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from the Office of the Commissioner for Human Rights  
to  
the Contact Persons of the National Human Rights Structures  
(NHRs)**

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*The selection of the information contained on this Issue and deemed relevant to NHRs is made under the responsibility of the NHRs Unit and the Legal Advice Unit of the Office of the Commissioner.*

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## **Introduction**

This issue is part of the "Regular Selective Information Flow" (RSIF) which Commissioner Hammarberg promised to establish at a round table with the heads of the national human rights structures (NHRs) in April 2007 in Athens. The purpose of the RSIF is to keep the national structures permanently updated of Council of Europe norms and activities by way of regular transfer of information, which the Commissioner's Office carefully selects and tries to present in a user-friendly manner. The information is sent to the Contact Persons in the NHRs who are kindly asked to dispatch it within their offices.

Each issue will cover two weeks and will be sent out by the Commissioner's Office a fortnight after the end of each observation period. This means that all information contained in any given issue will be between two and four weeks old.

Unfortunately, the issues will be available in English only for the time being due to the limited means of the Commissioner's Office. However, the majority of the documents referred to exists in English and French and can be consulted on the web sites that are indicated in the issues.

The selection of the information included in the issues is made by the Commissioner's Office under its responsibility. It is based on what the NHRs and the Legal Advice Units believe could be relevant to the work of the NHRs. A particular effort is made to render the selection as targeted and short as possible.

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

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

## A. Judgments

### 1. Judgments deemed of particular interest to NHRs

The judgments presented under this heading are the ones for which a separate press release is issued by the Registry of the Court as well as other judgments which the Office of the Commissioner considers relevant for the work of the NHRs. They correspond also to the themes addressed in the Peer-to-Peer Workshops. The judgments are thematically grouped. The information, except for the comments drafted by the Office of the Commissioner, is based on the [press releases of the Registry of the Court](#).

Some judgments are only available in French.

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

#### **Note on the Importance Level :**

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

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

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

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

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

#### • **Grand Chamber judgments**

**Paladi v. Moldova (no. 39806/05) (Importance 1) - 10 March 2009 - Violation of Article 3 on account of lack of appropriate medical treatment while in detention - Violation of Article 5§1 because the pre-trial detention had continued in the absence of a judicial decision to that effect - Violation of Article 34 on account of the failure of the Moldovan authorities to comply with the interim measure indicated under Rule 39 of the Rules of Court**

The Grand Chamber endorsed the Chamber's findings and held by fifteen votes to two, that there had been a violation of Article 3 on account of the fact that the applicant had not received appropriate medical treatment, as required by the seriousness of his condition, while in detention;

by sixteen votes to one, that there had been a violation of Article 5 § 1 in that the applicant's pre-trial detention had continued in the absence of a judicial decision to that effect;

unanimously, that it was not necessary to examine separately the complaints under Article 5 §§ 3 and 4; and,

by nine votes to eight, that there had been a violation of Article 34 (right of individual petition) on account of the Moldovan authorities' failure to comply with the interim measure, issued under Rule 39 of the Rules of Court, in which the Court asked them to keep the applicant in the Republican Neurology Centre (RNC) of the Ministry of Health.

In this particular case, the interim measure issued by the Court on 10 November 2005, required the Moldovan authorities to refrain from transferring the applicant from the RNC to another establishment. The Court noted that it was not disputed between the parties that on 11 November 2005 Mr Paladi was no longer at the neurological centre, but in the prison hospital. It also noted that there was nothing to support the Government's submission that the applicant had been transferred to the prison hospital before the Government had found out about the interim measure. The Court therefore concluded that the interim measure had not been complied with.

As to whether the failure to comply with the interim measure could be explained by the existence of objective impediments, the Court noted that the Moldovan authorities had shown negligence and passivity that were incompatible with their obligations under Article 34. This was the case both at the level of the Government Agent, responsible for transferring the interim measure immediately to the relevant judicial authorities, and at the level of these judicial authorities, which had had responsibility for adopting a decision to prevent the transfer.

Finally, the Court held that the fact that the risk to the applicant's health which had led it to indicate the interim measure had not ultimately materialised did not alter the fact that the authorities had failed in their obligations. Consequently, there had been a violation of Article 34 of the Convention (see §§ 84-92 for the general principles applied and §§ 93-105 for the *in concreto* assessment).

**Bykov v. Russia (no. 4378/02) (Importance 1) - 10 March 2009 - Violation of Article 5 § 3 on account of the insufficient reasons given for extending the applicant's pre-trial detention - Violation of Article 8 on account of the use of a surveillance technique which was not accompanied by adequate safeguards against possible abuses - No violation of Article 6 (right to a fair trial)**

The applicant, was chairman of the board of the Krasnoyarsk Aluminium Plant from 1997 to 1999. At the time of his arrest in October 2000 he was a major shareholder and an executive of a corporation called OAO Krasenergomash-Holding. He was also a member of the Krasnoyarsk Regional Parliamentary Assembly. In September 2000 Mr Bykov allegedly ordered V., a member of his entourage, to kill Mr S., a former business associate. V. did not comply with the order, but on 18 September 2000 he reported the applicant to the Federal Security Service ("the FSB").

The FSB and the police decided to conduct a covert operation to obtain evidence of the applicant's intention to murder S. On 29 September 2000 the police staged the discovery of two dead bodies at S.'s home. They officially announced in the media that one of those killed had been identified as S. The other man was his business partner, Mr I. On 3 October 2000 V. went to see the applicant at his home. He carried a hidden radio-transmitting device while a police officer outside received and recorded the transmission. Following the instructions he had been given, V. engaged the applicant in conversation, telling him that he had carried out the murder. As proof he handed the applicant several objects borrowed from S. and I. The police obtained a 16-minute recording of the conversation between V. and the applicant. On 4 October 2000 the applicant's house was searched. The objects V. had given him were seized. The applicant was arrested and remanded in custody.

On 19 June 2002 the applicant was found guilty on both counts and sentenced to six and a half years' imprisonment. He was conditionally released on five years' probation. The sentence was upheld on appeal on 1 October 2002. On 22 June 2004 the Supreme Court of the Russian Federation examined the case in supervisory proceedings. It found the applicant guilty of "incitement to commit a crime involving a murder", and not "conspiracy to murder". The rest of the judgment, including the sentence, remained unchanged.

Relying on Article 5 § 3 the applicant alleged that his pre-trial detention had been excessively long and that it had been successively extended without any indication of relevant and sufficient reasons. Under Article 6 § 1, he complained that the proceedings against him had been unfair, as the police had set a trap to trick him into incriminating himself in his conversation with V. and the court had admitted the recording of the conversation in evidence at the trial. The applicant also complained that the covert operation by the police had involved an unlawful intrusion into his home and that the interception and recording of his conversation with Mr V. amounted to interference with his private life and his correspondence, in breach of Article 8.

The Court held unanimously that there had been a violation of Article 5 § 3 on account of the insufficient reasons given for extending the applicant's pre-trial detention.

It also held unanimously that there had been a violation of Article 8 because the interference with the applicant's right to respect for his private life was not "in accordance with the law" as required by Article 8§2. The Court recalled the requirements "of the quality of the law" regarding the interception of communications for the purpose of a police investigation (see judgments *Malone*, *Huvig* etc; § 78) and affirmed that "*these principles apply equally to the use of a radio-transmitting device, which, in terms of the nature and degree of the intrusion involved, is virtually identical to telephone tapping*" (§ 79). Subsequently, it concluded that there was a lack of adequate safeguards:

*"In the instant case, the applicant enjoyed very few, if any, safeguards in the procedure by which the interception of his conversation with V. was ordered and implemented. In particular, the legal discretion of the authorities to order the interception was not subject to any conditions, and the scope and the manner of its exercise were not defined; no other specific safeguards were provided for. Given the absence of specific regulations providing safeguards, the Court is not satisfied that, as claimed by the Government, the possibility for the applicant to bring court proceedings seeking to declare the "operative experiment" unlawful and to request the exclusion of its results as unlawfully obtained evidence met the above requirements. It follows that in the absence of specific and detailed regulations, the use of this surveillance technique as part of an "operative experiment" was not accompanied by adequate safeguards against various possible abuses. Accordingly, its use was open to arbitrariness and was inconsistent with the requirement of lawfulness"* (§ 80-81).

The Court concluded by 11 votes to six that there had been no violation of Article 6: "*The Court also attaches weight to the fact that in making their assessment the domestic courts did not directly rely on the recording of the applicant's conversation with V., or its transcript, and did not seek to interpret specific statements made by the applicant during the conversation. Instead they examined the expert report drawn up on the conversation in order to assess his relations with V. and the manner in which he involved himself in the dialogue. Moreover, at the trial the recording was not treated as a plain confession or an admission of knowledge capable of lying at the core of a finding of guilt; it played a limited role in a complex body of evidence assessed by the court.*<sup>104</sup> Having examined the safeguards which surrounded the evaluation of the admissibility and reliability of the evidence concerned, the nature and degree of the alleged compulsion, and the use to which the material obtained through the covert operation was put, the Court finds that the proceedings in the applicant's case, considered as a whole, were not contrary to the requirements of a fair trial." (§§103-104). See in that respect the partly dissenting opinions of Judge Costa and Judge Spielmann, joined by Judges Rozakis, Tulkens, Casadevall and Mijović.

- **Police violence and discrimination**

**[Cakir v. Belgium](#) (no. 44256/06) (Importance 1) - 10 March 2009 - Violation of Article 3 (substantive and procedural angle)- Violation of Article 3 in conjunction with Article 14**

The applicant is a Belgian citizen of Turkish origin. The case concerned the applicant's allegations that he was subjected to ill-treatment on the basis of racist prejudice during his arrest and while held in police custody.

Article 3

Although the versions of events put forward by the parties differed substantially, there were uncontested elements that enabled the Court to determine whether the force used had been proportionate. The Court noted that the applicant had been hospitalised for ten days and that his body was covered in injuries and bruises, and that he had sustained fractures to the nose and several teeth. According to medical reports drawn up in 2004 and 2006, he was still suffering from the after-effects of the incident, particularly a reduction in auditory and visual capacity, dizziness, difficulties in breathing through the nose on account of the fracture which resulted in a deviation of the septum, and dental problems. Therefore, the Court considered that it had not been shown that the use of force by the police officers had been made strictly necessary by the applicant's conduct and concluded that there had been a violation of Article 3.

The Court also noted that the Belgian authorities had, admittedly, not remained inactive in response to the applicant's allegations. However, although the latter had appealed to the Indictments Division against the finding that there was no case to answer, the case had never been examined by that Division. With regard to the judgment finding that prosecution was time-barred, the Court had already held that where a State agent was accused of actions contrary to Article 3, the proceedings or conviction should not be allowed to lapse by becoming time-barred, and the application of measures such as an amnesty or pardon should not be authorised. Moreover, the Minister of Justice had himself admitted in a letter sent to the applicant that there had been a malfunctioning in the domestic

proceedings, and had issued a press release in which he attempted to explain the delay in examining the case. Finally, on 14 April 2006 the Investigation and Opinions Committee had declared a complaint submitted by the applicant concerning the delay to be well-founded. Accordingly, the Court considered that the investigation conducted by the domestic authorities had been ineffective and held that there had been a violation of Article 3.

#### Article 14

The Court considered that the general context at the relevant time, referred to by the applicant, was not sufficient to explain the allegedly racist attitude of the police officers during the arrest. It noted that in his criminal complaint and request to join the proceedings as a civil party, the applicant had referred specifically to an infringement of sections 1 and 4 of the law of 30 July 1981 on suppressing certain actions inspired by racism and xenophobia. In addition, he had mentioned racist remarks allegedly made against him by the police officers, specifically “dirty wog (*‘mètèque’*), you’re nothing but a wog and you’ll always be one”, “you’re nothing but a bloody towel-head (*‘bounoule’*), and you’ll always be one”. Yet, in his submissions inviting the *chambre du conseil* to find that there was no case to answer, the Crown Prosecutor did not express an opinion on this part of the complaint, considering that the actions which could be categorised as offences under the law of 30 July 1981 were equivalent to those covered by the other charges. On 17 October 2000 the *chambre du conseil* endorsed the prosecutor’s submissions and, on 26 April 2006, the Indictments Division found that the prosecution was time-barred, a fact which had led the Court in the earlier part of its judgment to find that there had been a violation of Article 3.

In consequence, the Court considered that the Belgian authorities had not taken all the necessary measures to ascertain whether discriminatory conduct could have played a role in the events in question, and therefore concluded that there had been a violation of Article 14 taken in conjunction with Article 3 (see the judgment of principle: *Nachova v. Bulgaria*, [GC], 6 July 2005).

#### **Böke and Kandemir v. Turkey (nos. 71912/01, 26968/02 and 36397/03) (Importance 2) – 10 March 2009 - (1<sup>st</sup> applicant) No violation of Article 3 (treatment) - (1<sup>st</sup> applicant) Violation of Article 3 (investigation) - Violation of Article 5 § 3 - Violation of Article 6 § 3 (c)**

Relying on Articles 5 § 3 and 6 § 3 (c), both applicants complained that they had been detained for seven days, on suspicion of having shot and injured two people in a bus in 2001, without being brought before a judge capable of authorising their detention, and that they had been denied access to a lawyer while in police custody. Relying on Article 3, Rifat Böke also alleged that he had been tortured while in police custody. The Court held unanimously that there had been a violation of Article 5 § 3 and a violation of Article 6 § 3 (c). It further held unanimously that there had been no violation of Article 3 concerning Rifat Böke’s allegations of ill-treatment, but that there had been a violation of that Article on account of the domestic authorities’ failure to effectively investigate those allegations.

- **Conditions of detention**

#### **Bychkov v. Russia (no. 39420/03) (Importance 3) – 5 March 2009 – Violation of Article 3 – Conditions of detention – Lack of personal space afforded to detainees**

The applicant was held in two pre-trial detention facilities nos. IZ-77/2 and IZ-77/3 in Moscow between 5 June 2000 and 9 September 2003, when he was transferred to a correctional colony to serve his sentence. The criminal proceedings against him were subject to extensive media coverage.

Mr Bychkov was held in a number of different cells in the two pre-trial detention facilities. His version of the conditions of his detention there differed significantly from that provided by the Government. While the Government submitted that, most of the time, the capacity of the cells in which he was held allowed for more detainees than there were in reality, Mr Bychkov maintained that during certain periods he was placed in overcrowded cells. In particular he submitted that for a period he shared a cell measuring 48 square metres with up to seventy other detainees, and another cell, measuring 36 square metres, with 38 other detainees; the inmates had to take shifts to sleep. In support for his allegations, Mr Bychkov submitted written statements from two fellow detainees with whom he shared the cells during part of the period in question. The Government submitted no information about the size of the cells, and did not provide sufficient information about how many detainees there had been in each cell during the whole examined period.



The Court observed that the Government had not provided any information on the measurements of the cells, or information about how it had calculated the average number of detainees per cell for the whole period in question. The Court found that given the failure of the Government to submit this information without a satisfactory explanation, it would base its analysis on the submissions by Mr Bychkov and the two written reports of his two inmates. Having noted that the living area per detainee had varied between 0,65 and 1,3 square metres, the Court referred to its earlier case law regarding the lack of personal space afforded to detainees, and held accordingly that there had been a violation of Article 3 (§§ 33-43).

**Aleksandr Makarov v. Russia (no. 15217/07) (Importance 2) – 12 March 2009 - Violation of Article 3 - Conditions of the applicant’s detention in Tomsk Town temporary detention facility - Violation of Article 5 § 3 – Insufficient reasons given for extending the applicant’s pre-trial detention.**

The applicant was the mayor of the city of Tomsk; on 6 December 2006 he was arrested and placed in pre-trial detention on suspicion of abuse of position and aiding and abetting aggravated extortion.

**Article 3**

The Court observed that the conditions in Tomsk detention facility were extremely cramped. Notably, since 27 September 2007 the applicant had been held in less than four square metres of living space. As could be seen from the photos of the cells submitted by the Government, the arrangement of the cells left inmates with literally no free space in which they could move. Indeed, for more than two years Mr Makarov had had to spend a considerable part of each day practically confined to his bed in a cell with poor ventilation and lighting and insufficient privacy in respect of sanitary arrangements. Lastly, although Mr Makarov had been prescribed physical exercise by a prison doctor to reduce his back pain, opportunity for outdoor exercise had been limited to one hour a day in the small facility courtyard.

Having regard to the cumulative effect of those factors, aggravated by the heating, food and sanitary conditions, the Court found that the intensity of distress or hardship caused to Mr Makarov had to have exceeded the unavoidable level of suffering inherent in detention, and aroused in him feelings of fear, anguish and inferiority capable of humiliating and debasing him. The Court therefore found a violation of Article 3 on account of the inhuman conditions of the applicant’s detention.

