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“Promoting independent national non-judicial mechanisms for the protection of human rights,  
especially for the prevention of torture”  
(“Peer-to-Peer II Project”)

**Joint European Union – Council of Europe Programme**

*The **selection** of the information contained in this Issue and deemed relevant to NHRs  
is made under the responsibility of the NHRs Unit*

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## Introduction

This Issue is part of the "Regular Selective Information Flow" (RSIF). Its purpose is to keep the National Human Rights Structures permanently updated of Council of Europe norms and activities by way of regular transfer of information, which the National Human Rights Structures Unit of the DG-HL (NHRS Unit) carefully selects and tries to present in a user-friendly manner. The information is sent to the Contact Persons in the NHRs who are kindly asked to dispatch it within their offices.

Each issue covers two weeks and is sent by the NHRS Unit to the Contact Persons a fortnight after the end of each observation period. This means that all information contained in any given issue is between two and four weeks old.

Unfortunately, the issues are available in English only for the time being due to limited means. However, the majority of the documents referred to exists in English and French and can be consulted on the websites that are indicated in the Issues.

The selection of the information included in the Issues is made by the NHRS Unit. It is based on what is deemed relevant to the work of the NHRs. A particular effort is made to render the selection as targeted and short as possible.

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

**The preparation of the RSIF is funded under the so-called Peer-to-Peer II Project, a European Union – Council of Europe Joint Project entitled “Promoting independent national non-judicial mechanisms for the protection of human rights, especially the prevention of torture”.**

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

## A. Judgments

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

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

Some judgments are only available in French.

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

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

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

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

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

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

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

- **Grand Chamber judgments**

**Tănase v. Moldova ([link to the judgment in French](#)) (no. 7/08) (Importance 1) – Violation of Article 3 of Protocol No. 1 – Disproportionate interference with the right to free elections on account of domestic provisions preventing elected MPs with multiple nationalities from taking seats in Parliament**

The applicant is a member of the Moldovan Liberal Democratic Party and currently holds the office of Minister of Justice in the coalition government. In the legislative elections in April 2009 and July 2009 he was elected as a Member of Parliament (MP). The case concerned the introduction in 2008 in Moldova of a prohibition on Moldovan nationals holding other nationalities who had not started a procedure to renounce those nationalities taking their seats as members of Parliament following their election.

Following Moldova’s declaration of independence in August 1991, a new law was adopted on Moldovan nationality. All those who had lived in the territory of the former Moldavian Soviet Socialist Republic before annexation were proclaimed citizens of Moldova; as a descendant of those persons, the applicant obtained Moldovan nationality. In 1991, the Romanian Parliament also adopted a new law on citizenship: former Romanian nationals and their descendants who had lost their nationality before 1989 were allowed to re-acquire Romanian nationality. The applicant requested and obtained Romanian nationality, the restriction on Moldovan nationals holding other nationalities having been repealed in June 2003. In April 2008, the Moldovan Parliament reformed the electoral legislation, notably by introducing Law no. 273. The reform was enacted and entered into force in May 2008. Both the Council of Europe’s Commission against Racism and Intolerance (“ECRI”) and the Venice Commission expressed concern about the amendments to the Moldovan electoral code. In particular,

both bodies pointed out that the provisions of the new law were incompatible with the European Convention on Nationality (ECN), which required equal treatment of multiple and single nationals and was ratified by Moldova in November 1999. The president of the Liberal Democratic Party brought a constitutional complaint against Law no. 273, which was declared constitutional, as it did not prevent dual nationals from becoming MPs, because of the possibility of complying with it by renouncing their other nationalities. Following his election to Parliament in April 2009, the applicant initiated a procedure to renounce his Romanian nationality in order to be able to take his seat, but indicated that he reserved his right to withdraw the letter after the judgment of the Grand Chamber in the present case. Having regard to his letter, the Constitutional Court validated his mandate.

The applicant complained that Law no. 273 interfered with his right to stand as a candidate in free elections and to take his seat in Parliament if elected, thus ensuring the free expression of the opinion of the people in the choice of legislature. He also complained that he had been subjected to discrimination. In a judgment of 18 November 2008, the Court unanimously held that there had been a violation of Article 3 of Protocol No. 1 in respect of the applicant.

Noting that all parties had invoked the concept of ensuring loyalty as the aim pursued by Law no. 273, the Court reiterated that in a democracy only loyalty to the State, not to the Government, could constitute a legitimate aim justifying restrictions on electoral rights. It was clear that MPs, in particular those from opposition parties, had the role of ensuring the accountability of the government in power and that the pursuit of different, sometimes opposite goals, was necessary to promote pluralism. The fact that Moldovan MPs with dual nationality might wish to pursue a political programme considered by some to be incompatible with the current principles of the Moldovan State did not make it incompatible with the rules of democracy.

The Court observed that Law no. 273 and the other measures of the electoral reform had had a harmful effect on opposition parties and that all MPs who were negatively affected by Law no. 273, because they held more than one nationality or had pending applications for a second nationality, were from opposition parties. Therefore the obligation on the Government to demonstrate that the amendments were introduced for legitimate reasons was all the more pressing. However, the Government had been unable to provide any example of an MP with dual nationality showing disloyalty to the State of Moldova. The Court was therefore not fully satisfied that the aim of the measure was to secure the loyalty of MPs to the State. As regards the proportionality of the measure, a review of practice across Council of Europe member States revealed a consensus that where multiple nationalities were permitted, the holding of more than one nationality should not be a ground for ineligibility to sit as an MP. Nonetheless the Court considered that a more restrictive practice might be justified, in particular by special historical or political considerations. Moldova's history made it likely that there was a special interest, at the time when it declared its independence, in taking measures to limit any threats to the independence and security of the State. However, the ban on MPs with multiple nationalities had been put in place some 17 years after Moldova had gained independence and some five years after it had relaxed its laws to allow dual citizenship.

In this light, the Court found the argument that the measure was necessary to protect Moldova's laws, institutions and national security to be far less persuasive. The Court further dismissed the Government's objection that the right to multiple nationalities and the right to acquire a nationality were not rights guaranteed by the Convention, and that the Court in its Chamber judgment had attached too much significance to Moldova's obligation under the ECN. The Court emphasised that it did not seek to examine the applicant's right to hold dual nationality but rather the right of Moldova to introduce restrictions on his right to take his seat following his election as a result of his dual nationality and the compatibility of any such restriction with the Convention. As regards the references to the ECN and the activities of other Council of Europe bodies, the Court underlined that it had consistently held that it must take into account relevant international instruments and reports, and in particular those of other Council of Europe organs, in order to interpret the guarantees of the Convention and to establish whether there is a common European standard in the field. It attached importance to the fact that international reports, in particular by ECRI and the Venice Commission, had been unanimous in their criticism, expressing concerns as to the law's discriminatory impact. The Court finally recalled that according to its case-law, no restriction on electoral rights should have the effect of excluding groups of persons from participating in the political life of the country. The Court found the provisions preventing elected MPs with multiple nationalities from taking seats in Parliament to be disproportionate and unanimously held that there had been a violation of Article 3 of Protocol No. 1.

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

**[Moretti and Benedetti v. Italy](#) (no. 16318/07) (Importance 1) – 27 April 2010 – Violation of Article 8 – Domestic authorities' failure to respect foster parents' right to family life on account of shortcomings in adoption proceedings**

The applicants lived with their daughter and a child adopted by Mrs Benedetti. They had previously fostered children subsequently adopted by other families. By an emergency order of 20 May 2004, a newborn baby, A., whose mother had ceased looking after her a few days after her birth, was provisionally placed with them by court decision for a period of five months that was subsequently extended until December 2005. In the meantime proceedings were instituted to declare A. free for adoption. In October 2004 the applicants sought a special adoption order in respect of A. When they received no response they repeated their request in March 2005. In the meantime the court had declared the child free for adoption. In December 2005 a new family was given custody of A. in a decision that was not served on the applicants. On the same day the child was removed from the applicants' home with the assistance of the police. The court dismissed a request to adopt by the applicant on the ground that another family had been chosen in the meantime in the child's best interests. On appeal by the applicants, the Court of Appeal set aside the lower court's decision on grounds of lack of reasoning and held that the application to adopt should have been examined before the child was declared free for adoption and a new family chosen. An expert opinion requested by the Court of Appeal found that the child appeared to be attached to both couples in question but seemed to be well integrated into her new family. In October 2006 the Court of Appeal held that a further separation would risk traumatising the child. The adoption order in respect of A. became final on an unspecified date.

