European Court of Human Rights
Cour Européenne des Droits de l'Homme

# Information Note on the Court's case-law

No. 112 October 2008

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

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## ARTICLE 2

**POSITIVE OBLIGATIONS**
Suicide of mentally disturbed prisoner in disciplinary cell: *violation*.

**RENOLDE - France** (N° 5608/05)
Judgment 16.10.2008 [Section V]

*Facts*: The applicant's brother, who had been detained pending trial, was stated in a medical report to be suffering from psychiatric disorders. He was transferred to another prison. His prison file described him as normal and mentioned sedative treatment. However, two days after his transfer he tried to commit suicide by slashing his arms. A psychiatric emergency team diagnosed an acute delirious episode and prescribed appropriate treatment. He was supplied with medication twice a week but no attempt was made to ensure that he actually took it. He was subsequently put in the care of the regional medical and psychological service and placed in a cell on his own where he was subject to special supervision in the form of more frequent patrols. However, he then assaulted a warder and was ordered to serve 45 days in a punishment cell. The day after that order was made, he wrote a letter to his sister in which he said that he could not go on. After seeing the letter, his lawyer requested a psychiatric assessment of his mental fitness to be detained in a punishment cell, but he was found hanged in his cell before he could be examined. Three days earlier he had been given several days' supply of medication, but once again without any attempt being made to ensure that he took it.
A public prosecutor started a preliminary investigation which found, *inter alia*, that the applicant's brother had committed suicide and that there were no traces of medicinal substances in his body. The prosecutor requested a judicial investigation into suspected involuntary homicide by a person or persons unknown. The dead man's siblings joined the proceedings as civil parties. The investigating judge ordered a psychiatric report by two experts, who concluded that the applicant's brother had been fit for detention in the punishment block and that the reason no medical substances had been found in his body was that he had decided of his own accord not to follow his treatment. Given his history of delirium, that decision may have increased the risk of suicide. Counsel for the civil parties asked the investigating judge to bring involuntary-homicide charges on the grounds that the measures taken for the deceased's safety and care were inadequate, the life of a prisoner known to be extremely fragile had been put at risk by sentencing him to the punishment cell, and he had not been given the assistance to which he was entitled as a person at risk. The judge refused that request and ruled that there was no case to answer, after finding that the applicant's brother had been properly supervised by specialists and that on the face of it his suicide was due to a psychotic disorder, there being nothing to indicate a depressive syndrome. That decision was upheld on appeal,.

*Law*: Article 2 – The evidence showed that the authorities had known from the moment the initial suicide attempt was made that the applicant's brother was suffering from acute psychotic disorders capable of resulting in self-harm. Although his condition was variable and there was not necessarily an immediate risk of a further suicide attempt, the risk was nevertheless real and he should have been closely monitored for any sudden deterioration in his condition. For a prisoner in that condition, the authorities might have been expected to take specially adapted measures to ascertain whether he was well enough to remain in detention. However, despite his suicide attempt and the diagnosis of his mental condition, the question of his admission to a psychiatric hospital did not appear ever to have been discussed. Further, having failed to order a suitable placement for the applicant's brother, the authorities should at the very least have provided medical treatment corresponding to the seriousness of his condition. Without overlooking the difficulties with which prison authorities were faced, the Court had serious doubts as to the advisability of leaving a prisoner known to be suffering from psychotic disorders to administer his own daily medication unsupervised. Even though it was not known what had driven the applicant's brother to suicide, the failure to ensure that he was taking his daily medication had played a part in his death. Lastly, his mental state did not appear to have been taken into account as, three days after his initial suicide attempt, he was given the maximum penalty by the disciplinary board of 45 days' detention in a punishment cell. This had

isolated him and deprived him of visits and all activities, thereby aggravating the risk of suicide. In the light of all these considerations, the Court concluded that the authorities had failed to comply with their positive obligations to protect the applicant's brother's right to life.
*Conclusion*: violation (unanimously).

Article 3 – In the case of *Keenan v. the United Kingdom* (no. 27229/95, ECHR 2001-III, Information Note no. 29), the Court had found that the infliction of what was described as the serious disciplinary punishment of 7 days' solitary confinement in a punishment block and 28 days' additional detention constituted treatment that was proscribed by Article 3 of the Convention. The penalty imposed in the applicant's brother's case, was substantially more severe and liable to break his physical and moral resistance. He had been suffering from anguish and distress at the time. Indeed, eight days before his death his condition had so concerned his lawyer that she had immediately asked the investigating judge to order a psychiatric assessment of his fitness for detention in a punishment cell. The penalty imposed on the applicant's brother was, therefore, not compatible with the standard of treatment required in respect of a mentally ill person and constituted inhuman and degrading treatment and punishment.
*Conclusion*: violation (unanimously).

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**LIFE**
**POSITIVE OBLIGATIONS**
Relatives of Polish officers executed by the USSR during World War II denied victim status and access to investigation file: *communicated*.

**JANOWIEC and TRYBOWSKI - Russia** (N° 55508/07)
[Section I]

The applicants are relatives of Polish officers imprisoned and executed by the USSR in 1940. In 2004 the criminal investigation concerning the execution (the so-called "Katyń" case) was terminated and the proceedings discontinued. The applicants unsuccessfully sought access to the case-file. Their request was refused on two grounds. Firstly, they had not been formally recognised as victims. Secondly, the decision to discontinue the criminal proceedings was classified as a State secret which automatically excluded any access to the file by foreign nationals.
*Communicated* under Articles 2, 6 § 1 and 13 of the Convention.

## ARTICLE 3

**INHUMAN OR DEGRADING TREATMENT**
Surgery performed on drug-trafficker without his consent: *no violation*.

**BOGUMIL - Portugal** (N° 35228/03)
Judgment 7.10.2008 [Section II]

(see Article 6 § 3 (c) above).

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**INHUMAN OR DEGRADING TREATMENT**
Conditions of detention and transport of a remand prisoner: *violations*.

**MOISEYEV - Russia** (N° 62936/00)
Judgment 9.10.2008 [Section I]

(see Article 6 below).

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**INHUMAN OR DEGRADING TREATMENT**
Placement of mentally disturbed prisoner in disciplinary cell for forty-five days: *violation*.

**RENOLDE - France** (N° 5608/05)
Judgment 16.10.2008 [Section V]

(see Article 2 above).

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**EXTRADITION**
Risk of ill-treatment if extradited to Turkmenistan : *extradition would constitute a violation*.

**SOLDATENKO - Ukraine** (N° 2440/07)
Judgment 23.10.2008 [Section V]

*Facts*: At the time the application was lodged, the applicant was detained in a Ukrainian penal institution, awaiting extradition to Turkmenistan. His lawyer claimed that he was stateless, whereas the Government stated that he was a Turkmen national.
In 1999 the Turkmen authorities had issued an indictment against the applicant ordering his arrest on charges of inflicting bodily injuries. The applicant left Turkmenistan, allegedly to flee persecution to which he had been subjected on ethnic grounds, and has resided ever since in Ukraine. On 4 January 2007 he was arrested by the Ukrainian police and informed that his arrest had been made in accordance with an international search warrant issued by the Turkmen authorities that same day. Six days later he was brought before a district court judge, who ordered his detention pending extradition. On 15 January 2007 the applicant requested the ECHR to issue an interim measure under Rule 39 of the Rules of Court. A day later, the President of the competent Chamber granted this request and indicated to the Ukrainian Government that the applicant should not be extradited to Turkmenistan pending the Court's examination of his case.
On 19 January 2007 the General Prosecutor's Office of Turkmenistan requested the applicant's extradition with a view to his prosecution for the offences of which he was charged. It also gave certain assurances and affirmed that he would not be discriminated against on grounds of social status, race, ethnic origin or religious beliefs. In a letter of 19 April 2007 the First Deputy Prosecutor General of Turkmenistan gave further assurances, notably that the applicant's rights under Articles 3 and 6 of the European Convention would be guaranteed.
Under the 1993 Minsk Convention regulating legal assistance in criminal matters, to which both Ukraine and Turkmenistan are parties, a person may be detained with a view to extradition on the basis of a petition on behalf of one of the Contracting States even before receipt of an official extradition request.

*Law*: Article 3 – At the outset the Court noted the existence of numerous and consistent credible reports of torture, routine beatings and use of force against criminal suspects by the Turkmen law-enforcement authorities. There were reports of beatings of individuals to the point of requiring medical treatment and of denied medical assistance. According to the Report of the United Nations Secretary-General, torture was also inflicted as a punishment for persons who had confessed. Reports equally noted very poor prison conditions, including overcrowding, poor nutrition and untreated diseases. It appeared from different reports that allegations of torture and ill-treatment were not investigated by the competent Turkmen authorities. On the other hand, from the materials available there was no evidence that criminal suspects of non-Turkmen origin were treated differently from ethnic Turkmens. Nevertheless, it was clear from the available materials that any criminal suspect held in custody ran a serious risk of being subjected to torture or inhuman or degrading treatment. Despite the fact that the applicant was wanted for a relatively minor offence which was not politically motivated, the mere fact of being detained as a criminal suspect in such a situation provided sufficient grounds to fear that he would be at serious risk of being subjected to treatment contrary to Article 3 of the Convention. With regard to the assurances given by the Turkmen authorities, it was not established that the officials concerned had been empowered to give such undertakings on behalf of the State. Furthermore, given the lack of an effective system of torture prevention, it would be difficult to ascertain whether such assurances were complied with. Finally,

international human rights reports had also shown serious problems as regards the international cooperation of the Turkmen authorities in the field of human rights and their categorical denials of human rights violations despite consistent information to the contrary from both intergovernmental and nongovernmental sources.
*Conclusion*: extradition would constitute a violation (unanimously).

