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

Information Note on the Court's case-law

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ARTICLE 3

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Janowiec and Others v. Russia
- 55508/07 and 29520/09
Judgment 16.4.2012 [Section V]

The applicants were relatives of Polish officers and officials who were killed by the Soviet secret police without trial, along with more than 21,000 others, in 1940. Investigations into the mass murders were started in 1990 but discontinued in 2004. The text of the decision to discontinue the investigation ("the decision") has remained classified to date and the applicants have not had access to it or to any other information about the investigation. The Russian authorities refused to provide a copy of the decision to the European Court.

In a judgment of 16 April 2012 (see Information Note no. 151), a Chamber of the Court held by four votes to three that the Government had failed to comply with Article 38 of the Convention by not producing a copy of the decision. As regards the obligation to investigate under Article 2, the Court noted that the deaths occurred before the entry into force of the Convention in respect of Russia. This in itself was not determinative, but in the present case the intervening period of 58 years was extremely long, and a significant proportion of the investigation appeared to have taken place before ratification, so it was difficult to establish a sufficient connection between the deaths and the entry into force of the Convention. While the murder of the applicant's relatives did have the nature of a war crime, no new evidence had been adduced which could revive the procedural obligation. Therefore the Court held by four votes to three that it had no temporal jurisdiction to examine the merits of this complaint. In considering the obligation under Article 3 it was observed that this was of a more general humanitarian nature than the procedural obligation under Article 2, and thus required a more humane response. The Court found a violation of Article 3 by five votes to two in respect of ten of the applicants due to the suffering caused by the continuous disregard shown for their situation by the Russian authorities. The remaining applicants had never had personal contact with their missing relatives, and so had not experienced comparable mental anguish amounting to inhuman treatment.

On 24 September 2012 the case was referred to the Grand Chamber at the request of the applicants supported by the Polish Government.

Positive obligations
Effective investigation
Torture

Alleged failure to acknowledge and investigate details of ill-treatment and enforced disappearance: *communicated*

Alleged complicity in practice of rendition of persons to secret detention sites at which illegal interrogation methods were employed: *communicated*

Al Nashiri v. Poland - 28761/11
[Section IV]
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[Section III]

The applicant, a Saudi Arabian national of Yemeni descent who is currently detained in the United States Guantanamo Bay Naval Base in Cuba due to suspicion of his involvement in certain terrorist activities, claims several violations of the Convention in relation to the alleged complicity of the respondent States in the practice within their

territory by the United States Central Intelligence Agency (CIA) of "extraordinary rendition".[1]

In his application to the Court he complains that these States, who he alleges knew and should have known about the rendition programme, the secret detention sites within their territory in which he was held, and the torture and inhuman and degrading treatment to which he and others were subjected to as part of the process, knowingly and intentionally enabled the CIA to detain him, and have refused to date to properly acknowledge or investigate any wrongdoing. He also alleges that the respondent States enabled the CIA to transfer him from their territory despite substantial grounds for believing that there was a real risk that he would be subjected to the death penalty and further ill-treatment and incommunicado detention, and that he would receive a flagrantly unfair trial.

In support of his complaints, the applicant notes that the process of extraordinary rendition has been condemned in the strongest terms by numerous international organisations – including the European Parliament, and that the circumstances surrounding these events have been the subject of various reports and investigations, including the "Marty Reports" commissioned by the Council of Europe, which detail an intricate network of CIA detention and transfer in certain Council of Europe States.

Communicated under Articles 2, 3, 5, 6, 8, 10 and 13 of the Convention, and under Protocol No. 6 to the Convention.

ARTICLE 5

Article 5 § 1

Deprivation of liberty

Prohibition on travel through country surrounding enclave: *inadmissible*

Nada v. Switzerland - 10593/08
Judgment 12.9.2012 [GC]

(See Article 8 below, page 12)

1. The apprehension and extrajudicial transfer of a person to a secret detention site for the purpose of interrogation, during which illegal methods are often employed.

Failure to provide the rehabilitative courses to prisoners which were necessary for their release: *violation*

James, Wells and Lee v. the United Kingdom - 25119/09, 57715/09 and 57877/09
Judgment 18.9.2012 [Section IV]

Facts – By virtue of section 225 of the Criminal Justice Act 2003, indeterminate sentences for the public protection were introduced. Like sentences of life imprisonment, these required the direction of the Parole Board in order for a prisoner to be released. A minimum term which had to be served before a prisoner could be released, known as the "tariff", was fixed by the sentencing judge. The three applicants, who had been sentenced pursuant to this Act, complained that while in detention they were not provided with the opportunity to complete the instructional courses that the Parole Board considered necessary for their rehabilitation. The applicants were detained in small local prisons, and due to resource constraints were unable to transfer to prisons where the relevant courses were available. This led the Parole Board to consider that they presented a continued risk to the public and were unsuitable for release after the completion of their tariff.

Law

Article 5 § 1: In considering the legality of the post-tariff detention of the applicants the Court examined whether there was a causal link between the continuing detention and the original sentence; whether the detention complied with domestic law; and whether it was free from arbitrariness. On the point of causality it was clear that the indeterminate sentences were imposed on the applicants because they were considered, albeit by the operation of a statutory assumption, to pose a risk to the public. Therefore there was a sufficient causal link between the convictions and the deprivations of liberty at issue. Further, the Court was satisfied that the applicants' post-tariff detention was based on their "conviction" for the purposes of Article 5 § 1 (a) of the Convention and that there was compliance with domestic law.