The applicants alleged that the relevant law and procedural rules had been wrongly applied in respect of their adoption request.

The Court reiterated that the notion of "family life" in Article 8 was not confined solely to marriage-based relationships but could also encompass other *de facto* "family ties" where further elements of dependency were present involving more than emotional ties. The determination of the family nature of such a relationship had to take account of a number of factors, such as the length of time the persons in question had been living together, the quality of the relationship and the adult's role in respect of the child. The Court noted that the applicants had lived with A. during the important stages of the first 19 months of her life and that she had been well integrated into the family, which had fostered her social development. Having regard to the strength of the bond that had developed between the applicants and the child, the Court found that this had amounted to family life for the purposes of Article 8. Whilst Article 8 did not guarantee a right to adopt, it did not prevent an obligation arising on States, in certain circumstances, to allow family ties to be formed. In the present case it had been of primary importance that the request for a special adoption order lodged by the applicants be examined carefully and speedily. The Court reiterated that where cases concerning family life were concerned the passage of time could have irremediable consequences. It was regrettable that the request for adoption lodged by the applicants had not been examined before declaring A. free for adoption and that it had been dismissed with no reasons being stated. It was not for the Court to substitute its own reasoning for that of the national authorities regarding the measures that should have been taken, and the good faith on the part of the courts in securing A.'s well-being was not in doubt. However, the shortcomings observed in the proceedings in question had had a direct impact on the applicants' right to family life, and the authorities had failed to ensure effective respect for that right. The Court held, by six votes to one, that there had been a violation of Article 8.

**Ciubotaru v. Moldova (no. 27138/04) (Importance 2) – 27 April 2010 – Violation of Article 8 – Domestic procedure for changing recorded ethnicity in identity card did not comply with Moldova's obligations under the Convention to safeguard the right to respect for private life**

The applicant is a writer and a professor of French. In 2002, when applying to have his old Soviet identity card replaced with a Moldovan one, he submitted that his ethnicity was Romanian. As he was advised that his application would not be accepted unless he indicated his identity was Moldovan, he complied. Shortly afterwards he requested the relevant State authority to change his identity from "Moldovan" to "Romanian". His request was refused with the argument that since his parents had not been recorded as ethnic Romanians in their birth and marriage certificates, it was impossible for him to be recorded as an ethnic Romanian. The applicant complained unsuccessfully numerous times about it to various officials, following which he brought proceedings in court against the relevant State authority. He asked to have his identity changed in his papers as he did not consider himself an ethnic Moldovan. His request was dismissed by the domestic courts with the same argument as the one advanced by the State administrative authority.

The applicant complained of the authorities' refusal to register his Romanian ethnic identity in his identity papers.

The Court noted that, along with such aspects as name, gender, religion and sexual orientation, an individual's ethnic identity constituted an essential aspect of his or her private life and identity, and thus fell under the protection of Article 8. Aware of the highly sensitive nature of the issues involved in

the present case, the Court distanced itself from the debate within Moldovan society concerning the ethnic identity of the main ethnic group. It took as a working basis the legislation of the Republic of Moldova and the official position of the Moldovan authorities when referring to Moldovans and Romanians. As regards the requirement by the Moldovan authorities of proof of the ethnic origin of the applicant's parents, the Court did not dispute the right of a Government to require the existence of objective evidence of a claimed ethnicity. It was also ready to accept that it should be open to the authorities to refuse a claim to be officially recorded as belonging to a particular ethnicity where such a claim was based on purely subjective and unsubstantiated grounds. However, the applicant appeared to have been confronted with a legal requirement making it impossible for him to support his claim. The relevant law and practice of recording ethnic identity had created insurmountable barriers before people who wished to have a different ethnic identity registered in respect of themselves as compared to that recorded in respect of their parents by the Soviet authorities in the past. According to the law, the applicant could have changed his ethnic identity only if he had shown that one of his parents had been recorded in the official records as being of Romanian ethnicity. However, during the Soviet times, the population of Moldova had been systematically registered as being of Moldovan ethnicity, with very few exceptions the criteria for which had been unclear. Therefore, by asking the applicant to show that his parents had been registered as being of Romanian ethnicity, the authorities had placed a disproportionate burden on him in view of the historical realities of the Republic of Moldova.

The Court further observed that the applicant's claim was based on more than his subjective perception of his own ethnicity. It was clear that he was able to provide objectively verifiable links with the Romanian ethnic group such as language, name, empathy and others. However, no such objective evidence could be relied upon under the Moldovan law in force. The applicant had been unable to have his claim that he belonged to a certain ethnic group examined in the light of the objectively verifiable evidence presented in support of that claim. Having had regard to the circumstances of the case as a whole, the Court concluded that the existing procedure for the applicant to have his recorded ethnicity changed did not comply with Moldova's obligations under the Convention to safeguard his right to respect for his private life. There had therefore been a breach of Article 8.

- **Freedom of expression**

**Brunet Lecomte and Lyon Mag v. France (no. 17265/05) (Importance 2) – 6 May 2010 – Violation of Article 10 – Infringement of the right to freedom of expression on account of the sentence imposed on the applicants for publishing an article on Islamist networks and their leaders in the Lyon area**

The applicants are Philippe Brunet Lecomte, a French national and the publication director of the monthly news magazine *Lyon Mag*, and a company that publishes the magazine. The October 2001 issue was entitled "Exclusive, SOFRES poll, Local Muslims and Terrorism. Report: Should we be afraid of Lyons' Islamist networks?". Filling three-quarters of the magazine's cover page was a photograph of T. with the caption "T., one of the most influential Muslim leaders in Lyon". An article about him ("The Ambiguous Mr T.") indicated among other things that in 1995, together with his brother H. with whom he was running the Islamist Centre in Geneva, which had become the meeting point for European Islamists according to French intelligence, T. had been banned from entering France. On a complaint by T., the Lyon Criminal Court found the article defamatory but acquitted the applicants and dismissed T.'s civil suit on account of their good faith. The Court of Appeal set aside that judgment in 2003, finding that the charge of public defamation against an individual was made out. It ordered Mr Lecomte to pay 2,500 euros (EUR) in damages to T. and found the second applicant civilly liable for the offence. In analysing the content of the article, the court noted in particular the insinuation that T. could be a leader recruiting "frustrated and vulnerable" young people who were easily influenced by "radical discourse". In 2004 the Court of Cassation dismissed an appeal on points of law lodged by the applicants.

The applicants complained about their conviction for defamation following the publication of an article about the Islamist networks in Lyon in 2001.

The Court noted that the interference with the applicants' exercise of their right to freedom of expression, constituted by their conviction, had been based on the French freedom of the press legislation. The offending articles had contributed to a debate in the general interest at the time – they were published shortly after the 11 September 2001 attacks on the World Trade Centre – and the Court thus took the view that the authorities had only limited discretion to restrict the applicants' freedom of expression. The Court further noted that whilst the domestic courts had analysed the terminology and insinuations in the articles, it was also appropriate to consider their context, namely the publication of a series of articles resulting from a three-week investigation into the Islamist networks of the Lyon area.