**Article 5 § 3**

The grounds for Mr Makarov’s continued detention were the gravity of the charges against him and the risk that the applicant could abscond, pervert the course of justice and reoffend. The Court reiterated that the gravity of the charges could not by itself serve to justify long periods of detention. The Court found that the Russian courts had not analysed the applicant’s personal situation in greater detail to assess the risk of his absconding. Indeed, they had accepted without question information from the Federal Security Service that was not supported by any evidence. In respect of the danger of perverting the course of justice, the Court observed that the Regional Court had only supported its conclusion of the risk of collusion on 3 December 2007 when it had referred to relatives of the applicant having allegedly attempted to tamper with witnesses. However, the applicant had not been notified of the content of the prosecution authorities’ submissions to corroborate that assertion, and no inquiry into those allegations had been opened.

As concerned the danger to public order, the Court noted that the Government had relied solely on the gravity of the offences allegedly committed by the applicant and had not provided any evidence or indicated any instance which could have shown that his release could have posed an actual danger. Lastly, the Court observed that the authorities had never even considered the possibility of ensuring the applicant’s attendance by the use of alternative “preventive measures”. The Court therefore concluded that the Russian authorities had failed to justify Mr Makarov’s continued deprivation of liberty for a period of over two years, in violation of Article 5 § 3.

**Ghvtadze v. Georgia (no. 23204/07) (Importance 3) – 3 March 2009 – Violation of Article 3 (treatment) – Conditions of detention – Appropriate medical treatment – Reference to the Annual Report of the Public Defender of Georgia**

The applicant is currently serving a prison sentence. He relied on Article 3 (prohibition of inhuman or degrading treatment). The Court held unanimously that there had been a violation of Article 3 in that the Georgian authorities had failed to comply with their obligation to protect his health during his

detention in Prison n°5 in Tbilisi and to provide him with appropriate treatment for his viral hepatitis C and tuberculous pleurisy; for example, the applicant had been admitted to hospital only when his symptoms had reached their peak.

The Court referred to the findings of the 2007 annual report of the Public Defender of Georgia concerning the conditions of detention in Prison n°5 in Tbilisi (See §§ 54-55 of the judgment).

- **Disclosure by a physician of a patient's HIV status**

**Colak and Tsakiridis v. Germany (nos. 77144/01 and 35493/05) (Importance 3) – 5 March 2009 - No violation of Article 2 - No violation of Article 8 - No violation of Article 6 § 1 – Proceedings brought at domestic level against a doctor for failing to inform the applicant that her companion was suffering from AIDS**

Relying on Articles 2 (right to life), 6 § 1 (right to a fair hearing) and 8 (right to respect for private and family life), Ms Colak complained that she had been denied a fair trial in proceedings she had brought against her doctor for failing to inform her that her companion was suffering from AIDS and that the domestic courts had refused to award her compensation for not knowing that she was HIV-positive. The Court considered that the domestic courts had had sufficient regard to Ms Colak's right to life and physical integrity; it further found that their assessment of the facts had not been arbitrary and that the principle of equality of arms had been complied with. Consequently, the Court held, unanimously, that there had been no violation of Article 2 of the Convention and no violation of Article 6 § 1. It further held, by six votes to one, that there had been no violation of Article 8:

*“The Court notes that at the time the Frankfurt Court of Appeal rendered the instant judgment in 1999, no established domestic case-law existed as to whether a family physician was obliged to disclose a patient's HIV status to the patient's partner even against the patient's express will. The Court further observes that the three judges deciding on the case in the first-instance court, unlike the Court of Appeal judges, did not consider that the physician had been obliged to disclose her partner's status to the applicant. Under these circumstances, it does not appear contrary to the spirit of Article 2 of the Convention if the Court of Appeal, while fully acknowledging that the physician acted in breach of his professional duties, did not consider that the latter committed a “gross error in treatment” which would have led to a reversal of the burden of proof. This does not exclude the possibility that a higher standard would have to be applied to a physician's diligence in cases which might arise after the Frankfurt Court of Appeal's judgment given in the instant case, which clarified the physician's professional duties in these specific circumstances, had been published” (§.34).*

- **Right to a fair trial**

**Iguual Coll v. Spain (no. 37496/04) (Importance 1) – 10 March 2009 – Violation of Article 6 § 1 (right to a fair trial) in that the applicant had been convicted on appeal without having been examined at a public hearing.**

In a judgment delivered on 5 September 2002, following a public hearing, the applicant was acquitted of wilfully deserting his family by not paying maintenance to his wife and son, on the ground that, being unemployed, he did not have the means. The applicant's former wife appealed. In January 2003 the appellate court (*Audiencia Provincial*) found the applicant guilty, without holding a public hearing, and ordered him to serve eight weekends in prison and to pay the outstanding amounts. It observed that the applicant, an engineer, had not made any effort to look for a job to be able to pay the maintenance and had not shown that it was impossible to find one. An appeal by the applicant to the Constitutional Court, in which he complained that there had been no public hearing in the appellate proceedings, was dismissed. The Constitutional Court held that the *Audiencia Provincial* had based its findings on facts taken to have been established at first instance and that the applicant had been convicted on the basis of sufficient objective evidence.

The European Court of Human Rights observed that the *Audiencia Provincial* had reached the opposite conclusion to that reached by the first-instance court – which had acquitted the applicant after a public hearing – following an examination of his intentions and conduct and the possibility for him to increase his income on account of his professional qualifications. The *Audiencia Provincial* had therefore gone beyond strictly legal considerations in carrying out a fresh assessment of the facts. The Court considered that a public hearing was an essential requirement in such circumstances.

The Court concluded that the fact that the applicant was convicted on appeal, without having been examined in person, was not compatible with the requirements of a fair trial and that a public hearing should have been held in the appellate court. It therefore found a violation of Article 6 § 1.

**Anakomba Yula v. Belgium (no. 45413/07) (Importance 1) - Violation of Article 6 § 1 taken together with Article 14 (prohibition of discrimination) – Right of access to a court concerning a decision to refuse legal aid for an action to contest paternity.**

The applicant is a Congolese national who lives in Koekelberg. Given that she was unlawfully resident in Belgium, she applied in June 2006 for regularisation of her residence status. Her estranged husband, M.L., who is also a Congolese national, was lawfully resident in the country, as were her children. In order for the biological father of her youngest child to be able to recognise the latter's paternity, Ms Anakomba Yula was required to bring an action against M.L. to contest his paternity of the child. She submitted a request for legal aid, seeking exemption from payment of the costs related to those proceedings.

Her request was dismissed on the ground that she was unlawfully resident in Belgium and that her action was not aimed at regularising her situation. In June 2007 the appeal court upheld that decision, emphasising that the "discrimination" referred to by the applicant was a reasonable difference in treatment, and was based on the objective criterion of lawful residence, indicating a minimal tangible connection with Belgium. With regard to the action to contest paternity, the first-instance court found that Ms Anakomba Yula had provided the evidence on non-paternity required under Congolese law. However, it ordered the applicant to pay the fees.

Although the Court reiterated that the right of access to a court was not absolute and that the State had a free choice of the means to be used towards this end, it emphasised that a limitation on access to a court must not impair the very essence of that right. The Court noted that this case concerned serious issues related to family law that were decisive for Ms Anakomba Yula and other individuals. In such circumstances, there ought to have been particularly compelling reasons to justify the difference in treatment between individuals with a residence permit and those without one, the explanation put forward by the Belgian courts to justify their refusal to grant the applicant legal aid.

The Court also noted that Ms Anakomba Yula had taken steps to regularise her situation prior to the expiry of her residence permit, in the context of her life with her daughter's father, a Belgian national. The Court further noted that it had been essential to act quickly, since actions to contest paternity had to be lodged before the child's first birthday. Accordingly, the Court considered that the Belgian State had failed in its obligation to regulate the right of access to a court in a manner that was compatible with the requirements of Article 6 § 1, taken together with Article 14.

- **Discrimination on grounds of religion**

**Gütl v. Austria (no. 49686/99) (Importance 2) - Löffelmann v. Austria (no. 42967/98) (Importance 2) – 12 March 2009 - Violation of Article 14 in conjunction with Article 9 – Obligation to perform civil service for members of the Jehovah's Witnesses**

The applicants are two Austrian nationals. They are members of the Jehovah's Witnesses. Relying in particular on Articles 9 (freedom of thought, conscience and religion) and 14 (prohibition of discrimination), they complained of having been forced to perform civil service in lieu of their military service while members of other recognised religious societies holding religious functions comparable to theirs were exempted from that requirement. The Court held unanimously that there had been a violation of Article 14 in conjunction with Article 9 of the Convention on account of discrimination against the applicants on the ground of their religion.

- **Right to respect for private life**

**Janković v. Croatia (no. 38478/05) (Importance 1) – 5 March 2009 - Violation of Article 8 - Failure by the authorities to adequately protect the applicant from an attack on her physical integrity - Violation of Article 6 § 1 (right to a fair hearing within a reasonable time)**

Relying on Articles 3 (prohibition of inhuman or degrading treatment) and 8 (right to respect for private and family life), Ms Janković complained that, despite her attempts to have her allegations of being

attacked and threatened by her flatmates investigated, the authorities failed to ensure her adequate protection. She also complained under Article 6 § 1 (right to a fair hearing within a reasonable time) of the excessive length of the civil and enforcement proceedings taken together which she had brought.

The Court first took note of the allegations of Ms Janković that three individuals had shouted obscenities at her in front of her apartment, that one of them had kicked her several times, pulled her by her clothes and hair and thrown her down the stairs, as well as the medical documentation showing that she had sustained blows to her elbow and tailbone. The Court attached particular importance to the fact that the attack occurred in connection with the applicant's attempt to enter a flat in respect of which she had obtained a court decision allowing her to occupy it.

The Court then observed that the relevant State authorities had decided not to prosecute the alleged attackers and had not allowed Ms Janković's attempts to prosecute privately. In addition, the minor-offences proceedings had been terminated as time-barred without any final decision on the attackers' guilt. The Court concluded that the national authorities had not provided adequate protection to Ms Janković against an attack on her physical integrity and that the manner in which the criminal-law mechanisms had been implemented constituted a violation of Article 8 of the Convention.

The Court noted that the civil and enforcement proceedings had to be regarded as a whole because the enforcement of the court decision in Ms Janković's favour constituted an integral part of her trial. Both sets of proceedings having lasted in total eight years, five months and six days, the Court held that this had been an excessively long period, in violation of Article 6§1 of the Convention.

- **Fair trial and freedom of expression**

**Băcanu and SC "R" SA v. Romania (no. 4411/04) (Importance 2) - 3 March 2009 - Violation of Article 6 §§ 1 (right to a fair trial) and 3 (d) (right to obtain attendance and examination of witnesses) - Refusal to admit the evidence produced by the applicant - Violation of Article 10 - Wider limits of acceptable criticism against politicians - Lack of proportionality**

The applicants are Petre Mihai Băcanu and the company "R" SA. Mr Băcanu is the editor of the national daily newspaper *România liberă*, published by "R". The applicants relied on Article 6 §§ 1 (right to a fair trial) and 3 (d) (right to examine witnesses), complaining of the Romanian courts' refusal to admit several pieces of evidence, and on Article 10 (freedom of expression), with regard to the criminal and civil orders made against them for libel following publication of the articles in *România liberă*. These publications were directed against Mr Nicolae Văcăroiu (N.V.), the Vice-president of the Social Democratic Party, former Prime Minister, Vice-president of the Senate at the material time and later President of the Senate. He had signed a contract with a businessman, Sorin Ovidiu Vântu (S.O.V.) concerning a plan to set up a new bank, the Bank for Investment and Development ("the bank"). The contract stipulated "ex gratia" remuneration of 10,800,000,000 old Romanian lei (ROL) for N.V., the equivalent of about EUR 657,000. On 31 January 2000 the national bank authorised the formation of the new bank. N.V. was appointed chairman of the board. Some media sources suggested that the bank's capital had been formed with sums invested by savers in an investment fund that had gone bankrupt in May 2000.

Article 6 §§ 1 et 3 (d)

The Court noted that the applicants' whole system of defence had been based on the evidence of witnesses given in open court subject to the rules of adversarial procedure, and that this defence had been hampered by the refusal throughout the proceedings to admit the evidence they wished to adduce, a refusal for which the courts had not given any satisfactory justification. The evidence concerned, in the Court's opinion, might have contributed to the equality required in a trial between the prosecution and the defence.

In view of the importance of respecting the rights of the defence in criminal proceedings, the Court considered that the restriction of those rights in the present case had deprived Mr Băcanu of a fair trial. It accordingly held that there had been a violation of Article 6 §§ 1 and 3 (d).

Article 10

The Court observed that, although it was frequently necessary to protect politicians from serious unfounded attacks, the limits of permissible criticism were wider in their respect than for private individuals, as they inevitably exposed themselves to public scrutiny. It further observed that the articles concerned N.V.'s acts as a senior political official, not his private life.

The Court noted that Mr Băcanu and “R” had played the role of “watchdog” which falls to the press in a democratic society, while acting in good faith and taking care to corroborate their allegations.

The Court found that the accusations of corruption against Senator N.V. had a factual basis, namely the role he had played when the bank was being set up. It further noted that these allegations were not deliberately defamatory but fell within the scope of press freedom, which included the possibility of recourse to a degree of exaggeration and even provocation.

The Court held that the court orders against the applicants had been disproportionate in relation to the legitimate aim pursued and that the national authorities had not given relevant reasons to justify them. There had therefore been a violation of Article 10.

- **Freedom of expression**

**Times Newspapers Limited (Nos. 1 and 2) v. the United Kingdom (no. 3002/03 and no. 23676/03) (Importance 1) - 10 March 2009- No violation of Article 10 – Libel – Internet - Continuing publication**

The applicant alleged that the rule under United Kingdom law whereby each time material is downloaded from the Internet a new cause of action in libel proceedings accrued (“the Internet publication rule”) constituted an unjustifiable and disproportionate restriction on its right to freedom of expression. The applicant contended that the Internet publication rule restricted its ability to maintain a publicly accessible Internet archive. It pointed to the “chilling effect” that the rule had upon freedom of expression, which it said was aggravated by the fact that it had not actively sought to disseminate the information contained in its Internet archive. The applicant submitted that Article 10 required the adoption of a single publication rule (US, see § 24).

The Court held unanimously that there had been no violation of Article 10 because the domestic court’s finding that the Times Newspapers Ltd had libelled G.L. by the continued publication on its Internet site of two articles had not represented a disproportionate restriction on the newspaper’s freedom of expression:

*“The applicants maintain that they are exposed to litigation, without limit in time, on account of the adoption of the Internet publication rule instead of the single publication rule.*

*The Court agrees at the outset with the applicant’s submissions as to the substantial contribution made by Internet archives to preserving and making available news and information. Such archives constitute an important source for education and historical research, particularly as they are readily accessible to the public and are generally free. The Court therefore considers that, while the primary function of the press in a democracy is to act as a “public watchdog”, it has a valuable secondary role in maintaining and making available to the public archives containing news which has previously been reported. However, the margin of appreciation afforded to States in striking the balance between the competing rights is likely to be greater where news archives of past events, rather than news reporting of current affairs, are concerned. In particular, the duty of the press to act in accordance with the principles of responsible journalism by ensuring the accuracy of historical, rather than perishable, information published is likely to be more stringent in the absence of any urgency in publishing the material.*

*The Court further observes that the introduction of limitation periods for libel actions is intended to ensure that those who are defamed move quickly to protect their reputations in order that newspapers sued for libel are able to defend claims unhindered by the passage of time and the loss of notes and fading of memories that such passage of time inevitably entails. In determining the length of any limitation period, the protection of the right to freedom of expression enjoyed by the press should be balanced against the rights of individuals to protect their reputations and, where necessary, to have access to a court in order to do so. It is, in principle, for contracting States, in the exercise of their margin of appreciation, to set a limitation period which is appropriate and to provide for any cases in which an exception to the prescribed limitation period may be permitted (see *Stubbings and Others v. the United Kingdom*, 22 October 1996, §§ 54-55, Reports of Judgments and Decisions 1996-IV).*

*On the facts of the present case, the Court considers it significant that, although libel proceedings in respect of the two articles were initiated in December 1999, the applicant did not add any qualification to the articles in its Internet archive until December 2000. The Court recalls the conclusion of the Court of Appeal that the attachment of a notice to archive copies of material which it is known may be defamatory would “normally remove any sting from the material”. To the extent that the applicant maintains that such an obligation is excessive, the Court observes that the Internet archive in question is managed by the applicant itself. It is also noteworthy that the Court of Appeal did not*

*suggest that potentially defamatory articles should be removed from archives altogether. In the circumstances, the Court, like the Court of Appeal, does not consider that the requirement to publish an appropriate qualification to an article contained in an Internet archive, where it has been brought to the notice of a newspaper that a libel action has been initiated in respect of that same article published in the written press, constitutes a disproportionate interference with the right to freedom of expression. The Court further notes that the brief notice which was eventually attached to the archive would appear to undermine the applicant's argument that any qualification would be difficult to formulate.*

*Having regard to this conclusion, it is not necessary for the Court to consider in detail the broader chilling effect allegedly created by the application of the Internet publication rule in the present case. The Court nonetheless observes that the two libel actions brought against the applicant concerned the same two articles. The first action was brought some two to three months after the publication of the articles and well within the one-year limitation period. The second action was brought a year later, some 14 or 15 months after the initial publication of the articles. At the time the second action was filed, the legal proceedings in respect of the first action were still underway. There is no suggestion that the applicant was prejudiced in mounting its defence to the libel proceedings in respect of the Internet publication due to the passage of time. In these circumstances, the problems linked to ceaseless liability for libel do not arise. The Court would, however, emphasise that while an aggrieved applicant must be afforded a real opportunity to vindicate his right to reputation, libel proceedings brought against a newspaper after a significant lapse of time may well, in the absence of exceptional circumstances, give rise to a disproportionate interference with press freedom under Article 10.*

*The foregoing considerations are sufficient to enable the Court to conclude that in the present case, the finding by the domestic courts in the second action that the applicant had libelled the claimant by the continued publication on the Internet of the two articles was a justified and proportionate restriction on the applicant's right to freedom of expression. There has accordingly been no violation of Article 10 of the Convention" (§§ 44-50).*

**[Hachette Filipacchi Presse Automobile and Dupuy v. France](#) (no. 13353/05) (Importance 2) and [Société de Conception de Presse et d'Édition et Ponson v. France](#) (no. 26935/05) (Importance 2) - 5 March 2009 - No violation of Article 10 - Conviction and sentence for tobacco advertising - Incitement to consume tobacco - No violation of Article 14 in conjunction with Article 10 - Difference between audiovisual and printed media**

The cases mainly concern the applicants' conviction and sentence for advertising cigarettes by publishing photographs of the Formula 1 driver Michael Schumacher sporting logos of the M. brand of cigarette in 2002. The French courts pointed out, among other things, the danger of displaying cigarette brands in a sports-related environment that attracted the attention of the general public and young people in particular.

