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Cour Européenne des Droits de l'Homme

Information Note on the Court's case-law

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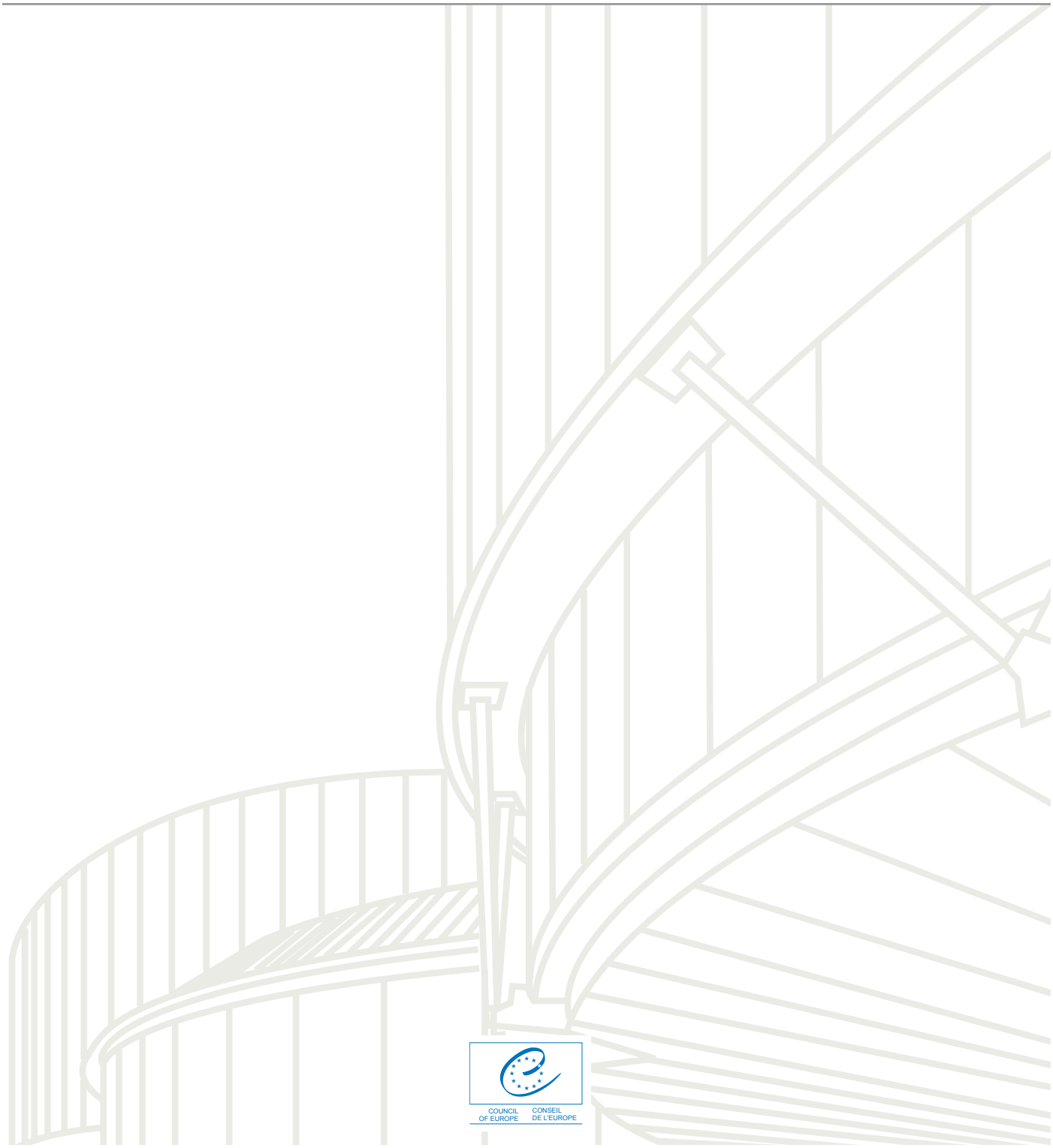

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ARTICLE 2

LIFE
POSITIVE OBLIGATIONS
Suicide of a conscript during military service following injuries and blows inflicted by a non-commissioned officer: *violation*.

ABDULLAH YILMAZ - Turkey (N° 21899/02)
Judgment 17.6.2008 [Section II]

Facts: The applicant is the father of Maşallah Yılmaz, a 20-year-old conscript who killed himself during compulsory military service. On 1 October 1999 a unit of conscripts, including the applicant's son, were placed under the orders of an expert sergeant, a non-commissioned officer under contract. At around 7.30 a.m. the sergeant ordered Maşallah to make tea. Maşallah delayed in doing so and the sergeant reprimanded him. During the afternoon the sergeant again ordered him to make tea. This time he found he had made it too strong and started punching and kicking Maşallah in front of other conscripts and another sergeant, uttering insults as he did so, until the young man lost consciousness. He then revived the young man by pouring water on his head before chasing him away and uttering curses at him. Later on he summoned him together with two other conscripts. He gave them some pieces of advice and then started insulting Maşallah again. About ten minutes later Maşallah appeared holding the barrel of his gun against his stomach, evidently in a state of distress. Rebelling against the sergeant, he threatened to kill himself. Fearing that Maşallah was about to attack him, the sergeant picked up an assault rifle that was within his reach, loaded it and pointed it at Maşallah, who killed himself immediately afterwards. Administrative investigations established that Maşallah had problems linked to his sister's marital difficulties and that on the morning of 1 October he had informed the sergeant concerned and a lieutenant of this. Both reports concluded that he had committed suicide, while mentioning that he had been provoked by the sergeant's actions. Two sets of criminal proceedings were brought against the sergeant concerned. In the initial judgment, in 1999, he was found guilty of assault causing bodily harm and sentenced to five months' imprisonment, suspended for good conduct. The second set of proceedings, which had been brought to establish the circumstances of the death, was discontinued. The military prosecutor's office considered that there was no causal link between the suicide and the sergeant's actions. An objection lodged by the applicant was dismissed

Law: The positive obligation incumbent on States to take the requisite preventive measures to protect persons under their jurisdiction against the actions of others or, where necessary, from themselves, applied without any doubt to the realm of compulsory military service. It meant that the States were required to secure high professional standards among regular soldiers, whose acts and omissions – particularly vis-à-vis conscripts – could, in certain circumstances, engage their responsibility, *inter alia* under the substantive limb of Article 2. Having regard to all the circumstances of the death, particularly the consistent witness statements gathered during the investigations, the Court did not discern any reason to call into question the conclusion favoured by the Turkish authorities, namely, that the applicant had committed suicide. Everything pointed to the conclusion that until the tragic events of 1 October 1999 the applicant's son had behaved normally and had never mentioned any problem to his superior officers that might have given cause for concern. However, the Court referred to the explanations supplied by the sergeant concerned, who acknowledged having asked Maşallah to make tea that morning because he wanted to spare him heavier duties on account of his fragile mental state, which, moreover, he had taken pains to point out to his lieutenant. The Court concluded that on 1 October 1999, at 10 a.m. at the latest, Maşallah's superiors, who had been apprised of the junior officer's situation, should have understood that his problems had taken on proportions going beyond ordinary family concerns. In the afternoon, however, far from attempting to appease matters, the sergeant had made them worse by becoming increasingly violent, both physically and verbally, towards the young man. The only other ranking officer on the premises had merely been a spectator to the incident, confining himself to criticising his peer's conduct. Although it was not possible to analyse the seriousness or nature of the effect that those actions had had

on the applicant's son's mental state, it was certain that that effect had become irreversible because of an ultimate irresponsible act committed by the sergeant concerned. The Court saw no reason to call into question the reports drawn up by the military board of inquiry or the garrison commanding officer according to which, notwithstanding the lack of intentional element, the tragedy had been "provoked" by the sergeant, or the factual observation that he had acted in full knowledge of the situation. All the circumstances of the case illustrated the sergeant's clear inability to assume the responsibilities of an army professional whose job was to protect the physical and mental integrity of conscripts placed under his orders. Having already been placed under arrest three times for acts of indiscipline, his ruthless treatment of a conscript he knew to be fragile was certainly not the type of error of judgment or negligence that could be tolerated in military service. The regulatory framework had proved deficient in respect of the sergeant's supervision by his superiors and his aptitude for the job, as well as his duties and responsibilities when faced with delicate situations such as the one that had arisen here. The authorities could not therefore be deemed to have done everything in their power to protect the victim from the improper conduct of his superiors. The sergeant's criminal conviction was by no means proof of the acknowledgement, explicit or in substance, of any liability for failure to safeguard the right to life: the criminal proceedings concerned had aimed only to establish whether he had been guilty of inflicting "bodily harm", which did not in any way relate to the protection of the right to life within the meaning of Article 2. The same applied to the second set of proceedings against the sergeant. The judicial machinery as applied here did not meet the requirements of Article 2 aimed at preventing violations of people's physical and moral integrity, in disregard of the need to maintain public confidence in the law and to avoid any appearance of tolerance of such violations, committed in circumstances generally known only to the military authorities.
Conclusion: violation (unanimously).

Article 41 – EUR 3,000 in respect of pecuniary damage and EUR 12,000 for non-pecuniary damage.

ARTICLE 3

INHUMAN OR DEGRADING TREATMENT
Applicant held for 34 days in a cell designed for short-term administrative detention not exceeding three hours: *violation*.

SHCHEBET - Russia (N° 16074/07)
Judgment 12.6.2008 [Section I]

Facts: The applicant, who is a Belarus national, was arrested on 20 February 2007 on her arrival at Domodedovo airport (Russia) with a view to her extradition to Belarus as she was on a list of its fugitives from justice. The police did not draw up an official record of the arrest. She was placed in a holding cell at the airport's transport police station and, following a faxed petition from the Belarus authorities, was kept there pending a formal extradition request. The applicant repeatedly complained to the domestic courts that she was being held without a judicial decision in excess of the maximum period – 48 hours – provided for under the Russian Constitution and Code of Criminal Procedure. However, they refused to hear her complaints because she was not a party to criminal proceedings in Russia and, in any event, they considered that under the relevant treaty (the Minsk Convention) the faxed letter of the Belarus authorities constituted a lawful basis for her detention until such time as a formal extradition request had been received. The applicant also complained to the Russian authorities about the conditions of her detention at Domodedovo. She alleged in particular that she was being held in a cell measuring approximately four square metres with no toilet, sink, bedding, table, chair or windows. The cell did not have a door but an open metal grille which left her plainly in view at all times. Occasionally she had to share the cell with other women offenders. She also stated that she was never taken outside for exercise and had to rely on her sister and boyfriend to bring her food. The Government acknowledged, for the most part, the applicant's description of her conditions of detention. They submitted, however, that the police had provided her with a mattress from a hotel and food from the airport canteen. On 23 March 2007 the

Prosecutor General's Office's applied for an arrest warrant, after receiving an extradition request from Belarus. That application was granted three days later and the applicant was transferred to a remand prison. Ultimately, the request for the applicant's extradition to Belarus was granted.

