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

Information Note on the Court's case-law

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POSITIVE OBLIGATIONS
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PREŽEC - Croatia (N° 7508/05)
[Section I]

The applicant, who is currently serving a prison term in a State prison, has been diagnosed as suffering from a paranoid personality disorder, schizophrenic disorder and a strong tendency towards self-destructive behaviour. He has attempted suicide on seven occasions and has also physically assaulted many of the prison employees. By a final court judgment, the applicant was ordered to undergo compulsory psychiatric treatment, which he has never received. He was admitted to the prison hospital on several occasions, including after each suicide attempt and was administered psychoactive drugs there. Following several disciplinary offences including assaults and threats, the prison authorities sentenced the applicant to 21 days' solitary confinement despite his continuing health problems. The applicant also complains that, as a result of the disciplinary offences, he was prohibited from using his prison money card for a period in excess of the one originally stipulated.
Communicated under Articles 2 and 3 of the Convention and under Article 1 of Protocol No. 1. Rule 39 indication to the Government to provide the applicant with requisite psychiatric treatment.

Article 2 § 2

USE OF FORCE
Use by police of a face-down immobilisation technique to arrest a deranged man: *violation.*

SAOUD - France (N° 9375/02)
Judgment 9.10.2007 [Section II]

Facts: The application was lodged by the mother, brothers and sisters of the late Mohamed Saoud. Mohamed Saoud suffered from schizophrenia and was recognised as 80 % disabled. He requested admission to hospital, but was told that there were no places available and he could not be admitted before 23 November 1998. On 20 November 1998 the police received a telephone call asking them to intervene at the Saoud family home, where the 26-year-old Mohamed was attacking his mother and two sisters. The young man had tied the legs of one of his sisters together and was kicking her. According to the applicants, one of the sisters informed the police officers of her brother's illness and disability and of the need to call a doctor. No doctor was called. Mohamed Saoud refused to open the reinforced door to the flat when requested to do so by the police, but agreed to free one of his sisters. Shouting abuse at the police officers, he then attacked his other sister, striking her several times with an iron bar. The police officers entered the flat by the balcony. Two rubber bullets hit the young man in the abdomen. During the intervention Mohamed Saoud managed to strike the officers several times with the iron bar and to seize one officer's hand gun and fire four shots at floor level before he was disarmed. The first contingent of officers, who were injured, were replaced by colleagues who, unable to handcuff Mohamed Saoud's arms behind his back, handcuffed them in front of his body and used their body weight to keep him pinned to the ground on his stomach. Two police officers held him by the wrists and ankles while a third placed his outstretched arms on the young man's shoulders and his knee in the small of his back. Mr Saoud's ankles were bound.
On their arrival at the scene, members of the fire service administered first aid to the injured police officers while waiting for the emergency medical service (SAMU) to arrive and administer a tranquiliser to Mohamed Saoud in view of his continuing resistance. Shortly afterwards, the young man developed a sudden weakness, which turned out to be cardiorespiratory arrest, and died.
An autopsy and other tests revealed signs of possible "slow mechanical asphyxia". The two pathologists appointed by the investigating judge confirmed suffocation as the cause of death, as a consequence of the victim being held face down, with his limbs bound and held down and pressure exerted on his shoulders and the small of his back for several minutes.
In January 1999 the applicants lodged a complaint for murder of an especially vulnerable person and sought leave to join the proceedings as a civil party, alleging in particular that no doctor had been called at the time of the events. The investigating judge ordered that the proceedings be discontinued. That order was upheld on appeal. The applicants appealed on points of law.
On 24 July 2001 the delegate of the President of the Court of Cassation granted full legal aid following an appeal against the refusal of aid by the Legal Aid Office. However, the reporting judge had already filed his report over a month earlier, and the time-limit for filing further pleadings had now expired. A lawyer practising in the *Conseil d'Etat* and the Court of Cassation was appointed on 10 September 2001. On 18 September 2001 the Court of Cassation declared the appeals inadmissible. The lawyer assigned to the applicants informed them that, as the decision of 24 July 2001 had not been served on him until 10 September 2001, he had been unable to file pleadings with the Court of Cassation before it ruled on the appeals.

Law: Article 2 – *Preliminary objection of non-exhaustion rejected*: Article L. 781-1 of the Judicature Code introduced a system of direct State responsibility which did not, in principle, exclude negligence by police officers in the course of their duty. However, the Government supplied only one decision along those lines which was relevant to the instant case, which had been delivered subsequent to the material events, the criminal proceedings and the application to the Strasbourg Court.

The police officers' intervention had been justified under Article 2 § 2 (a) and (b), as they had had to protect the physical safety of the young man's mother and sisters. He had inflicted injuries on his sisters

and some police officers had also been seriously injured during the struggle. The injuries sustained by the young man in the struggle with the police had not been the cause of his death. Accordingly, the conditions of his arrest and, in particular, the use of force by the police had been proportionate to the violence of his conduct.
With regard to the events following the arrest, namely Mohamed Saoud's being held to the ground by the police officers, the authorities had an obligation to protect the health of persons who were in detention or police custody or who, as in the case of Mohamed Saoud, had just been arrested. That entailed providing prompt medical care where the person's state of health so required.
The police officers had not been unaware of Mohamed Saoud's vulnerable state, having been told about it by one of his sisters. Despite the young man's illness, his obvious injuries and the fact that, with his hands and feet bound, he no longer presented a danger to others, the police officers had not relaxed their hold on Mohamed Saoud at any time and no medical examination, however superficial, had been carried out on him to ascertain his state of health. The only measure apparently contemplated by the police and fire officers at the scene was the administration of a tranquiliser by a doctor, which meant waiting for the emergency medical service to arrive. Mohamed Saoud had been pinned to the ground for 35 minutes, in a position identified by medical experts as likely to cause death by asphyxia. No precise instructions had been issued by the French authorities with regard to this type of immobilisation technique and, despite the presence at the scene of professionals trained in first aid, no treatment had been given to the young man prior to his cardiac arrest.
Conclusion: violation (unanimously).

Article 6 § 1 – By 24 July 2001, when legal aid was granted, on appeal, for the proceedings before the Court of Cassation, the time allowed for filing further pleadings had already expired. However, the decision of 24 July 2001, implicitly recognising the existence of arguable grounds of appeal, had offered an opportunity to have the appeal on points of law presented by a specialist member of the legal profession. The proceedings before the Court of Cassation had not been fair on account of the fact that it had been materially impossible for the specialist lawyer assigned to the applicants to file pleadings before the Court of Cassation ruled on their appeals.
Conclusion: violation (unanimously).

Article 41 – EUR 20,000 jointly to the seven applicants, for non-pecuniary damage.

ARTICLE 3

INHUMAN OR DEGRADING TREATMENT
Use of excessive force by a police officer against an unaccompanied woman who had been required to attend a police station: *violation*.

FAHRİYE ÇALIŞKAN - Turkey (N° 40516/98)
Judgment 2.10.2007 [Section IV]

Facts: Police officers went to the surgery of the applicant, who is a doctor, to take her to the police station in connection with the apparently unauthorised sale of tickets for a show organised by an association to which she belonged. The police accompanied the applicant to the police station, where she asked to speak with an officer other than S.Ç., an inspector against whom she had previously filed an administrative complaint for various offences, albeit unsuccessfully. According to the applicant, while she was speaking to the deputy inspector, S.Ç. entered the office and rushed towards her. He allegedly insulted her, shook her, hit her on the head and restrained her arms, then pulled her hair and spat in her face. According to the Turkish authorities, the applicant had started insulting inspector S.Ç. as soon as she arrived at the police station, then slapped him. She had then tried to leave the premises and had to be forcibly returned by the police.

The applicant and the inspector were both examined by a doctor on the day of the incident. The doctor reported a hyperaemia (congestion) 5 cm long under the inspector's left eye; on the applicant he found an ecchymosis and a haematoma 7-8 cm long on the inside of her left arm, a hyperaemia on the left shoulder blade and irritation of the scalp, and concluded that she had probably been beaten.
The applicant, who was feeling unwell, was examined on the same date by a neurologist, who noted that she was suffering from nausea, problems with her vision and a cranial traumatism, and ordered an urgent examination at a neurosurgical unit. This was carried out the next day and revealed a parietal haematoma necessitating five days' sick leave.
She was re-examined a few days later by doctors from a human rights association, who found bruises measuring 2x7 cm on the back of her right arm and 2x3 cm on her lower right forearm, symptoms of insomnia and amnesia, difficulty in concentrating and anxiety.
S.Ç. filed a complaint against the applicant with the police station, accusing her of insulting and attacking him. At the close of those proceedings the applicant was acquitted on all counts except the slap.
The applicant lodged complaints with the district commissioner's office then the Public Prosecutor's Office to open administrative and criminal investigations against the inspector. In support of her claims she submitted the medical reports drawn up on the day of the incident. The prosecuting authorities referred the case to the Provincial Administrative Council, in conformity with the Law on the Prosecution of Civil Servants, and an investigator – the deputy director of the provincial security police – was given the two complaints to examine jointly. In his report the investigator criticised the medical reports, condemning a certain "protectionism" and sympathy on the part of the doctors towards a colleague. Taking that report at face value, the disciplinary board and the administrative council decided that there was no case to answer. The Supreme Administrative Court upheld that finding.

Law: Article 3 – It was not contested that at the material time inspector S.Ç. had used force against the applicant. The medical evidence available was sufficiently corroborative to give credence to the applicant's allegation that the inspector had pulled her hair, restrained her arms and hit her on the head. Even assuming that the inspector had acted to control the applicant, who was allegedly highly agitated at the relevant time, he had been dealing with a woman alone in a police station, to which she had been brought in connection with a straightforward problem concerning an association. Even filled with resentment on account of having been slapped, an inspector, surrounded by his subordinates, should have shown greater self-control and certainly used other methods than those which had left the applicant unable to work for five days. That treatment had been debasing and likely to inspire disproportionate feelings of fear and vulnerability, and did not correspond to the necessary use of force.
Conclusion: substantive violation of Article 3 (unanimously).

Article 13 – Investigations carried out by administrative bodies like those involved in the present case raised serious doubts as to their independence vis-à-vis the executive. The intervention of the administrative council, which had merely endorsed the conclusions of an investigator who was himself a member of the police, was a factor which had considerably weakened the stringency of the judicial machinery in place, in so far as its implementation had ultimately failed to establish the facts or the possible liability arising from the applicant's allegations. The procedures initiated had not therefore been effective, in that they had not provided the applicant with any reasonable ground for seeking compensation from the administrative or civil courts since, in either case, it would have been necessary to prove, at the least, that she had been the victim of ill-treatment at the hands of a State agent.
Conclusion: violation (unanimously).

Article 41 – EUR 7,000 for pecuniary and non-pecuniary damage.

INHUMAN OR DEGRADING TREATMENT
Conditions in which a prisoner suffering from serious illness was held and lack of adequate medical care: *violation*.