In considering arbitrariness certain principles were relevant. First, that detention will be "arbitrary" where, despite complying with the letter of national law, there has been an element of bad faith or deception on the part of the authorities. Second, both the order to detain and the execution of the detention must genuinely conform with the purpose of the restrictions permitted by the relevant sub-paragraph of Article 5 § 1. Third, there must

be some relationship between the ground of permitted deprivation of liberty relied on and the place and conditions of detention; and fourth, this relationship must be proportionate.

The Court then considered the arbitrariness of the detention in the present case as a whole by reference to these considerations. It began by examining the lack of judicial discretion in sentencing. Under the scheme as it was first enacted and brought into force, the IPP sentence was mandatory where a future risk existed. The Court noted that restrictions on judicial discretion in sentencing do not *per se* render any ensuing detention arbitrary. However, they may be a relevant factor, and in such situations there is often an even greater need to ensure that there is a genuine correlation between the aim of the detention and the detention itself. Secondly, the Court had regard to the purpose of the detention. It was clear that a central purpose of the IPP sentences imposed was the protection of the public. However it could be seen from the debates on the drafting of the relevant legislation that an implied purpose of the detention was rehabilitation. This was further reflected in the Secretary of State's published policy at the time, and was clear from certain rulings of the domestic courts in the area. Also, it is to be presumed that States intend to comply with their international obligations when introducing legislation. In the present case, the relevant obligations made it clear that an essential aim of imprisonment was social rehabilitation.

Lastly, the Court noted the deficiencies in the rehabilitative process in the present case. Due to the unavailability of rehabilitative courses, for a significant period the applicants did not have the opportunity to reduce the risk they posed to the public as assessed by the Parole Board, which was necessary in order to shorten the length of their post-tariff detention. In considering the detrimental impact that this had on the applicants, it was acknowledged that there was a substantial danger inherent in ordering the release of a prisoner while they still posed an appreciable risk to the public. However, such a danger did not seem to be present in the case of the applicants. The assessment of the danger they posed was largely a product of statutory assumption, and it was far from clear that the sentencing judges concerned would have imposed an IPP sentence had they enjoyed the judicial discretion available to them under new amended legislation.

In applying the above considerations, the Court held that while indeterminate detention for the public protection is permissible in certain circumstances, where a government seeks to rely solely on the risk posed to the public by offenders in order to justify their continued detention, regard must be had to the need to encourage the rehabilitation of those offenders. In the applicants' cases, this meant that they were required to be provided with reasonable opportunities to undertake courses aimed at helping them to address their offending behaviour and the risks they posed. In such situations, any restrictions or delays encountered as a result of resource considerations must be reasonable in all the circumstances of the case, and a reasonable balance must be struck between the need to provide appropriate conditions of detention in a timely fashion and the efficient management of public funds. In striking this balance, particular weight must be given to the prisoner's right to liberty, bearing in mind that a significant delay in access to treatment is likely to result in a prolongation of detention. Therefore, following the expiry of the applicants' tariff periods and until steps were taken to progress them through the prison system with a view to providing them with access to appropriate rehabilitative courses, their detention was arbitrary and consequently unlawful within the meaning of Article 5 § 1.

Conclusion: violation (unanimously).

Article 5 § 4: The second and third applicants further alleged that even if they had succeeded in the challenge to their detention they were not been able to secure their release as a result of the provisions of primary legislation. Article 5 § 4 is *lex specialis* in this context. The Court noted that it was open to the applicants to commence judicial review proceedings in order to challenge the failure to provide the relevant courses. Both applicants did so and were transferred to a facility where they could participate in the courses necessary to secure their release.

Conclusion: no violation (six votes to one).

The Court also considered that the issues raised by the applicants under Article 5 § 4 relating to the lack of courses had already been examined in the context of Article 5 § 1, and that the complaint under this Article gave rise to no separate issue.

Article 41: In respect of non-pecuniary damage the Court awarded the first applicant EUR 3,000, the second applicant EUR 6,200 and the third applicant EUR 8,000.

(See also Saadi v. the United Kingdom [GC], no. 13229/03, 29 January 2008, Information Note no. 104; M. v. Germany, no. 19359/04, Information Note no. 125; Grosskopf v. Germany, no. 24478/03, 21 October 2010)

Procedure prescribed by law

Detention alleged to be unlawful on account of lack of legal representation during police custody and questioning by investigating judge: *inadmissible*

Simons v. Belgium - 71407/10
Decision 28.8.2012 [Section II]

Facts – In March 2010 the police were informed that a man had been stabbed with a knife. At the scene, the applicant stated that the victim was her boyfriend and that she was responsible for the stabbing. She was arrested the same day and interviewed as a suspect by the investigating officers. She was not assisted by a lawyer nor, she alleged, was she informed in advance of her right to remain silent. She admitted having stabbed her boyfriend and, in reply to the investigating officers' questions, gave a detailed account of the incident. The following day she gave evidence before an investigating judge. Again, she was not assisted by a lawyer. The applicant confirmed the statement she had made to the police. The investigating judge then informed her that she was being charged and that she had the "right to choose a lawyer", and issued a warrant for her arrest. In June 2010 the indictments division ordered the applicant's release on the grounds that her detention was no longer required in the interests of public safety. The investigation is still in progress and the case is not yet ready for trial.