Law: Article 5 § 1 (f) – The Court firstly observed that the absence of any formal record with information as to the date, time and location of the applicant's detention, her name, the reasons for her detention and the name of the arresting police officer, had to be considered a most serious failing and incompatible with the very purpose of Article 5 of the Convention. Furthermore, the applicant's detention, which was only formalised by an arrest warrant 34 days after her placement in custody, had also been incompatible with the Russian Constitution and Code of Criminal Procedure, which provided that the maximum period of detention without a judicial decision could not exceed 48 hours. The Minsk Convention, which required that provisional detention comply with domestic procedure, could not have been a legal basis either. The Russian authorities had misconstrued the relevant provision of the Minsk Convention, which did not provide a legal basis for detention of an initial 40-day period but required that anyone detained for more than 40 days be released if, in the meantime, no extradition request had been received.
Conclusion: violation (unanimously).

Article 3 – The Court had already found violations of Article 3 in cases where applicants had been kept in cells designed only for short-term detention. Moreover, the report by the Council of Europe's Committee for the Prevention of Torture (CPT) on holding cells in several police stations in Moscow had found, in particular, that the cells, which were dark, dirty, poorly ventilated and ill-furnished, were unacceptable for periods of custody exceeding three hours. As there had been no judicial decision concerning the applicant's detention, she could not be transferred to a remand prison and had been held for 34 days in a cell designed for short-term administrative detention not exceeding three hours. Not only had it been tiny – falling short of the seven-square-metre CPT guideline –it had also lacked the necessary amenities for prolonged detention. On occasions she had even had to share that tiny cell with other women offenders. The fact that the applicant had been confined to a cramped cell, which had no privacy, for practically 24 hours a day for more than a month, without exposure to daylight or air and without physical activity or other pastime, had to have caused her considerable suffering. Lastly, the fact that it had been impossible to establish whether there were any formal catering or bedding arrangements was a consequence of the applicant being detained outside any legal framework. Even if the police officers had brought her food, their goodwill could obviously not be a substitute for the glaring absence of precise regulations governing her situation. The Court therefore concluded that the conditions of detention which the applicant had had to endure for 34 days had to have caused her intense distress and hardship and aroused in her feelings of fear, anguish and inferiority capable of humiliating and debasing her and that those feelings had to have been exacerbated by her deprivation of liberty without a lawful basis.
Conclusion: violation (unanimously).

The Court also found a violation of Article 5 § 4 of the Convention (see also *Nasrulloyev v. Russia*, no. 656/06, 11 October 2007, Information Note no. 101).

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

INHUMAN OR DEGRADING TREATMENT
Conditions of detention of and lack of proper medical care for a prisoner suffering from Hepatitis-B-induced cirrhosis: *violation*.

KOTSAFTIS - Greece (N° 39780/06)
Judgment 12.6.2008 [Section I]

Facts: The applicant complained about the conditions of his detention on account, in particular, of the lack of treatment appropriate to his state of health. He had been placed in pre-trial detention for trafficking in antiques and possessing drugs. He was sentenced on appeal to thirteen years and four months' imprisonment. After the applicant was admitted to hospital for tests in August 2003, doctors found him to

be suffering from cirrhosis of the liver caused by chronic hepatitis B. According to a medical report the applicant's condition called for continuous monitoring in a centre specialising in hepatology, as well as treatment to prevent possible complications. The domestic courts ordered a stay of execution of the applicant's sentence to enable him to spend four months in hospital. After being granted prison leave, the applicant absconded. The applicant was arrested again over two years later and returned to prison, where he was placed in a cell measuring 24 square metres which he shared with ten other prisoners. He suffered from bleeding in the oesophagus and was sent to hospital for treatment. After the applicant lodged an application for a stay of execution of his sentence, an expert examination was carried out by two forensic medical experts. According to the two medical reports, an extended hospital stay was not essential at that stage of the disease. In order to prevent the applicant's condition from worsening, one of the reports recommended rest, a special diet, treatment with the appropriate drugs and regular check-ups. The application for a stay of execution was rejected. Under Rule 39 of the Rules of Court (interim measures), the European Court of Human Rights requested Greece to order the transfer of the applicant to a specialised medical centre so that he could undergo all the necessary tests and remain in hospital until his doctors considered that he could return to prison without his life being endangered. The applicant was transferred to a hospital gastroenterology and hepatology unit, where he remains to date. A medical report found his condition stable and concluded that he no longer needed to be kept in hospital.

Law: Article 3 – The applicant suffered from cirrhosis of the liver caused by the hepatitis B virus, a chronic and irreversible disease which gradually destroyed the structure of the liver. It was a disease which necessitated continuous monitoring and appropriate treatment and frequently, as in the applicant's case, resulted in complications such as bleeding in the digestive tract and portal hypertension. The applicant claimed that his infection with the hepatitis virus had been caused by his poor conditions of detention, but given the chronic nature of the disease and the way in which the virus was transmitted, the Court could not accept that claim.
The Court then sought to ascertain whether the national authorities had done what could reasonably be expected of them in view of the seriousness of the applicant's illness. It considered that prior to his absconding and since the interim measure ordering his transfer to a specialised medical centre the authorities had not failed in their duty to safeguard the physical integrity of the applicant, who had received the appropriate treatment and medical supervision during those periods. However, with regard to the period between the applicant's arrest and the application of Rule 39 of the Rules of Court, contrary to the findings of the expert reports drawn up, the applicant had been kept in detention without being given a special diet or treatment with the appropriate drugs, and had not undergone tests in a specialist medical centre. In particular, with the exception of his hospital treatment for bleeding in the oesophagus, virtually all the applicant's medical checks had related to other health problems. Moreover, an operation scheduled for a particular date had not been performed until one year later. The Court also deplored the fact that a person suffering from a serious and highly infectious disease had been detained along with ten other prisoners in a cell measuring 24 square metres. Lastly, despite the fact that the competent authorities had been informed that he was suffering from cirrhosis and that his condition necessitated appropriate treatment, it was not until measures had been indicated by the Court that the applicant began to receive regular check-ups. Therefore, during the period in question, the authorities had not fulfilled their obligation to safeguard the applicant's physical integrity, in particular by providing him with the appropriate medical care.
Conclusion: violation (unanimously).

Article 41 – EUR 7,000 in respect of non-pecuniary damage.

INHUMAN TREATMENT
Nature of threats of physical harm made by police interrogators in an attempt to secure information from a suspected child abductor regarding the missing child's whereabouts: *inhuman treatment*.

GÄFGEN - Germany (N° 22978/05)
Judgment 30.6.2008 [Section V]

Facts: The applicant was placed under surveillance and arrested after collecting a substantial ransom for an eleven-year-old boy who had been abducted. He was questioned by the police and initially gave false information about the boy's whereabouts and the identity of his abductors. The questioning was adjourned till the following morning, by which time the police were concerned that the boy's life was in great danger from the cold and a lack of food. On the orders of the deputy chief of police, the officers questioning the applicant warned him that he would suffer considerable pain at the hands of a specially trained person unless he disclosed the boy's whereabouts. As a result, the applicant revealed the precise location of the child. He later accompanied the police officers to the scene, where the boy's body was found, and confessed that it was he who had kidnapped and killed the child. He was charged with the boy's abduction and murder. The trial court decided to exclude the confessions and statements he had made during the investigation as having been obtained under duress, but ruled that the evidence obtained as a result of the confessions was admissible. In returning a guilty verdict, it noted that, despite being informed at the beginning of his trial of his right to remain silent and that none of his earlier statements could be used as evidence against him, the applicant had nevertheless again confessed to the abduction and killing of the boy. The trial court's findings of fact were essentially based on that confession, but were also supported by evidence – including the body and tyre tracks – secured as a result of his initial confession and by evidence obtained through the surveillance operation. The applicant was sentenced to life imprisonment. His appeal on points of law was dismissed by the Federal Court of Justice and the Federal Constitutional Court refused to examine a constitutional complaint, although it did endorse the trial court's finding that threatening the applicant with pain in order to extract a confession was prohibited under domestic law and violated Article 3 of the Convention. The two police officers involved in threatening the applicant were later convicted of coercion and incitement to coercion while on duty and given suspended fines. A claim for compensation against the authorities for the trauma allegedly caused by the police's investigative methods is still pending. Before the European Court the applicant complained that he had been subjected to torture when questioned by the police and that his right to a fair trial had been violated by the use of evidence secured as a result of his confession under duress.

Law: Article 3 – (a) *Nature of the ill-treatment*: According to the findings of the domestic criminal courts, a police officer had threatened the applicant with physical violence which would have caused him considerable pain in order to make him reveal the abducted child's whereabouts. The applicant had therefore been subjected to sufficiently real and immediate threats of deliberate ill-treatment. The prohibition of treatment contrary to Article 3 was absolute and applied irrespective of the conduct of the person concerned, even if the purpose was to extract information in order to save someone's life. The applicant's treatment must have caused him considerable mental suffering and the threats would have amounted to torture had they been carried out. However, the questioning had lasted only ten minutes and had taken place in an atmosphere of heightened tension and emotions as the police officers, who were completely exhausted and under extreme pressure, believed that they had just a few hours to save the boy's life. The threats of ill-treatment had not been put into practice or shown to have had any serious long-term consequences for the applicant's health. The Court therefore considered that the treatment to which the applicant was subjected during his interrogation was inhuman.

