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and the **Office of the Commissioner for Human Rights**

The selection of the information contained on this Issue and deemed relevant to NHRs is made under the joint responsibility of the NHRs Unit and the Office of the Commissioner for Human Rights

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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 (NHRU Unit) and the Office of the Commissioner for Human Rights carefully select and try to present in a user-friendly manner. The information is sent to the Contact Persons in the NHRUs who are kindly asked to dispatch it within their offices.

Each issue covers two weeks and is sent by the NHRU 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 the limited means. 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 NHRU Unit and the Office of the Commissioner for Human Rights. It is based on what is deemed relevant to the work of the NHRUs. 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.

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Auswärtiges Amt

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 considered 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 NHR Unit and the Office of the Commissioner for Human Rights, 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.

- **Prohibition of inhuman or degrading treatment and lack of effective investigation**

Olteanu v. Romania (no. 71090/01) (Importance 2) – 14 April 2009 – Violation of Article 3 (prohibition of inhuman or degrading treatment) - Ill-treatment by police officers during the applicant's arrest - Lack of effective investigation – Failure to provide the applicant with an adequate medical treatment

Relying on Article 3, the applicant complained that he had been subjected to ill-treatment by the police at the time of his arrest and that thereafter he had not been given appropriate medical treatment, despite having received a bullet wound after being shot by a police officer.

- The injuries inflicted on the applicant at the time of his arrest

It was not disputed that the bullet wound had occurred during the arrest. However, there was no evidence of violent conduct on Mr Olteanu's part to explain the degree of force used. Moreover, he was charged on 17 May 1997 with abuse of the arresting officers not with physical resistance to them.

The investigation into the police officers' conduct had been opened only three months after the applicant's complaint, and the composition of the military prosecutor's office could objectively give rise to doubts about its impartiality, as it was composed of serving officers subject to the principle of hierarchical subordination. Consequently, the Court considered that the Romanian Government had not convincingly explained the degree of force used, which had been excessive and unjustified in the

circumstances. The considerable suffering the applicant had undergone amounted to treatment contrary to Article 3, especially as his son had witnessed the events.

The Court concluded that there had been a violation of Article 3 on account of the injuries inflicted on Mr Olteanu and the lack of an effective investigation.

- Medical assistance after the arrest

The applicant had been taken back to the police station after undergoing major surgery so that he could be questioned about an offence of no great seriousness. But his state of health required him to be under close supervision, as evidenced by the need to administer antibiotics the very next morning. The Court did not see the urgency of transferring the applicant to the police station. It concluded that there had been a failure to provide appropriate treatment, in breach of Article 3.

Mecail Özel v. Turkey (no. 16816/03) (Importance 2) – 14 April 2009 – Violations of Article 3 (treatment and investigation) – Ill-treatment in police custody

In February 2000, when caught up in a demonstration, the applicant was arrested and taken into custody by police officers ordered to disperse the demonstrators. Relying in particular on Article 3, he complained that he had been assaulted after his arrest and while he was in police custody and that there had been no investigation into his allegations. The Court held unanimously that there had been two violations of Article 3, in that the Turkish Government had not provided any plausible explanation of bruising on Mr Özel's person and that an effective criminal investigation into the altercation complained of had been prevented by the provincial governor.

Gubkin v. Russia (no. 36941/02) (Importance 2) – 23 April 2009, - Violation of Article 3 – Conditions of detention in facility IZ-61/1 of Rostov-on-Don - Violation of Article 5 §§ 1, 3 and 4 - Unlawfulness and excessive length of detention - Violation of Article 6 § 1 (length) – Two violations of Article 13 – Lack of effective remedy

Relying on Articles 3, 5, 6 and 13, the applicant complained about the inhuman conditions of his detention and a lack of effective remedies in that connection, the unlawfulness and excessive length of detention, deficiencies in its judicial review, excessive length of the criminal proceedings in general and a lack of effective domestic remedies in this respect. The Court held unanimously that there had been violations of Articles 3 and 13 on account of the conditions of Mr Gubkin's detention in detention facility IZ-61/1 of Rostov-on-Don and on account of the lack of an effective remedy for him to complain about the conditions of his detention. The Court further held that there had been a violation of Article 5 § 1 on account of his detention from 12 February to 1 July 2002 and no violation of this provision on account of his detention from 1 July 2002 to 17 May 2004. The Court held that there had been a violation of Article 5 §§ 3 and 4 on account of the excessive length – four years and eight months – of Mr Gubkin's detention pending trial and of the lack of effective judicial review of his complaints. Lastly, the Court found violations of Articles 6 § 1 and 13 on account of the excessively long criminal proceedings against the applicant, almost six years, and of the fact that he could not have challenged it in the domestic legal system.

Popov and Vorobyev v. Russia (no. 1606/02) (Importance 2) – 23 April 2009 - Violation of Article 3 (treatment) – Conditions of detention in Vladivostok pre-trial detention centre - Violation of Article 5 §§ 3 and 4 – Length and possibility to challenge the lawfulness of the pre-trial detention

The applicants, former police officers, were arrested in January 2000 with regard to firearms offences. They were ultimately given suspended sentences and released in March 2001. Relying on Article 3, the applicants complained about the conditions of their detention. Further relying on Article 5 §§ 3 and 4 (right to liberty and security), they also complained about the excessive length of their pre-trial detention and that they had not been able to obtain judicial review of its lawfulness. The Court held unanimously that there had been a violation of Article 3 on account of the conditions of the applicants' detention in Vladivostok pre-trial detention centre. Further it found a violation of Article 5 §§ 3 and 4 regarding the length – 13 months and 17 days – of their detention and regarding the lack of response from Russian courts to the applicants' applications.

- **Medical care in detention – Lawfulness of detention – Telephone tapping**

Raducu v. Romania (no. 70787/01) (Importance 2) – 21 April 2009 – No violation of Article 2 – Lack of clear connection between the lack of care during pre-trial detention and the applicant’s death) - Violation of Article 5 § 1 – Unlawful detention of the applicant following a decision to release him – Lack of remedy to review the lawfulness of detention speedily - Violation of Article 8 – Lack of guarantees governing telephone tapping in Romanian law

The applicant died on 27 December 2000 and his widow decided to pursue the application before the Court. On 2 August 2000 the applicant was reported by a third party for allegedly soliciting a bribe from him; on the same day the authorities authorised the monitoring of his telephone calls. Caught in the act on 3 August, the applicant was arrested and charged with trading in influence, and remanded in custody for 30 days. On 14 August he applied to be released from custody. The County Court, which did not register his application until 24 August, declared on 25 August that it was unsubstantiated (that ruling was upheld on appeal). On 19 October the Court of Appeal ordered his immediate release. Mr Raducu was released about a day late, however, because the release order was sent to the wrong prison.

On 4 August the applicant’s wife had informed the authorities of the gravity of her husband’s state of health (he had been suffering for a number of years from diabetes, myocardial ischaemia, high blood pressure, obesity and Parkinson’s disease). Apparently, however, the applicant received no treatment between 3 and 16 August. On 16 August he was taken ill and admitted to hospital; the next day his condition stabilised. Mr Raducu was then kept in the prison hospital until 20 October, where he was diagnosed with diabetic retinopathy, a disease which requires strict observance of the patient’s treatment for diabetes. He also received treatment for two other diseases contracted while in detention. When he was released on 20 October 2000, his general condition was stable.

On 27 December, having been admitted to hospital again, the applicant died of a heart attack brought on by an acute pulmonary oedema, myocardial ischaemia, diabetes and obesity.

The Court found that no document submitted by the authorities indicated that the applicant had received proper treatment from 3 to 16 August. On the other hand, he had subsequently received constant care and his analyses showed that his condition was stable when he was released. Lastly, as the applicant had died over two months after his release, the lack of treatment in the early part of his pre-trial detention could not be considered as the direct and immediate cause of his death. The Court held that there had been no violation of Article 2.

The Court considered that the applicant’s detention from 19 to 20 October could not be attributed to the delay generally inevitable in the enforcement of a release order. The Government had failed to justify the mistake in the address to which the order was sent, which had not been rectified until 12 hours later, whereas it was the authorities’ duty to show special diligence in identifying the applicant’s place of detention. The Court found that there had been a violation of Article 5 § 1.

The Court found that two levels of jurisdiction had taken 30 days: it had taken 10 days for the court to register the complaint lodged with the prosecuting authorities - whereas domestic law provided for a 24-hour deadline - and the Court of Appeal had not given judgment until 16 days after the appeal. The authorities presented no relevant justification for these delays. The Court accordingly held that there had been a violation of Article 5 § 4.

The Court once again noted the lack of guarantees in Romanian law concerning the monitoring of telephone calls at the material time, which was incompatible with the minimum degree of protection in a democratic society and which the Romanian Government had failed to justify. It found that there had been a violation of Article 8. See with that respect the judgments *Calmanovici v. Romania* (1 July 2008) or *Dumitru Popescu v. Romania* (26 April 2007).

- **Right to liberty and security**

Stephens v. Malta (No 1) (no. 11956/07) (Importance 1) – 21 April 2009 – Violation of Article 5§1 (right to liberty and security) – Unlawful detention – No violation of Article 5§4 (right to have the lawfulness of detention decided speedily by a court) – The applicant could lodge an unlimited number of applications for release while in detention

The case concerned the applicant’s complaint about him having been detained in Spain on the basis of an unlawful order issued in Malta, and about not being able to appeal against judicial decisions concerning the lawfulness of his detention.

On 5 August 2004 Mr. Stephens was arrested in Spain following a request for his extradition by the Maltese authorities. The arrest warrant was issued on the basis of the suspicion that he had conspired with others in Spain to transport drugs to Malta. While detained in Spain, in October 2004, Mr.

Stephens brought proceedings in Malta, before the Court of Magistrates and before the Civil Court (constitutional jurisdiction), respectively. He claimed that his arrest warrant had been unlawful, because the court issuing it had not been competent to do so, that Malta did not have jurisdiction to try him, and that he could not appeal against a court decision refusing his release. The Court of Magistrates dismissed his claims. The Civil Court upheld them partly finding, in a decision of 12 November 2004, that the arrest order was unlawful as the court which had issued it was not competent to do so, ordered that compensation be paid to Mr Stephens and that he be released. At the same time the Civil Court held that, in accordance with domestic law, Malta had jurisdiction to try him even if the crime had been committed outside of its borders.

On the same day the Civil Court delivered its judgment, Mr Stephens appealed to the Maltese Constitutional Court claiming that his arrest in Spain had been unlawful as Malta lacked jurisdiction to try him. He also complained that the compensation he received was too low given the time he had spent in detention. On the same day, the Spanish Government was informed by the Maltese authorities that the arrest warrant had been declared unlawful, but that the decision was not final until the appeal procedure – yet to be lodged – was completed. Allegedly, Mr Stephens' lawyer applied for the applicant's release, but on 16 November 2004, a Spanish court decided against it.

On 23 November 2004, the Maltese Constitutional Court delivered its judgment in respect of Mr Stephens' complaints. It annulled the Civil Court's judgment ordering his release, as it found that where a person was not detained in Malta, his release could not be ordered by Maltese courts. It held it was not competent to decide on the question of jurisdiction as that was a matter for the criminal courts. It upheld, however, the first instance court's finding that the arrest warrant was unlawful, and thus in violation of Article 5§1 of the Convention, as the court which had issued it had not been competent to do so. Lastly, the Constitutional Court confirmed the compensation granted to Mr Stephens by the Civil Court.

Mr Stephens was released on bail on 22 November 2004, and rearrested by the Spanish authorities on 1 December 2004 on the basis of a new request by Malta but as a continuation of the previous extradition proceedings. On 9 September 2005, he was extradited to Malta to stand trial. The domestic courts held that they had jurisdiction over the facts for which Mr Stephens was accused and found him guilty as charged. He has been in prison since January 2008.

Jurisdiction of Malta

The Court considered necessary to examine the question of whether Malta had jurisdiction in respect of the complaints under Article 5. It found that Mr Stephens had been detained as a direct result of the arrest order issued by the Maltese authorities. The Court held accordingly that it had jurisdiction to examine the case against Malta, given that Mr Stephens' detention had been instigated by Malta on the basis of its domestic law, and had been effected by Spain only as a result of its international agreements with Malta. Therefore, the responsibility for Mr Stephens' detention had to be attributed to Malta irrespective of the fact that it had been executed in Spain.

Article 5§1 (detention between 5 August and 12 November 2004)

The Court held that Mr Stephens' complaint in respect of that period was inadmissible. On the one hand, he had no longer the status of a victim in relation to this part of his complaint given that the national courts had already found a violation of Article 5§1 as the arrest order had been issued by a court not competent to do so. On the other hand, the offence of which Mr Stephens had been accused had been prosecutable under Maltese law, and the Maltese courts' interpretation of the facts had been consistent with well established domestic practice.

Article 5§1 (detention between 12 November 2004 and 22 November 2004, following the Civil Court's judgment)

As regards the responsibility of Malta, the Court held that Malta had also been responsible for the further ten days detention, following the Maltese Civil Court's judgment. The same reasons, on the basis of which the Maltese courts had found a violation of Article 5§1 in respect of the initial period of detention, had been applicable in respect of the additional ten days detention.

