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Cour Européenne des Droits de l'Homme

Information Note on the Court's case-law

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ARTICLE 2

POSITIVE OBLIGATIONS
Failure to conduct effective investigation into fate of Greek-Cypriots who had gone missing during the Turkish military operations in northern Cyprus in 1974: *case referred to the Grand Chamber*.

VARNAVA and Others - Turkey (N° 16064/90, etc.)
Judgment 10.1.2008 [Section III]

In a judgment delivered by a Chamber, the Court held, by six votes to one, that there had been continuing violations of Articles 2 and 5 (concerning Turkey's failure to conduct an effective investigation into the whereabouts and fate of nine applicants who had disappeared in life-threatening circumstances) and of Article 3. It also held, unanimously, that there had been no violation of Article 5 concerning the alleged detention of the nine men.
The case was referred to the Grand Chamber at the Turkish Government's request.

For further details, see Information Note no. 104.

ARTICLE 3

TORTURE
POSITIVE OBLIGATIONS
Disproportionate and unjustified use of truncheons against a detainee and lack of effective investigation: *violation*.

VLADIMIR ROMANOV - Russia (N° 41461/02)
Judgment 24.7.2008 [Section I]

(see Article 34 below).

INHUMAN PUNISHMENT
Excessive level of physical exercise imposed as punishment on conscript known to be suffering from health problems and failure to conduct effective investigation: *violations*.

CHEMBER - Russia (N° 7188/03)
Judgment 3.7.2008 [Section I]

Facts: While performing his national service, the applicant, who had been exempted from physical exercise and squad drill on account of a known knee condition for which he had been receiving treatment, was among a group of men who were ordered to do 350 knee bends as punishment for failing to clean the barracks properly. He collapsed during the exercise and was taken to hospital. He was later diagnosed with a closed injury of the spine, discharged from military service on medical grounds and classified as suffering from a second-degree disability. He can no longer walk properly. Following an inquiry, the prosecutor's office decided not to bring criminal proceedings against the officers in charge for want of evidence of an offence. A claim for damages by the applicant in the civil courts was dismissed because there had been no finding of guilt in the criminal proceedings. In the meantime, the applicant's mother had complained to a higher military prosecutor about the decision not to bring criminal proceedings , but he refused to examine her complaint until such time as the civil court had returned the documents and the applicant had received no further information since.

Law: Article 3 – (a) *Substantive limb*: Even though challenging physical exercise might be part and parcel of military discipline, it should not endanger the health and well-being of conscripts or undermine their dignity. The applicant had been subjected to forced physical exercise to the point of collapse and the resulting injury had caused long-term damage to his health. Despite being fully aware of the applicant's specific health problems and having exempted him from physical exercise and squad drill, his commanders had forced him to do precisely the kind of exercise which would put great strain on his knees and spine. The severity of that punishment could not be accounted for by any disciplinary or military necessity. The punishment had thus been deliberately calculated to cause the applicant intense physical suffering, which amounted to inhuman punishment.
Conclusion: violation (unanimously).

(b) *Procedural limb*: The Court found the domestic inquiry defective in a number of ways (lack of a medical examination, failure to identify or question witnesses, and failure to hear the applicant in person or to mention his version of events in the decision not to bring criminal proceedings so that he was unable formally to claim victim status or to exercise his procedural rights). The applicant had been caught up in a vicious circle of shifted responsibility in which no domestic authority had reviewed or remedied the shortcomings of the inquiry. The civil court had not carried out any independent review, but had simply based its judgment on the findings in the military authorities' decision, while the supervising military prosecutor had then failed to respond to the applicant's mother's complaint as he considered that a response was no longer necessary following the civil court's judgment. The Russian authorities' inquiry into the applicant's allegations of ill-treatment had, therefore, not been thorough, adequate or efficient.
Conclusion: violation (unanimously).

Article 13 – As was illustrated by the fact that the civil courts had simply endorsed the investigator's opinion without assessing the facts, the effectiveness of any other remedy that might have existed had been undermined by the ineffectiveness of the criminal inquiry. The Court also noted that it was a peculiar feature of Russian criminal law that the ability to make a civil claim for damages depended on the grounds on which the criminal proceedings had been discontinued. The decision in the applicant's case not to bring criminal proceedings against his superiors on the ground that no offence had been committed had effectively debarred him from suing for damages in a civil court.
Conclusion: violation (unanimously).

Article 41 – EUR 10,000 in respect of non-pecuniary damage.

EXPULSION
Proposed deportation of Tamil asylum seeker to Sri Lanka: *expulsion would violate Article 3*.

N.A. - United Kingdom (N° 25904/07)
Judgment 17.7.2008 [Section IV]

Facts: The applicant was a Sri Lankan national and an ethnic Tamil. He entered the United Kingdom clandestinely in 1999 and claimed asylum on the grounds that he feared ill-treatment in Sri Lanka by the Sri Lankan army and the Tamil Tigers. He explained that he had been arrested and detained by the army on six occasions between 1990 and 1997 on suspicion of involvement with the Tigers. On each occasion he had been released without charge. During one or possibly more of these periods of detention he was ill-treated and his legs had scars from being beaten with batons. He had been photographed and his fingerprints had been taken. His father had signed certain papers in order to secure his release. He feared the Tigers because his father had done some work for the army. They had also tried to recruit him on two occasions. His claim was refused by the Home Secretary and his appeal against that decision was dismissed. He was issued with removal directions in 2006 and the Home Secretary refused to consider his further representations as amounting to a new asylum application, noting that the general situation in Sri Lanka did not indicate any personal risk of ill-treatment and there was no evidence that he would be personally affected upon his return. After successive applications by the applicant for judicial review of

the decision to return him to Sri Lanka failed, new removal directions were issued in 2007 but not proceeded upon in view of a Rule 39 indication by the European Court.
On a more general level, the Court noted in 2007 an increase in the number of requests it was receiving for interim measures from Tamils being returned to Sri Lanka from the United Kingdom and other Contracting States. In correspondence with the United Kingdom Government about the difficulties posed by the processing of numerous Rule 39 requests it indicated that the Court had concluded that pending the adoption of a lead judgment in one or more of the applications, Rule 39 should continue to be applied in any case brought by a Tamil seeking to prevent his removal. Since the end of October 2007, the Court has applied Rule 39 in respect of 342 Tamils due to be returned from the United Kingdom.

Law: The fact that there had been a deterioration in the security situation in Sri Lanka and a corresponding increase in human-rights violations did not create a general risk to all Tamils returning there. The assessment of the risk could only be done on an individual basis. It was in principle legitimate to assess the individual risk to returnees on the basis of the list of "risk factors" which the United Kingdom authorities, with the benefit of direct access to objective information and expert evidence, had drawn up, although it had to be borne in mind that a number of individual factors which did not constitute a real risk when considered separately might do so when taken cumulatively and considered in a situation of general violence and heightened security.
The information before the Court pointed to the systematic torture and ill-treatment by the Sri Lankan authorities of Tamils who would be of interest to them in their efforts to combat the Tigers and the Sri Lankan authorities had the technological means and procedures in place to identify at Colombo airport failed asylum seekers and those who were wanted by the authorities.
As to the alleged risk from the Tamil Tigers, the Court accepted that any risk in Colombo from Tamil Tigers would be only to Tamils with a high profile as opposition activists, or those seen as renegades or traitors, so that the applicant would not be at real risk of ill-treatment from that quarter if returned to Colombo. In assessing his position in relation to the Sri Lankan authorities, the Court examined the strength of the applicant's claim to be at real risk as a result of an accumulation of the risk factors in the light of developments since the last factual assessment by the domestic authorities, with due regard to the increase in general violence and heightened security. Relevant factors in his case were the fact that his father had signed a document to secure his release which logically would have been retained by the Sri Lankan authorities, the presence of scarring, which greatly increased the cumulative risk of ill-treatment, and the applicant's age, gender and origin, his previous record as a suspected or actual Tiger member, his return from London and the fact that he had made an asylum claim abroad, all of which contributed to the risk of identification, questioning, search and detention at the airport and, to a lesser extent, in Colombo. The fact that it had been over ten years since the applicant had been last detained by the Sri Lankan authorities was not seen as conclusive as their interest in particular categories of returnees was likely to change over time in response to domestic developments and could increase as well as decrease.
Since those considered by the authorities to be of interest in their efforts to combat the Tigers were systematically exposed to torture and ill-treatment, there was a real risk that the authorities at Colombo airport would be able to access the records relating to the applicant's detention. If they did so, when taken cumulatively with the other risk factors identified by the applicant, it was likely that he would be detained and strip-searched. This in turn would lead to the discovery of his scars. There were thus substantial grounds for finding that the applicant would be of interest to the Sri Lankan authorities in their efforts to combat the Tigers.
Conclusion: expulsion would constitute a violation (unanimously).

Article 41 – no claim made in respect of pecuniary or non-pecuniary damage.

ARTICLE 5

Article 5 § 1

PROCEDURE PRESCRIBED BY LAW
Confinement to ship of crew of foreign vessel arrested on high seas: *violation*.

MEDVEDYEV and Others - France (N° 3394/03)
Judgment 10.7.2008 [Section V]

Facts: The applicants, who were Ukrainian, Romanian, Greek and Chilean nationals, were crew members on a merchant ship named the *Winner*, flying the Cambodian flag. As part of the international effort to combat drug trafficking, the French authorities were informed that the ship might be carrying large quantities of drugs. The French authorities accordingly had the ship intercepted at sea, off Cape Verde, and redirected to Brest harbour (France).

Law: Article 5 § 1 – International law lay down the principle of freedom of navigation on the high seas, although ships remained subject to supervisory and coercive measures by other ships from the same flag State. Ships sailing under the flag of a different State might, however, board a ship, even without the prior consent of that ship's flag State, when there was reasonable ground to suspect that the ship concerned was carrying slaves or engaging in piracy or unauthorised broadcasting, was without nationality or, though flying a foreign flag or refusing to show its flag, was, in reality, of the same nationality as the ship investigating it, or when such boarding was provided for in specific treaties. The Investigation Division of the Court of Appeal had relied on international conventions to which Cambodia was not party. Its approach was based on legal provisions which, at the material time, provided for the French authorities to be able to board ships (in addition to French ships) outside their territory only if the ships concerned were flying the flag of a country party to the Vienna Convention (which Cambodia had not ratified) or were properly registered in one of those States – at the request or with the agreement of the flag State – or if the ships were flying no flag or were without nationality. It was open to doubt, however, whether the *Winner* actually fell into any of the above categories. In its present form the law was aimed more generally at ships whose flag State had asked the French authorities to take action or had agreed to them taking action. Lastly, the argument that those legal provisions applied to the case in issue and should have been complied with was based on a contradiction, the Government having maintained that at the time of the interception the *Winner* had not been flying a flag, while at the same time stating that they had first obtained confirmation from the Cambodian authorities that the ship was registered in Cambodia, and it was clear from the judgment of the Investigation Division that it had been identified as the *Winner* before any move was made to intercept it. However, the French authorities had acted with the prior consent of Cambodia. The interception and boarding of the *Winner* by the French authorities had thus had a legal footing in the Montego Bay Convention. By contrast, that convention did not provide a legal basis for the detention complained of. For one thing, there was no specific provision in the law for deprivation of liberty of the type and duration of that endured by the applicants. It referred instead to supervisory and coercive measures provided for under international law and under that convention. The same applied to international law and the Vienna Convention. They did not afford adequate protection against arbitrary infringements of the right to liberty. None of their provisions expressly addressed the deprivation of liberty of the crew members of an intercepted ship. It followed that they did not regulate the conditions of deprivation of liberty on board ship, including the possibility for the detainees to contact a lawyer or their relatives. Nor did they place the detention under the control of a judicial authority. It was true that the measures taken in application of the law had been taken under the supervisory authority of the public prosecutor and the parties concerned had received copies of the official reports recording the offences. And no questioning or body searching had been permitted on board. However, the public prosecutor was not a judicial authority for the purposes of the Court's case-law as he lacked the independence vis-à-vis the executive required to qualify as such. It could not be said, therefore, that the applicants had been deprived of their liberty in a lawful manner.
Conclusion: violation (unanimously).

Article 5 § 3 – The applicants had not been brought before a judge or other officer authorised by law to exercise judicial power until they had appeared before the liberties and detention judge (*juge des libertés et de la détention*), to be remanded in custody, that is to say after fifteen or sixteen days' deprivation of liberty. Now, in its decision in the case of *Rigopoulos v. Spain* (dec.), no. 37388/97, 2 January 1999 (Information Note no. 02), the Court had pointed out that such a delay was, in principle, incompatible with the requirement for prompt action expressed in the terms "brought promptly before a judge" used in this provision. Only wholly exceptional circumstances could justify it, while nothing could dispense the States from their obligation, in all circumstances, to afford persons under their jurisdiction sufficient safeguards against arbitrary deprivations of liberty. In the case of the *Winner* it had been materially impossible to bring the applicants physically before a judge or other legal officer any more promptly. Lastly, on their arrival in port after thirteen days' detention at sea the applicants had been placed in police custody for two days in some cases and three days in others, before being brought before an officer authorised by law to exercise judicial power, so the total duration of their deprivation of liberty remained comparable to that complained of by the applicant *Rigopoulos*. However, the placement in police custody and the duration thereof were explained by the needs of the investigation, considering the number of applicants involved and the need to use interpreters to question them. It did remain true that the applicants' detention on board the *Winner* had not been under the supervision of a judicial authority (the public prosecutor did not qualify as such) and that they had not enjoyed the protection against arbitrariness that such supervision afforded. These considerations did not, however, alter the fact that the duration of the deprivation of liberty endured by the applicants had been justified by the wholly exceptional circumstances outlined above.
Conclusion: violation (four votes to three).

Article 41 – Non-pecuniary damage: finding of a violation sufficient.

Article 5 § 3

BROUGHT PROMPTLY BEFORE JUDGE OR OTHER OFFICER
Period of 16 days' detention before detainees were brought before a judicial authority following the arrest of their vessel on the high seas: *no violation*.

MEDVEDYEV and Others - France (N° 3394/03)
Judgment 10.7.2008 [Section V]

(see Article 5 § 1 above).

ARTICLE 6

Article 6 § 1 [civil]

APPLICABILITY
Applicability of Article 6 to interlocutory proceedings: *case referred to the Grand Chamber*.

MICALLEF - Malta (N° 17056/06)
Judgment 15.1.2008 [Section IV]

In the Chamber judgment the Court held, by four votes to three, that there had been a violation of Article 6 § 1. The minority found that Article 6 was inapplicable to the proceedings at issue.
The case was referred to the Grand Chamber at the Government's request.

For more details see Information Note no. 104.

CIVIL RIGHTS AND OBLIGATIONS
Dispute concerning prisoner's transfer to a high security wing: *relinquishment in favour of the Grand Chamber*.

ENEA - Italy (N° 74912/01)
[Section II]

The application concerns the applicant's conditions of detention as a result of the application of section 41*bis* of the Prison Administration Act and his transfer to a high-security wing. It also concerns the ineffectiveness of the appeals brought by the applicant before the Naples court responsible for the supervision of sentences against the decisions ordering application of the special prison regime provided for in section 41*bis*, and the lack of legal grounding for and effective domestic remedy against his transfer to a high-security wing. It further concerns the monitoring of the applicant's correspondence and Article 9 of the Convention.

For further information about the case, see the decision on admissibility of 29 September 2004.
See also *Musumeci v. Italy,* no. 33695/96, Information Note no. 71.

RIGHT TO A COURT
Quashing, by way of supervisory review, of a final judgment adversely affecting the rights of a third person: *no violation*.