(b) *Victim status*: The Court was satisfied that the domestic courts had expressly and unequivocally acknowledged that the applicant's treatment by the police had violated Article 3. Both the trial court and the Federal Constitutional Court had stated that threatening pain in order to extract a statement not only was prohibited under domestic law but also violated the Convention. The two police officers involved had been convicted of coercion and incitement to coercion and punished, while the exclusion of the confessions and statements made under duress was an effective method of redressing the disadvantages the applicant had suffered and served to discourage the future use of interrogation methods prohibited by

Article 3. Although the applicant had yet to obtain compensation, the Court considered that where the breach of Article 3 lay in the threat of (as opposed to actual) ill-treatment, redress was essentially granted by the effective prosecution and conviction of those responsible. The domestic courts had thus afforded the applicant sufficient redress and he could no longer claim to be a victim of a violation of Article 3.
Conclusion: loss of victim status (six votes to one).

Article 6 – The domestic courts had refused to bar the use of evidence obtained as a result of the statements extracted from the applicant (the so-called "fruit of the poisonous tree") and at least some of that evidence had been used to prove the veracity of the confession made by the applicant at the trial. However, there was nothing to indicate that the applicant had been further threatened by any of the officers during the journey to and from the place where the body was hidden with a view to making him disclose items of real evidence. Accordingly, unlike the position in *Jalloh v. Germany* (no. 54810/00, Information Note no. 88), the investigation authorities had secured the impugned evidence only as an indirect, not a direct, result of the confession. It followed that the use of that evidence did not render the trial automatically unfair, although it led to a strong presumption of unfairness. The applicant's new confession at the trial was the essential basis for the trial court's judgment; the other evidence was of an accessory nature and was only used to test the veracity of that confession. The applicant's assertion that he had made the new confession only because of the evidence secured as a result of his initial confession obtained under duress was at odds with his consistent claims before the domestic courts that he had volunteered it out of remorse and the Court was not persuaded that he could not have remained silent or that his only defence option had been to make a confession at his trial. Indeed, it could be said that he had simply varied his defence strategy. As to the opportunities to challenge the impugned evidence, the trial court had had a discretion to exclude evidence improperly obtained and had weighed up all the interests involved in a thoroughly reasoned decision. In the particular circumstances of the applicant's case, including the police surveillance of the applicant after he collected the ransom and the available untainted evidence, the evidence obtained as a result of the initial confession was only accessory in securing the applicant's conviction and his defence rights had not been compromised as a result.
Conclusion: no violation (six votes to one).

EXTRADITION
Proposed extradition of applicant to Turkmenistan where he risked treatment proscribed by the Convention: *extradition would constitute a violation.*

RYABIKIN - Russia (N° 8320/04)
Judgment 19.6.2008 [Section I]

Facts: The applicant is a Turkmen national of Russian ethnic origin who currently lives in St Petersburg. In January 2001, fearing that he was in danger because he had been a witness in a criminal case against two officials, the applicant left Turkmenistan and eventually came to Moscow. He was then informed that a criminal case had been opened against him in Turkmenistan and that part of his property had been confiscated. In 2003 the applicant applied for refugee status in Russia. He submitted, in particular, that he feared persecution in Turkmenistan and that he was the subject of a criminal investigation. His request was ultimately rejected by the Russian migration authorities, and then by the courts, mainly on the grounds that the applicant had been allowed to leave Turkmenistan legally and without any hindrance; his family continued to reside safely in Turkmenistan; on arrival in Russia he had not immediately applied for asylum; and, the criminal proceedings in Turkmenistan were not in any way linked to his political, religious or ethnic background, but to his commercial activities. In February 2004 the applicant was summoned to the St. Petersburg Passport and Visa Service and arrested on the basis of an international search warrant which included charges against him of embezzlement, an offence punishable under the Turkmen Criminal Code by eight to fifteen years' imprisonment. The Russian courts subsequently ordered his detention pending extradition to Turkmenistan. In March 2004 the European Court, under Rule 39 of the Rules of Court, requested the Russian authorities not to extradite the applicant to Turkmenistan until further notice. The same day, the Office of the United Nations High Commissioner for Refugees (UNHCR) in Moscow issued a statement saying that the applicant's appeal concerning his

refugee status was pending and that his extradition to Turkmenistan prior to the determination of his appeal might be in violation of national and international law. The applicant appealed against his detention on several occasions before the local courts. Ultimately, in March 2005 the district court decided to order his release. It noted that no decision on extradition had been taken by the Prosecutor General's Office, in view of the application of Rule 39 of the Rules of Court, and that Russian law did not provide for the extension or variation of a preventive measure in respect of a person arrested further to an extradition request. The district court directly applied Article 17 of the Constitution of Russia, which guaranteed rights and freedoms in accordance with internationally recognised principles and norms of international law, and Article 5 of the European Convention on Human Rights. The extradition proceedings against the applicant are still pending. In their latest observations submitted to the European Court in July 2007, the Russian Government stated that the Prosecutor General's Office of Turkmenistan had provided guarantees in a letter to the effect that, if returned, the applicant would not be subjected to ill-treatment. The applicant submitted a number of reports on the situation in Turkmenistan, including documents issued by the OSCE, the European Parliament, the UN Commission on Human Rights, the US State Department and various NGOs. These indicated that the persecution of ethnic minorities (including Russians), extremely poor conditions of detention, ill-treatment and torture all remained a great concern in that country. They also indicated that accurate information about the human-rights situation was scarce and difficult to verify, in view of the exceptionally restrictive nature of the prevailing political regime, described as "one of the world's most repressive and closed countries" (Human Rights Watch, 2007 World Report), and the systematic refusal of the Turkmen authorities to allow any monitoring of places of detention by international or non-governmental observers.

Law: Article 3 – The Court observed that to date no decision had been taken concerning the applicant's extradition to Turkmenistan. Nevertheless, the parties had not disputed that the applicant remained under threat of such extradition. The evidence from the reports and documents submitted by the applicant revealed serious human-rights violations occurring in Turkmenistan and the fate of even the most prominent prisoners often remained unknown, even to their families. Moreover, although the Russian Government had requested assurances from the Prosecutor General of Turkmenistan, no copy of the Prosecutor General's letter had been submitted to the Court. In any event, even accepting that such assurances had been given, the Court noted that the various reports indicated that the authorities of Turkmenistan had systematically refused international observers access to the country, and in particular to places of detention. The Court therefore questioned the value of any such assurances. It also noted that it had previously found that diplomatic assurances were not in themselves sufficient to ensure adequate protection against the risk of ill-treatment in countries where reliable sources had reported practices contrary to the principles of the Convention. The applicant's claims for refugee status were limited to the question of whether he could claim to be a victim of persecution on one of the grounds listed in the relevant provisions of domestic and international law. The Russian Government stated that they had no reason to look into the conditions of detention of the applicant in Turkmenistan, because he had not been detained there. However, the Court considered that such an assessment had to take place prior to a decision on extradition and had to take into account the relevant factors in order to prevent the ill-treatment from occurring. Furthermore, the Court observed that in Turkmenistan the applicant had been charged with a serious crime. If extradited there, in the Court's view, the applicant would almost certainly be detained and ran a very real risk of spending years in prison.
Conclusion: extradition would constitute a violation (unanimously).

The Court also found violations of Article 5 § 1 (f) and 5 § 4 of the Convention (see *Nasrulloyev v. Russia*, no. 656/06, 11 October 2007, Information Note no. 101).

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

ARTICLE 5

Article 5 § 1

LAWFUL ARREST OR DETENTION
Unrecorded detention without a judicial decision: *violation*.

SHCHEBET - Russia (N° 16074/07)
Judgment 12.6.2008 [Section I]

(see Article 3 above).

ARTICLE 6

Article 6 § 1 [criminal]

FAIR HEARING
Conviction of the offence of bribery investigated upon a complaint and with collaboration of a private individual: *no violation*.

MILINIENE - Lithuania (N° 74355/01)
Judgment 24.6.2008 [Section II]

Facts: The applicant worked as a judge. In June 1998 she was approached by a male acquaintance, with whom, she alleged, she merely discussed the sale of her car. Having secretly recorded their conversation, the acquaintance lodged a complaint with a special anti-corruption police unit stating that the applicant had demanded a payoff, in the form of a new car, in return for admitting and deciding his civil claim in his favour. The Deputy Prosecutor General authorised a "Criminal Conduct Simulation Model" for a period of one year. In October 1998 the applicant was apprehended in her office whilst receiving another bribe from the acquaintance. In 2000 she was convicted of accepting a large bribe and attempting to buy off State officials. She was sentenced to four years' imprisonment, banned from State service for five years, and had her property confiscated. The court based the conviction mostly on the recordings made by the acquaintance when implementing the model, finding that she had taken a total of USD 10,500 in personal bribes, as well as USD 1,000 to buy-off certain higher court judges. It was established that, in return, she had drafted his civil claim, had made the necessary arrangements to be appointed as the judge in his case, and had started examining it. When dismissing her cassation appeal, the Supreme Court observed that the preliminary information on her readiness to accept a bribe had been confirmed in that she had immediately accepted the offer without any outside pressure. Such an offer could not be considered active pressure to commit an offence. Furthermore, the Supreme Court noted that, contrary to the applicant's arguments, the police officers could not have discontinued their investigations once the applicant had received the first money instalment, because for the purposes of characterising her acts it was necessary to establish if she would keep her promise and decide the case in favour of the plaintiff.

Law: There was no evidence that the applicant had committed any offences beforehand, in particular corruption-related offences. However, the initiative in the case had been taken by a private individual. To the extent that he had had police backing to offer the applicant considerable financial inducements and had been given technical equipment to record their conversations, it was clear that the police had influenced the course of events. However, the Court did not find the police's role to have been abusive, given their obligation to verify criminal complaints and the importance of thwarting the corrosive effect of judicial corruption on the rule of law in a democratic society. The determinative factor was not the police's role, but the conduct of the individual in question and the applicant. To this extent, the Court accepted that, on balance, the police could be said to have "joined" the criminal activity rather than to

have initiated it. Their actions had thus remained within the bounds of undercover work rather than that of *agents provocateurs* in possible breach of Article 6 § 1. Furthermore, the applicant had been able to put clear entrapment arguments before the domestic courts and a reasoned response had been given to them. There were clearly good reasons to commence the investigation after the individual concerned had contacted the police. It had been established that he had no special relationship with the applicant, from which it could be inferred that he had no ulterior motive in denouncing her. The model had been lawfully conceived and put into action. Moreover it had been adequately supervised by the prosecution, even if court supervision would have been more appropriate for such a veiled system of investigation. The applicant had had full opportunity to challenge the authenticity and accuracy of the evidence against her. Indeed, she had made no specific complaint to the Court of a lack of adversarial proceedings or denial of equality of arms.
Conclusion: no violation (unanimously).