Accordingly, there had been a violation of Article 5§1 (c) in respect of this period, as Mr Stephens had continued to be detained despite that his arrest order had been declared unlawful as it had been issued by a court not competent to do so.

Article 5§4

The Court held that there had been no violation of this Article in particular because Mr Stephens could have challenged his detention before the courts an unlimited number of times, even if he could not have appealed against a decision refusing his release.

Article 7

The Court dismissed Mr Stephens' complaint under this Article recalling that it applied only in respect of prosecution, conviction and punishment, and was, therefore, not applicable to Mr Stephens' case, since the instant case dealt with pre-trial detention (see with that respect the decisions of the Commission *Osthoff v. Luxembourg*, *Ferrari Bravo v. Italy* or *Lawless v. Ireland*)

Judge Bratza expressed a partly dissenting opinion, which is annexed to the judgment.

Stephens v. Malta (No 2) (no. 33740/06) (Importance 2) – 21 April 2009 - No violation of Article 5§3 (right to be brought promptly before a judge) – No violation of Article 5§4 (right to have the lawfulness of detention decided speedily by a court) – Lawfulness of detention

The case concerned the applicant's complaint that the domestic courts did not address the issues raised by his lawyer, in particular whether Malta had jurisdiction to try him, when challenging the lawfulness of his arrest on suspicion of drug trafficking, and failed to review speedily the lawfulness of his detention.

As stated in the previous judgment, Mr Stephens was arrested again - in 2004 - in Spain following a request for his extradition made by the Maltese authorities. The arrest warrant was issued on the basis of the suspicion that he had conspired with others in Spain to transport drugs to Malta. This was a second arrest warrant in continuation of the extradition proceedings previously started as a result of an earlier arrest warrant issued by the Maltese authorities some time before 5 August 2004. On 9 September 2005, Mr Stephens was extradited to Malta to stand trial on charges of drug trafficking. On 10 September 2005, Mr Stephens stood before the Court of Magistrates and challenged the legality of his arrest warrant, contested Malta's jurisdiction to try him, and claimed that the facts he was accused of did not constitute a criminal offence in Malta. The Court of Magistrates held that the question of legality of the arrest warrant had been decided upon in earlier proceedings before the Maltese courts while Mr Stephens was still in Spain.

On 3 October 2005, Mr Stephens applied to the Civil Court in its constitutional jurisdiction. He claimed that the Court of Magistrates had failed to assess the lawfulness of his arrest by refusing to decide on his lawyer's arguments challenging Malta's jurisdiction and alleging that the facts were not punishable in Malta; he asked the Civil Court to declare his detention unlawful and to order his release. The Civil Court rejected Mr Stephens' claims, following which he appealed to the Constitutional Court reiterating his allegations. On 14 February 2006, the Constitutional Court found a violation of Article 5§4 of the Convention, as it considered that the Court of Magistrates had not pronounced itself on the question of jurisdiction at a hearing it held on 29 September 2004, and had thus disregarded its duty to determine the lawfulness of the applicant's detention. As a result, the case was sent for a new examination to the Court of Magistrates and Mr Stephens was awarded compensation for the violation found.

On 23 February 2006, the Court of Magistrates held in a decision that Malta had jurisdiction to try the applicant and committed Mr Stephens for trial. In a judgment of 18 July 2007, confirmed by the Criminal Court of Appeal on 18 January 2008, Mr Stephens was found guilty as charged and was sentenced to a term in prison.

Article 5§3

The Court noted that Mr Stephens had been brought promptly before the Court of Magistrates. At the hearing of 10 September 2005, he complained of the quality of the review of the lawfulness of his detention, in particular that the Court of Magistrates had failed to deal with the issue of jurisdiction during that hearing. While it was undisputed that jurisdiction was an important issue, as it formed the basis of the criminal proceedings, the Court found that, given the complexity of the question of jurisdiction, the Court of Magistrates could not have been reproached for not having examined it at the very first appearance of Mr Stephens before it. On the contrary, the Court considered it more appropriate for this question to have been examined at a later stage of the proceedings. At the hearing of 10 September 2005 both parties had been heard and the Court of Magistrates had satisfied itself that the arrest had been justified. Accordingly, there had been no violation of Article 5§3.

Article 5§4

The Court limited its examination under this Article to the question of whether by having sent the case for a fresh examination to the Court of Magistrates, the Constitutional Court had failed to provide a speedy and efficient review of the lawfulness of Mr Stephens' detention. The Court recalled in this connection that the Constitutional Court had found a violation of Article 5§4 in its judgment of 14 February 2006 and had awarded compensation to Mr Stephens precisely because the Court of Magistrates had not ruled on the issue of jurisdiction on 29 September 2005. Accordingly, the applicant having lost victim status for that period of time, the period which remained to be decided upon by the Court had lasted 10 days: between 14 February 2006, when the case was sent for new

examination, and 23 February 2006, when the issue of jurisdiction and hence the lawfulness of Mr Stephens' detention had been decided by the Court of Magistrates.

In view of the complexity of the question of jurisdiction, the Court held that the lawfulness of Mr Stephens' detention had been decided sufficiently promptly and there had been no violation of Article 5§4. The Court observed, however, that the finding of no violation in this case had to be seen in the light of the particular circumstances of the present case, namely that Mr Stephens could not be considered to have been a victim in respect of the initial period of delay which had lasted more than four months. The Court emphasised that the present judgment did not change its findings in earlier case law that a constitutional complaint in Malta could not as such provide a speedy review of applicants' detention (see in particular with that respect the cases *Sabeur Ben Ali v. Malta*, 29 June 2000 and *Kadem v. Malta*, 9 January 2003).

Judge Bonello expressed a dissenting opinion, and Judge Bianku expressed a partly dissenting opinion, both of which are annexed to the judgment.

- **Right to a fair trial**

[Sibgatullin v. Russia](#) (no. 32165/02) (Importance 1) – 23 April 2009 - Violation of Article 6 §§ 1 and 3 (c) (right to a fair trial) - Appeal hearings in a criminal case held in the applicant's absence

On 22 February 2002 the applicant was found guilty of three murders and theft and was sentenced to 20 years' imprisonment. He lodged an appeal against this judgment; he did not expressly state that he wished to take part in the appeal hearing. On 15 August 2002 the Supreme Court of the Russian Federation ("the Supreme Court") examined the applicant's appeal ("the first appeal hearing") and dismissed it. Neither the applicant nor his counsel were present at that hearing. This decision was quashed on 5 April 2006 and the case was remitted for a fresh examination, following an application by the Deputy Prosecutor General for supervisory review of the appeal decision, on the ground that Mr Sibgatullin and his lawyer had not been properly notified of the appeal hearing.

Relying on Article 6, the applicant complained that the criminal proceedings against him were unfair because appeal hearings had been held in his absence.

The Court noted that the appeal court had been called on to make a full assessment, both factually and legally, of the applicant's guilt or innocence regarding the charges of the murders. These proceedings were of utmost importance for the applicant who had been sentenced to twenty years' imprisonment at first instance and who had not been represented at the second appeal hearing.

The appeal court could not properly determine the issues before it without a direct assessment of the evidence given by the applicant in person. Neither could it ensure equality of arms between the parties without giving Mr Sibgatullin the opportunity to reply to the observations made by the prosecutor at the hearing. It was not disputed that the first appeal proceedings had fallen short of the guarantees of fair trial because neither the applicant nor his legal counsel had been duly notified of the appeal hearing.

Furthermore the Court considered that the second appeal hearing had not complied with the requirements of fairness because Mr Sibgatullin had again not been duly notified of that hearing – and the appeal court had not verified that he had been – and the applicant had not waived his right to take part in the hearing in an unequivocal manner. Therefore the measures taken by the authorities had failed to provide appropriate redress to Mr Sibgatullin in respect of the violation of his right to take part in the first appeal hearing.

The Court concluded that there had been a violation of Article 6 §§ 1 and 3 (c) on account of holding both appeal hearings in the applicant's absence.

[Ferreira Alves v. Portugal](#) (No. 4) (no. 41870/05) (Importance 2) - [Ferreira Alves v. Portugal](#) (No. 5) (no. 30381/06) (Importance 2) – 14 April 2009 - Violation of Article 6 § 1 - Failure to provide the applicant with a copy of a note from the judge – Failure to reply to a ground of appeal

Relying on Article 6 § 1 (right to a fair trial), the applicant complained that the civil proceedings in which he had been a party had not complied with the requirements of a fair trial.

The Court held unanimously that there had been a violation of Article 6 § 1 on account of the failure, in both cases, to provide the applicant with a copy of a note from the judge and because the Court of Appeal failed to reply to a relevant ground of appeal submitted by the applicant in the first case (no. 4).

Hanževački v. Croatia (no. 17182/07) (Importance 2) - Violation of Article 6 § 1 in conjunction with Article 6 § 3 (c) (fairness) – Inability for the applicant to be represented by a legal representative of his own choice

Relying on Article 6 §§ 1 and 3 (c) (right to a fair trial) of the European Convention on Human Rights, the applicant complained about the unfairness of proceedings brought against him for violation of computer software copyrights. The Court found in particular that Mr Hanževački had not been able to defend himself through legal assistance of his own choice to the extent required under the Convention. Accordingly, the Court held by six votes to one that there had been a violation of Article 6 § 1 taken together with Article 6 § 3 (c). It further held that the finding of a violation together with the possibility under national law to seek a fresh trial constituted sufficient just satisfaction.

Karavelatzis v. Greece (no. 30340/07) (Importance 2) – 16 April 2009 – Violation of Article 6 § 1 - The right to a fair trial under Article 6 ECHR (in particular concerning the presumption of innocence) was not considered by the Court of cassation as an independent ground of appeal on points of law

The case concerned a dispute about ownership of a house on the island of Castellorizo (Greece), which had ended with the applicant's conviction for fraud. Relying on Article 6 §§ 1 and 2 (right to a fair trial), Mr Karavelatzis alleged that his trial had been conducted in a climate of hostility, responsibility for which laid mainly with the local press and which in his submission had infringed the principle of the presumption of innocence. Although the European Convention of Human Rights is fully incorporated in internal law, the Court of Cassation, on an appeal from the applicant, declared inadmissible his argument based on Article 6 § 2 of the Convention, finding that the "*violation of the right to a fair trial under Article 6 of the Convention [did] not constitute an independent ground of appeal on points of law*". In the Court of Cassation's view, the applicant should have alleged not only a violation of the European Convention of Human Rights but also and at the same time a violation of the Greek criminal code. The Court reiterated that Article 6 § 2 has an independent ground on any point and that the Court of Cassation did not take into consideration this provision. Thus the Court found a violation of the applicant's right to a fair trial, provided by Article 6 § 1 of the Convention. It found also that it did not need to examine separately the alleged violation of Article 6§2.

Topal v. Turkey (no. 3055/04) (Importance 3) – 21 April 2009 - Violation of Article 6 § 1 (fairness) – Unfairness of proceedings concerning expulsion from gendarmerie school – Deprivation of access to "classified" documents in the proceedings

Relying in particular on Article 6 § 1, the applicant complained about the unfairness of proceedings concerning his expulsion from the Beytepe special gendarmerie school following a secret investigation carried out by the competent authorities. The Court unanimously found a violation of Article 6 § 1 because the applicant had been denied access to "classified" documents in the proceedings before the Supreme Administrative Court of the Armed Forces.

- **Right to a fair trial and right to respect for family life**

Felbab v. Serbia (no. 14011/07) (Importance 3) – 14 April 2009 - Violation of Article 6 § 1 (fairness) - Violation of Article 8 - Violation of Article 13 in conjunction with Article 6 § 1 and Article 8 - Non-enforcement of a final access order by the domestic court concerning the dissolution of marriage and the custody of children

Relying on Article 6 § 1, Article 8 and Article 13, the applicant complained about the non-enforcement of a final access order by the Municipal Court concerning the dissolution of his marriage and the custody of his children, and that he had had no effective domestic remedy to expedite the enforcement proceedings. The Court found in particular that the Serbian authorities had not taken sufficient steps to execute the final access order, and, that the applicant's as well as his children's legitimate and long-term interest in developing and sustaining a bond had not been duly considered. Consequently, the Court held, by six votes to one, that there had been a violation of Article 6 § 1 and Article 8. It also held, by six votes to one, that there had been a violation of Article 13 in conjunction with Article 6 § 1 and Article 8 on account of the lack of an effective remedy with that respect.

- **Freedom of expression**

Egeland and Hanseid v. Norway (no. 34438/04) (Importance 2) – 16 April 2009 - No violation of Article 10 – Proportionality of the conviction of the newspapers following the publication of photographs of a person that had just been convicted of triple murder

At the relevant time, the applicants were both Editors in Chief of two major national newspapers in Norway, the *Dagbladet* and *Aftenposten*, respectively. The case concerns the applicants' complaint, in particular, that they were convicted and sentenced to a fine for unlawful publication of photographs of a woman leaving a court building where she had just been convicted and sentenced to 21 years' imprisonment for a triple murder, the so-called Orderud case.