PROTSENKO - Russia (N° 13151/04)
Judgment 31.7.2008 [Section I]

Facts: The applicant brought proceedings seeking to obtain acknowledgement of her title to a property comprising a group of cottages. In April 2003 a district court granted her claim. No ordinary appeal was lodged against the judgment, which became final and enforceable. In December 2003, following an application by a collective farm, which owned the land on which the property at issue was situated, the judgment was set aside by way of supervisory review on the ground that the district court had failed to establish all the circumstances of the case and to invite the owner of the land to participate in the proceedings, with the result that the rights of the latter had been adversely affected. At a fresh examination, the applicant's claim was dismissed.

Law: The owner of the land learnt about the judgment in question only after it had become final. In any event, not being a party to the proceedings, it had not been able to lodge an ordinary appeal through no fault of its own. Those circumstances were such as to justify the quashing of the final judgment by way of supervisory review. Therefore, the domestic courts had not acted inconsistently with the principle of legal certainty and had not deprived the applicant of the "right to a court".
Conclusion: no violation (unanimously).

INDEPENDENT AND IMPARTIAL TRIBUNAL
Absence of right to appeal against a receivership order to a judicial body with full jurisdiction: *violation*.

DRUŽSTEVNÍ ZÁLOŽNA PRIA and Others - Czech Republic (N° 2034/01)
Judgment 31.7.2008 [Section V]

(see Article 1 of Protocol No. 1 below).

IMPARTIAL TRIBUNAL
Statutory impossibility to challenge a judge on the basis of his/her family ties with a party's advocate: *case referred to the Grand Chamber*.

MICALLEF - Malta (N° 17056/06)
Judgment 15.1.2008 [Section IV]

(see above, under Applicability).

Article 6 § 1 [criminal]

ACCESS TO COURT
Inability of a parliamentarian to have his parliamentary immunity lifted to enable him to defend himself in criminal proceedings: *violation*.

KART - Turkey (N° 8917/05)
Judgment 8.7.2008 [Section II]

Facts: In the course of his professional activities as a lawyer, two sets of criminal proceedings were brought against the applicant. Then he was elected to the National Assembly, which entitled him to parliamentary immunity. The Assize Court adopted a decision interrupting the criminal proceedings, in accordance with the Constitution and the Code of Criminal Procedure, and transmitted the case file with a view to having the applicant's parliamentary immunity lifted. The applicant also applied for his immunity to be lifted. In his memorial he argued that parliamentary immunity had been introduced not to exempt MPs from accountability or prevent them being punished for their acts, but to enable them to do their jobs in full independence and peace. He also submitted that, unlike unaccountability, immunity was by nature a relative and temporary privilege. Having said that, the extent of the immunity, the procedure for lifting it and the shortcomings in its implementation had actually undermined the respect the National Assembly deserved. The applicant added that to turn an institution initially intended to enable MPs to do their job properly into a personal privilege was incompatible with the rule of law. However, the joint committee of the National Assembly decided to stay the criminal proceedings against the applicant until the end of his term of office. The applicant objected, relying on his right to a fair trial. The files concerning the applicant's request to have his immunity lifted remained on the agenda of the plenary Assembly for over two years, until the following elections, without ever being examined. Meanwhile, the applicant was re-elected to parliament. The Speaker of the National Assembly then informed him that the files concerning the lifting of his immunity were pending before the joint committee.

Law: Under the Turkish Constitution, no MP suspected of having committed an offence before or after his election could be arrested, questioned, detained or prosecuted unless the National Assembly decided to lift his immunity. Parliamentary immunity served a legitimate purpose, namely to ensure the full independence of members of parliament and of parliament itself. Proceedings brought against an MP could affect the smooth operation of parliament and disrupt its work. In view of the legitimate aim pursued, therefore, little did it matter what the nature of the event that gave rise to the proceedings was – in this case an event with no bearing whatsoever on the applicant's parliamentary functions. However, the exemptions that went with parliamentary immunity were legitimate only in so far as they related to the MPs' work and did not constitute a personal privilege but a principle of political law aimed at protecting not the individual but the function he or she fulfilled. It mattered little, therefore, that the facts concerned had taken place prior to the parliamentary election. However, the legitimacy of parliamentary immunity did not rule out the need to review the proportionality of the measure in respect of the applicant's rights under Article 6 of the Convention. The provisions of the Constitution should not result in the applicant being denied due process. The granting of parliamentary immunity fell within the margin of appreciation left to the State. However, the immunity enjoyed by Turkish MPs appeared broader than that enjoyed by members of other legislative bodies in Europe. It applied to both criminal and civil law matters, and to

acts committed prior to becoming an MP as well as those committed while in parliamentary office. In itself, a regulation providing for absolute parliamentary immunity could not be considered to overstep the margin of appreciation enjoyed by States in limiting people's access to a court. Parliamentary immunity was a matter of public policy, which meant that the judicial authorities were obliged to take it into account as a matter of course, and acts that did not follow that rule were void. Moreover, as parliamentary immunity was not a right to which MPs were entitled as individuals, the applicant could not relinquish it as of right. He could, however, ask the assembly of which he was a member to lift it; just as that assembly had the power to lift the immunity at the request of the judicial authorities. Under Turkish law, when the joint committee received a request to lift an MP's immunity it could decide, after seeking the advice of a preparatory committee, either to lift the parliamentary immunity or to stay the criminal proceedings against the MP concerned. When the joint committee chose to stay the proceedings, the decision could be appealed before the plenary Assembly, which would then decide whether or not to lift the immunity. There were no legal provisions, however, defining the conditions under which immunity could be lifted. The criteria seemed to be primarily political. Thus, the lack of explanation by the joint committee of the reasons for its decision, together with the lack of clearly defined objective criteria governing the lifting of immunity, would effectively deprive all the parties concerned by the decision of the means of defending their rights. Furthermore, there was no requirement of promptness and no time-limit in the procedure for lifting parliamentary immunity. The applicant's case had thus remained on the National Assembly's agenda for more than two years without any decision being taken, in spite of the applicant's wishes. Lastly, the suspension of all criminal proceedings against an MP during his or her term of office meant that a long time would necessarily elapse between the commission of the offences concerned and the opening of criminal proceedings, making the proceedings uncertain, particularly where evidence was concerned. The time it took to examine an action could affect its effectiveness. The applicant had directly suffered the consequences of such a delay. In that respect the immunity enjoyed by MPs in Turkey was a controversial subject which came under strong public criticism and had been identified as one of the major problems in dealing with corruption. The procedure for lifting parliamentary immunity had also been undermined by the fact that the plenary Assembly clearly appeared reluctant to use its powers in the matter. In such a context the Court understood the applicant's concerns about the repercussions and the risk of discredit when there was such a long delay, the lack of a decision as to whether or not to maintain his parliamentary immunity being easily perceived as an attempt to gain time and delay the course of justice. It could only regret that no account had been taken of his clear desire to waive his immunity. The opacity of the decision-making process, the lack of objective criteria governing the lifting of immunity, the inertia on the part of the National Assembly, which had refrained from determining the applicant's case, and the delays in the proceedings, which were still pending before the national courts, amounted to so many obstacles that had prevented the applicant from having his case decided on the merits by the criminal courts. That being so, the decision-making process in question and the manner of its implementation could not be considered compatible with the proper administration of justice and had interfered with the applicant's right of access to a court, to a degree which could not be considered proportionate to the legitimate aim pursued.
Conclusion: violation (four votes to three).

Article 6 § 3 (d)

EXAMINATION OF WITNESSES
Refusal to hear witnesses allegedly crucial for the applicant's defence: *admissible*.

SUTYAGIN - Russia (N° 30024/02)
Decision 8.7.2008 [Section I]

The applicant was the head of the Military-Technical and Military-Economic Policy Department at the Institute of the United States and Canada at the Russian Academy of Science. In 1999 the authorities arrested and charged him with high treason by way of espionage committed through the collecting and handing over to foreign organisations of military-related information allegedly containing State secrets

damaging to Russia's national security. The applicant's numerous requests for release from pre-trial detention were dismissed mainly because of the gravity of the charges against him. During the trial, the applicant complained of serious procedural breaches, including unexplained changes in the composition of the court and the selection of jurors from an unpublished list. The competent court also refused to hear two witnesses whom the applicant wished to call and whose evidence would, in his opinion, have been fundamental for his defence. Moreover, the applicant claimed that any information he had exchanged or reported on had been from open sources and the prosecution had failed to identify any classified information. In 2004 the applicant was found guilty as charged and sentenced to fifteen years' imprisonment. His appeals against the first-instance judgment were dismissed.
Admissible under Articles 5 § 3, 6 §§ 1 and 3 (d), Articles 7 and 10 of the Convention.

ARTICLE 7

Article 7 § 1

NULLUM CRIMEN SINE LEGE
Retrospective application of law through the applicant's conviction of war crimes for his part in a punitive military expedition on villagers during the Second World War: *violation*.

KONONOV - Latvia (N° 36376/04)
Judgment 24.7.2008 [Section III]

Facts: During the daytime on 27 May 1944 an armed unit of Red Partisans in German uniform led by the applicant entered the village of Mazie Bati, some of whose inhabitants were suspected of having betrayed another group of Red Partisans and turned them over to the Germans. The applicant's men burst into six homes and searched them. Having found rifles and grenades issued by the German military administration in each of the houses, the partisans executed the heads of the six households concerned. They then set fire to two houses and their outbuildings and three more people perished in the flames. In all, nine villagers were killed: six men and three women. In 2004 the applicant was convicted of a war crime and sentenced to one year and eight months' imprisonment. The Supreme Court's Cassation Division, or Senate, rejected his appeal.

Law: The Court had to examine whether, on 27 May 1944, the applicant's actions had amounted to offences defined with sufficient accessibility and foreseeability in national or international law. The applicant had been sentenced to imprisonment under the provisions of the former Latvian Criminal Code concerning war crimes. Although the code contained a summary list of the offences covered, it referred directly to the relevant conventions for a detailed definition of the acts concerned. The impugned conviction had thus been based on international rather than national law. In its judgment, upheld on appeal, the Criminal Affairs Division of the Supreme Court classified the applicant's actions from the standpoint of three international conventions of which only the Hague Convention existed and was in force at the time of the events at issue. The other two were drafted subsequent to the events concerned and contained no provisions giving them any retroactive effect. Moreover, when domestic criminal law referred to international law to define an offence, the domestic and international legal provisions formed a single criminal law standard for the purposes of Article 7 § 1 of the Convention. That being so, Article 7 § 1 prevented an international treaty from being applied retroactively to qualify an act or omission as criminal. Neither the USSR nor Latvia had been signatories to the Hague Convention of 1907. Consequently, in accordance with the "general participation" clause contained in Article 2, that Convention was not formally applicable to the armed conflict in question. However, those principles were already widely recognised at the end of the nineteenth century and there was no reason to doubt their universal character by the middle of the twentieth century, during the Second World War. Furthermore, the Court had already stated that, for the purposes of Article 7 § 1 of the Convention, the notion of "law" included, in principle, written law as well as unwritten law. It followed that the substantive rules contained in the Regulations appended to the Hague Convention of 1907 were applicable to the impugned

events. The Court therefore presumed that the applicant, as a serviceman, must have been aware of these rules. It thus had to determine whether a plausible legal basis existed on which to convict the applicant of a war crime and whether at the material time the applicant could reasonably have foreseen that his conduct would make him guilty of such an offence. On 27 May 1944 an armed unit of Red Partisans in German uniform led by the applicant had entered the village of Mazie Batiet and killed nine villagers: six men and three women. The decisions of the domestic courts were virtually silent concerning the applicant's direct personal involvement in what happened in Mazie Bati. Although he had initially been charged with murdering and torturing the villagers, he was subsequently acquitted in respect of the events concerned, which were removed from the charges against him. Having regard to the principle of the presumption of innocence enshrined in Article 6 § 2 of the Convention, the Court accepted that the applicant had not committed the offences in question. Therefore, the only offence he really stood accused of was that of having led the unit that carried out the punitive expedition of 27 May 1944. That being so, it was necessary to establish whether that expedition could, as such, reasonably be considered contrary to the laws and customs of war codified in the Hague Convention of 1907. The Court had first to take into consideration the conditions reigning in the Mazie Bati region in 1944 and, secondly, the conduct of the villagers killed by the applicant's unit. As far as the general context was concerned, the events had not taken place in a combat situation. However, the local area concerned and the entire surrounding region had been prey to the hostilities of war. As for the nine victims of the unit, the situation of the six men was to be examined separately from that of the three women who had perished in the incident. The men had received rifles and grenades from the German military administration in February 1944, about three months before the events at issue, as a reward for informing them that a group of Red Partisans had taken refuge in a barn. Furthermore, the villagers of Mazie Bati regularly mounted guard at night. The applicant and the other Red Partisans could thus legitimately have considered the villagers as collaborators of the German army. That being so, the six men killed on 27 May 1944 could not reasonably be considered as civilians. The Regulations appended to the Hague Convention of 1907 did not define the notions of civilian or civil population. There was no evidence that under the *jus in bello* as it existed in 1944 a person who did not satisfy the formal conditions to qualify as a "combatant" had automatically to be assigned to the category of "civilians" with all its attendant guarantees. Moreover, the expedition of 27 May 1944 had been selective. It was clear from the case file that it had never been the intention of the Red Partisans to attack the village of Mazie Bati as such. The expedition had specifically targeted six well-identified men who were strongly suspected of having collaborated with the Nazi occupier. The exact provisions of the Regulations appended to the Hague Convention of 1907 had to be analysed in order to determine whether a plausible legal basis had existed for convicting the applicant of at least one prohibited act. In their decisions the Latvian courts had omitted to carry out a detailed and sufficiently thorough analysis of the aforementioned text, so the literal and universally accepted meaning of the wording used in it had to be applied. It had not been adequately demonstrated that the attack on 27 May 1944 was *per se* contrary to the laws and customs of war as codified by the Regulations appended to the Hague Convention of 1907. There had therefore been no plausible legal basis in international law on which to convict the applicant for leading the unit responsible for the operation. However, there remained the issue of the three women killed at Mazie Bati. The reasoning given by the domestic courts had been overly general and summary and did not allow any definite answers to be given to the question whether and to what extent their execution had been planned by the Red Partisans from the start or whether the members of the unit had in fact acted beyond their authority. Nor had it given any indication of the exact degree of implication of the applicant in their execution. It had never been alleged that he himself had killed the women or had ordered or incited his comrades to do so. Even assuming that the applicant's conviction had had a basis in domestic law, the corresponding statutory limitation period under the legislation applicable to the events of 27 May 1944 had expired in 1954.

In the light of the above, on 27 May 1944 the applicant could not reasonably have foreseen that his acts constituted a war crime within the meaning of the *jus in bello* at the material time; there had been no plausible legal basis in international law for convicting him of such a crime. Even supposing, however, that the applicant had committed one or more offences punishable under the general domestic law, their prosecution had long since become statute barred; accordingly, domestic law could not serve as the basis for his conviction either.

Conclusion: violation (four votes to three).

Article 41 – 30,000 EUR in respect of non-pecuniary damage.

NULLUM CRIMEN SINE LEGE
Employee working for a company based in the Netherlands convicted for lacking a residence permit in Germany: *inadmissible*.

