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

Information Note on the Court's case-law

No. 152 May 2012

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

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ISSN 1996-1545

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Alleged breach of State's obligations to protect life during hostage taking crisis in Beslan in 2004: *communicated*

Tagayeva and Others v. Russia - 26562/07 et al.
[Section I]

This case arises out of a terrorist attack on a school in Beslan, North Ossetia (Russia) in September 2004 that resulted in the deaths of some 334 civilians, including 186 children, who had been taken hostage. Shortly after 9 a.m. on 1 September 2004 a group of heavily armed terrorists entered the courtyard of the school during a traditional ceremony to mark the opening of the academic year and forced over 1,100 of those present into a ground-floor gymnasium, which they proceeded to rig with explosive devices. Some sixteen male hostages were killed later that day. On 3 September a series of three explosions ripped through the gymnasium where the hostages were being held, causing multiple casualties, either during the explosions or resulting fire, or when they were shot when attempting to escape. The nature and origins of the explosions are disputed. In particular, a series of forensic reports commissioned by the investigators at the time indicated that the explosions were caused by the devices that had been placed by the terrorists. The applicants, however, rely on a report commissioned by the North Ossetian Parliament and a report by a deputy from the State Duma, Mr Saliyev, both of which argue that the first two explosions were in fact caused by external sources.

In their applications to the European Court, the applicants allege, *inter alia*, that the deaths in the gymnasium were the result of a disproportionate use of force by the authorities, that the authorities failed to negotiate with the assailants to secure the hostages' peaceful release and that there was no adequate plan for the treatment and medical care of victims and insufficient resources to prevent the loss of life from fire. They also alleged the lack of an effective investigation into the events.

Communicated under Articles 2, 3, 6, 8, 10 and 13 of the Convention.

Use of force

Conscript shot dead while trying to escape from detention to which he had been sentenced for disciplinary offence: *violation*

Putintseva v. Russia - 33498/04
Judgment 10.5.2012 [Section I]

Facts – The applicant's son was shot and killed while attempting to escape as he was being escorted back to his detention unit to complete a ten-day disciplinary sentence he had received for being absent without leave from his compulsory military service. No charges were brought against the sergeant who shot him – and with whom the applicant's son had had an altercation shortly beforehand – on the grounds that he had followed the rules regulating the use of firearms to prevent the escape of an arrestee.

Law – Article 2

(a) *Substantive aspect* – The domestic authorities' findings had not involved the assessment of the legal framework defining the circumstances for the use of force against a fleeing soldier. Ascertaining whether the facts disclosed a violation of Article 2 was a distinct question from assessing whether there was any criminal liability on the part of the sergeant. The standard applied by the domestic authorities had been whether the use of lethal force had been legitimate, as opposed to whether it had been "absolutely necessary" under Article 2 § 2. Under the relevant domestic law it was lawful to shoot any fugitive, even one sentenced for a minor disciplinary offence, who did not surrender immediately in response to an oral warning or the firing of a warning shot in the air. Such a legal framework was fundamentally deficient and fell well short of the level of protection "by law" of the right to life as it made no room for the proportionality requirement and did not contain any other safeguards to prevent the arbitrary deprivation of life. There had therefore been a general failure by the respondent State to comply with its obligation under Article 2 to secure the right to life by putting in place an appropriate legal and administrative framework on the use of force and firearms by military sentries against fleeing soldiers.

As regards the actual use of force and the authorities' conduct preceding the incident, the applicant's son was not armed and did not represent a danger to those escorting him or third parties. In these circumstances, any resort to potentially lethal force was prohibited by Article 2, regardless of any risk that he might escape. Moreover, it appeared that

there had been other means available to prevent his escape. His behaviour had apparently been predictable, since he had easily been found in a previous incident, and his commanding officers were aware that he was experiencing psychological problems in adjusting to life in the army and was liable to try to escape. However there was no indication that the sergeant who had shot him had received clear instructions about the amount of force necessary in such circumstances or been provided with guidance to minimise the risk of loss of life. It was also of concern that the same sergeant with whom the applicant's son had had a physical altercation shortly before the shooting had been entrusted with the task of escorting him. The escort had been organised in an unconsidered manner and the decision taken by the commandant to entrust the sergeant with the task of escorting him had lacked the necessary degree of caution. Thus the authorities had failed to minimise to the greatest extent possible recourse to lethal force and any risk to the applicant's son's life.

In sum, the relevant legal framework on the use of force had been fundamentally deficient and the applicant's son had been killed in circumstances in which the use of firearms to prevent his escape was incompatible with Article 2.

Conclusion : violation (unanimously).

(b) *Procedural aspect* – The investigation had been independent and was conducted with sufficient expedition.

Conclusion: no violation (unanimously).

Article 41: EUR 45,000 in respect of non-pecuniary damage.

ARTICLE 3

Inhuman treatment
Degrading treatment

Confinement of prisoner to restraint bed for nine hours: *violation*

Julin v. Estonia - 16563/08 et al.
Judgment 29.5.2012 [Section I]

Facts – The applicant, a convicted prisoner, was confined to a restraint bed for nearly nine hours following an incident with prison officers in which he was alleged to have become aggressive after being prohibited from taking tobacco to the punishment cell. The incident report stated that he had made threats, used foul language, banged at length against the door, struck a prison officer on the hand and failed to comply with lawful orders. His condition was monitored every hour, with the need for his continued restraint being assessed on the basis of his behaviour.

Law – Article 3 (*confinement to restraint bed*): While confinement to a restraint bed did not necessarily give rise to an issue under Article 3, in view of the high risk of ill-treatment it entailed, its application would be subject to thorough scrutiny by the Court, as regards both its lawfulness and the grounds for and manner of its use.

As to the question of lawfulness, the grounds, conditions and procedure for the use of such restrictive means of restraint had to be defined with the utmost precision,. The domestic regulations were, however, quite superficial and general and, as the Estonian Supreme Court had recently recognised, lacking in detail. Nevertheless, the way the authorities had acted in the applicant's case had in practice offered him some additional guarantees: his situation had been reviewed hourly and he had been seen twice by medical staff, whose observations were recorded in a report.

As regards the grounds for and manner of use of the measure, the Court noted that medical checks were performed only at the beginning and end of the confinement with an eight-hour interval in-between when the applicant was not seen by medical staff. It reiterated that restraint should never be used as a means of punishment but only to avoid self-injury or serious danger to others or to prison security. While the applicant's behaviour appeared to have been aggressive and disturbing, it was doubtful that, as the sole occupier of his cell, he posed a sufficient threat to himself or others as to justify such a severe measure and there was no indication that the authorities had given any consideration to using alternative measures. Most importantly, even if the applicant's initial confinement was justified, the Court was not persuaded that the situation had remained as serious for nearly nine hours. Confinement to a restraint bed, without valid medical reasons – which had not been shown – should rarely be needed for more than a few hours. However, after six (and again after seven) hours' confinement the authorities had decided to continue the restraint on the grounds that the applicant's "behaviour" was "abnormal" although he was "silent". These reasons were wholly insufficient for the extension of the restraint for such a long period. Regard being had to the great distress and physical discomfort the prolonged

immobilisation must have caused him, the level of suffering and humiliation the applicant endured could not be considered compatible with Article 3.

Conclusion: violation (unanimously).

The Court also found, by six votes to one, that there had been no violation of Article 3 on account of the use of force and handcuffs following an isolated incident and, unanimously, no violation of Article 3 concerning the effectiveness of the investigation into the applicant's allegations of ill-treatment. It further unanimously found a violation in respect of one of his two complaints of a breach of his right of access to a court (Article 6 § 1).

