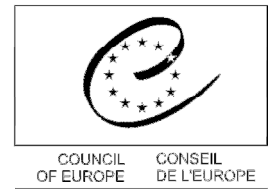


DIRECTORATE GENERAL OF HUMAN RIGHTS  
AND LEGAL AFFAIRS

LEGAL AND HUMAN RIGHTS CAPACITY BUILDING  
DEPARTMENT

**Division II - National Human Rights Structures Unit**



Strasbourg, 30 October 2009

**Regular Selective Information Flow  
(RSIF)  
for the attention of the National Human Rights Structures (NHRs)**

**Issue n°26  
covering the period from 28 September to 11 October 2009**

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

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## Introduction

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

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

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

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

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

The preparation of the RSIF is generously supported by funding from the Ministry of Foreign Affairs of Germany.



**Auswärtiges Amt**

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

We invite you to read the [INFORMATION NOTE No. 122](#) (provisional version) on the court's case-law. This information note, compiled by the Registry's Case-Law Information and Publications Division, contains summaries of cases which the Jurisconsult, the Section registrars and the Head of the aforementioned Division examined in August-September 2009 and selected as being of particular interest.

### 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, 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.

- **Right to life / Investigation**

#### **Seyfettin Acar and Others v. Turkey (no. 30742/03) (Importance 3) – 6 October 2009 – Violations of Article 2 – State's responsibility for the killing of the applicants' relatives – Authorities' failure to carry out an effective investigation**

In April 1992 the applicants, travelling with relatives in south-east Turkey, alleged that they had been stopped by a group of village guards who had opened fire on them injuring two of the applicants and killing two of their relatives. The applicants complained that the Turkish authorities had not done all that was necessary to identify and punish those responsible. The Court has already found that there was a risk attached to the use of civilian volunteers in a quasi-police function (see *Acar and Others v. Turkey*). The Court considered that the failure of the gendarmes to react to the unlawful activities of the village guards supports a strong inference of acquiescence in those activities. It also considered that the State must bear responsibility for the killing of the applicants' relatives and the attempt to kill other two applicants. No justifications for the killings or attempted killings having been provided, the

Court concluded accordingly that there has been a breach of Article 2. The Court also held that there has been a violation of Article 2 as a result of the ineffectiveness of the investigation in respect of the alleged events.

- **Ill-treatment in police custody / Investigation**

**Petru Roşca v. Moldova (no. 2638/05) (Importance 3) – 6 October 2009 – Violation of Article 3 – Lack of an effective investigation into allegation of ill-treatment during arrest – Violation of Article 6 § 1 in conjunction with Article 6 § 3 (c) and (d) – Lack of sufficient time and facilities to prepare defence**

The applicant is a school teacher with a third-degree disability. He alleged that he had been ill-treated in May 2004 when arrested by the police and while in detention on suspicion of minor hooliganism, and that he had been convicted without being given sufficient time to prepare his defence and without a lawyer. The Court held unanimously that there has been a violation of Article 3 due to the excessive use of force during the applicant's arrest and the lack of an effective investigation in that connection. The court also concluded that the applicant has not had the facilities to prepare his case in breach of Article 6 § 1 in conjunction with Article 6 § 3 (c) and (d).

**Ümit Gül v. Turkey (no. 7880/02) (Importance 3) – 29 September 2009 – Violations of Article 3 – Ill-treatment in police custody – Lack of an effective remedy – Violation of Article 6 § 3 (c) in conjunction with Article 6 § 1 – Inability to consult a lawyer while in police custody**

The applicant is a Turkish national of Kurdish origin. In 2001 he was arrested on suspicion of having written slogans on a wall in support of an illegal organisation. He complained that he had been tortured while in police custody. The Court considered that the applicant had been subjected to ill-treatment that was sufficiently serious to fall within the scope of Article 3 of the Convention. "*The conclusion that the investigation into the applicant's allegations of ill-treatment was not carried out by an impartial and independent body is sufficient for the Court to conclude that the authorities have failed to carry out an effective investigation, contrary to the positive obligation inherent in Article 3 of the Convention* (§ 56)." Consequently the Court held that there has been a violation of both the substantive and procedural aspects of Article 3 of the Convention. The court also concluded that there has been a violation of Article 6 § 1, due to the restrictions on the applicant's access to a lawyer while in police custody, during which he was also ill-treated.

- **Conditions of detention**

**Bordikov v. Russia (no. 921/03) (Importance 2) – 8 October 2009 – Violation of Article 3 – Conditions of detention – No violation of Article 3 – No inadequacy of the medical treatment received by the applicant in detention – No violation of Article 5 § 3 – No violation of Article 6 § 1 – Domestic authorities' displayed relevant and sufficient reasons to justify the length of the applicant's detention and the length of the proceedings**

The applicant complained that he had been detained in inhuman and degrading conditions without being given adequate medical treatment, and that his pre-trial detention and the criminal proceedings opened against him in 1998, on suspicion of unlawful possession of ammunition and drugs, had lasted too long. The Court found a violation of Article 3 due to the conditions of the applicant's detention in remand prison no. IZ-61/1 in Rostov-on-Don. The Court considered that there had been no violation of Article 3 on account of the adequacy of the medical treatment received while in detention. It also considered that there had been relevant and sufficient reasons to justify the applicant's detention. Accordingly there were no violations of Articles 5 § 3 and 6 § 1.

- **Right to liberty and security / Length of detention**

**Mikolenko v. Estonia (no. 10664/05) (Importance 2) – 8 October 2009 – Violation of Article 5 § 1 – Invalid grounds for the applicant's detention due to the lack of a realistic prospect of his expulsion**

The applicant complained that, following the authorities' refusal to extend his residence permit, he was detained unlawfully in 2003 in a deportation centre and was kept there for too long, until his release in

2007. The Court concluded that the grounds for the applicant's detention – action taken with a view to his deportation – did not remain valid for the whole period of his detention due to the lack of a realistic prospect of his expulsion and the domestic authorities' failure to conduct the proceedings with due diligence. Accordingly it found a violation of Article 5 § 1.

**Lazoroski v. “The former Yugoslav Republic of Macedonia” (no. 4922/04) (Importance 2) – 8 October 2009 – Violations of Article 5 §§ 1(c) and 2 – Unlawfulness of detention due to insufficient evidence for a “reasonable suspicion” – Violation of Article 6 § 1 – Inability to effectively participate in the proceedings**

On 6 August 2003 a high-ranking officer in the Intelligence Service gave a verbal order for the applicant's arrest on suspicion that he was armed and might leave the State. The same day the applicant was arrested by police near the Tabanovce border post with Serbia. He was taken to Tabanovce police station where he was detained until 9 a.m. on the following day.

During the night spent in detention, the applicant signed a report in which he waived his right to a lawyer. No record of questioning was kept; however, the applicant submitted that he was questioned about some members of the then opposition party and some high-profile journalists.

The next day the applicant challenged the lawfulness of his arrest before the Ministry of the Interior and before an investigating judge at the Kumanovo Court of First Instance. On 26 January 2005, the investigating judge found that he had been lawfully deprived of his liberty on suspicion of arms trafficking. The applicant's appeal was dismissed in February 2005.

The applicant complained that he had been detained unlawfully; that he had not been informed of the reasons for his arrest; that his lawyer had been prevented from attending his interview, that the arrest had been carried out without a court order, and that he could not participate effectively in the proceedings challenging the lawfulness of his detention, and that those proceedings had been too long.

**Article 5**

The Court noted that the domestic judicial authorities had not provided any information about the alleged offence that the applicant was suspected of, neither any evidence in support of his involvement. Given that there had been nothing to suggest that he had been involved in trafficking in arms, the Court held unanimously that his detention had not been based on reasonable suspicion and consequently had been unjustified, and in breach of Article 5 § 1 (c).

Furthermore, none of the reports submitted by the Government indicated that the applicant had been informed of the reasons for his arrest. No report had been drawn regarding his questioning while in police custody, and there had been no other evidence that the applicant had been given reasons for the arrest. Accordingly, the Court held unanimously that there had been a violation of Article 5 § 2.

**Article 6**

As regards the applicant's claim that he could not participate in the proceedings, the Court noted that the evidence presented by the Ministry of Justice to the investigating judge deciding on the lawfulness of detention had not been shown to the applicant. In addition, he had not been invited to attend the hearing before the judge who had decided on his claim. His complaints in this respect had been likewise left unanswered on appeal. Consequently, the Court held unanimously that the applicant had been prevented from effectively participating in the proceedings in breach of Article 6 § 1.

**Naudo v. France (no. 35469/06) and Maloum v. France (no. 35471/06) (Importance 3) – 8 October 2009 – Violation of Article 5 § 3 – Excessive length of pre-trial detention**

The applicants are currently serving a prison sentence in France. They were arrested on 27 December 2000 on suspicion of participating in the hold-up of a Brink's armoured van on the public highway in Gentilly. The robbers had taken over 6.3 million euros. The suspects were traced, thanks to indications by a witness, with a huge stock of weapons and explosives and a significant sum in cash was found. A judicial investigation was opened against them on 29 December 2000 and they were remanded in custody for one year, on the grounds, among others, that the obligations of judicial supervision appeared insufficient and that pre-trial detention was the only way to preserve evidence, prevent collusion with accomplices and ensure they remained amenable to justice. On several occasions their detention was extended and their applications for release were dismissed on similar grounds until they were finally convicted.

On 1 April 2005, after a judicial investigation that had lasted nearly four years (concerning several co-accused and involving 26 requests for evidence on commission, both in France and abroad, over 85

experts' reports and 43 records of interview or confrontation), the Investigation Division of the Paris Court of Appeal committed the applicants to stand trial before the Val-de-Marne Assize Court. On 29 November 2005 the Court of Cassation, ruling on an application from the public prosecutor, relocated the case to the Paris Assize Court on security grounds. In a final judgment of 22 December 2006 that court sentenced the applicants to 13 years' imprisonment.

The applicants complained that the length of their pre-trial detention had been excessive.

A pre-trial detention period of six years (from the applicants' arrest on 27 December 2000 to their conviction on 22 December 2006) has to be justified by particularly strong arguments. The reasons given by the French courts for holding Mr Naudo and Mr Maloum in custody (in particular the risk of absconding) were admittedly relevant and sufficient, as the case concerned organised crime and large-scale robbery with international ramifications, but the proceedings were excessively long.

The Court found that, whilst it was well aware that the requisite promptness in such a case must not hinder the efforts of judges and prosecutors to perform their duties with due care, the length of time at issue was unjustified. The delays (which did not concern the judicial investigation itself) could not be justified simply by the preparation for the trial or by the relocation of the trial on security grounds from the Assize Court originally hearing the case, or by the backlog of cases at the new Assize Court.

The Court held unanimously that the applicants' detention, by its excessive duration, had thus entailed a violation of Article 5 § 3.

### **Stoican v. Romania (no. 3097/02) (Importance 3) – 6 October 2009 – Violations of Article 5 § 3 – Failure to bring the applicant promptly before a judge – Excessive length of pre-trial detention**

At the material time the applicant was a judge in a first-instance court in Bucharest. Suspected of being part of an organised group and of having repeatedly falsified official documents in the exercise of her duties to obtain various properties in the centre of Bucharest, two sets of criminal investigations were brought against her.

The first set of proceedings against the applicant was started in October 2001. She was arrested for 30 days on the order of a prosecutor in connection with the criminal investigations against her. After that, between December 2001 and April 2002, her detention was extended several times to finalise the investigation and on the ground that her release would be contrary to public policy, given the seriousness of the offences she was accused of and the risk of generating mistrust in the judicial system. The applicant was convicted of abuse of power and forgery and sentenced to seven years' imprisonment. She was released from prison on 13 November 2007.

The second set of proceedings against the applicant was started in April 2002 when she was arrested. Her detention was repeatedly extended until November 2002 on the same grounds as in the first set of proceedings. She was ultimately convicted of abuse of power and forgery and sentenced to one year and four months' imprisonment in June 2003.

The applicant complained that she had not been brought promptly before a judge and had been kept too long in detention without concrete grounds.

8 and 12 days respectively had passed in each set of proceedings before the order to arrest Ms Stoican had been examined by a judge. In the light of its earlier case law concerning length of pre-trial detention in particularly serious cases, the Court found that the applicant should not have been detained for so many days before bringing her to a judge (see *Brogan and Others v. the United Kingdom* and *Pantea v. Romania*)

In the two sets of proceedings, the courts had extended the applicant's pre-trial detention six and nine times respectively, in order for the prosecutor to gather more evidence and because of the seriousness of the public-policy issue at stake. However, no concrete reasons to corroborate these grounds had been given by the domestic courts whose reasoning had become more elliptic over time. The Court reiterated that public scrutiny of the administration of justice was possible only by giving reasoned decisions.

The Court held unanimously that the lack of concrete reasons in the domestic courts' decisions and the repeated extension of the applicant's detention pending trial had infringed Article 5 § 3.

### **Bahçeli v. Turkey (no. 35257/04) (Importance 3) – 6 October 2009 – Violation of Article 5 § 3 – Excessive length of pre-trial detention – Violation of Article 6 § 1 – Excessive length of criminal proceedings**



The applicant complained that he had been detained for too long pending trial and that the criminal proceedings against him on suspicion of membership of an illegal organisation (the Revolutionary People's Liberation Party-Front) had been too long. The Court unanimously held that there had been violations of the above articles due to the excessive length of the applicant's pre-trial detention and of the length of the criminal proceedings against him.

- **Right to a fair trial / Excessive length of proceedings**

**Sándor Lajos Kiss v. Hungary (no. 26958/05) and Talabér v. Hungary (no. 37376/05) (Importance 2) – 29 September 2009 – Violation of Article 6 § 1 in conjunction with Article 6 § 3 (c) – Infringement of the right to a fair trial due to the fact that the public hearing on appeal took place in the applicants' as well as their lawyers' absence**

In 2003, non-related criminal proceedings were brought against the applicants. In 2004, Mr Kiss was found guilty of aggravated assault and sentenced to four years in prison; Mr Talabér was convicted of vandalism and sentenced to a fine. Both applicants appealed seeking acquittal. The appellate court, the same in both cases, informed them that their appeals would be decided behind closed doors; the applicants opposed this, asking that public hearings be held instead. In 2005, the appeal court examined the cases in the absence of the applicants, their lawyers and the prosecution, and upheld their convictions.

The applicants complained of not having taken part in the appeal hearings in which decisions were taken about their convictions.

The Court first recalled that, as a general rule, in criminal proceedings the hearing of the defendants in person was a fundamental requirement from which very few exceptions could be allowed.

Both applicants had been sentenced by the first instance criminal courts: Mr Kiss to a time in prison, Mr Talabér to a fine. In view of the nature of the offences of which they had been found guilty, it might have been necessary to consider on appeal issues such as the applicants' personality and character. Consequently, both applicants should have been heard directly by the appellate court, especially given their explicit requests.

The Court noted that the appellate court, without any hearings at all, had fully reviewed the lower courts' judgments and had determined the applicants' guilt anew. In the Talabér case the Court had even modified the findings of facts by the first instance court and had relied on new facts. It was irrelevant in this respect that the appellate court had reached the same conclusions on the merits. Accordingly, the Court held unanimously that there had been a violation of Article 6 § 1 in conjunction with Article 6 § 3 (c).

**Maksimov v. Azerbaijan (no. 38228/05) (Importance 3) – 8 October 2009 – Violation of Article 6 § 1 – Infringement of the right to a fair trial on account of the failure to send the applicant a prior notice of the hearings of his cassation appeals**

The applicant is currently serving a life sentence in Gobustan Prison for a bomb attack carried out in March 1994 in the Baku metro killing 14 people and injuring many more.

The applicant, a former member of "Sadval", considered by some as an extreme nationalist and separatist organisation, was convicted in May 1996 of planning and carrying out the 1994 metro bomb attack. He was initially given a death sentence which, following the abolition of the death penalty in Azerbaijan in 1998, was commuted to life imprisonment.

In 2000 a new Code of Criminal Procedure ("CCP") was adopted in Azerbaijan. In August 2004 the applicant lodged a cassation appeal under the transitional law which, before entry into force of the new CCP, allowed the lodging of an appeal against final first-instance judgments delivered according to the former criminal procedure. He alleged that his conviction had been unfair. Both the Supreme Court and, following the applicant's additional cassation appeal, the Plenum of the Supreme Court, after having held hearings in the applicant's absence in April and November 2005, dismissed in the main the applicant's appeals.

The Government alleged that they had sent the applicant summons on 22 March and 10 November 2005 notifying him of the appeal hearings in his case. The applicant claimed that he did not receive either of the summons and that, as a general rule, did not receive information on his case until months later.

The applicant complained of the domestic courts' failure to summon him to the hearings of his cassation appeals.

The Court noted that copies of the summons issued on 22 March and 10 November 2005, as submitted by the Government, were not postmarked. Nor did the Government provide any other evidence to prove that the summons had actually been sent or delivered to the applicant. Given on the one hand the presence of the Public Prosecutor – who had made oral submissions at the hearing before the Supreme Court – and on the other hand the absence of the applicant who, moreover, had not been legally represented, it was up to the Supreme Court to maintain the adversarial character of the proceedings by ensuring the applicant's presence. However, there was no indication that the Supreme Court had even checked whether the summons had indeed been served on the applicant. Likewise, the applicant had not been duly informed of the hearing before the Plenum.