Article 5 §§ 1 (f) and 4 – Even though the Minsk Convention, being part of the domestic legal order, was capable of serving as a legal basis for extradition proceedings and for detention with a view to extradition, Article 5 § 1 (f) of the Convention further required that detention with a view to extradition should be effected "in accordance with a procedure prescribed by law". In the present case, under Ukrainian law there were no specific legal provisions – whether in the Code of Criminal Procedure or in any other legislative instrument – that provided, even by reference, a procedure for detention with a view to extradition. Even though the Plenary Supreme Court by its 2004 resolution had advised the lower courts to apply certain general provisions of the Code of Criminal Procedure to extradition proceedings, its resolutions did not have the force of law and were not legally binding on the courts and the law-enforcement bodies involved in extradition proceedings. The above considerations were sufficient for the Court to establish that Ukrainian legislation did not provide for a procedure that was sufficiently accessible, precise and foreseeable in its application as to avoid the risk of arbitrary detention pending extradition.
*Conclusion*: violation (unanimously).

## ARTICLE 5

### Article 5 § 1 (f)

**EXTRADITION**
Lack of a sufficiently accessible, precise and foreseeable procedure under Ukrainian law to avoid arbitrary detention pending extradition: *violation*.

**SOLDATENKO - Ukraine** (N° 2440/07)
Judgment 23.10.2008 [Section V]

(see Article 3 above).

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### Article 5 § 3

**LENGTH OF PRE-TRIAL DETENTION**
Extension of remand prisoner's detention on insufficient grounds: *violation*.

**MOISEYEV - Russia** (N° 62936/00)
Judgment 9.10.2008 [Section I]

(see Article 6 below).

## ARTICLE 6

### Article 6 § 1 [civil]

**ACCESS TO COURT**
Criminal courts' refusal to hear civil claim owing to statutory limitation in the criminal proceedings: *violation*.

**ATANASOVA - Bulgaria** (N° 72001/01)
Judgment 2.10.2008 [Section V]

*Facts*: In January 1992 the applicant was injured in a road-traffic accident. In June 1994 she joined as a civil party the criminal proceedings that had been brought against the driver and claimed compensation for her alleged physical injuries. The domestic courts ultimately concluded in June 2002 that they could not examine her claim as a civil party in the criminal proceedings as those proceedings had been discontinued under the statute of limitations, but that she retained a remedy in the civil courts.

*Law*: The issue before the Court was whether, despite the fact that the applicant retained the right to seek compensation in the civil courts, the criminal courts' decision not to examine her civil claim once the criminal proceedings had been discontinued under the statute of limitations had infringed her right of access to a court competent to hear civil claims. The applicant had exercised her right under domestic law to seek compensation in the criminal proceedings as a civil party. She had therefore had a legitimate expectation that the courts would determine her claim one way or the other. It was solely because of the Bulgarian authorities' delays in dealing with the case that the prosecution of the offence had become time-barred with the result that she could no longer obtain a decision on her compensation claim in the criminal proceedings. In such circumstances, it would not be right for her to be required to wait until the prosecution of the offence had become time-barred through the negligence of the judicial authorities before she was allowed, years after the accident had taken place, to bring a new action in the civil courts for compensation for her injuries.
*Conclusion*: violation (five votes to two).

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

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**ACCESS TO COURT**
Inability to exercise remedies in access proceedings owing to failure to pay stamp duty: ***violation.***

**IORDACHE - Romania** (N° 6817/02)
Judgment 14.10.2008 [Section III]

(see Article 8 below).

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**ACCESS TO COURT**
Unwarranted refusal to examine merits of the applicant's case: *violation*.

**BLUMBERGA - Latvia** (N° 70930/01)
Judgment 14.10.2008 [Section III]

(see Article 1 of Protocol No. 1 below).

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## Article 6 § 1 [criminal]

**APPLICABILITY**
Applicability of Article 6 to European arrest warrant procedure: *inadmissible*.

**MONEDERO ANGORA - Spain** (N° 41138/05)
Decision 7.10.2008 [Section III]

The applicant was arrested in Spain and taken into custody under a European arrest warrant issued by the French judicial authorities following his conviction *in absentia* in 1993 for a drug-trafficking offence for which he was given a five-year prison sentence. Noting that the arrest had been made in accordance with the procedure laid down by Law no. 3/2003, which implemented Spain's obligations under the Framework Decision adopted on 13 June 2002 by the Council of the European Union on the European arrest warrant and the surrender procedures between Member States, the *Audiencia Nacional* made an order authorising the applicant's surrender to the French authorities. The applicant lodged an application for interpretation of that decision in which he argued in particular that his case should have been dealt with under the requested State's law on extradition rather than under the Framework Decision. The *Audiencia Nacional* dismissed that application and the applicant's *amparo* appeal was dismissed by the Constitutional Court.

*Inadmissible*: The right not to be extradited, as such, was not among the rights and freedoms recognised by the Convention and its Protocols. Nor did extradition proceedings concern a dispute (*contestation*) over civil rights and obligations or the determination of a criminal charge within the meaning of Article 6 of the Convention. The explanatory note to Law no. 3/2003 stated that the European arrest warrant procedure had replaced the traditional extradition procedure between member States of the European Union and pursued the same aim of ensuring that suspected offenders or persons fleeing from justice after being finally sentenced were surrendered to the authorities of the requesting State. Indeed, the execution of the warrant was virtually automatic as the judicial authority did not re-examine it to verify its conformity with the legislation of the requesting State and could only refuse to execute it on the statutory grounds. That procedure did not, therefore, concern the determination of a criminal charge: *incompatible* ratione materiae.

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**FAIR HEARING**
Procedural unfairness and lack of adequate facilities to prepare defence in criminal trial: *violation*.

**MOISEYEV - Russia** (N° 62936/00)
Judgment 9.10.2008 [Section I]

*Facts*: The applicant, who at the time was the deputy head of a Foreign Ministry department, was arrested in 1998 and charged with high treason in the form of espionage for disclosing classified information to a foreign intelligence agent. He was convicted as charged in 2001 and his conviction was upheld by the Supreme Court.
He complained, *inter alia*, about the conditions of his detention on remand and in which he was transported to and from court (Article 3), of the length of his detention (Article 5 § 3) and of unjustified restrictions on family visits and his correspondence (Article 8). He further complained that he had been denied a fair trial through constant changes in the composition of the court without explanation and that he had not had adequate facilities to conduct his defence (Article 6) and also that his conviction had been based on an unforeseeable and retrospective application of the law (Article 7).

*Law*: Article 3 – The cumulative effect of conditions in the remand prison were such that the applicant must have been caused distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention. He had been held in ill-lit and poorly ventilated cells for almost four years, without any possibility for adequate outdoor exercise and had had to endure cramped and insanitary conditions

and a total lack of privacy when using the toilet facilities. He had been transported to court hearings more than 150 times in prison vans that were sometimes filled beyond capacity. Remaining in such a confined space for hours on end must have caused intense physical suffering which would have been further aggravated by the lack of adequate ventilation and lighting, and unreliable heating. Lastly, the applicant had been detained on more than 150 occasions in the court cells. These were particularly cramped and intended for very limited periods of detention, but the applicant was often held there for hours on end without ventilation, food, drink or free access to a toilet. Although such detention was not continuous, it alternated with his detention in the remand prison and transport in conditions which the Court had already found above to have been inhuman and degrading.
*Conclusion*: violations (unanimously).

Article 5 § 3 – The Court noted that, as permitted by Russian law as it stood at the material time, the domestic courts had extended the applicant's detention to a total period of just over two years and six months on the sole basis of the gravity of the charges, although they had occasionally also mentioned other grounds, such as the risk of his absconding or interfering with justice. In that respect, it reiterated that while the severity of the sentence faced was relevant to the assessment of the risk of absconding, the need for continued detention could not be assessed from a purely abstract point of view, taking into consideration only the gravity of the offence. In the applicant's case, the domestic courts had failed to mention any specific facts to support their finding of a risk of absconding or interference with justice or to pay heed to the applicant's arguments that the risk of his absconding was mitigated by other factors, such as his stable domestic circumstances and lack of travel documents and savings. By failing to address concrete relevant facts and relying mainly on the gravity of the charges, the authorities had thus extended the applicant's detention on grounds which could not be regarded as "sufficient".
*Conclusion*: violation (unanimously).

Article 6 § 1: There had been frequent judicial replacements during the trial (eleven in all) and the proceedings had had to be started anew each time a new member joined the formation. Moreover, the reasons for the replacements had only been made known on two occasions. In the Court's view, replacing a sitting judge without giving reasons could only be described as arbitrary. Further, power to reassign a pending criminal case to another presiding judge was habitually exercised by the court president. Since domestic law did not determine with any degree of precision the circumstances in which this could occur the court presidents in the applicant's case had effectively been given an unfettered discretion on the matter without any procedural safeguards, such as a requirement to inform the parties of the reasons or to give them an opportunity to comment or to seek review by a higher court. The applicant's doubts as to the independence and impartiality of the trial court were thus objectively justified.
*Conclusion*: violation (unanimously).

Article 6 § 1, in conjunction with Article 6 § 3 – In finding that the rights of the defence had been so restricted in the applicant's case as to contravene the principle of a fair trial, the Court had regard to the following combination of factors:

(a) *Restrictions on legal assistance*: Counsel for the applicant had been required to seek special permits to visit and to confer with him. That requirement had been devoid of a legal basis and was therefore arbitrary. Moreover, not only had it created considerable practical difficulties, it had put the defence in a position of dependence on, and subordination to, the discretion of the prosecution thereby destroying the appearance of the equality of arms.