TOLGYESI - Germany (N° 554/03)
Decision 8.7.2008 [Section V]

In 1999 the applicant, a Hungarian national and therefore, at the time of the events in question, a national of a State outside the European Community, commenced employment with a Netherlands company as a lorry driver. He was in possession of an employment certificate issued in the Netherlands. He did not reside in the Netherlands, worked exclusively outside the Netherlands and had not yet been issued with a Netherlands work permit. In 2001 he was twice subjected to checks by the German police. After each check, criminal proceedings were instituted against him under the German Aliens Act. Subsequently, a district court convicted him of remaining in the country illegally and sentenced him to a fine. A regional court quashed his conviction as regards the first offence on the ground that he could not have known that his stay was illegal given that he had been subjected to checks before without any consequences. However, it upheld his conviction as regards the second offence but reduced the fine. The applicant appealed unsuccessfully. The German courts found that at the relevant time he had not possessed a work permit issued by the State where the company employing him was established, that his employment certificate could not be equated with such a permit and that he was not exempt from possessing such a permit on the grounds that he had been transporting goods exclusively outside the Netherlands. The exception to the requirement to hold a residence permit, provided for in an Order implementing the German Aliens Act, was clearly aimed at benefiting only those employees whose legal residence and employment were actually in the Community Member State where the company was established and not those who, like the applicant, worked exclusively outside that Member State. For the same reasons, the judgment of the European Court of Justice in *Vander Elst* relied on by the applicant did not have any bearing on his case.

Inadmissible: The domestic courts' interpretation of the relevant legal provision was based on its wording, aim and genesis and was therefore neither unforeseeable nor arbitrary. It was at least questionable whether the applicant could rely on the employment certificate as constituting a sufficient basis for the application of the exception provided for in the Order implementing the Aliens Act. In any event, after the first check by the police which had resulted in the institution of criminal proceedings, he had been made aware that the German authorities did not recognise that certificate. Therefore, he could reasonably have foreseen his criminal prosecution and conviction – at least with regard to the second conviction, which was the only conviction at issue in his case: *manifestly ill-founded*.

ARTICLE 8

PRIVATE LIFE
Insufficient protection of medical records of HIV-positive nurse from unauthorised access: *violation*.

I. - Finland (N° 20511/03)
Judgment 17.7.2008 [Section IV]

Facts: The applicant worked as a nurse in a public hospital. From 1987 she paid regular visits to the polyclinic for infectious diseases at the same hospital, after being diagnosed as HIV-positive. Early in 1992 she began to suspect that her colleagues were aware of her illness. At the time hospital staff had free access to the patient register which contained information on patients' diagnoses and treating doctors. She confided her suspicions to her doctor and the hospital register was amended so that henceforth only the

treating clinic's personnel had access to its patients' records. The applicant was registered under a false name and given a new social-security number. She later lodged a complaint with the County Administrative Board with a view to establishing who had accessed her confidential patient records, but the hospital administration advised that it was not possible to obtain that information under the data system then in place. A claim for damages by the applicant in the civil courts was dismissed because of a lack of firm evidence that her patient records had been unlawfully consulted.

Law: The confidentiality of health data was crucial not only to a patients' privacy but also to preserve their confidence in the medical profession and in the health services in general. These considerations were especially valid in the case of HIV infection, given the sensitive issues surrounding the disease. While the strict application of domestic law would have constituted a substantial safeguard by making it possible to police access to the records, the system at the hospital had made it impossible to clarify retroactively the use of patient records or to determine whether information contained on the applicant and her family had been given to or accessed by unauthorised parties. Moreover, at the material time the records could also be read by staff not directly involved in the applicant's treatment. Although the hospital had subsequently taken *ad hoc* measures to protect the applicant against unauthorised disclosures by restricting access to treating personnel and registering the applicant under a false name and social-security number, this had come too late. The applicant had lost her civil action because she was unable to prove on the facts a causal connection between the deficiencies in the access security rules and the dissemination of the information about her medical condition. However, to place such a burden of proof on her was to overlook the acknowledged deficiencies in the hospital's record-keeping at the material time. The decisive factor was that the records system in place in the hospital was clearly not in accordance with the statutory requirements and this had not been given due weight by the domestic courts. Nor was the fact that the domestic legislation allowed the applicant to claim compensation for unlawful disclosure sufficient to protect her private life. What was required was practical and effective protection to exclude any possibility of unauthorised access occurring in the first place. No such protection had been forthcoming in the applicant's case.
Conclusion: violation (unanimously).

Article 41 – EUR 5,771.80 in respect of pecuniary damage and EUR 8,000 in respect of non-pecuniary damage.

PRIVATE LIFE
Applicant obliged to change the name she had taken more than fifty years previously: *violation*.

DARÓCZY - Hungary (N° 44378/05)
Judgment 1.7.2008 [Section II]

Facts: In 1950 the applicant married Mr Tibor Ipoly Daróczy and chose to take his name by adding the suffix *-né*. Since her husband normally only used his first name, the applicant was registered as Tiborné Daróczy, whereas under the applicable law at the material time she could only have chosen to bear her husband's full name, in which case her correct married name would have been Tibor Ipolné Daróczy. However, this mistake was not revealed until 2004, after her husband's death, when the applicant lost her identity card and was issued a new one bearing the corrected version of her name. The applicant subsequently sought permission to use the name she had borne for over fifty years (Tiborné Daróczy), but the competent Ministry informed her that it was not possible for her to change her name to a form other than her late husband's full name.

Law: The State's reluctance to allow the applicant to use the name she wished amounted to an interference with her private life. The applicant had started to use the name Tiborné Daróczy in 1950, when she married. Whether or not this had been the correct way to use her married name at the time was not decisive. She had used that version of her name in all aspects of her official life: State authorities had issued her with several official documents, including her identity card, she had been entered on the electoral register and been able to open a bank account using that name. While it was true that States

enjoyed a wide margin of appreciation concerning the regulation of names, they could not disregard the importance of names in the lives of private individuals as central elements of self-identification and self-definition. Formal reference to the legitimate aim of ensuring the authenticity of the State Registry could not justify, in the absence of any actual prejudice to the rights of others, a restriction of the right protected by Article 8. Further, the Government had not put forward any convincing arguments showing that the genuineness of the system of State registries or the rights of the applicant's late husband had been at real risk. Nothing indicated that the late Mr Tibor Daróczy had used his name in another form and, therefore, it was implausible that the applicant's intention to continue using her name could infringe his rights, still less after his death. The restriction imposed was unacceptably rigid and completely disregarded the applicant's interests, in that she had been forced to alter a name which she had used for more than 50 years and which moreover gave her a strong personal link to her husband. A fair balance had therefore not been struck between the public interest relied on by the Government and the interests of the applicant under Article 8.
Conclusion: violation (unanimously).

Article 41 – EUR 3,500 in respect of non-pecuniary damage.

PRIVATE AND FAMILY LIFE
Exclusion of the applicant, who had been divested of her capacity to act, from proceedings resulting in the adoption of her daughter: *violation*.

X. - Croatia (N° 12233/04)
Judgment 17.7.2008 [Section I]

Facts: The applicant suffers from paranoid schizophrenia and has been divested of her capacity to act. In July 2000 the applicant's daughter A., who was born in December 1999, was taken into foster care by the applicant's mother. It was found that the applicant, who was suffering from a serious mental illness and was a drug addict, was not capable of caring for the child. Subsequently, by a court decision in May 2001 the applicant was divested of the capacity to act on the ground that, as she suffered from paranoid schizophrenia, she was incapable of taking care of her own rights and interests. Although not expressly stated in that decision, one of its consequences was that she was deprived, under sections 130 and 138 of the 2003 Family Act, of her parental rights since a parent divested of the capacity to act could not be a party to adoption proceedings and his or her consent was not required for adoption. In 2005 the domestic courts, relying on psychiatric assessments which reported that the applicant's illness had progressed and that she continued to be incapable of taking care of her interests, refused her request to have her capacity to act restored.
In the meantime, in November 2001 the applicant's daughter was taken into State care on the ground that the applicant, who was living with her mother, was interfering with the child's upbringing. Adoption proceedings were subsequently brought, without the applicant's knowledge, on the ground that A. was without parental care as her mother had been divested of her capacity to act and her father had died. The Government stated that the applicant had been informed of those proceedings by telephone on 26 August 2003. On 2 September 2003 A's adoption was authorised. Until the adoption, the applicant's access rights were preserved and, according to the applicant, she continued to visit her daughter on a regular basis.

Law: A. had lived with her mother from her birth in December 1999 until she was taken into foster care in November 2001. Even after that date, the applicant had continued to visit her on a regular basis. Throughout that period there had accordingly been a bond between the applicant and her daughter which amounted to "family life" within the meaning of Article 8. There was no doubt that the adoption had completely disrupted the applicant's relationship with her daughter and had amounted to a very serious "interference" with her right to respect for family life. That "interference" had had a basis in national law, namely the 1998 and 2003 Family Acts, and pursued the legitimate aim of protecting the best interests of the child. However, at no point in the domestic proceedings which preceded A.'s adoption had the applicant's relationship with her daughter been assessed, despite the fact that, under domestic law, one of the consequences of the decision to divest the applicant of her capacity to act had been her complete

exclusion from the adoption proceedings. Nor had any separate decision been taken about the applicant's parental rights. Indeed, after the applicant was divested of the capacity to act, she had still continued to exercise her parental rights at least to a certain extent, since her access rights had been preserved until the adoption. Notwithstanding this, A. had been given up for adoption and the applicant had not been allowed to participate in the ensuing proceedings in any form, save for an alleged telephone call. The Court found it difficult to accept that anyone divested of the capacity to act should be automatically excluded from adoption proceedings concerning his or her child. Instead of being summarily informed of the decision concerning her daughter, the applicant should also have been given an opportunity to express her views about the potential adoption in the proceedings. The applicant had not therefore been sufficiently involved in the decision-making process, especially given the crucial impact the decision of 2 September 2003 would have on her relationship with her daughter. It followed that by excluding the applicant from the proceedings which had resulted in the adoption of her daughter, the State had failed to ensure the applicant's right to respect for her private and family life.
Conclusion: violation (unanimously).

Article 41 – EUR 8,000 in respect of non-pecuniary damage.

FAMILY LIFE
Decisions to expel and impose an exclusion order on an illegal immigrant who had married a national of the respondent State and fathered her child: *no violation*.

DARREN OMOREGIE and Others - Norway (N° 265/07)
Judgment 31.7.2008 [Section I]

Facts: The first applicant, a Nigerian national, entered Norway in 2001 and applied for asylum. His request was turned down in May 2002. Pending his appeal against that decision, he was granted a temporary work permit and a stay of execution, but at no time was he granted lawful residence in Norway. He met the second applicant, a Norwegian national, in October 2001 and the couple started cohabiting in March 2002. In September 2002 the Immigration Appeals Board rejected his appeal and he was required to leave the country by the end of the month. From that point on, his continued stay in Norway was unlawful. In February 2003 the first applicant married the second applicant, and applied for a right to stay on that ground. However, that request was also rejected. In August 2003 the Directorate of Immigration issued an expulsion order accompanied by a five-year exclusion order on the first applicant for overstaying and working without a permit. He nevertheless continued to live with the second applicant in Norway and in September 2006 the couple had a child, the third applicant. In March 2007 the first applicant was expelled to Nigeria.

Law: The interference with the applicants' right to respect for their family life was in accordance with the law and pursued the legitimate aims of preventing disorder or crime and protecting the economic well-being of the country. As to the necessity of the measures, the Court noted that the first applicant was an adult when he first arrived in Norway and his links to the second and third applicants were formed only later. The basic condition for expelling him – serious and repeated violations of the immigration rules – had been fulfilled. As to his relationship with the second applicant, the couple could at no stage prior to their marriage have reasonably held any expectation that the first applicant would be granted leave to remain in Norway and they were not entitled to expect that any right of residence would be conferred upon him by confronting the Norwegian authorities with his presence in the country as a *fait accompli*. Like considerations applied to the third applicant's birth, which could not of itself give rise to any such entitlement. Whereas the first applicant's links to Nigeria were particularly strong, his links to Norway were comparatively weak, apart from the family bonds he had formed there with the second and third applicants pending the proceedings. The third applicant was still of an adaptable age and while the second applicant would probably experience some difficulties and inconvenience in settling in Nigeria, there were no insurmountable obstacles in the way of the applicants' developing family life there, if only through periodic visits by the second and third applicants. As to the five-year exclusion order, its purpose was to ensure that resilient immigrants did not undermine the effective implementation of rules on

immigration control. Moreover, it was open to the first applicant to apply for re-entry after two years. In sum, the national authorities had not acted arbitrarily or otherwise transgressed their margin of appreciation.
Conclusion: no violation (five votes to two).

CORRESPONDENCE
Interception by the Ministry of Defence of the external communications of civil-liberties organisations on the basis of a warrant issued under wide discretionary powers: *violation*.

LIBERTY and Others - United Kingdom (N° 58243/00)
Judgment 1.7.2008 [Section IV]

Facts: The Interception of Communications Act 1985 made it an offence intentionally to intercept communications by post or by means of a public telecommunications system. However, the Secretary of State was authorised to issue a warrant permitting the examination of communications if it was considered necessary in the interests of national security, to prevent or detect serious crime or to safeguard the State's economic well-being. Warrants could be issued in respect of communications (whether internal or external) linked to a particular address or person, or (under section 3(2) of the Act) to external communications generally, with no restriction on the person or premises concerned. Section 6 of the Act required the Secretary of State to make such arrangements as he considered necessary to ensure safeguards against abuses of power. Arrangements were reportedly put in place, but their precise details were not disclosed in the interests of national security. The Act also provided for a tribunal (the Interception of Communications Tribunal – ICT) to investigate complaints from any person who believed their communications had been intercepted and for the appointment of a Commissioner with reporting and review powers.
The applicants were a British and two Irish civil-liberties organisations. They alleged that between 1990 and 1997 their telephone, facsimile, e-mail and data communications, including legally privileged and confidential information, had been intercepted by an Electronic Test Facility operated by the British Ministry of Defence. Although they had lodged complaints with the ICT, the Director of Public Prosecutions and the Investigatory Powers Tribunal (IPT) challenging the lawfulness of the interceptions, the domestic authorities found that there had been no contravention of the 1985 Act. The IPT specifically found that the right to intercept and access material covered by a warrant, and the criteria by reference to which it was exercised, were sufficiently accessible and foreseeable to be in accordance with law. (The 1985 Act has now been replaced).

Law: The mere existence of legislation which allowed communications to be monitored secretly entailed a surveillance threat for all those to whom it might be applied and so constituted an interference with the applicants' rights. Section 3(2) of the 1985 Act allowed the British authorities a virtually unlimited discretion to intercept any communications between the United Kingdom and an external receiver described in the warrant. Warrants covered very broad classes of communications and, in principle, any person who sent or received any form of telecommunication outside the British Islands during the period in question could have had their communication intercepted. The authorities also had wide discretion to decide which communications from those physically captured should be listened to or read.
Although during the relevant period there had been internal regulations, manuals and instructions to provide for procedures to protect against abuse of power, and although the Commissioner appointed under the 1985 Act to oversee its workings had reported each year that the "arrangements" were satisfactory, the nature of those "arrangements" had not been contained in legislation or otherwise made available to the public. Further, although the Government had expressed concern that the publication of information regarding those arrangements during the period in question might have damaged the efficiency of the intelligence-gathering system or given rise to a security risk, the Court noted that extensive extracts from the Interception of Communications Code of Practice were now in the public domain, which suggested that it was possible to make public certain details about the operation of a scheme of external surveillance without compromising national security. In conclusion, domestic law at the relevant time had not indicated with sufficient clarity, so as to provide adequate protection against abuse of power, the scope or

manner of exercise of the very wide discretion conferred on the State to intercept and examine external communications. In particular, it had not set out in a form accessible to the public any indication of the procedure to be followed for examining, sharing, storing and destroying intercepted material. The interference was not therefore "in accordance with the law".
Conclusion: violation (unanimously).

Article 41 – Finding of a violation constituted sufficient just satisfaction for any non-pecuniary damage.

HOME
Lack of evidence to show unacceptable noise nuisance from a neighbouring tailor shop: *inadmissible*.

