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for the attention of the National Human Rights Structures (NHRs)**

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*The **selection** of the information contained in this Issue and deemed relevant to NHRs
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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 NHRSs 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 NHRSs. A particular effort is made to render the selection as targeted and short as possible.

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

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

A. Judgments

1. Judgments deemed of particular interest to NHRs

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

- **Conditions of detention / Ill-treatment**

Muskhadzhiyeva and Others v. Belgium (no. 41442/07) (Importance 2) – 19 January 2010 – Violation of Article 3 (positive obligation) (second, third, fourth and fifth applicant) – State authorities’ failure to ensure the protection of foreign children in a transit detention centre – No violation of Article 3 (first applicant) – Absence of inhuman treatment due to the constant presence of the children’s mother – Violation of Article 5 § 1 (second, third, fourth and fifth applicant) – Unlawfulness of detention on account of the children’s vulnerability – No violation of Article 5 § 1 (first applicant) – Lawfulness of detention with a view to expulsion – No violation of Article 5 § 4 – The applicants’ appeal had been examined by a court

The applicants, Aina Muskhadzhiyeva, and her four children are Russian nationals of Chechen origin who live in a refugee camp in Poland. Having fled from Grozny in Chechnya they eventually arrived in Belgium in October 2006, where they sought asylum. As they had spent some time in Poland, the Polish authorities agreed to take charge of them, by virtue of the European Council Regulation of 18 February 2003 “establishing the criteria and mechanisms for determining the member State responsible for examining an asylum application lodged in one of the member States by a third-country national”. The Belgian authorities issued a decision in December 2006 refusing them permission to stay in Belgium and ordering them to leave the country. The Aliens Office summoned the applicants, who had left their accommodation centre, in order to serve the decision on them. In December 2006 they were placed in a closed transit centre run by the Aliens Office near the Brussels airport, known as “Transit Centre 127 bis”, where aliens (single adults or families) were held pending

their removal from the country. Several independent reports drawn up in recent years have highlighted the unsuitability of the centre in question for housing children.

A request to release the applicants was rejected by the Brussels Court of First Instance on 5 January 2007 and again by the Brussels Court of Appeal on 23 January 2007. Between those two decisions the organisation “*Médecins sans frontières*” carried out a psychological examination of the applicants and found that the children in particular – and especially Khadizha – were showing serious psychological and psychotraumatic symptoms and should be released to limit the damage. In January 2007 the applicants were sent back to Poland. On the same day they lodged a cassation appeal. By a decision in March 2007 the Court of Cassation found the appeal devoid of purpose as the applicants had already been removed from the country. A report drawn up by a psychologist in Poland on 27 March 2007 confirmed Khadizha’s very critical psychological state and confirmed that the deterioration might have been caused by the detention in Belgium.

Aina Muskhadzhiyeva and her children complained about the conditions of their detention in “Transit Centre 127 bis” for more than a month. They also complained that their detention had been unlawful and the remedy against it before the Court of Cassation ineffective, as they had been removed from the country before the court had reached a decision.

Alleged violation of Article 3

Examining first the fate of the four children, the Court recalled that it had already found the detention of an unaccompanied minor in “Transit Centre 127 bis” contrary to Article 3 (see *Mubilanzila Mayeke and Kaniki Mitunga v. Belgium*) and that the extreme vulnerability of a child was paramount and took precedence over the status as an illegal alien. It was true that in the present case the four children were not separated from their mother, but that did not suffice to exempt the authorities from their obligation to protect the children. They had nevertheless been held for over a month in a closed centre which was not designed to house children, as confirmed by several reports cited by the Court. The Court also referred to the concern expressed by independent doctors about the children’s state of health. It found that there had been a violation of Article 3 in respect of the four children.

The Court then went on to examine the mother’s case, reiterating that parents should not always be considered victims of the ill-treatment inflicted on their children. They might qualify for victim status in some cases, but only where there were special factors that made the parents’ suffering different in scale and nature from the emotional distress inevitable in close relatives of victims of serious human rights violations. In Aina Muskhadzhiyeva’s case the Court found it decisive that she had not been separated from her children. Their constant presence must have somewhat appeased the distress and frustration of their detention in the transit centre so that it did not reach the level of severity required to constitute inhuman treatment. There had therefore been no violation of Article 3 in respect of the mother.

Alleged violation of Article 5 § 1

The Court held that the applicants were in a situation where it was in principle possible under the Convention to place them in detention (the Convention authorises the “lawful arrest and detention of a person to prevent his affecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition”). That did not mean, however, that their detention was necessarily lawful. In so far as the four children were kept in a closed centre designed for adults and ill-suited to their extreme vulnerability, even though they were accompanied by their mother, the Court found that there had been a violation of Article 5 § 1 in respect of the children. The Court saw no reason, on the other hand, to find the mother’s detention in breach of the Convention. She had been lawfully detained with a view to her expulsion from Belgium. There had been no violation of Article 5 § 1 in respect of the mother.

Alleged violation of Article 5 § 4

The Court noted that it was true that the Court of Cassation had delivered its decision concerning the applicants’ request for release after they had been sent back to Poland. Prior to that, however, two courts having *de facto* and *de jure* jurisdiction had examined the request without delay while they were still in Belgium. The Court pointed out that it was sufficient in principle for an appeal to be examined by a single court, on condition that the procedure followed had a judicial character and gave the individual concerned guarantees appropriate to the kind of deprivation of liberty in question. None of the applicants had been the victim of a violation of Article 5 § 4.

Wierzbicki v. Poland (no. 48/03) (Importance 2) – 19 January 2010 – Violation of Article 3 – Conditions of detention – Lack of adequate medical care in detention

The applicant died in July 2006 and the application to the Court was pursued by his mother. The applicant complained of the treatment to which he was subjected as a result of his imprisonment,

despite concerns about his state of health. The Court considered that the conditions of the applicant's detention had not been compatible with his state of health and that he had not been provided with adequate medical care while in detention. The Court held that there had been a violation of Article 3.

Tuna v. Turkey (no. 22339/03) (Importance 2) – 19 January 2010 – Violations of Articles 2 and 3 (procedural) – Lack of an effective investigation into the death and ill-treatment of the applicants' relative

The applicants' son and brother, Faruk Tuna, died in 1980 when he was a student, as a result of injuries sustained while he was being held in police custody for putting a poster on display. The applicants complained of the lack of an effective investigation to identify the police officers responsible for Faruk Tuna's death; prosecution of the offence is now time-barred. The Court held that there has been a violation of both of the alleged provisions under the procedural limb of Articles 2 and 3. The Court did not find effective the investigations into the death and the torture of the applicants' relative.

Demir v. Turkey (no. 41213/02) (Importance 3) – 19 January 2010 – Violations of Article 3 (substantive and procedural) – Ill-treatment in police custody

The applicant was taken into police custody in 1995 following a police operation on a house belonging to the PKK (the Kurdistan Workers' Party, an illegal organisation). He alleged that he was subjected to ill-treatment while in police custody and complained of the lack of an effective investigation into the matter. In the light of the evidence submitted to the Court, the Court found that the applicant had been ill-treated while in custody and that the State had failed to carry out an effective investigation in that respect. Therefore there had been two violations of Article 3, under both the procedural and the substantive limbs.

Cetkin v. Turkey (no. 30068/02) (Importance 3) – 19 January 2010 – Violation of Article 3 – Ill-treatment in police custody

In September 1999 the applicant was arrested in connection with a murder investigation and was taken into police custody at Yenişehir gendarmerie headquarters in Bursa. He alleged that he was ill-treated while in police custody. On the basis of the medical reports submitted, the Court concluded that there had been a violation of Article 3, due to the fact that the applicant had been ill-treated in police custody.

Nisbet Özdemir v. Turkey (no. 23143/04) (Importance 3) – 19 January 2010 – No violation of Article 3 (substantive) – Lack of sufficient evidence to establish ill-treatment – Violation of Article 3 (procedural) – Lack of an effective investigation – Violation of Article 11 – The applicant prevented from demonstrating peacefully

In February 2003 the applicant was arrested while on her way to an unauthorized demonstration on the square at Kadıköy landing stage in Istanbul to protest against the possible intervention of US forces in Iraq. She complained that she was ill-treated by police officers, that no effective investigation was carried out in that regard, and that she was prevented from demonstrating peacefully. The Court could not conclude beyond reasonable doubt that the injuries sustained by the applicant were a result of the ill-treatment in police custody. It concluded that there had been no violation of Article 3 under the substantive limb. The Court concluded a violation of Article 3 in its procedural limb on account of the lack of an effective investigation into the origins of the applicant's injuries. The Court noted that the applicant's arrest took place before beginning of the demonstration, and before the applicant arrived to the scene. Therefore, the arrest had a preventive effect, prohibiting the applicant from attending the demonstration, in violation of Article 11.

Atlı v. Turkey (no. 43529/04) (Importance 3) – 26 January 2010 – Violations of Article 3 (substantive and procedural) – Ill-treatment in police custody – Lack of an effective investigation – Violation of Article 6 § 1 in conjunction with Article 6 § 3 (c) – Lack of legal assistance in custody

Having received a warning of an imminent attack by the PKK (Kurdistan Workers' Party, an illegal organisation), the police on duty at the border with Iraq arrested the applicant and placed him in custody. The applicant complained that he had been tortured in police custody and that the criminal proceedings against him had been unfair. Based on the medical evidence submitted before it, the Court concluded that the applicant had been tortured while in police custody and that the authorities

had failed to conduct an effective investigation. Therefore, it held that there had been a violation of Article 3 under its procedural and substantive limb. The Court also held that there had been a violation of Article 6 § 1 in conjunction with Article 6 § 3 (c) on account of domestic authorities' failure to provide the applicant with legal assistance while in police custody.

- **Right to respect for family life/ Right to respect for the home**

Xavier Da Silveira v. France (no. 43757/05) (Importance 3) – 21 January 2010 – Violation of Article 8 – Illegal search and seizure of items at the French residence of a lawyer registered in Portugal

The applicant is a lawyer, based mainly in Portugal, but with a home in France, where he practices occasionally. In June 2005, in connection with an investigation against persons unknown for fraud and recording or storing nominative electronic data showing people's religious convictions without their consent, a search was carried out at the applicant's French home and items were seized. This was done in spite of his objections and his informing the investigators that he was a lawyer registered in an EU country. He showed the police a business card indicating that he was a lawyer and had addresses in Portugal and France. He also showed them various documents proving that the premises in question were his actual abode in France. He further informed them – to no avail – that the President of the Chartres Bar Association had been informed of the situation and was ready to be present during the search, in conformity with Article 56-1 of the Code of Criminal Procedure concerning lawyers' homes.

The applicant lodged two requests with the investigating judge to recover the items seized, but they were rejected, because, among other things, at the time of the search the applicant had not presented any official document proving beyond doubt that he was a lawyer. The applicant lodged another request with the "liberties and detention judge" to recover the items and documents seized at his home and have the records of the search and other related documents destroyed. The request was declared inadmissible as the judge considered that he could intervene only if an objection was raised by the President of the Bar Association or his representative during a search at a lawyer's office or home, whereas in this case neither had been present during the search. Lastly, the applicant lodged a request for judicial review with the President of the Investigation Division of the Paris Court of Appeal, but it was declared inadmissible on 6 July 2005 as the applicant was neither a party to the proceedings nor a witness assisted by a lawyer.

The applicant complained of the interference with the right to respect for his home and the lack of an effective remedy before the domestic courts by which to contest the search and the seizure of his possessions.