The Court noted that it was difficult to see how the applicant, without having prior notice of the hearings, could have exercised his right to be present and participate effectively in proceedings concerning the determination of criminal charges against him, a right implicit in the notion of an adversarial procedure. The Court therefore held unanimously that the proceedings before both the Supreme Court and its Plenum had not been fair, in violation of Article 6 § 1.

- **Right to respect for correspondence**

**Tsonyo Tsonev v. Bulgaria (no. 33726/03) (Importance 1) – 1 October 2009 – Violation of Article 8 – Unjustified interference with the right to respect for correspondence on account of the monitoring of a prisoner's correspondence – No violation of Article 13 – The monitoring of the correspondence was pursuant to Bulgarian legislation and as such could not be challenged under Article 13**

The applicant was detained in Lovech Prison on several occasions between November 2002 and February 2005.

On 20 June 2003 the applicant complained to the Execution of Sentences Directorate that letters to or from his relatives, various administrative authorities and his lawyers in the criminal proceedings had been systematically monitored without any justification. The Directorate replied that the monitoring was in accordance with domestic legislation on execution of sentences.

The applicant unsuccessfully requested that the Chief Public Prosecutor seek a declaration from the Constitutional Court that the provisions of the Execution of Sentences Act authorising the monitoring of prisoners' correspondence were unconstitutional.

Further to a criminal complaint by the applicant, alleging an infringement of his right to respect for his correspondence, the public prosecutor noted in an order of 3 November 2004 that there had been a failure to dispatch letters, amounting to an infringement, attributable to the prison administration, of the right of prisoners to respect for their correspondence. However, he observed that it was impossible to identify those responsible and to institute criminal proceedings, in view of the time that had elapsed and the lack of a register of incoming and outgoing mail. He forwarded the file to the prison governor so that action could be taken and suggested introducing a register of incoming and outgoing mail.

The applicant brought an action against the Ministry of Justice on account of the failure to dispatch the letters. He was successful on appeal; in a judgment of 8 February 2006 the Gabrovo Regional Court found that the failure to dispatch the letters had resulted from shortcomings in the functioning of the prison administration and that the procedure for receiving mail had since been improved. The applicant was also awarded compensation.

The applicant complained that his correspondence had been monitored by the prison authorities and that he had no effective domestic remedies available in respect of that complaint, especially as there was no direct access to the Constitutional Court.

The Court observed that during the applicant's detention, Bulgarian legislation had provided for the systematic monitoring of the correspondence of prisoners in pre-trial detention and those serving sentences.

The Court further noted that the applicant had received several letters that had been opened by the prison administration and that, following one of the applicant's complaints, the authorities had themselves acknowledged that systematic monitoring took place. The Court also noted that at the relevant time the monitoring had been systematic and not subject to any time-limits, any requirement to justify its necessity in each individual case or any scrutiny by an independent authority.

The Court therefore considered that there had been an interference with the applicant's right to respect for his correspondence, which had not been justified by a pressing social need. It thus found a violation of Article 8.

As regards the complaint under Article 13, the Court pointed out that the monitoring of Mr Tsonev's correspondence was pursuant to the application of Bulgarian legislation and not from an individual decision by the prison management or any other authority, and that on that account the applicant's complaint fell foul of the principle that Article 13 did not go so far as to guarantee a remedy allowing a Contracting State's laws as such to be challenged before a national authority on the ground of being contrary to the Convention. The Court therefore found no violation of Article 13.

**Kotowski v. Poland (no. 12772/06) (Importance 3) – 29 September 2009 – Violation of Article 8 – Infringement of the right to respect for correspondence with the Court**

The applicant complained that his correspondence with the Court had been censored by the authorities during his detention for physical and mental cruelty towards his common-law wife. The Court noted “[...] that the interference with the applicant's right to respect for his correspondence took place on one occasion when the applicant was detained in a remand centre. [...] Thus, [the alleged] censorship of the Court's letter to the applicant was contrary to the domestic law. It follows that the interference in the present case was not “in accordance with the law”. Consequently, the Court found that there has been a violation of Article 8 of the Convention.

- **Freedom of thought, conscience and religion**

**Kimlya and Others v. Russia (nos. 76836/01 and 32782/03) (Importance 1) – 1 October 2009 – Violation of Article 9 read in light of Article 11 – Refusal to register a religious group in a particular region unless it has existed for 15 years**

The three applicants are: Yevgeniy Kimlya, President of Surgut City Church of Scientology; as well as the Nizhnekamsk Church of Scientology and one of its co-founders, Aidar Sultanov.

The Surgut Church of Scientology, initially registered as a non-governmental organisation in 1994, was later dissolved on the ground that its activities were “religious in nature”. Subsequent applications for registration as a non-religious entity were rejected in July and October 1999 for the same reason. In August 2000 in order to obtain the status of a legal entity, the Church's founding members – including Mr Kimlya – applied to the Justice Department for registration as a local religious organisation.

The Nizhnekamsk Church of Scientology, initially set up in 1998 as a religious group, had also applied for state registration as a local religious organisation in December 1999.

Following complex and lengthy proceedings, the Russian courts subsequently upheld at final instance the decisions of the registration authorities by which the two churches of Scientology were refused registration as “religious organisations” by reference to the legal requirement of the Religions Act that any new religious group had to prove that it had existed for at least 15 years in a given Russian territory or that it was affiliated to a centralised religious organisation.

A religious group, as defined in the Religions Act, has no legal personality; as such it cannot own or rent property, have a bank account, hire employees or ensure judicial protection of the community, its members and assets. Its status also rules out the opening of places of worship, the holding of religious services that are accessible to the public, acquisition and distribution of religious literature and creation of educational institutions.

The applicants complained in particular about the Russian authorities' decisions, based on the Russian Religions Act, refusing State registration of their religious groups as legal entities.

The Court noted that the question of whether Scientology could be described as a “religion” was a matter of controversy among the member States. In the absence of any European consensus on the religious nature of Scientology teachings, the Court considered that it had to rely on the position of the domestic authorities in determining the applicability of Article 9. As the Russian authorities had been convinced of the religious nature of the Surgut and Nizhnekamsk Churches of Scientology, the Court therefore decided that Article 9 was applicable in the case. Moreover, given that religious communities traditionally existed in the form of organised structures and that the complaint concerned the alleged restriction on the right to associate freely with fellow believers, Article 9 also had to be examined in light of Article 11 which safeguarded associative life against unjustified State interference.

The Court found that the lack of legal personality and the restricted scope of rights of religious groups under the Russian Religions Act did not allow their members to effectively enjoy their right to freedom of religion and association. There had therefore been an interference with the applicants' rights under

Article 9 interpreted in light of Article 11. That interference had been prescribed by law, namely section 9 § 1 of the Religions Act, and pursued the legitimate aim of protecting public order.

However, at no point in the proceedings had it been shown that the applicants – either as individuals or as a religious group – had engaged or intended to engage in any unlawful activities or pursued any aims other than worship, teaching, practice and observance of their beliefs. Indeed, they were denied registration as a religious organisation, not because of any shortcoming on their part or of any specific feature of their religious creed, but rather as a result of the automatic application of a legal provision, the “15-year rule” contained in section 9 § 1 of the Religions Act. The ground for refusing registration had therefore been purely formal and unconnected with their actual functioning. Furthermore, the contested provision of the Religions Act had targeted base-level religious communities that could not prove either their presence in a given Russian region or their affiliation with a centralised religious organisation. Accordingly, only those newly emerging religious groups, such as Scientology groups, that did not form part of a strictly hierarchical church structure had been affected by the “15-year rule”. The Government had not given any justification for such differential treatment.

The Court therefore concluded that the interference with the applicants’ rights to freedom of religion and association had not been “necessary in a democratic society” and held unanimously that there had been a violation of Article 9 of the Convention, interpreted in light of Article 11.

It further held unanimously that it was not necessary to examine separately the applicants’ complaints under Articles 10 and 14.

### **Özbek and Others v. Turkey (no. 35570/02) (Importance 2) – 6 October 2009 – Violation of Article 11 – Refusal to register a religious foundation**

The applicants are 16 Turkish nationals. On 20 December 2000 they decided to set up a public-benefit foundation, which they called Kurtuluş Kiliseleri Vakfı (the Foundation of Liberation Churches), to be based in Ankara. The following day they applied to the Ankara Court of First Instance to register the foundation, as required under the Civil Code. The Directorate General of Foundations opposed the registration on the grounds that, according to the foundation’s constitution, its principal aim was to serve the interests of the Protestant community, which was not compatible with an Article of the Civil Code under which supporting a specific community was not allowed. In July 2001 and November 2002 respectively, the first-instance court and the Court of Cassation pronounced decisions in keeping with that opinion.

In January 2002 the applicants asked the Court of Cassation to review its decision, submitting that it had misinterpreted the foundation’s constitution, which was poorly worded and did not reflect the true intention of the founding members, which was in fact to provide support to people in need and to victims of natural disasters, regardless of their beliefs or religion. They added that if the Court of Cassation changed its judgment they would amend the constitution to reflect the real intentions of the founding members. In February 2002 the Court of Cassation rejected their request.

In 2004 some of the applicants formed an association with aims similar to those of the foundation, but with no reference to supporting any particular community.

The applicants complained mainly that the refusal to register their foundation was in violation of their right to freedom of association under Article 11 of the Convention. The Court pointed out that the ability to establish a legal entity in order to act collectively in a field of mutual interest was one of the most important aspects of freedom of association.

The applicants had been willing to amend the constitution of their foundation both to reflect their true aims and to comply with the legal requirements for registration. However, by not allowing them time to do this – something it had done in a similar case – the Court of Cassation had prevented them from setting up a foundation that would have had legal status.

The Court further noted that depositing a new constitution for a new foundation would have been more expensive than before. In addition, the fact that some of the applicants had subsequently been able to register an association did not prevent the would-be founders from complaining about the authorities’ refusal – which had not been acknowledged or remedied at the national level – to register their foundation.

The Court therefore held unanimously that the refusal to register the foundation, although permitted under Turkish law, had not been necessary in a democratic society, and that there had been a violation of Article 11.

- **Freedom of expression**

**Porubova v. Russia (no. 8237/03) and Romanenko and Others v. Russia (no. 11751/03) (Importance 2) – 8 October 2009 – Violation of Article 10 – Lack of a “pressing social need” to justify the interference with the applicant’s freedom of expression – No violation of Article 6 § 1 in the case of Porubova – Exclusion of the press was a necessary measure to protect the injured parties’ private life**

The applicant in the first case was the editor-in-chief of the newspaper D.S.P. The applicants in the second case are the founders of the weekly newspaper, Arsenyevskie Vesti.

The cases concerned the applicants’ complaints about proceedings brought against them for criminal libel and insult in the first case and defamation in the second case.

Ms Porubova had published an article in 2001 which accused V. and K., two local officials in the Sverdlovsk Region, of misappropriation of public funds. It also alleged that the two officials were having a homosexual affair. The officials concerned subsequently brought criminal proceedings against the applicant for criminal libel and insult. Ultimately, the domestic courts, leaving the alleged embezzlement outside the scope of the charges, found that the articles in question had damaged V.’s and K.’s reputation as politicians and public servants. The applicant was found guilty as charged and sentenced to one-and-a-half year’s correctional work, from which she was subsequently dispensed on account of an amnesty in favour of women and minors.

The applicants in the second case had published two articles in 2002 criticising the management of public resources in the Primorskiy region, in particular with regard to undocumented sale of timber to Chinese companies which had been on the rise after the local courts’ management department had obtained a timber purchasing quota. Subsequently, two sets of civil proceedings were brought against the applicants for defamation: the first by the courts’ management department of the Primorskiy region; and, the second by its director; Mr Shulga.

In June and October 2002, the domestic courts found that the applicants had disseminated information without verifying whether it was true or not and ordered to pay RUB 10,000 and RUB 15,000 to Mr. Shulga and the management department respectively.

The applicants complained that the proceedings against them had infringed their right to freedom of expression. Ms Porubova also complained that the trial in her case had not been public.

#### Article 10

Firstly, the Court found that the articles in question, concerning allocation and management of public resources, had dealt with issues which merited legitimate public concern and on which the applicants, as journalists, had the right to report. Although in the case of Porubova, the charges retained against the applicant had been in relation to V. and K.’s alleged homosexual relationship, the Court considered that the main thrust of the applicant’s articles had been the dubious transactions with taxpayers’ money and not V. and K.’s private life. Their alleged homosexual relationship had served to give colour to the events and explain why the scheme had been mounted in such a way that K. would be its ultimate beneficiary.

Indeed, the subjects of the applicants’ scrutiny had been, in the first case, professional politicians, and in the second case, a State body and civil servants acting in their official capacity, who should accept that the limits of acceptable criticism were wider for them than for private individuals. Furthermore, in the case of Romanenko, it had not been alleged that the applicants had distorted or otherwise modified the text of the original open letter. In reprinting an official non-confidential document, the applicants had acted in good faith. Nor indeed had the underlying facts in the proceedings been contested, such as the fact that the courts’ management department had obtained unusually high timber purchasing quotas or that wholesale companies purchasing timber had been able to operate without appropriate licences.

Likewise, the Court was struck by the fact that, in the case of Porubova, the domestic authorities, the prosecution and the courts had never examined the veracity of the allegations of V. and K.’s homosexual relationship; no finding had been made in that respect.

Given the severity of the sanctions against the applicants (correctional work in the first case – Ms Porubova’s dispensation through an amnesty being a fortunate coincidence – and in the second case a penalty amounting to four months of the applicants’ wages), the Court found that the Russian courts had not given relevant and sufficient reasons in either of the cases to justify the interference with the applicants’ freedom of expression. The interference had not been “necessary in a democratic society” and the Court held unanimously in both cases that there had been a violation of Article 10.

## Article 6 § 1

In the case of Porubova, the Court accepted that the exclusion of the press and public had been necessary for the protection of the injured parties' private life. The decision to hold the trial in private had not therefore been arbitrary or unreasonable and the Court therefore held unanimously that there had been no violation of Article 6 § 1.

## **Kuliś and Różycki v. Poland** (no. 27209/03) (Importance 2) – 6 October 2009 – Violation of Article 10 – Disproportionate sanction for publishing satirical cartoons

The first applicant owns a publishing house named "Westa Druk" which publishes a weekly magazine, Angora, and its supplement for children, Angorka. The second applicant was the editor in chief of the magazine.

In May 1999 Angorka published an article referring to an advertising campaign by a company, Star Foods, for its potato crisps. The article was critical of an ad placed by the company onto its crisps packaging which called a popular cartoon character for children "a murderer". The Angorka article included in particular an image of the cartoon character followed by the statements "Polish children shocked by crisps ad" and "Don't worry, I would be a murderer too if I ate this muck!".

The Star Foods Company brought civil proceedings against both applicants seeking an apology, reimbursement of their legal costs and the payment of some money by the applicants to a charity. These claims were granted by the courts who found that the applicants' article, by using strongly pejorative words which conveyed disgust and repulsion, had discredited the products of the company. The applicants' subsequent appeals were dismissed.

The applicants complained of the sanctions imposed on them.

The Court noted that the company's crisps campaign, although mainly aimed at children, had used slogans with inappropriate content for them. This had clearly raised issues which were of interest and importance for the public.

In addition, the cartoon published in the applicants' article had been obviously inspired by the company's advertising campaign as they had used the cartoon character and the slogan which had featured on the crisps packets. The Court accordingly found that the applicants had not aimed to denigrate the quality of the crisps but to raise awareness of the type of slogans used by the company and the unacceptability of such tactics to generate sales.

The Court finally considered that the domestic courts had failed to have regard to the fact that the press had a duty to impart information and ideas on matters of public interest and in so doing could resort to some exaggeration or even provocation, as had been the situation in the present case. Accordingly, the Court held unanimously that the domestic courts had not justified the sanctions imposed on the applicants, and there had been therefore a violation of Article 10.

- **Freedom of assembly**

## **Tebieti Mühafize Cemiyeti and Israfilov v. Azerbaijan** (no. 37083/03) (Importance 1) – 8 October 2009 – Violation of Article 11 – Unjustified dissolution of an environmental association

The applicants are Tebieti Mühafize Cemiyeti, a non-profit non-governmental organisation, and an Azerbaijani national. The organisation is an association registered in Baku which was active in the environmental field between 1995 and 2002.

The Association was registered by the Ministry of Justice ("the Ministry") in August 1995. About two years later, it received a letter from the Ministry stating that it had committed certain breaches of domestic law and its own charter. In August 2002, the Ministry started an inspection into the Association's activities, which culminated in three warnings issued between September and October 2002. The warnings concerned the Association's failure to hold annual general assemblies as required by law and its attempts to carry out unlawful environmental inspections into State and private commercial companies and to collect membership fees from the latter. Upon an application by the Ministry the domestic court ordered the Association's dissolution in March 2003. Following its unsuccessful appeals the Association was dissolved.

