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

Information Note on the Court's case-law

No. 131 June 2010

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

The Information Note, compiled by the Court's Case-Law Information and Publications Division, contains summaries of cases examined during the month in question which the Registry considers as being of particular interest. The summaries are not binding on the Court. In the provisional version the summaries are normally drafted in the language of the case concerned, whereas the final single-language version appears in English and French respectively. The Information Note may be downloaded at <www.echr.coe.int/echr/NoteInformation/en>. A hard-copy subscription is available for 30 euros (EUR) or 45 United States dollars (USD) per year, including an index, by contacting the publications service via the on-line form at <www.echr.coe.int/echr/contact/en>.

The HUDOC database is available free-of-charge through the Court's Internet site (<www.echr.coe.int/ECHR/EN/hudoc>) or in a pay-for DVD version (<www.echr.coe.int/hudoccd/en>). It provides access to the full case-law and materials on the European Convention on Human Rights, namely the decisions, judgments and advisory opinions of the Court, the reports of the European Commission of Human Rights and the resolutions of the Committee of Ministers.

European Court of Human Rights
(Council of Europe)
67075 Strasbourg Cedex
France
Tel: 00 33 (0)3 88 41 20 18
Fax: 00 33 (0)3 88 41 27 30
www.echr.coe.int

ISSN 1996-1545

TABLE OF CONTENTS

ARTICLE 2 OF PROTOCOL No. 1

Right to education

ARTICLE 2

Positive obligations

Suicide of prisoner through overdose of psychotropic drugs prescribed for mental disorders: *violation*

Jasińska v. Poland - 28326/05
Judgment 1.6.2010 [Section IV]

Facts – The applicant is the grandmother of R.Ch., who had been undergoing treatment since his childhood for psychological problems and headaches. In 2002 R.Ch. began a prison sentence for theft. In August 2004 he was taken to hospital, where he died after admitting that he had swallowed 60 psychotropic tablets, prescribed by a prison doctor. The autopsy established that death was due to drug poisoning. Criminal proceedings instituted by the public prosecutor's office were closed on the ground that R. Ch. had committed suicide after taking a substantial quantity of drugs in one go, having hidden them under his tongue each time the nurse had distributed them. In 2006 the applicant brought further proceedings against the authorities, but the criminal investigation was terminated on the ground that there was no evidence to suspect that a third party had been involved or that the authorities had been negligent.

Law – Article 2: It was generally accepted that R.Ch. had long been suffering from mental problems and severe headaches. Furthermore, an expert report of 29 May 2002 had indicated that he had mentioned a previous attempt to commit suicide and, three days before his death, a doctor's report had found that he was suffering from depression. Accordingly, the prison authorities, who had been apprised of the deterioration in his mental state, should have given thought to the risk of suicide. However, the medical prescriptions had been renewed without any consideration being given to other means of monitoring his condition. Moreover, after the proceedings against R.Ch., no thought had ever been given to a possible placement in a specialised institution or in solitary confinement. The Court questioned whether a prison regime had been appropriate in the present case. The authorities in charge of the post-mortem procedures had never attempted to clarify the exact circumstances in which the psychotropic drugs had been administered or how supervisory duties had been carried out by the medical staff, whose task was, in theory, to ensure that prisoners swallowed their pills. Nor had the Government provided a plausible explanation for how R. Ch. had managed to elude the vigilance of the prison authorities by amassing a lethal quantity of drugs. There had accordingly been a clear deficiency in the system, which had allowed a first-time prisoner, who was mentally fragile and whose state of health had deteriorated, to gather a lethal dose of drugs without the knowledge of the medical staff, and to commit suicide. The duty to provide inmates with adequate medical care should not be confined to prescribing appropriate medicines without also ensuring that they were properly taken and properly monitored. This was particularly important where mentally disturbed prisoners were concerned. Accordingly, the authorities had failed to comply with their obligation to protect R.Ch.'s right to life

Conclusion: violation (unanimously).

Article 41: EUR 16,000 for non-pecuniary damage.

(See also *Renolde v. France*, no. 5608/05, 16 October 2008, Information Note no. 112)

ARTICLE 3

Inhuman or degrading treatment

Lack of adequate medical treatment in prison for a period of less than fourteen days: *no violation*

Gavriliță v. Romania - 10921/03
Judgment 22.6.2010 [Section III]

Facts – In October 2000 the applicant was taken into police custody. He was transferred to a detention centre in March 2001. In October 2001 the country court gave him a three-year prison sentence for drug-trafficking and the judgment was upheld by the court of appeal. He was released on licence in April 2003. He complained that he had contracted tuberculosis in the detention centre.

Law – Article 3: On his arrival at the detention centre in 2001, the applicant had showed no signs of tuberculosis or any other pulmonary disease. The Court found it probable that he had contracted the tuberculosis at the detention centre. The prison authorities carried out systematic tests for tuberculosis on the arrival of each inmate. There was no evidence in the file to show that the applicant had complained to the authorities of the detention centre before March 2003 of health problems that might be symptoms of tuberculosis.

As soon as he was diagnosed with tuberculosis, the head doctor at the detention centre recommended his transfer to another detention-centre hospital for specific treatment. However, following his transfer he was only given medication for fever and headaches and it was not until after his release that he received treatment for tuberculosis. Nevertheless, the period during which the applicant had been without adequate medical care had lasted only fourteen days between the date the illness was detected and the date of his release. Moreover, during that period he had nonetheless benefited from treatment for his weak condition. Concerning the conditions of his detention, it could not be concluded that they had been so insalubrious, unhygienic or overcrowded as to have had a negative impact on the applicant's health or well-being.

Conclusion: no violation (five votes to two).

(See also *Ghavtadze v. Georgia*, no. 23204/07, 3 March 2009, Information Note no. 117)

Inhuman treatment

Threats of physical harm by police to establish whereabouts of missing child: *violation*

Gäfgen v. Germany - 22978/05
Judgment 1.6.2010 [GC]

(See Article 34 below – page 17)

Degrading treatment

Inadequate medical care in detention facility and use of metal cage during appeal hearing: *violations*

Ashot Harutyunyan v. Armenia - 34334/04
Judgment 15.6.2010 [Section III]

Facts – The applicant suffered from various illnesses including an acute duodenal ulcer, diabetes, diabetic angiopathy and a heart condition. In January 2004 he was convicted of defrauding a business partner and given a seven-year prison sentence. He appealed. During each of the twelve hearings before the court of appeal he was kept in a metal cage, an experience he said he found humiliating. His conviction was ultimately upheld by the Court of Cassation. From his arrest in May 2003 until his transfer to prison in August 2004, he was held in a detention facility where he alleged he did not receive the treatment his numerous infirmities required. In particular, despite a recommendation by a doctor from the facility in June 2003 for him to have surgery for his ulcer, no operation was ever carried out. He further claimed that, between August 2003 and August 2004 he was held in an ordinary cell in the detention facility, and not provided with regular check-ups, medication or a special diet. Both his own and his lawyer's numerous requests for him to receive medical assistance and to be transferred to hospital were ignored until in July 2004 he had a heart attack. His lawyer was subsequently informed that the applicant had received treatment and that his condition was satisfactory.