The Court's task was to determine whether the interference with the applicant's rights, which was in accordance with the law and pursued a legitimate aim (the prevention of crime), was proportionate to the aim pursued, and whether the applicant had had the requisite effective remedy at his disposal.

The Court noted first of all that the search had taken place at the applicant's place of residence as a lawyer and not as a private individual. This was an important distinction: searches and seizures at a lawyer's home might breach the professional confidentiality so essential to the relationship of trust between a lawyer and his client, so it was imperative that they should be attended by "special procedural guarantees". The fact that the applicant was a lawyer, as well as the tenant of the premises, had been clear from the start of the search. In spite of that, he had not been given the benefit of the special guarantees offered to lawyers by Article 56-1 of the Code of Criminal Procedure, even though a lawyer practising on an occasional basis was not required to register with a national Bar Association to qualify for that protection. The provision made no distinction between lawyers practising on a regular or an occasional basis and such a distinction would in any event not be justifiable for the purposes of Article 8 of the Convention. In the Court's opinion, even assuming that there had been any doubt as to whether the applicant was a lawyer, the circumstances of the case should at least have led the authorities to proceed with caution and to verify his allegations as soon as possible, before searching his home. Lastly, not only had the applicant not enjoyed the "special procedural guarantee" to which he was entitled but, in addition, the impugned search concerned matters that were entirely alien to him: at no time had he been accused or suspected of having committed an offence connected with the investigation.

The Court verified whether the applicant had had an effective means of contesting the search and seizure of his possessions, and found that he had not, in so far as none of the remedies he had sought had actually been available to him in law. The appeal to the "liberties and detention judge" applied only to objections raised by the President of the Bar Association or his representative when documents were seized during a search at a lawyer's home or office. One of the issues in this case, however, was precisely the absence of the President of the Bar Association or his representative

during the search. The appeal to the President of the Investigation Division was not admissible because the applicant was neither a party to the proceedings nor a witness assisted by a lawyer. Nor would an appeal to the Court of Cassation have succeeded, as in criminal cases such appeals were not admissible in respect of decisions not subject to appeal. The authorities' argument that the applicant could have obtained compensation by lodging a claim against the State failed to convince the Court: the outcome of such an action would have been uncertain and, above all, it would not have produced the desired result, which was to have the impugned search annulled. The Court held unanimously that there had been a violation of Article 8.

Simeonov v. Bulgaria (no.30122/03) (Importance 3) – 28 January 2010 – No violation of Article 5 § 3 – Justified pre-trial detention – Violation of Article 8 – Unlawful interference with the applicant's right to respect for family life on account of the hindrance to the applicant's right to see his wife for two years and ten months

In November 2002 and April 2003, following the opening of criminal investigations in respect of several persons, the applicant was charged with the burglary of a private home. He was arrested by the police in October 2002 and detained pending on the grounds that his six previous convictions and the three sets of criminal proceedings still pending against him gave rise to fears that he might abscond or reoffend. The applicant made five applications for release, which were all refused on those grounds.

The District Court held 13 hearings in the case. Four were postponed because one of the co-accused was ill or one of the defence lawyers was absent, another was adjourned because the judge was ill and a sixth was postponed because the civil party had not been summoned. At the hearings the applicant alleged that there had been a number of procedural irregularities during the preliminary investigation, concerning in particular the taking of evidence from witnesses. In December 2004 the applicant was sentenced to 15 years' imprisonment for burglary, sentence reduced to seven years on appeal in February 2006. An appeal on points of law by the applicant was dismissed in January 2007, the Supreme Court of Cassation holding that a thorough analysis of all the evidence had been conducted on appeal and that the procedural and substantive rules had been complied with. In the course of his pre-trial detention, from October 2002 to February 2003, the applicant was held in three centres, where, according to him, the material conditions were poor (lack of a window and toilets in the cell, overcrowding, etc.). In 2007 the applicant brought an action for damages against the State, seeking compensation from the Ministry of Justice for the non-pecuniary damage he had sustained during his detention. The Administrative Court discontinued the proceedings as the applicant had not satisfied the conditions for bringing such an action. That decision was challenged by the applicant in the Supreme Administrative Court; the proceedings are still pending. In July 2003, during the examination of the criminal case, the applicant was prohibited from seeing his wife, who was also one of the co-accused. During his pre-trial detention, the applicant was unable to see his daughter, a minor, who lived with his wife. Between 2003 and 2006 the applicant unsuccessfully sought on several occasions to have the ban lifted. It was eventually lifted in March 2006, after the reporting judge of the Regional Court had found that the ban contravened the relevant legislation.

The applicant complained about the conditions of his pre-trial detention and about its length. He further complained that he had been prohibited from seeing his wife and daughter.

Article 5 § 3

The Court pointed out that the applicant had been detained for two years and one month on the suspicion that he had committed a criminal offence; he did not dispute that the suspicion had been based on plausible grounds. Regard being had to the applicant's six previous convictions for theft, the other criminal proceedings also pending against him at that time and the prison sentence imposed on him in 2004 in a further set of criminal proceedings, the Bulgarian authorities could not be criticised for having concluded that there was a genuine and serious risk of his committing further offences or absconding. The grounds given for his continued detention had therefore been relevant and sufficient. The Court noted that there had been no significant shortcomings during the investigation stage and that four of the six postponements of hearings in the first-instance court had not been attributable to the judicial authorities and that the criminal proceedings against the applicant had been conducted with the requisite special diligence. There had been no violation of Article 5 § 3.

Article 8

The applicant had been prohibited from receiving visits from his wife for two years and ten months; this constituted an interference with his right to respect for his family life. The interference had not been in accordance with the law since, as the reporting judge of the Regional Court had found in his decision of 31 March 2006, the measure imposed on the applicant had not complied with domestic legislation. There had therefore been a violation of Article 8.

Brauer v. Germany (no. 3545/04) (Importance 3) – 28 January 2010 – Just satisfaction – Friendly settlement

In a judgment delivered on 29 May 2009, the Court held that there had been a violation of Article 14 taken in conjunction with Article 8 on account of the fact that the applicant, having been born outside of marriage, was unable to assert her inheritance rights. It could not find any ground on which such discrimination based on birth outside marriage could be justified today, particularly as the applicant's exclusion from any statutory entitlement to inherit penalised her to an even greater extent than the applicants in other similar cases brought before it (see *Brauer v. Germany 2009*). Following its principal judgment the Court has been informed that a friendly settlement has been reached between the Government and the applicant with respect to the latter's claims under Article 41 of the Convention. Accordingly, the Court decided to strike out of the list the remainder of the application.

- **Freedom of expression**

Laranjeira Marques da Silva v. Portugal (no. 16983/06) (Importance 3) – 19 January 2010 – Violation of Article 6 § 1 – Court of Appeal's failure to answer whether or not an aggravating circumstance applied to the present case – Violations of Article 10 – Unjustified interference with the freedom of expression of a journalist convicted of aggravated defamation and of a breach of the *segredo de justiça*

At the relevant time, the applicant was the editor of the regional weekly newspaper *Notícias de Leiria*, in which he wrote an article in February 2000 about criminal proceedings brought against J., a doctor and politician well known in the region, for the sexual assault of a patient. He wrote another article on the subject a few days later clarifying some of the facts, as well as an editor's note calling for further testimonies relating to other possible incidents of a similar nature involving J. In the course of the criminal proceedings against him, the applicant was charged with a breach of the *segredo de justiça* (a concept similar to confidentiality of the judicial investigation) and with defamation of J.

The Leiria District Court held in a judgment in December 2004 that the applicant had overstepped his responsibilities as a journalist and had aroused widespread suspicion towards J. by insinuating, without justification, that the latter had committed similar acts involving other victims. The applicant was found guilty of a breach of the *segredo de justiça* and of two counts of aggravated defamation, as the complainant was an elected representative. He was sentenced to a daily fine and ordered to pay 5,000 Euros in damages to J.

On appeal, the applicant challenged his conviction concerning the *segredo de justiça* on the ground that he had obtained access to the information in question lawfully. On the defamation issue he argued that he had simply exercised his right to freedom of expression and that his articles had been based on fact and related to a subject of general interest. He contended that the aggravating circumstance provided for by the Criminal Code should not apply in his case as J.'s actions had not been carried out in the exercise of his political office. The Court of Appeal dismissed his appeal in November 2005. The applicant lodged a constitutional appeal, without success. He then lodged an extraordinary appeal seeking harmonisation of the case-law with the Supreme Court, which declared it inadmissible.

The applicant complained of the failure of the Court of Appeal to examine his ground of appeal to the effect that the aggravating circumstance provided for by the Criminal Code did not apply. He also complained that his conviction for defamation had infringed his right to freedom of expression.

Article 6 § 1

The Court noted that although the courts were obliged to give reasons for their decisions, Article 6 did not in principle require appeal courts to reply in detail to each argument. However, a question as to whether or not an aggravating circumstance applied could not be rejected tacitly as a rule. The Court considered that a specific and explicit reply from the Court of Appeal had been called for in the present case. As no such reply had been given the Court held unanimously that there had been a violation of Article 6 § 1.

Article 10

The applicant's conviction for breach of the *segredo de justiça*

The Court did not share the applicant's view that the authorities' interference with his freedom of expression had not been "prescribed by law" as it had not been foreseeable. In the light of the Portuguese courts' case-law on the subject, the applicant could have foreseen the legal consequences of publishing the articles. Furthermore, it was not disputed that the interference in question had pursued the legitimate aim of protecting the proper administration of justice and the reputation of others. The Court pointed out that neither the concern to safeguard the investigation nor

the concern to protect the reputation of others could prevail over the public's interest in being informed of certain criminal proceedings conducted against politicians. It stressed that in the applicant's case there was no evidence of any damaging effects on the investigation – which had been concluded by the time the first article was published – or of a breach of the presumption of innocence. Lastly, there was nothing to indicate that the applicant's conviction had contributed to protecting the reputation of others. The Court therefore held unanimously that there had been a violation of Article 10.

The applicant's conviction for defamation

The Court accepted that the disputed articles had dealt with matters of general interest, as the public had the right to be informed about investigations concerning politicians, including investigations which did not, on the face of it, relate to their political activities. Furthermore, the issues before the courts could be discussed at any time in the press and by the public. As to the nature of the two articles, the Court pointed out that the applicant had simply imparted information concerning the criminal proceedings in question, despite adopting a critical stance towards the accused. The Court observed in that connection that it was not its place or that of the national courts to substitute their own views for those of the press as to what techniques of reporting should be adopted. As to the editor's note, the Court took the view that, notwithstanding one sentence which was more properly to be regarded as a value judgment; it had had a sufficient basis in fact in the broader context of the media coverage of the case. While the reasons given by the national courts for the applicant's conviction had been relevant, the authorities had not given any pressing social reasons justifying the interference with the applicant's right to freedom of expression. The Court further noted that the penalties imposed on the applicant had been excessive and liable to discourage the exercise of media freedom. The Court therefore held, by five votes to two, that there had been a violation of Article 10.

Judges Cabral Barreto and Jočienė expressed a partly dissenting opinion, which is annexed to the judgment, concerning the applicant's conviction for defamation.

