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Cour Européenne des Droits de l'Homme

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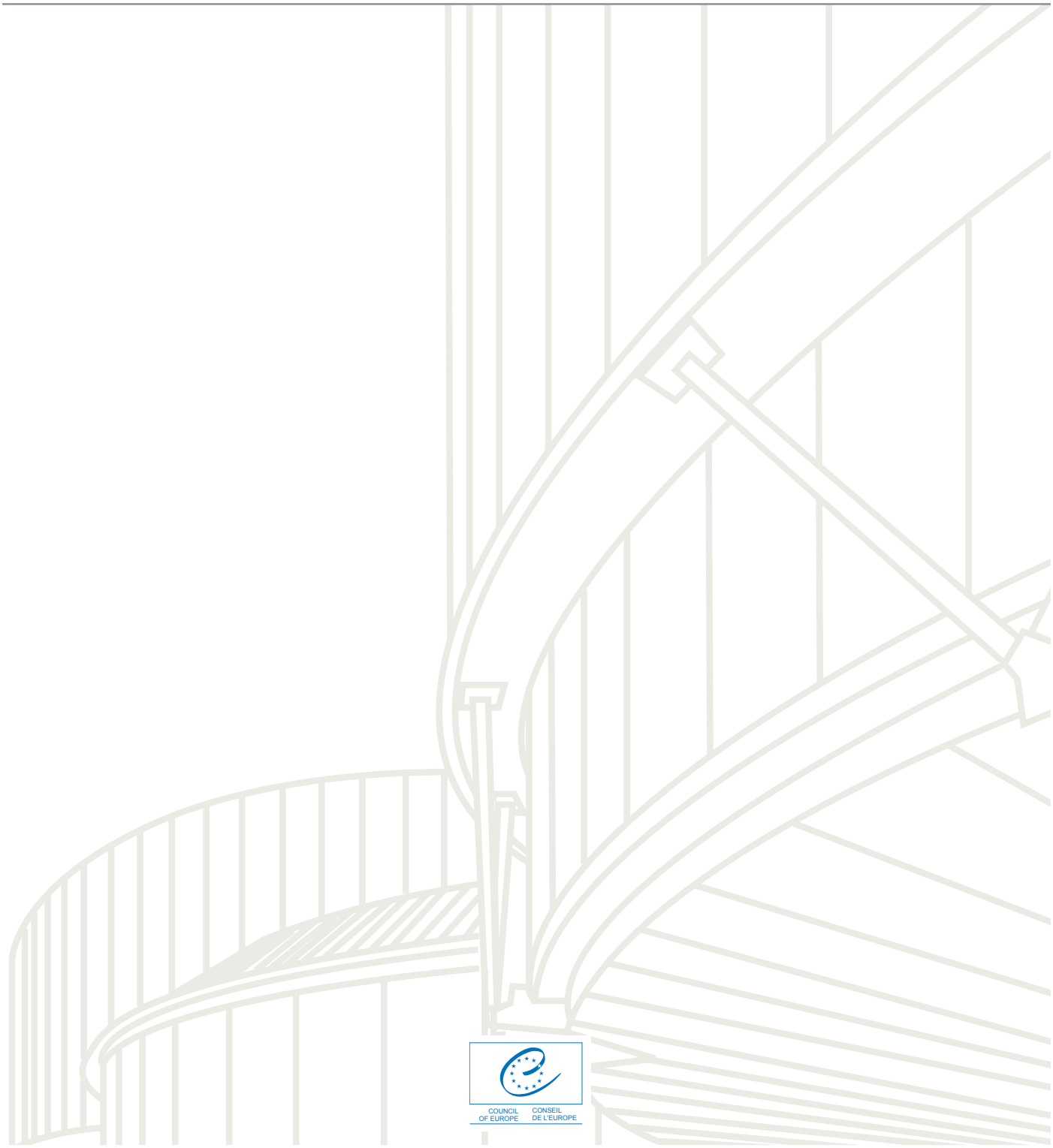

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INHUMAN OR DEGRADING TREATMENT
Woman of Roma origin allegedly sterilised without her consent: *communicated*.

V.C. - Slovakia (N° 18968/07)
[Section IV]

In 2000 the applicant, a Roma, was subjected to sterilization in a hospital during the delivery of her second child via Caesarean section. The request for sterilization was recorded in the hospital document concerning the delivery and bore the applicant's signature. However, the applicant alleged that she had not understood the term sterilization and had signed the request while suffering from labour pains. According to the applicant, her ethnic origin, which was clearly marked in her medical record, played a decisive role in the hospital personnel's decision to sterilise her. She further alleged that she had been accommodated separately from non-Roma women in a so-called "Gypsy room" and had been prevented from using the same bathrooms and toilets. She unsuccessfully sought redress in civil proceedings, arguing that her sterilisation had been carried out in violation of national legislation and international human rights standards and that she had not been duly informed about the procedure, its consequences or alternative solutions.
Communicated under Articles 3, 8, 12, 13, 14 and 35 § 1 of the Convention. The Government were invited to inform the Court of the applicable rules and existing practice as regards sterilisations in Slovakia. In particular, statistical information was requested on the number of sterilisations carried out and the proportion of Roma women concerned, both in the hospital where the applicant had given birth and countrywide.

