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COUR EUROPÉENNE DES DROITS DE L'HOMME

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LIFE
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Inadequacy of criminal sentence imposed on police officers responsible for ill-treatment causing death: *violation*.

NIKOLOVA AND VELICHKOVA - Bulgaria (N° 7888/03)
Judgment 20.12.2007 [Section V]

Facts: In 1994, the local police spotted Mr Nikolov – the first applicant's husband and the second applicant's father – testing a home-made metal detector. Two officers, Chief Sergeants B.I. and H.T., were sent to investigate. They approached Mr Nikolov who, surprised by their sudden appearance, raised the hoe he was holding in defence. B.I. pulled the hoe out of Mr Nikolov's hands and threw it to a safe distance. Both officers then hit Mr Nikolov over the head, overpowered and handcuffed him. He was taken to the police station where, while waiting to be questioned, he fainted. Mr Nikolov was taken to hospital where, following an unsuccessful operation to remove a blood clot, he died. A subsequent medical report concluded that the cause of death was severe cranial and cerebral trauma and internal brain haemorrhaging.
Criminal proceedings were opened into the incident and B.I. and H.T. were charged. Following a transfer of jurisdiction and the applicants' repeated complaints, the proceedings resumed in January 1998 and the chief sergeants were brought to trial. The first-instance court convicted them of having caused the death of Mr Nikolov through intentional grievous bodily harm and sentenced them to a three-year suspended prison sentence. The applicants were awarded compensation, to be paid by the chief sergeants. On appeal the applicants complained that the chief sergeants' sentencing was too lenient and the compensation too low. The appeal court found that the "situation [had] not call[ed] for the use of such intense physical violence" but upheld the suspended sentence. The compensation awarded to each applicant was, however, increased. The enforcement proceedings with respect to the compensation owed to the applicants were discontinued at the end of 2004 as the chief sergeants had no assets to be seized. Following a tort action brought by the applicants, the court ordered the police department to pay compensation and the amounts awarded were paid shortly after the end of those proceedings. No disciplinary measures have ever been taken against B.I. or H.T.. B.I. was promoted to unit commander but has since resigned from the police force. In 1999 H.T. was apparently still working for the police force as a guard in a commercial bank.

Law: Article 34 – Even though the applicants had received compensation for Mr Nikolov's death, the measures taken by the authorities had failed to provide appropriate redress. The criminal proceedings against the police officers had lasted seven years, they were convicted to a minimal suspended sentence and were never disciplined for their wrongful acts. The applicants could therefore still claim to be victims for the purposes of Article 34.

Article 2 (*substantive limb*) – The Bulgarian courts had examined the evidence and facts of the applicants' case and found that B.I. and H.T, acting in their official capacity, had intentionally hit Mr Nikolov and been responsible for his death. The domestic courts had also found that the incident in question had not required "such intense physical violence". The Court therefore concluded that the death of Mr Nikolov was attributable to Bulgaria and that the force used for carrying out his arrest had not been "absolutely necessary".
Conclusion: violation (unanimously).

Article 2 (*procedural limb*) – The Court considered the promptness of the criminal proceedings as a gauge for assessing the authorities' determination to prosecute those responsible for Mr Nikolov's death. An investigation had immediately been opened into the incident and had, at first, progressed at a good pace. However, the proceedings had then ground to a halt and had not been resumed until two-and-a-half years later and only after the applicants' repeated complaints. The chief sergeants had finally been convicted

and sentenced in 2002, more than seven years after killing Mr Nikolov. Those delays were unacceptable as the case had involved police violence and required a swift reaction from the authorities. The Court could not overlook the fact that, even though the domestic law had given the courts the possibility of sentencing the chief sergeants to a maximum of 12 years' imprisonment, they had chosen the minimum penalty and suspended it. Indeed, at least until 1999, well after the beginning of the criminal proceedings, both officers had still been serving in the police and one of them had even been promoted. In the Court's view, such a reaction to a serious case of deliberate police ill-treatment resulting in death could not be considered adequate. By punishing B.I. and H.T with suspended terms of imprisonment, more than seven years after Mr Nikolov was killed, and never disciplining them, Bulgaria had in effect supported the officers' feeling that they were not responsible. The criminal proceedings against the police officers responsible for Mr Nikolov's death had therefore been inadequate.
Conclusion: violation (unanimously).

Article 41 – EUR 7,000 for pecuniary damage and EUR 10,000 for non-pecuniary damage.

LIFE
Doctor's failure to inform applicant that her companion had AIDS: *admissible*.

COLAK and Others - Germany (Nos. 77144/01 and 35493/05)
Decision 11.12.2007 [Section V]

The applicants are a mother and her two children. Their companion and father found out in 1992 that he had cancer and AIDS. He informed the first applicant about the cancer but concealed his AIDS infection; he also forbade their family doctor to disclose to anybody that he had developed AIDS. When the first applicant consulted the doctor in January 1993, the doctor did not tell her that her companion had AIDS. In December 1994 the applicants' companion and father died. Only several months later did the doctor tell the first applicant that her companion had died from AIDS and not – as she had thought until then – from cancer. After a blood test had established that she was HIV-positive, she sued her doctor for damages. The civil courts dismissed her claim. They found that although the doctor was at fault for not informing her, they could not exclude that she had been infected before the doctor knew about her companion's AIDS infection. Moreover, the courts held that the doctor's behaviour could not be qualified as a gross error in treatment which, in accordance with domestic case-law, would have entailed a reversal of the burden of proof as to the causal link between the error in treatment and the first applicant's HIV-infection. The first applicant also unsuccessfully attempted to institute criminal proceedings against the doctor. The children were HIV-negative and were not parties to the proceedings.
Admissible under Articles 2 and 6 § 1 (the first applicant's complaints relating to the civil proceedings).

ARTICLE 3

INHUMAN OR DEGRADING TREATMENT
Conditions of detention of a prisoner suffering from mental disorders: *violation*.

DYBEKU - Albania (N° 41153/06)
Judgment 18.12.2007 [Section IV]

(see Article 46 below).

ARTICLE 6

Article 6 § 1 [civil]

APPLICABILITY
Proceedings for awarding a government tender: *inadmissible (Article 6 inapplicable*).

I.T.C. - Malta (N° 2629/06)
Decision 11.12.2007 [Section IV]

The applicant company applied to a public tender to stage a major public event on the occasion of Malta's joining the European Union. The tender was eventually awarded to another bidder. The applicant company objected to that decision, but to no avail. Before the Court it complained about the unfairness of the proceedings in which it challenged the decision on the tender.

Inadmissible: Article 6 of the Convention was not aimed at creating new substantive rights without a legal basis in the Contracting State, but to providing procedural protection of rights already recognised in domestic law. Given the wording of the relevant Maltese law, the mere fact that a legal person had submitted a bid or made an offer at a public tender could not give rise to an expectation or a right to be awarded the tender, or to have it determined by any particular method. Moreover, according to the case-law of the domestic courts a decision to award a government contract was considered an administrative act and the relevant legal provisions did not grant any civil right in the context of a public call for tenders. Finally, the fact that a tenderer had the right to object to an award and to have its objection considered at a public hearing did not amount to a civil right, but merely to a right of a public nature; a right to object did not suffice to make Article 6 applicable to proceedings determining the award of a tender, in view of the competent authority's discretion to decide who should be granted the tender: *incompatible* ratione materiae.

(along these lines see *Skyradio and others v. Switzerland* (dec.) no. 46841/99, 31 August 2004; *a contrario* see *Araç v. Turkey*, no. 69037/01, 21 September 2006).

ACCESS TO COURT
Failure to give final determination of the applicant's constitutional appeal due to tied vote: *violation*.

MARINI - Albania (N° 3738/02)
Judgment 18.12.2007 [Section IV]

Facts: The case concerned the applicant's complaint about five sets of proceedings he had brought following a dispute with the Albanian Government over a joint-venture company they had set up in 1991. Among other things, the applicant complained of the lack of access to the Constitutional Court, which had dismissed his appeal on account of a tied vote.

Law: In reality, the Constitutional Court appeared to have failed to obtain a majority on any of the issues it had been called upon to decide and had therefore declined to take a decision in the applicant's case. This had left the applicant without any final determination of his case and restricted the essence of his right of access to court. The tied vote provision in Albanian law did not serve the interests of legal certainty and was capable of depriving an individual of an effective right to have his constitutional appeal finally determined.
Conclusion: violation (unanimously).

Article 41 – EUR 330,000 in respect of pecuniary and non-pecuniary damage (lump sum including pecuniary damage for loss of investment and profits as the proceedings had exceeded the reasonable time requirement and the decision in the applicant's favour had not been enforced for a period of time).

FAIR HEARING
Conflicting decisions of a supreme court: *violation*.

BEIAN - Romania (n° 1) (N° 30658/05)
Judgment 6.12.2007 [Section III]

Facts: The applicant was conscripted in 1953 but not allowed to undergo military training because of his father's opposition to the collectivisation of farmland. Instead, he was assigned to several military units as a builder. Law no. 309 of 22 May 2002 recognised work done for military units under the authority of the Labour Department as forced labour and introduced compensatory measures, including a monthly allowance, free medical treatment and exemption from the television licence fee. The applicant was not able to benefit from this law because he had performed his military service in a military unit that did not answer to the Labour Department. In the Court of Cassation he complained of discrimination in the law between conscripts assigned to forced labour in military units under the authority of the Labour Department and those assigned to similar tasks but unable to benefit from the law simply because their military units did not operate under the authority of the Labour Department. He submitted that a former conscript in the same situation as himself had obtained a ruling in the Court of Cassation that he was covered by the provisions of Law no. 309/2002. The Court of Cassation dismissed the applicant's appeal on the ground that his military unit was not on the list of military units under the authority of the Labour Department.

Law: Article 6 § 1 – In one series of judgments the Court of Cassation had extended the scope of Law no. 309/2002, on compensatory measures for conscripts assigned to forced labour during their military service, to all conscripts, regardless of the hierarchy to which their military units answered, whereas in another series of judgments delivered over the same period it had reached the opposite decision, as in the applicant's case.
For want of a means of ensuring consistency of practice within the highest domestic court, that court had managed, sometimes on the same day, to deliver judgments concerning the scope of the same law which were diametrically opposed. However, the role of a supreme court was precisely to regulate such contradictions in the case-law. In this particular case the Court of Cassation had been at the origin of deep and lasting divergences. This practice, developed by the highest judicial authority in the land, was in itself contrary to the principle of legal certainty. Instead of playing its part and establishing an interpretation to be followed, the Court of Cassation itself had become a source of legal uncertainty, thereby undermining public confidence in the judicial system.
The lack of legal certainty had effectively deprived the applicant of any possibility of qualifying for the rights prescribed by law, unlike other people in a similar situation.
Conclusion: violation (unanimously).

Article 14 combined with Article 1 of Protocol no. 1 – The applicant complained of the authorities' refusal to grant him the rights provided for in Law no. 309/2002 in respect of forced labour carried out during his military service. Having been assigned to forced labour during his military service, the applicant met the requisite condition for entitlement to those rights. The refusal to grant them to him had been based solely on the fact that the military units in which he had served had not operated under the authority of the Labour Department. However, in the light of a series of judgments of the Court of Cassation granting the rights provided for in the law concerned to persons who had been assigned to forced labour outside the Labour Department, the applicant had had a "legitimate expectation" that his claim would be recognised. Article 1 of Protocol no. 1 was therefore applicable.
As a result of the contradictory case-law of the Court of Cassation there had been a difference of treatment between the applicant and other people in a similar situation. This was not a mere divergence in the case-law of the type inherent in any legal system built around a set of trial courts and courts of appeal,

but a deficiency of the Court of Cassation in the performance of its role in settling such disputes. The Government had submitted no objective and reasonable justification for this difference of treatment.
Conclusion: violation (unanimously).

Article 41 – EUR 5,000 in respect of all damage.

ARTICLE 7

Article 7 § 1

NULLUM CRIMEN SINE LEGE
Conviction of war crimes in relation to acts committed in 1944: *admissible*.