Law – Article 3: (a) *Lack of medical care in detention* – Given the number of serious illnesses from which the applicant suffered, he had clearly been in need of regular care and supervision. There was, however, no medical record to prove that the surgery recommended by his doctors had ever been carried out. There was no record in the applicant's medical file of his receiving any check-up or assistance from the detention facility's medical staff between August 2003 and August 2004. Especially worrying was the fact that his heart attack in July 2004 had coincided with several unsuccessful attempts by his lawyer to draw the authorities' attention to the applicant's need for medical care. In any event, a failure to provide requisite medical assistance in detention could be incompatible with Article 3 even if it did not lead to a medical emergency or otherwise cause severe or prolonged pain. The applicant was clearly in need of regular medical care and supervision, which was denied to him over a prolonged period. His lawyer's complaints had met with no substantive response and his own requests for medical assistance had gone unanswered. This must have caused him considerable anxiety and distress, beyond the unavoidable level of suffering inherent in detention.

Conclusion: violation (unanimously).

(b) *Use of metal cage* – Nothing in the applicant's behaviour or personality could have justified such a security measure: he had no previous convictions, no record of violent behaviour (no security measures had been used at first-instance) and he was accused of a non-violent crime. Indeed, it seemed that the applicant had been placed in a metal cage simply because that had been the seat where defendants in criminal cases were always placed. The average observer could easily have believed that an extremely dangerous criminal was on trial. Such exposure to the public, including

family and friends, must have been humiliating and aroused feelings of inferiority, while at the same time impairing his powers of concentration and mental alertness in proceedings where his criminal liability was at stake. Such a stringent and humiliating measure, which was not justified by any real security risk, had amounted to degrading treatment.

Conclusion: violation (unanimously).

Article 6 §§ 1 and 2: While disapproving of the use of the cage, the Court noted that the applicant had had two lawyers to assist him and there was nothing to suggest that the cage had prevented him from communicating confidentially and freely with them or the court. He had therefore been able to defend his case effectively and it could not be said that the measure had placed him at a substantial disadvantage. Nor did the use of the cage suggest that he had been presumed guilty, as it was a permanent security measure that was used in all criminal cases examined in the court of appeal. There had therefore been no infringement of the principle of equality of arms or breach of the presumption of innocence.

Conclusion: no violation (unanimously).

Article 41: EUR 16,000 in respect of non-pecuniary damage.

ARTICLE 6

Article 6 § 1 (criminal)

Fair hearing

Use in trial of evidence obtained under duress: *no violation*

Gäfgen v. Germany - 22978/05
Judgment 1.6.2010 [GC]

(See Article 34 below – page 17)

Independent and impartial tribunal

Assessment of question of pure fact evidence by an almost identically composed bench of the Court of Cassation in two successive appeals: *violation*

Mancel and Branquart v. France - 22349/06
Judgment 24.6.2010 [Section V]

Facts – In 2000 a criminal court convicted the applicants of acquiring or retaining a prohibited interest and aiding and abetting that offence. The Court of Appeal acquitted the applicants, but the Court of Cassation reversed and quashed that judgment in 2002 and remitted the case to a different court of appeal. The latter found the applicants guilty and passed sentence. In 2005 the Court of Cassation dismissed the appeals on points of law lodged against that judgment by the applicants.

Law – Article 6 § 1: The applicants had feared that the Court of Cassation would not be impartial as seven of the nine judges on the bench examining in 2005 their appeal on points of law against their conviction had sat on the bench which in 2002 had heard the prosecution appeal against the acquittal judgment. Accordingly, the Court had to determine whether, bearing in mind the task facing the judges of the Court of Cassation in examining the first appeal, they had been biased or could legitimately be considered to have been biased when it came to ruling on the second. In reaching its decision the Court had to take into consideration the particular features of the Court of Cassation's role, which consisted not in reassessing the purely factual evidence but in reviewing the lawfulness of the impugned decision and verifying whether it had been justified and adequate reasons had been given. In the instant case the Court of Cassation had made its decision on the first appeal by reference to the factual evidence that the offence had actually been committed, finding both the objective and subjective elements of the offence to have been made out. In the context of the second appeal it had been called upon again to review the assessment of the constitutive elements of the offence, this time by the court of appeal to which the case had been remitted. There had therefore been objective reasons to fear that the Court of Cassation might be biased or prejudiced in ruling on the second appeal, lodged by the applicants. Accordingly, there had been a breach of their right to an impartial tribunal.

Conclusion: violation (by four votes to three).

Article 41: finding of a violation sufficient in itself in respect of non-pecuniary damage.

Article 6 § 2

Presumption of innocence

Permanent use of metal cage as a security measure during appeal hearings: *no violation*

Ashot Harutyunyan v. Armenia - 34334/04
Judgment 15.6.2010 [Section III]

(See Article 3 above – page 8)

ARTICLE 8

Applicability

Cohabiting same-sex couple living in a stable relationship constitute "family life": *Article 8 applicable*

Schalk and Kopf v. Austria - 30141/04
Judgment 24.6.2010 [Section I]

(See Article 14 below – page 15)

ARTICLE 9

Freedom of religion

Obligation to disclose religious convictions to avoid having to take religious oath in criminal proceedings: *violation*

Dimitras and Others v. Greece - 42837/06 et al.
Judgment 3.6.2010 [Section I]

Facts – In 2006 and 2007 the applicants were summoned to appear in court as witnesses or complainants in criminal proceedings. As such, in accordance with the Code of Criminal Procedure, they were asked to take the oath by placing their right hands on the Bible. Each time, they had to inform the authorities that they were not Orthodox Christians and preferred to make a solemn declaration instead, which they were authorised to do. In several cases, in the standard wording of the record of the proceedings concerned, the words "Orthodox Christian", were crossed out and replaced by the handwritten references "atheist" and "made a solemn declaration", for example. Some records were actually incorrect, stating "Orthodox Christian – took the oath".

Law – Article 9: It appeared that the applicants were considered as Orthodox Christians as a matter of course and had to explain that they were not, and in certain cases that they were atheists or Jews, in order to have the standard wording of the record of the proceedings changed. There had thus been interference with their religious freedom. The interference had been prescribed by law and pursued the legitimate aim of protecting public order and, in particular, guaranteeing the proper administration of justice. On the question of whether it had been proportionate to the legitimate aim pursued, the Court considered that the provisions concerned were difficult to reconcile with freedom of religion in so far as the Code of Criminal Procedure created the presumption that a witness was an Orthodox Christian and would take a religious oath. The very wording of the Code meant that people had to give details of their religious convictions in order to rectify that presumption and avoid having to take a religious oath. Furthermore, the Code of Criminal Procedure required witnesses to state their religion in any event in order to be heard in criminal proceedings, whereas in civil proceedings witnesses could choose between a religious oath and a solemn declaration, and were thus not obliged to divulge their religious beliefs. The law as applied in this case had obliged the applicants to reveal their religious beliefs in order to make a solemn declaration, thereby interfering with their freedom of religion. The interference had not been justified in principle or proportionate to the aim pursued.

Conclusion: violation (unanimously).

The Court also found a violation of Article 13 (unanimously).

Article 41: EUR 15,000 to the applicants jointly in respect of non-pecuniary damage; respondent State required to remove from its legislation any obstacles that might prevent the applicants' situation from being adequately redressed.