See also *I.G., M.K. and R.H. v. Slovakia*, no. 15966/04 (Information Note no. 82).

EXTRADITION
Applicants risking ill-treatment if extradited to Uzbekistan: *violation*.

ISMOILOV and Others - Russia (N° 2947/06)
Judgment 24.4.2008 [Section I]

(see Article 6 § 2 below).

ARTICLE 6

Article 6 § 1 [criminal]

APPLICABILITY
FAIR HEARING
Unfair criminal proceedings following the accused's death: *violation of the widow's right to a fair trial.*

GRADINAR - Moldova (N° 7170/02)
Judgment 8.4.2008 [Section IV]

Facts: The applicant's husband was accused of murdering a police officer. In 1997 he was acquitted by a regional court. On appeal a retrial was ordered. The applicant, whose husband had in the meantime been shot dead, asked for the case to be reheard in order to prove his innocence. Ultimately, however, the courts found him guilty as charged.

Law: Victim status of the applicant – Applicability of Article 6: Domestic law allowed the applicant to have the case examined by the courts and to exercise her own civil rights within the criminal proceedings against her late husband. In particular, if she succeeded in proving his innocence, she would be allowed to claim compensation and public apologies from the prosecutor's office for his unlawful detention and conviction. She could therefore rely on Article 6 of the Convention under its civil head. Any shortcomings in the proceedings capable of preventing the fair examination of the case against her late husband and leading to an unfair conviction would necessarily result in violations of her own civil rights. Furthermore, neither the domestic courts nor the Government had raised any objection relating to her victim status, or lack of it. In the exceptional circumstances of the instant case, the applicant had standing to introduce the application.

Merits: The Court had serious reservations about a legal system which allowed the trial and conviction of deceased persons, given the obvious inability of such persons to defend themselves. While accepting as "decisive evidence" self-incriminating statements made by the accused, the domestic courts had simply chosen to remain silent with regard to a number of serious violations of the law noted by the regional court and to certain fundamental issues such as the fact that the accused had an alibi for the presumed time of the murder. The Court could not find any explanation for such omission in the courts' decisions and neither had the Government provided any clarification in this respect. In the absence of sufficient reasons, the conviction of the applicant's late husband had necessarily breached the applicant's own right to a fair trial.
Conclusion: violation (five votes to two).

Article 6 § 2

APPLICABILITY
Criminal proceedings in another country sufficient for Article 6 § 2 to apply to related extradition proceedings: *violation*.

ISMOILOV and Others - Russia (N° 2947/06)
Judgment 24.4.2008 [Section I]

Facts: The applicants, who are 12 Uzbek nationals and one Kyrgyz national, were arrested in June 2005 in Russia. They were the subject of an extradition request from the government of Uzbekistan, which claimed that they had financed the May 2005 unrest in the Uzbek city of Andijan. The applicants were held in detention with a view to extradition until March 2007, when they were released. In 2006 the United Nations High Commissioner for Refugees granted the applicants refugee status determining that they each had a well-founded fear of being persecuted and tortured if returned to Uzbekistan. The Russian authorities refused to give them refugee status or asylum. Instead, a deputy prosecutor general ordered their extradition to Uzbekistan after noting that they had "committed" acts of terrorism and other criminal offences and that the Russian authorities had received diplomatic assurances from the Uzbek government that they would not be tortured or sentenced to death upon their return. The extradition orders were upheld by the Russian courts, but the applicants were not extradited because of an interim measure indicated by the Court under Rule 39 of the Rules of Court.

Law: Article 3 – Most of the applicants had left Uzbekistan in order to flee persecution on account of their religious beliefs or successful businesses. Some of them had experienced earlier ill-treatment at the hands of the Uzbek authorities, others had seen their relatives or business partners arrested and charged with participation in illegal extremist organisations. After the unrest in Andijan in May 2005 the applicants were arrested in Russia at the request of the Uzbek authorities, who suspected them of financing the insurgents. It was the Court's task to establish whether there existed a real risk of ill-treatment in the event of the applicants' extradition to Uzbekistan. Information from a number of objective sources demonstrated that problems in connection with the ill-treatment of detainees still persisted in Uzbekistan and no concrete evidence had been produced of any fundamental improvement in the protection against

torture in recent years. Although the Uzbek government had adopted certain measures designed to combat the practice of torture, there was no proof that those measures had returned any positive results. The Court was therefore persuaded that ill-treatment of detainees was a pervasive and enduring problem in Uzbekistan. Moreover, as to the applicants' personal situation, given that the UN High Commissioner for Refugees had determined they each had a well-founded fear of being persecuted and ill-treated if extradited to Uzbekistan and had granted them refugee status and taking into account the well-documented evidence of widespread torture in that country, the Court was persuaded that the applicants would be at a real risk of suffering ill-treatment if extradited. Finally, given that the practice of torture in Uzbekistan had been described by reputable international experts as systematic, the Court was not persuaded that the assurances from the Uzbek authorities offered a reliable guarantee against the risk of ill-treatment.
Conclusion: violation (six votes to one) in the event of the extradition orders being enforced.