The applicants complained that their association was dissolved arbitrarily by the authorities in 2003.

The Court noted that the Association had not called a general assembly for around seven years; neither had it brought its own charter into conformity with domestic legislation as regards the frequency of convening general assemblies. Consequently, the Court found that the Azeri authorities, by issuing the first initial warning, had reacted correctly vis-à-vis the Association in order to ensure its compliance with domestic law.

That said, the Ministry had issued, in a very short period of time, two additional warnings to the Association despite being informed that a general assembly had been held in August 2002. The warnings had only given the Association a ten-day deadline to remedy the situation. Given that organising a general assembly required at least two weeks according to domestic law, the ten-day deadline had been insufficient to eliminate the said breaches of the law. The Court further noted that the immediate outright dissolution of an association had been the only available sanction under domestic law for any type of an association's misconduct. This was, however, a disproportionate measure in situations, like the present one, of mere failure to comply with certain internal management rules. Consequently less strict measures had to be considered by the authorities.

The content of the accusations against the Association had subsequently changed when it had been accused of attempting to collect money in the guise of membership fees. These allegations had been extremely vague, briefly worded and offered no detail of the purported illegal activities. While, if proven, they would have entailed criminal responsibility for the Association's managers, no criminal proceedings had ever been instituted. Further, no evidence had ever been adduced as to when or where the alleged unlawful activities had taken place or who exactly had been involved (see in particular §§ 79-82).

Finally, when deciding on all allegations in respect of the Association, the domestic courts had accepted the findings of the officials of the Ministry of Justice at their face value without an independent judicial inquiry. Consequently, the Court held unanimously that the Association's unlawful action had not been proven and the domestic courts' decision to dissolve it had been arbitrary, in violation of Article 11.

- **Protection of property**

**[Merzhoyev v. Russia](#) (no. 68444/01) (Importance 2) – No violation of Article 1 of Protocol No. 1 – Domestic authorities' fair balance between the general interest of the community and the applicant's property interests concerning the transfer of his indexed deposits from the Savings Bank of Russia, the successor of the USSR Savings Bank, to a branch in Moscow**

Between May 1990 and February 1992, while residing in Grozny, Chechnya, the applicant made three deposits for him and his children with the Grozny branch of the Chechen Savings Bank, then a part of the USSR Savings Bank. In 1999 the applicant, who in the meantime had moved to Moscow following the hostilities in Chechnya, unsuccessfully requested the Savings Bank of Russia, successor of the USSR Savings bank, to transfer his deposits to a branch in Moscow.

Following the bank's refusal to transfer his deposits, the applicant brought proceedings to restore and transfer his indexed deposits to the Moscow branch of the Savings Bank of Russia. On 13 October 2000 Gagarinskiy District Court of Moscow confirmed that the applicant had made three deposits with the Grozny branch of the Chechen Savings Bank and acknowledged "the existence of obligations" under the bank deposit agreements. Given that all branches of the Savings Bank of Russia in the Chechen Republic had been closed in 1996 and there was therefore "no mechanism which could enable the transfer of deposits", the district court denied the applicant's claim. The judgment was subsequently upheld by the Civil Section of the Moscow City Court.

The Russian Government submitted that the activities of the Chechen Savings Bank had been suspended in August 1996 in view of the difficult political, economic and social situation in Chechnya, and that it had been impossible to resume the bank's activity given the pecuniary damage it had sustained and the loss of primary documents and official seals, which could have enabled the falsification of claims. It further claimed that from 2001 to 2002 the authorities had made a list of the former depositors of the Chechen Savings Bank who had produced their savings book. They submitted that the applicant could have registered himself on that list, and that it was now open to him to receive his deposits and the accrued interest. They further stated that under a governmental decree of 9 July 2004 he was entitled to compensation for inflation losses in respect of the deposits made prior to 20 June 1991.

The applicant did not dispute the Government's claim that he was now entitled to have all his deposits repaid, but argued that by virtue of the governmental decree of 9 July 2004 the amount of his savings with compensation would only be equal to 1,054 Russian roubles (RUB), corresponding to 37.40 US

dollars (USD), whereas between 1990 and 1992 he had deposited an amount corresponding at that time to USD 14,832.

The case concerned the applicant's temporary inability to withdraw his savings deposited in the Chechen branch of the Savings Bank of Russia and his complaint that his savings had significantly depreciated because of inflation.

The Court considered that on 5 May 1998, the date of ratification and entry into force of the Convention in respect of Russia, the applicant had at best a mere hope of recovering his savings rather than any actual interest protected by Article 1 of Protocol No. 1. Subsequently, however, the applicant's claim had been sufficiently established by the domestic courts – at two levels of jurisdiction in 2000 – to constitute an asset within the meaning of Article 1 of Protocol No. 1. Furthermore, the amount the applicant could legitimately have expected to receive should have been calculated on the basis of 2000 (rather than 1990 to 1992) when that new entitlement to his deposits had been created.

*“§ 56. The Court observes first of all that the applicant's inability to make use of his deposits was of a temporary nature, having lasted a little more than two years (see paragraph 54), and that at present he can freely access his savings, a fact which is not in dispute between the parties. Furthermore, although temporarily inaccessible for the applicant, his deposits yielded interest, which by now exceeds the sums of the initial deposits (see paragraphs 19-21). The Court also does not overlook the fact that, as pointed out by the Government, the applicant is entitled, like any other depositor of the Savings Bank of Russia, to compensation in connection with inflation losses in respect of his savings deposited before 20 June 1991. In such circumstances, the Court is unable to conclude that the applicant was required to suffer an “individual and excessive burden”.*

The Court therefore held unanimously that there had been no violation of Article 1 of Protocol No. 1 in so far as the events after Russia's ratification of the Convention were concerned.

- **Right of appeal in criminal matters**

**Stanchev v. Bulgaria (no. 8682/02) (Importance 2) – 1 October 2009 – Violation of Article 2 of Protocol No. 7 – Inability to appeal against an “administrative” offence in Bulgarian law, although this offence was a criminal offence for the purposes of the Convention – No substantive nor procedural violations of Article 3 – Effective investigation into the allegations of ill-treatment**

The applicant claims he co-owns a piece of land in Dragor (a village in the south west of Bulgaria). On 28 January 2002 two police officers, following Mr Stanchev having changed the lock at the entrance to that land, and acting at the request of his mother and the person to whom she had sold half the land, asked the applicant to accompany them to the police station. The applicant refused and resisted until he was arrested. The parties disagree as to the circumstances of the arrest. In any event, the police were obliged to use force and handcuffed Mr Stanchev, who was eventually taken to the police station.

The same day, proceedings were brought against Mr Stanchev for disturbance of public order and the Pazardzhik District Court sentenced him to five days' administrative detention for a minor public-order offence. Under Bulgarian law no appeal lay against that judgment, which was enforced immediately. Mr Stanchev nevertheless attempted various courses of action (appeal, complaints against the police officers, action for damages), but to no avail.

The applicant complained that he had had no remedy against his conviction. He also complained of ill-treatment during his arrest and of the lack of an effective investigation into the alleged ill-treatment.

Lack of remedy against conviction

Persons convicted of criminal offences must be able to appeal to a higher court, but there are exceptions – in the case of minor offences, for example. The offence of which Mr Stanchev was convicted was indeed an “administrative” one under Bulgarian law, however it was a criminal offence for the purposes of the Convention, in view of its general scope and the fact that it was punishable by up to 15 days' imprisonment. This meant that it could not be considered a “minor” offence. Mr Stanchev should therefore have been able to have his conviction for a minor disturbance of public order examined by a higher court, which was clearly not the case under Bulgarian law. There had therefore been a violation of Article 2 of Protocol No. 7.

Allegations of ill-treatment and lack of an effective investigation

The Court held that Mr Stanchev's conduct in refusing to obey the police and resisting arrest had made it necessary for the police to use force, and that the force that they had used had not been



disproportionate. In the circumstances, the fact that he had been made to wear handcuffs was not a problem. Concerning the effectiveness of the investigation, the Court noted in particular that the investigating authorities had taken various steps to clarify the facts and that the police officers' version of events had been confirmed by eye-witnesses to the arrest and fully corroborated by the medical certificate issued to the applicant. There had therefore been no violation of Article 3.

- **Disappearances cases in Chechnya**

[Amanat Ilyasova and Others v. Russia \(no. 27001/06\)](#) (Importance 3) – 1 October 2009 – Violations of Art. 2 – Disappearance of the applicants' relative – State's failure to carry out an effective investigation into the disappearance – Violation of Art. 3 – Psychological suffering of the applicants' due to the disappearance of their relative – Violation of Art. 5 – Unacknowledged detention of the applicant's relative – Violation of Art. 13 in conjunction with Art. 2 – Lack of an effective remedy in respect of the claims concerning the investigation into the applicants' relative's disappearance and presumed death

## 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<sup>1</sup>. For a more complete information, please refer to the following link:

- Press release by the Registrar concerning the Chamber judgments issued on 29 Sept. 2009: [here](#).
- Press release by the Registrar concerning the Chamber judgments issued on 01 Oct. 2009: [here](#).
- Press release by the Registrar concerning the Chamber judgments issued on 06 Oct. 2009: [here](#).
- Press release by the Registrar concerning the Chamber judgments issued on 08 Oct. 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.

<b>State</b>	<b>Date</b>	<b>Case Title and Importance of the case</b>	<b>Conclusion</b>	<b>Key Words</b>	<b>Link to the case</b>
Albania	29 Sept. 2009	Gjyli (no. 32907/07) Imp. 3	Violation of Art. 6 § 1 and Art. 13	Non-enforcement of two court judgments in the applicant's favour and lack of an effective remedy	<a href="#">Link</a>
Albania and Italy	29 Sept. 2009	Vrioni and Others (nos. 35720/04 and 42832/06) Imp. 3	Violation of Art. 6 § 1 (concerning Albania), Art. 1 of Prot. 1 (concerning Albania) and Art. 13 in conjunction with Art. 1 of Prot. 1 (concerning Albania)	Excessive length of proceedings, failure to enforce a final domestic judgment in the applicants' favour, infringement of the right to peaceful enjoyment of possessions as a result of the failure to enforce final judgment, and lack of an effective remedy	<a href="#">Link</a>
Bulgaria	01 Oct. 2009	Antonovi (no. 20827/02) Imp. 3	Violation of Art. 1 of Prot. 1	Authorities' failure to provide the applicants with the apartment to which they had been entitled as compensation for expropriated property	<a href="#">Link</a>
Hungary	29 Sept. 2009	Jánosi (no. 19689/05) Imp. 3	Violation of Art. 6 § 1	Excessive length of civil proceedings concerning the ownership of the applicants' real estate	<a href="#">Link</a>
Italy	06 Oct. 2009	Perinati (no. 8073/05) Imp. 3	Violation of Art. 1 of Prot. 1 Violation of Art. 6 § 1	Insufficient compensation for the expropriation of the applicant's land  (see <i>Scordino v. Italy</i> (n° 1))	<a href="#">Link</a>
Moldova	06 Oct. 2009	Deservire S.R.L. (no. 17328/04) Imp. 3	Violation of Art. 6 § 1 Violation of Art. 13 in conjunction with Art. 6	Length of civil proceedings and lack of an effective remedy	<a href="#">Link</a>

<sup>1</sup> The "Key Words" in the various tables of the RSIF are elaborated under the sole responsibility of the NHRS Unit of the DG-HL

Poland	29 Sept. 2009	Tarnowski (No. 1) (no. 33915/03) Tarnowski (No. 2) (no. 43934/07)	No violation of Art. 1 of Prot. 1 No violation of Art. 6 § 1	Reasonable length of proceedings concerning property issues and concerning domestic courts' failure to take prompt action to restore the applicants' property to them	<a href="#">Link</a>  <a href="#">Link</a>
Poland	29 Sept. 2009	Wiśniewski (no. 43610/06) Imp. 3	Violation of Art. 5 § 3	Excessive length of pre-trial detention in criminal proceedings	<a href="#">Link</a>
Poland	06 Oct. 2009	Lewicki (no. 28993/05) Imp. 3	Violation of Art. 5 §§ 3 and 4	Excessive length of detention and failure to examine speedily the applicant's detention extension decisions (See <i>Kauczor v. Poland</i> )	<a href="#">Link</a>
Portugal	06 Oct. 2009	Almeida Santos (no. 50812/06) Imp. 2	Violation of Art. 6 § 1	Infringement of the principle of equality of arms in inheritance proceedings	<a href="#">Link</a>
Romania	29 Sept. 2009	Chiriță (no. 37147/02) Imp. 3	No violation of Art. 6 §§ 1 and 3 (d) No violation of Art. 34	Fairness of proceedings and no evidence to conclude that the State had failed its obligations under Art. 34	<a href="#">Link</a>
Russia	01 Oct. 2009	Makarova (no. 23554/03) Imp. 3	Two violations of Art. 6 § 1	Length of civil proceedings and the authorities' failure to assist the applicant in obtaining the enforcement of a judgment in her favour	<a href="#">Link</a>
Russia	01 Oct. 2009	Toporkov (no. 66688/01) Imp. 3	No violation of Art. 3 (substantive) Violation of Art. 3 (procedural)	No evidence to establish that the applicant's injuries had been caused by the police; lack of an effective investigation	<a href="#">Link</a>
Russia	08 Oct. 2009	Adzhigovich (no. 23202/05) Imp. 2	Violation of Art. 1 of Prot. 1	Unlawful confiscation of the applicant's property on account of the domestic authorities' failure to indicate a legal provision that could be construed as the basis for the confiscation and their refusal to return the money, which the Presidium determined should be repaid to the applicant	<a href="#">Link</a>
Russia	08 Oct. 2009	Malkin (no. 67363/01) Imp. 3	Struck out	Applicant's failure to communicate with the Court following its decision on admissibility	<a href="#">Link</a>
Russia	08 Oct. 2009	Shemilova and Shemilov (no. 42439/02) Imp. 3	Idem.	Idem.	<a href="#">Link</a>
Slovakia	29 Sept. 2009	Tomčáni (no. 19011/05) Imp. 3	Violation of Art. 6 § 1	Excessive length of criminal proceedings (proceedings had been pending for more than 10 years, and 11 months in the pre-trial stage, at the time of the second Constitutional Court's finding and continued afterwards for 1 year and more than 2 months)	<a href="#">Link</a>
Spain	06 Oct. 2009	C.C. (no. 1425/06) Imp. 1	Violation of Art. 8	Disclosure of information concerning the applicant's medical condition in the domestic courts' decisions	<a href="#">Link</a>
"the former Yugoslav Republic of Macedonia"	08 Oct. 2009	Kamilova (no. 34151/03) Imp.3	Violation of Art. 6 § 1	Non-enforcement of a court settlement according to which a debtor was to repay the applicant a loan given him in 1995  (see <i>Jankulovski v. "the former Yugoslav Republic of Macedonia"</i> )	<a href="#">Link</a>
Turkey	29 Sept. 2009	Cihangül (no. 44292/04) Imp. 3  Dikel (no. 8543/05)	Violation of Art. 6 § 1	Infringement of the principle of equality of arms on account of the applicants' lack of access to classified information submitted by the Ministry of Defence to the Supreme Military Administrative	<a href="#">Link</a>  <a href="#">Link</a>

		<p>Imp.3</p> <p>İlter (no. 43554/04) Imp.3</p> <p>Meridan (no. 38011/05) Imp. 3</p> <p>Okan Erdoğan (no. 43696/04) Imp. 3</p> <p>Tevfik Okur (no. 2843/05) Imp. 3</p> <p>Tamay and Others (nos. 38287/04, 1416/05 and etc.) Imp. 3</p>		<p>Court in judicial proceedings before that court and the non-communication to them of the written opinion of that court's principal public prosecutor</p>	<p><a href="#">Link</a></p> <p><a href="#">Link</a></p> <p><a href="#">Link</a></p> <p><a href="#">Link</a></p> <p><a href="#">Link</a></p>
Turkey	29 Sept. 2009	Fokas (no. 31206/02) Imp. 3	Violation of Art. 1 of Prot. 1	Infringement of the right to peaceful enjoyment of their possessions as a result of the national authorities' refusal to recognise the applicants as legal heirs in respect of immovable property on account of their Greek citizenship	<a href="#">Link</a>
Turkey	06 Oct. 2009	Bozoğlu (no. 25099/04) Imp. 3	Violation of Art. 6 § 1	Unfairness of criminal proceedings on account of domestic courts' failure to hold a public hearing	<a href="#">Link</a>
Turkey	06 Oct. 2009	Çatak (no. 26718/05) Imp. 3	Violation of Art. 6 § 1	Infringement of the principle of equality of arms on account of the lack of access to classified documents and information submitted by the Ministry of Defence to the Supreme Military Administrative Court in support of its decision to expel the applicant from the military academy	<a href="#">Link</a>
Turkey	06 Oct. 2009	<p>Eraslan and Others (no. 59653/00) Imp. 3</p> <p>Gürova (no. 22088/03) Imp. 3</p> <p>Mehmet Zeki Doğan (no. 38114/03) Imp. 3</p>	<p>(1st case) Violation of Art. 6 § 1</p> <p>(All 3 cases) Violation of Art. 6 § 3 (c) in conjunction with Art. 6 § 1</p>	<p>Unfairness of criminal proceedings - lack of independence and impartiality - due to the presence of a military judge on the bench of the Izmir State Security Court</p> <p>Lack of access to a lawyer while in police custody</p>	<p><a href="#">Link</a></p> <p><a href="#">Link</a></p> <p><a href="#">Link</a></p>
Turkey	06 Oct. 2009	Özcan Çolak (no. 30235/03) Imp. 3	Violation of Art. 6 §§ 1 and 3 (c)	Unfairness of proceedings on account of the applicant's conviction as a result of the use of his statements obtained allegedly under torture and ill-treatment during the preliminary investigation, in the absence of his lawyer	<a href="#">Link</a>
Turkey	06 Oct. 2009	Soyhan (no. 4341/04) Imp. 3	Violation of Art. 6 §§ 1 and 3 (c)	Lack of legal assistance while in police custody	<a href="#">Link</a>
Turkey	06 Oct. 2009	Uygurer İnşaat SaN. TiC. LiD. Şti. (no. 26664/05) Imp. 3	Violation of Art. 1 of Prot. 1	Infringement of the right to peaceful enjoyment of possessions on account of the municipality's failure to pay the sums owed to the applicant company for renovation work carried out on public buildings	<a href="#">Link</a>

