Open Society Justice Initiative

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BRIEFING PAPER

Summary of ECtHR Judgments Presented to the Committee of Ministers

NOVEMBER 2015

As part of a pilot project to improve the execution of court judgments, the Open Society Justice Initiative organized regular briefings of cases before the Council of Europe's Committee of Ministers, the body that supervises the execution of European Court of Human Rights judgments. This document summarizes the judgments that were the subject of briefings by civil society groups in advance of the Committee of Ministers' quarterly Human Rights (CM-DH) meetings. The purpose of these briefings was to provide Committee members with direct information on the state of execution of these judgments from advocates, lawyers, and petitioners at the national level. These case summaries are presented chronologically in the order in which the briefings occurred, commencing in 2013 through September 2015.

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Kurić and Others v. Slovenia (App no 26828/06)

The case was decided by the Grand Chamber on 26 June 2012.

This case was presented by Andrea Saccucci, counsel for the applicants, and Katarina Vucko, Peace Institute (Ljubljana) in February, May, September and December 2013.

Violation of Article 8 (respect for family and private life): Failure to regulate residence of persons who had been "erased" from the permanent residents register following Slovenian independence - the "erasure" and its repercussions had had an adverse effect on the applicants and continued to do so, amounting to interference with their private and family life. The GC also found a **violation of Article 14** (non-discrimination) and **Article 13** (effective remedy).

Case summary: The applicants belong to a group of persons known as the "erased" who, in February 1992, had their status as permanent residents within the former Socialist Republic of Slovenia automatically removed from the country's register.

Key legal points: The Grand Chamber found that this deprivation was without a basis in law: people were deprived of their permanent residence status arbitrarily, in violation of Articles 8, 13, and 14 of the ECHR. Moreover, with the loss of status, the erased lost all economic and social rights tied to permanent resident status, including access to housing, work permits, and social security. Many of the individuals concerned also became effectively stateless as a result of the lack of regularized legal status and the consequent denial of a realistic pathway to citizenship.

The Court's ordered remedy: General measures - Respondent State required to set up a compensation scheme securing adequate redress to "erased" persons. In November 2013, the Slovenian National Assembly established a compensation mechanism through the passage of the Act Regulating Compensation for Damage to Persons Erased, which came into effect in mid-2014. As a result of these steps, the Committee of Ministers transferred *Kuric* from enhanced to standard supervision in December 2013.

Key recommendations made by civil society:

- The scope of beneficiaries should include all those erased who have applied to regularize their status, regardless of the outcome of their application.
- Enable heirs, and the children of the erased, to seek compensation.
- Clarify the applicable rules for establishing state liability.
- Remove the limitation on the amount of financial compensation that can be granted in judicial proceedings

The Committee of Ministers' decisions: In its decision of March 2013 the CoM invited the Slovenian authorities to determine the amount of lump sum compensation to be awarded to "erased" persons, the method of calculation of this compensation, the legal framework that will govern the compensation scheme, and how the beneficiaries will be determined. In September 2013 the CoM further urged the Slovenian authorities to devote special attention to developing a proper solution for applying the scheme to those beneficiaries who applied for citizenship or permanent residence permits but were rejected. Following a meeting in Ljubljana between applicants' counsel and the Minister of Interior—facilitated, in part, by the Strasbourg briefings—several recommendations made to the CoM were accepted by the government, including revisions to the amount of proposed compensation and the scope of beneficiaries. In November 2013, the Slovenian National Assembly passed legislation establishing a domestic compensation mechanism, which came into effect in mid-2014. In

December 2013, the CoM transferred *Kuric* from enhanced to standard supervision.

Link to full judgment

Strain and Others v. Romania (App no 57001/00) and Maria Atanasiu and Others v. Romania (App no 30767/05)

These cases were decided by the Third Section of the Court on 21 July 2005 and 12 October 2010, respectively.

Cases presented by Diana-Olivia Hatneanu, Executive Director, Association for the Defence of Human Rights in Romania – the Helsinki Committee in May 2013 and again by Hatneanu in November 2014.

Violation of Article 1 para. 1 of Protocol No. 1 (deprivation of property): Applicants' property sold by the State before judicial determination on the ongoing dispute concerning the person entitled to the right of ownership.

Case summary: The applicants owned a house which the State nationalized in 1950. In 1993 they brought an action for recovery of possession, seeking a declaration that the nationalization had been unlawful and the return of the building in question, which the State had in the meantime converted into four flats let out to private individuals. In 1996 the tenants indicated that they wished to purchase the flats they were occupying. Although it had been informed that an action for recovery of possession was pending, the State-owned company which managed the property decided to accept one of the offers and sold the flat concerned to an internationally renowned former footballer. The applicants sought to have the contract of sale declared void, but were unsuccessful. The applicants submitted that the sale of their flat to a third party without any compensation had infringed their right to the peaceful enjoyment of their possessions.

Key legal points: Romanian law did not foresee with sufficient clarity and certainty the consequences for individuals' property rights of the sale of their property by the State to a third party acting in good faith; there was no indication whether owners should be compensated in such circumstances or how. The Court held that the total lack of compensation meant that the applicants had had to bear a disproportionate and excessive burden incompatible with the right to respect for the peaceful enjoyment of possessions.

The Court's ordered remedy: The Court held that, if it did not return the property, the Government would have to pay the applicants a sum corresponding to its current value. The Court made awards in respect of non-pecuniary damage.

Key recommendations made by civil society:

- The government should undertake a detailed costing analysis of Law No. 165/2013, and ensure that there is an adequate budget to support the administrative costs of running the mechanism.
- The most important piece of the law depends entirely on the adoption of secondary legislation, which has not yet been made public. This legislation should be made public promptly, and in consultation with appropriate stakeholders.
- While welcoming the passage of Law No. 165/2013, the CoM should continue to assess how the mechanism functions in practice; until then, the cases should not be closed.

The Committee of Ministers' decisions: In its decision of December 2014 the CoM decided to continue to monitor the implementation of the legislation in order to ensure the effectiveness of the reparation mechanism within the framework of the pilot judgment.

Link to Strain judgment

Link to Atanasiu judgment

Garabayev Group v. the Russian Federation (App no 38411/02)

This case was decided by the First Section of the Court on 7 June 2007.

Case presented by Kirill Koroteev, Memorial Human Rights Centre in May 2013; Nadezhda Ermolayeva, counsel for I.M. Mamazhonov in September 2013; and Samuel Boutruche, UNHCR in May 2015.

Violation of Article 3 (extradition): Arrest in breach of domestic law and extradition in circumstances in which the authorities must have been aware that the applicant faced a real risk of ill-treatment. **Violation of Article 5** (unlawfulness of detention).

Case summary: The applicant was a citizen of Russia and Turkmenistan. In September 2002 the Turkmen authorities requested the Russian authorities to detain and extradite him in connection with alleged banking offences. The applicant was arrested in Moscow and placed in detention. His lawyer pointed out to the Russian authorities that, as a Russian national, he could not be extradited to Turkmenistan. She also referred to human-rights reports indicating that the applicant would be at risk of torture or inhuman or degrading treatment the lack of guarantees of a fair-trial if extradited. The applicant's lawyer challenged the orders for the applicant's detention and extradition unsuccessfully. On 24 October 2002 the applicant was extradited to Turkmenistan - he was shown a copy of the decision to extradite him for the first time at the airport and his request to see a lawyer was rejected. In December 2002 the city court reviewed the decision to extradite him. It held that it was unlawful in view of his Russian nationality and had not been officially served on him or his lawyer. It also ruled that his detention had been unlawful. The applicant was returned to Moscow in February 2003 where he was arrested and detained pending trial.

Key legal points: The case concerns repeated violations of Article 3 on account of extraditions, expulsions or other irregular removals of individuals to Central Asian states and of Article 5 on account of unlawfulness of detention pending extradition.

The Court's ordered remedy: EUR 20,000 in respect of non-pecuniary damage.

Key recommendations made by civil society:

- Following the Court's decision in *Aslakhanova*, Russian authorities should establish a special mechanism, overseen by competent, high-level officials, to put an end to the practice of abductions and forced removals.
- Russian authorities should adopt a set of measures to ensure rapid and effective investigations into disappearances and forced transfers and the CoM should issue a resolution urging Russian authorities to take these measures.
- Russian courts should develop a more consistent practice in applying the principle of non-refoulement.

- Russian authorities should adopt and put into practice the measures recommended by the United Nations High Commissioner for Refugees' Guidance Note (published in January 2014) on safeguards against unlawful or irregular removal of refugees and asylum-seekers: http://www.refworld.org/pdfid/530afbd84.pdf

The Committee of Ministers' decisions: The CoM issued an interim resolution in September 2013, in which it called upon the authorities to develop without delay an appropriate mechanism tasked with both preventive and protective functions to ensure that applicants benefit, following their release from detention, from immediate and effective protection against unlawful or irregular removal. In June 2015 the CoM noted that the effectiveness of the protective measures taken by the Russian authorities, i.e., the organization of meetings with the applicants, was uncertain and requested the Russian delegation to provide regular updates about such meetings. It also invited the Russian delegation to submit written clarifications on the comments made by the UNHCR in relation to the attempted removal of applicants (despite the indication of interim measures under Rule 39); on the repeated refusal or denied extension of temporary asylum status for some applicants; on the status of those applicants who are still in pre-removal detention (despite violation of Article 3); and on investigations into disappearances from the Russian territory.

Link to full judgment

Volkov v. Ukraine (App no 21722/11)

This case was decided by Fifth Section of the Court on 9 January 2013.

Case presented by Joanna Evans, European Human Rights Advocacy Centre (EHRAC) in September 2013 and by Oleksandr Volkov and Jessica Gavron, EHRAC Senior Lawyer in December 2013.