In the case of *Hachette Filipacchi Presse Automobile and Dupuy*, the applicants were fined 30,000 Euros (EUR) and ordered to pay EUR 10,000 damages to the C.N.C.T. (national anti-tobacco committee) for indirect advertising of tobacco products by publishing, in *Action Auto Moto*, a photograph of Michael Schumacher celebrating his victory on the podium of the Australian Grand Prix. The lettering of the cigarette brand M., his team's sponsor, could be seen on the sleeve of his overall. The right sleeve of another driver sported the W. brand of cigarette. In 2004 the judgment was upheld on appeal and the Court of Cassation dismissed an appeal on points of law lodged by the applicants.

In the case of *Société de Conception de Presse et d'Édition and Ponson* the applicants were fined EUR 20,000 and ordered to pay EUR 10,000 damages to the C.N.C.T. for illegal advertising of tobacco products by publishing in *Entrevue* photographs of Michael Schumacher sporting logos of the M. brand and a satirical photomontage showing packets of that brand of cigarette. In 2004 the judgment was upheld on appeal and in 2005 the Court of Cassation dismissed an appeal on points of law lodged by the applicants.

#### Article 10

The Court noted that in both cases the aim of the interference had been the protection of public health as provided for by the "Evin Act" of 10 January 1991. It agreed with the French Government that the restriction of cigarette and tobacco-related advertising was an essential part of a broader strategy in the fight against the social evil of smoking. Fundamental considerations of public health, on which legislation had been enacted in France and the European Union, could prevail over economic imperatives and even over certain fundamental rights such as freedom of expression. The Court

pointed out that there was a European consensus (see for the relevant EU, Council of Europe and WHO texts, §§ 19-22) as to the need for strict regulation of tobacco advertising and added that a general trend towards such regulation could now be seen worldwide.

The Court did not have to take into account the actual impact of an advertising ban for tobacco consumption. The fact that the offending publications were regarded as capable of inciting people to consume such products was, for the Court, a “relevant” and “sufficient” reason to justify the interference. In addition, as the French courts had observed, the magazines in question were aimed at the general public, and in particular young people, who were more vulnerable. It was necessary to take into account the impact of the logos on those readers, who were particularly attentive to success in sports or finance (see §§ 48-50 for the detailed argumentation).

As regards the penalties imposed on the applicants, the Court found that the amounts were certainly not negligible, but that in assessing whether they were harsh they had to be compared with the revenue of high-circulation magazines such as *Action Auto Moto* and *Entrevue*.

The Court concluded that in both cases the interference in question could be regarded as “necessary in a democratic society”. Accordingly, there had been no violation of Article 10.

#### Article 14

The Court noted that in this complaint the applicants were challenging Article L. 3511-5 of the Public Health Code, which authorised the audiovisual media to broadcast motor-sports competitions in France – without concealing the cigarette brands displayed on vehicles, overalls or tracks – when the events took place in countries where tobacco advertising was authorised.

As the French courts had found, it was not yet feasible, by technical means, to hide lettering, logos or advertisements on footage used by broadcasters. However, it was possible to refrain from taking photographs of such signs, or to conceal or blur them, on the pages of magazines. The Court thus took the view that the print media had the necessary time and technical facilities to modify their pictures and blur any logos suggestive of tobacco products.

The Court further noted that, in connection with a dispute concerning footage of sports events shown several hours or days after it was recorded, the Court of Cassation had confirmed that the live broadcasting of a race constituted the sole exception to the ban on the indirect advertising of tobacco products.

The Court thus took the view that the audiovisual media and the print media were not placed in similar or comparable situations and held, in both cases, that there had been no violation of Article 14 in conjunction with Article 10.

- **Freedom of assembly**

#### **Barraco v. France (no. 31684/05) (Importance 1) - 5 March 2009- No violation of Article 11- Conviction for obstructing the public highway- Balance struck between the prevention of disorder and the right of the demonstrator to exercise his right to freedom of peaceful assembly**

The applicant a lorry driver, was one of seventeen motorists who participated on 25 November 2002 in a traffic-slowing operation organised as part of a national day of protest by a joint trade-union committee representing hauliers.

Starting at 6 a.m. they drove at about 10 k.p.h. along the A46 motorway, forming a rolling barricade across several lanes to slow down the traffic behind. Later that morning the police arrested Mr Barraco and two other drivers for completely obstructing the public highway by stopping their cars.

In November 2003 the Lyons Court of first instance held that the defendants bore no criminal responsibility, finding that the traffic had not been blocked but impeded in a manner that remained acceptable and did not call into question the principle of free movement on the public highway. In May 2004 the Lyons Court of Appeal set aside that judgment, finding that the drivers had committed the offence of obstructing traffic on the public highway by deliberately placing their cars across the motorway for that purpose. It decided that the offence in question could not be justified by the right to strike or to demonstrate. The Court of Appeal sentenced each of the accused to a suspended term of three months' imprisonment together with a fine of 1,500 Euros. In a judgment of 8 March 2005 the Court of Cassation dismissed an appeal on points of law lodged by the applicant and one of his co-accused.

The Court observed that the public authorities' interference with Mr Barraco's right to freedom of peaceful assembly, which included freedom to demonstrate, pursued the legitimate aims of preventing disorder and protecting the rights and freedoms of others.

The Court acknowledged that any demonstration in a public place could cause some disruption and considered that a certain tolerance was required of the authorities in such circumstances. It moreover reiterated the finding that a person could not be penalised for taking part in a demonstration that had not been prohibited so long as that person had not committed any reprehensible act.

The Court noted that, even though there had been no formal declaration of the demonstration beforehand, the authorities had been aware of it and had not stopped it going ahead; they had also had the opportunity to take measures for the protection of safety and public order.

Nevertheless, the Court observed that the complete blockage of motorway traffic, several times, had gone beyond the disruption inherent in any demonstration and that the three demonstrators had been arrested only after a number of warnings about stopping vehicles on the motorway. The Court considered that Mr Barraco had thus been able, for several hours, to exercise his right to freedom of peaceful assembly and that the authorities had displayed the requisite tolerance. The Court accordingly held that there had been no violation of Article 11; Mr Barraco's conviction and sentence had not been disproportionate considering the balance to be struck between the prevention of disorder and the demonstrators' interest in choosing that form of action.

- **Right to property**

**[Bozcaada Kimisis Teodoku Rum Ortodoks Kilisesi Vakfi v. Turkey \(no. 2\)](#) (nos. 37639/03 et al.) (Importance 1) – 3 March 2009 – Violation of Article 1 of Protocol 1 - Refusal of the Turkish courts to register the immovable property of the applicant foundation in the land register in its name.**

The applicant, Bozcaada Kimisis Teodoku Rum Ortodoks Kilisesi Vakfı (Foundation of the Bozcaada Kimisis Teodoku Greek Orthodox Church) is a foundation under Turkish law based in Çanakkale (Turkey). Its statute complies with the provisions of the Treaty of Lausanne on foundations of religious minorities. The case concerns the impossibility for the applicant foundation to have land and property which it had owned for many years registered in the land register in its name.

Relying on Article 1 of Protocol No. 1 (protection of property), Article 6 (right to a fair trial), Article 9 (right to freedom of thought, conscience and religion), Article 13 (right to an effective remedy) and Article 14 (prohibition of discrimination), the applicant foundation complained in particular of the Turkish courts' refusal to register its real property in the land register under its name.

The Court considered that the applicant foundation could legitimately have believed that it had satisfied all the requirements for its title to the real property it had owned for a very long time to be recognised. It also noted that Article 1 of Protocol No. 1 required, primarily and above all, that interference by a public authority with the right to peaceful enjoyment of possessions should be legal.

In the Court's opinion, the relevant legislative provisions in force were sufficiently clear. Section 14 of the Land Registry Act listed the conditions for acquisition of a property by adverse possession. In addition, Law no. 2762 on foundations, as amended after 2002, recognised the capacity of foundations of religious minorities to acquire property on the basis of possession. Consequently, the Court observed that the Turkish courts' refusal to register the disputed property in the land register in the applicant's name could not be regarded as sufficiently foreseeable for the foundation, which had possessed it uninterruptedly for more than 20 years, for the purposes of section 14 of the Land Registry Act. The Court concluded that the interference complained of was incompatible with the principle of legality. There had accordingly been a violation of Article 1 of Protocol No. 1.

- **Right to education**

**[Temel and Others v. Turkey](#) (no. 36458/02) (Importance 3) - 3 March 2009- Violation of Article 2 of Protocol No. 1 - Suspension of the applicants from the university in reaction to their petition to introduce optional Kurdish language classes - Disproportionate disciplinary measure**

The applicants are eighteen Turkish nationals who, at the time of the events, were students at various faculties attached to Afyon Kocatepe University in Afyon.



On various dates between 27 December 2001 and 4 January 2002 the applicants petitioned the University requesting that optional Kurdish language classes be introduced. As a reaction to their petition, in January 2002 they were suspended from the university for a period of two terms starting from the spring, except for one of them, who, having shown remorse, was suspended for one term. The applicants requested the domestic courts to first stop the execution of the suspension decisions and then to annul them altogether. Their suspension requests were dismissed. Their requests for annulment were also initially rejected by the courts, the main arguments being that the petitions were likely to give rise to polarization on the basis of language, race, religion or denomination, and that they represented part of the PKK 's new strategy of action of civil disobedience.

In December 2003, however, the Supreme Administrative Court quashed the lower courts' decisions and sent the cases for re-examination to the first instance court. In May 2004, the competent court annulled the disciplinary sanctions against the applicants, finding that their petitions to the authorities for optional Kurdish language classes were fully in line with the general aim of the Turkish higher education, which was to train students in becoming objective, broad-minded and respectful of human rights citizens. In the meantime, the applicants were acquitted on charges of aiding and abetting an illegal armed organisation.

The Court reiterated that access to any institution of higher education existing at a given time is an inherent part of the right set out in the first sentence of Article 2 of Protocol No. 1 and that therefore Article 2 of Protocol No. 1 is applicable in the instant case (see *Mürsel Eren v. Turkey*, 7 February 2006).

In order to ensure that the restrictions which are imposed do not curtail the right in question to such an extent as to impair its very essence and deprive it of its effectiveness, the Court must satisfy itself that they were foreseeable for those concerned and pursued a legitimate aim. However, unlike the position with respect to Articles 8 to 11 of the Convention, it is not bound by an exhaustive list of "legitimate aims" under Article 2 of Protocol No.1. Furthermore, a limitation will only be compatible with Article 2 of Protocol No.1 if there is a reasonable relationship of proportionality between the means employed and the aim sought to be achieved. In the instant case the Court accepted that there was a legal basis for the restriction, namely Regulation 9 (d) of the Disciplinary Regulations of Higher Education Institutions, and that it was accessible. However, the Court has serious doubts whether the application of this Regulation in the present case served any legitimate aim in Convention terms. Nevertheless, the key issue to be examined was for the Court that of proportionality, i.e. whether a fair balance was struck between the means employed and the aim sought to be achieved.

The Court observed that the applicants were subject to a disciplinary sanction for merely submitting petitions which conveyed their views on the need for and the necessity of Kurdish language education and requested that Kurdish language classes be introduced as an optional module, without committing any reprehensible act. In this connection, the Court finds that, in view of the information contained in the case file, the applicants did not resort to violence or breach or attempt to breach the peace or order in the university:

The Court noted that the applicants were sanctioned because of the views expressed in their petitions. For the Court, neither the views expressed therein nor the form in which they were conveyed could be construed as an activity which would lead to polarisation on the basis of language, race, religion or denomination within the meaning of Regulation 9 (d):

*"The Court reiterates that the right to education does not in principle exclude recourse to disciplinary measures, including suspension or expulsion from an educational institution in order to ensure compliance with its internal rules (see *Yanasik v. Turkey*, no. 14524/89, Commission decision of 6 January 1993, DR 74, p. 14, and *Sulak v. Turkey*, no. 24515/94, Commission decision of 17 January 1996, DR 84-A, p. 98). However, such regulations must not injure the substance of the right nor conflict with other rights enshrined in the Convention or its Protocols (see *Campbell and Cosans v. the United Kingdom*, 25 February 1982, § 41, Series A no. 48). In the instant case the applicants were suspended from the university for either one or two terms as a result of the exercise of their freedom of expression.*

*In the particular circumstances of the case and for the reasons stated above, the Court considers that the imposition of such a disciplinary sanction cannot be considered as reasonable or proportionate. Although, it notes that these sanctions were subsequently annulled by the administrative courts on grounds of unlawfulness, regrettably by that time the applicants had already missed one or two terms of their studies and, thus, the outcome of the domestic proceedings failed to redress the applicants' grievances under this head" (§§ 45-46).*

The Court found by six votes to one that there has been a violation of Article 2 of Protocol No. 1 to the Convention.

- **Cases concerning the Chechen Republic**

**[Khalitova v. Russia](#) (no. 39166/04) (Importance 3) – 5 March 2009 - Two violations of Article 2 (life and investigation) - Violation of Article 13 in conjunction with Article 2**

The applicant lives in Urus-Martan (Chechen Republic). On 11 September 2000 her husband, Lecha Khazhmuradov, while working in the woods near his home village, was shot dead by a group of armed men equipped with armoured personnel carriers in broad daylight. Relying on Articles 2 (right to life) and 13 (right to an effective remedy), the applicant complained that her husband had been killed by Russian servicemen, that the authorities had failed to carry out an effective investigation into the matter, and that there had been no effective remedies available to her in respect of those violations.

The Court found it established that Lecha Khazhmuradov had been killed on 11 September 2000 by State agents. Noting that the Russian Government had not provided any plausible explanation at all, the Court concluded that there had been a violation of Article 2 in respect of the applicant's husband. It further held that there had been a violation of Article 2 relating to the authorities' failure to carry out a thorough and effective investigation into the circumstances in which the applicant's husband had been killed. Lastly, it held that there had been a violation of Article 13 in conjunction with Article 2.

**[Dzhambekova and Others v. Russia](#) (nos. 27238/03 and 35078/04) (Importance 3) – 12 March 2009 - Violations of Article 2 (right to life and lack of effective investigation) - Violation of Article 3 (inhuman treatment in respect of all the applicants except Magomed Soltymuradov's uncle and cousin) - Violation of Article 3 (conditions of detention of Imran Dzhambekov's mother and Magomed Soltymuradov's sister) - Violation of Article 5 (unacknowledged detention) - Violation of Article 5 § 1 (unlawfulness of detention of Imran Dzhambekov's mother and Magomed Soltymuradov's sister) - Violation of Article 13 (lack of an effective remedy) in conjunction with Article 2**

**[Elsiyev and Others v. Russia](#) (no. 21816/03) (Importance 3) – 12 March 2009 - Violations of Article 2 (right to life and lack of effective investigation) - Violation of Article 3 (inhuman treatment in respect of the applicants) - Violation of Article 5 (unacknowledged detention) - Violation of Article 13 (lack of an effective remedy) in conjunction with Article 2**

**[Khadayeva and Others v. Russia](#) (no. 5351/04) (Importance 3) – 12 March 2009 - Violations of Article 2 (right to life and lack of effective investigation) - Violation of Article 3 (inhuman treatment in respect of the applicants) - Violation of Article 5 (unacknowledged detention) - Violation of Article 13 (lack of an effective remedy) in conjunction with Article 2**

In all three cases the Court considered that the applicants had presented a coherent and convincing picture of their relatives' abduction, corroborated by witness statements. In the case of ***Elsiyev and Others*** it was indeed even common ground between the parties that the applicants' eight relatives had been apprehended in a security operation in Tsotsi-Yurt. The Court therefore held in all three cases that the evidence available to it established beyond reasonable doubt that the applicants' relatives had to be presumed dead following their unacknowledged detention by Russian servicemen during security operations. The Court came to these conclusions by drawing inferences from the Government's failure to submit the documents from the investigation files which were in their exclusive possession or to provide another plausible explanation for the events in question. Noting in the cases of ***Dzhambekova and Others*** and ***Khadayeva and Others*** that the authorities had not justified the use of lethal force by their agents and in the case of ***Elsiyev and Others*** that the Government had failed to give any plausible explanation for the events in question, the Court concluded that there had been a violation of Article 2 in respect of all of the applicants' relatives.