(b) *Perusal of defence documents by prosecution*: Domestic law provided for the censorship of all prisoners' correspondence without any exception for privileged correspondence. Since the remand centre was managed by the same authority that was prosecuting the case, the routine reading of all documents exchanged between the applicant and his defence team had had the effect of giving the prosecution advance knowledge of the defence strategy and had placed the applicant at a disadvantage. It had not been claimed that the application of such a sweeping measure throughout the entire duration of the criminal proceedings was justified by any exceptional circumstances or previous abuses of the privilege. It

therefore constituted a flagrant breach of the confidentiality of the client-attorney relationship and encroached on the rights of the defence in an excessive and arbitrary fashion.

(c) *Restrictions on defence access to documents*: The bill of indictment, other case documents, and the notes compiled by the applicant and his defence team had only been accessible in special departments at the remand centre and trial court. While national security considerations could, in certain circumstances, call for procedural restrictions in cases involving State secrets, the concepts of lawfulness and the rule of law required that measures affecting fundamental human rights, such as the right to a fair trial, should have a lawful basis and should be appropriate to achieve their protective function. The Government had not invoked any provision of domestic law governing the functioning of special departments in remand prisons or the courts, or put forward any justification for the sweeping nature of the restrictions on the applicant's access to the case materials when, for example, classified information could have been held separately. The defence team's inability to remove their own notes had effectively prevented them from using the information they contained and left them to rely solely on their own recollection. Unrestricted access to the case file, the unrestricted use of notes and, if necessary, the possibility of obtaining copies of relevant documents were important guarantees of a fair trial.

(d) *Effect of conditions of transport and confinement*: The suffering and frustration the applicant must have felt on account of the inhuman conditions of transport and confinement had impaired his faculty for concentration and intense mental application in the vital hours immediately preceding the court hearings. The cumulative effect of the conditions and the inadequacy of the facilities had made it impossible for him to prepare his defence, especially as he was unable to consult the case file or his notes in his cell.
*Conclusion*: violation (unanimously).

Article 7 – The applicant had complained, firstly, that Article 275 of the Russian Federation Criminal Code had been applied in his case with retrospective effect, and that the potential terms of imprisonment under that provision were longer than under the corresponding provision of the previous legislation. On this point, the Court noted that the Russian Federation Criminal Code provided explicitly for its retrospective application to acts committed prior to its entry into force if the relevant offence carried a milder penalty than under the old criminal law. Since the offence of high treason under the Russian Federation Criminal Code was more lenient than a similar offence under the old law, it was that Code which was applicable and the applicant's complaint was without merit. The applicant also complained that in the absence of a clear regulation governing the information which constituted State secrets in the relevant period, he could not reasonably have foreseen that the communication of certain information would expose him to criminal liability or that he would incur criminal liability for communicating sensitive information that was only subsequently found to constitute a State secret. Noting that both the former law and the Russian Federation Criminal Code defined the concept of "espionage" in similar terms and explicitly referred to the collection of "other information" (that is, information not constituting a State secret) at the request of a foreign intelligence service, the Court found that the consequences of failure to comply with these laws were adequately foreseeable, not only with the assistance of legal advice, but also as a matter of common sense, and that the interpretation of the scope of the offence was consistent with the essence of that offence. It was unnecessary to consider the final point raised by the applicant as the Court had already found that his conviction for the disclosure of non-classified information had not violated Article 7 § 1.
*Conclusion*: no violation (unanimously).

Article 8 – The applicant had not been allowed any family visits during certain periods of his detention. In the remaining periods family visits had been limited to two one-hour meetings a month during which the applicant was separated from his family by bars and a glass partition. The Court found that the refusals of visits could not be regarded as having been "prescribed by law" as the relevant legislation, which conferred unfettered discretion on the investigator in the matter of family visits but did not define the circumstances in which they could be refused, failed to satisfy the foreseeability requirement. As to the periods when he was permitted family visits, it was a matter of concern that the legislation restricted them to two per month without affording any degree of flexibility for determining whether such limitations were appropriate or indeed necessary in each individual case. There did not appear to be any need for such

stringent limitations in the applicant's case as his wife was not a witness against him and his daughter was still a minor. The security considerations relating to criminal family links which had been found to be justified in the Italian mafia-organisation cases were conspicuously absent in the applicant's case. Accordingly, the measure went beyond what was necessary in a democratic society "to prevent disorder and crime". Lastly, the installation of the glass partition was not "prescribed by law" and in any event the imposition of such a measure for more than three and a half years without any established security risk was disproportionate.
*Conclusion*: violations (unanimously).

The Court also found violations of Article 5 § 4 on account of the Supreme Court's failure to examine, or its belated examination of, appeals by the applicant against decisions rejecting requests for release, Article 6 § 1 on account of the length of the criminal proceedings and Article 8 on account of unjustified restrictions on the applicant's correspondence.

Article 41 – EUR 25,000 for non-pecuniary damage on account of a combination of serious violations of the applicant's fundamental rights.

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## Article 6 § 3 (c)

**DEFENCE THROUGH LEGAL ASSISTANCE**
Failure by domestic courts to ensure practical and effective compliance with rights of the defence: *violation*.

**BOGUMIL - Portugal** (N° 35228/03)
Judgment 7.10.2008 [Section II]

*Facts*: In November 2002, on arriving at Lisbon Airport from Rio de Janeiro (Brazil), the applicant was searched by customs officers, who found several packets of cocaine hidden in his shoes. The applicant informed them that he had swallowed a further packet. He was taken to hospital and underwent surgery for its removal. Charges were brought against him for drug-trafficking, and he was placed in pre-trial detention. During the initial phase of the proceedings, he was assisted by a trainee lawyer. Since he faced a heavy sentence, however, a new, supposedly more experienced, lawyer was assigned to his case in January 2003 under the duty scheme. However, the new lawyer took no action in the proceedings other than to ask to be released from the case three days before the trial. A replacement lawyer was then assigned on the day the trial began and had only five hours in which to study the case file. In September 2003 the Lisbon Criminal Court convicted the applicant, sentenced him to four years and ten months' imprisonment and ordered his exclusion from Portugal.

*Law*: Article 6 §§ 1 and 3 (c) – Owing to the manner in which the case was prepared and conducted by the duty lawyers, the aim of Article 6 § 3 was not fulfilled. As regards in particular the lawyer assigned on the day of the hearing, the period of a little over five hours she had to prepare the defence was quite clearly too short for such a serious offence that was liable to result in a heavy sentence. The Lisbon Criminal Court had not taken steps to ensure that the applicant was receiving proper assistance from a duty lawyer. Having assigned the replacement lawyer and knowing that the applicant had not received genuine legal assistance, it could have adjourned the hearing on its own initiative. In the circumstances of the case, the domestic court should have ensured concrete and effective respect for the applicant's defence rights rather than remain passive.
*Conclusion*: violation (unanimously).

Article 3 – As regards the alleged violation of the applicant's physical integrity on account of the surgery, there was insufficient evidence to establish that he had given his consent or that he had refused and had been forced to undergo the operation. The decision to perform the surgery had been taken by medical staff. The operation had been required by medical necessity as the applicant risked dying from

intoxication and had not been carried out for the purpose of collecting evidence. Indeed, the applicant had been convicted on the basis of other pieces of evidence. It had been a straightforward operation and the applicant had received constant supervision and an adequate medical follow-up. As to the effects of the operation on his health, the evidence before the Court did not establish that the ailments from which he claimed to have been suffering since were related to the operation.
*Conclusion*: no violation (unanimously).

Article 8 – The interference with the applicant's right to respect for his private life was in accordance with the law and, at the very least, sought to protect his health. A fair balance had been struck between the public interest in the protection of health and the applicant's right to the protection of his physical and mental integrity.
*Conclusion*: no violation (unanimously).

Article 41– EUR 3,000 for non-pecuniary damage.

## ARTICLE 7

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

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

The applicant was prosecuted after killing his wife and wounding one of his children in 1999. At a preliminary hearing in 2000 he asked to be tried under a shortened form of procedure that would result in a reduced sentence in the event of a conviction. Under the Code of Criminal Procedure, this procedure meant that if the sentence normally applicable was life imprisonment he would be sentenced to thirty years. In keeping with that rule, on being found guilty of the charges on 24 October 2000 he was given a thirty-year sentence. In 2001 the Principal State Prosecutor's Office appealed on points of law, arguing that the trial court should have taken into account a change introduced by a legislative-decree affecting the applicant's situation that had entered into force on the date of his conviction. The applicant appealed but was sentenced to life imprisonment by the assize court of appeal on the grounds that the new procedural rule applied to all proceedings under way and that he could have withdrawn his request for the shortened form of procedure and been tried in the ordinary way. In 2003 the Court of Cassation dismissed the applicant's appeal.
In an admissibility decision of 13 May 2008, the Court found that the application concerned not only the alleged violation of the *nulla poena sine lege* principle but also the issue of whether the newly introduced provisions had affected the fairness of the trial (Article 6 § 1 of the Convention).

## ARTICLE 8

**PRIVATE LIFE**
Surgery performed on drug-trafficker without his consent: *no violation*.

**BOGUMIL - Portugal** (N° 35228/03)
Judgment 7.10.2008 [Section II]

(see Article 6 § 3 (c) above).

**PRIVATE LIFE**
Allegations in satirical magazine that politician had collaborated with former Communist repressive regime: *violation*.

**PETRINA - Romania** (N° 78060/01)
Judgment 14.10.2008 [Section III]

*Facts*: The applicant, a politician, was alleged to have been a *Securitate* agent in a television programme on a bill relating to access to information stored in the archives of the former State security services ("the *Securitate*") and two subsequent articles in a humorous magazine. He lodged two criminal complaints against the journalists concerned for insulting remarks and defamation. The two journalists were acquitted, the first because the impugned remarks were general and vague, which precluded criminal liability in the absence of intent, and the second because no precise, detailed allegations had been made against the applicant in the magazine, which had always had a positive effect on society. A certificate issued four years later by the national council set up to examine the *Securitate* archives stated that the applicant was not listed as having collaborated with that organisation.