(See also *Alexandridis v. Greece*, no. 19516/06, 21 February 2008, Information Note no. 105)

Dissolution of religious community without relevant and sufficient reasons: *violation*

Jehovah's Witnesses of Moscow v. Russia - 302/02
Judgment 10.6.2010 [Section I]

Facts – The applicant community – the Moscow branch of the Jehovah's Witnesses – obtained legal-entity status in December 1993. In October 1997 the Federal Law on Freedom of Conscience and Religious Associations entered into force. It required all religious associations with legal-entity status to amend their articles of association in line with the new statutory requirements and to re-register with the justice department. The applicant community made five unsuccessful appli-

cations for re-registration but, even after obtaining a court ruling in 2002 that the refusals to re-register it were unlawful, remained unregistered. In the meantime, following complaints by a non-governmental organisation aligned with the Russian Orthodox Church, a prosecutor brought a civil action for the community's dissolution. The proceedings ended in 2004 when a district court ordered its dissolution and a permanent ban on its activities after upholding various allegations of misconduct. An appeal by the applicant community was dismissed.

Law – Article 9 in the light of Article 11 (dissolution): The dissolution order, which had effectively stripped the applicant community of its legal personality and prohibited it from exercising the rights it had previously enjoyed, had amounted to interference. That interference was prescribed by law and pursued the legitimate aim of protecting health and the rights of others. It had not, however, been necessary in a democratic society as, firstly, the domestic courts had failed to adduce relevant and sufficient reasons to justify the measure and, secondly, it had been disproportionate to the legitimate aim pursued.

(a) *Absence of relevant and sufficient reasons* – Many of the district court's findings in support of the dissolution order had not been substantiated and were not grounded on an acceptable assessment of the relevant facts. For instance, there had been no evidence to support allegations that the applicant community or its members had engaged in coercion, lured children into the organisation or encouraged suicide. Indeed, some of the court's findings had attested to preconceived ideas about Jehovah's Witnesses that had resulted in its wrongly excluding defence evidence. The remaining allegations that had been made against the applicant community – that it had breached its members' right to respect for their private life, infringed the parental rights of non-community parents, encouraged members to refuse blood transfusions and incited them not to comply with civic duties – were also rejected by the Court for the following reasons:

(i) *Respect for private life and, in particular, the right to choose one's occupation*: Many religions determined doctrinal standards of behaviour and, by obeying such precepts, believers manifested their desire to comply strictly with the religious beliefs they professed. The community members had testified that they followed the doctrines and practices of the Jehovah's Witnesses of their own free will and personally determined for themselves their place of employment, the balance between work and free time, and the amount of time devoted to preaching or other religious activities. Those who had carried out religious service at the community centre were not employees but unpaid volunteers, and so were not subject to employment regulations. Voluntary work or part-time employment or missionary activities were not contrary to the Convention principles and the Court was unable to discern any pressing social need that could have justified the interference.

(ii) *Parental rights of non-community parents*: While it was true that children of mixed marriages had participated in the community's activities despite objections from the non-community parent, this did not appear to have stemmed from any improper conduct on the part of the community or its members but to have been approved and encouraged by the parent who was a Jehovah's Witness. The States were required by Article 2 of Protocol No. 1 to respect the rights of parents to ensure education and teaching in conformity with their own religious convictions and Article 5 of Protocol No. 7 established that spouses enjoyed equality of rights in their relations with their children. The domestic legislation did not make a child's religious education conditional on the existence of an agreement between the parents. Accordingly, any disagreements between the parents over the necessity and extent of a child's participation in religious practices and education were private family-law disputes that had to be resolved in accordance with the set procedure.

(iii) *Blood transfusions*: Freedom to accept or refuse specific medical treatment, or to select an alternative form of treatment, was vital to self-determination and personal autonomy. Many established jurisdictions had examined the cases of Jehovah's Witnesses who had refused a blood transfusion and found that, although the public interest in preserving the life or health of a patient was undoubtedly legitimate and very strong, it had to yield to the patient's stronger interest in directing the course of his or her own life. Russian law itself explicitly provided a right to refuse medical treatment or to request its discontinuation provided the patient had been given full accessible information about the possible consequences. There was no evidence that the applicant community had applied any improper pressure or undue influence on its members. Where the patient was a child, domestic law enabled a parent's decision to refuse treatment to be reversed by the courts. In sum, no pressing social need or relevant and sufficient reasons capable of justifying a restriction on the individual's right to personal

autonomy in the sphere of religious beliefs and physical integrity had been shown.

(iv) *Alleged incitement to refuse civic duties*: The religious admonishment to refuse military service was in full compliance with domestic law, which permitted conscientious objection, and no instances of any community members unlawfully refusing alternative civilian service had been cited at the trial. The domestic courts had not cited any domestic legal provision that would require Jehovah's Witnesses to pay respect to State symbols (as opposed to refraining from desecrating them); nor was there any duty in law to participate in celebrations during State holidays. Accordingly, it had not been shown that community members had been incited to refuse to carry out lawfully established civil duties.

(b) *Proportionality* – Before its dissolution in 2004, the applicant community had existed and legally operated in Moscow for more than twelve years, without any of its elders or individual members being found responsible for any criminal or administrative offence or civil wrong. However, in common with other religious organisations perceived by the Moscow authorities as "non-traditional"[1], it appeared to have been singled out for differential treatment. Forced dissolution and a ban on activities was the only sanction the domestic courts could apply to religious organisations found to have breached the requirements of the Law on Freedom of Conscience and Religious Associations, and was thus applied indiscriminately without regard to the gravity of the breach in question. That drastic measure had denied thousands of Jehovah's Witnesses in Moscow the possibility of joining fellow believers in prayer and observance. Accordingly, even assuming there had been compelling reasons for the interference, it had been disproportionate to the legitimate aim pursued.

Conclusion: violation (unanimously).

Article 11 in the light of Article 9 (refusal to re-register): The grounds invoked by the domestic authorities for refusing re-registration of the applicant community had had no lawful basis. The authorities had failed to give adequate reasons for their decisions or had imposed unduly burdensome requirements without any basis in law. By the time the re-registration requirement was introduced, the applicant had lawfully existed and operated in Moscow as an independent religious community for many years, without it or any of its individual members being found to have breached any domestic law or regulation governing associative life and religious activities. In these circumstances, the reasons for refusing re-registration should have been particularly weighty and compelling. In denying re-registration, the authorities had not acted in good faith and had neglected their duty of neutrality and impartiality towards the applicant community.

Conclusion: violation (unanimously).

The Court also found that the length of the dissolution proceedings had been unreasonable, in violation of Article 6 § 1 (unanimously).

Articles 41: EUR 20,000 to the applicant community and the four individual applicants jointly in respect of non-pecuniary damage. A review of the domestic judgments in the light of the Convention principles would be the most appropriate means of remedying the violations that had been identified in the applicant community's case.

1. See *Moscow Branch of the Salvation Army v. Russia*, no. 72881/01, 5 October 2006, Information Note no. 90, and *Church of Scientology Moscow v. Russia*, no. 18147/02, 5 April 2007, Information Note no. 96.

ARTICLE 10

Freedom of expression

Conviction of non-violent demonstrators for shouting slogans in support of an illegal organisation: *violation*

Gül and Others v. Turkey - 4870/02
Judgment 8.6.2010 [Section II]

Facts – In 2000 the applicants were convicted by a State Security Court of aiding and abetting members of an illegal organisation and sentenced to three years and nine months' imprisonment, after it found that they had participated in demonstrations and shouted slogans in support of an illegal organisation, including: "Political power grows out of the barrel of a gun" and "It is the barrel of the gun that will call to account".