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

Expulsion

Refusal of asylum to Iranian dissidents who had actively and openly campaigned against the regime there since their arrival in respondent State: *deportation would constitute a violation*

S.F. and Others v. Sweden - 52077/10
Judgment 15.5.2012 [Section V]

Facts – In 2007 the first two applicants, a married couple of Kurdish and Persian origin, sought asylum in Sweden after leaving their native Iran. They submitted that their political activities and opposition to the Iranian regime meant that their lives would be at risk if they returned to Iran. The first applicant had campaigned in favour of the Kurdish cause, and had spent a month in prison there in 2003 because of his activities. Since their arrival in Sweden, both the first and second applicants had been politically active, attending meetings of the Democratic Party of Iranian Kurdistan (KDPI) and featuring in news programmes broadcast on satellite channels banned in Iran. The second applicant had started working regularly for a Kurdish television channel known to be critical of the Iranian regime. Their asylum requests were rejected by the Swedish migration board and courts, which found that while their story sounded credible, it was unlikely that the Iranian authorities would persecute them, given their low ranking as Kurdish-rights activists.

Law – Article 3: The human-rights situation in Iran gave rise to grave concern. The information available from a number of international sources showed that the Iranian authorities frequently detained and ill-treated people who peacefully participated in opposition or human-rights activities in the country: anyone who demonstrated or in any way opposed the regime was at risk of being detained and ill-treated or tortured. However, the reports of serious human-rights violations in Iran were not of such a nature as to show, on their own, that there would be a violation of the Convention if the applicants were expelled to Iran.

Turning to the applicants' personal situation, the Court noted that the first applicant had sympathised with the KDPI only at a low political level in Iran and that a considerable time had elapsed since his arrest in 2003. He had been able to continue his work and life as normal after his time in prison and there was no indication of any further attention from the Iranian authorities. These circumstances were not by themselves sufficient to find that the applicants would be at risk of proscribed treatment if expelled. However, the applicants had been involved in extensive and genuine political and human-rights activities and incidents since their arrival in Sweden, having appeared on several internet sites and television broadcasts and played leading roles in raising human-rights issues in Iran and criticising the regime. The second applicant had been the international spokesperson of a European committee campaigning on behalf of Kurdish prisoners and human rights in Iran. These activities placed the applicants at risk as the information before the Court confirmed that the Iranian authorities monitored internet communications and regime critics both within and outside Iran and screened returning nationals. In this context, the first applicant's arrest in 2003 and his background as a musician and prominent athlete also increased the risk of his being identified. Additionally, the applicants had allegedly left Iran illegally and did not have valid exit documentation. Lastly, the fact that the applicants were of Kurdish and Persian origin, culturally active and well-educated, were also potential risk factors. There were thus substantial grounds for believing that the applicants would be exposed to a real risk of ill-treatment if they were deported to Iran.

Conclusion: deportation would constitute a violation (unanimously).

ARTICLE 6

Article 6 § 1 (civil)

Fair hearing

Final judgment given in brief interval before case-law conflict was resolved by the High Court: *no violation*

Albu and Others v. Romania - 34796/09 et al.
Judgment 10.5.2012 [Section III]

Facts – The applicants are civil servants. They brought proceedings against their employer, seeking the payment of allowances, but their claims were dismissed. The final decision in their case was given by a court of appeal in January 2009. From 2008 onwards, conflicting decisions affecting a large number of people were adopted by the domestic courts in respect of the allowances in question. In September 2009, upon an application by the Prosecutor General, the High Court of Cassation and Justice laid down binding guidelines for the uniform interpretation of the legal provisions at issue.

Law – Article 6: The applicants had had the benefit of adversarial proceedings and been able to adduce evidence and freely formulate their case. Their arguments had been properly examined by the domestic courts. The courts' conclusions and interpretation of the relevant law could not be regarded as manifestly arbitrary or unreasonable. Furthermore, the mechanism provided by the Code of Civil Procedure and designed to resolve, and not preclude, conflicting court decisions had proved to be effective, since it had been set in motion relatively promptly by the Prosecutor General and had put an end to the divergence in the case-law in a reasonably short period of time. While the judgment dismissing the applicants' claims had been given before the High Court of Cassation and Justice had had the opportunity to give a uniform interpretation of the legal texts in issue, the approach adopted by the domestic courts in the applicants' case was similar to that advocated by the High Court. Thus, even though the impugned judgment had been given during the period of time when the divergence still existed, there had been no breach of the principle of legal certainty.

Conclusion: no violation (unanimously).

Article 6 § 1 (criminal)

Equality of arms

Raised position of public prosecutor in hearing room: *inadmissible*

Diriöz v. Turkey - 38560/04
Judgment 31.5.2012 [Section II]

Facts – In 2003 the applicant was sentenced to imprisonment for murder, attempted murder and causing injury with a firearm. Before the European Court, the applicant complained, *inter alia*, that the principle of equality of arms had been breached in so far as the prosecutor had stood on a raised platform, whereas he and his lawyer had been placed, as was the rule, at a lower level in the courtroom. He also complained that the prosecutor had entered the courtroom at the same time as the judges and by the same door, whereas his lawyer had had to use the public entrance.

Law – Article 6 § 1: The fact complained of was not sufficient to breach the principle of equality of arms in so far as, although a privileged "physical" position had been conferred on the prosecutor, the accused had not been placed at a disadvantage regarding the defence of his interests.

Conclusion: inadmissible (manifestly ill-founded).

The Court also held, unanimously, that there had been no violation of Article 6 §§ 1 and 3 (c) with regard to the applicant's allegation that he had not been assisted by a lawyer while in police custody.

Reasonable time

Criminal proceedings lasting over twenty-five years because of the applicant's state of health: *inadmissible*

Krakolinig v. Austria - 33992/07
Decision 10.5.2012 [Section I]

Facts – In 1985 the applicant was indicted for embezzlement. The case was originally scheduled for trial by the regional court in the summer of 1986, but the applicant suffered a heart attack the day before it was due to begin and was unable to attend. Thereafter the case was repeatedly adjourned at the applicant's request on the basis of expert medical opinion. In March 2007 the applicant requested that the proceedings be terminated because he thought that it would be a violation of

the Convention to continue in the circumstances. The domestic courts refused his request and the proceedings are still pending. In separate proceedings the applicant was convicted of other crimes by various district courts in 2000, 2006 and 2009. In his application to the European Court, the applicant complained of the length of the embezzlement proceedings.

Law – Article 6 § 1: It was not excluded that the subject-matter of the applicant's case was of some complexity, as it concerned white-collar crime, but that element alone could not explain the exceptional length of the proceedings in issue. Nor could the Austrian authorities be held exclusively responsible. There was no indication that they had contributed to the delays: the regional court, in particular, had tried repeatedly to hold trial hearings and had had the applicant's fitness to stand trial examined by medical experts at regular intervals. The repeated postponements and stays were caused by the applicant's ill-health. While he could not be considered responsible as that was a matter beyond his control, it was without doubt the objective reason for the resulting length of the proceedings. Accordingly, the delays could not be attributed to the domestic courts. The Court observed further that Article 6 did not give a right to have criminal proceedings terminated on account of the accused's state of health, particularly when, as in the applicant's case, there was an indication that the person concerned had not been entirely prevented by his state of health from attending court proceedings as such.

Conclusion: inadmissible (manifestly ill-founded).

ARTICLE 8

Positive obligations
Respect for family life

Lack of diligence by domestic authorities in executing court order granting biological father custody of abducted child: *violation*

Santos Nunes v. Portugal - 61173/08
Judgment 22.5.2012 [Section II]

Facts – The applicant had a casual relationship with a Brazilian national, who gave birth to a daughter in 2002. In 2003, following a genetic test, the applicant acknowledged paternity and applied to the authorities for custody of the child. It came out in the proceedings that the mother had placed the child in the care of a Portuguese couple. When questioned, the couple (Mr and Mrs G.) explained that the mother had signed a consent form entrusting the child to their care because she could not afford to bring her up. As they could not have children of their own, they had applied to adopt the child. In July 2004 the court awarded the applicant custody of his daughter. It explained that although Mr and Mrs G. were financially better off than the applicant, in taking the child they had shown complete disregard for the applicable laws and procedures. The applicant subsequently asked the court to enforce the decision, alleging that Mr and Mrs G. had refused to hand over the child. In 2006, after all attempts to locate the child had failed, the court decided to give the case priority, and Mr G. was remanded in custody. Mrs G. then complied with the court's order to have the child examined in a hospital. In 2007, following that examination, the court fixed a transitional period for the enforcement of the judgment awarding custody to the father. The girl stayed with Mr and Mrs G. but the applicant was able to visit her. She was handed over to her father in December 2008. In January 2009, after interviewing the girl, the judge ended the transitional period and decided that the girl would live with the applicant from then on. Mr and Mrs G. were subsequently granted access. They were prosecuted and found guilty of child abduction, given a two-year suspended sentence and ordered to pay the applicant damages.