In all three cases, the Court further held that there had been violations of Article 2 relating to the authorities' failure to carry out effective investigations into the circumstances in which the applicants' relatives had disappeared.

The Court also found that, with the exception of Magomed Soltymuradov's uncle and cousin who could not be considered as his close family members and had not apparently been involved in the search for him, all the applicants had suffered and continued to suffer distress and anguish as a result of the disappearance of their relatives and their inability to find out what had happened to them. The

manner in which their complaints had been dealt with by the authorities had to be considered to constitute inhuman treatment, in violation of Article 3.

The Court found in particular in all three cases that the applicants' relatives had been held in unacknowledged detention without any of the safeguards contained in Article 5, which constituted a particularly grave violation of the right to liberty and security enshrined in that article.

Lastly, the Court found that, in the case of *Dzhambekova and Others*, Imran Dzhambekov's mother and Magomed Soltymuradov's sister had been detained for four days in December 2002 in manifest contradiction to the procedural guarantees provided for by domestic legislation and the European Convention, in violation of Article 5 § 1. It further held that the mental anguish caused by the unlawful nature of their detention had been exacerbated by the unsatisfactory conditions of their detention, especially taking into account the two women's vulnerable position, in view of their age, 43 and 53 at the time, and gender. The Court therefore held that there had been a violation of Article 3 on account of the two women's conditions of detention in December 2002.

## 2. Other judgments issued in the period under observation

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

- press release by the Registrar concerning the Chamber judgments issued on 3 March 2009 : [here](#).
- press release by the Registrar concerning the Chamber judgments issued on 5 March 2009 : [here](#).
- press release by the Registrar concerning the Chamber judgments issued on 10 March 2009 : [here](#).
- press release by the Registrar concerning the Chamber judgments issued on 12 March 2009 : [here](#).

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

<u>State</u>	<u>Date</u>	<u>Case Title and Importance of the case</u>	<u>Conclusion</u>	<u>Key Words by the Office of the Commissioner</u>	<u>Link to the case</u>
Luxembourg	10 Mar. 2009	Thilgen N° 2196/05 <a href="#">Link</a>	Struck out of the list (friendly settlement reached)	The applicant complained that the investigation into the death of his sister in hospital in 1996 had not been effective, that the length of the proceedings had been excessive and that he had been denied access to a court, as a complaint he had filed against a decision of discontinuance was declared inadmissible and his appeal on points of law had been dismissed	
Moldova	03. Mar. 2009	Eugenia and Doina Duca (no. 75/07) Imp. 3.	Violation of Art. 6 § 1 (fairness) and of Art. 1 of Prot. No. 1 (right to peaceful enjoyment of the possessions)	Quashing of a judgment in the applicants' favour, six years after it had become final	<a href="#">Link</a>
Poland	03. Mar. 2009	Cibicki (no. 20482/03) Imp.3.	Violation of Article 6 § 1 (fairness and right of access to a court)	The Court found that ordering the applicant to bear the costs of an expert opinion – which was a necessary piece of evidence – and the refusal to exempt him from court fees for pursuing his appeal had constituted a breach of his right of access to a court and to a fair trial.	<a href="#">Link</a>

Poland	03. Mar. 2009	Hilgartner (no. 37976/06) Imp.3.	Violation of Article 5 § 3	Excessive length (four years and six months) of pre-trial detention See on that issue the judgment <a href="#">Kauczor v. Poland</a> in RSIF n°10	<a href="#">Link</a>
Poland	10 Mar. 2009	Kaźmierczak (no. 4317/04) Imp. 3.	No violation of Art. 5 § 3 Violation of Art. 6 § 2	Violation of the right to the presumption of innocence (on the extension of length of the applicant's pre-trial detention, the Regional Court stated that the applicant had committed one of the offences with which he had been charged)	<a href="#">Link</a>
The Netherlands	10 Mar. 2009	Ibrahim Mohamed (no. 1872/04) Imp. 3.  Said Botan (no. 1869/04) Imp. 3.	Struck out of the list (the matters giving rise to the applicants' complaints could be considered as "resolved" within the meaning of Article 37 § 1 (b) of the Convention)	The applicants complained that the domestic authorities had refused to grant them residence permits in order to live with their families in the Netherlands. Pending the proceedings before the Court, the applicants in both cases had been granted a temporary residence permit for the purpose of asylum in view of the general situation in Somalia.	<a href="#">Link</a>  <a href="#">Link</a>
Turkey	03. Mar. 2009	Aba (nos. 7638/02 and 24146/04) Imp.3	Violation of Art. 5 §§ 3 and 5, and of Art. 6 § 3 (c) in conjunction with Art. 6 § 1 (fairness)	Length of the applicant's detention in police custody for five days and lack of an enforceable right to compensation for the breach of the rights under Article 5 § 3 Lack of legal assistance while in police detention	<a href="#">Link</a>
Turkey	03. Mar. 2009	Ali Kemal Uğur and Others (no. 8782/02) Imp. 3.	Violation of Art. 6 § 1 (length)	Excessive length (22 years) of civil proceedings (the first proceedings were brought in the 1950s)	<a href="#">Link</a>
Turkey	03. Mar. 2009	Taççigil (no. 16943/03) Imp. 3.	Violation of Art. 6 § 3 (c) in conjunction with Art. 6 § 1 (fairness) Violation of Art. 6 § 1 (fairness)	Lack of legal assistance available to the applicant in police custody Non-communication of the written opinion of the Principal Public Prosecutor at the Court of Cassation	<a href="#">Link</a>
Turkey	10 Mar. 2009	Özgür Radyo-Ses Radyo-Televizyon Yayın Yapım Ve Tanıtım A.Ş. (No. 3) No. 10129/04 Imp. 3	Violation of Article 10	The Court found a violation of the applicant's freedom of expression following the total suspension of the applicant's radio programmes for 30 days, imposed by the radio-broadcasting regulatory authority	<a href="#">Link</a>
Ukraine	12 Mar. 2009	Plakhteyev and Plakhteyeva (no. 20347/03) Imp. 2	Violation of Art. 6 § 1 (fairness) Violation of Art. 1 of Prot. No. 1	The applicants have been denied access to a court while they wanted to claim damages for a wrongful fine and the unjustified seizure, lengthy holding and deterioration of their lorry and its load of wheat.	<a href="#">Link</a>

Ukraine	12 Mar. 2009	Sergey Volosyuk (no. 1291/03) Imp. 3	Violation of Article 5 §§ 3 and 4 Violation of Article 6 § 1 (length) Two violations of Article 8	The Court held unanimously that there had been a violation of Article 5 §§ 3 and 4 (on account of the length of detention and of the fact that the requests for release pending trial had not been examined by a court). It also held that there had been a violation of Art. 6 § 1 (excessive length, almost five years, of criminal proceedings). Finally, it held a violation of Article 8 in respect of the monitoring of the applicant's correspondence, and a further violation of the same article in respect of the disciplinary punishment imposed on him.	<a href="#">Link</a>
Ukraine	12 Mar. 2009	Svetlorusov (no. 2929/05) Imp. 3	Violation of Article 5 §§ 1 (f), 4 and 5	The Court reiterated <i>inter alia</i> that Ukrainian legislation did not provide for a procedure that was sufficiently accessible, precise and foreseeable in its application to avoid the risk of arbitrary detention pending extradition and therefore held unanimously that there had been a violation of Article 5 § 1 (f)	<a href="#">Link</a>
Ukraine	12 Mar. 2009	Vergelskyy (no. 19312/06)	Violations of Article 3 (treatment and investigation) Violation of Article 6 § 1 (length) Violation of Article 13	The Court held that there had been a violation of Article 3 on account of the ill-treatment inflicted while in police custody and a further violation on account of the ineffective investigation into the allegation of ill-treatment. The Court further held that there had been a violation of Article 6 § 1 and Article 13 on account of the excessive length, over four years, of the criminal proceedings against the applicant which are still pending.	<a href="#">Link</a>

### 3. Repetitive cases

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

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

<b>State</b>	<b>Date</b>	<b>Case Title</b>	<b>Conclusion</b>	<b>Key words by the Office of the Commissioner</b>
Bosnia and Herzegovina	03. Mar. 2009	Milisavljević (no. 7435/04) <a href="#">link</a>	Violation of Art. 6 § 1 (fairness) Violation of Art. 1 of Prot. No. 1	Domestic authorities' failure to enforce a final judgment/decision in the applicants' favour
Italy	10 Mar. 2009	Cifra (no. 26735/05) <a href="#">link</a> D'Apolito (no. 33226/05) <a href="#">link</a> Fabiano (no. 40807/05) <a href="#">link</a> Furno (no. 40824/05) <a href="#">link</a> Massimo (no. 11000/05) <a href="#">link</a> Moroni (no. 40261/05) <a href="#">link</a> Puzella and Others (no. 38264/05) <a href="#">link</a> Umberto Pedicini and Pierpaolo Pedicini (no. 8681/05) <a href="#">link</a> Valentini no. 40664/05) <a href="#">link</a>	Violation of Art. 8 and of Art. 13	Infringements of the applicants' rights resulting from bankruptcy proceedings
Italy	10 Mar. 2009	Shaw (no. 981/04) <a href="#">link</a>	Violation of Art. 6 § 1 (length), of Art. 8, of Art. 13, of Art. 1 of Prot. No. 1 and of Art. 2 of Prot. No. 4	Ibid.
Portugal	03. Mar. 2009	Simões Alves Noronha (no. 35254/05) <a href="#">link</a>  Vasconcelos do Couto and Others "Agrarian Reform" (nos. 30808/05, et al) <a href="#">link</a>	Violation of Art. 1 of Prot. No. 1	The compensation was paid several years after expropriations and nationalisations in the framework of the agrarian reform in 1975. See with that respect the judgment <a href="#">Almeida Garrett, Mascarenhas Falcão and others v. Portugal.</a>

Romania	03. Mar. 2009	Deneş and Others (no. 25862/03) <a href="#">link</a>	Violation of Art. 1 of Prot. No. 1	Delay in the payment of the compensation following an interference in the applicant's right to respect for property
Romania	10 Mar. 2009	Ichim (no. 9164/02) <a href="#">link</a> Stanciu Romania (no. 3530/03) <a href="#">link</a> .	Violation of Art. 1 of Prot. No. 1	Deprivation of the applicants' property rights without any compensation
Russia	12 Mar. 2009	Kalinichenko (no. 19136/04) <a href="#">link</a> Zakharov (no. 51380/07) <a href="#">link</a>	Violation of Art. 6 § 1 (fairness) Violation of Art. 1 of Protocol No. 1	Quashing of judgments in the applicants' favour by way of supervisory review
Russia	12 Mar. 2009	Veretennikov (no. 8363/03) <a href="#">link</a>	Violation of Art. 1 of Protocol No. 1 Violations of Art. 6 § 1 (fairness and length)	State's failure to enforce final judgments in the applicant's favour in good time or at all Excessive length of proceedings against the former employer concerning claims for reinstatement and damages
Russia	12 Mar. 2009	Krasovskiy (no. 36772/04) <a href="#">link</a> Lebedintseva (no. 37208/04) <a href="#">link</a> Otychenko and Fedishchenko (nos. 1755/05 and 25912/06) <a href="#">link</a>	Violations of Art. 6 § 1 (fairness)	State's failure to enforce final judgments in the applicants' favour in good time or at all
Turkey	03. Mar. 2009	Argunhan (no. 27045/02) <a href="#">link</a>	Violation of Art. 1 of Prot. No. 1	Idem.
Turkey	10 Mar. 2009	Ahmet Doğan (no. 37033/03) <a href="#">link</a>	Violation of Art. 6 § 1 (fairness)	The applicant had been tried as a civilian by a military court.
Turkey	10 Mar. 2009	Erbey (no. 29188/02) <a href="#">link</a> Nural Vural (no. 16009/04) <a href="#">link</a> Rimer and Others (no. 18257/04) <a href="#">link</a> Şatir (no 36192/03) <a href="#">link</a> Temel Conta Sanayi Ve Ticaret A.Ş. (no. 45651/04) <a href="#">link</a>	Violation of Art. 1 of Prot. No. 1	The applicants had been deprived of their property without receiving any compensation.
Turkey	10 Mar. 2009	Sait Işık (no. 19255/02) <a href="#">link</a>	Violation of Art. 1 of Prot. No. 1	Delays in payment of additional compensation to the applicant for expropriation of land

Ukraine	12 Mar. 2009	Matkivska (no. 38683/04) <a href="#">link</a> Vasylyeva and Others (nos. 39876/05, 35532/06 and 37715/06) <a href="#">link</a> Voskoboynyk (no. 39874/05) <a href="#">link</a>	Violation of Art. 1 of Protocol No. 1 Violation of Art. 6 § 1 (length)	State's failure to enforce final judgments in the applicants' favour in good time or at all
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#### 4. Length of proceedings cases

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

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

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

<u>State</u>	<u>Date</u>	<u>Case Title</u>	<u>Link to the judgment</u>
Germany	05 Mar. 2009	Bozlar (no. 7634/05)	<a href="#">Link</a>
Greece	12 Mar. 2009	Beckas (no. 24454/07)	<a href="#">Link</a>
Greece	12 Mar. 2009	Michailidou and Others (no. 21091/07)	<a href="#">Link</a>
Greece	12 Mar. 2009	Nikitaki and Others (no. 51380/07)	<a href="#">Link</a>
Poland	10 Mar. 2009	Wolnicka (no. 18414/03)	<a href="#">Link</a>
Romania	10 Mar. 2009	Martin (no. 14466/02)	<a href="#">Link</a>
Slovenia	03 Mar. 2009	Rogelj (no. 21415/02)	<a href="#">Link</a>
Turkey	10 Mar. 2009	Güngil (no. 28388/03)	<a href="#">Link</a>

#### B. The decisions on admissibility / inadmissibility / striking out of the list including due to friendly settlements

Those decisions are published with a slight delay of two to three weeks on the Court's Website. Therefore the decisions listed below cover **the period from 9 to 22 February 2009**.