YAKOVENKO - Ukraine (N° 15825/06)
Judgment 25.10.2007 [Section V]

Facts: The applicant, who had been in custody both on remand and as a convicted prisoner since 2003, complained of his conditions of detention and, in particular, of a lack of access to appropriate medical care. His allegations were contested by the Government. According to the applicant he had been held in the Simferopol SIZO pending his trial, but had had to be transferred at regular intervals to Sevastopol, where the investigative authorities were based. The 80-kilometre journey took some 36 to 48 hours in prison vans and trains that were severely overcrowded, dimly lit and poorly ventilated. Prisoners were not provided with food or drink. Between June 2003 and April 2006 he had spent about a year in all in the Sevastopol ITT, a facility that was severely overcrowded, poorly ventilated and had no medical facilities. While there, his health had started to deteriorate. He suffered from tuberculosis and in February 2006 was diagnosed as HIV-positive (although he claimed that he was only informed of the diagnosis three months later). By April 2006 the applicant was running a high temperature and could hardly move or eat without assistance. An ambulance had been called out on two occasions, but the prison authorities had only agreed to his hospitalisation after the applicant's mother lodged a complaint with the prosecutor general. The applicant was finally transferred to hospital on 28 April 2006 following an indication by the Court under Rule 39. He died a year later.

Law: Article 3 – (a) *Conditions of detention in Sevastopol ITT*: In the light of recent internal and international reports, including a report by the Committee for the Prevention of Torture ("CPT") and a letter from the head of the city police department, the Court found that the facility suffered from continuous and severe overcrowding (the detainees' personal space being no larger than 1.5 square metres). This would have resulted in sleep deprivation. The CPT report of 2000 had also noted a lack of natural light and inadequate ventilation. These conditions amounted to degrading treatment.
Conclusion: violation (unanimously).

(b) *Lack of medical care*: The Court accepted that, despite having been aware of the applicant's condition since February 2006, the prison authorities had not taken the urgent medical measures stipulated in the regulations for the treatment of detainees with HIV/AIDS. He had not been given antiretroviral treatment or monitored for infections and had only been registered as an HIV patient at the local anti-AIDS centre in May 2006. Instead, they had continued to send him to the Sevastopol ITT, which had no medical staff. Although the Government had argued that an ambulance could have been called whenever a deterioration in the applicant's health warranted medical intervention, permission was nevertheless required from the administration, which in turn was faced with a difficult decision in view of the absence of professional medical advice. Indeed, the authorities had refused to authorise the applicant's transfer to a specialised hospital for further examination and there was no indication that they had made sure he had been provided with prescribed anti-tuberculosis treatment. In sum, the failure to provide timely and appropriate medical care to the applicant in respect of his HIV and tuberculosis infections had amounted to inhuman and degrading treatment.
Conclusion: violation (unanimously).

(c) *Repeated transport between detention centres*: The size of the individual compartments (0.3 sq. m. for vans and 0.4 sq. m. for trains) failed to meet CPT standards for transport, irrespective of the journey time. The applicant's allegations of poor lighting and ventilation and a lack of food and water were corroborated by the CPT delegation's findings in 2000. The applicant had thus had to endure cramped conditions for some 64 trips to and from Sevastopol over a period of two years and eight months.
Conclusion: violation (unanimously).

Article 13 – The applicant had not had any effective and accessible remedy available to complain about his conditions of detention.
Conclusion: violation (unanimously).

Article 41 – EUR 434 euros in respect of pecuniary damage and EUR 10,000 in respect of non-pecuniary damage.

INHUMAN OR DEGRADING TREATMENT
Harsh treatment during applicant's arrest including filming of the event and showing of the footage at a press conference: *communicated*.

GARLICKI - Poland (N°36921/07)
[Section IV]

The applicant, a renowned cardiac surgeon and director of a clinic, was arrested at his workplace on 12 February 2007. He was pinned to the floor and handcuffed, after which masked men searched his office and his car. The events were viewed by many of the hospital's staff, patients and visitors and were filmed by one of the police officers. The applicant was subsequently charged with the homicide of a patient, corruption, harassment and the forging of documents. An assistant judge remanded him in custody for three months mainly on account of the heavy prison sentence he faced for homicide and of the need to prevent him obstructing the investigation. The second-instance court dismissed the applicant's appeal on the ground that, even if there was arguably insufficient evidence in respect of the homicide charges, the seriousness of the remaining offences justified his remand in custody. The applicant's detention was subsequently prolonged for a further three months, but the court at the same time set bail at EUR 90,000 and imposed other conditions for release. The applicant was released on 18 May 2007.
Meanwhile, at a press conference showing the video recording of the applicant's arrest and the search of his premises, the Minister of Justice – Prosecutor General commented that "no one else will ever again be deprived of life by [the applicant]",. The case subsequently gained considerable media attention, with the applicant being referred to as "Doctor Death" and "Mengele". The criminal proceedings are still at the investigation stage.
Communicated under Article 3, Article 5 §§ 1 and 3 and Article 6 § 2 of the Convention and Article 1 of Protocol No. 1.

ARTICLE 5

Article 5 § 1 (f)

EXTRADITION
Inconsistent interpretation of provisions applicable to detainees awaiting extradition: *violation*.

NASRULLOYEV - Russia (N° 656/06)
Judgment 11.10.2007 [Section I]

Facts: The applicant, a Tajikistani national, was charged by the Tajikistan Prosecutor General's Office with numerous criminal offences (notably manslaughter, kidnapping and participation in an armed group with a view to attacking Government institutions) allegedly committed during the 1992 to 1997 civil war in that country. On 13 August 2003 the applicant was arrested in Moscow and detained on the basis of a subsequent court order of 21 August 2003 with a view to being extradited to Tajikistan. The order contained no time-limit for the applicant's detention. The applicant on several occasions sought to be released from detention, but to no avail. Following the deputy prosecutor's request, on 1 July 2006 a court extended the applicant's detention by fourteen days. Several days later the Prosecutor General informed the applicant about the decision to extradite him to Tajikistan. The applicant appealed against that

decision claiming that he was being prosecuted on political grounds and that he risked a death sentence if found guilty as charged. On 12 July 2006 the Court indicated to the Russian Government under Rule 39 of the Rules of Court not to extradite the applicant until further notice. Subsequently, on 21 August 2006 a court overturned the Prosecutor General's decision, at the same time ordering the applicant's release, since the Tajikistan Government had not furnished necessary guarantees required under the Russian law. The Supreme Court upheld that decision.

Law: Article 5 § 1 (f) – The Court firstly examined whether the initial decision on the applicant's detention dated 21 August 2003 had been sufficient for holding him in custody for any period of time. The Court observed the inconsistent legal interpretation of domestic authorities on the issue of provisions of Russian law applicable to detainees awaiting extradition and concluded that they were neither precise nor foreseeable. They therefore fell short of the "quality of law" standard required under the Convention and the applicant's detention was consequently found to be unlawful: *violation*.

Article 5 § 4 – The Court observed that Articles 108 and 109 of the Russian Code of Criminal Procedure, regulating review of detention, provided that the prosecutor was to request the court extension of a custodial measure and that the detainee was allowed to take part in such proceedings and plead for his or her release. However, nothing in the wording of those provisions indicated that such proceedings could be taken on the initiative of the detainee, the prosecutor's application for an extension of a custodial measure being the required element for institution of such proceedings. In the present case such a review was initiated only once during the applicant's three-year-long detention. Consequently, during his time in detention the applicant did not have at his disposal a procedure through which he could have challenged the lawfulness of his detention in court: *violation*.

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

Article 5 § 4

TAKE PROCEEDINGS
Three years of detention pending extradition without any possibility to apply for review: *violation*.

NASRULLOYEV - Russia (N° 656/06)
Judgment 11.10.2007 [Section I]

(see Article 5 § 1 (f) above)

ARTICLE 6

Article 6 § 1 [civil]

FAIR HEARING
Grant of legal aid for proceedings before the Court of Cassation after the time-limit for lodging submissions had expired: *violation*.

SAOUD - France (N° 9375/02)
Judgment 9.10.2007 [Section II]

(see Article 2, above).

Article 6 § 1 [criminal]

IMPARTIAL TRIBUNAL
Impartiality of a court of appeal when two of the judges who ruled that the reproduction in a newspaper of certain passages from a novel was defamatory had already held the passages to be defamatory in previous proceedings against the author and publisher: *no violation.*

LINDON, OTCHAKOVSKY-LAURENS and JULY - France (N° 21279/02 and N° 36448/02)
Judgment 22.10.2007 [GC]

(see Article 10 below).

EQUALITY OF ARMS
Presence of a member of the State prosecutor's office at an information meeting for members of the jury: *no violation*.

CORCUFF - France (N° 16290/04)
Judgment 4.10.2007 [Section III]

Facts: The applicant, having been convicted by the Assize Court, obtained the re-examination of his case. A meeting was held for jurors drawn by lot to inform them about proceedings before an Assize Court and of their role in those proceedings. The meeting was conducted by the President of the Assize Court, a member of the Bar and a member of the prosecution service, who was also to represent the prosecution at the applicant's trial. The public prosecutor concerned did not challenge of any of the jurors. At the opening of the proceedings the applicant's lawyers submitted pleadings and a statement by their colleague who had attended the information meeting for the jury members. The Assize Court rejected the claim that the fact that the public prosecutor had addressed the members of the jury might have violated the equality of arms principle, and found the applicant guilty. In an appeal on points of law the applicant based one of his arguments on an alleged violation of Article 6 § 1 of the Convention, claiming that the fact that the public prosecutor responsible for his prosecution had participated in an information meeting for the jury must have given the prosecutor an opportunity to form an initial impression of the jurors and to establish a natural authority over them, as he had explained the Assize Court procedure to them. Furthermore, his presence at the meeting had given him an unfair advantage, by giving him an opportunity to reject certain jurors and constitute a more sympathetic jury, and giving added credence to his authority over the jurors in the court proceedings. The Court of Cassation dismissed the applicant's appeal on the ground that his lawyers had not submitted their pleadings concerning the prosecution before the start of the proceedings. The applicant further claimed that the manner in which the record of the proceedings had been drafted had not enabled the Court of Cassation to determine whether the parties had exercised their right to challenge jury members. The Court rejected that claim on the ground that the applicant had failed to raise an objection, prior to the commencement of the proceedings, concerning any irregularity allegedly committed by the defence or the prosecution in the jury selection process.

Law: *Rejection of the preliminary objection of non-exhaustion of domestic remedies*: The Government did not establish that the applicant had been aware, prior to the start of the proceedings before the Assize Court, that the public prosecutor had attended the information meeting organised for the jury whereas the lawyer who had attended the meeting was not the one defending the applicant's interests. The applicant had requested that formal note be taken that the fact that the public prosecutor had spoken to the jurors, who had been drawn by lots, might have violated the equality of arms principle. However, the Assize Court had used its power to decline to take note of facts it had not witnessed itself to refuse the applicant's request. The applicant had subsequently raised the same allegation before the Court of Cassation. Furthermore, the Government did not show that the procedure applicable gave the applicant an opportunity to present his arguments effectively. Accordingly, it would be excessively formalistic to consider that the applicant had failed to exhaust the domestic remedies because he had failed to follow the

prescribed procedural rules, when it was uncertain, to say the least, whether it had been possible in practice for him to do so.