Law – Article 8: It had taken four years and five months to have the decision granting the applicant custody of his daughter enforced. The process had been marked by a lack of cooperation on the part of Mr and Mrs G., who had ignored the various summonses issued by the courts and the police. The case had not been considered urgent until 2006, even though the applicant had alerted the authorities about this lack of cooperation by the couple as early as July 2004. The Court was surprised by the failure of the police to trace the child. Not until Mr G. was remanded in custody had Mrs G. presented the child to the authorities. It was a particularly delicate case because of the media interest it generated and the unusual situation, which went beyond a simple dispute between biological parents, or between the latter and the State, because third parties were involved. However, this did not absolve the authorities of their positive obligations under Article 8. It was true that from 2007, in spite of various complications, the domestic courts had done their best, in good faith, to protect the child's welfare. However, the Portuguese authorities had failed to make adequate and effective efforts to protect the applicant's

rights, thereby breaching his right to respect for his family life.

Conclusion: violation (unanimously).

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

Respect for private life

Refusal to renew teacher of Catholic religion and morals' contract after he publicly revealed his position as a "married priest": *no violation*

Fernández Martínez v. Spain - 56030/07
Judgment 15.5.2012 [Section III]

Facts – The applicant is a secularised Catholic priest. In 1984 he applied to the Vatican for dispensation from the requirement of celibacy. He married the following year and he and his wife had five children. From 1991 he worked as a teacher of religion and morals at a State high school, his contract of employment being renewed annually on the basis of the opinion of the local bishop, which was binding on the Ministry of Education. In 1996 the applicant attended a meeting of the "Movement for Optional Celibacy". The participants expressed their disagreement with the Church's position on various matters, including abortion, divorce, sexuality and birth control. An article was published in a regional newspaper, together with a photograph of the applicant and his family. It mentioned the applicant's name and reported a number of comments he had made. In 1997 the applicant was granted a dispensation from celibacy. His teaching contract was not renewed, on the ground that he had breached his duty to teach "without creating a risk of scandal" by publicising his status as a "married priest". The applicant challenged that decision in the domestic courts, but to no avail. The Constitutional Court observed, in particular, that the diocese had been aware of his status as a "married priest" but had only stopped renewing his contract after the article was published – at the applicant's own instigation – in the press.

Law – Article 8: The decision not to renew the applicant's contract had affected his prospects of pursuing a professional activity and had had a consequential impact on his enjoyment of the right to respect for his private life. Article 8 was therefore applicable. The main question was accordingly whether, in discharging its positive obligations, the State was required to give precedence to the applicant's right to respect for his private life over the right of the Catholic Church to refuse to renew his contract. Religious communities traditionally and universally existed in the form of organised strucures, and where their organisation was at issue, Article 9 of the Convention was to be interpreted in the light of Article 11, which protected participation in associations from unjustified State interference. Under Spanish law, the concept of autonomy of religious communities was accompanied by the principle of State religious neutrality, which prevented the State from expressing a position on matters such as scandal or celibacy for priests. However, this obligation of neutrality was limited in that the bishop's decision was subject to judicial review. The bishop could not put forward candidates who did not possess the professional qualifications required for the post and was also required to respect fundamental rights and freedoms. Furthermore, although the definition of the religious or moral criteria serving as a basis for not renewing a candidate's contract was the exclusive prerogative of the religious authorities, the domestic courts could nevertheless weigh up the competing fundamental rights and also had jurisdiction to examine whether the decision not to appoint the candidate concerned had been based on any grounds other than strictly religious ones, those being the sole aspects protected by religious freedom. The applicant had had the opportunity to bring his case before the appropriate courts. Since the grounds on which he had not had his contract of employment renewed were of a strictly religious nature, the Court confined itself to ensuring that neither the fundamental principles of the domestic system nor the applicant's dignity had been impaired.

In the present case, the publication of the article in question had led the bishop to consider that the requisite bond of trust had been breached. This bond necessarily entailed certain characteristics which set teachers of Catholic religion and morals apart from other teachers. In not renewing the applicant's contract, the ecclesiastical authorities had simply been discharging their obligations in accordance with canon law and the principle of religious autonomy. On signing his contract, the applicant had been, or should have been, aware of the particular features of the employment relationship for a post of that nature. As a result, the Court considered that the applicant had been bound by duties of loyalty and observed in that connection that he had not left the meeting in question, even after noticing the presence of media representatives, and that he had been among those who had openly expressed their disagreement with

Church policy on various matters. The appropriate courts had, moreover, shown on the basis of sufficiently detailed reasoning that such duties of loyalty were acceptable in that their purpose was to protect the sensitivities of the public and of the parents of pupils at the school. Furthermore, the duty of discretion and circumspection was all the more important because the direct beneficiaries of the applicant's teaching were minor children, who were vulnerable and impressionable by nature. Regard being had to the State's margin of appreciation, the appropriate courts had struck a fair balance between various private interests.

Conclusion: no violation (six votes to one).

(See *Lombardi Vallauri v. Italy*, no. 39128/05, 20 October 2009, Information Note no. 123; *Obst v. Germany*, no. 425/03, and *Schüth v. Germany*, no. 1620/03, 23 September 2010, Information Note no. 133; and *Siebenhaar v. Germany*, no. 18136/02, 3 February 2011)

Police powers to stop and search individuals in city-centre areas designated as a security risk owing to the prevalence of violent crime there: *inadmissible*

Colon v. the Netherlands - 49458/06
Decision 15.5.2012 [Section III]

Facts – In response to a rise in violent crime in the city, the Amsterdam Burgomaster issued orders under section 151b of the Municipalities Act designating certain parts of the city as security-risk areas for set periods. This in turn empowered the public prosecutor to issue orders, valid for twelve hours, allowing the police to search anyone present in the designated area for weapons. In two reports issued on May 2006 and May 2007 the COT Institute for Safety and Crisis Management noted a significant and continuing decline in the number of weapons-related incidents in the designated areas since the use of the preventive searches.

In his application to the European Court, the applicant, who had on one occasion been convicted, but ultimately not sentenced, for refusing to comply with an order to submit to a search, complained that the public prosecutor had been given the power within the designated areas to invade his privacy without any form of prior judicial control.

Law – Article 8: The stop and search power constituted interference with the applicant's right to respect for his private life, which interference was in accordance with the law and pursued the legitimate aims of protecting public safety and preventing disorder or crime.

In assessing whether the interference had been necessary in a democratic society, the Court first had regard to the legal framework within which the preventive-search system operated. Under the applicable legislation the Burgomaster's powers to designate a security-risk area were dependent on the prior adoption of a bye-law by the local council. The designated area could be no greater than strictly necessary and the order was to be revoked when no longer needed. The Burgomaster's powers were subject to review and control by the local council, an elected representative body and, before making a designation order, the Burgomaster was required to consult with the public prosecutor and the local police commander. Preventive-search operations had to be ordered by the public prosecutor, whose powers were also statutorily defined. The public prosecutor had to issue an order defining the area within which searches could be made and such orders were only valid for twelve hours at a time and were not renewable. Accordingly, no single executive authority had the power by itself to order a preventive-search operation.