*Law*: The debate was highly important for Romanian society as collaboration by politicians with the *Securitate* was a highly sensitive social and moral issue in the Romanian historical context. However, despite the satirical character of the magazine, the articles in question had been liable to offend the applicant, as there was no evidence that he had ever belonged to that organisation. The message they contained was clear and direct, with no ironic or humorous note whatsoever. The impugned remarks made accusations that directly concerned the applicant in his personal, not professional, capacity. Accordingly, this was not a case of journalists indulging in the measure of exaggeration or provocation they were allowed in the context of press freedom. Reality had been misrepresented, without any factual basis. The journalists had overstepped acceptable bounds by accusing the applicant, at a time when there was no legislative framework allowing the public access to *Securitate* files, of having belonged to a group that had used repression and terror to help the former regime subjugate political opponents. In these circumstances, the Court was not satisfied that the reasons given by the domestic courts for protecting freedom of expression were sufficient to take precedence over the applicant's reputation. They had accordingly failed to strike a fair balance between the competing interests at stake.
*Conclusion*: violation (unanimously).

Article 41 – EUR 5,000 in respect of non-pecuniary damage.

See *Pfeifer v. Austria* (no. 12556/03, 15 November 2007), Information Note no.102.

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**PRIVATE LIFE**
Photographs of a defendant in criminal proceedings released to the press and shown on television, without his consent: *violation*.

**KHUZHIN and Others - Russia** (N° 13470/02)
Judgment 23.10.2008 [Section I]

*Facts*: The applicants are three brothers. They were arrested in 1999 and subsequently accused of abducting and torturing a vagrant, who they had forced into physical labour in exchange for extremely low pay. A few days before their trial, a national television channel broadcast a talk show during which three prosecution officials discussed in detail the brothers' case. One of the officials referred to them as hardened criminals and said that the "crime" they had committed was characteristic of their "cruelty and meaningless brutality". During the talk show, black-and-white passport-size photos of the applicants were shown full screen. A local newspaper also subsequently published an article about the affair. The brothers lodged several complaints about the press coverage of the proceedings against them, without success. The prosecutor's office informed them that, under domestic law, it had the right to disclose materials in the

case-file and make them available to journalists. Ultimately, the brothers were found guilty as charged and sentenced to imprisonment.

*Law*: The first applicant had complained that the police had taken his passport photograph from the criminal case-file and, without his consent, given it to a journalist who had used it in a television show. This had constituted an interference with his right to respect for his private life. No justification for the interference had been put forward by the Government. Where a photograph published in the context of reporting on pending criminal proceedings had no information value in itself, there had to be compelling reasons to justify an interference with the defendant's right to respect for his private life. Even assuming that there was a lawful basis for granting the press access to the case-file, in the instant case the Court did not see any legitimate aim for the interference in question. Being in custody at the material time, the first applicant was not a fugitive from justice and the showing of his photograph could not have been necessary for enlisting public support to determine his whereabouts. Nor could it be said to have bolstered the public character of judicial proceedings because at the time of the recording and the first airing of the television show the trial had not yet begun. Accordingly, in the circumstances of the present case the release of the first applicant's photograph from the criminal file to the press had not pursued any of the legitimate aims enumerated in paragraph 2 of Article 8.
*Conclusion*: violation (unanimously).

See also *Sciacca v. Italy* (50774/99, 11 January 2005), Information Note no. 71.

The Court also found violations of Article 6 §§ 1 and 2 and Article 1 of Protocol N° 1. For more information, see press release N° 753.

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**PRIVATE LIFE**
Refusal to make medication available to assist suicide of a mental patient: *communicated*.

**HAAS – Switzerland** (N° 31322/07)
[Section I]

The applicant, who had been suffering from serious bipolar disorder for some 20 years, made two suicide attempts and had several stays in a psychiatric clinic. He joined an association which offered assistance with suicide as a means of helping its members enjoy a dignified life and death. Considering that he could no longer live a dignified life because of his illness, which was difficult to treat, the applicant sought the association's help. He asked a number of doctors to prescribe him the substance he needed, sodium pentobarbital, but without success.
He then applied to various authorities for permission to obtain the substance from a chemist's without a prescription, again without success. On appeal to the Federal Court against their refusals, he argued that the obligation to present a medical prescription for a substance needed to commit suicide and his inability to obtain such a prescription owing to threats by the authorities to withdraw the licences of any doctor who prescribed the substance in question to mental patients constituted disproportionate interference with his right to respect for his private life.
The Federal Court dismissed his appeals on the grounds that, by law, sodium pentobarbital could not be supplied without a prescription, the applicant had not managed to obtain one and his case did not fall into the exceptional category in which the law permitted the delivery of medicines without a prescription. The Federal Court did not accept that the State had an obligation under Article 8 of the Convention to ensure that the applicant could die without pain or risk or that he could obtain sodium pentobarbital without a prescription by derogation from the legislation. Lastly, it considered that the prescription and provision of sodium pentobarbital was a particularly delicate issue when it came to mental illness.
The applicant subsequently wrote to 170 doctors individually to ask if they would be prepared to conduct a psychiatric examination of him with a view to the possible prescription of sodium pentobarbital. None agreed.
*Communicated* under Article 8 of the Convention.

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**PRIVATE AND FAMILY LIFE**
Failure by Supreme Court to give adequate explanation for reversing an award of compensation for damage caused to police officers' integrity and reputation by allegations of torture: *violation*.

**TALIADOROU & STYLIANOU - Cyprus** (N^os 39627/05 and 39631/05)
**KYRIAKIDES - Cyprus** (N° 39508/05)
Judgments 16.10.2008 [Section I]

*Facts*: In 1992 the applicants, who were senior officers in the Cypriot police force, were prosecuted for their alleged involvement in the ill-treatment and torture of suspects. However, the prosecution failed to make out a prima facie case and they were acquitted. Subsequently, the Ministerial Council appointed an independent investigating commission to examine the matter further. The commission found that Mr Taliadorou and Mr Stylianou had used torture against certain suspects and that, as their commanding officer, Mr Kyriakides was guilty of negligence. On the basis of the commission's findings, all three applicants were dismissed from the police force in 1996 in a decision that was widely reported in the national press. The applicants challenged the legality of that decision in the Supreme Court, which found that their constitutional rights had been violated in that there had been breaches of the *non bis in idem* rule and the presumption of innocence and that they had effectively been dismissed without a trial or disciplinary proceedings. After being reinstated in their former posts in December 1997 the applicants brought proceedings for compensation and were awarded damages by a district court for the injury they had sustained to their psychological and moral integrity and reputation as a result of the decision to dismiss them. However, on appeal, the Supreme Court reversed that award after finding that the "moral damage did not constitute a direct consequence of the annulled administrative act".

*Law*: Article 8 – The applicants' complaint concerned the protection of their moral and psychological integrity and of their reputation and so fell within the scope of this provision. The case was best analysed as concerning the State's positive obligations to guarantee effective respect for private life by its legislative, executive and judicial authorities. The district court had found that significant injury, with severe defamatory consequences, had been caused to the applicants' moral and psychological integrity through their dismissal. Although the Supreme Court did not explicitly depart from or overrule that finding, it observed that the moral damage sustained by the applicants had not emanated from the annulled decision to dismiss them and so was not covered by the provision of domestic law under which their claim had been made. No reason was provided for that conclusion. Accordingly, while it was not the Court's role to interpret the Constitutional provision under which the applicants had sought compensation for the injury to their integrity and reputation, the Court found that the Supreme Court had failed to provide an adequate explanation for the reversal of the award of moral damages and noted that the absence of a comprehensive assessment as regards a matter affecting the applicants' Article 8 rights was not consonant with an acceptable margin of appreciation. There had therefore been a breach of the State's procedural obligations.
*Conclusion*: violation (unanimously).

Article 6 § 2 (case of *Taliadorou & Stylianou*) – The Supreme Court had not made any express or implied indication which undermined the applicants' innocence and acquittal. Although it had reversed the moral damages award made by the district court, it had not linked that reversal to any suspicion that the applicants had in fact been guilty of the offences of which they had been acquitted, but had instead relied conclusively on the issue of causation.
*Conclusion*: no violation (unanimously).

Article 41 – EUR 5,000 awarded to Mr Kyriakides in respect of non-pecuniary damage. Mr Taliadorou and Mr Stylianou made no claim in respect of damage.

**PRIVATE AND FAMILY LIFE**
Refusal to rectify spelling of a forename in the registry of births, deaths and marriages: *violation*.

**GÜZEL ERDAGÖZ - Turkey** (N° 37483/02)
Judgment 21.10.2008 [Section III]

*Facts*: The applicant was unable to obtain payment of certain benefits because of differences in the spelling of her forename in the State records. It had been entered in the register of births, deaths and marriages in 1933 as "Güzel". However, her family and friends had always known her as "Gözel" and in 2000 she issued court proceedings for the rectification of that entry. Her application was dismissed at first instance and subsequently by the Court of Cassation on the grounds that the spelling used by the applicant reflected a regional pronunciation that was not in the dictionary of the Turkish language.

*Law*: The Court reiterated that disputes relating to individuals' surnames and forenames came within Article 8 and that the Contracting States enjoyed a wide margin appreciation in that particular sphere. The domestic courts had not cited any statutory provisions or public or private interests that competed with the applicant's legitimate interest. The reasoning of the lower courts appeared to have been based not on any clearly established legislation but mainly on the applicant's preference for a spelling of her forename that was not in the dictionary of the Turkish language. A general bar on the registration of names that were not in the dictionary would be difficult to reconcile with Article 8 or the extremely diverse linguistic origins of Turkish forenames. Accordingly, Turkish law had failed to indicate with sufficient clarity the scope and manner of exercise of the authorities' discretion when it came to applications for the rectification of forenames and there were no adequate safeguards against the abuse that could result from the application of such restrictions. There was nothing to suggest that amending the applicant's forename was liable to undermine order or any public interest. The dismissal of her application could not, therefore, be regarded as having been necessary in a democratic society.
*Conclusion*: violation (unanimously).