Merits: No instructions had been given to the jury members by the legal officers present at the information meeting in question. The President of the Assize Court had conducted the meeting and ensured its neutrality. It was his duty to supervise the information exchanged and make sure that no comments were made about the case, the defendant's personality or his possible guilt. The meeting had been held simply to inform jurors about the organisation of proceedings before the Assize Court. The Court stressed the benefits of such information for jury members, who were not legal professionals but ordinary citizens unfamiliar with the complexities of the legal system. The presence at these meetings of a member of the State prosecutor's office and a member of the Bar was clearly useful since they played an important part in the proceedings and were therefore well placed to answer any questions the jurors might have about their respective roles. Furthermore, the fact that these meetings were attended by all the jurors on jury duty during the assize court session made it difficult to appoint a member of the State prosecutor's office who would not be pleading in any of the cases heard during the session. Likewise, requiring all the lawyers who would be pleading in the different cases to attend the meetings would make the process unnecessarily unwieldy, when its sole purpose was to present the procedure and address general questions, and certainly not the specific circumstances of the different cases or the personalities of the defendants. That being so, the compromise solution adopted by the Assize Court, which was to invite one member of the Bar to represent the defence lawyers, seemed satisfactory. So the presence at these information meetings of a representative of the State prosecutor's office and a member of the Bar struck a fair balance in terms of the information given to the jurors. As to the allegation that the representative of the State prosecutor's office had been placed at an advantage when it came to challenging jury members, there was no evidence that the information meeting on the procedure had given him an opportunity to forge an opinion about the personality of any particular juror, especially when, at the time of the meeting, the member of the prosecutor's office had not known which of the jurors present would eventually be drawn by lot or to which cases they would be assigned. It would not appear, therefore, that the public prosecutor was given any real advantage over the applicant in the instant case when it came to exercising the right to challenge jury members.
Conclusion: no violation (unanimously)

Article 6 § 2

PRESUMPTION OF INNOCENCE
Press statement by the Minister of Justice – Prosecutor General that "no one else will ever again be deprived of life by [the applicant]": *communicated*.

GARLICKI - Poland (N°36921/07)
[Section IV]

(see Article 3 above)

ARTICLE 8

PRIVATE LIFE
Retention of fingerprints and DNA samples of former suspects even when no guilt has been established or when the investigation has been discontinued: *relinquishment in favour of the Grand Chamber.*

S. and Michael MARPER - United Kingdom (N° 30562/04 and N° 30566/04)
[Section IV]

The applicants were arrested, suspected of attempted robbery and harassment respectively. Fingerprints and DNA samples were taken from them. The first applicant was eventually acquitted, whereas the case against the second one was formally discontinued. They both asked for the fingerprints and DNA samples to be destroyed but the police refused. Their application for judicial review was rejected by the Administrative Court and the Court of Appeal upheld that decision. The lead judgment of the House of Lords noted the considerable value of retained fingerprints and DNA samples. Even assuming that such retention amounted to interference with the right to respect for private life, such interference was very modest and at any rate justified under Article 8 § 2. The House of Lords further rejected the applicants' complaint that the retention subjected them to discriminatory treatment in breach of Article 14 when compared to the general body of persons who had not had their fingerprints and samples taken in the course of a criminal investigation.
The applicants complain under Articles 8 and 14 of the Convention about the retention of fingerprints and DNA samples and profiles pursuant to Section 64 (1A) of the Police and Criminal Evidence Act 1984. They allege that the retention of the material concerning them violates their right to respect for private life. Moreover, as persons who were, but are no longer, suspected of a crime, they are in the same position as the rest of the unconvicted population of the United Kingdom, though they are being treated differently for reasons which are not compatible with Article 14.
The case was declared *admissible* on 16 January 2007.

PRIVATE AND FAMILY LIFE
Conjecture by court hearing an application for access that the child had been abused by the applicant: *violation*.

SANCHEZ CARDENAS – Norway (N° 12148/03)
Judgment 4.10.2007 [Section I]

Facts: In 1995 the applicant separated from the mother of his two sons. Although they initially agreed on terms of access, a dispute subsequently arose following allegations by the mother to the police that the applicant had sexually abused one of the boys. The police investigation into the allegations was later discontinued. In 2001 a city court granted the applicant access on alternate weekends and for part of the holidays after rejecting the allegations of sexual abuse as being a fabrication by the mother designed to obstruct the applicant's access rights. That decision was overturned by the High Court, which refused the applicant access as it considered this to be the course most favourable to the children's development and justified by their best interest. With regard to the allegations of sexual abuse it stated that the fact that there was insufficient evidence for a criminal conviction was not decisive and that no risk could be taken in the case of access to minors; it added that there were many elements that might indicate that abuse had occurred, although it did not find it necessary to go into or take a stance on that point.

Law: Even though the impugned passage in the High Court's judgment had had no bearing on its decision regarding access, it suggested that the applicant might have engaged in highly reprehensible conduct vis-à-vis his son and was capable of adversely affecting his enjoyment of his private and family life, in the ordinary sense of those terms. The complaint thus fell within the scope of Article 8. The interference was

"in accordance with the law" and pursued the legitimate aim of protecting the rights and freedoms of others. However, as regards the necessity of the interference, it was not apparent why the High Court should have indicated that there was evidence of abuse but then decided that it was unnecessary to go further into that issue. The message thereby conveyed was that, on the basis of the available evidence, it suspected the applicant of the sexual abuse of one of his sons. In the Court's opinion, the High Court should either have dealt with that issue fully, with all that meant in terms of evidentiary assessment and reasoning, or left it to one side. Portraying the applicant in that light in an authoritative judicial decision had stigmatised him, damaged his honour and reputation and adversely affected his private and family life. There had been no cogent reasons for the inclusion of the impugned passage. Accordingly, the interference was not sufficiently justified and was disproportionate.
Conclusion: violation (unanimously).

Article 41: EUR 7,000 for non-pecuniary damage.

PRIVATE AND FAMILY LIFE
Former patients prevented from photocopying medical records: *admissible*.

K.H. AND OTHERS – Slovakia (N° 32881/04)
Decision 9.10.2007 [Section IV]

The applicants are eight women of Roma origin who were treated at gynaecological and obstetrics departments in two hospitals in eastern Slovakia during their pregnancies and deliveries. Despite continuing attempts to conceive, none of the applicants has become pregnant since their last stay in the hospitals, when they delivered via caesarean section. The applicants suspected that the reason for their infertility might be that they were sterilised without their knowledge or consent during the operation. In 2004 each of the applicants issued powers of attorney to lawyers from a non-governmental organisation, who then sought to review and make photocopies of the applicants' medical records. Having encountered difficulties in gaining access to the records, the applicants instituted proceedings in local courts. As a result, most of the applicants were allowed to view their files. However, their requests to make photocopies were eventually denied with reference to the domestic legislation in force at the time, which provided that medical records were owned by the hospital concerned and that the restriction on access was justified in order to prevent abuse. Following the introduction of new legislation in 2005, all the applicants – except for the second, whose medical records had meanwhile been lost – were eventually afforded full access to the requested medical documentation and allowed to take relevant photocopies thereof.
Admissible under Article 8 following the dismissal of the preliminary objection that the applicants could no longer claim to be "victims". Also *admissible* under Article 6 § 1 (access to court) and under Article 13 (effective remedy).

PRIVATE LIFE
CORRESPONDENCE
Police providing, in absence of regulatory framework, technical assistance to an individual who wished to record his conversations with the applicant: *violation*.

VAN VONDEL – the Netherlands (N° 38258/03)
Judgment 25.10.2007 [Section III]

Facts: In 2002 the applicant, a former police officer, was convicted of having committed perjury before a general parliamentary inquiry and of attempting to intimidate a potential witness - his former informer. The courts relied on recordings of telephone conversations between them which the informer had made on his own initiative and with the aid of devices provided by the police.

Law: The obtaining by the police – for the purposes of an officially commissioned fact-finding inquiry – of recordings of conversations between the applicant and his informer had constituted an interference with the applicant's private life and/or correspondence which was imputable to a public authority. Although the recordings of the applicant's conversations had been made by the informer on a voluntary basis and for his own purposes, the equipment had been provided by the authorities, who on at least one occasion had given him specific instructions as to what information should be obtained from the applicant. In these circumstances, the authorities had made a crucial contribution to executing the scheme. The Court was not persuaded that it was ultimately the informer who had been in control of events. The Government had not shown that the interference at issue had had any legal basis. Furthermore, as the investigation had been a fact-finding inquiry, the police had not been allowed to have recourse to any investigative powers such as, for instance, the covert recording of conversations. The Court understood that for practical reasons a witness who feared that his credibility had been damaged might need technical assistance from the authorities in order to substantiate his version of events. However, it was unacceptable for the provision of such assistance by the authorities not to have been governed by rules aimed at providing legal guarantees against arbitrary acts. The applicant had been deprived of the minimum degree of protection to which he was entitled under the rule of law in a democratic society. The interference had therefore not been "in accordance with the law".
Conclusion: violation (unanimously).

CORRESPONDENCE
Failure to comply with procedural safeguards in search and seizure of electronic data on a lawyer's computer system: *violation*.

WIESER AND BICOS BETEILIGUNGEN GMBH - Austria (N° 74336/01)
Judgment 16.10.2007 [Section IV]

Facts: The first applicant was a lawyer and the owner and general manager of the second applicant, a holding company. The second applicant was the sole owner of another company, Novamed. Both companies were based at the first applicant's law office. Following a request for legal assistance from the Italian authorities in connection with a criminal investigation, a regional court issued a warrant to search the companies' head offices. During the search one group of police officers, in the presence of the first applicant and a representative of the bar association, looked for hard-copies of files relating to the second applicant and Novamed. If the first applicant objected to the immediate examination of a document, it was sealed and deposited with the regional court as required by the Code of Criminal Procedure. All seized and sealed documents were listed in a report signed by the first applicant and the officers. Simultaneously, another group of officers examined the first applicant's computer equipment and copied several files to disk. An IT specialist and the bar association representative briefly attended that search. However, no report was drawn up until later in the day. It indicated that the officers had not taken a complete copy of the server, but had carried out a search of the names of the two companies and of the suspects in the criminal proceedings. The investigating judge subsequently opened, in the presence of the first applicant, the documents that had been sealed. Some were copied and added to the file while others were returned to the first applicant on the ground that their use would impinge on his duty of professional secrecy. The first and second applicants complained to the domestic courts that the search and seizure procedure in respect of the electronic data had violated the first applicant's professional secrecy obligations. However, their complaints were dismissed.