Ürper and Others v. Turkey (nos. 55036/07, 55564/07, 1228/08, 1478/08, 4086/08, 6302/08 and 7200/08) and Özer v. Turkey (no. 2) (no. 871/08) (Importance 3) – 26 January 2010 – Violation of Article 10 – Interference with the applicants' right to freedom of expression on account of the excessive measures (banning the future publication of entire periodicals and resorting to criminal proceedings respectively) imposed on the applicants on account of their publications

The applicants are 20 Turkish nationals, who are or were journalists, editors, senior executives or proprietors of newspapers. From 2001 in one case, and 2007 in the other, they had criminal proceedings brought against them (personally or through their newspapers) on account of certain of their publications. The 19 applicants in the case of *Ürper and Others* published or wrote articles in five Turkish newspapers (*Gündem*, *Yedinci Gün*, *Haftaya Bakış*, *Yaşamda Demokrasi* and *Gerçek Demokrasi*), whose publications were suspended by the Istanbul Assize Court from October to December 2007. The reason given for that decision, taken under the Prevention of Terrorism Act, was that the newspapers were instruments of propaganda of a terrorist organisation (the PKK, Kurdistan Workers' Party, an illegal organisation). The criminal proceedings (still pending) against four of the applicants (Mr Lütfi Ürper, proprietor of *Gündem*, Mr Ali Turgay, Mr Hüseyin Aykol and Mr Hüseyin Bektaş) concern the dissemination of propaganda for that organisation.

The applicant in the *Özer (no. 2)* case, Mr Aziz Özer, is the proprietor and editor in chief of the monthly *Yeni Dünya İçin Çağrı* ("Appeal for a New World") having its registered office in Istanbul. In December 2000 an operation was conducted by the security forces in Turkish prisons, leading to the deaths of two officers and 30 prisoners. In February 2001 the magazine published two articles harshly criticising the operation, accusing the State, among other things, of a "brutal attack" against the prisoners, with a photo on the cover page of some who had been burned or beaten. On account of those articles, all copies of the February 2001 edition of the periodical were seized (judgment of 20 February 2001 of the Beyoğlu Police Court, on the application of the public prosecutor) and Mr Özer was sentenced to six months' imprisonment, later commuted to a fine in January 2006 by the Beyoğlu Assize Court, for impugning the moral authority of the State.

The applicants complained about the measures taken against them on account of their publications. They alleged that those measures had entailed violations of Articles 6, 7 and 13 and of Article 1 of Protocol No. 1.

The Court noted that for interferences with the right to freedom of expression, such as those in the present cases, to be compatible with the Convention, it was not sufficient for them to be prescribed by law and to pursue legitimate aims, such as the protection of the rights of others or the prevention of disorder, they also needed to be "necessary" in a democratic society.

In the *Ürper and Others* judgment, the Court found that this was not the case: it reiterated that the practice of banning the future publication of entire periodicals went beyond any necessary restraint and amounted to censorship. In the *Özer (no. 2)* judgment it was not the case either: the impugned articles (containing harsh criticism of the State) had dealt with facts that were of great interest to public opinion, and the Court reiterated that the limits of permissible criticism were wider with regard to the Government than in relation to a private citizen. Furthermore, the dominant position which the Government occupied made it necessary for it to display restraint in resorting to criminal proceedings. In the present case the articles had not called on readers to commit acts of violence or terrorism. The Court found, unanimously in both cases, that there had been a violation of Article 10.

- **Protection of property**

R.P. v. France (no. 10271/02), Barret and Sirjean v. France (no. 13829/03), Fernandez and Others v. France (no. 28440/05) (Importance 3) – 21 January 2010 – Violations of Article 1 of Protocol No. 1 – Domestic authorities’ failure to take the necessary steps to restore the applicants’ properties, leading to a form of private expropriation to the advantage of illegal occupants

The applicants are eight French nationals who live in France and one legal entity (a civil-law farming partnership set up by the Fernandez family under French law). At different dates between 1959 and 1965 the applicants acquired plots of land in Corsica, which they converted into farmland and vineyards. On returning from Algeria, R.P., who qualified for measures provided for under French law to help overseas French nationals to resettle in France, went to Corsica and purchased 36 hectares of scrubland. The applicants in the *Barret and Sirjean* case had inherited a property of over 35 hectares from their mother. The Fernandez family had set up a civil-law partnership and acquired over 1,000 hectares of scrubland on arriving in Corsica after leaving Algeria.

The properties were illegally occupied respectively by members of the Rural Coordination union, then the Corsican Farmers’ Union (*R.P.*), a Corsican farmer with the support of nationalist militants (*Barret and Sirjean*) and members of the Young Farmers’ centre of Upper Corsica (*Fernandez and Others*). The applicants alerted the authorities on several occasions after receiving tracts containing threats of physical violence by nationalist groups, being attacked with automatic weapons and grenades (*Barret and Sirjean*) and suffering damage to their property and other offences, such as burglary, theft and arson (*R.P.* and *Fernandez and Others*). Following those complaints, expulsion orders were issued against the illegal occupants, respectively in April 1998 (*R.P.*), November 2000 (*Barret and Sirjean*) and April 1983 (*Fernandez and Others*). In the *Barret and Sirjean* and *Fernandez and Others* cases a bailiff ordered the illegal occupants to vacate the properties, but to no avail. In the case of *R.P.*, in spite of a decision ordering the eviction of the illegal occupants with the assistance of the police, more offences (theft and arson) were perpetrated against the property; the applicant lodged complaints, but no action was taken. A police report of September 2007 confirmed the illegal occupation of the land but stated that it had been short-lived and that the land had been left untended.

In the *Barret and Sirjean* case an investigation carried out at the request of the Prefect of Upper Corsica found that expulsion proceedings were likely to trigger unrest, as the illegal occupant, supported by a politically active trade union, had manifested his intention to stand his ground and could easily mobilise his family and friends. Compensation proceedings led to the State being ordered in April 2009 to pay the rightful owners 989,310 Euros in compensation for the pecuniary damage sustained as a result of their inability to farm their land, plus 10,000 Euros in respect of non-pecuniary damage. In the *Fernandez and Others* case, in May 2007 the family farm was sold to a company the applicants claimed was owned by the illegal occupants of their land.

The applicants complained about the refusal of the authorities to use the police to enforce court orders to evict the people who were illegally occupying their land.

Article 1 of Protocol N°1

The Court pointed out that since the final decisions in favour of the applicants, the authorities had made no attempt to vacate the illegally occupied properties. While aware of the difficulties encountered by the French authorities in upholding law and order in Corsica, the Court considered that the arguments submitted by the Government did not constitute sufficient, serious and legitimate grounds to justify the inaction of the authorities, whose duty it was to protect the applicants’ property rights. The Court noted that the authorities had sought no alternative solution but had simply refused to enforce the court orders. It was the authorities’ duty to rapidly take all the necessary steps to execute the court orders and restore the properties to their rightful owners. The Court considered that, in the absence of any public-interest justification, their inaction had led to a form of private expropriation to the advantage of the illegal occupants. By letting such a state of affairs continue the authorities had encouraged certain individuals to damage the applicants’ property in all impunity and

created a climate of fear and insecurity that was not conducive to the applicants' return. This type of situation revealed the inefficacy of the enforcement system and there was a risk of it leading to a form of "private justice" that might well undermine public confidence in the justice system. The fair balance between the requirements of the general interest and the applicants' right to the peaceful enjoyment of their possessions had thus been upset, in violation of Article 1 of Protocol No. 1.

- **Deportation cases**

Z.N.S. v. Turkey (no. 21896/08) (Importance 2) – 19 January 2010 – Applicant's deportation would be in violation of Article 3 – Iranian refugee's deportation to Iran would expose her to a real risk of being subjected to ill-treatment on account of her conversion to Christianity – Violation of Article 5 §§ 1 and 4 – Unlawfulness of detention – Lack of an effective remedy – No violation of Article 3 – No evidence to prove the ill-treatment on account of the conditions of detention

The applicant, an Iranian national, entered Turkey illegally in February 2005 and is currently held in the Kırklareli Foreigners' Admission and Accommodation Centre. In Turkey, the applicant became interested in Christianity and converted to Protestantism. In May 2008 she was arrested on suspicion of infringement of visa requirements and forging official documents and was placed in the Foreigners' Department of the Istanbul police headquarters with a view to her deportation from Turkey. Ms Z.N.S. repeatedly requested to be released from detention and given a temporary residence permit pending the outcome of her application for refugee status to the United Nations High Commissioner for Refugees ("UNHCR"), stating that she was against the Government in Iran and that she and her family had been oppressed in that country. In June 2008 she was transferred to the Kırklareli Centre and in July she was informed that her case before the Turkish authorities was suspended pending the proceedings before the Court. In December 2008 the applicant and her son were granted refugee status under the UNHCR's mandate on religious grounds. A request she subsequently lodged with the administrative court against the decision not to suspend her detention was rejected and this decision was upheld by the regional court in June 2009.

The applicant complained that a deportation to Iran would expose her to a real risk of death or being subjected to ill-treatment. She also complained that her detention was unlawful and that its conditions were poor.

The Court observed that the national authorities had planned the applicant's deportation without examining her statements to the effect that she did not wish to return to Iran and that she had come to Turkey in order to apply to the UNHCR; her case before the Turkish authorities had been suspended pending the proceedings before the Court. The Court was not convinced that the national authorities had conducted a meaningful assessment of whether the applicant's claim that she was at a risk of ill-treatment in Iran was well-founded. It further noted that the UNHCR, in interviewing the applicant, had had the opportunity to test the credibility of her fears and the veracity of her account and, as a result, had found that she indeed risked being subjected to persecution in Iran. The Court concluded that there were substantial grounds for accepting that, on account of her religion, the applicant would risk being subjected to inhuman treatment if removed to her country of origin, in violation of Article 3.

The Court had already examined a grievance about the placement of detainees in the Kırklareli Foreigners' Admission and Accommodation Centre (see *Abdolkhani and Karimnia v. Turkey*). In particular, in the absence of clear legal provisions in Turkey on the procedure for ordering and extending detention with a view to deportation and setting time-limits for such detention, it had found that such placement constituted a deprivation of liberty which was not "lawful" for the purposes of Article 5. In the applicant's case, the Court did not find any circumstances requiring it to depart from those findings, in violation of Article 5 § 1.

The Court observed that the applicant's request seeking the annulment of the decision against her release had been refused and that her subsequent appeal had been dismissed. The initial review by the administrative courts had lasted two months and ten days. It noted that the proceedings had not raised any complex issues and that the administrative court assessing the applicant's case should have been in a position to observe the lack of a sufficient legal basis for her detention. The Court unanimously concluded that the Turkish legal system had not provided the applicant with a remedy allowing her to obtain a speedy judicial review of her detention, in violation of Article 5 § 4.

Addressing the applicant's complaints about the material conditions in the Foreigners' Admission and Accommodation Centre, the Court noted that the applicant had failed to prove with appropriate arguments her allegation about the poor quality of the food and drinking water, and how the latter had affected her health. The fact that there were no facilities for physical exercise did not raise an issue under Article 3, given that the applicant was not continuously kept indoors. In terms of hygiene, the only shortcomings calling for criticism were the state of the toilets and the presence of cleaning

products whose expiry dates had passed several years ago. Although the applicant's detention might continue for an indeterminate period in the absence of clear time-limits in national law, it had not been established that the shortcomings in the material conditions were so severe as to bring them within the scope of Article 3. The Court therefore held unanimously that there had been no violation of that Article on account of the applicant's detention conditions.