Article 41 – EUR 2,000 for non-pecuniary damage.

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**FAMILY LIFE**
Severance of all ties with the biological family of a child who was put up for adoption following suspected sexual abuse by members of the family: *violation*.

**CLEMENO - Italy** (N° 19537/03)
Judgment 21.10.2008 [Section II]

*Facts*: X, a child aged about 13, declared that she had been subjected to sexual abuse for seven years by six members of her family. An order was made for her to be placed in a children's home. In a letter to the children's court, she said she feared that her cousin Y had also been subjected to sexual abuse and rape by the same people. On the basis of an expert report indicating that Y was emotionally disturbed and that her behaviour suggested that she had been sexually abused, the children's court ordered her to be taken into the care of the social services and placed in a children's home. Criminal proceedings were instituted against the six persons named by X. Y's father was sentenced to 13 years' imprisonment and the payment of approximately EUR 52,000, and his parental authority was withdrawn. Y's mother launched a protest in support of her husband by chaining herself in front of the children's home in which Y had been placed. Y's father was subsequently acquitted by a court of appeal along with another four of the six accused. An appeal by the prosecution to the Court of Cassation was dismissed.
The children's court decided to prohibit further contact between Y and her parents and brother and gave permission for her adoption. It declined to stay the proceedings pending the final outcome of the criminal proceedings or even the outcome of the appeal. It withdrew the parental authority of both parents and ordered Y's placement with foster parents. The applicants appealed, in particular, on the grounds that Y's father had been acquitted in a decision that was final. However, the Court of Appeal dismissed their

appeal on the grounds that the issues in the two sets of proceedings were entirely independent and that the interests of the child were paramount. Their appeal to the Court of Cassation was also dismissed.
The applicant attained her majority in 2006 and returned to her biological family of her own free will. She informed the Court registry that she wished to support her parents' application.

*Law*: The care order, Y's placement in a children's home and the order giving leave for her adoption amounted to interference with the first four applicants' rights for respect of their family life. That interference was in accordance with the law and the impugned measures pursued the legitimate aims of protecting health or morals and the rights and freedoms of others as they were intended to ensure Y's welfare.

(a) *The care order and Y's removal from her home*: The children's court had based its decision on strong presumptions that the child had suffered sexual abuse by her father, as confirmed by his committal for trial and the psychological report on the two brothers which the Court had ordered of its own motion. Subsequently, with a view to ensuring a stable family environment and after considering the second expert report on Y and the conduct of the parents over a one and a half year period the courts had decided to grant permission for Y's adoption. In these circumstances, the care order and the removal of Y from her family could be regarded as proportionate measures that were necessary in a democratic society for the protection of her health and her rights as a child. The criminal background, with Y's father being seen as the offender, could reasonably have led the authorities to believe that keeping Y in her home might cause her harm.
*Conclusion*: no violation (unanimously).

(b) *Lack of contact between the first four applicants in the period between the care order and the decision to grant leave for adoption*: The civil courts had given leave for Y's adoption while the criminal proceedings against her father were still pending and had chosen not to reverse that decision when they were called upon to rule on the family's objections following the father's acquittal. Although the decisions dismissing the parents' objections contained lengthy reasons and were based on various expert reports that indicated a difficult family context, the reasons given by the domestic courts for the decision to grant leave for adoption were, despite their extensiveness, insufficient when it came to the child's interest. Neither the children's court nor social services had set up a programme to re-establish links between Y and her biological family, even though the mother had not faced any criminal charges. Moreover, the main reasons advanced for granting permission for Y's adoption were the mother's support for the father and her inability to understand Y's deepest needs. However, at the time that decision was made, the criminal proceedings against the father were still pending and he was later acquitted. Lastly, criminal proceedings did not appear to be a sufficient ground to justify severing all links between mother and daughter or granting permission for adoption. From the moment she was taken into care, Y was never allowed to meet any member of her biological family, or her brother, or her father, even after his acquittal. The severing of all links with her biological family was total and final. The domestic authorities had not made any attempts to maintain links between Y, who was seven years old when she was taken into care, and her family, particularly her mother and her brother, or to help the biological family to overcome any difficulties in their relations with Y and to reconstitute the family.
*Conclusion*: violation (unanimously).

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

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**FAMILY LIFE**
Restrictions on family visits to a remand prisoner: *violations.*

**MOISEYEV - Russia** (N° 62936/00)
Judgment 9.10.2008 [Section I]

(see Article 6 above).

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**FAMILY LIFE**
Automatic application of ban on exercising parental rights: *violation.*

**IORDACHE - Romania** (N° 6817/02)
Judgment 14.10.2008 [Section III]

*Facts*: In 1999 the applicant was sentenced to 20 years' imprisonment which resulted in the automatic withdrawal of his parental authority for the duration of his detention. In 2000 he brought proceedings against his former wife for access to his son. His request was rejected at first instance on the ground that she could not be compelled to take the boy to the prison. The applicant's subsequent appeals were rejected because he had not paid the requisite stamp duty.

*Law*: Article 6 § 1 – The Court noted that although at first sight the stamp duty the applicant had been required to pay (ROL 94,500, approximately EUR 2.55) appeared insignificant, it was nevertheless a substantial sum for someone in his circumstances. Furthermore, what was at stake in the proceedings, namely access to his son, was of great importance to him.
*Conclusion*: violation (unanimously).

Articles 8 and 13 – Completely depriving someone by law of their parental rights without any review by the courts of the type of offence and the interests of the child was incompatible with the basic need to take the interests of the child into account, and could therefore not be said to pursue a legitimate aim. The decision to withdraw all the applicant's parental rights had been taken automatically by the domestic courts, which had not assessed the child's interests or the applicant's alleged unfitness to take decisions. Persons in the applicant's situation had no effective remedy to defend their Article 8 rights before the competent courts. Furthermore, since the authorities' acts were not limited to the judgment withdrawing parental authority, the applicant's situation had to be regarded as a continuing one. Accordingly, the Government's preliminary objection, which had been joined to the merits of the complaint, had been raised out of time and was dismissed.
*Conclusion*: violation (unanimously).

Article 41 – EUR 9,000 in respect of non-pecuniary damage.

## ARTICLE 10

**FREEDOM OF EXPRESSION**
Conviction for complicity in condoning terrorism following publication of a caricature and accompanying caption: *no violation*.

**LEROY - France** (N° 36109/03)
Judgment 2.10.2008 [Section V]

*Facts*: On 11 September 2001, the day of the attack on the twin towers of the World Trade Centre, the applicant, a cartoonist, submitted to the editorial team of a Basque weekly a drawing representing the attack with a caption which parodied the advertising slogan of a famous brand: "We have all dreamt of it... Hamas did it". He said that his aim had been to represent the destruction of the American empire on the day of the attack on New York. The drawing was published in the newspaper on 13 September 2001. Following a complaint by the prefect, the public prosecutor brought proceedings in the criminal court against the applicant and the newspaper's publishing director under section 24 of the Law of 29 July 1881 on charges of condoning terrorism and complicity. A full page in the next issue of the newspaper was devoted to extracts from letters and e-mails that had been received in reaction to the drawing and to support for the publishing director, who explained his reasons for publishing the drawing. The criminal court convicted the applicant and the publishing director of the charges and ordered them to pay a fine of EUR 1,500 each. It found that by explicitly showing the tragic and violent destruction of the twin towers

on 11 September 2001 and adding a caption referring to a dream, thereby glamorising an act of death, the newspaper had condoned terrorism. It also considered that the sentence should reflect the damage that had been done to public order in a region that was particularly sensitive to the issue of terrorism. An appeal by the applicant was dismissed and the Court of Cassation dismissed the main part of his further appeal on points of law.

*Law:* Article 10 – *preliminary objection* (*jurisdiction* ratione materiae) *dismissed*: The Government had argued that the application was inadmissible pursuant to Article 17 of the Convention as the condoning of acts of terrorism did not fall within its scope. However, the Court considered that the impugned form of expression did not come within the category of publications which Article 17 excluded from the protection of Article 10. Firstly, the underlying message the applicants had sought to convey was not the negation of fundamental rights and could not be equated with racist, anti-Semitic or Islamophobic remarks that struck directly against the values underpinning the Convention. Secondly, although the drawing and accompanying caption had been found by the domestic courts to condone terrorism, they could not be seen as an unequivocal attempt to justify terrorist acts. Lastly, the offence caused to the memory of the victims of the attacks had to be examined in the light of the right protected by Article 10, which was not an absolute right. Consequently, the freedom of expression to which the applicant claimed to be entitled had to be covered by that provision: *admissible*.

See *Ivanov v. Russia* (no.3522/04, 20 February 2007), Information Note no. 94.

