and C v. Ireland*[3]). It considered whether the evidence submitted by the applicants was sufficiently indicative of a change in the views of the Irish population in this area as to displace the opinion submitted by the State on the content of the requirements of public morals in the country.

With regard to a fundamental choice made by a State on a sensitive moral or ethical issue, based on the profound moral values of its people, the Grand Chamber clarified the case-law on the role of a European consensus in the interpretation of the Convention and the State's margin of appreciation.

Family life

In the *Mustafa and Armağan Akın v. Turkey*[4] judgment, the Court addressed a new question, namely that of the separation of children following their parents' divorce. The case concerned the access arrangements decided by the national courts, which prevented a brother and sister from seeing each other and thus spending time together and also deprived their father of the simultaneous company of both of his

1. No. 20999/04, 19 October 2010.
2. No. 2660/03, 30 November 2010.
3. [GC], no. 25579/05, 16 December 2010, to be reported in ECHR 2010.
4. No. 4694/03, 6 April 2010.

children. The Court stressed the obligation on the authorities to act with a view to maintaining and developing family life. It added that maintaining the ties between the children was too important to be left to the parents' discretion.

Home and private life

In the *Deés v. Hungary*[1] judgment, the Court examined for the first time the nuisance caused by road traffic. It recognised the complexity of the task facing the national authorities in handling infrastructure issues. Nonetheless, in spite of the efforts made by the Hungarian authorities, the measures had proved to be insufficient, resulting in the applicant having been exposed to a direct and serious nuisance over a substantial period of time. The State had thus failed in its duty to guarantee respect for the right to the home and private life.

Freedom of conscience and religion (Article 9)

The judgment in *Sinan Işık v. Turkey*[2] concerned the negative aspect of freedom of religion and conscience, namely an individual's right not to be obliged to disclose his or her religion. The applicant complained, in particular, of the reference to religion on his identity card, a public document that was frequently used in daily life. The judgment makes an important contribution to the concept of *beliefs*. In the Court's view, where identity cards have a space reserved for indicating the person's religion, the fact of leaving the space blank was bound to have a particular connotation. Persons with identity cards not containing information concerning their religion would be distinguished, against their wishes and on the basis of interference by the public authorities, from persons with identity cards on which their religious beliefs were indicated. A request for such information not to be included on the identity card was closely bound up with the individual's most deeply held convictions. Accordingly, the issue invariably concerned the disclosure of one of the most intimate areas of a person's life.

The manifestation by a citizen of his or her beliefs in a public place, through the wearing of a specific dress code, lay at the heart of the *Ahmet Arslan and Others v. Turkey*[3] case. It differed from previous cases examined by the Court concerning the regulation of the wearing of religious symbols in public institutions, in which respect for neutrality with regard to beliefs could take precedence over the free exercise of the right to manifest one's religion.

The judgment in *Jakóbski v. Poland*[4] developed the case-law on special diets in prison on the ground of religious beliefs. The case concerned the

1. No. 2345/06, 9 November 2010.
2. No. 21924/05, 2 February 2010, to be reported in ECHR 2010.
3. No. 41135/98, 23 February 2010, to be reported in ECHR 2010.
4. No. 18429/06, 7 December 2010, to be reported in ECHR 2010.

refusal by prison authorities to provide a vegetarian diet to a Buddhist, in spite of the dietary rules laid down by his religion.

Freedom of expression (Article 10)

In the case of *Sanoma Uitgevers B.V. v. the Netherlands*[1], the Court clarified the procedural safeguards that are required in the event of an injunction requiring journalists to hand over material containing information likely to allow identification of their sources. How is the protection of journalistic sources to be reconciled with the necessities of a criminal investigation? It was necessary to ensure an independent assessment of whether the interest of an ongoing criminal investigation ought to override the public interest in the protection of journalists' sources. Thus, such a review could only be made by a judge or other independent and impartial decision-making body; the latter had to be empowered to refuse to issue a disclosure order or to make a more limited or qualified order. The Grand Chamber also listed the requirements in situations of urgency, and indicated those situations of judicial intervention that were incompatible with the rule of law.

The judgment in *Akdaş v. Turkey*[2] developed the case-law concerning the compromise between freedom of expression and the protection of morals. The Court enshrined the concept of a *European literary heritage* and set out in this regard various criteria: the author's international reputation; the date of the first publication; a large number of countries and languages in which publication had taken place; publication in book form and on the Internet; and publication in a prestigious collection in the author's home country. It considered that members of the public speaking a given language could not be prevented from having access to a work that was part of such a heritage.