Law – Article 10: The interference with the applicants' freedom of expression had been prescribed by law and pursued the legitimate aim of protecting national security and public order. As regards proportionality, the slogans had been shouted during lawful, non-violent demonstrations. Although, taken literally, some of the

phrases had been violent in tone, they were well-known, stereotyped leftist slogans which could not be interpreted as a call for violence or an uprising. In a pluralist democratic society, tolerance was required also of ideas that offended or shocked. There had been no indication that there had been a clear and imminent danger such as to require the lengthy criminal prosecution the applicants had faced. The applicants had initially been sentenced to three years and nine months' imprisonment and, although following a change in the legislation those proceedings had since been reopened, that sentence and the lengthy criminal proceedings had been disproportionate. The applicants' conduct could not be considered to have had an impact on national security or public order. The interference had not, therefore, been necessary in a democratic society.

Conclusion: violation (five votes to two).

Article 41: EUR 3,000 to each applicant in respect of non-pecuniary damage.

Seizure of book for almost two years and eight months on basis of unreasoned judicial decisions: *violation*

Sapan v. Turkey - 44102/04
Judgment 8.6.2010 [Section II]

Facts – The applicant is the owner of a publishing house which published a book in 2001 analysing the emergence of stardom as a phenomenon in Turkey and studying a well-known pop singer there. Considering that the book adversely affected his image and his personality rights, the singer applied for and obtained a court order for its seizure and a ban on its distribution. He later brought an action for damages against the applicant and the book's author before the same court. The applicant applied three times for the seizure order to be lifted, but the court dismissed his applications, without giving reasons. In May 2004 the court finally rejected the singer's claim for damages and lifted the seizure order on the book. In 2005, however, the Court of Cassation set that judgment aside, considering that the book had infringed the singer's personality rights. The proceedings are still ongoing in the Turkish courts.

Law – Article 10: the seizure of the book had amounted to interference with the applicant's enjoyment of his right to freedom of expression. The interference had been prescribed by law for the purpose of protecting the rights of others. The Court noted that the book was a partial reproduction of a doctoral thesis, and emphasised the importance of academic freedom. Through the example of the singer and using scientific methods, the author had analysed the star phenomenon and its appearance in Turkey, so the book could not be likened to the type of material published in the tabloid press and gossip magazines, which was generally aimed at satisfying the curiosity of a certain type of reader about the strictly private lives of celebrities. Furthermore, all the photographs used to illustrate the book were ones which had already been published, and for which the singer had posed. The court had ordered the seizure on the ground that the book infringed the singer's personality rights. It had referred to certain passages from the book and relied on the law, but had adopted the complainant's arguments and failed to give reasons for its decision. In addition, it had rejected three applications to have the ban lifted, without giving reasons. So, in spite of expert reports produced in the meantime in the applicant's favour, the ban on the book had remained in place for nearly two years and eight months, until the May 2004 decision on the merits. The court could thus not be said to have taken the trouble to examine in detail the criteria to be taken into consideration in striking a fair balance between the rights in issue, namely, the right to freedom to communicate information and the protection of the reputation of others. That being so, the impugned seizure could not be considered to have been necessary in a democratic society as it had not been based on relevant and sufficient reasons.

Conclusion: violation (unanimously).

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

ARTICLE 11

Freedom of association

Refusal to re-register community as religious organisation without lawful basis: *violation*

Jehovah's Witnesses of Moscow v. Russia - 302/02
Judgment 10.6.2010 [Section I]

(See Article 9 above – page 10)

ARTICLE 12

Right to marry

Inability of same-sex couple to marry: *no violation*

Schalk and Kopf v. Austria - 30141/04
Judgment 24.6.2010 [Section I]

(See Article 14 below – page 15)

ARTICLE 14

Discrimination (Article 5 § 1 (a))

Refusal to release a convicted prisoner on licence: *inadmissible*

Celikkaya v. Turkey - 34026/03
Decision 1.6.2010 [Section II]

Facts – The applicant had a number of convictions for which he received prison sentences. Between 1987 and 1996, with a view to resolving the problem of the extreme length of the sentences he was required to serve (87 years out of a total term of more than 190 years were not suspended), orders were made for his sentences to run concurrently and a ceiling was set on the maximum term. In a separate development, as a multiple repeat offender he was kept in prison after the enactment of an amnesty law (Law no. 4616).

Law – Article 14 taken together with Article 5 § 1 (a): the applicant had been given a prison sentence in accordance with a procedure prescribed by law, and by a competent court, within the meaning of Article 5 § 1 (a), but had challenged the prosecutor's calculation of the sentence reduction under Law no. 4616. Article 5 § 1 (a) did not guarantee, as such, any right for a convicted person to benefit from an amnesty law or to obtain early release on a final or conditional basis. The fact that the courts concerned had agreed with the arguments of the public prosecutor did not render the applicant's detention arbitrary in the light of Article 5 § 1 (a). It was their task in the first place to interpret and apply domestic law and it was not for the Court to substitute itself for them in assessing the facts that led them to one decision rather than another. However, the Court could not but agree with the means of calculation adopted in the present case, as it did not give rise to any confusion and was consistent with the rules in force at the material time. As regards the discriminatory nature of the applicant's detention after the entry into force of Law no. 4616, it was difficult to distinguish any factual circumstances that differed in essence from those of two prisoners who had been released on licence. Thus the Court was not convinced that there had been no discrimination. However, it could not speculate further on that point because, under Turkish law on the enforcement of sentences, measures or errors, even when in a prisoner's favour, did not confer any acquired right and could be corrected by the authorities at any time. Therefore the situations of the two prisoners did not concern the exercise of any acquired rights for the purposes of Article 5 § 1 (a) and thus had no comparative value in relation to the applicant's own situation. If there had been any inequality it was an apparent *de facto* inequality on which the applicant could not legitimately rely under Article 14.

Conclusion: inadmissible (manifestly ill-founded).

Discrimination (Article 8)

Unmarried woman of a certain age debarred from adopting a second child: *no violation*

Schwizgebel v. Switzerland - 25762/07
Judgment 10.6.2010 [Section I]

Facts – After adopting a first child in 2002, the applicant, a single woman aged 47, sought authorisation to receive a second child with a view to adoption. However, all her applications were rejected, up to the Federal Court at last instance in 2006.

Law – Article 14 taken together with Article 8: (a) *Applicability* – The case concerned an adoption authorisation procedure. The legislation expressly authorised adoption by a single person up to 35 years old. Since such authorisation was indispensable for anyone wishing to adopt a child, the circumstances of the case fell within Article 8. In addition, the applicant alleged that she had been discriminated against on the basis of age in the exercise of a right recognised by domestic legislation. Her age was decisive in the domestic authorities' rejection of her applications. Article 14, taken together with Article 8, was therefore applicable in the present case.