Law: The search and seizure of the applicants' electronic data amounted to interference with their right to respect for their "correspondence". The Code of Criminal Procedure had specific rules on the seizure of documents and under the case-law of the domestic courts these rules were also applicable to electronic data. The search and seizure served the legitimate aim of preventing crime. However, while the safeguards had been complied with in respect of the hard-copies of the documents seized, they had not been observed in respect of the electronic data. In particular, the representative of the bar association had not been able to properly supervise that part of the search, the report had been drawn up too late, and neither the first applicant nor the bar association representative had been informed of the results of the

search. Although the first applicant was not the second applicant's counsel, he did act as counsel for numerous companies whose shares it held. Moreover, the electronic data seized contained by and large the same information as the paper documents, some of which the investigating judge had returned to the first applicant as being subject to professional secrecy. It could therefore be reasonably assumed that the electronic data seized also contained such information. The police officers' failure to comply with certain procedural safeguards aimed at preventing "arbitrariness" and protecting lawyers' professional secrecy had made the search and seizure of the first applicant's electronic data disproportionate to the legitimate aim pursued.
Conclusion: violation (four votes to three).

Article 41 – EUR 2,500 for non-pecuniary damage.

ARTICLE 10

FREEDOM OF EXPRESSION
Author and publisher of a novel convicted for defamation of extreme right-wing party and its president : *no violation*.

Newspaper director convicted for defamation after publishing a petition repeating the impugned passages and protesting against the aforementioned convictions : *no violation*.

LINDON, OTCHAKOVSKY-LAURENS and JULY - France (N° 21279/02 and 36448/02)
Judgment 22.10.2007 [GC]

Facts: Mr Lindon, a writer, is the author of a work presented as a novel and bearing the title *Le Procès de Jean-Marie Le Pen* (*Jean-Marie Le Pen on Trial*), referring to the Chairman of the Front National, a political party of the far right. Mr Otchakovsky-Laurens is the publisher. The novel, based on real events but adding fictional elements, recounts the trial of a Front National militant, who, while putting up posters for his party with other militants, committed the cold-blooded murder of a young man of North African descent and has admitted that it was a racist crime. The novel openly raises questions about the responsibility of the Front National and of Mr Le Pen in the growth of racism in France and about the difficulty of combating this scourge.
Following proceedings brought by the Front National and Mr Le Pen, Mr Otchakovsky-Laurens was convicted of defamation and Mr Lindon of complicity in that offence. They were each fined and ordered jointly to pay damages and to have notice of the judgment published. The court found four passages from the book to be defamatory, stating that the criminal conduct attributed to the complainants had not been made out and that the author had distorted the facts to reinforce the hostility of his readers towards Mr Le Pen and his party.
Just over a month later the daily newspaper *Libération* published an article in the form of a petition against the convictions, signed by 97 writers. The article reproduced in full the passages that the court had found to be defamatory and challenged that characterisation.
Mr July, publication director of *Libération*, was summoned by the Front National and Mr Le Pen to appear before a court, which found him guilty of defamation and ordered him to pay a fine and damages, not for reporting on the opinions of writers but for reiterating the offence of which Mr Lindon and Mr Otchakovsky-Laurens had been convicted, by reproducing the impugned passages.
The Paris Court of Appeal upheld the judgment against Mr Lindon and Mr Otchakovsky-Laurens as to the fine, the damages awarded and the defamatory nature of three passages from the book containing the following remarks about Mr Le Pen: that he is "not the chairman of a political party but the chief of a gang of killers", comparable to Al Capone; that his words and assertions are full of "racist overtones ... barely concealed at best" and that "behind [them] looms the spectre of the worst abominations of the history of mankind"; and that he is "a vampire who thrives on the bitterness of his electorate, but sometimes also on their blood, like the blood of his enemies". The court found that the author had not sufficiently distanced himself from the views expressed and, without calling into question the political

combat or condemning the aversion to the ideas and values of the civil parties, noted that the other factors that might have supported a defence of good faith (allegations made with moderation and after prior verification) were lacking. The Court of Cassation upheld the judgment.
In the meantime the Paris Court of Appeal had upheld Mr July's conviction. As regards the defamatory nature of the article, the Court referred to the reasons given in its judgment against Mr Lindon and Mr Otchakovsky-Laurens, which, it stated, "remain[ed] applicable". It then dismissed the defence of good faith, in particular because the petitioners' aim had simply been to express their support for Mathieu Lindon "by repeating with approval, out of defiance, all the passages that had been found defamatory by the court, and without even really calling into question the defamatory nature of the remarks". The Court of Cassation dismissed Mr July's appeal on points of law, and in particular the argument that the Court of Appeal had been biased because the president and one of the other two judges had previously sat in the case concerning Mr Lindon and Mr Otchakovsky-Laurens.

Law: Article 10 – The legal basis of the applicants' convictions lay in the clear and accessible provisions of the Freedom of the Press Act of 29 July 1881 applicable to defamation, which, according to domestic case-law, could be committed through a work of fiction where the person claiming to have been defamed was designated clearly. The case-law was dated and rather scant. Nevertheless, professionals in publishing had a duty to apprise themselves of the relevant legal provisions and case-law, even if that meant consulting specialised lawyers. The interference was thus prescribed by law and also pursued a legitimate aim, that of protecting the reputation or rights of others. The penalty imposed on the author and publisher had not been directed against the arguments expounded in the impugned novel but only against the content of three passages from the work. The criteria applied by the Court of Appeal in assessing whether or not the passages in issue were defamatory had complied with Article 10.
To point out that all writings, even novelistic, were capable of resulting in a conviction for defamation, was consistent with Article 10. Admittedly, anyone who, for example, created or distributed a literary work contributed to an exchange of ideas and opinions which was essential for a democratic society, hence the obligation on the State not to encroach unduly on their freedom of expression, especially where, like the novel at issue in the present case, the work constituted political or militant expression. Nonetheless, novelists and those who promoted their work had to assume certain "duties and responsibilities". The finding of defamation could not be criticised in view of the virulent content of the offending passages and the fact that they specifically named the Front National and its chairman. Moreover, only those remarks that reflected the thoughts of the author had been found to be defamatory and not those from which the author had really distanced himself.
The Court of Appeal's finding that the three offending passages had not been based on basic verification was also consistent with Strasbourg case-law. The distinction between statements of fact, the existence of which could be demonstrated, and value judgments, the truth of which was not susceptible of proof, did not usually need to be made when dealing with extracts from a novel except where, as in the present case, the work mixed fact and fiction and was thus not pure fiction but introduced real characters or facts. It was all the more acceptable to require the applicants to show that the allegations contained in the passages from the novel that were found to be defamatory had a "sufficient factual basis" as they were not merely value judgments but also allegations of fact. In addition, the Court of Appeal had adopted a measured approach, criticising the applicants not for having failed to prove the veracity of the allegations in question but for failure to carry out "basic verification" beforehand.
The Court of Appeal's finding that the content of the impugned writings was not sufficiently "dispassionate" was also compatible with Strasbourg case-law. The Court of Appeal had made a reasonable assessment of the facts in finding that to liken an individual, even a politician who, like Mr Pen, exposed himself to harsh criticism, to the "chief of a gang of killers", to assert that a murder, even one committed by a fictional character, had been "advocated" by him, and to describe him as a "vampire who thrive[d] on the bitterness of his electorate, but sometimes also on their blood", "overstep[ped] the permissible limits in such matters". Those involved in political struggles had to show a minimum degree of moderation and propriety. Wording that expressed the intention of stigmatising an opponent and capable of stirring up violence and hatred went beyond what was tolerable in political debate, even in respect of a figure who occupied an extremist position in the political spectrum.
In short, the conviction upheld by the Court of Appeal against the author and publisher had been based on "relevant and sufficient" reasons. The penalties imposed had not been disproportionate.

As to Mr July, publication director of *Libération*, he had been convicted on account of the publication of a petition which had reproduced extracts from the novel containing "particularly serious allegations" and offensive remarks, and whose signatories, repeating those allegations and remarks with approval, had denied that the extracts were defamatory in spite of a ruling to that effect.
Having regard to the content of the offending passages of the novel, to the potential impact on the public of the defamatory remarks on account of their publication by a national daily newspaper with a large circulation, and to the fact that it was not necessary to reproduce them in order to report fully on the conviction of the author and publisher and on the ensuing criticism, Mr July had overstepped the permissible limits of "provocation" by reproducing the remarks, also taking into consideration the need to protect the reputation of a named person and the rights of others. In addition, the fine and the damages awarded had been moderate.
Conclusion: no violation (thirteen votes to four).

Article 6 § 1 – Mr July alleged that the court had lacked impartiality since two of the three judges on the bench which upheld his conviction for defamation on account of the publication of the petition had already ruled, in the case of the first two applicants, on the defamatory nature of the offending passages from the novel which were cited in the petition.
However, there was no evidence to suggest that the two judges in question had been influenced by personal prejudice when they heard the case, and as to the composition of the bench of the Paris Court of Appeal, those fears had not been objectively justified for the following reasons.
Even though they were connected, the facts in the two cases differed and the "accused" was not the same. It was moreover clear that the judgments delivered in the case of the author and publisher of the novel did not contain any presupposition as to the guilt of Mr July. Whilst in its judgment in Mr July's case, the Paris Court of Appeal had referred back, in respect of the defamatory nature of the passages in question, to the judgment that it had given in the case of Mr Lindon and Mr Otchakovsky-Laurens, that was because the previous judgment had become *res judicata*. The question of the good or bad faith of Mr July remained open, however, and had not been prejudiced by the first judgment.
The presence of the two criticised judges on a bench which had successively delivered the two judgments in question could not taint the court's objective impartiality: as regards the characterisation of the text as defamation, any other judge would have been bound by the *res judicata* principle, which meant that the participation of those two judges had had no influence on the respective part of the second judgment; and as to the issue of good faith, which was a totally different issue in the two cases despite the close connection between them, there was no evidence to suggest that the judges had in any way been bound by their assessment in the first case.
Conclusion: no violation (unanimously).

FREEDOM OF EXPRESSION
Refusal to revise a judgment prohibiting a television commercial from being broadcast which had previously given rise to a finding of a violation of Article 10 by the European Court of Human Rights: *violation*.

VEREIN GEGEN TIERFABRIKEN SCHWEIZ (VGT) – Switzerland (N° 3272/02)
Judgment 4.10.2007 [Section V]

Facts: The applicant is an animal-protection association. Ruling on its first application (no. 24699/94), the European Court of Human Rights, in a judgment of 28 June 2001, found that there had been a violation of Article 10 because of the Swiss authorities' refusal to allow its television commercial expressing opposition to battery livestock rearing methods to be broadcast. Based on the Court's judgment, the applicant association applied to the Federal Court to revise its judgment prohibiting the broadcasting of the commercial. In 2002 the Federal Court dismissed that application. The applicant association lodged this new application with the Court to challenge that decision. The Committee of Ministers of the Council of Europe, which is responsible for supervising execution of the Court's judgments, had not been informed of these developments, and accordingly ended its examination of the applicant association's

initial application in 2003, referring to the possibility of lodging a request for revision with the Federal Court.