BORYSIEWICZ - Poland (N°71146/01)
Judgment 1.7.2008 [Section IV]

Facts: The applicant, who lived in a semi-detached house in a residential area, complained that the authorities had failed to protect her home from the noise emanating from a tailoring workshop located in an adjacent building. She brought proceedings against her neighbour to have the workshop closed or to have measures taken to reduce the level of noise. The proceedings were still pending before a regional administrative court.

Law: Article 8 – It was accepted that the applicant and her family might have been affected by the operation of the workshop in the neighbouring house, but the nuisance had to reach a minimum level of severity in order to raise an issue under Article 8. In this connection, the Court observed that in the course of the proceedings noise evaluation tests were carried out twice and that, since the applicant had criticised the procedure by which the tests had been carried out and the administrative court had eventually accepted her arguments, it was plausible that the results of the tests were not fully reliable. However, the applicant never submitted those results to the Court, nor had she submitted the results of any alternative noise tests which would have allowed the noise levels in her house to be ascertained and for it to be determined whether they exceeded the norms set either by domestic law or by applicable international environmental standards, or exceeded the environmental hazards inherent in life in every modern town. The applicant had, furthermore, failed to submit any documents to show that her health or that of her family had been negatively affected by the noise. In the absence of such findings it could not be established that the State had failed to take reasonable measures to secure her rights under Article 8. In view of the above, it had not been established that the noise levels complained of were serious enough to reach the high threshold established in cases dealing with environmental issues: *manifestly ill-founded*.

The Court further found a violation of the applicant's right to a hearing within a reasonable time under Article 6 § 1 of the Convention.

HOME
Search of law offices and seizure of documents by tax inspectors seeking evidence against one of the firm's corporate clients: *violation*.

ANDRÉ and Other - France (N° 18603/03)
Judgment 24.7.2008 [Section V]

Facts: The offices of the applicants, who are lawyers, were searched by the tax authorities in the hope of discovering incriminating evidence against a client company of the lawyers which was suspected of tax evasion. The search was carried out by four Inland Revenue officers, in the presence of the first applicant, the President of the Bar Association and a police officer. At the time, the first applicant was given a copy of the warrant issued by the *tribunal de grande instance* authorising the search at the behest of the tax authorities. A report with an inventory of the items seized was drawn up and signed by those present. Sixty-six documents were seized, including hand-written notes and a document with a hand-written

comment penned by the first applicant, which the President of the Bar Association expressly pointed out were personal documents of the lawyer's and, as such, were absolutely confidential and could not be seized. The first applicant expressed reservations concerning the conduct of the search and made a number of observations, which were included in the search report. He was given copies of the search report and the documents seized. The applicants appealed, pleading professional privilege and the rights of the defence and arguing that documents handed over by a client to his lawyer and correspondence between them could not be seized if the purpose of the search was not to obtain evidence of the involvement of the lawyer in the offences concerned. They also objected to the lack of any express mention in the search warrant that the presence of the President of the Bar Association or his delegate was mandatory during the search. The Court of Cassation rejected the appeal.

Law: The search carried out at the applicants' offices and the seizures effected amounted to an interference with their right to respect for their home. That interference was provided for by law and had pursued a legitimate aim, namely the prevention of disorder and crime. However, searches and seizures at a lawyer's office indubitably interfered with the professional privilege at the heart of the relationship of confidence which existed between the lawyer and his client and was the corollary of the lawyer's client's right not to incriminate himself. That being so, if domestic law could provide for the possibility of such searches of lawyers' premises, they should imperatively go hand in hand with special guarantees. In this case there had been a special procedural guarantee as the search had been carried out in the presence of the President of the Bar Association of which the applicants were members. His presence and his observations concerning the confidentiality of the documents seized had been mentioned in the subsequent report. However, not only had the judge who authorised the search been absent, but the presence of the President of the Bar Association and the objections he had voiced had not prevented the officers carrying out the search from looking at all the documents in the office and seizing them. On the matter of the seizure of notes hand-written by the first applicant, the papers concerned had been the lawyer's personal documents, and therefore subject to professional privilege. Furthermore, the search warrant had been worded in very broad terms, simply ordering the searches and seizures necessary to produce the requisite evidence in certain places where documents and other sources of information relating to the presumed tax evasion were likely to be found, in particular at the applicants' offices. This had given wide powers to the tax and police officers in charge of the search, the purpose of which had been to find, on the applicants' premises, in their sole capacity as lawyers to the company suspected of tax evasion, documents capable of confirming the suspicion of tax evasion and being used in evidence against the company concerned. At no time had the applicants been accused or suspected of having committed an offence or been involved in any fraud committed by their client company. Thus, in the framework of the tax inspection of a corporate client of the applicants, the authorities had targeted the applicants solely because they were having difficulties completing the tax inspection, in the hope of finding accounting, legal or administrative documents that might confirm their suspicion that the company was guilty of tax evasion. In that context the search and seizures carried out at the applicants' offices had been disproportionate to the aim pursued.
Conclusion: violation (unanimously).

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

ARTICLE 9

MANIFEST RELIGION OR BELIEF
Prolonged failure to grant legal personality to a religious group: *violation*.

RELIGIONSGEMEINSCHAFT DER ZEUGEN JEHOVAS and Others - Austria (N° 40825/98)
Judgment 31.7.2008 [Section I]

Facts: Under Austrian law religious bodies may obtain separate legal personality by registering either as a religious society under the Legal Recognition of Religious Societies Act 1874 or as a religious

community under the Religious Communities Act 1998. Registration as a society, which enjoys more extensive rights than a community, is only possible if the organisation has existed for at least 20 years in Austria or has been registered as a religious community for at least 10 years.
In 1978 and again in 1987 a group of Jehovah's Witnesses, including the first four applicants, applied to register the applicant community as a religious society. The authorities did not effect the registration and the competent minister ultimately informed the applicants that under the 1874 Act they had no right to a formal decision. Following a complex series of proceedings and a Constitutional Court ruling in 1995 that the applicant community was entitled to a determination of its request for recognition as a religious society, the minister issued a decision refusing registration on grounds relating to the applicant community's internal organisation and perceived attitude. That decision that was subsequently quashed by the Constitutional Court as being arbitrary and in violation of the principle of equality. Following the introduction of the 1998 Act the applicant community was able to obtain legal personality as a religious community, which afforded it legal standing before the Austrian courts and authorities and the right to acquire and manage assets in its own name, establish places of worship and disseminate its beliefs. It nevertheless renewed its request for recognition as a religious society, but this was refused on the ground that it had not been registered as a religious community for the requisite ten-year period.

Law: Article 9 – The period between the submission of the request for recognition as a religious society and the granting of legal personality was substantial, some 20 years, during which the applicant community had had no legal personality in Austria. There had therefore been interference with the applicants' right to freedom of religion. That interference had been "prescribed by law" and pursued the "legitimate aim" of protecting public order and public safety. The right of a religious community to an autonomous existence was indispensable for pluralism in a democratic society. Given the importance of that right, there was an obligation to keep the time such a community had to wait for legal personality reasonably short. The fact that the applicants could have created auxiliary associations with legal personality could not compensate for the authorities' prolonged failure to grant legal personality. Since the Government had not provided "relevant" and "sufficient" reasons to justify that failure, the measure had gone beyond any "necessary" restriction on the applicants' freedom of religion.
Conclusion: violation of Article 9 (six votes to one).

Article 14 in conjunction with Article 9 – Under Austrian law religious societies enjoyed privileged treatment in many areas, notably taxation. In view of those privileges, the authorities were under an obligation to remain neutral and to give all religious groups wishing to apply for a specific status a fair opportunity to do so, using established criteria in a non-discriminatory manner. The duty to remain neutral and impartial also raised delicate questions when imposing a qualifying period on a religious association which had legal personality before it could obtain a more consolidated status as a public-law body. While making a religious community wait for ten years before granting it the status of a religious society could be necessary in exceptional circumstances, such as in the case of newly established and unknown religious groups, it hardly appeared justified in respect of religious groups such as the Jehovah's Witnesses that were well-established nationally and internationally and thus familiar to the authorities. It should have been possible to verify whether the requirements of the legislation were fulfilled within a considerably shorter period in respect of such a group. Citing the example of another religious group that had been recognised in 2003 despite having been established in Austria much more recently and only being registered as a religious community in 1998, the Court concluded that the respondent State had not considered it essential to apply the same ten-year qualifying period to all. Accordingly, the difference in treatment was not based on any "objective and reasonable justification".
Conclusion: violation (six votes to one).

Article 41 – EUR 10,000 in respect of non-pecuniary damage.

ARTICLE 10

FREEDOM OF EXPRESSION
Criminal conviction for wearing an outlawed totalitarian symbol (red star) at a political demonstration: *violation*.

VAJNAI - Hungary (N° 33629/06)
Judgment 8.7.2008 [Section II]

Facts: Section 269/B of the Criminal Code made it a criminal offence to disseminate, use in public or exhibit certain symbols that were deemed "totalitarian". These included the red star. The constitutionality of that provision was upheld by the Constitutional Court in a decision in 2000 in which it noted that allowing the unrestricted, open and public use of such symbols would seriously offend all persons committed to democracy and in particular those who had been persecuted by Nazism and Communism. Accordingly, the historical experience of Hungary and the danger the symbols represented to its constitutional values convincingly, objectively and reasonably justified their prohibition and the use of the criminal law to combat them.
At the material time the applicant was the Vice-President of the Workers' Party (*Munkáspárt*), a registered left-wing political party. In 2003 he was convicted of using a totalitarian symbol for wearing a red star on his jacket at an authorised demonstration in the centre of Budapest he was attending as a speaker. Sentencing was deferred for a probationary one-year period.

Law: The applicant's conviction amounted to interference with his right to freedom of expression that was "prescribed by law" and pursued the legitimate aims of preventing disorder and protecting the rights of others. When – as in the applicant's case – freedom of expression was exercised as political speech, limitations were only justified if there was a clear, pressing and specific social need. In view of the multiple meanings of the red star, a blanket ban was too broad as it was not exclusively associated with totalitarian ideas. Accordingly, as with offending words, a careful examination of the context in which it was used was required. The applicant had worn the symbol at a lawfully organised, peaceful demonstration in his capacity as the vice-president of a registered, left-wing, political party, with no known intention of defying the rule of law. The Government had not cited any instance where an actual or even remote danger of disorder triggered by the public display of the red star had arisen in Hungary. The containment of a mere speculative danger, as a preventive measure for the protection of democracy, could not be seen as a "pressing social need" and various other offences existed in Hungarian law to prevent public disturbances. Moreover, the ban was indiscriminate. Merely wearing the red star could lead to a criminal sanction and no proof was required that its display amounted to totalitarian propaganda. While the Court accepted that the display of a symbol which had been ubiquitous during the reign of the Communist regimes might create unease among past victims and their relatives, such sentiments, however understandable, could not alone set the limits of freedom of expression. Almost two decades had gone by since the transition to pluralism in Hungary, which was now a Member State of the European Union and had proved itself to be a stable democracy. Accordingly, the applicant's conviction could not be considered to have responded to a "pressing social need".
Conclusion: violation (unanimously).

Article 41 – Finding of a violation constituted sufficient just satisfaction for any non-pecuniary damage.

FREEDOM OF EXPRESSION
Conviction of demonstrators for chanting slogans supporting an illegal organisation: *violation*.

YILMAZ and KILIÇ - Turkey (N° 68514/01)
Judgment 17.7.2008 [Section III]

Facts: At the material time the two applicants were members of Hadep (the People's Democratic Party). Both were arrested following demonstrations held to protest against the arrest of Abdullah Öcalan, former leader of the illegal armed organisation PKK (Kurdistan Workers' Party). The applicants were each sentenced by the National Security Court to about four years' imprisonment for aiding and abetting an illegal organisation.

Law: *Rejection of the preliminary objection of non-exhaustion* – The applicants were accused of having facilitated the activities of an armed group. The offence had consisted mainly in their having taken part in a demonstration in the course of which they had chanted slogans in favour of the organisation concerned. The applicants had naturally based their defence on that charge, rejecting the characterisation of the facts of the case and the establishment of the facts as such. The first applicant could not be blamed for not having relied on his right to freedom of expression when he had in fact been charged with facilitating the activities of an armed group, precisely for expressing his views as he did. To have done otherwise would have required him to accept the charges, drawing him into a vicious circle that would have deprived him of the protection of the Convention. Moreover, the National Security Court, of its own motion, had evoked the right to freedom of expression in substance. Lastly, both the first applicant and the two applicants' counsel could be considered, in the particular circumstances of the case, to have raised the right to freedom of expression.

Merits: According to the National Security Court's judgment the applicants' conviction had been based solely on their participation in a protest demonstration against the arrest of Abdullah Öcalan and on the support they had voiced for him and for an illegal organisation. However, in order to establish whether or not there had been interference with the applicants' freedom of expression, there was no need to dwell on the classification of the offence by the domestic courts. As the evidence on the strength of which the applicants had been convicted consisted solely of forms of expression, there had been interference. The Government's preliminary objection concerning victim status was therefore rejected. The Court confined itself to examining whether the applicants' conviction was compatible with Article 10 of the Convention. The impugned interference had been provided for by law and pursued the legitimate aim of protecting national security and preventing disorder. The demonstrations had not been violent. Some of the slogans chanted had had particularly violent connotations, but it had not been established that these had been chanted by the applicants themselves. Therefore, even if the national authorities' interference with the applicants' right to freedom of expression might have been justified by their concern to prevent disorder, especially in the particularly tense political climate that reigned in the country at the time, the punishment inflicted on the applicants, namely almost four years' imprisonment, had been manifestly disproportionate in its nature and severity to the legitimate aim pursued in their conviction. The domestic courts had gone beyond what would have amounted to a necessary restriction to the applicants' freedom of expression.
Conclusion: violation (unanimously).

FREEDOM OF EXPRESSION
Unprofessional conduct of a newspaper in publishing two articles defamatory of a high school principal: *no violation*.

FLUX - Moldova (no. 6) (N° 22824/04)
Judgment 29.7.2008 [Section IV]

Facts: The applicant newspaper published an anonymous letter that had allegedly been received from a group of students' parents concerning a local high school. The letter criticised the situation in the school, in particular the spending of its funds by the principal and allegations that he had received bribes for

enrolling children in the school. The school principal then published a reply to that article in another newspaper, since the applicant refused to do so. Subsequently, the applicant published another article explaining why it had refused to publish that reply. At the same time, it also accused the principal of taking bribes and gave a concrete example of a person who had contacted the applicant in response to its first article. The principal then brought proceedings for defamation against the applicant. Despite hearing three witnesses confirming the existence of bribery, the court found in favour of the principal after concluding that those witnesses' statements were not sufficient to overturn the presumption of innocence enjoyed by the principal, which could only have been rebutted in criminal proceedings. It ordered the applicant to publish an apology and pay the principal EUR 88 for non-pecuniary damage. Subsequent appeals against that judgment were to no avail.

Law: The Court accepted the applicant's argument that it was impossible to dissociate the two articles it had published on the matter at issue and decided to consider them together. Despite the seriousness of the accusations contained in the anonymous letter, the applicant's journalists had made no attempt to contact the principal or to ask his opinion on the matter, nor did it appear that they had made any form of investigation into the issues mentioned in the letter. Moreover, the applicant had refused to publish the principal's reply to the letter, considering it offensive, whereas there was nothing in the language used to justify such a conclusion. As to the second article published following the principal's reply, having regard to the repetition of certain accusations already contained in the anonymous letter, it was considered more as a form of reprisal against the persons who had questioned the newspaper's professionalism. The tone of the article indicated a degree of mockery and the article itself suggested an alleged personal relationship between the principal and a teacher, without any evidence to that end. The Court disagreed with the domestic courts' assertion that allegations of serious misconduct such as bribery first had to be proved in criminal proceedings. However, it reiterated that the right to freedom of expression should not be perceived as conferring on newspapers an absolute right to act in an irresponsible manner by charging individuals with criminal acts in the absence of a basis in fact at the material time. Taking into consideration the unprofessional conduct of the applicant and the relatively modest award of damages it had been required to pay, the domestic courts had struck a fair balance between the competing interests of the applicant and its opponent.
Conclusion: no violation (four votes to three).