(b) *Merits* – The applicant could claim that she was a victim of a difference of treatment in relation to a younger single woman who, in the

same circumstances, might have been able to obtain authorisation to receive a second child for adoption. The denial of her request had pursued the legitimate aim of protecting the well-being and rights of that child. In 1998 the applicant, aged 41, had been authorised to receive a first child. As regards the adoption of a second child, in 2006 the Federal Court had taken the view that the age difference between the applicant and the child to be adopted (between 46 and 48 years) was excessive and contrary to the child's interests. There was no common denominator among the legal systems of the member States of the Council of Europe concerning the right to adopt as a single parent, the lower and upper age-limits for adopters or the age-difference between the adopter and the child. The Swiss authorities had thus had a broad margin of appreciation and both the domestic legislation and the decisions taken in the present case seemed to be consonant with the solutions adopted by the majority of the member States of the Council of Europe and, moreover, to be compliant with the applicable international law. Nor could any arbitrariness be detected in the present case: the domestic authorities' decisions, taken in the context of adversarial proceedings, had been reasoned. They had considered not only the best interests of the child to be adopted, but also those of the child already adopted. Moreover, the criterion of the age-difference between the adopter and the child had not been laid down in an abstract manner by legislation but had been applied by the Federal Court flexibly and having regard to the circumstances of the situation. The arguments of the domestic courts had not been unreasonable or arbitrary concerning the fact that the reception of a second child, even of an age comparable to the first, would constitute an additional burden for the applicant or that problems are more numerous in families with more than one adopted child. It was evident in this type of case that the use of statistics was necessary and that a degree of speculation was inevitable. Taking into account the broad margin of appreciation of States in this area and the need to protect children's best interests, the refusal to authorise the placement of a second child had not contravened the proportionality principle. The difference in treatment complained of had not been discriminatory within the meaning of Article 14.

Conclusion: no violation (unanimously).

Inability of same-sex couple to marry: *no violation*

Schalk and Kopf v. Austria - 30141/04
Judgment 24.6.2010 [Section I]

Facts – In 2002 the applicants, a same-sex couple, requested the competent authorities permission to get married. Under domestic law a marriage could only be concluded between persons of opposite sex and the applicants' request was consequently dismissed. Following their subsequent constitutional complaint, the Constitutional Court held that neither the Austrian Constitution nor the European Convention required that the concept of marriage, which was geared to the possibility of parenthood, should be extended to relationships of a different kind and that the protection of same-sex relationships under the Convention did not give rise to an obligation to change the law on marriage. On 1 January 2010 the Registered Partnership Act entered into force in Austria, aiming to provide same-sex couples with a formal mechanism for recognising and giving legal effect to their relationships. While the Act provided registered partners with many of the same rights and obligations as spouses, some differences remained, in particular registered partners were unable to adopt or undergo artificial insemination.

Law – Article 12: The Court first examined whether the right to marry granted to "men and women" under the Convention could be applied to the applicants' situation. Even though only six of the Council of Europe member States allowed same-sex marriages, the provision of the Charter of Fundamental Rights of the European Union granting the right to marry did not include a reference to men and women, so allowing the conclusion that the right to marry must not in all circumstances be limited to marriage between two persons of the opposite sex. It could, therefore, not be concluded that Article 12 did not apply to the applicants' complaint. At the same time the Charter left the decision whether or not to allow same-sex marriages to regulation by member States' national law. The Court underlined that national authorities were best placed to assess and respond to the needs of society in this field, given that marriage had deep-rooted social and cultural connotations differing largely from one society to another. In conclusion, Article 12 did not impose an obligation on the respondent State to grant same-sex couples access to marriage.

Conclusion: no violation (unanimously).

Article 14 in conjunction with Article 8: Given the rapid evolution of social attitudes in Europe towards same-sex couples over the past decade, it would have been artificial for the Court to maintain the view that such couples could not enjoy "family life". It therefore concluded that the relationship of the applicants, a cohabiting same-sex couple living in a stable partnership, fell within the notion of "family life", just as the relationship of a different-sex couple in the same situation did. The Court had repeatedly held that different treatment based on sexual orientation required particularly serious reasons by way of justification. It had to be assumed that same-sex couples were just as capable as different-sex couples of entering into stable committed relationships; they were consequently in a relevantly similar situation as regards the need for legal recognition of their relationship. However, given that the Convention was to be read as a whole, having regard to the conclusion reached that Article 12 did not impose an obligation on States to grant same-sex couples access to marriage, the Court was unable to share the applicants' view that such an obligation could be derived from Article 14 taken in conjunction with Article 8. What remained to be examined was whether the State should have provided the applicants with an alternative means of legal recognition of their partnership any earlier than 2010. Despite the emerging tendency to legally recognise same-sex partnerships, this area should still be regarded as one of evolving rights with no established consensus, where States enjoyed a margin of appreciation in the timing of the introduction of legislative changes. The Austrian law reflected this evolution; though not in the vanguard, the Austrian legislature could not be reproached for not having introduced the Registered Partnership Act any earlier. Finally, the fact that the Registered Partnership Act retained some substantial differences compared to marriage in respect of parental rights corresponded largely to the trend in other member States adopting similar legislation. Moreover, since the applicants did not claim that they were directly affected by any restrictions concerning parental rights, the Court did not have to examine every one of those differences in detail as that was beyond the scope of the case.

Conclusion: no violation (four votes to three).

Discrimination (Article 9)

Failure to provide a pupil excused from religious instruction with ethics classes and associated marks: *violation*

Grzelak v. Poland - 7710/02
Judgment 15.6.2010 [Section IV]

Facts – The first two applicants, who are declared agnostics, are parents of the third applicant. In conformity with the wishes of his parents, the latter did not attend religious instruction during his schooling. His parents systematically requested the school authorities to organise a class in ethics for him. However, no such class was provided throughout his entire schooling at primary and secondary level (1998-2009) because there were not enough pupils interested. His school reports and certificates contained a straight line instead of a mark for "religion/ethics".

Law – Article 14 in conjunction with Article 9:

(a) *Admissibility*: The complaint was incompatible *ratione personae* with respect to the first and second applicants.

(b) *Merits*: The absence of a mark for "religion/ethics" on the third applicant's school reports fell within the ambit of the negative aspect of freedom of thought, conscience and religion as it might be read as showing his lack of religious affiliation. Article 14 taken in conjunction with Article 9 was therefore applicable. The third applicant had complained of the discriminatory nature of the non-provision of courses in ethics and resultant absence of a mark for "religion/ethics" in his school reports. The Court considered it appropriate to limit its examination of the alleged difference in treatment between the third applicant, a non-believer who was willing but unable to attend ethics classes, and those pupils who attended religious-education classes to the latter aspect of the complaint, namely the absence of a mark. Domestic law providing for a mark to be given for "religion/ethics" on school reports could not, as such, be considered to infringe Article 14, taken in conjunction with Article 9, as long as the mark constituted neutral information on the fact that a pupil had followed one of the optional courses offered at a school. However, a regulation of this kind had also to respect the right of pupils not to be compelled, even indirectly, to reveal their religious beliefs or lack thereof. When reviewing the issue of a mark for "religion/ethics" on school reports, the Constitutional Court had proceeded on the assumption that any interested pupil would be able to follow a class in either of the two subjects concerned and held that an outside observer would thus not be in a position to determine whether a pupil had followed a class in religion or in ethics. However, that analysis, while unquestionable in

substance, appeared to overlook other situations which might arise in practice, like that of the third applicant. The absence of a mark for "religion/ethics" would be understood by any reasonable person as an indication that the third applicant had not followed religious-education classes, which were widely available, and that he was thus likely to be regarded as a person without religious beliefs. This finding took on particular significance in respect of a country like Poland where the great majority of the population owed allegiance to one particular religion. Moreover, from September 2007 onwards, in accordance with the new rule, marks obtained for religious education or ethics were to be included in the calculation of the "average mark" obtained by a pupil in a given school year and at the end of a given level of schooling. The rule might have a real adverse impact on the situation of pupils who, despite their wishes, were not provided with a course in ethics. Such pupils would either find it more difficult to increase their average mark or might feel pressurised – against their conscience – to attend a religious-education class in order to improve their average mark. In sum, the absence of a mark for "religion/ethics" on the third applicant's school certificates throughout the entire period of his schooling had amounted to a form of unwarranted stigmatisation. In those circumstances, the Court was not satisfied that the difference in treatment between non-believers who wished to follow ethics classes and pupils who followed religious classes had been objectively and reasonably justified and that there had existed a reasonable relationship of proportionality between the means used and the aim pursued. The State's margin of appreciation had been exceeded in this matter as the very essence of the third applicant's right not to manifest his religion or convictions under Article 9 had been infringed.