### 3. Repetitive cases

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

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

<u>State</u>	<u>Date</u>	<u>Case Title</u>	<u>Conclusion</u>	<u>Key words</u>
Italy	06 Oct. 2009	Ricci and Others (no. 42021/02) <a href="#">link</a>	Violation of Art. 1 of Prot. 1	Disproportionate interference with the right to peaceful enjoyment of possessions on account of the lack of sufficient compensation after expropriation  (See <i>Scordino v. Italy</i> (n° 1))
Moldova	06 Oct. 2009	Godorozea (no. 17023/05) <a href="#">link</a>	Violation of Art. 6 § 1	Domestic court's failure to summon the applicant when her case had been examined on appeal  (See <i>Russu v. Moldova</i> )
Romania	29 Sept. 2009	Costăchescu (no. 37805/05) <a href="#">link</a>	Violation of Art. 6 § 1 Violation of Art. 1 of Prot. 1	Non-enforcement of final judgment in the applicant's favour
Romania	29 Sept. 2009	Tănăsescu (no. 23692/02) <a href="#">link</a>	Idem.	Idem.
Romania	06 Oct. 2009	Gătitu (no. 16535/04) <a href="#">link</a>	Violation of Art. 1 of Prot. 1	Disproportionate interference with the right to peaceful enjoyment of possessions on account of the non-enforcement of a judgment in the applicant's favour concerning compensation after nationalisation
Romania	06 Oct. 2009	Musteață and Others (nos. 67344/01, 10772/04 etc.) <a href="#">link</a>	Violation of Art. 1 of Prot. 1 Violation of Art. 6 § 1	Non-enforcement of final judgments in the applicants' favour
Russia	08 Oct. 2009	Finkov (no. 27440/03) <a href="#">link</a>	2 violations of Art. 6 § 1 (fairness) No violation of Art. 6 § 1 (length) 2 violations of Art. 1 of Prot. 1 Violation of Art. 13	Non-enforcement of final judgments in the applicant's favour and the quashing of those judgments by way of supervisory review  Lack of an effective remedy
Russia	08 Oct. 2009	Prokhorova (no. 13869/05) <a href="#">link</a>	Violation of Art. 6 § 1 Violation of Art. 1 of Prot. 1	Non-enforcement of final judgments in the applicant's favour and the quashing of those judgments by way of supervisory review
Turkey	06 Oct. 2009	Firat and Others (no. 17597/03) <a href="#">link</a>  Gezer (no. 18704/04) <a href="#">link</a>	Violation of Art. 6 § 1 Violation of Art. 1 of Prot. 1	Delayed payment of additional expropriation compensation  Length of civil proceedings in the case of Gezer
Turkey	06 Oct. 2009	Hasan Coşkun (no. 15360/05) <a href="#">link</a>	Violation of Art. 6 § 1	Unfairness of proceedings on account of the lack of a public hearing and the applicant's inability to attend the hearing  (See <i>Karahanoğlu v. Turkey</i> )

#### 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	01 Oct. 2009	Donka Stefanova (no. 19256/03)	<a href="#">Link</a>
Germany	08 Oct. 2009	KIndereit (no. 37820/06)	<a href="#">Link</a>
Germany	08 Oct. 2009	Sopp (no. 47757/06)	<a href="#">Link</a>
Germany	08 Oct. 2009	Yildiz (no. 23279/06)	<a href="#">Link</a>
Moldova	29 Sept. 2009	Panzari (no. 27516/04)	<a href="#">Link</a>
Poland	29 Sept. 2009	Korcz (no. 33429/07)	<a href="#">Link</a>
Poland	06 Oct. 2009	Karasińska (no. 13771/02)	<a href="#">Link</a>
Poland	06 Oct. 2009	Puchalska (no. 10392/04)	<a href="#">Link</a>
Turkey	06 Oct. 2009	Baltutan and ANO İnşaat ve Ticaret Ltd. Şti. (no. 9522/03)	<a href="#">Link</a>
Turkey	06 Oct. 2009	Tur-Ko Turizm Yatırım ve Ticaret A.Ş. (no. 41421/05)	<a href="#">Link</a>
Turkey	06 Oct. 2009	Yücel Doğan (no. 24647/04)	<a href="#">Link</a>

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

Those decisions are published with a slight delay of two to three weeks on the Court's Website. Therefore the decisions listed below cover the period from 7 to 20 September 2009.

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

<u>State</u>	<u>Date</u>	<u>Case Title</u>	<u>Alleged violations (Key Words)</u>	<u>Decision</u>
Austria	17 Sept. 2009	Markl (no 29481/06) <a href="#">link</a>	Alleged violation of Art. 6 § 1 (length of proceedings)	Struck out of the list (unilateral declaration of Government)
Azerbaijan	17 Sept. 2009	Yagubov (no 5763/07) <a href="#">link</a>	Alleged violation of Art. 1 of Prot. 1 (non-enforcement of a judgment in the applicant's favour in good time)	Inadmissible as manifestly ill-founded (reasonable delay for the enforcement of the judgment)
Azerbaijan	17 Sept. 2009	Osmanov (no 4582/06) <a href="#">link</a>	Alleged violation of Art. 6 § 1 and Art. 1 of Prot. 1 (non-enforcement of a judgment in the applicant's favour), Art. 6 and Art. 13 (unfairness of proceedings and lack of an effective remedy)	Inadmissible as manifestly ill-founded (adequate measures taken by the authorities in order to ensure the execution of the judgment and no infringements of the rights and freedoms protected by the Convention)
Bulgaria	15 Sept. 2009	Dimitrov (no 23342/06) <a href="#">link</a>	Alleged violation of Art. 3 (conditions of detention in Plevan Prison), Art. 7 and 6 § 3 (c) (courts' refusal to provide the applicant with	Partly adjourned (concerning conditions of detention), partly inadmissible as manifestly ill-founded (concerning the

			legal assistance in criminal proceedings and the applicant's less favourable treatment by the prison administration)	remainder of the application as no infringement of the rights and freedoms protected by the Convention)
Bulgaria	15 Sept. 2009	Filipov (no 12098/05) <a href="#">link</a>	Alleged violation of Art. 3 and 13 in conjunction with Art. 3 (conditions of detention in the Plovdiv Regional Investigation Service and Plovdiv Prison and lack of an effective remedy), Art. 8, 13, 34 (monitoring by the prison administration of the applicant's correspondence with his legal counsel), Art. 5 § 4 (domestic courts' failure to examine speedily the appeals against the applicant's continued detention and their failure to exercise full judicial review and refusal of the court to commission an additional expert report)	Partly adjourned (concerning the failure to examine speedily the appeals against the continued detention, the right to respect for correspondence and the failure to hold an oral hearing and to guarantee adversarial proceedings), partly inadmissible (concerning the remainder of the application as no infringement of the rights and freedoms protected by the Convention)
Bulgaria	08 Sept. 2009	Iliya Petrov (no 19202/03) <a href="#">link</a>	Alleged violation of Art. 2 and 6 (lack of compensation following an accident on an electrical transformer and lack of an effective investigation)	Admissible (the Government's preliminary exceptions rejected)
Bulgaria	15 Sept. 2009	Kechedzhieva-Popova (no 15165/04) <a href="#">link</a>	Alleged violation of Art. 6 § 1 (length of proceedings), Art. 1 of Prot. 1 (the applicant's inability to enjoy her property)	Struck out of the list (applicant no longer wished to pursue her application)
Bulgaria	15 Sept. 2009	Tilev (no 35746/03) <a href="#">link</a>	The application concerned the excessive amount of legal taxes that the applicant had to pay as a result of proceedings against the State	Struck out of the list (friendly settlement reached)
Bulgaria	15 Sept. 2009	Emil Ivanov (no 42627/02) <a href="#">link</a>	Alleged violation of Art. 6 § 1 and Art. 13 (length of proceedings and lack of an effective remedy)	Struck out of the list (unilateral declaration of Government)
Croatia	17 Sept. 2009	Kolarić-Kišur (no 17129/05) <a href="#">link</a>	Alleged violation of Art. 1 of Prot. 1 (infringement of the right to respect for property on account of domestic courts' decision to declare null the contract upon which the applicant had sold her apartment), Art. 6 § 1 (outcome of civil proceedings)	Inadmissible (incompatible <i>ratione personae</i> )
Croatia	17 Sept. 2009	Car (no 45493/06) <a href="#">link</a>	Alleged violation of Art. 6 § 1 (length of civil proceedings)	Struck out of the list (friendly settlement reached)
Cyprus	17 Sept. 2009	Constantinou and Others (no 3888/06) <a href="#">link</a>	Alleged violation of Art. 6 § 1 (length and unfairness of proceedings), Art. 8 and Art. 1 of Prot. 1 (non-enforcement of a judgment in the applicants' favour), Art. 13 and 14 (lack of an effective remedy)	Partly struck out of the list (unilateral declaration of the Government concerning the length of proceedings and the lack of an effective remedy), partly inadmissible as manifestly ill-founded pursuant to Articles 35 § 3 and 4 (concerning the remainder of the application)
Cyprus	17 Sept. 2009	Investylia Public Company Limited (no 13832/05) <a href="#">link</a>	Alleged violation of Art. 6 § 1 (infringement of the right of access to a court infringed on account of the dismissal of the applicant's appeal by the Supreme Court), Art. 1 of Prot. 1 (the District Court's failure to order the investor to return the titles of the shares held by him), Art. 13 (lack of an effective remedy)	Partly inadmissible as manifestly ill-founded (the applicant company's failure to provide an arguable claim concerning the infringement of its right of access to a court and the lack of an effective remedy), partly inadmissible for non exhaustion of domestic remedies (concerning the complaints under Art. 1 of Prot. 1)
Cyprus	17 Sept.	Papachristoforou (N° III) (no 34371/07)	Alleged violation of Art. 6 § 1 and 13 (length of proceedings and lack of	Partly struck out of the list (unilateral declaration of the

	2009	<a href="#">link</a>	an effective remedy), Art. 6 (insufficient reasoning in the Supreme Court's dismissal of the applicants' appeal)	Government concerning the length of proceedings and the lack of an effective remedy), partly inadmissible as manifestly ill-founded pursuant to Article 37 § 1 (c) (concerning the remainder of the application)
Cyprus	17 Sept. 2009	Investylia Public Company Limited (no 24321/05) <a href="#">link</a>	Alleged violation of Art. 6 § 1 (right of access to the Supreme Court), Art. 13 (lack of an effective remedy); and Art. 1 of Prot. 1 (infringement of the right to peaceful enjoyment of possessions on account of the district court's judgement ordering the applicant company to return the original value of the shares plus interest to the shareholder); and alleged violation of Art. 6, 11, 13 and 14	Partly inadmissible as manifestly ill-founded (concerning Art. 1 of Prot. 1 and Art. 13), partly incompatible <i>ratione materiae</i> (concerning the claims under Art. 6, 11, 13 and 14)
France	15 Sept. 2009	Matelly (no 30330/04) <a href="#">link</a>	Alleged violation of Art. 10 and 13, Art. 1 of Prot. 1 (restriction on the promotion of the applicant's book in the media, lack on an effective remedy in respect of the right to freedom of expression), Art. 6 § 1 (infringement of the principle of equality of arms)	Inadmissible as manifestly ill-founded (proportionate interference in the applicant's right to freedom of expression, lack of "an arguable claim" concerning the lack of an effective remedy), no appearance of violation of the rights and freedoms of the Convention (concerning the claims under Art. 1 of Prot. 1 and Art. 6 § 1)
France	15 Sept. 2009	Etienne (no 11396/08) <a href="#">link</a>	Alleged violation of Art. 6 § 1 and 13 (infringement of principle of equality of arms and lack of an effective remedy and insufficient reasoning in the <i>Conseil d'Etat's</i> dismissal of the applicant's application)	Inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention)
France	15 Sept. 2009	Comby (no 15052/05) <a href="#">link</a>	Alleged violation of Art. 6 §§ 1 and 3 b) and c) (lack of legal assistance before the court of cassation), Art. 5 § 1 (unlawful detention), Art. 5 § 3 and 6 § 1 (excessive length of detention) and Art. 14 (discrimination on grounds of fortune)	Inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention) and outside of the six-month requirement from the date on which the final decision was taken (Art. 35 § 1)
France	15 Sept. 2009	Poitou (no 16557/08) <a href="#">link</a>	Alleged violation of Art. 6 § 1 and 8 (the applicant complains of his inability to see his son as a result of national authorities' failure to enforce a decision concerning visiting rights)	Inadmissible as manifestly ill-founded (necessary measures taken to protect the child's interests)
France	15 Sept. 2009	Razibaouene (no 20754/07) <a href="#">link</a>	Alleged violation of Art. 8 (the applicant's inability to attend to his father's funeral in spite of the fact that his release was scheduled three days later)	Struck out of the list (unilateral declaration of Government)
France	15 Sept. 2009	Ait El Hadj (no 12903/07) <a href="#">link</a>	Alleged violation of Art. 5 § 1 and 3 (unlawfulness and length of detention)	Struck out of the list (applicant no longer wished to pursue his application)
France	15 Sept. 2009	Gouranton (no 10631/07) <a href="#">link</a>	Alleged violation of Art. 6 § 1 (presence of Government agent on the bench of the <i>Conseil d'Etat</i> , insufficient reasoning of the decision and excessive length of proceedings), Art. 1 of Prot. 1 in conjunction with Art. 14 (different treatment concerning social privileges compared to other employees of the <i>Chambre de Commerce et d'Industrie</i> of Amiens)	Partly struck out of the list (unilateral declaration of the Government concerning the presence of Government agent on the bench of the <i>Conseil d'Etat</i> ), partly inadmissible as manifestly ill-founded as no infringement of any rights and freedoms protected by the Convention (concerning the remainder of the application)

France	15 Sept. 2009	Montolio (no 43386/06) <a href="#">link</a>	Alleged violation of Art. 6 § 1 (unfairness of proceedings, insufficient reasoning of the decision of the court of cassation), Art. 6 § 2 (infringement of the principle of presumption of innocence on account of the excessive amount asked for bail release)	Inadmissible as manifestly ill-founded (fairness respected before the court of cassation), no infringement of any rights and freedoms protected by the Convention (concerning the remainder of application)
France	15 Sept. 2009	Wargny (no 17561/06) <a href="#">link</a>	Alleged violation of Art. 6 § 1 (presence of Government agent on the bench of the <i>Conseil d'Etat</i> ), Art. 6 § 1, 6 § 3, 7 and 14 (the sanctions placed upon the applicant were allegedly more severe than that the <i>Autorité des marchés financiers</i> sentencing Commission places on more serious infractions)	Partly struck out of the list (unilateral declaration of Government concerning the presence of Government agent on the bench of the <i>Conseil d'Etat</i> ), partly inadmissible as no infringement of any rights and freedoms protected by the Convention (concerning the remainder of the application)
France	15 Sept. 2009	Chaplain and Others (no 11052/06) <a href="#">link</a>	The application concerned the length of proceedings	Struck out of the list (friendly settlement reached)
Greece	10 Sept. 2009	Tsaggarakis (no 45136/06) <a href="#">link</a>	Alleged violation of Art. 6 §§ 1 and 3 a) b) and d) (unfairness of proceedings and the applicant's inability to question witnesses)	Inadmissible as manifestly ill-founded (fairness of proceedings respected before the court of appeal of Athens)
Hungary	08 Sept. 2009	J.P. (no 19313/08) <a href="#">link</a>	Alleged violation of Art. 8 and 9 (authorities' hindering the applicant's access to an abortion in a civilian hospital); violation of Prot. 12 (discrimination on grounds of the applicant's being a prostitute)	Struck out of the list (applicant no longer wished to pursue her application)
Hungary	15 Sept. 2009	Fekete (no 30567/05) <a href="#">link</a>	The application concerned the protraction of the applicant's case before the Kecskemét District Court	Struck out of the list (friendly settlement reached)
Poland	08 Sept. 2009	Węgierekiewicz (no 6979/07) <a href="#">link</a>	Alleged violation of Art. 5 § 3 (excessive length of pre-trial detention), Art. 6 § 1 (length of proceedings), Art. 8 (monitoring of correspondence by prison authorities)	Partly struck out of the list (unilateral declaration of Government concerning the length of pre-trial detention), partly inadmissible for non-exhaustion of domestic remedies (concerning Art. 6 § 1), partly inadmissible as manifestly ill-founded pursuant to Art. 35 § 4 (concerning the claims under Art. 8)
Poland	08 Sept. 2009	Lis (no 39561/03) <a href="#">link</a>	The application concerned the non-enforcement of a judgment of the Szczecin District Court	Inadmissible as manifestly ill-founded (delay in enforcing the judgment was not unreasonable)
Poland	08 Sept. 2009	Stolarski (no 11881/07) <a href="#">link</a>	Alleged violation of Art. 5 § 3 (excessive length of pre-trial detention) and Art. 6 § 2 (infringement of the principle of presumption of innocence)	Partly struck out of the list (unilateral declaration of the Government concerning the length of pre-trial detention), partly inadmissible (concerning the remainder of the application)
Poland	15 Sept. 2009	Słota (no 14931/07) <a href="#">link</a>	Alleged violation of Art. 5 § 3 (excessive length of pre-trial detention)	Struck out of the list (friendly settlement reached)
Poland	15 Sept. 2009	Frankowski (no 18243/04) <a href="#">link</a>	Alleged violation of Art. 6 § 1 (excessive length of proceedings)	Idem.
Poland	15 Sept. 2009	Bator (no 68978/01) <a href="#">link</a>	Alleged violation of Art. 6 (unfairness of proceedings on account of the refusal of the legal aid lawyer to prepare cassation appeal, and length of proceedings of first set of proceedings)	Struck out of the list (unilateral declaration of Government)
Poland	15 Sept. 2009	Pawłowski (no 49493/08) <a href="#">link</a>	Alleged violation of Art. 6 § 1 (length of the criminal proceedings), Art. 13 (lack of an effective remedy)	Struck out of the list (friendly settlement reached)
Poland	15 Sept.	Pietras (no 6331/08)	Alleged violation of Art. 5 § 3 (excessive length of pre-trial	Idem.