Violation of Article 6 § 1 (independent and impartial tribunal): Structural defects of the system of judicial discipline; (fair hearing): Absence of limitation period for imposing disciplinary penalty on judges and abuse of electronic vote system in Parliament when adopting decision on judge's dismissal; (tribunal established by law): Composition of chamber examining applicant's case defined by a judge whose term of office as court's president had expired. **Violation of Article 8 § 1** (respect for private life): Dismissal of a judge for "breach of oath" in absence of consistent interpretation of that offence and of requisite procedural safeguards.

Case summary: The applicant, a sitting judge of the Ukrainian Supreme Court, was elected as a member of the High Council of Justice (HCJ) but did not assume the office, following the refusal of the chairman of the parliamentary committee on the judiciary. Three members of the committee then requested the HCJ to investigate allegations of professional misconduct. Following preliminary inquiries, a request was made to the HCJ seeking Mr. Volkov's dismissal as a judge for "breach of oath." Subsequent HCJ proceedings—from which Mr. Volkov was absent—led to a resolution for his dismissal, which the Parliament adopted at a plenary meeting. An appeal to the Higher Administrative Court was subsequently upheld.

Key legal points: The Court referred to "serious systemic problems as regards the functioning of the Ukrainian judiciary" and concluded that the nature of Mr. Volkov's violations underscored the insufficient separation of the judiciary from other branches of state

power, as well as insufficient guarantees against the abuse and misuse of disciplinary measures.

The Court's ordered remedy:

General measures – The respondent State would be required to take a number of general measures aimed at reforming the system of judicial discipline. Those measures should include legislative reform involving the restructuring of the institutional basis of the system. The measures should also entail the development of appropriate forms and principles of coherent application of domestic law in that field.

Individual measures – Having regard to the very exceptional circumstances of the case and the urgent need to put an end to the violations of Articles 6 and 8, the Court held that the respondent State must secure the applicant's reinstatement in the post of judge of the Supreme Court at the earliest possible date.

The Court also awarded EUR 20,000 in respect of non-pecuniary damage.

Key recommendations made by civil society:

- Reinstate Mr. Volkov as a judge of the Supreme Court as a matter of urgency.
- Take urgent measures to pass the Draft Law on Amendments to the Constitution.
- Restructure the basis of the judicial disciplinary system in Ukraine, consistent with recommendations of the Venice Commission.

The Committee of Ministers' decisions: The above recommendations are reflected in the CoM's decision of 6 March 2014, in which it called upon the Ukrainian authorities to secure Mr Volkov's reinstatement in the post of judge of the Supreme Court and reiterated that they pursue in close co-operation with the Secretariat the necessary constitutional and legislative reforms to improve the independence of the Ukrainian judicial system. Following a vote by the Ukrainian parliament, the CoM welcomed in its decision of March 2015 Mr. Volkov's reinstatement to his post as judge of the Supreme Court.

Link to full judgment

DH and Others v. the Czech Republic (App no 57325/00)

This case was decided by the Grand Chamber on 13 November 2007.

Case presented by Petr Polák, Office of the Public Defender of Rights (Ombudsman), Lenka Felcmanova, Czech Society for Inclusive Education (COSIV), Nils Muižnieks, Council of Europe Commissioner for Human Rights in December 2013; Jiri Nantl, Director, Central European Institute of Technology former Deputy Minister of Education for the Czech Republic in May 2014; Vladimír Foist, Principal of Basic School in Poběžovice, Czech Republic, Štěpán Drahokoupil, Open Society Fund-Prague and Marína Urbániková, Office of the Public Defender of Rights in February 2015.

Violation of Article 14 (non-discrimination): Placement of Roma children in "special" schools **– in conjunction with Article 2 Protocol No. 1** (the right to education).

Case summary: The applicants are all Czech nationals of Roma origin who, between 1996 and 1999, were placed, either directly or after a certain period in ordinary primary schools, in

"special schools", a category of schools within a larger group called "specialized schools", for children with learning difficulties unable to attend a "basic" or other specialized elementary school. By law, the decision to place a child in a special school was taken by the head teacher on the basis of the results of tests devised to measure the child's intellectual capacity and carried out in an educational psychology and child guidance center, and requires the consent of the child's parent or legal representative. In 1999 some of the applicants applied to the appropriate Education Department, outside the appeal procedure, for review of the administrative decisions on their placement in special schools. Some of the applicants lodged a constitutional complaint in which they argued that they had been subjected to de facto segregation through the general operation of the special education system and that they had not been sufficiently informed of the consequences of their placement in special schools. The Constitutional Court dismissed the applicants' complaint.

Key legal points: The Grand Chamber held that the disproportionate placement of Romani children in "special schools"—where they, along with children with disabilities, were segregated from their mainstream peers and taught to a limited curriculum—constituted unlawful discrimination. Once assigned to these schools, Romani children had little chance to catch-up with their mainstream classmates' level of learning or to transfer back to mainstream schools.

The Court's ordered remedy: The Czech government was ordered to end the violation and remedy, so far as possible, its effects. The Court also made awards of 4,000 EUR each in respect of non-pecuniary damage.

Key recommendations made by civil society:

- Amend legislation on school placements and diagnostic stays: children with health or social disadvantages (Romani children are often classified as being "socially disadvantaged") must no longer be placed, for any period of time, in classes ostensibly set up for children with disabilities.
- Submit a comprehensive, detailed implementation plan by the end of 30 June 2015 regarding the adaptation of the schools and school counseling facilities to the education system put in place by the amendments to the Education Act, and make a public political commitment toward this end.
- Submit a detailed financial reform plan to enable schools and school counseling facilities to adapt to the changes in the education system.
- Ensure greater supervision of diagnostic tools and counselling services.
- Ensure collection of disaggregated data and provide accurate statistics: the number of Roma children educated under a practical curriculum must be surveyed annually.
- The Czech government must abolish the existence of nursery schools or preparatory classes attached to practical schools.

The Committee of Ministers' decisions: In June 2014 the CoM called upon the Czech authorities to provide an update on the use of diagnostic tools and the most recent statistics concerning the education of Roma pupils in groups/classes for pupils with "mild mental disability." In its most recent decision of March 2015, the CoM welcomed the changes to the legislative framework envisaged under the amended Education Act—which includes the

transition from a system of diagnosing disabilities/disadvantages to one in which the individual needs of children are identified and supported—and invited the authorities to indicate by September 2015 the measures to be taken to implement effectively this new framework. The CoM expressed concern, however, that the percentage of Roma pupils in classes or groups for children with "mild mental disabilities" remains disproportionate and noted the important of continued monitoring. It requested, by February 2016, an update with the most recent statistics concerning the education of Roma pupils in groups/classes for pupils with "mild mental disability."

Note: On September 25, 2014, the European Commission announced that it would initiate infringement proceedings against the Czech government for breaching the European Race Equality Directive. These proceedings are currently on-going.

Link to full judgment

M.S.S v. Belgium and Greece (App no 30696/09)

This case was decided by the Grand Chamber on 21 January 2011.

Case presented by Simon Cox, Migration Lawyer, Open Society Justice Initiative and Dr. Yonous Muhammadi, Greek Forum of Refugees in December 2013; Vassilis Kerasiotis, Greek lawyer specializing in representing migrants and Simon Cox in May 2014; Roisin Pillay, International Commission of Jurists in November 2014; Gert Westerveen, UNHCR Representative to the European Institutions in Strasbourg in February 2015.

Violation of Article 3 (degrading treatment – expulsion): Conditions of detention and subsistence of asylum-seeker expelled under the Dublin Regulation. **Violation of Article 13** (effective remedy): Deficiencies in the asylum procedure in Greece and risk of expulsion without any serious examination of merits of asylum application or access to effective remedy.

Case summary: This case concerns an Afghan asylum seeker who initially reached the EU via Greece before making his way to Belgium, where he applied for asylum. Despite his objections that Greece lacked a functioning asylum system (and thus risked onward removal to Afghanistan), the Belgian authorities returned him to Greece.

Key legal points: Against Belgium, the Court found that the applicant's transfer back to Greece violated the principle of non-refoulement; against Greece, it found that the lack of a functioning asylum system was a violation of the Convention, as were the appalling conditions of detention.

The Court's ordered remedy: Without prejudice to the general measures required to prevent other similar violations in the future, Greece was to proceed, without delay, with an examination of the merits of the applicant's asylum request in keeping with the requirements of the Convention and, pending the outcome of that examination, to refrain from deporting the applicant.

Greece and Belgium were to pay the applicant, respectively, EUR 1,000 and EUR 24,900 in respect of non-pecuniary damage.

Key recommendations made by civil society:

- The Greek government must ensure that the new Asylum Service opens additional regional centers for asylum claims, particularly on the islands of Lesbos, Samos

and Chios.

- Detention centers should be used for long-term detention in all cases.
- The Greek government must direct police and coastguards to ensure access to the Asylum Service for all migrants on Greek territory and its frontier.
- The Greek government must issue clear instructions to the police and coastguard that administrative detention in police cells should be limited to a few days at most.
- Within six months, Greece should ensure that asylum centers are opened and available to non-detainees, which would require either the relocation or the opening of new centers outside of detention facilities.
- The Greek government should conclude a credible investigation into the events in Farmakonisi in January 2014.
- The Committee should request the Greek government to submit a progress report with regards to the new Asylum service by June 2014 and resume consideration of the case at that time.