Law – Article 5 § 1: The Court had to ascertain whether there was a "general principle" implicit in the Convention according to which all persons deprived of their liberty had to have the possibility of being assisted by a lawyer from the beginning of their detention. The Court's case-law had established the principle that persons "charged with a criminal offence" within the meaning of Article 6 of the Convention had the right to be assisted by a lawyer from the start of their time in police custody or pre-trial detention and, where applicable, during questioning by the police and the investigating judge. However, that was a principle inherent in the right to a fair trial, which was based specifically on the third paragraph of Article 6, concerning, in particular, the right of any person "charged with a criminal offence" to legal assistance of his or her own choosing. It was not a "general principle" implicit in the Convention, such principles being by definition overarching in nature. The general principles implicit in the Convention to which the case-law on Article 5 § 1 referred were the rule of law and the related principle of legal certainty, the principle of proportionality and the principle of protection against arbitrariness. Hence, while the impossibility in law for persons "charged with a criminal offence" and deprived of their liberty to be assisted by a lawyer from the start of their detention had a bearing on the fairness of the criminal proceedings in question, it could not be inferred from that fact alone that their detention was contrary to Article 5 § 1 as failing to satisfy the lawfulness requirement inherent in that provision.

Conclusion: inadmissible (manifestly ill-founded).

Article 5 § 1 (e)

Persons of unsound mind

Court order for admission to psychiatric hospital for observation owing to concerns about applicant's mental state: *inadmissible*

S.R. v. the Netherlands - 13837/07
Decision 18.9.2012 [Section III]

(See Article 5 § 4 below)

Article 5 § 4

Review of lawfulness of detention

Supreme Court decision declaring appeal inadmissible but nevertheless addressing the merits: *inadmissible*

S.R. v. the Netherlands - 13837/07
Decision 18.9.2012 [Section III]

Facts – In July 2006 a public prosecutor submitted a request, supported by a psychiatric report, for provisional authorisation for the applicant's committal to a psychiatric hospital. The Regional Court rejected that request and made an observation order instead, pursuant to which the applicant was admitted to a psychiatric hospital. The applicant appealed to the Supreme Court on points of law, *inter alia*, on the grounds that she had not been heard by the Regional Court before the observation order was issued and that Article 5 § 1 (e) of the Convention did not permit the detention of persons purely for observation for the purposes of determining whether they were of unsound mind. She left hospital three weeks after her admission. The Supreme Court subsequently declared her appeal inadmissible for lack of interest as the

observation order had already lapsed. However, in view of the relevance of the legal questions raised, it nonetheless addressed the merits of a number of her grounds of appeal.

Law – Article 5 § 1: A medical report drawn up by a qualified practitioner not involved in the applicant's existing treatment had been available to the Regional Court and the Court was not disposed to doubt that it reflected genuine concerns that the applicant's mental state was such as to justify at least her detention for a limited period so as to make sure. The fact that the applicant was released after three weeks' observation and that her mental condition was never determined to be dangerous could not be decisive. The Court had previously interpreted Article 5 § 1 (e) so as to allow the detention of persons who had abused alcohol and whose resulting behaviour gave rise to genuine concern for public order and for their own safety. The same applied to persons in respect of whom there was sufficient indication that they may be of unsound mind.

Conclusion: inadmissible (manifestly ill-founded).

Article 5 § 4: In the case of *S.T.S. v. the Netherlands*[1] the Court had noted that a former detainee might well have a legal interest in the determination of the lawfulness of his detention even after his release, for example, in relation to his "enforceable right to compensation", so that by declaring his appeal on points of law inadmissible as having become devoid of interest, the Supreme Court had deprived the proceedings for deciding the lawfulness of his detention of effect, in breach of Article 5 § 4.

In the instant case, however, while it was true that the Supreme Court had declared the applicant's claim inadmissible (as the order appealed against could no longer be overturned), it was not thereby prevented from ruling on the lawfulness of the applicant's detention. Although it did not accept the applicant's complaints as regards the legality of her detention, it did actually express itself in her favour on the complaint that she had not had a proper opportunity to argue her case against the delivery of an observation order as distinct from a provisional order. Had the applicant brought proceedings to obtain compensation for damage, the court seized of the case would have found the Supreme Court's opinion impossible to ignore. Accordingly, the Supreme Court's decision did not have the effect of depriving the applicant of a decision on the merits of her appeal on points of law. Nor was it established that the applicant had been prevented from enjoying the effects of that decision in so far as it was favourable to her position. *S.T.S.* distinguished.

Conclusion: inadmissible (manifestly ill-founded).

1. *S.T.S. v. the Netherlands*, no. 277/05, 7 June 2011, Information Note no. 142.

ARTICLE 6

Article 6 § 1 (criminal)

Fair hearing

Use of evidence from overseas when there was a real risk that it had been obtained by torture: *violation*

El Haski v. Belgium - 649/08
Judgment 25.9.2012 [Section II]

Facts – The applicant is a Moroccan national who travelled on various occasions between Syria, Morocco, Tunisia, Saudi Arabia and Afghanistan. He arrived in Belgium in 2004, with false identity papers, and applied for asylum. He was arrested on 1 July 2004 and charged with various offences, including participating as a leader in the activities of a terrorist group, forgery and uttering, being a leader of a criminal organisation, using a false name, and illegal entry and residence. He was convicted in 2006. The court of appeal and the Court of Cassation upheld the judgment. The convictions were based *inter alia* on two statements made by a witness to the authorities in Morocco, which the applicant alleged had been made under torture.