Article 6 § 2 – The applicants had not been charged with any criminal offence within Russia. The extradition proceedings against them therefore did not concern the determination of a criminal charge within the meaning of Article 6 of the Convention. However, the applicants' extradition had been ordered for the purpose of their criminal prosecution. The extradition proceedings were therefore a direct consequence, and the concomitant, of the criminal investigation pending against the applicants in Uzbekistan. The Court therefore considered that there was a close link between the criminal proceedings in Uzbekistan and the extradition proceedings justifying the extension of the scope of the application of Article 6 § 2 to the latter. Moreover, the wording of the extradition decisions clearly showed that the prosecutor regarded the applicants as "charged with criminal offences" which was in itself sufficient to bring into play the applicability of Article 6 § 2 of the Convention. The Court further considered that an extradition decision might raise an issue under Article 6 § 2 if supporting reasoning, which could not be dissociated from the operative provisions, amounted in substance to the determination of the person's guilt. The extradition decisions in the present case declared that the applicants should be extradited because they had "committed" acts of terrorism and other criminal offences in Uzbekistan. That statement was not limited to describing a "state of suspicion" against the applicants, it represented as an established fact, without any qualification or reservation, that they had been involved in the commission of the offences, without even mentioning that they denied their involvement. The wording of the extradition decisions amounted to a declaration of the applicants' guilt which could encourage the public to believe them guilty and which prejudged the assessment of the facts by the competent judicial authority in Uzbekistan.
Conclusion: violation (unanimously).

Referring to the case of *Nasrulloyev v. Russia*, no. 656/06 (see Information Note no. 102), the Court also found violations of Article 5 § 1 (unlawful detention) and Article 5 § 4 of the Convention (review of lawfulness of detention).

Article 41 – EUR 15,000 to each of the applicants in respect of non-pecuniary damage.

ARTICLE 8

PRIVATE AND FAMILY LIFE
Woman of Roma origin allegedly sterilised without her consent: *communicated*.

V.C. - Slovakia (N° 18968/07)
[Section IV]

(see Article 3 above).

EXPULSION
Expulsion of an alien on unsubstantiated grounds resulting in separation from his family: *violation*.

C.G. and Others - Bulgaria (N° 1365/07)
Judgment 24.4.2008 [Section V]

Facts: The first applicant, a Turkish national who settled in Bulgaria in 1992, married a Bulgarian national (the second applicant), with whom he had a daughter (the third applicant). He was granted a permanent residence permit in Bulgaria. In 2005 his residence permit was withdrawn and a deportation order was issued stating that he posed a threat to national security. The decision, relying on the relevant provisions of the Aliens Act, referred to a classified report by Plovdiv Internal Affairs but gave no factual grounds for the deportation. At 6.30 a.m. on 9 June 2005 the first applicant was summoned to a police station, where he was served with the order and detained with a view to his expulsion. He was deported to Turkey the same day, without being allowed to get in touch with a lawyer or his wife and daughter. His subsequent appeal to the Minister of Internal Affairs was dismissed. In the ensuing judicial review proceedings, the Bulgarian courts rejected the first applicant's complaints concerning the unlawfulness of his expulsion. Their decisions were based on information contained in the Ministry of Internal Affairs' report, which stated that, following secret surveillance, it had been established that the first applicant was involved in drug-trafficking. On that basis, the courts refused to make any further enquiries into the facts of the first applicant's case or examine any other evidence. (Since being deported, the first applicant has seen his wife and daughter a few times a year in Turkey. They have also remained in contact by telephone.)

Law: Article 8 – The first applicant was lawfully residing in Bulgaria until his deportation in 2005 and after that date was only able to see his wife and daughter occasionally for brief periods of time. The deportation therefore amounted to an interference with the applicants' right to respect for their family life. Even where national security was at stake, deportation measures had been subject to some form of adversarial proceedings before an independent authority or court which was competent to effectively scrutinise the reasons for those measures and to review the relevant evidence, if need be with appropriate limitations on the use of classified information. In the present case the decision to deport the first applicant had given no factual grounds and had simply cited the relevant legal provisions concerning serious threats to national security. That conclusion was based on unspecified information contained in a classified report. As the first applicant had not been given even the slightest indication as to why he posed such a threat, he had not been able to present his case adequately in his appeal or in the ensuing judicial review proceedings. Moreover, in those proceedings the Bulgarian courts had subjected the decision on deportation to a purely formal examination, refusing to examine evidence which would confirm or contest the allegations against the first applicant, and had relied solely on uncorroborated information in a classified report drawn up as a result of covert monitoring. Furthermore, Bulgarian law on such monitoring did not provide the minimum guarantees required under Article 8 such as ensuring that the original written record of special surveillance was faithfully reproduced or laying down proper procedures for preserving the integrity of such data. Indeed, in the first applicants' case, the file contained no information as to whether the secret surveillance measures had been lawfully ordered and executed or whether that aspect had even been considered by the courts. Finally, it had transpired during the judicial review proceedings that the only basis for the assessment that the first applicant posed a threat to national security was his alleged involvement in drug-trafficking. The Court found that the allegations against the first applicant – as grave as they might be – could not reasonably be considered to be capable of threatening Bulgaria's national security. The Bulgarian courts had not therefore subjected the allegations against the first applicant to any meaningful scrutiny. Despite having had the formal possibility of seeking judicial review of the deportation order, the first applicant had not enjoyed the minimum degree of protection against arbitrariness. The interference with the applicants' family life had therefore not been "in accordance with the law" within the meaning of Article 8.
Conclusion: violation (unanimously).