The Committee of Ministers' decisions: In June 2013, the Greek government launched a new Asylum Service under Law 3907/2011, which established an asylum service and an appeal authority. In its decision of December 2013, the CoM decided to continue focusing on the examination of this new procedure and invited the authorities to continue providing information on the following issues: the number of asylum requests registered and the number of decisions granting asylum in both instances; the state of management of the backlog applications of pending asylum requests; and on the number of first reception centers already operational, their capacity and the system implemented to assist prospective asylum seekers. In its subsequent decisions the CoM called upon the Greek authorities to pursue their efforts to guarantee, without delay, full and effective access to the asylum procedure throughout the territory; to improve the conditions of its detention centers (in which, with the exception of Athens and Rodos, all asylum offices are housed); and to implement measures with respect to the first reception of asylum-seekers and the asylum procedure, in co-operation with all relevant stakeholders. In June 2015, the CoM also "called upon the authorities to take all the necessary steps to adequately and effectively preserve and protect the rights and interests of third country unaccompanied minors." A legislative framework on the guardianship of unaccompanied minors is currently under review.

Link to full judgment

Khashiyev and Akayeva Group (App no. 57942/00)

Cases presented by Grigor Avetisyan, Russian Justice Initiative in February 2014, and by Joanna Evans, European Human Rights Advocacy Centre in September 2014, February 2015, and September 2015.

This group of more than 200 cases arises predominantly out of the 1999-2006 Chechen conflict and includes cases of aerial bombardment, extra-judicial killings, enforced disappearances, and torture. The Court found violations of Articles 2, 3, 5, 6, 8 and 13 and Article 1 of Protocol No. 1; in addition, some cases concern the failure to cooperate with the

Convention organs as required under Article 38. In all cases, the defining features are the involvement of Russian security forces in the commission of the relevant violations and the absence of any effective domestic criminal investigation into the underlying crimes revealed either before or after the Court's judgements. For purpose of the briefing, two cases in the larger group were discussed.

The briefing focused on the issues of enforced disappearances and ineffective investigations related to the aerial bombardment of Katyr Yurt.

Isayeva (App no. 57950/00) and Abuyeva v. Russian Federation (App no. 27065/05)

These cases were decided on 24 February 2005 and 1 December 2010 respectively.

Violation of Article 2 (both the substantive and procedural aspect of the right to life): the military operations had pursued a legitimate aim, but had not been planned and executed with the requisite care for the lives of the civilian population; **Violation of Article 13** (right to an effective remedy): the criminal investigation into the bombardment had been ineffective and the effectiveness of any other remedy that might have existed, including civil remedies suggested by the Government, had consequently been undermined.

Case summary: The cases concerned the attack by the Russian military forces between 4 and 7 February 2000 on the village of Katyr-Yurt following its capture by a large group of Chechen fighters who had escaped from Grozny. The assault, during which the Russian forces used heavy free-falling aviation bombs, missiles and other arsenal, resulted in the deaths of a number of the applicants' close relatives (including minor children and elderly parents), all mostly sheltering in basements during the attacks. Criminal investigations were launched by the Russian authorities into the incidents but were soon closed, as the actions of the military were found to have been legitimate in the circumstances, as a large group of illegal fighters had occupied the village and refused to surrender.

The applicants complained about that decision and in March 2006 the courts decided to send the investigation back to the military prosecutor's office. In the meantime, however, the investigation had already been resumed in November 2005 following the conclusions of the Court in the *Isayeva* case, where the applicant was a party to the same set of domestic proceedings as the applicants in the present case. During this second set of proceedings a number of additional witnesses were interviewed, including ten of the applicants and some of their relatives. In June 2007 the investigation was closed, with the same conclusions as in March 2002.

Key legal points: While the operation in Katyr Yurt between 4 and 7 February 2000 pursued a legitimate aim, it was not planned and executed with requisite care for the lives of the civilian population. Accordingly, there had been a violation of Russia's obligation to protect the right to life of the applicants and their relatives who died or who were wounded during the operation. In the *Isayeva* judgment the Court concluded that the domestic investigation had been inefficient. It criticised the delay of the opening of the investigation, the lack of crucial information about the "safe passage", about the persons responsible for the safety of the evacuation and about the instructions given to the soldiers. Those who had victim status had also not been notified of the most important procedural decision taken in the criminal

proceedings. The Court found that the major flaws of the investigation indicated in 2005 had persisted throughout the second set of proceedings, in particular concerning the crucial issues of responsibility for the safety of the civilians' evacuation and of the "reprisal" character of the operation against the population of Katyr-Yurt. In sum, the investigation carried out after the adoption of the *Isayeva* judgment had suffered from exactly the same defects as those identified in respect of the first set of proceedings, which, aside from the issues under Article 2, raised a matter under Article 46 of the Convention, that is, in carrying out the investigation in the *Abuyeva* case, Russia manifestly disregarded the specific findings of the binding judgment *Isayeva* concerning the ineffectiveness of the investigation.

The Court's ordered remedy: In the *Isayeva* case the Court awarded the applicant EUR 18,710 in respect of pecuniary damages and EUR 25,000 in respect of non-pecuniary damages; in the *Abuyeva* case the Court held that Russia was to pay the applicants a total of 1,720,000 euros (EUR) – sums ranging from EUR 30,000 to EUR 120,000 – in respect of non-pecuniary damage.

Aslakhanova v. Russian Federation (App nos 2944/06 and 8300/07, 50184/07, 332/08, 42509/10)

This case was decided on 18 December 2012.

Violation of Article 46.2 (execution of judgment - measures of a general character): Respondent State required to take measures to resolve systemic problems with criminal investigations into missing persons.

Case summary: The cases concerned five joined applications lodged by families who complained about the disappearance of their eight male relatives in Grozny or the Grozny District between March 2002 and July 2004. The facts of the cases were similar in both the style of the abductions, which were conducted in a manner resembling a security operation, and the resulting criminal investigations, which remained pending without having produced any tangible results.

The Court found it established that the applicants' family members must be presumed dead following their unacknowledged detention by State agents. Accordingly, a substantive violation of Article 2 was found. The Court also found a procedural violation of Article 2 on account of the failure to carry out effective investigations into the disappearances. The Court also found a violation of Article 3 on account of the distress and anguish suffered by the families of the abducted men and a "particularly grave" violation of Article 5 as the applicants' relatives had been held in detention by State agents without legal grounds or acknowledgement. Lastly, the Court held that there had been a violation of Article 13 as, while the Russian Code of Criminal Procedure provided for the possibility of judicial review of investigators' decisions, the Court was not satisfied that this provided an adequate remedy where, as in this case, the investigations were repeatedly adjourned and reopened.

Key legal points: The *Aslakhanova* judgment is an "Article 46" judgment which found, for the first time, that non-investigation of disappearances in the North Caucasus constitutes a "systemic problem at the national level for which there is no domestic remedy" (para 217) and called for "a time-bound general strategy or action plan" (para 232) to deal with the problem. Of the 224 judgments of the Court on the North Caucasus, over 150 concern disappearances; thus, the findings of *Aslakhanova* apply widely to the *Khashiyev* group. The *Aslakhanova*

judgment also concluded that there are no effective remedies—judicial or otherwise—for disappearances. An updated action plan was submitted in December 2014 by the Russian Government, in response to the Committee of Ministers' decision of September 2014. No steps towards creating a single-high-level body have been taken; the government's consistent response has been that there is no need for such a body. Furthermore, the government's response to the Committee's recommendation on allocation of resources for forensic and scientific work has been to list a number of institutions located outside the Chechen Republic, which it describes as sufficient. No evidence has been provided on identification of special operations leading agencies and commanding officers, nor has any explanation been put forward for the failure to do so. As regards access to case files for victims, the government provided no such information.

In respect of a significant number of cases within the group, a statute of limitations will become applicable in 2015, in some cases as of February. Furthermore, from the 'case progression' table appended to the government's submission, it is clear that investigations in the overwhelming majority of cases are either currently suspended or terminated.

The Court's ordered remedy: In *Aslakhanova,* the Court awarded sums ranging between EUR 14,000 and EUR 16,000 in respect of pecuniary damage and sums ranging between EUR 60,000 and EUR 120,000 in respect of non-pecuniary damage.

Key recommendations made by civil society:

- The CoM should inquire as to what measures the Russian government has taken to set up a "single high-level body in charge of solving disappearances in the region" and to allocate sufficient resources for forensic work.
- The Russian government's position that regular limitation periods will apply to the crimes of torture, enforced disappearances, extrajudicial executions, and indiscriminate killing should be challenged.
- The Russian government should be required to provide a strategy with a view to addressing the Court's recommendations within a fixed time period (of no more than 2 years). The component parts of such a strategy could most helpfully be presented in tabular form akin to the 'case progression' table appended to the January 2015 submission, containing a breakdown of the relevant tasks together with a proposed completion date.
- Furthermore, the government should be asked to urgently provide:
    - A list of all burial sites within the region
    - The date on which each of the relevant sites was identified
    - The proposed date on which exhumation of each of the identified sites will take place and the means by which storage and identification of remains will be safeguarded
    - A time-bound proposal for identifying and exhuming all remaining burial site
- The case progress table appended to the government's updates submission could usefully be added to by way of additional columns that include identification of:
    - The relevant commanding officer(s) in charge of any special operation(s)

relevant to each of the cases included within the table

- The relevant agency and commanding officer with responsibility for detainees within the circumstances of each of the cases
- Identification of any case in which service vehicles would have passed through any roadblock during curfew hours

- The government should be required to make relevant legislative amendments with regard to access to case files for victims.
- The striking failure to comply with this group of cases, coupled with the refusal of the Russian government to address the Court´s clear recommendation to create a single high-level body, would appear to leave the Committee with no option but to commence proceedings under Article 46(4) at the earliest possible date.