Law – Article 6 § 1: In the realm of proof that statements used in evidence had been obtained as a result of treatment contrary to Article 3, various possibilities could arise. In the event, however, that an accused person asked the domestic court to disallow statements obtained from a witness in a third country, allegedly through treatment contrary to Article 3, the reasoning developed in the *Othman* judgment[2] should be applied. Thus, when the judicial system of another State did not offer real guarantees of independent, impartial and serious examination of allegations of torture or inhuman or degrading treatment, in order for the accused to be able to request the exclusion of a statement

2. *Othman (Abu Qatada) v. the United Kingdom*, no. 8139/09, 17 January 2012, Information Note no. 148.

from the case file it sufficed for him to demonstrate that there was a "real risk" that it had been obtained by such treatment. The domestic court could therefore not allow the evidence concerned without having first examined the arguments of the accused and convinced itself, in spite of those arguments, that no such risk existed.

Numerous references in reports published by the United Nations or various NGOs indicated that at the material time the Moroccan judicial system did not offer any real guarantees of independent, impartial and serious examination of allegations of torture or inhuman or degrading treatment, particularly during the investigations and proceedings that followed the Casablanca bombings of 16 May 2003. It was therefore sufficient for the applicant to demonstrate to the domestic courts that there existed a real risk that the statements had been obtained by torture or inhuman or degrading treatment. The Court considered that as the impugned statements had been made by suspects questioned in Morocco in the wake of the Casablanca bombings, the aforesaid reports established the existence of a "real risk" that they had been obtained through treatment contrary to Article 3 of the Convention. Article 6 accordingly required the domestic courts not to use them in evidence without previously having made sure, in the light of the particular facts of the case, that they had not been thus obtained. However, in refusing to disallow the statements concerned the court of appeal had simply explained that the applicant had produced no "concrete evidence" that could give rise to a "reasonable doubt" as to how the statements had been obtained.

Conclusion: violation (unanimously).

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

ARTICLE 8

Respect for private life
Respect for family life

Prohibition, under legislation implementing UN Security Council Resolutions, on travel through country surrounding enclave:
violation

Nada v. Switzerland - 10593/08
Judgment 12.9.2012 [GC]

Facts – The Swiss Federal Taliban Ordinance was enacted pursuant to several UN Security Council Resolutions. It had the effect of preventing the applicant, an Egyptian national, from entering or transiting through Switzerland due to the fact that his name had been added to the list annexed to the UN Security Council's Sanctions Committee of persons suspected of being associated with the Taliban and al-Qaeda ("the list"). The applicant had been living in Campione d'Italia, an Italian enclave of about 1.6 square kilometres surrounded by the Swiss Canton of Ticino and separated from the rest of Italy by a lake. The applicant claimed that the restriction made it difficult for him to leave the enclave and therefore to see his friends and family, and that it caused him suffering due to his inability to receive appropriate medical treatment for his health problems. The applicant further found it difficult to remove his name from the Ordinance, even after the Swiss investigators had found the accusations against him to be unsubstantiated.

Law

(a) *Preliminary objections* – The respondent Government argued that the application was inadmissible on several counts, namely that it was incompatible *ratione personae* and *ratione materiae* with the Convention, that the applicant did not have "victim" status, and that the applicant had failed to exhaust domestic remedies. The Court joined consideration of the issue of compatibility *ratione materiae* to the merits. As regards the remaining preliminary objections it held as follows:

(i) *Compatibility* ratione personae*:* The Court could not endorse the argument that the measures taken by the member states of the United Nations to implement the relevant Security Council resolutions were attributable to that organisation, rather than to the respondent State. Unlike the position in *Behrami and Behrami v. France*[1], in which the impugned acts and omissions were attributable to UN bodies, the relevant resolutions in the instant case required States to act in their own names and to implement them at national level. The measures imposed by the Security Council resolutions had been implemented at national level by an Ordinance of the Federal Council and the applicant's requests for exemption from the ban on entry into Swiss territory were rejected by the Swiss authorities. The acts and omissions in ques-

1. *Behrami and Behrami v. France and Saramati v. France, Germany and Norway* (dec.) [GC], nos. 71412/01 and 78166/01, 2 May 2007, Information Note no. 97.

tion were thus attributable to Switzerland and capable of engaging its responsibility.

Conclusion: preliminary objection dismissed (unanimously).

(ii) *Victim status*: The lifting of the sanctions, more than six years after they were imposed, could not be regarded as an acknowledgement by the Government of a violation of the Convention and had not been followed by any redress within the meaning of the Court's case-law. Accordingly, the applicant could still claim to have been a victim of the alleged violations.

Conclusion: preliminary objection dismissed (unanimously).

(iii) *Exhaustion of domestic remedies*: The Court noted that the applicant had not challenged the refusals to grant his requests for exemption from the sanctions regime, and that on two occasions he had been granted exemptions he had not used. However, even supposing that those exemptions had alleviated certain effects of the regime by allowing him to temporarily leave the enclave for certain reasons, the Court was of the view that the issue of exemptions was part of a broader situation whose origin lay in the addition by the Swiss authorities of the applicant's name to the list annexed to the Taliban Ordinance, which was based on the UN list. Noting that the applicant had, without success, submitted many requests to the national authorities for the deletion of his name from the list and that the Federal Court had dismissed his appeal without examining the merits of his complaint under the Convention, the Court took the view that the applicant had exhausted domestic remedies relating to the sanctions regime as a whole in respect of his complaints under Articles 5 and 8 of the Convention. It joined to the merits the objection that he had failed to exhaust domestic remedies in respect of his complaint under Article 13.

Conclusion: preliminary objection dismissed (unanimously).