KONONOV - Latvia (N° 36376/04)
Decision 20.9.2007 [Section III]

The case concerns the criminal conviction in 2004 of a former NCO in the Soviet army for a war crime (the massacre of nine villagers) committed during the Second World War, on Latvian soil, when the country was under occupation. The applicant was born in 1923 and was a Latvian national until 12 April 2000, when he was granted Russian citizenship. In 1942 he was mobilised as a soldier in the Soviet army. In 1943 he was parachuted into what is now Belarus (then occupied by Germany), near the border with Latvia, where he joined a Soviet commando of "red partisans". According to the Latvian prosecuting authorities and courts, the applicant was in command of a group responsible for an attack on the village of Mazie Bati (Ludza district) on 27 May 1944 in the course of which nine civilians, including three women, were slaughtered.
In January 1998 the Latvian information centre on the consequences of totalitarianism opened a criminal investigation into the events of 27 May 1944. The centre found that the applicant could have committed the war crime covered by provisions of the former criminal code as amended by a law of 6 April 1993. Article 68-3 of the code stated that war crimes were punishable by life imprisonment or a prison sentence of three to fifteen years. Article 6-1 authorised the retroactive application of the law to war crimes and Article 45-1 stipulated that war crimes were not subject to statutory limitations.
In August 1998 the applicant was charged with war crimes. He was taken into custody in October. He appealed, but to no avail. He also pleaded not guilty. The Riga Regional Court found the applicant guilty of the crime covered by Article 68-3 and sentenced him to six years' imprisonment. It noted, in particular, that the applicant had been a member of the Soviet army and therefore a "combatant" within the meaning of the relevant instruments of international humanitarian law. It found that the applicant had committed deeds prohibited by the Charter of the Nuremberg International Military Tribunal, The Hague Convention of 1907 respecting the Laws and Customs of War on Land and the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War.
That judgment was set aside because certain questions remained unanswered, particularly whether Mazie Bati had actually been in "occupied territory" and whether the applicant and his victims could be qualified, respectively, as "combatants" or "non-combatants". The applicant was released. After the file had been sent back for further information the prosecutor's office once again charged the applicant under Article 68-3 of the Criminal Code. The Court acquitted the applicant of the war crime charges but found him guilty of banditry. It accepted that the deaths of six men in Mazie Bati could be regarded as necessary and justified for military reasons, but not the murder of the three women or the burning down of the buildings in the village. The applicant, as commander of the combat group, was responsible for the group's actions. However, banditry did not belong to the category of crimes which were not subject to statutory limitations.
In a judgment delivered in April 2004 the Criminal Division of the Supreme Court granted the prosecution's request and set the judgment aside. It found that attacking non-combatant civilians, killing them and stealing their weapons, with particular brutality, burning a pregnant villager alive and burning down buildings violated the laws and customs of war enshrined in the Hague Convention of 1907

respecting the Laws and Customs of War on Land, the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War and the 1977 first Protocol additional thereto relating to the Protection of Victims of International Armed Conflicts. The deeds at issue were qualified as war crimes within the meaning of the Charter of the Nuremberg International Military Tribunal and as grave breaches within the meaning of Article 147 of the Geneva Convention. The court affirmed that at the time of the crime the applicant was acting as a combatant and that the victims should be considered civilians under domestic and international law. The court found that the applicant had committed the offence criminalised by Article 68-3.
Noting that the applicant was old, infirm and not dangerous, the court sentenced him to one year and eight months' imprisonment. The applicant appealed on points of law, but to no avail.
In his application the applicant complained that criminal law had been applied to him retroactively. He alleged in particular that the acts on account of which he had been prosecuted had not been crimes under domestic or international law at the time when they had been committed. As to the exception provided for in Article 7 § 2, he argued that it did not apply in the instant case as the acts concerned were clearly outside its scope. He further submitted that the Hague and Geneva conventions applied only to "combatants" and that he had not been a combatant at the material time.
Admissible in respect of the complaint under Article 7.

Article 7 § 2

GENERAL PRINCIPLES OF LAW RECOGNISED BY CIVILISED NATIONS
Conviction of war crimes in relation to acts committed in 1944: *admissible*.

KONONOV - Latvia (N° 36376/04)
Decision 20.9.2007 [Section III]

(see above)

ARTICLE 8

PRIVATE AND FAMILY LIFE
Refusal to grant artificial insemination facilities to enable a serving prisoner to father a child: *violation*.

DICKSON - United Kingdom (N° 44362/04)
Judgment 4.12.2007 [GC]

Facts: The applicants are a married couple who met through a prison correspondence network while serving prison sentences. The husband was convicted of murder and is not scheduled for release before 2009. He has no children. His wife has completed her sentence and has three children from other relationships. The applicants requested artificial insemination facilities to enable them to have a child together, arguing that it would not otherwise be possible, given the husband's earliest release date (2009) and his wife's age (she was born in 1958). The Secretary of State refused their application, explaining that under his general policy requests for artificial insemination by prisoners could only be granted in "exceptional circumstances". The grounds given for refusal were that the applicants' relationship had never been tested in the normal environment of daily life, that insufficient provision had been made for the welfare of any child that might be conceived, that mother and child would have had only a limited support network and that the child's father would not be present for an important part of her or his childhood. It was also considered that there would be legitimate public concern that the punitive and deterrent elements of the first applicant's sentence were being circumvented if he were allowed to father a child by artificial insemination while in prison. The applicants appealed unsuccessfully.

Law: Article 8 was applicable in that the refusal of artificial insemination facilities concerned the applicants' private and family lives, which notion incorporated the right to respect for their decision to become genetic parents. Convention rights were retained on imprisonment, so that any restriction had to be justified, either on the grounds that it was a necessary and inevitable consequence of imprisonment or that there was an adequate link between the restriction and the prisoner's circumstances. A restriction could not be based solely on what would offend public opinion. The core issue was whether a fair balance had been struck between the competing public and private interests.

(a) *The conflicting interests* – As to the applicants' interests, it was accepted domestically that artificial insemination remained the applicants' only realistic hope of having a child together, given the wife's age and the husband's release date. It was evident that this was a matter of vital importance to them. Three justifications for the policy were cited by the Government, namely, that losing the opportunity to beget children was an inevitable and necessary consequence of imprisonment, that public confidence in the prison system would be undermined if prisoners guilty of serious offences were allowed to conceive children, and that the lengthy absence of a parent would have a negative impact on both the child and society as a whole. On the first point, the Court noted that while the inability to beget a child was a consequence of imprisonment, it was not an inevitable one as it had not been suggested that the grant of artificial insemination facilities would have involved any security issues or imposed any significant administrative or financial demands on the State. As to the question of public confidence in the prison system, while accepting that punishment remained one of the aims of imprisonment, the Court underlined the evolution in European penal policy towards the increasing relative importance of the rehabilitative aim of imprisonment, particularly towards the end of a long prison sentence. Lastly, although the State had obligations to ensure the effective protection of children, that could not go so far as to prevent parents from attempting to conceive in circumstances like those in the applicants' case, especially as the wife was at liberty and could have taken care of any child conceived until her husband was released.

(b) *Balancing the conflicting interests and the margin of appreciation* – This was an area in which the Contracting States could enjoy a wide margin of appreciation as, while the Court had expressed its approval for the evolution in several European countries towards conjugal visits, which could obviate the need for artificial insemination facilities, it had not yet interpreted the Convention as requiring Contracting States to make provision for such visits. Nevertheless, the policy as structured effectively excluded any real weighing of the competing individual and public interests and prevented the required assessment of the proportionality of a restriction in any individual case. In particular, it placed an inordinately high "exceptionality" burden on applicants for artificial insemination as they had to demonstrate both that the deprivation of artificial insemination facilities might prevent conception altogether and that the circumstances of their case were "exceptional" within the meaning of certain criteria. The policy thus set the threshold so high that it did not allow a balancing of the competing interests or an assessment of the proportionality of the restriction by the Secretary of State or the domestic courts. Nor did it appear that such a balancing exercise or assessment of proportionality had been carried out when the policy was originally fixed. The fact that only a few persons might be affected by it made no difference here. The absence of such an assessment had to be seen as falling outside any acceptable margin of appreciation so that a fair balance had not been struck between the competing public and private interests involved.
Conclusion: violation (twelve votes to five).

Article 41 – EUR 5,000 jointly in respect of non-pecuniary damage.

PRIVATE AND FAMILY LIFE
Failure by the applicants, against whom deportation orders had been made, to act upon respondent Government's proposals to regularise their immigration status: *striking out*.

CHEVANOVA - Latvia (N° 58822/00)
Judgment 7.12.2007 [GC]
KAFTAILOVA - Latvia (N° 59643/00)
Judgment 7.12.2007 [GC]

Facts: In both cases the applicants, who had been settled in Latvia for several years or decades, found themselves stateless following the break-up of the Soviet Union. The Latvian authorities refused to regularise their immigration status and took steps to have them expelled. According to the applicants, those steps infringed their right to respect for their private and family life.
In 1970 the applicant Nina *Shevanova*, a Soviet national, settled in Latvia for work-related reasons. In 1973 she married a Latvian national, with whom she had a son. The couple divorced in 1980. In 1981, having lost her Soviet passport, the applicant was given a new passport; she found the lost passport in 1989 but did not return it to the relevant authorities. In 1991 the Soviet Union, of which the applicant had been a national until then, ceased to exist as a State, and she accordingly became stateless. She was registered as a permanent resident in Latvia, while her son was granted "permanently resident non-citizen" status there. In 1994 a Latvian bridge-building firm offered the applicant work in the Caucasian regions of Russia bordering on Chechnya. In view of the difficulties caused by tighter supervision in these regions by the Russian authorities on account of the troubles in Chechnya, the firm advised her to obtain Russian citizenship and register officially as a resident in Russia before signing the employment contract. The applicant then had her first Soviet passport, the one she had found but not handed in to the authorities, stamped with a false certificate cancelling her registration as a resident in Latvia. She was registered in Russia at her brother's address and obtained Russian citizenship. She then applied for "permanently resident non-citizen" status in Latvia. The Latvian Interior Ministry's Nationality and Migration Department then discovered that the applicant had also registered as a resident in Russia and had completed certain formalities using the old passport which had been mislaid and found again. The Department decided in April 1998 to remove the applicant's name from the register of residents and issued an order for her deportation and prohibiting her from re-entering Latvia for five years.
All the applicant's attempts to have the deportation order reviewed and lifted were in vain. In February 2001 the applicant was arrested and placed in a detention centre for illegal immigrants with a view to her forcible expulsion. When she was hospitalised for acute hypertension, execution of the forcible expulsion decision and the expulsion order were suspended, and the applicant was released and continued to reside illegally in Latvia.
After the European Court of Human Rights declared her application admissible, the Latvian authorities offered, in February 2005, to regularise the applicant's situation and issue her with a permanent residence permit, and invited her to submit the requisite documents. However, by the date on which the Strasbourg Court delivered its judgment, the applicant had not supplied the necessary documents.
In 1982 the applicant Natella *Kaftailova*, a Soviet national then residing in Russia, married a Soviet civil servant employed by the USSR Ministry of the Interior. In 1984 the couple had a daughter and the family settled in Latvia.
In July 1988 the applicant's husband exchanged the accommodation he had previously been renting in Russia for the right to rent a State-owned flat in Riga, where he and his family moved in straight away. In March 1990 the applicant cancelled her formal registration of residence in Russia; the following month her husband registered her, without her knowledge or consent, as resident at the family's new address in Riga, and subsequently registered his own residence at that address. When she discovered this, the applicant had her name removed from the register in question. The couple divorced in October 1990. In 1991 the Soviet Union, the State of which the applicant had hitherto been a national, broke up. The applicant therefore became stateless.
In February 1993 the applicant was granted the right to rent the room obtained by her former husband in a "duty residence" in 1987, and requested the Interior Ministry's Nationality and Immigration Department to enter her name in the register of residents as a permanent resident of Latvia. In her request, however,

she gave the address at which her ex-husband had unlawfully registered her, rather than the address in Riga at which she then lived.
Initially, the Department granted her request. However, in July 1993 the Department cancelled the applicant's registration on the ground that the stamp in her passport was false. The registration stamp in fact proved to be authentic, but had been placed in the passport by the authorities in breach of the relevant regulations. In February 1994 the Department removed the applicant's name from the register of residents, cancelled her personal identification code and quashed the judgment that had given her the right to rent the room she was living in.
In January 1995 the Department served a deportation order on the applicant, ordering her to leave Latvia with her daughter, having discovered that on 1 July 1992, the decisive date laid down by law, the applicant had not had an officially registered permanent residence in Latvia. She ought therefore to have applied for a residence permit within one month of the date of entry into force, failing which she would be liable to be deported; the applicant, however, had omitted to do this. All the applicant's attempts to have her situation regularised were to no avail.
After the European Court of Human Rights declared her application admissible, the Latvian authorities offered, in January 2005, to regularise the applicant's situation and issue her with a permanent residence permit, and invited her to submit the requisite documents. However, by the date on which the Strasbourg Court delivered its judgment, the applicant had not supplied the necessary documents.

Law: *Procedure* – In Chamber judgments the Court had found a violation of Article 8. The cases were referred to the Grand Chamber, in conformity with Article 43 of the Convention, at the request of the Latvian Government.