Article 10 – The applicant's conviction amounted to an interference with freedom of expression. That interference was prescribed by law and pursued several legitimate aims which, in view of the sensitive nature of the fight against terrorism and the need for the authorities to be alert to the risk of heightened violence, were public safety, the prevention of disorder and the prevention of crime. As to whether the interference had been "necessary in a democratic society", the events of 11 September 2001 had given rise to global chaos and the issues that had been raised on that occasion were part of a debate of general interest. The drawing was itself a good indicator of the applicant's intention. However, when viewed together with the accompanying text it could be seen not merely to criticise American imperialism, but to support and glorify its violent destruction. By publishing the drawing, the applicant had expressed his moral support for and solidarity with those whom he presumed to be the perpetrators of the attacks, demonstrated approval of the violence and undermined the dignity of the victims. His underlying intentions were not relevant to the proceedings brought by the public prosecutor. Indeed, they had not been expressed until after the event and could not, given the context, undo the harm caused by his positive reaction to the consequences of the criminal act. Provocation did not necessarily need to cause a reaction to constitute an offence. While in the applicant's case it had taken the form of satire, a form of artistic device and social commentary whose natural aim, though its intrinsic characteristics of exaggeration and distortion of the truth, was to provoke and cause agitation, anyone relying on freedom of expression undertook duties and responsibilities.
The drawing had assumed special significance in the circumstances of the case, as the applicant must have realised. It was published two days after of the attacks, with no precautions as to language, at a time when the entire world was still in a state of shock at the news. The timing of the publication could only increase the applicant's responsibility. In addition, the impact of such a message in a politically sensitive region was not to be overlooked; the publication of the drawing had provoked a reaction that could have stirred up violence and suggested that it may well have affected public order in the region. The applicant's conviction had thus been based on relevant and sufficient grounds and only a modest fine had been imposed. In the circumstances, regard being had in particular to the context in which the caricature had been published, the measure imposed on the applicant had not been disproportionate to the legitimate aim pursued.
*Conclusion*: no violation (unanimously).

The Court also found a violation of Article 6 § 1 of the Convention.

Article 41 – The finding of a violation of Article 6 § 1 constituted in itself sufficient just satisfaction for any damage sustained by the applicant.

## ARTICLE 11

**FREEDOM OF PEACEFUL ASSEMBLY**
Dispersal of a demonstration which had not been notified to the police and which was not justified by special circumstances warranting an immediate response: *no violation*.

**MOLNÁR - Hungary** (N° 10346/05)
Judgment 7.10.2008 [Section II]

*Facts*: In April 2002 legislative elections took place in Hungary, as a result of which the governing coalition lost their majority. On 4 May 2002 the National Election Committee made a public statement in the Official Gazette, according to which the election results had become final. Two months later, on 4 July 2002 several hundred demonstrators started protesting against the statutory destruction of the ballots, which had been scheduled for late July. They blocked a centrally located bridge with their cars and requested a recount of the election vote. Since they caused significant traffic congestion, and had failed to give prior notification of the protest to the police, the demonstrators were dispersed after several hours. At around 1 p.m., again without any prior notification, more demonstrators gathered in front of the Parliament building demanding a recount of the votes. The applicant joined the demonstration at around 7 p.m. By that time, the police had already closed in the area off to traffic. However, at around 9 p.m. when the traffic situation had become unmanageable, the police broke up the demonstration without using force. The applicant subsequently sought judicial review of the police actions before the district court claiming that the dispersal of the demonstration was unlawful. The court dismissed his claim on the ground that the demonstration had not been notified to the police as required under domestic law.
*Law*: The Court reiterated at the outset that a prior-notification requirement was not as such incompatible with Article 11. For reasons of public order or national security, a Contracting State could require that the holding of meetings be subject to prior authorisation, save in special circumstances when an immediate response in the form of a spontaneous demonstration might be justified, for example, in relation to a political event. In the present case there were no special circumstances to justify an immediate demonstration since the election results had been objectively established and announced two months earlier. Moreover, Hungarian law merely required seventy-two hours prior notification rather than an authorisation. The Court further attached importance to the illegal character of the demonstration as well as the fact that it had disrupted the traffic and disturbed public order. Furthermore, it noted that unlike the position in other cases, since the demonstration had started at 1 p.m. and was dispersed at around 9 p.m., the demonstrators had been given several hours to manifest their views and the ultimate interference with the applicant's freedom of assembly was therefore not unreasonable.
*Conclusion*: no violation (unanimously).

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**FREEDOM OF PEACEFUL ASSEMBLY**
Repeated bans on silent demonstrations outside Prime Minister's residence: *violation*.

**PATYI - Hungary** (N° 5529/05)
Judgment 7.10.2008 [Section II]

*Facts*: The applicant, along with other creditors of an insolvent private company, wished to organise a series of silent demonstrations outside the Prime Minister's private residence in Budapest. After being notified of the demonstration by the applicant, as required by domestic law, the police prohibited it. The applicant sought judicial review of that decision, but the regional court eventually dismissed his application. Meanwhile, he in company with 15 other demonstrators gathered outside the Prime Minister's house allegedly disguised as tourists and walked past the residence before leaving the scene, without causing any inconvenience to traffic or other pedestrians. The applicant subsequently notified the police of another demonstration for the same reasons and at the same venue. This was again prohibited by the police, who took the view that the pavement was not wide enough to accommodate the demonstration and that they would have needed to close off half the street which with the heavy traffic expected that day

– a public holiday – would have considerably disrupted the flow of traffic. The applicant's request for judicial review was again dismissed. The applicant later notified the police of a further four demonstrations he and the other creditors intended to hold at the same venue, but these were also prohibited on the same grounds.

*Law*: The Government had claimed that the applicant's assemblies would have seriously hampered the free movement of pedestrians and caused major traffic congestion. However, the Court noted that the planned demonstration had consisted of 20 participants silently standing in line on the pavement outside the Prime Minister's house. The pavement was approximately five metres wide, sufficient to allow other pedestrians to walk by undisturbed during the demonstrations. Nor were the demonstrators likely to hinder the traffic, especially as on one of the proposed dates the bus service in that street was due to finish at around 4 p.m. Finally, there was no evidence to suggest that the demonstrations would be violent or otherwise represent a danger to public order. In such circumstances, the domestic authorities' repeated prohibition of the demonstrations in a mechanical reliance on the same reasons failed to strike a fair balance between the rights of those wishing to exercise their freedom of assembly and others whose freedom of movement might have temporarily been disturbed.
*Conclusion*: violation (unanimously).

Article 41 – The finding of a violation constituted sufficient just satisfaction for any non-pecuniary damage.

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**FREEDOM OF PEACEFUL ASSEMBLY**
Administrative fine imposed for holding an authorised and peaceful picket against corruption in a court: *violation*.

**SERGEY KUZNETSOV - Russia** (N° 10877/04)
Judgment 23.10.2008 [Section I]

*Facts*: In 2003 a small group including the applicant formed a picket in front of a regional court to attract public attention to violations of the right of access to a court. They distributed press clippings and leaflets about the president of the regional court, who had allegedly been involved in corruption scandals, and collected signatures calling for his dismissal. The authorities were notified of the picket eight days beforehand. The police were ordered to maintain public order and traffic safety during the event. A few days after the picket, a deputy president of the regional court instructed the police to open administrative proceedings against the applicant who had allegedly misled the municipality as to the purpose of the picket and used the event to defame the court president. Subsequently, the applicant was found liable under administrative law and fined a sum equivalent to EUR 35 for having breached the procedure for organising and holding a public assembly.

*Law*: The administrative prosecution had amounted to an interference with the applicant's right to freedom of assembly, interpreted in the light of his right to freedom of expression. The interference was "prescribed by law" and pursued the "legitimate aims" of preventing disorder and protecting the rights of others. Three charges had been upheld against the applicant. Firstly, the courts had found that he had sent the picket notice belatedly; secondly, that he had obstructed passage to the court building; and thirdly, that the contents of the materials he had disseminated were at variance with the declared aims of the picket. As to the first charge, the applicant had indeed submitted the picket notice eight days before the planned event, whereas the applicable regulations stipulated a ten-day notification. However, it did not appear that the two-day difference had in any way impaired the authorities' ability to make necessary preparations for the picket. Given the small scale of the planned event, the town administration had not considered the alleged delay in notification relevant or important. The delay had not been held against the applicant in any official documents and had not affected the lawfulness of the picket. In fact, that transgression had surfaced for the first time in the report on the administrative offence, which had been compiled six weeks after the assembly. In these circumstances, a merely formal breach of the notification time-limit was neither a relevant nor a sufficient reason for imposing administrative liability on the applicant. Freedom to

take part in a peaceful assembly was of such importance that a person could not be subjected to a sanction – even one at the lower end of the scale of disciplinary penalties – for participation in a demonstration which had not been prohibited, so long as he or she did not himself commit any reprehensible act on such an occasion. As regards the alleged blocking of passage, there had been no complaints by anyone, whether individual visitors, judges or court employees, about the alleged obstruction of entry to the court-house by the picket participants. Even assuming that the presence of several individuals at the top of the staircase had restricted access to the main entrance, it was credible that the applicant had diligently complied with the officials' request and without further argument had descended the stairs onto the pavement. Moreover, the alleged hindrance had been of an extremely short duration. As to the third ground for the applicant's conviction, the domestic courts' judgments had not contained any analysis as to what the alleged differences were between the declared aims of the picket and the content of the article the applicant had distributed during the picketing. Furthermore, the materials distributed by the applicant and the ideas he had advocated had not been shown to contain any defamatory statements, incitement to violence or rejection of democratic principles. Accordingly, however unpleasant the call for dismissal of the president of the regional court could have been to him and however insulting he may have considered the article alleging corruption in the regional court, it was not a relevant or sufficient ground for imposing liability on the applicant for the exercise of his right to freedom of expression and assembly. It was also a matter of concern for the Court that the alleged discrepancy between the aims of the picket and the disseminated materials had been raised for the first time in a letter addressed to the police by the official reporting directly to the president of the regional court who had been the target of criticism in the distributed publications. The terms employed in the letter, such as the statement that the picket participants had "committed thereby an administrative offence", had prejudged the assessment of the facts by the competent judicial authority and expressed the opinion that the applicant was guilty even before he had been proved guilty according to law. Lastly, the purpose of the picket had been to attract public attention to the alleged dysfunctioning of the judicial system in the region. This serious matter was undeniably part of a political debate on a matter of general and public concern. It had been the Court's constant approach to require very strong reasons for justifying restrictions on political speech or serious matters of public interest such as corruption in the judiciary. However, the Russian authorities had not adduced any "relevant and sufficient" reasons which could have justified the interference with the applicant's rights to freedom of expression and assembly. That the amount of the fine had been relatively small did not detract from the fact that the interference had not been "necessary in a democratic society".
*Conclusion*: violation (unanimously).