(b) *Merits* – Article 8: The impugned measures had left the applicant in a confined area for at least six years and had prevented him, or at least made it more difficult for him, to consult his doctors in Italy or Switzerland or to visit his friends and family. There had thus been interference with the applicant's rights to private life and family life. The measures had a sufficient legal basis and pursued the legitimate aims of preventing crime and contributing to national security and public safety.

The Court then considered whether the interference was justified. It reiterated that a Contracting Party is responsible under Article 1 of the Convention for all acts and omissions of its organs regardless of whether the act or omission in question was a consequence of domestic law or of the necessity to comply with international legal obligations. When considering the relationship between the Convention and Security Council resolutions, the Court had found in *Al-Jedda v. the United Kingdom*[1] that there must be a presumption that the Security Council does not intend to impose any obligation on Member States to breach fundamental principles of human rights and that it was to be expected that clear and explicit language would be used were the Security Council to intend States to take particular measures which would conflict with their obligations under international human-rights law. In the present case, however, that presumption had been rebutted as Resolution 1390 (2002) expressly required the States to prevent individuals on the list from entering or transiting through their territory.

Nevertheless, the UN Charter did not impose on States a particular model for the implementation of resolutions adopted by the Security Council under Chapter VII, but instead left them a free choice among the various possible models for transposition of those resolutions into their domestic legal order. Accordingly, Switzerland had enjoyed a limited but real latitude in implementing the relevant binding resolutions. The Court went on to consider whether the measures taken by the Swiss authorities were proportionate in light of this latitude. It found it surprising that the Swiss authorities had apparently not informed the Sanctions Committee until September 2009 of the Federal Prosecutor's findings in May 2005 that the accusations against the applicant were clearly unfounded: a more prompt communication of the investigative authorities' conclusions might have led to the applicant's name being deleted from the UN list considerably earlier. As regards the scope of the prohibition, it had prevented the applicant not only from entering Switzerland but also from leaving Campione d'Italia at all, in view of its situation as an enclave, even to travel to any other part of Italy, the country of which he was a national. There was also a medical aspect to the case that was not to be underestimated: the applicant, who was born in 1931 and had health problems, was denied a number of requests he had submitted for ex-

1. *Al Jedda v. the United Kingdom* [GC], no. 27021/08, 7 July 2011, Information Note no. 143.

emption from the entry and transit ban for medical reasons or in connection with judicial proceedings. Nor had the Swiss authorities offered him any assistance in seeking a broad exemption from the ban in view of his particular situation. While it was true that Switzerland was not responsible for the applicant's name being on the list and, not being his State of citizenship or residence, was not competent to approach the Sanctions Committee for delisting purposes, the Swiss authorities appeared never to have sought to encourage Italy to undertake such action or offer it assistance for that purpose. The Court considered in this connection that they had not sufficiently taken into account the realities of the case, especially the unique situation of the applicant geographically, and the considerable duration of the measures. The respondent State could not validly confine itself to relying on the binding nature of Security Council resolutions, but should have persuaded the Court that it had taken – or attempted to take – all possible measures to adapt the sanctions regime to the applicant's individual situation. That finding dispensed the Court from determining the question of the hierarchy between the obligations arising under the Convention on the one hand and under the UN Charter on the other. The respondent Government had failed to show that they had attempted, as far as possible, to harmonise the obligations that they regarded as divergent. Their preliminary objection that the application was incompatible *ratione materiae* with the Convention was therefore dismissed. Having regard to all the circumstances, the restrictions imposed on the applicant's freedom of movement for a considerable period of time had not struck a fair balance between his right to the protection of his private and family life and the legitimate aims pursued.

Conclusion: violation (unanimously).

Article 13: The Court observed that the applicant was able to apply to the national authorities to have his name deleted from the list and that this could have provided redress for his complaints under the Convention. However, those authorities did not examine his complaints on the merits. In particular, the Federal Court took the view that whilst it could verify whether Switzerland was bound by the Security Council resolutions, it could not lift the sanctions imposed on the applicant on the ground that they did not respect human rights. The Federal Court, moreover, expressly acknowledged that the delisting procedure at United Nations level could not be regarded as an effective remedy within the meaning of Article 13 of the Convention.

Conclusion: violation (unanimously).

Article 5 § 1: Although the restrictions on the applicant's freedom of movement were maintained for a considerable length of time, the area in which he was not allowed to travel was the territory of a third country which, under international law, had the right to prevent the entry of an alien. The restrictions in question did not prevent the applicant from freely living and moving within the territory of his permanent residence. Although that territory was small the applicant was not, strictly speaking, in a situation of detention, nor was he actually under house arrest. The sanctions regime permitted the applicant to seek exemptions from the entry or transit ban and such exemptions were indeed granted to him on two occasions (although he did not make use of them). Accordingly, the applicant had not been "deprived of his liberty" within the meaning of Article 5 § 1.

Conclusion: inadmissible (manifestly ill-founded).

Article 41: No claim made in respect of damage.

Respect for private life

Refusal to renew teacher of Catholic religion and morals' contract after he publicly revealed his position as a "married priest": *case referred to the Grand Chamber*

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

The applicant is a secularised Catholic priest. In 1984 he applied to the Vatican for dispensation from celibacy. He was married the year after, and he and his wife have five children. He taught religion and morals in a State high school from 1991 and his contract was renewed every year by the Bishop of the Diocese, the Ministry of Education being bound by that decision. In 1996 the applicant took part in a rally of the "Movement for Optional Celibacy". The participants expressed their disagreement with the Church's position on a number of issues such as abortion, divorce, sexuality and contraception. An article was published in a regional newspaper showing a photograph of the applicant at the rally together with his family, and including his name and various comments by him. In 1997 he was dispensed from celibacy. His contract was not renewed on the ground that he had failed in his duty to teach "without risking scandal", by publicly displaying his situation as a "married priest". The applicant

complained about the decision to the domestic courts but was unsuccessful.