Merits – The Court noted that neither of the applicants faced any real and imminent risk of being deported, as the expulsion decisions against them were no longer enforceable. Furthermore, the authorities had offered both applicants an opportunity to regularise their situation, in a letter sent to them in 2005 explaining the procedure they should follow. If they took the necessary steps the applicants could remain in Latvia legally and permanently, living normal social lives and enjoying a normal relationship with their respective children in accordance with Article 8 of the Convention.
In spite of that express invitation from the Latvian authorities, the applicants had not yet followed the recommended procedure or made any attempt, however small, to contact the authorities and seek a solution in the event of difficulties. That being so, the Court noted that the situation the applicants complained of had ceased to exist.
It was true that, particularly after their final appeals on points of law against the expulsion orders were dismissed, the applicants had experienced a long period of insecurity and legal uncertainty in Latvia. In Mrs Kaftailova's case, however, the authorities had made no attempt to enforce the expulsion order, so she had been able to remain in Latvia the whole time. Mrs Shevanova, on the other hand, had carried out certain fraudulent formalities with the aid of her two passports. As a Russian citizen she could have regularised her stay in Latvia by applying for a residence permit, but had not done so. On the contrary, instead of taking that legal course she had decided to adopt a manifestly fraudulent attitude. That being so, the hardship she complained of was largely the result of her own conduct.
Consequently, the Court considered that the regularisation arrangements proposed to the applicants by the Latvian authorities constituted an adequate and sufficient remedy for their complaints under Article 8 of the Convention.
The matters giving rise to this complaint could therefore now be considered to be "resolved" within the meaning of Article 37 § 1 (b). As no particular reason relating to respect for human rights as defined in the Convention required the Court to continue its examination of the applications, the Court decided to strike them out of its list of cases.

PRIVATE LIFE
Inability to bring a paternity suit as a result of an absolute time-bar that operated despite the applicant's lack of knowledge of the relevant facts: *violation*.

PHINIKARIDOU - Cyprus (N° 23890/02)
Judgment 20.12.2007 [Section I]

Facts: In 1991 the Government introduced legislation (the Children (Relatives and Legal Status) Law) enabling children born out of wedlock to seek judicial recognition of their paternity. The limitation period for an application by the child under the Act was three years from the date the child attained its majority or, in the case of children who had already attained their majority, three years from the date the Act entered into force. The applicant, who was already an adult when the Act came into force, did not learn the identity of her biological father until December 1997. In June 1999 she lodged an application with the family court for judicial recognition of paternity. However, this was dismissed on the grounds that the limitation period applicable in her case had expired on 1 November 1994, three years after the Act had entered into force. Her appeal to the Supreme Court was dismissed. The applicant complained that the statutory three-year limitation period had prevented her from instituting proceedings.

Law: The Court's task was to determine whether the respondent State had complied with its positive obligations in its handling of the applicant's action for judicial recognition of paternity. A limitation period *per se* was not incompatible with the Convention and in paternity suits could be justified by the desire to ensure legal certainty and finality in family relations. The issue was thus whether the nature of the time-limit and/or the manner in which it was applied was compatible with the Convention and whether a fair balance had been struck between the competing rights and interests. Among the relevant factors to be taken into consideration here were the existence of alternative means of redress or of an exception in cases where knowledge of the biological reality had been acquired only after the time-limit had expired. The yardstick against which these factors were measured was whether a legal presumption had been allowed to prevail over biological and social reality and whether that was compatible with the obligation to secure effective respect for private and family life. Although there was no uniform approach in the legislation of the Contracting States, a significant number did not set a limitation period for children to bring a paternity suit (in contrast with the position where the claimant was the father) and a tendency could be discerned towards greater protection of the right of the child to have its paternal affiliation established.
The Court had difficulty in accepting inflexible limitation periods that applied irrespective of the child's awareness of the relevant facts and considered that a distinction had to be made between cases in which the child had had no opportunity to find out the facts and those in which it had refrained from instituting proceedings within the statutory time-limit for other reasons. In the instant case, it was clear from the Supreme Court's judgment that the general interest and the competing rights and interests of the presumed father and his family had been accorded greater weight than the applicant's right to find out her origins. Even having regard to the State's margin of appreciation, the application of a rigid time-limit for the exercise of paternity proceedings, regardless of the circumstances of the individual case and in particular, the child's knowledge of the facts concerning paternity, had impaired the very essence of the applicant's right to respect for her private life.
Conclusion: violation (unanimously).

Article 41 – EUR 6,000 in respect of non-pecuniary damage.

PRIVATE AND FAMILY LIFE
Lack of procedural safeguards in deportation proceedings: *violation*.

LIU AND LIU - Russia (N° 42086/05)
Judgment 6.12.2007 [Section I]

Facts: The first applicant – a Chinese national – and the second applicant – a Russian national – have been married since 1994 and have two children. The second applicant and the two children have lived in Russia all their lives. The first applicant lived legally in Russia until August 2003 on the basis of renewable work permits. In November 2002 he applied for a residence permit, but his application was eventually rejected without any reasons being given. The applicants appealed unsuccessfully to the Russian courts. In November 2004 the competent district court found that, on the basis of certain classified information, the first applicant posed a national security risk. However, that information was a State secret and could not be made public, nor was there any indication in the judgment that the district court had ever had access to the classified information in question. In March 2005 a new application for a residence permit was rejected by the Department of Internal Affairs. The applicants' attempts to have that decision overturned failed. On several occasions between 2003 and 2005 the first applicant was administratively fined for living in Russia without a valid residence permit. However, the domestic courts reversed most of those decisions, finding them procedurally defective or time-barred. In November 2005 the competent court held that the first applicant had infringed the residence regulations and ordered his detention pending deportation. On the same day he was placed in a detention centre and was released on 13 December 2005, when the decision to detain him was quashed owing to a lack of reasoning. The administrative proceedings against him were eventually discontinued as being time-barred. In November 2005 the head of the Federal Migration Service ordered the first applicant's deportation under the Law on the Procedure for Entering and Leaving the Russian Federation. No further reasons were provided. In December 2006 the court ordered his placement in a detention centre with a view to deporting him. The deportation order appears not to have been enforced and the first applicant apparently continued to live with his family in Russia.

Law: Article 8 – The applicants' relationship clearly amounted to family life and the refusal to grant the first applicant a residence permit and to order his deportation constituted an interference with the right to respect for their family life which had a basis in domestic law. However, the domestic courts were not in a position to assess effectively whether the decisions to reject the first applicant's request for a residence permit were justified because they were based on classified information. Even though the use of confidential material might be unavoidable where national security was at stake, it did not mean that the national authorities could be free from effective control by the domestic courts whenever they chose to assert that national security and terrorism were involved. There were ways to deal with legitimate security concerns about the nature and sources of intelligence information while providing the individual with a substantial measure of procedural justice. The failure to disclose the relevant information to the courts had deprived them of the power to assess whether the conclusion that the first applicant constituted a danger to national security had a reasonable basis in the facts. It followed that the judicial scrutiny was limited in scope and did not provide sufficient safeguards against arbitrary exercise of the wide discretion conferred by domestic law on the Ministry of Internal Affairs in cases involving national security.
The relevant provisions of the Foreign Nationals Act allowed the Ministry of Internal Affairs to refuse residence permits and to require a foreign national to leave the country on national security grounds without giving any reasons and without effective scrutiny by an independent authority. The decisions ordering the first applicant's detention had been taken by the Federal Migration Service on the initiative of a local police department. Both agencies were part of the executive and took such decisions without hearing the foreign national concerned. It was not clear whether there was a possibility of appealing against those decisions to a court or other independent authority offering guarantees of an adversarial procedure and being competent to review the reasons for the decisions and relevant evidence. Furthermore, the Administrative Offences Code provided for a different procedure for the removal of foreign nationals unlawfully residing in Russia, with substantial procedural safeguards. In particular, the power to order administrative removal belonged exclusively to a judge and the order was subject to appeal to a higher court. It followed that Russian law established two parallel procedures for expulsion of foreign

nationals whose residence in Russia had become unlawful. In one of those procedures deportation of a foreign national could be ordered by the executive without any form of independent review or adversarial proceedings, while the other procedure (administrative removal) provided for judicial scrutiny. Domestic law permitted the executive to choose between those procedures at their discretion. The enjoyment of procedural safeguards by a foreign national was therefore in the hands of the executive. The Court concluded that the first applicant's deportation had been ordered on the basis of legal provisions that did not afford an adequate degree of protection against arbitrary interference.
Conclusion: violation, if the deportation order were to be enforced (unanimously).

Article 5 § 1 – The Court considered whether the detention order of 21 November 2005 had constituted a lawful basis for the first applicant's detention until it was quashed in December 2005 on account of the court's failure to give reasons justifying the need to hold him in custody. It considered that that flaw did not amount to a "gross or obvious irregularity". The town court had not acted in bad faith and had attempted to apply the relevant legislation correctly. The fact that certain flaws in the procedure had been found on appeal did not in itself mean that the detention was unlawful.
Conclusion: no violation (unanimously).

Article 41 – EUR 6,000 in respect of non-pecuniary damage.

FAMILY LIFE
Return of a child to its father in the United States under the Hague Convention on the Civil Aspects of International Child Abduction: *no violation*.

MAUMOUSSEAU and WASHINGTON - France (N° 39388/05)
Judgment 6.12.2007 [Section III]

Facts: The applicants are Sophie Maumousseau, a French national living in France, and her daughter Charlotte Washington, who was born in the United States and has dual French and American nationality. Charlotte lives with her father in the United States. The application concerns the return of Charlotte, then aged four, to the United States further to an order by the French courts in December 2004 based on the Hague Convention and a decision by a US court granting custody of the girl to her father. The child, whose habitual residence had been in the USA, had arrived in France in March 2003 for a holiday with her mother, who had then decided not to return to the USA but to remain with her daughter in France.
In May 2000 Ms Maumousseau married David Washington, a national of the United States. Their daughter Charlotte was born in August 2000. The couple's marriage subsequently went through a very troubled period. In March 2003, with her husband's consent, Ms Maumousseau took Charlotte on holiday to France, to stay with her parents. She later refused to return with her daughter to the USA, despite repeated requests from her husband. In September 2003 a US Court granted interim custody of Charlotte to her father, at his main place of residence, and ordered Ms Maumousseau to return the child immediately. Charlotte's father then applied to the US Central Authority, which submitted a request to the French authorities, under the 1980 Hague Convention on the Civil Aspects of International Child Abduction, to secure Charlotte's return to the United States.
As Ms Maumousseau refused to return her child, the French prosecution service brought proceedings against her. At first instance the French courts took the view that it was not appropriate to order Charlotte's return to the United States on account of a grave risk that she would be placed in an "intolerable situation", within the meaning of the Hague Convention of 1980. Meanwhile the US court awarded the father sole custody of the child and ordered her return. In May 2004 the French Court of Appeal ordered that Charlotte be returned immediately to her place of habitual residence in the United States on the ground that it had not been shown that there was a grave risk that Charlotte's return would expose her to physical or psychological harm or place her in an intolerable situation. The Court of Cassation, reversing its previous case-law, upheld that judgment in June 2005.
In July 2004 Ms Maumousseau was informed that she would be guilty of a criminal offence if she kept her daughter in the current situation, but she reiterated her refusal to comply with the judgment ordering Charlotte's return to the United States. In late September 2004 a public prosecutor, assisted by four police

officers, entered Charlotte's nursery school seeking to enforce the judgment. Ms Maumousseau, her parents and staff from the school physically resisted the police intervention by forming a protective barrier around the child, with the help of some villagers. Faced with this resistance, in the course of which blows and insults were apparently exchanged, the public prosecutor provisionally discontinued enforcement of the decision.
Ms Maumousseau applied to the children's judge, who ordered Charlotte's placement in care, with rights of contact for both parents, then the Court of Appeal ordered that Charlotte be returned to her father, in conformity with the US court decisions and the judgment of May 2004 based on the Hague Convention. The following day, on 4 December 2004, the girl left France for the United States.
In February 2006 the US court allowed Charlotte's father's application for a restriction on Ms Maumousseau's access rights (under supervision, after handing over her passport and depositing a security of 25,000 US dollars). In April 2007 the French court granted a divorce and ordered that Charlotte was to live with her mother, her father being allowed access.
In her application Ms Maumousseau submitted that her four-year-old daughter's return to the United States had been contrary to her interests and had placed her in an intolerable situation in view of her very young age. She further alleged that the police intervention at Charlotte's nursery school in September 2004 would leave her daughter with significant psychological after-effects. In addition, she argued that she had been deprived of her right of access to a court with full jurisdiction, both the Court of Cassation and the Court of Appeal having agreed that the court asked to consider a request for a return on the basis of the Hague Convention had no authority to examine the situation as a whole in order to determine whether the return was in the child's best interest. She relied, *inter alia*, on Articles 8 and 6 § 1.