Freedom of assembly and association (Article 11)

The case of *Vörður Ólafsson v. Iceland*[3] concerned the statutory obligation on a building industry entrepreneur to pay a contribution to the national federation of industries, a private association, although he (like the association for his industry) was not a member and was not obliged to join, and despite the fact that he considered the policies advocated by the federation to be contrary to his own political views and interests. This case differs from previous ones in that there was no obligation to join the federation. The Court dealt for the first time with the negative aspect of the right to freedom of association in relation to employers and recognised such a right. It examined whether a proper balance had been struck between the employer's right not to join an

1. [GC], no. 38224/03, 14 September 2010, to be reported in ECHR 2010.
2. No. 41056/04, 16 February 2010.
3. No. 20161/06, 27 April 2010, to be reported in ECHR 2010.

association on the one hand and the general interest sought by the impugned legislation in promoting and developing national industry on the other.

Right to marry (Article 12)

The Court found that, although the State could regulate civil marriage in accordance with Article 12, it could not however oblige persons within its jurisdiction to marry in a civil ceremony (judgment in *Şerife Yiğit v. Turkey*[1]).

The Grand Chamber noted that States enjoyed a certain margin of appreciation in providing for differing treatment depending on whether or not a couple was married, particularly in the areas affected by social and fiscal policy, such as liability for tax, pensions and social security benefits (*Şerife Yiğit*, cited above).

In the *Schalk and Kopf* judgment (cited above), the Court ruled for the first time on the issue of same-sex marriages, and concluded that Article 12 did not impose an obligation on the State to allow such persons to marry.

The Court delivered its first judgment on State measures intended to prevent the practice of sham marriages, used to circumvent immigration regulations (judgment in *O'Donoghue and Others v. the United Kingdom*[2]). The Court ruled that there was no justification for imposing a blanket prohibition on marriage that would affect all members of a particular category of the population and/or which was not based on an assessment of the genuineness of the marriage.

Prohibition of discrimination (Article 14)

The Court clarified the expression "*other status*", used in Article 14: in its judgment in *Carson and Others v. the United Kingdom*[3], it held that a person's place of residence was to be seen as an aspect of personal status and therefore represented a ground for discrimination that was prohibited by this Article. According to the *Şerife Yiğit* judgment (cited above), the absence of marital ties between two parents was an aspect of personal *status* that was likely to result in discrimination prohibited by Article 14. In this case, the applicant, who had been married in a religious but not a civil ceremony, complained that she had been discriminated against in comparison to women who had married according to the provisions of the Civil Code.

1. [GC], no. 3976/05, 2 November 2010, to be reported in ECHR 2010.
2. No. 34848/07, 14 December 2010, to be reported in ECHR 2010 (extracts).
3. [GC], no. 42184/05, 16 March 2010, to be reported in ECHR 2010.

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

The judgment in *Oršuš and Others* (cited above) concerned the placement of Roma children in school classes made up uniquely of Roma, on account of their allegedly insufficient grasp of the national language. When such a measure disproportionately or even, as in the present case, exclusively affects members of a specific ethnic group, then appropriate safeguards have to be put in place. These safeguards must ensure that, in exercising its margin of appreciation in the education field, the State takes sufficient account of the children's special needs as members of a disadvantaged group.

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

The Court underlined the essential role played by members of parliament in ensuring pluralism and the proper functioning of democracy. In particular, the role of members of the opposition was to represent the electors by ensuring the accountability of the government in power and evaluating the latter's policies. The *Tănase v. Moldova*[1] judgment added that the loyalty towards the State required of members of parliament could not be used to undermine their ability to represent the views of their constituents, in particular minority groups. The Court paid particular attention to restrictions on the right to vote or to stand as a candidate that were imposed shortly before an election was due to be held.

Unlike the great majority of judgments delivered on the right of free elections to date, which examined the criteria for eligibility, the *Grosaru v. Romania*[2] judgment dealt with the specific question of the attribution of a seat as a member of parliament, a crucial issue in post-electoral law. The case concerned a State which did not have a system allowing for post-electoral review by the courts. For the first time, the Court found that there had been a violation of Article 13 of the Convention taken together with Article 3 of Protocol No. 1. More generally, the judgment examined the subject of the political representation of national minorities.

For the first time, the Court examined under the right to vote the situation of individuals suffering from a mental disability that required a legal protection measure.