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

<u>State</u>	<u>Date</u>	<u>Case title</u>	<u>Alleged violations (Key Words by the Office of the Commissioner)</u>	<u>Decision</u>
Austria	12 Feb. 2009	Mitterbauer N° 2027/06 <a href="#">link</a>	The applicant complains under Art. 6 § 1 about the length of proceedings and under Art. 13 that he had no remedy in respect of the duration of proceedings before the Administrative Court	Inadmissible as the applicant can no longer claim to be a victim of the alleged violation of Art. 6 § 1 (the fine imposed on the applicant has been reduced to its minimum as a compensation for the



				excessive length of proceedings)
Bulgaria	10 Feb. 2009	Ponomaryov & Others N° 5335/05 <a href="#">link</a>	The applicants complain under Art. 8 that they had been unable to obtain permanent residence permits after turning eighteen, by reason of the high fees which they could not afford to pay. They further complain of subsequent violations of Art. 14 (prohibition of discrimination) and Art. 2 of Prot. 1 (right to education)	Partly struck out of the list (the two first applicants were granted permanent residence permits) Partly inadmissible as manifestly ill-founded (the third applicant failed to provide any specific information about her situation)
Cyprus	17 Feb. 2009	Andreas Koursoumpas Ktimatiki Ltd. N° 9026/08 <a href="#">link</a>	The applicant company complains under Art. 6 about the fairness and the length of proceedings before domestic courts	Struck out of the list (friendly settlement reached)
Cyprus	17 Feb. 2009	Papachristoforou (n° 2) N° 34361/07 <a href="#">link</a>	The applicants complain under Articles 6 § 1 and 13 about the protracted length of proceedings and the lack of an effective remedy in this respect	Partly struck out of the list (friendly settlement reached) Partly inadmissible as incompatible <i>rationae personae</i> (the second applicant was never a party to the proceedings before the domestic courts)
Finland	17 Feb. 2009	Raninen N° 25996/04 <a href="#">Link</a>	The applicant complains <i>inter alia</i> under Article 5 § 4 that, since the relevant pre-trial documents had not been communicated to him, he had had no means to challenge the lawfulness of his detention	Inadmissible for non exhaustion of domestic remedies
France	10 Feb. 2009	E.S. N° 49714/06 <a href="#">link</a>	Alleged violation of Art. 1 of Prot. 1 taken alone and in conjunction with Art. 14 concerning the successorial rights of the applicant, an illegitimate child <i>Inter alia</i> alleged violations of Art. 6 and 13 concerning the fairness of the proceedings before the Court of cassation	Partly inadmissible as manifestly ill-founded ( <i>inter alia</i> because the share of the succession was completed before the case <i>Mazurek v. France</i> , n° 34406/97) Partly adjourned (concerning the fact that the Court of cassation raised an argument <i>ex officio</i> without prior notice; concerning the equality of arms; and concerning the participation of the Advocate General to the deliberate)
Germany	10 Feb. 2009	Von Holtum N° 42440/07 <a href="#">link</a>	The applicant complains in particular under Art. 6 about the unfairness and the length of divorce and ancillary proceedings.	Struck out of the list (friendly settlement reached)
Germany	10 Feb. 2009	Niedzwiecki (II) N° 30209/05 <a href="#">link</a>	Alleged violations of Art. 6 concerning the length of proceedings and concerning the fairness of the proceedings, namely because the Federal Constitutional Court had refused to allow the applicant's complaint, which would have put an early end to the discriminatory provision of the Child-raising Allowance Act	Inadmissible as manifestly ill-founded, in particular because the overall length of proceedings can be considered as reasonable
Germany	10 Feb. 2009	Muhle N° 21773/05 <a href="#">link</a>	Alleged violation of Art. 1 of Prot. 1 (concerning the refusal to approve the sale of a property) and of Art. 14 taken in conjunction with Art. 1 of Prot. 1 Alleged violation of Art. 6 (fairness of proceedings before the Administrative Court of Appeal and before the Federal Administrative Court)	Inadmissible as incompatible <i>ratione materiae</i> (the applicants cannot claim to have had a "legitimate expectation" within the meaning of Article 1 of Protocol No. 1 to acquire the property on the basis of previous administrative practice) Inadmissible as manifestly ill-founded (no appearance of violation of the Convention)

Germany	10 Feb. 2009	Streicher N°40384/04 <a href="#">link</a>	The applicant complained under Articles 2 and 3 that his sentence of life imprisonment was not commuted to probation after 15 years' imprisonment, but extended to a total of "at least" 26 years' imprisonment. Relying on Article 7, he complained that the courts supervising the execution of sentences did not have a coherent approach as regards decisions on the particular gravity of a person's guilt.	Inadmissible as manifestly ill-founded (in particular because the refusal to commute the applicant's sentence of life imprisonment to probation cannot be qualified as inhuman treatment within the meaning of Article 3 and because the decision on the particular gravity of the applicant's guilt cannot be qualified as a retroactive imposition of a "heavier penalty" which failed to meet the requirements of Article 7 § 1)
Greece	17 Feb. 2009	Galatsanou and others N° 33471/06 <a href="#">link</a>	Alleged violation of Art. 1 of Prot. 1 (concerning the possibility to get reimbursed from an allegedly undue sum of money in the framework of a succession)	Inadmissible as incompatible <i>ratione personae</i> (the applicants cannot claim to have had a "legitimate expectation" within the meaning of Article 1 of Protocol No. 1)
Latvia	10 Feb. 2009	Jeronovics N° 547/02 <a href="#">link</a>	<i>Inter alia</i> : alleged violation of Art. 3 (ill-treatment during police custody), of Art. 5 (concerning the lawfulness, the length, and the impossibility to obtain compensation for an unlawful detention), and of Art. 6 (concerning the fairness of proceedings)	Partly struck out of the list (following an unilateral declaration of the Government concerning Art. 3, 5, 6, 13, 14 of the Convention and Art. 2 of Prot. 7) Partly admissible : concerning the conditions of transfers to various penitentiary establishments under Art 3 and concerning the impossibility to attend a hearing before the Supreme Court
Moldova	10 Feb. 2009	Trohin N° 3630/05 <a href="#">link</a>	<i>Inter alia</i> alleged violations of Art. 3 (ill-treatment by police officers), of Art. 5 (conditions of detention), Art. 6 (refusal to assign the applicant a lawyer before the Supreme Court), Art. 13, Art. 14, and Art. 1 of the Convention	Struck out of the list (friendly settlement reached)
Moldova	17 Feb. 2009	Cernenchii (iv) N° 7173/05 <a href="#">link</a>	The applicant complains under Art. 6 § 1 about the retroactive application of the law by the courts and about the examination of his case in his absence by the Supreme Court of Justice. He further alleges a violation of Art. 10	Struck out of the list (friendly settlement reached) See with that respect the case <i>Busuioc v. Moldova</i> (no. 61513/00)
Moldova	17 Feb. 2009	Rusu N° 75646/01 <a href="#">Link</a>	Alleged violations of Art. 6 and Art. 1 of Prot. 1 (due to the non enforcement and the quashing of a judgment in the applicant's favour) as well as violations of Art. 3 and 8	Partly struck out of the list (following the unilateral declaration of the government concerning the allegations of violations of Art. 6 and 1 of Prot. 1) Partly inadmissible as manifestly ill-founded
Poland	10 Feb. 2009	Probala N° 8513/07 <a href="#">link</a>	Alleged violation of Art. 6 § 1 (unreasonable length of proceedings)	Struck out of the list (friendly settlement reached)
Poland	17 Feb. 2009	Lesniak N° 28690/08 <a href="#">link</a>	Alleged violation of Art. 6 § 1 (excessive length of the judicial phase of proceedings)	Struck out of the list (friendly settlement reached)
Poland	17 Feb. 2009	Kimmel N° 31419/07 <a href="#">link</a>	The applicant complains under Article 6 of the Convention that the Court of Appeal had wrongly dismissed her application for the appointment of a legal-aid lawyer in the cassation appeal proceedings	Struck out of the list (friendly settlement reached)
Poland	17 Feb. 2009	Zajadlo N° 26099/07 <a href="#">link</a>	Alleged violation of Art. 6 (excessive length of civil proceedings for damages) and of Art. 13	Struck out of the list (friendly settlement reached)
Poland	17 Feb. 2009	Machelski N° 33035/06 <a href="#">link</a>	Alleged violation of Art. 3 (conditions of detention in the Częstochowa Remand Centre)	Struck out of the list (applicant no longer wishing to pursue his application)

Poland	10 Feb. 2009	Delakowski N° 28960/07 <a href="#">link</a>	Alleged violation of Art. 6 (excessive length of proceedings)	Struck out of the list (friendly settlement reached)
Poland	10 Feb. 2009	Drezek N° 40097/07 <a href="#">link</a>	Alleged violation of Art. 6 (excessive length of proceedings)	Struck out of the list (friendly settlement reached)
Poland	10 Feb. 2009	Krzysztof Bajolek N° 52810/08 <a href="#">link</a>	Alleged violation of Art. 6 (excessive length of proceedings)	Struck out of the list (friendly settlement reached)
Poland	17 Feb. 2009	Zalek N° 25356/06 <a href="#">link</a>	Alleged violation of Art. 6 (excessive length of proceedings)	Struck out of the list (friendly settlement reached)
Romania	17 Feb. 2009	Zeadin N° 1819/02 <a href="#">link</a>	Alleged violations of Art. 6 and 1 of Prot. 1 (concerning the impossibility to execute a judgment)	Struck out of the list (applicant no longer wishing to pursue her application)
Romania	17 Feb. 2009	Badescu N° 22131/06 <a href="#">link</a>	Alleged violation of Art. 6 (excessive length of proceedings) and of Art. 2, 6 § 1 and 13	Partly struck out of the list (pursuant to the unilateral declaration of the Government concerning the length of proceedings) Partly inadmissible as manifestly ill-founded (concerning the remainder of the application)
Romania	17 Feb. 2009	Stanciu N° 36431/02 <a href="#">link</a>	Alleged violation of Art. 6 (fairness) and of Art. 1 of Prot.1 (the applicant had unlawfully to pay taxes on his retirement pension)	Struck out of the list (friendly settlement reached)
Romania	10 Feb. 2009	Popa N° 31390/02 <a href="#">link</a>	Alleged violation of Art 1 of Prot. 1 taken alone and in conjunction with Art. 14 (the applicant had unlawfully to pay taxes on his retirement pension)	Struck out of the list (friendly settlement reached)
Russia	17 Feb. 2009	Krayushkina and Kulyukina N° 3516/04 <a href="#">link</a>	Alleged violation of Art. 5, 6, 7 and 8 (following the search of the office of the applicants, a notary and her assistant)	Struck out of the list (the applicants may be regarded as no longer wishing to pursue their application)
Russia	12 Feb. 2009	Kupreyanov N° 21158/05 <a href="#">link</a>	Alleged violations of Art. 6 § 1 and 13 (length of criminal proceedings) and of Art. 6 and 2 of Prot. 7 (refusal of the domestic court to deal with the applicant's appeal)	Inadmissible as manifestly ill-founded (in particular because the overall length of the proceedings did not infringe the reasonableness requirement)
Russia	17 Feb. 2009	Pavlov N° 40203/03 <a href="#">link</a>	Alleged violation of Art. 5 (certain detention orders were unlawful), of Art. 5 and 6 (excessive length of detention and criminal proceedings)	Struck out of the list (the applicant may be regarded as no longer wishing to pursue his application)
Russia	17 Feb. 2009	Podrugina and Yedinov N° 39654/07 <a href="#">link</a>	The applicants complain under Art. 6 and 13 and Art. 1 of Prot. No. 1 that domestic judgments had deprived them of their status as prisoners of war and thereby precluded them from receiving the allowance related to that status	Inadmissible as manifestly ill-founded (in particular the Court finds that the quashing of the final judgment by the Presidium of the Supreme Court of the Kareliya Republic by way of supervisory review did not deprive the second applicant of his "right to a court" under Article 6 § 1 of the Convention)
Russia	12 Feb. 2009	Lamakin and Chernyshev N° 28292/03 <a href="#">link</a>	Alleged violations of Art. 6 and 1 of Prot. 1 (delayed enforcement of a judgment)	Partly struck out of the list (friendly settlement reached with the first applicant) Partly inadmissible (concerning the second applicant)
Russia	12 Feb. 2009	Saratova N° 5612/05 <a href="#">link</a>	Alleged violations of Art. 6, Art. 17 and 1 of Prot. 1 (delayed enforcement of a judgment in the applicant's favour)	Struck out of the list (friendly settlement reached)
Slovakia	17 Feb. 2009	Petik N° 22019/04 <a href="#">Link</a>	The applicant complains that he had been removed from his position on the basis of amended legislation with retroactive effect. He alleged a violation of Art. 8, 13 and 14, Art. 1 of Prot. No. 1 and Art. 4 of Prot. No. 7	Struck out of the list (the applicant may be regarded as no longer wishing to pursue his application)

Slovenia	17 Feb. 2009	Vovk N° 13935/05 et al. <a href="#">link</a>	Alleged violation of Art. 6 (excessive length of proceedings) and of Art. 13 (lack of effective remedy)	Struck out of the list (friendly settlement reached)
Slovenia	17 Feb. 2009	Arsovic N° 24030/06 et al. <a href="#">link</a>	Alleged violation of Art. 6 (excessive length of civil proceedings) and of Art. 13 (lack of effective remedy)	Struck out of the list (friendly settlement reached)
Slovenia	17 Feb. 2009	Verbancic N° 38837/04 <a href="#">link</a>	Alleged violation of Art. 6 (excessive length of proceedings)	Struck out of the list (the applicant may be regarded as no longer wishing to pursue his application)
Spain	17 Feb. 2009	Gasayev N° 48514/06 <a href="#">link</a>	Alleged violation of Art. 2 and 3 (concerning the extradition of a Russian national of Chechen origin from Spain to Russia). The applicant relies <i>inter alia</i> on the risk of death penalty in Russia and on the risk to be subject to a life prison sentence Alleged violation of Art 6	Inadmissible as manifestly ill-founded, in particular because the Russian authorities gave guarantees that the applicant would not be subject to death penalty or to a life prison sentence. Moreover Russia undertook the commitment to respect the rights set forth in the ECHR. Inadmissible as incompatible <i>ratione persone</i> concerning Art. 6 (proceedings concerning deportation of foreigners does not fall within the scope of the "criminal matter" under Art. 6 ; see also <i>Maaouia v. France</i> [GC], n° 39652/98)
Sweden	10 Feb. 2009	S.M. N°47683/08 <a href="#">link</a>	The applicant complains under Article 3 that, if deported from Sweden to the Democratic Republic of Congo, she would be arrested, tortured and imprisoned, and maybe even killed, because she had escaped from detention and was wanted by the authorities in her home country on suspicion of treason.	Inadmissible as manifestly ill-founded (the Court considers that the applicant has failed to show that her return to the Democratic Republic of Congo, has exposed her to a real risk of being persecuted, arrested, tortured and/or killed)
Sweden	17 Feb. 2009	Handolsdalen Sami Village and others N° 39013/04 <a href="#">link</a>	The applicants complain that their right to use land for winter grazing, constituting a possession within the meaning of Article 1 of Protocol No. 1, was violated, as the limitations resulting from the Court of Appeal judgment were not prescribed by sufficiently clear and precise domestic law, as the grazing areas remain undefined, and did not strike a fair balance between the demands of the public and the rights of the Sami villages. The applicants <i>inter alia</i> complain about further violations of Art. 6 and 13.	Partly admissible (concerning the applicants' complaints that they did not have an effective access to court, given the high legal costs of the proceedings, and that the length of the proceedings was unreasonable) Partly inadmissible as incompatible <i>ratione materiae</i> (in particular the Court is not satisfied that the applicants' claim to a right to winter grazing on the disputed property was sufficiently established to qualify as an "asset" attracting the protection of Article of Protocol No. 1). Partly inadmissible as manifestly ill-founded (concerning the remainder of the application).
The United Kingdom	10 Feb. 2009	Peterson N° 36534/04 <a href="#">link</a>	The applicant complained that British social security legislation discriminated against him on grounds of sex, in breach of Article 14 of the Convention taken in conjunction with both Article 8 of the Convention and Art. 1 of Prot. No. 1	Partly struck out of the list (concerning the applicant's complaint about non-entitlement to a Widowed Mother's Allowance) Partly inadmissible as manifestly ill-founded
The United Kingdom	10 Feb.	Woodward N° 31968/02	Ibid	Inadmissible as manifestly ill-founded (the applicant cannot

\* See on that issue the cases *Willis v. the United Kingdom*, no. 36042/97, §§ 14-26, ECHR 2002-IV and *Runkee and White v. the United Kingdom*, no. 42949/98, §§ 40-41, 25 July 2007

	2009	<a href="#">link</a>		claim the status of victim)
The United Kingdom	10 Feb. 2009	Holmes N° 5787/06 <a href="#">link</a>	The applicant complains under Article 6 § 1 of the Convention that the ancillary relief proceedings were not dealt with within a reasonable time, that he was not given a real opportunity to present his case and that some of the judges involved in the proceedings were not impartial.	Partly struck out of the list (pursuant to the unilateral declaration of the Government concerning the length of proceedings and the delay in the ancillary relief proceedings) Partly inadmissible as manifestly ill-founded
The United Kingdom	10 Feb. 2009	Graley N° 36152/05 <a href="#">link</a>	Alleged violation of Art. 8 (concerning the allegedly unlawful interception of the applicant's communications). The applicant further alleges violations of Art. 6 and 13.	Struck out of the list (friendly settlement reached)
The United Kingdom	10 Feb. 2009	Ayliffe and others N° 33294/06 <a href="#">link</a>	The applicants, all either employees of or volunteers for Greenpeace, were charged with a number of offences relating to the boarding of a cargo ship, complained that the refusal to award them their costs in criminal proceedings was incompatible with Article 6 § 2. They further complained that since their action in boarding the ship was also a protest, it was protected by Article 10.	Struck out of the list (the applicants withdrew their application)
The United Kingdom	10 Feb. 2009	The Wall Street Journal Europe Sprl N° 28577/05 <a href="#">link</a>	Following the conviction pursuant to the publication of an article entitled "Saudi officials monitor certain bank accounts", the applicants complain under Article 10 that the operation of the common law presumption of falsity had undermined their plea of defence of qualified privilege and was incompatible with their right to freedom of expression as it had had a "chilling effect" that deterred voicing criticism because of doubt whether it could be proved in court. The applicants complain about further violations of Article 6 (in particular concerning the refusal of the trial judge to request the jury to determine the defamatory meaning of the article)	Inadmissible mainly on account of the fact that the applicants cannot claim to be victims of violations of the ECHR : the Court notes in particular that the inappropriate application of the presumption of falsity by the trial judge was criticised by the Court of Appeal and was ultimately rectified by the House of Lords. On this basis, the applicants' appeal to the House of Lords was successful and the action against the applicants was dismissed.
The United Kingdom	17 Feb. 2009	Williams N° 32567/06 <a href="#">link</a>	The applicant complains under Article 2 that the United Kingdom authorities failed to investigate properly the circumstances of her son's death at Hillsborough football stadium (supporters were crushed against the wall at the front of the pens)	Inadmissible <i>ratione temporis</i> (application lodged out of time)
Turkey	17 Feb. 2009	Akbas N° 33307/03 <a href="#">link</a>	The applicants complain under Art. 1 of Prot. No. 1 that the interest on the additional compensation received, following the expropriation of their property, was insufficient and that the authorities had delayed in paying them the relevant amounts. They further complain about a violation of Art. 6	Struck out of the list (the applicants may be regarded as no longer wishing to pursue their application)
Turkey	17 Feb. 2009	Yerlikaya N° 21072/04 <a href="#">link</a>	Alleged violations of Art. 3 (ill-treatment during the detention in police custody) and of Art. 6 and 13 (lack of effective remedy concerning the complaint of ill-treatment)	Inadmissible as manifestly ill-founded (the applicant has failed to adduce sufficient evidence to substantiate his allegations)
Turkey	17 Feb. 2009	Altintop N° 7806/05 <a href="#">link</a>	The applicants complain <i>inter alia</i> about violations of Art. 6 (access to a court on account of the Supreme Military Administrative Court's refusal to grant the applicants' legal aid. The applicants further complained under	Struck out the list (applicant no longer wishing to pursue his application)