Law: Article 8 – *Reasons for the decision ordering Charlotte's return to the United States*: The main issue for the Court to determine was whether, in ordering Charlotte's return to the United States, the French courts had maintained a fair balance between the conflicting interests in the case – those of the child, her two parents and public policy.
The Court could not accept the mother's argument that a court asked to consider a request for a return on the basis of the Hague Convention had no authority to examine the situation as a whole in order to determine whether the return was in the child's best interests.
The Court failed to see why the domestic courts' interpretation of Article 13 (b) of the Hague Convention should be necessarily incompatible with the notion of the "best interests of the child" embodied in the New York Convention on the Rights of the Child. It considered it preferable that the notion of "best interests" should always be interpreted in a consistent manner, no matter which international convention was being referred to.
The French courts had taken into account Charlotte's "best interests", understood as her immediate reintegration into the environment she was familiar with. In particular, they had carefully examined the family situation as a whole, studied a number of different factors, conducted a balanced and reasonable assessment of the respective interests and constantly endeavoured to ascertain what was the best solution for Charlotte.
There was no cause to consider that the decision-making process that led the French courts to order Charlotte's return to the United States had been unfair or had not permitted the applicants to assert their rights effectively. The Court held that the fact that the domestic courts had not heard a four-year-old child in the instant case did not amount to a violation of Article 8.

Conditions of enforcement of the return order (police intervention at the school): Since the judgment ordering Charlotte's return the child had become untraceable, as her mother had hidden her whereabouts from the authorities to evade execution of the decision. That showed Ms Maumousseau's total lack of cooperation with the French authorities. The circumstances of the police intervention at Charlotte's nursery school were therefore the result of her mother's constant refusal to hand the child over to her father voluntarily, despite a court order which had been enforceable for more than six months. Although intervention by the police was not the most appropriate way of dealing with such situations and might have traumatic effects, it had taken place under the authority and in the presence of the public prosecutor, a professional State legal officer invested with a high level of decision-making responsibility under whose orders the accompanying officers were placed. Furthermore, faced with the resistance of the people who

had taken the applicants' side in the dispute, the authorities had not persisted in trying to take the child away.
Conclusion: no violation (five votes to two).

Article 6 § 1 – The French authorities were required to give their assistance to ensure Charlotte's return to the United States in view of the object and purpose of the Hague Convention, unless there were objective reasons to believe that the child, and possibly her mother, might be the victims of "a flagrant denial of justice" there. The alleged risk that Ms Maumousseau would not be allowed to enter United States territory to present her case was purely hypothetical. She could have applied to the competent American court and had, indeed, been expressly invited to do so, and the American court which had given the father sole custody of the child and ordered her return had reserved the possibility of reviewing its decision at the request of either party. So at the time when the child's return was ordered, then enforced, or when the Court of Cassation dismissed the appeal, the French courts had no reason to believe that the mother or child were likely to be the victims of "a flagrant denial of justice". Subsequent to the child's return, the French Central Authority for the purposes of the Hague Convention had remained alert to the applicants' situation, in keeping with its obligations under that Convention. The French Central Authority had made an unsuccessful attempt to mediate with the child's father, but was prepared to try again by putting Ms Maumousseau's case to its American counterpart.
Conclusion: no violation (unanimously).

FAMILY LIFE
Remand prisoner prevented from bidding farewell to his dying father on the telephone in any meaningful way: *violation*.

LIND - Russia (N° 25664/05)
Judgment 6.12.2007 [Section I]

Facts: In December 2004 the applicant, a Russian and Dutch national, was charged with the attempted violent overthrow of State power and placed in detention on remand. In September 2005 he unsuccessfully applied for temporary release so that he could see his father in The Hague. The latter was dying of cancer and had asked for euthanasia, which was scheduled for the end of the month. The applicant was allowed to talk to his father on the telephone in Russian only. The Dutch Embassy paid for the call. His request for release with a view to attending a farewell ceremony was also rejected on the grounds of the gravity of the charge and the rarity of his contacts with his father. In December 2005 the applicant was convicted of participation in mass disorders and sentenced to suspended imprisonment.

Law: Article 3 – By keeping the applicant in overcrowded cells and by refusing him medical assistance appropriate to his chronic kidney condition, the domestic authorities had subjected him to inhuman and degrading treatment.
Conclusion: violation (unanimously).

Article 5 § 3 – The applicant's detention on remand had lasted for almost twelve months. While rejecting his applications for release the courts had relied, *inter alia*, on his Dutch nationality as a reason to believe that he might abscond. The applicant, on the other hand, had constantly referred to his close ties with Russia, such as his Russian nationality, his permanent place of residence and family in Russia and ongoing studies at a Russian university. The domestic authorities had not explained why the withdrawal of his Russian travel passport, a measure explicitly envisaged in domestic law for removing flight risks, would not have been sufficient to prevent him from absconding abroad. By relying essentially on the gravity of the charges and by failing to address the underlying facts or to consider alternative "preventive measures", the authorities had prolonged the applicant's detention on grounds which, although "relevant", could not be regarded as "sufficient".
Conclusion: violation (unanimously).

Article 8 – The refusals to release the applicant so that he could see his father on his deathbed and attend the farewell ceremony for him had interfered with the applicant's rights under Article 8 of the Convention. The distinguishing feature of the case was that the date of the applicant's father's death was known in advance and that it was known that he would die within a matter of days. It was therefore the last opportunity for the applicant to meet his father. Given his father's grave condition, it was unrealistic to expect him to travel abroad. Taking into account the exceptional circumstances of the case and the strong humanitarian considerations involved, the domestic authorities should have examined the applicant's request for release with particular attention and scrutiny. The Court understood the authorities' apprehension that the applicant, who would have had to travel to the Netherlands to see his father, might not return. Despite the fact that the Dutch Ambassador had contacted them several times to request his release, the Russian authorities had not considered seeking assistance from their Dutch counterparts. Nevertheless, given that the domestic authorities were better placed than the European Court to assess the matter, the Court was unable to find that, in refusing to release the applicant, they had exceeded their margin of appreciation. Respect for his family life required that he be offered another way of saying goodbye to his dying father. However, a one-minute conversation in a language his father had difficulty understanding had not allowed the applicant to do that in a meaningful way. The Government had not explained why his phone conversation had been so quickly interrupted by the administration of the detention facility. No other possibility of contacting his father had been offered. The domestic authorities had therefore failed to secure respect for the applicant's family life.
Conclusion: violation (unanimously).

Article 41 – EUR 15,000 in respect of non-pecuniary damage.

FAMILY LIFE
Effects of adoption of an adult by the mother's partner: *violation*.

EMONET and Others - Switzerland (N° 39051/03)
Judgment 13.12.2007 [Section I]

Facts: The application was lodged by Isabelle Emonet, her mother Mariannick Faucherre and the mother's partner Roland Emonet, all Swiss nationals.
Mariannick Faucherre and Isabelle Emonet's father divorced in 1985 and the father died in 1994. Since 1986 Mariannick Faucherre has been living with Roland Emonet, who is divorced and has no children. The three applicants lived together between 1986 and 1992. In March 2000 a serious illness left Isabelle Emonet paraplegic. She kept her own home, but needed to be cared for by her mother and Roland Emonet, whom she regards as her father. The three applicants agreed that Roland Emonet should adopt Isabelle Emonet so that they could become a real family in the eyes of the law. In March 2001 the Court of Justice of the Canton of Geneva made the adoption order. However, the cantonal civil status authority informed Mariannick Faucherre that the adoption effectively terminated her legal mother-daughter relationship with Isabelle Emonet, who would take on her adoptive father's surname, as she was henceforth his daughter. The first two applicants objected to the termination of the mother-daughter relationship between them and requested that it be restored. The cantonal authority stood by its decision, referring to Article 267 paragraph 2 of the Swiss Civil Code, according to which previously existing parental ties were severed on adoption, except in respect of the spouse of the adoptive parent; Mariannick Faucherre and Roland Emonet, however, were simply cohabiting. The administrative authorities formally rejected the request for restoration of the parental tie. The applicants applied to the administrative courts to have that decision quashed and instituted parallel proceedings to have the adoption order set aside. The latter proceedings were suspended pending the outcome of the application in Strasbourg. The administrative court quashed the administrative decisions severing the mother-daughter relationship and ordered the cantonal civil status authority to restore that relationship. However, on an appeal from the Federal Office of Justice, the Federal Court requested the cantonal civil status authority to enter the adoption in the civil status register.

Law: Article 8 – The severing of the legal mother-daughter relationship between Isabelle Emonet and her mother as a result of the adoption constituted an interference with the applicants' right to respect for their family life, and that interference was "in accordance with the law". Whether or not severing the existing parental tie was likely to serve the interests of the adopted daughter's welfare in a practical, effective manner was closely linked here to the question whether the impugned measure was "necessary in a democratic society".

The reasoning that adoption severed existing parental ties between the person adopted and his or her natural parent was valid for minors and was indeed the solution adopted by a large majority of the Council of Europe's member States for this type of adoption. The Court did not consider, however, that the same reasoning could be applied to the particular circumstances of the present case, which concerned an adult with a serious disability, to whose adoption all the interested parties had given their free and informed consent. Although Isabelle Emonet was an adult, she needed care and affection. The other two applicants, who provided that care and affection, had intended the adoption to make their *de facto* family a family in the eyes of the law. That being so, the Court considered that this was a situation involving "the existence of additional factors of dependence other than normal ties of affection" which exceptionally brought into play the guarantees afforded by Article 8 between adults

With regard to the Swiss Government's argument that the two older applicants could have avoided this loss of the parental tie by marrying each other, the Court considered that it was not for the national authorities to take the place of those concerned in reaching a decision as to the form of communal life they wished to adopt. It pointed out that the concept of "family" under Article 8 was not confined to marriage-based relationships and could encompass other "family" ties. In the instant case, as the Court found that a "family" life existed, it was the duty of the national authorities to act in such a manner as to allow that family tie to develop.

The 1967 European Convention on the Adoption of Children provided that the rights and obligations existing between adopted persons and their fathers or mothers should cease to exist on adoption. However, the Court noted that only 18 member States of the Council of Europe had ratified that Convention, and that under the draft revised Convention legal provision could be made for there to be no loss of the original parental ties in the event of adoption by the spouse or registered partner of the child's parent. In the Court's opinion, that indicated a growing recognition in the Council of Europe's member States for adoptions such as that at the origin of the case.

Moreover, the Court considered that the applicants, who had been represented by counsel before the domestic courts, could not be criticised for not realising how far-reaching the consequences of their adoption request would be, resulting as they did in a severing of the parental relationship between the mother and daughter. In those circumstances "respect" for the applicants' family life would have required both the biological and the social realities to be taken into account, in order to avoid the blindly automatic application of legal provisions to the applicants' very particular situation, which had clearly not been foreseen in the law. That failure to take the realities into account had flown in the face of the wishes of the individuals concerned, without actually benefiting anyone.

Conclusion: violation (unanimously).

Article 12 – As to the right to "found a family", Article 12 could not be considered to give the applicants, as an unmarried couple, any right to adopt which was not provided for by law: *inadmissible*.

Article 41 – The applicants would be able, based on a new law which entered into force on 1 January 2007, to submit a request for revision of the impugned judgment of the Federal Court and seek to have the relationship between the mother and daughter restored, without that severing the parental tie between the adoptive father and daughter, which had been protected by Article 8 since the Federal Court endorsed the adoption. In spite of that possibility, however, the Court considered that the applicants had suffered frustrations from the time when they were informed of the impugned measure. It accordingly awarded them jointly EUR 5,000 in respect of non-pecuniary damage.

EXPULSION
Lack of procedural safeguards in deportation proceedings: *violation*.

LIU AND LIU - Russia (N° 42086/05)
Judgment 6.12.2007 [Section I]

(see "Private and family life" above).

ARTICLE 9

FREEDOM OF RELIGION
MANIFEST RELIGION OR BELIEF
Refusal of a work permit to enable a foreign national to work as an imam at a mosque: *striking out*.

EL MAJJAOUI AND STICHTUNG TOUBA MOSKEE - Netherlands (N° 25525/03)
Judgment 20.12.2007 [GC]

(see Article 37 below).

ARTICLE 10

FREEDOM OF EXPRESSION
Conviction of a journalist for the publication of a diplomatic document on strategy classified as confidential: *no violation*.

