EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Information Note on the Court's case-law

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ARTICLE 2

Positive obligations
Life

Fatal stabbing of youth by pupil outside school: *violation*

Kayak v. Turkey - 60444/08
Judgment 10.7.2012 [Section II]

Facts – The applicants are the mother and brother of a 15-year-old boy who died after being stabbed by E.G., an 18-year-old pupil, in front of the junior school where E.G. was a boarder. In September 2002 the victim, a former pupil of that school (but at the time attending a higher school), went to the junior school with some friends. They got into an argument in the school playground with E.G. and in the ensuing dispute E.G. stabbed the victim, 150 metres away from the school, with a bread knife that he had stolen from the school canteen. The boy died later that day. In October 2002 the Junior Schools Inspectorate initiated an urgent investigation, which found no direct negligence on the part of the schools' administrators and teachers in relation to the incident. In October 2005 E.G. was sentenced to life imprisonment for murder, subsequently reduced to six years and eight months. In June 2003 the applicants brought administrative-liability proceedings but their action was dismissed by the Administrative Court. In January 2007 the Supreme Administrative Court upheld the judgment of the court below and in July 2008 dismissed an application for review lodged by the applicants.

Law – Article 2: The applicants' relative had tragically met his death as a result of a series of unexpected circumstances and it had not been possible to identify the victim beforehand as the potential target of mortal wounding by his assailant. Whilst the fact that an 18 year old was still at a junior school contravened the statutory provisions governing junior schools at the material time, the mere breach of the regulations was not sufficient in itself to raise an issue under Article 2. It would be necessary to establish that a lack of intervention on the part of the authorities in that connection caused a real and immediate risk for the victim. Nor did it appear that E.G., even though he had behavioural problems, had displayed any aggressive or violent behaviour before the incident that would have required special supervision of the victim. The issue in the present case, therefore, was the State's obligation, through the school authorities, to assume responsibility for the pupils entrusted to it. The mission vested in schools in this context implied the existence of a primary duty to protect them against any form of violence to which they might be subjected while under the school's supervision. Whilst the teaching staff could not be expected to watch over each pupil all the time, movements inside and outside the school required heightened surveillance. It transpired that, owing to a shortage of staff, the supervision of pupils had sometimes been entrusted to the pupils themselves. The school's administration had warned the competent authorities about the difficulty of maintaining security around the school and had requested specific assistance, but to no avail. In addition, the perpetrator had managed to steal the murder weapon, a knife, from the school's premises at a time when he should have been under the supervision of teachers. Whilst the teaching staff, once informed about the confrontation, had tried to intervene, the Court found it unfortunate that one of the teachers, after being told that E.G. was going to fetch a knife from the canteen, merely waited for him at the door for several minutes without intercepting him. The Court was thus of the view that, in the circumstances of the case, the national authorities had failed in their duty to ensure supervision on the premises of the school attended by the perpetrator of the murder.

Conclusion: violation (five votes to two).

The Court further found, unanimously, that there had been a violation of Article 6 § 1 as the length of the proceedings had not met the "reasonable-time" requirement.

Article 41: EUR 15,000 jointly in respect of non-pecuniary damage; EUR 4,513 to the applicant mother in respect of pecuniary damage.

ARTICLE 3

Positive obligations

Violent and persistent harassment of a disabled person by neighbourhood children: *violation*

Đorđević v. Croatia - 41526/10
Judgment 24.7.2012 [Section I]

Facts – The first applicant, who was mentally and physically disabled, lived with his mother (the second applicant) in a ground-floor flat. Both applicants complained that they had been continuously harassed between July 2008 and February 2011 by pupils from a nearby primary school and

that the authorities had not adequately protected them. A series of incidents were recorded throughout that period, with children ringing the family doorbell at odd times, spitting on the first applicant, hitting and pushing him around, burning his hands with cigarettes, vandalising the applicants' balcony and shouting obscenities at them. The attacks had left the first applicant deeply disturbed, afraid and anxious. They complained on numerous occasions to various authorities, including the social services and the ombudsman. They also rang the police many times to report the incidents and seek help. Following each call, the police arrived at the scene, sometimes too late, and sometimes only to tell the children to disperse or stop making a noise. They also interviewed several pupils and concluded that, although they had admitted to having behaved violently towards the first applicant, they were too young to be held criminally responsible.

Law – Article 3 (*first applicant*): The first applicant had been continuously harassed and, as a result, had felt helpless and afraid for prolonged periods of time. He had also been physically hurt on one occasion. That ill-treatment had been sufficiently serious to attract the protection of Article 3.

Acts of violence contrary to Article 3 normally required recourse to the application of criminal-law measures against the perpetrators. However, in the instant case most of the alleged perpetrators were children under fourteen, who could not be held criminally responsible under the domestic law. It was also possible that none of the acts complained of had individually amounted to a criminal offence, but that the incidents taken as a whole were nevertheless incompatible with Article 3. The first applicant's case therefore concerned the State's positive obligations in a situation outside the sphere of criminal law where the competent State authorities were aware of serious harassment directed at a person with physical and mental disabilities. The authorities had been aware of the harassment from the start and were thus under an obligation to take all reasonable steps to protect the first applicant. Although the police had interviewed some of the children allegedly involved and the school authorities had discussed the problem with the pupils and their parents, no serious attempt had been made to assess the true nature of the situation or the lack of a systematic approach which had resulted in the absence of adequate and comprehensive measures. The findings of the police were never followed by concrete action: no policy decision was adopted or monitoring mechanisms put in place in order to recognise and prevent further harassment. The Court was particularly struck by the lack of any true involvement of the social services and the absence of any indication that relevant experts had been involved who could have given appropriate recommendations and worked with the children concerned. No counselling was ever provided to the first applicant. The authorities had thus failed to take all reasonable measures to protect the first applicant, notwithstanding the real and foreseeable risk of continuing abuse.

Conclusion: violation (unanimously).

Article 8 (*second applicant*): The harassment of the first applicant had inevitably affected the private and family life of his mother, the second applicant. In view of its finding that the authorities had failed to adequately prevent further harassment of the first applicant, the Court could not but conclude that they had failed to afford adequate protection in that respect also to the second applicant.

Conclusion: violation (unanimously).

Article 41: EUR 11,500 jointly in respect of non-pecuniary damage.

Torture
Effective investigation

Failure adequately to investigate allegations of police brutality or to afford legal representation to victim disabled as a result of his injuries: *violations*

Savitskyy v. Ukraine - 38773/05
Judgment 26.7.2012 [Section V]

Facts – The facts of the case are disputed. The applicant alleged that on an evening in August 1998 he was subjected to a serious assault by three police officers who had arrested him in the street following a call from a petrol-station attendant who had mistakenly believed him to be drunk. According to the police officers, however, they had found the applicant lying near a fence in a park complaining of acute pain in the waist and stomach. The applicant was taken to hospital, where he was diagnosed with two fractured vertebrae and a spinal cord injury. He has been unable to walk unaided since and is registered disabled. Following a complaint by the applicant, the case was investigated by the prosecuting authorities. The applicant requested legal representation in view of his physical disability, but this was refused. The investigators subsequently terminated the proceedings after finding that the applicant had been very drunk and had sustained the injuries through his

own negligence when falling from a fence. That decision was upheld by the domestic courts.

Law – Article 3

(a) *Procedural aspect* – The Court found that the investigation of the applicant's allegations of ill-treatment by police officers had not been effective for the purposes of the Convention. The investigation had not been impartial, objective or thorough and the overall length of the proceedings had been excessive. In addition, the applicant's effective participation in the procedure had not been ensured. Although he was severely disabled and had had no legal education, his requests for free legal representation to support his allegations of ill-treatment had been refused. The Convention was intended to guarantee rights that were "practical and effective". Accordingly, in the particular circumstances of the case the State's procedural obligations to ensure the effective participation of the victim in the investigation of his complaints of ill-treatment extended to the issue of providing effective access to free legal representation. The domestic law at the material time made no provision for legal-aid for someone in the applicant's situation and it had not been shown that the social-support centres and legal-advice offices had been able to provide the applicant with the requisite legal representation. The applicant's approaches to the national ombudsman and other authorities had not yielded appropriate results either. The State had thus fallen short of its obligation to provide the applicant with free legal assistance in order to ensure his effective participation in the domestic proceedings.

Conclusion: violation (unanimously).

(b) *Substantive aspect* – The police officers had maintained that they had arrived at the petrol station shortly after receiving a call from the sales assistant and had immediately gone to the park opposite, where they found the applicant already severely injured. They did not, however, explain why they decided to look for the applicant, who had already left the petrol station without committing an offence and was no longer disturbing the sales assistant. Even on the basis of the officers' account, given the short interval between the applicant's last being seen in good health and the police finding him severely injured and given the officers proximity to the scene at the time, the State was obliged under Article 3 to provide a satisfactory and convincing explanation for the applicant's injuries. That burden had not been discharged as, owing to the serious shortcomings of the domestic enquiries and investigations, the evidential basis for the support of the official version of the incident was of poor quality, while the applicant's version had not been effectively investigated and the evidence to support it had not been properly assembled. The applicant's submissions were coherent and consistent with the indirect evidence available in the file. In view of the exceptional gravity of his injuries and the fact that they had been inflicted in order to intimidate and humiliate, the ill-treatment amounted to torture.

Conclusion: violation (unanimously).

The Court also found a violation of Article 6 § 1 of the Convention and a failure by the State to comply with its obligations under Article 34 in respect of the authorities' failure to produce certain documents despite a domestic court order requiring them to do so and a request by the European Court for their production.

Article 41: EUR 100,000 in respect of non-pecuniary damage; EUR 50,994.05 in respect of pecuniary damage.