Article 1 of Protocol No. 7 – Aliens lawfully residing on the territory of a State which had ratified Protocol No. 7 benefited from certain procedural safeguards in the event of their deportation such as

knowing the reasons for their expulsion and having their case reviewed. In the present case the Bulgarian courts had refused to gather evidence to confirm the allegations against the first applicant and their decision was formalistic, resulting in him not having been able to have his case heard or reviewed, as required under paragraph 1 (b) of Article 1 of Protocol No. 7. His expulsion had therefore not been "in accordance with the law". Moreover, as the first applicant was expelled on the very day he received his deportation order, he had only been able to challenge the measures against him once outside Bulgaria. Article 1 of Protocol No. 7 allowed for that situation but only in the event that expulsion was "necessary in the interests of public order" or "grounded on reasons of national security". The Court had already found that the first applicant's deportation had not been based on any genuine national security reasons. Furthermore, there was nothing in the case file to suggest, and the Government had not put forward any convincing argument, that it had truly been necessary to deport him immediately in the interests of public order. The Court therefore concluded that the first applicant had not been given the opportunity to exercise his rights before his expulsion from Bulgaria.
Conclusion: violation (unanimously).

The Court also found a violation of Article 13 of the Convention.

Article 41 – The Court made awards in respect of non-pecuniary damage suffered by the applicants (EUR 10,000 for the first applicant, EUR 6,000 for the second and the third applicant).

ARTICLE 11

FREEDOM OF PEACEFUL ASSEMBLY
FREEDOM OF ASSOCIATION
Refusal to register a non-governmental association based on a broad interpretation of vague legal provisions: *violation*.

KORETSKYY and Others - Ukraine (N° 40269/02)
Judgment 3.4.2008 [Section V]

Facts: The applicants founded a local environmental association. Its registration was refused on the ground that its articles had not been drafted in accordance with domestic law. The authorities asserted, in particular, that an association with local status could not have representative offices or representatives in other cities and towns; that the managing board of an association was not entitled to exercise everyday administrative functions; that an association could not carry out publishing activities on its own, publicise its activities, lobby the authorities about environmental protection, or carry out expert examinations in this field; and, finally, that the association could not engage volunteers as members of the association. The applicants unsuccessfully challenged that decision before the courts.

Law: The refusal to give the association the status of a legal entity had amounted to an interference by the authorities with the applicants' exercise of their right to freedom of association. The provisions of the Associations of Citizens Act, which regulated the registration of associations, were too vague to be sufficiently "foreseeable" and granted an excessively wide margin of discretion to the authorities to decide whether a particular association could be registered. In particular, the registration of an association could be refused if its articles of association or other documents submitted for the registration contravened the Ukrainian law. The Act did not specify whether that provision referred only to the substantive incompatibility of the aim and activities of the association with the requirements of the law or also to their textual incompatibility with the relevant legal provisions. Given the changes to the text of the association's articles on which the authorities had been insisting, the provision at issue allowed of a particularly broad interpretation and could be read as prohibiting any departure from the relevant domestic regulations on associations' activities. In such a situation, the judicial review procedure available to the applicants could not prevent arbitrary refusals of registration.

The local courts' decision and the government's submissions contained neither an explanation nor even an indication of the necessity for restrictions on associations distributing publicity materials, lobbying authorities, engaging volunteers as members or independently carrying out publishing activities. Moreover, the Court did not see why the managing bodies of such association were prohibited from carrying out everyday administrative activities, even if such activities had been essentially financial. As regards the territorial limitation on the activities of associations with local status, even if that restriction could be said to be aimed at maintaining the proper functioning of the system of State registration of associations, the Court did not discern any threat through local associations in having branch offices in other cities and towns, especially given the burdensome requirement for associations wishing to have pan-Ukrainian status to set up local branches in the majority of the twenty-five regions of Ukraine. Moreover, the association had intended to pursue purely peaceful and democratic aims and tasks. Nevertheless, the authorities had applied a radical measure which had gone so far as to prevent it from even starting its main activities, without giving relevant and sufficient reasons.
Conclusion: violation (unanimously).

Article 41 – EUR 1,500 to each applicant in respect of non-pecuniary damage.

ARTICLE 13

EFFECTIVE DOMESTIC REMEDY (Russia)
Proceedings offering no speedy redress and an insufficient amount of damages for the length of enforcement proceedings: *violation*.