In a judgment of 15 May 2012 a Chamber of the Court found, by six votes to one, that there had been no violation of Article 8 of the Convention (see Information Note no. 152). The Court considered that the courts of competent jurisdiction had shown, by sufficiently detailed reasoning, that the obligations of loyalty imposed on the applicant were acceptable in so far as their aim was to ensure respect for the sensitivity of the general public and the parents of the high-school pupils and that the duty of reserve and discretion were all the more important as the applicant's teaching was addressed directly to minors, who by nature were vulnerable and easily influenced.

On 24 September 2012 the case was referred to the Grand Chamber at the applicant's request.

Homosexual couples denied access to registered partnership status: *relinquishment in favour of the Grand Chamber*

Vallianatos and Others v. Greece
29381/09 and 32684/09 [Section I]

The applications concerned Law no. 3719/2008 entitled "Reforms concerning Families, Children, Society and other provisions", which introduced in parallel to marriage an official form of cohabitation, the "registered partnership". Under the first section of that Law, such partnerships are reserved for opposite-sex adults. The applicants, apart from the association "Synthessi", are in homosexual relationships and complain under Articles 8 and 14 of the Convention of a difference in treatment on grounds of sex.

Ban preventing healthy carriers of cystic fibrosis from screening embryos for *in vitro* **fertilisation, despite existence of right to therapeutic abortion in domestic law:** *violation*

Costa and Pavan v. Italy - 54270/10
Judgment 28.8.2012 [Section II]

Facts – Not until their daughter was born with the disease in 2006 did the applicants discover that they were healthy carriers of cystic fibrosis. When Ms Costa subsequently became pregnant again, she underwent a pre-natal test to make sure that their second child would not be born with cystic fibrosis, but the foetus tested positive for the disease. The couple decided to have the pregnancy terminated on medical grounds. Before having any more children the applicants sought access to medically-assisted procreation techniques so they could have the embryos screened prior to implantation. In Italy, however, medically-assisted procreation was available only to sterile or infertile couples or where the man had a sexually transmissible viral disease, and embryo screening (or pre-implantation diagnosis) was prohibited.

Law – Article 8: The applicants' desire to use medically-assisted procreation and embryo screening to have a child not infected with the genetic disease of which they were healthy carriers was a form of expression of their private and family life that fell within the scope of Article 8. Access to embryo screening was banned outright under Italian law, whereas medically-assisted procreation was permitted but only to certain categories of people, to which the applicants did not belong. This interference with the applicants' family life was in accordance with the law and could be considered to pursue the legitimate aims of protecting morals and the rights and freedoms of others. However, the domestic law lacked consistency: on the one hand it prohibited the screening of embryos, a technique that made it possible to select only those not infected with cystic fibrosis for implantation, while on the other hand it permitted the abortion of a foetus infected with the same disease. This meant that in order to protect their right to have a child not infected with cystic fibrosis the only course of action open to the applicants, who were healthy carriers of the disease, was to initiate a pregnancy by natural means and to terminate it if prenatal testing showed the foetus to be infected. Yet a foetus was at a much more advanced stage of development than an embryo. Furthermore, although the Government spoke of protecting the health of the "child", an embryo was not a "child". In these circumstances the Court could not ignore the anxiety the applicant must have felt, for with no access to embryo screening there was always a risk that any child she had would have cystic fibrosis. Nor could the Court ignore the suffering of a mother faced with the painful choice of having an abortion if the foetus she was carrying tested positive for the disease. Unlike the *S.H. and Others* case,[1] which concerned the prohibition of donor insemination, this case concerned homologous insemination and the proportionality

1. *S.H. and Others v. Austria* [GC], no. 57813/00, 3 November 2011, Information Note no. 146.

of a measure in a specific context of inconsistency of the law. Lastly, the authorisation of termination of pregnancy on medical grounds, combined with the prohibition of embryo screening, was a situation found in only three of the thirty-two States covered by a research report, including Switzerland, where amendments to the law were in progress. In view of the inconsistency of the Italian legislation regarding embryo screening, the interference with the applicants' right to respect for their private and family life had been disproportionate.

Conclusion: violation (unanimously).

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

Inability of child abandoned at birth to gain access to non-identifying information or to make request for mother to waive confidentiality: *violation*

Godelli v. Italy - 33783/09
Judgment 25.9.2012 [Section II]

Facts – The applicant was abandoned at birth by her mother, who did not consent to being named on the birth certificate. In 2006 the applicant requested rectification of the birth certificate. The court refused her request on the ground that, in accordance with Law no. 184/1983, she was prohibited from gaining access to the information concerning her origins because her mother, at the time of the birth, had not agreed to have her identity disclosed. That judgment was upheld on appeal.

