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

Information Note on the Court's case-law

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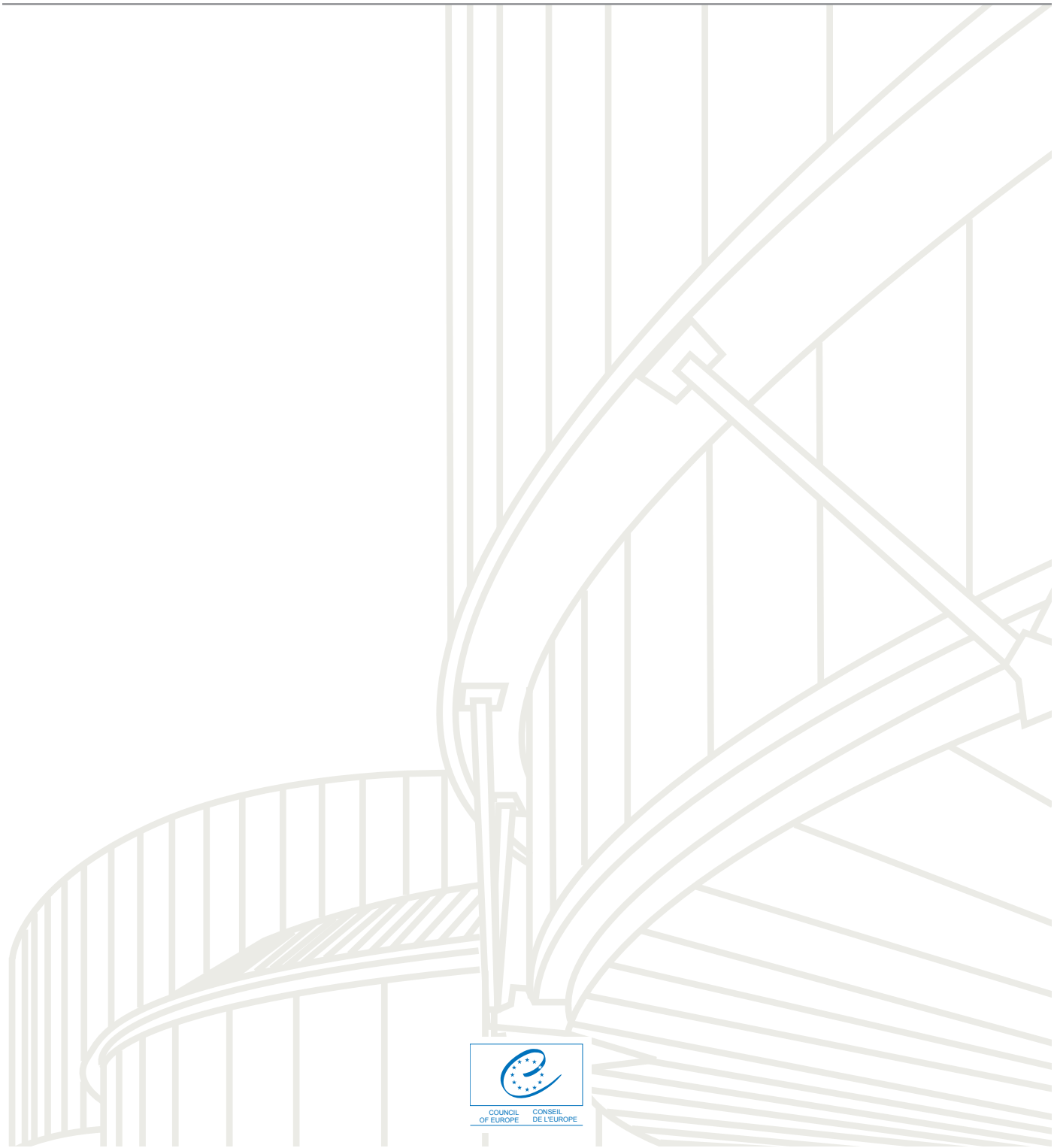

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ARTICLE 2

LIFE
Disappearance of applicants' relatives in Chechnya during military operations: *violations*.

BETAYEV and BETAYEVA - Russia (N° 37315/03)
GEKHAYEVA and Others - Russia (N° 1755/04)
IBRAGIMOV and Others - Russia (N° 34561/03)
SANGARIYEVA and Others - Russia (N° 1839/04)
Judgments 29.5.2008 [Section I]

Facts: These four cases concern Russian military operations in Chechnya in late 2002 and the spring of 2003. The facts of each case are similar: close relatives of the applicants went missing after being abducted in night raids by armed men using military vehicles and wearing camouflage uniforms and balaclavas. Although criminal investigations were started they failed to identify the abductors or to lead to a prosecution. In the proceedings before the European Court, the Government declined (as in a number of previous cases) to produce certain documents from the criminal investigation files on the grounds that their disclosure would violate Article 161 of the Russian Code of Criminal Procedure since they contained information of a military nature or personal data on witnesses and other participants in the criminal proceedings.

Law: Article 2 – The Court noted that there was *prima facie* evidence, such as eye witness accounts and the fact that large groups of armed men in uniform had been able to move freely through military roadblocks during curfew hours, that the missing relatives had been apprehended by State servicemen. Although it did not in this instance examine the question of the Government's refusal to submit requested documents under Article 38 § 1 (a) of the Convention, it nevertheless drew inferences from that refusal and the absence of any other plausible explanation from the Government for the events in question. Observing that unacknowledged detention by unidentified servicemen in the context of the conflict in Chechnya could be regarded as life-threatening and the authorities' attitude towards the abduction had exacerbated the situation, it concluded that the applicants' relatives had to be presumed dead following their unacknowledged detention by Russian servicemen in circumstances in which there had been no justification for the use of lethal force.
Conclusion: violations (unanimously).

Other findings – The Court also found, in each of these cases, violations of the procedural limb of Article 2 and violations of Articles 3, 5 and 13. In *Betayev and Betayeva*, it also found a violation of Article 8 in respect of a search of the applicants' home without a warrant. The applicants were awarded sums in respect of non-pecuniary and, in the case of *Sangariyeva and Others*, pecuniary damage.

For further details on these cases, see Press Releases nos. 391 (*Betayev and Betayeva*), 388 (*Gekhayeva*), 390 (*Ibragimov*) and 387 (*Sangariyeva*).

ARTICLE 3

TORTURE
Ill-treatment and unjustified use of truncheons against detainees and lack of effective investigation: *violation*.

DEDOVSKIY and Others - Russia (N° 7178/03)
Judgment 15.5.2008 [Section I]

Facts: In 2001, while serving a prison sentence at a correctional colony, the seven applicants were ill-treated and beaten with truncheons by the *Varyag* squad, a special unit created to maintain order in detention facilities. The squad was allegedly called into the correctional colony to intimidate detainees who were being encouraged to engage in subversive activities by the leader of a criminal gang. The squad had instructions to maintain order by carrying out body searches of the detainees and of all quarters within the colony. The whole squad, except for its commander, wore balaclava helmets and camouflage uniforms with no indication of their rank and was armed with rubber truncheons. The criminal proceedings were discontinued in respect of most of the complaints of ill-treatment on the ground that the investigation had not obtained "objective information" to confirm the allegations. The charges brought against the commander and his subordinates for excess of power were also discontinued due to lack of evidence.

Law: Article 3 – (a) *Substantive aspect*: Having regard to the indiscriminate nature of the squad's operations, which targeted the entire colony rather than specific detainees, and the Government's acceptance of the applicants' factual submissions, the Court found it established to the requisite standard that the applicants had been subjected to the ill-treatment of which they had complained. The use of truncheons had no basis in law. The Penitentiary Institutions Act permitted rubber truncheons to be used in certain situations, for instance to prevent assaults, repress mass disorder and apprehend prisoners who persistently disobeyed or resisted officers. Nevertheless, there was no evidence that the applicants had attacked officers or fellow detainees. The beatings had been individual rather than collective in nature. Even though some applicants had allegedly disobeyed or resisted the officers' orders, no attempt had been made to arrest them. Even though the officers may have needed to resort to physical force in certain cases, their actions had been grossly disproportionate to the applicants' alleged transgressions and were manifestly inconsistent with the goals they sought to achieve. It was obvious that hitting a detainee with a truncheon was not conducive to the desired result of facilitating the search. In such a situation, a truncheon blow was merely a form of reprisal or corporal punishment. Such a disproportionate response was all the more striking in case of the applicants who had simply refused to state their name or change clothes. The squad had therefore resorted to deliberate and gratuitous violence in order to arouse feelings of fear and humiliation which would break the applicants' physical or moral resistance, and to debase the applicants and drive them into submission. The truncheon blows must have caused intense mental and physical suffering amounting to torture.
Conclusion: violation (unanimously).