Inhuman punishment
Degrading punishment

Imprisonment for life with release possible only in the event of terminal illness or serious incapacitation: *case referred to the Grand Chamber*

Vinter and Others v. the United Kingdom - 66069/09, 130/10 and 3896/10
Judgment 17.1.2012 [Section IV]

In England and Wales murder carries a mandatory life sentence. All three applicants were given "whole life orders" following convictions for murder. Such an order meant that their offences were considered so serious that they must remain in prison for life unless the Secretary of State exercised his discretion to order their release on compassionate grounds if satisfied that exceptional circumstances – in practice, terminal illness or serious incapacitation – existed. In their applications to the European Court, the applicants complained that the imposition of whole life orders in their cases meant their sentences were, in effect, irreducible, in violation of Article 3 of the Convention.

In a judgment of 17 January 2012 (see Information Note no. 148) a Chamber of the Court held, by four votes to three, that there had been no violation of Article 3.

On 9 July 2012 the case was referred to the Grand Chamber at the applicants' request.

ARTICLE 4

Trafficking in human beings

Trafficking of a young Bulgarian girl in Italy not supported by sufficient evidence: *inadmissible*

M. and Others v. Italy and Bulgaria - 40020/03
Judgment 31.7.2012 [Section II]

Facts – The applicants are Bulgarian nationals of Roma origin. The first applicant is the daughter of the second and third applicants. In 2003 the family travelled to Italy, allegedly to work as domestics. There the daughter married a Serbian citizen, possibly after a sum of money (several thousand euros) was paid by the groom to the bride's father. The applicants claim that the parents were forced to return to Bulgaria while their daughter remained in Italy, where she was ill-treated and forced to work for her husband. The mother came back to Italy and complained to the police. Complaints were also made to various Bulgarian and Italian authorities. The Italian police then raided the groom's house, where they found the first applicant and made a number of arrests. However, the authorities decided not to bring criminal proceedings after finding that the evidence indicated that the marriage was consensual.

Law

Article 3: The Court found a violation by Italy of the procedural aspect of Article 3 in respect of the authorities' failure to conduct an effective investigation into the first applicant's allegations of ill-treatment, but no violation of that provision by Italy in respect of her complaint that the Italian authorities had not taken sufficient steps to secure her release from her alleged captivity.

Article 4: The parties to the case had presented diverging factual circumstances and regrettably the lack of investigation by the Italian authorities had led to little evidence being available to determine the case. The Court therefore had no alternative but to take its decisions on the basis of the evidence that had been submitted by the parties.

(a) *Complaint against Italy*

(i) *Circumstances as alleged by the applicants*: The circumstances as alleged by the applicants could have amounted to human trafficking. However, from the evidence submitted there was not sufficient ground to establish the veracity of this version. It followed that the allegation that there had been an instance of actual human trafficking had not been proved and the positive obligations under Article 4 to penalise and prosecute trafficking in the ambit of a proper legal or regulatory framework could not come into play. As to the obligation to take appropriate measures to remove the individual from risk, the Court had already found under Article 3 that the Italian authorities had taken all the required steps to free the first applicant from the situation she was in. As to the procedural obligation to investigate situations of potential trafficking, the Court had already found a violation of Article 3 in respect of the Italian authorities' failure to undertake an effective investigation of the case. In consequence, it was not necessary to examine this limb of the complaint.

Conclusion: inadmissible (manifestly ill-founded).

(ii) *Circumstances as established by the authorities*: Even assuming the applicant's father had received a sum of money in respect of the alleged marriage, such a monetary contribution could not be considered to amount to a price attached to the transfer of ownership such as to bring into play the concept of slavery. The payment could reasonably have been accepted as representing a gift from one family to another, a tradition common to many different cultures. Nor was there any evidence to indicate that the first applicant had been subjected to "servitude" or "forced or compulsory" labour. Furthermore, the *post facto* medical records submitted were not sufficient to determine beyond reasonable doubt that the first applicant had actually suffered some form of ill-treatment or exploitation as understood in the definition of trafficking and the sole payment of a sum of money did not suffice to establish that trafficking had taken place. There was no evidence either to suggest that the union had been contracted for the purposes of exploitation, sexual or otherwise, and no reason to believe that it had been undertaken for purposes other than those generally associated with a traditional marriage. There was not sufficient evidence to indicate that the union had been forced on the first applicant, who had not testified that she had not consented to it and had emphasised that she had not been forced to have sexual intercourse. Accordingly, it could not be said that the circumstances as established by the authorities raised any issue under Article 4.

Conclusion: inadmissible (manifestly ill-founded).

(b) *Complaint against Bulgaria* – Had any alleged trafficking commenced in Bulgaria it would not have been outside the Court's competence to examine whether Bulgaria had complied with any

obligation it may have had to take measures within the limits of its own jurisdiction and powers to protect the first applicant from trafficking and to investigate the possibility that she had been trafficked. In addition, member States were also subject to a duty in cross-border trafficking cases to cooperate effectively with the relevant authorities of other States concerned in the investigation of events which occurred outside their territories. However, as had already been established, the circumstances of the case had not given rise to human trafficking. Moreover, the applicants had not complained that the Bulgarian authorities had not investigated any potential trafficking. Lastly, the Bulgarian authorities had assisted the applicants and had maintained constant contact and cooperation with the Italian authorities.

Conclusion: inadmissible (manifestly ill-founded).

(See also *Rantsev v. Cyprus and Russia*, no. 25965/04, 7 January 2010, Information Note no. 126)

ARTICLE 5

Article 5 § 1 (e)

Persons of unsound mind

Forced confinement in a mental institution: *violation*

X v. Finland - 34806/04
Judgment 3.7.2012 [Section IV]

(See Article 8 below, page 15)

ARTICLE 6

Article 6 § 1 (civil)

Access to court

Refusal by domestic courts to acknowledge deemed service against foreign State made in accordance with rules of customary international law: *violation*

Wallishauser v. Austria - 156/04
Judgment 17.7.2012 [Section I]

Facts – In 1998 the applicant, who had worked as a photographer for the American Embassy in Vienna, brought an action for unpaid wages against the United States. A staff member of the Austrian Embassy in Washington attempted service by handing the documents over to the United States Department of State, but these were returned with a note to the Austrian Ministry of Foreign Affairs stating that the United States wished to assert its immunity in any case brought by the applicant. The applicant then applied to the Austrian courts for judgment in default, but his application was dismissed on the grounds that the summons had not been duly served. A subsequent application by the applicant for deemed service, by publication or service on a court-appointed representative, was also refused on the grounds that domestic law required service through the Ministry of Foreign Affairs.

Law – Article 6 § 1: It was undisputed that the United States could not validly rely on jurisdictional immunity in the proceedings. However, unlike the position in *Cudak v. Lithuania* and *Sabeh El Leil v. France*,[1] each of which had concerned a decision by the respective domestic authorities to uphold an objection to jurisdiction based on State immunity, the issue in the instant case concerned the Austrian courts' acceptance of the United States' refusal to accept the summons that had been served on them. That acceptance was based on the Austrian courts' view that the service of a summons in a civil action against a foreign State was in itself a sovereign act that had to be accepted irrespective of the nature of the underlying claim. The Court considered, however, that the rule that the service of documents instituting proceedings against a State was deemed to have been effected on their receipt by the Ministry of Foreign Affairs of the State concerned applied to Austria as a rule of customary international law.[2] The Austrian courts had not examined that eventuality. Instead, they had confined themselves to noting that no treaty regulating the issue had been adopted, and that there was no provision under domestic law for service to be effected on the foreign ministry of another State. Accordingly, by accepting the United States' refusal to serve the summons in the applicant's case as a sovereign act and by refusing to proceed with the applicant's case, the Austrian

1. *Cudak v. Lithuania* [GC], no. 15869/02, 23 March 2010, Information Note no. 128; *Sabeh El Leil v. France* [GC], no. 34869/05, 29 June 2011, Information Note no. 142.
2. In the absence of any objection by Austria to Article 20 of the International Law Commission's 1991 Draft Articles, which embodied the rule, or to a similar provision in the 2004 United Nations Convention on Jurisdictional Immunities of States and Their Property.

courts had impaired the very essence of the applicant's right of access to court.

Conclusion: violation (unanimously).

Article 41: EUR 12,000 in respect of non-pecuniary damage.

Article 6 § 1 (criminal)

Independent tribunal
Impartial tribunal

Participation of serving military officer in military criminal court: *violation*

İbrahim Gürkan v. Turkey - 10987/10
Judgment 3.7.2012 [Section II]

Facts – In 2008 a military prosecutor filed an indictment against the applicant, who at the time was serving in the Turkish Navy, for wilfully disobeying a superior. A military criminal court composed of a military officer with no legal background and two military judges found the applicant guilty as charged and sentenced him to two months and fifteen days' imprisonment.

Law – Article 6 § 1: In a previous case[1] in 2004 the Court had dismissed a complaint regarding the independence and impartiality of military criminal tribunals in Turkey after finding that sufficient safeguards were in place to guarantee the independence and impartiality of the members of such courts. However, in 2009 the Turkish Constitutional Court found that the domestic legislation in force at the material time did not provide sufficient safeguards against the risk of outside pressure being exerted on members of the military criminal courts. The European Court was therefore called upon to re-examine the issue. Given that participation of lay judges as such was not contrary to Article 6 of the Convention, the Court did not consider that the military officer's lack of legal qualifications had hindered his independence or impartiality. However, he was a serving officer who remained in the service of the army and was subject to military discipline. He had been appointed to the bench by his hierarchical superiors and did not enjoy the same constitutional safeguards as the other two military judges. The military criminal court that convicted the applicant could therefore not be considered to have been independent and impartial.

Conclusion: violation (unanimously).

1. *Önen v. Turkey* (dec.), no. 32860/96, 10 February 2004.

Article 41: Finding of a violation constituted sufficient just satisfaction.

Article 6 § 2

Presumption of innocence

Application of the presumption of innocence to non-criminal proceedings: *relinquishment in favour of the Grand Chamber*

Allen v. the United Kingdom - 25424/09
[Section IV]

The applicant was convicted of manslaughter. Five years later the Court of Appeal quashed her conviction on the basis of new evidence which might have led the jury to reach a different conclusion. However, given the time that had passed and the fact that the applicant had served her sentence, no retrial was ordered. The applicant sought compensation for a "miscarriage of justice" pursuant to primary legislation, but her claim was refused by the Secretary of State in a decision that was later upheld by the domestic courts on the grounds that the Court of Appeal had considered that the applicant had neither established her innocence nor demonstrated that there had been a fundamental flaw in the trial process, such that a miscarriage of justice had arisen. In her application to the European Court, the applicant complains under Article 6 § 2 that the refusal of compensation in her case was incompatible with the presumption of innocence.