The photographed woman, B, had been on trial for murdering her parents-in-law and sister-in-law in a particularly brutal manner. Following the judgment delivery of 22 June 2001, she was immediately arrested inside the courthouse and taken to an unmarked police car. The criminal case attracted unprecedented attention from the Norwegian media and the public in general. In the *Dagbladet's* and *Aftenposten's* subsequent reports, three photographs were published of B – leaving the courthouse, walking towards and then in the awaiting police car – in which she appeared distraught and in tears with a handkerchief drawn to her face.

Relying on Article 10, the applicants complained about their conviction and sentencing by domestic courts to a fine for unlawfully publishing photographs of B, just convicted, while leaving the court building.

The parties did not dispute that the judgment delivery of 22 June 2001 resulting in B's conviction, sentencing and immediate arrest had been a matter of public interest. However, under the terms of Article 10 § 2, the exercise of freedom of expression carried with it "duties and responsibilities". In the applicants' case this involved protecting "the reputation or rights of others" and "maintaining the authority and impartiality of the judiciary".

Although the photographs had concerned a public event and had been taken in a public place at a time when B's identity was already well known to the public (see *inter alia* *Peck v. the United Kingdom*, no. 44647/98, §§ 57-63), the Court found that their portrayal of her had been particularly intrusive. Indeed, she had just been arrested inside a court house after having been notified of a judgment in which she had been convicted of triple murder and sentenced to the most severe sentence under Norwegian law. It had to be assumed that B, shown in tears and great distress, had been emotionally shaken and at her most vulnerable psychologically.

Nor had B consented to the photographs being taken or to their publication. The fact that she had cooperated with the press on previous occasions could not justify depriving her of protection against the publication by the press of the photographs in question.

In conclusion, the Court found that both reasons relied on in the Supreme Court's judgment, that is to say protection of B's privacy and the fair administration of justice, had been sufficient to justify the restriction on the applicant editors' right to freedom of expression. Moreover, the interest in restricting publication of the photographs had outweighed those of the press in informing the public on a matter of public concern. Given also that the fines imposed on the applicants had not been particularly severe, the Court held that there had therefore been no violation of Article 10.

- **Right of public servants to take strike action**

Enerji Yapı-Yol Sen v. Turkey (no. 68959/01) (Importance 3) – 21 April 2009 - Violation of Article 11 - Ban preventing public-sector employees from taking part in a one-day national strike in support of the right to a collective-bargaining agreement

Enerji Yapı-Yol Sen is a union of civil servants which was founded in 1992 and is active in the fields of land registration, energy, infrastructure services and motorway construction. It is based in Ankara and is a member of the Federation of Public-Sector Trade Unions. On 13 April 1996 the Prime Minister's Public-Service Staff Directorate published circular no. 1996/21, which, *inter alia*, prohibited public-sector employees from taking part in a national one-day strike organised in connection with events planned by the Federation of Public-Sector Trade Unions to secure the right to a collective-bargaining agreement. On 18 April 1996 some of the trade union's board members took part in the strike and received disciplinary sanctions as a result. The appeals lodged by Enerji Yapı-Yol Sen were dismissed, the Turkish courts considering in particular that the aim of the impugned circular was to remind public servants of the legislative provisions governing the conduct expected of them.

Relying on Article 11, Enerji Yapı-Yol Sen alleged that the Turkish authorities had breached its right to trade-union freedom.

The Court pointed out, that the impugned circular had been adopted five days before the action planned by the Federation of Public-Sector Trade Unions, at a time when work was under way to bring Turkey's legislation into line with international conventions on the trade-union rights of State employees and the legal situation of public servants was unclear.

The Court acknowledged that the right to strike was not absolute and could be subject to certain conditions and restrictions. However, while certain categories of civil servants could be prohibited from taking strike action, the ban did not extend to all public servants or to employees of State-run commercial or industrial concerns. In this particular case the circular had been drafted in general terms, completely depriving all public servants of the right to take strike action.

Furthermore, there was no evidence that the national action day on 18 April 1996 had been prohibited. In joining in the action the members of the applicant trade union had simply been making use of their freedom of peaceful assembly. In the Court's view the disciplinary action taken against them on the strength of the circular was capable of discouraging trade-union members and others from exercising their legitimate right to take part in such one-day strikes or other actions aimed at defending their members' interests. Furthermore, the Turkish Government had failed to justify the need for the impugned restriction in a democratic society. The Court found that the adoption and application of the circular did not answer a "pressing social need" and that there had been disproportionate interference with the applicant union's rights. There had therefore been a violation of Article 11.

See for the judgment of principle on that question *Demir and Baykara v Turkey*, 12 November 2008, in RSIF n°6.

- **Judgments concerning Chechnya**

[Alaudinova v. Russia](#) (no. 32297/05) (Importance 3) – 23 April 2009 – Violations of Article 2 (right to life in respect of Bekkhan Alaudinov and lack of effective investigation into his disappearance) - Violation of Article 3 (inhuman treatment as a result of mental suffering of the applicant, mother of Bekkhan Alaudinov) - Violation of Article 5 (unacknowledged detention of Bekkhan Alaudinov) - Violation of Article 13 (lack of an effective remedy) in connection with Article 2

[Bitiyeva and Others v. Russia](#) (no. 36156/04) (Importance 2) – 23 April 2009 - Violations of Article 2 (right to life in respect of Bayali and Sharip Elmurzayev, Khusin and Isa Khadzhimuradov; Lechi Shaipov, Aпти Murtazov, Zelimkhan Osmayev, and Idris Elmurzayev and lack of effective investigation into their deaths) - Violation of Article 5 (unacknowledged detention of Bayali and Sharip Elmurzayev, Khusin and Isa Khadzhimuradov; Lechi Shaipov, Aпти Murtazov, Zelimkhan Osmayev) - Violation of Article 13 (lack of an effective remedy) in connection with Article 2

[Gakiyev and Gakiyeva v. Russia](#) (no. 3179/05) (Importance 3) – 23 April 2009 - Violations of Article 2 (right to life in respect of Idris Gakiyev and lack of effective investigation into his abduction and death) - Violations of Article 3 (inhuman treatment in respect of the father of Idris Gakiyev of account of him being ill-treated by servicemen and lack of effective investigation into this ill-treatment) - Violation of Article 3 (inhuman treatment as a result of mental suffering of both applicants) - Violation of Article 5 (unacknowledged detention of Idris Gakiyev) - Violation of Article 13 (lack of an effective remedy) in connection with Articles 2 and 3

[Israilova and Others v. Russia](#) (no. 4571/04) (Importance 3) – 23 April 2009 - Violations of Article 2 (right to life in respect of Adlan Dovtayev and Sharpuddin Israilov and lack of effective investigation into their disappearance) - Violation of Article 3 (inhuman treatment as a result of mental and emotional suffering of both parents of Sharpuddin Israilov, and of the mother, wife and children of Adlan Dovtayev) and no violation of Article 3 in respect of the rest of the applicants - Violation of Article 5 (unacknowledged detention of Adlan Dovtayev and Sharpuddin Israilov) - Violation of Article 13 (lack of an effective remedy) in connection with Article 2 and no violation of Article 13 in connection with Article 3 in respect of Adlan Dovtayev and Sharpuddin Israilov

[Khachukayev v. Russia](#) (no. 28148/03) (Importance 3) – 23 April 2009 - Violation of Article 38§1(a) (refusal to submit documents requested by the Court) - Violations of Article 2 (right to life in respect of Murad Khachukayev and lack of effective investigation into his abduction and death) - Violation of Article 5 (unacknowledged detention of Murad Khachukayev) - Violation of Article 13 (lack of an effective remedy) in connection with Article 2

In all five cases the Court found it established that the applicants' relatives had been apprehended, and in three of the cases killed, by State servicemen, and that those missing men, who had not been found, had to be presumed dead following their unacknowledged detention by State agents.

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 14 April 2009 : [here](#).
- press release by the Registrar concerning the Chamber judgments issued on 16 April 2009 : [here](#).
- press release by the Registrar concerning the Chamber judgments issued on 21 April 2009 : [here](#).
- press release by the Registrar concerning the Chamber judgments issued on 23 April 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</u>	<u>Link to the case</u>
Bulgaria	23 Apr. 2009	Kamburov (No. 2) (no. 31001/02) Imp. 3.	Violation of Art. 2 of Prot. No.7	Given the severity of the penalty provided for in domestic law for a minor disturbance to public order, the court considered that the applicant’s case should have been examined by a higher court	Link
Bulgaria	23 Apr. 2009	Rangelov (no. 14387/03) Imp. 3.	Violation of Art. 5 §§ 3 and 4 Violation of Art. 6 § 1 (length)	Excessive length (almost five years and seven months) of pre-trial detention Excessive length (more than nine and a half years) of the criminal proceedings Lack of plausible reasons for suspecting the applicant of the offences concerned during the examination at domestic level of the applications for release	Link
Finland	14 Apr. 2009	Manninen (no. 28631/05) Imp. 3.	Violation of Art. 6 § 1 (length) Violation of Art. 13	Excessive length of criminal proceedings (almost eight years) and lack of an effective remedy in that connection	Link
Finland	21 Apr. 2009	Marttinen (no. 19235/03) Imp. 2.	Violation of Art. 6 § 1 (fairness)	Unfairness of debt recovery proceedings in which the applicant had been fined for refusing to give an overall account of his assets and other financial means (the debt recovery procedure could not justify a provision which extinguished the very essence of the applicant’s right to silence and not to incriminate himself)	Link
Greece	16 Apr. 2009	Antonopoulou and Others (no. 49000/06) Imp. 2.	Violation of Art. 6 § 1 (fairness) Violation of Art. 1 of Prot. No. 1	Unfairness of the proceedings concerning the expropriation of the applicants’ land Unlawful refusal of domestic courts to award the applicants special compensation for the non-expropriated parts of their land that had been devalued as a result of the widening of a highway	Link

* The “Key Words” in the various tables of the RSIF are elaborated under the sole responsibility of the NHRS Unit of the DG-HL and the Office of the Commissioner for Human Rights.

Greece	16 Apr. 2009	Dellis (no. 24977/07) Imp. 3. Kanakis (no. 16634/07) Imp. 3.	Violation of Art. 6 § 1 (length)	Excessive length of criminal proceedings (five years and seven months for Mr Dellis and seven years and nine months for Mr Kanakis)	Link Link
Poland	21 Apr. 2009	Jelitto (no. 17602/07) Imp.3.	Violation of Art. 6 § 1 (length)	Excessive length of criminal proceedings (about 12 years and 6 months)	Link
Poland	21 Apr. 2009	Rusiecki (no. 36246/97) Imp. 3.	Violation of Art. 5 § 3	Excessive length of the applicant's detention during the judicial proceedings (five years and 16 days)	Link
Romania	14 Apr. 2009	Dan Cristian Ionescu (no. 17782/02) Imp. 3.	Violation of Art. 6 § 1 (length) Violation of Art. 1 of Prot. No. 1	Excessive length of civil proceedings (six years and nine months) and lack of adequate compensation following the demolition of the applicant's property	Link
Romania	14 Apr. 2009	Didu (no. 34814/02) Imp. 2.	Violation of Art. 6 §§ 1 and 2 (fairness)	Excessive length of criminal proceedings (six years and five months) and violation of the applicant's presumption of innocence (the applicant had been acquitted at first instance but the decision at the appeal stage that prosecution was time- barred did not expunge the criminal qualification of the facts)	Link
Russia	23 Apr. 2009	Moskovets (no. 14370/03) Imp. 2.	Violation of Art. 5 §§ 1 (c) and 3 Violations of Art. 6 § 1 (length and fairness)	Unlawful detention (from 2 December to 30 December 2002) Excessive length of pre-trial detention (four years and four months) Unreasonable length and unfairness of criminal proceedings	Link
Turkey	14 Apr. 2009	Ditaban (no. 69006/01) Imp. 3.	Violation of Art. 6 § 3 (c) in conjunction with Art. 6 § 1 (fairness)	The applicant had been deprived of the assistance of a lawyer while in police custody	Link
Turkey	21 Apr. 2009	Çığdem (no. 16963/07) Imp. 3. Abdullah Yalçın (no. 2723/07) Imp. 3.	Violation of Art. 5 § 3	Excessive length of the applicants' pre-trial detention (nine years and one month for Mr Çığdem and eight years and nine months for Mr Yalçın) in the course of operations against the illegal armed organisation <i>Hezbollah</i>	Link Link
Turkey	21 Apr. 2009	Miran (no. 43980/04) Imp. 3.	Violation of Art. 6 § 1 (fairness)	Failure of the authorities to inform the applicant of the opinion of the Principal State Prosecutor of the Supreme Administrative Court of the Armed Forces (leading to the expulsion from a training school) and denial of access to "classified" documents in the proceedings. See also with that respect the case <i>Topal v. Turkey</i> p. 11.	Link

Turkey	21 Apr. 2009	Soykan (no. 47368/99) Imp. 2.	Violation of Art. 6 § 3 (c) in conjunction with Art. 6 § 1 (fairness)	Unfairness of criminal proceedings on account of the lack of access to a lawyer while in police custody	Link
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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 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.