Furthermore, the articles did not systematically make direct reference to T. and had shown prudence by, for example, distinguishing between Islam and Islamism. Whilst T. had been given a prominent place in the magazine, in both text and pictures, he had not been targeted by any personal animosity and the acceptable degree of exaggeration in matters of journalistic freedom had not been exceeded, especially as T, being an active lecturer, could expect a close examination of his statements. Lastly, the offending remarks were not devoid of factual basis because numerous documents showing the danger posed by T.'s statements had been submitted to the Court. Therefore, the applicants' interest in imparting and the public's in receiving information about a subject in the general interest and its repercussions for the Lyon area as a whole, prevailed over T.'s right to the protection of his reputation. The Court further found that the amount of damages was disproportionate. The Court held, by five votes to two, that there had been a violation of Article 10. Judges Lorenzen and Berro-Lefèvre expressed a dissenting opinion.

- **Freedom of assembly**

**Vörður Ólafsson v. Iceland (no. 20161/06) (Importance 1) – 27 April 2010 – Violation of Article 11 – Interference with the applicant's right to freedom of association on account of domestic authorities' failure to provide adequate safeguards against the statutory obligation on the applicant to make a financial contribution to a private organisation that was not of his own choosing**

An employer in the building sector and a member of the Master Builders' Association, the applicant complained about a statutory obligation to make a contribution to the Federation of Icelandic Industries ("the FII"), a private organisation, although he (and his Association) was not a member and was not obliged to join. On 8 November 2004 the applicant brought proceedings against the State with the Reykjavik District Court requesting an order to invalidate the charges imposed on him from 2001 to 2004. In July 2005 the District Court found in favour of the State and rejected the applicant's action. The applicant then appealed to the Supreme Court of Iceland, arguing in particular that section 3 of the 1993 Act effectively meant that all individuals and companies engaged in specific business activities had to pay membership fees to the FII, irrespective of whether they were members. Indeed, he considered that the charge amounted to a *de facto* FII membership fee and that that was clearly reflected by the fact that FII members who paid the charge were entitled to a reduction of their membership fees by an amount equivalent to the charge. The levy and collection of the charge therefore made membership of the FII compulsory for others, although they enjoyed no rights vis-à-vis the FII. In December 2005 the Supreme Court rejected the applicant's appeal and upheld the District Court's judgment.

The applicant complained in particular about the obligation by law to make a contribution to the FII. He further complained that that contribution amounted to a separate taxation being imposed on a restricted group of citizens on top of their ordinary tax. This was without any condition that it be used for their benefit. On the contrary, the levy was to be transferred to another restricted group of citizens to their benefit. Finally, he complained that he had been the victim of discrimination in that there was no objective and reasonable justification for the selection of enterprises that were included in or excluded from the list of those liable to contribute.

The Court found that the statutory obligation on the applicant to make a financial contribution to the FII, a private law organisation, that was not of his own choosing and which advocated policies – accession to the European Union for example – which were contrary to his own political views and interests had amounted to an interference with his right not to join an association. It further considered that that obligation, its basis being in sections 1 to 3 of the 1993 Act, had been "prescribed by law" and pursued the legitimate aim of promoting industry in Iceland.

The Court essentially observed that not only had the relevant national law been open-ended, failing to set out specific obligations for the FII, but that there had also been a lack of transparency and accountability, vis-à-vis non-members such as the applicant, as to the use of the revenues from the charge. The definition of the FII's role and duties – "to promote industry and industrial development in Iceland" – was very broad and unspecific. Furthermore, neither the 1993 Act nor any other instrument drawn to the Court's attention set out any specific obligations vis-à-vis non-members who financially contributed to the FII via the Industry Charge. Indeed, according to the FII's annual reports to the Ministry of Justice, no separate accounts were kept of whether the Federation's operations were financed by money derived from membership fees, capital income, or the Industry Charge. Nor was the Court convinced that the FII's reporting to the Ministry of Industry involved substantial and systematic supervision, the FII having unrestricted power to decide how the charge was allocated, and the Ministry of Industry not being able to interfere with that as long as it remained within the framework of the law. The Court was therefore not satisfied that there had been adequate safeguards against the FII favouring its members and placing the applicant and other non-members like him at a

disadvantage. In conclusion, the Icelandic authorities having failed to sufficiently justify the interference with the applicant's freedom of association, had not struck a proper balance between his right not to join an association on the one hand and the general interest in promoting and developing Icelandic industry on the other. Accordingly, there had been a violation of Article 11.

## 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 27 Apr. 2010: [here](#)
- Press release by the Registrar concerning the Chamber judgments issued on 29 Apr. 2010: [here](#)
- Press release by the Registrar concerning the Chamber judgments issued on 06 May. 2010: [here](#)

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

<u>State</u>	<u>Date</u>	<u>Case Title and Importance of the case</u>	<u>Conclusion</u>	<u>Key Words</u>	<u>Link to the case</u>
Poland	27 Apr. 2010	Bielaj (no. 43643/04) (Imp. 3)	No violation of Article 6 § 1 in conjunction with Article 6 § 3	No opportunity to examine witnesses at the hearing before the Lublin Regional Court did not infringe the rights of the defence to such an extent that it constituted a breach of paragraphs 1 and 3 (d) of Article 6 taken together	<a href="#">Link</a>
Poland	27 Apr. 2010	Friedensberg (no. 44025/08) (Imp. 3)	Violation of Article 8	Censorship of the applicant's correspondence during his detention on remand for robbery	<a href="#">Link</a>
Poland	27 Apr. 2010	Polanowski (no. 16381/05) (Imp. 3)	Violation of Article 3 (procedural)	Lack of an effective investigation into allegations of ill-treatment by the police during the applicant's arrest	<a href="#">Link</a>
Poland	27 Apr. 2010	Weber and Others (no. 23039/02) (Imp. 3)	Violation of Article 2 (procedural)	Lack of an effective and prompt investigation into the death of the applicants' relative	<a href="#">Link</a>
Slovakia	27 Apr. 2010	Hudáková and Others (no. 23083/05) (Imp. 2)	Violation of Article 6 § 1	Unfairness of civil proceedings regarding a property dispute on account of the failure to forward a copy of the plaintiffs' written observations to the applicants	<a href="#">Link</a>
Russia	29 Apr. 2010	Khristoforov (no. 11336/06) (Imp. 3)	Violation of Article 3 (substantive)	Conditions of the applicant's detention in the temporary detention facility at the Severo-Evensk District police station	<a href="#">Link</a>
Russia	29 Apr. 2010	Tugarinov (no. 20455/04) (Imp. 3)	Violation of Article 6 § 1 Violation of Article 13	Excessive length of criminal proceedings concerning disorderly conduct causing severe injury Lack of an effective remedy	<a href="#">Link</a>
Russia	29 Apr. 2010	Yuriy Yakovlev (no. 5453/08) (Imp. 2)	Violation of Article 5 § 3	Domestic authorities' failure to refer to concrete relevant facts or consider alternative "preventive measures" in extending the applicant's deprivation of liberty for a period of over two years	<a href="#">Link</a>
"the former Yugoslav Republic of Macedonia"	06 May 2010	Boris Stojanovski (no. 41916/04) (Imp. 3)	Violation of Article 6 § 1 (fairness)	No decision was ever taken on the merits concerning the applicant's compensation claim brought in the course of proceedings as the courts had advised him to bring a separate civil action for damages	<a href="#">Link</a>

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

			No violation of Article 6 § 1 (length)	The length of proceedings could not be considered "excessive"	
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### 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 NHRs 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.

<u>State</u>	<u>Date</u>	<u>Case Title</u>	<u>Conclusion</u>	<u>Key words</u>
Russia	29 Apr. 2010	Smetanko (no. 6239/04) <a href="#">link</a>	Violation of Article 6 § 1 Violation of Article 1 of Protocol No. 1	Domestic authorities' failure to enforce a final judgment in the applicant's favour in good time

### 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 [Frydender 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>
Bulgaria	06 May 2010	Kabakchievi (no. 8812/07)	<a href="#">Link</a>

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

No decisions were published on the Court's Website under the observation period (**from 5 to 18 April 2010**).