(b) *Procedural aspect*: Criminal proceedings had not been brought until one-and-a-half months after the event. However, no evidence had been produced to show that the applicants had been medically examined following the incident, as the records submitted referred only to subsequent examinations. Indeed, the lack of any "objective" evidence, such as medical records, had been given as a reason for discontinuing the proceedings in respect of most of the complaints. The reports on the use of truncheons had not specified which officers had used them. By allowing the squad to cover their faces and not to wear any distinctive signs on their uniforms, the authorities had knowingly made it impossible for them to be identified by their victims. That ground had even been given as the main reason for discontinuing the criminal proceedings. Similarly, the courts had hindered any meaningful attempt to bring those responsible to account. Further, while the district court had acquitted the commander because he had exercised appropriate control over the lawfulness of the actions of his subordinates, the regional court had

exonerated him on the ground that he was not able, or obliged, to control his officers in his absence. The Court accordingly noted the glaring contradictions between the findings of the domestic courts. Moreover, the applicants' right to participate effectively in the investigation had not been secured. The investigator had not heard evidence from the applicants or other victims in person and had not even considered mentioning their version of events in his decisions. There was no evidence that copies of the prosecutor's decisions had been duly served on the applicants. The investigation carried out into the applicants' allegations of ill-treatment had therefore not been thorough, adequate or efficient.
Conclusion: violation (unanimously).

Article 13 – While Russian civil courts in theory had the capacity to make an independent assessment of a case, in practice the weight attached to a preceding criminal inquiry was so important that even the most convincing evidence to the contrary would have been discarded and such a remedy would have been only theoretical and illusory. The criminal proceedings had been discontinued and, consequently, any other remedy, including a claim for damages, had limited chances of success. The applicants therefore had not had an effective remedy under domestic law to claim compensation for the ill-treatment they had suffered.
Conclusion: violation (unanimously).

Article 38 § 1 (a): Despite repeated requests, the Government had refused to submit a copy of a report by the head of department for supervision of compliance with laws in penitentiary institutions. The evidence contained in that report had been crucial to the establishment of the facts in the case. The reasons given by the Government for their refusal had been inadequate. Accordingly, the Government had failed to meet their obligations under Article 38 § 1 (a).
Conclusion: failure to comply (unanimously).

Article 41 – The Court awarded each applicant EUR 10,000 in respect of non-pecuniary damage.

INHUMAN OR DEGRADING TREATMENT
Failure to secure the well-being of prisoners subjected to ethnically-motivated violence: *violation*.

RODIĆ and Others - Bosnia and Herzegovina (N° 22893/05)
Judgment 27.5.2008 [Section IV]

Facts: The applicants, citizens of Bosnia and Herzegovina, were all convicted of war crimes against Bosniac civilians during the 1992-95 war in Bosnia and Herzegovina. Between August 2004 and May 2005 the applicants were each sent to Zenica Prison, the only maximum-security prison in that part of the country, where the prison population was approximately 90% Bosniac.
In May 2005 offensive graffiti referring to two of the applicants were discovered in the prison canteen. Those responsible were never identified. In early June 2005, following the screening of a video which showed a 1995 killing of Bosniacs from Srebrenica, a prisoner lured the second applicant into his cell and punched him in the eye with a clenched fist. Three days later, that applicant was taken to hospital. According to an official report, the attack was ethnically motivated, the attacker had a piece of glass in his hand and the consequences could have been more serious had it not been for the intervention of another prisoner. At the same time, another prisoner attacked the fourth applicant in the prison canteen. The prison guards intervened after he had received several blows to the head. He was taken to hospital.
On 8 June 2005 the applicants declared a hunger strike to attract public attention to their situation and were immediately placed in separate accommodation in the prison hospital unit. The same day the prisoners responsible for the attacks were sentenced to 20 days' solitary confinement and an investigation was opened by an *ad hoc* commission into the attacks. On 15 June 2005 the Ministry of Justice of Bosnia and Herzegovina ordered the applicants' transfer to another prison for security reasons. Subsequently, the ad hoc commission issued its final report criticising the prison authorities for failing to protect the applicants. In their defence, the authorities cited, *inter alia*, the lack of prison staff. On 1 July 2005 the applicants discontinued their hunger strike in response to a request from the European Court.

The applicants complained unsuccessfully to the Constitutional Court of Bosnia and Herzegovina about the failure to enforce the decision of 15 June 2005 ordering their transfer to another prison and about the conditions of their detention in Zenica Prison. They were subsequently transferred to Mostar Prison.

Law: Article 3 (detention with other inmates in Zenica Prison) – The applicants alleged that they had been persecuted by fellow prisoners from the time of their arrival in Zenica Prison until they were provided with separate accommodation in the prison hospital unit. The Court did not find the Government's policy of integrating those convicted of war crimes into the mainstream prison system to be inherently inhuman or degrading. However, it did not rule out that the implementation of that policy might raise issues under Article 3.
It was common ground that the three main ethnic communities in Bosnia and Herzegovina (Bosniacs, Croats and Serbs) had been at war against each other from 1992 until 1995. Because of the atrocities committed during the war, inter-ethnic relations were still strained and occurrences of ethnically-motivated violence were still relatively frequent during the relevant period. Serious incidents of ethnically-motivated violence directed against prisoners of Serb and Croat origin in Zenica Prison had also been reported. Taking into consideration the number of Bosniacs in the prison and the nature of the applicants' offences (war crimes against Bosniacs), it was clear that their detention there entailed a serious risk to their physical well-being. Despite that, no specific security measures were introduced in Zenica Prison for several months. The applicants were placed in ordinary cell blocks, where they had to share a cell with up to 20 other prisoners and they were provided with separate accommodation in the prison hospital only after the attacks of June 2005, their declaration of a hunger strike and the consequent media attention. This had occurred almost ten months after the first of the applicants arrived at the prison. It was true that Zenica Prison was experiencing a serious shortage of staff during the period under examination. However, structural shortcomings did not alter the obligation of the State to adequately secure the well-being of prisoners. The Court concluded that the applicants' physical well-being was not adequately secured from the time of their arrival at Zenica Prison until they were provided with separate accommodation in the hospital – a period which lasted between one and ten months, depending on the applicant.
Conclusion: violation (unanimously).

Article 3 (conditions of detention in Zenica Prison hospital) – The applicants were allocated more than 4 square metres of personal space (the minimum requirement for a single inmate in multi-occupancy cells according to the standards set by the Council of Europe's Committee for the Prevention of Torture or Degrading or Inhuman Treatment or Punishment). While their rooms were equipped with neither a toilet nor running water, the Government claimed, and the applicants did not disagree, that they had unlimited access to the communal sanitation facilities, including at night. The applicants had not complained about the adequacy of their access to natural light, ventilation, heating and artificial lighting. Having been under special protection, the applicants could not benefit from the entire range of available work, educational and recreational activities. It had to be noted, however, that they were able to watch television and obtain reading materials without restrictions. Finally, in the Court's opinion, they spent adequate time outside the hospital unit every day. There was no other indication that the facilities in issue were such as to render their use inhuman or degrading.
Conclusion: no violation (unanimously).

The Court also found a violation of Article 13 read in conjunction with Article 3 of the Convention for lack of an effective remedy in respect of the applicants' Article 3 complaint.

Article 41 – EUR 4,000 to the first and fourth applicants and EUR 2,000 to the second and third applicants in respect of non-pecuniary damage.

INHUMAN OR DEGRADING TREATMENT
INHUMAN OR DEGRADING PUNISHMENT
Imposition of a life sentence in Italy: *inadmissible*.