STOLL - Switzerland (N° 69698/01)
Judgment 10.12.2007 [GC]

Facts: The case relates to the sentencing of the applicant, a journalist by profession, to payment of a fine for having disclosed in the press a confidential report by the Swiss ambassador to the United States concerning the strategy to be adopted by the Swiss Government in negotiations between, among others, the World Jewish Congress and Swiss banks on the subject of compensation due to Holocaust victims for unclaimed assets deposited in Swiss bank accounts.
In December 1996 the Swiss ambassador to the United States drew up a "strategy paper", classified as "confidential", in the context of the negotiations in question. The paper was sent to the official dealing with the matter in the Federal Department of Foreign Affairs in Berne. Copies were sent to nineteen other individuals in the Swiss Government and the federal authorities and to Swiss diplomatic missions abroad. The applicant obtained a copy, probably as the result of a breach of official secrecy by a person whose identity remains unknown.
A Zurich Sunday newspaper published, among other things, two articles by the applicant entitled "Ambassador Jagmetti insults the Jews" and "The ambassador in bathrobe and climbing boots puts his foot in it". The following day a Zurich daily newspaper printed extensive extracts from the strategy paper; subsequently, another newspaper also published extracts.
The court ordered the applicant to pay a fine of 800 Swiss francs (approximately 476 euros) for having published "secret official deliberations" within the meaning of Article 293 of the Criminal Code. The applicant's appeals were dismissed at final instance by the Federal Court.
The Swiss Press Council, while accepting that publication had been legitimate on account in particular of the importance at the time of the public debate concerning the assets of Holocaust victims, took the view that the applicant had, in irresponsible fashion, made the ambassador's remarks appear shocking and scandalous by printing the strategy paper in truncated form and failing to make the timing of the events sufficiently clear. The Press Council added that the other newspapers, by contrast, had placed the affair in its proper context by publishing the strategy paper in its near-entirety.

Law: *Procedure* – In its Chamber judgment the Court held, by four votes to three, that there had been a violation of Article 10. At the request of the Swiss Government the case was referred to the Grand Chamber in accordance with Article 43 of the Convention.

Merits – The applicant's conviction amounted to "interference" with the exercise of his freedom of expression. The interference had been provided for by the Swiss Criminal Code and had pursued the legitimate aim of preventing the "disclosure of information received in confidence". The Grand Chamber emphasised that, in the light of paragraph 3 of Article 33 of the 1969 Vienna Convention on the Law of Treaties, and in the absence of any indication to the contrary in the drafting history of Article 10, it was appropriate to adopt an interpretation of the phrase "preventing the disclosure of information received in confidence", within the meaning of Article 10 § 2, that encompassed confidential information disclosed either by a person subject to a duty of confidence or by a third party and in particular, as in the present case, by a journalist.
The main issue to be determined was whether the interference in question had been "necessary in a democratic society". In that regard the Grand Chamber confirmed at the outset that Article 10 was applicable to the dissemination by journalists of confidential or secret information.
The issue of unclaimed assets not only involved substantial financial interests, but also had a significant moral dimension which meant that it was of interest even to the wider international community. Consequently, in assessing whether the measure taken by the Swiss authorities had been necessary, the Court took account of the need to weigh up the two public interests involved: the interest of readers in being informed on a topical issue and the interest of the authorities in ensuring a positive and satisfactory outcome to the diplomatic negotiations being conducted.
Although the impugned articles had concentrated almost exclusively on the ambassador's personality and personal style, they had been capable of contributing to the public debate on the issue of unclaimed assets, which was the subject of lively discussion in Switzerland at that time. The public had therefore had an interest in publication of the articles.
As to the interests which the Swiss authorities had sought to protect, it was vital to diplomatic services and the smooth functioning of international relations for diplomats to be able to exchange confidential or secret information. However, the confidentiality of diplomatic reports could not be preserved at any price; in weighing the interests at stake against each other, the content of the report and the potential threat posed by its publication were the important factors. In the present case the disclosure of passages from the ambassador's report at that point in time had been liable to have negative repercussions on the smooth progress of the negotiations in which Switzerland was engaged, on account not just of the content of the ambassador's remarks but also of the way in which he had expressed himself. The disclosure – albeit partial – of the content of the ambassador's report had been capable of undermining the climate of discretion necessary to the successful conduct of diplomatic relations in general and of having negative repercussions on the negotiations being conducted by Switzerland in particular. Hence, given that they had been published at a particularly delicate juncture, the articles written by the applicant had been liable to cause considerable damage to the interests of the Swiss authorities.
As to the applicant's conduct, he could not, as a journalist, have been unaware that disclosure of the report was punishable under the Criminal Code. The question whether the form of the articles had complied with the rules of journalistic ethics carried greater weight. The content of the articles had been clearly reductive and truncated and the language used had tended to suggest that the ambassador's remarks were anti-Semitic. The applicant had, in capricious fashion, started a rumour which had undoubtedly contributed to the ambassador's resignation and which related directly to one of the very phenomena at the root of the issue of unclaimed assets, namely the atrocities committed against the Jewish community during the Second World War. The Court reiterated the need to deal firmly with allegations and/or insinuations of that nature. Furthermore, the way in which the articles had been edited, with sensationalist headings, seemed unfitting for a subject as important and serious as that of the unclaimed funds. Lastly, the applicant's articles had also been imprecise and liable to mislead the reader.
In the circumstances, and in view of the fact that one of the articles had been placed on the first page of a Swiss Sunday newspaper with a large circulation, the Court shared the opinion of the Swiss Government and the Press Council that the applicant's chief intention had not been to inform the public on a topic of general interest but to make the ambassador's report the subject of needless scandal. The truncated and

reductive form of the articles in question, which had been liable to mislead the reader as to the ambassador's personality and abilities, had considerably detracted from the importance of their contribution to the public debate protected by Article 10. Finally, the Court considered that the fine imposed on the applicant had not been disproportionate to the aim pursued.
Conclusion: no violation (by twelve votes to five).

FREEDOM OF EXPRESSION
Conviction of a lawyer for triggering a press campaign about a *sub judice* case by making statements and trial documents available: *violation.*

FOGLIA - Switzerland (N° 35865/04)
Judgment 13.12.2007 [Section I]

Facts: When HJ died it emerged that he had misappropriated large sums of money and deposited them in accounts in a bank. The Public Prosecutor's Office opened a criminal investigation. The applicant, a lawyer, represented several victims and clients of the bank. The Public Prosecutor's Office discontinued the proceedings for lack of evidence. It then published a press release stating that the investigation had revealed that HJ had misappropriated money on several occasions. An appeal lodged by the applicant against the decision to discontinue the proceedings was dismissed by the Court of Appeal. The applicant then brought criminal proceedings against the employees, managers and organs of the bank but no investigation was opened and that position was upheld by the Federal Court. HJ's death and the investigations into his actions gave rise to considerable media coverage, including the publication of several interviews with the applicant in which he expressed his conviction that the employees of the bank concerned could not have been unaware of the fraudulent conversion, and described the investigation by the Public Prosecutor's Office as superficial and hasty. The bank and three of its managers took court action against the applicant for damages and for the protection of personality rights, alleging that he had triggered a media campaign against them by disseminating information aimed at tarnishing their reputation. They eventually abandoned the case. Then the bank reported the applicant to the Bar Association's disciplinary board, for failure to comply with the duty of diligence in practising his profession and for using methods not authorised by law. The board found against him and ordered him to pay a fine of CHF 1,500 (about EUR 1,024 at the time). That decision was upheld by the Court of Appeal and the Federal Court dismissed an appeal lodged by the applicant, pointing out that a lawyer should always, in any public statement, show moderation of tone and be objective in stating his arguments. It found that it had been because of the applicant's statements that the press had started to show interest in the allegations of fraudulent conversion. The applicant had actively encouraged the publication of his own version of events in the press, when there was no evidence to substantiate his public statements. He had placed undue pressure on the courts, in view of the foreseeable widespread dissemination and repetition of his declarations. The Federal Court considered that he had not been justified in making public details of the proceedings under way. Moreover, he had failed to ensure that the media used them discreetly and with restraint and did not exaggerate his assertions. The court found that the applicant's declarations, taken separately, had been neither exaggerated nor disrespectful. However, they had to be taken as a whole, considering the effect they had had, and the applicant had failed to show the necessary restraint in the circumstances. The court found that the role played by the applicant vis-à-vis the press had exceeded the limits of what was necessary for the defence of his clients. His declarations could not be said to have been necessary. Accordingly, he had failed to comply with the duty of diligence in practising his profession. The general interest in guaranteeing the proper administration of justice, confidence in the judicial system and upholding the dignity of the legal profession took precedence over the applicant's freedom of expression and press freedom. The applicant brought civil proceedings against the bank on behalf of his clients and those proceedings are still pending before the domestic courts.

Law: The applicant's conviction amounted to an interference with his right to freedom of expression and was prescribed by law. That interference had pursued a legitimate aim, namely to guarantee the authority and impartiality of the judiciary. The applicant had been convicted for making public statements which were allegedly unjustified in the light of the applicable domestic legal provisions and case-law. However,

the applicant's conduct had been set in a context of undeniably intense media interest, even well before the interviews he had given. Furthermore, the Court failed to see how a lawyer could be held liable for statements made to the press by his client. The statements the applicant himself had made to the press, subsequent to those made by his client, had concerned the reasons for his clients' dissatisfaction and the grounds on which the appeal had been lodged, including the excessive haste and superficiality of the investigation. Those statements, made after the appeal had been lodged, contained reproaches that were not directed against the personal or professional qualities of the prosecuting authorities, but only how they had performed their duties in the case in which the applicant's clients were civil parties. It followed that those statements could not be classified as serious or insulting in respect of the prosecuting authorities or likely to undermine public confidence in justice. The domestic courts had not substantiated the allegation that the applicant had made documents from the proceedings available to the press. The Federal Court had simply accused him of not having ensured that the media used the documents in a discreet and restrained manner. The applicant could not be held accountable for the conduct of the media. Furthermore, the information had been disclosed in a context of considerable media interest and was arguably in the interest of the public's right to receive information on the activities of the judicial authorities. Also, as the press had used the applicant's statements in articles published after he had given the interviews, he could not be held responsible. The applicant had thus not been responsible for a press campaign and a media trial in parallel with the judicial proceedings, to influence the courts in charge of the case. In addition, the statements he had made were neither excessive nor offensive and had not impinged unduly on the interests of the bank and its managers. That was confirmed by the fact that no complaint for defamation had been lodged against the applicant and the action for the protection of personality rights had been withdrawn. Furthermore, no complaint had been lodged against him by the prosecuting authorities or any other parties involved in the investigation. Lastly, while the fine imposed on the applicant had been quite a modest one, it nevertheless had a symbolic value. There had therefore been no pressing social need to restrict the applicant's freedom of expression and the Swiss authorities had not given relevant and sufficient reasons to justify it. The interference could therefore not be considered necessary in a democratic society.
Conclusion: violation (unanimously).

Article 41 – EUR 1,024 in respect of pecuniary damage.

FREEDOM OF EXPRESSION
Orders dissolving political parties on the grounds that they were the political arm of a terrorist organisation and banning candidates or political groups from standing for election: *admissible*.