The automatic disenfranchisement of an individual on the sole ground that he had been placed under guardianship was at the origin of the judgment in *Alajos Kiss v. Hungary*[3]. The Court held that treating persons with mental or intellectual disabilities as a single group was a

1. [GC], no. 7/08, 27 April 2010, to be reported in ECHR 2010.
2. No. 78039/01, 2 March 2010, to be reported in ECHR 2010.
3. No. 38832/06, 20 May 2010, to be reported in ECHR 2010.

questionable classification. Any curtailments on the rights of those individuals had to be subject to strict scrutiny. In short, the automatic loss of the right to vote, in the absence of an individualised judicial assessment of the person's situation and on the sole basis of a mental disability requiring guardianship, could not be considered as a measure to restrict the right to vote that was founded on legitimate reasons. More generally, States had to provide weighty reasons when applying a restriction on fundamental rights to a particularly vulnerable group in society, such as the mentally disabled, who had suffered considerable discrimination in the past. The Court took into consideration the situation of such groups which had historically been subject to unfavourable treatment with lasting consequences, resulting in their social exclusion.

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

Applicability

The judgment in *Depalle v. France*[1] concerned a demolition order in respect of a house built on maritime public property that could not be appropriated for private ends. Authorisation to occupy the house had been regularly renewed over very many years. Although a State's domestic laws did not recognise a particular interest as a *right* or even as a *property right*, the Court could find that there existed a proprietary interest that was of a sufficient nature and sufficiently recognised to constitute a *possession* within the meaning of the Convention. In this case, the time that had elapsed had had the effect of vesting in the applicant a proprietary interest in the peaceful enjoyment of his house.

The Grand Chamber reaffirmed that the obligation to pay court costs, and the regulations governing them, came under the second paragraph of Article 1 of Protocol No. 1, such costs being *contributions* (*Perdigão v. Portugal*[2] judgment).

Right to the peaceful enjoyment of possessions

The *Depalle* judgment (cited above) examined the issue of protecting coastal areas. Having regard to the appeal of the coast and the degree to which it is coveted, the Court indicated that the need for planning control and unrestricted public access to the coast made it necessary to adopt a firmer policy of management of this part of the country, an observation that it extended to all European coastal areas.

Environmental protection was at stake in the case of *Consorts Richet and Le Ber v. France*[3]. The Court examined the extent to which a State which sought to protect the environment and to preserve an island had

1. [GC], no. 34044/02, 29 March 2010, to be reported in ECHR 2010.
2. [GC], no. 24768/06, 16 November 2010, to be reported in ECHR 2010.
3. Nos. 18990/07 and 23905/07, 18 November 2010.

nonetheless failed to strike a fair balance between the protection of property and the demands of the general interest. It found that States could not be exonerated from their contractual obligations on the sole ground that the rules adopted by them had changed.

The *Carson and Others* judgment (cited above) commented, in particular, on the conclusion of bilateral social security treaties, the method most commonly used by the member States of the Council of Europe to ensure reciprocity in social security benefits.

In the case of *Perdigão* (cited above), the expropriation compensation awarded to the former owners had been completely absorbed by court costs, the amount of which had been higher. In the end, not only had the dispossessed owners received nothing, they had had to pay a sum of money to the State. The Court underlined the importance of the result sought by Article 1 of Protocol No. 1 in terms of the *fair balance* between the means employed and the aim sought to be achieved, which had not been the case here. It might seem paradoxical that the State took back with one hand – through court costs – more than it had given with the other. In such a situation, the Court found that the difference in legal character between the obligation on the State to pay compensation for expropriation and the obligation on a litigant to pay court costs did not prevent an overall examination of the proportionality of the interference complained of under Article 1 of Protocol No. 1.

The Court developed its case-law concerning the limitations placed on the rights of tenants to terminate a property lease (*Almeida Ferreira and Melo Ferreira v. Portugal*[1] judgment). The case concerned a State's decision to grant wider protection to the interests of a certain category of tenants, such as those who had longer and more secure residential leases.

Compensation for wrongful conviction (Article 3 of Protocol No. 7)

Called on to examine a new issue in the case of *Bachowski v. Poland*[2], the Court clarified the scope of Article 3 of the above Protocol. The application concerned compensation proceedings for detention that had taken place prior to the fall of communism, the applicant's criminal conviction having been declared null and void on the ground that it was politically motivated. The Court found Article 3 of Protocol No. 7 to be inapplicable to the proceedings in question; relying on the Explanatory Report on the Protocol, it decided to interpret this provision literally. In other words, a change in political system could not be considered a *new or newly discovered fact*.