	2009	<a href="#">link</a>	detention) and Art. 6 § 1 (excessive length of proceedings)	
Poland	15 Sept. 2009	Kramarz (no 46271/07) <a href="#">link</a>	Alleged violation of Art. 6 § 1 (length of proceedings), Art. 4, 13, 14, 17 and Art. 1 of Prot. 1	Idem.
Poland	15 Sept. 2009	Karasiak (no 17622/07) <a href="#">link</a>	Alleged violation of Art. 5 § 3 (length of pre-trial detention), Art. 6 § 1 (length of criminal proceedings), Art. 6 § 3 (d) (inability to question witnesses and excluded from the hearing room where witnesses were examined), Art. 6 § 3 (e) (failure to provide the applicant with the assistance of an interpreter during the proceedings) and Art. 14 (discrimination on ground of nationality)	Idem.
Poland	15 Sept. 2009	Cichopek (no 16584/07) <a href="#">link</a>	Alleged violation of Art. 5 (length of pre-trial detention) and Art. 6 (length of criminal proceedings); censorship of a letter from the Ombudsman and the applicant's deprivation of the right to receive visits from his fiancée and his 3-year-old son	Struck out of the list (applicant no longer wished to pursue his application)
Poland	15 Sept. 2009	Jozef Frankowski (No.2) (no 35323/06) <a href="#">link</a>	Alleged violation of Art. 1 and 6 (unfairness and length of proceedings)	Struck out of the list (friendly settlement reached)
Poland	15 Sept. 2009	Marach (no 24126/06) <a href="#">link</a>	Alleged violation of Art. 3 and 6 (authorities' refusal to allow the applicant to attend his mother's funeral)	Idem.
Poland	15 Sept. 2009	Pawelczyk (no 7689/05) <a href="#">link</a>	Alleged violation of Art. 5 § 1, 2, 4 and 5 (unlawfulness of detention, failure to inform the applicant about the reasons for his arrest, failure to examine speedily the lawfulness of the detention, lack of an effective remedy to claim compensation for illegal detention)	Struck out of the list (applicant no longer wished to pursue his application)
Poland	15 Sept. 2009	Węgrzyński (Suska), (no 20405/08) <a href="#">link</a>	Alleged violation of Art. 5 § 3 (length of pre-trial detention) and Art. 6 (length of criminal proceedings)	Struck out of the list (friendly settlement reached)
Poland	15 Sept. 2009	Pacan (no 25212/06) <a href="#">link</a>	Alleged violation of Art. 5 § 3 (length of detention)	Idem.
Romania	08 Sept. 2009	Blaga Pop (no 37379/02) <a href="#">link</a>	Alleged violation of Art. 3 (conditions of detention and ill-treatment), Art. 5 §§ 1 (c), 5 § 2, 5 § 3, 5 § 4, 5 § 5, Art. 6 (unfairness and length of proceedings, infringement of the principle of presumption of innocence), 8, 13, 14 (in conjunction with Art. 6) and Art. 2 of Prot. 4, Art. 1 of Prot. 1	Partly adjourned (concerning Art. 3, 5 § 1 c), 5 § 3, 5 § 4, 5 § 5, 6 §§ 1 et 2, Art. 1 of Prot. 1, Art. 8 and Art. 2 of Prot. 4), partly inadmissible (concerning the remainder of the application)
Romania	15 Sept. 2009	Peter (no 25333/03) <a href="#">link</a>	Alleged violation of Art. 3, Art. 5, Art. 6, 8, 13 and Art. 1 of Prot. 1	Partly adjourned (concerning the conditions of detention, the interceptions of phone calls and the right for prisoners to make a phone call), partly inadmissible as manifestly ill-founded (concerning the remainder of the application)
Romania	15 Sept. 2009	Zapodeanu (no 25799/03) <a href="#">link</a>	Alleged violation of Art. 6 § 1 and Art. 1 of Prot. 1 (non-enforcement of a judgment in the applicant's favour)	Struck out of the list (applicant no longer wished to pursue his application)
Russia	10 Sept. 2009	Buldashev (no 46793/06) <a href="#">link</a>	Alleged violation of Art. 3 (conditions of detention and ill-treatment), Art. 5 § 3 (length of	Partly adjourned (concerning the conditions of his detention and the ill-treatment, the lack of an

			detention), Art. 6 § 1 (unlawfulness and length of proceedings) Art. 6 § 3 b) and c) (complaint investigated in the applicant's and his lawyer's absence) and Art. 13 and Art. 8	effective remedy, the length of the applicant's pre-trial detention, the length of criminal proceedings against him and the availability of an effective remedy in this respect), partly inadmissible (concerning the remainder of the application)
Russia	17 Sept. 2009	Loshchilin (no 14305/03) <a href="#">link</a>	Alleged violation of Articles 3, 5 and 6 (unfairness of convictions and of proceedings)	Struck out of the list (applicant no longer wished to pursue his application)
Russia	10 Sept. 2009	Shkurenko (no 15010/04) <a href="#">link</a>	Alleged violation of Art. 3 (conditions of detention and ill-treatment), Art. 6 §§ 1 and 3 (b), (c), (d), Art. 8 § 1, Art. 13, Art. 17 and Art. 1 of Prot. 1 (domestic authorities' failure to take the necessary measure in order to secure the applicant's property)	Inadmissible as manifestly ill-founded (concerning the conditions of detention), and no infringement of the rights and freedoms protected by the Convention (concerning the remainder of the application)
Russia	17 Sept. 2009	Tsygankov and Tsygankova (no 23521/06) <a href="#">link</a>	Alleged violation of Art. 6 § 1 (unfairness and length of proceedings), Art. 8 (State's forgery of the applicants' personal data in order to calculate their pensions), Art. 10 (infringement of the right to receive information)	Struck out of the list (friendly settlement reached)
Serbia	15 Sept. 2009	Rajković (no 48145/06) <a href="#">link</a>	Alleged violation of Art. 6 (length of proceedings), and 13 (lack of an effective remedy)	Struck out of the list (unilateral declaration of Government)
Serbia	15 Sept. 2009	Nikolić (no 10308/07) <a href="#">link</a>	Alleged violation of Art. 6 § 1 (length of proceedings)	Struck out of the list (applicant no longer wished to pursue her application)
Serbia	15 Sept. 2009	Cakić-Ivković (no 33623/07) <a href="#">link</a>	Non-enforcement of a final maintenance order issued in the applicant's favour	Struck out of the list (applicant no longer wished to pursue his application)
Serbia	15 Sept. 2009	Univerturs-Lider-Logistic (no 19735/05) <a href="#">link</a>	Alleged violation of Art. 6 (length of proceedings), and 13 (lack of an effective remedy)	Struck out of the list (unilateral declaration of Government)
Serbia	15 Sept. 2009	Puzović and Medarević (no 2545/05) <a href="#">link</a>	Alleged violation of Articles 3, 6, 8, 13, 14 and 17 ( <i>inter alia</i> , length and unfairness of proceedings and lack of an effective remedy)	Struck out of the list (unilateral declaration of Government)
Slovenia	08 Sept. 2009	Gošnjak-Kušter and 3 other applications (no 9691/03) <a href="#">link</a>	Alleged violation of Art. 6 § 1 (length of proceedings) and 13 (lack of an effective remedy), Art. 1 of Prot. 1 (unlawful deprivation of property) and Art. 3 of Prot. 4 (the applicants allege that nationalisation measures carried out in 1946 resulted in <i>de facto</i> expulsion of Yugoslavian nationals)	Partly struck out of the list (the applicants can no longer claim to be victims), partly inadmissible for non-exhaustion of domestic remedies (concerning the deprivation of the property as regards Mr Podpečan), partly incompatible <i>ratione temporis</i> (concerning Mr Podpečan's complaint under Art. 3 of Prot. 4)
Spain	15 Sept. 2009	Análisis Auditores S.L. and Others (no 41987/05) <a href="#">link</a>	Alleged violation of Art. 6 § 1 (unfairness of proceedings) and Art. 11 (infringement of the right to freedom of association, in this particular case to not join the Official Chamber of Commerce)	Struck out of the list (applicants no longer wished to pursue their application)
Switzerland	15 Sept. 2009	Eiffage S.A. and Others (no 1742/05) <a href="#">link</a>	Alleged violation of Art. 6 § 1 and 13 (infringement of the right to access to a court, length of proceedings and lack of an effective remedy)	Partly inadmissible (no respect of the six-month requirement), partly incompatible <i>ratione materiae</i>
Sweden	15 Sept. 2009	I.N. (no 1334/09) <a href="#">link</a>	The applicant is a Burundi national currently residing in Sweden Alleged violation of Articles 2 and 3 (real risk of being killed by the applicant's husband's former business partner and of being detained and ill-treated or killed by the authorities if expelled to	Partly inadmissible as manifestly ill-founded (lack of sufficient evidence to prove the risk of ill-treatment and execution, if expelled to Burundi), partly incompatible <i>ratione materiae</i> , (concerning the claim under Art. 6)

			Burundi), Art. 6 (lack of an oral hearing before the migration authorities)	
the Netherlands	15 Sept. 2009	`Blondje` (no 7245/09) <a href="#">link</a>	Alleged violation of Art. 5 (unlawful continued detention by the aliens' police), Art. 6 (lack of a fair hearing) and Art. 14	Inadmissible (anonymous application)
the United Kingdom	08 Sept. 2009	M. A. (no 43790/06) <a href="#">link</a>	Alleged violation of Art. 8 (disproportionate interference with the right to respect for family life on account of the Secretary of State's decision to remove the applicant from the United Kingdom to Bangladesh because his daughter would be placed for adoption)	Struck out of the list (applicant no longer wished to pursue his application)
the United Kingdom	08 Sept. 2009	K. (no 29696/07) <a href="#">link</a>	Alleged violation of Articles 2 and 3 (risk of execution or being subjected to torture, if expelled to Ethiopia)	Idem.
the United Kingdom	08 Sept. 2009	Lowe (no 12486/07) <a href="#">link</a>	Alleged violation of Art. 6 § 1 (unfairness of proceedings) and Art. 3, 5, 7, 8 and 14 (the additional term of imprisonment imposed on the applicant following his non-payment of the sums outstanding in the confiscation order amounted to "triple jeopardy")	Inadmissible (concerning the claim under Art. 6 § 1, the present complaint had the same factual basis and raised the same complaint as a matter which had already been examined by the Court: inadmissible within the meaning of Articles 35 § 2 (b) and 4 of the Convention), and for non-exhaustion of domestic remedies (concerning the remainder of the application)
the United Kingdom	08 Sept. 2009	Abdulrazak Yahya (no 43537/07) <a href="#">link</a>	Alleged violation of Art. 3 (risk of being tortured if expelled to Sudan, ill-treatment by the immigration authorities while in detention)	Struck out of the list (applicant no longer wished to pursue her application)
the United Kingdom	08 Sept. 2009	Mubarak (no 3867/07) <a href="#">link</a>	Alleged violation of Art. 6 § 1 (restrictions on the right of access to a court and on the right to equality of arms)	Inadmissible as manifestly ill-founded (proportionate interference with the applicant's rights under Art. 6)
Turkey	15 Sept. 2009	Khalajabadi and Araghi (no 22679/08) <a href="#">link</a>	Alleged violation of Articles 2, 3 and 13 (risk of execution or being submitted to torture if expelled to Iran and lack of an effective remedy)	Struck out of the list (applicants no longer wished to pursue their application)
Turkey	15 Sept. 2009	Şen (no 10194/05) <a href="#">link</a>	The application concerned the length of civil proceedings	Struck out of the list (friendly settlement reached)
Turkey	15 Sept. 2009	Güneş (no 1991/04) <a href="#">link</a>	Alleged violation of Art. 6 (erroneous conviction in fact and law and length of the criminal proceedings)	Struck out of the list (applicant no longer wished to pursue his application)
Turkey	15 Sept. 2009	Güngörmez (no 38734/04) <a href="#">link</a>	Alleged violation of Art. 6 § 1 (length of criminal proceedings - over 22 years before two levels of jurisdiction)	Struck out of the list (friendly settlement reached)
Turkey	15 Sept. 2009	Aykut and Others (no 22473/03) <a href="#">link</a>	Alleged violation of Art. 1 of Prot. 1 (insufficient compensation following the expropriation of the applicants' property)	Inadmissible (the applicants can no longer be considered as victims)
Turkey	15 Sept. 2009	Firat (no 15128/03) <a href="#">link</a>	Alleged violation of Art. 1 of Prot. 1 (non-enforcement of a judgment in the applicant's favour in good time in compensation proceedings)	Struck out of the list (friendly settlement reached)
Turkey	08 Sept. 2009	Güdek and Others (no 31552/07) <a href="#">link</a>	Alleged violation of Art. 2 (State's responsibility in the suicide of the applicants' relative while on military duty) and Art. 6 (unfairness of proceedings)	Inadmissible as manifestly ill-founded (the responsibility had been recognized by the domestic courts)
Turkey	15 Sept. 2009	Oral and Yılmaz (no 40193/04;	Alleged violation of Art. 6 § 1 (unfairness and length of civil proceedings), Art. 1 of Prot. 1	Struck out of the list (applicants no longer wished to pursue their application)

		40203/04) <a href="#">link</a>		
Turkey	15 Sept. 2009	Ekinci and Others (no 10682/03) <a href="#">link</a>	Alleged violation of Art. 6 § 1 (length of compensation proceedings)	Struck out of the list (the circumstances no longer justified the continued examination of the application)
Ukraine and Russia	08 Sept. 2009	Zhukovskiy (no 31240/03) <a href="#">link</a>	The applicant generally complained that his trial in Ukraine and his conviction had been unlawful Alleged violations of Art. 3, Art. 4, Art. 5 §§ 1 (c) and 3, Art. 6 §§ 1, 2, and 3 (b) and (d), Art. 8, Art. 13, Art. 17 and Art. 4 of Prot. 7	Partly adjourned (unfairness of proceedings, and inability of the applicant to question the witnesses, under Art. 6 § 1 and 3 (d)), partly inadmissible (no infringement of the rights and freedoms protected by the Convention)

### 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 5 October 2009 : [link](#)
- on 12 October 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.