Hussun and Others v. Italy (nos. 10171/05, 10601/05, 11593/05 and 17165/05) (Importance 2) – 19 January 2010 – The 84 applicants complained of the risk of being subjected to ill-treatment to which expulsion to Libya exposed them – Struck out of the list – Absence of contact with all the applicants concerned – No violation of Article 34 (concerning Mr Midawi) – No evidence to conclude that the applicant had been prevented from lodging an application with the Court

The 84 applicants arrived on the island of Lampedusa from Libya in March 2005, in a group of about 1200 people. Most of the applicants appeared to be Palestinians, but there were also some Iraqi, Algerian, Jordanian and Moroccan nationals and one Tunisian. Like thousands of migrants every year, they had sailed to Europe on board unsafe vessels (most with no identity documents) in search of a better economic situation and/or political asylum. On arrival they were placed in temporary holding centres. At the end of March 2005 they instructed a lawyer to represent them. A little later dozens of illegal immigrants, including many of the applicants, escaped from the holding centre.

The applicants fell into three groups, according to their subsequent fate. The whereabouts of 57 of them was unknown. The Court had only their application forms and powers of attorney; some of these were incomplete and there was generally no indication of when and where the powers of attorney had been signed. A second group of 14 applicants had been expelled early in April 2005, by decision of the Prefect of Crotone, after a district court had heard each of them in the presence of a lawyer and an interpreter and endorsed the expulsions. The remaining 13 applicants had been released when the time-limit for keeping them in the holding centre expired, and their representatives had lost contact with all but one of them, Mr. Kamel Midawi.

As the Government had questioned the authenticity of the powers of the attorney produced by some of the applicants' representatives, the Court ordered an examination of the handwriting in the powers of attorney of the 57 applicants whose whereabouts was unknown. It revealed that in at least 34 cases the powers of attorney had been written and signed by the same person. Counsel subsequently withdrew the applications lodged on behalf of 22 applicants.

The representatives had lost all contact with the applicants and were unable to trace them, with the exception of Mr Kamel Midawi (who lived in Italy).

The applicants complained of the risk to which expulsion to Libya exposed them, the lack of an effective remedy against the expulsion decisions, their collective expulsion as aliens, and also of having been obstructed in their right to apply to the Court.

Alleged violation of Articles 2, 3 and 13 and Article 4 of Protocol No. 4 (in respect only of the 57 applicants whose whereabouts were unknown and the 14 who had been expelled)

As regards the group of 57 applicants whose whereabouts were unknown, at least some of whom seemed to have absconded towards the end of March 2005, the Court noted that according to the graphologist's report the powers of attorney of a large number of them had been written and signed by one and the same person. This appeared to belie the statement that a lawyer had collected each of the signatures from a "real, physically existing person" (22 of the applications concerned had actually been withdrawn following the graphologist's findings).

As to the group of 14 applicants expelled to Libya, the Court noted that the expulsion order against each one of them had been individually endorsed by a district court following a hearing held in the presence of a lawyer and an interpreter. The Court further noted that the validity of the powers of attorney concerning some of these applicants too was open to doubt.

In any event, the representatives had lost contact with all of the applicants concerned, so the Court was unable to learn any more about the particular situation of each one (it did not know, for example, exactly where in Libya the group concerned had been expelled to, or what kind of reception the Libyan authorities had given them).

In view of the above, the Court held that further examination of the applications in this respect was not justified and they should be struck out of the list.

Alleged violation of Article 34 (this part of the applications concerned all three groups of applicants: the 57 whose whereabouts were unknown, the 14 who had been expelled and the 13 who had been released)

With the exception of Mr Kamel Midawi's application, the Court found, for the same reasons as above, that further examination of the applications in this respect was not justified and they should be struck out of the list. In the case of Mr Kamel Midawi, while there was no doubt as to the authenticity of his power of attorney and he had remained in contact with his counsel, the Court noted that there was no sign of any conduct on the part of the domestic authorities that might have prevented the Mr Midawi from lodging an application with the Court, or rendered his application ineffective. There had therefore been no violation of Article 34.

2. Other judgments issued in the period under observation

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

- Press release by the Registrar concerning the Chamber judgments issued on 19 Jan. 2010: [here](#)
- Press release by the Registrar concerning the Chamber judgments issued on 21 Jan. 2010: [here](#)
- Press release by the Registrar concerning the Chamber judgments issued on 26 Jan. 2010: [here](#)
- Press release by the Registrar concerning the Chamber judgments issued on 28 Jan. 2010: [here](#)

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

State	Date	Case Title and Importance of the case	Conclusion	Key Words	Link to the case
Austria	28 Jan. 2010	Puchstein (no. 20089/06) Imp. 2 Stechauer (no. 20087/06) Imp. 2	Violation of Article 6 § 1 (length) No violation of Article 6 § 1 (fairness)	Excessive length of proceedings Independent and impartial position of the Regional Appeals Commission	Link Link
Italy	19 Jan. 2010	Montani (no. 24950/06) Imp. 3	Violation of Article 8	Monitoring of the applicant's correspondence in prison	Link
Poland	19 Jan. 2010	Felix Blau SP. Z O.O. (no. 1783/04) Imp. 3	No violation of Article 6 § 1	The amount of fees required from the applicant company cannot be considered disproportionate and did not hinder access to the Court	Link
Poland	19 Jan. 2010	Wegera (no. 141/07) Imp. 2	Violation of Article 5 § 3 Violation of Article 8	Excessive length of pre-trial detention Restrictions on the applicant's right to family visits	Link
Romania	19 Jan. 2010	Palamariu (no. 17145/04) Imp. 3	Violation of Article 6 § 1	Excessive length of the proceedings	Link
Romania	26 Jan. 2010	Balint (no. 44954/04) Imp. 3 Bogdan (no. 21750/04) Imp. 3	Violation of Article 6 § 1	Excessive length of criminal proceedings concerning robbery and trespassing Excessive length of proceedings concerning a claim for damages	Link Link
the Czech Republic	21 Jan. 2010	Družstevní Záložna Prie and Others (no. 72034/01) Imp. 3	Just satisfaction	The applicant's, a credit union, complaint about having been placed in receivership; lack of impartiality of the judicial proceedings in that regard	Link
the United Kingdom	26 Jan. 2010	Ebanks (no. 36822/06) Imp. 2	No violation of Article 6 § 1 in conjunction with Article 6 §3 (c)	Fairness of proceedings in relationship to the complaint concerning legal assistance	Link
Turkey	19 Jan.	Aslantürk (no. 3884/04)	Violation of Article 6 § 1	Excessive length of criminal proceedings for forgery of	Link

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

	2010	Imp. 3		documents	
Turkey	19 Jan. 2010	Ocak (no. 33675/04) Imp. 3	Violation of Article 1 of Protocol No. 1	Deprivation of applicant's property, designated as public forest area, without compensation	Link
Turkey	26 Jan. 2010	Abdo (no. 17681/04) Imp. 3	Violation of Article 5 §§ 3 and 4 Violation of Article 6 § 1	Excessive length of pre-trial detention and the lack of an effective remedy to challenge the lawfulness of the detention Excessive length of criminal proceedings	Link
Turkey	26 Jan. 2010	Alican (no. 21868/02) Imp. 3	Violation of Article 6 § 1	Excessive length of compensation proceedings	Link
Turkey	26 Jan. 2010	Alici and Omak (no. 57653/00) Imp. 3	Violation of Article 5 §§ 3 and 4	Failure to bring the applicants promptly before a judge and lack of an effective remedy to challenge the lawfulness of detention	Link
Turkey	26 Jan. 2010	Çoban (No. 2) (no. 4977/04) Imp. 3 Ömer Berber (no. 45084/04) Imp. 3	Violation of Article 6 § 3 (c) in conjunction with Article 6 § 1 Violation of Article 6 § 1 (second case)	Lack of legal assistance while in police custody (both cases) Excessive length of proceedings (second case)	Link Link
Turkey	26 Jan. 2010	Demir and İpek (nos. 42138/07 and 42143/07) Imp. 3	Violation of Article 5 § 3 Violation of Article 6 § 1	Excessive length of pre-trial detention Excessive length of criminal proceedings	Link
Turkey	26 Jan. 2010	Emen (no. 25585/02) Imp. 3	Violation of Article 6 §§ 1 and 3 (d)	Hindrance to the applicant's right to question witnesses whose statements had played an essential part in establishing his guilt	Link
Turkey	26 Jan. 2010	Kürüm (no. 56493/07) Imp. 3	Violation of Article 5 §§ 3, 4 and 5 Violation of Article 6 § 1	Excessive length of pre-trial detention, lack of an effective remedy to challenge the lawfulness of the detention and claim compensation Excessive length of criminal proceedings	Link
Turkey	26 Jan. 2010	Mızrap Ateş (no. 7933/05) Imp. 3	Violation of Article 5 § 3	Excessive length of pre-trial detention (approximately seven years)	Link

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	19 Jan. 2010	D'Aniello (no. 28220/05) link	No violation of Article 1 of Protocol No. 1	The applicant did not take advantage of the opportunity created by the Constitutional Court judgment in 1983 allowing him to demand compensation for expropriation
Italy	19 Jan. 2010	Zuccalà (no. 72746/01) link	Violation of Article 1 of Protocol No. 1 Violations of Article 6 § 1	Inadequate compensation for expropriation Excessive length of compensation proceedings (twenty-nine years for one level of jurisdiction)
Italy	26 Jan.	Leoni (no. 67780/01)	Violation of Article 1 of Protocol No. 1	Failure to pay compensation for the expropriation of the applicant's property for

	2010	link		more than twenty-three years
Moldova	26 Jan. 2010	Avramenko (no. 29808/02) link	Just satisfaction Friendly settlement	Lengthy non-enforcement of a judgment in the applicant's favour
Romania	19 Jan. 2010	Andreescu Murăreţ and Others (no. 4867/04) link Caragheorghe and Others (no. 38742/04) link Ciobanu (no. 38800/02) link Varodi (no. 8704/06) link	Violation of Article 1 of Protocol No. 1	The applicants' inability to recover the possession of property that had been nationalised and subsequently sold by the State
Romania	19 Jan. 2010	Chibulcutean (no. 19588/04) link	Just satisfaction	Domestic authorities' failure to enforce a final judgment in the applicants' favour
Romania	19 Jan. 2010	Chiva (no. 46011/06) link Hăbăgău (no. 47166/06) link Olteanu and Others (nos. 3198/04, 12040/06, 15534/06 and 49645/07) link	Violation of Article 6 § 1 (fairness) Violation of Article 1 of Protocol No. 1	Idem.
Romania	19 Jan. 2010	Corbu (no. 12393/05) link Rogojină (no. 6235/04) link	Violation of Article 1 of Protocol No. 1	The applicants' inability to obtain effective compensation for their property that had been illegally nationalised
Romania	19 Jan. 2010	Serban (no. 3729/03) link	Violation of Article 6 § 1 (fairness) Violation of Article 1 of Protocol No. 1	Quashing of a final judgment in the applicant's favour by way of supervisory review
Romania	26 Jan. 2010	Bădoi v. (no. 22815/07) link	Violation of Article 1 of Protocol No. 1	The applicant's inability to obtain effective compensation for property that had been illegally nationalised
Romania	26 Jan. 2010	Ionescu (no. 25963/03) link Loewenton (no. 111/07) link Nita (no. 24202/07) link Veniamin (no. 19438/05) link	Violation of Article 1 of Protocol No. 1	The applicants' inability to recover possession of nationalised property
Romania	26 Jan.	Popa (no. 1690/05) link	Violation of Article 6 § 1 Violation of Article 1 of	Domestic authorities' failure to enforce final judgments in the applicants' favour