Law: The refusal to set aside the decision banning the broadcasting of the commercial in issue gave rise to a fresh interference in the exercise by the applicant association of its rights under Article 10. The Federal Court had rejected its application for review on the ground that it had not provided a sufficient explanation of the nature of "the amendment of the judgment and the redress being sought". That approach appeared overly formalistic, seeing that it followed from the circumstances of the case as a whole that the association's request concerned the broadcasting of the commercial in question, which the Federal Court itself had prohibited in 1997. Furthermore, the Federal Court had held that the applicant association had not sufficiently shown that it still had an interest in broadcasting the commercial in its original version. In so doing, it had effectively taken the place of the association in deciding whether there was still any purpose in broadcasting the commercial. It had failed, however, to explain how the public debate on battery farming had changed or become less topical since 1994, when the commercial was initially meant to have been broadcast. That being so, the reasons given by the Swiss Federal Court, having regard to the case as a whole and to the interest of a democratic society in ensuring and maintaining freedom of expression in matters of indisputable public interest, were not relevant and sufficient to justify the interference in issue.
Conclusion: violation (five votes to two).

FREEDOM OF EXPRESSION
Failure to give reasons for refusing to grant a broadcasting licence and lack of judicial review of that decision: *violation*.

GLAS NADEZHDA EOOD and ELENKOV – Bulgaria (N° 14134/02)
Judgment 11.10.2007 [Section V]

Facts: The applicants are a single-member private company and its manager. In 2000 the applicant company was refused a broadcasting licence on the basis of a decision by the National Radio and Television Committee (the NRTC) which found that the proposed radio station failed to meet fully its requirements. The applicants unsuccessfully sought judicial review of this decision before the Supreme Administrative Court which held that the NRTC's discretion was not open to judicial scrutiny.

Law: Article 10 – The interference with the applicants' freedom of expression had stemmed from the NTRC's decision. The NRTC had not held any form of public hearing and its deliberations had been kept secret, despite a court order obliging it to provide the applicants with a copy of its minutes. Nor had it given reasons explaining why it considered that the applicant company had failed to meet its requirements. This lack of reasons had not been made good in the ensuing judicial review proceedings, because the Supreme Administrative Court had held that the NTRC's discretion was not reviewable. This, coupled with the vagueness of some of the NRTC's criteria, had denied the applicants legal protection against arbitrary interference with their freedom of expression. In this connection, the guidelines adopted by the Committee of Ministers of the Council of Europe in the broadcasting regulation domain called for open and transparent application of the regulations governing the licensing procedure and specifically recommended that all decisions taken by the regulatory authorities be duly reasoned and open to review by the competent jurisdictions. Consequently, the interference with the applicants' freedom of expression had not been lawful.
Conclusion: violation (unanimously).

Article 13 – The approach taken by the Supreme Administrative Court in the applicants' case, which had involved refusing to interfere with the NRTC's discretionary powers, had fallen short of Article 13 requirements, which obliged the domestic authorities to examine the substance of the Convention complaint.
Conclusion: violation (unanimously).

Article 41 – EUR 5000 for non-pecuniary damage.

FREEDOM OF EXPRESSION
Criminal conviction of a patient for defamation of a plastic surgeon following the publication in the tabloid press of articles about her case: *violation*.

KANELLOPOULOU – Greece (N° 28504/05)
Judgment 11.10.2007 [Section I]

Facts: Immediately after breast reduction surgery performed by Dr X., the applicant complained of severe pains. Dr X. informed her that histological tests had revealed the existence of cancerous tissue in both breasts, which would have to be surgically removed. A mastectomy was then performed by a different doctor. Dr X. subsequently inserted silicone implants and had to operate on the applicant several times, before eventually removing both implants. The applicant continues to suffer from severe after-effects. In July 2001 the applicant brought an action for damages against Dr X. and the private clinic where he had performed the operations. She subsequently brought a further action against the doctor who had performed the mastectomy. The proceedings are still pending before the Athens Court of First Instance. In the meantime the tabloid press published statements allegedly made by the applicant during interviews. Dr X. lodged a complaint against the applicant for defamation. The court found that the remarks reported in the press were liable to damage Dr X.'s honour and reputation, and that the applicant knew that the allegations were false. It found the applicant guilty and sentenced her to a suspended term of 13 months' imprisonment. The sentence was subsequently reduced to five months, suspended. The applicant appealed on points of law, arguing, in particular, that several of the phrases on which her conviction had been based had come not from her but from the authors of the articles. The Court of Cassation dismissed the appeal.

Law: Article 6 § 1 – The still pending civil proceedings for damages had lasted for over six years to date, at one level of jurisdiction. Such a period was excessive and failed to satisfy the "reasonable-time" requirement.
Conclusion: violation (unanimously)

Article 10 – *Rejection of the preliminary objection of failure to exhaust domestic remedies*: In her appeal the applicant had relied expressly on Article 14 of the Greek Constitution, which protected the right to freedom of expression, to defend her right to criticise the doctor who had operated on her. The complaint she had made was thus clearly linked to the alleged violation of Article 10 of the Convention.

Merits – In the framework of Article 10, the custodial sentence handed down to the applicant, although suspended, was disproportionate to the aim pursued. Publication of the articles in question might have had an adverse effect on the doctor's professional image, but the interest in protecting his reputation had not been sufficient to justify a custodial sentence while an action for damages was still pending. Even assuming that the applicant had been at fault, the means available under civil law would have sufficed to settle the matter and protect the doctor's reputation. There was no denying that the applicant had undergone a painful experience and still suffered from serious after-effects. It was therefore surprising to say the least that she should have been given a prison sentence too, for having expressed her suffering without any apparent intention other than to give vent to her distress. While she might have expressed herself in coarse and virulent terms, it had to be borne in mind that the expressions used had reflected her own perception of the seriousness of her condition. Furthermore, her statements contained nothing to suggest bad faith on her part. It was important not to confuse the intentions of the applicant with those of the sensationalist press, which had taken an interest in the case in particular because the doctor was well known. Yet this seemed to be what had happened before the Greek courts, which had failed to place the

applicant's remarks in the particular context of the case, or to take proper account of the distress felt by the applicant when she had made the statements. The restriction of the applicant's right to freedom of expression had therefore not been reasonably proportionate to the legitimate aim pursued.
Conclusion: violation (five votes to two)

Article 41 – EUR 503 for pecuniary damage and EUR 8,000 for non-pecuniary damage.

ARTICLE 11

FREEDOM OF ASSOCIATION
Refusal by courts to register an association on the basis of mere suspicion about the founders' real intentions and future actions: *violation*.

BEKIR-OUSTA AND OTHERS – Greece (N° 35151/05)
Judgment 11.10.2007 [Section I]

Facts: The applicants and nineteen other members of the Muslim minority in Western Thrace decided to set up a non-profit-making association called the "Evros Prefecture Minority Youth Association". The association sought, in particular, to harness the intellectual potential of young people belonging to the minority, safeguard and promote the minority's traditions, develop relations between its members and protect democracy, human rights and friendship, especially between the Greek and Turkish peoples. The Court of First Instance rejected an application to have the association registered, pointing out that the Treaty of Lausanne recognised only a Muslim, and not a Turkish, minority in Western Thrace. It found that the title of the association was confusing, creating the impression that nationals of a foreign country, and in particular Turkish nationals, were permanently resident in Greece and that the association they had set up was not aimed at serving the interests of the Muslim minority in Evros. The applicants challenged the decision, but the Court of Appeal agreed with the lower court's findings and upheld its decision. The applicants then appealed on points of law and the Court of Cassation quashed the impugned judgment and sent the case back to the Court of Appeal. There, the appeal was rejected, the court considering that the name of the association, particularly the phrase "Minority Youth", was not sufficiently clear and unequivocal but, on the contrary, created confusion and doubt as to whether the association represented a religious (Muslim) minority or an ethnic (Turkish) minority – the latter being against the law in Greece. The Court of Cassation rejected a new appeal lodged by the applicants.

Law: Article 6 § 1 – The proceedings had lasted more than ten years, at three levels of jurisdiction. The case had certainly been marked by a degree of complexity. However, the interested parties had shown no particular diligence in conducting the proceedings, but had rather delayed them. The judicial authorities could not be accused of unjustified delays or periods of inactivity.
Conclusion: no violation (unanimously).

Article 11 – The courts' refusal to register the applicants' association amounted to interference by the authorities in the exercise of their right to freedom of association. The interference was prescribed by a law which allowed the courts to refuse an application to register an association if they found that the validity of its articles of association was open to question. Moreover, the interference had pursued the legitimate aim of preventing disorder. As to whether the interference had been necessary in a democratic society to achieve the legitimate aim pursued, the refusal to register the association had been motivated mainly by a concern to put a stop to the applicants' alleged intention to spread the idea that there was an ethnic minority living in Greece whose rights were not fully respected. The disputed measure had been based on a mere suspicion as to the true intentions of the association's founders and the activities it might have engaged in had it started to function. However, in the instant case it had not been possible to verify their intentions in practice, as the association had never been registered. Furthermore, even assuming that the true aim of the association had indeed been to spread the idea that there was an ethnic minority living

in Greece, that alone did not amount to a threat to democratic society, especially considering that there was nothing in the articles of association to suggest that its members advocated the use of violence or antidemocratic or anti-constitutional methods. There was no preventive supervisory system under Greek law covering the establishment of non-profit-making associations. And lastly, had the association been established, the Court of First Instance could always have ordered its dissolution if it were subsequently to pursue an aim other than that specified in its articles of association, or if its functioning proved to be contrary to law, morality or public order. The Court accordingly failed to see what pressing social need there had been to refuse to register the applicants' association and concluded that the impugned measure had been disproportionate to the aims pursued.
Conclusion: violation (unanimously).

Article 41 – Finding of a violation constitutes in itself sufficient just satisfaction for non-pecuniary damage.

FREEDOM OF ASSOCIATION
Refusal to register an association solely on the basis of a suspected anticonstitutional aim that did not appear in its statute: *violation*.

BOZGAN – Romania (N° 35097/02)
Judgment 11.10.2007 [Section III]

Facts: The applicant filed an application with the District Court to register an association called the "Anti-Mafia National Guard" in the register of associations and foundations. He included copies of the association's memorandum and articles of association, which stated, among other things, that its aim was to provide guidance for citizens concerning legal forms of self-defence to counter the threat of organised crime, and that the association would identify, through the mass media, persons involved in organised crime and create a corresponding database. The articles of association further specified that the association did not seek to take the place of the State authorities. The court rejected the application, finding that the aims of the association promoted activities which entailed interference with the activities of the State judicial authorities, going as far as to propose to set up parallel structures which would monitor those authorities. An appeal by the applicant against that judgment was dismissed in a final judgment.