Conclusion: violation (six votes to one).

Article 2 of Protocol No. 1: In Poland religious education and ethics were organised on a parallel basis. Both subjects were optional and the choice depended on the wishes of parents or pupils, subject to the proviso that a certain minimum number of pupils were interested in following any of the two subjects. The system of teaching religion and ethics as provided for by Polish law – as typically applied – fell within the margin of appreciation accorded to States in the planning and setting of the curriculum. Accordingly, the alleged failure to provide ethics classes did not disclose any appearance of a violation of the rights of the first and second applicants under Article 2 of Protocol No. 1.

Conclusion: inadmissible (manifestly ill-founded).

Article 41: Finding of a violation constituted sufficient just satisfaction in respect of any non-pecuniary damage.

ARTICLE 34

Victim

Acknowledgment by national authorities of inhuman treatment but without compensation or adequate punishment of offenders: *victim status upheld*

Gäfgen v. Germany - 22978/05
Judgment 1.6.2010 [GC]

Facts – In 2002 the applicant suffocated an eleven-year-old boy to death and hid his corpse near a pond. Meanwhile, he sought a ransom from the boy's parents and was arrested shortly after having collected the money. He was taken to a police station where he was questioned about the victim's whereabouts. The next day the deputy chief police officer ordered one of his subordinate officers to threaten the applicant with physical pain and, if necessary, to subject him to such pain in order to make him reveal the boy's location. Following these orders, the police officer threatened the applicant that he would be subjected to considerable pain by a person specially trained for such purposes. Some ten minutes later, for fear of being exposed to such treatment, the applicant disclosed where he had hid the victim's body. He was then accompanied by the police to the location, where they found the corpse and further evidence against the applicant, such as the tyre tracks of his car. In the subsequent criminal proceedings, a regional court decided that none of his confessions made during the investigation could be used as evidence since they had been obtained under duress contrary to Article 3 of the European Convention. At the trial, the applicant again confessed to murder. The court's findings were based on that confession and on other evidence, including evidence secured as a result of the statements extracted from the applicant during the investigation. The applicant was ultimately convicted to life imprisonment and his subsequent appeals were dismissed, the Federal Constitutional Court having nonetheless acknowledged that

extracting his confession during the investigation constituted a prohibited method of interrogation both under the domestic law and the Convention. In 2004 the two police officers involved in threatening the applicant were convicted of coercion and incitement to coercion while on duty and were given suspended fines of EUR 60 for 60 days and EUR 90 for 120 days, respectively. In 2005 the applicant applied for legal aid in order to bring proceedings against the authorities for compensation for the trauma the investigative methods of the police had caused him. The courts initially dismissed his application, but their decisions were quashed by the Federal Constitutional Court in 2008. At the time of the European Court's judgment, the remitted proceedings were still pending before the regional court.

Law – Article 34: The national authorities had acknowledged the breach of the Convention both in the criminal proceedings against the applicant and in the subsequent conviction of the police officers. However, it was necessary to establish whether they had afforded the applicant appropriate and sufficient redress for the violation suffered. Although the criminal proceedings against the police officers, which had lasted some two years and three months, had been sufficiently prompt and expeditious, the officers had been sentenced to very modest and suspended fines since the domestic court took into account a number of mitigating circumstances, including the urgent need to save the victim's life. While the applicant's case could not be compared to other cases involving arbitrary acts of brutality by State agents, imposing almost token fines could not be considered an adequate response to a breach of Article 3. Such punishment, which was manifestly disproportionate to a breach of one of the core rights of the Convention, did not have the necessary deterrent effect in order to prevent further violations of that right in future difficult situations. Moreover, even though both police officers had initially been transferred to posts which no longer involved direct association with the investigation of criminal offences, one of them had later been appointed chief of his section, which raised serious doubts as to whether the authorities' reaction adequately reflected the seriousness of a breach of Article 3. Finally, as to the proceedings for compensation, the applicant's request for legal aid was still pending after over three years. Consequently, no hearing had been held and no judgment given on the merits of his claim. In such circumstances, the domestic courts' failure to decide the merits of the applicant's compensation claim without the requisite expedition brought into question the effectiveness of those proceedings. In conclusion, the Court held that the different measures taken by the domestic authorities had failed to comply fully with the requirement of redress as established by its case-law and that, consequently, the applicant could still claim to be the victim of a violation of his Convention right.

Conclusion: victim status upheld (eleven votes to six).

Article 3: It was uncontested between the parties that the applicant was threatened by the police officer with intolerable pain by a person specially trained for such purposes if he refused to disclose the victim's whereabouts. Since the deputy chief officer had ordered his subordinates on several occasions to threaten the applicant or, if necessary, to use force against him, his order could not be regarded as a spontaneous act, but as a premeditated and calculated one. The interrogation under the threat of ill-treatment had lasted for about ten minutes in an atmosphere of heightened tension and emotions when the officers believed that the victim's life could still be saved. The applicant was handcuffed and thus in a state of vulnerability, so the threat he had received must have caused him considerable fear, anguish and mental suffering. Despite the police officers' motives, the Court reiterated that torture and inhuman or degrading treatment could not be inflicted even in circumstances where the life of an individual was at risk. In conclusion, the method of interrogation to which the applicant had been subjected was found to be sufficiently serious to amount to inhuman treatment prohibited by Article 3.

Conclusion: violation (eleven votes to six).

Article 6: The use of evidence obtained by methods in breach of Article 3 raised serious issues regarding the fairness of criminal proceedings. The Court was therefore called upon to determine whether the proceedings against the applicant as a whole had been unfair because such evidence had been used. At the start of his trial, the applicant was informed that his earlier statements would not be used as evidence against him because it had been obtained by coercion. Nonetheless he confessed to the crime again during the trial, stressing that he was confessing freely out of remorse and in order to take responsibility for the crime he had committed. The Court had therefore no reason to assume that the applicant would not have confessed if the domestic courts had decided at

the outset to exclude the disputed evidence. In the light of these considerations the Court concluded that, in the particular circumstances of the applicant's case, the failure of the domestic courts to exclude the evidence obtained following a confession extracted by means of inhuman treatment had not had a bearing on the applicant's conviction and sentence or on the overall fairness of his trial.

Conclusion: no violation (eleven votes to six).

Article 41: No claim made in respect of damage.