ARTICLE 7

Article 7 § 1

Heavier penalty

Allegedly retrospective application of heavier criminal sanction for war crimes: *relinquishment in favour of the Grand Chamber*

Maktouf v. Bosnia and Herzegovina - 2312/08
Damjanović v. Bosnia and Herzegovina - 34179/08
[Section IV]

The applicants were convicted under the 2003 Criminal Code of Bosnia and Herzegovina of war crimes committed during the war in Bosnia and Herzegovina in 1992 and 1993 and sentenced to

terms of imprisonment. In their applications to the European Court, the applicants complain under Article 7 of the Convention that they were not granted the benefit of the more lenient provisions of the 1976 Criminal Code of the Socialist Federal Republic of Yugoslavia as regards their sentences. One of the applicants, Mr Maktouf, also complains under Article 6 of the Convention that the tribunal that convicted him was not independent.

Postponement of date of applicant's release following change in case-law after she was sentenced: *violation*

Del Rio Prada v. Spain - 42750/09
Judgment 10.7.2012 [Section III]

Facts – Between 1995 and 2000 the applicant was sentenced, in the context of eight sets of criminal proceedings, to various prison terms for several offences linked to terrorist attacks; the terms totalled more than 3,000 years. In November 2000, having regard to the close legal and chronological connection between the offences, the *Audiencia Nacional* combined the various sentences and fixed the term to be served at thirty years, in accordance with the maximum limit set out in the 1973 Criminal Code, in force at the relevant time. In April 2008 the authorities of the prison where the applicant was being held set July 2008 as the date for her release, after applying remission for work she had done in prison since 1987. In May the *Audiencia Nacional* asked the prison authorities to revise the planned release date and to recalculate it on the basis of a new case-law (the so-called "Parot" doctrine) laid down in a Supreme Court judgment of February 2006, under which the relevant entitlements to remission were to be applied to each sentence individually, and not to the limit of thirty years' imprisonment. Applying that doctrine, the final date for the applicant's release was set at 27 June 2017. The appeals lodged by the applicant were unsuccessful.

Law – Article 7: The finding of guilt and the various individual prison terms to which the applicant had been sentenced had as their legal basis the criminal law applicable at the relevant time. The parties' arguments mainly concerned the calculation of the total sentence to be served as a result of the application of the rules on cumulative penalties, with a view to applying the rules on remission.

With regard to the accessibility of the law and the case-law, the 1973 Criminal Code referred to a term of thirty years' imprisonment as the maximum limit for serving a sentence in the case of multiple sentences, without providing any specific rule on the calculation of remission where the total of the sentences imposed considerably exceeded that limit. Moreover, according to the relevant case-law, where an individual was sentenced to several prison terms, the prison authorities envisaged remission for work on the basis of thirty years' imprisonment. On the strength of this practice, the applicant could legitimately have hoped to enjoy remission for the work she had carried out since 1987. Accordingly, at the time the applicant committed the offences and when the decision to combine her sentences was taken, the relevant Spanish law and case-law had enabled the applicant to foresee, to a reasonable extent in the circumstances, the scope of the sentence imposed and the manner of its execution.

When changing in 2008 the date set for the applicant's final release, the *Audiencia Nacional* had relied on the new case-law set out in the Supreme Court's judgment of 2006, long after the applicant had committed the offences and the 2000 decision on cumulative penalties, and had thus retroactively extended the sentence by almost nine years, thus completely invalidating the periods of remission for work. Since the change in the method of calculating the sentence to be served had had major repercussions on the effective length of the sentence, to the applicant's detriment, the new calculation method concerned not only the execution of the sentence but also its scope. With regard to the foreseeability of that interpretation by the domestic courts, there was not a single relevant precedent along the lines of the 2006 judgment, and pre-existing prison and judicial practice was more favourable to the applicant. Moreover, the Supreme Court's new case-law had rendered meaningless the periods of remission for work calculated under the new Criminal Code of 1995, which had abolished the system of remission for work and introduced stricter rules on the calculation of prison benefits for prisoners serving multiple long-term sentences. In this connection, while the Contracting States were free to amend their criminal policy, the domestic courts could not apply retroactively and to the detriment of the persons concerned the spirit of legislative changes that occurred after their offences had been committed. Thus, at the material time, it had been difficult, if not impossible, for the applicant to foresee the change in the Supreme Court's case-law and therefore to know that the

Audiencia Nacional would calculate remission on the basis of each of the individual sentences imposed, rather than on the total sentence to be served, thus extending considerably the duration of her imprisonment.

Conclusion: violation (unanimously).

Article 5: In view of the considerations which had led to the finding of a violation of Article 7, the applicant had not at the relevant time been able to foresee to a reasonable extent that the actual length of her deprivation of liberty would be extended by almost nine years, thus rendering meaningless the remission for work to which she had been entitled under the terms of the former Criminal Code of 1973. Accordingly, from the date on which the applicant ought to have been released pursuant to the legislation as interpreted prior to the change in case-law, her detention had not been "lawful".

Conclusion: violation (unanimously).

Article 46: Having regard to the particular circumstances of the case and the urgent need to put an end to the violation of Articles 7 and 5 § 1, the Court considered that the Spanish State was to secure the applicant's release at the earliest possible date.

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

ARTICLE 8

Expulsion

Expulsion of long-term resident following series of criminal convictions: *no violation*

Samsonnikov v. Estonia - 52178/10
Judgment 3.7.2012 [Section I]

Facts – The applicant was born in Estonia in 1978 and lived there on the basis of a temporary residence permit practically all his life until his expulsion in 2011. He did not appear to have ever formally requested Estonian citizenship, but instead obtained Russian citizenship in 1998 after attending a Russian-speaking school in Tallinn. His father and brother both lived in Estonia with their respective families. From 1997 onwards the applicant received a series of convictions for criminal offences, some of which involved violence and/or drugs and was also found guilty of various misdemeanours. In 2008 he was convicted of aggravated drug smuggling in Sweden. Following his release from prison there in 2009 he was deported to Estonia, whose authorities had meanwhile refused to prolong his temporary residence permit owing to the nature and severity of the offences he had committed. He was expelled to Russia in 2011 with a three-year prohibition on re-entry.

Law – Article 8: There was no doubt that the applicant's expulsion from Estonia had interfered with his right to respect for his private life. As for his family life, however, there was nothing to suggest that his relationship with his father or brother had extended beyond the usual ties existing between adult family members. Although the applicant had a partner in Estonia, the couple had only started cohabiting after the applicant's expulsion from Sweden, so they should have been aware of his precarious residence status in Estonia. The applicant had never requested Estonian citizenship but had obtained Russian citizenship instead, thereby apparently identifying himself with that country. His social circle, including his relatives and partner, consisted mainly of persons of Russian origin and he also had family living in Russia. All these factors indicated that the applicant would not face insurmountable difficulties in settling in Russia. The Estonian authorities had rejected the applicant's request for an extension of his residence permit, not just on the basis of his criminal conviction in Sweden, but following an assessment of all the circumstances including his criminal record in Estonia, which had seen him sentenced to a total of eight years' imprisonment in the preceding twelve years. Given his age, the length of time he had been offending and the seriousness of offences his behaviour could not be regarded as mere "juvenile delinquency". The Court noted further that Recommendation Rec(2000)15 of the Committee of Ministers of the Council of Europe[1] stated that each State had the option to provide in its internal law that a long-term immigrant may be expelled if he or she constituted a serious threat to national security or public safety. Lastly, the three-year ban on his re-entering Estonia did not amount to a disproportionate interference with the applicant's Convention rights.

Conclusion: no violation (five votes to two).

(See also *Mutlag v. Germany*, no. 40601/05, 25 March 2010, Information Note no. 128; and *Maslov v. Austria* [GC], no. 1638/03, 23 June 2008, Information Note no. 109)

1. Recommendation Rec(2000)15 of the Committee of Ministers to member States concerning the security of residence of long-term migrants, adopted on 13 September 2000.

Respect for private life

Forced administration of therapeutic drugs in mental institution: *violation*

X v. Finland - 34806/04
Judgment 3.7.2012 [Section IV]

Facts – The applicant, a paediatrician, was arrested in October 2004 in connection with criminal proceedings that had been brought against her after she allegedly helped a mother remove her daughter from public care. The court ordered the applicant's transfer to a mental institution, where a doctor concluded after examining her over a two-month period that she suffered from a delusional disorder and met the criteria for involuntary confinement. In February 2005 the Board for Forensic Psychiatry of the National Authority for Medico-Legal Affairs ordered the applicant's involuntary treatment on the basis of the doctor's report. The hospital then started injecting the applicant with medication which she had refused to take orally. She was not released from hospital until January 2006 and her treatment officially ended in June of that year. The applicant unsuccessfully challenged her confinement and involuntary treatment before the domestic authorities.

Law – Article 5 § 1: The initial decision to place the applicant in involuntary hospital care had been taken by an independent administrative body with legal and medical expertise and had been based on a thorough psychiatric examination carried out in a mental institution by a doctor who had not participated in the decision to place her. The decision-making process had followed the domestic legal procedures at all times and the Mental Health Act was sufficiently clear and foreseeable in that respect. However, domestic law also had to protect individuals from arbitrary deprivation of their liberty and security. While there had been no problem with the applicant's initial confinement, as it had been ordered by an independent specialised authority following a psychiatric examination and had been subject to judicial review, the safeguards against arbitrariness had been inadequate as regards the continuation of the applicant's involuntary confinement after that period. In particular, there had been no independent psychiatric opinion, as the two doctors who had decided on the prolongation of the confinement were from the hospital where she was detained. In addition, under Finnish law the applicant herself could not bring proceedings for review of the need for her continued confinement, as such periodic review could only take place every six months at the initiative of the relevant domestic authorities. The procedure prescribed by national law had thus not provided adequate safeguards against arbitrariness.