GARAGIN - Italy (N° 33290/07)
Decision 29.4.2008 [Section II]

The applicant was sentenced by two different Italian courts in 1995 and 1997 to twenty-eight and thirty years' imprisonment. In 1999, applying Article 78 § 1 of the 1930 Criminal Code, the Bologna public prosecutor's office declared that the applicant should serve a total of thirty years' imprisonment, and this was confirmed by the Rome public prosecutor's office in 2004. This meant that the applicant could expect to be released on 19 March 2021, or sooner if granted remission of sentence. In 2006, however, the Rome Assize Court of Appeal, referring to the relevant case-law of the Court of Cassation, declared that the applicant should serve a life sentence, in application of Article 73 § 2 of the Criminal Code. The applicant appealed to the Court of Cassation, but to no avail.

Inadmissible under Article 3 – In the Italian legal system a person sentenced to life imprisonment might be granted more lenient conditions of detention, or early release. Referring to the principles set forth in its *Kafkaris* judgment, the Court found that in Italy life sentences were reducible *de jure* and *de facto*. It could not be said, therefore, that the applicant had no prospect of release or that his detention in itself, albeit lengthy, amounted to inhuman or degrading treatment. The mere fact of giving him a life sentence did not attain the necessary level of gravity bring it within the scope of Article 3: *manifestly ill-founded*.

It then had to be determined whether the recalculation of the applicant's sentence, leading to a longer term of imprisonment than that suggested by the public prosecutor's office, had violated Articles 5 and 7 of the Convention.

Inadmissible under Article 5 – Making use of their undisputed right to interpret domestic law, and in particular the provisions on the aggregation of sentences, the national courts considered that Article 73 § 2 of the Criminal Code (under the terms of which, in the event of more than one sentence of at least twenty-four years, the term applicable was life imprisonment) was *lex specialis* in respect of Article 78 § 1. The Court noted that the process by which the total sentence to be served by the applicant had been calculated had not been arbitrary or in any other way contrary to the provisions of Article 5.
Moreover, the Convention could not stand in the way of the subsequent rectification of an error in the calculation of the sentence to be served or of a mistaken application of the rules on the aggregation of sentences: *manifestly ill-founded*.

Inadmissible under Article 7 – The sentences pronounced against the applicant were provided for by the Criminal Code and the applicant did not allege that the sentences had been applied retroactively. Furthermore, the national courts' interpretation of the provisions governing the aggregation of sentences in force at the time of the offences of which the applicant had been found guilty had not been arbitrary. That interpretation had been confirmed by case-law of the Court of Cassation's predating the applicant's case. So there was no reason to find that a harsher sentence had been imposed on the applicant retroactively: *manifestly ill-founded*.

See also the *Kafkaris v. Cyprus* [GC] judgment, no. 21906/04, 12 February 2008, Information Note no. 105.

EXPULSION
Proposed removal of HIV patient to her country of origin, where her access to appropriate medical treatment was uncertain: *removal would not constitute a violation*.

N. - United Kingdom (N° 26565/05)
Judgment 27.5.2008 [GC]

Facts: The applicant, N., a Ugandan national, had entered the United Kingdom in 1998 under an assumed name and applied for asylum. In the ensuing months she was diagnosed as having two AIDS defining illnesses and a high level of immunosuppression. She was treated with antiretroviral drugs and her condition began to stabilise. In 2001 the Secretary of State refused her asylum claim on credibility grounds and also rejected a claim that her expulsion would constitute inhuman treatment under Article 3 of the Convention. Although the applicant successfully appealed to an adjudicator on the Article 3 point, that decision was overturned by the Immigration Appeal Tribunal, which found that medical treatment was available in Uganda even though it fell below the level of medical provision in the United Kingdom. The applicant's appeals to the Court of Appeal and the House of Lords were dismissed. At the date of the Grand Chamber's judgment, the applicant's condition was stable, she was fit to travel and was expected to remain fit as long as she continued to receive the basic treatment she needed. The evidence before the national courts indicated, however, that if she were to be deprived of the medication she had been receiving in the United Kingdom her condition would rapidly deteriorate and she would suffer ill-heath, discomfort, pain and death within a few years. According to information collated by the World Health Organisation, antiretroviral medication was available in Uganda, although, through a lack of resources, it was received by only half of those in need. The applicant claimed that she would be unable to afford the treatment and that it would not be available to her in the rural area from which she came. It appeared that she had family members in Uganda, although she claimed that they would not be willing or able to care for her if she were seriously ill.

Law: The Court summarised the principles applicable to the expulsion of the seriously ill: Aliens subject to expulsion could not in principle claim any entitlement to remain in the territory of a Contracting State in order to continue to benefit from medical, social or other forms of assistance and services provided there. The fact that the applicant's circumstances, including her or his life expectancy, would be significantly reduced if he or she were to be removed was not sufficient in itself to give rise to a breach of Article 3. The decision to remove an alien suffering from a serious mental or physical illness to a country where the facilities for the treatment of that illness were inferior to those available in the Contracting State might raise an issue under Article 3, but only in a very exceptional case, where the humanitarian grounds against the removal were compelling, as in *D. v. the United Kingdom* (*Reports of Judgments and Decisions* 1997-III – applicant critically ill and close to death, with no guarantees of any nursing or medical care in his country of origin or family there willing or able to provide even a basic level of food, shelter or social support). Article 3 did not place an obligation on Contracting States to alleviate disparities between the levels of treatment available in different countries through the provision of free and unlimited health care to all aliens without a right to stay within their jurisdiction. Finally, these principles had to apply to the expulsion of any person afflicted with any serious, naturally occurring physical or mental illness which might cause suffering, pain and reduced life expectancy and require specialised medical treatment which might not be so readily available in the applicant's country of origin or which might be available only at substantial cost.
In the applicant's case, her claim was based solely on her serious medical condition and the lack of sufficient treatment available in her home country. The fact that the United Kingdom had provided her with medical and social assistance at public expense while her asylum application and claims under the Convention were being determined did not in itself entail a duty on its part to continue to provide for her. Although her quality of life and life expectancy would be affected if she were returned to Uganda, she was not critically ill. The rapidity of the deterioration she would suffer and the extent to which she would be able to obtain access to medical treatment, support and care, including help from relatives, involved a

certain degree of speculation, particularly in view of the constantly evolving situation as regards the treatment of HIV and AIDS worldwide. Her case did not, therefore, disclose "very exceptional circumstances".
Conclusion: no violation (fourteen votes to three).

EXPULSION
Risk of ill-treatment in case of expulsion to Algeria of a terrorist suspect: *admissible*.

RAMZY - Netherlands (N° 25424/05)
Decision 27.5.2008 [Section III]

The applicant is an Algerian national known to the Netherlands authorities under the name of "Mohammed Ramzy" as well as several aliases. Since 1998 he has been residing illegally in the Netherlands after two successive asylum requests were rejected. In 2002 the applicant and eleven others were arrested on suspicion of membership of an active Islamic extremist support network in the Netherlands. These suspicions were based on intelligence reports by the Netherlands national security agency. The network was believed to have links with the Algerian Groupe Salafiste pour la Prédication et le Combat (GSPC) and al-Qaeda and to be involved in the recruitment and preparation of young men in the Netherlands for Islamic extremist terrorist acts abroad (in Kashmir, Afghanistan and Iraq). In 2003, in the criminal proceedings known as "the Rotterdam jihad trial", the applicant was acquitted as the trial court concluded that the intelligence reports could not be used in evidence, given the absence of an effective opportunity for the defence to verify their content and completeness. Consequently, the applicant was released from pre-trial detention. Immediately after his release, he filed a third asylum request, claiming that he would be exposed in Algeria to a risk of ill-treatment for his suspected involvement with Islamic extremist terrorism, as the jihad trial had been given wide coverage in the international media. His request was rejected, as the alleged risk was deemed too general and unsubstantiated. In the meantime, in 2004 the Minister for Immigration and Integration issued an exclusion order against the applicant for posing a threat to national security. He unsuccessfully challenged both decisions before the courts. On 15 July 2005, at the applicant's request, the European Court decided to indicate to the respondent Government under Rule 39 of the Rules of Court that the applicant should not be removed to Algeria until further notice. Subsequently, he was released from detention. His request for access to the material on which the intelligence report was based, was rejected, as he had failed to submit a valid identity document. The judicial proceedings on this issue are still pending. In 2005 the Algerian authorities advised in reply to a request from their Dutch counterparts that the applicant was known in Algeria under another name, and issued a laissez-passer in that name. To date, it has not been used by the Netherlands authorities. In 2006 the Netherlands national security agency stated in a new report that the applicant had stayed in Algeria after July 2004. The applicant contested that statement. Referring to various reports on Algeria, he complains that, if he is expelled there, he will be exposed to a real risk of treatment contrary to Article 3 of the Convention. He further complains under Article 13 in conjunction with Article 3 that, as he has not been granted access to the material on which the national security agency relied in their reports, he has been denied the right to effective adversarial proceedings and therefore does not have an effective remedy. *Admissible*.