Law – Article 8: The issue in the present case was whether a fair balance had been struck in weighing the competing rights and interests at stake, namely the applicant's interest in learning about her origins on the one hand and the mother's interest in not disclosing her identity on the other. An individual's interest in discovering his or her parentage did not disappear with age, quite the reverse. In contrast to the French system examined in the *Odièvre v. France* judgment,[1] the Italian legislation did not strive to strike a balance between the competing rights and interests at stake. The applicant's request for access to information concerning her mother and birth family, enabling her to trace some of her roots while ensuring the protection of third-party interests, had met with a blanket and final refusal without any possibility of appeal. In the absence of any mechanism for balancing the applicant's right to discover her origins against the mother's rights and interests in preserving her anonymity, the latter were automatically given preference. Where the birth mother had opted not to disclose her identity, the Italian legislation did not provide any means for a child who was adopted and had not been formally recognised at birth to request access to non-identifying information on his or her origins or the waiver of confidentiality by the mother. Furthermore, whereas legislative reform in France now made this possible, a bill on reforming the system had been before the Italian parliament for four years and had still not been passed. Accordingly, the Court considered that the Italian authorities had not sought to strike a balance and ensure proportion between the interests of the parties concerned and had therefore overstepped their margin of appreciation.

Conclusion: violation (six votes to one).

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

1. *Odièvre v. France* [GC], no. 42326/98, 13 February 2003, Information Note no. 50.

ARTICLE 10

Freedom of expression

Publication of untrue statements concerning alleged judicial bias: *no violation*

Falter Zeitschriften GmbH v. Austria (no. 2)
- 3084/07 Judgment 18.9.2012 [Section I]

Facts – In May 2005 a certain H.P. was acquitted in criminal proceedings of the attempted rape of an asylum-seeker. The applicant company published an article which was highly critical of those proceedings, in particular on account of the manner in which evidence was taken and assessed and of alleged bias on the part of the presiding judge. The judge then brought an action in defamation against the applicant company on account of statements in the impugned article accusing her of ignoring relevant evidence, giving a "scandalous" judgment and having "unfinished business" with the alleged victim. In December 2005 a regional court found for the judge and ordered the applicant company to pay EUR 7,000 in compensation and to publish a summary of the judgment.

Law – Article 10: The issue discussed in the impugned article concerned a matter of public interest, but in addition to criticising H.P.'s trial

also contained particularly harsh criticism of the presiding judge as having been biased. The statements in question must be considered as statements of fact, which the applicant company unsuccessfully sought to prove before the domestic courts. The seriousness of the allegation that the judge had purposely given too little weight to some evidence and too much weight to other evidence required a very solid factual basis, which the applicant company was unable to rely on. The applicant company was ultimately ordered to pay EUR 7,000, a reasonable amount taking into account the length and content of the impugned article. In sum, in awarding such compensation in respect of an article that was so damaging to the judge's reputation, the State had acted within its margin of appreciation.

Conclusion: no violation (unanimously).

Refusal to allow trade union to campaign for education in a mother tongue other than the national language: *violation*

Eğitim ve Bilim Emekçileri Sendikası v. Turkey - 20641/05 Judgment 25.9.2012 [Section II]

(See Article 11 below)

ARTICLE 11

Freedom of association

Application for trade union's dissolution for supporting right to education in a mother tongue other than the national language: *violation*

Eğitim ve Bilim Emekçileri Sendikası v. Turkey - 20641/05 Judgment 25.9.2012 [Section II]

Facts – In its statutes the applicant union – the Union of Salaried Employees in Education and Science – defended "the right of all individuals in society, in equality and liberty, to receive democratic, secular, scientific teaching free of charge in their mother tongue". In February 2002 the area governor asked them to delete the term "mother tongue" because it was incompatible with the Constitution. Then in March 2002 the governor asked the public prosecutor to institute proceedings to have the union dissolved because it had not yet amended its statutes as requested. In July 2002 the applicant union amended the offending paragraph thus: "the right of all individuals in society to receive teaching in their mother tongue". The public prosecutor discontinued the dissolution proceedings, noting in particular that there had been a lively debate on the matter and that the issue was to be placed on the agenda of a parliamentary session, so it was not the right time to take action to have the union dissolved. In October 2003, at the request of the Armed Forces Chief of Staff, the governor asked the applicant union to delete the offending words from its statutes. He subsequently again approached the public prosecutor to have the union dissolved, and in July 2004 the public prosecutor applied for the union's dissolution. The Labour Court dismissed the dissolution proceedings, explaining that the wording of the statutes did not jeopardise the territorial integrity of the nation or State, or the existing borders of the Republic of Turkey. The public prosecutor appealed. The Court of Cassation set aside the Labour Court's judgment but in a second judgment the Labour Court reiterated its initial finding. In July 2005 the union deleted the words "mother tongue" from its statutes.

Law – Article 11: The proceedings brought against the applicant union amounted to interference by the national authorities with the union's exercise of its right to freedom of association, preventing it from collectively or individually pursuing the aims set forth in its statutes. The interference was prescribed by law and pursued the legitimate aims of preventing disorder and protecting national security and the territorial integrity of the State. It remained to be seen whether the interference was "necessary in a democratic society" to achieve the legitimate aims pursued.