	2010	Popa (no. 11249/06) link	(no.)	Protocol No. 1	
		Tureanu (no. 9822/06) link	(no.)		
Romania	26 Jan. 2010	Țuluș and Others (no. 40892/04) link	(no.)	Violation of Article 6 § 1	Quashing of a final decision in the applicants' favour by way of supervisory review
Turkey	19 Jan. 2010	Bozüyük (no. 3595/05) link	(no.)	Violation of Article 6 § 1 (fairness) Violation of Article 1 of Protocol No. 1	Lengthy non-enforcement of a judgment concerning compensation for expropriation in the applicant's favour
Turkey	19 Jan. 2010	Nazmi Apaydın (no. 33742/05) link	(no.)	Violation of Article 1 of Protocol No. 1	Deprivation of applicant's property, designated as public forest area, without compensation
Turkey	26 Jan. 2010	Gümrükçüler and Others (no. 9580/03) link	(no.)	Violation of Article 1 of Protocol No. 1 Violation of Article 6 § 1	Deprivation of property, designated as public forest area, without compensation Excessive length of proceedings
Turkey	26 Jan. 2010	Keçeli and Başpınar (no. 21426/03) link	(no.)	Violation of Article 1 of Protocol No. 1	Deprivation of the applicants' property, designated as public forest area, without compensation
		Pak (no. 21516/04) link	(no.)		
Turkey	26 Jan. 2010	Yener and Albayrak (no. 42900/04) link	(no.)	Violation of Article 6 § 1	Lack of a public hearing concerning the applicants' disregard of public authorities' summons

4. Length of proceedings cases

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

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

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

<u>State</u>	<u>Date</u>	<u>Case Title</u>	<u>Link to the judgment</u>
Austria	28 Jan. 2010	Rambauske (no. 45369/07)	Link
Croatia	28 Jan. 2010	Pavić (no. 21846/08)	Link
Finland	19 Jan. 2010	Huoltoasema Matti Eurén Oy and Others (no. 26654/08)	Link
Finland	19 Jan. 2010	Rangdell (no. 23172/08)	Link
Germany	21 Jan. 2010	Wildgruber (nos. 42402/05 and 42423/05)	Link
Poland	19 Jan. 2010	Sobieccy (no. 32594/03)	Link
Serbia	19 Jan. 2010	Čížková (no. 8044/06)	Link
Serbia	19 Jan. 2010	Dimitrijević and Jakovljević (no. 34922/07)	Link
Slovakia	19 Jan. 2010	Zongorová (no. 28923/06)	Link
"the former Yugoslav Republic of Macedonia"	21 Jan. 2010	Pakom Slobodan Doel (no. 33262/03)	Link
"the former Yugoslav Republic of"	28 Jan. 2010	Risteska (no. 38183/04)	Link

Macedonia”			
Turkey	26 Jan. 2010	Gökçek and Others (no. 6219/04)	Link
Turkey	26 Jan. 2010	Zeytinli (no. 42952/04)	Link
Turkey	19 Jan. 2010	Demirtürk (no. 31345/05)	Link

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

Those decisions are published with a slight delay of two to three weeks on the Court’s Website. Therefore the decisions listed below cover **the period from 28 December 2009 to 10 January 2010.**

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>
Bulgaria	05 Jan. 2010	Tencheva-Rafailova (no 13885/04) link	Alleged violation of Art. 6 and Art. 13 (deprivation of the right of access to a court)	Incompatible <i>ratione materiae</i>
Bulgaria	05 Jan. 2010	Chervenyakova (no 42953/06) link	Alleged violation of Art. 6 § 1 (length of criminal proceedings), Art. 6 § 3 (d) (court’s refusal to examine some of the applicant’s witnesses), Art. 8 and Art. 2 of Prot. 4 (failure to provide the applicant with a Bulgarian passport)	Partly adjourned (concerning the length of proceedings), partly inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention concerning the remainder of the application)
Bulgaria	05 Jan. 2010	Alichkova (no 20255/05) link	Alleged violation of Art. 5 § 1 (e) (alleged unlawful placement in a psychiatric hospital), Art. 5 § 5 (lack of an effective remedy to obtain compensation)	Struck out of the list (the applicant no longer wished to pursue her application)
Estonia	05 Jan. 2010	Vayser (no 7157/05) link	Alleged violation of Art. 6 § 2 (unlawful police incitement leading to the applicant’s conviction) and Art. 1 of Prot. 1 (deprivation of money the applicant allegedly had to receive for his collaboration with the police)	Inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention)
Finland	05 Jan. 2010	Penttinen (no 9125/07) link	Alleged violation of Art. 6 (length of administrative proceedings), Art. 14 (discrimination on grounds of age) and Art. 7 (being treated as an habitual offender by the Supreme Administrative Court)	Inadmissible as manifestly ill-founded (reasonable length of proceedings, no violation of the rights and freedoms protected by the Convention concerning the remainder of the application)
Germany	05 Jan. 2010	Wirges and Quicknaut GMBH (no 51976/08) link	The complaint concerned the length of a set of civil proceedings for damages	Struck out of the list (friendly settlement reached)
Italy	05 Jan. 2010	Bosco (no 11345/07) link	Alleged violation of Art. 1 of Prot. 1 (unlawful expropriation of a plot of land)	Struck out of the list (the applicant no longer wished to pursue her application)
Moldova	05 Jan. 2010	Madan and Musaji (no 2856/05) link	Alleged violation of Art. 5 (unlawful detention) and Art. 3 (ill-treatment)	Struck out of the list (friendly settlement reached)
Moldova	05 Jan. 2010	X. (no 37507/02) link	Alleged violation of Art. 3 (ill-treatment by the police and prison staff, poor conditions of detention in prison no. 5 in Cahul, alleged deliberate infection with hepatitis and syphilis), Art. 5 § 1 (unlawful detention), Art. 6 § 1 (length and unfairness of proceedings), Art. 8	Partly struck out of the list (unilateral declaration of the Government concerning the ill-treatment and conditions of detention, length of proceedings and interception of correspondence), partly inadmissible as manifestly ill-

			(interception of correspondence), Art. 13 (lack of an effective remedy) and Art. 34 (prosecutor's refusal to issue the applicant a copy of a document)	founded (concerning the remainder of the application)
Moldova	05 Jan. 2010	Avramenko (no 7467/06) link	Alleged violation of Art. 6 § 1 and Art. 1 of Prot. 1 (re-opening of the applicant's case by the Supreme Court of Justice)	Struck out of the list (friendly settlement reached)
Romania	05 Jan. 2010	Roşoga (no 39681/06) link	Alleged violation of Art. 6 (unfairness and outcome of proceedings), Art. 1 of Prot. 1 (non-enforcement of a judgment in the applicant's favour)	Incompatible <i>ratione materiae</i> and <i>ratione personae</i>
Russia	07 Jan. 2010	Vetrov (no 30492/06) link	Alleged violation of Articles 6, 13 and Art. 1 of Prot. 1 (non-enforcement of a judgment in the applicant's favour)	Struck out of the list (friendly settlement reached)
Sweden	05 Jan. 2010	Diallo (no 13205/07) link	Alleged violation of Art. 6 § 1 (unfairness of proceedings on account of the failure to provide the applicant with the assistance of an authorised interpreter during the first interview)	Inadmissible as manifestly ill-founded (no violation of the rights and freedoms protected by the Convention)
Switzerland	07 Jan. 2010	Kamaco (no 21010/08) link	Alleged violation of Art. 3 and Art. 13 (the applicant's state of health allegedly was incompatible with an expulsion)	Struck out of the list (the matter could be considered as resolved at the domestic level, the applicant had been granted a temporary leave to stay in Switzerland)
Turkey	05 Jan. 2010	Kavaklıoğlu and Others (no 15397/02) link	The 74 applicants are Turkish nationals, injured or affected by the death of their relatives during the a special forces operation conducted at the central prison in Ankara on 23 September 1999 Alleged violation of Articles 2, 3, 6, 13, 14 and Art. 1 of Prot. 1 (death of the applicants' relatives' (list A of the applicants) applicants' injuries (list B)	Partly incompatible <i>ratione personae</i> (in respect of 5 applicants), partly struck out of the list (in respect of 5 applicants) and partly admissible (concerning the remainder of the application and other applicants)
Turkey	05 Jan. 2010	Karaoğlu (no 27012/04) link	The application concerned the excessive length of proceedings	Struck out of the list (friendly settlement reached)

C. The communicated cases

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

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

- on 11 January 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).

Communicated cases published on 11 January 2010 on the Court's Website and selected by the NHRS Unit

The batch of 11 January 2010 concerns the following States (some cases are however not selected in the table below): Albania, Andorra, Austria, Azerbaijan, Bulgaria, Croatia, France, Georgia, Germany, Italy, Luxemburg, Malta, Moldova, Poland, Portugal, Russia, Spain, Sweden, Switzerland, the Czech Republic, the United Kingdom, Turkey and Ukraine.

<u>State</u>	<u>Date of communication</u>	<u>Case Title</u>	<u>Key Words of questions submitted to the parties</u>
Albania	17 Dec. 2009	Alimucaj no. 20134/05	Alleged violation of Art. 3 – Outcome of the proceedings concerning the applicant's request for health care – Lack of an effective remedy – Lack of adequate medical assistance in prison – Alleged violation of Art. 6 § 1 – Unfairness of proceedings – Alleged violation of Art. 7 – Lack of foreseeability of the applicant's conviction under Article 143 of the Criminal Code – Heavier penalty imposed on the applicant than the one which was applicable at the time of the commission of the offence
Bulgaria	17 Dec. 2009	Nenkova-Lalova no. 35745/05	Alleged violation of Art. 10 § 2 – Interference with the applicant's freedom of expression on account of her disciplinary dismissal for exposing corrupt practices during her radio show – Alleged violation of Art. 6 § 1 – Length of proceedings
Croatia	16 Dec. 2009	Skendžić and Others no. 16212/08	Alleged violation of Art. 2 (procedural) – Lack of an effective investigation into the disappearance of the applicants' relative – Alleged violation of Art. 3 – The applicants' mental suffering due to the disappearance – Alleged violation of Art. 5 – Domestic authorities' failure to conduct an effective investigation into the whereabouts and fate of the applicants' relative – Alleged violation of Art. 14 – Disappearance due to the applicants' relative's Serbian origin – Alleged violation of Art. 13 – Lack of an effective remedy
France	16 Dec. 2009	R. A. no 49718/09 W. J. no. 57741/09	Alleged violation of Articles 2 and 3 – Risk of having his right to life violated if expelled. Risk of treatment contrary to Art. 3 on grounds of sexual orientation if expelled to Pakistan – Lack of an effective remedy Alleged violation of Art. 3 – Risk of being subjected to treatment contrary to Art. 3 if expelled to Sri-Lanka
France	09 Dec. 2009	Stasi no. 25001/07	Alleged violation of Art. 3 – Ill-treatment in prison – Domestic authorities' failure to protect the applicant from the other prisoners' aggression – Art. 14 in conjunction with Art. 3 (positive obligation) – Domestic authorities' failure to protect the applicant from violence caused to him on the basis of his sexual orientation
Georgia	21 Dec. 2009	Khokhiachvili no. 65594/09	Alleged violation of Art. 3 – Conditions of detention – The applicant's state of health as a result of the conditions of detention – Lack of medical care in Prison no 7 in Ksani
Georgia	11 Dec. 2009	Makharadze and Sikharulidze no. 35254/07	Alleged violation of Art. 2 (positive obligation) – Domestic authorities' failure to take the necessary measures to protect the first applicant's life on account of his poor state of health, lack of appropriate medical treatment while in detention and subsequent death – Alleged violation of Art. 3 – Lack of adequate medical care – Alleged violation of Art. 34 – Domestic authorities' failure to comply with the interim measure indicated by the Court on 10 November 2009
Georgia	09 Dec. 2009	Kikvadze no. 5456/09	Alleged violation of Art. 3 – Lack of appropriate medical treatment in Kutaisi no. 2 prison in relation to the applicant's cardiac problems; requisite cardiac tests needed
Georgia	07 Dec. 2009	Maisuradze no. 44973/09	Alleged violation of Art. 2 (positive obligation) – Domestic authorities' failure to take the appropriate measures to protect the life of the applicant's son – Alleged violation of Art. 2 (procedural) – Lack of an effective investigation – Alleged violation of Art. 3 – Lack of adequate medical treatment in prison – Alleged violation of Art. 6 § 3 (c) in conjunction with Article 6 § 1 – Refusal to provide the applicant's son with a lawyer during the line-up identification – Alleged violation of Art. 13 – Lack of an effective remedy
Germany	15 Dec. 2009	Sude no. 38102/04	Alleged violation of Art. 8 – Infringement of the applicant's right to family life on account of the courts' decisions refusing the applicant joint custody – Alleged violation of Art. 14 in conjunction with Art. 8 – Discrimination against unmarried fathers on the grounds of sex in comparison with divorced fathers
Moldova	17 Dec.	Postoliuc	Alleged violation of Articles 10 and 11 – Infringement of the applicant's right to