See also *Ramanauskas v. Lithuania* [GC], in Information Note no. 105.

FAIR HEARING
Conviction based on confession made in the absence of a lawyer and retracted immediately the lawyer was present: *violation*.

YAREMENKO - Ukraine (N° 32092/02)
Judgment 12.6.2008 [Section V]

(see Article 6 § 3 (c) below).

FAIR HEARING
Decision by criminal court to admit evidence obtained from information provided in confessions it had ruled inadmissible: *no violation*.

GÄFGEN - Germany (N° 22978/05)
Judgment 30.6.2008 [Section V]

(see Article 3 above).

IMPARTIAL TRIBUNAL
Granting lay judges access to the bill of indictment containing the essential findings of the investigation against the applicant: *no violation*.

ELEZI - Germany (N° 26771/03)
Judgment 12.6.2008 [Section V]

Facts: In 2000 the applicant, along with five other persons including his sister, was charged with human trafficking. In the bill of indictment the prosecution set out in detail the exact course of events for each charge against the accused and summarised testimonies of witnesses and the content of intercepted phone calls intended to prove the charges. In October 2000 the Berlin Regional Court, composed of three professional judges and two lay judges, opened the trial against the applicant and the other co-defendants, including his sister. Following the applicant's sister's confession, the court severed the proceedings against her from those against the applicant, but the two cases continued to be heard by the same professional and lay judges. Since she had made a general confession to the offences described in the bill of indictment while refusing to give more detailed information, the professional judges considered it necessary to give the lay judges a copy of the part of the bill of indictment containing the essential results of the prosecution's investigation against all the defendants. The applicant then lodged a motion for bias against the lay judges arguing that they could no longer follow the trial without prejudice after having

taken note of the entire pre-assessment of the evidence by the prosecution. His motion was dismissed as ill-founded after the three professional judges of the Regional Court found that there were no grounds to doubt the lay judges' impartiality. Even though under domestic law the results of the investigation were in principle not to be disclosed to lay judges, in the present case the professional judges had explained to them that the bill of indictment expressed views taken by the prosecution and that it was not to be confused with the results of the main hearing on which the judgment should be based. The applicant was subsequently convicted and sentenced by the Regional Court to four and a half years' imprisonment. His conviction was upheld on appeal.

Law: The applicant complained that the lay judges sitting in his case had lacked impartiality since they had taken note of the essential results of the investigation containing the prosecution's evaluation of the evidence against him. Domestic law did not expressly regulate the question of access by lay judges to case-files including the bill of indictment, but it did prohibit the disclosure to them of the part of the indictment that contained the results of the investigation. In the present case, however, that part of the bill of indictment had been given to the lay judges in order to speed up the proceedings in the applicant's sister's case, which had been severed from the applicant's case because of her confession. Since she had made a general confession to offences as described in the essential results of the investigation, it had been necessary to clarify at the trial the full content of her confession. In these circumstances, the Court held the procedure whereby the impugned part of the bill of indictment had been disclosed to the lay judges objectively justified in the particular context of the proceedings in the applicant's case. Moreover, the lay judges' impartiality had been ensured by sufficient safeguards: it had been explained to them that the prosecution's views expressed in the bill of indictment should not be the basis for the judgment in the applicant's case, which needed to be based solely on the evidence taken in the main hearing. Also, the trial court had held further twenty hearings after the lay judges were given the bill of indictment. In view of the foregoing, it appeared that the lay judges had made their final assessment as to the applicant's guilt on the basis of the evidence produced and arguments heard at those hearings.
Conclusion: no violation (unanimously).

Article 6 § 3 (c)

DEFENCE THROUGH LEGAL ASSISTANCE
Lawyer dismissed from the case for having advised his client not to testify against himself: *violation*.

YAREMENKO - Ukraine (N° 32092/02)
Judgment 12.6.2008 [Section V]

Facts: In January 2001 the applicant was arrested on suspicion of several crimes committed that month and questioned in the presence of his lawyer. In February 2001 he was questioned with a view to establishing his possible involvement in another crime that had been committed in 1998. The applicant alleges that during the questioning he was beaten by police officers, who forced him to waive his right to counsel and to confess to murder. The next day, in his lawyer's presence, he denied his involvement in the 1998 crime. However, later that day he signed a waiver of his right to counsel on the ground that the latter had prevented him from confessing to the 1998 crime. His counsel was removed from his case. Subsequently, the applicant complained that he had signed the waiver under pressure from the police officers and the case investigator. His counsel was later allowed to return to the case and in June 2001 the applicant was questioned in his presence. He repeatedly claimed that he was innocent of the 1998 crime and explained that he had been forced to confess by police officers. In November 2001 he was convicted, together with another person, of the 1998 and 2001 crimes and sentenced to life imprisonment.

Law: Article 6 § 1 – The applicant's lawyer had been dismissed from the case by the investigator for having advised his client to remain silent and not to testify against himself. A prosecutor, in reply to complaints by the lawyer, had observed that he had breached professional ethics by advising his client to claim his innocence and to retract part of his previous confession. Moreover, the Court found it

remarkable that the applicant and a co-accused, over two years later, should have given very detailed testimony, which, according to investigator, contained no discrepancies or inconsistencies. That fact raised the suspicion that their accounts had been carefully coordinated. The domestic courts, however, had considered such detailed testimonies as undeniable proof of their veracity and made them the basis for the applicant's conviction for the 1998 crime, despite the fact that his testimony had been given in the absence of a lawyer and retracted immediately after he was granted access to his counsel, and was not supported by other evidence. In those circumstances, there were serious reasons to suppose that the statement signed by the applicant had been obtained against his will. Taking into account that there had been no adequate investigation into the allegations by the applicant that the statement had been obtained by ill-treatment[1], the Court found that its use at trial had impinged on his right to silence and privilege against self-incrimination.
Conclusion: violation (unanimously).

Article 6 § 3 (c) – The Court noted with concern the circumstances under which the initial questioning of the applicant about the 1998 crime had taken place. The law-enforcement authorities, investigating the violent death of a person, had initiated criminal proceedings for the infliction of grievous bodily harm causing death rather than for murder. The former was a less serious crime and therefore did not require the obligatory legal representation of a suspect. Immediately after the confession had been obtained, the crime had been reclassified as, and the applicant had been charged with, murder. As a result, he had been placed in a situation in which, as he had maintained, he had been coerced into waiving his right to counsel and incriminating himself. He had had a lawyer in the initial criminal proceedings, yet had waived his right to be represented during his questioning for another offence. The fact that he had made confessions without a lawyer being present and had retracted them immediately once his lawyer was present demonstrated the vulnerability of his position and the real need for appropriate legal assistance. The government's argument that the counsel had been removed solely at the applicant's request seemed scarcely credible, since it was not mentioned in the removal decision itself, and in the prosecutors' replies it was referred to only as an additional ground. The other two lawyers who represented the applicant had seen him only once each, during questioning, and never before the questioning took place. That fact seemed to indicate the notional nature of their services. The manner of and reasoning for the lawyer's removal from the case, as well as the alleged lack of legal grounds for it, raised serious questions as to the fairness of the proceedings in their entirety.
Conclusion: violation (unanimously).

ARTICLE 7

Article 7 § 1

NULLA POENA SINE LEGE
Effect of the entry into force on the date of his conviction of a legislative-decree liable to affect the applicant's situation: *admissible*.

SCOPPOLA - Italy (N° 10249/03)
Decision 13.5.2008 [Section II]

In 1999 the applicant killed his wife and wounded one of his children. Criminal proceedings were brought against him. At a preliminary hearing in 2000 he asked to be tried under a shortened form of procedure that would result in a reduced sentence in the event of a conviction. Under the Code of Criminal Procedure, this procedure meant that if the sentence normally applicable was life imprisonment the applicant would be sentenced to thirty years. In keeping with that rule, when found guilty of the charges against him on 24 October 2000 the applicant was sentenced to thirty years' imprisonment. In 2001 the Principal State Prosecutor's Office appealed on points of law, submitting that the court should have taken

[1] The Court found a violation of Article 3 (procedural aspect). For further details, see Press Release no. 432.

into account a change introduced by a legislative-decree that had entered into force on the date of the applicant's conviction, affecting his situation. The applicant appealed. The competent Assize Court of Appeal sentenced the applicant to life imprisonment, considering that the new procedural rule was applicable to any proceedings under way and that the applicant could have withdrawn his request for the shortened form of procedure to be applied and have his case tried in the ordinary way. In 2003 the Court of Cassation dismissed the applicant's appeal.
The Court considered that the application concerned not only the alleged violation of the *nulla poena sine lege* principle but also the matter of whether the newly introduced provisions had affected the fairness of the trial (Article 6 § 1 of the Convention), and declared the application *admissible*.

ARTICLE 8

PRIVATE AND FAMILY LIFE
Exclusion order made on account of convictions for largely non-violent offences committed when still a minor: *violation*.

MASLOV - Austria (N° 1638/03)
Judgment 23.6.2008 [GC]

Facts: The applicant, a Bulgarian national, had arrived in Austria in 1990 at the age of six and was lawfully resident there with his parents and brother and sister. He obtained an unlimited settlement permit in 1999. In 2001, at the age of 16, he was issued with a ten-year exclusion order by the Federal Police Authority with effect from his eighteenth birthday. The order was made following his convictions by a juvenile court for offences of aggravated burglary, extortion and assault committed at the ages of 14 and 15 and for which he had received prison sentences. After serving his sentences and attaining his majority, the applicant was deported to Bulgaria in December 2003.