1. No. 41696/07, 21 December 2010.
2. (dec.), no. 32463/06, 2 November 2010, to be reported in ECHR 2010.

General prohibition of discrimination (Article 1 of Protocol No. 12)

The Court clarified the scope of Article 1 of Protocol No. 12 in the judgment *Savez crkava "Riječ života" and Others v. Croatia*[1]. It ruled that this Article was applicable, even in the absence of a *right set forth by law*. The Explanatory Report on Protocol No. 12 and paragraph 2 of its Article 1 ruled out a narrow interpretation of the Article in question.

Execution of judgments (Article 46)

The judgment in *Sinan Işık* (cited above) is the first case in which Article 46 has been applied with regard to freedom of thought, conscience and religion.

In the case of *Al-Saadoon and Mufdhi* (cited above), the Court found that, in order to comply with its obligations, the United Kingdom, which had been found to have breached Article 3 of the Convention, was to seek to put an end to the applicants' suffering as rapidly as possible, by taking all possible steps to obtain an assurance from the Iraqi authorities that they would not be subjected to the death penalty.

The *Yetiş and Others v. Turkey*[2] judgment found that there was a *systemic problem* that had already given rise to more than two hundred applications and could result in numerous subsequent applications, and indicated that this was an aggravating factor with regard to the State's responsibility under the Convention. The adoption of general measures at national level was thus necessary in order to execute the judgment.

In its pilot judgment in *Maria Atanasiu and Others v. Romania*[3], which concerned a large-scale systemic problem with regard to the nationalisation of property during the communist period, the Court decided to adjourn for a specified period examination of all the applications resulting from the same general problem, pending the adoption of general measures at national level. In view of the large number of shortcomings in the system for compensation and restitution, which had persisted after the adoption of judgments by it, the Court held that it was essential for the State to take general measures as a matter of urgency. It suggested, as guidance, the type of measures that the State concerned could take in order to put an end to the structural problem, and drew attention to possible sources of inspiration provided by other States Parties to the Convention.

The failure of a State to execute a judgment finding a violation of the Convention on account of legislation had resulted in an influx of similar cases. In such a context, the *Greens and M.T. v. the United Kingdom*[4]

1. No. 7798/08, 9 December 2010.
2. No. 40349/05, 6 July 2010.
3. Nos. 30767/05 and 33800/06, 12 October 2010.
4. Nos. 60041/08 and 60054/08, 23 November 2010, to be reported in ECHR 2010 (extracts).

judgment marked a new approach by the Court. It pointed out that this situation represented a threat to the future effectiveness of the Convention machinery. Applying its pilot-judgment procedure, it held that there was nothing to be gained, nor would justice be best served, by the repetition of its findings in a lengthy series of similar cases, which would be a significant drain on its resources and add to its already considerable caseload. In particular, such an exercise would not contribute usefully or in any meaningful way to the strengthening of human rights protection under the Convention. For the first time, the Court proposed to strike out all similar pending cases once the required legislative changes had been introduced by the State in question, without prejudice to any decision to recommence the treatment of these cases in the event of any non-compliance by the respondent State. For the first time, the Court also considered it appropriate to suspend the treatment of any applications not yet registered at the date of delivery of this judgment, as well as future applications.

Striking out (Article 37)

In the *Rantsev* judgment (cited above), the Court reiterated that its judgments served not only to decide those cases brought before it but, more generally, to elucidate, safeguard and develop the rules instituted by the Convention, thereby contributing to the observance by the States of the engagements undertaken by them. It set out the grounds on which respect for human rights required it to continue its examination of the case, in spite of the Cypriot authorities' request that it be struck out, based especially on the content of their unilateral declaration.

A unilateral declaration was rejected in order to facilitate the adoption of national measures in the applicant's favour in the *Hakimi v. Belgium*[1] judgment. This case raised a general issue in terms of the Convention, namely the impact of a government's unilateral declaration on the possibility of requesting the reopening of proceedings at national level. The legislation of several Contracting States allowed for the option of reopening proceedings if the Court had delivered a judgment finding a violation. In this case, it was unclear if it would be possible to accede to such a request following a unilateral declaration by the government. The Court held that it was not appropriate to strike out the case on the sole basis of the unilateral declaration: in particular, it held that, in order to be able to request reopening of the disputed proceedings, the applicant might require a judgment by the Court explicitly finding that there had been a violation of the Convention.

1. No. 665/08, 29 June 2010.