<u>State</u>	<u>Date</u>	<u>Case Title</u>	<u>Conclusion</u>	<u>Key words</u>
Italy	21 Apr. 2009	Velocci (no. 1717/03) link	Just satisfaction Friendly settlement	Struck out of the list further to a friendly settlement on the just satisfaction following a judgment of 18 March 2008 , in which the Court found a violation of Art. 1 of Prot. No. 1.
Romania	21 Apr. 2009	Chibulcutean (no. 19588/04) link Nițescu (no. 20763/03) link	Violation of Article 6 § 1 (fairness) Violation of Article 1 of Protocol No. 1	Failure of the authorities to enforce final judgments in the applicants' favour (concerning cases of payments of salaries and arrears of salary)
Romania	14 Apr. 2009	S.C. Ghepardul S.R.L. (no. 29268/03) link	Violation of Art. 1 of Prot. No. 1	Failure of the authorities to enforce a final judgment in the applicant's favour concerning his claims relating to tax liabilities
Turkey	14 Apr. 2009	Karakuş (no. 19467/07) link	Violation of Article 1 of Protocol No. 1	Deprivation of the applicant's property without compensation
Turkey	21 Apr. 2009	Kurt and Firat (no. 26828/03) link	Violation of Article 6 § 1 (fairness) Violation of Article 1 of Protocol No. 1	Delay in the payment of an additional award of compensation for expropriation
Turkey	21 Apr. 2009	Mustafa Koçer (no. 9738/06) link	Violation of Article 1 of Protocol No. 1	Deprivation of property without any compensation
Ukraine	16 Apr. 2009	Buchkovskaya (no. 32832/06) link	Violation of Article 6 § 1 (fairness) Violation of Article 1 of Protocol No. 1 Violation of Article 13	Failure of domestic authorities to enforce final judgments in the applicant's favour in good time and lack of effective remedy in this respect
Ukraine	16 Apr. 2009	Garashchenko (no. 26873/05) link Gnitzevich (no. 29925/04) link Yarmola (no. 7060/04) link	Violation of Article 6 § 1 (fairness) Violation of Article 1 of Protocol No. 1	Failure of domestic authorities to enforce final judgments 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 [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>
Bulgaria	23 Apr. 2009	Bratovanov (no. 28583/03)	Link
Germany	23 Apr. 2009	Ballhausen (no. 1479/08)	Link
Greece	16 Apr. 2009	Davaris (no. 43394/06)	Link
Greece	16 Apr. 2009	Gioka (no. 44806/07)	Link
Greece	16 Apr. 2009	Vlastos (no. 28803/07)	Link
Hungary	21 Apr. 2009	Tamási and Others (no. 25848/06)	Link
Poland	14 Apr. 2009	Paliga and Adamkowicz (no. 23856/05)	Link
Poland	14 Apr. 2009	Tomaszewska (no. 9399/03)	Link
Poland	21 Apr. 2009	Serafin and Others (no. 36980/04)	Link
Slovakia	14 Apr. 2009	Rusňáková (no. 51071/06)	Link
Slovakia	21 Apr. 2009	Gerstbrein (no. 17252/04)	Link
Turkey	21 Apr. 2009	Coşkun (no. 620/03)	Link
Ukraine	16 Apr. 2009	Popilin (no. 12470/04)	Link
Ukraine	16 Apr. 2009	Pysatyuk (no. 21979/04)	Link
Ukraine	16 Apr. 2009	Bykov (no. 26675/07)	Link

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 23 March to 5 April 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.

• Decisions deemed of particular interest for NHRs

[Faccio v. Italy](#) (application no. 33/04) (Importance 2) – 17 April 2009 – Alleged violation of Articles 8, 10, and 1 of Protocol 1 – Inadmissible as manifestly ill-founded – Sealing of the applicant's television set in a bag because he had not paid his licence fee - Legitimate aim of a measure dissuading individuals from failing to pay a tax

On 20 December 1999 the applicant filed a request with the R.A.I. (Radiotelevisione italiana) "subscriptions bureau" to terminate his subscription to the public television service. On 29 August 2003 the tax police of Valdarno (Vicenza) sealed his television set in a nylon bag so that it could not be used.

Relying on Article 10 (freedom of expression) and Article 8 (right to respect for private and family life) of the European Convention on Human Rights, Mr Faccio complained before the Court about a violation of his right to receive information and of his right to respect for his private and family life. He

alleged among other things that the act of making his television set unusable had been a disproportionate measure as it also prevented him from watching private channels. He further relied on Article 1 of Protocol No. 1 (protection of property) to the Convention.

The Court noted that it was not in dispute that the sealing of the television set had constituted interference with the applicant's right to receive information and with his right to respect for his property and for his private life. It further found that the measure, taken under Article 10 of royal legislative decree no. 246 of 21 February 1938, had pursued a legitimate aim: to dissuade individuals from failing to pay a tax, or in other words to dissuade them from terminating their subscriptions to the public television service.

The licence fee represents a tax that is used for the financing of the public broadcasting service. In the Court's view, as shown by the wording of Article 1 of royal legislative decree no. 246, regardless of whether or not Mr Faccio's wished to watch programmes on public channels, the mere possession of a television set obliged him to pay the tax in question. Moreover, a system whereby viewers could watch only private channels without paying the licence fee, assuming that this was technically feasible, would amount to depriving the tax of its very nature, since it was a contribution to a community service and not the price paid by an individual in return for receiving a particular channel.

In view of the foregoing considerations and the reasonable amount of the tax (which, by way of example, amounts to 107.50 euros for 2009), the Court concluded that the measure consisting of sealing the applicant's television set in a bag was proportionate to the aim pursued by the Italian authorities. It thus declared the application manifestly ill-founded.

- **Other decisions**

<u>State</u>	<u>Date</u>	<u>Case Title</u>	<u>Alleged violations (Key Words)</u>	<u>Decision</u>
Belgium	24 Mar. 2009	Monin N° 31674/07 Link	Alleged violations of Art. 6 (in particular concerning the impartiality of the judge in charge of the investigation and concerning the refusal to hear the applicant's witnesses)	Inadmissible as manifestly ill-founded (no appearance of violation)
Belgium	31 Mar. 2009	Belova N° 28057/08 Link	Alleged violations of Art. 3, 5, 6, 8, 12, 13 and 18 on account of the risk of deportation of the applicant to Russia	Struck out of the list (applicant no longer wishing to pursue her application)
Bulgaria	31 Mar. 2009	Gerdzhikov N° 4364/04 Link	Alleged excessive length and lack of effective remedies in respect of a partition-of-property proceedings	Struck out of the list (friendly settlement reached)
Bulgaria	31 Mar. 2009	Atanasovi N° 14843/04 Link	Excessive length of civil proceedings and lack of an effective remedy in that respect	Struck out of the list (friendly settlement reached)
Bulgaria	31 Mar. 2009	Stoimenov N° 19351/04 Link	Excessive length of criminal proceedings	Struck out of the list (friendly settlement reached)
Croatia	2 Apr. 2009	Cesnik 23980/07 Link	Excessive length of civil proceedings and lack of an effective remedy in that respect	Struck out of the list (friendly settlement reached)
Cyprus	2 Apr. 2009	Konnides and Nicolaou N° 11608/07 Link	Excessive length of civil proceedings and lack of an effective remedy in that respect Failure of the Supreme Court to adequately motivate the dismissal of the applicants' appeals	Struck out of the list (friendly settlement reached)
Finland	24 Mar. 2009	Mbengeh N° 43761/06 Link	The applicant, a Gambian national married to a Finnish citizen, alleged that the deportation order and the refusal of entry pronounced against him were disproportionate	Inadmissible as manifestly ill-founded : a fair balance was struck between the relevant interests, in particular because the applicant was convicted for dealing in very dangerous drugs for monetary gain
Finland	24 Mar. 2009	Leino N° 25905/06 Link	The applicant complains under Art. 6 and 13 about the decisions taken by the Social Insurance Institution and the Insurance Court concerning the applicants' pensions (lack of	Inadmissible for non exhaustion of domestic remedies

			reasoning of the decisions, retroactive and incorrect interpretation of the law, etc)	
Germany	24 Mar. 2009	Puttrus N° 1241/06 Link	The applicant complained under Article 5 § 1 (e) that he had been detained in a psychiatric hospital since 1985. He alleges that this confinement was not justified and lasted longer than the term of imprisonment. Under Art. 6§3, he further complains about the domestic courts' failure to hear the medical experts	Inadmissible as manifestly ill-founded, in particular because the continued detention which has been subject to periodic judicial review was necessary
Greece	26 Mar. 2009	Theocharis N°32821/07 Link	The applicant alleges that the proceedings lasted excessively long and that the courts erred in fact and in law	Inadmissible as manifestly ill-founded (no appearance of violation of the Convention)
Greece	26 Mar. 2009	Lekkas and others N° 38037/07 Link	Alleged violation of Art. 6 (right of access to a court) and of Art. 1 of Prot. 1 (impossibility to obtain the payment of an expropriation compensation)	Inadmissible for non-exhaustion of domestic remedies
Iceland	24 Mar. 2009	Adolfsson and others N° 14890/06 Link	The applicants complained under Art. 8 and Art. 1 of Prot. No. 1 that the authorities had unjustifiably deprived their relative of her right to handle her own financial affairs and had appointed an unsuited trustee resulting in financial losses	Partly inadmissible <i>ratione personae</i> (the applicants did not establish under Art. 8 the existence of close social or blood ties to their relative) Partly inadmissible <i>ratione materiae</i> (the applicants' existing possessions were not affected and the applicants did not under Art. 1 of Prot. 1 have a "legitimate expectation")
Italy	24 Mar. 2009	Pecar and Pertot N° 316/05 Link	Alleged violation of Art. 1 of Prot. 1 following the indirect eviction of the applicants from their properties	Struck out of the list (friendly settlement reached)
Italy	24 Mar. 2009	Scoppola N° 126/05 Link	Following his conviction to a life prison sentence, the applicant complains under Art. 3 of Prot. 1 about the loss of his right to vote	The complaint is declared admissible as it raises serious questions of facts and law
Italy	24 Mar. 2009	Parenti N° 32815/04 Link	Alleged violation of Art. 1 of Prot. 1 on account of a specific tax the applicant had to pay	Struck out of the list (applicant no longer wishing to pursue her application)
Poland	24 Mar. 2009	Skorzybot N° 28131/08 Link	The applicant complained under Art. 6 § 1 that his right of access to a court had been violated in that the domestic courts refused to appoint him a lawyer with a view to filing a cassation appeal and thus deprived him of a possibility to have his case examined by the Supreme Court.	Struck out of the list (friendly settlement reached)
Poland	24 Mar. 2009	Popiel N°45403/04 Link	Alleged violations of Art. 3 and 13 concerning the length of proceedings and the lack of an effective remedy in that respect	Partly struck out the list (following the unilateral declaration of the Government concerning the excessive length of proceedings under Art. 6) Partly inadmissible as manifestly ill-founded (concerning Art. 3 and 13)
Poland	24 Mar. 2009	Cembrzynski N° 34838/07 Link	The applicant complained under Art. 6 § 1 that his right of access to a court had been violated in that the domestic courts refused to appoint him a lawyer with a view to filing a cassation appeal and thus deprived him of a possibility to have his case examined by the Supreme Court.	Struck out of the list (friendly settlement reached)
Poland	24 Mar. 2009	Kruczek N° 22870/07 Link	Alleged violations of Art. 6 (length of proceedings, lack of time to prepare the defence, inability to examine witnesses against the applicant)	Struck out of the list (friendly settlement reached)