As regards the factual situation, it was apparent from the figures given by the Burgomaster and from the reports of the COT Institute for Safety and Crisis Management that preventive searches were having their intended effect of helping to reduce violent crime in Amsterdam. There was always a possibility the applicant might be subjected to a preventive search he found unpleasant and inconvenient if he ventured into the city centre when a designation order was in force. Nevertheless, in the light of the legal framework surrounding such searches and the effectiveness of such searches for their intended purpose, the domestic authorities had been entitled to consider that the public interest outweighed any subjective disadvantage caused to the applicant and had given "relevant" and "sufficient" reasons for the interference with his right to respect for his private life.

Conclusion: inadmissible (manifestly ill-founded).

(See also *Gillan and Quinton v. the United Kingdom*, no. 4158/05, 12 January 2010, Information Note no. 126)

ARTICLE 10

Positive obligations

Failure of authorities to take adequate measures to enforce court order allowing journalists access to radio station: *violation*

Frăsilă and Ciocîrlan v. Romania - 25329/03
Judgment 10.5.2012 [Section III]

Facts – The first applicant was the manager of two companies, Radio M Plus and Tele M, which between them carried out various broadcasting activities. In August 2002, after Tele M had broadcast two reports about an influential local politician, the first applicant, who was facing financial pressure, was forced to sell the company in question. On the same day, the two companies formed a partnership for the production and transmission of radio programmes. The partnership agreement specified, among other things, that Radio M Plus, which was still managed by the first applicant and employed the second applicant as editor, was to continue broadcasting from its headquarters, which were in the same building as those of Tele M. However, from October 2002 onwards, both applicants were refused access to the radio station's editorial office by representatives of Tele M. In a decision of December 2002 the county court upheld an urgent application by the applicants and ordered Tele M to grant them access to the Radio M Plus editorial office. That decision was upheld on appeal, but all attempts to enforce it were unsuccessful. Before the European Court, the applicants complained that the appropriate authorities had not provided them with effective assistance in securing the enforcement of the county court's final decision of December 2002, thereby preventing them from working as radio journalists and hence infringing their right to freedom of expression.

Law – Article 10: Although the authorities had not been directly responsible for the alleged restriction on the applicants' freedom of expression, it remained to be determined whether or not the respondent State had complied with any positive obligation it might have had to protect that freedom from interference by others. The case concerned the means by which to exercise the freedom of expression of a profession acknowledged by the Court as playing a crucial "watchdog" role in a democratic society. Moreover, the State was the ultimate guarantor of pluralism, especially in the audiovisual media, which often broadcast to a very large audience. This role became even more crucial where the independence of the press was jeopardised by outside pressure from those holding political and economic power. Accordingly, the Court attached particular importance to the fact that freedom of the press in Romania had been unsatisfactory at the relevant time, with the local press being directly or indirectly controlled by leading political or economic figures in the region. In the present case, the first applicant alleged that he had been pressured into selling his stake in a television company. In those circumstances, the State had been under an obligation to take effective steps to assist the applicants in securing the enforcement of the final decision in their favour.

The applicants had taken sufficient steps on their own initiative and made the necessary efforts to have the final decision enforced. However, the main legal means available to them, namely the bailiff system, had proved inadequate and ineffective. The bailiff had not called on the assistance of the police, as should have happened in view of the uncooperative attitude of the persons against whom the order had been made, and had taken no other steps to enforce the decision in question. By refraining from taking the necessary effective measures to assist the applicants in the enforcement of the court decision, the national authorities had deprived the provisions of Article 10 of all useful effect and had hindered the applicants in pursuing their profession as radio journalists.

Conclusion: violation (unanimously).

Article 41: EUR 18,000 jointly in respect of pecuniary and non-pecuniary damage.

ARTICLE 14

Discrimination (Article 3 of Protocol No. 1)

Refusal of financial aid to political party on grounds that it had not received the statutory minimum number of votes (7%) required to be eligible for aid: *no violation*

Özgürlük ve Dayanışma Partisi (ÖDP) v. Turkey - 7819/03
Judgment 10.5.2012 [Section II]

Facts – The applicant party was authorised to take part in the 1999 municipal and parliamentary elections. On that occasion, it applied for the financial assistance available to political parties under the Constitution. Its request was refused on the ground that it did not fulfil the conditions set

out in the legislation, namely holding a seat in Parliament already or having obtained at least 7% of the votes cast in previous elections. The applicant party challenged this decision before the administrative court, arguing that it was difficult to carry out political activities and campaigns without the necessary financial resources and that the refusal to grant it financial aid was contrary to the principle of non-discrimination. This complaint was dismissed in 1999 on the ground that the applicant party did not meet the legal conditions for receiving financial aid. That judgment was upheld by the Supreme Administrative Court in 2002. Before the European Court the applicant party considered that the decision to refuse to grant it financial aid had placed it at a disadvantage in the 1999, 2002 and 2007 elections, in which it had obtained 0.8%, 0.34% and 0.15% respectively of the valid votes cast.

Law – Article 14 of the Convention in conjunction with Article 3 of Protocol No. 1: The refusal to grant financial aid had had the consequence of making it more complicated for the applicant party to disseminate its political opinions at national level than was the case for parties which received such assistance. The applicant party had thus been treated differently in the exercise of its electoral rights. The public funding of political parties was a means of preventing corruption and avoiding excessive dependence on private donors. An examination of the systems applied in the majority of European countries suggested that grants were made on the basis of two systems: on a strictly equal basis or under the principle of equitable funding. In the latter case, a minimum level of electoral support was almost always required, in order to avoid an excessive upsurge in candidacies. None of the texts adopted by Council of Europe bodies concerning political parties in a democratic system described as unreasonable the requirement, imposed by national legislation on parties which received public funding, to enjoy a minimum level of electoral support, nor did they lay down specific levels for such support. It appeared from reports by certain specialised institutions that, on the one hand, it was necessary to ensure that the threshold set was not excessively high, so as not to infringe political pluralism and the rights of small parties and, on the other, that the formula for awarding funds should not be such as to enable the two main parties to monopolise the receipt of public resources.

The public funding of political parties under a system of equitable funding requiring a minimum level of electoral support pursued a legitimate aim, namely that of strengthening pluralist democracy while avoiding excessive and dysfunctional fragmentation of the candidacies. The minimum level of representativeness required in Turkey from parties claiming public funding was the highest in Europe (7%). Nonetheless, during the periods in question, this threshold had not had the effect of creating a monopoly of financial aid to the political parties represented in Parliament. In addition, the applicant party's results in the 1999, 2002 and 2007 parliamentary elections were significantly lower than 7% and would not have allowed it to obtain funding in several other European states. The applicant party had not shown that it enjoyed sufficient support from the Turkish electorate to assert that it had significant representativeness. Finally, the State provided other forms of public support to political parties, including tax exemptions in respect of some of their income and the allocation of broadcasting time during electoral campaigns. The applicant party had benefited from those forms of corrective public support. The system for awarding financial aid was proportionate, taking into account its scope and the attendant compensatory measures. In consequence, the refusal to grant direct financial aid to the applicant party on the ground that it had not achieved the minimum level of representativeness required by law, namely 7%, had had an objective and reasonable basis. It had not impaired the very essence of the right to the free expression of the will of the people.

Conclusion: no violation (five votes to two).