#### 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 3 May 2010 : [link](#)
- on 10 May 2010 : [link](#)

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

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

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

*The batch of 3 May 2010 concerns the following States: Bulgaria, Italy, Lithuania and Serbia.*

**No communicated cases were selected by the NHRS team concerning the batch published on 3 May 2010 on the Court's Website**

**Communicated cases published on 10 May 2010 on the Court's Website and selected by the NHRS Unit**

*The batch of 10 May 2010 concerns the following States (some cases are however not selected in the table below): Azerbaijan, Bosnia and Herzegovina, France, Italy, Montenegro, Russia, Serbia, Slovakia, Switzerland, the United Kingdom, and Turkey*

<u>State</u>	<u>Date of communication</u>	<u>Case Title</u>	<u>Key Words of questions submitted to the parties</u>
France	21 Apr. 2010	K.N. no 47129/09	Alleged violation of Art. 2 and 3 – Risk of being killed or ill-treated if deported to Iran following expulsion to Greece – Alleged violation of Art. 13 – Lack of an effective remedy against the extradition order
France	21 Apr. 2010	O.E. no 63239/09	Alleged violation of Art. 2 and 3 – Risk of being ill-treated if deported to Sudan following expulsion to Greece – Alleged violation of Art. 13 – Lack of an effective remedy against the extradition order
France	21 Apr. 2010	U.N. no 411/10	Alleged violation of Art. 3 – Risk of being ill-treated if deported to Afghanistan following expulsion to Greece – Alleged violation of Art. 13 – Lack of an effective remedy
Montenegro and Serbia	19 Apr. 2010	Šabanović no. 5995/06	Alleged violation of Art. 10 – Interference with the applicant's right to freedom of expression on account of his criminal conviction for stating his views during a press-conference about the quality of drinking water in the Herceg-Novi area
Russia	22 Apr. 2010	Chernukhin no 29993/06	Alleged violation of Art. 3 – Conditions of detention – Alleged violation of Art. 6 § 1 – Lack of access to a court to challenge the alleged conditions – Question as to whether the principle of equality of arms was respected – Alleged violation of Art. 13 – Lack of an effective remedy in respect of Art. 3 – Alleged violation of Art. 5 § 1 – Delay in enforcing the appeal court's decision ordering the applicant's release – Alleged violation of Art. 5 § 5 – Lack of an effective and enforceable right to compensation in relation to the above alleged violation
Russia	22 Apr. 2010	Ivanov no. 8892/05	Alleged violation of Art. 3 – Conditions of detention in the temporary detention facility of the Mytishchi Department of the Interior and in Volokolamsk IZ-50/2 detention facility – The Government was requested to provide more details as regards the detention conditions – Alleged violation of Art. 5 § 1 – Unlawful detention
Russia	22 Apr. 2010	Kakalov no 28652/06	Alleged violation of Art. 3 – Conditions of Astrakhan remand prison IZ-30/1 – Alleged violation of Art. 5 § 3 – Was the applicant's pre-trial detention based on "relevant and sufficient" reasons, as required by Article 5 § 3 of the Convention?
Russia	22 Apr. 2010	Samoylov no 57541/09	Alleged violation of Art. 3 – Lack of adequate medical assistance in remand centre – Alleged violation of Art. 5 § 1 c) – Unlawful arrest and detention – Alleged violation of Art. 5 § 3 – Unlawful continued detention and excessive length of detention
Switzerland	22 Apr. 2010	Bedat no 56925/08	Alleged violation of Art. 10 – Interference with the applicant's right to freedom of expression on account of his criminal conviction for publishing secret documents concerning an ongoing criminal investigation
Turkey	23 Apr. 2010	Boylan no 49229/06	Alleged violation of Art. 3 (substantive and procedural) – Ill-treatment in police custody – Lack of an effective investigation
Turkey	23 Apr. 2010	Deniz no 36716/07	Alleged violation of Art. 3 (substantive and procedural) – Ill-treatment during arrest and subsequent detention at Samsun police headquarters – Lack of an effective investigation – Alleged violation of Art. 13 – Lack of an effective remedy

Turkey	23 Apr. 2010	Yazici and Others no 45046/05	Alleged violation of Art. 3 (substantive and procedural) – Ill-treatment in police custody – Lack of an effective investigation
<b><u>Cases concerning disappearances in Chechnya</u></b>			
Russia	22 Apr. 2010	Gaysanova no 62235/09	Alleged violation of Art. 2 (substantive and procedural) – Disappearance and presumed death of the applicant's daughter following a special operation in Grozny – Lack of an effective investigation into the disappearance of the applicant's daughter – Alleged violation of Art. 3 – Mental suffering of the applicant due to the disappearance of her daughter – Alleged violation of Art. 5 § 1 – Unacknowledged detention – Was such a deprivation compatible with the guarantees of Article 5 §§ 1 - 3 and 5 of the Convention? – Alleged violation of Art. 13 in conjunction with Art. 2 – Lack of an effective remedy
Russia	22 Apr. 2010	Umarova and Others no 25654/08	Alleged violation of Art. 2 (substantive and procedural) – Disappearance and presumed death of the applicants' relative following a special operation in Achkhoy-Martan – Lack of an effective investigation into the disappearance of the applicants' relative – Alleged violation of Art. 3 – Mental suffering of the applicants due to the disappearance of their relative – Alleged violation of Art. 5 § 1 – Unacknowledged detention – If such detention took place, was it in compliance with the guarantees of Article 5 §§ 1–5 of the Convention? – Alleged violation of Art. 13 in conjunction with Art. 2 – Lack of an effective remedy

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

##### **Series of lectures (26.04.2010)**

In partnership with the French *Conseil d'Etat*, the European Court of Human Rights is launching a series of lectures on human rights protection. President Costa, in the company of Jean-Marc Sauvé, Vice-President of the *Conseil d'Etat*, opened the first lecture on 19 April 2010. [Programme](#), [Speech of President Costa](#) (in French only), [Speech of Jean-Marc Sauvé](#) (in French only)

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

### A. New information

The Council of Europe's Committee of Ministers will hold its next "human rights" meeting from 1 to 3 June 2010 (the 1086th meeting of the Ministers' deputies).

### B. General and consolidated information

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

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

For more information on the specific question of the execution of judgments including the Committee of Ministers' annual report for 2008 on its supervision of judgments, please refer to the Council of Europe's web site dedicated to the execution of judgments of the European Court of Human Rights:

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

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

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

#### **The European Council of Police Trade Unions (CESP) lodges a complaint against Portugal (30.04.2010)**

In a recent complaint, *European Council of Police Trade Unions v. Portugal* (No. 60/2010), the complainant organisation alleges that Portuguese legislation does not allow investigative personnel in the Criminal Police to receive compensation for overtime work, and that the Portuguese Government refuses to negotiate with national trade unions on this matter. [Complaint 60/2010](#); [Further information on collective complaints](#)

#### **European Roma Rights Centre lodges a complaint against Portugal (05.05.2010)**

A recent collective complaint, *European Roma Rights Centre (ERRC) v. Portugal* (no. 61/2010) addresses the housing situation of Roma in Portugal. The complainant organisation claims that the sum of housing-related injustices in Portugal (including problems of access to social housing, substandard quality of housing, lack of access to basic utilities, residential segregation of Romani communities and other systemic violations of the right to housing) is in violation of Articles 16 (the right of the family to social, legal and economic protection), 30 (right to protection against poverty and social exclusion) and 31 (right to housing), read alone or in conjunction with Article E (non-discrimination) of the Revised European Social Charter. [Complaint 61/2010](#); [Further information on collective complaints](#)

#### **Conference on housing rights in Barcelona (06.05.2010)**

<http://www.coe.int/t/dghl/monitoring/socialcharter/Images/BarcelonaHousingRights06052010.jpg>The European Federation of National Organisations working with the Homeless (FEANTSA) has organised a Conference in the framework of its Housing Rights Watch project, entitled "Housing Rights: from theory to practice", taking place on 6 May 2010. This conference provides an opportunity to discuss housing rights at European and national level. Mr Régis BRILLAT, Head of the Department of the ESC spoke of the important role of the ESC and the collective complaint mechanism. [Programme](#); [More information on the Housing Rights Watch network](#)

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

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

The next session of the European Committee of Social Rights will be held from 21-25 June 2010 in Strasbourg.