HERRI BATASUNA and BATASUNA - Spain (N^{os} 25803/04, 25817/04)
Decision 11.12.2007 [Section V]

The Spanish Parliament passed organic law 6/2002 on political parties ("the LOPP"), the purpose of which was to develop Articles of the Constitution concerning the organisation, functioning and activities of political parties and their dissolution or judicial suspension. Dissolution of a political party required the reiteration or accumulation of actions irrefutably amounting to conduct at variance with democracy and damaging to constitutional values, democracy and human rights. The LOPP made the Special Division of the Supreme Court responsible for cases involving the dissolution of political parties. It also laid down a specific, priority procedure comprising a single level of jurisdiction, which could be set in motion only by the prosecuting authorities or the Government, of its own motion or at the request of the Chamber of Deputies or the Senate. The procedure concerned aimed to reconcile legal certainty and the rights of the defence with the requisite speed and reasonable duration. A judgment delivered by the Supreme Court lay open only to an *amparo* appeal before the Constitutional Court. Finally, following notification of the judgment ordering the dissolution of a political party, the party had to cease all activities. Furthermore, it was not permitted to set up another political formation or use another, existing party to pursue the activities of the party declared illegal and dissolved. In assessing such continuity, the Supreme Court based itself on the existence of a substantial similarity between the structure, organisation or functioning of the parties, or on other evidence, such as the identity of the members or leaders, their financing or their

support for violence or terrorism. The possessions of a dissolved political party were liquidated and transferred to the State for social and humanitarian use.
Following the Supreme Court's judgment imposing prison sentences on the twenty-three members of the national directorate of the Herri Batasuna party for collaboration with an armed organisation, the *Euskal Herritarrok* ("EH") party was formed to stand for the Basque elections. The applicant Batasuna then took steps to have it registered as a political party. The Autonomous Government of the Basque Country lodged a complaint of unconstitutionality against the LOPP. The Constitutional Court found the law constitutional. It held that legitimising terrorist actions or justifying or minimising their antidemocratic significance and the fact that they violated fundamental rights was something that could be done implicitly, through conclusive acts, in certain circumstances. There was no question of an infringement of freedom of expression in such cases. Furthermore, a party exposed itself to dissolution only if, through its actions, not its ideology, it sought effectively and actually to weaken or destroy the system of liberties in a recurrent and serious manner or in a repeated or cumulative manner. The provision applied only to the future and to political parties with convicted persons at their head or as candidates, and considered as grounds for dissolution the regular use of persons who could be considered, on the strength of evidence, to be sympathetic towards the methods of terror; it did not apply to those which had ideas or programmes which terrorist organisations might conceivably seek to implement. Lastly, it was illegal, immediately before or at any time after the date of entry into force of the LOPP, to set up a political party which continued or took over the activities of another party for the sole purpose of circumventing the application to that party of the provisions of the LOPP. The law applied to activities carried out subsequent to its entry into force. It was perfectly possible, however, to take into account what the law called the background, which might include conduct prior to the entry into force of the law, but by no means in a manner that could be interpreted as retroactive application of the law as prohibited by the Constitution. The Autonomous Government of the Basque Country subsequently lodged an application with the Court which was declared inadmissible.
Meanwhile, the central investigating judge of the *Audiencia Nacional* ordered the suspension of Batasuna's activities and the closure, for three years, of any offices and premises Herri Batasuna and Batasuna might use. Proceedings to dissolve the political parties Herri Batasuna, EH and Batasuna were brought before the Supreme Court. Batasuna applied for the reporting judge who had been appointed to be removed on account of a direct or indirect interest in the case, as he had publicly stated that the preliminary draft LOPP was compatible with the rule of law and the Constitution. The Supreme Court joined the two proceedings, appointed H. as the reporting judge and dismissed the request for his removal. Batasuna requested that a preliminary question be put to the Constitutional Court concerning the constitutionality of the LOPP. The Supreme Court refused, unanimously, pointing out that that objection had already been examined and dismissed by a judgment of the Constitutional Court. The Supreme Court declared the parties Herri Batasuna, EH and Batasuna illegal and ordered their dissolution on the grounds that they were part of a tactical separation strategy at the service of terrorism, issuing frequent calls to armed struggle in their internal documents and their external activities. It considered it proven that the three parties were essentially one and the same entity and linked to the terrorist organisation ETA, and found that to all intents and purposes they formed a whole. It noted that the calls to violence that motivated the restriction of the freedoms of the parties concerned were the result of an intentional sharing of tasks between terrorism and politics since, for ETA, justifying the need for terrorism was one of the roles it required Herri Batasuna to play. Bearing in mind the historical and social context of the battle against terrorism, the court considered that the terrorist organisation ETA and its satellite organisation, *Koordinadora Abertzale Sozialista*, had run Herri Batasuna since its inception. It based that finding on evidence showing the existence of hierarchical links between the three organisations. As to the operational succession found to exist between the three parties declared illegal, the Supreme Court based its finding on the fact that the same people occupied responsible positions in all three organisations and they shared the same premises. On the matter of the links between the applicant parties and the terrorist organisation ETA, the Supreme Court referred to the conviction of certain of their members for terrorism-related offences. The activities of the applicant parties following the entry into force of the LOPP – a series of activities corresponding to a strategy predefined by the terrorist organisation ETA – were of a nature to complement and politically support the action of terrorist organisations in achieving their aim of disturbing the constitutional order or causing serious public disorder. The conduct held against the applicant parties thus fell within the scope of the LOPP. In examining whether the dissolution of the parties was necessary and proportionate, the

Supreme Court pointed out that it took into consideration both the Convention proper and the Court's case-law. It found that in view of the frequent calls to violence made by the applicant parties, their dissolution was justified in order to protect the fundamental rights of others. The Batasuna and Herri Batasuna parties lodged two *amparo* appeals with the Constitutional Court against the Supreme Court, but both were dismissed by unanimous judgments. The Constitutional Court emphasised that any project or aim was considered compatible with the Constitution unless it was defended by an activity prejudicial to democratic principles or the fundamental rights of citizens, and reiterated that the constitutionality of the LOPP had been confirmed in a judgment. From the constitutional point of view, associating with terrorism and violence fell outside the legitimate framework of freedom of association and expression and could therefore be prohibited by law in a democratic society. Moreover, the various reasons that could give rise to the dissolution of a party were taken into account only subsequent to the entry into force of the law. The applicant party had not been dissolved because of activities prior to that date, or because of conduct attributable to other parties, but because Batasuna, Herri Batasuna and EH had been found to constitute successive avatars of a single entity – a political formation used by a terrorist group for illegal ends. The successive formations of what was in fact one and the same political party had been dissolved. The dissolution ordered by the Supreme Court was based on subsequent events entirely attributable to the applicant party, the Supreme Court having found that the three parties dissolved were in fact one and the same. Finally, the Supreme Court dismissed the complaints of lack of impartiality and non-observance of the adversarial principle as lacking in constitutional substance.
Admissible under Articles 10 and 11.

Inadmissible under Article 6 – The complaints of lack of impartiality on the part of the President of the Division of the Supreme Court and failure to observe the adversarial principle in the proceedings raised questions in respect of Article 6 of the Convention, although the applicants relied on Article 13. The Court was faced with the question of the applicability of Article 6 to the special procedure for the dissolution of political parties before the Special Division of the Supreme Court. It noted in that connection that the instant case differed from those where dissolution had been ordered by a Constitutional Court. However, the Court saw no reason to depart from the conclusion it had reached in those cases. The procedure in question concerned a dispute over the applicants' right as political parties to pursue their political activities. It was in essence a political right and, as such, did not fall within the scope of Article 6 § 1. Moreover, the right of Batasuna and Herri Batasuna to peaceful enjoyment of their possessions had not been raised in the proceedings before the Supreme Court, then the Constitutional Court. The procedure at issue thus concerned neither a dispute over the applicants' civil rights and obligations nor a criminal charge against them within the meaning of Article 6 § 1. Nor did that part of the application raise any question that fell within the scope of Article 13 of the Convention: *incompatible* ratione materiae.
The complaint concerning the ineffectiveness of the *amparo* appeal was dismissed as *manifestly ill-founded.*

(see also *Etxeberria and 3 other cases v. Spain*, below).

FREEDOM OF EXPRESSION
Dissolution of electoral groups on the grounds that they were continuing the work of a previously dissolved party: *admissible*.

ETXEBERRIA and 3 other cases - Spain (N^{os} 35579/03, 35613/03, 35626/03, 35634/03)
Decision 11.12.2007 [Section V]

Institutional Law no. 6/2002 on political parties ("the LOPP") was aimed at ensuring that political parties respected democratic principles and human rights. It listed the forms of behaviour which were incompatible with those principles and explained the procedure followed and its consequences (see also *Herri Batasuna and Batasuna v. Spain*, above). Following the entry into force of the law the Supreme Court declared the political parties Batasuna ("B."), Herri Batasuna ("H.B.") and Euskal Herritarrok ("E.H.") illegal, for violating the LOPP by a series of activities that irrefutably amounted to conduct

incompatible with democracy, prejudicial to constitutional values, democracy and human rights and contrary to the principles laid down in the explanatory part. The parties B. and H.B. lodged an *amparo* appeal against that decision with the Constitutional Court, but the appeal was dismissed. Then the electoral commissions of the Basque Country and Navarre registered the applicants (in the cases before the Court) as candidates in the municipal, regional and autonomous community elections. State Counsel and the Public Prosecutor's Office lodged appeals with the Special Division of the Supreme Court to have approximately 300 candidatures struck off the lists, including those of the four applicant electoral groups. They accused the applicants of continuing the activities of the political parties B., H.B. and E.H., which had been declared illegal and dissolved. On the same day the Supreme Court, applying the principles of promptitude and grouping of cases applicable in disputes concerning electoral matters, summoned the applicants to appear that very day. The Supreme Court barred the candidates from standing because their aim was to carry on the activities of the three parties declared illegal and dissolved. It dismissed the applicants' allegations that they had not had enough time to submit their pleadings, finding that the brevity of the time allowed had been justified by the exceptional nature of this type of appeal, which had to be determined, in accordance with the Elections Act, within two days. For the Supreme Court, while the dissolution of political parties did not deprive their leaders or members of the right to vote or stand for election, the activities of the parties dissolved could not be allowed to continue in the future under other names or legal guises. In order to determine whether such continuity or succession existed between a political party and an electoral group, the Elections Act set forth a number of criteria such as substantial similarity of structure, organisation or operation, the origin of their financial resources or their support for violence or terrorism. The Supreme Court considered that the purpose of the Elections Act was not to restrict the candidates' right to stand for election but to prevent the subversion of electoral groups as instruments of citizen participation. The Supreme Court also listed other criteria that could be taken into account to determine whether there was continuity. The various factors had to be weighed together in such a way that it was possible to determine, in a reasonable, non-arbitrary manner, whether the electoral group had acted, to all intents and purposes, as a successor to parties declared illegal. There was evidence showing that the purpose of the electoral groups in question was to carry on the activities of parties which had been declared illegal and dissolved. As to the links between the candidates of the applicant groups and the parties declared illegal, numerous leaders and former candidates of those parties were candidates on the lists of the groups in issue. Moreover, certain of those leaders had made statements to the media shortly before the elections affirming that all the organisations which had been declared illegal had continued to exist. This was evidence of a strategy on the part of the political parties declared illegal to circumvent the effects of the judgment declaring them illegal through the electoral groups. The applicant groups lodged an *amparo* appeal with the Constitutional Court complaining, *inter alia,* of violations of their right to an impartial hearing, the rights of the defence, their right to a hearing attended by all safeguards, their right to make use of evidence relevant to their defence, their right to respect for their private life combined with the right to a hearing attended by all safeguards and the right to freedom of thought, the right to be presumed innocent and to be informed of the charges against them, the right to participate in public affairs directly or through representatives, freedom of association and the principles of non-retroactivity of the rules restricting political and civil rights, and of non-discrimination. The Constitutional Court dismissed the appeals of the four applicants in the instant cases before the Court. However, the *amparo* appeals of twenty of the electoral groups involved in the domestic proceedings were allowed. As to the complaints concerning the right to a fair hearing, the right to a hearing attended by all safeguards and the rights of the defence, the Constitutional Court referred to its own case-law with regard to the constitutionality of the electoral disputes procedure and pointed out that the brevity of the time allowed for appeals against the registration of candidatures and candidates did not, *per se*, infringe the right to a fair hearing. The applicants had been able to present their complaints and submit evidence to challenge the appeals against their candidatures before the Supreme Court. Also, they had had the opportunity, in an *amparo* appeal, to make further submissions. Finally, on the complaint concerning the right to participate in public affairs, the Constitutional Court referred to the Supreme Court judgments in question and found that they were reasonable and sufficiently well-reasoned to attest to the existence of a joint strategy, elaborated by the terrorist organisation ETA and the dissolved party B., aimed at helping to rebuild the party and present candidates in the forthcoming municipal, regional or autonomous community elections. The Constitutional Court pointed out that it had no authority to review that finding as it concerned a matter of ordinary law. It highlighted the evidence the Supreme Court had considered

relevant in reaching its conclusion. It also pointed out that restrictions on the right to participate in public affairs could be justified only if, after an assessment of the proportionality between the aim pursued and the restricted right, it was possible to prove that the electoral groups had been subverted by individuals who turned them into political parties giving *de facto* continuity to other parties which had been dissolved. In those circumstances and as the Supreme Court seemed to have weighed the evidence in a reasonable manner and taken into account all the rights and interests involved, the Constitutional Court found that the restriction on the right to participate in public affairs had been justified. Finally, on the question of freedom of expression, the Constitutional Court pointed out that freedom of thought and expression and the right to participate in public affairs had no objective bearing on the impugned judgment and should not be examined as such.

Inadmissible under Article 13 (complaint concerning the effectiveness of the *amparo* appeal) – The Court noted that the applicants had been able to present the arguments they had considered necessary in their defence to the Constitutional Court and that they confined their complaint to expressing their disagreement with the way in which the Constitutional Court had carried out its supervisory role. The Court pointed out that the effectiveness of a remedy did not depend on the certainty of a favourable outcome: *manifestly ill-founded*.

Admissible for the remainder of Article 13.