Poland	24 Mar. 2009	Baran-Baranowski N° 45097/07 Link	Alleged violation of Art. 5§3 (length of pre-trial detention) and of Art. 6 (fairness of criminal proceedings)	Inadmissible partly as manifestly ill-founded (the applicant's detention of seven months did not disclose any appearance of a breach of the "reasonable time" requirement of Article 5 § 3) and partly for non-exhaustion of domestic remedies (the proceedings concerning the violations of Art. 6 were still pending at domestic level)
Poland	31 Mar. 2009	Korzuch N° 12875/07 Link	Alleged violation of Art. 6 (length of proceedings and inability to examine all the witnesses)	Struck out of the list (friendly settlement reached)
Poland	31 Mar. 2009	Zapolski N°13126/07 Link	Excessive length of criminal proceedings and lack of an effective remedy in that respect	Struck out of the list (friendly settlement reached)
Poland	31 Mar. 2009	Nadolski N°23750/04 Link	Excessive length of proceedings and lack of access to a court (on account of the refusal to appoint a legal-aid lawyer to lodge a cassation appeal)	Struck out of the list (friendly settlement reached)
Poland	31 Mar. 2009	Sawko N°32002/03 Link	Alleged violation of the right to a fair trial (in particular on account of the legal-aid lawyer's refusal to prepare a cassation appeal)	Partly struck out of the list (following the unilateral declaration of the Government concerning the right of access to a court) Partly inadmissible (concerning the remainder of the application)
Poland	31 Mar. 2009	Leszek Bajolek N° 32383/08 Link	Excessive length of proceedings	Struck out of the list (friendly settlement reached)
Poland	31 Mar. 2009	Musialski N° 25770/07 Link	Excessive length of pre-trial detention	Struck out of the list (following the unilateral declaration of the Government)
Poland	31 Mar. 2009	Rybak-Chacun N° 21404/08 Link	Alleged violation of Art. 6§1 (excessive length of proceedings) and 1 of Prot. 1 (delay in the payment of a compensation)	Struck out of the list (friendly settlement reached)
Romania	24 Mar. 2009	Babes N° 13425/04 Link	Alleged violations of Art. 6§1 (excessive length of proceedings), Art. 6 § 1, 13 and 17 (fairness of proceedings) and of Art. 1 of Prot. 1 (unlawful deprivation of the applicant's flat and plot of land)	Partly struck out of the list (following the unilateral declaration of the Government concerning the length of proceedings) Partly inadmissible (concerning the remainder of the application)
Romania	24 Mar. 2009	Miculescu N° 5378/04 Link	Alleged violations of Art. 6 (excessive length of proceedings) and of 1 of Prot. 1 (unlawful deprivation of property)	Struck out of the list (friendly settlement reached)
Romania	31 Mar. 2009	Stan N° 33825/05 Link	The applicants complained about the non-enforcement of a judgment ordering the authorities to prepare the documentation pertaining to the acquisition of ownership title	Struck out of the list (applicants no longer wishing to pursue their application)
Romania	24 Mar. 2009	Automobil Clubul Roman N° 51202/06 Link	Alleged violation of Art. 1 of Prot. 1 following the cancellation of the applicant's property title	Struck out of the list (applicant no longer wishing to pursue his application)
Romania	24 Mar. 2009	Mocanu and Lazar N° 29486/03 Link	Alleged violation of Art. 1 of Prot. 1 following the cancellation of the applicant's property title	Struck out of the list (applicant no longer wishing to pursue his application)
Romania	24 Mar. 2009	Ciobanu and others N° 16978/03 Link	Alleged violation of Art. 1 of Prot. 1 following the non enforcement of a domestic judgment in the applicants favour	Struck out of the list (applicants no longer wishing to pursue their application as the matter had been settled at domestic level)
Romania	24 Mar. 2009	Opris N° 12481/04 Link	Alleged violation of Art. 1 of Prot. 1 (deprivation of the use of the applicant's property)	Struck out of the list (applicant no longer wishing to pursue his application as the matter had been settled at domestic level)

Romania	24 Mar. 2009	Zorila N° 23191/03 Link	Alleged violation of Art. 1 of Prot. 1, Art. 6 and Art. 14 concerning the taxation of the applicant's retirement allowance	Struck out of the list (friendly settlement reached)
Romania	24 Mar. 2009	Lucan N° 1199/03 Link	Alleged violation of Art. 1 of Prot. 1, and Art. 6 and Art. 14 concerning the taxation of the applicant's allowance	Struck out of the list (friendly settlement reached)
Romania	31 Mar. 2009	Corbu N° 27396/04 Link	The applicant complains under Art. 6 about the outcome and length of criminal proceedings that he brought against a third person	Inadmissible <i>ratione materiae</i> : Article 6 of the Convention does not as such guarantee a right to have criminal proceedings instituted against third parties
Romania	31 Mar. 2009	Costea and others N° 4113/04 Link	Alleged violation of Art. 6 in particular concerning the violation of the right of access to a court on account of the rule of unanimity to claim the property of an undivided property (« bien indivis ») and of Art. 1 of Prot. 1	Inadmissible for non-exhaustion of domestic remedies
Romania	31 Mar. 2009	Iuga N° 6341/04 Link	Alleged violation of Art.1 of Prot. 1 (concerning the refusal of domestic courts to cancel the sale contract of an apartment)	Struck out of the list (applicants no longer wishing to pursue their application as the matter had been settled at domestic level)
Romania	31 Mar. 2009	Prorocu N° 26047/03 Link	Alleged violations of Art. 3 (conditions of detention and lack of adequate medical treatment), of Art. 5 (lawfulness and length of pre-trial detention) and of Art. 6 (fairness of criminal proceedings)	Struck out of the list (the applicant passed away and the heirs were considered as not wishing to pursue the application)
Romania	31 Mar. 2009	Tirdea N° 21953/03 Link	Alleged violation of Art. 1 of Prot. 1, Art. 6 and Art. 14 concerning the taxation of the applicant's retirement allowance	Struck out of the list (friendly settlement reached)
Romania	31 Mar. 2009	Gheorghe N° 26882/03 Link	Alleged violation of Art. 1 of Prot. 1, Art. 6 and Art. 14 concerning the taxation of the applicant's retirement allowance	Struck out of the list (friendly settlement reached)
Russia	26 Mar. 2009	Ionov N° 14438/05 Link	Alleged violations of Art. 5 (concerning in particular the unlawfulness of the applicant's placement in custody, the length and the lack of reasoning for the detention)	Struck out of the list (applicant no longer wishing to pursue his application)
Russia	26 Mar. 2009	Nayda and others N° 15399/06 et al. Link	Alleged violation of Art. 6 § 1 about the non-execution of final judicial decisions in the applicants' favour	Struck out of the list (friendly settlement reached at domestic level)
Russia	26 Mar. 2009	Aleshkova N° 3028/07 Link	Alleged violations of Art. 2, 6 and 13 about prolonged non-enforcement of the judgment in the applicant's favour and about poor quality of the premises she had been living in pending enforcement	Struck out of the list (friendly settlement reached)
Russia	26 Mar. 2009	Radionova N° 36082/02 Link	Alleged violations of Art. 3 and 8 (concerning the failure of the authorities to provide an adequate protection and to carry out an investigation into the allegations of ill-treatment in a choregraphy school), and of Art. 2, 6, 14 and 2 of Prot. 1	Inadmissible as manifestly ill-founded (in particular because the conduct of the domestic authorities could not be considered as defective with respect to the positive obligation of the authorities under Art. 8)
Russia	2 Apr. 2009	Shabazova N° 4023/05 Link	The applicant, residing in Chechnya, complained under Art. 3, 5 and 8 about her husband's abduction and disappearance	Struck out of the list (applicant no longer wishing to pursue her application)
Serbia	24 Mar. 2009	Thirstein N° 16812/06 Link	Alleged violation of Art. 6§1 (excessive length of civil proceedings)	Struck out of the list (friendly settlement reached)
Serbia	24 Mar. 2009	Ignjatovic and others N° 38355/06	Alleged violation of Art. 6§1 (excessive length of civil proceedings)	Struck out of the list (friendly settlement reached)

Serbia	24 Mar. 2009	Link Curcic N° 32823/07 Link	Alleged violation of Art. 6§1 (excessive length of civil proceedings)	Struck out of the list (friendly settlement reached)
Serbia	24 Mar. 2009	Link Cesljar N° 35027/07 Link	Alleged violation of Art. 6§1 (excessive length of civil proceedings)	Struck out of the list (friendly settlement reached)
Serbia	24 Mar. 2009	Link Cesljar (III) N° 53738/07 Link	Alleged violation of Art. 6§1 (excessive length of civil proceedings) and lack of an effective remedy in that respect	Struck out of the list (friendly settlement reached)
Slovakia	31 Mar. 2009	Valach and others N° 77155/01 Link	Alleged violation of Art. 1 of Prot. 1 due to the compulsory lease of the applicants' land and the transfer of the land to individual gardeners	Partly inadmissible as manifestly ill-founded (no appearance of violation of the Convention) Partly struck out of the list (some of the applicants were no longer wishing to pursue their application)
Slovakia	24 Mar. 2009	Kisska N° 45123/06 Link	Alleged violation of Art. 6 (excessive length of civil proceedings)	Inadmissible <i>ratione personae</i> : the applicant cannot claim the status of victim as a compensation for the excessive length had already been granted at domestic level
Slovenia	31 Mar. 2009	Lah N° 3039/06 et al. Link	Excessive length of civil proceedings and lack of an effective remedy in that respect	Struck out of the list (friendly settlement reached)
Slovenia	31 Mar. 2009	Orac N° 3577/06 et al. Link	Excessive length of civil proceedings and lack of an effective remedy in that respect	Struck out of the list (friendly settlement reached)
Sweden	24 Mar. 2009	Albertsson and Carina Ahlstrom Forvaltning Ab N° 41102/07 Link	Alleged violation of Art. 1 of Prot. 1 (concerning the lack of compensation for damages caused by an erroneous bankruptcy decision), of Art. 13 and of Art. 6 (fairness of proceedings)	Partly adjourned (concerning the lack of compensation following the erroneous bankruptcy decision) Partly inadmissible as manifestly ill-founded (concerning the remainder of the application)
The Czech Republic	31 Mar. 2009	Serwetnicky and Serwetnicka N° 13157/04 Link	Alleged violation of Art. 1 of Prot. 1 (obligation to surrender certain agricultural land in the context of restitution proceedings)	Struck out of the list (applicants no longer wishing to pursue their application)
"the Former Yugoslav Republic of Macedonia"	31 Mar. 2009	Jusufoski N° 32715/04 Link	The applicant complained under Art. 6 and Art. 1 of Prot. 1 that national courts had not recognised him as having the requisite standing to bring proceedings in relation to his possession	Inadmissible partly as manifestly ill-founded (concerning Art. 6) and partly for non exhaustion of domestic remedies (concerning the allegation under Art. 1 of Prot. 1)
Turkey	24 Mar. 2009	Erol N° 45572/04 Link	Alleged violations of Art. 5 (excessive length of detention in police custody and pre-trial detention ; inability to challenge speedily the lawfulness of the detention ; and inability to obtain compensation for the unlawfulness of the detention) and Art. 6 (length and fairness of proceedings)	Partly adjourned : concerning the right to be released pending trial under Art. 5 § 3, the right to compensation under Art. 5 § 5 and the excessive length of proceedings under Art. 6 § 1 Partly inadmissible : concerning the remainder of the application
Turkey	24 Mar. 2009	Arslan N° 37927/04 Link	Alleged violations of Art. 6 (length and fairness) concerning the proceedings before the Kayseri civil and administrative courts	Partly adjourned : concerning the length of compensation proceedings before Kayseri courts Partly inadmissible : concerning the remainder of the application
Turkey	31 Mar. 2009	Askin N° 24110/07 Link	The applicant complained under several provisions of the Convention about a disciplinary sanction imposed by the Prison Disciplinary Board	Struck out of the list (the applicant wished to withdraw his application)
Turkey	31 Mar.	Sarak N° 21568/05	Alleged violation of Art. 6 § 1 (fairness of the Military Administrative	Inadmissible as manifestly ill-founded (no appearance of

	2009	Link	Court)	violation)
Turkey	31 Mar. 2009	Akel N° 6510/04 Link	Alleged violation of Art. 6 (fairness of proceedings before the military courts, in particular concerning the lack of communication of the opinion of the Public Prosecutor)	Struck out of the list (applicant no longer wishing to pursue his application)
Turkey	31 Mar. 2009	Cetinkaya N° 8945/04 Link	Alleged violation of Art. 6 § 1 (excessive length of proceedings before the Ankara Labour court) and of Art. 1 of Prot. 1 (concerning the consequences of the excessive length of proceedings in the light in particular of the high inflation rates)	Partly adjourned (concerning the length of proceedings) Partly inadmissible as manifestly ill-founded (concerning the allegation of violation of Art. 1 of Prot. 1)
Turkey	31 Mar. 2009	Araz N° 44319/04 Link	Alleged violations of Art. 5 (excessive length of detention in police custody and pre-trial detention ; inability to challenge speedily the lawfulness of the detention ; and inability to obtain compensation for the unlawfulness of the detention) and Art. 6 (concerning the detention of the applicant, a minor at the relevant time, with adults and concerning the fairness of proceedings)	Partly adjourned : concerning the right to be released pending trial under Art. 5 § 3, the right to compensation under Art. 5 § 5 and the excessive length of proceedings under Art. 6 § 1 Partly inadmissible : concerning the remainder of the application
Turkey	24 Mar. 2009	Buyukdere and others N° 6162/04 et al Link	Alleged violation of Art. 6 § 1 (concerning the absence of communication of the opinion of the Prosecutor before the Conseil d'Etat) and of Art. 6 and 1 of Prot. 1 (concerning the refusal to grant the applicants with allowances for the termination of their working contracts)	Partly adjourned (concerning the lack of communication of the opinion of the Public Prosecutor) Partly inadmissible <i>ratione materiae</i> (concerning the remainder of the application)
Turkey	24 Mar. 2009	Aladag N° 3477/04 Link	Alleged violation of Art. 6 (concerning the length of administrative proceedings and the fairness of the proceedings before the Conseil d'Etat, concerning in particular the communication of the opinion of the Prosecutor)	Struck out of the list (friendly settlement reached)
Turkey	24 Mar. 2009	Canozer and others N° 25732/02 et al Link	Alleged violations of Art. 1 of Prot. 1 and Art. 14 (concerning the delay in the payment of expropriation compensations in favour of the applicants)	Struck out of the list (applicants no longer wishing to pursue their application)
Turkey	31 Mar. 2009	Tarhan N° 9078/06 Link	Alleged violations of Art. 3, 5, 8 and 9 for the conviction of the applicant for being a conscientious objector. Alleged violations of Art. 3 and 5 (concerning the ill-treatment of the applicant and the poor conditions and the lawfulness of the detention in the military prison of Sivas) and of Art. 6 (concerning the fairness of the proceedings before the criminal military courts)	Partly adjourned (concerning the conviction of the applicant for using his right of conscientious objector and concerning the allegations of ill-treatment) Partly inadmissible for non-exhaustion of domestic remedies (concerning the remainder of the application)
Turkey	31 Mar. 2009	Cinar and Akmugan N° 70241/01 Link	Alleged violations of Art. 2, 6 8, 13 and 1 of Prot. 1 following the death of one of the applicant's spouse and three daughters and concerning the destruction of the applicants' property in an explosion of a rubbish dump	Struck out of the list (friendly settlement reached)
Turkey	31 Mar. 2009	Elverdi N° 1237/03 Link	Alleged violations of Art. 3 (ill-treatment by police officers), of Art. 6 and of Art. 2 of Prot. 7	Struck out of the list (applicant no longer wishing to pursue his application)
Turkey	31 Mar. 2009	Aktas N° 37256/04 Link	Alleged ill-treatment during police custody and alleged excessive length of pre-trial detention and of criminal proceedings	Struck out of the list (friendly settlement reached)
Turkey	31 Mar. 2009	Akkirpikler N° 11827/03 Link	Alleged unfairness and excessive length of criminal and civil proceedings brought against the applicant	Struck out of the list (applicant no longer wishing to pursue his application)