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

#### **Council of Europe anti-torture Committee visits the [Russian Federation](#) (26.04.2010)**

A delegation of the CPT recently carried out a one-week visit to the Russian Federation. The main purpose of the visit, which began on 13 April 2010, was to hold high-level talks with the Russian authorities on issues of common interest. After 19 visits to the Russian Federation, the CPT considered it important to review the state of its dialogue with the Russian authorities and to have an exchange of views on progress made towards implementation of the most important recommendations made by the Committee in the past. The aim of the visit was also to take stock of new developments in areas falling under the CPT's mandate, in particular the proposed reforms of the penitentiary system and the Ministry of Internal Affairs. In the course of the visit, the CPT's delegation met Vasilii

LIHACHEV and Alexander SMIRNOV, Deputy Ministers of Justice, Alexander YAKOVENKO, Deputy Minister of Foreign Affairs, Alexander REIMER, Director of the Federal Service for the Execution of Sentences, and representatives of the Ministry of Internal Affairs, the General Prosecutor's Office and the Investigation Committee. Further, the delegation held consultations with Vladimir LUKIN, Human Rights Commissioner of the Russian Federation, Ella PAMFILOVA, Chairperson of the Presidential Council for the Promotion of Civil Society Institutions and Human Rights, and Sergey KATYRIN, Vice-President of the Council of the Civic Chamber of the Russian Federation. In addition, the delegation met representatives of the Public Monitoring Commission for Moscow City and non-governmental organisations active in areas of concern to the CPT.

### **Council of Europe anti-torture Committee publishes 2009 report on [Italy](#) (28.04.2010)**

The CPT has published on 28 April the [report](#) on its ad hoc visit to Italy in July 2009, together with the [response of the Italian Government](#). Both documents have been made public at the request of the Italian authorities. The main purpose of the visit was to look into the new policy of the Italian authorities to intercept, at sea, migrants approaching Italy's Southern Mediterranean maritime border and to send them back to Libya or other non-European States (frequently referred to as the "push-back" policy). In this context, the delegation carrying out the visit focused on push-back operations that took place between May and the end of July 2009 and sought to examine the system of safeguards in place to ensure that no one is sent to a country where there are substantial grounds for believing that he/she would run a real risk of being subjected to torture or inhuman or degrading treatment or punishment. The delegation also examined the treatment afforded to migrants during the time that they were deprived of their liberty by the Italian authorities in the course of such operations.

In the report, the CPT expresses the view that, in its present form, Italy's policy of intercepting migrants at sea and obliging them to return to Libya or other non-European countries, violates the principle of non-refoulement. The Committee emphasises that Italy is bound by the principle of non-refoulement wherever it exercises its jurisdiction, which includes via its personnel and vessels engaged in border protection or rescue at sea, even when operating outside its territory. Moreover, all persons coming within Italy's jurisdiction should be afforded an appropriate opportunity and facilities to seek international protection. The information available to the CPT indicates that no such opportunity or facilities were afforded to the migrants intercepted at sea by the Italian authorities during the period examined. On the contrary, the persons who were pushed back to Libya in the operations carried out from May to July 2009 were denied the right to obtain an individual assessment of their case and effective access to the refugee protection system. According to the report, Libya cannot be considered a safe country in terms of human rights and refugee law; the situation of persons arrested and detained in Libya, including that of migrants – who are also exposed to being deported to other countries by Libya – indicates that the persons pushed back to Libya are at risk of ill-treatment.

In its response to the report, the Italian authorities refer to the above-mentioned operations as the "return of migrants, intercepted in international waters, upon request by Algeria and Libya" and as search and rescue operations. The authorities state that in the course of such operations, during the period examined by the CPT, no migrant, once transferred onto an Italian ship, expressed his/her intention to apply for asylum. Further, the authorities state that English and French speaking personnel are present aboard Italian vessels in order to provide adequate information to migrants in the event of an asylum request, and when such a request is articulated the migrant is brought to mainland Italy. The Italian Government further argues that Libya is bound by international conventions under which it must respect human rights, and that it has ratified the 1969 Organisation of the African Union Refugee Convention, under which it must protect all persons who are persecuted and who originate from "areas at risk". The Italian authorities also state that the UNHCR has an office in Libya which can respond to the protection needs of those persons who are returned.

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

#### **ECRI's Round table in Germany (06.05.2010)**

ECRI held its last round table on 12 May 2010, in Berlin. The main themes of this Round table were: 1) legislative and institutional framework on combating racial discrimination, 2) preventing and responding effectively to racism and 3) integration. [Programme](#) and [Explanatory note](#); [Opening speech: Mr Nils Muiznieks, Chair of ECRI](#); [ECRI's report on Germany: Ms Gudrun Holgersen, member of ECRI](#)

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



### **Estonia: receipt of the third cycle State Report (27.04.2010)**

Estonia submitted on 13 April 2010 its third [state report](#) in English and Estonian, pursuant to Article 25, paragraph 1, of the Framework Convention for the Protection of National Minorities. It is now up to the Advisory Committee to consider it and adopt an opinion intended for the Committee of Ministers.

### **Denmark: receipt of the third cycle State Report (28.04.2010)**

Denmark submitted on 30 March 2010 its third [state report](#) in English and Danish, pursuant to Article 25, paragraph 1, of the Framework Convention for the Protection of National Minorities. It is now up to the Advisory Committee to consider it and adopt an opinion intended for the Committee of Ministers.

### **Portugal: publication of the second cycle opinion (30.04.2010)**

The 2nd [Opinion](#) of the Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities (FCNM) on Portugal has been made public at the same time as the government [comments](#). The Advisory Committee adopted this Opinion in November 2009.

Summary of the Opinion: "Since the adoption of the first Opinion of the Advisory Committee in October 2006, the Portuguese authorities have taken further measures to implement the existing anti-discrimination legislation. However, the effectiveness of remedies against discrimination is hampered by the complexity of the system. The authorities have also continued to develop and implement programmes aimed at promoting tolerance, intercultural dialogue and at fighting discrimination and racially-motivated hatred, notably through the work of the Office of the High Commissioner for Immigration and Intercultural Dialogue. However, it is regrettable that no visit of the Advisory Committee to Portugal could be organised. Such a visit would have enabled the Advisory Committee to obtain further and more detailed information on the implementation of the Framework Convention in Portugal. Despite some positive projects at the local level, many persons belonging to the Roma minority continue to be confronted with discrimination in various areas of daily life and to face, in some instances, hostile societal attitudes. Their situation in the field of housing is of particular concern as many Roma live in segregated areas, sometimes in substandard conditions. The situation of those Roma who are compelled to move from place to place is a source of deep concern. Roma also face difficulties in the education system and instances of placement of Roma pupils in separate classes, including in some cases in temporary prefabricated classrooms, have been reported. This is also a source of deep concern. In general, notwithstanding the efforts made in recent years, further steps should be taken to promote and expand intercultural education at school. Resolute measures should be taken to enhance consultation and co-operation between the authorities and Roma representatives and improve participation of the latter in decision-making, in particular on issues of concern to them. The authorities should publicise and disseminate information about the Framework Convention for the Protection of National Minorities and the results of the monitoring process."

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

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### **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 inter-governmental work

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

**26 April 2010**

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

**27 April 2010**

**"The former Yugoslav Republic of Macedonia"** ratified Protocol No. 14bis to the Convention for the Protection of Human Rights and Fundamental Freedoms ([CETS No. 204](#)).