Law: The imposition and enforcement of the exclusion order against the applicant constituted an interference with his right to respect for his private and family life that was in accordance with the law and pursued the legitimate aim of preventing disorder or crime. The decisive feature of the case was the young age at which the applicant had committed the offences and, with one exception, their non-violent nature. His convictions had essentially been for acts of juvenile delinquency. Where expulsion measures against a juvenile offender were concerned, the obligation to take the best interests of the child into account included an obligation to facilitate his or her reintegration. Reintegration would not be achieved by severing family or social ties through expulsion, which had to remain a means of last resort in the case of a juvenile offender. Following his release from prison, the applicant had stayed a further 18 months in Austria without reoffending. Little was known about his conduct in prison or the extent to which his living circumstances had stabilised after his release, so the question of his conduct since the commission of the offences carried less weight than the other applicable criteria, in particular the fact that the offences were mostly non-violent and had been committed when the applicant was a minor. The applicant had his main social, cultural, linguistic and family ties in Austria, where all his relatives lived, and no proven ties with his country of origin. The fact that the exclusion order was of limited duration was not decisive. In view of the applicant's young age, a ten-year exclusion order banned him from living in Austria for almost as much time as he had spent there and for a decisive period of his life. In the circumstances, it was disproportionate to the legitimate aim pursued and thus not necessary in a democratic society.
Conclusion: violation (sixteen votes to one).

Article 41 – EUR 3,000 in respect of non-pecuniary damage.

ARTICLE 10

FREEDOM OF EXPRESSION
Refusal of nationality application by the Cabinet of Ministers, allegedly on national interest grounds: *admissible*.

PETROPAVLOVSKIS - Latvia (N° 44230/06)
Decision 3.6.2008 [Section III]

The applicant, who was permanently resident in Latvia, applied for Latvian nationality through naturalisation. Although the Naturalisation Board certified that he fulfilled the requirements of the Citizenship Act, his application was refused by the Cabinet of Ministers. In the proceedings on the applicant's appeal against that decision, a lawyer acting for the Cabinet of Ministers explained that the reason for the refusal was that the applicant had made statements to the media that were contrary to the national interest and had sought to destabilise the country. This was a reference to the fact that the applicant had been actively involved in protests against changes in the State education system which in his view were gradually eroding the rights of the Russian speaking minority to education in their own language. The domestic courts declined to hear the applicant's appeal on the merits as they considered that the decision of the Cabinet of Ministers was of a political nature and so not subject to examination by the judiciary. The applicant complained under Articles 10 and 11 of the Convention that he had arbitrarily been denied Latvian citizenship as a punitive measure because he had expressed his views and engaged in peaceful assembly. He also complained of a lack of an effective domestic remedy.

Admissible under Articles 10, 11 and 13. The Government's objection that the subject matter of the complaint was incompatible *ratione materiae* with the Convention was joined to the merits.

FREEDOM TO IMPART INFORMATION
Failure to state reasons for successive refusals to grant a television broadcasting licence: *violation*.

MELTEX LTD and MESROP MOVSESYAN - Armenia (N° 32283/04)
Judgment 7.6.2008 [Section III]

Facts: The applicant company was formed in 1995 after an independent television company (A1+) set up by its founder had had its licence suspended by the authorities for refusing to broadcast only pro-Government material in the run-up to the 1995 presidential elections. In January 1997 the applicant company was granted a five-year broadcasting licence and A1+ was relaunched within that structure. In October 2000 the Government brought in new legislation (the Television and Radio Broadcasting Act) establishing the National Television and Radio Commission ("the NTRC"), a public body composed of nine members appointed by the President of Armenia which was entrusted with the licensing and monitoring of private television and radio companies. The Act also introduced a new licensing procedure, whereby broadcasting licences were granted by the NTRC on the basis of calls for tenders. In February 2002 the NTRC announced calls for tenders for various broadcasting frequencies, including the band on which the first applicant operated. At a public hearing in April 2002 it awarded the tender to another company, without stating reasons. The applicant company subsequently made bids for seven other bands, but was unsuccessful on each occasion. Although it challenged the decisions in the courts its claims were dismissed on the grounds that the tender procedure had been carried out in accordance with domestic law.

Law: The NRTC's refusal to grant the applicant company a broadcasting licence effectively amounted to an interference with its freedom to impart information and ideas. Although the Broadcasting Act defined the criteria on which the NTRC was to make its choice, it did not explicitly require it to give reasons, so that while the NTRC had held public hearings, it had not announced the reasons for its decisions. Consequently, neither the applicant company nor the public were aware of the basis on which the NTRC had exercised its discretion to refuse a licence. The Court noted that the Committee of Ministers'

guidelines on broadcasting regulations called for the open and transparent application of regulations governing licensing procedures and specifically recommended that all decisions taken by regulatory authorities should be duly reasoned. Likewise, in a Resolution of 27 January 2004 the Parliamentary Assembly had concluded that the NTRC had effectively been given outright discretionary powers as a result of the "vagueness of the law". In the Court's view, a procedure which did not require the licensing authority to give reasons for its decisions did not provide adequate protection against arbitrary interference by a public authority. The interference therefore failed to meet the Convention requirement of lawfulness.
Conclusion: violation (unanimously).

Article 41 – EUR 20,000 in respect of non-pecuniary damage.

ARTICLE 11

FREEDOM OF ASSOCIATION
Dismissal of regional public servants for failing to declare their membership of an association: *inadmissible*.

SIVERI and CHIELLINI - Italy (N° 13148/04)
Decision 3.6.2008 [Section II]

In 1994 the applicants, who were respectively members of a regional commission and council, were dismissed on the basis of a regional law requiring persons appointed to such posts to declare whether they belonged to any associations which engaged, openly or *de facto*, in activities of a political, cultural, social, welfare or economic nature. The first applicant had neglected to send the relevant documents, and the second had omitted to mention that he was a member of a Masonic lodge. The applicants challenged their dismissal. By a judgment of 1997 the administrative court dismissed their appeals. In 2003 the Council of State dismissed their appeals.

Inadmissible under Article 11 – It could be assumed that there had been an interference with the applicants' freedom of association as the applicants alleged that declaring their membership of a Masonic lodge would have exposed them to social disapproval that might adversely affect their careers and private lives. As to the legitimate aims pursued, the findings in the *Grande Oriente d'Italia di Palazzo Giustiniani [GOI] v. Italy (no. 1)* (no. 35972/97, CEDH 2001-VIII) and *(no. 2)* (no. 26740/02, 31 May 2007), where the Court found that the ban on the appointment of freemasons to public office and the obligation for candidates to such posts to declare whether they were freemasons pursued the legitimate aims of protecting national security and preventing disorder, also applied to this case. The instant case differed from *GOI v. Italy (no. 1)*, however, in that the applicants were already in post and their membership of a Masonic lodge was not in itself grounds for dismissal. Further, the impugned law involved a simple duty of transparency, the declaration of membership of an association being intended to inform the public of possible conflicts of interest affecting public servants. It was true that dismissal was the automatic legal consequence of the applicants' conduct, but in relations between the authorities and certain public servants States were not expected to provide for adjustable penalties to suit the particular circumstances of each case. The sanction imposed on the applicants had not been disproportionate. They had also had the benefit of certain procedural guarantees: *manifestly ill-founded*.

Inadmissible under Article 14 – The applicants considered that they had been discriminated against either because of the content of the regional laws or because of how they were applied in practice. The instant case also differed from *GOI v. Italy (no. 2)*, as the obligation to make the declaration applied to a very large number of associations, not only to freemasons. The Court pointed out that the possibility for a region to regulate certain matters differently from other regions or central government was a consequence of regional self-government. The situation of the applicants, who had been appointed by the authorities

and were answerable to them, differed from that of persons elected to office, who were answerable to public opinion for their conduct in the course of their duties: *manifestly ill-founded*.

ARTICLE 13

EFFECTIVE REMEDY
Ineffectiveness of length-of-proceedings remedy owing to lack of compensation for non-pecuniary damage: *violation*.

MARTINS CASTRO and ALVES CORREIA DE CASTRO - Portugal (N° 33729/06)
Judgment 10.6.2008 [Section II]

Facts: The applicants brought proceedings in 1993 to have tenants evicted. A judgment in their favour was pronounced in 2002. In 2004 the applicants lodged an action to establish non-contractual liability on the part of the State because of the length of the civil proceedings. In a judgment in 2004 the administrative court, while acknowledging that the proceedings had been unreasonably lengthy, found that the applicants had not proved the existence of any non-pecuniary damage and found against them. In 2006 the appeal court confirmed that decision. The same year the Supreme Administrative Court declared a new appeal inadmissible.

Law: Article 13 – The main question that arose in this case was whether, in view of the decisions pronounced by the administrative courts, the action to establish non-contractual liability on the part of the State, which the Strasbourg Court had found effective on 27 March 2003 (*Paulino Tomas v. Portugal* (dec.), no. 58698/00), remained an "effective" remedy for complaints about the length of judicial proceedings in Portugal. The fact that the administrative courts very often took such a long time to examine such actions did not, in itself, render the remedy ineffective. As to the level of compensation, unlike the stance taken by the domestic courts in the instant case, the reasoning of the courts in such matters should be based on the strong but rebuttable presumption that excessively long proceedings would occasion non-pecuniary damage (see *Scordino v. Italy (no. 1)* [GC], CEDH 2006). Now, although the Supreme Administrative Court, in a judgment of 28 November 2007, accepted that interpretation and the principles enshrined in the Court's case-law, these did not seem sufficiently well anchored in Portuguese law, as the instant case showed.
An action to establish non-contractual liability on the part of the State could not be considered an "effective" remedy within the meaning of Article 13 of the Convention while the current uncertainty remained and the principle laid down in the Supreme Administrative Court's judgment of 28 November 2007 had not been incorporated into Portuguese law through harmonisation of the conflicting decisions.
Conclusion: violation (unanimously).

Article 46 – Having noted the existence of several dozen pending applications containing complaints identical to those in the present case, the Court invited the respondent State and all its bodies, including the prosecuting authorities, who played a very important role in this field, to take all necessary measures to ensure that decisions taken at national level were in conformity with the Court's case-law.

Article 41 – EUR 9,500 to the applicants jointly in respect of non-pecuniary damage.

ARTICLE 14

DISCRIMINATION (Article 11)
Dismissal of regional public servants for failing to declare their membership of an association: *inadmissible*.