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

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

#### Communicated cases published on 5 October 2009 on the Court's Website and selected by the NHRS Unit

*The batch of 5 October 2009 concerns the following States (some cases are however not selected in the table below): Albania, Bulgaria, France, Greece, Italy, Latvia, Moldova, Romania, Russia, Slovakia, Spain, Sweden, the Netherlands, the United Kingdom, Turkey and Ukraine.*

<u>State</u>	<u>Date of communication</u>	<u>Case Title</u>	<u>Key Words</u>
Bulgaria	15 Sept. 2009	Dimitrov no. 23342/06	Alleged violation of Art. 3 – Conditions of detention in Pleven Prison - A <a href="#">partial decision on admissibility</a> is available on Hudoc
Latvia	15 Sept. 2009	Bernāns no. 18705/02	Alleged violation of Art. 3 – Conditions of detention in Brasa and Grīva prisons – Alleged violation of Art. 13 – Lack of an effective remedy – Alleged violation of Art. 8 – Infringement of right to respect for correspondence with the Court
Moldova	14 Sept. 2009	Fusu no. 33238/06	Alleged violation of Art. 11 §§ 1 and 2 – Interference with the applicant's right to freedom of assembly – Alleged violation of Art. 13 – Lack of an effective remedy – Alleged violation of Art. 6 – Unfairness of proceedings – Alleged violation of Art. 10 – Alleged violation of the applicant's freedom of speech

Romania	15 Sept. 2009	Lăutaru no. 13099/04	Alleged violation of Art. 3 – Conditions of detention, ill-treatment and lack of adequate medical care in Colibași Prison – Alleged violation of Art. 8 – Infringement of the right to correspondence with the Court – Alleged violation of Art. 34 by the Court – State’s hindrance of the effective exercise of the applicant’s right of individual petition – Alleged violations of Art. 6 – Unfairness and length of proceedings – Alleged violation of Art. 13 – Ineffective consideration of the applicant’s appeal
Romania	15 Sept. 2009	Rozsa no. 21600/05	Alleged violation of Art. 3 – Conditions of detention and ill-treatment in Târgu Mureș Prison as a result of the lack of adequate medical treatment – Treatment contrary to this article during arrest – Lack of an effective investigation
Russia	17 Sept. 2009	Alekseyev nos. 4916/07, 25924/08 and 14599/09	Alleged violation of Art. 11 §§ 1 and 2 – Interference with the applicant’s right to peaceful assembly on account of police interference in Gay Pride march – Alleged violation of Art. 13 – Lack of an effective remedy – Alleged violation of Art. 14 in conjunction with Art.11 – Discrimination on grounds of sexual orientation
Slovakia	15 Sept. 2009	Ibragimov no. 51946/08	Alleged violation of Art. 2 and 3 – Risk of execution or being subjected to torture if expelled to Russia
Slovakia	15 Sept. 2009	Chentiev no. 21022/08	
Sweden	15 Sept. 2009	Iljazovic and Others no. 38233/09	Alleged violation of Art. 3 – Risk of being subjected to torture if expelled to Serbia – Alleged violation of Art. 8 – Infringement of the right to family life as a result of the applicants’ separation from their mother during her imprisonment
Turkey	18 Sept. 2009	Kaya no. 12673/05	Alleged violation of Art. 3 – Inhuman or degrading treatment while in police custody – Lack of an effective investigation – Alleged violation of Art. 5 §§ 1 and 2 – Unlawful arrest and detention – Alleged violation of Art. 13 in conjunction with Art. 3 – Ineffective investigation into alleged ill-treatment – Alleged violation of Art. 14 – Discrimination on grounds of race and political views
Turkey	16 Sept. 2009	Avul and Avul no. 24957/04	Alleged violation of Articles 2 and 3 – The applicants’ son’s death after being shot by Turkish security forces – Lack of adequate medical assistance given the seriousness of the applicants’ son’s injury – Lack of an effective investigation – Alleged violations of Art. 13 in conjunction with Art. 6 – Ineffective investigation
Turkey	16 Sept. 2009	Uzan no. 30569/09	Alleged violation of Art. 10 § 1 – Infringement of the right to freedom of expression on account of the applicant’s speech concerning the Prime Minister – Alleged violation of Art. 6 § 1 – Length of criminal proceedings
Turkey	15 Sept. 2009	Belek and Velioğlu no. 44227/04	Alleged violation of Art. 10 § 1 – Infringement of the right to freedom of expression on account of the applicants’ conviction after publishing an article demanding a democratic solution for the “Kurdish issue” – Alleged violation of Art. 6 – Lack of an independent and impartial tribunal
Turkey	15 Sept. 2009	Güler and Öngel nos. 29612/05 and 30668/05	Alleged violation of Articles 3, 5 § 1 (c), 10 § 1 and 11 § 1 – Intervention of excessive and disproportionate police force in the protest action against the NATO summit
Turkey	14 Sept. 2009	Arab no. 4513/07	Alleged violation of Art. 3 – Ill-treatment by police officers – Lack of an effective investigation – Conditions of detention at the Zeytinburnu police headquarters – Alleged violation of Articles 5 , 6 and 8 – Unlawful detention, unfair proceedings and inability to meet partner while in detention – Alleged violation of Art. 1 of Prot. 1 – Financial loss

**Communicated cases published on 12 October 2009 on the Court’s Website and selected by the NHRS Unit**

*The batch of 12 October 2009 concerns the following States (some cases are however not selected in the table below): Albania, Austria, Azerbaijan, Bulgaria, Croatia, Cyprus, France, Georgia, Greece, Italy, Latvia, Malta, Moldova, Poland, Romania, Russia, Sweden, Turkey and Ukraine*

<u>State</u>	<u>Date of communication</u>	<u>Case Title</u>	<u>Key Words</u>
Azerbaijan	24 Sept. 2009	Pashayev no. 36084/06	Alleged violation of Art. 3 – Conditions of detention in Gobustan Prison – Lack of adequate medical assistance in Gobustan Prison and in Specialised Medical Establishment No. 3 – Alleged violation of Art. 6 § 1 – Infringement of the right of

			access to a court – Unfairness of civil proceedings against the administration of Bayil Prison – A <a href="#">partial decision on admissibility</a> is available on Hudoc
Bulgaria	21 Sept. 2009	Sabev No. 3 no. 27887/06	Alleged violation of Art. 3 – Conditions of detention in Lovech Prison – Alleged violation of Art. 13 – Lack of an effective remedy – Alleged violation of Art. 6 § 1 – Excessive amount of court fees
France	21 Sept. 2009	Martin and Others no. 30002/08	Alleged violation of Art. 10 §§ 1 and 2 – Infringement of the right to freedom of expression as a result of the searches and seizure conducted in the applicants' office
Georgia	25 Sept. 2009	Tsiklaouri no. 17775/09	Alleged violation of Art. 3 – Ill-treatment due to the applicant's state of health – Conditions of detention in Rustavi Prison no. 2 – Lack of adequate medical care in detention – Alleged violation of Art. 13 – Lack of an effective remedy
Latvia	21 Sept. 2009	Petriks no. 19619/03	Alleged violation of Art. 3 – Conditions of detention (lack of mattresses, proper nourishment and adequate hygienic and sanitary conditions) in the short-term detention facility in Saldus – Lack of adequate medical assistance in Liepāja prison – Alleged violation of Art. 5 § 3 – Excessive length of pre-trial detention
Moldova	21 Sept. 2009	Popescu no. 11367/06	Alleged violation of Art. 8 § 1 – Interference in the applicant's right to respect for private life as a result of the interception of his telephone conversations – Alleged violation of Art. 8 § 2 – Lack of sufficient safeguards against illegal telephone tapping in Moldovan law – Alleged violation of Articles 6 and 13 in conjunction with Art. 8
Poland	21 Sept. 2009	Kawiecki no. 15593/07	Alleged violation of Art. 3 and Art. 8 – Conditions of detention under the "dangerous detainee" regime (solitary confinement, the practice of regular body searches and shackling) – Alleged violation of Art. 9 §§ 1 and 2 – Interference with the right to freedom of religion on account of the applicant's inability to attend the Sunday service together with other detainees as a "dangerous detainee" – Alleged violation of Art. 5 § 3 – Trial within reasonable time after arrest
Russia	23 Sept. 2009	Pakhomov no. 44917/08	Alleged violation of Art. 3 – Infection of the applicant with tuberculosis while in Prymorye Regional prison hospital no. 47 – State's failure to ensure adequate protection of the applicant's health and well-being – Alleged violation of Art. 6 §§ 1 and 3 (a) and (d) – Unfairness of criminal proceedings – The applicant's inability to obtain the attendance of witnesses on his behalf
Sweden	21 Sept. 2009	H.N. no. 30720/09	Alleged violation of Art. 2 § 1 and Art. 3 – Risk of execution or being subjected to torture if expelled to Burundi
Ukraine	22 Sept. 2009	Bulanov no. 7714/06 and 2 other applications	Alleged violation of Art. 6 § 1 – Unfairness of proceedings – Alleged violation of Art. 13 – Infringement of the applicants' right of access to a court of cassation – Alleged violation of Art. 14 in the case of Bulanov – Discrimination on account of the outcome of proceedings
Ukraine	22 Sept. 2009	Rudenko no. 5797/05	Alleged violation of Art. 3 – Ill-treatment while in police custody – Lack of adequate medical assistance – Alleged violation of Art. 5 § 1 – Unlawfulness of detention – Alleged violation of Art. 5 § 3 – Length of detention – Alleged violation of Art. 5 § 4 – Lack of an effective remedy in respect of the lawfulness of continuous detention – Alleged violation of Art. 6 § 1 – Length of proceedings – Alleged violation of Art. 13 – Lack of an effective remedy in respect of length of proceedings – A <a href="#">partial decision on admissibility</a> is available on Hudoc
Ukraine	22 Sept. 2009	Dovzhenko no. 36650/03	Alleged violation of Art. 6 § 2 – Infringement of the principle of presumption of innocence due to statements made by the investigative authorities – Alleged violation of Art. 6 § 3 (b) in conjunction with Art. 6 § 1 – Lack of adequate time to prepare defence – Alleged violation of Art. 6 § 3 (c) in conjunction with Art. 6 § 1 – Lack of legal assistance before the Supreme court – Alleged violation of Art. 8 – Interference with the applicant's right to correspondence with the Supreme court – A <a href="#">partial decision on admissibility</a> is available on Hudoc
Ukraine	24 Sept. 2009	Kashperskiy no. 1434/06	Alleged violation of Art. 3 – Conditions of detention in Simferopol no. 15 SIZO – Alleged violation of Art. 6 § 1 – Unfairness and length of proceedings – Alleged violation of Art. 6 § 3 (d) – Impossibility to obtain the attendance of witnesses on the applicant's behalf – Alleged violation of Art. 6 § 3 – Lack of adequate facilities to prepare defence and deprivation to participate effectively in his trial
Ukraine	24 Sept. 2009	Izzetov no. 23136/04	Alleged violation of Art. 3 – Conditions of detention in the Simferopol no. 15 SIZO – Alleged violation of Art. 5 § 1(c) – Unlawfulness of detention – Alleged violation of Art. 5 § 3 – Length of detention – Alleged violation of Art. 6 § 1 – Length of criminal proceedings

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

### **Recent hearing (07.10.2009)**

The Court held a Grand Chamber hearing *Neulinger and Shuruk v. Switzerland*. The case concerns the child's return to Israel after being removed by his mother to live in Switzerland. [Press Release](#), [webcast of the hearing](#)

### **Referrals to the Grand Chamber (01.10.2009)**

The cases of *Sanoma Uitgevers B.V. v. the Netherlands*, *Şerife Yiğit v. Turkey* and *Saknovskiy v. Russia* have been referred to the Grand Chamber of the Court. [Press Release](#)

### **Visit by the Armenian Minister of Justice (08.10.2009)**

On 6 October 2009 Gevorg Danielyan, the Armenian Minister of Justice, visited the Court and was received by President Costa. Alvina Gyulumyan, the judge elected in respect of Armenia, and Michael O'Boyle, Deputy Registrar, also attended the meeting.

### **Visit by the Turkish Minister of Justice (08.10.2009)**

On 6 October 2009 Sadullah Ergin, the Turkish Minister of Justice, visited the Court and was received by President Costa. Işıl Karakaş, the judge elected in respect of Turkey, and Erik Fribergh, Registrar, also attended the meeting.

### **Visit to Monaco (05.10.2009)**

On 1 October 2009 President Costa visited Monaco, where he was received for an audience by His Serene Highness Prince Albert II. He was accompanied by Isabelle Berro-Lefèvre, the judge elected in respect of Monaco. During the visit, they gave a lecture on the challenges facing the European Court of Human Rights and attended the traditional hearing marking the opening of the judicial year in Monaco.

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

### A. New information

The Council of Europe's Committee of Ministers held its latest "human rights" meeting from 15 to 16 September 2009 (the 1065th meeting of the Ministers' deputies).

Link to the [Decisions adopted at the meeting](#)

Links to the annotated agenda with decisions:

- [CM/Del/OJ/DH\(2009\)1065genpublicE / 30 September 2009](#)
  - 1065th meeting (DH), 15-16 September 2009 - Annotated Agenda - General questions - Public information version
- [CM/Del/OJ/DH\(2009\)1065section1publicE / 30 September 2009](#)
  - 1065th meeting (DH), 15-16 September 2009 - Annotated Agenda - Section 1 – Final Resolutions - Public information version
- [CM/Del/OJ/DH\(2009\)1065section2.1publicE / 30 September 2009](#)
  - 1065th meeting (DH), 15-16 September 2009 - Annotated Agenda - Section 2.1 - New cases - Public information version
- [CM/Del/OJ/DH\(2009\)1065section2.2publicE / 30 September 2009](#)
  - 1065th meeting (DH), 15-16 September 2009 - Annotated Agenda - Section 2.2 - New cases - Public information version
- [CM/Del/OJ/DH\(2009\)1065section4.1publicE / 30 September 2009](#)
  - 1065th meeting (DH), 15-16 September 2009 - Annotated Agenda - Section 4.1 - Cases raising specific questions (individual measures not yet defined or special problems) - Public information version
- [CM/Del/OJ/DH\(2009\)1065section4.2publicE / 30 September 2009](#)
  - 1065th meeting (DH), 15-16 September 2009 - Annotated Agenda - Section 4.2 - Cases raising specific questions (individual measures not yet defined or special problems) - Public information version
- [CM/Del/OJ/DH\(2009\)1065section4.3publicE / 30 September 2009](#)
  - 1065th meeting (DH), 15-16 September 2009 - Annotated Agenda - Section 4.3 - Cases raising specific questions (individual measures not yet defined or special problems) - Public information version
- [CM/Del/OJ/DH\(2009\)1065section5publicE / 30 September 2009](#)
  - 1065th meeting (DH), 15-16 September 2009 - Annotated Agenda - Section 5 - Supervision of general measures already announced - Public information version
- [CM/Del/OJ/DH\(2009\)1065section6.1publicE / 30 September 2009](#)
  - 1065th meeting (DH), 15-16 September 2009 - Annotated Agenda - Section 6.1 - Cases presented with a view to the preparation of a draft final resolution - Public information version
- [CM/Del/OJ/DH\(2009\)1065section6.2publicE / 30 September 2009](#)
  - 1065th meeting (DH), 15-16 September 2009 - Annotated Agenda - Section 6.2 - Cases presented with a view to the preparation of a draft final resolution - Public information version



- [CM/Del/OJ/DH\(2009\)1065statpublic / 30 September 2009](#)
  - 1065th meeting (DH), 15-16 September 2009 - Annotated Agenda - Statistics - Public information version / 1065e réunion (DH), 15-16 septembre 2009 - Ordre du jour annoté - Statistiques - Version destinée à l'information publique

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

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

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

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

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

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

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

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

### A. European Social Charter (ESC)

#### A specialised international cycle on Human Rights held at ENA (01.10.09)

The *École Nationale d'Administration* (ENA) has organised a session from 14 September - 9 October 2009 on the theme of "Human Rights", targeting senior civil servants from foreign countries. On 6 October 2009, M. Régis BRILLAT, head of the Department of the European Social Charter, gave a presentation of the Charter.

[Programme](#) (French only)

[ENA Website](#)

#### International Conference on children's rights in Ljubljana (06.10.09)

Mrs Polonca KONCAR, President of the European Committee on Social Rights attended the International Conference on children's rights and protection against violence held in the National Assembly of the Republic of Slovenia, in Ljubljana, from 6 - 7 October 2009.

[Programme](#)

[Further information](#)

#### Colloquy at the University of Marmara on the Social Charter and constitutional social rights (09.10.09)

A colloquy entitled "Constitutional social rights and the European Social Charter" was held at the University of Marmara (Turkey) from 15 to 16 October 2009. The colloquy was attended by Mr Rûçhan İŞİK and Mr Luis JIMENA QUESADA, members of the European Committee on Social Rights, and Mrs Isabelle CHABLAIS, administrator in the Department of the Social Charter. Mr İŞİK gave a presentation of the collective complaints procedure, Mr QUESADA spoke of the application of the European Social Charter through domestic jurisdictions, and Mrs CHABLAIS presented the Revised European Social Charter.

[Programme](#) (French only)

The last session of the European Committee of Social Rights took place from 19-23 October 2009.