**28 April 2010**

**Montenegro** ratified the Council of Europe Convention on the avoidance of statelessness in relation to State succession ([CETS No. 200](#)), and Protocol amending the European Convention on the Suppression of Terrorism ([ETS No. 190](#)).

**Spain** ratified the Criminal Law Convention on Corruption ([ETS No. 173](#)).

**29 April 2010**

**Moldova** signed the Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, regarding supervisory authorities and trans-border data flows ([ETS No. 181](#)).

**3 May 2010**

**Azerbaijan** signed and ratified the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data ([ETS No. 108](#)).

**5 May 2010**

**Bosnia and Herzegovina** signed and accepted the European Convention on the Legal Protection of Services Based on, or Consisting of, Conditional Access ([ETS No. 178](#)).

**Sweden** signed and ratified the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority ([CETS No. 207](#)).

**Montenegro** signed the European Convention on Nationality ([ETS No. 166](#)).

**Slovakia** ratified Protocol No. 14bis to the Convention for the Protection of Human Rights and Fundamental Freedoms ([CETS No. 204](#)).

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

[CM/Res\(2010\)2E / 07 May 2010](#)

Resolution amending Resolution (96) 36 establishing the criteria for partial and enlarged agreements of the Council of Europe (Adopted by the Committee of Ministers on 5 May 2010 at the 1084th meeting of the Ministers' Deputies)

[CM/ResCMN\(2010\)6E / 07 May 2010](#)

Resolution on the implementation of the Framework Convention for the Protection of National Minorities by Moldova (Adopted by the Committee of Ministers on 5 May 2010 at the 1084th meeting of the Ministers' Deputies)

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

**Micheline Calmy-Rey: "A revitalization of the Council of Europe has begun" (26.04.2010)**

The Committee of Ministers' Chairperson welcomed, on 26 April, the Council of Europe reform started by its Secretary General Thorbjørn Jagland. She raised problems encountered in Belarus and Bosnia

and Herzegovina. She considers it vital that the Committee of Ministers send a clear and unanimous message to Bosnia and Herzegovina to align its Constitution and legislation with requirements of the European Convention on Human Rights without further delay. [Speech](#); [Video of the speech](#); [Written report by the Swiss Chair \(February to April 2010\)](#)

**Conference "Democracy and decentralisation - Strengthening democratic institutions through participation" (04.05.2010)**

The Conference, organised by the Swiss chairmanship of the Committee of Ministers, in partnership with the Venice Commission and the University of St. Gallen and its International Students' Committee, took place on 3 and 4 May in St. Gallen. The participants met to discuss ways of strengthening democratic institutions and fostering a citizen-based democracy. [File](#)

**Deputies' Meeting: strong support for Secretary General's proposals (07.05.2010)**

At their 1084th meeting on 5 May, the Ministers' Deputies welcomed the strategic approach of the Secretary General Thorbjørn Jagland, and supported his proposals regarding the prioritisation of the Programme of Activities and Budget for 2011. They will resume consideration of this item in June.

## Part V: The parliamentary work

### A. Resolutions and Recommendations of the Parliamentary Assembly of the Council of Europe (adopted by the Assembly during its Spring session between 26-30 April 2010)

Recommendation 1908: [Lobbying in a democratic society \(European Code of conduct on lobbying\)](#)

Resolution 1721: [Wealth, welfare and well-being: how to reconcile them in a changing Europe?](#)

Resolution 1720: [Investing in family cohesion as a development factor in times of crisis](#)

Recommendation 1912: [Investing in family cohesion as a development factor in times of crisis](#)

Resolution 1718: [The impact of the global economic crisis on migration in Europe](#)

Recommendation 1910: [The impact of the global economic crisis on migration in Europe](#)

Resolution 1717: [The social impact of the economic crisis](#)

Resolution 1716: [Associating women in the prevention and the solution of unsolved conflicts in Europe](#)

Recommendation 1909: [Associating women in the prevention and the solution of unsolved conflicts in Europe](#)

Resolution 1724: [Honouring of obligations and commitments by Montenegro](#)

Resolution 1723: [Commemorating the victims of the Great Famine \(Holodomor\) in the former USSR](#)

Recommendation 1913: [The necessity to take additional international legal steps to deal with sea piracy](#)

Resolution 1722: [Piracy – a crime and a challenge for democracies](#)

Resolution 1719: [Women and the economic and financial crisis](#)

Recommendation 1911: [Women and the economic and financial crisis](#)

Resolution 1728: [Discrimination on the basis of sexual orientation and gender identity](#)

Recommendation 1915: [Discrimination on the basis of sexual orientation and gender identity](#)

Resolution 1729: [The protection of “whistle-blowers”](#)

Recommendation 1916: [The protection of “whistle-blowers”](#)

Resolution 1727: [Situation in Belarus: recent developments](#)

Resolution 1726: [Effective implementation of the European Convention on Human Rights: the Interlaken process](#)

Resolution 1725: [The urgent need for a constitutional reform in Bosnia and Herzegovina](#)

Recommendation 1914: [The urgent need for a constitutional reform in Bosnia and Herzegovina](#)

Resolution 1731: [Euro-Mediterranean region: call for a Council of Europe strategy](#)

Recommendation 1919: [Euro-Mediterranean region: call for a Council of Europe strategy](#)

Recommendation 1917: [Migrants and refugees: a continuing challenge for the Council of Europe](#)

Recommendation 1918: [Biodiversity and climate change](#)

Resolution 1730: [Post-monitoring dialogue with Bulgaria](#)

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

### **➤ Countries**

#### **PACE elects its Vice-President with respect to Ukraine (26.04.2010)**

PACE elected Ivan Popescu (Ukraine, SOC) Vice-President of the Assembly with respect to Ukraine on 26 April.

#### **PACE elects Ganna Yudkivska judge of the European Court of Human Rights with respect to Ukraine (27.04.2010)**

PACE, meeting in plenary session in Strasbourg, elected on 27 April Ganna Yudkivska as judge to the European Court of Human Rights with respect to Ukraine. Mrs Yudkivska, having obtained an absolute majority of votes cast, is elected a judge of the European Court of Human Rights for a term of office of six years starting as of the date of taking up office and in any event not later than three months as from 27 April 2010. When Protocol 14 of the European Convention of Human Rights comes into force on 1 June 2010, this term of office will be extended ipso jure to a period of nine years.

#### **Albania: PACE Bureau calls for resumption of political dialogue in Parliament (26.04.2010)**

The Bureau of PACE, meeting on 26 April in Strasbourg, adopted the following declaration: "The Bureau of PACE is concerned about the continuing political crisis in Albania following the June 2009 parliamentary elections, notwithstanding the partial return of opposition Socialist MPs to the Albanian Parliament after the visit of PACE's Presidential Committee to Tirana in February this year.

On 25 February, MPs of the Socialist Party entered the Parliament and took their oath after their six-month boycott of the Parliament's work, making their further presence in the Parliament conditional on the approval of two draft acts they had prepared which they claimed were designed to render the June 2009 elections fully transparent. On 19 March, Parliament approved a draft decision establishing a committee of inquiry into the June 2009 parliamentary elections.

In the absence of an agreement between the two main parties on the mandate of this committee of inquiry, Socialist Party MPs refused to join the committee. Its sitting was put on hold and it did not convene. Given this deadlock, and the fact that demonstrations of both opposition and governing parties are due to take place on 30 April and 1 May 2010, the Bureau of the Assembly calls on all political leaders to ensure a resumption of the political dialogue within the Parliament and garner the support of the population for this democratic process. All political forces should take part actively, and on a permanent basis, in the work of the Parliament. The democratic functioning of the state's institutions should resume without delay, so as to tackle the urgent reforms needed for the European integration of the country. Furthermore, the Bureau reiterates the possibility, already mentioned during the visit of the Presidential Committee, for the Constitutional Court to request the opinion of the Venice Commission concerning the scope of the committee of inquiry's investigation, in particular regarding the issue of the reopening of ballot boxes."