Ukraine	24 Mar. 2009	Puzan N° 51243/08 Link	The applicant complains that if extradited to Belarus he would face a risk of being subjected to torture and inhuman or degrading treatment. He further alleges violations of Art. 3 (conditions of detention in the Simferopol SIZO), of Art. 5 (lawfulness of detention pending extradition and lack of effective judicial review), of Art. 6 (fairness of proceedings), of Art. 13 and of Art. 8 and 34 (concerning the monitoring of the correspondance in detention)	Partly adjourned : concerning the complaints related to the applicant's possible extradition and detention under Art. 3, 5, 6 and 13 and concerning the hindrance of the applicant's right to individual petition under Art. 34 Partly inadmissible as manifestly ill-founded
Ukraine	24 Mar. 2009	Kirichenko N° 8883/02 Link	Alleged violations of Art. 2 and 3 (alleged police misconduct) and of Art. 6 and 13 (fairness of proceedings and lack of an effective remedy in that respect)	Inadmissible for non exhaustion of domestic remedies (concerning the allegations of ill-treatment by police officers) and as manifestly ill-founded (concerning the remainder of the application)
Ukraine	24 Mar. 2009	Matmuratova N°10825/02 Link	The applicant, an Uzbek national, complained about violations of Art. 3, 5 and 13 following her conviction at domestic level for selling heroin	Struck out of the list (applicant no longer wishing to pursue her application)
Ukraine	24 Mar. 2009	Kochkadayev N° 23951/05 Link	The applicant complains that he was not entitled to pension payments and that he was discriminated against	Inadmissible <i>ratione temporis</i>
Ukraine	24 Mar. 2009	Vorontsova and others N° 48584/06 et al. Link	Non enforcement of final decisions in the applicants' favour	Struck out of the list (applicants no longer wishing to pursue their application)
Ukraine	24 Mar. 2009	Ivashchenko N° 23728/03 Link	Alleged violations of Art. 6 (excessive length of criminal proceedings, unfairness of proceedings, in particular lack of access to a court)	Inadmissible as manifestly ill-founded (no appearance of violation of the Convention because in particular the overall length of criminal proceedings could not be considered as excessive)
Ukraine	24 Mar. 2009	Bratchenko n° 27234/04 Link	Alleged violations of Art. 6 (length and fairness of the proceedings), of Art. 8 and Art. 1 of Prot. 1 (confidentiality of correspondance and unlawful occupation of the applicant's flat), of Art. 5 (unlawful detention)	Adjourned concerning the excessive length of proceedings Inadmissible as manifestly ill-founded concerning the remainder of the application (no appearance of violation)
Ukraine	24 Mar. 2009	Deyneko N° 40795/04 Link	Alleged violation of Art. 3 (police ill-treatment), of Art. 5 (lawfulness and length of pre-trial detention), of Art. 6 (fairness and length of proceedings) and of Art. 10 (concerning in particular the refusal to make a video record of the hearing)	Partly adjourned (concerning the length of pre-trial detention and the length of criminal proceedings) Partly inadmissible for non-exhaustion of domestic remedies (concerning the allegation of ill-treatment) and as manifestly ill-founded (concerning the remainder of the application)
Ukraine	24 Mar. 2009	Sholos N° 11780/05 Link	Alleged violation of Art. 1 of Prot. 1 (concerning the refusal to continue the payment of the old-age pension of the applicant who emigrated in Israel), and of Art. 14 (discrimination on ground of place of residence and ethnic origin) and Art. 2 of Prot. 4 (freedom of movement)	Inadmissible <i>ratione temporis</i> : the alleged violations took place before the Convention entered into force in Ukraine
Ukraine	24 Mar. 2009	Filatov N° 16061/05 Link	Non enforcement of a final decision in the applicant's favour	Struck out of the list (friendly settlement reached)

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 27 April 2009 : [link](#)
- on 4 May 2009 : [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 and the Office of the Commissioner for Human Rights.

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 NHRI's 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).

Communicated cases published on 27 April 2009 on the Court's Website and selected by the NHRS Unit and the Office of the Commissioner for Human Rights

The batch of 27 April 2009 concerns the following States (some cases are however not selected in the table below): Austria, Bulgaria, Croatia, Finland, France, Georgia, Greece, Latvia, Romania, Russia, Turkey and Ukraine.

<u>State</u>	<u>Date of communication</u>	<u>Case Title</u>	<u>Key Words</u>
Croatia	9 Apr. 2009	Delic N° 35838/08	Alleged violation of Art. 6 § 1 – Fairness of the proceedings before domestic courts – Lack of access to the Constitutional Court : complaint inadmissible as being lodged outside the thirty-day time-limit
Croatia	9 Apr. 2009	Mavrinac N° 38950/08	Alleged violation of Art. 6 § 1 – Lack of access to a court in the framework of proceedings to obtain compensation following a road accident – Alleged violations of Art. 8 and 1 of Prot. 1
Croatia	9 Apr. 2009	Oluic N° 61620/08	Complaint about the excessive noise level in the applicant's flat and excessive noise coming from a bar – Alleged violations of Art. 8, Art. 6, Art. 2 and Art. 1 of Prot. 1
Finland	6 Apr. 2009	Majuri N° 21989/08	Alleged violation of Art. 2 of Prot. 4 - Right to choose his place of residence – Inability to obtain a long-term placement in a nursing home near the place of residence of the applicant's son
France	7 Apr. 2009	Chapin and Charpentier N° 40183/07	Alleged violations of Art. 12 and 14 – Alleged discrimination on the basis of sexual orientation - Annulment of a marriage pronounced in Bègles of two persons of the same sex
Georgia	8 Apr. 2008	Miminoshvili N° 10300/07	Alleged violation of Art. 3 – Lack of adequate medical treatment in detention in Tbilissi Prison n° 8 – Alleged violation of Art. 34 (on account of the refusal of the applicant to withdraw his previous application before the European Court of Human Rights as allegedly requested by domestic authorities)

Russia	9 Apr. 2009	Khachatryan N° 9443/05	<i>Inter alia</i> : alleged violations of Art. 3 – Ill-treatment – Police misconduct – Procedural aspect - Lack of medical treatment in detention
Russia	8 Apr. 2009	Klepikov N° 5443/06	
Russia	8 Apr. 2009	Nasakin N° 22735/05	
Russia	8 Apr. 2009	Stepanov N° 33872/05	
Russia	8 Apr. 2009	Novaya Gazeta and Milashina N° 4097/06	Alleged violation of Art. 10 – Conviction of the applicant, the newspaper <i>Novaya Gazeta</i> , for defamation following the publication of articles on the need to reopen the Kursk submarine case.
Russia	6 Apr. 2009	Bozhkov N° 17071/05	<i>Inter alia</i> : Alleged violations of Art. 2 and 3 (the applicant contracted tuberculosis in a penitentiary institution) – Alleged violation of Art. 6 (in particular concerning a breach in the equality of arms)
Turkey	8 Apr. 2009	Dilipak (no.4) N° 29680/05	<i>Inter alia</i> : Alleged violation of Art. 6 – Fairness of the proceedings before military courts
Turkey	8 Apr. 2009	Gazioglu and Others N° 29835/05	Alleged violation of Art. 3 – Police misconduct – Alleged violations of Art. 5, 10 and 11
Ukraine	6 Apr. 2009	Pokhlebin N° 35581/06	Alleged violation of Art. 3 – Conditions of detention in Simferopol ITT – Alleged violations of Art. 5 and 6
Ukraine	6 Apr. 2009	Tsygoniy N° 19213/04	Alleged violations of Art. 3 – Conditions of detention in Yevpatoriya IVS – Ill-treatment by police officers – Alleged violations of Art. 5 and 13
<u>Cases concerning Chechnya</u>			
Russia	8 Apr. 2009	Kadirova and others N° 5432/07	Disappearance cases in Chechnya – Alleged violations in particular of Art. 2, 3, 5 and 13
Russia	8 Apr. 2009	Taymuskhano va and others N° 11528/07	

Communicated cases published on 4 May 2009 on the Court's Website and selected by the NHRS Unit and the Office of the Commissioner for Human Rights

The batch of 4 May 2009 concerns the following States (some cases are however not selected in the table below): Austria, Bulgaria, Hungary, Moldova, Poland, Romania, Russia, Spain, the United Kingdom, Turkey and Ukraine.

State	Date of communication	Case Title	Key Words
Austria	14 April 2009	Wallishauser N°14497/06	The applicant complained under Art. 1 of Prot. No. 1 that section 53 § 3 (a) of the General Social Insurance Act made the employee liable for paying the employer's social security contribution when extraterritorial employers refused to pay the contribution. According to the applicant such a rule was no longer justified under public international law. The applicant also claimed a violation of Art. 14 taken in conjunction with Art. 6 and Art. 1 of Prot. No. 1. Under Art. 6 the applicant complained that the Federal Ministry for Social Security, Generations and Consumer Protection and the Constitutional Court failed to request the European Court of Justice to give a preliminary ruling on the question whether section 53 § 3 of the General Social Insurance Act violated European Union's law.
Bulgaria	14 April 2009	Deyanov no. 2930/04	Alleged violation of Art. 2, Art. 6 § 1 and Art. 13 – Failure of the authorities to take timely and adequate measures to find the applicant's son and to investigate into the disappearance - Length of civil proceedings - Lack of any effective remedy in that regard – The remainder of the application was declared inadmissible as manifestly ill-founded
Moldova	15 April 2009	Mătăsarua no. 44743/08	Alleged violation of Art. 5, 8, 10, 11 and 13 – Unlawful arrest and detention of the applicant – Alleged violation of the right to private and family life on account of the viewing and deletion of the content of the applicant's video cassette, including private material - Unwarranted interruption of the applicant's authorised protest.
Poland	15 April	M.K	Alleged violations of Art. 3, 5, 9, 14 and Art. 2 of Prot. No. 1 - Harassment and

	2009	no. 24200/07	physical violence of the applicants by other prisoners in Siedlce Prison due to the fact that the applicant was a prosecution witness - Failure of the prosecution authorities and of the prison staff to ensure the applicant's safety in prison and since his release – Impossibility to attend mass in the prison chapel and to follow the education courses offered in prison
Poland	14 April 2009	Witek no. 13453/07	Alleged violations of Articles 3, 5, 6, 7, 8, 9, 10 and 14 - Unlawfulness of the applicant's compulsory confinement in a psychiatric hospital.
Romania	16 April 2009	Geleri no 33118/05	Alleged violations of Article 3, Art. 8, Art. 5 § 2, Art. 6 § 3 a) and b), Art. 13 and Art. 1 of Prot. 7 – Ill-treatment by police officers during the deportation of the applicant to Italy – Disproportionate interference into the right to respect for private and family life of the applicant, who is married and has a child with a Romanian national - Unfairness of the deportation proceedings
Romania	16 April 2009	Iamandi no 25867/03	Alleged violation of Art. 5 §§ 1 and 3, Art. 3, Art. 8, Art. 34 and Art. 6 §§ 1 and 3 a) and e) – Unlawfulness of the arrest and detention– Alleged ill-treatment of the applicant during the investigation - Lack of adequate medical treatment while in detention – Censorship of correspondence – Disproportionate restrictions of the family visits in prison – Censorship of correspondence with the European Court of Human Rights (refusal to provide an envelope and a stamp) – Unfairness of criminal proceedings
Romania	16 April 2009	Roșca no 24857/03	Alleged violation of Art. 3, Art. 5 §§ 1 and 4, and Art. 6 § 1 – Ill-treatment of the applicant during the investigation – Lack of adequate medical treatment in the prison of Iasi – Unlawfulness of the applicant's detention– Unfairness of criminal proceedings
Spain	14 April 2009	Eusko Abertzale Ekintza - Accion Nacionalista Vasca (EAE-ANV) no 51762/07 (1) No 51882/07 (2)	In the first case, the applicant, a political party, complains under Art. 10, 11 and 13 about of the impossibility to take part to the elections in the Basque country and about the cancellation of its candidatures to the Basque elections. He alleges in particular that he cannot be considered as succeeding to the prohibited political parties Batasuna, Herri Batasuna and Euskal Heritarrok. He complains also about the lack of an effective remedy in this respect. In the second case the applicant complains under Art. 3 of Prot. 1 about a disproportionate interference with its right to participate to elections.
The United Kingdom	16 April 2009	Clift no. 7205/07	The applicant complains under Art. 5 together with Art. 14 of the Convention that his continued detention following the recommendation of the Parole Board to be granted conditional release violated his rights under the Convention on account of the difference in treatment between prisoners serving sentences of less than 15 years or discretionary life sentences with a tariff of less than 15 years and those serving sentences of 15 years or more.
<u>Cases concerning Chechnya and North Ossetia</u>			
Russia	14 April 2009	Alayeva no. 32952/06	Disappearance cases in Chechnya and North Ossetia – Alleged violations in particular of Art. 2, 3, 5 and 13
Russia	14 April 2009	Bopayeva and Others no. 40799/06	
Russia	14 April 2009	Murtazov and Others no. 11564/07	
Russia	14 April 2009	Z. no. 39436/06	

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

Hearings

In May 2009, the Court will be holding hearings in the cases of *Medvedyev and others v. France (Grand Chamber)*, *Gillan and Quinton v. the United Kingdom*, *Kononov v. Latvia* and *Muñoz Diaz v. Spain*. [Press Release](#) ; [Webcast of hearings](#).