	2009	no. 32242/07	freedom of expression on account of Chişinău's acting mayor's repeated and unreasoned refusal to authorise a protest meeting
Moldova	17 Dec. 2009	<i>Eparhia Moldovei de est a Bisericii Ortodoxe Din Ucraina and Others</i> no. 46157/07	Alleged violation of Articles 6, 9, 11 and 13 – Domestic authorities' failure to comply with a judgment of the Supreme Court of Justice ordering the Government to register the applicant church
Poland	17 Dec. 2009	Wilewski no. 27581/09	Alleged violation of Art. 3 – Conditions of detention (in particular overcrowding) in Olsztyn Remand Centre – Lack of an effective remedy – Alleged violation of Art. 1 of Prot. 1 – Discriminatory working conditions in prison on account of part of the applicant's salary being withheld by the remand centre's authorities (See <i>Kauczor v. Poland</i> and <i>Orchowski v. Poland</i>)
Poland	15 Dec. 2009	Ostrowski no. 27224/09	Alleged violation of Art. 8 – The applicant prohibited from establishing a new family – Alleged violation of Art. 14 in conjunction with Art. 8 – Discrimination on grounds of age to establish a new family A partial decision on admissibility is available on HUDOC*
Poland	08 Dec. 2009	Urban no. 29690/06	Alleged violation of Art. 10 – The applicant's conviction for insulting Pope John Paul II
Poland	07 Dec. 2009	Nocha no. 21116/09	Alleged violation of Art. 3 – Ill-treatment in Częstochowa Remand Centre on account of the poor conditions of detention and the applicant's state of health
Poland	07 Dec. 2009	Trojanowski no. 27952/08	Alleged violation of Art. 5 § 3 – Excessive length of pre-trial detention – Lack of an effective remedy – Alleged violation of Art. 3 – Conditions of detention (overcrowding) in the Warszawa-Białoleka Remand Centre
Russia	15 Dec. 2009	Samodurov and Vasilovskaya no. 3007/06	Alleged violation of Art. 10 – The applicant's conviction for having organised an exhibition entitled "Caution, religion!" – State's failure to comply with their positive obligation of securing the effective exercise of freedom of expression – Alleged violation of Art. 9 – Interference with the Orthodox Christians' right to freedom of religion A partial decision on admissibility is available on HUDOC
Sweden	15 Dec. 2009	M.I. no. 61204/09	Alleged violation of Articles 2 and 3 – Risk of being killed or subjected to a torture or ill-treatment if the family of Russian nationals of Chechen origin were expelled to Russia
the Czech Republic	14 Dec. 2009	R.K. no. 7883/08	Alleged violation of Articles 3 and 8 – The applicant's forced sterilization in a public hospital – Lack of an effective investigation – Lack of an effective remedy
Turkey	11 Dec. 2009	Kiliç and Eren no. 43807/07	Alleged violation of Art. 10 §§ 1 and 2 – The applicants' conviction for shouting slogans like "Turks and Kurds are brothers" during the Newroz celebrations
Turkey	11 Dec. 2009	Sak no. 24556/06	Alleged violation of Art. 3 – Ill-treatment in police custody – Lack of an effective investigation – Alleged violation of Art. 5 § 1 – Unlawfulness of detention – Alleged violation of Art. 6 §§ 1 et 3 c) – Failure to provide the applicant with legal assistance – Alleged violation of Art. 8 – Unlawful search of the applicant's vehicle
Ukraine	16 Dec. 2009	Gerashchenko no. 20602/05	Alleged violation of Art. 5 § 1 – Unlawful detention – Alleged violation of Art. 5 § 3 – Excessive length of pre-trial detention – Alleged violation of Art. 5 § 4 – Lack of an effective remedy to challenge the lawfulness of the detention – Alleged violation of Art. 8 – Search of the applicant's home – Monitoring of the applicant's correspondence with the Court by SIZO officers – Alleged violation of Art. 34 – Hindrance to the effective exercise of the applicant's right of petition
Ukraine	09 Dec. 2009	Dushka no. 29175/04	Alleged violation of Art. 3 – Ill-treatment by police officers – Lack of an effective investigation
	14 Dec. 2009	Bocharov no. 21037/05	

* See RSIF 32, page 29 for the decision on admissibility

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

Opening of the judicial year (29.01.2010)

The judicial year of the Court opened on 29 January 2010. One hundred and fifty leading judicial figures from across Europe were invited to participate in a seminar on the topic “The Convention is yours”. [Watch the Seminar](#)

At the solemn hearing which followed the seminar, President Costa and Jean-Marc Sauvé, Vice-President of the French *Conseil d'Etat* addressed an audience of about 250 people, including many representatives of judicial institutions and national and local authorities. [Press Release](#), [Watch the Ceremony](#), [more information](#)

Press Conference (28.01.2010)

The President of the Court, Jean-Paul Costa, expressed optimism about prospects for reform of the Convention during its annual press conference on Thursday 28 January 2010. [Press Release](#), [More information](#)

Election of new Italian judge (27.01.2010)

Guido Raimondi has been elected to the Court in respect of Italy. [Press Release](#)

Second advisory opinion of the Court (22.01.2010)

In the second advisory opinion, the Court concluded that a list of candidates for election as a judge of the Court in respect of a particular State, which had already been submitted to the Parliamentary Assembly of the Council of Europe, could not be withdrawn and replaced with a new list after the deadline set for submission of the list to the Assembly. [Press Release](#)

Court receives prestigious Franklin D. Roosevelt Four Freedoms Award (18.01.2010)

The Court has been awarded the Franklin D. Roosevelt Four Freedoms Award for 2010. [Press Release](#)

Joint project with the European Union Agency for Fundamental Rights (18.01.2010)

The Court and the European Union Agency for Fundamental Rights will join forces to work on a year-long joint project aimed at increasing the knowledge and domestic implementation of EU law and other legal instruments in the field of non-discrimination. [Press Release](#)

Part II : The execution of the judgments of the Court

A. New information

The Council of Europe's Committee of Ministers will hold its next "human rights" meeting from 2 to 4 March 2010 (the 1078th meeting of the Ministers' deputies).

B. General and consolidated information

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

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

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

http://www.coe.int/t/dghl/monitoring/execution/default_en.asp

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

http://www.coe.int/t/e/human_rights/execution/02_Documents/PPIndex.asp#TopOfPage

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

A. European Social Charter (ESC)

Publication of the Conclusions of the European Committee of Social Rights (27.01.2010)

The European Committee of Social Rights published its [conclusions](#) in respect of 36 State Parties to the Charter. These Conclusions concern the rights related to health, social security and social protection.

The European Committee of Social Rights examines national reports and decides whether or not the situations in the countries concerned are in conformity with the European Social Charter. Its decisions, known as “conclusions”, are published every year.

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/NewsletterNo2Jan2010_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

The next session of the European Committee of Social Rights will be held from 15-19 March 2010.

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

Council of Europe anti-torture Committee holds talks in Greece (21.01.2010)

A delegation of the CPT has returned from two days of talks in Athens, Greece (18-19 January 2010).

The main objective of the talks was to gauge the commitment of the Greek authorities to combat impunity within the police, to improve the conditions of detention of irregular migrants and to address long-standing problems in the prison system. In this context, the delegation was keen to learn about the measures already taken or being considered by the new Government to tackle the problems found by the CPT in the course of its visits in recent years. The talks were carried out in a spirit of openness and all parties expressed their desire to improve cooperation.

In the course of the visit, the delegation had meetings with the Minister of Citizen's Protection, Mihalis CHRYSOCHOIDIS, the Alternate Minister for Foreign Affairs, Dimitrios DROUTSAS, the Deputy Minister of Justice, Transparency and Human Rights, Aspostolos KATSIFARAS, and the Deputy Minister of Citizen's Protection, Spyros VOUGIAS. Further, it met the Secretary Generals of the Ministries of Citizen's Protection, Foreign Affairs and Justice, Transparency and Human Rights, as well as the Special Secretary for Correctional Policy and the Chief of Police, and other senior officials. The delegation also met the Chief Prosecutor of the Supreme Court, Ioannis TENTES and the Ombudsman, Yorgos KAMINIS.

C. European Commission against Racism and Intolerance (ECRI)

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

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

E. Group of States against Corruption (GRECO)

Council of Europe Group of States against Corruption publishes report on Ireland (25.01.2010)

GRECO published on 25 January its Third Round Evaluation Report on Ireland, which focuses on two distinct themes: criminalisation of corruption and transparency of party funding. The report as a whole addresses 10 recommendations to Ireland. GRECO will assess the implementation of these recommendations in the second half of 2011.

Link to the report: [Theme I \(Incriminations\)](#) / [Theme II \(Transparency of Party Funding\)](#)

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

On - site evaluation visit to Hungary (27.01.2010)

A MONEYVAL team of evaluators visited Hungary from 18 to 22 January 2010 under the fourth evaluation round. The visit was coordinated by the Ministry of Finance and the Hungarian Financial Supervisory Authority. The team met with State Secretary Tamas Katona as well as representatives from 25 organisations and agencies including law enforcement agencies, government departments, financial services supervisors, trade associations and the private sector. A key findings document was discussed with the Hungarian authorities and left with them at the conclusion of the mission. The draft report will now be prepared for review and adoption by MONEYVAL at its 33rd Plenary meeting (27-30 September 2010).

MONEYVAL's fourth round evaluations are more focussed and primarily follow up the recommendations made in the 3rd round. Evaluation teams in the fourth round examine all Financial Action Task Force (FATF) key and core Recommendations as well as other Recommendations which were previously rated "non compliant" or "partially compliant". Evaluations are complemented by issues linked to the Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing in accordance with MONEYVAL's terms of reference.

Mutual evaluation report on Bosnia and Herzegovina public (27.01.2010)

The 3rd round evaluation report on Bosnia and Herzegovina, as adopted at MONEYVAL's 31st Plenary meeting (7-11 December 2009), is now available for consultation.