ARTICLE 34

Hinder the exercise of the right of petition

Failure to comply with interim measure indicated by Court on account of real risk of torture: *violation*

Labsi v. Slovakia - 33809/08
Judgment 15.5.2012 [Section III]

Facts – The applicant, an Algerian national, married a Slovak national in London in 2001. He was later extradited to France on terrorism related charges and given a five-year prison sentence. Following his release, he travelled to Slovakia, where he made three unsuccessful attempts to obtain asylum. In 2006 the Slovakian immigration authorities ordered his expulsion and banned him from re-entering the country for ten years. The Algerian authorities subsequently requested his extradition to Algeria

where in 2005 he had been sentenced in his absence to life imprisonment for membership of a terrorist organisation and forgery. In 2008 the Slovak Supreme Court ruled that the applicant could not be extradited to Algeria owing to the risk that he would be subjected to torture and the European Court issued an interim measure under Rule 39 of its Rules requiring the Slovak authorities not to extradite him. In March 2010 the Supreme Court upheld the immigration authorities' original decision in 2006 to expel the applicant after finding that he represented a safety risk in Slovakia on account of his involvement in terrorism. On being informed of this situation, the European Court specifically informed the Slovak Government that the Rule 39 interim measure remained in force pending a possible constitutional complaint by the applicant. The applicant was nevertheless expelled to Algeria three days later.

Law – Article 3: The assurances the Slovak Government had received from the Algerian authorities were of a general nature and had to be considered in the light of the information available on the human-rights situation obtaining in Algeria. From the material before the Court – including reports from international bodies and the findings of the Slovakian authorities themselves – it was clear that, at the time of his expulsion, there had been substantial grounds for believing that the applicant faced a real risk of being subjected to treatment contrary to Article 3 in Algeria. The argument that the expulsion had nevertheless been justified because he represented a security risk could not be accepted because of the absolute nature of the guarantee under Article 3. The applicant was reported to have been detained by Algerian Intelligence for twelve days following his return to Algeria and there had been no follow-up to the request for a visit by a Slovak official to check compliance with the Algerian authorities' assurances as regards his treatment. The guarantees that he would be protected against the risk of ill-treatment had thus been insufficient.

Conclusion: violation (unanimously).

Article 13: The applicant's expulsion to Algeria just one working day after he was served with the Supreme Court's judgment of March 2010 had deprived him of an effective remedy as it had prevented him from seeking redress through a constitutional complaint since the time for lodging a complaint only started to run from the date of the final effect of the impugned decision and the complaint had to be accompanied by the decision.

Conclusion: violation (unanimously).

Article 34: The level of protection the Court was able to afford the rights the applicant was asserting under Article 3 had been irreversibly reduced by his expulsion to Algeria. The expulsion had occurred prior to the exchange of the parties' observations on the admissibility and merits of the application. The applicant's representative had lost contact with him since his expulsion and, as a result, the gathering of evidence in support of the applicant's allegations had proved more complex. The Court had thus been prevented by the applicant's expulsion from conducting a proper examination of his complaints in accordance with its settled practice in similar cases. It had further been prevented from protecting the applicant against a real risk of ill-treatment. The applicant had thus been hindered in the effective exercise of his right of individual application.

Conclusion: violation (unanimously).

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

(See also *Mannai v. Italy*, no. 9961/10, 27 March 2012, Information Note no. 150)

ARTICLE 35

Article 35 § 1

Exhaustion of domestic remedies

Inability, owing to particularly strict interpretation of a procedural rule, to obtain hearing of application: *preliminary objection dismissed; admissible*

UTE Saur Vallnet v. Andorra - 16047/10
Judgment 29.5.2012 [Section III]

Facts – The applicant is a temporary business consortium. The Ministry for Regional Development imposed two administrative fines on it in 2007. The applicant appealed against those ministerial decisions but its appeal was dismissed in 2008. On 14 September 2009, on appeal, the Administrative Division of the High Court of Justice upheld the judgment of the lower court. On 1 October 2009 the applicant lodged two applications to have the judgment set aside on grounds of nullity. It submitted in one of the applications that the reporting judge of the Administrative Division, who was also a partner in and a member of the board of directors of a Spanish

law firm which had been providing legal services to the Andorran Government since 2002, lacked independence and impartiality. Submitted together with its application was a document taken from the law firm's website that had been consulted and printed on 24 September 2009. The High Court of Justice joined the two applications and dismissed them for being out of time, because the time-limit for lodging an appeal was fifteen calendar days from service of the judgment or from the date on which the party concerned became aware of the violation of the right that it intended to exercise. The applicant lodged an *empara* appeal with the Constitutional Court which was declared inadmissible. That court stated that the applicant could not rely on "new information" as the judge's position was an objective fact and had been a matter of public knowledge for some years, and that the applicant had failed to prove that it had become aware of it only on the date on which it lodged its application. In 2011, in proceedings instituted by the Government for enforcement of the 2008 judgment, the Criminal Division of the High Court of Justice allowed the application for the withdrawal of the judge in question after having verified with the Government the authenticity of certain documents submitted by the applicant. The reporting judge was replaced.

Law – Article 35 § 1: The Government submitted that domestic remedies had not been exhausted as the applicant had failed to comply with the statutory time-limit for lodging an application for a decision to be set aside on grounds of nullity. However, the time-limit for lodging an appeal only started to run from the date the appellant was able to act effectively. The applicant's two applications for the judgment to be set aside on grounds of nullity were based on different grounds and warranted a differentiated response from the courts. With regard to the application alleging that the reporting judge was not impartial, it was true that the applicant had been unable to provide proof of when it had become aware of the reporting judge's situation. It was however most unlikely that any such proof could have been provided. Even were it to be assumed that the applicant had been aware of the judge's situation on 24 September 2009, as argued by the Government, it had in any event lodged its application for the judgment to be set aside on 1 October 2009, that is, well within the statutory time-limit of fifteen days. The applicant could not be said to have acted negligently or to have erred given that the *dies a quo* had been in dispute and the Administrative Division of the High Court of Justice had not looked into the allegations on which the application had been based. That had been done later by the Criminal Division of the High Court of Justice, which had allowed the applicant's request for the judge's withdrawal. The particularly strict interpretation by the Administrative Division of the High Court of Justice and by the Constitutional Court of a procedural rule had deprived the applicant of the possibility of having its appeal on grounds of nullity examined.

Conclusion: preliminary objection dismissed; admissible (unanimously).

The Court also found a violation of Article 6 § 1 on account of the lack of impartiality of the Administrative Division of the High Court of Justice.

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

Exhaustion of domestic remedies
Effective domestic remedy – Germany

Proceedings under Protracted Court Proceedings and Criminal Investigations Act: *effective domestic remedy*

Taron v. Germany - 53126/07
Decision 29.5.2012 [Section V]

Facts – On 3 December 2011 the Protracted Court Proceedings and Criminal Investigations Act entered into force in Germany. It was passed in response to the European Court's pilot judgment in *Rumpf v. Germany*[1] which required Germany to introduce an effective domestic remedy in length-of-proceedings cases. It covers both civil and criminal proceedings and combines a mechanism for expediting proceedings with a right to bring a subsequent claim for compensation. A transitional provision provides that the Act applies to past and pending proceedings whose duration may or has already become the subject of a complaint before the European Court. Compensation claims under the transitional provision had to be lodged with the relevant courts by 3 June 2012.

In an application to the European Court lodged in November 2007, the applicant complained under Article 6 § 1 of the Convention of the length of proceedings he had brought to challenge a construction permit. The Court began by exam-

1. *Rumpf v. Germany*, no. 46344/06, 2 September 2010, Information Note no. 133.

ining, in the light of the new domestic legislation, whether he had exhausted domestic remedies.

Law – Article 35 § 1: There was no reason to doubt that the applicant was entitled to lodge a claim with the domestic courts under the transitional provision. The Act had been enacted to address the issue of excessive length of domestic proceedings in an effective and meaningful manner, taking account of the Convention requirements. In particular, compensation was to be determined with regard to the individual circumstances of the case, the length of the delays and the consequences for the applicant. Finally, compensation was to be awarded irrespective of the establishment of fault. Despite the lack of any established practice on the part of the domestic courts in the few months since the Act had entered into force, there was no reason as yet to believe that the new remedy would not afford an opportunity to obtain adequate and sufficient compensation or not offer reasonable prospects of success. Although applicants were required to exhaust a domestic remedy introduced after the date they lodged their application to the European Court only in exceptional circumstances, such circumstances existed in the instant case in which the introduction of a domestic compensatory remedy had made it particularly important for the complaints to be considered in the first place and without delay by the national authorities and the existence of the transitional provision reflected the legislator's intention to grant redress at domestic level to those who already had applications pending before the Court. That position might be subject to review in the future depending, in particular, on the domestic courts' capacity to establish consistent case-law under the Act in line with the Convention requirements. The applicant was therefore required to make use of the new domestic remedy.