SIVERI and CHIELLINI - Italy (N° 13148/04)
Decision 3.6.2008 [Section II]

(see Article 11 above).

DISCRIMINATION (Article 2 of Protocol No. 1)
Roma children denied access to school before being assigned to special classrooms in an annex to the main primary school buildings: *violation*.

SAMPANIS and Others - Greece (N° 32526/05)
Judgment 5.6.2008 [Section I]

Facts: The 11 applicants were all Greek nationals of Roma origin living at the Psari authorised residential site near Aspropyrgos (Greece). On 21 September 2004 the applicants, with other Roma parents, visited the premises of the Aspropyrgos primary schools in order to enrol their minor children. Their action followed a press release issued in August 2004 by the Minister for Education stressing the importance of integrating Roma children into the national education system. There had also been a visit, on 10 September 2004, by the State Secretary for the education of persons of Greek origin and intercultural education, accompanied by two Greek Helsinki Monitor representatives, to the Roma camps in Psari, for the purpose of ensuring the enrolment of all school-age Roma children. According to the applicants, the head teachers of two schools had refused to enrol their children on the ground that they had not received any instructions on this matter from the competent ministry. The head teachers allegedly informed them that as soon as the necessary instructions had been received they would be invited to proceed with the appropriate formalities. However, the parents were apparently never invited to enrol their children. The Greek Government claimed that the applicants had simply approached the schools to obtain information with a view to the enrolment of their children, and that the headmistress of the tenth primary school of Aspropyrgos had told them what documents were necessary for that purpose. Subsequently, in November and December 2004, a delegation of primary school teachers from Aspropyrgos had visited the Psari Roma camp to inform and persuade the parents of minor children of the need to enrol them, but that action had been unsuccessful as the parents concerned had not enrolled their children for the current school year.
An informal meeting of the competent authorities was convened by the Director of Education for the Attica administrative district on 23 September 2004 in order to find a solution to the problem of the capacity of primary schools in Aspropyrgos to cater for further enrolments of Roma children. It was decided, firstly, that pupils at the age of initial school admission could be taught on the existing premises of the Aspropyrgos primary schools, and secondly, that additional classes would be created for older children, to prepare them for integration into ordinary classes.
On 9 June 2005, on the initiative of the Association for coordination of organisations and communities for human rights of Roma in Greece (SOKARDE), 23 children of Roma origin, including the applicants' children, were enrolled for the school year 2005-2006. According to the Government, the number of children came to 54.
In September and October 2005, from the first day of the school year, non-Roma parents protested about the admission of Roma children to primary school and blockaded the school, demanding that the Roma children be transferred to another building. The police had to intervene several times to maintain order and prevent illegal acts being committed against pupils of Roma origin.

On 25 October 2005 the applicants signed, according to them under pressure, a statement drafted by primary school teachers to the effect that they wanted their children to be transferred to a building separate from the school. Thus, from 31 October 2005, the applicants' children were given classes in another building and the blockade of the school was lifted.
Three preparatory classes were housed in prefabricated classrooms on land belonging to the municipality of Aspropyrgos. Following a fire in April 2007, the Roma children were transferred to a new primary school set up in Aspropyrgos in September 2007. However, on account of infrastructure problems, that school was not yet operational in October 2007.

Law: Article 14 taken together with Article 2 of Protocol No. 1 – The applicants argued that their children had been subjected, without any objective or reasonable justification, to treatment that was less favourable than that given to non-Roma children in a comparable situation and that this situation constituted discrimination contrary to the Convention.

Existence of evidence justifying a presumption of discrimination: It was not in dispute between the parties that the applicants' children had missed the school year 2004-2005 and that preparatory classes had been set up inside one of the primary schools in Aspropyrgos.
The creation of the three preparatory classes in question had not been planned until 2005, when the local authorities had had to address the question of schooling for Roma children living in the Psari camp. The Government gave no example of special classes being created inside primary schools in Aspropyrgos prior to the present case, even though other Roma children had been enrolled there in the past.
In addition, as regards the composition of the preparatory classes, they were attended exclusively by Roma children. Even though the incidents of a racist nature that took place in front of Aspropyrgos primary school in September and October 2005 could not be imputed to the Greek authorities, it could nevertheless be presumed that those incidents influenced the decision to place pupils of Roma origin in an annexe to the primary school.
In short, the evidence adduced by the applicants and other evidence in the case file could be regarded as sufficiently reliable and revealing to create a strong presumption of discrimination, and it was therefore for the Government to show that this difference in treatment was the result of objective factors, unrelated to the ethnic origin of the persons concerned.

Existence of objective and reasonable justification: The material in the case file did not show that the applicants had met with an explicit refusal, on the part of the Aspropyrgos primary school authorities, to enrol their children for the school year 2004-2005. However, even supposing that the applicants had simply sought to obtain information on the conditions of enrolment of their children at primary school, there was no doubt that they had explicitly expressed to the competent school authority their wish to enrol their children. Given the Roma community's vulnerability, which made it necessary to pay particular attention to their needs, and considering that Article 14 required in certain circumstances a difference of treatment in order to correct inequality, the competent authorities should have recognised the particularity of the case and facilitated the enrolment of the Roma children, even if some of the requisite administrative documents were missing. Greek law recognised the specific nature of the Roma community's situation by facilitating the school enrolment procedure for their children. In addition, domestic legislation provided for the possibility of enrolling pupils at primary school simply by means of a declaration signed by someone with parental authority, provided birth certificates were produced in good time.
This obligation should have been particularly clear to the Aspropyrgos school authorities as they were aware of the problem of providing schooling for the children living in the Psari camp and of the need to enrol them at primary school.
As regards the special classes, the competent authorities had not adopted a single, clear criterion in choosing which children to place in the preparatory classes. The Government provided no evidence that any suitable tests were ever given to the children concerned in order to assess their capacities or potential learning difficulties.
Furthermore, the declared objective of the preparatory classes was for the pupils concerned to attain the right level so that they could enter ordinary classes in due course. However, the Government cited no examples of pupils – and there were over 50 of them – who, after being placed in a preparatory class for two school years, were then admitted to the ordinary classes of the Aspropyrgos primary school. Nor did

the Government mention any assessment tests that Roma children should have been periodically required to sit in order for the school authorities to assess, on the basis of objective data rather than approximate appraisal, their ability to follow ordinary classes.

The Court stressed the importance of introducing a suitable system for assessing the capacities of children with learning needs, to monitor their progress, especially in the case of children from ethnic minorities, to provide for possible placement in special classes on the basis of non-discriminatory criteria. In addition, in view of the racist incidents triggered by the parents of non-Roma children, the setting-up of such a system would have given the applicants the feeling that their children had not been placed in preparatory classes for reasons of segregation. Whilst admitting that it was not its role to rule on this issue of educational psychology, the Court considered that this would have been of particular help in the integration of Roma pupils, not only into ordinary classes but into local society generally.
Moreover, the Court was not satisfied that the applicants, as members of an underprivileged and often uneducated community, had been able to assess all the aspects of the situation and the consequences of their consent to the transfer of their children to a separate building.
Reiterating the fundamental importance of the prohibition of racial discrimination, the Court considered that the possibility that someone could waive their right not to be the victim of such discrimination was unacceptable. Such a waiver would be incompatible with an important public interest.
That being so, in spite of the authorities' willingness to educate Roma children, the conditions of school enrolment for those children and their placement in special preparatory classes – in an annexe to the main school building – ultimately resulted in discrimination against them.
Conclusion: violation (unanimously).

Article 13 – The Greek Government had not adduced evidence of any effective remedy that the applicants could have used in order to secure redress for the alleged violation of Article 14 of the Convention taken together with Article 2 of Protocol No. 1.
Conclusion: violation (unanimously).

ARTICLE 34

VICTIM
Loss of victim status by applicant following assignment of his rights to another applicant: *striking out*.

DIMITRESCU - Romania (N^{os} 5629/03 and 3028/04)
Judgment 3.6.2008 [Section III]

Facts: The applicants are brothers. Their father purchased some real estate comprising a piece of land with two buildings containing flats. The State subsequently nationalised the property. The applicants lodged an action against the municipal council before the court of first instance to recover the property. In the meantime they notified the company responsible for managing State property not to sell it to the tenants as they had lodged an action for recovery of possession. The State nevertheless sold the flats to third parties occupying them as tenants. The appurtenant land was also sold. After the initial judgment was overturned and the case remitted, the court of first instance in a final judgment allowed the action and ordered the municipal council to return the property to the applicants. The applicants took legal action against the buyers and in some but not all cases the courts issued final decisions in their favour. Finally, the applicants asked the municipal authorities, by virtue of the law, to return their property. That request has not yet been examined, however, as the applicants failed to submit certain documents.

Preliminary observation: By an authentic deed of transfer the first applicant transferred his rights in respect of the present proceedings to his brother, the second applicant. In the same deed of transfer the parties agreed that the second applicant was thereby subrogated to all the rights of the first applicant. The Court saw no reason not to take the agreement between the parties into account and, from that time on,

consider the second applicant as the only applicant. It further considered that the first applicant no longer had *locus standi* in the matter and that the applications concerning him should be struck out of the list.
Conclusion: striking out with respect to the first applicant.

Law: Article 1 of Protocol No. 1 – The applicant had a final, irrevocable court decision ordering the authorities to return the property to him, including the two flats and the appurtenant land at issue in this application. Furthermore, his title to the property under the final judgment was not conditional on any other formalities. Under Romanian legislation governing actions to recover property and the restitution of property nationalised by the communist regime, the sale by the State to third parties acting in good faith of property belonging to others, even prior to final confirmation by the courts of the others' title to the property, was considered as a deprivation of property. That deprivation, combined with a total lack of compensation, was contrary to Article 1 of Protocol No. 1. In addition, the law did not take into account the damage prolonged lack of compensation caused to persons deprived of their property. It followed that the negation of the applicant's ownership rights to his flats and the appurtenant land, combined with the total lack of compensation, had imposed a disproportionate and excessive burden on the applicant which was incompatible with his right to the peaceful enjoyment of his possessions.
Conclusion: violation (unanimously).