			Articles 2, 3, 8, 9 and 10 of the Convention and Article 1 of Protocol No. 12 (in particular the first applicant was allegedly infected with hepatitis B during military service)	
Turkey	10 Feb. 2009	Alaksanyan N° 4682/05 <a href="#">link</a>	Alleged violation of Art. 1 of Prot. 1 (inability to obtain the restitution of the applicant's property)	Struck out the list (applicant no longer wishing to pursue his application)
Ukraine	17 Feb. 2009	Garkavyi 25978/07 <a href="#">link</a>	The applicant complains under Article 6 about a violation of procedural rights during his trial <i>in absentia</i> in the Czech Republic. He further complains without reference to any ECHR Article about the unlawfulness of his detention under the decisions of Ukrainian courts.	Partly adjourned (concerning the unlawfulness of the detention) Partly inadmissible <i>ratione temporis</i> (complaint introduced out of time concerning the fairness of the trial <i>in absentia</i> )
Ukraine	17 Feb. 2009	Lopatin and Medvedskiy N° 2278/03 ; 6222/03 <a href="#">link</a>	Alleged violations of Art. 3, 5 and 6	Partly adjourned (concerning the unreported detention and ill-treatment by the police and the lack of effective investigation as well as concerning the length of the criminal proceedings) Partly inadmissible as manifestly ill-founded (concerning the remainder of the application)
Ukraine	17 Feb. 2009	Miroshnyk N° 44917/04 <a href="#">link</a>	Alleged violations of Art. 6, 13 and 1 of Prot. 1 pursuant to the non-enforcement of a judgment in the applicant's favour	Struck out of the list (applicant no longer wishing to pursue her application)
Ukraine	17 Feb. 2009	Yemelyanov N° 27201/03 <a href="#">link</a>	Alleged violations of Art. 6 (unfairness, outcome and length of proceedings) and of Art. 1 of Prot. 1	Inadmissible as manifestly ill-founded (no appearance of violation)
Ukraine	17 Feb. 2009	Vysotskyi N° 17737/04 <a href="#">link</a>	<i>Inter alia</i> : alleged violations of Art. 6 and 13 (non enforcement of a decision in the applicant's favour)	Inadmissible for non exhaustion of domestic remedies
Ukraine	17 Feb. 2009	Rekachynska N° 27117/05 <a href="#">link</a>	Alleged violation of Art. 6 § 1 (excessive length of proceedings)	Inadmissible <i>ratione temporis</i> (application lodged out of time)
Ukraine	17 Feb. 2009	Panchenko N° 13706/02 <a href="#">link</a>	Alleged violations of Art. 6 (excessive length of civil proceedings) and of Art. 13 (lack of access to the Supreme Court)	<i>Inter alia</i> inadmissible as manifestly ill-founded (in particular because the duration of the judicial proceedings in the applicant's case did not exceed what may be considered "reasonable")
Ukraine	17 Feb. 2009	Somov N° 22912/02 <a href="#">link</a>	Alleged violation of Art. 6 (concerning the outcome of the proceedings) and Art. 13 (the right to appeal in cassation was allegedly unlawfully restricted as the time-limit for lodging an appeal in cassation had been shortened)	Inadmissible for non-exhaustion of domestic remedies

### C. The communicated cases

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

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

- on 9 March 2009 : [link](#)
- on 16 March 2009 : [link](#)
- on 23 March 2009 : [link](#)

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

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

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

**Communicated cases published on 9 March 2009 on the Court's Website and selected by the Office of the Commissioner**

<u>State</u>	<u>Date of communication</u>	<u>Case Title</u>	<u>Key Words by the Office of the Commissioner</u>
<b><u>Cases of deportation to Afghanistan</u></b>			
The Netherlands	19 Feb. 2009	S. S. no. 39575/06	The applicant had been working in different ranks of Afghan security service and army between 1982 – 1992. In 1992, after the fall of Kabul, the aforementioned Mujahedeen commanders had looked for him. The Deputy Minister of Justice rejected the applicant's asylum application on account that the applicant was guilty of acts within the meaning of Article 1F of the 1951 Geneva Convention Relating to the Status of Refugees. The applicant complains under Article 3 of the Convention that the Dutch authorities have erred in not acknowledging the existence of a real risk of him being subjected to treatment contrary to that provision if expelled by the Netherlands to Afghanistan.
The Netherlands	19 Feb. 2009	A. A. Q. no. 42331/05	The applicant complains under Articles 2 and 3 of the Convention that he runs a real risk of being tortured and/or murdered if expelled to Afghanistan due to his communist political convictions and past high-ranking position in the Afghan army. Secondly, the applicant complains under Article 8 of the Convention that he is being precluded from exercising family life with his wife and eight children due to the refusal by the Dutch authorities to grant him a residence permit. The applicant complains under Article 13 of the Convention that he did not have an effective remedy for his complaint under Article 3 of the Convention.
The Netherlands	19 Feb. 2009	A. G. R. no. 13442/08	The applicant had been a member of the communist People's Democratic Party of Afghanistan and had worked for the Afghan security service from 1982 to 1992. The applicant entered the Netherlands in 1997 and applied for a residence permit for the purpose of asylum as well as for reasons not related to asylum. The applicant complains that his expulsion to Afghanistan by the Netherlands will infringe his rights under Article 3 of the Convention.
The Netherlands	19 Feb. 2009	M.R.A. and Others no. 46856/07	The applicants complain under Art. 3 and 8 that they run a real risk of being subjected to treatment contrary to the said provisions, if expelled by the Dutch authorities to Afghanistan. As regards the second and third applicants – both women – it is argued, in addition to the above, that those applicants' rights under Articles 3 and 8 will be violated if they are expelled to Afghanistan on account of those applicants' Western lifestyle. As regards Article 13 it is submitted that certain information and facts submitted by the applicants were not examined by a court or other independent body. The applicants argue that the Dutch authorities did not subject their Convention claims to a full and rigorous scrutiny and that the burden of proof in terms of their Article 3 claim was placed too high.
The Netherlands	19 Feb. 2009	S.D.M and Others no. 8161/07	The first applicant (living with the second applicant and father of the third applicant) belongs to the Tajik minority and had worked for one of the Directorates of the Afghan security service between 1988 and 1992. The first applicant had <i>inter alia</i> been sentenced to capital

			punishment by the Taliban's Islamic Court in Herat. The first applicant had also been informed that his brother had been captured and tortured in order to locate him. The applicant applied for asylum in the Netherlands on 10 March 1996, the Deputy Minister dismissed the first applicant's plea that he had only performed tasks of an administrative nature. The applicants complain under Articles 2 and 3 of the Convention that their expulsion to Afghanistan would expose them to a real risk of death, torture or inhuman or degrading treatment.
<b><u>Cases related to the Iraq conflict</u></b>			
The United Kingdom	18 Feb. 2009	AL-SAADON and MUFDHI no. 27021/08	The applicants are Iraqi nationals, Sunni Muslims and members of the Ba'ath Party. The applicants were arrested in 2003 by the UK Forces in Basra. They were detained by the UK Forces from that time, until their transfer to the Iraqi authorities. The applicants were arrested for reasons unconnected to the criminal allegations and for intelligence linking to the deaths of the two UK Forces personnel. The ECtHR gave an indication under Rule 39, informing the Government that the applicants should not be removed or transferred from the custody of the United Kingdom until further notice. On 31 December 2008 the applicants were transferred to the Iraqi authorities. The applicants complain that their transfer to the Iraqi authorities on 31 December 2008 gave rise to violations of Articles 2, 3, 6, 13 and 34 of the Convention and of Article 1 of Protocol No. 13 to the Convention. The applicants are currently detained near Baghdad.
The United Kingdom	18 Feb. 2009	Hilal Abdul-Razzaq Ali AL-JEDDA no. 27021/08	The applicant, an Iraqi national, moved to the United Kingdom in 1992, where he made a claim for asylum and was granted indefinite leave to remain. He was subsequently granted British nationality. On 10 October 2004 the applicant was arrested in Iraq by the United States troops accompanied by Iraqi national guards and British soldiers. He was informed that he was suspected of membership of a terrorist group and was taken to the detention centre run by British forces and held there until 30 December 2007. The applicant complains that he was detained in breach of Article 5 § 1 of the Convention. The government is <i>inter alia</i> requested to confirm that the applicant was within the "jurisdiction" of the United Kingdom and whether the applicant's detention was attributable to the United Kingdom or to the United Nations. Moreover if the detention was attributable to the United Kingdom, the Government is requested to provide information on the effect of the legal regime established pursuant to United Nations Security Council Resolution 1546 (and subsequent resolutions).
<b><u>Other communicated cases deemed of particular interest</u></b>			
Bulgaria	16 Feb. 2009	Kamburov (no. 14336/05)	The applicant complains under Article 8 that the Ministry of Internal Affairs has in its records personal information concerning the applicant's administrative detention in 1946-47 and that he does not have the opportunity to challenge its truthfulness. The Government is requested to confirm the exact legal basis for the storage, release and use of this information. The applicant further complains under Article 13 about the lack of an effective remedy with that respect.
Georgia	17 Feb. 2009	Badouachvili (no 18720/08)	The applicant complains under the Article 3 about the lack of adequate medical treatment while in detention in several prisons in Tbilissi or in Roustavi. He further complains <i>inter alia</i> about his conditions of detention and about the fairness of criminal proceedings, as well as about his inability to receive visits from his family more than once every two months.
Moldova	18 Feb. 2009	Brega (no 52100/08)	The applicant complains under Article 3 that he was subjected to inhuman and degrading treatment by police officers who hit and insulted him and then placed him in detention in degrading conditions. The applicant complains under Articles 10 and 11 of the Convention about a breach of his rights to freedom of expression and assembly (following his arrest after a demonstration before the building of the Government). He finally complains under Article 5 of the Convention about his unlawful detention.
Romania	19 Feb. 2009	Dumitru (no. 14510/04)	The applicant complains under Article 2 § 2 of Protocol No. 4 about the domestic authorities' decision to suspend her right to use her passport for a period of four years, although she had not committed any



			punishable act. She considers that this measure was excessive and violated Article 2 § 3 of Protocol No. 4.
Romania	19 Feb. 2009	C.B (no 21207/03)	The applicant claims under Articles 3, 5 and 8 about the degrading conditions of his arrest, about a violation of the right to respect for privacy and about the lawfulness of his psychiatric confinement. Relying on Article 6 the applicant further claims that the criminal proceedings against him were unfair.
Russia	16 Feb. 2009	Suldin (no. 20077/04)	The applicant complains under Article 3 that he was detained in inhuman and degrading conditions in the temporary detention unit of Tuymazinskiy Police Department and in Ufa IZ-3/1 pre-trial detention. He also complains under Article 5 §§ 1 (c) and 3 that his pre-trial detention was lengthy and unlawful. The applicant further complains under Article 6 §§ 1, 3 (a), (b), (c) and (d) that in the course of the criminal proceedings against him he did not receive a fair trial.
Slovenia	20 Feb. 2009	TRNOVSEK N° 20844/03	Excessive length of proceedings (Article 6). Lack of effective remedies available for excessive legal proceedings (Article 13)
Slovenia	19 Feb. 2009	ZUREJ N° 10386/03	
Switzerland	17 Feb. 2009	Schwizgebel (no 25762/07)	The applicant claims under Article 12 in conjunction with Article 14, that the domestic authorities had refused her application for adopting a second child solely on the ground of her age (the applicant was 47 and half at the time of the application). The applicant considers the domestic authorities' decision as discriminatory because women of that age may have biological children.

**Communicated cases published on 16 March 2009 on the Court's Website and selected by the Office of the Commissioner**

<u>State</u>	<u>Date of communication</u>	<u>Case Title</u>	<u>Key Words by the Office of the Commissioner</u>
Italy	23 Feb. 2009	Casini N° 47503/07	Alleged violation of Art. 1 of Prot. 1 due to the application of the law n° 359 of 1992 to determine the amount of the compensation following an expropriation
Italy	23 Feb. 2009	Giardiello N° 23066/07	Alleged violation of Art. 1 of Prot. 1 following the application of the law n° 662 of 1996 to determine the amount of compensation due to the applicants
Italy	23 Feb. 2009	Guerriero and others N° 13986/07	Alleged violation of Art. 1 of Prot. 1 following the application of the law n° 662 of 1996 to determine the amount of compensation due to the applicants
Italy	23 Feb. 2009	Ricci and others N° 13455/07	Alleged violation of Art. 1 of Prot. 1 following the application of the law n° 662 of 1996 to determine the amount of compensation due to the applicants
Italy	23 Feb. 2009	Silvestri and Demiancokova N° 38589/06	Alleged violation of Art. 1 of Prot. 1 due to the insufficient compensation granted to the applicants

**Communicated cases published on 23 March 2009 on the Court's Website and selected by the Office of the Commissioner**

*The 23 March batch contains a number of cases with alleged violations of procedural provisions (Article 6) with respect to: Croatia, Finland, Hungary, Moldova, Poland, Portugal, Romania, Russia and Ukraine.*

<u>State</u>	<u>Date of communication</u>	<u>Case Title</u>	<u>Key Words by the Office of the Commissioner</u>
Croatia	2 March 2009	SIKIC N° 9143/08	The applicant complains under Article 6 §1 about the length and the fairness of disciplinary proceedings brought against him. He further complains about a violation of Art. 6 § 2 concerning the right to be presumed innocent and a violation of Art. 13
Finland	5 March 2009	ACKERMANN N° 12490/06	The applicant complains under Articles 6 and 14 of the Convention <i>inter alia</i> about the length and fairness of proceedings. The applicant alleges in particular that the sole reason for the delay was the fact that the applicant chose to use the Swedish language in the proceedings, a right which was granted to her by law.