WASSERMAN - Russia (no. 2) (N°21071/05)
Judgment 10.4.2008 [Section I]

Facts: The applicant had brought a previous application before the Court (application no. 15021/02) concerning the non-enforcement of a judgment debt in his favour. In its Chamber judgment of 18 November 2004 the Court held unanimously that there had been a violation of Article 6 § 1 (right of access to a court) and Article 1 of Protocol No. 1 (protection of property). The present case concerned the applicant's complaint about the continued non-enforcement of the same judgment and the absence of an effective domestic remedy. He had instituted civil proceedings claiming compensation for non-pecuniary damage caused by the protracted non-enforcement of the judgment and was eventually awarded RUB 8,000 (less than EUR 250).

Law: Preliminary objection: Competence ratione materiae: The Government had claimed, firstly, that the Court was not competent to examine the case under Article 46 § 2 because the Committee of Ministers had not yet completed the execution of the Chamber judgment of 18 November 2004. The Court acknowledged that it had no jurisdiction to review the measures adopted by the Russian authorities but considered that it could, nevertheless, take stock of subsequent factual developments. It observed that the applicant's complaints concerned a further period during which the judgment in his favour had also remained unenforced so that it did in fact have competence to examine them.

Merits: The Court noted that Russian law did not determine the procedure for complaints concerning the excessive length of enforcement proceedings. In the applicant's case, he had brought an action for compensation for damage incurred by the prolonged non-enforcement of a judgment in his favour, but those proceedings had exceeded two-and-a-half years and did not therefore meet the requirement of speediness necessary for a remedy to be "effective" within the meaning of Article 13. Moreover, the domestic courts' award to the applicant in respect of non-pecuniary damage was manifestly unreasonable in the light of the Court's case-law in similar cases.
Conclusion: violation (unanimously).

The Court further found violations of the applicant's rights under Article 6 § 1 (right of access to court) and Article 1 of Protocol No. 1 (protection of property).

Article 41 – EUR 373 for pecuniary damage and EUR 4,000 for non-pecuniary damage.

ARTICLE 14

DISCRIMINATION (Article 1 of Protocol No. 1)
Ineligibility of cohabiting sisters to exemption from inheritance tax enjoyed by surviving spouses or civil partners: *no violation*.

BURDEN - United Kingdom (N° 13378/05)
Judgment 29.4.2008 [GC]

Facts: Under the Inheritance Tax Act 1984, inheritance tax is charged at 40% on the value of the deceased's estate above a threshold fixed in the annual budget. Property passing from the deceased to his or her spouse or "civil partner" (a category introduced under the Civil Partnership Act 2004 for same-sex couples, which does not cover family members living together) is, however, exempt from charge. The applicants were elderly, unmarried sisters who had lived together all their lives, for the last 31 years in a house they owned jointly built on land inherited from their parents. Each had made a will leaving all her estate to the other. They were concerned that, when one of them died, the survivor would face a heavy inheritance tax bill – unlike the survivor of a marriage or a civil partnership – and might be forced to sell the house to pay the liability.
In a judgment of 12 December 2006 (see Information Note no. 92), a Chamber of the Court, by four votes to three, left open the question whether the applicants could claim to be in an analogous position to a couple who were married or in a civil partnership, holding that any difference in treatment was in any event objectively and reasonably justified, regard being had to the wide margin of appreciation enjoyed by the States in the area of taxation.

Law: (a) *Preliminary objections*: (i) *Victim status*: The Grand Chamber reiterated that it was open to a person to contend that a law violated his rights if he was a member of a class of people who risked being directly affected by the legislation. Given their age, the wills they had made and the value of the property each owned, the applicants had established that there was a real risk that, in the not too distant future, one of them would be required to pay substantial inheritance tax on the property inherited from her sister. In those circumstances, they could claim to be victims of the alleged discriminatory treatment.
(ii) *Exhaustion of domestic remedies*: The Government had argued that the applicants – who had not suffered any liability for inheritance tax – could have applied to the domestic courts under the Human Rights Act for a declaration that the legislation in question was incompatible with a Convention right. The Grand Chamber noted that a declaration would have given a discretionary power to the relevant government minister to amend the offending legal provision. However, while it was true that steps had been taken to amend the offending legislation in all cases where declarations of incompatibility had become final, it would be premature to hold that that procedure provided an effective remedy. Nevertheless, that did not exclude the possibility of the practice of amending legislation following a declaration of incompatibility becoming so certain at some point in the future as to create a binding obligation. In those circumstances, except where an effective remedy necessitated the award of damages, applicants would be required first to exhaust that remedy before making an application to the Court.
Conclusion: objections dismissed (unanimously).

(b) *Merits*: The relationship between siblings was qualitatively of a different nature to that between married couples and homosexual civil partners under the Civil Partnership Act. The very essence of the connection between siblings was consanguinity, whereas one of the defining characteristics of a marriage or Civil Partnership Act union was that it was forbidden to close family members. The fact that the applicants had chosen to live together all their adult lives did not alter that essential difference between

the two types of relationship. Marriage conferred a special status on those who entered into it and civil partnerships gave rise to a legal relationship designed by Parliament to correspond as far as possible to marriage. The legal consequences which couples in both marriages and civil partnerships expressly and deliberately decided to incur set those types of relationship apart from other forms of cohabitation. Rather than the length or the supportive nature of the relationship, what was determinative was the existence of a public undertaking, carrying with it a body of rights and obligations of a contractual nature. The absence of such a legally-binding agreement between the applicants rendered their relationship of cohabitation, despite its long duration, fundamentally different to that of a married or civil partnership couple. There had therefore been no discrimination.
Conclusion: no violation (fifteen votes to two).