The Committee of Ministers' decisions: The CoM has put forward a number of the above recommendations, including an interim resolution of March 2015 calling for a single, high-level body mandated with the search for missing persons as well as ensuring the allocation of the necessary resources required for large-scale forensic and scientific work within a centralized and independent mechanism (in September 2015, the CoM "noted with profound regret" that no information had been provided in response). It has also urged the authorities to ensure that the domestic law and practice concerning the applicability of the statute of limitations take into account Convention standards. More recently, the CoM has urged the authorities to provide information "in tabular form" of the steps taken to locate, secure and exhume mass graves or burial sites in the North Caucuses region, including whether bodies/remains were found, the date of any forensic examination taken, and whether the applicants were informed.

Link to Khashiyev judgment

Link to Aslakhanova judgment

Link to Isayeva judgment and to Abuyeva judgment

El Masri v. The Former Yugoslav Republic of Macedonia (App no 39630/09)

This case was decided by the Grand Chamber on 13 December 2012.

Case presented by Darian Pavli, Open Society Justice Initiative in February 2014; Betsy Apple, Open Society Justice Initiative in February 2015; and Amrit Singh, Open Society Justice Initiative in May 2015.

Violation of Article 3 (degrading treatment, inhuman treatment, torture, effective investigation, extradition): Torture and inhuman and degrading treatment during and following applicant's extraordinary rendition to CIA. **Violation of Article 5 § 1** (lawful arrest or detention): Detention during and following operation involving extraordinary rendition to CIA. The Court also found **violations of Articles 8 and 13** of the Convention.

Case summary: In December 2012, the Grand Chamber found that Khaled El-Masri had been abducted by the Macedonian secret service in December 2004, leading to his prolonged detention and torture in Skopje and, later, Afghanistan.

Key legal points: The Court found Macedonia responsible for the applicant's torture and ill-treatment, as well as his extraordinary rendition and arbitrary detention. The Court also concluded that the investigation into Mr. El-Masri's disappearance was inadequate, as it relied exclusively on information provided by the Ministry of Interior, and that he was denied the right to an effective remedy.

The Court's ordered remedy: The Court awarded EUR 60,000 in respect of non-pecuniary damage.

Key recommendations made by civil society:

- Macedonia must urgently submit a revised action plan Action Plan detailing how it intends to implement the following recommendations:.
- The Macedonian government must amend the statute of limitations for the crime of torture, in compliance with international law.
- Establish a Commission of Inquiry, with international assistance as necessary, capable of leading to the identification and punishment of those officials who participated in or were otherwise complicit in Mr. El-Masri's extraordinary rendition.
- Identify the existing domestic legislative and policy impediments to an effective investigation and how the government intends to remedy them.
- Provide a full and public apology to Mr. El-Masri for his torture, ill-treatment, and rendition, issued by the highest level of government and including a full admission of its participation in the violation of his rights.

The Committee of Ministers' decisions: In its decisions of March 2014 and 2015 the CoM urged the Macedonian authorities to submit an action plan, and to carry out a fresh investigation into the facts of the case with a view to bringing the responsible individuals to justice and to keep the Committee informed. In June 2015 the CoM expressed grave concern that the authorities have provided no information concerning the reopening of the investigation and further stressed the importance of a fresh investigation. It noted that the government envisaged the establishment of a new, external supervisory body by 2016 for the supervision of the intelligence and security services; however, it called on the State to provide further information on the content of the relevant legislative amendments. The Committee also emphasized that most of the measures set out in the action plan submitted by the government in February 2015 do not address the root causes of the issues identified in the Court's judgment.

Link to full judgment

Alekseyev v. Russia (App nos 4916/07; 25924/08; 14599/09)

This case was decided by the First Section of the Court on 21 October 2010.

Case presented by Kseniya Kirichenko Coming Out and Robert Biedron, PACE General Rapporteur for LGBT Issues in February 2014; Kseniya Kirichenko in September 2014; Nigel Warner, ILGA-Europe in May 2015.

Violation of Article 11§ 1 (freedom of association and freedom of peaceful assembly):

Repeated refusals to authorize gay-pride parades. **Violation of Article 13** (right to an effective remedy): In the absence of a legally binding rule requiring the authorities to issue a final decision before the dates on which the marches were planned, the judicial remedy available to the applicant was of a post hoc nature and not capable of affording adequate redress in respect of the alleged violations of the Convention. **Violation of Article 14** (prohibition of discrimination): The main reason for the bans on the gay marches was the authorities' disapproval of demonstrations which they considered promoted homosexuality - applicant had thus suffered a difference in treatment on the grounds of his and other participants' sexual orientation for which the Government had not provided any valid justification.

Case summary: In 2006, a Russian gay-rights activist complained of repeated rejection by Moscow authorities to hold a march (Arts. 11, 13, and 14 in conjunction with Article 11). Despite cooperating with the law and completing procedural requests, the authorities refused permission based on the grounds of public order, as well as the protection of health and morals. Since the Court's decision in favor of the applicant, the judgment has not only not been implemented, but restrictions on LGBT rights have intensified: there have been repeated bans on LGBT public events, a failure to provide safety for such events, compulsory termination of these events, and ongoing detention and false charges brought against LGBT human rights activists. More recently, legislation prohibiting "homosexual propaganda" has encouraged further stigmatization of LGBT people, hate speech, harassment, and a rise in homophobic and transphobic violence.

Key legal points: The Court held that the Russian government's justification of the ban on the grounds of safety was not justified as a mere risk of a demonstration creating a disturbance was not sufficient. If every probability of tension and heated exchanges between opposing groups were to warrant a ban, society would be deprived from hearing differing views on questions which offended the sensitivity of the majority opinion. The decisions of the authorities to ban the march had mainly been guided by the prevailing moral values of the majority. The Court stressed, however, that it would be incompatible with the underlying values of the Convention if the exercise of Convention rights by a minority group were made conditional on its being accepted by the majority.

The Court's ordered remedy: The Court ordered an award of EUR 12,000 in respect of non-pecuniary damage.

Key recommendations made by civil society:

- Revise the Assemblies Act, with a view to ensuring that its provisions are consistent with the European Convention and its case law, and that current deficiencies facilitating arbitrary and discriminatory behavior by officials are eliminated.
- Preparation of a code of conduct for municipal authorities responsible for handling notifications for public events, addressing, *inter alia*, their duty to conduct their office in accordance with the law, to behave fairly and impartially under all circumstances, and to reject arbitrary and discriminatory behavior.
- Trainings for three categories of public servants: (1) municipal authorities responsible for handling the notifications for holding public events, (2) judges and other court staff, and (3) the police.
- Repeal federal and regional legislation banning "propaganda of homosexuality" or

"propaganda of non-traditional sexual relations"; pending repeal of these laws, provide guidance to municipal authorities responsible for authorizing public events to ensure that they are not used to restrict peaceful assemblies.

- Urge the Russian authorities to conduct objective investigations of incidents of unreasonable restrictions on LGBT public events, as well as incidents of homophobic or transphobic violence and hate speech.

The Committee of Ministers' decisions: In its decision of March 2014, the CoM reiterated its request that Russian authorities strictly monitor the implementation of the legislation prohibiting "propaganda of non-traditional sexual relations" and invited them to provide comprehensive information on its application. In September 2014 the CoM noted that the exercise of the important right to assembly is not sufficiently recognized and protected; it urged the authorities to take the necessary measures, including of an awareness-raising nature, to remedy this situation and, in particular, to ensure that the Federal Law does not hinder the effective exercise of this right. In its June 2015 decision, the Committee expressed serious concern that the local authorities in the Russian Federation continue to reject most of the requests made to hold public events. It invited the authorities to provide further information on measures taken to sufficiently recognize and defend the exercise of the right to assembly, and also urged the government to provide concrete information on how judicial practice has been developing, in particular since the September 2014 judgment of the Russian Constitutional Court. The CoM welcomed, however, the adoption of the Code of Administrative Procedure, which provides for a legally binding time-frame to resolve dispute concerning public events prior to their planned date.

Link to full judgment

Zorica Jovanovic v. Serbia (App no 21794/08)

This case was decided by the Second Section of the Court on 26 March 2013.

Case presented by Gordana Stevanovic, Deputy Ombudsman, Office of the Serbian Ombudsman; Natasa Jovic, Head of Department for the Rights of the Child and Prof. Vesna Rakić Vodinelić, University "Union" School of Law, Belgrade in February 2014; Natasa Jovic in September 2014.

Violation of Article 8 § 1 (Positive obligations - Respect for family life): Continuing failure to provide information concerning fate of newborn baby in hospital care.

Case summary: This case concerns a violation of the applicant's right to respect for her family life on account of the State's continuing failure to provide her with credible information as to the fate of her newborn son, who allegedly died at a state run hospital in 1983. The applicant was restricted from seeing her son's body and his death has never been properly investigated or officially recorded. In light of similar cases, the applicant's husband filed a criminal case against the hospital, which was rejected in 2003 (without reason) as unfounded. Following similar complaints by several hundreds of parents, an Investigating Committee issued a report, adopted by Parliament in 2006, which concluded that the response to reports of similar cases was insufficient, and that a specialized unit be formed with a mandate to investigate all cases where parents have raised suspicion about possible disappearance of their children from birth clinics. A 2010 report undertaken by the Serbian Protector of Citizens—following three complaints that it had received—reached a similar

conclusion. Despite acknowledging that there had been serious shortcomings in the legislation and procedures concerning the death of newborn babies in hospital, and that the parents had legitimate concerns and were entitled to know the truth about their children's fate, the State had not remedied the situation.

Key legal points: The considerations the Court had with respect to a State's positive obligations under Article 3 of the Convention to account for the whereabouts and fate of missing persons were broadly applicable, mutatis mutandis, to the very specific context of positive obligations under Article 8 in the instant case. Due to the States' continuing failure to provide her with credible information as to the fate of her son, the applicant had suffered a continuing violation of her right to respect for her family life.