FREEDOM OF EXPRESSION
Lawyer given a written reprimand for making a defamatory and unfounded allegation against a prosecution authority in written submissions: *no violation.*

SCHMIDT - Austria (N° 513/05)
Judgment 17.7.2008 [Section I]

Facts: In written submissions, the applicant, a lawyer, accused the Vienna Food Inspection Agency (the Agency) of attempting to play tricks on his client. The Agency had a function comparable to the prosecution in ordinary criminal proceedings. Following disciplinary proceedings brought against him for infringing the Agency's reputation, he was sanctioned with a written reprimand. He appealed unsuccessfully.

Law: Although the impugned statement had not amounted to personal insult, but had rather been directed against the conduct of the Agency in the proceedings, the decisive factor was that the applicant's allegations were not supported by any facts. Indeed, the statement had not explained in any detail why the applicant thought that the Agency had acted improperly in bringing charges against his client. In contrast to the case of *Nikula*, what was at stake was not a criminal penalty but a disciplinary sanction. As regards

the proportionality of the penalty, the most lenient sanction provided for by the Disciplinary Act had been applied, namely a written reprimand. In sum, the domestic authorities had given relevant and sufficient reasons for their decision and had not gone beyond their margin of appreciation.
Conclusion: no violation (four votes to three).

See also *Nikula v. Finland*, no. 31611/96, judgment of 21 March 2002, Information Note no. 40.

FREEDOM OF EXPRESSION
Early termination of a conscript's military service on the ground of his membership of an extremist party: *inadmissible*.

LAHR - Germany (N° 16912/05)
Decision 1.7.2008 [Section V]

In 1998, when he commenced his compulsory military service, the applicant was a local chairperson of the National Democratic Party of Germany, which is considered populist and right-wing extremist and has therefore been under scrutiny by the German office for the protection of the constitution. Some months later, his military service was prematurely terminated on account of his membership of and functions in the party. He unsuccessfully appealed against this decision to the administrative courts and the Federal Constitutional Court.

Inadmissible: The assumed interference with the applicant's right to freedom of expression was lawful and had pursued the legitimate aims of preserving the army's political neutrality, order and readiness to defend the free democratic constitutional system. As regards the necessity for the interference, a Contracting State did not overstep its margin of appreciation when deciding whether or not the further presence of a conscript within the army would pose a serious danger to military order. Even though no criticism had been levelled at the way the applicant actually performed his duties, the domestic courts had established comprehensively that his holding of functions in the party at issue during his military service and his failure to dissociate himself from the unconstitutional aims of that party posed a serious danger to the army's integrity and loyalty to the Constitution. Moreover, the early termination of the applicant's military service had had no effect on his livelihood (in contrast to the *Vogt v. Germany* case). The measure had therefore not amounted to a disproportionate and unjustified restriction of the applicant's right to freedom of expression: *manifestly ill-founded*.

See also *Erdel v. Germany* (dec.), no. 30067/04, 13 February 2007, Information Note no. 94.

FREEDOM TO IMPART INFORMATION
Conviction for imparting information which the applicant alleged was not from a classified source: *admissible*.

SUTYAGIN - Russia (N° 30024/02)
Decision 8.7.2008 [Section I]

(see Article 6 § 3 (d) above).

ARTICLE 11

FREEDOM OF ASSOCIATION
Dissolution of an association aimed at promoting "the historical identity of the Slavs from Macedonia, who have for centuries appeared as Bulgarians": *admissible*.

ASSSOCIATION OF CITIZENS RADKO & PAUNKOVSKI - the former Yugoslav Republic of Macedonia (N° 74651/01)
Decision 8.7.2008 [Section V]

In 2000 ten Macedonian nationals, including the second applicant, founded the first applicant under the name "the Association of Citizens Radko-Ohrid". The first applicant's articles of association defined it as an independent, non-political public organisation, which studied and promoted the Macedonian Liberation Movement. In reality, the first applicant's aims were "raising and affirming the Macedonian cultural space, having as its priority the cultural and historical identity of the Slavs from Macedonia who have appeared as Bulgarians throughout the centuries". Some months after the first applicant's establishment, three practising lawyers from Skopje, together with a political party, filed a petition with the Constitutional Court challenging the constitutionality of the first applicant's articles of association claiming that the first applicant's aims were to infiltrate Bulgarian linguistic elements into the Macedonian language and alphabet. In March 2001 the Constitutional Court declared the first applicant's articles and programme null and void. Since its leader taught that Macedonian ethnicity had never existed, but belonged to the Bulgarians, the Constitutional Court concluded that the first applicant's aims were the violent destruction of the constitutional order and incitement to national or religious hatred or intolerance. Consequently, the competent court of first instance decided *ex officio* to terminate the first applicant's activities. Its appeal against that decision was dismissed.
The applicants complain under Article 11 that the Constitutional Court's decision to declare the first applicant's articles of association null and void violates their right to freedom of association. The second applicant further complains under Article 10 that the dissolution of the first applicant also prevents him from expressing his views regarding the ethnic origin of certain segments of the population. *Admissible*.

ARTICLE 13

EFFECTIVE REMEDY
Effectiveness of length-of-proceedings remedy lasting over three years: *violation*.

VIDAS - Croatia (N° 40383/04)
Judgment 3.7.2008 [Section I]

Facts: In 1995 the applicant brought an action for compensation for damage caused by a work-related injury. In March 2002, when his case was for the second time pending before the first-instance court, he lodged a constitutional complaint complaining of the excessive length of the proceedings. In April 2005 the Constitutional Court upheld the applicant's complaint, finding a violation of his right to a hearing within a reasonable time and awarding him EUR 700 in compensation. The proceedings ended in February 2007, when the Supreme Court dismissed the applicant's appeal on points of law.

Law: Article 6 § 1 – Owing to the low amount of compensation awarded, the applicant could still claim to be a victim of the violation alleged. As the proceedings had lasted a total of nine years and three months before three levels of jurisdiction, the Court found that they had not been concluded within a reasonable time.
Conclusion: violation (unanimously).

Article 13 – The applicant had availed himself of the effective remedy for the length of proceedings by lodging a complaint with the Constitutional Court. However, the proceedings upon his complaint had lasted three years and fifteen days. The Court considered that a remedy designed to address the length of proceedings could be considered effective only if it provided adequate redress speedily, which in the present situation had not been the case. The effectiveness of the constitutional complaint as a length-of-proceedings remedy had therefore been undermined by its excessive duration.
Conclusion: violation (unanimously).

Article 41 – EUR 2,300 in respect of non-pecuniary damage.

EFFECTIVE REMEDY
Insufficient compensation for length of proceedings coupled with the failure to speed up the proceedings at issue: *violation*.

KAIĆ and Others - Croatia (N° 22014/04)
Judgment 17.7.2008 [Section I]

Facts: In 1994 the applicants brought a civil action in the Zagreb Municipal Court. In December 2002, while the proceedings were still pending at first instance, they lodged a constitutional complaint about the length of the proceedings. In November 2004 the Constitutional Court upheld the applicants' complaint, finding a violation of their right to a hearing within a reasonable time. It awarded them about EUR 890 each in compensation and ordered the second-instance court to decide their case no later than six months following the publication of that decision. The Zagreb County Court did so a year later, in November 2005.

Law: Article 6 § 1 – Owing to the low amount of compensation awarded, the applicants could still claim to be victims of the violation alleged. As the proceedings had lasted a total of some eight years before two levels of jurisdiction, the Court found that they had not been concluded within a reasonable time.
Conclusion: violation (unanimously).

Article 13 – The applicants had availed themselves of the effective remedy for the length of proceedings by lodging a complaint with the Constitutional Court. That court had awarded them compensation and ordered the Zagreb County Court, where the proceedings were at the time pending, to decide the applicants' case within six months. However, that court did so with a six-month delay, which the Government had not attempted to justify. While it was true that insufficient compensation alone did not normally render a length-of-proceedings remedy ineffective, that failing had been reinforced by the Zagreb County Court's failure to execute the Constitutional Court's decision in a timely manner. Consequently, the combination of these two factors in the particular circumstances of the present case had rendered an otherwise effective remedy ineffective.
Conclusion: violation (unanimously).

Article 41 – EUR 1,350 each in respect of non-pecuniary damage.

ARTICLE 14

DISCRIMINATION (Article 6 § 1)
Refusal to grant an authority to enforce the judgment of foreign court: *inadmissible*.

McDONALD - France (N° 18648/04)
Decision 29.4.2008 [Section V]

The applicant, an American diplomat, married a French woman in France. Some years later the applicant filed a petition for divorce for misconduct against his wife with the *tribunal de grande instance*, but his petition was dismissed. The court granted both spouses parental authority over their child and fixed a monthly financial provision the applicant was to pay to his wife. As neither spouse appealed against that judgment, it became final. At a later date the applicant filed a petition for divorce with a court in his home state of Florida (USA). That court dissolved the marriage but left certain aspects of the divorce, such as maintenance, to the French courts to decide. Thereupon, the applicant stopped paying the financial provision the French court had ordered him to pay his former wife. The couple then disposed of various assets linked to their former marriage, but the applicant's ex-wife had part of the applicant's share of the proceeds attached for failure to pay the monthly financial provision. The applicant applied to the executions judge to lift the attachment, but his application was dismissed. He then applied to the *tribunal de grande instance* to enforce the judgment pronounced by the Florida court, but that action was also dismissed as the applicant had failed to demonstrate that his ex-wife had renounced the right to jurisdiction of the French courts to which she was entitled under the Civil Code. The applicant appealed both rulings. The Court of Appeal joined the cases and dismissed them. It found that the judgment pronounced in Florida could not be fully recognised in France, much less declared enforceable as requested, because the American courts had no international jurisdiction in this case, which fell within the exclusive jurisdiction of the French courts, and because in turning to the American courts the applicant had attempted to circumvent the law and obtain the divorce the French courts had just denied him, in order to avoid paying the financial provision he had been ordered to pay to his former wife. The Court of Cassation dismissed the applicant's appeal.

Inadmissible under Article 14 combined with Article 6 § 1 – The proceedings before the Florida court concerned the applicant's civil rights, in particular his marital status. He had applied to the *tribunal de grande instance* in France to enforce the judgment pronounced in Florida. That court, the Court of Appeal and the Court of Cassation had all found against him, based on the fact that his former wife was a French national and the French Civil Code provided for the exemption of French nationals from the jurisdiction of foreign courts, and also because the applicant had attempted to circumvent the applicable rules of procedure. In order for a foreign court judgment to be enforceable in France, a prior application had to be made for authority to execute it. In such cases the European Court verified the lawfulness of the procedure followed before the foreign courts from the standpoint of Article 6 and examined the rules in force in the contracting States concerning jurisdiction, to make sure they did not infringe any of the rights protected by the Convention. The applicant's complaint concerned the conformity of the French Civil Code with fundamental rights and the application of the Civil Code in his case. The refusal to authorise the execution of the United States court's judgments amounted to an interference with the applicant's right to a fair hearing. As a general rule, however, a person should not complain about a situation they had helped to bring about by their own inaction. The applicant admitted that he had let the deadline for appealing against the French court's decision pass. When his petition for a divorce was dismissed in France, he had turned to the American courts with a similar petition after a brief stay in Florida and, when the judgment was pronounced, he had stopped paying the financial contribution the French court had ordered him to pay to his ex-wife even though the American court had declined to rule on that issue and had referred it back to the French court. However, before filing a petition with the United States court and going on to seek the enforcement of the foreign judgment in France, the applicant should have appealed against the judgment of the *tribunal de grande instance*, to which he had initially chosen to apply for a divorce. The

French authorities could therefore not be faulted for having refused to execute a decision apparently designed to circumvent the applicable rules of procedure because of the applicant's failure to act: *manifestly ill-founded*.

DISCRIMINATION (Article 9)
Inconsistent application of qualifying periods for eligibility to register as a religious society: *violation*.

RELIGIONSGEMEINSCHAFT DER ZEUGEN JEHOVAS and Others - Austria (N° 40825/98)
Judgment 31.7.2008 [Section I]

(see Article 9 above).

DISCRIMINATION (Article 2 of Protocol No. 1)
Placement of Roma children in Roma-only classes owing to their poor command of the Croatian language: *no violation*.

ORŠUŠ and Others - Croatia (N° 15766/03)
Judgment 17.7.2008 [Section I]

Facts: The applicants are fourteen Croatian nationals of Roma origin who started primary school in three village schools in the Međimurje County between 1996 and 2000. During their elementary schooling, the first nine applicants attended both Roma-only and mixed classes before leaving school at the age of 15. The remaining five applicants are still at school and attend entirely Roma-only classes. Most of the applicants were provided with additional classes in Croatian and participated in mixed group extra-curricular activities organised by their respective schools. In April 2002 the applicants brought proceedings against their primary schools. They claimed that the Roma-only curriculum in their schools had 30% less content than the official national curriculum. They alleged that that situation was racially discriminating and violated their right to education as well as their right to freedom from inhuman and degrading treatment. They also submitted a psychological study of Roma children who attended Roma-only classes in their region which reported that segregated education produced emotional and psychological harm in Roma children, both in terms of self-esteem and development of their identity. In September 2002 a municipal court dismissed the applicants' complaint. It found that the reason why most Roma pupils were placed in separate classes was that they needed extra tuition in Croatian. Furthermore, the curriculum at two of those schools was the same as that used in parallel classes in those schools. Consequently, the applicants had failed to substantiate their allegations concerning racial discrimination. The applicants' complaint was subsequently also dismissed on appeal. The applicants' constitutional complaint, lodged in November 2003, was dismissed on similar grounds in February 2007. The Government submitted statistics for the year 2001 which showed that only one of the schools had a majority of Roma pupils attending Roma-only classes, whereas the other two schools' proportion of Roma pupils attending such classes was below 50%. This proved that it was not a general policy in the schools to automatically place Roma pupils in separate classes. The applicants claimed, however, that they were told to leave school at 15 and that the discrimination they suffered was borne out by certain statistics, for example, in the school year 2006/2007, the drop-out rate of Roma pupils at primary school was 84%, in comparison to a 9% drop-out rate with regard to the general elementary school population in their county.

Law: Article 2 of Protocol No. 1 – The Court firstly noted that the applicants' education had not been of lower quality than that of other pupils attending the same schools. It had been established in the domestic proceedings that the Roma-only curriculum in the schools attended by the applicants had been no different. Nor had the applicants given sufficient evidence in their submissions to the Court to support their claim that the Roma-only curriculum had up to 30% less content. Furthermore, transferring pupils from a Roma-only to a mixed class had been a regular practice in those schools, as illustrated by the case of the first nine applicants. The remaining applicants had never asked to be transferred to a mixed class, or

objected to their placement in a Roma-only class. The last five applicants were still attending lower grades of elementary school, where the question of transfer to a mixed class would be premature in view of the reasons for their initial placement in a Roma-only class, namely their insufficient command of the Croatian language. Moreover, the applicants' parents had not been deprived or even complained that they had been deprived of their rights under Article 2 of Protocol No. 1. Accordingly, the applicants had not been deprived of their right to attend school and receive an education and the education they had been provided with had been adequate and sufficient.
Conclusion: no violation (unanimously).