ARTICLE 5

Article 5 § 1

LAWFUL ARREST OR DETENTION
Court orders detention to continue even though it finds the original detention order to be unlawful: *case referred to the Grand Chamber*.

MOOREN - Germany (N° 11364/03)
Judgment 13.12.2007 [Section V]

The case concerns the applicant's complaint about the unlawfulness of his pre-trial detention following his arrest on suspicion of tax evasion. The applicant argued that he had been deprived of his liberty contrary to Article 5 § 1 as the appellate court had ordered his detention to continue even though it considered the original detention order to be unlawful.
In its Chamber judgment of 13 December 2007, (see Press Release no. 917), the Court held by five votes to two that there had been no violation of Article 5 § 1 (right to liberty and security).
The Court held unanimously that there had been two violations of Article 5 § 4 on account of the lack of speedy review of the lawfulness of the applicant's detention and the refusal to grant access to the case files in those review proceedings.

The case was referred to the Grand Chamber at the applicant's request.

LAWFUL ARREST OR DETENTION
Calculation of total period to be served after applicant received prison sentences from two different courts: *inadmissible*.

GARAGIN - Italy (N° 33290/07)
Decision 29.4.2008 [Section II]

(see Article 3 above).

Article 5 § 3

LENGTH OF PRE-TRIAL DETENTION
Pre-trial detention of a minor for 48 days in an adult facility: *violation*.

NART - Turkey (N° 20817/04)
Judgment 6.5.2008 [Section II]

Facts: The applicant, then aged seventeen, was arrested on suspicion of the armed robbery of a grocer's shop and held in an adult prison. His lawyer applied for his release on the grounds that, as a minor, he could be detained only as a measure of last resort and not in an adult facility. However, the application was refused by an assize court on account of the nature of the offence and the state of the evidence. The applicant remained in custody for a total of 48 days before being released at the start of his trial. In his application to the Court, he complained of the length of his pre-trial detention.

Law: Various international texts indicated that the pre-trial detention of minors was to be used only as a measure of last resort and to be as short as possible. Likewise, minors were to be kept apart from adults. The applicant had been held in pre-trial detention for 48 days. In finding that period to have been

excessive, the Court noted that the authorities had failed to take his age into consideration, that he had been held in a prison with adults and that "the state of the evidence" could not by itself justify the length of his detention.
Conclusion: violation (five votes to two).

Article 41 – EUR 750 in respect of non-pecuniary damage.

ARTICLE 6

Article 6 § 1 [civil]

APPLICABILITY
FAIR HEARING
Disciplinary proceedings resulting in restriction on family visits to prison: *Article 6 applicable; violation (unfair proceedings)*.

GÜLMEZ - Turquie (N° 16330/02)
Judgment 20.5.2008 [Section II]

Facts: In 2001 the applicant, a prisoner in Ankara Sincan F-type Prison, was found guilty on five different occasions of various disciplinary offences (including damaging prison property and chanting slogans). For each offence he was prohibited from receiving visits for a certain period, amounting to almost a year in all. He appealed to the Ankara State Security Court against each of the sanctions, but to no avail.

Law: Article 6 – Since the disciplinary proceedings did not involve the determination of a criminal charge against the applicant, it was necessary to establish whether they concerned a genuine and serious "dispute" over civil rights or obligations recognised under domestic law. The restriction of the applicant's visiting rights clearly fell within the sphere of his personal rights and was therefore civil in nature. Moreover, since the domestic law provided judicial remedies against disciplinary sanctions imposed on prisoners, the applicant had the right to challenge those sanctions before the domestic courts. The above sufficed for the Court to conclude that Article 6 was applicable to the applicant's case. As to the merits, the Court drew particular attention to Article 59 (c) of the European Prison Rules, adopted by the Committee of Ministers of the Council of Europe on 11 January 2006, according to which prisoners charged with disciplinary offences should be allowed to defend themselves in person or through legal assistance when the interests of justice so required. Pursuant to the domestic law at the material time, prisoners' appeals against disciplinary sanctions were examined on the basis of the case file, without a public hearing. The applicant's defence submissions were only taken into account before imposing various sanctions and he was not afforded the opportunity of defending himself through a lawyer before the domestic courts which decided his disciplinary appeals. In conclusion, the applicant could not effectively follow the proceedings against him.
Conclusion: violation (unanimously).

Article 8 – Save for the right to liberty, prisoners generally continued to enjoy all the fundamental rights and freedoms guaranteed under the Convention, including the right to respect for family life. In the present case, the restrictions imposed on the applicant's visiting rights lasting almost one year were based on applicable regulations which, as in force at the material time, did not indicate in precise terms the punishable acts or related penalties, leaving the domestic authorities a wide degree of discretion in this respect. In these circumstances the Court concluded that the domestic regulations failed to meet the "quality of law" requirement.
Conclusion: violation (unanimously).

Article 41 – EUR 1,000 in respect of non-pecuniary damage.

Article 46 – Domestic legislation concerning disciplinary offences committed in prison, as in force since January 2005, provided a sufficiently clear and detailed list of punishable acts and sanctions relating to them. However, the procedure to be followed in such proceedings remained unchanged and the charged prisoners were still not allowed to defend themselves in person or through legal assistance. Having regard to the systematic situation identified and with a view to ensuring the effective protection of the right to a fair hearing in accordance with Article 6 of the Convention, the Court considered it desirable for the respondent State to bring its legislation in line with the principles set out in Articles 57 § 2 (b) and 59 (c) of the European Prison Rules.

APPLICABILITY
No right under domestic law to obtain a permit to provide betting and gaming services: *inadmissible*.

LADBROKES WORLDWIDE BETTING - Sweden (N° 27968/05)
Decision 6.5.2008 [Section III]

The applicant, a UK based company, applied to the Government for a permit to provide betting and gaming services in Sweden under section 45 of the Lotteries Act. The Government rejected the application noting that betting and gaming in Sweden was essentially reserved for the State and that the profits arising from such activities should be for the benefit of the public or for public utility purposes. The applicant applied for judicial review of that decision to the Supreme Administrative Court and moved for withdrawal of certain judges from sitting in his case. The court rejected that motion and subsequently dismissed the applicant's appeal, upholding the Government's findings.
The applicant complained of the lack of independence and impartiality of the Supreme Administrative Court. However, it was first necessary to establish whether there existed a right that could arguably be said to be recognised by Swedish law. Under the Lotteries Act, betting and gaming services depended on granting a permit generally reserved for Swedish non-profit making associations fulfilling certain requirements. Moreover, section 45 of that Act conferred on the Government the power to grant a permit to arrange lotteries whenever they considered it appropriate, without specifying how and when that power should be used. Given such unfettered discretion on the part of the public authority, the applicant could not claim to have an actual right that could be said to have been recognised under domestic law: *incompatible* ratione materiae.

Article 6 § 2

PRESUMPTION OF INNOCENCE
Specific remedies available in domestic law for violations of the presumption of innocence: *inadmissible (non-exhaustion of domestic remedies)*.

MARCHIANI - France (N° 30392/03)
Decision 27.5.2008 [Section V]

Several sets of proceedings, all investigated by the same judge, have been opened against the applicant, a Member of the European Parliament ("MEP"), in which a number of procedural measures have been taken for offences including misuse of company assets. The French authorities sent the European Parliament a report of the Principal Public Prosecutor at the Court of Appeal, with a request to lift the applicant's parliamentary immunity, stating that his detention pending trial was the only way to put a stop to the disturbance of public order, keep the applicant at the disposal of the judicial authorities, prevent him from entering into contact with various witnesses or accomplices and enable the investigators to carry out their investigations properly. A newspaper published an article on the request to lift the applicant's parliamentary immunity, together with the content of two previous requests in which the judge spoke of the need to commit the MEP to prison. The European Parliament's Committee on Legal Affairs and the Internal Market unanimously rejected the request to lift the applicant's parliamentary immunity.