Hinder the exercise of the right of petition

Failure of the authorities to comply with an interim measure indicated by the Court under Rule 39: *violation*

Kamaliyevy v. Russia - 52812/07
Judgment 3.6.2010 [Section I]

Facts – The first applicant is a national of Uzbekistan who has lived in Russia since the late 1990s. He married the second applicant, a Russian national. In March 2006 the Deputy General Prosecutor of Uzbekistan requested the first applicant's extradition on the ground that he was charged with belonging to an extremist religious organisation, incitement of religious hatred and attempted subversion of the constitutional regime. In December 2006 the Russian Deputy General Prosecutor refused to extradite him. In November 2007, during an identity check, the first applicant was arrested in Tyumen as an unlawfully resident alien. A district court found him guilty of a violation of the residence rules for aliens, in that he had failed to take any steps to get a residence permit or to obtain nationality by legal means. It imposed a fine and ordered his expulsion from Russia. On 3 December 2007 the first applicant applied to the European Court requesting suspension of his extradition to Uzbekistan. In view of the crimes he had been charged with there, he alleged that he would be exposed to a risk of torture. On the same day, the Court indicated to the Russian Government that, under Rule 39 of the Rules of Court, it was adopting an interim measure suspending the extradition. On 5 December 2007 the first applicant was nevertheless deported to Uzbekistan, where he is currently serving a prison sentence.

Law – Article 34: The respondent Government had contended that, although the competent authorities had done everything in their power to comply with the measure indicated by the Court, the short notice and time difference between Strasbourg, Moscow and Tyumen had meant that the information had failed to reach the intended recipients before the expulsion had occurred. The Court noted, however, that the first applicant had been put on a plane about 26 hours after the notification of the interim measure to the respondent Government. That period had included one full working day, when all the relevant offices had been open and no difficulties in communication had been reported. While cognisant of the inevitable difficulties which arose when differences in time were involved, the Court considered that in the present case these had clearly not been of such a nature as to explain the failure to transmit the message to the service responsible. Indeed, in its first letter of 3 December 2007 the Court had already indicated the first applicant's place of detention and it should have been relatively simple to identify the body responsible. The Court also remarked that the first applicant's deportation had been upheld by the regional court and the necessary formalities to carry it out had been completed in an even shorter period of time. The Government had relied on the need to contact various ministries in Moscow and to obtain information from the local services before any steps could be ordered. The working day of 4 December 2007 had thus not been sufficient to comply with the measure indicated by the Court. The Court did not find such an excuse compatible with the nature of urgent requests aimed at preventing a person's imminent deportation. By definition, these decisions were not complex to implement, since all that was needed was to inform the local authority responsible for carrying out the deportation and/or the administration of the detention centre of the temporary ban on the person's removal from the territory of the Contracting State. In view of all the information in its possession, the Court was not satisfied that the Government had taken all reasonable steps to comply with the Court's ruling. Nor had they shown that there had been an objective impediment to compliance with the interim measure indicated under Rule 39 of the Rules of Court.

Conclusion: violation (unanimously).

The Court also found that there had been no violation of Article 8 (four votes to three).

Article 41: Reserved.

ARTICLE 35

Article 35 § 1

Six-month period

Six-month period to be calculated by reference to criteria specific to the Convention: *inadmissible*

Büyükdere and Others v. Turkey - 6162/04 et al.
Judgment 8.6.2010 [Section II]

Facts – Following the privatisation of their company, the applicants lost their civil servant status. They brought various actions before the competent administrative courts with a view to obtaining compensation for the termination of their employment contracts, but to no avail. On appeal, the Supreme Administrative Court upheld the first-instance judgments.

Law – Article 35 § 1: in application no. 6162/04, the Supreme Administrative Court's judgment of 19 June 2003, which was the final domestic court decision, had been served on the applicant on 25 July 2003. The applicant had lodged his application with the Court on 26 January 2004, more than six months after receiving notification of the final domestic court decision. It followed that the application had been lodged out of time and should be rejected pursuant to Article 35 §§ 1 and 4. (See also *Otto v. Germany* (dec.), no. 21425/06, 10 November 2009, Information Note no. 124)

The Court found the other applications admissible and found a violation of Article 6 § 1 of the Convention.

Original of the application form submitted outside the eight-week time-limit set in the Practice Direction on the Institution of Proceedings: *inadmissible*

Kemevuako v. the Netherlands - 65938/09
Decision 1.6.2010 [Section III]

Facts – The applicant, an Angolan national, complained of the refusal by the Netherlands authorities to grant him a residence permit. The final judgment in the domestic proceedings was sent to him on 15 June 2009. On 14 December 2009 the applicant's representative sent a fax to the Registry, stating that he wanted to lodge a complaint under Article 8 of the European Convention on behalf of the applicant. He was then notified by the Registry that he had to return the application form to the Court by 4 March 2010, eight weeks from the date of the Registry's letter of 7 January 2010. The representative was further informed that if he failed to do so, the date of submission of the completed application form would be taken as the date of introduction of the application. On 4 March 2010 the applicant's representative sent a completed application form to the Registry by fax. The original of the form, as well as copies of all relevant documents, were received by the Registry by post on 12 March 2010. The envelope containing all these documents was postmarked 10 March 2010.

Law – Article 35 § 1: The Court first considered whether the complaint had been lodged within a period of six months from the date on which the final decision had been taken. In accordance with the established practice of the Convention organs and Rule 47 § 5 of the Rules of Court, the Court normally considered the date of the introduction of an application to be the date of the first communication indicating an intention to lodge an application and giving some indication of the nature of the application. Such first communication, which might take the form of a letter sent by fax, would interrupt the running of the six-month period. However, as the Court had held, it would be contrary to the spirit and aim of the six-month rule if, by any initial communication, an application could set into motion the proceedings under the Convention and then remain inactive for an unexplained and unlimited length of time. Applicants had therefore to pursue their applications with reasonable expedition after any initial introductory contact. A failure to do so might lead the Court to decide that the interruption of the six-month period was to be invalidated and that it was the date of the submission of the completed application which was to be considered as the date of its introduction. The Court was to be provided with the original of the application form, and also of the authority form if the applicant was represented. Transmissions by fax of these documents were, without the originals of these documents, insufficient to constitute a complete or valid application (see Rule 47 § 5 of the Rules of Court and paragraphs 1, 4 and 5 of the Practice Direction on the Institution of Proceedings). The fact, therefore, that the completed application form in the present case had been transmitted to the Registry by fax on 4 March 2010 was irrelevant as long as the original form had not also been

despatched within the eight-week period, which ended on 4 March 2010. Although the cover letter accompanying the application form, as well as that form itself, had indeed been dated 4 March 2010, the envelope containing the original completed application form, and the signed authority form and copies of all relevant documents, had been postmarked 10 March 2010. In this respect, the Court had held that, in order for the date featuring on a first communication to be considered as the date of introduction of an application, it should be posted at the latest on the day after the date which appeared on the communication. If that communication was postmarked more than one day later, it was the date of the postmark – rather than the date featuring on the letter or application form – that would be considered as the date of introduction. The Court saw no reason to apply a different criterion in respect of the question whether the original application form had been submitted within the eight-week period. The date on which the envelope containing the original application form had been postmarked, namely 10 March 2010, should therefore be considered as the date of introduction of the present case. The six-month period having started to run on 15 June 2009, the application had been out of time.

Conclusion: inadmissible (out of time).

Article 35 § 3 (b)

No significant disadvantage

Fulfilment of new three-part inadmissibility test under Protocol No. 14 – no significant disadvantage to applicant: *inadmissible*

Ionescu v. Romania - 36659/04
Decision 1.6.2010 [Section III]

Facts – The High Court of Cassation and Justice declared null and void an appeal on points of law against a decision of a district court rejecting a claim for EUR 90 in damages brought by the applicant for non-performance of a contract.

Law – Article 6 § 1: (a) *Fairness* – The proceedings before the district court had met the requirements of fairness.

Conclusion: inadmissible (manifestly ill-founded).