Article 14 in conjunction with Article 2 of Protocol No. 1 – The Court observed that any difference in treatment of the applicants had been based on their language skills. Indeed, the applicants had never contested the fact that, at the time of their enrolment in elementary school, they had not had a sufficient command of the Croatian language to follow lessons. The Government also submitted that language tests had shown that a majority of Roma children in the communities at issue had lacked adequate knowledge of the Croatian language. The Court accepted that that problem had to be addressed by the relevant State authorities. In any event, the placing of Roma children in separate classes in Croatia was a method used in only four elementary schools in one particular region, owing to the high representation of Roma pupils there. The statistics submitted by the Government further proved that it had not been a general policy in those schools to automatically place Roma pupils in separate classes. The Court reiterated that in the sphere of education States could not be prohibited from setting up separate classes or different types of school for children with difficulties, or implementing special educational programmes to respond to special needs. It was in fact satisfying that the authorities had addressed that sensitive and important issue. The placement of the applicants in separate classes had therefore been a positive measure designed to assist them in acquiring the knowledge necessary for them to follow the school curriculum. The initial placement of the applicants in separate classes had thus been based on their insufficient knowledge of the Croatian language and not on their race or ethnic origin.
Conclusion: no violation (unanimously).

Lastly, the Court found that the length of the proceedings before the Constitutional Court (more than four years) had been excessive, in violation of Article 6 § 1.

Article 41 – EUR 2,000 in respect of non-pecuniary damage.

ARTICLE 34

DEFENDANT STATE PARTY
Ex officio examination of a case against Moldova by virtue of factual links with that country: *inadmissible*.

KIREEV - Moldova and Russia (N° 11375/05)
Decision 1.7.2008 [Section IV]

The applicant was a Russian national living in Tighina/Bender, a town on the territory of Moldova, but which has since 1991 been under the control of the self-proclaimed "Moldavian Republic of Transdniestria" (the "MRT"). Since 1962 the applicant had been saving money in a bank situated in Tighina/Bender. In 2004 he lodged an action with the local "MRT courts" requesting compensation for the loss of value of his deposits following economic reforms, for which he considered the State was liable. In 2005 he also brought an action in the Moldovan courts, but failed to submit the necessary documentary evidence. Subsequently, he appears also to have attempted to obtain compensation from a Russian bank for the loss of the value of his deposits, but his application was rejected since his money had been deposited in a bank outside Russia.

Inadmissible: The application was initially lodged against "the unrecognised Moldavian Republic of Transdniestria" and the applicant subsequently designated Russia as the respondent State. However, given that the applicant had deposited money in a bank currently situated in Moldova and had taken certain steps before the Moldovan authorities, the Court *ex officio* examined the application in respect of Moldova as well. It firstly observed that even though Article 1 of Protocol No. 1 did not oblige States to maintain the purchasing power of sums deposited with financial institutions, both Russia and Moldova had enacted legislation allowing partial compensation for the effects of inflation to be paid under certain conditions. The 1995 Russian Savings Act allowed compensation only for savings in banks operating on the territory of the former Russian Soviet Socialist Federal Republic. Since the applicant's bank was situated in Moldova, he had not been eligible to apply for such compensation. Moreover, even assuming that Russia could be held accountable for acts or omissions of the "MRT authorities", under the Convention it had no obligation to enact a law providing for compensation for money deposited in banks located in the territory of the "MRT". On the other hand, Moldovan legislation allowed for compensation only to citizens of Moldova. Since the applicant had only Russian nationality, he was not eligible for such compensation either. Accordingly, the applicant had no right or legitimate expectation to obtain compensation under either Russian or Moldovan legislation: *manifestly ill-founded*.

VICTIM

Whether applicant who obtained damages in civil courts could claim to be victim of ill-treatment by gendarme against whom criminal proceedings were discontinued: *victim status upheld*.

ÇAMDERELİ - Turkey (N° 28433/02)
Judgment 17.7.2008 [Section II]

Facts: In 1999 the applicant was injured following a beating by a gendarme. She was examined by a doctor who reported extensive bruising rendering her unfit for work for ten days. Although criminal proceedings were instituted against the gendarme, in 2001 the criminal court decided to suspend them in accordance with Law no. 4616 (which allowed criminal proceedings to be suspended and subsequently discontinued if no offences of the same kind were committed by the offender within a five-year period), The applicant's objection against that decision was dismissed and the criminal proceedings against the gendarme were discontinued in 2006. In the interim, the applicant successfully sued the gendarme in the civil courts, where she was awarded the equivalent of approximately EUR 900 in damages.

Law: Article 34 – An applicant was deprived of victim status if the national authorities had acknowledged, and afforded appropriate and sufficient redress for, a breach of the Convention. The civil court's decision to order the defendant to pay compensation to the applicant for having beaten her amounted to an acknowledgment in substance of a breach. As to the issue of appropriate and sufficient redress, even assuming that the modest award by the domestic court could be deemed sufficient, the focal point of the applicant's complaints was the inadequacy of the criminal proceedings that had resulted in impunity for the person responsible for her ill-treatment. Breaches of Article 3 could not be remedied exclusively by an award of compensation, as otherwise State agents could abuse the rights of those within their control with virtual impunity and the general legal prohibition of ill-treatment would be ineffective in practice. Accordingly, compensation in such cases was only part of the measures necessary to provide redress and the Court had to ascertain whether the other measures taken by the authorities had afforded the applicant appropriate redress. Although the investigation had been launched promptly and the gendarme had been committed for trial, there was no evidence that he had been suspended from duty while under investigation or during the trial, while the application of Law no. 4616 had allowed the criminal proceedings to be suspended and the charges against him to be dropped. The Court had already found in a number of cases that the Turkish criminal-law system had proved far from rigorous and had no dissuasive effect capable of ensuring the effective prevention of unlawful acts by State agents. In conclusion, the measures taken had failed to provide appropriate redress.
Conclusion: victim status confirmed (unanimously).

Article 3 – violation (unanimously).

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

See also, for a similar finding in respect of victim status in respect of an Article 2 complaint, *Nikolova and Velichkova v. Bulgaria*, no. 7888/03, judgment of 20 December 2007, Information Note no. 103.

VICTIM
Lack of effective investigation into the torture of a detainee who had been awarded compensation: *victim status upheld*.

VLADIMIR ROMANOV - Russia (no. 41461/02)
Judgment 24.7.2008 [Section I]

Facts: In June 2001 prison warders of the detention facility where the applicant was being held entered his cell and, in order to force the inmates out, hit them with rubber truncheons. The warders continued to beat the applicant even when he had been forced into the corridor and had fallen to the floor. He was immediately examined by the prison dermatologist who recorded linear bruising on his legs and back. He was subsequently taken to the prison hospital, where doctors noted that the applicant had sustained a chest injury caused by a blunt instrument. He also had an operation for a ruptured spleen. Relying on a report of the incident drawn up by the detention facility, the Government submitted that the warders had had to resort to force owing to unrest in the applicant's cell which had risked turning into a generalised prison riot. The prosecutor refused to bring criminal proceedings against the warders as he considered their actions to have been lawful. The applicant subsequently brought judicial proceedings in which he sought compensation. The courts found that the use of force against the applicant had been lawful, but in view of the serious life-threatening damage he had sustained and the insufficient control by the detention facility over its warders, he was awarded a sum equivalent to EUR 960. In 2002 the applicant was convicted of aggravated robbery and sentenced to imprisonment. The domestic courts based that decision, in particular, on two depositions made by the alleged victim of the robbery during the pre-trial investigation. As he was out of the country, he did not appear at the trial and his depositions were therefore read out.

Law: Article 3 – *Concerning the alleged ill-treatment*: The use of rubber truncheons in the applicant's case had had a legal basis under the Penitentiary Institutions Act and the Custody Act. Use of force might, on occasion, be necessary to ensure prison security, maintain order or prevent crime in penitentiary facilities. However, the Court did not see any reason why the use of rubber truncheons against the applicant had been necessary. Indeed, the warders' actions had been grossly disproportionate to what the applicant had been accused of, disobedience. The warders might admittedly have needed to resort to physical force in order to remove inmates from their cell, but the Court was not convinced that hitting them with a truncheon had been conducive to achieving that aim. Furthermore, the Court did not consider it established that the applicant had actively resisted the warders. In the detention facility's documents he had not been listed as one of the instigators of or active participants in the incident. Mention of an active role by the applicant had first been made in the prosecutor's decision. There was no explanation for that discrepancy. Given that the warders had continued hitting him even when he had complied with the order to leave his cell and had fallen to the floor, the use of rubber truncheons against the applicant had been a form of reprisal. That punitive violence had been deliberately intended to arouse in him feelings of fear and humiliation and to break his physical or moral resistance. The injuries had to have caused him serious physical pain and intense mental suffering and had resulted in long-term damage to his health. The applicant had therefore been subjected to treatment which could be described as torture.

Concerning the applicant's victim status and the effectiveness of the investigation: The issue of the applicant's victim status was closely linked to the questions whether the investigation into the events at issue had been effective and whether the compensation awarded had amounted to sufficient redress for his suffering. Although the Court was not convinced that the judgments awarding compensation to the applicant had amounted to an acknowledgment in substance of a breach of Article 3, it decided to proceed on that assumption. The applicant had received at least partial compensation for the ill-treatment he had

suffered. However, in cases of wilful ill-treatment, a violation of Article 3 could not be remedied exclusively through an award of compensation to the victim because, if that were the case, it would be possible for the State to avoid prosecuting and punishing those responsible and the general legal prohibition of torture and inhuman and degrading treatment would be ineffective in practice. The Court therefore had also to examine the effectiveness of the investigation. As regards its promptness, it had taken the facility's administration three days to inform the prosecution authorities about the incident, a delay which could have resulted in a loss of evidence. As regards its thoroughness, no evaluation had been carried out with respect to the quantity and nature of the applicant's injuries, in view of the different versions of the events. The prosecutor had relied on three medical reports drafted only by prison doctors which had provided limited medical information and had not included any explanation by the applicant regarding his complaints. Similarly, the assessment of the evidence had been selective and inconsistent, the conclusions being based mainly on the warders' testimonies, the credibility of which should also have been questioned. Indeed, it was curious that it had been impossible to identify those inmates who had been eyewitnesses to the beatings and who could have provided relevant information. Nor had there at any point been any attempt to analyse the degree of force used by the warders and whether it had been necessary and proportionate in the circumstances. The prosecution had, without any independent evidence, found that the warders had lawfully assaulted the applicant owing to his physical resistance. Lastly, the domestic courts had simply relied on the findings of the prosecutor; eyewitnesses to the incident, including the applicant himself and the warders who had beaten him, had never been questioned personally. The Court was particularly struck by the fact that the courts had awarded the applicant compensation relying on a mere lack of sufficient control on the part of the detention facility over its warders. In view of those failings, the authorities' reaction to a grave incident of deliberate ill-treatment by its agents had been inadequate and inefficient and the measures they had taken had failed to provide appropriate redress to the applicant. The applicant could therefore still claim to be a victim within the meaning of Article 34. There had therefore been a violation of Article 3 under its substantive and procedural limbs.
Conclusion: violation (unanimously).

Article 41 – EUR 20,000 for non-pecuniary damage.

For more details see Press Release no. 546. See also *Dedovskiy and Others v. Russia*, no. 7178/03, judgment of 15 May 2008, Information Note no. 108.

VICTIM
Application introduced on behalf of the applicant's sister who died while her constitutional claim concerning the alleged breach of her right to a fair trial was pending: *case referred to the Grand Chamber*.

MICALLEF - Malta (N° 17056/06)
Judgment 15.1.2008 [Section IV]

(see above, under Article 6 § 1 [civil], Applicability).

ARTICLE 35

Article 35 § 3

COMPETENCE *RATIONE TEMPORIS*
Entry into force of Protocol to Convention after conviction but before conviction quashed: *jurisdiction* ratione temporis.

MATVEYEV - Russia (N° 26601/02)
Judgment 3.7.2008 [Section I]

(see Article 3 of Protocol No. 7 below).

ARTICLE 46

EXECUTION OF A JUDGMENT
MEASURES OF A GENERAL CHARACTER
Systemic failings in domestic legal order relating to housing legislation: *indication of appropriate legal or other measures*.

GHIGO - Malta (N° 31122/05)
Judgment 17.7.2008 [Section IV]

Facts: In the principal judgment delivered on 26 September 2006 (see Information Note no. 89), the Court found a violation of Article 1 of Protocol No. 1 as regards a landlord-tenant relationship which had been imposed on the applicant for almost 22 years under which he received only a nominal rent and minimal profit. The question of the application of Article 41 was reserved. In its judgment on the issue of just satisfaction, the Court turned to the question of execution under Article 46 of the Convention.

Law: Article 46 – The Court's conclusion in the principal judgment was the result of shortcomings in the Maltese legal system, particularly, Maltese housing legislation, as a consequence of which, an entire category of individuals had been and were still being deprived of their right to the peaceful enjoyment of their property. The unfair balance detected in the applicant's case could subsequently give rise to other numerous well-founded applications which were a threat for the future effectiveness of the system put in place by the Convention. In view of that systemic situation, general measures at the national level were undoubtedly called for in the form of legal and/or other measures to secure in its domestic legal order a mechanism maintaining a fair balance between the interests of landlords (including their entitlement to derive profit from their property) and the general interest of the community (including the availability of sufficient accommodation for the less well-off). While it was not for the Court to specify the most appropriate way of setting up such remedial procedures, the many options open to the State included measures setting out the features of a mechanism balancing the rights of landlords and tenants and criteria for what might be considered a "tenant in need", "fair rent" and "decent profit".

Article 41 – EUR 27,720 awarded on an equitable basis in respect of pecuniary damage, which sum took into account market rental values, the fact that measures designed to achieve greater social justice could call for reimbursement of less than the full market value, and interest to compensate for the loss of value of the award over time. A claim by the applicant for future losses was rejected, subject to action being taken by the Government to put an end to the violation found by putting in place a mechanism which would allow a fair amount of rent to be paid in future years.

EXECUTION OF A JUDGMENT
MEASURES OF A GENERAL CHARACTER
Systemic problem of non-enforcement of judgments in Russia: *communicated*.

BURDOV - Russia (no. 2) (N° 33509/04)
[Section I]

Between 2003 and 2007 the applicant obtained four final judgments ordering the authorities to pay him certain amounts of money. None of those judgments have to date been enforced. The case was *communicated* in November 2007 under Article 6 § 1 and Article 1 of Protocol No. 1. Subsequently, in July 2008 the Russian Government were invited to reply to further questions under Article 46 of the Convention (whether the Russian authorities' recurrent failure to enforce domestic judicial decisions delivered against them constituted a systemic problem and/or a practice incompatible with the Convention) and under Article 13 of the Convention (whether the applicant had at his disposal an effective domestic remedy in order to ensure proper and timely enforcement of the domestic judgments in his favour or to obtain adequate redress for late enforcement).

ARTICLE 1 OF PROTOCOL No. 1

PEACEFUL ENJOYMENT OF POSSESSIONS
Classification of land as public woodlands without compensation: *violation*.

KÖKTEPE - Turkey (N° 35785/03)
Judgment 22.7.2008 [Section II]

Facts: The applicant acquired a piece of land which the Treasury had sold to a private individual, in whose name it had been registered in the land register as agricultural land. The General Directorate of Land Registration issued the applicant with a title deed. Meanwhile, the Forestry Commission had set about officially delimiting the public forest estate, as a result of which part of the plot of land concerned had been included within the boundaries of the public forest. No mention of this was made in the land register at the time. The applicant applied to the District Court for judicial review of the decision delimiting the public forest areas, arguing that the decision was defective. After examining diverging expert reports, the court followed the findings of a report that placed part of the land at issue within the public forest, noted that public forest land could not be privately owned and accordingly dismissed the applicant's action. An appeal by the applicant to the Court of Cassation was dismissed, as was his subsequent revision request.
The applicant twice received a suspended sentence of one year and three months' imprisonment, on one occasion for clearing part of the land without permission and on the other for growing wheat on the cleared land. Furthermore, the Ministry of Forestry brought an action for the annulment of the applicant's title to the disputed land and for its registration as Treasury property in the land register. Allowing a request by the Ministry for interim measures, the Turkish courts ordered the Land Registry to add an annotation to the register preventing the transfer of the land to third parties. The proceedings were still pending.