Conclusion: violation (unanimously).

Article 8: Medical intervention in defiance of the individual's will normally constituted interference with his or her private life, and in particular with his or her personal integrity. Such interference was justified if it was in accordance with the law, pursued a legitimate aim and was proportionate. The accessibility and foreseeability of the law at issue in the applicant's case did not give rise to any problems. However, Article 8 also required that the law in question be compatible with the rule of law, which in the specific area of forced medication meant that the domestic law had to provide some kind of protection to the individual against arbitrary interference. Under the Mental Health Act, doctors attending a patient could decide on the treatment to be given, regardless of the patient's wishes, and their decisions were not subject to appeal. However, given the seriousness of the forced administration of medication, the Court considered that the law on which such treatment was based had to guarantee proper safeguards against arbitrariness. In the applicant's case such safeguards had been missing: the decision to confine the applicant involuntarily had included automatic authorisation for the forced administration of medication if she refused treatment. The decision-making had been solely in the hands of the treating doctors and was not subject to any kind of judicial scrutiny. The applicant had not had any remedy by which she could ask the courts to rule on the lawfulness or the proportionality of the measure or discontinue it. Accordingly, the interference in question had not been "in accordance with the law".

Conclusion: violation (unanimously).

Article 41: EUR 10,000 in respect of non-pecuniary damage; claim in respect of pecuniary damage dismissed.

(See also *Herczegfalvy v. Austria*, no. 10533/83, 24 September 1992)

Refusal by the German courts to examine the merits of an application by a man whose wife had just committed suicide in Switzerland after having attempted unsuccessfully to obtain authorisation to purchase a lethal substance in Germany: *violation*

Koch v. Germany - 497/09
Judgment 19.7.2012 [Section V]

Facts – In 2004 the applicant's wife, who was suffering from complete quadriplegia, applied to the Federal Institute for Pharmaceutical and Medical Products for authorisation to obtain a lethal dose of a drug that would have enabled her to commit suicide at home in Germany. The Institute refused and an administrative appeal by the applicant and his wife was dismissed. In February 2005 they both went to Switzerland, where the wife committed suicide with the help of an association. In April 2005 the applicant unsuccessfully brought an action to obtain a declaration that the Institute's decisions had been unlawful. His appeals to the administrative court, administrative court of appeal and Federal Constitutional Court were declared inadmissible.

Law – Article 8

(a) *Alleged violation of the applicant's own rights* – The present case had to be distinguished from cases brought before the Court by a deceased person's heir or relative solely on behalf of the deceased, in that the applicant claimed a violation of his own rights. In spite of that difference, the conditions in which an heir or relative were entitled to bring an action on behalf of the deceased were also relevant here. The applicant and his wife had been married for 25 years and shared a very close relationship. He had accompanied her throughout her suffering, ultimately accepting and supporting her wish to end her life, and had travelled with her to Switzerland in order to fulfil that wish. Lastly, he had lodged an administrative appeal jointly with his wife and had pursued the domestic proceedings in his own name after her death. Those exceptional circumstances showed that the applicant had a strong and persisting interest in having the merits of the original case decided by the courts. Furthermore, the case concerned fundamental questions about the possibility for a patient to decide to end his or her life, such questions being of general interest and transcending the personal situations and interests of the applicant and his late wife. Having regard, in particular, to the exceptionally close relationship between the applicant and his wife, and to his immediate involvement in the fulfilment of her wish to end her days, he could claim to have been directly affected by the refusal to grant her authorisation to acquire a lethal dose of the medication. There had accordingly been an interference with his own right to respect for his private life, on account of the Federal Institute's decision to dismiss his wife's request and the refusal by the administrative courts to examine the substance of his action.

As regards the procedural limb of Article 8, and in particular the question whether the applicant's own rights had been sufficiently safeguarded in the domestic proceedings, the administrative court and the administrative court of appeal had refused to examine the merits of his case on the ground that he could not rely on his own rights under domestic law or under Article 8 and that he did not have *locus standi* to pursue his late wife's action after her death. Whilst the administrative court had expressed the opinion that the Federal Institute's refusal had been legitimate and in compliance with Article 8, neither the administrative court of appeal nor the Federal Constitutional Court had examined the initial action on the merits. This refusal to examine the merits of the case had not pursued any legitimate aim. There had thus been a violation of the applicant's right to have the merits of his complaint examined by the domestic courts.

Having regard to that finding, to the principle of subsidiarity and to the considerable margin of appreciation afforded to States in such matters in the absence of any consensus concerning the possibility for doctors to prescribe a lethal dose of medication, it was not necessary to examine the substantive limb of the applicant's complaint.

Conclusion: violation (unanimously).

(b) *Alleged violation of the applicant's wife's rights* – The Court reiterated that the rights under Article 8 were of a non-transferrable nature and that complaints under that Article could thus not be pursued by a close relative or other successor of the person concerned. The applicant did not therefore have standing to complain of a violation of his wife's rights and that complaint was therefore inadmissible as being incompatible *ratione materiae* with the Convention.

Conclusion: inadmissible (unanimously).

Article 41: EUR 2,500 in respect of non-pecuniary damage; claim in respect of pecuniary damage dismissed.

(See also *Haas v. Switzerland*, no. 31322/07, 20 January 2011, Information Note no. 137)

Suspension of public official coupled with ban on exercising any gainful employment for six-year duration of criminal proceedings against him: *violation*

D.M.T. and D.K.I. v. Bulgaria - 29476/06
Judgment 24.7.2012 [Section IV]

Facts – The first applicant was head of the Interior Ministry's Economic Crime Department. In 1999 criminal proceedings were instituted against him and he was suspended from his post. Despite his suspension, he remained subject to the ban on Ministry officials engaging in any other gainful employment. The applicant asked to be dismissed so that he could claim his pension entitlements, but his request was refused. Between 1999 and 2002 he made several applications to the courts to have his suspension overturned. He also asked to be reinstated in his post. None of his requests were successful. In 2005, following the applicant's conviction in the criminal proceedings, the Minister for the Interior dismissed him.

Law – Article 8: The applicant was not only complaining that he had been suspended from his post in the civil service but also that his suspension had been coupled with a general ban on any other gainful employment in the public and private sectors, except in the fields of teaching or research, a measure that had continued to apply until his dismissal six years later. This situation had for a prolonged period hindered him from developing professional relations with the outside world and, as a result, had interfered with his private life. The interference had been in accordance with the law and had pursued the legitimate aim of preventing disorder and crime. However, the delay of two and a half years in the criminal proceedings as a result of various shortcomings on the part of the investigative authorities and the courts had automatically prolonged both the applicant's suspension and the ensuing restriction on his ability to apply for a post in the private sector. While in normal circumstances such a restriction could be justified by the concern to prevent conflicts of interests in the civil service, the application of this general ban in the applicant's specific case – as a civil servant who had been suspended from his post for more than six years – had caused him to bear an excessive burden. Furthermore, the authorities had not provided any convincing explanation for their refusal to dismiss him, an outcome which would have allowed him to seek other employment. It was unclear how affording him this opportunity would have obstructed the criminal proceedings. Consequently, the restrictive measures complained of had not struck a fair balance between the applicant's interests and those of society as a whole, and there had not been sufficient justification for the interference with the applicant's private life.

Conclusion: violation (unanimously).

The Court also found a violation of Article 6 § 1 in conjunction with Article 6 § 3 (a) and (b), of Article 6 § 1 and of Article 13 in conjunction with Article 6 § 1 and Article 8.

Article 41: EUR 5,800 to the first applicant in respect of non-pecuniary damage; claim in respect of pecuniary damage dismissed.

(See also *Karov v. Bulgaria*, no. 45964/99, 16 November 2006)

Respect for family life

Forced return to an allegedly abusive father of a child well integrated in the host country: *forced return would constitute a violation*

B. v. Belgium - 4320/11
Judgment 10.7.2012 [Section II]

Facts – In 2003 the first applicant gave birth in the United States to a daughter, the second applicant, who had an American father. For the first four years of her life, the child lived with her mother. In 2004 the first applicant asked the father to waive any rights to custody, which he refused to do. In 2006 the first applicant was convicted of social-security fraud. There followed a long judicial battle for custody of the child, during which the mother referred to a risk of domestic violence against the girl. In October 2008 the first applicant left the United States with the child, without authorisation from either the father or the courts, and settled in Belgium. In December 2008 an American court noted that the child had been abducted by the first applicant and gave sole custody to the father. In January 2009 the American Central Authority applied to the Belgian Central Authority for international child abductions, requesting the girl's enforced return in application of the Hague Convention on the Civil Aspects of International Child Abduction. At the same time the first applicant brought proceedings with a view to obtaining parental authority and sole custody of the child. As the mother refused to take the child back to the United States, the Belgian Central Authority, acting on behalf of the father, referred the case to the court of first instance, which held in March 2010 that the child's return could not be justified

under the Hague Convention. The court of appeal, to which the Belgian Central Authority had applied, set aside that decision and ordered the first applicant to return her daughter to the United States. The mother appealed on points of law. In February 2011, at the first applicant's request, the Court ordered the application of Rule 39 of its Rules of Court until the close of the proceedings before the Court of Cassation and subsequently pending the proceedings before the Court.