Law: The refusal to register the association had interfered with the applicant's right to freedom of association. The interference had been prescribed by law and pursued the legitimate aim of protecting national and public safety. The association's application had been refused solely on the basis of its articles of association. The domestic courts had relied on a mere suspicion that the association's intention was to set up parallel structures to the courts. That decision appeared arbitrary, however, in so far as the articles of association made no mention of any such intention. On the contrary, they stated that the association would abide by the law and not seek to take the place of the State authorities. Prior to applying for registration the association had given the courts no *prima facie* reason through its activities to believe that it might have anti-constitutional intentions contrary to those announced in its articles of association. In refusing to register it the authorities had prevented the association from being constituted. The law applicable in these matters allowed the courts to order the dissolution of an association if its aim proved to be unlawful or different from that mentioned in its articles of association. Consequently, a measure as radical as refusing to register an association even before it had engaged in any activities appeared to be disproportionate to the aim pursued and, accordingly, unnecessary in a democratic society. The application for registration had been rejected without the applicant having been informed of the alleged irregularities or given a chance to remedy them. Obliging him to start the registration procedure again from scratch was to impose too heavy a burden, especially as the law provided for him to remedy any irregularities as part of the initial application process. The refusal to register the association in the register of associations and foundations could therefore not reasonably be considered to have answered a pressing social need or to have been necessary in a democratic society.
Conclusion: violation (unanimously).

Article 41 – Finding of a violation constitutes in itself sufficient just satisfaction for the damage sustained.

ARTICLE 14

DISCRIMINATION (Article 4 § 3 (a) and Article 1 of Protocol No. 1
Refusal to take work performed in prison into account in calculation of pension rights: *admissible*.

STUMMER – Austria (N° 37452/02)
Decision 11.10.2007 [Section I]

This case concerns the issue of whether prisoners are entitled to be affiliated to a pension scheme in respect of work performed in prison. Under Austrian law, any prisoner who is fit to work is required to perform work assigned to him. However, working prisoners are not considered to be employees within the meaning of section 4 of the General Social Security Act and so are not affiliated to the general social insurance system, which covers such matters as health and accident insurance and old-age pensions. In a leading decision on the subject, the Supreme Court upheld the legislature's decision not to affiliate prisoners to the scheme on the grounds that their work was performed on the basis of a legal obligation, not under a contract of employment.
The applicant has spent much of his life in prison. In 1999 he made an application for an early retirement pension. His application was turned down on the grounds that he had failed to make the requisite number of monthly contributions. The applicant challenged that decision arguing that a total of 28 years he had spent working in prison should have been taken into account when calculating his entitlement. However, his appeals were dismissed.
Admissible under Article 14 (in conjunction with Article 4 § 3 (a) and in conjunction with Article 1 of Protocol No. 1).

ARTICLE 34

HINDER THE EXERCISE OF THE RIGHT OF PETITION
Prosecutor-General threatens Bar member with criminal investigation for having made "false" human rights allegations to international organisations: *violation*.

COLIBABA – Moldova (N° 29089/06)
Judgment 23.10.2007 [Section IV]

Facts: On 25 April 2006, while in police custody, the applicant was ill-treated by police officers with a view to extracting a confession. His body was suspended from a metal bar with a coat hanger passed under his arms. While in this position he was repeatedly hit with a chair in the back of his head while his legs and arms were tied behind his back. Several days later the applicant was again ill-treated by police officers; this time he was hit in the head with a two-litre plastic bottle full of water as well as punched and kicked. On 29 April 2006 the applicant was taken to hospital, where he underwent a superficial medical examination conducted in the presence of the police officers who had ill-treated him. The medical report issued on that occasion concluded that the applicant had no signs of violence on his body other than self-inflicted injuries caused by his attempted suicide. All further requests for medical examinations made by the applicant's lawyer were refused. Following wide media pressure, on 16 May 2006 the applicant was released from detention and immediately sought medical assistance. Following detailed medical examination, a non-governmental centre for torture victims concluded that the applicant had suffered severe bodily injury including consequences of cranial trauma. Another medical check-up in a public hospital confirmed those findings. Meanwhile, the applicant's lawyer had lodged a criminal complaint concerning the applicant's alleged ill-treatment. The prosecutor dismissed that complaint on the grounds that the suspected police officers had denied all accusations, that the medical report of 28 April 2006 had

shown no bodily injury and that no coat hangers had been found in the office where the alleged ill-treatment had taken place. The applicant's appeal against this decision was dismissed on the same grounds, even though meanwhile he had submitted new medical reports. After the applicant had lodged his application with the Court, on 26 June 2006 the Moldovan Prosecutor General addressed a letter to the Moldovan Bar Association stating, *inter alia*, that "some Moldovan lawyers involve international organisations specialising in the protection of human rights in the examination by the national authorities of criminal cases", whereby they "[make] public on an international scale false information about alleged breaches of human rights which gravely prejudice the image of [the] country". He expressly mentioned the name of the applicant's lawyer, stating that the Prosecutor General's office would undertake a criminal investigation into the matter. At the same time the Prosecutor General requested the Bar to take appropriate action and "prevent as far as possible any prejudice to the authority of the Republic of Moldova".

Law: Article 3 (substantive part) – The Government submitted that the applicant had not been subjected to any form of ill-treatment since no traces of violence had been found on his body during the medical examination of 29 April 2006. The Court expressed doubts as to the credibility of the medical report relied on by the Government, since the applicant could have felt intimidated by the presence during that examination of the police officers who had previously ill-treated him. On the other hand, the Court found no reason to distrust the findings of the two medical examinations the applicant had undergone immediately on his release from detention, both of which had concluded that he had suffered a cranial trauma. The Government, who had the burden of proof to the contrary, had given no explanation concerning the origin of those injuries: *violation*.

Article 3 (procedural part) – The Court observed a series of shortcomings in the investigation of the applicant's ill-treatment allegations by the national authorities. Not only had the prosecutor dismissed his request for an independent medical examination while he had still been in custody, but later on the court had showed no interest in the subsequent medical reports submitted by the applicant nor had it given any explanation as to why they had been dismissed: *violation*.

Article 34 – Having examined the Prosecutor General's letter, the Court agreed with the applicant that it had not seemed to have been merely a call to lawyers to observe professional ethics as claimed by the Government. The language employed by the Prosecutor General, the fact that he had expressly named the applicant's lawyer and the warning that a criminal investigation would be brought as a result of the latter's allegedly improper complaint to international organisations could easily have been construed as amounting to intimidation. Even though it was not clear whether the Prosecutor General had known about the present application when he had written the letter, the wording could in any event have had a chilling effect on the applicant's lawyer's intention to bring or pursue his client's case before the Court: *violation*.

Article 41 – EUR 14,000 in respect of non-pecuniary damage.

ARTICLE 35

Article 35 § 1

EFFECTIVE DOMESTIC REMEDY (France)
Remedy under the Judicature Code for breach of duty by the police: *preliminary objection (non-exhaustion) dismissed*.

SAOUD - France (N° 9375/02)
Judgment 9.10.2007 [Section II]

(see Article 2, above).

EFFECTIVE DOMESTIC REMEDY (Czech Republic)
Effectiveness of new domestic remedies concerning the length of judicial proceedings: *inadmissible*.

VOKURKA – Czech Republic (N° 40552/02)
Decision 16.10.2007 [Section V]

In 1993 the applicant brought a court action against a public transport company, seeking compensation. His claims were allowed in part. The proceedings ended in 2002 with a decision of the Constitutional Court dismissing the applicant's appeal.

The preventive remedy: the possibility of applying for a time-limit to be set for the completion of a procedural step was introduced into the Czech judicial system as of 1 July 2004, in order to guarantee the right to a hearing within a reasonable time. However, such an application could be made only if the interested party had previously and unsuccessfully lodged a complaint with the competent judicial authority for delays in the proceedings. That being so, it was really no more than an extension of administrative appeal to a higher authority. On several occasions, however, the Court had found that administrative appeal in Czech law did not constitute an effective remedy within the meaning of Article 35 § 1. It followed that this preventive remedy could not be considered as such either.

Concerning the compensatory remedy introduced into Czech law in April 2006, compensation for the non-pecuniary damage sustained as a result of failure to take a step or deliver a decision within a reasonable time had to be claimed from the State authorities – generally the Ministry of Justice. While acknowledging that this system had its advantages, the Court could not avoid expressing reservations about the risk of proceedings being drawn out unduly, but deemed it premature to pronounce itself on that issue. It considered it particularly important that the State's liability should also apply to any damage caused prior to the date of entry into force of the law concerned. Where a person had lodged an application with the Court complaining of the excessive length of proceedings brought before the new law came into force, the right to compensation for non-pecuniary damage was not time-barred until one year after the date on which the law had entered into force. Although the ideal solution would be to prevent delays, the fact that the remedy in question – which could be used during or after the proceedings – was purely compensatory was not decisive in determining its effectiveness. This new remedy thus afforded the Czech people a genuine possibility of obtaining redress at the domestic level, a possibility of which they should, in principle, avail themselves. Although the Registry of the Court had informed him of its existence, the applicant had not availed himself of a remedy which was considered effective and accessible: *non-exhaustion of domestic remedies.*

EFFECTIVE DOMESTIC REMEDY (Slovenia)
Effectiveness of a new compensatory remedy concerning length of judicial proceedings: *inadmissible*.

ŽUNIČ – Slovenia (N° 24342/04)
Decision 18.10.2007 [Section III]

In 2000 the applicant instituted civil proceedings against an insurance company. The proceedings are currently pending before the first-instance court. The applicant's supervisory appeal and his motion for a deadline (accelerative remedies provided for by the Protection of the Right to a Trial without Undue Delay Act – "the 2006 Act") were dismissed on the grounds that the delays had resulted from systemic problems, and through no fault of the sitting judge.