Conclusion: inadmissible (failure to exhaust domestic remedies).

(See also *Garcia Cancio v. Germany* (dec.), no. 19488/09, 29 May 2012)

Six-month period

Non-consecutive periods of pre-trial detention treated as separate for purposes of six-month time-limit

Idalov v. Russia - 5826/03
Judgment 22.5.2012 [GC]

Facts – The applicant was arrested on suspicion of abduction and was detained pending trial and officially charged in June 1999. His detention was subsequently extended on a number of occasions until, in July 2001, he was released on bail. Later, in October 2002, the competent court revoked the bail and ordered the applicant's renewed detention. His detention was repeatedly extended until he was found guilty in November 2003 and sentenced to a lengthy term of imprisonment.

Law – Article 5 § 3: The applicant complained that his pre-trial detention had been excessively long and had not been based on relevant or sufficient reasons.

(a) *Admissibility* – Having been detained for approximately two years, the applicant had then been released pending trial and had been at liberty for approximately one year and four months, before being rearrested and detained for a further period of one year and one month. Seeing that he had lodged his application more than six months after the end of his first period of detention, the question arose as to whether the two non-consecutive periods of the applicant's pre-trial detention should be assessed cumulatively or whether his release for a significant period pending trial had the effect of starting the six-month period referred to in Article 35 § 1 of the Convention in respect of the first period of detention.

The Court's case-law regarding the application of the six-month rule to multiple non-consecutive periods of pre-trial detention had varied until now, developing along two distinct lines of reasoning. Under the approach taken in *Neumeister v. Austria* (no. 1936/63, 27 June 1968), although the six-month time-limit precluded a finding as to whether the length of the first period of detention had been "reasonable", that period should be taken into account when assessing the reasonableness of the second period. On the contrary, under the overall approach subsequently adopted in *Kemmache v. France (no. 1 and no. 2)* (nos. 12325/86 and 14992/89, 27 November 1991), where an accused person was detained for two or more separate periods pending trial, the reasonable-time guarantee was found to require an overall assessment of the aggregate period instead of an examination of whether the six-month rule should apply. Following the recent return to the *Neumeister* approach, the Court considered it essential to harmonise the above approaches and to adopt a uniform and foreseeable approach so that the requirements of justice would be better served. The Court therefore held that, where an accused person's pre-trial detention was broken into several non-consecutive periods, such periods should not

be assessed as a whole but separately. Once at liberty, an applicant was obliged to bring any complaint he or she might have concerning pre-trial detention within six months from the date of actual release. However, where different periods formed part of the same set of criminal proceedings, the fact that an applicant had previously spent time in custody pending trial could be taken into consideration. The Court considered that this approach faithfully respected the intention of the Contracting Parties *vis-à-vis* the six-month rule, whilst simultaneously permitting it to have regard to any previous periods which the applicant had spent in custody. This was also the practice followed in the assessment of complaints concerning the "reasonable-time" requirement in Article 6 of the Convention, and it had the added benefit of promoting the more expeditious conduct of criminal trials at domestic level.

In the present case, the applicant's pre-trial detention was broken into two non-consecutive periods. Having regard to the above, the six-month rule was to be applied separately to each period of pre-trial detention. The applicant's complaint concerning his first period of detention should be declared inadmissible as having been lodged out of time. However, the time he had already spent in custody in the context of the same set of criminal proceedings should be taken into account in assessing the sufficiency and relevance of the grounds justifying his subsequent period of pre-trial detention. The applicant's complaint in respect of his second period of detention was not manifestly ill-founded.

Conclusion: partly inadmissible (unanimously).

(b) *Merits* – The period of the applicant's pre-trial detention to be taken into consideration had lasted approximately one year and one month. The national authorities had extended his detention on grounds which, although "relevant", could not be regarded as "sufficient" to justify its duration.

Conclusion: violation (unanimously).

The Court also held unanimously that there had been a violation of Article 3 on account of the conditions of the applicant's detention and the conditions in which he had been transferred between the prison and the courthouse; a violation of Article 5 § 4 on account of the failure to examine speedily his appeals against the orders for his pre-trial detention and on account of his absence from the appeal hearings; a violation of Article 6 §§ 1 and 3 (c) and (d) of the Convention on account of the unfairness of his trial following his exclusion from the courtroom; no violation of Article 6 § 1 on account of the length of the criminal proceedings against him; and a violation of Article 8 on account of the opening by the prison authorities of two letters to the applicant from the Court.

Article 41: EUR 7,150 in respect of non-pecuniary damage.

Failure by applicant to comply with time-limits set by Court for lodging a form of authority enabling representative to act: *inadmissible*

Kaur v. the Netherlands - 35864/11
Decision 15.5.2012 [Section III]

Facts – Under Rule 47 § 5 of the Rules of Court an application will normally be considered to have been introduced on the date of the first communication from the applicant setting out the subject matter of the application, provided a duly completed application form is submitted within the time-limits laid down by the Court. In the present case, the applicant's representative sent a signed paper copy of the application and supporting documents to the Court on 27 May 2011 but without including an authority form. The Court subsequently sent him two reminders advising that a failure to send the authority to the Court by the dates indicated could lead to the application being declared inadmissible. The representative failed to comply with either deadline and only submitted the form on 22 December 2011, some three months after the expiry of the six-month period laid down by Article 35 § 1 of the Convention. No explanation was given for the delay.

Law – Article 35 § 1: Even an application containing all the data and documents required by Rule 47 § 1 of the Rules of Court could not continue to be considered to have been introduced at a particular date if the authority form was not submitted until considerably later and after the expiry of the time-limits fixed for its submission.

In so finding, the Court explained that it had held in a number of cases that, where the applicant had not been in contact with the Court directly, it was essential for representatives to demonstrate that they had received specific and explicit instructions from the person on whose behalf they purported to act. In the absence of a document in which the applicant had indicated that he or she wished the representative to lodge an application with the Court on their behalf, the cases would be rejected

for want of an "applicant". Further, it would clearly run contrary to the purpose of the six-month rule if Convention proceedings could be instituted on behalf of purported applicants who did not confirm to the Court for an unexplained and unlimited length of time their wish for those proceedings to be set in motion on their behalf. Accordingly, the Court could not be expected to deal with the merits of cases in which time-limits set for the purpose of submitting an authority form were exceeded without an application for an extension or an explanation for the delay.

In the instant case, the application to the Court should have been introduced at the latest by 25 September 2011. Although a signed paper copy of the application form and supporting documents were lodged on 27 May 2011, the duly signed and completed authority form was not received until 22 December 2011, despite the fact that two reminders had been sent to the representative explicitly warning him that failure to submit the authority form within the set time-limits could result in the application being declared inadmissible. Accordingly, it was this latter date that was to be considered the date of introduction of the application for the purposes of Rule 47 § 5 and the application was out of time.

Conclusion: inadmissible (out of time).

Starting point for six-month time-limit in deportation cases under Article 3

P.Z. and Others v. Sweden - 68194/10
Decision 29.5.2012 [Section V]

Facts – The applicants, who are Afghan nationals, arrived in Sweden in 2007 and applied for asylum. Their application was refused in a decision that was upheld by the Migration Court. In September 2008 the Migration Court of Appeal refused leave to appeal. The applicants nevertheless remained in Sweden and lodged an application with the European Court in November 2010 in which they alleged that they would be at risk of inhuman and degrading treatment if deported to Afghanistan. The Swedish Government argued in a preliminary objection that their application was out of time as, by virtue of Article 35 § 1 of the Convention, it should have been made within six-months of the Migration Court of Appeal's decision of September 2008 refusing leave to appeal.