Hungary	3 March 2009	DOBOS N° 45069/05	The case concerns an interference with the applicant's right to the peaceful enjoyment of possessions in view of the fact that, for the purpose of his upkeep, a daily amount is being deducted from his pension received in cash directly in prison. Moreover the applicant alleges a violation of Article 14 read in conjunction with Article 1 of Protocol No. 1 due to discrimination between those who receive their pension in cash directly in prison and those who receive it with different arrangements.
Hungary	3 March 2009	SOMOGYI N° 5770/05	The applicant complains that, because of a mistake made by the Hungarian courts, he unduly spent two years and five months in a strict-regime prison and was released four months later than could have been expected. Moreover the Hungarian courts have refused to award him compensation and the applicant complains about a further violation of Article 6 about the unfairness and length of the proceedings.
Moldova and Ukraine	5 March 2009	SARUPICI N° 37187/03	Mr Șarupici complains under Art. 3 about the conditions of his detention in the remand centre of the Ministry of Internal Affairs of Moldova and that he was ill-treated by police officers while in pre-trial detention.
Moldova	5 March 2009	GANEA and GHERSCOVIC I N° 18577/08	Mr Șarupici also complains under Art. 5 § 1, in respect of both Moldova and Ukraine, that he was unlawfully arrested on the territory of Ukraine and brought to Moldova by the Moldovan police in breach of the extradition procedure. He further complains about violations of Art. 6 (partiality of the judge before the first-instance court, infringement of the principle of presumption of innocence) and about violations of Art. 8 (during his detention in remand) and 1 of Prot. 1 (seizure of the applicant's mobile phone) The three applicants complain under Article 6 § 1 of the Convention taken together with Article 13 that their right to a fair trial was breached and that the proceedings were not examined within a reasonable time. They also allege that they did not have an effective remedy in respect of these complaints. Finally, the applicants contend that there was a breach of the principle of "legal certainty", as provided for by Article 4 of Protocol No. 7 to the Convention, as a result of the quashing of final judgment acquitting them.
Poland	5 March 2009	BALCER N° 19236/07	In those four cases the applicants allege in particular that the proceedings were unfair in that they were denied an effective access to a court since the legal-aid lawyer refused to prepare a cassation complaint to the Supreme Court.
Poland	5 March 2009	KOWALCZYK N° 27058/07	
Poland	5 March 2009	KRAMARZ N° 34851/07	
Poland	5 March 2009	STACHURSKI N° 35046/07	
Poland	5 March 2009	WOJNOWSKI N° 35631/05	
Poland	3 March 2009	KLOCEK N° 20674/07	Alleged violations of Art. 8 (failure to provide the applicant the legal means for challenging his paternity) and of Art. 14 in conjunction with Art. 8 (discrimination in comparison with fathers whose children are born in wedlock)
Portugal	4 March 2009	Dore N° 775/08	Alleged violations of Art. 6 and 8 due to the inaction and negligence of Portuguese authorities with respect to the proceedings brought by the applicant, an Italian national, residing in London, to exercise his custody rights over his child (brought illegally to Portugal by the mother) See concerning this issue the judgment <i>Maire v. Portugal</i> (n° 48206/99, CEDH 2003-VII)
Romania	4 March 2009	OGICA N° 24708/03	The applicant complains under Art. 3 about his conditions of detention in the police premises of Bucharest (DGPMB) and in the Bucarest-Jilava prison. He further complains about violations of Art. 5 (lawfulness of detention), of Art. 6 (fairness of criminal proceedings), of Art 7, and of Art. 8 (inability to attend his father's funeral)
Russia	3 March 2009	KHMEL N° 20383/04	The applicant complains under Art. 8 that he was unlawfully filmed at the police station and that this footage was shown on TV. On ground of Art. 4 of Prot. no. 7, the applicant further complains that being fined firstly in the course of administrative proceedings and then in the

			course of criminal proceedings amounted to double jeopardy. He further complains about violations of Art. 3, 5, 6 and 13 of the Convention.
Russia	2 March 2009	ANGIROV N° 45480/05	The applicant, a member of the National Bolsheviks Party, complains under Art. 5 § 1 that his detention had been based on insufficient reasons. He further complains about violations of Art. 6.
Russia	2 March 2009	ANOSHINA N° 45013/05	The applicant complains <i>inter alia</i> under Art. 2 and 13 that her brother had been killed in the sobering centre by the police officers and that the prosecution authorities had failed to effectively investigate the murder and to punish the offenders.
Russia	2 March 2009	Naboyshchikov N° 21240/05	The applicant complained under Article 3 that he had been severely tortured by officers of the rifle division, as a result of which he lost his leg and became handicapped. He further complains that he has not been afforded effective protection from the domestic authorities.
Russia	2 March 2009	NAZARENKO N° 29933/04	Under Articles 6 and 13 of the Convention the applicants allege that the proceedings concerning their eviction from a building owned by a company specialized in oil and gas exploration were unfair. The applicants further complain that their eviction amounted to a violation of Art. 8 of the Convention.
Russia	2 March 2009	SHISHKIN N° 18280/04	The applicant alleges <i>inter alia</i> that he was subjected to torture from January to May 2001 and that he had been coerced into confessing to crimes he had not committed. Under Article 3 the applicant also complains that the conditions of his detention in detention facilities "SIZO-1" in Lipetsk and "IOY 323/CT-2" in Yelets and in the correctional colony IK-3 of Yelets were inadequate. He further alleges violations of Art. 5 and 6 of the Convention.
Russia	2 March 2009	TASUYEVA N° 23507/06	The applicant complains about her brother's disappearance and the failure of domestic authorities to conduct an effective investigation into the events. Under Article 5 she complains about the unlawfulness of her brother's apprehension and a violation of the guarantees against arbitrary detention in his respect.
Russia	2 March 2009	Tovsultanova N° 26974/06	The applicant submits that the apprehension of her son and the absence of any news from him give rise to a strong presumption that he was killed by Russian servicemen, in violation of Article 2. She also complains about the lack of effective investigation and further violations of Art. 3, 5 and 13.
Russia	2 March 2009	VAVILOV N° 38818/07	The applicant complains under Article 3 about conditions of his pre-trial detention and lack of medical treatment during that time. He further complains that he was beaten up by police officers and alleges further violations of Art. 5, 6, 8 and 13.
The United Kingdom	6 March 2009	C. 21061/05	The applicants complain, under Article 5 § 1 of the Convention, taken alone and in conjunction with Article 14, that their detention was unlawful and discriminatory. In the case of <i>B. and Others</i> , the applicants complain, under Article 5 § 5, that they had no enforceable domestic right to compensation for the unlawful detention. See with that respect the judgment <i>A. and Others v. the United Kingdom</i> [GC] (no. 3455/05, 19 February 2009) in RSIF n°11
The United Kingdom	2 March 2009	B and Others N° 20721/05	
Ukraine	5 March 2009	Smirnov N° 38683/06	The applicant complains that he had been tortured by a police officer in violation of Art. 3. He further complains about the lack of effective investigation and about violations of Art. 6, 13 and 34
Ukraine	2 March 2009	BILOZIR AND RIZOVA N° 37863/05	In 1991 the applicants' mother was rehabilitated as a victim of political repression. In 1992 the Radekhiv Town Council restored her entitlement to a house, which had been confiscated in the 1950s. Following the applicants' mother death and following the annulment of the applicants' entitlement to the property, the applicants complain under Articles 6 § 1 and 13 and under Article 2 of Protocol No. 7 that the Radekhiv Town Court had passed an unlawful and unfounded judgment, which had been upheld on appeal and cassation. They further complained under Article 1 of Protocol No. 1 that the State had unlawfully deprived them of their property.
Ukraine	2 March 2009	GAZETA UKRAINA-TSENTR N° 16695/04	The applicant was found guilty of disseminating false information about a candidate to mayoral elections. The applicant complains under Article 10 that the interference with its freedom of speech was not in accordance with the law, was disproportionate and unnecessary in a democratic society. It further complains under Article 6 § 1 that the first instance and appellate courts were not independent and impartial.

Ukraine	2 March 2009	KAPSHUK N° 38095/04	The applicant complains under Article 2 that the investigation into the disappearance of her daughter (who disappeared while she was out for a walk) has been ineffective and lengthy, and that she was duly informed neither of its progress nor of the grounds for the prosecution authorities to consider her daughter dead. She also relies on Articles 4 and 5 of the Convention, alleging that her daughter was abducted and sold into slavery abroad with involvement of the local law-enforcement officials, and that the authorities lack the will to reveal the crime and bring the guilty to liability. The applicant further complains under Article 6 about the unfairness of proceedings.
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#### D. Miscellaneous (Referral to grand chamber, hearings and other activities)

##### Visit from the Court of Cassation and the Constitutional Court of Belgium (13.03.09)

Delegations from the Belgian Court of Cassation and Constitutional Court visited the Court on 13 March 2009. The delegations were received by President Costa and Françoise Tulkens, Section President and the judge elected in respect of Belgium. A number of other judges from the Court took also part in this meeting.

##### Hearings:

You may consult the webcasts of the hearings in the following cases:

- **Kart v. Turkey** (Grand Chamber) (no. 8917/05), 4 March 2009  
[Original language version](#), [English](#), [French](#)  
[Press releases](#), [Facts and Complaints](#)
- **Suljagic v. Bosnia and Herzegovina** (Chamber) (no. 27912/02), 10 March 2009  
[Original language version](#), [English](#), [French](#)  
[Press releases](#), [Facts and Complaints](#)

## Part II : The execution of the judgments of the Court

### A. New information

#### 17-19 March 2009: Committee of Ministers to supervise the execution of European Court of Human Rights judgments (16.03.09)

The Council of Europe's Committee of Ministers held its first special "human rights" meeting of 2009 from 17 to 19 March. The Committee supervises the adoption of individual measures needed to erase the consequences for applicants of violations established by the Court (including the payment of any just satisfaction awarded) and/or general measures (legislative or other changes) aimed at preventing new similar violations.

413 new cases were examined, a number of which raised questions related to the adoption of new general measures. The others are either linked to issues which are already examined under other cases, or do not reveal any structural problem.

In the remaining cases, the Committee examined progress made, notably as far as some 300 legislative or other reforms are concerned.

At the meeting, the Committee also considered the adoption of final resolutions in 31 cases in which all of the necessary execution measures have been taken, and will assess whether some 34 further cases are ready to be closed.

You may already consult the following documents:

- **The list of decisions adopted at the meeting :** [link to document](#)
- **The following Interim Resolutions :**

[CM/ResDH\(2009\)45E / 19 March 2009](#)

Interim Resolution - Execution of the judgment of the European Court of Human Rights - Ülke against Turkey

[CM/ResDH\(2009\)44E / 19 March 2009](#)

Interim Resolution - Action of the Security Forces in Northern Ireland (Case of McKerr against the United Kingdom and five similar cases)

[CM/ResDH\(2009\)43E / 19 March 2009](#)

Interim Resolution - Execution of the judgements of the European Court of Human Rights in 145 cases against the Russian Federation relative to the failure or serious delay in abiding by final domestic judicial decisions delivered against the state and its entities as well as the absence of an effective remedy

[CM/ResDH\(2009\)42E / 19 March 2009](#)

Interim Resolution - Execution of the judgments of the European Court of Human Rights concerning the excessive length of judicial proceedings in Italy

- **The following information document :**

[CM/Inf/DH\(2009\)16revE / 17 March 2009](#)

Cases concerning the action of police forces in Greece – Individual measures - Memorandum prepared by the Department for the Execution of Judgments of the European Court of Human Rights (DG-HL)

➤ **The following Appendices**

[CM/Del/OJ/DH\(2009\)1051appendix1E / 15 January 2009](#)

1051st meeting (DH) (17-19 March 2009) - Appendix 1 - Gençel group against Turkey - 206 cases concerning the independence and impartiality of state security courts

[CM/Del/OJ/DH\(2009\)1051appendix2E / 15 January 2009](#)

1051st meeting (DH) (17-19 March 2009) - Appendix 2 - Bořánková group against the Czech Republic - 68 cases of length of judicial proceedings

[CM/Del/OJ/DH\(2009\)1051appendix3E / 11 March 2009](#)

1051st meeting (DH) (17-19 March 2009) - Appendix 3 - Tímár group against Hungary - 94 cases of length of judicial proceedings

[CM/Del/OJ/DH\(2009\)1051appendix4E / 15 January 2009](#)

1051st meeting (DH) (17-19 March 2009) - Appendix 4 - Belvedere Alberghiera S.R.L. group of cases against Italy - 84 cases concerning constructive expropriation - Interim Resolution CM/ResDH(2007)3

[CM/Del/OJ/DH\(2009\)1051appendix5E / 11 March 2009](#)

1051st meeting (DH) (17-19 March 2009) - Appendix 5 - Străin group against Romania - 80 cases concerning the failure to restore or compensate for nationalised property sold by the state to third parties

[CM/Del/OJ/DH\(2009\)1051appendix6E / 15 January 2009](#)

1051st meeting (DH) (17-19 March 2009) - Appendix 6 - Zhovner group against Ukraine - 284 cases concerning the failure or substantial delay by the administration or state companies in abiding by final domestic judgments

[CM/Del/OJ/DH\(2009\)1051appendix7E / 15 January 2009](#)

1051st meeting (DH) (17-19 March 2009) - Appendix 7 - Section 4.3 - Overall list of cases against Italy concerning excessive length of judicial proceedings

[CM/Del/OJ/DH\(2009\)1051appendix8E / 15 January 2009](#)

1051st meeting (DH) (17-19 March 2009) - Appendix 8 - Timofeyev group against the Russian Federation - 145 cases concerning the failure or substantial delay by the administration or state companies in abiding by final domestic judgments

[CM/Del/OJ/DH\(2009\)1051appendix9E / 15 January 2009](#)

1051st meeting (DH) (17-19 March 2009) - Appendix 9 - Demirel group against Turkey - 68 cases of length of detention on remand and of length of criminal proceedings

The second annual report on the execution of judgments will be made public on 22 April. The annotated agenda and additional information on the 1051<sup>st</sup> meeting will be provided in the next issue of the RSIF.

## **B. General and consolidated information**

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

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

For more information on the specific question of the execution of judgments including the Committee of Ministers' annual report for 2007 on its supervision of judgments, please refer to the Council of Europe's web site dedicated to the execution of judgments of the European Court of Human Rights:

[http://www.coe.int/T/E/Human\\_Rights/execution/](http://www.coe.int/T/E/Human_Rights/execution/)

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

[http://www.coe.int/t/e/human\\_rights/execution/02\\_Documents/PPIndex.asp#TopOfPage](http://www.coe.int/t/e/human_rights/execution/02_Documents/PPIndex.asp#TopOfPage)

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

### A. European Social Charter (ESC)

#### Training course on gender equality standards of the Revised Charter (03.03.09)

Ms Csilla KOLLONAY LEHOCZKY, member of the European Committee of Social Rights, and Mr Matti MIKKOLA, former President of the Committee, participated in a training course for key actors on the gender equality standards of the Revised European Social Charter, in Kyiv on 4-5 March 2009. This training course forms part of a new joint project between the Council of Europe and the European Union on strengthening and protecting women's and children's rights in Ukraine.

[Further information on the project](#)

The European Committee of Social Rights will hold its next session from 30 March to 2 April 2009. You may find relevant information on the sessions using the following link :

[http://www.coe.int/t/dghl/monitoring/socialcharter/default\\_en.asp](http://www.coe.int/t/dghl/monitoring/socialcharter/default_en.asp).

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

[http://www.coe.int/t/dghl/monitoring/socialcharter/CountryFactsheets/CountryTable\\_en.asp](http://www.coe.int/t/dghl/monitoring/socialcharter/CountryFactsheets/CountryTable_en.asp)

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

#### Council of Europe anti-torture Committee publishes report on [Spain](#) (02.03.09)

The CPT published the [report on its visit to Spain in January 2007](#), together with the [response of the Spanish Government](#). Both documents have been made public at the request of the Spanish authorities. The purpose of the visit was to examine the modalities of care and custody of José Ignacio DE JUANA CHAOS, a prisoner on hunger strike who, further to a judicial decision, was fed against his will while hospitalized.

The CPT does not believe that it is the Committee's role to pronounce on the question whether it is right to force-feed a detained person on hunger strike. However, the Committee sets out in [paragraph 14 of its report](#) certain standards which should be met in the event that a decision is taken to force-feed a prisoner. The CPT states that force-feeding a prisoner without meeting those standards could very well amount to inhuman or degrading treatment.

In the particular case examined during the visit, the CPT formed the view that the various actors responsible for implementing the decision to force-feed the prisoner in question took into careful consideration the elements identified by the Committee.

#### Council of Europe anti-torture Committee visits [Austria](#) (03.03.09)

A delegation of the CPT carried out a periodic visit to Austria from 15 to 25 February 2009. It was the CPT's fifth visit to Austria. In the course of the visit, the CPT's delegation reviewed the measures taken by the Austrian authorities in response to various recommendations made by the Committee after its previous visits. In this connection, particular attention was paid to the treatment of persons detained by the police and to the conditions of detention under which foreign nationals are held in police detention centres. The delegation also examined in detail various issues related to prisons, including the situation of juvenile prisoners. In addition, the delegation visited a civil psychiatric hospital and – for the first time in Austria – a social welfare institution.

The delegation had fruitful consultations with Ms Maria FEKTER, Federal Minister of the Interior, Ms Claudia BANDION-ORTNER, Federal Minister of Justice, and Mr Alois STÖGER, Federal Minister of Health, as well as with senior officials from the above-mentioned Ministries, the Federal Ministry of European and International Affairs, and the Federal Chancellery. Discussions were also held with the

Chairman of the Human Rights Advisory Board, Professor Gerhart Klaus WIELINGER, and representatives of the Austrian Bar Association and various NGOs active in areas of concern to the CPT. At the end of the visit, the delegation presented its preliminary observations to the Austrian authorities.

#### **Council of Europe anti-torture Committee publishes response of [Danish](#) authorities (13.03.09)**

The CPT published the response of the Government of Denmark to the report on the CPT's most recent visit to that country, in February 2008. The response has been made public at the request of the Danish authorities. The [CPT's report](#) on the February 2008 visit was published on 25 September 2008. The [response of the Danish Government](#) is available on the Committee's website: <http://www.cpt.coe.int>

#### **C. European Commission against Racism and Intolerance (ECRI)**

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

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#### **E. Group of States against Corruption (GRECO)**

#### **Group of States against Corruption publishes report on France (12.03.09)**

GRECO published its Third Round Evaluation Report on France. The report has been made public with the agreement of the country's authorities. It focuses on two distinct themes: criminalisation of corruption and transparency of party funding.

Regarding the criminalisation of corruption ([Theme I](#)), GRECO recognises that following various changes, the most recent in December 2007, France has a well developed legal framework that enables it to respond, to a very large extent, to the relevant requirements of the [Criminal Law Convention on Corruption \(ETS 173\)](#) and its [Additional Protocol \(ETS 191\)](#). France also uses these criminal provisions, which has allowed the development of relevant case-law.

Nevertheless, considerable uncertainty remains as regards the concept of a corruption agreement, in particular as to whether proof of the existence of an agreement must be established in every case. Moreover, France has severely restricted its jurisdiction and its ability to prosecute cases with an international dimension which, given the country's importance in the international economy and the scale of many of its companies, is regrettable.