[Agenda of the 239th Session](#)

An electronic newsletter is now available to provide updates on the latest developments in the work of the Committee:

[http://www.coe.int/t/dghl/monitoring/socialcharter/newsletter/newsletterno1sept2009\\_en.asp](http://www.coe.int/t/dghl/monitoring/socialcharter/newsletter/newsletterno1sept2009_en.asp)

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

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

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

#### [Council of Europe anti-torture Committee visits Greece](#) (05.10.09)

A delegation of the CPT carried out a visit to Greece from 17 to 29 September 2009. It was the Committee's fifth periodic visit to Greece. The visit provided the opportunity to assess progress made since the previous periodic visit in September 2005 and the ad hoc visits of February 2007 and

September 2008. In the course of the visit, the CPT's delegation examined the treatment and conditions of detention of persons held in a number of prisons and in aliens' detention centres, including in the eastern Aegean and the Evros region. The delegation also visited police and border guard establishments with a view to examining the conditions of detention and the safeguards in place, both in relation to persons suspected of a criminal offence and those held under Aliens legislation.

In the course of the visit, the delegation met the Secretary General of the Ministry of Justice, Athanasios ANDREOULAKOS, Head of Penitentiary Policy, Christina PETROU, and the Chief Prosecutor of the Court of Cassation, Ioannis TENTES, as well as senior officials from the Greek Police Force and representatives from the Ministries of Foreign Affairs, Health, Interior and Justice. The delegation also met the Ombudsman and Deputy Ombudsman, representatives of the United Nations High Commissioner for Refugees (UNHCR) and the Greek National Commission for Human Rights, and several members of non-governmental organisations.

#### **Council of Europe anti-torture Committee visits Romania (07.10.09)**

A delegation of the CPT carried out an ad hoc visit to Romania from 28 September to 2 October 2009. The main objective of the visit was to review the situation of residents and patients at Nucet Medico-Social Centre and at Oradea Hospital for Neurology and Psychiatry (Bihor County), in the light of the recommendations and comments made by the Committee concerning these two establishments in its report on the 2006 visit.

At the end of the visit, the delegation held discussions with Aurel NECHITA, Secretary of State in the Ministry of Health, and Ileana BOTEZAT ANTONESCU, Director of the National Mental Health Centre, Ministry of Health.

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

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

#### **Bulgaria: visit of the Advisory Committee on the Framework Convention for the Protection of National Minorities (28.09.09)**

A delegation of the Advisory Committee on the FCNM visited Sofia and Plovdiv, from 28 September - 02 October 2009 in the context of the monitoring of the implementation of this convention in Bulgaria.

This is the second visit of the Advisory Committee to Bulgaria. The Delegation had meetings with the representatives of all relevant ministries, public officials, the Ombudsman, as well as persons belonging to national minorities and Human Rights NGOs.

*Note: Bulgaria submitted its second [State Report](#) under the Framework Convention in November 2007. Following its visit, the Advisory Committee will adopt its own report in autumn 2009, which will be sent to the Bulgarian Government for comments. The Committee of Ministers of the Council of Europe will then adopt conclusions and recommendations in respect of Bulgaria.*

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\* No work deemed relevant for the NHRSs for the period under observation

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

### **GRECO celebrated its first ten years of existence (12.10.09)**

On 5 October 2009 GRECO celebrated its 10th Anniversary with a High-level Conference which brought together a large number of Ministers and Secretaries of State as well as representatives from its 46 member States, several non-member States, international organisations and civil society. Numerous speakers highlighted the need for enhanced cooperation among all international stakeholders in the fight against corruption with a view to avoiding duplication and promoting synergies.

[See complete file including videos of the Conference, speeches, programme and list of participants](#)

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

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

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

## Part IV: The inter-governmental work

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

**Montenegro** ratified on 1 October 2009 the Convention on the Conservation of European Wildlife and Natural Habitats ([ETS No. 104](#)).

**Poland** signed on 1 October 2009 Protocol No. 14bis to the Convention for the Protection of Human Rights and Fundamental Freedoms ([CETS No. 204](#)).

On 1 October 2009 Protocol No. 14bis to the Convention for the Protection of Human Rights and Fundamental Freedoms **entered into force** ([CETS No. 204](#)).

**Slovakia** signed on 7 October 2009 Protocol No. 14bis to the Convention for the Protection of Human Rights and Fundamental Freedoms ([CETS No. 204](#)).

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

[CM/ResCPT\(2009\)3E / 07 October 2009](#)

Election of members of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in respect of Estonia, Liechtenstein, Monaco, the Netherlands, Norway, Switzerland and Ukraine (Adopted by the Committee of Ministers on 7 October 2009 at the 1067th meeting of the Ministers' Deputies).

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

**Renewed dialogue with the Parliamentary Assembly is vital to promote Council of Europe values, says Samuel Žbogar (29.09.09)**

Speaking at the Assembly on 29 September, the Foreign Affairs Minister of Slovenia and Chairman of the Committee of Ministers announced that an agreement has been reached on a package of measures to enhance dialogue and co-operation between the Parliamentary Assembly and the Committee of Ministers. "I believe that it is of vital importance that the two statutory bodies of our Organisation stand united to promote the values and principles of the Council of Europe," he said.

[Speech](#)

**Danilo Türk: "European unity must remain the priority" (01.10.09)**

Speaking at the Parliamentary Assembly on 1 October, the President of the Republic of Slovenia said that a "Europe united around common values is still not fully realised". He stated that this aim should remain the priority of the Council of Europe, which should continue to be the "ultimate watchdog for human rights in the continent". He called on member states to respect their commitments with regard to the execution of judgments of the European Court of Human Rights, and to give the required attention to the implementation of conventions and the recommendations of the bodies that monitor torture, racism, national minorities and social rights.

[Speech](#)

[Video of the speech](#)

### **Thorbjørn Jagland elected Secretary General of the Council of Europe (29.09.09)**

The Parliamentary Assembly on 29 September elected Thorbjørn Jagland (Norway) Secretary General of the Organisation for a five-year term. In the first round of the election, Thorbjørn Jagland obtained 165 votes (an absolute majority) and Włodzimierz Cimoszewicz (Poland) 80 votes. There were 245 votes cast. Mr Jagland has been President of the Norwegian Parliament (Storting) since 2005 and Member of Parliament for Buskerud County since 1993. Thorbjørn Jagland was sworn in as Secretary General on 1 October 2009.

[Video of the speech](#)

[Photo Gallery](#)

[Thorbjørn Jagland campaign website](#)

### **Ministers' Deputies meeting: Exchange of views on the abolition of the death penalty (07.10.09)**

In 2007, the Committee of Ministers of the Council of Europe decided to declare a European Day against the Death Penalty. The day is marked every year on 10 October with the objective to achieve a complete abolition of the death penalty in Europe and to promote efforts by the international community to introduce a world-wide moratorium and, ultimately, universal abolition of the death penalty. In view of the celebration of the European Day against the Death Penalty, the Ministers' Deputies devoted part of their meeting [on the 7 October] to an exchange of views on the abolition of the death penalty.

[Statement by the Slovenian Chairmanship](#)

[Statement by the Swedish Presidency of the European Union](#)

[Conclusions of the Chair of the Ministers' Deputies](#)

### **Joint statement on the imminent execution of Vasily Yusepchuk in Belarus (09.10.09)**

On the eve of the celebration of the European Day against the Death Penalty, the Chair of the Committee of Ministers Samuel Žbogar, PACE President Lluís Maria de Puig and the Secretary General of the Council of Europe Thorbjørn Jagland made the following statement: "We appeal to President Alyaksandr Lukashenka to grant clemency to Mr Yusepchuk, to declare forthwith a moratorium on the use of the death penalty in Belarus, and to commute the sentences of all prisoners sentenced to death to terms of imprisonment. Such an action would align Belarus with the 47 member States of the Council of Europe, all of which have suspended or abolished the death penalty."

### **10 October - European Day against the Death Penalty (09.10.09)**

The Council of Europe has been a pioneer in the abolition process which has made Europe a de facto death-penalty-free zone since 1997. Death Penalty Day 2009 sees the Council of Europe pushing its campaign for world-wide abolition into new territory with an in-depth look at "why death is not justice", and a focus on how the criminal justice system can deal with offenders.

[Joint Statement - Chairmanship of the Committee of Ministers of the Council of Europe/Presidency of the European Union](#)

### **Opening of the exhibition "You See Me – I See You: Cultural Diversity in the Eyes of the Roma" (30.09.09)**

Ambassador Marjetica Bole, Permanent Representative of Slovenia and Chair of the Ministers' Deputies, opened on 28 September the exhibition "You See Me – I See You: Cultural Diversity in the Eyes of the Roma". The exhibition explores the role of photography in the context of often negative images and stereotypes of the Roma.

## Part V: The parliamentary work

### A. Resolutions and Recommendations of the Parliamentary Assembly of the Council of Europe (adopted during the 4<sup>th</sup> part of the 2009 Ordinary Session)

Recommendation 1882: [The promotion of Internet and online media services appropriate for minors](#) (28.09.09)

Resolution 1683: [The war between Georgia and Russia: one year after](#) (29.09.09)

Recommendation 1884: [Cultural education: the promotion of cultural knowledge, creativity and intercultural understanding through education](#) (29.09.09)

Resolution 1682: [The challenges posed by climate change](#) (29.09.09)

Recommendation 1883: [The challenges posed by climate change](#) (29.09.09)

Resolution 1685: [Allegations of politically-motivated abuses of the criminal justice system in Council of Europe member states](#) (30.09.09)

Recommendation 1885: [Drafting an additional protocol to the European Convention on Human Rights concerning the right to a healthy environment](#) (30.09.09)

Resolution 1686: [Challenge on procedural grounds of the still unratified credentials of the parliamentary delegation of Moldova](#) (30.09.09)

Resolution 1684: [The activities of the Organisation for Economic Co-operation and Development \(OECD\) in 2008-2009](#) (30.09.09)

Resolution 1690: [Honouring of obligations and commitments by Monaco](#) (01.10.09)

Resolution 1689: [The future of the Council of Europe in the light of its 60 years of experience](#) (01.10.09)

Recommendation 1886: [The future of the Council of Europe in the light of its 60 years of experience](#) (01.10.09)

Resolution 1688: [United Nations reform and the Council of Europe member states](#) (01.10.09)

Resolution 1687: [Reconsideration on substantive grounds of previously ratified credentials of the Russian delegation \(Rule 9 of the Rules of Procedure of the Assembly\)](#) (01.10.09)

Resolution 1694: [Towards a new ocean governance](#) (02.10.09)

Recommendation 1888: [Towards a new ocean governance](#) (02.10.09)

Resolution 1693: [Water: a strategic challenge for the Mediterranean Basin](#) (02.10.09)

Resolution 1691: [Rape of women, including marital rape](#) (02.10.09)

Recommendation 1887: [Rape of women, including marital rape](#) (02.10.09)

Resolution 1692: [The functioning of democratic institutions in Moldova: implementation of Resolution 1666 \(2009\)](#) (02.10.09)

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

#### ➤ *Countries*

#### **PACE demands Russia allow access to South Ossetia and Abkhazia (29.09.09)**

Before the end of this year, Russia should allow EU monitors into South Ossetia and Abkhazia, lift all restrictions on humanitarian aid to the two regions and let Georgian civilians move freely across the boundary lines, PACE demanded on 29 September. Debating the war between Georgia and Russia a

year on, the Assembly deplored the fact that there had been “little tangible progress” in addressing the consequences of the war – and said that in several areas the situation had actually regressed.

[Resolution 1683](#)

[The full report \(PDF\)](#)

[The debate: who said what](#)

[The voting results](#)

### **The situation of human rights defenders in the North Caucasus: ‘There can be no justice without truth’ says Dick Marty (30.09.09)**

“In April 2009, the Russian Government announced the end of the operations in Chechnya. Now, however, the entire region is beset by violence,” said Dick Marty (Switzerland, ALDE) at the start of the current affairs debate on the situation of human rights defenders and the increasing violence in the North Caucasus region of the Russian Federation. According to Mr Marty, it is above all the general climate of impunity at all levels which has prevailed in the region for many years that has generated an atmosphere conducive to the spread of violence.

Ilyas Umakhanov (Russia, EDG) underlined that, when speaking of terrorism, it is necessary to “analyse all its acts without excluding criminality”, as some of them may be linked to an underground mafia seeking to destabilise the region. Although “the situation is under control,” he said, it is difficult and needs to be monitored.

The Council of Europe Commissioner for Human Rights, Thomas Hammarberg, stressed the need to remember the people who live in the region, as it is very important for victims’ families not to feel that they have been left on their own.

[Dick Marty: Situation in the North Caucasus Region: security and human rights - 2nd information report](#)

### **PACE confirms credentials of the Russian delegation (01.10.09)**

PACE decided to confirm on 1 October the credentials of the Russian delegation, following a challenge submitted by 72 Assembly members. In a resolution adopted by 88 votes to 35, the parliamentarians said: “Notwithstanding the lack of compliance by Russia with most of its demands, the Assembly decides to confirm the ratification of the credentials of the Russian delegation, on the understanding that this will enable the Russian authorities to engage in a meaningful and constructive dialogue with a view to addressing all the issues mentioned in the Assembly resolutions on the consequences of the war between Georgia and Russia.”

[Full report](#)

[Motion for a resolution](#)

### **Monaco: PACE decides to close the monitoring procedure (01.10.09)**

PACE decided on 1 October to close the monitoring procedure relating to the honouring of the obligations and commitments of Monaco towards the Council of Europe. In a resolution adopted on the basis of the report by Leonid Slutsky (Russian Federation, SOC) and Pedro Agramunt (Spain, EPP/CD), the Assembly considered that Monaco had clearly demonstrated “its determination and ability” to fulfil the undertakings made upon its accession in 2004. Monaco has ratified 40 of the 250 Council of Europe conventions and signed three others.

### **Assembly ratifies the credentials of Moldovan delegation (30.09.09)**

PACE decided to ratify on 29 September the credentials of the parliamentary delegation of Moldova, challenged at the opening of the session on procedural grounds. The Assembly concluded that the list of its members fairly represented political groups in the Moldovan Parliament, in compliance with Rule 6 of the Assembly’s Rules of Procedure. PACE also asked the relevant Moldovan authorities to specify urgently their intentions in regard to four vacant seats for substitutes on the Moldovan delegation.

[Resolution](#)



### **Moldova: new coalition and opposition must negotiate to break deadlock over President (02.10.09)**

Moldova's new coalition government and opposition should enter into meaningful negotiations to break the deadlock over electing the President, PACE said on 2 October. Debating a monitoring report on Moldova, the Assembly also said that once the President and Prime Minister were in place, there needs to be far-reaching reform – including, where appropriate, of the Constitution – to avoid such institutional deadlock in the future.

### **Ukraine: co-rapporteurs concerned about the ruling of Kyiv District Court regarding materials critical of PM (06.10.09)**

The co-rapporteurs in relation to Ukraine of the Monitoring Committee of the PACE, Renate Wohlwend (Liechtenstein, EPP/CD) and Sabine Leutheusser-Schnarrenberger (Germany, ALDE), expressed their concern about the ruling of the Court of the Pecherskyi district in Kyiv that forbids the publication or distribution by “any individual or legal entity” of any “unfair advertising” concerning the Prime Minister of Ukraine. “Especially in the context of the forthcoming Presidential election in Ukraine, such a decision could easily be seen as censorship and meddling of the courts in the election campaign and political debate, which would be unacceptable”, the co-rapporteurs said.

The Assembly will send a 40 member delegation to observe the forthcoming Presidential election, as well as an 11 member pre-election mission in November 2009 to assess the election campaign as well as the political climate in the run up to the election.

### **Official visit by PACE President to Turkey (08.10.09)**

PACE President Lluís Maria de Puig made an official visit to Turkey from 10 to 13 October. He was scheduled to hold meetings with the President, Abdullah Gül, the Speaker of the Grand National Assembly, Mehmet Ali Sahin, the Prime Minister, Recep Tayyip Erdogan, the Minister for European Affairs and chief negotiator with the EU, Egemen Bagis, and the Chair of the Turkish national parliamentary delegation to the PACE, Mevlüt Çavusoglu. Mr de Puig also held talks with the leaders of the political parties represented in parliament.

### **Bosnia and Herzegovina: constitution-making should not be ‘abused’ for electoral goals (09.10.09)**

“The positions of various stakeholders are extremely polarised and an agreement on a comprehensive package of constitutional amendments is almost impossible to reach,” said Mevlüt Çavusoglu (Turkey, EDG) and Kimmo Sasi (Finland, EPP/CD) in an information note declassified this week by the Assembly's Monitoring Committee.

“Constitution-making is a serious exercise which requires building a broad consensus about the key features of the reform. It should not be abused to satisfy immediate goals relating to the electoral campaign,” they concluded. Key stakeholders should launch, without delay, a meaningful dialogue about changes to the Constitution, drawing on help from the Council of Europe's Venice Commission, in order to make Bosnia and Herzegovina “a normal European state”.

Depending on progress, the co-rapporteurs proposed a possible debate on this question at the Assembly's January 2010 part-session.

The prospects of adopting a new constitution for Bosnia and Herzegovina before the next parliamentary elections, expected to be held in autumn 2010, look “rather gloomy”, say the monitoring co-rapporteurs of the PACE in their latest assessment.

## ➤ *Themes*

### **Thorbjørn Jagland elected Secretary General of the Council of Europe (29.09.09)**

PACE elected on 29 September Thorbjørn Jagland (Norway) Secretary General of the Organisation for a five-year term. In the first round of the election, Thorbjørn Jagland obtained 165 votes (an absolute majority) and Włodzimierz Cimoszewicz (Poland) 80 votes. There were 245 votes cast. Mr Jagland has been President of the Norwegian Parliament (Storting) since 2005 and Member of Parliament for Buskerud County since 1993. Thorbjørn Jagland was sworn in as Secretary General on 1 October 2009.