ARTICLE 34

VICTIM
Continuation of criminal proceedings after the accused's death: *victim status afforded to widow*.

GRADINAR - Moldova (N° 7170/02)
Judgment 8.4.2008 [Section IV]

(see Article 6 § 1 above).

ARTICLE 37

RESPECT FOR HUMAN RIGHTS
MATTER RESOLVED
Friendly settlement providing for both individual and general measures in pilot-judgment case: *striking out*.

HUTTEN-CZAPSKA - Poland (N° 35014/97)
Judgment 28.4.2008 [GC]

Facts: (a) *Background*: The applicant was one of an estimated 100,000 landlords in Poland who have been affected by a restrictive system of rent control. Under the former communist regime in Poland the State was given wide powers to administer properties and allocate housing, including power to grant residential leases over privately owned property. Although legislation was introduced in 1994 (and amended in 2001 and 2005) with a view to abolishing that system, rent control was maintained in respect of sitting residential tenants in order to protect them during the transition towards a free-market housing system. The legislation also imposed onerous maintenance obligations on landlords and afforded tenants paying controlled rent substantial security of tenure. The applicant's property, which at the time belonged to her parents, was taken under State management in 1946. After repeated attempts by both her and her parents to recover possession had failed, the applicant lodged a complaint with the European Court. In a judgment of 19 June 2006 (see Information Note no. 87), the Grand Chamber found a violation of Article 1 of Protocol No. 1 to the Convention on account of the applicant's inability to use the property or charge an adequate rent and awarded her EUR 30,000 in respect of non-pecuniary damage. The Court also considered the violation to be part of the systemic malfunctioning of the Polish housing legislation and directed the State to secure in its domestic legal order a mechanism maintaining a fair balance between the interests of the landlords and the general interest of the community. It reserved the question of pecuniary damage and stipulated that that issue was to be resolved by reference not only to any agreement made between the parties but also in the light of the individual and general measures taken in execution of the Court's judgment.

(b) *Friendly settlement*: In February 2008 the parties signed a friendly settlement under the terms of which the Government were to pay the applicant 240,000 Polish zlotys (PLN) for pecuniary damage. The Government identified various general measures that had been taken to resolve the underlying housing problem, including a scheme for State backing for investment in social housing, the creation of conditions enabling landlords to receive market-related rent, and the introduction of a mechanism for the monitoring of rent levels to ensure the transparency of rent increases. They also undertook to implement further measures relating to funding for the renovation and/or thermo-modernisation of tenement buildings and to the promotion of investment in housing, and formally recognised their obligation to afford redress to other people in a similar predicament to the applicant.

Law: The Court could strike an application out of its list only if it was satisfied that the solution arrived at between the parties was based on "respect for human rights as defined in the Convention and the Protocols thereto". Since the applicant's case had been examined under the pilot-judgment procedure, it also had to examine the general measures that needed to be taken in the interest of other potentially affected property owners. It was accepted that the proposed friendly settlement addressed the general as well as the individual aspects of the finding of a violation made in the principal judgment. A number of general remedial measures had been taken or were planned by the Government. These took into account both the Court's principal judgment and the judgments of the Polish Constitutional Court declaring certain provisions of the existing legislation unconstitutional. Defective provisions had been repealed and new legislation introduced that enabled landlords to charge higher rents, rent levels to be monitored and subsidies to be obtained for housing projects. Further legislation was pending, including a Bill offering a system of subsidies for maintenance and renovation works. In two combined measures that were evidently designed to remove the effects of the remaining restrictions on the termination of leases and the eviction of tenants, steps had been taken to provide social accommodation and to render the authorities more accountable to any landlords who sustained damage as a result of a failure to make such accommodation available to protected tenants. The Government had likewise recognised their obligation to make redress available to other persons adversely affected by the rent-control legislation through a special scheme of compensatory refunds they would be proposing. While noting that it was for the Committee of Ministers, as the body responsible for supervising the execution of the judgment, to evaluate the general measures adopted by the State, the Court stated that, in exercising its own competence to decide whether or not to strike the case out of its list following the friendly settlement, it would take into account the active commitment that had been demonstrated by the Government to take measures aimed at resolving the systemic problem and rely on the actual and promised remedial action as a positive factor going to the issue of "respect for human rights as defined in the Convention and the Protocols thereto". Accordingly, having regard to both the general measures for addressing the systemic problem that had been identified and the individual measures afforded to the applicant under the agreement, the Court was satisfied that the settlement was based on respect for human rights.
Conclusion: striking out (unanimously).

ARTICLE 1 OF PROTOCOL No. 1

PEACEFUL ENJOYMENT OF POSSESSIONS
Withdrawal of an Internet service provider's operating licences for purely formal breach of regulations: *violation*.