Inadmissible: Article 13, as interpreted in the Court's case-law, offered an alterative: a remedy was "effective" if it could be used either to expedite the proceedings or to provide adequate redress, such as just satisfaction, for delays that had already occurred. As regards the former alternative, the accelerative remedies, in the present case, had so far failed to be effective. As regards the remaining alternative, the 2006 Act provided a right to lodge a claim for just satisfaction if two cumulative conditions were satisfied. Firstly, the claimant had to have exhausted properly the accelerative remedies and, secondly, the

proceedings had to have been finally resolved. The Court appreciated that the second condition could have the legitimate aim of simplifying the procedure by, *inter alia*, preventing the repeated filing of just satisfaction claims while the proceedings were still pending. The Court also understood that the compensation for excessive delay should reflect the circumstances and the overall length of the proceedings up to their final resolution. However, because of this condition, persons who believed that they had suffered a violation of their right to a trial within a reasonable time might be obliged to wait even further before being able to seek relief. Therefore, also taking into account that the maximum amount of compensation for non-pecuniary damage was fixed at EUR 5,000, the Court found it indispensable for the proceedings, which had already been long, to be finally resolved particularly promptly following the exhaustion of the accelerative remedies. Indeed, it could not be ruled out that the question of reasonably prompt access to a just satisfaction claim would affect the conclusion on whether this remedy, alone or in combination with the accelerative remedies, was effective in respect of delays which had already occurred. The respondent State had already adopted several measures in the framework of the Lukenda Project to address the structural problem of delays in judicial proceedings. The measures aimed at reducing the backlog, such as the employment of additional judges, had also been implemented at the court dealing with the applicant's case. Since April 2007 two hearings had been scheduled in the applicant's case, whereas none had been previously. Moreover, the applicant could use the accelerative remedies again if new reasons for a delay arose. Having regard to the State's margin of appreciation and the subsidiarity principle and in view of the fact that no more than six months had elapsed since the applicant had exhausted the accelerative remedies and that progress had been made in dealing with his claim, the Court was inclined to conclude that the applicant should soon be able to make a claim for just satisfaction, which in principle appeared to be an effective remedy. Moreover, there was no reason to believe at this point that the just satisfaction claim, once available, would not have a reasonable prospect of success in the applicant's case. His complaint under Article 6 had thus to be regarded as *premature*. The Court's position might however be subject to review in the future. The Court was of the view that in order to comply with Article 13 of the Convention the possibility of seeking compensation should be open to the applicant no later than within the coming year, provided that he acted with due diligence in the remaining part of the proceedings and that no special difficulties, which would justify their prolongation, arose: *manifestly ill-founded*.

See also *Grzinčič v. Slovenia***,** n° 26867/02, judgment 3.5.2007, in Information Note n° 97.

Article 35 § 3

COMPETENCE *RATIONE PERSONAE*
Applicants' removal from public functions by a decision of the High Representative for Bosnia and Herzegovina whose authority derives from UN Security Council Resolutions: *inadmissible*.

BERIĆ AND 25 OTHERS – Bosnia and Herzegovina (N° 36357/04,etc.)
Decision 16.10.2007 [Section IV]

The applicants were holders of various public functions in Republika Srpska, one of the two entities within Bosnia and Herzegovina. In 2004 the High Representative for Bosnia and Herzegovina – an international administrator monitoring the implementation of the Dayton Peace Agreement whose office had been endorsed by the UN Security Council in 1995 – removed the applicants from all their public and political party positions for "obstructing international law by assisting in evading justice individuals indicted by the ICTY". An ensuing decision by the Constitutional Court ordering the domestic authorities to secure an effective remedy in respect of removals from office by the High Representative was rendered devoid of any practical effect by his subsequent statement that his decisions, pursuant to his international mandate, were not justiciable by the courts of Bosnia and Herzegovina or its entities.
The applicants complained under the criminal limb of Article 6 and under Articles 11 and 13 of the Convention about the High Representative's measures and the lack of an effective remedy in that respect.

Inadmissible: Having identified a "threat to international peace and security" within the meaning of Article 39 of the UN Charter, the UN Security Council had delegated to an informal group of States actively involved in the peace process in Bosnia and Herzegovina ("the Peace Implementation Council") the establishment of the office of the High Representative. The High Representative was to report directly to the PIC and was authorised, *inter alia*, to remove from office public officials considered to have violated legal commitments of the Dayton Peace Agreement. However, pursuant to the relevant provisions of the UN Charter, in delegating its powers through Resolution 1031, the Security Council retained effective overall control. The Court therefore considered that in the applicants' cases the High Representative had been exercising lawfully delegated Chapter VII powers of the UN Security Council and that the impugned actions regarding the applicants had been "attributable" to the UN within the meaning of the relevant provisions of international law. Attempting to establish a review mechanism in respect of the High Representative's decisions could therefore not have changed the nature of those acts without a prior approval by the High Representative himself. The Court noted, moreover, that the impugned decisions had had immediate effect and had not required any procedural steps by the domestic authorities. As to whether Bosnia and Herzegovina could nevertheless be held liable for the impugned acts, the Court recalled its reasoning in *Behrami and Behrami and Saramati v. France, Germany and Norway* ((dec.) [GC] nos. 71412/01 and 78166/01, 2 May 2007; see Information Note no. 97), which concerned acts performed by KFOR and UNMIK in Kosovo under the aegis of the UN. The Court considered that the reasoning outlined in those cases also applied to the acceptance of an international civil administration in its territory by a respondent State: incompatible *ratione personae*.

Article 35 § 4

REJECTION OF APPLICATION AT ANY STAGE OF THE PROCEEDINGS
Re-examination by the Court of its own motion of a preliminary objection after it had already declared the application admissible: *application inadmissible*.

SAMMUT and VISA INVESTMENTS LIMITED – Malta (N° 27023/03)
Decision 16.10.2007 [Section IV]

The applicants are a private company and its director. They complained that a new building permit had been issued which modified the building specifications fixed initially, thus frustrating their expectations of developing the site in conformity with the plans previously accepted. In its decision of 28 June 2005 the European Court dismissed the Government's objection of non-exhaustion of domestic remedies and declared the applicants' complaint under Article 1 of Protocol No. 1 admissible.

Inadmissible: Under Article 35 § 4 of the Convention, the Court could reject an application at any stage of the proceedings. This provision allowed the Court, even during the examination at the merits stage, and subject to compliance with Rule 55 of the Rules of Court, to review a decision declaring an application admissible, if it was of the view that it should have been considered inadmissible for any of the reasons enumerated in paragraphs 1 to 3 of the same Article. In their further observations on the merits, after the complaint had been declared admissible, the Government had not insisted on their non-exhaustion plea and had not provided any further details on this matter. However, the raising of the non-exhaustion plea before the Court during the admissibility stage sufficed to satisfy the requirements of Article 35 § 4 in so far as they were conditioned by Rule 55. Consequently, nothing prevented the Court from re-examining the non-exhaustion issue of its own motion at that stage of the proceedings and after it had requested and received the parties' complementary observations on the matter. Upon re-examination, the Court found that the applicants had had effective remedies of which they could have availed themselves within the meaning of the Convention and therefore upheld the Government's objection: *non-exhaustion of domestic remedies*.

ARTICLE 46

EXECUTION OF A JUDGMENT
Indication of an appropriate form of redress (for a violation of Article 2 of Protocol No. 1): measures to make national education system and relevant domestic law Convention compliant.

HASAN and EYLEM ZENGİN - Turkey (N° 1448/04)
Judgment 9.10.2007 [Section II (former)]

(see Article 2 of Protocol No 1, below)

ARTICLE 2 OF PROTOCOL No. 1

RESPECT FOR PARENTS' RELIGIOUS OR PHILOSOPHICAL BELIEFS
RIGHT TO EDUCATION
Refusal to exempt a State school pupil whose family was of the Alevi faith from mandatory lessons on religion and morals: *violation*.

HASAN and EYLEM ZENGİN - Turkey (N° 1448/04)
Judgment 9.10.2007 [Section II (former)]

Facts: Hasan Zengin and his daughter Eylem Zengin are Turkish nationals who were born in 1960 and 1988 respectively. Mr Zengin and his family are followers of Alevism, a branch of Islam which has deep roots in Turkish society and history. Its religious practices differ from those of the Sunni schools in certain aspects such as prayer, fasting and pilgrimage. Alevism is one of the most widespread faiths in Turkey (after the Hanafite branch of Islam, which is one of the four schools of Sunni Islam). At the time the application was lodged, Eylem Zengin was attending the seventh grade of a state school in Istanbul. As a pupil at a State school, she was obliged to attend classes in religious culture and ethics. Under Article 24 of the Turkish Constitution and section 12 of Basic Law no. 1739 on national education, religious culture and ethics is a compulsory subject in Turkish primary and secondary schools. Mr Zengin submitted requests to the Directorate of National Education and before the administrative courts for his daughter to be exempted from lessons in religious culture and ethics. He pointed out, in particular, that his daughter was a follower of Alevism, and that no teaching was provided on her faith. He relied on the right of parents to choose the type of education their children were to receive. The requests for exemption were dismissed, lastly on appeal before the Supreme Administrative Court.

Law: Examination of the Ministry of Education's guidelines for lessons in religious culture and ethics and school textbooks showed that syllabus for teaching in primary schools and the first cycle of secondary school and the relevant textbooks gave greater priority to knowledge of Islam than to that of other religions and philosophies. This in itself could not be viewed as indoctrination, since, notwithstanding the State's secular nature, Islam was the majority religion practiced in Turkey. Given that attendance at these classes was likely to influence the minds of young children, it was appropriate to examine whether the information or knowledge was disseminated in an objective, critical and pluralist manner. The Alevi faith was a religious conviction which had deep roots in Turkish society and history and had features which were particular to it. It was thus distinct from the Sunni understanding of Islam which was taught in schools. The expression "religious convictions", within the meaning of the second sentence of Article 2 of Protocol No. 1, was applicable to this faith. In the "religious culture and morals" lessons, the religious diversity which prevailed in Turkish society was not taken into account. In particular, pupils received no teaching on the confessional or ritual specificities of the Alevi faith, although the proportion of the Turkish population belonging to it was very large. Certain information about the Alevis was taught in the 9th grade, but, in the absence of instruction in the basic elements of this faith in primary and secondary school, this was insufficient to compensate for the shortcomings in the teaching. Accordingly, the

instruction provided in the school subject "religious culture and ethics" could not be considered to meet the criteria of objectivity and pluralism, enabling pupils to develop a critical mind with regard to religious matters, nor to respect the religious and philosophical convictions of the parent of a pupil who belonged to the Alevi faith, on the subject of which the syllabus was clearly lacking.
It remained to be established whether appropriate means existed in the Turkish education system to ensure respect for parents' convictions. The class in question was a compulsory subject, but a possibility for exemption had existed since 1990 children of Turkish nationality whose parents belonged to the Christian or Jewish religion, provided they affirmed their adherence to one of those religions. According to the Government, this possibility for exemption could be extended to other convictions if such a request was submitted. Nonetheless, whatever the scope of this exemption, the fact that parents were obliged to inform the school authorities of their religious or philosophical convictions made this an inappropriate means of ensuring respect for their freedom of conviction. In the absence of any clear text, the school authorities always had the option of refusing such requests. In consequence, the exemption procedure was not an appropriate method and did not provide sufficient protection to those parents who could legitimately consider that the subject taught was likely to give rise in their children to a conflict of allegiance between the school and their own values. No possibility for an appropriate choice had been envisaged for the children of parents who had a religious or philosophical conviction other than that of Sunni Islam, where the procedure for exemption was likely to subject those parents to a heavy burden and to the necessity of disclosing their religious or philosophical convictions.
Conclusion: violation (unanimously).