The Court's ordered remedy: Given the significant number of potential applicants, the respondent State had to take within one year of the judgment becoming final appropriate measures to establish a mechanism providing individual redress to all parents in a situation similar to the applicant's. The mechanism was to be supervised by an independent body, with adequate powers, capable of providing credible answers regarding the fate of each missing child and affording adequate compensation.

The Court has also ordered an award of EUR 10,000 in respect of non-pecuniary damage.

Key recommendations made by civil society:

- Serbia must submit an Action Plan for establishing a functioning mechanism providing redress.
- The Serbian government should follow the Court's order to set up a mechanism capable of investigating "single high-level body in charge of solving disappearances in the region" and allocate sufficient resources for forensic work.
- Serbia will need to enact a special law providing for such a mechanism, and to avoid similar situations from arising in the future.
- The government should explain as to why it has failed to establish an investigative mechanism "aimed at providing individual redress" to all parents seeking information as to the disappearances of their children

The Committee of Ministers' decisions: As the deadline for setting up the mechanism expired in September 2014, the CoM urged the Serbian authorities to intensify their efforts to establish one and ensure that it begins operating without further delay. It also asked Serbia to clarify the procedures to be introduced to establish the facts surrounding the disappearance of babies; the nature of the criminal-law mechanisms to be applied to bring individuals to justice; the basis and the criteria to be used for the calculation of the compensation to be awarded to parents; and the starting date for the operation of the mechanism.

Link to full judgment

Manushaqe Puto and Others v. Albania (App nos 604/07; 43628/07; 46684; 34770/09)

This case was decided by the Fourth Section if the Court on 31 July 2012.

Case presented by Sokol Puto, counsel for the applicants (and former Government Agent for Albania to the ECtHR), in February 2014.

Violation of Article 13 (effective remedy): Lack of effective remedy to secure enforcement of final administrative decisions concerning compensation of property owners. **Violation of Article 6 § 1** of the Convention and **Article 1 of Protocol No. 1**.

Case summary: This case concerns the non-enforcement of final domestic court and administrative decisions relating to the applicants' right to restitution or compensation (whether pecuniary or in kind) for property nationalized under the communist regime. In a series of decisions between 1994 and 1999 commissions hearing property claims recognized the applicants' title to various plots of land and ruled that they were entitled to compensation. Although some of the applicants did recover part of their land, they have not received financial compensation in lieu for the remainder.

Key legal points: The Court found that there was no effective domestic remedy that allowed for adequate and sufficient redress on account of the prolonged non-enforcement of commission decisions awarding compensation.

The Court's ordered remedy: In view of the large number of problems besetting the compensation mechanism in Albania which continued to persist after the Court's judgments in a series of previous cases, and of the urgent need to grant applicants speedy and appropriate redress at the domestic level, the Court considered it imperative to apply the pilot-judgment procedure. Albania was required to take general measures, as a matter of urgency, in order to secure in an effective manner the right to compensation, while striking a fair balance between the different interests at stake. Albania had to effectively secure the right to compensation within 18 months, i.e., before 17 June 2014, through the establishment of an effective compensation mechanism.

The Court also ordered awards ranging between EUR 280,000 and EUR 1,360,000 in respect of pecuniary and non-pecuniary damage.

Key recommendations made by civil society:

- With regard to the general measures, the Albanian Government must commit to a realizable, time-bound strategy for implementing the judgment. To this end the government must determine concrete objectives and tasks, with pre-determined rigorous deadlines that also include concrete responsibilities for all levels of state involved in the process.
- With regards to the individual measures, the Albanian authorities must satisfy the payment of compensation and present a concrete deadline for completion.

The Committee of Ministers' decisions: In its decision of March 2014, the CoM highlighted that the political commitment expressed by the Albanian government in its action plan must be followed by concrete and substantial actions at the domestic level, reflecting the first of the above recommendations. In June 2014, the CoM welcomed the formal adoption by the Albanian Council of Ministers of the action plan for the establishment of an effective compensation mechanism. In June 2015, the Committee further welcomed the commitment shown by the Albanian authorities in the search for an effective and sustainable solution and welcomed their presentation of the draft law and their co-operation with the Council of Europe, as well as the close consultations held with the Department for Execution of Judgments. They also noted that the authorities have now estimated the overall cost of compensation in order to have a concrete basis for considering the necessary legislative changes. The Committee invited the Albanian authorities to submit, as soon as possible,

explanations and additional information on the solutions proposed in the draft law, as well on the other outstanding issues.

Link to Full judgment

Namat Aliyev Group v. Azerbaijan (App no 18705/06)

This case was decided by the First Section of the Court on 8 April 2010.

Case presented by Intigam Aliyev, Chairman of the Legal Education Society, in May 2014; Giorgi Gogia, Human Rights Watch in May 2015; and Gulnara Akhundova, International Media Support in September 2015.

Violation of Article 3 of Protocol No. 1 (stand for election): Failure by domestic authorities to adequately investigate complaints of electoral irregularities

Case summary: These cases concern parliamentary elections that took place in Azerbaijan in November 2005; applicants were members of the opposition parties or independent candidates. The Court found violations of Article 3, Protocol No. 1 due to actions by the electoral commissions and domestic courts deemed arbitrary and without motivation, including rejecting complaints that had alleged breaches of electoral law and cancelling candidate registration. The Constitutional Court also annulled the elections in the electoral constituencies of certain applicants without sufficient reason, and without affording procedural safeguards to the parties (including the inability to participate in a review hearing).

Key legal points: States have to ensure that a genuine effort was made to address the substance of arguable individual complaints of electoral irregularities and that decisions were sufficiently reasoned. The applicant's complaints had not been effectively addressed at the domestic level and had been dismissed in an arbitrary manner. …

The Court's ordered remedy: EUR 7,500 in respect of non-pecuniary damage.

Key recommendations made by civil society:

- Election commissions remain dominated by pro-government forces.
- More transparency is needed in the registration process, including the participation of prospective candidates and offering the opportunity to correct potential deficiencies in a timely manner.
- A multi-person expert panel that is open to the public should review complaints; complainants should be invited to participate in the review.
- Judicial independence remains weak and new rules on the selection of judges continue to raise concerns over transparency.
- The government should Implement OSCE/ODIHR recommendations in order to meaningfully ensure the fundamental right to stand for national election.
- It should end repressions against civil society groups and activists involved in election monitoring and reporting.
- The authorities should release Anar Mammadli and vacate his conviction.

The Committee of Ministers' decisions: In its decision of June 2014, the CoM invited the authorities to provide a detailed explanation of the way in which the new legislation is meant to resolve the problems of judicial review in electoral matters revealed by the Court's judgments and stressed the importance of continued training efforts to ensure the efficiency of judicial review. In later decisions, the Committee considered, in relation to the electoral commissions, that the reforms adopted in addition to training measures, and in particular, the introduction of expert groups, would not be sufficient to resolve the problems revealed as regards the independence, transparency and legal quality of the procedure before these commissions. In view of the forthcoming legislative elections, the Committee, in September 2015, "strongly deplored" that "none of the measures" it had identified had yet been adopted and "exhorted the authorities" to resume dialogue.

Link to full judgment

Mahmudov and Agazade Group v. Azerbaijan (App no 35877/04), Fatullayev v. Azerbaijan (App no 40984/07)

The cases were decided by the First Section of the Court on 18 December 2008 and 22 April 2010 respectively.

Cases presented by Ramute Remezaite, Media Rights Institute in May 2014; Giorgi Gogia, Human Rights Watch in November 2014 and May 2015; and Gulnara Akhundova, International Media Support in September 2015.

Violation of Article 10 § 1 (freedom of expression): concerning the applicants' conviction for defamation of a politician and well-known expert on agriculture; and criminal convictions of newspaper editor for articles calling into question official version of events and government policy, respectively. **Violation of Article 6 § 1** (impartial and independent tribunal) and 6.2 (presumption of innocence) in the Fatullayev case.

Case summary: Applicants were prosecuted for the publication of a print article in 2003 and objected to their imprisonment for defamation of a politician and agriculture expert; the Court found violations of Articles 10.

Key legal points: the Court held that the criminal sanction imposed on the applicants had amounted to a disproportionate interference with their freedom of expression and, in breach of Article 10, could not be regarded as "necessary in a democratic society".

The Court's ordered remedy: the Court awarded the applicants, jointly, 1,000 euros (EUR) in respect of non-pecuniary damage. In the Fatullayev case the Court ordered the applicant to be released immediately and awarded EUR 25,000 in respect of non-pecuniary damage.

Key recommendations made by civil society:

- The Committee should urge the government should abolish imprisonment as a sanction for criminal defamation, including defamation online.
- Azerbaijan should halt its practice of launching selective prosecutions against government critics.
- The Committee should urge the government to immediately review all on-going criminal prosecutions against journalists and bloggers.

- The authorities should drop criminal charges against investigative journalist Khadija Ismayilova

The Committee of Ministers' decisions: In its June 2014 decision, the CoM stressed the importance of ensuring that sanctions imposed, whether in the context of criminal or civil defamation proceedings, are not disproportionate and do not have a "chilling effect" on freedom of expression. In September 2014, the Committee issued an interim resolution reiterating tits serious concerns, in particular on account of the reported recent use of different criminal laws against journalists, bloggers, lawyers and members of NGOs. Subsequently, the Committee has deeply deplored the absence of any information in response to its decisions, as well as expressed its "deep concern" concerning the charges, and the reasons for the conviction of Intigam Aliyev, the applicants' representative. In September 2015, the Committee instructed the Secretariat, in the absence of tangible progress, to prepare a subsequent draft interim resolution.