Law – Article 8: The Belgian courts' order to return the child amounted to interference, the legal basis of which was the Hague Convention. In the field of international child abduction, the obligations placed on the States by Article 8 had to be interpreted in the light of the requirements imposed, in particular, by that Convention. In the instant case, the national courts had not been unanimous. In addition, the psychological reports on the child indicated that it was not in her interest to be separated from her mother and that a return to the United States would pose a danger to her. It was the appeal court's prerogative not to attach full credence to psychological reports submitted by one of the parties. However, the appeal court had not attempted, by ordering other reports as recommended by the State Counsel's Office, to ascertain for itself the true extent of the likelihood that the child would be exposed to an intolerable situation. Nor had it based its decision on a finding that, in the absence of grounds which would objectively justify the mother's refusal to return to the United States, she could reasonably be expected to return to that country with the child. Finally, it had not relied on the possibility that the mother could accompany the child to the United States in order to assert her residence and visiting rights there. On the contrary, it had merely found that it was improbable that the mother would return to the United States, where she faced a prison sentence and the loss of her parental authority. In addition, the child, who had dual nationality, had arrived in Belgium at the age of five years and had lived there since without interruption. She spoke Dutch and was fully integrated into her surroundings and school environment. Yet the court of appeal had taken account of the "time" factor only from a procedural standpoint. However, the "time" factor was itself a crucial element, which ought to have been taken into account in evaluating more exhaustively the tangible implications of a return. The court of appeal had thus not been in a position to determine, in an informed manner, whether there existed a risk within the meaning of the Hague Convention. The domestic decision-making process had therefore not met the procedural requirements inherent in Article 8 of the European Convention. The child's forced return to the United States could not be considered necessary in a democratic society.

Conclusion: forced return would constitute a violation (five votes to two).

Article 41: EUR 5,000 to the second applicant in respect of non-pecuniary damage; claim submitted by the first applicant for non-pecuniary damage dismissed.

(See also *Neulinger and Shrunk v. Switzerland* [GC], no. 41615/07, 6 July 2010, Information Note no. 132; and *Šneersone and Kampanella v. Italy*, no. 14737/09, 12 July 2011, Information Note no. 143)

Automatic and perpetual deprivation of parental rights following criminal conviction for ill-treatment of children: *violation*

M.D. and Others v. Malta - 64791/10
Judgment 17.7.2012 [Section IV]

Facts – The first applicant is the mother of two minor children, the second and third applicants. An investigation by the social services was initiated in respect of the family and in 2005 the competent authority issued a care order placing the children in an institution. The care order was upheld by the juvenile court following objections by the first applicant. In parallel, criminal proceedings were brought against the first applicant and her partner and both were convicted of child cruelty and neglect. The couple subsequently separated and the first applicant was given supervised contact with the children before eventually being allowed to spend weekends and public holidays with them. However, as a result of her conviction she was automatically and perpetually deprived of her parental rights.

Law – Article 6 § 1: The applicants complained that they had not had access to a court to contest the care order once it had been confirmed by the juvenile court. The Government did not submit any evidence to show that such a judicial remedy existed, but argued that the courts would not be the right venue for challenging a care order that had become final. For the Court, that argument ran counter to the entire basis of the right of access to an impartial and independent tribunal for the determination of civil rights and obligations. It was precisely the role of the courts to supervise ad-

ministrative action and guarantee freedom from arbitrariness and any assessment they made would evidently take into consideration the input given by the relevant actors. The Court could not accept that a review by social workers reporting to a minister vested with power to revoke a care order could constitute an independent and impartial tribunal, in particular since there would be no written public decision and the procedure did not offer the possibility of judicial review.

Conclusion: violation (unanimously).

Article 8: Deprivation of parental rights was a particularly far-reaching measure that should only be applied in exceptional circumstances, when justified by an overriding requirement pertaining to the best interest of the child. Under the Maltese Criminal Code only certain offences, such as the ill-treatment and neglect of children, led to the removal of parental rights. Although, in view of the interests at stake, providing for such a measure could not be considered as exceeding the State's margin of appreciation, the automatic application of the measure, outside the scrutiny of the domestic courts and any examination of whether it was in the child's best interest or whether the accused's circumstances had changed, was problematic. Moreover, the deprivation of parental rights was permanent until the child attained the age of majority. In such circumstances, the automatic application of the measure, coupled with the lack of access to court to challenge the deprivation of parental rights at a future date, had failed to strike a fair balance between the interests of the children, the first applicant and those of society at large.

Conclusion: violation (unanimously).

Article 46: The Court had found a violation of Article 8 on account of the fact that the deprivation of the first applicant's parental rights was automatic and perpetual following her criminal conviction. In order to redress the effects of the breach found, and without prejudice to the outcome of such future proceedings, the authorities were required to provide a procedure that would allow the first applicant to request an independent and impartial tribunal to consider whether the deprivation of her parental authority remained justified. Further, in order to remedy the Article 6 violation that had been found, the authorities should envisage appropriate general measures in order to ensure the effective possibility of access to court for persons affected by a care order.

Article 41: EUR 4,000 each in respect of non-pecuniary damage.

Respect for correspondence

Authorisation of search and seizure of all electronic data in law office without sufficient reasons: *violation*

Robathin v. Austria - 30457/06
Judgment 3.7.2012 [Section I]

Facts – In 2006 an investigating judge issued a search warrant in respect of the premises of the applicant, a practising lawyer wanted in connection with a series of theft and fraud related offences. The warrant was not confined to data likely to be related to the alleged offences, but extended to all data in the office. Following the search a review chamber authorised the examination of all the materials after noting that the data had been seized in the context of preliminary investigations and that a lawyer could not rely on his duty of professional secrecy when he himself was the suspect. The applicant was ultimately acquitted of the offences.

Law – Article 8: The search and seizure of the electronic data had constituted an interference with the applicant's right to respect for his "correspondence" and had pursued the legitimate aim of crime prevention. The issue whether, as the applicant had submitted, the search warrant was too vague to be in accordance with the law raised questions of proportionality and would be examined in that context. The warrant was issued by an investigating judge in the context of criminal proceedings against the applicant and gave details of the alleged offences, the time of their commission and the alleged damage. The fact that the applicant was ultimately acquitted did not mean that there had not been reasonable grounds for suspicion when it was issued. The warrant was, however, couched in very broad terms, as it authorised in a general and unlimited manner the search and seizure of documents, personal computers and discs, savings books, bank documents and deeds of gift and wills in favour of the applicant. Although the applicant had benefited from a number of procedural safeguards, the review chamber to which he had referred the case had given only brief and rather general reasons when authorising the search of all the electronic data from the applicant's law office, rather than data relating solely to the relationship between the applicant and the victims of his alleged offences. In view of the specific circumstances prevailing in a law office, particular reasons should have been given to allow such an all-encompassing search. In the absence of such reasons, the seizure

and examination of all the data had gone beyond what was necessary to achieve the legitimate aim.

Conclusion: violation (five votes to two).

Article 41: EUR 3,000 in respect of non-pecuniary damage; claim in respect of pecuniary damage dismissed.

ARTICLE 10

Freedom of expression

Ban on displaying advertising poster in public owing to immoral conduct of publishers and reference to proselytising Internet site: *no violation*

Mouvement raëlien suisse v. Switzerland - 16354/06
Judgment 13.7.2012 [GC]

Facts – The applicant is a non-profit association constituting the national branch of the Raelian Movement, whose declared aim is to make initial contact and establish good relations with extra-terrestrials. In 2001 it sought permission from the police to put up posters which featured, among other things, pictures of extraterrestrials' faces and a flying saucer and displayed the movement's website address and telephone number. The authorisation was denied and appeals by the association were all rejected.

In a judgment of 13 January 2011 (see Information Note no. 137), a Chamber of the Court found unanimously that there had been no violation of Article 10 on the ground that the authorities had sufficient reason to consider necessary the denial of the authorisation requested by the applicant association, in view of the link to the website of Clonaid (a company offering specific illegal cloning services), possible sexual abuse of minors within the Movement and the promotion of "geniocracy" (a doctrine whereby power should be given to individuals with the highest intellect).

Law – Article 10: The applicant association had sustained an interference prescribed by law in the exercise of its right to freedom of expression on account of the ban on the poster campaign that it sought to conduct. That measure had pursued the legitimate aims of the prevention of crime and the protection of health, morals and the rights of others.

The present case raised the question whether the national authorities had to allow the applicant association to disseminate its ideas through its poster campaign by making public space available to it. The campaign in question sought mainly to draw the attention of the public to the ideas and activities of a group with a supposedly religious connotation that was conveying a message claimed to be transmitted by extraterrestrials, referring for this purpose to a website address. The website in question thus referred only incidentally to social or political ideas, because its main aim was to draw people to the cause of the applicant association. Even if the applicant association's speech fell outside the commercial advertising context, it was nevertheless closer to commercial speech as it had a certain proselytising function. The State's margin of appreciation was therefore broader. For that reason the management of public billboards in the context of campaigns that were not strictly political might vary from one State to another, or even from one region to another within the same State. Consequently, only serious reasons could lead the Court to substitute its own assessment for that of the national authorities. The impugned poster clearly had the aim of attracting people's attention to the website: the address given in bold type above the slogan "The Message from Extraterrestrials". The Court thus had to look not only at the poster itself but also at the content of the website.

There was no issue concerning the efficiency of the judicial review. The domestic courts that had examined the case had given detailed reasons for the refusal to allow the poster campaign, namely, the promotion of human cloning and "geniocracy", together with the possibility that the Movement's writings and ideas had led to sexual abuse of minors by some of its members. Whilst some of those reasons taken separately might not be capable of justifying the ban on the posters, the domestic authorities had been entitled to consider that in view of the situation as a whole the ban had been indispensible. The Grand Chamber did not see any reason to depart from the Chamber's findings in this connection. The concerns expressed by the domestic authorities had thus been based on relevant and sufficient reasons.

Moreover, the Chamber had found that the impugned measure was limited in scope, as the applicant association remained free to express its beliefs through numerous other means of communication. The applicant association had claimed that this position of the Chamber was contradictory. In the Court's view, however, such a contradiction was no more than apparent. Like the Government, it found that a distinction had to be drawn between the aim of the association and the means that it

used to achieve that aim. Accordingly, in the present case it might perhaps have been disproportionate to ban the association itself or its website on the basis of the above-mentioned factors. To limit the scope of the impugned restriction to the display of posters in public places was thus a way of ensuring the minimum impairment of the applicant association's rights. As the applicant association had been able to continue to disseminate its ideas, in particular through its website or leaflets (placed in letter-boxes or handed out in the street), the impugned measure had not been disproportionate.