Law – Article 35 § 1: While the normal starting-point for the calculation of the six-month period was the date of the final domestic decision providing an effective remedy, the responsibility of a sending State under Article 3 of the Convention was, as a rule, incurred only at the time when measures were taken to remove the individual concerned from its territory. The considerations relevant in determining the date of the sending State's responsibility were also applicable in the context of the six-month rule. It followed that the date of the State's responsibility under Article 3 corresponded to the date the six-month period started to run for the applicant, so that where a decision ordering removal had not been enforced and the individual remained on the territory of the State wishing to remove him or her, the six-month period had not yet started to run. In the instant case, although the application to the Court was introduced more than two years after the final national decision, the deportation order had not been enforced and the applicants remained in Sweden. The six-month period had, therefore, not started to run.

Conclusion: preliminary objection dismissed (unanimously).

(See also *B.Z. v. Sweden* (dec.), no. 74352/11, 29 May 2012)

ARTICLE 46

General measures

Respondent State required to effect urgent reforms to eradicate ill-treatment by police and ensure effective investigations into allegations of police brutality

Kaverzin v. Ukraine - 23893/03
Judgment 15.5.2012 [Section V]

Facts – The applicant was given a life sentence in 2003 for aggravated murder and is held in a high-security prison. In his application to the European Court, he complained that he had been subjected to ill-treatment at the hands of the police both during and after his arrest. A hospital specialist had examined him the day after his arrest and found bruising to the chest, lower back, kidneys, face and back of the head. A week later a further medical examination had noted bleeding in the eyeball, and bruising and scratches to the chest, arms and legs, some of which were three to four days old. The applicant further complained of the lack of an effective investigation into his allegations of torture

by the police, of the lack of medical care for his eye injury that had resulted in his losing his sight and that for five years, despite being blind and in need of daily care, he had been systematically handcuffed with his hands behind his back whenever he left his prison cell.

Article 3

(a) *Torture* – On the basis of the medical and other available evidence, the Court found that the police were entirely responsible for the applicant's injuries. Given the gravity of the injuries and the fact that they had been inflicted deliberately, the ill-treatment to which the applicant had been subjected in police custody had to be classified as torture.

Conclusion: violation (unanimously).

(b) *Investigation into the allegations of torture* – Although the prosecutor completed an investigation into the applicant's injuries within a relatively short period, his findings were vague and confusing and he had made no attempt to look into the lawfulness or proportionality of the use of force during the arrest or the allegations of torture after arrest. Instead he had simply relied on the applicant's initial statement denying ill-treatment, ignoring his more recent submissions to the contrary. The courts which heard the applicant's criminal case had not examined in any way his allegation that his confession had been made under duress. The Ukrainian authorities had thus failed adequately to investigate the applicant's complaints of torture.

Conclusion: violation (unanimously).

(c) *Medical care* – Although the injury that had resulted in the applicant losing his eyesight was sustained in January 2001 he received no treatment for it until September 2001. The authorities had therefore failed to provide him with adequate medical care throughout that period. The medical care had been adequate thereafter.

Conclusion: violation for period to September 2001 (unanimously).

(d) *Handcuffing* – While the applicant's criminal record and classification as exceptionally dangerous may have required his being held in the highest level of security, there was nothing to suggest that he had tried to escape or been violent during his pre-trial detention or subsequently. His handcuffing, particularly with his hands behind his back, despite his being completely blind and requiring assistance, must, therefore, have caused him suffering and humiliation beyond that inevitably connected with a particular form of legitimate punishment and constituted inhuman and degrading treatment.

Conclusion: violation (unanimously).

Article 46: The applicant's ill-treatment in police custody reflected a recurring problem in Ukraine. The Court had already found the Ukrainian authorities responsible for the ill-treatment of people in police custody and for failing to conduct an effective investigation into allegations of ill-treatment in some forty cases and over a hundred more were pending.

Criminal suspects appeared to be one of the groups most vulnerable to ill-treatment by the police. Such ill-treatment often occurred in the first days of detention when they had no access to a lawyer, and their injuries were not properly recorded. Although not a factor in every case, a link between the victims' ill-treatment and the authorities' goal of collecting incriminatory evidence could not be ruled out. Evaluating police work on the basis of the number of crimes solved appeared to be a further contributory factor, as was the reluctance of prosecutors to take all reasonable and expeditious steps to establish the facts and secure relevant evidence. In their inquiries, prosecutors rarely went beyond obtaining explanations from police officers which they made no effort to verify. Such reluctance on the part of the prosecutors could be explained to some extent by their conflicting tasks in criminal proceedings – prosecution on behalf of the State and supervision of the lawfulness of pre-trial investigations. Appeals to courts against prosecutors' refusals to investigate had not resulted in the required improvement in the prosecutors' inquiry. Trial judges rarely gave an independent assessment of the reliability of evidence allegedly obtained under duress if such allegations had been rejected by the prosecutors. Like previous cases against Ukraine in which the Court had found a procedural breach of Article 3, the applicant's case also demonstrated that State agents responsible for ill-treatment commonly went unpunished, thus perpetuating a climate of virtually total impunity.

This situation had resulted from systemic problems that called for the prompt implementation of comprehensive and complex measures. While the task of determining the general and individual measures Ukraine needed to implement fell to the Committee of Ministers, the Court considered it necessary to stress that Ukraine must urgently reform its legal system to ensure that ill-treatment in custody is eradicated, effective investigations are conducted in accordance with Article 3 in every case where an arguable complaint of ill-treatment

is raised and any shortcomings in the investigation are effectively remedied at the domestic level. In so doing, the Ukrainian authorities must have due regard to the instant judgment, and to the Court's case-law and the Committee of Ministers' recommendations, resolutions and decisions on the subject.

Article 41: EUR 40,000 in respect of non pecuniary damage.

ARTICLE 1 OF PROTOCOL No. 1

Positive obligations

Damage to property caused by flooding after heavy rainfall: *inadmissible*

Hadzhiyska v. Bulgaria - 20701/09
Decision 15.5.2012 [Section IV]

Facts – The applicant's house was flooded after a river broke its banks due to heavy rain. She brought an action in damages against the Ministry of Environment and Waters and the regional governor alleging a failure to clean the riverbed, build protective facilities and put in place monitoring or a warning system. The administrative courts dismissed her claim as inadmissible.

Law – Article 1 of Protocol No. 1: The applicant's property had been damaged as a result of heavy rainfall, not by man-made activities. The applicant had neither alleged that the authorities could have foreseen or prevented the consequences of the rain, nor provided any details of the scale of the flooding. It remained unclear whether the measures she had suggested could have prevented or mitigated the damage the flood had caused to her possessions, or, in other words, whether the damage sustained by her could be attributed, wholly or partly, to State negligence. It did not appear that the floods had caused serious damage to the applicant's house or been life-threatening and no causal link had been established between any acts or omissions of the authorities and the damage to her property. Article 1 of Protocol No. 1 did not go as far as requiring the Contracting States to take preventive measures to protect private possessions in all situations and all areas prone to flooding or other natural disasters. In view of the operational choices which had to be made in terms of priorities and resources, any obligations arising under that provision had to be interpreted in a way which did not impose an impossible or disproportionate burden on the authorities. The applicant had thus failed to make out an arguable claim under Article 1 of Protocol No. 1.

Conclusion: inadmissible (manifestly ill-founded).

Possessions

Reimbursement of sum deposited with Portuguese Consulate on the independence of Mozambique without any allowance in respect of inflation or currency depreciation: *no violation*

Flores Cardoso v. Portugal - 2489/09
Judgment 29.5.2012 [Section II]

Facts – The case concerned repayment by the State of a sum of money which the applicants had deposited with the Portuguese consulate in Mozambique when leaving the former Portuguese colony following the outbreak of the civil war in 1976. Some 3,000 people were apparently in a similar situation. The applicants complained that no account had been taken of the depreciation of the currency or of inflation when the money had been repaid to them. Their claims for compensation were dismissed.