Law: The applicant owned property to which he had a valid title deed. However, as the disputed land was classified as public forest, there had been an interference with the applicant's right to the peaceful enjoyment of his possessions. The impugned restriction had resulted in a considerable reduction in the applicant's ability to enjoy the land. By a judicial decision the authorities had classified the disputed land as public forest. In spite of the applicant's objections to that classification, the domestic courts had upheld that decision, in accordance with the provisions of the Constitution, based on expert reports. Having regard to the reasoning given by the courts, the aim pursued in depriving the applicant of his possession, namely the protection of nature and forests, fell within the public interest. And economic imperatives and even certain fundamental rights, including the right of property, should not be placed before

considerations relating to environmental protection, in particular when there was legislation on the subject. This case differed from the decision in *Ansay v. Turkey* (no. 49908/99, 2 March 2006). The applicant had acquired the disputed land in good faith, at a time when it was indisputably classified as agricultural land and free of any restrictions in the land register, which was the authoritative legal document. No irregularity could therefore be held against the applicant with regard to his acquisition of the land. As matters stood, however, despite still having title to it, the applicant, who had purchased a field of farmland, was unable to cultivate or harvest it or to enter into any transaction in respect of the land. He therefore had no real possibility of enjoying the land.
That being so, the classification of the disputed land as public forest had effectively rendered the applicant's lawfully acquired right of property devoid of any substance. Furthermore, there was no effective domestic remedy in terms of compensation. The circumstances of the case, in particular the permanent nature of the delimitation, the lack of any effective domestic remedy in respect of the situation, the impairment of the full enjoyment of the applicant's right of property and the lack of compensation led the Court to find that the applicant had had to bear an individual and excessive burden which had upset the fair balance that should be struck between the requirements of the general interest and the protection of the right to the peaceful enjoyment of possessions.
Conclusion: violation (five votes to two).

Article 41 – reserved.

DEPRIVATION OF PROPERTY
Registration of land belonging to the applicants in the name of the Treasury for nature-conservation purposes without payment of compensation: *violation*.

TURGUT and Others - Turkey (N° 1411/03)
Judgment 8.7.2008 [Section II]

Facts: The applicants claimed that a piece of land measuring more than 100,000 square metres had been owned by their families for more than three generations. In 1962 the Ministry of Forestry and the Treasury brought court proceedings to have the title to the land in question annulled. In its judgment the court found that the land was part of the State forest and that it could not be privately owned. In 1974, following an amendment of Turkish legislation on the delimitation of State forests, the case was referred back to the court for new expert opinions concerning the disputed land. Based on expert reports it had commissioned, the court ordered the land to be registered in the land register under the applicants' names. In 1978 the Court of Cassation, considering the expert reports insufficient, remitted the case to the court. New expert reports concluded that the land was located within the perimeter of the State forest. In a judgment delivered in 2001 the court ruled that the land was part of the State forest and ordered its registration in the land register as property belonging to the Treasury. The court based its decision on experts' reports, on the principle emerging from the case-law of the Court of Cassation to the effect that title to property forming part of the national forestry domain had no legal value and on the constitutional principle of the inalienability of ownership of State forests. That judgment was upheld by the Court of Cassation, which subsequently dismissed a revision request lodged by the applicants. Yet 50-odd private housing units and a military holiday camp for officers in the armed forces had since been built on the disputed land.

Law: There had been an interference with the applicants' right to the peaceful enjoyment of their possessions, as they had been deprived of their property. The applicants' good faith was not in dispute. Until the annulment of their title and its re-registration in the name of the Treasury, the applicants had been the rightful owners of the property, with all the consequences arising from their title, and they had further benefitted from "legal certainty" as to the validity of the title recorded on the land register, which provided undisputable evidence of ownership. The applicants had been deprived of their property by a judicial decision. In spite of their protests as to the nature of the land, the domestic courts had finally annulled their ownership title in application of the provisions of the Constitution and on the strength of expert reports according to which the land was part of the national forestry domain. Having regard to the

reasons given by the domestic courts, the purpose of the deprivation imposed on the applicants, namely the protection of nature and forests, fell within the public interest. The Court had often dealt with questions linked to environmental protection, and stressed the importance of the subject. The protection of nature and forests, and of the environment in general, was a matter of considerable and constant concern to public opinion and consequently to the public authorities. Economic imperatives and even certain fundamental rights, including the right of property, should not be placed before considerations relating to environmental protection, in particular when there was legislation on the subject. However, where there was deprivation of property, consideration had to be given to the means of compensation provided for in domestic legislation. The applicants had not received any compensation for the transfer of their property to the Treasury, in conformity with the Constitution. No exceptional circumstance had been raised in order to justify the lack of compensation. Consequently, the failure to award the applicants any compensation had upset, to their detriment, the fair balance that had to be struck between the demands of the general interest of the community and the requirements of the protection of individual rights.
Conclusion: violation (unanimously).

CONTROL OF THE USE OF PROPERTY
Denial of access to business documents and accounts in the control of a State-appointed receiver for purposes of challenging the receivership order: *violation*.

DRUŽSTEVNÍ ZÁLOŽNA PRIA and Others - Czech Republic (N° 2034/01)
Judgment 31.7.2008 [Section V]

Facts: The applicant, a credit union, was placed in receivership (*nucená správa*) by the Office for the Supervision of Credit Unions (OSCU) for allegedly engaging in activities outside its remit without authorisation. Following an administrative appeal by the applicant, the Ministry of Finance upheld that order. The High Court dismissed an application by the applicant for judicial review after finding that the receivership order was in accordance with the legislation then in force and that the OSCU had not exceeded its discretionary power. Ultimately, following various applications and appeals, the applicant was declared insolvent and a trustee was appointed.
In its application to the European Court, the applicant complained that its property rights had been interfered with, that its supervisory board had been denied access by the receiver to business and accountancy documents necessary to challenge the receivership order and that it had been unable to contest the receivership order before an independent and impartial tribunal with full jurisdiction.

Law: Article 1 of Protocol No. 1 – Any interference with the peaceful enjoyment of possessions had to be accompanied by procedural guarantees affording the individual or entity concerned a reasonable opportunity of effectively challenging the impugned measures. Under the law in force at the material time the receiver was not obliged to grant access to the applicant's business and accountancy documents and had refused access to the supervisory board. The financial situation was a decisive factor in any decision to impose receivership and played a central role in any subsequent review of that decision. It was therefore indispensable for any entity intending to contest a decision to place it in receivership to have access to all of its documents and other materials which might assist an appeal. Business and accountancy documents fell within that category. While the right to access was not absolute, any limitation had to avoid impairing the very essence of that right. This was particularly true where the decision whether to grant access to the documents rested with a receiver employed by a regulatory authority, as otherwise the executive branch of the State could frustrate any challenge to the receivership order by denying access to indispensable documents. None of these requirements had been met in the applicant's case, so that it was deprived of the requisite procedural guarantees. While the Court accepted that particularly at a time of crisis there could be a paramount need for the State to act in order to avoid irreparable harm, the threat in the applicant's case had been substantially reduced once the State was in full control of the business, so there had been no reason to deny it access to the business documents or to contest access before the courts. The interference with the applicant's possessions was accordingly not attended by sufficient guarantees against arbitrariness and so not lawful.
Conclusion: violation (unanimously).

Article 6 § 1 – The audit of the applicant's economic standing had been carried out by the OSCU and the applicant's objections heard by an OSCU employee. The Ministry of Finance had declined to review the audit as it had been taken in accordance with the legislation and the facts as assessed by the OSCU were not reviewable by any other administrative authority. The OSCU was managed by a director appointed and removed from office by the Minister of Finance, who also exercised the power to approve in detail the OSCU's status, remit and policy. Hence, it was an authority subordinated to and dependent on the Ministry, which formed part of the executive branch, and could not be deemed an independent and impartial tribunal.
As regards the judicial-review proceedings, until the end of 2002 the Czech administrative courts did not have full jurisdiction to review administrative acts, their scrutiny being limited to issues of legality. It was apparent from the reasoning of the High Court that, owing to its limited jurisdiction, it had abstained from examining whether the applicant's situation did in fact justify receivership. Accordingly, instead of ruling on the proportionality of that measure, it had confined itself to verifying whether the OSCU had acted within the bounds of its discretionary powers. In so doing, it had assumed, without verifying, the accuracy of the OSCU's assessment of the applicant's economic standing and so had not exercised full judicial review.
Conclusion: violation (unanimously).

Article 41 – not ready for decision.

ARTICLE 2 OF PROTOCOL No. 1

RIGHT TO EDUCATION
Placement of Roma children in Roma-only classes owing to their poor command of the Croatian language: *no violation*.

ORŠUŠ and Others - Croatia (N° 15766/03)
Judgment 17.7.2008 [Section I]

(see Article 14 above).

RESPECT FOR PARENTS' RELIGIOUS CONVICTIONS
Display of a crucifix in classrooms of a State school: *communicated*.

LAUTSI - Italy (N° 30814/06)
[Section II]

At a meeting at the State school her children attended, the applicant expressed the opinion that the presence of crucifixes in the classrooms was contrary to the principle of secularism in accordance with which she wanted to raise her children. When the school authorities decided to leave the crucifixes, she appealed to the Administrative Court and asked it to refer the constitutionality issue to the Constitutional Court. Meanwhile, the Ministry of Education adopted guidelines recommending headmasters to display the crucifix. The Administrative Court found that the constitutionality issue was not ill-founded and the applicant joined the proceedings before the Constitutional Court. The Constitutional Court declared the constitutionality question inadmissible. The proceedings before the Administrative Court resumed, but the applicant's appeal was dismissed. She lodged an appeal with the *Consiglio di Stato*, which was dismissed.
Communicated under Articles 9 and 14 of the Convention and Article 2 of Protocol No. 1.

ARTICLE 3 OF PROTOCOL No. 1

FREE EXPRESSION OF OPINION OF PEOPLE
STAND FOR ELECTION
Introduction of an active system of voter registration shortly before the election in a "post-revolutionary" political context, aimed at remedying the problem of chaotic electoral rolls: *no violation*.

THE GEORGIAN LABOUR PARTY - Georgia (N° 9103/04)
Judgment 8.7.2008 [Section II]

Facts: In November 2003 a general parliamentary election was held in Georgia. Its outcome was to be decided according to two voting systems, majority voting and proportional representation. The Georgian Labour Party obtained 12.04% of the votes cast under proportional representation, which corresponded to 20 of the 150 seats in Parliament reserved for candidates from party lists. Demonstrators protesting that the elections had been rigged and calling for the resignation of Georgian President Eduard Shevardnadze disrupted the newly-elected Parliament's first session (the so-called "Rose Revolution"). President Shevardnadze resigned and the Supreme Court of Georgia annulled the proportional representation results of the general election. It was subsequently decided to hold a presidential election in January 2004 and a re-run of the parliamentary election was ultimately scheduled for 28 March 2004. The Central Electoral Commission (CEC) adopted a decree requiring electoral precincts to publish preliminary lists of voters and obliging voters to go there to check that their names were on the lists and make a request for any correction if necessary. Following various complaints about voting irregularities in the election on 28 March, the CEC annulled the results in the Kobuleti and Khulo electoral districts in the Autonomous Republic of Ajaria and set 18 April 2004 as the date for a new vote. On that day, however, the polling stations in those two districts failed to open due to tensions between central and local authorities. The same day, the CEC tallied the votes and announced the results of the 28 March election; the applicant party had received 6.01% of the vote, which was not enough to clear the 7% threshold needed to obtain seats in Parliament. The applicant party appealed unsuccessfully to the Supreme Court and the Constitutional Court.

Law: Article 3 of Protocol No. 1 – *New system of voter registration*: The proper management of electoral rolls was a pre-condition for a free and fair ballot. The effectiveness of the right to stand for election was undoubtedly contingent upon the fair exercise of the right to vote. Thus, if an electoral roll omitted to mention some voters and/or allowed the multi-registration of others, such mismanagement would not only undermine voters' interests but could also diminish the candidates' chances to stand equally and fairly for election. Therefore, a sufficiently close causal link existed between the applicant party's right to stand in the repeat parliamentary election and its complaint about the voter registration system. As acknowledged by the OSCE/ODHIR Election Observation Mission Report, the introduction of a new, "active" system of voter registration had allowed the CEC to eliminate many errors, to consolidate handwritten voter lists into a single computerised database and to enfranchise an additional 145,000 voters. Even though the new system had several shortcomings, in the Court's view, it was more important that the authorities had spared no effort to make the repeat election fairer. Given that the authorities had had the challenge of remedying the problem of chaotic electoral rolls within very tight deadlines (between 25 November 2003 and 28 March 2004), in a "post-revolutionary" political situation, it would have been an excessive and impracticable burden to expect an ideal solution from them. Consequently, the unexpected change in the rules on voter registration one month before the repeat election did not give rise to criticism under Article 3 of Protocol No. 1. As to whether or not the new system, which partly shifted responsibility for the accuracy of electoral rolls from the authorities onto the voters, was compatible with the Contracting States' positive obligation to ensure the free expression of the opinion of the people, the Georgian State, which was not alone in opting for such a system, had to be granted a wide margin of appreciation in that regard. In sum, the active system of voter registration could not in itself amount to a breach of the applicant party's right to stand for election. In the particular circumstances of the instant case, that system had proved not to be the cause of the problem of ballot fraud but a reasonable attempt to remedy it, whilst not providing a perfect solution.

Conclusion: no violation (unanimously).

Composition of the electoral commissions: The raison d'être of an electoral commission was to ensure the effective administration of free and fair polls in an impartial manner, which would be impossible to achieve if that commission became another forum for political struggle between election candidates. A proportion of seven members out of fifteen-member electoral commissions, including the Chairpersons who had the casting votes and were appointed by the President of Georgia and his party, was particularly high in comparison to other legal orders in Europe. Pro-presidential forces thus had a relative majority *vis-à-vis* the representatives of other political parties in electoral commissions at every level. This composition lacked sufficient checks and balances against the President's power and the commissions could hardly enjoy independence from outside political pressure. However, in the absence of any proof of particular acts of abuse of power or electoral fraud committed within the electoral commissions to the applicant party's detriment, no breach of the latter's right to stand for election could be established. The Court could not find a violation of Article 3 of Protocol No. 1 solely on the basis of the allegation, no matter how plausible, that the system created possibilities for electoral fraud.
Conclusion: no violation (five votes to two).

Disenfranchisement of the Khulo and Kobuleti voters: The Khulo and Kobuleti voters' inability to participate in the repeat parliamentary election held under the proportional system had to be questioned under the principle of universal suffrage. The applicant party was entitled under Article 3 of Protocol No. 1 to rely on the electorate of Khulo and Kobuleti, irrespective of its chances of obtaining a majority of their votes. The disenfranchisement of voters, especially if arbitrary, could impede the effective exercise by an election candidate of its right to stand for election. The Court did not call into question the veracity of the Government's submission that irregularities had taken place at polling stations in Khulo and Kobuleti. Rather, the source of the Court's concern was that by annulling the election results in those two districts, the CEC had not only apparently exceeded its authority but had also acted without a proper legal basis or the guarantees of due process. Neither the Government, nor the CEC, had adduced relevant and sufficient reasons to explain why, without examining the electoral material from each precinct and hearing witnesses, the CEC had come to the conclusion that all of the results in the two districts merited annulment. In the Court's view, the CEC's decision to disregard the investigative measures envisaged by the Electoral Code – the opening of electoral packages and re-counting ballots – and to annul the election results solely in view of allegations of voting irregularities, smacked of arbitrariness. Furthermore, after the failure to open polling stations on 18 April 2004, the CEC had taken a hasty decision to terminate the country-wide election, although the Electoral Code provided for a period of eighteen days for the finalisation of the election results. It would have been more compatible with the fundamental principles of the rule of law for the CEC to cancel the scheduled polls in Khulo and Kobuleti in the form of a clear-cut, formal and reasoned decision. Taking into account the positive obligations of the State and the importance of the principle of universal suffrage, the Court could not accept the legitimate interest of having a fresh Parliament elected "at a reasonable interval" as a sufficient justification for the respondent State's inability or unwillingness to take further reasonable measures for the purpose of enfranchising 60,000 Ajarian voters (who represented about 2.5% of the registered voters in the country) after 18 April 2004.
Conclusion: violation (unanimously).