France has made two reservations to the Convention, which GRECO invites the country to lift or not renew. Other possible improvements concern the length of the limitation period for prosecutions of lesser offences of corruption and trading in influence, as well as the fact that the fines levied in this type of case are not always collected in practice.

Concerning transparency of party funding ([Theme II](#)), French legislation on political funding generally implements the provisions under evaluation of [Recommendation Rec\(2003\)4 of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns](#).

France has various rules to ensure a certain level of transparency in the funding of politics, which include supervision and sanctions procedures. No serious divergence between the applicable texts and political practice was noted. Nonetheless, the system does not yet apply to certain fields, such as elections to the Senate and the funding of parliamentary groups. Parties also have significant room for manoeuvre in defining the scope of their accounts, and the role of the political parties' financial agents could usefully be reinforced.

Furthermore, France has put in place specialist supervisory bodies in the fields of party funding and the fight against corruption, but it is regrettable that it has not always given them genuine powers.

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<sup>\*</sup> No work deemed relevant for the NHRSs for the period under observation.



There is also a range of administrative and criminal penalties for the vast majority of breaches, but there should ideally be greater flexibility in the allocation of these sanctions according to the gravity of the crime.

The report addresses a total of 17 recommendations to France. GRECO will assess the implementation of these recommendations in the second half of 2010, through its specific compliance procedure.

Report: [Incriminations](#) / [Transparency of Party Funding](#)

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

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

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\* No work deemed relevant for the NHRs for the period under observation.

## Part IV : The intergovernmental work

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

**Armenia** signed on 3 March 2009 the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters ([ETS No. 182](#)).

**Belgium** ratified on 9 March 2009 the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters ([ETS No. 182](#)).

**Georgia** signed on 2 March 2009 the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse ([CETS No. 201](#)).

**Germany** ratified on 9 March 2009 the Convention on Cybercrime ([ETS No. 185](#)).

**Greece** ratified on 10 March 2009 the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse ([CETS No. 201](#)).

**Honduras** acceded on 9 March 2009 to the Convention on the Transfer of Sentenced Persons ([ETS No. 112](#)).

**Italy** ratified on 3 March 2009 Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances ([ETS No. 187](#)).

**Romania** signed on 4 March 2009 the European Convention on the Adoption of Children (Revised) ([CETS No. 202](#)).

**Montenegro** signed on 3 March 2009 the Convention on the Conservation of European Wildlife and Natural Habitats ([ETS No. 104](#)).

**Spain** signed on 2 March 2009 the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse ([CETS No. 201](#)).

**Slovakia** ratified on 2 March 2009 the European Convention on the Compensation of Victims of Violent Crimes ([ETS No. 116](#)).

### B. Recommendations and Resolutions adopted by the Committee of Ministers

#### [CM/Rec\(2009\)2E / 11 March 2009](#)

Recommendation of the Committee of Ministers to member states on the evaluation, auditing and monitoring of participation and participation policies at local and regional level (Adopted by the Committee of Ministers on 11 March 2009 at the 1050th meeting of the Ministers' Deputies)

#### [CM/RecChL\(2009\)1E / 11 March 2009](#)

Recommendation of the Committee of Ministers on the application of the European Charter for Regional or Minority Languages by Austria (Adopted by the Committee of Ministers on 11 March 2009 at the 1050th meeting of the Ministers' Deputies)

### C. Other news of the Committee of Ministers

#### 1049bis Ministers' Deputies meeting (02-05.03.09)

On 2 March 2009, the Ministers' Deputies welcomed the progress made by Moldova with regard to the implementation of reforms which aim to promote the protection of human rights and the functioning of democratic institutions.

They reiterated the importance for the elections, which will take place in Moldova on 5 April 2009, to be carried out in conformity with the relevant international standards, including during the campaign preceding the elections, in particular by ensuring free and fair access to the media during this campaign.

In this context, they also called on the Moldovan authorities to ensure proper follow-up to the recommendations of the Venice Commission concerning the Moldovan electoral legislation and to intensify their efforts with regard to the different issues identified in the conclusions and recommendations of the Secretariat's report. The Ministers' Deputies will follow progress made in the implementation of the above-mentioned decisions and will consider the necessity of an enhanced dialogue with the Moldovan authorities.

Considering a report presented by the Secretariat on confidence-building measures initiated in the framework of the Transnistrian conflict settlement process (document DPA/Inf(2009)2), the Ministers' Deputies encouraged the Secretariat to continue to implement such measures, with particular focus on civil society, and invited it to report back in due course.

### **1050th Ministers' Deputies meeting (12.03.09)**

On 11 March 2009, the Ministers' Deputies examined the candidatures for election of the Secretary General and agreed to invite the four candidates to an interview during their 1054th meeting (15 April 2009).

The Ministers' Deputies agreed that the Council of Europe 2009 Exchange on the religious dimension of intercultural dialogue would be held on 29-30 June 2009 in Strasbourg.

They adopted a Recommendation to member states on the evaluation, auditing and monitoring of participation and participation policies at local and regional level.

They furthermore took note of Opinion No. 11 (2008) of the Consultative Council of European Judges (CCJE) on the quality of judicial decisions and gave instructions for its dissemination. This was also the case as regards "Guidelines on judicial statistics (GOJUST)" and the "SATURN Guidelines for judicial time management" transmitted to it by the European Commission for the Efficiency of Justice.

Finally, the Deputies decided to open the Council of Europe Convention on Access to Official Documents for signature on 18 June 2009 on the occasion of the 29th Conference of the European Ministers of Justice, which will take place in Tromsø (Norway) on 18 and 19 June 2009.

### **Spanish Chairmanship welcomes adoption of Resolution 1866 by UN Security Council (13.03.09)**

"The adoption of this Resolution constitutes a significant step for the preservation of the stability in the region, in so far as it allows for the continuity of a UN mission that has turned out to be of a paramount importance in that respect."

[Statement](#)

### **[Toledo: conference on protection of children in justice systems \(12.03.09\)](#)**

Within the programme of the Spanish Chairmanship of the Committee of Ministers, a conference was organised on 12-13 March. Representatives of Council of Europe member states, including several Ministers of Justice, and experts started on 12 March to analyse how to improve the protection of children in European judicial systems, in particular with regard to violence and sexual offences. On 10 March, Greece became the first state to ratify the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, which was opened for signature in Lanzarote in 2007. Before the opening, Spain and Georgia signed the treaty, which will enter into force when four more states ratify it. 34 have signed it but not ratified it yet.

[Conclusions](#)

[Speech by Maud de Boer-Buquicchio](#)

[File: Sexual exploitation](#)

## Part V : The parliamentary work

### A. Reports, Resolutions and Recommendations of the Parliamentary Assembly of the Council of Europe

Recommendation 1863 : [Environment and health: better prevention of environment-related health hazards](#) (13.03.09)

Recommendation 1864 : [Promoting the participation by children in decisions affecting them](#) (13.03.09)

Resolution 1656 : [Mobilising parliaments for Africa's development](#) (13.03.09)

### B. News of the Parliamentary Assembly of the Council of Europe

#### ➤ *Countries*

[Pre-electoral visit by PACE delegation to Moldova](#) (03.03.09)

[Moldova: declaration of the PACE pre-electoral mission](#) (06.03.09)

A pre-electoral delegation from the Parliamentary Assembly of the Council of Europe (PACE), visiting Chisinau on the eve of the parliamentary elections of 5 April 2009, has noted considerable pluralism in the political landscape of the country.

However, the delegation stresses that, despite the repeated recommendations of the Assembly and other bodies of the Council of Europe, a number of concerns continue to subsist during this electoral campaign.

More precisely, the pre-electoral delegation was informed of the following issues: use of administrative resources for the campaign, cases of pressure or intimidation, accuracy of voters' lists.

The delegation welcomes the pluralism of opinions in the print media but is preoccupied by the problem of equal access of all political parties

[PACE co-rapporteurs to visit the Russian Federation](#) (06.03.09)

Luc Van den Brande (Belgium, EPP/CD) and Theodoros Pangalos (Greece, SOC), co-rapporteurs on Russia for the Monitoring Committee of the PACE, made a fact-finding visit to Moscow from 9 to 11 March 2009 to take stock of Russia's compliance with its obligations and commitments to the Council of Europe, for a forthcoming report.

[Humanitarian consequences of the conflict between Georgia and Russia: visit by Corien Jonker to Tskhinvali and the surrounding region](#) on 13-14 March 2009 (11.03.09)

[Situation of Roma in Europe: visit by PACE rapporteur to Czech Republic](#) on 17-18 March 2009 (12.03.09)

#### ➤ *Themes*

[PACE committee calls for stronger use of alternatives to custodial sentences for women](#) (11.03.09)

[PACE Human Rights Prize to be awarded to British Irish Rights Watch for 'outstanding' action to defend human rights](#) (13.03.09)

British Irish Rights Watch has been selected as the winner of the first ever Council of Europe Parliamentary Assembly (PACE) Human Rights Prize, which honours "outstanding civil society action in the defence of human rights in Europe".

The independent non-governmental organisation – which has been monitoring the human rights dimension of the conflict in Northern Ireland, and latterly the peace process, since 1990 – was unanimously selected from among fourteen individuals and NGOs nominated for the prize by a distinguished panel including leading figures from the world of human rights.

**C. Miscellaneous**

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\* No work deemed relevant for the NHRs for the period under observation.

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

### A. Country work

#### **"Serbia has to strengthen human rights implementation", says Commissioner Hammarberg in his report (11.03.09)**

Thomas Hammarberg published a [report](#) on his visit to Serbia, highlighting that "despite progress, a number of obstacles remain to the effective implementation of human rights standards".

Assessing the country's human rights situation, the Commissioner proposes a set of practical recommendations for improvements in relation to the judiciary, the fight against discrimination, human rights activists, police behaviour and conditions of detention.

"Lengthy civil and criminal proceedings and non-enforcement of domestic judgments remain issues of concern" says Commissioner Hammarberg. "There is also a need to strengthen the enforcement of anti-corruption measures and ensure a more transparent and independent appointment of judges and prosecutors."

Furthermore, Serbia has to make progress in the field of discrimination and protection of minorities and vulnerable groups. "The authorities must adopt and apply a general anti-discrimination law covering all forms of discrimination. In particular, the Roma situation should be addressed urgently as they are the most discriminated and marginalised minority in the country suffering from social exclusion and often enduring inhumane living conditions."

Although the protection of persons with disabilities has been improved, the Commissioner observes that they remain stigmatized, continue to suffer from widespread prejudice and lack of access to education and employment.

In addition, the Commissioner expresses concern about the hostile environment for human rights activists, in particular those who address the rights of lesbian, gay, bisexual and transgender persons, the issues of transitional justice and war crimes. "Discriminatory statements made by political figures and the media go largely unpunished. Human rights activists in particular are victims of intolerance, hate speech and threats, sometimes resulting in physical attacks. Such instances must be condemned from the highest political level and sanctioned appropriately."

Finally, the Commissioner sets out recommendations to improve police behaviour, conditions of detention, reinforce the Ombudsman institutions, enhance the fight against trafficking in human beings, and strengthen media freedom and access to information.

Based on a visit to Serbia from 13-17 October 2008, the report, together with the Government's response, is available on the Commissioner's website.

[Read the report](#), [Link to the video of the visit](#)

#### **Netherlands: "Progress made but more efforts needed to ensure the implementation of human rights standards" says Commissioner Hammarberg's report (11.03.09)**

"The policies towards migrants and asylum-seekers require further review". This was emphasised by Thomas Hammarberg when presenting his [report](#) on the Netherlands. The report addresses also issues on children's rights, integration, actions against discrimination and intolerance, and anti-terrorism measures.

While recognizing progress, the report calls for an improvement of the safeguards for asylum-seekers. The Commissioner voiced also concern about the plans to process more applications through an enhanced accelerated procedure. "A fast procedure is certainly suitable for clear-cut cases, but it can be detrimental to all others and is clearly unsuitable for vulnerable groups such as victims of violence and unaccompanied children."

The Commissioner recommends assessing the current immigration laws regarding the provisions for family reunification and formation, stressing that “tests, fees and age requirements must not amount to a disproportionate obstacle.”

On children's rights the report focuses on the juvenile justice system. “It is unacceptable that young offenders and children in need of protection, notably because they are victims of crimes, share the same institutions” he states, regarding the detention of children with civil protection orders in custodial institutions. Moreover, he criticises the low age of 12 years for criminal responsibility and the application of adult criminal law to minors who can be detained in adult prisons.

On protection against discrimination and intolerance, Commissioner Hammarberg recommends better coordination and a holistic approach. He expresses concerns about the risks of ethnic profiling and recommends enhancing the protection of minority rights, in particular of Roma and Sinti. He underlines that discrimination in the labour market “is one of the most pressing problems, especially for young people from certain ethnic minority communities and women.”

“Racist and intolerant tendencies also raise serious concerns” added the Commissioner. “The debate on ‘integration’ should be based on careful and precise use of language and an evaluation of measures taken to combat segregation on the housing market is needed.”

Furthermore, the Commissioner recommends reviewing anti-terrorism measures to ensure full compliance with international human rights standards, judicial oversight and effective procedural guarantees. He also expresses his concerns about the use of administrative law and sanctions to address terrorism, as this could lead to circumventing the fundamental safeguards offered by criminal law.

Based on a visit to the European part of the Kingdom of the Netherlands carried out in September 2008, the report, together with the authorities' comments, is available on the Commissioner's web site. [Read the report](#)

#### **Monaco: “More efforts needed to overcome discrimination and increase privacy protection” says Commissioner Hammarberg releasing his report (11.03.09)**

“Monaco has made considerable progress in strengthening human rights protection. More efforts are now needed, in particular to overcome possible discriminatory situations and increase privacy protection” said Thomas Hammarberg presenting his [report](#) on the Principality. Assessing the overall human rights situation, the Council of Europe Commissioner for Human Rights sets out recommendations to address shortcomings, mainly in the field of the judiciary, domestic violence, children's rights, discrimination, privacy and conditions of detention.

“The judicial process could be further improved by instituting new procedures, especially to give victims better protection, and reviewing criminal laws that are obsolete or inadequate” said the Commissioner. “Court decisions should be more transparent and legislation should be adopted to safeguard and strengthen the independence of judges. The authorities must also swiftly establish an independent body responsible for judges' recruitment, transfer and appraisal”.

Commissioner Hammarberg is concerned about the fact that differing rights are granted to native Monegasques, foreign residents, inhabitants of border communes and non-resident foreigners. “Legislation should not discriminate foreigners, in particular regarding employment and taxation. The authorities should make the law on acquiring and transmitting nationality non-discriminatory and review as a matter of priority the legislation that results in cases of statelessness”.

Furthermore, the Commissioner recommends enhancing the protection of victims of domestic violence and incorporating the principles of children's best interest and participation in national law, stressing the urgent need to recognise and safeguard the special status of children and their need for protection, including in criminal cases.

On privacy, Commissioner Hammarberg noted that the widespread use of CCTV should be counter-balanced by an increased protection of individuals' privacy, in particular by adopting a law clearly regulating CCTV use, data retention time and persons authorised to view the footage. He also underlined that although efforts were made by the Monegasque authorities to improve conditions of detention, problems still remain. “Conditions of detention in the prison should be improved, in particular by providing more activities and access to daylight. Both untried and convicted prisoners should be allowed to make more use of the telephone and minors should be granted access to a wider range of activities.”

Finally, the Commissioner recommends improving the living conditions of persons with disabilities, enhancing the protection of social rights and establishing an independent human-rights structure able to deal effectively with complaints from individuals.

Based on a visit carried out in October 2008, the report, together with the authorities' response, is available on the Commissioner's website. [Read the report](#)

## **B. Thematic work**

### **"Police misbehaviour must be investigated by independent bodies" (12.03.09)**

"An independent and effective police complaints system is of fundamental importance for a democratic and accountable police service" said today the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, in releasing an [opinion on investigating complaints against the police](#).

"Such complaints mechanisms could help enhance public trust and confidence in the police and ensure that there is no impunity for misconduct or ill-treatment" he said. "It is important that they comply with the five principles developed by the European Court of Human Rights, that is independence, adequacy, promptness, public scrutiny and victim involvement".

In addition, the Commissioner highlights that such independent bodies should have oversight of the police complaints system and share responsibility with law enforcement officials. "The expectation that criminal or disciplinary proceedings will be brought against police officers' misbehaviour is an important protection against impunity and essential for public confidence in the police complaints system. In addition, it can provide the police and the public with informed advice on how to improve the effectiveness of policing services and police community relations." [Read the opinion](#)

### **[Viewpoint : "Think globally, act locally - for human rights"](#) (02.03.09)**

The struggle for human rights is also a local affair. Authorities at local or regional level take key decisions on education, housing, health care, social services and policing – areas extremely relevant for people's human rights. These decision-makers should apply European and international human rights standards when they formulate their policies and ensure that their approach is rights-based.

## **C. Miscellaneous (newsletter, agenda...)**

The Office of the Commissioner for Human Rights publishes a regular electronic newsletter. You may consult the latest issue: [No.24 / 24 January-27 February 2009](#)