Article 41 – The respondent State was to return the two flats and the appurtenant land to the applicant. Failing that, EUR 210,000 in respect of pecuniary damage. EUR 4,000 for non-pecuniary damage.

VICTIM
Domestic redress for ill-treatment by police officers including express judicial condemnation, the officers' conviction and the exclusion of the applicant's confession: *loss of victim status*.

GÄFGEN - Germany (N° 22978/05)
Judgment 30.6.2008 [Section V]

(see Article 3 above).

ARTICLE 35

Article 35 § 1

EXHAUSTION OF DOMESTIC REMEDY (Denmark)
Failure to exercise a remedy for the length of proceedings which, if successful, could have resulted in an exemption from costs order: *inadmissible*.

PINDSTRUP MOSEBRUG A/S - Denmark (N° 34943/06)
Decision 3.6.2008 [Section V]

The applicant company is a private company in the peat extraction business. In November 1954 it entered into a contract with a State authority for the extraction of peat in a named bog for 50 years, i.e. until 2005. Nevertheless, at the end of 1978 and beginning of 1979 the State interfered with the applicant company company's rights under the contract, partly by commencing procedures to preserve the bog since it was considered an area of outstanding environmental interest and partly by passing legislation making the extraction of peat in general subject to a permit, which was refused in respect of the southern part of the bog at issue. In 1997 the applicant company contested those decisions in proceedings in the High Court, which in 2001 awarded it compensation. The Supreme Court overturned that judgment, in 2006 finding the interference with the applicant company company's rights justified due to significant environmental interests. It also ordered the applicant company to pay the competent Ministry the costs of the proceedings.

Inadmissible: Article 6 § 1 – The applicant company firstly complained of the excessive length of the proceedings. The Court observed that under domestic law, in civil proceedings instituted by an individual against a public authority, the Danish courts could grant redress for a length-of-proceedings violation by, for example, exempting the individual from paying legal costs. However, the applicant company never complained about the length of the proceedings while the case was still pending before the Supreme Court. Since it eventually lost the case and was ordered to pay the costs of the proceedings, it could have realistically been exempted from paying such costs if it had lodged such a complaint and such complaint had been successful. The foregoing was sufficient for the Court to conclude that the applicant company had failed to avail itself of a remedy which may have been considered effective in the case: *non-exhaustion of domestic remedies*.

Article 1 of Protocol No. 1 – The Court agreed with the domestic authorities that the interference with the applicant company's right to the peaceful enjoyment of its possessions occurred in 1979, when the Nature Preservation Act came into force and the applicant company was refused a permit to work part of the leased area. It was undisputed that that part of the bog consisted of unspoiled raised bog that was geologically and biologically unique, and that nationally it had been of the greatest value in terms of nature preservation. In deciding the applicant company's case the Supreme Court found that the applicant company had not been affected in a particularly severe manner; at the relevant time it had not invested in any production facilities in the disputed part of the bog and had access to considerable expanses elsewhere in Denmark. The Court considered those observations made by the Supreme Court relevant and appropriate in the applicant company's case. Its claims were carefully examined by two levels of jurisdiction, which took into account all relevant elements and reached conclusions which were neither arbitrary nor unreasonable. They had therefore fulfilled their duty to strike a fair balance between the applicant company's property rights and the general interests of the community: *manifestly ill-founded*.

SIX-MONTH PERIOD

Company's continuing failure to comply with order to reinstate a dismissed employee ended by supervening winding up order: *preliminary objection upheld*.

CONE - Romania (N° 35935/02)
Judgment 24.6.2008 [Section III]

Facts: In 1998 an agricultural joint stock company in which the State was a majority shareholder dismissed the applicant. In a judgment delivered in 1999 the court ordered the company to reinstate her in her post. In a judgment pronounced in 2000 the County Court ordered the company to pay her a sum in compensation for the wages she had not been paid. In a judgment of 26 June 2001, in the applicant's presence, the County Court decided to open insolvency proceedings and duly appointed a liquidator. In 2002 decisions finding that there was no case to answer in respect of the criminal proceedings brought by the applicant against her former employers' accountant and manager were confirmed. In 2003 the County Court found that the debtor company's assets were insufficient to cover all the company's debts, including what it owed the applicant, and terminated the insolvency proceedings, ordering the company to be wound up. The judgment and decisions in the applicant's favour remained unenforced.

Law: (a) Regarding the objection that the application was out of time in so far as it concerned the final judgment of 1999 that the applicant should be reinstated in her former post, the Court had to examine the Government's argument that it would have been "objectively impossible" to execute the aforesaid judgment once the compulsory liquidation of the employer company had been ordered by the judgment of 26 April 2001, which judgment had allegedly brought the continuing situation to an end and was the starting point for calculation of the six-month time-limit. The Court had previously found continuing situations to exist in cases concerning the reinstatement of applicants in their posts by the authorities, even though the State had argued that the posts concerned had been abolished and the government department where the applicant worked dissolved or the relevant company or State institution liquidated. However, a distinction had to be made between those cases and the present case. Firstly, while the applicant could

have expected the authorities to execute the 1999 judgment even though her post had been abolished, that had not been the case after the County Court's judgment of 26 June 2001 finding that recovery was impossible and ordering the company's liquidation, leading to the winding up of its activities and the sale of its assets by a liquidator. Subsequent to these judicial decisions, the authorities, which could previously have been held responsible for the failure to execute the judgment concerned, had no longer been in a position to reinstate the applicant in her former post as the company had been liquidated. That being so, the only result applicant's appeal against the court's decisions that there was no case to answer might be expected to produce was legal action against those responsible, without any incidence on the execution of the order to reinstate her in her post or an equivalent post. In that respect, unlike in similar cases, there was no evidence to show that the authorities had adopted contradictory positions as to the possibility of executing the 1999 judgment, or that the company in question had been replaced by a comparable structure, where an equivalent post might have been found for the applicant. The applicant herself had made no such claim. Having regard to the very particular circumstances of this case, the opening of liquidation proceedings against the company by the judgment of 26 June 2001 had been such as to put a stop to the continuing situation in respect of the obligation to reinstate the applicant in her former post; the date of the opening of liquidation proceedings was therefore the date from which the six-month time-limit ran. As the applicant had submitted her complaint about the failure to enforce the 1999 judgment to the Court on 20 September 2002, the Government's preliminary objection was to be allowed and the corresponding part of the application rejected as being *out of time*.

(b) With respect to the failure to enforce the 2000 judgment, the Court found a violation of Article 6 § 1 and Article 1 of Protocol No. 1.

ARTICLE 46

EXECUTION OF A JUDGMENT
Invitation to State to comply with Court's case-law on the effectiveness of remedies.

MARTINS CASTRO and ALVES CORREIA DE CASTRO - Portugal (N° 33729/06)
Judgment 10.6.2008 [Section II]

(see Article 13 above).

ARTICLE 1 OF PROTOCOL No. 1

PEACEFUL ENJOYMENT OF POSSESSIONS
Refusal to grant permit for peat extraction for nature conservation reasons: *inadmissible*.

PINDSTRUP MOSEBRUG A/S - Denmark (N° 34943/06)
Decision 3.6.2008 [Section V]

(see Article 35 § 1 above).

CONTROL OF THE USE OF PROPERTY
Inability of the owner to recover possession of let agricultural land at the end of the lease owing to a decision by the courts to grant the tenant permission to assign the lease to his son: *no violation*.

GAUCHIN - France (N° 7801/03)
Judgment 19.6.2008 [Section V]

Facts: The first applicant, a farmer and owner of agricultural land, leased several pieces of land to a farmer and his wife for a period of twelve full, consecutive years. Together with his son, the second applicant, also a farmer, the first applicant set up a farming partnership to farm the family land. When the first applicant retired the second applicant continued to farm the land with his mother. The tenants' lease was tacitly renewed. They requested the first applicant's authorisation to assign the lease to their son, but received no answer. The first applicant gave them notice to vacate all the land concerned in conformity with the Countryside Code. The tenants brought an action against the first applicant before the agricultural land tribunal to secure authorisation to assign the lease to their son. The first applicant served them with a second notice, annulling and replacing the first. This notice was served primarily because the tenants would have reached retirement age by the time the lease expired; in the alternative so that the second applicant and his mother could recover the land; and in the further alternative so that the second applicant could recover it for his own use. The tenants challenged the two notices in succession before the agricultural land tribunal. The tribunal validated the second notice because of the tenants' age and to enable the owners to recover the leased land, noting that the applicant and his mother would otherwise be farming no more than 46 hectares each, which was not in their interest. It accordingly ordered the tenants to vacate the land. The tenants appealed and the second applicant intervened in the proceedings on his own initiative. The Court of Appeal upheld the judgment in respect of the notice served on account of the tenants' age but set aside the remainder and authorised the transfer of the lease to the son. The applicants appealed to the Court of Cassation on points of law and submitted a supplementary memorial arguing that the Court of Appeal had not ruled on the grounds for the notice based on the recovery of the leased land and challenging the reasons which had led that court to authorise the transfer of the lease. The appeal was rejected. The first applicant had notice served on the tenant at the date of expiry of the renewed lease, to recover the land for the benefit of the second applicant. And in order to be able to farm the land at issue upon expiry of the lease, the second applicant applied to the prefect for prior authorisation to farm the land, but was refused.

Law: The questions of the existence among the second applicant's assets of a possession within the meaning of Article 1 of Protocol No. 1, and of his victim status for the purposes of Article 34 of the Convention, were closely connected. They were therefore to be examined together. Even assuming that the second applicant, who intervened in the domestic proceedings as the designated recipient of the land, could be considered a victim, he could complain of a violation of Article 1 of Protocol No. 1 only in so far as the proceedings he challenged concerned possessions to which he was entitled for the purposes of that provision. However, the first applicant was the sole owner of the disputed plots of land and, as such, the only holder, under the Countryside Code, of the right to recover the land or refuse to renew the lease. Furthermore, domestic law attached no legal effect to the fact that the second applicant had been designated as the possible recipient of the leased land with a view to farming it, and in that capacity he could claim no right or debt in his own name under the domestic law or case-law. He could therefore not claim title to an actual possession or to a payable debt. Accordingly the second applicant had no title to a real and substantive interest protected by Article 1 of Protocol No. 1: *incompatible* ratione personae.