Accordingly the national authorities had not overstepped the broad margin of appreciation afforded to them in this case; the grounds for their decisions had been "relevant and sufficient" and had corresponded to a "pressing social need". The Court did not see any serious reason to substitute its own assessment for that of the court of last instance, which had examined the question carefully and in line with the principles laid down in the Court's case-law.

Conclusion: no violation (nine votes to eight).

Award of damages against journalist for publishing interview with strip dancer accusing her former employer of criminal conduct: *violation*

Björk Eiðsdóttir v. Iceland - 46443/09
Judgment 10.7.2012 [Section IV]

Facts – In 2007 there was a public debate in the Icelandic media on whether the regulations concerning strip clubs should be tightened or the clubs banned altogether. Following a first article on the topic – in which three strip dancers claimed that they were happy with their working environment – the applicant, a journalist, was contacted by a former dancer who offered to relate her experience working at a club. The applicant's newspaper published an article based on an interview with the dancer, in which she spoke of prostitution at the club, her subsequent drug addiction and threats she had received in relation to her work. Alongside the interview, the newspaper published a reply by the club owner, rejecting the accusations made against him and the club. The owner subsequently brought defamation proceedings against the applicant, the newspaper editor and the former dancer, but later concluded a judicial settlement with the latter and withdrew his claim against her. The Supreme Court found the applicant liable in damages for defamation.

Law – Article 10: The Court accepted that, for the purposes of Article 10, the reasons relied on by the Supreme Court in finding the allegations defamatory under Icelandic law were relevant to the legitimate aim of protecting the rights and reputation of others. As to whether those reasons were also sufficient, the Court noted that the article seen as a whole had concerned a matter of serious public concern for Iceland at the material time. There had been an ongoing public debate on the matter and another magazine had previously published an article on the links between strip clubs and prostitution. By engaging in that line of business, the club owner had to be considered as having inevitably and knowingly entered the public domain, where the limits of acceptable criticism were necessarily wider than in the case of private individuals.

At the same time, the right of journalists to impart information on issues of general interest required that they act in good faith and on an accurate factual basis and provide reliable and precise information in accordance with the ethics of journalism. The impugned statements had originated from the former dancer, who had contacted the applicant herself in order to give her own account of her personal experience of the profession. She had later confirmed that her story had been accurately rendered and the club owner had subsequently withdrawn his libel claim against her. At the same time, the applicant had adduced evidence in support of the disputed statements, such as an incident report by the US Embassy and an interview in which the club owner had himself conceded that there had been incidents in his club where clients had been offered sexual services. The fact that the Supreme Court had omitted to deal with such factual arguments made it questionable whether the applicant had in fact been afforded a real opportunity to absolve herself of liability by establishing the truth of her allegations. Moreover, the applicant's interview with the former dancer had been presented with counter-balancing elements: for example, reference was made to the earlier interview with the club's dancers who rejected the negative comments and the owner had been afforded an opportunity to comment. News reporting based on interviews – whether edited or not – constituted one of the most important means of enabling the press to play its vital role of "public watchdog". In these circumstances, the Court found that the applicant had acted in good faith, consistent with the diligence expected of a re-

sponsible journalist reporting on a matter of public interest, and could not be criticised for having failed to ascertain the truth of the disputed allegations. The domestic courts had thus failed to adduce sufficient reasons to show that the interference with her freedom of expression had been necessary in a democratic society.

Conclusion: violation (unanimously).

Article 41: EUR 5,000 in respect of non-pecuniary damage; EUR 7,790 in respect of pecuniary damage.

(See also *Erla Hlynsdóttir v. Iceland*, no. 43380/10, 10 July 2012)

Fine for displaying a flag with controversial historical connotations in protest against an anti-racist demonstration: *violation*

Fáber v. Hungary - 40721/08
Judgment 24.7.2012 [Section II]

Facts – In 2007 the Hungarian Socialist Party (MSZP) held a demonstration in Budapest to protest against racism and hatred. Simultaneously, members of a right-wing political party assembled in an adjacent area to express their disagreement. The applicant silently held a so-called *Árpád*-striped flag which could be regarded both as a historical symbol and as a symbol reminiscent of a former regime. The police supervising the scene called on the applicant to either remove the banner or leave. The applicant refused, pointing out that the flag was a historical symbol and that no law forbade its display. He was taken into custody and fined approximately EUR 200.

Law – Article 10 read in the light of Article 11: The applicant's right to freedom of expression and his claim to freedom of peaceful assembly had to be balanced against the MSZP demonstrators' right to protection against disruption of their assembly. In that connection, a wide discretion was granted to the national authorities, not only because, in principle, the two competing rights deserved equal protection that satisfied the obligation of State neutrality when opposing views clashed, but also because those authorities were best positioned to evaluate the risks and appropriate measures. However, such discretion applied (only) where the existence of a serious threat of a violent counter-demonstration was convincingly demonstrated. Counter-demonstrators had the right to express their disagreement with the demonstrators so that, when implementing measures, the State had to fulfil its positive obligations to protect the right of assembly of both demonstrating groups and find the least restrictive means that would, in principle, enable both demonstrations to take place.

In the applicant's case, the interference had pursued the legitimate aims of maintaining public order and protecting the rights of others. It had not been argued that there had been any increased likelihood of violence due to the presence of the *Árpád*-striped banner or that the use of that symbol, perceived as provocative by the authorities, had resulted in a clear threat and present danger of violence. The impugned banner had not caused any disruption to the demonstration during the period it was displayed. Moreover, neither the applicant's conduct nor that of the others present had been threatening or abusive. Therefore, given the applicant's passive conduct, the distance from the MSZP demonstration and the absence of any demonstrated risk of insecurity or disturbance, the reasons given by the national authorities to justify the interference complained of were not relevant and sufficient. Furthermore, the freedom to take part in a peaceful assembly was of such importance that it could not be restricted in any way, so long as the person concerned did not himself commit any reprehensible act. The applicant's decision to display the impugned flag in the vicinity of the MSZP demonstration had to be regarded as his way of expressing his political views, namely a disagreement with the ideas of the MSZP demonstrators. Only by a careful examination of the context in which the offending expressions appeared could one draw a meaningful distinction between a shocking and offensive expression that was nonetheless protected by Article 10 and one which forfeited its right to tolerance in a democratic society. Ill-feelings or even outrage, in the absence of intimidation, could not represent a pressing social need for the purposes of Article 10 § 2, especially since the flag in question had never been outlawed. Lastly, where an applicant expressed contempt for the victims of a totalitarian regime, this might amount to an abuse of Convention rights. In the applicant's case, however, no such abusive element could be identified.

Conclusion: violation (six votes to one).

Article 41: EUR 1 500 in respect of non-pecuniary damage.

(See also *Öllinger v. Austria*, no. 76900/01, 29 June 2006; and *Vajnai v. Hungary*, no. 33629/06, 8 July 2008, Information Note no. 110)

ARTICLE 11

Freedom of association

Refusal to register a trade union of church employees: *case referred to the Grand Chamber*

Sindicatul « Păstorul cel Bun » v. Romania - 2330/09
Judgment 31.1.2012 [Section III]

In April 2008 thirty-five clerics and lay members of the Romanian Orthodox Church decided to establish a trade union. The elected president requested the court of first instance to grant the union legal personality and enter it in the trade-unions register. However, the representative of the Archdiocese lodged an objection. The union's representative reiterated the request, which was supported by the public prosecutor's office. In May 2008 the court granted the union's request and ordered its entry in the register, thereby granting it legal personality. The Archdiocese appealed against that judgment. In a final judgment of July 2008 the county court allowed the appeal, set aside the first-instance judgment and, on the merits, dismissed the request for the union to be granted legal personality and entered in the trade-unions register.

In a judgment of 31 January 2012 (see Information Note no. 148) a Chamber of the Court held by five votes to two that there had been a violation of Article 11, finding that in the absence of a "pressing social need" or of sufficient reasons, a measure as drastic as the refusal to register the applicant union had been disproportionate to the aim pursued and therefore not necessary in a democratic society.

On 9 July 2012 the case was referred to the Grand Chamber at the Government's request.

ARTICLE 13

Effective remedy

Lack of effective remedy to secure enforcement of final administrative decisions concerning compensation of property owners: *violation*

Manushaqe Puto and Others v. Albania - 604/07 et al.
Judgment 31.7.2012 [Section IV]

Facts – In a series of decisions between 1994 and 1999 commissions hearing property claims recognised the applicants' title to various plots of land and ruled that they were entitled to compensation. Although some of the applicants did recover part of their land, they have not received financial compensation *in lieu* for the remainder.

Law – Article 13: The Court found that there was no effective domestic remedy that allowed for adequate and sufficient redress on account of the prolonged non-enforcement of commission decisions awarding compensation. Although a significant number of legal acts had been enacted since the Court's judgment in *Ramadhi and Others*,[1] the position remained unsatisfactory. The non-financial forms of compensation that had been envisaged were found not to be effective in the absence of any evidence that any such awards had been made or, in the case of State bonds, were even contemplated by the legislation.

As to financial compensation, the authorities' decisions recognised such a right only where the commission concerned had awarded compensation in respect of the entire property, not in cases concerning partial restitution or other forms of compensation; the decisions provided for a maximum amount of financial compensation equal to the value of 200 square metres of land; unsuccessful claimants in a given year were required to re-submit their claims in a subsequent year; and the awards did not take into account any non-pecuniary damage incurred as a result of the delays in enforcement. This form of compensation was, therefore, not effective either.

Conclusion: violation (unanimously).

Article 46: In view of the large number of problems besetting the compensation mechanism in Albania which continued to persist after the Court's judgments in a series of previous cases,[2] and of the urgent need to grant applicants speedy and appropriate redress at the domestic level, the Court considered it imperative to apply the pilot-judgment procedure. Albania was required to take general measures, as a matter of urgency, in order to secure in an effective manner the right to compensation, while striking a fair balance between the different interests at stake.