Article 14 in conjunction with Article 3 of Protocol No. 1 – In the light of all the material in its possession, the Court did not find any evidence which might arguably have suggested that either the challenged electoral mechanisms – the system for voter registration and the composition of electoral commissions – or the events which took place in Khulo and Kobuleti, had been exclusively aimed at the applicant party and had not affected the other candidates standing for that election.
Conclusion: no violation (unanimously).

Article 41 – The finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained.

FREE EXPRESSION OF OPINION OF PEOPLE
STAND FOR ELECTION
No evidence of abuse of power or electoral fraud adduced to back up a complaint of a pro-presidential majority in electoral commissions at all levels: *no violation*.

THE GEORGIAN LABOUR PARTY - Georgia (N° 9103/04)
Judgment 8.7.2008 [Section II]

(see above).

FREE EXPRESSION OF OPINION OF PEOPLE
STAND FOR ELECTION
Illegitimate and unjustified exclusion of two electoral districts from the country-wide vote tally: *violation*.

THE GEORGIAN LABOUR PARTY - Georgia (N° 9103/04)
Judgment 8.7.2008 [Section II]

(see above).

FREE EXPRESSION OF OPINION OF PEOPLE
CHOICE OF THE LEGISLATURE
Requirement for political parties to obtain at least 10% of the vote in national elections in order to be represented in Parliament: *no violation*.

YUMAK and SADAK - Turkey (N° 10226/03)
Judgment 8.7.2008 [GC]

Facts: The applicants stood in the parliamentary elections of November 2002 as candidates for the DEHAP (Democratic People's Party) in a constituency covering a province. As a result of the ballot, DEHAP obtained approximately 45.95% of the vote (47,449 votes) in that province, but secured only 6.22 % of the vote nationally. In accordance with Law no. 2839 of 1983 on the election of members of the National Assembly, which states that "parties may not win seats unless they obtain, nationally, more than 10% of the votes validly cast", the applicants were not elected. Of the three parliamentary seats allotted to the province, two were filled by a party which obtained 14.05% of the vote (14,460 votes), and the third by an independent candidate who obtained 9.69% of the vote (9,914 votes). Of the 18 parties which took part in the elections, only two succeeded in passing the 10% threshold and thus obtaining seats in Parliament. One of them, which polled 34.26% of the votes cast, won 66% of the seats, while the other obtained 33% of the seats, having polled 19.4% of the votes. Nine independent candidates were also elected. The National Assembly which emerged from the elections was the least representative since the multi-party system was first introduced. The proportion of voters not represented reached approximately 45% and the abstention rate exceeded 20%.

Law: The electoral threshold of 10% imposed nationally for the representation of political parties in Parliament constituted interference with the applicants' electoral rights. The threshold pursued the legitimate aim of avoiding excessive and debilitating parliamentary fragmentation and thus of strengthening governmental stability. The choice made by the legislature was not as such incompatible with Article 3 of Protocol No. 1, which did not in principle impose on Contracting States the obligation to adopt an electoral system guaranteeing parliamentary representation to parties with an essentially regional base irrespective of the votes cast in other parts of the country. On the other hand, a problem might arise if the relevant legislation tended to deprive such parties of parliamentary representation. The electoral threshold used in Turkey was the highest among the member States of the Council of Europe. Only three other member States had opted for high thresholds (7 or 8 %). A third of the States imposed a 5% threshold and 13 of them had chosen a lower figure. The Court noted, however, that the effects of an

electoral threshold could differ from one country to another and the various systems could pursue different, sometimes even antagonistic, political aims. None of these aims could be considered unreasonable in itself. The role played by thresholds varied in accordance with the level at which they were set and the party system in each country. A low threshold excluded only very small groupings, which made it more difficult to form stable majorities, whereas in cases where the party system was highly fragmented a high threshold deprived many voters of representation. While the Court could agree that an electoral threshold of about 5% corresponded more closely to the member States' common practice, it could not assess the threshold concerned without taking into account the electoral system and the political evolution of the country concerned. The Court had accordingly to assess the effects of the correctives and other safeguards with which the impugned system was attended. As regards the possibility of standing as an independent candidate, the Court noted that in Turkey independent candidates were subject to a number of unfavourable restrictions and conditions not applicable to political parties. However, this method could not be considered to be ineffective in practice, as shown by the elections of 2007 in particular, where the fact that no threshold applied to independent candidates had enabled small parties to win seats in the legislature. The same applied to the possibility of forming an electoral coalition with other political groups. Admittedly, since about 14.5 million of the votes in the November 2002 elections had been cast for unsuccessful candidates, these electoral strategies could have only a limited effect. However, the 2002 elections had taken place in a crisis climate for a number of reasons (economic and political crises, earthquakes), and the representation deficit observed after the elections could have been partly contextual in origin and not solely due to the high national threshold. These were the only elections since 1983 where such a high percentage of votes had given rise to no representation in parliament. This meant that the political parties affected by the threshold had managed in practice to develop strategies whereby they could attenuate some of its effects, even though such strategies also ran counter to one of the threshold's declared aims, which was to avoid parliamentary fragmentation. The Court also attached importance to the role of the Constitutional Court. In exercising vigilance to prevent any excessive effects of the impugned electoral threshold by seeking the point of equilibrium between the principles of fair representation and governmental stability, the Constitutional Court, provided a guarantee calculated to stop the threshold concerned impairing the essence of the right enshrined in Article 3 of Protocol No. 1. In conclusion, the Court considered that in general a 10% electoral threshold appeared excessive, and concurred with the organs of the Council of Europe, which had recommended that it be lowered. The high threshold compelled political parties to make use of stratagems which did not contribute to the transparency of the electoral process. In the present case, however, the Court was not persuaded that, when assessed in the light of the specific political context of the elections in question, and attended as it was by correctives and other guarantees which had limited its effects in practice, the threshold had had the effect of impairing in their essence the rights secured to the applicants by Article 3 of Protocol No. 1.
Conclusion: no violation (thirteen votes to four).

See the Chamber judgment in Information Note no. 93.

STAND FOR ELECTION
Cancellation of applicant's candidacy for parliamentary elections on the basis of allegedly fabricated evidence: *communicated*.

ABIL - Azerbaijan (N° 16511/06)
[Section I]

The applicant was a registered independent candidate for the 2005 parliamentary elections. Shortly before the elections, at a meeting held in the applicant's absence, the competent election commission applied to the Court of Appeal for an order cancelling the applicant's registration because he had allegedly promised money to people in exchange for their votes. The applicant was refused access to the case file. Two days later, the Court of Appeal examined the case and, having heard eight witnesses, cancelled the applicant's registration as a candidate. The applicant appealed claiming that the Court of Appeal's judgment had been arbitrary. In particular, he argued that the witnesses who had purportedly testified against him were false,

as they had not even had registered residence in his constituency and were in reality relatives of various officials of the local executive authorities. The Supreme Court dismissed the applicant's appeal. *Communicated* under Article 3 of Protocol No. 1 to the Convention.

ARTICLE 3 OF PROTOCOL No. 7

COMPENSATION
Inability to seek compensation for non-pecuniary damage following quashing of criminal convictions in the absence of a "new or newly discovered fact": *unable to take cognisance of merits* (*incompatibility* ratione materiae).

MATVEYEV - Russia (N° 26601/02)
Judgment 3.7.2008 [Section I]

Facts: The applicant was convicted of forging a prepaid postal stamp and using it to send personal correspondence free of charge. He was sentenced to two years' imprisonment, which he served. His conviction was later quashed under the supervisory-review procedure by the presidium of a regional court, which found that the stamp used by the applicant was in fact invalid under the relevant legislation and so could not have been used to obtain a profit unlawfully. The applicant made a successful claim for compensation for pecuniary damage, but his claim for compensation for non-pecuniary damage was dismissed as there was no provision in domestic law at the time permitting such a claim to be made.

Law: (a) *Jurisdiction* rationae temporis: Since the aim of Article 3 of Protocol No. 7 was to confer the right to compensation on persons convicted as a result of a miscarriage of justice where such conviction had been reversed by the domestic courts, the relevant date for determining the Court's jurisdiction *rationae temporis* was the date the conviction was quashed, not the date of the conviction. Accordingly the Court had jurisdiction in the applicant's case as, although he had been convicted before the Protocol entered into force in respect of Russia, his conviction was only set aside afterwards.

(b) *Applicability*: As the Explanatory Report to Article 3 of Protocol No. 7 made clear, the nature of the procedure used to quash the conviction was immaterial. The Explanatory Report also confirmed that that provision applied only where the conviction had been reversed on the ground that a new or newly discovered fact showed conclusively that there had been a miscarriage of justice, so that there was no requirement to pay compensation if the conviction had been reversed or a pardon granted on some other ground. The applicant's conviction was quashed on the ground that the postal stamp was no longer valid at the material time and could not have been used to obtain a profit unlawfully. From the evidence, both he and the trial court had been aware of the content of the price list indicating that the postal stamp the applicant had sought to use was no longer valid. Accordingly, the conviction had not been quashed with regard to "a new or newly discovered fact", but owing to a reassessment by the regional-court presidium of the evidence that had been used at the trial. It followed that the conditions of applicability had not been complied with.
Conclusion: unable to take cognisance of merits (unanimously).

Relinquishment in favour of the Grand Chamber

Article 30

ENEA - Italy (N° 74912/01)
[Section II]

(see Article 6 § 1 [civil] above).

Referral to the Grand Chamber

Article 43 § 2

The following cases have been referred to the Grand Chamber in accordance with Article 43 §2 of the Convention:

VARNAVA and Others - Turkey (N° 16064/90, etc.)
Judgment 10.1.2008 [Section III]

(see Article 2 above).

MICALLEF - Malta (N° 17056/06)
Judgment 15.1.2008 [Section IV]

(see Article 6 § 1 above).

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

On 7 July 2008 the Panel of the Grand Chamber rejected requests for referral of the following judgments, which have consequently become final:

MARINI – Albania (N° 3738/02)
RAHIMOVA – Azerbaijan (N° 21674/05)
DEMEBUKOV – Bulgaria (N° 68020/01)
KIDZINIDZE – Georgia (N° 69852/01)
GLESMANN – Germany (N° 25706/03)
MARIETTOS and MARIETTOU – Greece (N° 17755/06)
KONSTANTINOS LADAS – Greece (N° 15001/06)
TÓT – Hungary and Italy (N° 44746/04)
SÚSANNA RÓS WESTLUND – Iceland (N° 42628/04)
ASCIUTTO – Italy (N° 35795/02)
BAGARELLA – Italy (N° 15625/04)
BERTOLINI – Italy (N° 14448/03)
ESPOSITO – Italy (N° 35771/03)
ZAGARIA – Italy (N° 58295/00)
KUOLELIS, BARTOŠEVIČIUS and BUROKEVIČIUS – Lithuania (N°s 74357/01,26764/02 and 27434/02)
OFERTA PLUS S.R.L. – Moldova (N° 14385/04) (just satisfaction)
JAKUBIAK – Poland (N° 36161/05)
KOŁODZIŃSKI – Poland (N° 44521/04)
KYZIOŁ – Poland (N° 24203/05)
PIETRZAK – Poland (N° 38185/02)
PRODANOF and Others – Romania (no. 1) (N° 2739/02)
SC CONCEPT LTD SRL and MANOLE – Romania (N° 42907/02)
KHATSIYEVA and Others – Russia (N° 5108/02)
MASLOVA and NALBANDOV – Russia (N° 839/02)
MECHENKOV – Russia (N° 35421/05)
PSHENICHNYY – Russia (N° 30422/03)
RYAKIB BIRYUKOV – Russia (N° 14810/02)
RYABOV – Russia (N° 3896/04)
TANGIYEVA – Russia (N° 57935/00)
ZUBAYRAYEV – Russia (N° 67797/01)
KAČAPOR and Others – Serbia (N°s 2269/06, 3041/06, 3042/06, 3043/06, 3045/06 and 3046/06)
ŠPANÍR – Slovakia (N° 39139/05)
VIČANOVÁ – Slovakia (N° 3305/04)
TRAJKOSKI – the former Yugoslav Republic of Macedonia (N° 13191/02)
ALBAYRAK – Turkey (N° 38406/97)
GERÇEK – Turkey (N° 67634/01)
HAZIRCI and Others – Turkey (N° 57171/00)
KARABULUT – Turkey (N° 56015/00)
KARADAVUT – Turkey (N° 17604/04)
MUTU – Turkey (N° 25984/03)
ÖZEL and Others – Turkey (N° 37626/02)

[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.

SUAT ÜNLÜ – Turkey (N° 12458/03)
SÜRMELIOĞLU – Turkey (N° 17940/03)
TUNÇ – Turkey (N° 20400/03)
USTA and Others – Turkey (N° 57084/00)
UYSAL – Turkey (N° 51964/99)
ARSENENKO – Ukraine (N° 6128/04)
MITIN – Ukraine (N° 38724/02)
HIGHAM – United Kingdom (N° 64735/01)

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12.08.2008

Press release issued by the Registrar

European Court of Human Rights grants request for interim measures

The European Court of Human Rights has today indicated to the Government of the Russian Federation interim measures under Rule 39 of the Rules of Court.

On 11 August 2008 the Georgian Government requested the Court to indicate to the Government of the Russian Federation interim measures to the effect that the Russian Government should "refrain from taking any measures which may threaten the life or state of health of the civilian population and to allow the Georgian emergency forces to carry out all the necessary measures in order to provide assistance to the remaining injured civilian population and soldiers via humanitarian corridor". The Agent of the Georgian Government informed the Court that this request was made in the context of an application directed against the Russian Federation alleging violations of Articles 2 (right to life) and 3 (prohibition of inhuman and degrading treatment) of the European Convention on Human Rights and Article 1 of Protocol No. 1 (protection of property) to the Convention.

The terms of the Court's decision are as follows:

"On 12 August 2008 the President of the Court, acting as President of Chamber, decided to apply Rule 39 of the Rules of Court (interim measures) considering that the current situation gives rise to a real and continuing risk of serious violations of the Convention. With a view to preventing such violations and pursuant to Rule 39, the President calls upon both the High Contracting Parties concerned to comply with their engagements under the Convention particularly in respect of Articles 2 and 3 of the Convention.

In accordance with Rule 39 § 3, the President further requests both Governments concerned to inform the Court of the measures taken to ensure that the Convention is fully complied with."

Rule 39 of the Rules of the Court (Interim measures):

"1. The Chamber or, where appropriate, its President may, at the request of a party or of any other person concerned, or of its own motion, indicate to the parties any interim measure which it considers should be adopted in the interests of the parties or of the proper conduct of the proceedings before it.

2. Notice of these measures shall be given to the Committee of Ministers.

3. The Chamber may request information from the parties on any matter connected with the implementation of any interim measure it has indicated."

Note: For the already pending inter-State case *Georgia v. Russia* (13255/07), see Information Note no. 95 (p. 25) and Press Release no. 190 (2007).