MEGADAT.COM SRL - Moldova (N° 21151/04)
Judgment 8.4.2008 [Section IV]

Facts: The applicant company, a privately owned corporation and the largest Internet service provider in Moldova at the time, moved its headquarters in November 2002. The change was registered with the State registration chamber and the tax authorities were also informed. In May 2003 the applicant company applied to the national telecommunications regulatory authority (ANRTI) for an additional licence. However, although it gave its new address when making the application, the licence was issued with the

old address. In September 2003 the applicant company and a number of other operators received a letter from the regulatory authority requiring them to pay an annual licence fee and provide details of their addresses within ten days or risk having their operating licences suspended. Although the applicant company subsequently attempted to rectify these omissions, the regulatory authority queried the information it had supplied and, without waiting for a response or imposing any period of suspension, declared its licences invalid. An amendment made to the regulations shortly afterwards meant that the applicant company was unable to apply for a new licence for a period of six months. It was unsuccessful in a challenge to the regulatory authority's decision in the courts and ultimately was forced out of business. Of the more than 50 operators who were alleged not to have complied with the regulatory authority's warning letter, the applicant company appears to have been the only one to have had its licence withdrawn, the others receiving a three-month suspension instead.

Law: The termination of the licences was a measure of control of use of property which fell to be examined under the second paragraph of Article 1 of Protocol No. 1. The central issue was the question of proportionality. As to the breach of the regulations by the applicant company, the Government had not indicated any concrete detriment caused by the failure to have its address modified in the text of the licences. The regulatory authority had been well aware of the change of address and had had no difficulty in contacting the applicant company. Other relevant authorities and clients had also been informed. There was no suspicion that the company had been seeking to evade its tax liabilities. Against that background, it was striking that the measure imposed was of such severity as to force what had been Moldova's largest Internet service provider to wind up its business and sell all of its assets. For its part, the regulatory authority had failed to comply with its obligations as a public authority to act in good time, in an appropriate manner and with utmost consistency. Despite been apprised of the change of address it had issued the applicant company with a new licence indicating the old address, had acquiesced in the technical flaw in its licences, and had later led the applicant company mistakenly to believe that it could continue operating provided it furnished the requested information within a set period. The requisite procedural safeguards were also lacking, as the applicant company was given no opportunity to appear or explain its position before the regulatory authority and, in the appeal proceedings, the case was decided in its absence after its application for an adjournment was refused without explanation. Indeed, the domestic courts' examination of the case had been unduly formalistic with no attempt being made to carry out a balancing exercise. Lastly, there was also evidence of discriminatory treatment in that the applicant company appeared to have been treated more severely than other companies in a similar position. In the light of the arbitrariness of the proceedings, the discriminatory treatment and the disproportionately harsh measure imposed, the authorities could not be said to have followed genuine and consistent policy considerations when invalidating the licences and had thus failed to strike the requisite fair balance.
Conclusion: violation (unanimously).

Article 41 – Not ready for decision.

ARTICLE 3 DU PROTOCOLE N° 1

VOTE
Elected parliamentarians deprived of their seats as a result of an unforeseeable departure by the Special Supreme Court from its settled case-law concerning the method for calculating the electoral quotient: *violation.*

PASCHALIDIS, KOUTMERIDIS and ZAHARAKIS - Greece
(N^os 27863/05, 28422/05 and 28028/05)
Judgment 10.4.2008 [Section I]

Facts: The applicants complained that they had been deprived of their parliamentary seats by a judgment of the Special Supreme Court. They stood for election in the March 2004 general elections and won seats in their respective constituencies. However, a rival candidate of the first applicant lodged an application

before the Special Supreme Court, the court responsible for electoral matters, to have the first applicant's election cancelled. She complained, in particular, that the blank ballot papers cast in the constituency concerned had not been taken into consideration in calculating the electoral quotient and that this had affected the distribution of seats in her local constituency and in the main constituency of Central Macedonia, with the result that the first applicant had been elected in her place. In a final judgment of 9 May 2005, departing from its long-established case-law, the Special Supreme Court held that blank ballot papers should be taken into consideration when calculating the electoral quotient and the distribution of seats. In application of that interpretation of the electoral law, it re-distributed the seats, depriving the three applicants of their seats. In February 2006 the Greek Parliament enacted a new provision (section 1 of Law no. 3434/2006) according to which blank ballot papers were not to be taken into consideration in elections.

Law: The question was whether the manner in which the Special Supreme Court had interpreted, then applied, the electoral law was compatible with the very essence of the applicants' right to be elected and to hold office. The Court noted first of all that the applicants had stood for election and been elected in compliance with the electoral law in force, as consistently interpreted by the Special Supreme Court and the Council of State, according to which the electoral quotient was calculated without blank ballot papers being taken into account. The applicants had expected that law to apply and the outcome of their election to be based on it, and could not have foreseen that their election would be cancelled following a departure from the case-law. The Court also highlighted the fact that this judgment of the Special Supreme Court was the sole decision in favour of blank ballot papers being included in the total number of valid ballot papers, as the Greek Parliament had subsequently enacted a new provision – to avoid any uncertainty as a result of the judgment – under which blank ballot papers were not to be taken into consideration. Secondly, disregarding various provisions of the electoral law in an election that had already taken place was liable to alter the will of the electorate as expressed in the ballot box. In particular, by opting to cast a blank vote, part of the electorate in the main constituency of Central Macedonia had wished to express their dissatisfaction with all the political parties. However, as a result of the departure from the case-law their blank ballot papers had been interpreted as positive votes in the parties' favour. Furthermore, in the general elections at issue the main constituency of Central Macedonia was the only one where the electoral quotient had been calculated on the basis of the Supreme Court's new case-law. In consequence, the court's judgment had created two categories of members of the Greek Parliament: those who were elected without the inclusion of blank ballot papers, and those who held their seats because such ballot papers had been taken into consideration, to the detriment of the three applicants. The unforeseeable manner in which the Special Supreme Court had interpreted and applied the electoral law had impaired the essence of the rights guaranteed under Article 3 of Protocol No. 1.
Conclusion: violation (unanimously).