In this connection, noting that the property legislation in Albania had been amended at least seven times between 2004 and 2010, the Court stressed that frequent changes to the legislation were to be avoided as they inevitably led to a lack of legal certainty. The respondent State should carefully

1. *Ramadhi and Others v. Albania*, no. 38222/02, 13 November 2007.
2. *Çaush Driza v. Albania*, no. 10810/05, 15 March 2011; *Ramadhi and Others v. Albania*, cited above; *Vrioni and Others v. Albania and Italy*, nos. 35720/04 and 42832/06, 29 September 2009; and *Delvina v. Albania*, no. 49106/06, 8 March 2011.

examine all legal and financial implications before introducing further modifications. The existence of precise data, which should also reflect modifications made by way of judicial review, would enable the authorities to calculate and track the overall compensation bill as well as the financial implications of the compensation mechanism. The compilation of a database and the estimation of the global compensation bill should be accompanied by a carefully devised and clear compensation scheme – free of cumbersome compliance procedures – that took into account the relevant principles from the Court's case-law. The authorities should also start using alternative forms of compensation to ease pressure on the budget. The decision-making process relating to compensation awards had to be transparent and efficient and decisions had to contain clear and sufficient reasons and be amenable to judicial review. A transparent and effective system of property registration, including accurate, unified, cartographic data, was also required in order to enable and facilitate legal transactions. Setting realistic, statutory and binding time-limits in respect of every step of the process was essential. Lastly, the magnitude of the problem and the need for a comprehensive and practical solution could be better addressed if subjected to wide public discussions regarding the level and forms of compensation.

As to the procedure to be followed in similar cases, the Court directed that proceedings concerning new applications lodged after the date of the instant judgment would be adjourned for eighteen months, but there would be no adjournment of applications lodged before that date.

The Court also found a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

Article 41: Awards ranging between EUR 280,000 and EUR 1,360,000 in respect of pecuniary and non-pecuniary damage.

ARTICLE 14

Discrimination (Article 3)

Ineffective investigation into possible racist motivation for ill-treatment allegedly suffered by Nigerian prostitute: *violation*

B.S. v. Spain - 47159/08
Judgment 24.7.2012 [Section III]

Facts – The applicant is a woman of Nigerian origin who worked as a prostitute at the material time. In July 2005 she was stopped for questioning on three occasions; she alleged that she was beaten and racially abused on each occasion. Following the third such incident, she lodged a criminal complaint and attended a hospital. After being stopped for questioning a fourth time, she lodged a further complaint in which she alleged, among other things, that women with a "European phenotype" were not stopped by the police. She again went to hospital for an examination.

Law – Article 3

(a) *Procedural aspect* – The investigation had been inadequate in many respects: in particular, the only report examined had been submitted by the official superior of the police officers accused in the case, the authorities had refused to organise an identity parade using a two-way mirror and the medical reports had not been taken into consideration. Accordingly, the investigation had not been sufficiently thorough and effective to satisfy the requirements of Article 3.

Conclusion: violation (unanimously).

(b) *Substantive aspect* – The medical reports were inconclusive as to how the injuries observed on the applicant might have been sustained, and their cause could not be established beyond all reasonable doubt from the evidence submitted.

Conclusion: no violation (unanimously).

Article 14 in conjunction with Article 3 (*procedural aspect*): The Court reiterated that the authorities' duty to investigate whether there was any link between racist attitudes and an act of violence was an aspect of their procedural obligations under Article 3, but could also be seen as implicit in their responsibilities under Article 14 to secure without discrimination the observance of the fundamental value enshrined in Article 3. Owing to the interplay of these two Articles, issues such as those in the present case could fall to be examined under one of the two Articles only, with no separate issue arising under the other, or could require examination under both Articles. In her complaints the applicant had mentioned possible racist motives. Her arguments had not been examined by the domestic courts, which had also not taken into account her special vulnerability inherent in her situation as an African woman working as a prostitute. The authorities had thus failed to satisfy their obligation to take all possible measures to ascertain whether or not a discriminatory attitude might have played a role in the events.

Conclusion: violation (unanimously).

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

Discrimination (Article 3 of Protocol No. 1)

Judicial decision requiring the State to take steps to oblige a highly traditional protestant political party to open its lists of candidates for election to representative bodies to women: *inadmissible*

Staatkundig Gereformeerde Partij v. the Netherlands - 58369/10
Decision 10.7.2012 [Section III]

Facts – The applicant party professed the absolute authority of the Word of God over all areas of societal life. It rejected the idea of absolute equality of human beings. In essence, it believed that, although all human beings were of equal value as God's creatures, differences in nature, talents and place in society had to be recognised. Men and women had different roles in society. Thus, women were not inferior to men as human beings; but, unlike men, women should not be eligible for public office. After the rulings of the regional court in the civil proceedings brought against it by several associations and organisations, the applicant party amended its Principles to admit women members, though still without allowing them to stand for election to public office. In 2010 the Supreme Court found the way in which the applicant party put its convictions into practice in nominating candidates for election to general representative bodies unacceptable. It stated further that the State was wrong to take the position that its own balancing exercise entitled it not to take any measures against this practice. The Standing Parliamentary Committee for the Interior of the Lower House of Parliament then decided to await the outcome of the proceedings before the Court before deciding whether to take any action.

Law – Article 3 of Protocol No. 1: The Court reiterated that democracy was the only political model contemplated in the Convention and the only one compatible with it. Moreover, the advancement of the equality of the sexes in the member States prevented the State from lending its support to views of the man's role as primordial and the woman's as secondary. The fact that no woman had expressed the wish to stand for election as a candidate for the applicant party was not decisive. It made little difference whether or not the denial of a fundamental political right based solely on gender was stated explicitly in the applicant party's bye-laws or in any other of the applicant party's internal documents, given that it was publicly espoused and followed in practice. The applicants party's position was unacceptable regardless of the deeply-held religious conviction on which it was based.

Conclusion: inadmissible (manifestly ill-founded).

ARTICLE 18

Restrictions for unauthorised purposes

Deprivation of opposition leader's liberty for reasons other than bringing him before a competent legal authority on reasonable suspicion of having committed an offence: *violation*

Lutsenko v. Ukraine - 6492/11
Judgment 3.7.2012 [Section V]

Facts – The applicant was a former Minister of the Interior and the leader of an opposition political party. On 2 November 2010 criminal proceedings were instituted against him for unlawfully arranging work-related benefits for his former driver. The applicant gave a written undertaking not to abscond. On 13 December 2010 he was indicted and given an appointment to inspect the case file. Following several postponements, allegedly because some parts of the file were not yet ready, the applicant and his lawyer consulted it some ten days later. In the meantime, a weekly newspaper had published an interview with the applicant in which he denied the accusations against him. On 24 December 2010 the prosecutor instituted a further set of criminal proceedings against the applicant concerning the unlawful authorisation of search and seizure activities. A day later, the investigator sought to have the undertaking given in the first set of proceedings not to abscond replaced by pre-trial detention. In support of that application, he cited the applicant's failure to inspect the case file and participate in certain investigative actions, and alleged that the applicant's statements to the media had sought to distort public opinion and influence the investigation and trial. The applicant was arrested the following day (26 December) near his home. He says that he was not informed of the reasons for his arrest or given a copy of the charge sheet. He was then brought before a court, which ordered his pre-trial detention as requested by the investigator, without examining his arrest. The detention was subsequently prolonged for an undetermined period.

Law – Article 5 § 1

(a) *The applicant's arrest on 26 December 2010* – The applicant was arrested in connection with the

second criminal case instituted against him and was brought before a court the following day. However, the court only examined the request that had been made in the first criminal case because the prosecuting authorities effectively opposed any examination of the applicant's arrest. Such conduct strongly suggested that the purpose of the arrest was not to bring the applicant before a competent legal authority within the same criminal case, but to ensure his availability for examination of the application for a change of the preventive measure to a custodial one in a different set of criminal proceedings. Furthermore, the applicant's arrest did not appear to have been necessary to prevent continued offending since he had ceased to carry on his former function almost a year earlier; nor did it appear to have been necessary to prevent the applicant from fleeing as he had previously given assurances in this respect to the same investigator who had subsequently arrested him. The arrest was thus made for a purpose other than that indicated in Article 5 § 1 and was arbitrary.

Conclusion: violation (unanimously).

(b) *The applicant's detention* – The court order for the applicant's detention was based on grounds which were in themselves questionable. Deprivation of liberty could not be considered an adequate response to a problem of delay in inspecting the case file, the first ground relied on by the authorities. Furthermore, the authorities had not explained the second reason for the applicant's detention, namely, his statements to the media. As a prominent political figure, the applicant could have been expected to express his opinion concerning the criminal proceedings against him and there had been no justification for depriving him of his liberty for exercising his freedom of speech. Further grounds that had been given for the applicant's detention – a failure to testify and admit guilt – ran contrary to important elements of a fair trial, such as freedom from self-incrimination and the presumption of innocence. The fact that such grounds had been advanced was particularly disturbing as it indicated that an individual might be punished for relying on his or her basic right to a fair trial. Lastly, ordering further detention without fixing a time-limit was in itself contrary to the requirements of Article 5.

Conclusion: violation (unanimously).

Article 18 in conjunction with Article 5: The applicant further complained that his arrest and prosecution had been used by the authorities to exclude him from political life and from participation in upcoming parliamentary elections. The Government challenged the applicability of Article 18, arguing that his arrest and detention had been effected for the sole purpose of Article 5. The Court observed that soon after the change of power in Ukraine, the applicant, a former minister and the leader of a popular political party, had been accused of abuse of power and prosecuted. This had happened in a context described by external observers as the politically motivated prosecution of the opposition leaders and the applicant's case – like that of the former Prime Minister Tymoshenko – had attracted important attention nationwide and internationally. There were thus sufficient reasons for the Court to examine the applicant's detention from the viewpoint of Article 18.