Admissible under Article 10 of the Convention and Article 3 of Protocol No. 1.

FREEDOM OF EXPRESSION
Convictions of newspaper editors for publishing photographs of a person on the point of being arrested to serve a lengthy sentence she had just received for her part in a triple murder: *admissible*.

EGELAND and HANSEID - Norway (N° 34438/04)
Decision 22.11.2007 [Section I]

The applicants were the editors in chief of two national newspapers in Norway which were covering a major murder trial. The case had attracted significant media attention and the identities of the defendants were known to the general public. The defendants had been on bail for more than a year before the trial. At the trial they were convicted and given lengthy prison sentences. The applicants' newspapers published photographs of one of the defendants as she was making her way to an unmarked police vehicle parked in the vicinity of the court to begin a 21 year prison sentence for complicity. She had broken down on hearing the verdict and was described as being in a state of "deep despair". The applicants were charged under a provision that made it an offence to photograph defendants in criminal proceedings on their way to or from court without their consent, unless there were special reasons for making an exception. They were acquitted at first instance but convicted by the Supreme Court following an appeal by the public prosecutor and ordered to pay 10,000 Norwegian kroner in fines with 15 days' imprisonment in default. The Supreme Court found that although the defendant's identity was already widely known, she had nevertheless been in obvious distress and in a situation of "reduced control" following her conviction and so within one of the core areas the legislation was intended to protect. Neither the shocking nature of the offence of which she had been convicted nor the extensive public interest in the case could deprive her of that protection.
The applicants complain that the Supreme Court's judgment was not supported by sufficient reasons and that their convictions for publishing the photographs were not therefore necessary in a democratic society.
Admissible under Article 10.

(For a closely related case in which a complaint about a ban on the live broadcasting of the trial was declared inadmissible, see the Court's decision in *P4 Radio Hele Norge ASA v. Norway* ((dec.), no. 76682/01, ECHR 2003-VI – Information Note no. 53).

ARTICLE 11

FREEDOM OF ASSOCIATION
Orders dissolving political parties on the grounds that they were the political arm of a terrorist organisation and banning candidates or political groups from standing for election: *admissible*.

HERRI BATASUNA and BATASUNA - Spain (N°s 25803/04, 25817/04)
Decision 11.12.2007 [Section V]

(see Article 10 above).

ARTICLE 14

DISCRIMINATION (Article 1 of Protocol No. 1)
Difference in treatment between persons in the same position as a result of conflicting decisions by the Supreme Court: *violation*.

BEIAN - Romania (n° 1) (N° 30658/05)
Judgment 6.12.2007 [Section III]

(see Article 6 § 1 above).

DISCRIMINATION (Article 1 of Protocol No. 1)
Retirement pension following break-up of the USSR: *relinquishment in favour of the Grand Chamber.*

ANDREJEVA - Latvia (N° 55707/07)
Decision 11.07.2006 [Section III]

The case concerns the method of calculating the retirement pension of a "permanently resident non-citizen" in respect of periods of time (altogether 17 years) the applicant worked on Latvian territory for Soviet State-owned firms based in Russia and Ukraine, before Latvia regained independence.

ARTICLE 34

VICTIM
State-owned company operating with legal and financial independence: *victim status upheld.*

ISLAMIC REPUBLIC OF IRAN SHIPPING LINES - Turkey (N° 40998/98)
Judgment 13.12.2007 [Section III]

Facts: In October 1991 the Turkish authorities seized a Cypriot-owned vessel chartered by the applicant as they suspected that the weapons it was transporting were intended for smuggling. Criminal proceedings were brought against several of the ship's crew. In December 1991, following an investigation into the matter, the Turkish Ministry of Foreign Affairs confirmed that the cargo transported by the applicant belonged to Iran and that its seizure could not be justified by the alleged "state of war" between Turkey and Cyprus. The Turkish courts eventually acquitted the crew members and in December 1992 released the vessel. In subsequent civil proceedings, the applicant was unable to obtain any compensation for the damage incurred to it through the seizure of the vessel.

Law: Article 34 – The Government firstly objected that the applicant had no *locus standi* since it was a state-owned corporation, and that it could therefore not be distinct from the Government of the Islamic Republic of Iran. The Court found, however, that since the applicant company was governed essentially by company law and was legally and financially independent of the State, there was nothing to suggest that the application had effectively been brought by the State of the Islamic Republic of Iran.

Article 1 of Protocol No. 1 – The seizure of the vessel amounted to control of use of property within the meaning of the second paragraph of Article 1 of Protocol No. 1. The parties agreed that the interference had a legal basis, whilst disagreeing on the scope and the meaning of the applicable law. Despite the authorities having been made aware only two months following the seizure that the cargo was not being smuggled and did not pose a threat to Turkish national security, the situation continued for another year. The Court considered that the vessel should have been released at the latest in March 1992, when the first-instance court gave its decision to that effect. The detention of the vessel following that date was arbitrary since there was no basis for suspecting an offence of arms smuggling or any general power to seize the ship due to a state of war between Turkey and Cyprus. Moreover, given the courts' refusal of the applicant's compensation claim, the interference with the applicant's property rights had been disproportionate.
Conclusion: violation (unanimously).

ARTICLE 37

Article 37 § 1

MATTER RESOLVED
Failure by the applicants, against whom deportation orders had been made, to act upon respondent Government's proposals to regularise their immigration status: *striking out*.

CHEVANOVA - Latvia (N° 58822/00)
Judgment 7.12.2007 [GC]
KAFTAILOVA - Latvia (N° 59643/00)
Judgment 7.12.2007 [GC]

(see Article 8 above).

MATTER RESOLVED
Matter before Court resolved by successful intervening application for a work permit: *striking out*.

EL MAJJAOUI AND STICHTUNG TOUBA MOSKEE - Netherlands (N° 25525/03)
Judgment 20.12.2007 [GC]

Facts: The first applicant is a Moroccan national and the second applicant a foundation with legal personality under the laws of the Netherlands, where it runs a mosque. In 1999 the foundation applied for a work permit for the first applicant to act as its imam. That application was refused on the grounds that since the job vacancy had not been advertised it had to be assumed that there was an adequate supply of priority labour available from within the European Union or European Economic Area and that it had not been shown that the first applicant would be paid the statutory minimum wage. The applicants appealed unsuccessfully and in 2005 the first applicant returned to Morocco after being served with an expulsion order. In the interim he had lodged an application with the European Court complaining *inter alia* of a violation of Article 9 of the Convention. In 2006 the applicants made a fresh application for a work permit, which the authorities granted as they were now satisfied that sufficient efforts had been made to fill the post with priority labour and that the first applicant's proposed wages met the minimum-wage requirements. The first applicant was able to take up the post.

Law: The Government had argued that the case had been resolved and should therefore be struck out of the Court's list under Article 37 § 1 (b) of the Convention. The Court noted that in deciding that issue it had to determine whether the circumstances complained of still obtained and whether the effects of a possible violation of the Convention on account of those circumstances had also been redressed. As to the first point, there was no longer any question of the first applicant being prevented from working as an imam at the mosque or of the foundation not being allowed to employ him in that capacity. As to the question of redress, the mere fact that the foundation had had to comply with certain requirements before it was able to employ the first applicant did not as such raise an issue under Article 9. That provision did not guarantee foreign nationals a right to a residence permit for the purposes of taking up employment in a Contracting State even if the employer was a religious association. Since a work permit had since been granted and the first applicant was now lawfully employed by the applicant foundation, their complaints had, in the light of all the relevant circumstances, been adequately and sufficiently remedied. The matter could therefore be considered to have been resolved.
Conclusion: striking out (fourteen votes to three).

MATTER RESOLVED
General measures, including the introduction of new legislation, taken by State to remedy systemic problem in domestic law: *striking out*.

WOLKENBERG and Others - Poland (N° 25525/03)
Decision 4.12.2007 [Section IV]
WITKOWSKA-TOBOŁA - Poland (N° 11208/02)
Decision 4.12.2007 [Section IV]

Facts: As in the *Broniowski* case, the applicants' families had been forced at the end of the Second World War to abandon land in the territories beyond the Bug River which no longer formed part of Poland and to resettle within the redrawn Polish borders. Under a compensation scheme set up by the Polish State, they successfully applied for certificates which entitled them to have the value of the abandoned property deducted either from the price of immovable property purchased from the State or from a fee for the "perpetual use" of State property. However, they were unable to enforce their claims owing to a shortage of available property. They and a large number of other claimants subsequently lodged applications with the Court. In 2004 the Court found in the pilot case of *Broniowski* that there was a systemic problem in the manner in which the Bug River claims were being dealt with and directed the respondent State to secure through appropriate legal measures and administrative practice the implementation of the remaining Bug River claimants' property rights or to afford equivalent redress in lieu. The Polish State responded by introducing new legislation ("the 2005 Act") which offered claimants a choice between offsetting the value of their abandoned land against the cost of replacement land as before or of receiving a cash payment. A statutory ceiling of 20% of the current value of the abandoned property was placed on the amount of compensation. Following the friendly settlement in *Broniowski* and the entry into force of the 2005 Act, the applicants were dealt with under the accelerated payment procedure on account of their personal circumstances. They accepted a Government offer of a cash payment but stated that they still wished to pursue their applications before the Court and to assert their rights to the remaining 80% of the current value of the abandoned properties.
In their applications to the Court, the applicants complained of a failure by the State to secure the implementation of their right to compensation prior to the entry into force of the 2005 Act and of a violation of their rights of property on account of the restriction on their entitlement to compensation under the new legislation to 20% of the current value of the abandoned land.

Law: It was inherent in the pilot-judgment procedure that the Court's assessment of the situation complained of in a "pilot" case necessarily extended beyond the sole interests of the individual applicant and required it to examine the case also from the perspective of the general measures that needed to be taken in the interest of other potentially affected persons. The same logic applied when determining whether an application could be struck out of the Court's list pursuant to Article 37 § 1 (b) of the

Convention on the ground that the matter had been resolved. For that reason, the Court's findings on that issue in the instant cases would be valid in the context of all subsequent similar cases.

(a) *Compensation scheme under the 2005 Act* – The Court had expressly accepted in *Broniowski* that the radical reform of Poland's political and economic system, as well as the state of its finances, might justify stringent limitations on compensation for the Bug River claimants. It acknowledged that the 2005 Act was a compromise between the claimants' expectations and the State's budgetary constraints and that the State also had financial obligations towards many other persons who had suffered considerable material losses due to the nationalisation or expropriation of their property under the totalitarian regime. The choice the authorities had made, in particular their decision to impose a statutory ceiling of 20% on compensation and to use the retail price index to re-evaluate the Bug River claims on the date of payment, did not appear unreasonable or disproportionate in view of their wide margin of appreciation and the fact that the purpose of the compensation was not to secure reimbursement for a distinct expropriation but to mitigate the effects of the taking of property which was not attributable to the Polish State. Accordingly, having regard in particular to the legitimate public interest objectives pursued, the impugned provisions struck a fair balance between the protection of the applicants' right of property and the general interest in a manner compatible with Article 1 of Protocol No. 1.

(b) *Operation of the 2005 Act in practice* – The new legislation created more favourable conditions for the realisation of the Bug River claims, especially by introducing the possibility of receiving compensation in cash as an alternative to the cumbersome bidding procedure previously available and by enlarging the pool of land set aside for claims. Taking into account the difficulty of setting up a completely new compensatory mechanism to register and process up to 80,000 claims of substantial value, the State could not be censured for the actions it had thus far taken to remedy the situation. It had acted promptly and decisively in introducing fresh legislation laying down clear rules of procedure and offering greater foreseeability. Substantial funds had been allocated to secure cash payments for claimants and steps had been taken to ensure that the process was transparent both to claimants and taxpayers. As demonstrated by the number and results of competitive bids and the operation of the cash payments, practical and legal obstacles to the exercise of the claimants' rights had been removed by the scheme.

(c) *Whether the matter had been resolved* – The Court was satisfied that the 2005 Act effectively secured "the implementation of the property right in question in respect of the remaining Bug River claimants", as indicated in the fourth operative provision of the *Broniowski* pilot judgment. As regards redress for any past prejudice suffered as a result of the defective operation of the compensation scheme before the new legislation was introduced, it noted that the applicants had neither sought redress nor supplied it with evidence showing any systematic policy in Poland of refusing claims for damages by Bug River claimants. It therefore saw no reason to consider that the domestic remedies that had been referred to in the *Broniowski* friendly-settlement judgment were unavailable or generally ineffective. Further, having regard to the purpose of the pilot-judgment procedure, the Court's role after the delivery of the pilot judgment and the implementation by the State of general measures in conformity with the Convention could not be converted into that of providing individualised financial relief in repetitive cases arising from the same systemic situation. Thus, without prejudice to its decision to restore any of the applications if the circumstances – in particular the future functioning of the compensation scheme under the 2005 Act – justified, the Court was satisfied that the procedures under that statute had provided the applicants and other Bug River claimants with domestic relief such that the further examination of their applications was no longer justified.
Conclusion: striking out (unanimously).