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

## ARTICLE 13

**EFFECTIVE REMEDY**
Lack of effective remedy against ban on exercising parental rights: *violation.*

**IORDACHE - Romania** (N° 6817/02)
Judgment 14.10.2008 [Section III]

(see Article 8 above).

## ARTICLE 14

**DISCRIMINATION (article 1 of Protocol no. 1)**
Difference in treatment between illegitimate children in succession case depending on how their relationship to their parents was established: *inadmissible*.

**ALBOIZE-BARTHES and ALBOIZE-MONTEZUME – France** (N° 44421/04)
Decision 21.10.2008 [Section V]

The applicants were born out of wedlock. In 1955 their father died without recognising them as his offspring. A few months later his estate was divided up under the terms of a notarial deed and the beneficiaries took possession of their shares. In 1996 the applicants obtained an order from a *tribunal de grande instance* recognising their filiation. They then sued their father's heirs to recover their share of the estate. However, their claims were dismissed on the grounds that illegitimate children whose filiation had been established by public acceptance of their status could not claim an interest in an estate that had already been wound up.

*Inadmissible*: The Court agreed with the parties that it was the legislation itself that had created the difference in treatment between the rules governing the devolution of property to illegitimate children who had been voluntarily recognised and illegitimate children whose filiation had been established by public acceptance, with the latter not benefiting from the thirty-year period allowed by the Civil Code for accepting or abandoning a share in an estate. Although the applicants' complaint was a general complaint of discrimination that came within the scope of the new Protocol No. 12, France had not ratified that instrument. For Article 14 of the Convention to apply the applicants' interests had to come within the scope of Article 1 of Protocol No. 1. The 1982 Act enabled illegitimate children to establish their filiation through the public acceptance of their status and thereby to gain recognition as an heir to their father's estate. It thus enabled a claim to be made to a share in an estate in cases where the winding up had already begun before the entry into force of the Act but not where the winding up had been completed. The domestic courts had found that the applicants' father's estate had been definitively wound up in 1955, that is, before their filiation was established. It followed that at the date of their father's death the applicants had no right to inherit from his estate, which did not therefore form part of their property. In that regard, the case could be distinguished from *Camp and Bourimi v. the Netherlands* (see Information Note no. 23), in which the applicant had obtained legal recognition of his family ties with his deceased father through a grant of letters of legitimation although that legitimation was not fully effective. In the applicants' case, the Court found that Article 1 of Protocol No. 1 was not applicable and that Article 14 could not, therefore, be relied on in conjunction with it: incompatible *ratione materiae*.

## ARTICLE 17

**DESTRUCTION OF RIGHTS AND FREEDOMS**
Conviction for complicity in condoning terrorism following publication of a caricature and accompanying caption: *no violation*.

**LEROY - France** (N° 36109/03)
Judgment 2.10.2008 [Section V]

(see Article 10 above).

## ARTICLE 35

### Article 35 § 1

**SIX-MONTH PERIOD**
Existence of continuing situation in family proceedings: *preliminary objection joined to merits.*

**IORDACHE - Romania** (N° 6817/02)
Judgment 14.10.2008 [Section III]

(see Article 8 above).

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### Article 35 § 3

**COMPETENCE *RATIONE TEMPORIS***
**CONTINUING SITUATION**
Expropriation of private property of ethnic Germans, located on territories entrusted to Poland after World War II, and failure to enact rehabilitation or restitution laws: *inadmissible*.

**PREUSSISCHE TREUHAND GMBH & CO. KG A. A. – Poland** (N° 47550/06)
Decision 7.10.2008 [Section IV]

The applicants are, or are successors in title to, persons who, before the end of the Second World War, lived in the provinces which were included in the territory of Poland after the defeat of Germany, when the border between those two States was drawn along the Oder-Neisse line. In the beginning of 1945 the German Nazi authorities, in connection with the Soviet offensive, ordered the evacuation of German civilians, including some of the applicants or their relatives, who had to abandon their homes in those regions and head for the western provinces of the Reich. In 1945-1946 the Polish State enacted a series of laws designed to take over the German state property and to expropriate the private property of all Germans, including the applicants, on the territories east of the Oder-Neisse line. These laws were enacted following the Yalta Conference, the Potsdam Agreement and the Three Powers' undertakings in respect of war reparations for Poland, which were satisfied from the German-owned assets located on Polish territory. During that period, some of the applicants and their families who had not been evacuated were expelled from their homes by the Polish authorities.

(a) As regards the applicants and their families who fled because of, and in fear of, the victorious Red Army's imminent approach, the Polish State could not be held responsible for the alleged acts of violence and expulsion, since, at that time, it had had no *de iure* or *de facto* control over those still German territories, gradually taken over by the Soviet troops, and had been entrusted with the administration of the regions east of the Oder-Neisse line only under the provisions of the Potsdam Agreement of 1945: incompatible *ratione personae*.

(b) In so far as the application could be regarded as directed against Poland, the applicants' complaint was based on specific events, i.e. individual acts of violence, expulsion, dispossession and seizure or confiscation of property which had taken place mostly in 1946 and which, if assessed as a whole, could not be regarded as anything more than instantaneous acts. In the *Loizidou* case referred to by the applicants, the inherent illegitimacy of measures stripping the applicant of her ownership rights had derived from the fact that the expropriation laws in question could not be attributed legal validity for the purposes of the Convention as they emanated from an entity which was not recognised in international law as a State and whose annexation and administration of the territory concerned had no international law basis. As a result, it could not be said that formal acts of expropriation had been carried out. In the instant case the situation was different. There could be no doubt that the former German territories on

which the individual applicants had their property had been lawfully entrusted to the Polish State under the provisions of the Potsdam Agreement and that, subsequently, the Polish-German border as referred to in that Agreement had been confirmed by a sequence of bilateral treaties concluded between Poland and two former separate German States and, finally, between Poland and the reunified Federal Republic of Germany. In consequence, the applicants' arguments as to the existence of international law violations entailing "inherent unlawfulness" of the expropriation measures adopted by the Polish authorities and the continuing effects produced by them up to the present date had to be rejected. Moreover, after the confiscation of the applicants' property, the Polish State had not enacted any restitution or compensation laws providing for restoration of German property expropriated under the previous regime that would generate a new property right eligible for protection under Protocol No. 1. In sum, there had been no continuing violation of the Convention which could be imputable to Poland: incompatible *ratione temporis.*

(c) In so far as the applicants had complained about Poland's failure to enact laws providing for the rehabilitation or the restitution of confiscated property or compensation for property lost by them, the Polish State had no duty under Article 1 of Protocol No. 1 to provide redress for wrongs or damage caused prior to their ratification of the Convention: incompatible *ratione materiae.*

## ARTICLE 37

**STRIKING OUT APPLICATIONS**
Claims either satisfied or still pending at national level: *struck out of the list*.

**KOVAČIĆ and Others - Slovenia** (N° 44574/98 et al.)
Judgment 3.10.2008 [Grand Chamber]

*Facts*: The applicants were three Croatian nationals, who had previously deposited foreign currencies in savings accounts with the Ljubljana Bank's Zagreb office in Croatia. The system in operation at the time was that foreign-currency deposits at former Yugoslav commercial banks were transferred to the National Bank of Yugoslavia in Belgrade. Foreign-currency accounts earned interest at rates of 10% or even higher and were guaranteed by the former Yugoslav State ("SFRY"). However, as an emergency response to the hyper-inflation suffered by the SFRY in the 1980s, the withdrawal of foreign currency was progressively restricted by legislation and in 1988 the Ljubljana Bank froze all its foreign-currency accounts. Almost all the applicants' attempts to withdraw the money from their accounts failed. The applicants and the Croatian Government considered that since 1991, the year Slovenia and Croatia became independent, liability for the debts owed to the customers of the Croatian branch of the Ljubljana Bank should have been assumed by that bank or by the Slovenian State. Conversely, the Slovenian Government took the view that they should be divided among the successor States to the SFRY under the State succession arrangements.
In 2003, 42 account holders, including the first and second applicants, lodged applications in Croatia for the seizure and sale of real estate owned by the Ljubljana Bank on Croatian territory. This resulted in the Zagreb Main Branch's assets being liquidated. In July 2005 the first and second applicants received full payment of their savings deposits together with their legal costs. The third applicant did not bring proceedings in Croatia to recoup her foreign currency savings. However, in 2007 her heir brought an action in the Croatian courts for the recovery of her foreign-currency savings accounts plus interest. At the time of the Court's judgment, those proceedings were still pending in the Zagreb Municipal Court.