Link to Mahmudov judgment

Link to Fatullayev judgment

Ilgar Mammadov v. Azerbaijan (App No. 15172/13)

This case was decided by the Court on 22 May 2014.

Case presented by Ramute Remezaite, PhD Candidate, School of Law, Middlesex University on 17 February 2015; Giorgi Gogia, Human Rights Watch in May 2015; Gulnara Akhundova, International Media Support in September 2015.

Violation of Article 5 § 1 (right to liberty and security), **a violation of Article 5 § 4** (right to judicial review of one's detention); **a violation of Article 6 § 2** (presumption of innocence)**; and a violation of Article 18** (limitation on use of restrictions on rights)

Case summary: The case concerns the arrest and detention of the applicant in violations of Article 5, 6 and 18. The European Court concluded *inter alia* that the applicant was arrested for reasons other than those permitted by Article 5, namely to silence or punish the applicant for having criticized the government. The applicant, an opposition politician with a history of criticizing the Government, maintained a personal internet blog on which he commented on various political issues. On 24 January 2013 he travelled to Ismayilli, a town where rioting had broken out the day before. He described his impressions in blog posts in which he suggested that at least part of the official Government version of the events may have been untrue and was an attempt at a cover-up. On the following day the Prosecutor General's Office and the Ministry of Internal Affairs said in a joint press statement that the applicant had committed illegal actions which were calculated to inflame the situation in the country and would be fully and thoroughly investigated and receive legal assessment. The applicant was invited for questioning on three occasions before being charged with criminal offences and remanded in custody. His appeals against that measure were rejected.

Key legal points: The Court found that the charges against Mr. Mammadov had not been based on a "reasonable suspicion" for the purpose of Article 5 § 1. The court also considered that there had been no genuine review of the lawfulness of Mr. Mammadov's detention, which lead to a violation of Article 5 § 4. The restriction of his liberty had been applied for the purpose to silence or punish him for criticizing the Government and attempting to

disseminate what he believed to be true information which the Government was trying to hide, and not for the purposes of bringing him before a competent legal authority on reasonable suspicion of having committed an offence – a violation of Article 18 in conjunction with Article 5. The Court also found, having regard to the press statement's wording as a whole, that it could only have encouraged the public to believe that Mr. Mammadov was guilty before he had been proved guilty under the law and therefore violated Article 6 § 2.

The Court's ordered remedy: The Court awarded EUR 20,000 in respect of non-pecuniary damage.

Key Recommendations made by civil society:

- Demand the immediate release of the applicant.
- Take effective measures to ensure a non-arbitrary application of the criminal legislation and respecting freedom of expression.
- Proceed with effective and independent examination of the cases against human rights defenders, journalists, and other critical voices.
- Urge the Azeri authorities to amend the criminal code and end selective prosecutions.
- Demand the appropriate medical treatment of prisoners and to request medical records.
- Ensure that Article 39 reporting by the authorities on Intigam Aliyev and Leyla Yunus are detailed and include medical records.
- Ensure that Mr. Aliyev and Ms. Yunus have access to the highest possible standards of care while in custody.

The Committee of Ministers' decisions: In March 2015, the CoM adopted an interim resolution in which it expressed its very serious concern about the fact that Mammadov is still detained despite Azerbaijan's obligation to comply with the judgment of the Court; it further recalled the general problem of the arbitrary application of criminal legislation to restrict freedom of expression. A September 2015 decision "deplored" Azerbaijan's continued non-compliance, "firmly reiterated" the call for Mammadov's immediate release, and expressed its "deepest concern" on the lack of adequate information on general measures. It called on member States and the Secretary General to "raise the applicant's situation with the highest authorities in Azerbaijan in order to get him released."

Link to full judgment

Incal Group v. Turkey (App no 22678/93), Gözel and Özer Group v. Turkey (App no 43453/04) Ürper and Others v. Turkey (App no 14526/07)

This case was decided by the Second Section of the Chamber on 6 July 2010.

Case presented by Kerem Altiparmak, University of Ankara, in May 2014.

Gözel and Özer Group v. Turkey (App no 43453/04)

Violation of Article 10 § 1 (freedom to impart information): Virtually automatic conviction of media professionals for publishing written material of banned organizations.

Case summary: The applicants were both convicted under Articles 6(2) and 6(4) of the Turkish Anti-Terror Law, which punished the publication and distribution of the statements of illegal organizations. Mostly pro-Kurdish and leftist periodicals have been the target of these provisions. The Court determined that the law failed to impose upon national judges the responsibility to examine the content of these publications or the context in which they were written. The Court had previously found a violation of that Article in numerous cases against Turkey in which media professionals had repeatedly been convicted for publishing statements by prohibited organizations.

Key legal points: The impugned convictions constituted interference with the applicants' right to impart information or ideas freely. Such automatic repression, without taking into account the objectives of media professionals or the right of the public to be informed of another point of view, could not be reconciled with the freedom to receive or impart information or ideas.

The Court's ordered remedy: The violation of Article 10 stemmed from a problem relating to the wording and application of section 6(2) of Turkish Law no. 3713. In this connection, as an appropriate form of redress by which to put an end to the violation in question, the Court ordered to bring the relevant domestic law into compliance with Article 10. The Court also awarded EUR 170 to the first applicant in respect of pecuniary damage; EUR 2,000 to the first applicant and EUR 3,000 to the second applicant in respect of non-pecuniary damage.

Key recommendations made by civil society:

The Committee should continue to monitor the implementation of *Gözel and Özer* in order to ascertain whether domestic courts' practice—at all levels—complies with legal amendments and incorporates ECtHR case law.

The Committee of Ministers' decisions: In its decision of June 2014 the CoM followed the above recommendation and strongly encouraged the Turkish authorities to ensure that the Court's case-law is fully applied by domestic courts at all levels. In June 2014, the Committee "noted with satisfaction the ongoing positive trend in the manner domestic courts apply Convention standards."

Link to Gözel and Özer judgment

Ürper and Others v. Turkey (App no 14526/07)

This case was decided by the Second Section of the Chamber on 20 October 2009.

Violation of Article 10 § 1 (freedom of expression): Orders suspending publication of newspapers under anti-terrorist legislation.

Case summary: In *Ürper*, the newspapers were accused of publishing propaganda in favour of a terrorist organization, condoning crimes the organization had committed, and revealing the identity of officials engaged in the fight against terrorism, so making them targets for terrorist

attack. The Court held that the practice of banning the future publication of entire periodicals on the basis of Article 6(5) of the Turkish Anti-Terror Law went beyond any notion of "necessary" restraint in a democratic society, and amounted to a violation of Article 10.

Key legal points: The restraints in the applicants' case had been imposed not on particular types of article, but on the future publication of entire newspapers, whose content was unknown at the time the court orders were made. By suspending the publication and distribution of the newspapers, albeit for short periods, the domestic courts had largely overstepped the narrow margin of appreciation afforded to them and unjustifiably restricted the press's essential role as a public watchdog – this practice amounted to violation of Article 10.

The Court's ordered remedy: The Court ordered awards ranging from EUR 5,000 to EUR 40,000 to the owners of the newspapers in respect of pecuniary damage. EUR 1,800 to each of the applicants in respect of non-pecuniary damage.

Key recommendations made by civil society:

The Committee should not close the *Ürper* judgment until such time that all websites banned under the Anti-Terror Law are made accessible.

The Committee of Ministers' decisions: Noting "with satisfaction the abrogation of Article 6 § 5 of the Anti-Terrorism Law," the CoM decided in its June 2014 meeting to close the supervision of the execution of the *Ürper* group of cases.

Link to Ürper judgment

Yildirim v. Turkey (App no 3111/10)

This case was decided by the Second Section of the Court on 18 December 2012.

Case presented by Professor Yaman Akdeniz, Istanbul Bilgi University, in September 2014.

Violation of Article 10 § 1 (freedom of expression): Interim court order incidentally blocking access to host and third-party websites in addition to website concerned by proceedings.

Case summary: The applicant owns and runs a website on which he publishes material including his academic work. It was set up using the Google Sites website creation and hosting service. On 23 June 2009 the Criminal Court of First Instance ordered the blocking of another Internet site under the Law on regulating publications on the Internet and combating Internet offences. The order was issued as a preventive measure in the context of criminal proceedings. Later that day, under the same Law, a copy of the blocking order was sent to the Telecommunications Directorate for execution. On 24 June 2009, further to a request by the Telecommunications Directorate, the Criminal Court of First Instance varied its decision and ordered the blocking of all access to Google Sites. As a result, the applicant was unable to access his own site. He applied to have the blocking order set aside in respect of his own site, which had no connection with the site that had been blocked because of its illegal content. The Criminal Court dismissed the applicant's application.

Key legal points: Following the blocking of another website as a preventive measure, the court had subsequently, further to a request by the Telecommunications Directorate, ordered

the blocking of all access to Google Sites, which also hosted the applicant's site. This had entailed a restriction amounting to interference with the applicant's right to freedom of expression.

The Court's ordered remedy: The Court awarded EUR 7,500 in respect of non-pecuniary damage.

Key recommendations made by civil society:

- Despite the Court's judgment, the Turkish government failed to revoke the blocking order against the Google Sites website; rather, it remained in force until July 2014.
- The blocking provisions of Law No. 5651 remain disproportionate and are not sufficient to prevent similar violations or practices.
- Having recently moved *Yildirim* into enhanced review, and in light of continued failure to comply, the Committee should debate this case.

The Committee of Ministers' decisions: As recommended, the CoM debated this case at its September 2014 meeting. It considered that the legislative amendments made to Law No. 5651 do not respond to the concerns raised by the Court as to the arbitrary effects of decisions on wholesale blocking of access to websites, and called upon the Turkish authorities to amend the relevant legislation to ensure that it provides effective safeguards to prevent abuse by the administration, and that further measures blocking access to websites do not result in wholesale blocking of access to a host website.