For the background to the Bug River cases, see the *Broniowski v. Poland* (no.31443/06) judgments on the merits (reported in Information Note no. 65) and the friendly settlement (Information Note no. 79).

ARTICLE 46

GENERAL MEASURES
Urgent improvement of prison conditions: *appropriate conditions of detention and adequate medical treatment for prisoners requiring special care on account of their health.*

DYBEKU - Albania (N° 41153/06)
Judgment 18.12.2007 [Section IV]

Facts : Since 1996 the applicant has been suffering from chronic paranoid schizophrenia. For many years he has received in-patient treatment in various psychiatric hospitals in Albania. In August 2002 criminal proceedings were brought against him and he was eventually arrested and charged with murder and illegal possession of explosives. He was placed in a pre-trial detention facility, where he shared a cell with an unspecified number of prisoners. In May 2003, on the basis of a medical report, which concluded that at the time of the offence the applicant was in remission, the competent court ruled that he was fit to stand trial. The court found him guilty and sentenced him to life imprisonment. The applicant appealed unsuccessfully and his requests for new medical examinations were rejected as unnecessary. Since December 2003 the applicant has been in three different prisons: Tirana Prison no. 302, Tepelene Prison and Peqin Prison, where he has shared cells with inmates who were in good health and has been treated as an ordinary prisoner, despite his state of health. According to the authorities, it was impossible to provide the applicant with the requisite medical treatment and so he was treated with drugs similar to those prescribed by his doctor. He received in-patient treatment in Tirana Prison Hospital only when his health worsened in May/June 2004 and December 2004 and January 2005. The applicant's father and lawyer lodged several complaints with the competent authorities against the prison hospital administration and the medical unit, alleging that they had been negligent in failing to prescribe adequate medical treatment and that the applicant's health had deteriorated because of the lack of treatment. Their complaints were dismissed. Given the applicant's increasingly disturbed state of mind, in January 2005 his lawyer brought proceedings asking for him to be released or transferred to a medical facility on the ground that his detention conditions were inappropriate and put his life at risk. The applicant's counsel also asked for psychiatric examinations to be undertaken. Those requests were rejected and the applicant's subsequent appeals were unsuccessful.

Law: Article 3 – The parties agreed that the applicant was suffering from a chronic mental disorder which involved psychotic episodes and feelings of paranoia. His condition had also deteriorated by the time he received in-patient treatment in Tirana Prison Hospital. The Court further noted that all the complaints from the applicant's father and lawyer had been disregarded and that the last assessment of the applicant's health dated back to 2002. The applicant's medical notes showed that he had repeatedly been prescribed the same treatment and that no detailed description of the development of his illness had been given. The feeling of inferiority and powerlessness typical of those suffering from a mental disorder called for increased vigilance in reviewing whether the Convention had been complied with. While it was for the authorities to decide, on the basis of the recognised rules of medical science, on the therapeutic methods to be used to preserve the physical and mental health of patients who were incapable of deciding for themselves, and for whom they were therefore responsible, such patients nevertheless remained under the protection of Article 3. The Court accepted that the very nature of the applicant's psychological condition made him more vulnerable than the average detainee and that his detention might have exacerbated to a certain extent his feelings of distress, anguish and fear. The fact that the Government admitted that the applicant was treated like the other inmates, notwithstanding his particular state of health, showed a failure to comply with the Council of Europe's recommendations on dealing with prisoners with mental illnesses. The Government had also failed either to submit detailed information about the material conditions of the applicant's detention or to show that those conditions were appropriate for a person with his history of mental disorder. Furthermore, the applicant's regular visits to the prison hospital could not be viewed as a solution since the applicant was serving a sentence of life imprisonment. Many of those shortcomings could have been remedied even in the absence of considerable financial means. In any event, a lack of resources could not in principle justify detention conditions so poor as to reach the

threshold of severity for Article 3 to apply. The Court took into account the cumulative effects of the entirely inappropriate conditions of detention to which the applicant was subjected, which clearly had had a detrimental effect on his health and well-being. It also took note of the Council of Europe's Committee for the Prevention of Torture's findings in its latest reports concerning the detention conditions in Albanian prisons, particularly with regard to prisoners with mental illnesses. It concluded that the nature, duration and severity of the ill-treatment to which the applicant had been subjected and the cumulative negative effects on his health were therefore sufficient to be qualified as inhuman and degrading.
Conclusion: violation (unanimously).

Article 41 – EUR 5,000 in respect of non-pecuniary damage.

Article 46 – Albania was to take the necessary measures, as a matter of urgency, to secure appropriate conditions of detention, and in particular adequate medical treatment, to prisoners requiring special care on account of their state of health.

ARTICLE 1 OF PROTOCOL No. 1

CONTROL OF THE USE OF PROPERTY
Arbitrary seizure for over a year of a ship and its cargo on suspicion of arms smuggling: *violation*.

ISLAMIC REPUBLIC OF IRAN SHIPPING LINES - Turkey (N° 40998/98)
Judgment 13.12.2007 [Section III]

(see Article 34 above).

ARTICLE 3 OF PROTOCOL No. 1

STAND FOR ELECTION
Dissolution of electoral groups on the grounds that they were continuing the work of a previously dissolved party: *admissible*.

ETXEBERRIA and 3 others cases - Spain (N° 35579/03)
Decision 11.12.2007 [Section V]

(see Article 10 above).

Other judgments delivered in December

The list of "other" judgments rendered during the month in question (i.e. judgments which have not been reported in the form of a summary) has been discontinued. Please refer to the Court's Internet page: http://www.echr.coe.int/ECHR/EN/Header/Case-Law/Case-law+information/Lists+of+judgments/ for alphabetical and chronological lists of all judgments as well as for a list of all Grand Chamber judgments.

Relinquishment in favour of the Grand Chamber

Article 30

ANDREJEVA - Latvia (N° 55707/07)
Decision 11.07.2006 [Section III]

(see Article 14 above).

Judgments having become final under Article 44 § 2 (c)[1]

On 10 December 2007, the Panel of the Grand Chamber rejected requests for referral of the following judgments, which have consequently become final:

Bobek v. Poland (68761/01) – Section II, judgment of 17 July 2007
Kuc v. Poland (73102/01) – Section IV, judgment of 17July 2007 (*)
Ješina v. the Czech Republic (18806/02) – Section V, judgment of 26 July 2007 (*)
Panteleeva v. Ukraine (31780/02) – Section V, judgment of 5 July 2007 (*)
Spanoche v. Romania (3864/03) – Section III, judgment of 26 July 2007
Krempa-Czuchryta v. Poland (11184/03) – Section IV, judgment of 3 July 2007
Pello v. Estonia (11423/03) – Section V, judgment of 12 April 2007
Lazarevska v. the former Yougoslav Republic of Macedonia (22931/03) – Section V, judgment of 5 July 2007
Tozkoparan and Others v. Turkey (29128/03) – Section II, judgment of 17 July 2007
Baškienė v. Lithuania (11529/04) –Section II, judgment of 24 July 2007
Immobilia Bau Kft. v. Hungary (13647/04) – Section II, judgment of 9 October 2007 (*)
Scorziello v. Italy (22689/04) – Section II, judgment of 31 July 2007
Kletsova v. Russia (24842/04) – Section I, judgment of 12 April 2007
Casotti v. Italy (26041/04) – Section II, judgment of 31 July 2007
Çarkçi v. Turkey (7940/05) – Section II, judgment of 26 June 2007

1. The list of judgments having become final pursuant to Article 44(2)(b) of the Convention has been discontinued. Please refer to the Court's database HUDOC which will indicate when a given judgment has become final.

Statistical information[1]

Judgments delivered	December	2007
Grand Chamber	5	15(17)
Section I	27	336(365)
Section II	22(30)	315(424)
Section III	36(39)	267(295)
Section IV	19(21)	328(363)
Section V	15(18)	212(239)
former Sections	0	30(32)
Total	**124(140)**	**1503(1735)**

Judgments delivered in December 2007					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	2	0	3	0	5
Section I	27	0	0	0	27
Section II	22(30)	0	0	0	22(30)
Section III	36(39)	0	0	0	36(39)
Section IV	17(19)	0	0	2	19(21)
Section V	15(18)	0	0	0	15(18)
former Section I	0	0	0	0	0
former Section II	0	0	0	0	0
former Section III	0	0	0	0	0
former Section IV	0	0	0	0	0
Total	**119(135)**	**0**	**3**	**2**	**124(140)**

Judgments delivered in 2007					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	12(14)	0	3	0	15(17)
Section I	321(349)	1	10	4(5)	336(365)
Section II	313(422)	1	0	1	315(424)
Section III	257(285)	3	3	4	267(295)
Section IV	293(304)	21(45)	8	6	328(363)
Section V	209(236)	2	1	0	212(239)
former Section I	0	0	0	1	1
former Section II	23(25)	0	0	2	25(27)
former Section III	4	0	0	0	4
former Section IV	0	0	0	0	0
Total	**1432(1639)**	**28(52)**	**25**	**18(19)**	**1503(1735)**

1. The statistical information is provisional. A judgment or decision may concern more than one application: the number of applications is given in brackets.

Decisions adopted		December	2007
I. Applications declared admissible			
Grand Chamber		0	0
Section I		4	59(66)
Section II		0	23
Section III		1	12
Section IV		0	14(16)
Section V		7(54)	22(71)
Total		**12(54)**	**130(188)**
II. Applications declared inadmissible			
Grand Chamber		0	1
Section I	- Chamber	3	50
	- Committee	847	5971
Section II	- Chamber	12(14)	139(140)
	- Committee	107	3351
Section III	- Chamber	3(4)	85(87)
	- Committee	423	4925
Section IV	- Chamber	4	77
	- Committee	583	5049
Section V	- Chamber	6(14)	113(132)
	- Committee	743	6245
Total		**2731(2741)**	**26006(26028)**
III. Applications struck off			
Grand Chamber		0	1
Section I	- Chamber	14	132
	- Committee	9	117
Section II	- Chamber	9	134(136)
	- Committee	38	118
Section III	- Chamber	1	108
	- Committee	13	93
Section IV	- Chamber	109	265
	- Committee	8	75
Section V	- Chamber	10	92
	- Committee	11	143
Total		**212**	**1278(1280)**
Total number of decisions[1]		**2955(3007)**	**27414(2796)**

1. Not including partial decisions.

Applications communicated	December	2007
Section I	22	746
Section II	41	905
Section III	30	726
Section IV	26	502
Section V	26	413
Total number of applications communicated	**316**	**3292**

News from the library

The Court's resources in terms of primary literature are complemented by books and periodical articles (secondary literature) which are collected and recorded by the Court's Library. These are of great value to legal practitioners, academics and students who study the Court's judgments, observe their evolution over time and assess their impact at the national level.

The bibliographical references drawn from the secondary literature are accessible via the Library's main tool, the **Library catalogue,** which you can find at the following Internet address:

http://hrls.echr.coe.int/uhtbin/cgisirsi.exe/x/0/0/49?user_id=WEBSERVER&password=

The catalogue contains references to purchased and gift materials relating primarily to the European Convention on Human Rights and European human rights case-law; however, human rights generally, civil liberties, constitutional law, international criminal law and other topics are also represented.

There are self-explanatory keywords which make searching for a particular case ("affaire XY") or a specific Article of the Convention ("CEDH-10") simple and extremely efficient. This retrieval system (indexing) uses French keywords and brings up references mainly in the official languages, English and French, but also in other European languages. The cataloguing of the materials to a very detailed level (for instance, chapters from books) together with the indexing system enables users to exploit this unique collection to the full.

More information on the Library's activities can be found on the **Library Internet site:**

http://www.echr.coe.int/Library/indexEN.html

The site provides information on (a) the conditions of access to the Library, (b) the range of services offered and (c) the extent of the collection. It gives prominence to information on key aspects of the collection, such as the main commentaries on the Convention, and to the Library's quarterly "New Acquisitions Bulletin", soon to be distributed via RSS.

The Library serves primarily the Court and its Registry, meeting the research needs arising from the Court's judicial and publishing activities. It is open for general use to Council of Europe staff and to a restricted number of external visitors who have research interests addressed by the collection. External visitors are required to make an appointment to consult the collection and have access to the Library during its opening hours of 10 a.m. to 5 p.m., Monday to Friday.