[Mr Jagland's curriculum vitae](#); [Video of the speech](#)

### **Internet and online media services: PACE calls for increased protection for minors (28.09.09)**

In a recommendation adopted on 28 September, the Assembly calls on the member States to increase protection for minors who use Internet and online media services, particularly through the use of parental filter systems. PACE also urges the member states to support the creation of secure, restricted-access networks which filter content harmful to minors and comply with codes of conduct, as recommended by József Kozma (Hungary, SOC) in his report. The Assembly favours measures to raise public awareness, focusing on the risks and opportunities for minors using Internet and online media services. It also recommends that the Committee of Ministers work towards ensuring greater legal responsibility of Internet service providers for illegal content, and that it call on the member states which have not yet signed the Convention on Cybercrime and its Additional Protocol to do so without delay.

### **Dzhema Grozdanova (Bulgaria) and Juan Moscoso del Prado Hernández (Spain) elected Vice-Presidents of PACE (28.09.09)**

PACE elected on 28 September two of its Vice-Presidents: Dzhema Grozdanova, in relation to Bulgaria and Juan Moscoso del Prado Hernández, in relation to Spain.

### **Cultural education should be mandatory at school, according to the Assembly (29.09.09)**

Art can usefully reinforce formal education, according to the Assembly. That is why cultural and artistic means of education should become an essential part of formal education, in particular at school level. Following the proposals of the rapporteur (Christine Muttonen, Austria, SOC), the Assembly invited the Council of Europe member and observer states to support research with a view to establishing national strategies for cultural education at school and as part of informal education and lifelong learning. Cultural education through qualified arts teachers and artists, they said, should be mandatory at school.

[Recommendation 1884 \(2009\)](#)

### **Equity and social justice should be at the heart of the Copenhagen agreement on climate change (29.09.09)**

PACE believes that the United Nations Conference on Climate Change to be held in Copenhagen in December 2009 should result in an agreement giving priority to equity and social justice. While the Assembly recognises the need to reach agreement in Copenhagen on a significant reduction in greenhouse gas (GHG) emissions for each country – at least 50% by 2050 compared with 1990 levels – it supports, in a resolution adopted on 29 September, an equitable and differentiated approach that takes due account of a country's population, industrial development and poverty.

[Recommendation 1883](#)

[Resolution 1682](#)

### **Rajendra K. Pachauri: 'Council of Europe should promote action against climate change' (29.09.09)**

The Chairman of the United Nations Intergovernmental Panel on Climate Change (IPCC) addressed the Parliamentary Assembly on 29 September highlighting the relevance of climate change. The Indian expert focused on the global warming effects and on the role of the international community gathering in Copenhagen in December.

[Video of the speech](#)

### **Anne Brasseur elected President of ALDE (29.09.09)**

The Alliance of Liberals and Democrats for Europe (ALDE) has unanimously elected Anne Brasseur new President of the Group. Mrs Brasseur has been engaged in politics since 1975 and has a long and rich experience of parliamentary work. She was Minister of National Education and Sports of Luxembourg (1999-2004) and at present chairs PACE's Committee on Culture, Science and Education.

[ALDE Website](#)

### **Living in a healthy environment should be made a legally enforceable human right (30.09.09)**

PACE called on 30 September for the “right to live in a healthy and viable environment” to be enshrined in the European Convention on Human Rights – which would make it legally enforceable in courts across Europe. In a recommendation based on a report by José Mendes Bota (Portugal, EPP/CD), the Assembly said the European Court of Human Rights, in its case-law, had already on some occasions protected such a right as a “knock-on effect” of other rights.

[Recommendation](#)

### **The independence of the judicial system is the principal line of defence against political interference in the law, according to PACE (30.09.09)**

In a resolution unanimously adopted on 30 September, PACE stressed that the independence of the judiciary is the principal line of defence against politically-motivated interference in the law. In order to ensure the success of any changes to the system, PACE advised maintaining the right balance between parties enjoying full independence (judges, defence lawyers) and the prosecution and the police. Sabine Leutheusser-Schnarrenberger (Germany, ALDE), PACE rapporteur on this subject, examined how politicians can interfere in criminal proceedings in four countries representing the principal types of criminal justice system in Europe.

[Resolution](#)

### **PACE concerned about OECD countries’ debt levels (30.09.09)**

PACE expressed on 30 September concern about the generally deteriorating state of OECD member countries’ public finances, with debt ratios in some that have reached “record and unsustainable levels”. States should return their economies to a sound footing to better withstand future crises, the parliamentarians said. The enlarged Assembly – including parliamentarians from the OECD’s non-European states – also welcomed the promotion of rational energy policies, and said it looked forward to OECD membership for Chile, Estonia, Israel, Russia and Slovenia, but only on terms of full respect for democracy, human rights and the rule of law.

### **Lluís Maria de Puig: 'Parity in politics is still a long way off' (30.09.09)**

“Balanced participation in politics by women and men is vital if democracy and society are to function more smoothly, and political parties have a key role to play here,” said Lluís Maria de Puig, President of the Assembly, at the award ceremony for the PACE’s 2009 Gender Equality Prize. “However, parity is still a long way off,” he added. “As far as the Assembly is concerned, there was only one woman when it was set up and now only 27% of its members are women.”

The Portuguese Socialist Party, the first winner of the prize has stood out in this area, according to the jury, by adopting internal quotas as far back as 1995 and then passing a parity law requiring a minimum of 33% of candidates from the under-represented sex on party lists for European, parliamentary and municipal elections. The second and third prize-winners, respectively the UK Labour Party and the Swedish Left Party, each received a diploma.

“I hope the prize will encourage other political parties to take practical steps in order significantly to improve women’s participation in politics,” said Mr de Puig in conclusion.

### **Angel Gurría: Global economy stabilising, but biggest challenges lie ahead (30.09.09)**

OECD Secretary General at the Assembly on 30 September said “although the global economy seemed to be stabilising, this didn’t mean that the crisis was over.” “Our biggest challenges lie ahead,” he said. “But we can and must reactivate economic growth and employment, plan carefully and coordinate our recovery strategies, to make sure that this kind of crisis will never happen again.”

[Speech](#)

### **Sustainable growth is possible with the involvement of business (30.09.09)**

The debate on the green economy in Europe and the United States held by PACE and the Alsace Region on 29 September clearly underlined the urgent need to reduce greenhouse gas emissions at the earliest opportunity – between 50% and 85% by 2050 – as well as the idea that sustainable growth depends on the involvement of business. John Prescott (United Kingdom, SOC), PACE rapporteur on climate change, drew attention to the vitally important nature of the negotiations due at the Copenhagen Conference in December.

While a low-carbon economy will, of course, bring about radical change for growth, according to Kathleen McGinty, former environmental adviser to President Clinton, it should not undermine business competitiveness or employment, especially if governments promote investment in clean forms of energy. In his opening address, Jean-Claude Mignon (France, EPP/CD), PACE Vice-President, also pointed out that living in a healthy environment is a fundamental right of all citizens and that the Assembly will this week be debating a parliamentary proposal to draw up an additional protocol to the ECHR recognising that right.

### **PACE calls on European governments to show 'political will', unwavering support for the Council of Europe (01.10.09)**

The Assembly called on 1 October on European political leaders "to show political will in order to ensure unwavering support for the Council of Europe in the performance of its statutory functions".

Aware that the Organisation's activities must constantly be subjected to objective critical analysis, the parliamentarians asked member States to show "political courage" in censuring behaviour that is inconsistent with the Council of Europe's principles and values. "It is necessary to resist the temptation to exploit and relativise, according to the political opportunity."

Following the proposals of the rapporteur (Jean Claude Mignon, France, EPP/CD), the parliamentarians called on the Committee of Ministers, the organisation's executive body, to strengthen the political scope of its ministerial sessions, so that "each session becomes a major political event at which substantive political decisions are taken". The Assembly is convinced that the Council of Europe cannot function properly unless there is "genuine, substantive and ongoing dialogue" between its two statutory organs. The channels of dialogue and consultation between the Assembly and the Committee of Ministers "must be revitalised".

The Council of Europe's budgetary strategy, they concluded, should be revised in order to provide it with the resources it needs to carry out its tasks.

### **PACE committee urges Iran to stop violence on its own citizens (01.10.09)**

The Political Affairs Committee of PACE, meeting during the Assembly's plenary session in Strasbourg, adopted on 1 October the following declaration:

"The Political Affairs Committee expresses great sorrow about the developments in Iran after the last elections. The violent reactions of the Iranian authorities to peaceful protests are a very serious breach of the human rights of Iranian citizens. The committee is also greatly saddened by the irresponsible continuation of the Iranian nuclear programme, which is a clear breach of international law.

In a situation in which the safety and security of people in Iran who protest against the behaviour of the Iranian authorities are under great threat, the Political Affairs Committee calls upon governments of other countries not to expel Iranian citizens to Iran. The committee calls on the government of Iraq not to expel refugees who are living in Camp Ashraf to Iran, and to respect the Iraqi courts' judgements on these citizens.

The Political Affairs Committee urges the Iranian Government to stop its violence against its own citizens, to end immediately its breach of international law with regard to its nuclear programme and to collaborate with the so-called 'six plus one' talks."

### **Pierre Lellouche: laying the foundations for true synergy with the EU (01.10.09)**

The French Secretary of State for European Affairs gave an assurance of France's attachment to the Council of Europe by stating before the Assembly on 1 October, "I know what great pride the Council can take in the work accomplished." He suggested identifying any overlaps with the European Union in order to focus on the areas where the action of the Council of Europe proves most apposite and effective.

"In the Europe of the 47, there should not be a two-track freedom, or high and low pressure belts for democracy. In answer to those who may have lost sight of the goals of the Council of Europe, I would solemnly reassert France's determination to ensure the unity of the European continent, abiding by the core values to which we must remain committed," he concluded.

### **UN reform: PACE calls for a ban on the Security Council veto in the case of human rights violations (01.10.09)**

At the end of a debate on the reform of the United Nations, the Assembly called on 1 October on European governments to reach a common position as regards the prohibition of the recourse to the veto within the Security Council in the case of "actual or threatened serious and widespread human rights violations". Following the proposals of the rapporteur (Andreas Gross, Switzerland, SOC), the parliamentarians also voted in favour of a transitional reform of the Security Council, based on the establishment of a new category of non-permanent seats, which could be held for a longer period of time than in the current system.

### **Water: how to protect this precious resource (02.10.09)**

In two inter-linked debates on 2 October, PACE members unanimously called for greater co-operation between member states in managing water issues. In the first debate, the Assembly said sharing expertise on how to combat water shortage and pollution in the Mediterranean Basin could help to promote peace. Recognising access to drinking water as a basic human right, the Assembly called for legislation on water supply and projects to limit further water stress. In a second debate on the oceans, PACE said they need to be protected from pollution, such as plastic, heavy metals and sewage, as well as over-fishing, increasing and poorly controlled coastal activities, as well as rising sea levels due to climate change. It urged European countries to endorse the maritime policies already proposed by the EU in its 2007 "Blue book".

[Resolution 1693](#)

[Recommendation 1888](#)

[Resolution 1694](#)

### **The fight against rape needs to be stepped up, PACE says (02.10.09)**

While stressing that the fight against rape needs to be stepped up, the Assembly called on member states on 2 October to ensure that the legislation on rape and sexual violence reaches "the highest possible standard". The unanimously adopted text based on the report prepared by Marlene Rupprecht (Germany, SOC) ask Member states to develop a comprehensive strategy which should comprise measures to prevent rape in the first place, as well as to ensure (securely-funded) protection of and assistance to rape victims at every step of the proceedings, including, possibly, compensation for the victims.

[Resolution 1691 \(2009\)](#)

[Recommendation 1887 \(2009\)](#)

[Voting results](#)

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

### A. Country work

#### **[Turkey: Commissioner Hammarberg recommends further efforts to protect human rights for minorities, asylum seekers and refugees \(01.10.09\)](#)**

The Council of Europe Commissioner for Human Rights, Thomas Hammarberg, has initiated a dialogue with Turkish authorities on minority rights and on the rights of asylum seekers and refugees. He published on 1 October reports on these two issues based on a mission from 28 June to 3 July during which he visited Istanbul, Izmir and Ankara. He also made public the written comments by the Turkish government. The Commissioner is concerned that the authorities do not officially recognise the existence of any minority groups other than those of Armenians, Greeks and Jews and recommends efforts to establish a genuine dialogue with all minority groups.

[Read the report](#) on Human rights of minorities

[Read the report](#) on Human rights of asylum seekers and refugees

### B. Thematic work

#### **Commissioner Hammarberg participates in the celebrations for the 60<sup>th</sup> anniversary of the Council of Europe (02.10.09)**

The Council of Europe Commissioner for Human Rights, Thomas Hammarberg took part in the celebration for the 60th anniversary of the Council of Europe on October 1. In his speech, the Commissioner underlined that over the past sixty years, the Council of Europe has achieved a great deal in building a continent where disputes are solved by dialogue and injustices corrected by agreed standards and procedures protecting the rights of the individual. "This has also sowed hope among many" he said. "We must now empower the next generations with the same hopes, means and abilities to defend the true European values."

[Read the speech](#)

[Read the video](#)

#### **"Corruption is a major human rights problem" says the Commissioner at GRECO's conference (05.10.09)**

"No system of justice is effective if it is not trusted by the population" said Commissioner Hammarberg speaking at a [high-level conference](#) in Strasbourg on 5 October organised by GRECO to assess the challenges in the fight against corruption. In his speech, Commissioner Hammarberg underlined that "corruption threatens human rights and, in particular, the rights of the poor. What is needed is a comprehensive, high-priority programme to stamp out corruption at all levels and in all public institutions." The conference also marked GRECO's 10th anniversary.

<https://wcd.coe.int/ViewDoc.jsp?id=1513381&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679>[Read the speech](#)

#### **"The death penalty is a fallacious idea of justice" says Commissioner Hammarberg (05.10.09)**

"Europe is today close to being a death penalty free zone. However, more must be done not only to abolish it, but also to persuade public opinion of the need to protect the right to life in any circumstances" said Thomas Hammarberg, Council of Europe Commissioner for Human Rights, in his Viewpoint published on 5 October. "Our position on the death penalty indicates the kind of society we want to build. When the State itself kills a human being under its jurisdiction, it sends a message that legitimises extreme violence. The death penalty has a brutalising effect in society."

[Read the Viewpoint](#)

Read the Viewpoint in Russian ([.pdf](#) or [.doc](#))

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

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

**European NPM Project: “Organising, carrying out and reporting on preventive visits to various types of places of deprivation of liberty: an exchange of experiences between the National Preventive Mechanism against torture (NPM) of Estonia and the CPT, SPT and APT”, 28 September – 1 October 2009, Tallinn, Estonia**

This pilot activity was organised by the NHRS Unit and the Office of the Chancellor of Justice of Estonia as part of the “European NPM Project” and funded by a generous grant from the Government of Liechtenstein. The Association for the Prevention of Torture (APT, Geneva) helped as the Council of Europe’s implementing partner.

The objective was two-fold: to ensure that the standards applied and methods used by the NPM of Estonia for the prevention of ill-treatment in places of deprivation of liberty are comparable to those of the international and regional bodies (SPT and CPT); and to serve as a pilot activity for a type of training which the Council of Europe’s NHRS Unit will organise on a large scale from 2010 to Spring 2012 under the so-called “European NPM Project”. That project will be funded by a joint European Commission – Council of Europe project called “Peer-to-Peer II Project” and by the Human Rights Trust Fund<sup>1</sup>.

The exchange of experiences in Tallinn involved 14 participants from the NPM of Estonia, including the Chancellor of Justice, on the one side, and on the other side members or former members of the SPT, the CPT and the APT. Two members of the NHRS Unit served as facilitators.

On the first day of the meeting the designation, composition, functioning and general working methods of the Estonia NPM in the light of the OPCAT<sup>2</sup> prescriptions were examined. The second day served to prepare common on-site visits to four different types of places of deprivation of liberty (a prison, an arrest house, a reform school for children with behavioural problems and a foreigner expulsion centre) for which participants split in small groups on the third day. On the fourth day the international experts presented their observations on the working methods of the national experts and these observations were discussed in plenary.

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

At the forthcoming 1<sup>st</sup> Meeting of European NPMs organised by the NHRS Unit in Strasbourg on 5 November 2009, the Estonian Deputy Chancellor of Justice, Ms Nele Parrest, will report on this pilot activity from the angle of her institution.

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<sup>1</sup> The Human Rights Trust Fund (HRTF) was established in March 2008 as an agreement between the Ministry of Foreign Affairs of Norway as founding contributor, the Council of Europe and the Council of Europe Development Bank. Germany and the Netherlands have joined in as contributors.

<sup>2</sup> The Optional Protocol to the UN Convention Against Torture (OPCAT) obliges states Parties to set up an NPM within one year of ratification.