Law – Article 1 of Protocol No.1: The sum deposited by the applicants with the consulate was a "possession" within the meaning of Article 1 of Protocol No. 1. According to the Court's well-established case-law, it could not be inferred from that Article that there was a general obligation on States to maintain, by means of systematic indexation, the purchasing power of sums deposited with banks or other financial institutions. The same reasoning applied, *a fortiori*, to a sum deposited with a non-financial institution, as in the present case. Remittance of the sum at issue to the consulate could not be deemed to constitute an interest-bearing deposit, and moreover the parties had not stipulated any compensatory interest on the sum in question. Only a specific agreement between the applicants and the depositary on adjustment of the sum upon repayment, in line with inflation and depreciation of the currency, could preclude application of the nominalism principle provided for by domestic law. Under domestic law, the applicants were entitled only to receive the nominal value of the sum in question. A "legitimate expectation" could only amount to a "possession" if there was a sufficient basis in domestic law. However, neither domestic law nor the decisions of the domestic courts had ever been able to establish any financial

interest for the applicants that could be considered as such. While the applicants were entitled to repayment of the nominal amount of the sum in question, an obligation with which the Government had complied, they were not entitled to claim any adjustment of that sum. The applicants' entitlement to a sum so adjusted could not therefore be deemed to amount to a "possession".

Conclusion: no violation (five votes to two).

The Court also held, unanimously, that there had been a violation of Article 6 § 1.

Article 41: EUR 2,600 in respect of non-pecuniary damage.

ARTICLE 3 OF PROTOCOL No. 1

Vote

Ban on prisoner voting imposed automatically as a result of sentence: *no violation*

Scoppola v. Italy (no. 3) - 126/05
Judgment 22.5.2012 [GC]

Facts – In 2002 an assize court sentenced the applicant to life imprisonment for murder, attempted murder, ill-treatment of members of his family and unauthorised possession of a firearm. Under Italian law his life sentence entailed a lifetime ban from public office, which in turn meant the permanent forfeiture of his right to vote. The applicant's appeals against the ban were unsuccessful. The Court of Cassation dismissed an appeal on points of law in 2006, pointing out that only prison sentences of between five years and life entailed permanent disenfranchisement (where the offence attracted a sentence of less than five years, the disenfranchisement lasted only five years). In a judgment of 18 January 2011 a Chamber of the Court held, unanimously, that there had been a violation of Article 3 of Protocol No. 1 (see Information Note no. 137).

Law – Article 3 of Protocol No. 1: The measure complained of constituted an interference with the applicant's right to vote. It pursued the legitimate aims of enhancing civic responsibility and respect for the rule of law and ensuring the proper functioning and preservation of the democratic regime. As to the proportionality of the interference, after noting a trend in Europe towards fewer restrictions on convicted prisoners' voting rights the Court reaffirmed the principles set out by the Grand Chamber in the *Hirst (no. 2)* judgment, in particular the fact that when disenfranchisement affected a group of people generally, automatically and indiscriminately it was not compatible with Article 3 of Protocol No. 1.

On the question whether the ban on voting should be imposed by a court, the *Hirst (no. 2)* judgment referred to above made no explicit mention of the intervention of a judge among the essential criteria for determining the proportionality of a disenfranchisement measure. While the intervention of a judge was clearly likely to guarantee the proportionality of restrictions on prisoners' voting rights, contrary what was suggested in the *Frodl* judgment such restrictions would not necessarily be automatic, general and indiscriminate simply because they were not ordered by a judge. The circumstances in which the right to vote was forfeited might be detailed in the law, making its application conditional on such factors as the nature or the gravity of the offence committed. Arrangements for restricting the voting rights of convicted prisoners varied considerably from one national legal system to another, particularly as to the need for such restrictions to be ordered by a court. The Contracting States were free to decide either to leave it to the courts to determine the proportionality of a measure restricting convicted prisoners' voting rights, or to incorporate provisions into their laws defining the circumstances in which such a measure should be applied. In this latter case, it would be for the legislature itself to balance the competing interests in order to avoid any general, automatic and indiscriminate restriction. On that basis, removal of the right to vote without any *ad hoc* judicial decision, as in the present case, did not, in itself, give rise to a violation of Article 3 of Protocol No. 1.

The impugned measure also had to be found to be disproportionate to the legitimate aims pursued – in terms of the manner in which it was applied and the legal framework surrounding it. In the Italian system the measure was applied to individuals convicted of certain well-defined offences, or to people sentenced to certain terms of imprisonment specified by law. This showed the legislature's concern to adjust the application of the measure to the particular circumstances of the case in hand. The law also adjusted the duration of the measure to the sentence imposed and thus, indirectly, to the gravity of the offence. A large number of convicted prisoners in Italy were not deprived of the right to vote in parliamentary elections. It was also possible for a convicted person who had been permanently deprived of the right to vote to recover that right. This showed that the

Italian system was not excessively rigid, and that the margin of appreciation afforded to the respondent Government in this sphere had not been overstepped. In the circumstances the Court could not find that the disenfranchisement provided for in Italian law was of the general, automatic and indiscriminate nature that led it, in its *Hirst (no. 2)* judgment, to find a violation of Article 3 of Protocol No. 1.

Conclusion: no violation (sixteen votes to one).

(See *Hirst v. the United Kingdom (no. 2)* [GC], no. 74025/01, 6 October 2005, Information Note no. 79; and *Frodl v. Austria*, no. 20201/04, 8 April 2010, Information Note no. 129)

COURT NEWS

Handbook on the European case-law covering the fields of asylum, immigration and border control

The European Union Agency for Fundamental Rights (FRA) and the Court have agreed to implement another joint project aimed at assisting EU Member States in their efforts to apply EU law in the area of asylum, immigration and border control by identifying possible systemic problems while at the same time supporting the training of judges, prosecutors, lawyers and law enforcement officials, as carried out in particular by the Council of Europe. The project will result in the publication of a handbook, in select languages, which will highlight and summarise in a didactical way the key legal and jurisprudential principles of European law in these fields. It should be similar in style to the handbook on non-discrimination. Its publication is expected in the first half of 2013.

HRTF project "Bringing Convention standards closer to home: Translation and dissemination of key ECHR case-law in target languages"

This three-year project is supported by the Human Rights Trust Fund (www.coe.int/humanrights-trustfund). It started in May 2012 and will concern principally the following States: Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Moldova, Montenegro, Serbia, "the former Yugoslav Republic of Macedonia", Turkey and Ukraine. The objective of the project is to improve the understanding and domestic implementation of ECHR standards by commissioning key Court case-law translations into the languages of the beneficiary States and by ensuring their dissemination through the Court's database HUDOC as well as through the various Council of Europe entities and other operational project partners that organise training on Convention standards in the beneficiary States.

The material to be translated will consist of leading cases (or extracts or legal summaries of such cases) which the Court's Jurisconsult deems to be of significant relevance to one or more of the beneficiary States. The case selection and the choice of target language(s) for each case will be carefully calibrated in order to maximise impact and minimise the risk of overlap with translations that may already have been commissioned or are under way within the beneficiary State(s).

The Registry is looking to form partnerships with entities (universities, judicial training academies, NGOs, etc.) which are currently commissioning translations of the Court's case-law at national level. In particular, and so as to avoid overlap, the Registry would like to be informed of any cases or case summaries that have already been translated or earmarked for translation by such an entity. Partners at national level are also invited to suggest cases for translation within the context of this project.

The Registry is also looking for translators or lawyers with prior experience of translating this type of text (from English or French into one or more of the beneficiary languages). A roster of translators will be established following a selection procedure. Prospective partners and legal translators are invited to contact the Case-Law Information and Publications Division at publishing@echr.coe.int.