#### **War between Georgia and Russia: 'everyone has lost', dialogue now the only way forward (28.04.2010)**

"There are no winners and losers in this conflict: everyone has lost," said Ambassador Heidi Tagliavini, summarising her fact-finding report on the 2008 conflict in Georgia during a current affairs debate. "All parties to the conflict failed, there were terrible violations of humanitarian and human rights law, and both the threat and use of force have returned to European politics." Dialogue at all levels was the only way forward, she said. Co-rapporteur on the conflict Mátyás Eörsi (Hungary, ALDE) agreed that Georgia, Russia and the separatist regions of Abkhazia and South Ossetia were all losers from the conflict, but declared: "Europe can never approve a new Yalta." The other co-rapporteur on the conflict David Wilshire (United Kingdom, EDG) said Europe risked finding itself with yet another frozen conflict. "PACE can only offer one thing: dialogue – dialogue to start confidence-building, dialogue to build trust," he said. [Mrs Tagliavini's report](#)

#### **Disregard by Slovakia of binding interim measures ordered by the Strasbourg Court 'unacceptable' (29.04.2010)**

The Chairpersons of two committees of PACE have expressed their shock and concern at the decision taken by the Slovak authorities to extradite Mustapha Labsi to Algeria on 19 April 2010, ignoring a binding interim measure ordered by the European Court of Human Rights that this applicant

should not be extradited to Algeria. "It is disgraceful to have extradited Mustapha Labsi to Algeria; this is a case in which there exists an imminent risk of irreparable damage to the applicant," said Christos Pourgourides (Cyprus, EPP/CD), Chair of PACE's Committee on Legal Affairs and Human Rights, and John Greenway (United Kingdom, EDG), Chair of the Committee on Migration, Refugees and Population. "Such action directly undermines the authority of the Strasbourg Court at a time when all member States have just reiterated their attachment to the Court. This is an unacceptable disregard of European Convention on Human Rights requirements," they added.

[PACE Resolution 1571 \(2007\)](#); [PACE Recommendation 1809 \(2007\)](#); [Committee of Ministers Resolution ResDH\(2006\)45](#); [Motion by Mrs Jonker and others \(PDF\)](#)

### **Implementation of Court judgments in Moldova: good intentions not enough (05.05.2010)**

Christos Pourgourides (Cyprus, EPP/CD), rapporteur of PACE on the implementation of judgments of the European Court of Human Rights, has ended a two-day visit to Chisinau (3-4 May 2010) with a call to the Moldovan authorities to increase their efforts to solve several structural problems revealed in these judgments. "Good intentions to rectify the various deficiencies pointed to by the Court are just not enough," said Mr Pourgourides, who chairs the Assembly's Committee on Legal Affairs and Human Rights. He also called on the authorities to ensure a greater transparency and involvement of civil society, and to make greater use of the Council of Europe's legal expertise, in particular that of the Venice Commission. The rapporteur also invited the Moldovan Parliament to monitor the implementation of judgments of the Court and was assured that it will continue to do so.

Other topics discussed included the problems of abusive use of force by police officers, lack of effective investigation into such abuses, poor conditions in detention facilities and non-enforcement of domestic final decisions. During the visit, Mr Pourgourides met the Speaker of Parliament and acting President, the Interior Minister and the Deputy Minister of Foreign Affairs and European Integration, the Vice-President of the Supreme Court and the Deputy Prosecutor General, as well as a number of other officials. This is the sixth in a series of visits aimed at applying parliamentary pressure on states where delays or difficulties in implementing the European Court's judgments have arisen. The rapporteur has previously undertaken visits to Bulgaria, Greece, Italy, Russia and Ukraine, and will later travel to Romania and Turkey.

[Progress report \(PDF\)](#); [Addendum to the progress report \(PDF\)](#)

### **Romania should do more to bring its laws and practices into line with the European Convention on Human Rights (07.05.2010)**

Christos Pourgourides (Cyprus, EPP/CD), rapporteur of PACE on the implementation of judgments of the European Court of Human Rights, has ended a two-day visit to Bucharest (5-6 May 2010) with a call to the Romanian authorities to increase their efforts to solve several structural problems revealed in these judgments. "Many cases brought before the Court against Romania show the need for legislative and administrative measures to be carefully examined at domestic level to see if they are compatible with the Convention," said Mr Pourgourides, who chairs the Assembly's Committee on Legal Affairs and Human Rights. He also called on the legislature, executive and judiciary to increase the confidence of the Romanian population in their authorities, and to take steps in order to reduce the number of applications lodged before the Court. The rapporteur also invited the Romanian Parliament to improve the monitoring of the implementation of judgments of the Court, and was assured that it will continue to do so.

Other topics discussed included the problems of non-enforcement of domestic final decisions, including those concerning restitution of properties nationalised under the communist regime, or compensation for their loss, and the excessive length of domestic judicial proceedings.

During the visit, Mr Pourgourides met State Secretaries in the Ministry of Justice and the Ministry of the Interior and Administration, judges of the Supreme Court, the President of the High Council of Judges as well as a number of other officials.

[Progress report \(PDF\)](#); [Addendum to the progress report \(PDF\)](#)

#### ➤ *Themes*

### **Moroccan Parliament first candidate for 'partner for democracy' status with PACE (27.04.2010)**

The Parliament of Morocco is the first one to apply officially for the status of "partner for democracy". This status, recently established by the PACE, allows parliamentary delegations from the countries of the Mediterranean's southern shore, the Middle East and central Asia to take part in the Assembly's activities. In return, parliaments seeking "partner for democracy" status must declare their commitment to the Council of Europe's values, undertake to hold free and fair elections, work towards abolishing



the death penalty and encourage balanced participation of women and men in political life. A Moroccan parliamentary delegation is now in Strasbourg for the Assembly's plenary session and has submitted its application to the PACE President. This will be considered by the Bureau of the Assembly on Friday. The procedure then requires the Bureau to transmit the application to the Political Affairs Committee for a report.

### **Council of Europe's contribution to the Euro-Mediterranean partnership should be strengthened (30.04.2010)**

On the basis of a report by Denis Badré (France, ALDE), which takes stock of existing Euro-Mediterranean relations at both European Union and Council of Europe level, the Assembly takes the view that the Council should strengthen its contribution to the Euro-Mediterranean partnership process. It is not for the Organisation to compete with the actions of the Union for the Mediterranean by setting up parallel structures, but to complement it by adding the dimension relating to democracy, human rights and the rule of law, and the transversal issue of gender equality. At the same time, PACE recommends that the Council of Europe intensify its bilateral co-operation in its spheres of activity with any Mediterranean countries which so desire.

PACE also wishes to contribute to the development of the parliamentary dimension of Euro-Mediterranean relations. In this context, it strongly encourages the national parliaments of the non-member states of the Council of Europe taking part in the Union for the Mediterranean to apply for the new "partner for democracy" status which it has created, and which opens up new prospects for dialogue and co-operation. The Moroccan Parliament is the first to request this status.

### **Thorbjørn Jagland: Greater coherence, cohesion and consolidation through reform (27.04.2010)**

Reforming the Council of Europe would make it "more politically relevant and influential," Secretary General Thorbjørn Jagland has declared. The organisation would focus "on what we can do best, in areas where we can make a real impact" he told the Parliamentary Assembly on 27 April. The Secretary General urged greater coordination and cooperation on all parts of the Organisation as vital to ensuring that new dividing lines in Europe did not emerge. A failure to reform could impede the "main goal" of the European Union's accession to the European Convention for the Protection of Human Rights. This could lead to the development of separate case law and standards in Europe.  
[Video of the speech](#)

### **PACE suspends its high-level contacts with the Belarusian Government and Parliament (29.04.2010)**

PACE decided on 29 April to suspend its activities involving high-level contact with the Belarusian Parliament and/or the governmental authorities, having noted a "lack of progress" towards Council of Europe standards and a "lack of political will" on the part of the authorities to adhere to the Organisation's values. During a debate held under urgent procedure, in which Alexander Yushkevich, the President of the Standing Committee on Human Rights of the Belarusian Chamber of Representatives, and Anatoly Lebedko, the President of the Civic Union Party, took part, the parliamentarians regretted recent developments in the country, including the executions of Andrei Zhuk and Vasily Yuzepchuk, the situation of the Polish minority and the absence of international observers during the local elections, as well as the authorities' refusal to permit the establishment of the Council of Europe's East European School of Political Studies.