The Court held also a Chamber hearing on 16 April 2009 on the admissibility and merits in the case of *Georgia v. Russia (No.1)* (application no. 13255/07). The case concerns the alleged harassment of the Georgian immigrant population in the Russian Federation following the arrest in Tbilisi on 27

September 2006 of four Russian service personnel on suspicion of espionage against Georgia. Eleven Georgian nationals were also arrested on the same charges. The four Russian servicemen were subsequently released by executive act of clemency. You may find additional information using the following [link](#).

Referrals to the Grand Chamber (21.04.09)

The following cases have been referred to the Grand Chamber of the European Court of Human Rights:

- ***Carson and Others v. the United Kingdom*** (application no. 42184/05);
- ***Tănase and Chirtoacă v. Moldova*** (no. 7/08).

The Grand Chamber panel of five judges accepted the above cases for referral to the Grand Chamber, under Article 43 of the European Convention on Human Rights. The panel also adjourned the following cases:

- ***Panzari v. Moldova*** (no. 27516/04).

Judgments in a further 68 cases, listed at the end of the following [press release](#), are now final after requests for them to be referred to the Grand Chamber were rejected.

Visit by the Minister of Justice of the Russian Federation (06.05.2009)

On 7 May 2009 President Costa will meet Alexander Konovalov, Minister of Justice of the Russian Federation, who will be visiting the Court.

Visit by a delegation from the Lithuanian Constitutional Court (05.05.2009)

On 6 and 7 May 2009 a delegation from the Lithuanian Constitutional Court, led by its President, Kęstutis Lapinskas, will be visiting the Court. It will be received by, among others, President Costa and Danutė Jočienė, the judge elected in respect of Lithuania. Other judges will also be taking part in the meeting.

Part II : The execution of the judgments of the Court

A. New information

2008 report on execution of judgments of the European Court of Human Rights (22.04.09)

The Committee of Ministers of the Council of Europe published its second annual report on its supervision of the execution of the judgments of the European Court of Human Rights.

In 2008, 1,384 new judgments finding violations of the Convention on Human Rights were brought before the Committee for supervision of their execution, thus bringing the number of pending cases to 6,614. The compensation awarded to the victims in these new judgments amounted to some 55.5 million euros.

400 cases were closed by final resolutions in 2008 (in a number of these necessary execution measures had already been taken before 2008).

In their introduction to the report, the successive Chairs of the Committee's special human rights meetings in 2008 - Ambassadors Per Sjögren from Sweden, Marta Vilardell from Spain and Meta Bole from Slovenia - stress the close links between good execution, the proper implementation of the European Convention on Human Rights in the Council of Europe's member states and the case-load of the European Court of Human Rights.

They underline in particular the importance of ensuring, after the finding of a violation of the Convention, not only that necessary legislative and other changes are rapidly undertaken, but also that effective domestic remedies exist so that other victims may obtain reparation without having to go before the European Court of Human Rights.

The Director General of Human Rights and Legal Affairs of Council of Europe, Philippe Boillat, said the report demonstrates "not only the importance of rapid execution but also the complexity of many execution issues and the need for constructive interaction between all involved in order to find good solutions. The recent increase of cooperation activities to speed up execution in a number of situations is a step forward in this direction".

Major developments of the execution process in 2008 are noted in the report. Appendices present detailed statistical information, both in general and by state, and also a thematic overview of major developments in the execution of the pending cases. The report also presents the Committee of Ministers new Recommendation (2008)2 in which the Committee provides a number of recommendations to member states to improve their capacity to implement the judgments of the European Court of Human Rights, (e.g. to designate a co-ordinator of the execution process or to keep, as appropriate, national parliaments informed).

[Link to 2nd annual report \(2008\)](#)

The Council of Europe's Committee of Ministers will hold its next "human rights" meeting from 2 to 4 June 2009 (the 1059 st 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 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/

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

Part III : The work of other Council of Europe monitoring mechanisms and advisory bodies

A. European Social Charter (ESC)

[European Roma Rights Center \(ERRC\) v. Bulgaria: decision on the merits made public \(20.04.09\)](#)

The ERRC alleged in its complaint that Bulgarian health insurance legislation discriminates some groups in society, such as the Roma community. It also maintained that government policies do not adequately address the specific health risks of the Romani communities, and that the government has not taken any measures to put an end to the discriminatory practices on the part of health care practitioners against Roma. The ERRC considers that this situation constitutes a violation of Articles 11 and 13 of the Revised Charter, taken alone or in conjunction with Article E.

In its decision on the merits of 3 December 2008, the European Committee of Social Rights concluded that the situation in Bulgaria constituted a violation of Article 11 §§ 1, 2 and 3 (right to health) in conjunction with Article E (non-discrimination), and of Article 13§1 (right to social and medical assistance) of the European Social Charter (revised) :

In particular, "bearing in mind that Article 13§1 of the Revised Charter provides that persons without adequate resources, in the event of sickness, should be granted financial assistance for the purpose of obtaining medical care or provided with such care free of charge, the Committee considers that the measures adopted by the Government do not sufficiently ensure health care for poor or socially vulnerable persons who become sick, thus amounting to a breach of this provision" (§.44).

The Committee furthermore *"holds that the failure of the authorities to take appropriate measures to address the exclusion, marginalisation and environmental hazards which Romani communities are exposed to in Bulgaria, as well as the problems encountered by many Roma in accessing health care services, constitute a breach of Article 11§§ 1, 2 and 3 of the Revised Charter in conjunction with Article E" (§.51).*

The European Committee of Social Rights will hold its **236th Session** from 11-15 May 2009. You may already consult the agenda of the session using the following link: [Agenda](#).

The ECSR will in particular examine the reports submitted by the States Parties :

- Revised Charter (2009) : Estonia, Finland, France, Lithuania, Moldova, Romania and Sweden.
- 1961 Charter (XIX-2) : Poland, Slovakia and Spain.

These reports cover Articles 3 (right to safe and healthy working conditions), 11 (right to protection of health), 12 (right to social security), 13 (right to social and medical assistance), 14 (right to benefit from social welfare services), 23 (or Article 4 of the Additional Protocol) (right of elderly persons to social protection), 30 (right to protection against poverty and social exclusion).

Committee member speaks about the Charter at an International Colloquy in Italy (23.04.09)

Mr Luis JIMENA-QUESADA, member of the European Committee of Social Rights, spoke of *"La justiciabilité des droits sociaux dans la Charte et la CEDH"* (Justifiability of social rights in the Charter and the ECHR), at an international Colloquy on the European Convention of Human Rights, held in Torino and Aosta, Italy (21-26 April 2009).

[Programme](#)

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

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)

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C. European Commission against Racism and Intolerance (ECRI)

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

Publication of the Advisory Committee Opinions to be accelerated (16.04.09)

The Committee of Ministers of the Council of Europe adopted on 16 April, a major [amendment to the rules](#) governing the publicity of the Opinions of the Advisory Committee on the Framework Convention for the Protection of National Minorities: opinions will now become automatically public four months after they have been transmitted to the State concerned.

[CM/Res\(2009\)3E/16 April 2009](#)

Election of experts

[CM/ResCMN\(2009\)3E/22 April 2009](#)

Election of an expert to the list of experts eligible to serve on the Advisory Committee on the Framework Convention for the Protection of National Minorities, and appointment of an ordinary member of the Advisory Committee in respect of a casual vacancy in respect of Cyprus.

[CM/ResCMN \(2009\)4E/22 April 2009](#)

Election of an expert to the list of experts eligible to serve on the Advisory Committee in respect of the Russian Federation.

Moldova: visit of the Advisory Committee on the Framework Convention for the Protection of National Minorities (21-24.04.09)

A delegation of the Advisory Committee on the Framework Convention for the Protection of National Minorities visited Chisinau in Moldova from 21 to 24 April 2009 in the context of the monitoring of the implementation of this convention in Moldova.

San Marino: Third State Report (22.04.09)

San Marino has just submitted its third [state report](#) in English, 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.

E. Group of States against Corruption (GRECO)

42nd Plenary Meeting of GRECO in Strasbourg (11-15.05.09)

GRECO will examine at its 42nd Plenary Meeting for adoption : draft Third Round Evaluation Reports on Albania, Belgium and Spain; a draft Joint First and Second Round Compliance Report on Ukraine; a draft Second Round Compliance Report on Georgia; draft Addenda to the Second Compliance Round reports on Belgium, Denmark, France and Slovenia. An exchange of views will be held on Wednesday 13 May with Mr. François VINCKE, Chair of the Commission on Anti-Corruption, International Chamber of Commerce.

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

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

Albania ratified on 14 April 2009 the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse ([CETS No. 201](#)).

Hungary ratified on 20 April 2009 the Revised European Social Charter ([CETS No. 163](#)).

Hungary signed and ratified on 14 April 2009 the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism ([CETS No. 198](#)).

Serbia ratified on 14 April 2009 the Convention on Cybercrime ([ETS No. 185](#)), the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems ([ETS No. 189](#)), the Protocol amending the European Convention on the Suppression of Terrorism ([ETS No. 190](#)), the Council of Europe Convention on the Prevention of Terrorism ([CETS No. 196](#)), the Council of Europe Convention on Action against Trafficking in Human Beings ([CETS No. 197](#)), and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism ([CETS No. 198](#)).

Slovakia ratified on 23 April 2009 the Revised European Social Charter ([CETS No. 163](#)).

B. Recommendations and Resolutions adopted by the Committee of Ministers

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C. Other news of the Committee of Ministers

[Conference "Health Care in Europe- for and with children" \(16-17.04.09\)](#)

The conference took place in Madrid from 16-17 April during the Spanish Chairmanship of the Committee of Ministers. It launched a specific project concerning children's rights in the field of health. The provision of child-friendly health care and the promotion of children's participation in decision-making are among the issues addressed.

[Situation in Moldova: Statement by Council of Europe Committee of Ministers' Chairman Miguel Angel Moratinos \(23.04.09\)](#)

"I am much concerned about the situation in Moldova following the violent events of 7 April, especially in view of the reports of ill-treatment of those detained by the authorities and restrictions on freedom of the media and on access to information. Taking into consideration the information provided by the delegation of the Council of Europe that recently visited Moldova there are many elements for concern. I urge the Moldovan government to act in accordance with its commitments towards the Council of Europe when dealing with the consequences of the events of 7 April. The Moldovan authorities should guarantee the full respect for the rule of law, fundamental freedoms and human rights, including the rights of peaceful assembly, access to information and expression. Allegations of ill-treatment should be properly investigated. At the same time, all concerns regarding the 5 April elections should be addressed in a transparent manner. I call on all political forces in Moldova to engage in political dialogue with a view to restoring the proper functioning of democratic institutions and to pursuing Moldova's European path."

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

Part V : The parliamentary work

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

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

➤ *Countries*

[Azerbaijan: it is better to consult in advance, say PACE co-rapporteurs following visit \(13.04.09\)](#)

"It is better to consult on sensitive issues in advance," said Andres Herkel (Estonia, EPP/CD) and Evguenia Jivkova (Bulgaria, SOC), co-rapporteurs for the monitoring of Azerbaijan by the Parliamentary Assembly of the Council of Europe (PACE), commenting on the 18 March Constitutional referendum at the end of a three-day fact-finding visit to the country (8-10 April).

[Ukraine: consensus and implementation of reforms is now urgently needed, say PACE co-rapporteur \(15.04.09\)](#)

"We welcome the work undertaken in the fields of legal and electoral reform in Ukraine, but it is now time that the different concept papers and draft laws are harmonised, adopted and implemented," said the two co-rapporteurs on Ukraine of the Parliamentary Assembly of the Council of Europe (PACE), Renate Wohlwend (Liechtenstein, EPP/CD) and Sabine Leutheusser-Schnarrenberger (Germany, ALDE), speaking at the end of their visit to Kiev from 5 to 8 April 2009.