Articles 41 and 46 – Damages: finding of a violation sufficient.
The Court concluded that, with regard to religious instruction, by failing to meet the requirements of objectivity and pluralism and to provide an appropriate method for ensuring respect for parents' convictions, the Turkish educational system was inadequate. The violation found originated in a problem related to implementation of the syllabus for religious instruction in Turkey and the absence of appropriate methods for ensuring respect for parents' convictions. In consequence, the Court considered that bringing the Turkish educational system and domestic legislation into conformity with Article 2 of Protocol No. 1 would represent an appropriate form of compensation.

See also *Folgerø and Others v. Norway* [GC], 29 June 2007, Information Note no. 98, judgment concerning a country which has a State religion and a State church.

RULE 39 OF THE RULES OF COURT

PROVISIONAL MEASURE
Request to the Government to provide a prisoner with requisite psychiatric treatment: *communicated.*

PREŽEC - Croatia (N° 7508/05)
[Section I]

(see Article 2 "Positive obligations" above)

Other judgments delivered in October

The list of "other" judgments rendered during the month in question (i.e. judgments which have not been reported in the form of a summary) has been discontinued. Please refer to the Court's Internet page: http://www.echr.coe.int/ECHR/EN/Header/Case-Law/Case-law+information/Lists+of+judgments/ for alphabetical and chronological lists of all judgments as well as for a list of all Grand Chamber judgments.

Relinquishment in favour of the Grand Chamber

Article 30

Retention of fingerprints and DNA samples of former suspects even when no guilt has been established or when the investigation has been discontinued: *relinquishment in favour of the Grand Chamber.*

S. and Michael MARPER - United Kingdom (N° 30562/04 and N° 30566/04)
[Section IV]

(see above under Article 8 "Private life")

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

Article 44 § 2 (c)

On 12 November 2007 the Panel of the Grand Chamber rejected requests for referral of the following judgments, which have consequently become final:

Akhmadova and Sadulayeva v. Russia (40464/02) – Section I, judgment of 10 May 2007
Amato v. Turkey (58771/00) – Section III, judgment of 3 May 2007
Atici v. Turkey (19735/02) – Section II, judgment of 10 May 2007
Ayrapetyan v. Russia (21198/05) – Section I, judgment of 14 June 2007
Bakonyi v. Hungary (45311/05) – Section II, judgment of 3 May 2007 (*)
Dika v. the former Yugoslav Republic of Macedonia (13270/02) – Section V, judgment of 31 May 2007
Dupuis and Others v. France (1914/02) – Section III, judgment of 7 June 2007
G. M. v. Italy (56293/00) – Section II, judgment of 5 July 2007
Gallucci v. Italy (10756/02) – Section II, judgment of 12 June 2007
Gładczak v. Poland (14255/02) – Section IV, judgment of 31 May 2007
Gorodnichev v. Russia (52058/99) – Section I, judgment of 24 May 2007
Gregori v. Italy (62265/00) – Section II, judgment of 5 July 2007
Hachette Filipacchi Associés v. France (71111/01) – Section I, judgment of 14 June 2007
Hélioplán Kft. v. Hungary (30077/03) – Section II, judgment of 3 May 2007 (*)
Hürriyet Yilmaz v. Turkey (17721/02) – Section II, judgment of 5 June 2007 (*)
Inci (Nasiroğlu) v. Turkey (69911/01) – Section III, judgment of 14 June 2007
Ivanov v. Bulgaria (67189/01) – Section V, judgment of 24 May 2007
Kansiz v. Turkey (74433/01) – Section IV, judgment of 22 May 2007
Kizir and Others v. Turkey (117/02) – Section II, judgment of 26 June 2007
Kovalev v. Russia (78145/01) – Section I, judgment of 10 May 2007
Kuznetsova v. Russia (67579/01) – Section I, judgment of 7 June 2007
Leonidopoulos v. Greece (17930/05) – Section I, judgment of 31 May 2007
Lysenko v. Ukraine (18219/02) – Section V, judgment of 7 June 2007 (*)
Macko and Kozubal v. Slovakia (64054/00 and 64071/00) – Section IV, judgment of 19 June 2007
Malahov v. Moldova (32268/02) – Section IV, judgment of 7 June 2007
Mikadze v. Russia (52697/99) –Section I, judgment of 7 June 2007
Mishketkul and Others v. Russia (36911/02) – Section I, judgment of 24 May 2007
Murillo Espinosa v. Spain (37938/03) – Section V, judgment of 7 June 2007
OAO Plodovaya Kompaniya v. Russia (1641/02) – Section I, judgment of 7 June 2007
OOO PTK « Merkuriy » v. Russia (3790/05) – Section I, judgment of 14 June 2007
Paudicio v. Italy (77606/01) – Section II, judgment of 24 May 2007
Peca v. Greece (14846/05) – Section I, judgment of 21 June 2007
Pititto v. Italy (19321/03) – Section II, judgment of 12 June 2007
Radchikov v. Russia (65582/01) – Section V, judgment of 24 May 2007
Riihikallio and Others v. Finland (25072/02) – Section IV, judgment of 31 May 2007
Rozhkov v. Russia (64140/00) – Section V, judgment of 19 July 2007 (*)
Salt Hiper, S.A. v. Spain (25779/03) – Section V, judgment of 7 June 2007 (*)

[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.

Smirnov v. Russia (71362/01) – Section I, judgment of 7 June 2007
Sociedade Agrícola Herdade da Palma S. A. v. Portugal (31677/04) – Section II, judgment of 10 July 2007
Solovyev v. Russia (2708/02) – Section I, judgment of 24 May 2007
Sova v. Ukraine (36678/03) – Section V, judgment of 21 June 2007
Thomas Makris v. Greece (23009/05) – Section I, judgment of 21 June 2007
Tuleshov and Others v. Russia (32718/02) – Section V, judgment of 24 May 2007
Yeşil and Sevim v. Turkey (34738/04) – Section II, judgment of 5 June 2007

Statistical information[1]

Judgments delivered	October	2007
Grand Chamber	1(2)	9(11)
Section I	32(33)	288(316)
Section II	26	240(321)
Section III	23(25)	199(224)
Section IV	60	254(287)
Section V	11(12)	171(183)
former Sections	1	30(32)
Total	**154(159)**	**1191(1374)**

Judgments delivered in October 2007					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	1(2)	0	0	0	1(2)
Section I	32(33)	0	0	0	32
Section II	25	0	0	1	26
Section III	23(25)	0	0	0	23(25)
Section IV	56	2	2	0	60
Section V	11(12)	0	0	0	11(12)
former Section I	0	0	0	0	0
former Section II	1	0	0	0	1
former Section III	0	0	0	0	0
former Section IV	0	0	0	0	0
Total	**149(154)**	**2**	**2**	**1**	**154(159)**

Judgments delivered in 2007					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	9(11)	0	0	0	9(11)
Section I	273(300)	1	10	4(5)	288(316)
Section II	238(319)	1	0	1	240(321)
Section III	189(214)	3	3	4	199(224)
Section IV	227(236)	19(43)	4	4	254(287)
Section V	168(180)	2	1	0	171(183)
former Section I	0	0	0	1	1
former Section II	23(25)	0	0	2	25(27)
former Section III	4	0	0	0	4
former Section IV	0	0	0	0	0
Total	**1131(1289)**	**26(50)**	**18**	**16(17)**	**1191(1374)**

1 The statistical information is provisional. A judgment or decision may concern more than one application: the number of applications is given in brackets.

Decisions adopted		October	2007
I. Applications declared admissible			
Grand Chamber		0	0
Section I		10	45(7)
Section II		1	22
Section III		0	10
Section IV		3	15(2)
Section V		1	13(2)
Total		**15**	**105(11)**
II. Applications declared inadmissible			
Grand Chamber		0	1
Section I	- Chamber	2	42
	- Committee	503	4377
Section II	- Chamber	13	112
	- Committee	512	2840
Section III	- Chamber	12	76
	- Committee	612	3844
Section IV	- Chamber	34	75
	- Committee	428	4072
Section V	- Chamber	17(1)	100(9)
	- Committee	454	4907
Total		**2587(1)**	**20446(9)**
III. Applications struck off			
Grand Chamber		0	1
Section I	- Chamber	123	107
	- Committee	10	102
Section II	- Chamber	16	113
	- Committee	5	77
Section III	- Chamber	18	92
	- Committee	10	58
Section IV	- Chamber	28	122
	- Committee	14	54
Section V	- Chamber	17	69
	- Committee	19	114
Total		**260**	**909**
Total number of decisions[1]		**2862(1)**	**21460(20)**

[1] Not including partial decisions.

Applications communicated	October	2007
Section I	84	630
Section II	54	759
Section III	90	654
Section IV	56	396
Section V	29	346
Total number of applications communicated	**313**	**2785**

[1] The statistical information is provisional. A judgment or decision may concern more than one application: the number of applications is given in brackets.

CONVENTION-RELATED INITIATIVES TAKEN BY ORGANS OF THE COUNCIL OF EUROPE

New website for training judges and prosecutors on human rights

Strasbourg, 09.10.2007 - The Council of Europe launched today a website aimed at supporting its 47 member states to integrate human rights into their training of judges and prosecutors, which is part of the European Programme for Human Rights Education for Legal Professionals (the "HELP" Programme).

The programme intends to ensure that by 2009 the standards of the European Convention on Human Rights (ECHR), as interpreted in the case law of the European Court of Human Rights (ECtHR), are fully integrated into national curricula for professional training of judges and prosecutors in all member states and becomes part of their basic knowledge.

The site (http://www.coe.int/help) contains standard curricula on the ECHR, a Manual on training methodology and a collection of ECHR training materials (slide shows, case studies, moot courts), to be used by trainers in the member states.

The site is open to the public but there is a restricted area, only accessible with password, for judges, prosecutors and trainers at the national training structures for the judiciary. This area of the site is interactive and provides tools to exchange materials and to discuss relevant matters.
…

The HELP Programme, launched in 2006, is part of the efforts made by the Council of Europe to ensure the continued effectiveness of the ECHR and strengthen the implementation of the ECHR at national level. …

New survey of national case-law

The Directorate General of Human Rights and Legal Affairs (former DG II) of the Council of Europe has published – as a supplement to its regular *Information bulletin* (http://www.coe.int/t/E/Human_Rights/hribe.asp) – a survey of national case-law in a number of member states.

Using material commissioned for the Yearbook of the European Convention on Human Rights, also edited by the same Directorate, the publication summarises decisions by national courts in eleven member states, either where the ECHR is directly cited, or where the case concerns rights protected by the Convention. The research has been carried out by legal experts in the member states, and the presentation is bilingual (English or French, depending on the language chosen by the consultant).

Among the subjects covered are: adoption by, and rights of succession of, same-sex life-partners (Austria); the immunity of members of parliament (Belgium); religious dress and the right to education (United Kingdom); and the Danish Mohammed cartoons case.

The European Convention on Human Rights and national case-law, 2006, H/Inf (2007) 5, can be found on the Internet at: http://www.coe.int/t/e/human_rights/hrib71suppl.pdf The volume covering 2005 is also available: http://www.coe.int/t/e/human_rights/IB68_suppl.pdf

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