(b) *Public hearing* – As regards the lack of a public hearing before the High Court of Cassation and Justice, these complaints were subsumed by that concerning the annulment of the appeal and could be addressed in the context of the right of access to a court. That complaint was not incompatible with the provisions of the Convention or its Protocols, nor was it manifestly ill-founded or an abuse of the right of application within the meaning of Article 35 § 3 (a) of the Convention as amended by Protocol No. 14. However, having regard to the entry into force of that Protocol, the Court found it necessary to examine of its own motion whether it should apply the new inadmissibility test provided for by Article 35 § 3 (b) of the Convention as amended. The main aspect of the new test was whether the applicant had suffered any significant disadvantage. A number of dissenting opinions annexed to various judgments showed that the absence of any such disadvantage could be based on criteria such as the financial impact of the matter in dispute or the importance of the case for the applicant. The applicant's alleged financial loss on account of a failure to perform a contract had been limited. The amount in issue was EUR 90 for all heads of damage, and there was no evidence that his financial circumstances were such that the outcome of the case would have had a significant effect on his personal life. In those circumstances the applicant had not suffered any "significant disadvantage" in the exercise of his right of access to a court. As regards the second aspect, respect for human rights did not require an examination of the application on the merits, as the case was now only of historical interest, following the repeal of the domestic legislation concerning the preliminary examination of the admissibility of appeals on points of law, and as the Court had already had a number of opportunities to rule on the application of procedural rules by domestic court. Lastly, concerning the third question, whether the case had been duly considered by a domestic tribunal, the applicant had been able to submit his arguments in adversarial proceedings before the district court. The three conditions of the new inadmissibility test had therefore been satisfied.

Conclusion: inadmissible (no significant disadvantage).

ARTICLE 37

Article 37 § 1

Special circumstances requiring further examination

Unilateral declaration by Government denying applicant opportunity to obtain finding of

violation of Article 6 § 1 needed to seek review of domestic decision: *strike out refused*

Hakimi v. Belgium - 665/08
Judgment 29.6.2010 [Section II]

Facts – In 2006 an appeal court sentenced the applicant in his absence to a prison term and payment of a fine. The judgment, which was served on the applicant the same day, made no reference to the fifteen-day period allowed for lodging an application to have the judgment set aside. A few weeks later the applicant applied to have his conviction set aside. A court of appeal rejected the application as being out of time. In 2007 the Court of Cassation dismissed an appeal on points of law by the applicant.

Law – Article 6 § 1: (a) *Preliminary remarks concerning the strike-out application* – The friendly settlement proposed by the Court was rejected by the applicant on the ground that he wished to obtain a guarantee that he would be able to have his case reopened. The Government had submitted a unilateral declaration to the Court requesting that it strike the application out of its list of cases in return for an acknowledgment that Article 6 § 1 had been breached and payment of compensation. In their declaration they stressed that no right to have proceedings reopened existed, that the Minister of Justice did not have the power to issue guarantees in that regard and that the Court of Cassation had discretion as to whether requests for the reopening of proceedings should be granted. In view of the terms of the Government's declaration and the circumstances of the case, the Court took the view that the application should not be struck out of its list of cases on the sole basis of the declaration. In particular, the Court could not rule out the possibility that the applicant, should he decide to request a review of the impugned court of appeal judgment, might need to rely on a judgment of the Court expressly finding a violation of Article 6 § 1. Consequently, it decided to continue its examination of the application, which was not inadmissible on any grounds.

(b) *Merits* – The notice of the judgment served on the applicant had made no mention of the time-limit for applying to have the judgment set aside. The Court based its decision on its finding in a similar case to the effect that the refusal by a court of appeal to reopen the proceedings conducted in the applicant's absence and the rejection of the application to set aside as being out of time had deprived the applicant of his right of access to a court.

Conclusion: violation (unanimously).

Article 41: finding of a violation sufficient in itself in respect of non-pecuniary damage.

ARTICLE 46

Execution of a judgment – Individual measures

Respondent State required to take measures to review decisions dissolving and refusing to re-register religious community

Jehovah's Witnesses of Moscow v. Russia - 302/02
Judgment 10.6.2010 [Section I]

(See Article 9 above – page 10)

ARTICLE 2 OF PROTOCOL No. 1

Right to education

Measures taken by authorities of "Moldavian Republic of Transdniestria" against schools refusing to use Cyrillic script: *admissible*

Catan and Others v. Moldova and Russia - 43370/04, 8252/05 and 18454/06
Decision 15.6.2010 [Section IV]

Facts – According to its Constitution of 1978 the Moldavian Soviet Socialist Republic had two official languages: Russian and "Moldavian" (Romanian/Moldovan written with the Cyrillic script). In 1989 the Latin alphabet was reintroduced in Moldova for written Romanian/Moldovan, which became the first official language. In August 1991 the Republic of Moldova became an independent State. In parallel, separatists in Transdniestria sought to break away from the newly formed republic by adopting a "declaration of independence" in respect of the "Moldavian Republic of Transdniestria" (the "MRT"), which has not been recognised by the international community. Legislation introduced by the "MRT" authorities in 1992 requires "Moldavian" to be written with the Cyrillic alphabet and the use of the Latin script in schools has been forbidden since 1994. In 1999 the "MRT" ordered that all schools belonging to "foreign States" and functioning on "its" territory had to register with the "MRT" authorities, failing which they would not be

recognised and would be deprived of their rights. In July 2004 the "MRT" authorities began taking steps to close down all schools using the Latin script. There now remain only six schools in Transdniestria using the Moldovan (Romanian) language and the Latin script.

The applicants were pupils (or their parents or teachers) attending three schools in the "MRT". Two of the schools had been built with Moldovan public funds, were registered with the Moldovan Ministry of Education and were using the Latin script and a curriculum approved by that Ministry. Both these schools refused to register with the "MRT" authorities, as this would have meant having to use the Cyrillic script and the "MRT" curriculum. The third school, which was already using the Cyrillic script, petitioned the "MRT" authorities to be allowed to use the Latin script. All three schools were forced to transfer to new premises following stand-offs with the "MRT" authorities involving the intervention of the police to evict pupils, parents and teachers inside the buildings. The secondary-school pupils of the first school were moved to premises that had previously been used as a kindergarten and the school became a target for systematic vandalism. The second school was split up into three separate buildings in different parts of the town, with a main building that had no access to public transport and lacked a number of basic facilities. Faced with the occupation of the building by the "MRT" regime, the Moldovan Ministry of Education decided to transfer the third school temporarily to a village under Moldovan control some twenty kilometres away. This meant pupils and teachers being subjected to daily bag searches and identity checks by "MRT" officials. Numbers in all three schools have declined dramatically. In their application to the European Court, the applicants complain, *inter alia*, of the restrictions on their right to use the Moldovan language and Latin script and of the impact of these restrictions on the cultural identity and integrity of the Moldovan community in the "MRT" (Article 8 of the Convention), of the difficulties encountered by pupils wishing to be educated in the Moldovan official language and in accordance with the curriculum of the Moldovan Ministry of Education (Article 2 of Protocol No. 1) and of discriminatory treatment (Article 14 of the Convention).

Admissible under Article 8 of the Convention, Article 2 of Protocol No. 1, and Article 14 of the Convention in conjunction with Articles 3 and 8 of the Convention and Article 2 of Protocol No. 1. The issue of whether the applicants came within the jurisdiction of either or both of the respondent States was joined to the merits.