[Situation in Moldova: PACE co-rapporteurs ask the authorities for 'full information' \(16.04.09\)](#)

Josette Durrieu (France, SOC) and Egidijus Vareikis (Lithuania, EPP/CD), co-rapporteurs on Moldova for the Monitoring Committee of the Parliamentary Assembly of the Council of Europe (PACE), have sent letters to the Presidents of the Republic and the Parliament of Moldova requesting full information about the sequence of events that followed the elections on Sunday 5 April 2009.

Moldova: Andrew McIntosh concerned at restrictions on media freedom (17.04.09)

Andrew McIntosh (United Kingdom, SOC), Chair of the Council of Europe Parliamentary Assembly (PACE) Sub-Committee on the Media, expressed concern at reports of restrictions on the work of journalists in Moldova following the recent elections.

"Especially in times of crisis and public controversies over the functioning of democratic institutions in a country, media freedom is essential for the public's right to information under Article 10 of the European Convention on Human Rights. Freedom of expression and information is a cornerstone of democracy. Public confidence and democratic stability can only be restored if the public is able to receive unrestricted, unbiased and truthful information through their own choice of media," he said.

➤ *Themes*

[Statement by PACE President on the Durban Review Conference \(22.04.09\)](#)

"The emergence of various forms of intolerance and racism within our communities and in relations between nations is a cause for concern. The Durban Review Conference taking place in Geneva is proof that we need to step up our efforts to combat racism," said Lluís Maria de Puig, President of the PACE. "On the one hand, the Conference has shown us the determination of the international community to make progress in this field, but at the same time, it provides a platform for intolerant

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

remarks presented as anti-racism. However, denial of the Holocaust is in itself a manifestation of racism and an incitement to hatred.”

PACE hearing on discrimination on the basis of sexual orientation and gender identity (14.04.09)

A recent hearing on “discrimination on the basis of sexual orientation and gender identity” organised by PACE’s Legal Affairs Committee (Berlin, 24 March 2009), brought together legal experts, NGOs and academics to brief parliamentarians on why – in the words of rapporteur Andreas Gross (Switzerland, SOC) – “some countries are more progressive on lesbian, gay, bisexual and transgender issues, and some have greater problems”. The hearing focused on the human rights aspects of such discrimination and also covered gender identity issues.

Hans Ytterberg, a former Swedish Ombudsperson against discrimination on the basis of sexual orientation who also chairs a Council of Europe expert committee, gave an overview of the legal and human rights principles in the field, and pointed out that sexual orientation was “a profound element of the identity of each and every human being” covering homosexuality, bisexuality and heterosexuality. A number of people were not heterosexual and their sexual orientation (homosexuality or bisexuality) was not illegal under international law. Their rights were part of international human rights law; therefore discrimination against them was not a question of minority rights. Sexual orientation and gender identity were dealt with in the case-law of the European Court of Human Rights, and by UN Treaty bodies, among others. According to the European Court, a difference in treatment was discriminatory if it had no objective and reasonable justification. Since sexual orientation was a most intimate aspect of an individual’s private life, the Court also considered that differences in treatment based on sexual orientation required particularly serious reasons by way of justification. Finally, this was not a matter of opinion: negative attitudes on the part of a heterosexual majority against a homosexual minority could not amount to sufficient justification, any more than similar negative attitudes towards those of a different race, origin or colour. Equality in dignity and rights was a fundamental human right, not a negotiable concession, he concluded.

Julia Ehart of Berlin-based TransGender Europe explained what it was like to be born male, but identify as female. She outlined the forms of discrimination transgender people are subjected to, pointing out that “roughly one hate-killing of a transgender person per month comes to public attention”. Name and gender were “the entry cards to society”, she pointed out (for example on ID cards, credit and bank cards, school and university degree certificates) and if changes to these were not recognised, transgender people faced stigmatisation in every aspect of life. Participation in social life, travelling or finding a job became virtually impossible. She stressed the need for protection from hate crimes by the law, and for greater reporting of hate crime, as well as the need to include gender identity in anti-discrimination legislation. Transgender people should have the possibility to change name and gender in an accessible and quick way.

Professor Igor Kon of the Russian Academy of Sciences said that the level of discrimination against LGBT persons was a litmus test for evaluating the state of human rights and tolerance in a country. He gave some examples of hate speech against LGBT people and recalled that a recently-published report of the Moscow Helsinki Group on the situation of LGBT persons in Russia contained a multitude of compelling examples of grave violations of human rights, including beatings and murders, but these facts were hushed up and victims’ complaints were not listened to by the authorities. Such a mindset was hardly in keeping with the 21st century, since a world governed on these lines would have no inter-racial or inter-faith marriages, nor any female politicians or black presidents. He said differences in public opinion from country to country on this issue were not cultural, but linked to historical development. Today, some 31 per cent of Russians considered homosexuality as an “illness” and only 20 per cent thought it as valid as other forms of sexuality, he pointed out, but public education could help to change this. “Every boy is told from childhood that a real boy should not be a girl or gay – this is banged into him.” He stressed that there should be special instruction making clear that persecution and harassment on grounds of sexual orientation are inadmissible. Millions of persons were concerned. There should also be objective international monitoring of the real situation of the LGBT community, he said.

Ioannis Dimitrakopoulos of the European Union’s Agency for Fundamental Rights presented a short overview of the report prepared by his Agency on homophobia and discrimination on grounds of sexual orientation in all the EU member states. One key finding was that hate-crimes directed at LGBT people were often under-reported: LGBT people should be encouraged to come forward and lodge complaints on incidents of discrimination. The word “gay” continued to be a derogatory term in many EU countries, there was a lot of hate-speech on the internet and there remained few positive LGBT images in education. EU countries needed to take a firm stance against discrimination on grounds of sexual orientation and gender identity, he said, but should base themselves on robust data: authorities

and other specialised bodies in many EU member states still need to develop appropriate data collection mechanisms.

Dennis van der Veur from the office of the Council of Europe Commissioner for Human Rights said the Commissioner was committed to working on this issue, and pointed out that discrimination took place in all Council of Europe member states. It was “not just a problem of the East”, as some claimed. Two particular issues needed to be stressed, he pointed out: the right to physical integrity and dignity of transgender people, and the lack of data on discrimination on the basis of sexual orientation and gender identity. The Commissioner had made a proposal to complement the study covering EU countries with further research in order to cover Council of Europe member states which are not EU members.

Mr Gross is to prepare a full report on the issue for debate by the Assembly in the coming months.

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

“Italy should eradicate discrimination and xenophobia and improve its migration policy” says Commissioner Hammarberg” (16.04.09)

“Although efforts have been undertaken, serious concerns remain about the situation of Roma, migration policy and practice, and the non-respect of binding interim measures requested by the European Court of Human Rights” said Thomas Hammarberg, the Council of Europe Commissioner for Human Rights, presenting his report on Italy.

“The authorities should condemn more firmly all racist or intolerant manifestations and ensure effective implementation of anti-discrimination legislation”, he said He also recommends that the representation of ethnic groups in the police should be increased and that an independent national human rights institution, such as an Ombudsman, should be established in order to reinforce human rights protection.

Commissioner Hammarberg further recommends improving the situation of Roma. “There is a persistent climate of intolerance against them and their living conditions are still unacceptable in a number of settlements that I visited. Local good practices exist in the country, and they should be broadened.” He further expresses his deep concern about the appropriateness of the census in Roma and Sinti settlements and remains worried about its “compatibility with European standards guiding the collection and processing of personal data.”

Moreover, the Commissioner urges the authorities to create consultative mechanisms at all levels with Roma and Sinti, avoid evictions without offering alternative housing and offer appropriate education solutions for children. He also hopes that “the new action plan for social welfare and integration measures is soon implemented and the authorities implement promptly their pledge to ratify without reservation the Council of Europe Convention on Nationality, which would benefit in particular *de facto* stateless Roma children.”

The Commissioner reiterates his critique of the draft law on public security for its possible negative effects on migrants’ rights. “Criminalising migrants is a disproportionate measure which risks igniting further discriminatory and xenophobic tendencies in the country” he said. “Furthermore, the recent provision introduced by the Senate which allows medical personnel to report to the police irregular migrants who access the health system is profoundly unjust and could further marginalise migrants.”

Commissioner Hammarberg remains worried by a number of forced returns, on security-related grounds, to Tunisia of individuals who seriously risk torture in that country. “In their duty to protect societies from terrorism, states should not contravene human rights standards such as the absolute prohibition of torture or inhuman treatment. Italy has ignored binding interim measures requested by the European Court of Human Rights to halt deportations, thus seriously jeopardising the effectiveness of the European system of human rights protection.”

Finally, the Commissioner welcomes certain positive steps taken by the Italian authorities, in particular the adoption of intercultural education programmes, the decision to ratify the Council of Europe’s Convention on action against trafficking in human beings and the development of a national programme on unaccompanied foreign minors.

The report is based on the visit carried out last January and follows up on the recommendations set up in the Commissioner’s memorandum of July 2008. It is published together with the authorities’ response and a photo gallery illustrating the visit.

[Read the report](#), [Link to the photo gallery](#)

Moldova: Commissioner Hammarberg to assess post-electoral human-rights situation (24.04.09)

The Council of Europe Commissioner for Human Rights, Thomas Hammarberg, carried out a visit to Moldova from 25 to 28 April to assess the human rights situation following the recent post-electoral events. "I want to obtain a first-hand, complete picture of the recent events and their implications for human rights" he said. "It is essential to establish an accurate description of what actually happened and take all necessary measures to protect human rights."

Kosovo^{*}: Exchange between the Commissioner and the UN on the environmental disaster in Roma camp (23.04.09)

The Commissioner published an exchange of letters with Ambassador Lamberto Zannier, Special Representative of the UN Secretary General in Kosovo on the situation of the Roma, Askhali and Egyptian families who are living in the lead-contaminated camps of Cesmin Lug and Osterode in north Mitrovica. Offering his support to UNMIK, the Commissioner stresses the urgency of ensuring a viable solution for the people who are still living in the contaminated camps. The Commissioner's letter was sent to UNMIK after his visit to Kosovo carried out in March and is published together with the response of Ambassador Zannier.

[Read the Letter](#) of the Commissioner; [Read the response](#) of Ambassador Lamberto Zannier

Polish authorities submit interim report on Commissioner's Recommendations (16.04.09)

The Polish authorities have recently provided the Commissioner with an interim report on the progress made in implementing the Commissioner's 19 recommendations for improvement of the human rights situation in the country.

Following Commissioner Hammarberg's visit to Poland in December 2006 and the publication of the visit Memorandum in June 2007, the Polish authorities adopted a Plan of Action and set up an inter-governmental Working Group specifically to deal with implementation. The interim report provides a comprehensive analysis of the steps taken so far by concerned Ministries to improve public institutions and the system of justice.

"I am impressed with the conscientious way in which the Polish authorities are going about the task of implementing my Memorandum recommendations. This interim report provides the basis for further dialogue on the key issues raised, such as the fight against discrimination and the system of justice. There do remain a number of areas where more work is needed, and I intend to provide the authorities in due course with a written response", says Commissioner Hammarberg.

[Read the report](#)

B. Thematic work

Racism: Europeans ought to be more self-critical and remain open to thorough and frank UN discussions (14.04.09)

"Europe is not a racism-free zone" points out Thomas Hammarberg in his Viewpoint published and goes on to say that "hate crimes must be stopped and action taken against discrimination in employment, education, housing, sport and other social contexts." The Council of Europe Commissioner for Human Rights urges all governments to be self-critical and participate constructively in the UN Conference which will meet in Geneva from 20-24 April to review the implementation of the Durban Declaration and Plan of Action against racism and intolerance adopted in 2001 in the framework of the first World Conference against racism, racial discrimination, xenophobia and intolerance.

[Read the viewpoint](#)

Children should be protected from the consequences of the economic crises, says Commissioner (24.04.09)

"Child poverty was already before the current crisis an acute problem in large parts of Europe" said

^{*} "All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo."

Commissioner Hammarberg at a UNICEF-sponsored conference at the State University of Moscow. “Now there is a serious risk of further degradation. We see already that allocations for children are cut in state budgets”, he said in his lecture at UNICEF-sponsored conference at the State University of Moscow.

[Read the speech](#)

C. Miscellaneous (newsletter, agenda...)

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

Part VII : the Venice Commission

Ukraine - Request for opinion on the Draft Constitution (21.04.09)

During a visit to Strasbourg on 21 April the Deputy Head of the Secretariat of the President of Ukraine, Ms Stavnichuk, presented the new version of the Constitution of Ukraine proposed by the President of Ukraine. The draft addresses in particular the relations between President, parliament and government. It provides for the establishment of a second chamber of parliament.

Ms Stavnichuk asked the Venice Commission to provide an opinion on this text at its next session in June 2009.

[Read the Draft law on amending the Consitution of Ukraine presented by the President of Ukraine](#)

Electoral issues: Conference on the Spanish Presidency of the Committee of Ministers (24.04.09-25.04.09)

Within the framework of the Spanish Presidency of the Committee of Ministers, the Venice Commission organises, in co-operation with the Centre for Constitutional and Political Studies, a conference on "Controlling Electoral Processes".

[Programme](#)