The applicant's detention was ordered but he was released subject to court supervision.
The investigating judge authorised the interception and recording of telephone conversations on the applicant's home line and his wife's mobile phone. The resulting evidence was filed in court. The applicant lodged an application to have certain evidence declared null and void because the warrant for the tapping of his telephone had been signed while he was still an MEP. He wanted the documents containing transcripts of the telephone conversations disallowed in so far as the President of the European Parliament had not been notified of the telephone-tapping. He further submitted that the court could not disregard the provisions of the Code of Criminal Procedure as they affected MEPs without having first submitted a preliminary question to the Court of Justice of the European Communities, or the Minister of Foreign Affairs as the only person authorised to interpret treaties when their interpretation raised issues of public international law. The investigation division of the Court of Appeal declared certain items of evidence inadmissible and ordered other documents to be declared null and void. In the meantime the investigating judge filed copies of excerpts from the transcriptions of telephone conversations intercepted while the applicant was an MEP. The applicant lodged two applications to have procedural measures declared null and void. He appealed on points of law, as did the Principal Public Prosecutor at the Court of Appeal. The Court of Cassation quashed and annulled the judgments of the investigation division of the Court of Appeal in so far as they declared the procedural measures null and void, but without remitting the case.
The European Parliament adopted a decision to defend the immunity and privileges of the applicant, a former MEP, called for the judgment of the Court of Cassation to be annulled or revoked and in any event for all *de facto* or *de jure* effects of that judgment to cease, and instructed its President to send its decision and the relevant committee report immediately to the Court of Cassation, the Government and the French National Assembly and Senate. The European Parliament also adopted a resolution on a possible violation of the Protocol on privileges and immunities of the European Union by a member State, in which it decided to ask the Commission to initiate proceedings against France for violating EU law.
The applicant was committed to stand trial before the *tribunal de grande instance* on the charges against him. He asked the court to refer a preliminary question to the Court of Justice of the European Communities concerning the interpretation and application of the Protocol on privileges and immunities of the European Union. He said that he had lodged a complaint with the European Court of Human Rights under Article 8 of the Convention and explained that this was a necessary step in view of the incompatibility of the decisions of the Court of Cassation with the terms of the Protocol and the decision of the European Parliament. The court rejected the objection to admissibility. It considered a preliminary question unnecessary in so far as, in keeping with the judgment pronounced by the criminal division of the Court of Cassation – whose decision concerning the readmission of the impugned documents as evidence was binding – the application of the Protocol on privileges and immunities could not be considered to extend the provisions of the Code of Criminal Procedure to members of the European Parliament. The applicant was found guilty as charged.

Inadmissible under Article 6 § 2 – The report the Principal Public Prosecutor submitted to the President of the European Parliament had merely singled out those items in the case file that might serve to justify pre-trial detention. That being so, the declarations made by the Principal Public Prosecutor had in no way affected the applicant's right to be presumed innocent. Furthermore, the applicant complained that a newspaper had published passages from the above-mentioned report and that the domestic courts had had a hand in their publication. However, a matter could be brought before the Court only once the domestic remedies had been exhausted. In this particular case there were specific remedies in French law of which the applicant could have availed himself to have the alleged violation set right. It had been up to him to use those remedies, the respondent State being under no obligation to apply them of its own motion: *non-exhaustion of domestic remedies*.

Inadmissible under Article 8 – The interception of telephone communications amounted to an interference with the applicant's right to respect for his private life and his correspondence. The telephone tapping had been ordered by an investigating judge based on provisions of the Code of Criminal Procedure – to which reference was also made in the law on the confidentiality of telecommunications – and had therefore been in accordance with the law. The law was also accessible. As to whether it was foreseeable, the applicant complained essentially that the telephone-tapping measures had been unlawful because the Court of

Cassation had decided that the provisions of the Code of Criminal Procedure reserving special treatment for certain social groups were not applicable to members of the European Parliament like himself. However, the Code of Criminal Procedure laid down clear and detailed rules and explained in sufficiently clear terms the scope and manner of the authorities' margin of appreciation in that area. Furthermore, as to the applicability of the Code of Criminal Procedure to MEPs, it was for the national authorities first and foremost, and in particular the courts, to interpret and apply the domestic law, even when it referred to international law or international agreements. Just as the judicial organs of the European Union were best placed to interpret and apply Community law. The role of the Court consisted in verifying the compatibility of the effects of such decisions with the Convention. It was not, in principle, for the Court to disagree with the Court of Cassation as to the scope of the Code of Criminal Procedure or the nature of the measures provided for therein, except in the event of a manifestly arbitrary interpretation, which was not the case here. Furthermore, the Protocol on privileges and immunities of the European Union, in the absence of any independent and uniform legal framework governing the immunity of members of the European Parliament, expressly referred to domestic law regarding the substantive content of members' immunity when proceedings were brought against them in their own countries. That being so, the rules governing parliamentary immunity in French law, which covered the notions of freedom from liability and immunity from prosecution, laid down no obstacles to criminal proceedings against, or investigations of, MPs except in connection with opinions expressed or votes cast in the exercise of their duties. The relevant Article of the Code of Criminal Procedure concerned only members of the lower and upper houses of the French Parliament and, in the absence of any provision to the contrary, could not be considered to apply, or even to be transposable, to MEPs. Failure to fulfil the requisite conditions rendered the measures concerned null and void. Such nullity should generally be understood restrictively, but there were no decisions in Community law or judgments of the Court of Justice which interpreted the Article concerned in the extensive manner suggested by the applicant. It followed that its non-application to the applicant did not challenge the lawfulness of the monitoring of his telephone conversations or the requisite quality of the corresponding law. The impugned measures were therefore in accordance with the law. Lastly, the purpose of the interference was to establish the truth in criminal proceedings intended to protect law and order. The applicant had had every opportunity to present his arguments to the competent courts, as he had been able to apply to the investigation division of the Court of Appeal and to the Court of Cassation to have certain evidence obtained through telephone-tapping disallowed. Not only had the telephone-tapping been ordered by a judge and carried out under his supervision, but the provisions of the law governing telephone-tapping were in keeping with the requirements of Article 8 of the Convention. The applicant had therefore not been deprived of the effective protection of the relevant domestic law and he had had access to an effective remedy to challenge the telephone-tapping measures. The interference in question was therefore not disproportionate to the legitimate aim pursued: *manifestly ill-founded*.

ARTICLE 7

Article 7 § 1

HEAVIER PENALTY
Final calculation of total period to be served after applicant received two prison sentences that led to a longer deprivation of liberty than that initially indicated by State Counsel's Office: *inadmissible*.

GARAGIN - Italy (N° 33290/07)
Decision 29.4.2008 [Section II]

(see Article 3 above).

ARTICLE 8

PRIVATE LIFE
Restrictions on obtaining an abortion in Ireland: *communicated*.

A., B. and C. - Ireland (N° 25579/05)
[Section III]

Under Irish law as interpreted by the Supreme Court, an abortion is lawful only if there is a real and substantive risk to the life of the mother that can be averted only by a termination of pregnancy. Since the introduction of the Thirteenth and Fourteenth Amendments to the Constitution, it is now lawful for Irish residents to have an abortion abroad or to obtain or make available information relating to services available in another State.
All three applicants were resident in Ireland at the material time, had become pregnant unintentionally and had decided to have an abortion as they considered that their personal circumstances did not permit them to take their pregnancies to term. The first applicant was an unemployed single mother. Her four young children were in foster care and she feared that having another child would jeopardise her chances of regaining custody after sustained efforts on her part to overcome an alcohol-related problem. The second applicant had been advised that she had a substantial risk of an ectopic pregnancy and in any event did not wish to become a single parent. The third applicant, a cancer patient, was unable to find a doctor willing to advise whether her life would be at risk if she continued to term or how the foetus might have been affected by contraindicated medical tests she had undergone before discovering she was pregnant. As a result of the restrictions in Ireland all three applicants were forced to seek an abortion in a private clinic in England in what they described as an unnecessarily expensive, complicated and traumatic procedure. The first applicant was forced to borrow money from a money lender, while the third applicant, despite being in the early stages of pregnancy, had to wait for eight weeks for a surgical abortion as she could not find a clinic willing to provide a medical abortion (drug-induced miscarriage) to a non-resident because of the need for follow-up. All three applicants experienced complications on their return to Ireland, but were afraid to seek medical advice there because of the restrictions on abortion.
Communicated under Article 2 (third applicant) and Articles 3, 8, 13 and 14.