The Assembly recalled that it was still prepared to engage in a progressive dialogue with the Belarusian authorities "in response to positive developments", while reiterating its conviction that "dialogue can be sustained only through Belarus' continuous progress towards Council of Europe standards". The adopted text, which is based on a report by Sinikka Hurskainen (Finland, SOC), recalls the proposal set out last year by PACE to lift the suspension of the Belarusian Parliament's special guest status provided that a moratorium is decreed on enforcement of the death penalty.  
[Adopted text](#); [Report](#)

### **Sergey Lavrov: a common future for the US-Europe-Russia triangle (29.04.2010)**

"Equal, indivisible and assured security of all states should turn from a catchy slogan to reality," Sergey Lavrov, told Parliamentary Assembly on 29 April. The Russian Federation's Foreign Affairs Minister warned against the "recurrence of nationalist attitudes," as he put forward the "principle of

indivisible security" and outlined his vision for the common future of the "US-Europe-Russia triangle." He said "common survival" would require the "pooling of forces, resources and comparative advantages." The minister also endorsed the Council of Europe's reform process, describing the organisation as a "humanitarian pillar for the new European security architecture" with an "intrinsic" role in resolving European concerns. [Speech of Mr Lavrov](#)

**Press Freedom Day: journalists and the media are a vital cornerstone of democracy (30.04.2010)**

"International Press Freedom Day reminds us that journalists and the media are a vital cornerstone of democracy," Andrew McIntosh, the standing rapporteur on media freedom of PACE, said on 30 April. "It is therefore an alarming sign that at least 20 journalists have been killed in Europe since 2007, several of whom had worked on shedding light on corruption and organised crime," he added. "As the Parliamentary Assembly stated in its Recommendation 1897 (2010), Europe must do more to ensure that freedom of expression and information in the media are fully respected in accordance with Article 10 of the European Convention on Human Rights. It is not enough to have the European Court of Human Rights judge past violations of media freedom. We must seek to prevent violations."

"This requires new approaches to reporting such violations and ensuring adequate political evaluation at European and national levels. I invite member states, media and journalists' organisations to join the Assembly in this common effort," Mr McIntosh concluded.

**PACE President expresses appreciation for efforts of the Swiss Presidency (07.05.2010)**

PACE President Mevlüt Çavusoglu has expressed his appreciation for the achievements of Switzerland's six-month Presidency of the Council of Europe's Committee of Ministers, which is due to end on 11 May. Meeting Erika Forster-Vannini, the Speaker of Switzerland's Council of States – the upper house of the Swiss Parliament – and an accompanying delegation yesterday, the President praised in particular the Presidency's work on the Interlaken Process, which aims to streamline the work of the European Court of Human Rights. Maximilian Reimann (Switzerland, ALDE) and Liliane Maury Pasquier (Switzerland, SOC) from the Swiss delegation to the Assembly were also present.



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

### **A. Country work**

#### **Commissioner in Tbilisi and Tskhinvali: detainees released (03.05.2010)**

The process of resolving the humanitarian and human rights issues has restarted, said Commissioner Hammarberg after a visit to Tskhinvali on 2 May. Three detained Georgians were released and it was pledged that another three would be freed within the near future. Following an initiative by the Commissioner, the Georgian authorities had already released on 30 March six detainees. While welcoming these steps, the Commissioner underlined that there are still people who should be released from custody, cases of missing persons whose fate must be clarified, and families who are suffering because their loved ones are detained or have disappeared. It is therefore absolutely crucial for the sides to follow through and build on the positive steps they have already taken in response to the Commissioner's efforts.

### **B. Thematic work**

#### **Time to give smacking a beating - children deserve total ban against adults hitting them (28.04.2010)**

"Thirty-one years ago Sweden banned corporal punishment, and became the first country to forbid all forms of violence against children, including at home. Since then a majority of the 47 Council of Europe member States have followed suit and committed themselves to putting an end to all corporal punishment. Yet, after years of discussion, legislation, education on the subject and research showing the damaging effects of corporal punishment, it is still seen in many places as perfectly normal to hit a child. The idea of punishing children this way reflects an old fear of losing control over the child. I have often been asked how one is supposed to make children obey if one can not hit them. The answer is: with words." [Read the Commissioner's comment](#)

### **C. Miscellaneous**

#### [The Commissioner - CommDH/Speech\(2010\)1 / 4 mai 2010](#)

Speech by Thomas Hammarberg, Council of Europe Commissioner for Human Rights, on the occasion of the presentation of the Annual activity report 2009 to the Parliamentary Assembly on 28 April 2010

## **Part VII : Activities of the Peer-to-Peer Network**

### **(under the auspices of the NHRS Unit of the Directorate General of Human Rights and Legal Affairs)**

**European NPM Project: 1<sup>st</sup> NPM On-site Visit and Exchange of Experiences: “Organising, carrying out and reporting on preventive visits to various types of places of deprivation of liberty: an exchange of experiences between the National Preventive Mechanism against torture (NPM) of Poland and experts from the SPT, former members of the CPT and the APT”, Warsaw, Poland, 4 – 7 May 2010**

This first On-site Exchange of Experiences was organised by the NHRS Unit, European NPM Project team and the NPM of Poland – the Office of the Human Rights Defender of Poland – as part of the so-called “European NPM Project” and funded by a joint European Commission – Council of Europe project: “the Peer-to-Peer II Project” and by the Human Rights Trust Fund<sup>\*</sup>. The Association for the Prevention of Torture (APT, Geneva) helped as the Council of Europe’s implementing partner.

The overall aim of the four-day On-site Exchange was to foster an exchange of experiences and cooperation between members and former members of the SPT, CPT and NPM in order to build and enhance capacity to carry out detention monitoring for the prevention of torture. The specific objectives were: Analyze the strengths, weaknesses, opportunities and challenges of the NPM, as regards its mandate and functioning; Exchange on the practice of preventive monitoring, particularly with regards the methodology of conducting visits and following-up on monitoring visits; Prepare a preventive monitoring Visiting Exercise to three different places of deprivation of liberty in Poland; Carry out preventive monitoring visits; Debrief jointly on the findings and methodology of the visiting exercise.

The exchange of experiences in Warsaw involved 20 participants from the NPM of Poland, including the Acting Human Rights Defender Poland and the Deputy Human Rights Defender Poland, on the one side, and on the other side members or former members of the SPT, the CPT and the APT. Two members of the NHRS Unit served as facilitators.

On the first day of the meeting the designation, composition, functioning and general working methods of the Polish NPM in the light of the OPCAT<sup>†</sup> prescriptions were examined. The second day served to prepare a common on-site visiting exercise to three different types of places of deprivation of liberty for which participants split in small groups on the third day. On the fourth day the international experts presented their observations on the working methods of the national experts and these observations were discussed in plenary.

A confidential debriefing paper for the benefit of all participants in the exchange is under preparation.

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<sup>\*</sup> The Human Rights Trust Fund (HRTF) was established in March 2008 as an agreement between the Ministry of Foreign Affairs of Norway as founding contributor, the Council of Europe and the Council of Europe Development Bank. Germany and the Netherlands have joined in as contributors.

<sup>†</sup> The Optional Protocol to the UN Convention Against Torture (OPCAT) obliges states Parties to set up an NPM within one year of ratification.