[Executive Summary](#)

[Mutual evaluation report](#)

[Annexes](#)

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

28 January 2010

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

B. Recommendations and Resolutions adopted by the Committee of Ministers

[CM/Rec\(2010\)1E / 20 January 2010](#): Recommendation of the Committee of Ministers to member States on the Council of Europe Probation Rules (Adopted by the Committee of Ministers on 20 January 2010 at the 1075th meeting of the Ministers' Deputies)

[CM/RecChL\(2010\)1E / 20 January 2010](#): Recommendation of the Committee of Ministers on the application of the European Charter for Regional or Minority Languages by Montenegro (Adopted by the Committee of Ministers on 20 January 2010 at the 1075th meeting of the Ministers' Deputies)

C. Other news of the Committee of Ministers

Montenegro: Report on minority languages published (20.01.2010)

The Committee of Ministers made public on 21 January the first report on the situation of minority languages in Montenegro. This report has been drawn up by a committee of independent experts which monitors the application of the European Charter for Regional or Minority Languages.

Secretary General's reform unanimously supported by Committee of Ministers (21.01.2010)

The proposal to reform the Council of Europe presented by Secretary General Thorbjørn Jagland on 20 January received unanimous support by the Committee of Ministers of the Organisation. "It's a new time. The political landscape is changing", said the Secretary General, as he presented his vision for the future of the Council of Europe to the Organisation's decision-making body. "Europe has once again come to a crossroads, so has the Council of Europe", he added. Jagland unveiled his plan to revitalise the Council of Europe as a political body and an innovative, flexible organisation, in close cooperation with staff and the stakeholders of the Organisation, making it more visible and relevant for the citizens of Europe.

[Speech](#)

Micheline Calmy-Rey: "To send out a loud and clear political signal by tracing the path" (25.01.2010)

Minister Micheline Calmy-Rey, Head of the Federal Department of Foreign Affairs of Switzerland and Chairperson of the Committee of Ministers, presented the first report to the Parliamentary Assembly in the name of the Swiss Chairmanship of the Committee of Ministers. In her speech, she highlighted the "Organisation's irreplaceable role in building a wider Europe without dividing lines", while underlining that "it is essential to make the Council of Europe as effective and efficient as possible". The Swiss Chairmanship will contribute to this aim through the implementation of its three main priorities: protection of human rights and rule of law; strengthening of democratic institutions, and enhancement of the Council of Europe's transparency and effectiveness. While underlining that the entry into force of Protocol 14 represented a big breath of air for the European Court of Human Rights, the Committee of Ministers' Chairperson insisted on the need to look beyond. She also welcomed the Secretary General's draft reform of the Organisation and of the full support of the Ministers' Deputies.

[Video of the speech](#)

[Speech](#)

[Report by the Swiss Chair of the Committee of Ministers \(November 2009 - January 2010\)](#)

Part V: The parliamentary work

A. Resolutions and Recommendations of the Parliamentary Assembly of the Council of Europe (texts adopted by the Parliamentary Assembly during its Plenary session on 26-29 January 2010)

Resolution 1700: [The situation in the Middle East](#)

Resolution 1702: [Action against trafficking in human beings: promoting the Council of Europe convention](#)

Recommendation 1895: [Action against trafficking in human beings: promoting the Council of Europe convention](#)

Resolution 1701: [The functioning of democratic institutions in Bosnia and Herzegovina](#)

Recommendation 1894: [The functioning of democratic institutions in Bosnia and Herzegovina](#)

Resolution 1706: [Increasing women's representation in politics through the electoral system](#)

Recommendation 1899: [Increasing women's representation in politics through the electoral system](#)

Recommendation 1898: [Thresholds and other features of electoral systems which have an impact on representativity of parliaments in Council of Europe member States](#)

Recommendation 1897: [Respect for media freedom](#)

Resolution 1705: [Thresholds and other features of electoral systems which have an impact on representativity of parliaments in Council of Europe member States](#)

Resolution 1704: [Freedom of religion and other human rights for non-Muslim minorities in Turkey and for the Muslim minority in Thrace \(Eastern Greece\)](#)

Resolution 1703: [Judicial corruption](#)

Recommendation 1896: [Judicial corruption](#)

Resolution 1709: [The functioning of democratic institutions in Albania](#)

Recommendation 1902: [The functioning of democratic institutions in Albania](#)

Resolution 1708: [Solving property issues of refugees and displaced persons](#)

Recommendation 1901: [Solving property issues of refugees and displaced persons](#)

Resolution 1707: [The detention of asylum seekers and irregular migrants in Europe](#)

Recommendation 1900: [The detention of asylum seekers and irregular migrants in Europe](#)

Recommendation 1903: [Fifteen years since the International Conference on Population and Development Programme of Action](#)

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

➤ *Countries*

Ukraine's presidential election meets most international commitments (18.01.2010)

The first round of Ukraine's presidential election was of high quality and showed significant progress over previous elections, meeting most OSCE and Council of Europe commitments, concluded the international election observation mission in a statement published on 18 January. The observers noted that the election demonstrated respect for civil and political rights and offered voters a genuine choice between candidates representing diverse political views. Candidates were able to campaign freely, and the campaign period was generally calm and orderly, although the legal framework remained unclear and incomplete, and was subject of permanent discussion. Nevertheless, the election was generally administered efficiently, and commissions mostly worked in a collegial and non-

partisan manner. A pluralistic media offered voters a variety of information about candidates, although electronic media reporting was often influenced by candidates paying for news coverage. Voting and counting on Election Day was assessed overwhelmingly positive by observers.

“Ukraine has proven that it can hold a clean election, even under an incomplete and unclear election law, confirming the desire of the Ukrainian people to freely choose their leaders. However, a major challenge ahead for Ukraine’s politicians is to play by the rules rather than with the rules,” said Matyas Eörsi, Head of PACE delegation. “This election was organized overall efficiently and with respect for fundamental freedoms, despite challenges such as an incomplete and inconsistent legal framework. We commend the tireless efforts of countless election workers to ensure a smooth functioning of the electoral process,” said Heidi Tagliavini, Head of the election observation mission of the OSCE Office for Democratic Institutions and Human Rights (ODIHR).

Greece must co-ordinate its execution of European Court judgments more effectively, says PACE rapporteur (20.01.2010)

Christos Pourgourides (Cyprus, EPP/CD), rapporteur of PACE on the implementation of judgments of the European Court of Human Rights, has ended a two-day visit to Athens (18-19 January 2010) with a call for a number of problems in the execution of these judgments to be solved. Mr Pourgourides called on the representatives of the Greek authorities to co-ordinate more effectively the different state bodies which are responsible for the execution of the European Court’s judgments. He also invited Greek parliamentarians to monitor the implementation of these judgments within the Parliament, and has been assured that they will do so.

During his visit, Mr Pourgourides met the President of the Supreme Court, the President of the Council of State, the Prosecutor General, the deputy Minister for Citizens’ Protection and the Secretary General of the Ministry of Justice, as well as a number of other officials, to discuss in particular the problems of excessive length of judicial proceedings and abusive use of force by police officers.

This is the fourth in a series of visits aimed at applying parliamentary pressure on states where delays or difficulties in implementing the European Court’s judgments have arisen. The rapporteur has previously undertaken visits to Bulgaria, Italy and Ukraine, and will later travel to Moldova, Romania, the Russian Federation and Turkey.

[Progress report \(August 2009\) \(PDF\)](#); [Addendum to the progress report \(PDF\)](#)

Greece and Turkey should treat all their religious minorities according to European standards, says PACE (27.01.2010)

Both Greece and Turkey should treat all their citizens who are members of religious minorities according to the standards of the Convention – rather than invoking “reciprocity” under the 1923 Treaty of Lausanne as a basis for refusing to implement some rights.

Approving a report on 27 January on “Freedom of religion and other human rights for non-Muslim minorities in Turkey and for the Muslim minority in Thrace (Eastern Greece)”, PACE acknowledged the question was “emotionally very highly charged”, but it said the two countries should “treat all their citizens without discrimination, without taking into account the way in which the neighbouring state might treat its own citizens”. In a resolution, the Assembly said the recurrent invoking by Greece and Turkey of the principle of reciprocity as a basis for refusing to implement the rights guaranteed to the minorities concerned by the Treaty of Lausanne was “anachronistic” and could jeopardise each country’s national cohesion. However, it also welcomed “a degree of new awareness by the authorities of both countries, which have demonstrated their commitment to finding appropriate responses to the difficulties facing the members of these minorities”.

The parliamentarians urged both governments to recognise the “freedom of ethnic self-identification” and to make a series of changes in minority, education and religious policy. They were also asked to report back to the Assembly on progress made within a year.

[Resolution 1704 \(2010\)](#)

Mevlüt Çavusoglu from Turkey elected as new PACE President (25.01.2010)

The 318-member PACE elected on 25 January Mevlüt Çavusoglu (Turkey, EDG) as its new President at the opening of its plenary session in Strasbourg (25-29 January). Mr Çavusoglu succeeds Lluís Maria de Puig (Spain, SOC) as the Assembly’s 25th President. He is the first Turk to hold the office since Turkey’s accession to the Council of Europe in August 1949.

“I come from a country which has prided itself for two millennia on being a bridge between continents,” Mevlüt Çavusoglu said in his first speech as PACE President. “I want to bring that political understanding to a new level, to act as a bridge for the peoples of Europe, whether they are in the frozen Arctic or on the temperate beaches of Antalya.”

He stressed that one of the major challenges societies were facing was increasing intolerance and discrimination. “Tolerance remains an important European goal which we cannot set aside. Creating new fault lines, with the false image of the other and disrespect towards difference must be fought with renewed urgency and vigour. We must first break down the walls in our minds. Unless we do that, there is no real freedom”, Mr Çavusoglu said. “The foundation of our common European home must be built on an open society, based on respect for diversity, not on exclusion, not on discrimination, not on fear and not on hatred. We must eradicate racism, xenophobia, anti-semitism, Islamophobia and all kinds of similar phobias leading to discrimination and intolerance.”

Among his other priorities as a President of the Assembly, Mr Çavusoglu referred to the entry into force of the Lisbon Treaty, opening new avenues of co-operation, including the EU’s accession to the European Convention on Human Rights. He also called on PACE to strive for the European ideal of allowing everyone to live in dignity and security and, in this regard, he reiterated the importance of the fight against terrorism. The President also said that he considered co-operation with the new Council of Europe Secretary General Thorbjørn Jagland as a “golden opportunity” to reflect on how to increase the relevance and effectiveness of the work of the 47-nation organisation and achieve the necessary reform.

He concluded by committing himself to championing the cause of the Parliamentary Assembly throughout the European continent.

Constitutional reform for Bosnia and Herzegovina is long overdue, and needs meaningful dialogue within the country (26.01.2010)

PACE has again urged all domestic stakeholders in Bosnia and Herzegovina to engage fully in a meaningful and constructive dialogue about amendments to the Constitution, in line with the recommendations of the Venice Commission, before the 2010 parliamentary elections. Based on the report by Mevlüt Çavusoglu (Turkey, EDG) and Kimmo Sasi (Finland, EPP/DC), the Assembly also suggested launching a wide discussion, with the participation of key local and international stakeholders, about the challenges the country has to face.

[Resolution 1701 \(2010\)](#)

Assembly confirms the credentials of the Albanian delegation (27.01.2010)

The credentials of the Albanian delegation to the Assembly, which were challenged on the opening day of the session on the grounds that it did not reflect the composition of the Albanian Parliament, were confirmed on 26 January. In its opinion, the Rules Committee said it had examined the objections, but concluded the delegation was appointed in compliance with the Rules – though it also expressed the hope that “a solution will be found to end the political situation in the country which would also allow the Albanian parliament to appoint a complete delegation to the Parliamentary Assembly under normal conditions”.