The entire Convention structure was based on a rebuttable presumption that domestic authorities would act in good faith and an applicant alleging that his rights and freedoms had been limited for an improper reason had to show convincingly that the authorities' real aim was not the proclaimed one. In the applicant's case, the Court had already established that the grounds advanced by the authorities for depriving him of his liberty were incompatible with Article 5 and against the spirit of the Convention. Given his profile and political involvement, it was reasonable for the applicant to reply to the accusations of abuse of office through the media. However, when requesting the applicant's detention, the prosecuting authorities had explicitly indicated the applicant's communication with the media as one of the grounds for his detention and accused him of distorting public opinion about the crimes he had committed. Such reasoning clearly demonstrated an attempt by the authorities to punish the applicant for publicly disagreeing with the accusations against him and for asserting his innocence, which he had the right to do. In such circumstances, the Court could not but conclude that the restrictions of the applicant's liberty had been applied not only for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence, but also for other reasons.

Conclusion: violation (unanimously)

The Court also found a violation of the applicant's rights under Article 5 § 2 (failure to inform the applicant of the reasons for his arrest), Article 5 § 3 (right to be brought promptly before a judge) and Article 5 § 4 (proper judicial review of the applicant's detention).

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

ARTICLE 34

Hinder the exercise of the right of petition

Refusal by the authorities to provide a copy of documents from his file to a prisoner wishing to substantiate his application to the Court: *failure to comply with Article 34*

Vasiliy Ivashchenko v. Ukraine - 760/03
Judgment 26.7.2012 [Section V]

Facts – In April 1998 the applicant was arrested on suspicion of aggravated robbery and murder. In the course of the criminal investigations against him, he complained of ill-treatment by the police to various public authorities, but without success. In January 2002 he was convicted of several counts of aggravated robbery, inflicting grievous bodily injuries and murder, and sentenced to life imprisonment. The applicant's cassation appeals were rejected by the Supreme Court in July 2002. After lodging his application with the European Court in November 2002, he asked the trial court in April 2004 to provide him with copies of the medical reports drawn up after his examination at the detention facility and of other documents pertaining to the criminal proceedings. The trial court refused on the grounds that it was not its function to provide copies of documents and that there were no funds for such purposes. The applicant's appeals against that decision were unsuccessful.

Law – Article 34: The applicant had lodged his application with the Court after the domestic proceedings against him had been completed. He was denied access to the case file and was not able to make copies of case documents by hand or by other means. The fact that the application had reached the Court did not exclude the possibility that there had been interference with the applicant's right of individual petition. In these circumstances, Ukraine had failed to comply with its obligation under Article 34 to furnish all necessary facilities to the applicant in order to make possible a proper and effective examination of his application by the Court.

Conclusion: failure to comply with Article 34 (unanimously).

Article 46: This was the second case, after *Naydyon v. Ukraine*,[1] in which the Court had found a violation of Article 34 because a prisoner dependent on the authorities was not provided with effective access to documents he needed to substantiate his application before the Court. Similar complaints of interference with the right of individual petition had been raised in a number of other cases against Ukraine currently pending before the Court. Of these, some 23 had been communicated to the Government. The issue thus concerned a systemic problem which called for the implementation of measures of a general character.

The problem resulted from the absence of a clear and specific procedure enabling prisoners to obtain copies of case documents, either by making copies themselves or having the authorities do so for them. While there were domestic regulations providing for public access to documents, including court case files, kept by the authorities the national judicial authorities did not consider themselves under an obligation to assist prisoners in obtaining copies. Nor was there any evidence to show that the prison authorities complied with their obligation under the prison regulations to assist prisoners. Accordingly, the Court directed that the respondent State should take adequate legislative and administrative measures without delay to ensure that persons deprived of their liberty had effective access to documents necessary for substantiating their complaints before the Court.

The Court further found, unanimously, that there had been a violation of the substantive aspect of Article 3, and no failure to comply with Article 34 as regards the dispatch of the applicant's letters addressed to the Court.

Article 41: EUR 12,000 in respect of non-pecuniary damage; claim in respect of pecuniary damage dismissed.

ARTICLE 35

Article 35 § 1

Six-month period

Application lodged nine years after disappearance of applicants' relative while domestic investigation was still under way: *preliminary objection dismissed*

Er and Others v. Turkey - 23016/04
Judgment 31.7.2012 [Section II]

Facts – In 1995, following an armed clash, a close relative of the nine applicants was allegedly taken

1. *Naydyon v. Ukraine*, no. 16474/03, 14 October 2010, Information Note no. 134.

from his village by soldiers and was never heard from again. On the day of his disappearance the applicants informed the prosecutor, who initiated investigations that were subsequently continued by the military prosecutor. The fate of the applicants' missing relative was never elucidated and in May 2004 the applicants lodged an application with the European Court. The Government objected, *inter alia*, that the applicants had failed to comply with the six-month time-limit laid down by Article 35 § 1 of the Convention.

Law – Article 35 § 1: Reaffirming its approach in the case of *Varnava and Others*,[1] the Court noted that, in disappearance cases more than in cases concerning killings, it was difficult for the relatives of the missing to assess what was happening or what could be expected to happen. Allowances had to be made for the uncertainty and confusion which frequently marked the aftermath of a disappearance. Moreover, the serious nature of disappearances was such that the standard of expedition expected of the relatives could not be rendered too rigorous. Lastly, it was best for the facts of cases to be investigated and issues to be resolved in so far as possible at the domestic level. All these reasons justified a less rigid approach when examining the issue of compliance with the six-month time-limit in disappearance cases. However, in the instant case, which unlike *Varnava and Others* did not concern a situation of international conflict, it had to be determined whether the applicants had met the stricter expectations on account of their direct access to the investigative authorities. They had informed the prosecutor immediately of their relative's detention by the military. They had cooperated with him and the military prosecutor and had provided them with eyewitness evidence. A lawyer appointed by them had also contacted the military prosecutors and had asked for information about the investigation. An investigation, albeit a sporadic one, had been conducted during the period in question and the applicants had been doing all that could have been expected of them to assist the authorities. Moreover, a decision by the civilian prosecutor in 2003 that the evidence concerning military involvement in the disappearance was credible, and the subsequent investigation started by the military prosecutor must have been regarded as promising new developments by the applicants. In these circumstances, the applicants had not failed to show the requisite diligence by waiting for the investigations to yield results.

Conclusion: preliminary objection dismissed (unanimously).

The Court found a violation of Articles 2 (substantive and procedural aspects), 3 (substantive aspect), 5 and 13 of the Convention.

Article 41: Awards totalling EUR 65,000 in respect of non-pecuniary damage and EUR 60,000 in respect of pecuniary damage.

1. *Varnava and Others v. Turkey* [GC], nos. 16064/90 et al., 18 September 2009, Information Note no. 122.

ARTICLE 46

Pilot judgment
General measures

Respondent State required to introduce effective remedy to secure enforcement of final administrative decisions concerning compensation for property owners

Manushaqe Puto and Others v. Albania - 604/07 et al.
Judgment 31.7.2012 [Section IV]

(See Article 13 above, page 23)

General measures

Respondent State required to implement laws in order to ensure that prisoners can have effective access to the necessary documents for substantiating their complaints before the Court

Vasiliy Ivashchenko v. Ukraine - 760/03
Judgment 26.7.2012 [Section V]

(See Article 34 above, page 27)

General measures
Individual measures

Respondent State required to introduce measures in respect of automatic and perpetual deprivation of parental rights following criminal conviction for ill-treatment of children and lack of access to court

M.D. and Others v. Malta - 64791/10
Judgment 17.7.2012 [Section IV]

(See Article 8 above, page 18)

Individual measures

Respondent State encouraged to waive continuing unlawful automatic taxation of gifts to a religious association

Association Les Témoins de Jéhovah v. France - 8916/05
Judgment (just satisfaction)
5.7.2012 [Section V]

Procedure – By a judgment of 30 June 2011 (see Information Note no. 142), the Court had held that the taxation of gifts to the applicant association from 1993 to 1996 amounted to an interference, not prescribed by law, in the exercise of the rights guaranteed by Article 9. It had also reserved the question of the application of Article 41.

Law

Article 41: EUR 4,590,295 in respect of pecuniary damage, corresponding to the amount unduly paid by the applicant association; claim for non-pecuniary damage dismissed.

Article 46: The tax measure, including penalties and interest for late payment, was still in force. Consequently, a decision to discontinue recovery of those sums would be an appropriate form of reparation which would put an end to the violation found. However, subject to monitoring by the Committee of Ministers, the respondent State remained free to choose other means to discharge its legal obligation under Article 46.

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:

Vinter and Others v. the United Kingdom - 66069/09, 130/10 and 3896/10
Judgment 17.1.2012 [Section IV]

(See Article 3 above, page 9)

Sindicatul « Păstorul cel Bun » v. Romania - 2330/09 Judgment 31.1.2012 [Section III]

(See Article 11 above, page 23)

RELINQUISHMENT IN FAVOUR OF THE GRAND CHAMBER

Article 30

Allen v. the United Kingdom - 25424/09
[Section IV]

(See Article 6 § 2 above, page 12)

Maktouf v. Bosnia and Herzegovina - 2312/08
Damjanović v. Bosnia and Herzegovina - 34179/08
[Section IV]

(See Article 7 § 1 above, page 12)

COURT RECENT PUBLICATIONS

Research reports

Two new Research reports have been published on the Court's Internet site (<www.echr.coe.int> – Case-Law). The first, which is available in English and French, deals with the new admissibility criterion, and the second, which is available only in English, with bioethics.

The new admissibility criterion under Article 35 § 3 (b) of the Convention: case-law principles two years on (eng)

Le nouveau critère de recevabilité inséré à l'article 35 § 3 b) de la Convention : les principes jurisprudentiels deux ans après son introduction (fra)

Bioethics and the case-law of the Court (eng)

The Court in brief

This leaflet, which provides an overview of the Court, the Convention and the Human Rights Building, is now available in print and electronically in the following languages: Chinese, English, French, German, Italian, Russian and Spanish. It will ultimately be translated into all the languages of the Member States of the Council of Europe. PDF versions can be downloaded from the Court's website (<www.echr.coe.int> – The Court).

法院简介 (zho)

The Court in brief (eng)

La Cour en bref (fra)

Der Gerichtshof in Kürze (deu)

La Corte in breve (ita)

О Суде коротко (rus)

El Tribunal en breve (esp)