Article 1 of Protocol No. 1 – The application of the Countryside Code by the domestic courts, making it impossible for the first applicant to recover the disputed land when the lease expired, amounted to control of the use of property within the meaning of the second paragraph of Article 1 of Protocol No. 1. It was not disputed by the parties that the interference in question was provided for by law, namely the provisions of the Countryside Code. As to the aim pursued, the Court accepted the Government's argument that those provisions pursued an aim in the public interest, which was to guarantee the tenant farmer security of tenure to put his investments to profitable use, and to support medium-sized farms as a development model for French agriculture by facilitating transfer from one generation to another. The

Court's duty was also to consider whether there was a reasonable relationship of proportionality between the means employed and the aim pursued; in other words, it should seek to determine whether a balance had been struck between the demands of the general interest and the interest of the individual or individuals concerned. In so doing, the Court recognised that the State enjoyed a wide margin of appreciation with regard both to choosing the means of enforcement and to ascertaining whether the consequences of enforcement were justified in the general interest for the purpose of achieving the object of the law in question. In order to guarantee the stability of the farm, French law provided for a minimum duration for a lease and for the right to renew it when it expired. It also encouraged continuity in the family by providing for the tenant farmer to be able to assign the lease to his or her spouse or descendant, with the owner's permission or the authorisation of a court. However, the owner had the right to refuse to renew the lease in certain circumstances, including the legitimate reasons listed in the Countryside Code, the tenant's age, or to farm the land himself or for his spouse or descendant to farm it. In addition, where there were conflicting interests, as in the present case, French law provided procedural guarantees for the owner, as it was for the agricultural land tribunal and the Court of Appeal to rule on applications to transfer leases or to recover leased land. In this case, before authorising the transfer, the Court of Appeal had first made sure that the operation would not harm the legitimate interests of the owner, within the meaning of the Countryside Code, by verifying in detail whether the tenants had fulfilled all their obligations under the lease, such as paying the rent and properly farming the land. It then considered whether the assignee met the requisite conditions in terms of diplomas and professional experience and had an administrative authorisation to farm the land. Only after verifying all these conditions had the court authorised the transfer of the lease. Lastly, although the first applicant had been unable to recover his land when the lease expired, he did receive rent for it which he had not alleged was insufficient. That being so, bearing in mind the margin of appreciation in the matter, a fair balance had been struck between the requirements of the general interest and the protection of the first applicant's right to the peaceful enjoyment of his possessions.
Conclusion: no violation (unanimously).

ARTICLE 3 OF PROTOCOL No. 1

STAND FOR ELECTION
Ineligibility for election of a former member of a military unit affiliated to the KGB: *no violation*.

ADAMSONS - Latvia (N° 3669/03)
Judgment 24.6.2008 [Section III]

Facts: The applicant was an officer in the Border Guard Forces of the former Soviet Union, an armed corps placed under the supervision of the KGB. During his service, which was mainly in the Far East, he was promoted to the rank of Commander. After the break-up of the USSR all the Soviet Armed Forces came under the jurisdiction of the Russian Federation. In 1992 the applicant left the Russian Border Guard Forces and returned to Latvia, where he was appointed to important posts in the command of the army. He became Vice-Commander of the Navy and then Commander of the Latvian Border Guard Forces. Finally, he abandoned his military career to go into politics. After having been Minister of the Interior, he was elected to Parliament in 1995. The applicant left the party then in power ("The Latvian Way") and joined the ranks of the Social Democrat opposition. The Parliamentary Record Office took measures to have him formally recorded as having collaborated with the KGB. In a judgment given at the request of the prosecutor's office, a court found that the applicant had been a "serving officer of the KGB Border Guard Forces" and not a "KGB officer" as the prosecution had maintained. On the basis of that judgment a number of members of parliament attempted to have the applicant's parliamentary mandate revoked. They referred to a section of the Parliamentary Elections Act which disqualified citizens who were or had been serving officers of organs of public security or intelligence or counter-espionage services of the USSR, the SSR of Latvia or a foreign State from elected office. However, the parliamentary commission found that the judgment drew a clear distinction between a "KGB officer" and an "officer of the KGB Border Guard Forces", even if the latter was subordinate to the KGB. The

restriction in question applied only to the first category. In 2002 the applicant stood in the parliamentary elections as a candidate for the Workers' Social Democratic Party of Latvia. Under the above-mentioned section of the Parliamentary Elections Act, however, the Central Electoral Commission struck him out of the list. The applicant appealed to the Central District Court. His appeal was dismissed and that ruling was upheld by the Senate of the Supreme Court. In 2006 the applicant was not able to stand for election.

Law: Article 3 of Protocol No. 1 – In order to be compatible with the Convention, a lustration procedure had to meet certain conditions.

a) *Lawfulness*: The applicant had been prevented from standing for election in application of the sub-section of the Parliamentary Elections Act which disqualified citizens who were or had been serving officers of organs of public security or intelligence or counter-espionage services of the USSR, the SSR of Latvia or a foreign State from elected office. In its final judgment upholding the decision to dismiss the applicant's appeal the Senate of the Supreme Court had refused to entertain the distinction drawn by the applicant between a KGB officer and an officer of the KGB Border Guard Forces, thereby acknowledging that the provisions of the law concerned applied to him. The judgment therefore appeared sufficiently well-reasoned and the conclusions were not arbitrary.

b) *Legitimate aim*: Having regard to the situation Latvia had experienced under the Soviet yoke and the active role played by the KGB, the main State security organisation of the former USSR, in keeping the totalitarian regime in place and combating all political opposition to that regime, the impugned Elections Act had served the legitimate purpose of protecting the independence of the State, its democratic order, its institutional system and its national security.

c) *Proportionality*: In the light of the particular socio-historical background to the applicant's case, the Court could accept that during the first years after Latvia had regained independence electoral rights could be substantially restricted without this infringing Article 3 of Protocol No. 1. However, with the passing of time, a mere general suspicion regarding a group of persons no longer sufficed and the authorities had to provide further arguments and evidence to justify the measure in question. The legal provision applied in this case targeted former officers of the KGB. Having regard to the wide-ranging functions of that agency, that concept was too broad: taken at face value it could be understood to include all those who had served in the KGB, regardless of the period concerned, the actual tasks they had been assigned and their individual conduct. The Constitutional Court had expressly mentioned this problem. The present case was fundamentally different from the *Ždanoka* case. Unlike in that case, it was not sufficient here simply to find that the person belonged to the group concerned. As that group was defined in terms which were too general, any restriction on the electoral rights of its members should take a case-by-case approach which would allow their actual conduct to be taken into account. The need for such a case-by-case approach grew greater over the years, as the period when the impugned acts were supposed to have taken place grew more distant in the past. The applicant had never been accused of having been directly or indirectly involved in the misdeeds of the communist totalitarian regime, such as repression of political and ideological opposition, informing against people or taking any other measure against them. There appeared to be nothing in the applicant's past to suggest that he had opposed or expressed hostility to the recovery of Latvia's independence and democratic order. Moreover, the applicant had not officially been declared disqualified from standing in elections until much later, after a remarkable ten-year military and political career in Latvia as re-established. Indeed, from his return he had held very important posts before embarking on a parliamentary career. Only the most compelling reasons could justify disqualifying the applicant in such conditions. In the absence of any information revealing new facts about the applicant, his disqualification was clearly at odds with the principle of legitimate trust. The ten-year period during which restrictions provided for in other legal instruments could be applied to former KGB officers was to expire in June 2004. Shortly afterwards, however, Parliament had extended it by another ten years. As neither Parliament nor the Government had explained the reasons for the extension, in spite of the passage of time and the stronger stability now enjoyed by Latvia thanks to its full integration into the European fold, the only possible conclusion was that the extension of the ban had been clearly arbitrary in respect of the applicant. Moreover, the facts of the present case revealed that the Constitutional Court of Latvia had found it possible to adopt a case-by-case approach in respect of another former KGB officer. It followed

that the authorities had exceeded their acceptable margin of appreciation and the interference complained of was incompatible with the requirements of Article 3 of Protocol No. 1.
Conclusion: violation (six votes to one).

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

See also the *Ždanoka v. Latvia* [GC] judgment, no. 58278/00, 16 March 2006, Information Note no. 84.

STAND FOR ELECTION
Obligation to give up double or multiple nationalities to stand for legislative elections: *communicated*.

TANASE and CHIRTOACA - Moldova (N° 7/08)
[Section IV]

In 2008 a new electoral law entered into force in Moldova, according to which persons holding double or multiple nationalities are allowed to stand for legislative elections, but are obliged to give up the other nationalities before the validation of their MP mandates by the Constitutional Court. According to the initial version of the draft law, only persons having exclusively Moldovan citizenship were entitled to run for Parliament.
The applicants, Moldovan citizens, are politicians in Moldova, and have both Moldovan and Romanian nationality. Each one is Vice-President of an opposition party. The next legislative elections will be held in 2009. They complain that the law compromises their right to stand for elections and that the provision is not applicable to other Moldovan nationals who live in Transdniestria.
Communicated under Article 34 (applicants' victim status) and Article 3 of Protocol No. 1 taken separately or in conjunction with Article 14.

Cases selected for publication[1]

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

Grand Chamber judgments

HUTTEN-CZAPSKA – Poland (just satisfaction – friendly settlement) (N° 35014/97) (107)
BURDEN and BURDEN – United Kingdom (N° 35014/97) (107)
N. – United Kingdom (N° 26565/05) (108)

Chamber judgments

RODIĆ and Others – Bosnia-Herzegovina (N° 22893/05) (108)
C.G. and Others – Bulgaria (extracts) (N° 1365/07) (107)
MEGADAT.COM SRL – Moldova (N° 21151/04) (107)
ROSENGREN – Romania (extracts) (N° 70786/01) (107)
WASSERMAN – Russia (N° 21071/05)
ISMOILOV – Russia (extracts) (N° 2947/06) (107)
DEDOVSKIY and Others – Russia (extracts) (N° 7178/03) (108)
SHTUKATUROV – Russia (N° 44009/05) (106)
McCANN – United Kingdom (N° 19009/04) (108)

Decisions

EL MORSLI – France (N° 15585/06) (106)
MARCHIANI – France (extracts) (N° 30392/03) (108)

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