PRIVATE LIFE
Gynaecological examination imposed on a detainee without her free and informed consent: *violation*.

JUHNKE - Turkey (N° 52515/99)
Judgment 13.5.2008 [Section IV]

Facts: In 1997 the applicant, a German national, was arrested by Turkish soldiers on suspicion of membership of an illegal armed organisation, the PKK (Workers' Party of Kurdistan) and handed over to local gendarmes. In 1998 she was convicted as charged and sentenced to imprisonment. In the meantime she lodged a petition with a public prosecutor's office, stating that she had been subjected to a gynaecological examination without her consent. She further claimed that she had been stripped naked and sexually harassed by several gendarmes present during the examination. The applicant had requested the prosecution of both the gendarmes and the doctor. In 2002 the criminal investigation against the gendarmes was suspended by the Supreme Administrative Court. In 2004 the applicant was released and deported to Germany.

Law: The applicant had resisted the gynaecological examination until persuaded to agree to it. Given the vulnerability of a detainee at the hands of the authorities, she could not have been expected to have resisted the examination indefinitely. She had been detained *incommunicado* for at least nine days prior to the intervention. At the time of the examination, she had apparently been in a particularly vulnerable mental state. It was not suggested that there had been any medical reason for such an examination or that it had been carried out in response to a complaint of sexual assault lodged by her. It remained, moreover,

unclear whether she had been adequately informed of the nature of and the reasons for the measure. In the light of the doctor's statement, she might have been misled into believing that the examination had been compulsory. It could not be concluded with certainty that any consent given by the applicant had been free and informed. The imposition of a gynaecological examination on her, in such circumstances, had given rise to an interference with her right to respect for her private life, and in particular her right to physical integrity. Further, it had not been shown that that interference had been "in accordance with the law", as the Government had not presented any arguments to the effect that the interference was based on and was in compliance with any statutory or other legal rule. The impugned examination had not been part of the standard medical examination applied to persons arrested or detained. Rather it appeared to have been a discretionary decision – not subject to any procedural requirements – taken by the authorities in order to safeguard the members of the security forces, who had arrested and detained the applicant, against a potential false accusation by the applicant of sexual assault. Even if this could, in principle, have constituted a legitimate aim, the examination had not been proportionate to such an aim. The applicant had not complained of having been sexually assaulted and no reason had been advanced suggesting that she would be likely to do so. Therefore, that aim was not such as to justify overriding the refusal of a detainee to undergo such an intrusive and serious interference with her physical integrity or seeking to persuade her to give up her express objection. The gynaecological examination which had been imposed on the applicant without her free and informed consent had not been shown to have been "in accordance with the law" or "necessary in a democratic society".
Conclusion: violation (five votes to two).

The Court found no violation of Article 3 and a violation of Article 6.

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

See also *Y.F. v. Turkey*, no. 24209/94 in Information Note no. 55.

PRIVATE LIFE
CORRESPONDENCE
Ruling by Court of Cassation that a special procedure that had to be followed before the telephone calls of a member of the national parliament could be monitored did not apply to the monitoring of calls of members of the European Parliament: *inadmissible*.

MARCHIANI - France (N° 30392/03)
Decision 27.5.2008 [Section V]

(see Article 6 § 2 above).

CORRESPONDENCE
Systematic monitoring of the entirety of a prisoner's correspondence: *violation*.

PETROV - Bulgaria (N° 15197/02)
Judgment 22.5.2008 [Section V]

(see Article 14 below).

FAMILY LIFE
Restrictions on contact before trial between a remand prisoner and his wife on the ground that she might be called as a prosecution witness: *violation*.

FERLA - Poland (N° 55470/00)
Judgment 20.5.2008 [Section IV]

Facts: The applicant was charged with the aggravated assault of a neighbour and detained pending trial. His wife said in statements to the police that she had not witnessed the incident and would not testify against her husband. During the eleven-month period leading up to the trial, she was allowed to visit him only once, her other requests being turned down on the grounds that she would be called as a witness for the prosecution. At the trial, the applicant was convicted and sentenced to four years' imprisonment.

Law: The case turned on the issue of whether the measure was "necessary in a democratic society". Initially the measure could be considered to have been necessary and reasonable despite the harsh consequences it had had on the applicant's family life. However, the Court had to consider whether its continued application was compatible with Article 8. Although the applicant's wife had stressed that she had no information to offer and had subsequently refused to testify, she had been allowed to visit the applicant only once. The authorities had not considered any alternative means, such as supervision by a prison officer or other restrictions on its nature, frequency and duration, of ensuring that the applicant's contact with his wife would not lead to collusion or otherwise obstruct the process of taking evidence. Indeed, the authorities had not seen any obstacle to her visiting the applicant on the one occasion they had allowed her to do so. In the circumstances, and having regard to their duration and nature, the restrictions on the applicant's contact with his wife went beyond what was necessary in a democratic society "to prevent disorder and crime" and failed to maintain a fair balance between the means employed and the aim pursued.
Conclusion: violation (unanimously).

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

FAMILY LIFE
Disciplinary proceedings resulting in restriction on family visits for almost a year: *violation*.

GÜLMEZ - Turkey (N° 16330/02)
Judgment 20.5.2008 [Section II]

(see Article 6 § 1 above).

HOME
Eviction of council-house tenant under summary procedure affording inadequate procedural safeguards: *violation*.

McCANN - United Kingdom (N° 19009/04)
Judgment 13.5.2008 [Section IV]

Facts: The applicant and his wife were secure tenants under the Housing Act 1985 of a three-bedroom house belonging to the city council. The marriage broke down and the wife obtained an order requiring the applicant to leave the matrimonial home on grounds of domestic violence. After she and the children had been re-housed, the applicant moved back into the vacant house and did a considerable amount of renovation work. His relationship with his wife improved and she supported his application for an exchange of accommodation with another local-authority tenant, as the three-bedroom house was too big for him but he still required a home in the area so that his children could visit. In January 2002 a housing officer, having realised that the property was not in fact empty, visited the applicant's wife and got her to

sign a notice to quit. The wife says that she was not advised and did not understand at that time that this would extinguish the applicant's right to live in the house or to exchange it. The local authority then sought a possession order which it obtained on appeal, the appellate court finding that the local authority had acted lawfully and that the notice to quit was effective even though it had been signed without an understanding of its consequences. That decision was upheld in judicial review proceedings brought by the applicant and again on appeal. The applicant was evicted from the house.

Law: The notice to quit and possession proceedings amounted to interference with the applicant's right to respect for his home. That interference was in accordance with the law and pursued the legitimate aims of protecting the local authority's right to regain possession of property from an individual who had no contractual or other right to be there and of ensuring that the statutory scheme for housing provision was properly applied. The Court noted that any person at risk of losing his home should be able to have the proportionality of the measure determined by an independent tribunal, even if, under domestic law, the right of occupation had come to an end. The legislature in the United Kingdom had set up a complex system for the allocation of public housing which included, under section 84 of the Housing Act 1985, provisions to protect secure tenants with public authority landlords. Had the local authority sought to evict the applicant in accordance with that statutory scheme, the applicant could have asked the court to examine his personal circumstances, including the need to provide accommodation for his children and whether his wife had really left the family home because of domestic violence. However, the local authority had chosen to bypass that statutory scheme by asking the applicant's wife to sign a common law notice to quit, which had resulted in the termination of the applicant's right, with immediate effect, to remain in the house. The authority, in the course of that procedure, had not given any consideration to the applicant's right to respect for his home. Nor had the ensuing possession proceedings or judicial review proceedings provided any opportunity for an independent tribunal to examine whether the applicant's loss of his home was proportionate to the legitimate aims pursued. It was immaterial whether or not the wife had understood or intended the effects of the notice to quit. The procedural safeguards under the summary procedure available to a landlord where one joint tenant served a notice to quit were inadequate.
Conclusion: violation (unanimously).