Article 41 – In respect of pecuniary damage, EUR 119,613 to the first applicant, EUR 78,298 to the second and EUR 142,532 to the third. The finding of a violation was sufficient just satisfaction for the non-pecuniary damage sustained.

ARTICLE 2 OF PROTOCOL No. 4

Article 2 § 1

FREEDOM OF MOVEMENT
Length of a residence condition to which an accused was subject both during and after criminal proceedings: *violation*.

ROSENGREN - Romania (N° 70786/01)
Judgment 24.4.2008 [Section III]

Facts: The applicant was arrested in 1993 and remanded in custody in connection with fraud charges. In December 1995 and at his request a county court ordered his release from custody subject to the condition that he remain in Bucharest. He subsequently made a series of unsuccessful attempts to have that measure lifted. The criminal proceedings continued until October 2000, when they were discontinued under the statute of limitations. However, the residence condition remained in force until a further appeal by the applicant had been heard (and dismissed) by the Supreme Court of Justice in March 2002.

Law: It was common ground that the prohibition on the applicant's leaving Bucharest had interfered with his freedom of movement. That interference was in accordance with law and pursued the legitimate aims of preventing crime and protecting the rights and freedoms of others. On the question of proportionality, however, it was noted that the measure had been in force for six years and three months, a period which in itself could constitute a violation and which had continued for approximately seventeen months after the charges against the applicant had become time-barred. Further, the domestic courts had not given relevant reasons for taking or prolonging the measure, despite repeated challenges by the applicant. The authorities had thus failed to strike a fair balance between the demands of the general interest and the applicant's rights.
Conclusion: violation (unanimously).

Article 41 – EUR 3,000 for non-pecuniary damage.

ARTICLE 1 OF PROTOCOL No. 7

REVIEW OF EXPULSION DECISION
EXPULSION BEFORE EXERCISING PROCEDURAL RIGHTS
Lack of procedural safeguards in deportation proceedings: *violation*.

C.G. and Others - Bulgaria (N° 1365/07)
Judgment 24.4.2008 [Section V]

(see Article 8 above).

Cases selected for publication[1]

The Publications Committee has selected the following cases for publication in *Reports of Judgments and Decisions* (where applicable, the three-digit number after each case-title indicates the issue of the Case-Law Information Note where the case was summarised):

Grand Chamber judgments

E.B. – France (N° 43546/02) (104)
SAADI – United Kingdom (N° 13229/03) (104)
RAMANAUSKAS – Lithuania (N° 74420/01) (105)
KAFKARIS – Cyprus (N° 21906/04) (105)
GUJA – Moldova (N° 14277/04) (105)
ARVANITAKI-ROBOTI and Others – Greece (N° 27278/03) (105)
SAADI – Italy (N° 37201/06) (105)

Chamber judgments

RYAKIB BIRYUKOV – Russia (N° 14810/02) (104)
DODOV – Bulgaria (N° 59548/00) (104)
RIAD and IDIAB – Belgium (extracts (Nos 29787/03 and 29810/03) (104)
MASLOVA and NALBANDOV – Russia (extracts) (N° 839/02) (104)
ALBAYRAK – Turkey (N° 38406/97) (104)
KOVACH – Ukraine (N° 39424/02) (105)
HADRI-VIONNET – Switzerland (N° 55525/00) (105)
GLASER – the Czech Republic (N° 55179/00) (105)
JULY and SARL LIBERATION – France (extracts) (N° 20893/03) (105)
ALEXANDRIDIS – Greece (N° 19516/06) (105)
LADENT – Poland (extracts) (N° 11036/03) (106)
BUDAYEVA and Others – Russia (extracts) (Nos 11673/02, 15339/02, 15343/02, 20058/02 and 21166/02) (106)

Decisions

BARSOM and VARLI – Sweden (Nos 40766/06 and 40831/06) (104)
EPSTEIN and Others – Belgium (extracts) (N° 9717/05) (104)
COUTANT – France (N° 17155/03) (104)
MIR ISFAHANI – the Netherlands (N° 31252/03)
FÄGERSKIÖLD – Sweden (extracts) (N° 37664/04) (105)

[1] For a list of previously selected cases please see Composition of Reports of Judgments and Decisions from 1999 at:
http://www.echr.coe.int/NR/rdonlyres/F81AF3C4-F231-4E01-87E4-C54A3622B3E6/0/Publication_list.pdf