Link to full judgment

Ataman v. Turkey (App no 74552/01)

This case was decided by the Second Section of the Court on 5 December 2006.

Case presented by Professor Kerem Altiparmak, Ankara University in September 2014.

Violation of Article 11 § 1 (freedom of peaceful assembly): Forceful breaking up by police of a peaceful demonstration, held in a park during a busy period without submission of mandatory prior notification.

Case summary: The applicant, president of the Istanbul Human Rights Association, organized a demonstration in Sultanahmet Square in Istanbul in the form of a march followed by a statement to the press. The police requested the group of 40-50 people, who were demonstrating by waving placards, to break up, telling them that the demonstration was unlawful as no prior notification had been given, and that they would be disturbing public order at a busy time of day. The demonstrators refused to comply and attempted to force their way through. The police used a kind of tear gas known as "pepper spray" to disperse them. They arrested 39 demonstrators, including the applicant, who was released after an identity check.

Key legal points: The group of demonstrators had not represented any danger to public order, apart from possibly disrupting traffic. The Court was struck by the authorities' impatience in seeking to end the demonstration, which had been organized under the auspices of the Human Rights Association. Where demonstrators did not engage in acts of

violence it was important for the public authorities to show a certain degree of tolerance towards peaceful gatherings. The forceful intervention of the police had been disproportionate and had not been necessary for the prevention of disorder.

The Court's ordered remedy: Non-pecuniary damage; finding of a violation sufficient.

Key recommendations made by civil society:

- The Committee should condemn the fact that, rather than comply with the Court's case law in the Ataman cases, Turkish authorities have implemented retrogressive measures.
- The Turkish National Assembly must amend Law No. 2911— "Meetings and Demonstrations Marches Act" —to accord with the Ataman judgments.
- Seek information as to the number of complaints made by citizens against police officers to the Prosecutor's Office, as well as the number of disciplinary sanctions investigations initiated against police officers.
- The Committee should request that the government provide evidence of training of police officers in Article 11 and Article 3 standards.

The Committee of Ministers' decisions: The CoM noted with concern in its September 2014 decision that no concrete information has been provided on the review of the "Meetings and Demonstrations Marches Act" and urged the Turkish authorities to strengthen the guarantees on the proper use of tear gas (or pepper gas) or tear-gas grenades, and to adopt a clearer set of rules in accordance with the Court's findings in the judgments of the *Ataman* group. In relation to disciplinary investigations against police officers, the CoM requested the Turkish authorities to obtain precise information on the nature, range and effectiveness of sanctions provided under Turkish law in cases where law enforcement officers fail to comply with the legislation and urged them to provide concrete information on the precise measures taken to ensure that the judicial authorities conduct effective investigations into allegations of ill-treatment in conformity with Article 3 of the Convention.

Link to full judgment

L. v. Lithuania (App No. 27527/03)

The case was decided by the Court on 11 September 2007.

Case presented by Natalija Bitiukova, Human Rights Monitoring Institute Tomas Vytautas Raskevičius, Lithuanian Gay League in February 2015.

Violation of Article 8 (respect for private life, including respect for human dignity and the quality of life): the States' failure to implement a law regulating full gender reassignment surgery.

Case summary: The applicant was registered as a girl at birth but, from an early age, regarded himself as a male and sought medical advice about gender reassignment. Although he was diagnosed as a transsexual his doctor initially refused to prescribe hormone therapy in view of uncertainty as to whether or not full gender reassignment could be legally carried out. He was therefore forced to follow the hormone treatment unofficially. Following the adoption of the new Civil Code in 2000, which for the first time introduced a right to gender-reassignment surgery in Lithuanian law, the applicant underwent partial reassignment

surgery. However, he agreed with the doctors to defer any further surgical steps pending the introduction of implementing legislation on the conditions and procedure for gender reassignment. The implementing legislation has not yet been enacted following strong opposition to the bill in the Parliament. The applicant remained a female under domestic law and although he was eventually permitted to change his name to one that was not gender sensitive, his personal code on his new birth certificate and passport and on his university diploma continued to identify his gender as female. He thus faced considerable embarrassment and difficulties in daily life and found himself ostracised to the point where he had become suicidal.

Key legal points: This case concerns an Article 8 violation on account of a legislative lacuna that fails to enable individuals to undergo gender-reassignment surgery and to change their gender identification in official documents. Until this law is adopted there does not appear to be suitable medical facilities that are reasonably accessible or available in Lithuania. This legislative gap left the applicant in an intermediate position of distressing uncertainty—having undergone partial surgery, with certain important civil-status documents having been changed—with regard to his private life.

The Court's ordered remedy: Lithuania was ordered to adopt the requisite subsidiary legislation on gender reassignment. In the absence of the enactment of the subsidiary legislation within three months of the judgment becoming final, the Court awarded the applicant EUR 40,000 in pecuniary damage towards the cost of having the final stages of the necessary surgery performed abroad. The applicant was also awarded EUR 5,000 for non-pecuniary damage.

Key Recommendations made by civil society: The Lithuanian Government should be encouraged to:

- Include NGO representatives and members of the transgender community into the deliberations by the high level working group on a permanent basis
- Comprehensively integrate medical and legal aspects of gender reassignment procedure
- Ensure that amendments to the civil code and the accompanying legal acts, enabling legal gender recognition, are adopted

The Committee of Ministers' decisions: The government submitted an updated action plan on 12 January 2015 to provide information on the creation of a high-level working group established "to ensure proper treatment of transsexuals." In its decision of March 2015 the CoM noted with interest this development; however, it expressed concern that Lithuanian authorities have provided no information as to when the working group will conclude its work and when the required legislative reform will be brought before Parliament and adopted. It urged the government to produce concrete results without further delay and invited the Lithuanian authorities to provide updated information by 31 July 2015.

Link to full judgment

Stanev v. Bulgaria (App no 36760/06)

The case was decided by the Grand Chamber on 17 January 2012.

Case presented by Rusi Stanev, Applicant; Steven Allen, Advocacy Director, Mental Disability Advocacy Center (MDAC); Aneta Genova, MDAC Legal Monitor in November 2014.

Violation of Article 5.1 (right to liberty and security): Placement of applicant against his will in social care institution and for an independent period of time. **Violation of Article 3** (freedom from degrading treatment): Living conditions amounted to degrading treatment. **Violation of Article 6** (right to a fair trial): Inability to access a court to review restrictions on legal capacity. **Violation of Article 13** (right to an effective remedy).

Case summary: In 2000, the applicant was placed under partial guardianship and a municipal employee was appointed as his guardian. In 2002, without ever having met the applicant, his guardian had him placed in a social care institution in a remote mountainous area. Once there, the director of the institution became his guardian and controlled all of his affairs. The conditions in the institution were unlivable, including inadequate food, lack of heat, and sub-standard sanitary facilities. The applicant had no ability to challenge this situation, as he could not initiate any type of legal proceedings, including a proceeding to have his guardianship lifted, without the guardian's consent.

Key legal points: The Court found that the applicant's placement in the social care institution, against his will and for an independent period of time, on the order of a government employee, amounted to a deprivation of liberty. The Court went on to state that a need for social assistance should not automatically lead to measures involving deprivation of liberty. The system of guardianship in Bulgaria meant that the applicant had no realisable right to challenge the lawfulness of his detention in the Bulgarian courts. The Court further held that the applicant's inability to access a court to review the restrictions on his legal capacity, which restricted many other rights, violated the right to a fair trial. Bulgaria also did not provide a remedy for the degrading treatment he had suffered, or for the unlawful denial of the right to a fair trial.

The Court's ordered remedy: The Court awarded EUR 15,000 in respect of non-pecuniary damage. The Court also ordered that the applicant should be asked whether he wished to remain in the home and, if not, a re-examination of his situation should be carried out. The Bulgarian government should also ensure that the applicant would be provided with the opportunity to apply directly to Bulgarian courts for a review of the restriction of his legal capacity.

Key recommendations made by civil society:

- Bulgaria must pass legislation to ensure that those under guardianship have access to judicial review.
- Due to Bulgaria's failure to adequately and timeously implement the judgment, it should be moved into enhanced supervision and debated by the Committee.

The Committee of Ministers' decisions:

Following the submission of a revised action plan in February 2015, the *Stanev* case was moved into enhanced supervision.

Link to full judgment

Moldovan and Others v. Romania (App no 41138/98)

The case was decided by the Court on 12 July 2015.

Case presented by Stefan Luca, European Roma Rights Centre and Oana Mihalache, Romani Criss, in May 2015

Violation of Article 3 (prohibition of degrading and inhuman treatment): Living conditions of, and discrimination against, Roma villagers following the killing of fellow Roma and the destruction of homes. **Violation of Article 6 § 1** (right to a fair hearing within a reasonable time): The period under consideration had lasted more than 11 years. **Violation of Article 8** (respect for private and family life and home): Authorities' general attitude, including their repeated failure to put an end to breaches of Roma applicants' rights, perpetuating their feelings of insecurity. **Violation of Article 14** (right to non-discrimination) in conjunction with **Article 6 and 8**: the applicants' Roma ethnicity appeared to have been decisive for the length and the result of the domestic proceedings.

Case summary: These cases concern the consequences of racially motivated violence carried out in 1993 against villagers of Roma origin and the general discriminatory attitude of the authorities, including their prolonged failure to put an end to the breaches of the applicants' rights. The applicants complained that – following the destruction of their houses, in which police officers had been complicit – they could not live in their homes and had to live in very poor, cramped conditions. They also complained that the authorities failed to carry out an adequate criminal investigation, which prevented them from bringing a civil action in damages against the State regarding the misconduct of the police officers concerned. Several applicants also complained about the length of the criminal proceedings, which they alleged was discriminatory.