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

ARTICLE 13

EFFECTIVE REMEDY
Denial of access to intelligence that had resulted in an asylum seeker's exclusion on national security grounds: *admissible*.

RAMZY - Netherlands (N° 25424/05)
Decision 27.5.2008 [Section III]

(see Article 3 above).

ARTICLE 14

DISCRIMINATION (Article 8)
Prisoner's inability to make telephone calls to his partner because they were not married: *violation*.

PETROV - Bulgaria (N° 15197/02)
Judgment 22.5.2008 [Section V]

Facts: Between 2001 and 2003 the applicant served a prison sentence at Lovech Prison. During his stay, he was not allowed to send correspondence in sealed envelopes to the lawyer representing him in pending

domestic proceedings and before the Court. His letters were systematically opened and checked by the prison authorities. Furthermore, while married inmates had the right to call their spouses from a private telephone booth twice a month, he was barred for a period of time from making calls to the mother of his child with whom he had been living for about four years on account of the fact that they were not married.

Law: Article 8 – The applicant complained about the monitoring of his correspondence, including with his lawyer. The monitoring was based on domestic law, which provided that the entirety of the prisoners' correspondence was to be screened, without distinguishing between different categories of correspondents. Moreover, the statutory provisions did not lay down any rules governing the implementation of such monitoring nor were the domestic authorities required to give reasons. Despite the existence of a certain margin of appreciation in this domain, and in the absence of any arguments by the authorities as to the indispensable nature of such a measure, the monitoring of the entirety of the applicant's correspondence did not correspond to a pressing social need and was not proportionate to the legitimate aim pursued.
Conclusion: violation (unanimously).

Article 14 in conjunction with Article 8 – The applicant also complained that, unlike married prisoners, he was not allowed to call his life-partner from the prison telephone. Notwithstanding the differences in legal status of married couples, as well the general acceptance of the institution of marriage, the applicant and his partner were in a long-term relationship and had a child together. His situation was therefore substantially the same as that of married inmates. However, neither the domestic authorities nor the Government had advanced objective and reasonable justification for the difference in treatment of the applicant compared to married inmates. Despite the State's margin of appreciation, the Court did not consider it acceptable that married and unmarried prisoners with an established family life should receive such disparate treatment in terms of maintaining family ties while in custody.
Conclusion: violation (unanimously).

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

DISCRIMINATION (Article 8)
Failure of domestic courts to impose sanctions in respect of works allegedly insulting to Roma: *communicated*.

AKSU - Turkey (N° 4149/04 and 41029/04)
[Section II]

The applicant, who is a Turkish national of Roma origin, brought two civil actions in the Ankara Civil Court claiming that two publications financed by the Ministry of Culture – a book entitled "Gypsies of Turkey" and a dictionary (the Turkish Dictionary for Pupils) – contained expressions amounting to discrimination against Roma and an insult to his identity as a Roma. The court dismissed his claims finding that the book was the result of scientific research into the social structures of Roma, and the definitions and the expressions contained in the dictionary were based on historical and sociological realities, so that neither of the publications had amounted to an insult of the applicant.

Cases *communicated* under Article 14 read in conjunction with Article 8 of the Convention, with specific questions concerning the applicant's victim status.

ARTICLE 35

Article 35 § 1

EFFECTIVE DOMESTIC REMEDY (France)
Specific remedies available in domestic law for violations of the presumption of innocence: *inadmissible*.

MARCHIANI - France (N° 30392/03)
Decision 27.5.2008 [Section V]

(see Article 6 § 2 above).

Article 35 § 3

COMPETENCE *RATIONE TEMPORIS*
Alleged violation based on an administrative decision taken before the entry into force of the Convention, whereas the final judicial decision was taken thereafter: *inadmissible*.

MELTEX LTD - Armenia (N° 37780/02)
Decision 27.5.2008 [Section III]

The applicant, a television company, was granted a five-year broadcasting licence in 1997 by the Ministry of Communication. A Law on Television and Radio was passed in 2000 introducing a new licensing procedure and entrusting the granting of licences to the National Television and Radio Commission ("the NTRC"). The applicant's licence was renewed by the Commission until licensing competitions took place. In 2002 several competitions were announced, including one for the frequency which had until then been used by the applicant. The applicant and two other companies submitted bids. On 2 April 2002 the NTRC announced that another company had won the call for tender. Thereafter, the electricity supply to the applicant company's transmitter was cut off and its broadcasts ceased. The applicant unsuccessfully sought to annul that decision before the courts. The final decision was given by the Court of Cassation on 14 June 2002. Subsequently, the applicant submitted bids for other frequency competitions, but on each occasion was refused a licence.

Inadmissible: The Convention had entered into force in respect of Armenia on 26 April 2002. The NTRC's decision to grant a broadcasting licence to a company other than the applicant company, thereby rejecting the latter's bid for a broadcasting a licence, had been taken on 2 April 2002. The applicant company had instituted court proceedings seeking an order annulling that decision. The final decision had been taken by the Court of Cassation on 14 June 2002, that is, after the Convention's entry into force in respect of Armenia. However, the applicant company's bid for a licence had been refused by the NTRC's decision, not in the course of the subsequent court proceedings. The NTRC was the sole authority vested with power to examine the applicant company's bid for a broadcasting licence and to decide whether to grant or refuse such a licence. The domestic courts could review the legality of that decision but not examine the competitive bids and decide which company was to be granted a licence. The alleged interference with the applicant company's rights guaranteed by Article 10 had therefore taken place on the date of the NTRC's decision, namely 2 April 2002, which preceded the date of the Convention's entry into force in respect of Armenia. The fact that the final judicial decision had been taken after that date did not bring the alleged interference within the Court's temporal jurisdiction. Furthermore, that decision concerned only the entitlement to conduct broadcasting on band 37 and had not amounted to a general prohibition on the applicant company's right to broadcast as such. Nor had the applicant company been prevented from submitting tenders for other available bands. The fact that the NTRC had rejected all its bids within a certain period did not imply that the decision of 2 April 2002 had given rise to a continuing situation. All the NTRC's decisions in respect of the subsequent calls for tenders had been adopted on

identifiable dates and were the object of a separate application before the Court. The NTRC's decision of 2 April 2002 had been an instantaneous act which, despite its ensuing effects, had not in itself given rise to any possible continuing situation: *incompatible* ratione temporis.

ARTICLE 38

FURNISH ALL NECESSARY FACILITIES
Government's refusal to disclose documents requested by the Court in connection with Article 2 complaints: *inferences drawn under Article 2*.

BETAYEV and BETAYEVA - Russia (N° 37315/03)
GEKHAYEVA and Others - Russia (N° 1755/04)
IBRAGIMOV and Others - Russia (N° 34561/03)
SANGARIYEVA and Others - Russia (N° 1839/04)
Judgments 29.5.2008 [Section I]

(see Article 2 above).

See also, for recent cases in which the Court found a failure to comply with Article 38: *Shamayev and Others v. Georgia and Russia* (no. 36378/02 – reported in Information Note no. 74); *Imakayeva v. Russia* (no. 7615/02 – Information Note no. 91); *Baysayeva v. Russia* (no. 74237/01 – Information Note no. 96); *Akhmadova and Sadulayeva v. Russia* (no. 40464/02 – Information Note no. 97); *Bitiyeva and X. v. Russia* (nos. 57953/00 and 37392/03 – Information Note no. 98); *Kukayev* and *Khamila Isayeva* (nos 29361/02 and 6846/02 – Information Note no. 102); and *Maslova and Nalbandov* (no. 839/02 – Information Note no. 104).

ARTICLE 46

GENERAL MEASURES
Ensure the effective protection of the right to a fair hearing in disciplinary proceedings against prisoners: *bring the national legislation in line with the principles set out in the European Prison Rules*.

GÜLMEZ – Turkey (N° 16330/02)
Judgment 20.5.2008 [Section II]

(see Article 6 above).

ARTICLE 1 OF PROTOCOL No. 1

POSSESSIONS
No right under domestic law to a court award reflecting inflation: *inadmissible*.