PACE asks its Presidential Committee to visit Albania as soon as possible (29.01.2010)

At the close of its debate on the functioning of democratic institutions in Albania, PACE asked its Presidential Committee, accompanied by the Monitoring Committee's co-rapporteurs for Albania, Jaakko Laakso (Finland, UEL) and David Wilshire (United Kingdom, EDG), to visit Albania as soon as possible, “in order to support the process of resolving the current political situation and assist President Topi in his role of mediator and his efforts to restore political dialogue”. The Assembly urged the Albanian government and the opposition “to put an end to the current political crisis in the country and assume their responsibilities in order to proceed with the vitally needed reforms”. In particular, it called the government “to set up, without further delay, a parliamentary inquiry committee into the June 2009 elections”, and urged the opposition “to return to parliament and fully participate in its work”.

The Assembly notes that “the absence of parliamentary dialogue [...] seriously hampers the democratic functioning of the state’s institutions”. It further regrets that, “in the absence of any meaningful parliamentary dialogue, inflammatory rhetoric is being increasingly used by all involved”. This, PACE said, “could further destabilise the country”.

[Resolution 1709 \(2010\)](#); [Recommendation 1902 \(2010\)](#)

Assembly confirms the credentials of the Armenian delegation (27.01.2010)

The credentials of the Armenian delegation to the Assembly, which were challenged on the opening day of the session on the grounds that the Armenian Parliament had “manipulated its internal rules”, were confirmed on 26 January. In its opinion, the Rules Committee said it had examined the objections, but concluded the Armenian delegation was appointed in compliance with the Rules – though it added that the situation of the Armenian opposition should continue to be monitored.

➤ *Themes*

Lluís Maria de Puig: Education should be at the heart of society (19.01.2010)

Lluís Maria de Puig, visiting the Autonomous University of Barcelona on 18 January, carried out his last official act as President of the Parliamentary Assembly. He chose this prestigious university to receive a collection of more than 100 Council of Europe publications relating to the organisation's activities in the fields of education, communication and culture. The President of PACE emphasised the “often discreet, but always irreplaceable” role of “the 47” in protecting and promoting culture in Europe. “Although our fellow citizens all too often focus on Brussels, another Europe exists which would feel bereft without our organisation's work on culture; this is a continent which wants education, in the context of European construction, to have its rightful place at the very heart of society.”

Thorbjørn Jagland: 'Council of Europe should anticipate social and political crises' (25.01.2010)

Presenting his political reform plan to the Parliamentary Assembly on 25 January, the Secretary General said the Council of Europe should be “a lighthouse for Europe” by anticipating social and political crises, and by providing solutions. He said that the reform aims to revitalise the organisation as a political and innovative body, to make it more flexible and visible, and to concentrate on high added value projects.

[Video of the speech](#); [Speech](#)

PACE elects its Vice-Presidents (25.01.2010)

At the opening of its plenary Winter Session, the PACE elected its Vice-Presidents. The seat of Vice-President in respect of Ukraine remains vacant. [See the list](#)

Action against trafficking in human beings: PACE advocates widest possible signature and ratification of the convention (26.01.2010)

In a resolution adopted on 26 January, the Assembly called on Council of Europe member States which had not yet done so to sign and/or ratify the Council of Europe Convention on action against trafficking in human beings, and encouraged the European Union to accede to it. It also spoke out in favour of intensified co-operation with other international organisations, taking special care to avoid all risk of duplication between the different monitoring mechanisms.

The parliamentarians also asked that the GRETA be able to command the financial and human resources needed for its activity. Finally, in line with the recommendations of Gisela Wurm (Austria, SOC), rapporteur of the Equal Opportunities Committee, PACE proposed to organise a conference in 2010 on action against trafficking, involving all partners.

[Resolution 1702 \(2010\)](#)

PACE elects Guido Raimondi judge of the European Court of Human Rights with respect to Italy (26.01.2010)

PACE, meeting this week in plenary session in Strasbourg elected Guido Raimondi on 26 January as judge to the European Court of Human Rights with respect to Italy. Judges are elected by PACE from a list of three candidates nominated by each State which has ratified the Convention.

PACE concerned about crooked judges, lawyers and police (27.01.2010)

Countries where justice is seen as the most corrupt institution must deal with the problem urgently, PACE said in a resolution on 27 January. Judges, prosecutors and police should be recruited and promoted only on merit, paid a reasonable wage, and develop their own ethical standards, the

Assembly said, debating a report by Kimmo Sasi (Finland, EPP/CD). The Council of Europe should also draft a model code of conduct for judicial officials.

[Recommendation 1896 \(2010\)](#)

Positive discrimination needed in electoral systems to increase political representation of women (27.01.2010)

Under-representation of women in politics is a threat to the legitimacy of democracies. The global situation is severe with less than 20% of parliamentary seats held by women and not even 5% women heads of state. At the end of a debate on the ways to increase women's representation in politics through the electoral system, the Assembly called on member States to employ a series of measures to rectify this situation by reforming electoral systems and by applying positive discrimination, such as introducing quotas for women on political party lists (in countries with a proportional representation system).

The adopted texts, based on the proposals by Lydie Err (Luxembourg, SOC), also encourage measures such as gender-sensitive civic education in political parties who, together with the media and trade unions, have traditionally often shown "built-in" bias against women.

[Recommendation 1899 \(2010\)](#)

Increasing trust and confidence in an electoral system (27.01.2010)

Increased trust and confidence in an electoral system may greatly contribute to an enhanced interest among citizens in the political process as a whole and, in consequence, to overcoming the feeling of political discontent and disaffection among them, according to PACE. And the Council of Europe, it said, can make a considerable contribution to the achievement of this objective. Following the proposal by the rapporteur (Hendrik Daems, Belgium, ALDE), the parliamentarians proposed that a common understanding be established of the principles which qualify elections as "fair and free", and that the application of these be ensured in all elections in every Council of Europe state.

[Resolution 1705 \(2010\)](#); [Recommendation 1898 \(2010\)](#)

Member States must do more to guarantee respect for media freedom (27.01.2010)

PACE adopted on 27 January a recommendation to the Committee of Ministers containing a series of measures to guarantee greater respect for media freedom and the safety of journalists. The Assembly proposes in particular a review of national legislation to ensure that anti-terrorism measures fully respect media freedom. It also reaffirms that defamation laws should not be used to silence critical comment and satire in the media, and calls on governments to ensure fair and equal access of all political parties and candidates to the media before elections.

The parliamentarians also asked the Committee of Ministers to assist member States in training their judges, law enforcement authorities and police in respecting media freedom in order to protect journalists against violent threats. Furthermore, they asked the Secretary General of the Council of Europe to allocate the resources necessary to collate information regularly on violations of media freedom, analyse this information on a systematic basis, country by country, and circulate it to the governments of the member States at least quarterly.

[Recommendation 1897 \(2010\)](#)

Detention of asylum seekers: PACE calls for rules governing minimum standards (28.01.2010)

The detention of asylum seekers and irregular migrants in Council of Europe member States has increased substantially in recent years. PACE set down guiding principles on the legality of detention and put forward a number of European rules governing minimum standards for conditions in detention centres which should be guaranteed by member States and adopted by the Committee of Ministers as European rules. Following the proposals by the rapporteur (Ana Catarina Mendonça, Portugal, SOC), the parliamentarians encouraged member States to use alternatives to detention, such as placement in special establishments, release on bail/surety or electronic monitoring.

[Resolution 1707 \(2010\)](#)

Anti-terrorist blacklists: Dick Marty welcomes British court ruling (28.01.2010)

Dick Marty (Switzerland, ALDE), rapporteur of PACE on UN and EU anti-terrorist blacklists, has warmly welcomed Britain's Supreme Court' ruling that the United Kingdom must not apply UN Security

Council anti-terrorist sanctions where they violate basic human rights. Mr Marty said: "I congratulate Britain's recently-established Supreme Court for recognising, in one of its first judgments, that human rights take precedence over executive decisions founded on international law, including those originating from the United Nations Security Council. International law cannot be a round-about means of bypassing citizens' most basic fundamental rights."

"Pending a real reform of the Security Council's procedures to ensure greater respect for human rights, I can but hope that other national courts will follow the example of the British Supreme Court and the European Court of Justice, which last year issued similar rulings in cases concerning European Union blacklists. I also call on national parliaments to exert pressure on their governments, as the Swiss Senate has done, so that these international sanctions are applied in accordance with minimum standards of respect for fundamental rights."

[Resolution 1597 \(2008\)](#); [Recommendation 1824 \(2008\)](#); [Report](#)

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

A. Country work

Commissioner Hammarberg discusses human rights with President Medvedev (22.01.10)

At the end of a two-day visit to Moscow, Council of Europe Commissioner for Human Rights Thomas Hammarberg was received by President of the Russian Federation, Dmitry Medvedev, at the Kremlin. The issues discussed included the implementation of the recommendations made by the Commissioner in his recent report on Chechnya and Ingushetia, as well as necessary steps to protect human rights in the field of administration of justice.

[Read in Russian](#)

B. Thematic work

“Minority languages need more respect” says Commissioner Hammarberg (25.01.2010)

“Language rights have become an issue of contention within several European countries. Their denial undermines human rights and causes inter-communal tensions” said Thomas Hammarberg, Council of Europe Commissioner for Human Rights, in his latest Viewpoint published on 25 January. “The spelling of personal names on passports, the displaying of street names and other topographical indications, the language used in schools, the language requirements when communicating with the authorities and the possibility to establish minority media are some of the main issues being raised by minority representatives”, said Commissioner Hammarberg.

[Read the Viewpoint](#)

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 Network: First meeting of the Contact Persons, Padua (Italy), 27-28 January 2010

The meeting was held under the aegis of the European NPM Project, which is part of the Peer-to-Peer II Project, a Joint European Union-Council of Europe Project with co-funding from the Council of Europe's Human Rights Trust Fund.

It was organised by the Council of Europe's Project Team (from the National Human Rights Structures Unit - NHRS Unit - of the Directorate General of Human Rights and Legal Affairs) and the Interdepartmental Centre on Human Rights and the Rights of People of the University of Padua.

The Contact Persons from 19 of the 20 presently operating European National Preventive Mechanisms against torture (NPMs), representatives of the European Commission and the United Nations Sub-Committee on the Prevention of Torture (SPT), former members of the European Committee for the Prevention of Torture (CPT) as well as experts from the Association for the Prevention of Torture (APT, Geneva – the Council of Europe's implementing partner for the Project) participated.

On the first day the participants tried to clarify the concept of preventive monitoring as opposed to the concept of complaints-based monitoring, as well as the relationship between both. The second day was dedicated to the common work programme under the European NPM Project for the coming two years.

A first series of "On-site exchanges of experiences" between the staff of volunteering NPMs, SPT members, experts with CPT experience and from the APT, lasting four days each, will be held in the coming months in Poland and Georgia and next year in Albania. The idea is to compare in detail everybody's working methods and to give constructive criticism.

2-day "Thematic workshops" with specialised staff from the NPMs and SPT, CPT and APT members as well as individual experts will be co-hosted in 2010 by the NPMs of Albania and Armenia and in 2011 by those of Azerbaijan, Estonia and France, with the possibility of an additional workshop in Spain.

The European NPM Project will pay for all costs and the Project Team, with the help of the APT and the Project Adviser (Dr. Sivilia Casale, former President of the CPT and the SPT), will co-organise all these meetings with the host NPMs. However, the first Thematic workshop will be held again in Padova, on 24-25 March 2010, on mental health issues in places of detention.

A debriefing paper (in English only) is currently being drafted to summarise the key outputs of the meeting, including a list of the workshops, their themes and dates. It will be sent to participants and can also be requested from jolanta.delcourt@coe.int.