Key legal points:

- The racial discrimination to which the applicants had been publicly subjected constituted an interference with their human dignity which, in the special circumstances of the case, amounted to "degrading treatment" within the meaning of Article 3.
- The domestic proceedings in the case lasted more than 11 years, which did not satisfy the reasonable-time requirement and therefore amounted to the violation of Article 6 § 1.
- The Court held that it was clear from the evidence submitted as well as from the civil court judgments that police officers had been involved in the burning of the Roma houses and had tried to cover up the incident.
- Having regard to the direct repercussions of the acts of State agents on the applicants' rights, the Government's responsibility was engaged with regard to the applicants' living conditions. The authorities' attitude, and their repeated failure to put a stop to breaches of the applicants' rights, amounted to a serious violation of Article 8.
- The Court noted that the attacks were directed against the applicants because of

their Roma origin, and it also took note of the repeated discriminatory remarks made by the authorities throughout the case and their blanket refusal until 2004 to award non-pecuniary damages for the destruction of the family homes.

The Court's ordered remedy: The Court awarded compensation to each applicant for pecuniary and non-pecuniary damage in global amounts ranging from 11,000 to 95,000 EUR.

Key recommendations made by civil society:

The Committee of Ministers should:

- Take note of the adoption of the emergency ordinance (which sets out the legal framework for the construction of the medical center and the industrial site), and strongly encourage the authorities to abide by the timetable to build and open the medical center and the industrial facility.
- Urge the Romanian authorities to conduct consultations with the community to assess the current status of implementation and identify further necessary measures
- Deplore the continued lack of progress in building the remaining houses and refurbishing those that have been poorly rebuilt.
- Call on national authorities to carry out an evidenced-based assessment of the impact and sustainability of anti-discrimination and conflict prevention measures and mechanisms.

The Committee of Ministers' decisions: In their decision in June 2015, the CoM noted that the legislative framework for the construction of a medical center and of an industrial site in Hadareni, announced to the Committee of Ministers in 2011, has been put in place. Having regard to the significant delay in its adoption, however, the Committee strongly invited the authorities to intensify their efforts to ensure that the works planned are rapidly completed. It furthermore encouraged the authorities to define as a matter of priority the additional measures they envisage adopting in the areas of intervention identified and welcomed in this respect their initiative to co-operate with civil society, which would benefit from being broadened to other areas for further interventions identified.

Link to full judgment

Al Nashiri v. Poland (App no 28761/11)

The case was decided by the Court on 24 July 2014.

Case presented by Amrit Singh, Open Society Justice Initiative in May and September 2015.

Violations of Article 3 (prohibition of torture and inhuman or degrading treatment in both its substantive and procedural aspects): torture and inhuman and degrading treatment during and following the applicant's extraordinary rendition to CIA; **Article 5** (right to liberty and security): detention during and following operation involving extraordinary rendition to CIA; **Article 8** (right to respect for private and family life): the interference with the applicant's private and family life was not in accordance with the law; **Article 13** (right to an effective remedy): ineffective criminal investigations by Poland; **Article 6 § 1** (right to a fair trial): extraordinary rendition to CIA despite real risk of flagrantly unfair trial before US military commission; **Articles 2 and 3 taken together with Article 1 of Protocol No. 6** (abolition of the death penalty): extraordinary rendition to CIA of suspected terrorist facing capital

charges; **Article 38** (obligation to furnish all necessary facilities for the effective conduct of an investigation): Failure to produce documentary evidence despite Court assurances regarding confidentiality.

Case summary: The applicant was a victim of an "extraordinary rendition" by the United States Central Intelligence Agency (CIA): he was apprehended and extrajudicially transferred to a secret detention site in Poland with the knowledge of the Polish authorities for the purpose of interrogation. He was then subjected to so-called "enhanced interrogation techniques" and to "unauthorised" interrogation methods, including mock executions, prolonged stress positions, and threats to detain and abuse members of his family. He was subsequently secretly removed from Poland in June 2003 on a rendition flight before ultimately arriving at the US Naval Base in Guantanamo Bay. A criminal investigation in Poland concerning secret CIA prisons on Polish territory was opened against persons unknown in March 2008; it was extended a number of times and remained pending at the date of the Court's judgment.

Key legal points: The Court found that Poland participated in the extraordinary rendition and secret detention of Al Nashiri and that, by refusing to comply with its evidentiary requests, had failed to discharge its obligations under Article 38 of the Convention. The Court further concluded that Al Nashiri's transfer from Poland exposed him to a flagrant denial of justice due to the possibility he would face trials before U.S. military commission using evidence obtained under torture. The applicant has indeed been charged with capital offences before the military commission; to that end, the Court also found that he faced a real risk of being subjected to the death penalty.

The Court's ordered remedy: The applicant was awarded EUR 100,000 for non-pecuniary damages and the Court ordered Poland to seek diplomatic assurances that the U.S. would not subject him to the death penalty or to a flagrant denial of justice and to conduct an effective investigation..

Key recommendations made by civil society:

- An official acknowledgement, issued by the highest level of government, that Poland hosted a secret CIA prison on Polish territory in 2002 and 2003.
- An effective criminal investigation into Poland's role in the CIA extraordinary rendition, including but not limited to:
- Disclosure of the full terms of reference of the investigation to Mr. Al Nashiri's counsel in both his Polish and European Court proceedings, as well as to the public;
- Granting Polish counsel unhindered access to the entire case file (including classified files) on a regular basis;
- Disclosure of information to Polish counsel about the Prosecutor's legal characterization of the facts established thus far in the proceedings, and about the charges which were or are to be brought in the case; and
- Disclosure to Polish counsel of the investigative actions to be undertaken in the course of the investigation, together with the anticipated time frame.
- A plan for disclosure of non-classified case files to the general public, to inform them about the result of the domestic investigation to date.

- Disclose all communications to and from the U.S. government to all counsel for Mr. Al Nashiri in his Polish and European Court proceedings, particularly assurances relating to the death penalty as well as the flagrant denial of justice.

The Committee of Ministers' decisions: The CoM decision of March 2015 called upon Polish authorities to urgently seek assurances from the United States authorities that Mr. Al Nashiri will not be subjected to the death penalty and to a flagrant denial of justice. According to the information submitted, the Polish authorities have acted promptly on this urgent individual measure.. In June 2015, the CoM with satisfaction the above advancements made by the Polish authorities; nonetheless, it strongly encouraged the Polish authorities to follow up their requests for diplomatic assurances, and to keep the Committee fully informed of all developments.

Link to full judgment

Abu Zubaydah v. Poland (App no 7511/13)

The case was decided by the Court on 24 July 2014 and was examined simultaneously by the CoM with the *Al-Nashiri v. Poland* case above.

Case presented by Helen Duffy, Human Rights in Practice and Professor at University of Leiden in May 2015.

Link to full judgment

Genderdoc-M v. Moldova (App no 9106/06)

The case was decided by the Court on 12 September 2012.

Case presented by Doina Ioana Straisteanu, independent human rights lawyer, in September 2015.

Violations of Article 11 (right to peaceful assembly); **Article 13, taken together with Article 11** (lack of an effective remedy given post-hoc character of judicial remedy); **Article 14** (discrimination on account of demonstrations that authorities considered to promote homosexuality).

Case summary: This case concerns an Article 11 violation of the applicant NGO's right to peaceful assembly on account of the ban on a demonstration planned to be held in Chisinau in May 2005 in front of the Parliament to encourage the adoption of laws for the protection of sexual minorities from discrimination. In addition, the European Court found a lack of an effective remedy on account of the post-hoc character of the judicial remedy available in the domestic legislation (violation of Article 13 in conjunction with Article 11), and that the applicant NGO had been subjected to discrimination on account of the authorities' disapproval of demonstrations which they considered to promote homosexuality (violation of Article 14 in conjunction with Article 11).

Key legal points: While welcoming the progress and steps taken by the Moldovan authorities, Genderdoc-M has still experienced violent disruption during assemblies held between 2013 and 2015. On 4 May 2015, the denial of a 2013 demonstration was included in a new application to the European Court. Subsequent assemblies in 2014 and 2015, despite being

carefully planned and strategized, were similarly obstructed. Genderdoc-M lodged an application to the Court in respect of these events in May 2015 as well.

Key recommendations made by civil society:

- The CoM should keep the case under enhanced supervision. Furthermore, it should ask the Moldovan authorities to:
- Train law enforcement and local public authorities about LGBT rights and how to properly assess the need to balance the freedom of assembly for opposing groups.
- Introduce legislation and appropriate sanctions against hate speech and hate crime.
- Identify and adopt preventive measures that law enforcement should take in response to protests and extremist violence against the LGBT community.
- Apply the legislation sanctioning violation of the right of freedom of assembly consistently.

The Committee of Ministers' decisions: In September 2015, the CoM "noted with satisfaction the reforms made in the Moldovan legislation," and invited information on the work carried out by the newly created Anti-discrimination Council. It further invited authorities to provide information on how appeal proceedings can be concluded with sufficient time in instances where a court bans a public event or changes its time or venue. It "strongly encouraged the Moldovan authorities to continue their efforts in providing security protection to demonstrators against counter demonstrators" in similar public events. The judgment remains under enhanced supervision.

Link to full judgment

The Open Society Justice Initiative uses law to protect and empower people around the world. Through litigation, advocacy, research, and technical assistance, the Justice Initiative promotes human rights and builds legal capacity for open societies. Our staff is based in Abuja, Amsterdam, Bishkek, Brussels, Budapest, The Hague, Cape Town, London, Mexico City, New York, Paris, Santo Domingo, and Washington, D.C.