TODOROV - Bulgaria (N° 65850/01)
Decision 13.5.2008 [Section V]

In 1997 the applicant brought an action against a municipality seeking restitution of the price paid by him under a contract concluded in 1990 and damages for breach of that contract. A district court granted his claim in part. In 1999 the award was increased on appeal. However, by then, owing to the depreciation of the currency, with accrued interest it represented in real terms but a fraction of the original claim.

Inadmissible: While it was true that the award had been made against the municipality as an administrative body, the facts concerned contractual relations between the applicant and the municipality. In accordance with the established practice of the Bulgarian courts, it was not possible to adjust claims. The applicant had no right under national law to obtain an award in damages reflecting inflation and, therefore, his claim for such an award did not constitute a "legitimate expectation" or "existing possessions", within the meaning of Article 1 of Protocol No. 1. That Article could not be interpreted as imposing an obligation on States to maintain the value of claims or apply an inflation-compatible default interest rate to private claims. The Court did not find any indication that the authorities had contributed to the loss of value of his claim. In particular, there had been no unreasonable delays in the proceedings: *incompatible* ratione materiae.

PEACEFUL ENJOYMENT OF POSSESSIONS
Rate of default interest payable by State hospital lower than that payable by private individuals: *violation*.

MEÏDANIS - Greece (N° 33977/06)
Judgment 22.5.2008 [Section I]

Facts: The applicant had brought proceedings in the Magistrates' Court against the public hospital where he worked under a fixed-term private-law contract, to secure the payment of wages in arrears. He asked for default interest to be paid on the sums due, at the rates prescribed in the law governing interest on debts between private individuals or debts between private individuals and public corporations. In his case that rate would have been 27% for part of the period to be taken into account and 23% for the remainder. The court acknowledged the hospital's obligation to pay the applicant the full amount claimed, plus interest at the legal rate of 6% per year, as provided for in Law no. 496/1974 on the debts of public corporations. The hospital and the applicant appealed. The court of first instance found that the distinction between debtors in the determination of default interest rates unduly favoured public corporations and served no public interest, as financial interest alone could not be considered as such an aim. It held that the application of Law no. 496/1974 violated the principle of equality of arms and violated Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. It adjusted the amount of default interest due accordingly. The hospital appealed on points of law. The case was sent before the full Court of Cassation to rule on the conformity of Law no. 496/1974 with the Constitution and the Convention. The court ruled that applying lower default interest rates to the debts of public corporations than to those of private individuals did not infringe Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. While admitting that Article 1 of Protocol No. 1 protected the creditor's property, it held that the hospital's assets also needed to be protected to enable it to provide a public service unimpeded. The Court of Cassation accordingly quashed the impugned judgment and remitted the case to the court of first instance for re-examination. Eight judges drafted dissenting opinions.

Law: The courts had agreed that the hospital had a debt towards the applicant and that default interest should be paid on the sum owed. In so doing they had established that the applicant was owed default interest which was sufficiently well established to be claimed. The question was whether the difference between the default interest rates applicable to money owed by the State and to money owed by private individuals had caused the applicant to sustain a loss incompatible with Article 1 of Protocol No. 1. The hospital against which the applicant had taken action had not been acting as a public authority in the instant case, but as a private employer. The dispute had come about in the framework of a private-law contract, within which the hospital should have been able to assume the same duties towards its employees as any other private-sector employer, without relying on State privileges to alleviate its debts. However, relying on its public corporate status, the hospital managed to secure an interest rate almost four times lower than that applied to private individuals over the same period. The Court had therefore to consider this shortfall in the sum owed to the applicant, who complained about the difference in interest rates according to the identity of the debtor. It accepted that public entities might enjoy privileges and immunities in the course of their duties that helped them carry out their public service mission effectively. However, it considered that merely being part of the State structure was not sufficient in itself to justify the application of State privileges in all circumstances, but only where they were necessary for public

services to function properly. The Court could not accept the Government's argument that the difference in default interest rates had been essential in the instant case to the smooth functioning of the hospital. As the court of first instance and the judges of the Court of Cassation in their dissenting opinions rightly said, the mere financial interest of a public corporation could not be considered as a public or general interest and could not justify the violation of a creditor's right to the peaceful enjoyment of his possessions caused by the impugned legislation. Furthermore, the Court noted that the Government had offered no other reasonable and objective justification for the distinction for the purposes of Article 1 of Protocol No. 1. That being so, the application of a default interest rate to the hospital, a public corporation, which was almost four times lower than the rate applied to private individuals over the same period had infringed the applicant's right to the peaceful enjoyment of his possessions, enshrined in Article 1 of Protocol No. 1. *Conclusion*: violation (unanimously).

Referral to the Grand Chamber

Article 43 § 2

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

MOOREN - Germany (N° 11364/03)
Judgment 13.12.2007 [Section V]

(see Article 5 § 1 above).

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

On 2 June 2008 the Panel of the Grand Chamber rejected requests for referral of the following judgments, which have consequently become final:

A.B. – Poland N° 33878/96)
ALEKSANDROVA – Russia (N° 28965/02)
BIONDIĆ – Croatia (N° 38355/05)
BOCELLARI and RIZA – Italy (N° 399/02)
CRESCI – Italy (N° 35783/03)
DRIZA – Albania (N° 33771/02)
DYBEKU – Albania (N° 41153/06)
ERKAN SOYLU – Turkey (N° 74657/01)
EVCIMEN – Turkey (N° 21865/02)
GRISHIN – Russia (N° 30983/02)
ISMAILOVA – Russia (N° 37614/02)
JOSEPHIDES – Cyprus (N° 33761/02)
K.Ö – Turkey (N° 71795/01)
KHAMIDOV – Russia (N° 72118/01)
KHAMILA ISAYEVA – Russia (N° 6846/02)
KNYAZEV – Russia (N° 25948/05)
KÖSEOĞLU – Turkey (N° 73283/01)
KUKAYEV – Russia (29361/02)
LEBEDEV – Russia (N° 4493/04)
LIND – Russia (N° 25664/05)
LIU and LIU – Russia (N° 42086/05)
LUCZAK – Poland (N° 77782/01)
MASLENKOVI – Bulgaria (N° 50954/99)
MAUMOUSSEAU and WASHINGTON – France (N° 39388/05)
MELEGARI – Italy (N° 17712/03)
MERAL – Turkey (N° 33446/02)
NACARYAN and DERYAN – Turkey (Nos 19558/02 and 27904/02)
NANKOV – the former Yugoslav Republic of Macedonia (N° 26541/02)
NUR RADYO VE TELEVIZIYON YAYINCILIĞI A.Ş. – Turkey (N° 6587/03)
NURETTIN ALDEMIR and Others – Turkey (Nos 32124/02, 32126/02, 32129/02, 32132/02, 32133/02, 32137/02 and 32138/02)
OGANOVA – Georgia (N° 25717/03)
OOO PKG « Sib Yukass » – Russia (N° 34283/05)
OREL – Ukraine (N° 39924/02)
USTALOV – Russia (N° 24770/04)
ÖZGÜR RADYO – SES RADYO TELEVIZYION YAYIN YAPIM ve TANITIMI A.Ş. –Turkey (N° 11369/03)
PASCULLI – Italy (N° 36818/97)
PAYKAR YEV HAGHTANAK LTD – Armenia (N° 21638/03)
PERRY – Latvia (N° 30273/03)
POPOVICI – Moldova (Nos 289/04 and 41194/04)
RAMADHI and 5 Others – Albania (N° 38222/02)

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

RYDZ – Poland (N° 13167/02)
S.C.I. PLÉLO-CADIOU – France (N° 12876/04)
SAMPSONIDIS and Others – Greece (N° 2834/05)
ŞENCAN – Turkey (N° 7436/02)
SUBOCHEVA – Russia (N° 2245/05)
STOJKOVIC – the former Yugoslav Republic of Macedonia (N° 14818/02)
TIMPUL INFO-MAGAZIN and ANGHEL – Moldova (N° 42864/05)
TOMAŽIČ – Slovenia (N° 38350/02)
URBÁRSKA OBEC TRENČIANSKE BISKUPICE – Slovakia (N° 74258/01)
Z.A.N.T.E. – MARATHONISI A.E. – Greece (N° 14216/03)