*Law*: It was noted as a preliminary point that the applicants, the respondent Government and the intervening Government had in effect requested the Court to go into a number of issues pertaining to the circumstances of the break-up of the SFRY, its banking system and those of the successor States and the redistribution of liability for old foreign-currency savings among the successor States of the SFRY. The Court observed at the outset that it had received applications from individuals who had been affected by those matters and that several thousand such applications were currently pending against all of the SFRY

successor States Parties to the Convention. Even though such issues fell within the Court's jurisdiction as defined in Article 32 of the Convention, the Court could only subscribe to the view of the Parliamentary Assembly in Resolution 1410 (2004) that the matter of compensation for so many thousands of individuals had to be solved by agreement between the successor States. In that respect, the Court noted that several rounds of negotiations had already been held between the successor States, at different levels, with a view to reaching an agreement on the solution of the issues which remained unsettled. It called on the States concerned to proceed with these negotiations as a matter of urgency, with a view to reaching an early resolution of the problem. The Court noted that it was common ground that Mr Kovačić's heirs and Mr Mrkonjić had received the full amount of their foreign-currency deposits plus accrued interest. As regards them, the matter had therefore been resolved.
The Court further noted the special circumstances of Mrs Golubović's case, which were the consequence of the break-up of the SFRY, its banking system and, ultimately, the redistribution of liability for old foreign-currency savings among the successor States of the SFRY. In such a context, the Court considered that claimants could reasonably be expected to seek redress in *fora* of one of the successor States where other claimants had been successful. It noted in that respect that Mrs Golubović's heir had recently brought proceedings in Croatia with a view to recovering his late aunt's foreign-currency savings with interest. These proceedings were still pending before the Zagreb Municipal Court. Furthermore, the Court found no justification for continuing with the examination of a case where proceedings were simultaneously pending in a court of a Contracting Party to recover foreign-currency deposits which were the very subject-matter of the application. Being satisfied that respect for human rights as defined in the Convention and its Protocols did not require it to continue the examination of the applications, it decided to strike the cases out of its list.
*Conclusion*: strike out (unanimously).

## ARTICLE 41

**JUST SATISFACTION**
Assessment of pecuniary damage for *de facto* expropriation.

**GUISO-GALLISAY - Italy** (N° 58858/00)
Judgment 20.10.2008 [Section II]

*Facts:* The applicants were the owners of plots of lands on which the authorities occupied with a view to expropriation and began construction works. Since there had been no formal expropriation and they had not been paid compensation the applicants issued proceedings for damages for the unlawful occupation of their land. In a judgment delivered on 8 December 2005, the European Court held that the interference with the applicants' right to the peaceful enjoyment of their possessions through the indirect expropriation of their land was incompatible with the principle of legality and that there had accordingly been a violation of Article 1 of Protocol No. 1. It also held that the question of the application of Article 41 (just satisfaction) was not ready for decision.

*Law*: The applicants had retained victim status as their position had not changed since the date of the principal judgment. As regards the assessment of compensation, the method that had been used hitherto had been to compensate for losses that would not be covered by payment of a sum obtained by adding the market value of the property to the cost of not deriving earnings from the property, by automatically assessing those losses as the gross value of the works carried out by the State plus the value of the land at current prices. However, that method of compensation was not justified and could lead to unequal treatment between applicants, depending on the nature of the public works carried out by the public authorities, which was not necessarily linked to the potential of the land in its original state. It could also result in arbitrariness and in compensation for pecuniary damage playing a punitive or deterrent role vis-à-vis the respondent State rather than a compensatory role for the applicants. In the light of these considerations and of the legislative change in 2007 requiring compensation for the expropriation of land with building rights to reflect the market value of that land except when the expropriation was part of an

economic and social reform, a change in the case-law concerning the application of Article 41 in constructive-expropriation cases was justified. In order to assess the loss sustained by the applicants, it was necessary to take into consideration the date on which they had established with legal certainty that they had lost the right of ownership over the property concerned. The total market value of the property fixed on that date by the national courts was then to be adjusted for inflation and increased by the amount of interest due on the date of the judgment's adoption by the Court. The sum paid to applicants by the authorities of the country concerned was to be deducted from the resulting amount. The construction costs of the building that had been built on the land could no longer be taken into account.
In the instant case, the sum to be awarded for pecuniary damage amounted to EUR 1,803,374 for the three applicants jointly. The Court also awarded them EUR 45,000 for non-pecuniary damage.

## ARTICLE 1 OF PROTOCOL No. 1

**POSITIVE OBLIGATIONS**
Burglary of the applicant's houses while she was in custody: *no violation*.

**BLUMBERGA - Latvia** (N° 70930/01)
Judgment 14.10.2008 [Section III]

*Facts*: The applicant was detained for several months in 1995. During that time, her two houses were broken into and some of her belongings stolen. Under Article 80 of the Criminal Procedure Code, it was incumbent on the authorities to ensure the protection of the property of detainees. Criminal proceedings were initiated in respect of both burglaries. The proceedings concerning the first house were terminated in 2005 due to a lack of evidence, whereas those concerning the second house were still ongoing and suspects appeared to have been identified. Meanwhile, in 2001 the applicant lodged a civil action against the police claiming compensation and requesting exemption from court fees due to her poor financial situation. Her action was eventually dismissed because she had not submitted sufficient proof of her financial situation or of the circumstances on which her claim was based.

*Law*: Article 1 of Protocol No. 1 – Even though the interference with the applicant's property rights was perpetrated by private individuals, the Court considered that positive obligations arose for the State to ensure in its domestic legal system that property rights were sufficiently protected and that adequate remedies for asserting those rights were provided. In addition, where the interference was of a criminal nature, that obligation required the authorities to conduct an effective criminal investigation. It was an obligation of means, not to achieve a result. On the other hand, the possibility of bringing civil proceedings against the alleged perpetrators of the offence could provide the victim with alternative means of securing his or her property rights even if the criminal proceedings were not concluded successfully. The State would, in such circumstances, only fail to fulfil its positive obligations under Article 1 of Protocol No. 1 if the civil claim had no prospects of success as a direct result of exceptionally serious and flagrant deficiencies in the conduct of the criminal investigation. In the present case, having regard to all the materials in its possession the Court could not conclude that the failure to bring the criminal proceedings to a successful conclusion was the result of flagrant and serious deficiencies in the authorities' conduct. Further, under domestic law the applicant could have instituted separate civil proceedings against the suspected offenders, in particular since domestic law did not require a criminal conviction in order to claim damages in civil proceedings. Moreover, the investigation into the second burglary had resulted in suspects being identified and the burden of proof in civil proceedings was less demanding. Such proceedings would therefore not have been devoid of reasonable prospects of success. However, since the applicant had never instituted such proceedings, the Court was unable to establish whether they would have constituted an appropriate means for the State to fulfil its positive obligations under Article 1 of Protocol No. 1.
*Conclusion*: no violation (unanimously).

Article 6 § 1 – The domestic courts had declined to examine the merits of the applicant's claim on the ground that it had not been properly submitted. However, in lodging her civil action, the applicant had attached documents proving her financial situation and the relevant replies of the public prosecutor relating to the burglaries, which, in the Court's view, provided a reasonable and sufficient basis for her claim. Moreover, in rejecting her claim, the domestic courts had failed to indicate to the applicant which additional documents she had been expected to submit. The foregoing rendered the domestic courts' refusal to decide the merits of the applicant's claim manifestly unwarranted and resulted in the deprivation of the applicant's formally existing access to court of any substance.
*Conclusion*: violation (unanimously).

Article 41 – EUR 8,000 in respect of non-pecuniary damage.

## Relinquishment in favour of the Grand Chamber

### Article 30

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

(see Article 7 above).

# Cases selected for publication[1]

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

**Grand Chamber judgments**

MASLOV – Austria (N° 1638/03) (109)
KORBELY – Hungary (N° 9174/02) (111)
YUMAK and SADAK – Turkey (N° 10226/03) (110)

**Chamber judgments**

ORSUS and Others – Croatia (extracts) (N° 15766/03 ) (110)
ANDRE and another – France (N° 18603/03 ) (110)
MEDVEDYEV and Others – France (extracts) (N° 3394/03 ) (110)
SOULAS and Others – France (N° 15948/03)
THE GEORGIAN LABOUR PARTY – Georgia (N° 9103/04) (110)
GÄFGEN – Germany (N° 22978/05 ) (109)
VAJNAI – Hungary (N° 33629/06) (110)
ĀDAMSONS – Latvia (N° 3669/03) (109)
KONONOV – Latvia (extracts) (N° 36376/04) (110)
GRAYSON and BURNHAM – United Kingdom (extracts) (N$^{os}$ 19955/05 and 15085/06) (111)
LIBERTY and Others – United Kingdom (N° 58243/00) (110)
NA. – United Kingdom (extracts) (N° 25904/07) (110)
CHEMBER – Russia (N° 7188/03 ) (110)
ARAC v. Turkey (N° 9907/02) (111)
KART – Turkey (extracts) (N° 8917/05) (110)
TURGUT and Others – Turkey (extracts) (N° 1411/03) (110)

**Decision**

BOIVIN – France and others States (N° 73250/01) (111)

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

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**31.10.2008**

**Press release issued by the Registrar**

## Ten years of the "new" European Court of Human Rights

## President of the European Court of Human Rights calls upon Governments to reaffirm their commitment to international human rights protection

Ten years after the setting up of a full-time European Court of Human Rights guaranteeing a right of individual petition to over 800 million Europeans, the President of the Court Jean-Paul Costa yesterday hailed the establishment of the "new" Court in 1998[1] as a landmark in the development of international human rights protection.

Speaking in Strasbourg, the President said: "Much has been achieved over the last ten years, which has seen over 9,000 judgments delivered and human rights jurisprudence evolve into a common language understood and used by legal professionals and others throughout Europe and beyond. It is enormously important that the Court should be able to continue to play to the full its role as a guarantor of democracy and the rule of law in the 47 States through which its jurisdiction extends. This means that the Court will have to adapt to cope with the massive inflow of cases which it has experienced since 1998, that further reforms to the system are required and, above all, that at the beginning of the 21st century and a few weeks before the 60th anniversary of the Universal Declaration of Human Rights all the member Governments of the Council of Europe must reaffirm their commitment to effective international human rights protection, while ensuring that their domestic systems offer citizens the possibility to seek redress for human rights breaches at home."

To mark the 10th anniversary, the Court will also be launching today its new monolingual (French or English) web portal (www.echr.coe.int). The newly designed portal will have a link to a special page dedicated to the 10th anniversary where information can be found on the activities of the "new" Court, including up-to-date statistics, photo galleries and events such as the seminar held on 13 October 2008 to discuss the Court's situation and outlook.

[1] Following the entry into force of Protocol No. 11 on 1 November 1998.