Two sets of proceedings had been brought against the applicant union for defending teaching in the "mother tongue". The first proceedings were discontinued. In the second, as the Court of Cassation found that the statutes were incompatible with the Constitution and the principle of the unitary State, the union had been obliged to delete the offending words in order to avoid dissolution. However, the offending passage contained no incitement to resort to violence or any other illegal means to achieve its aim. The principle the applicant union defended was not at variance with the fundamental principles of democracy. Furthermore, the offending words had to be viewed in the context of an on-going debate at the material time on the topic of teaching in the mother tongue. Such a proposal might upset certain convictions of the majority population. However, the proper functioning of democracy required public debate in order to help

find solutions to questions of general political or public interest. Also, the latest report of the European Committee against Racism and Intolérance (ECRI) on Turkey showed that there were Turkish children whose mother tongue was not Turkish but Adyghe, Abkhaz or Kurdish. In this connection, the Law of 3 August 2002 had made provision for the opening of private lessons to teach languages and dialects other than Turkish. This legislative approach contrasted with the attitude taken by the national courts in considering that the content of the union's statutes was unconstitutional. The aim professed in the statutes had not threatened national security or public order. The reasons given by the Court of Cassation had not been relevant and sufficient, or proportionate to the legitimate aims pursued. The proceedings to have the applicant union dissolved, which had obliged it to amend the offending passage of its statutes by deleting the words "to receive teaching in their mother tongue", could not reasonably be regarded as answering a pressing social need.

Conclusion: violation (unanimously).

Article 10: This Article includes freedom to receive and impart information and ideas in any language which affords the opportunity to take part in the public exchange of cultural, political and social information and ideas of all kinds. The second set of dissolution proceedings against the applicant union amounted to interference by the national authorities with the union's right to freedom of expression. That interference was prescribed by law and pursued the legitimate aims of preventing disorder and protecting national security and the territorial integrity of the State.

The offending passage from the applicant union's statutes defended the idea of teaching in the "mother tongue". In the Turkish context and taking the words at their face value, this provision could be read as defending teaching in Turkish as the mother tongue. Regard being had to the country's historical and social background, however, the mother tongue could be another language. At the material time the law had been amended to permit private teaching for Turkish nationals in mother tongues other than Turkish. In addition, the offending part of the applicant union's statutes did not encourage the use of violence, or armed resistance or insurrection, or instil hatred or threaten the territorial integrity of the State. In conclusion, the dissolution proceedings against the union, obliging it to delete the offending words from its statutes, had been disproportionate to the aims pursued and had therefore not been necessary in a democratic society.

Conclusion: violation (unanimously).

Article 41: EUR 7,500 in respect of non-pecuniary damage; claim in respect of pecuniary damage dismissed.

Strong ministerial criticism of calls by police union for Government's resignation: *no violation*

Trade Union of the Police in the Slovak Republic and Others v. Slovakia - 11828/08
Judgment 25.9.2012 [Section III]

Facts – The first applicant was a trade union representing police officers. The second, third and fourth applicants were respectively its former president and vice-president and one of its members. In October 2005 the union organised a public meeting in one of the main squares in Bratislava to protest against proposed legislative changes to the police's social-security regime. During the meeting the participants spontaneously called for the Government to step down and a banner on display read "If the State doesn't pay a policeman, the mafia will do so with pleasure." Subsequently the Minister of the Interior criticised the meeting and its organisers and removed the second applicant from the post of director in the police force. The third applicant was also removed from his position at the Minister's behest. The Minister stated in the press and on television that he would dismiss anyone who acted contrary to the ethical code of the police again, that the union representatives had lost credibility and that he was not obliged to negotiate with them. The applicants lodged a complaint with the Constitutional Court alleging that the Minister's statements would deter members of the police force from availing themselves of their freedoms of expression, assembly and association for fear of sanctions. In 2007 the Constitutional Court dismissed their complaint after finding that the Minister's statements were part of the dialogue between both parties and did not amount to a breach of the freedoms at issue.

Law – Article 11 read in the light of Article 10: The Court accepted that the applicants had been intimidated by the Minister's statements, which could thus have had a chilling effect and discouraged them from pursuing activities within the trade union, including organising or taking part in similar meetings. There had consequently been interference with the exercise of their right to freedom of association. What the Court had to establish was whether such interference had been "necessary in a democratic society". Under domestic

law, when expressing their views in public, police officers were required to act in an impartial and reserved manner in order to maintain public trust. Given their primordial role in ensuring internal order and security and in fighting crime, duties and responsibilities inherent in the position and role of police officers justified particular arrangements as regards the exercise of their trade-union rights. The Court observed that the Minister's impugned statements had been given in reaction to, and were exclusively directed against, the calls for the Government's resignation and a slogan implying that there was a risk that the police might get involved with the mafia. The Minister had considered their conduct to be in breach of the obligation of police officers to express their views in an impartial and reserved manner and his statements had represented an immediate reaction to ideas and views expressed at the meeting. Given his responsibility for the appropriate functioning of the entire Ministry, including the police, the Minister had been entitled to express his opinion on the situation. Moreover, it did not appear that the applicants' right to be heard or to continue pursuing trade-union activities had been impaired in any way. In sum, the Court accepted that the interference at issue corresponded to a "pressing social need" and that the reasons for the interference were "relevant and sufficient".

Conclusion: no violation (five votes to two).

ARTICLE 14

Discrimination (Article 8)

Homosexual couples denied access to registered partnership status: *relinquishment in favour of the Grand Chamber*

Vallianatos and Others v. Greece
29381/09 and 32684/09 [Section I]

(See Article 8 above, page 15)

Dismissal of HIV positive employee upheld by Court of Cassation in order to avoid tensions in the workplace: *admissible*

I.B. v. Greece - 552/10
Decision 28.8.2012 [Section I]

Facts – The applicant, who was HIV-positive, was dismissed following complaints by co-workers unwilling to work with him. In May 2005 the first-instance court found that he had been dismissed illegally. The employer lodged an appeal, which was rejected. In March 2009 the Court of Cassation quashed the decision of the Court of Appeal, finding that the termination of an employment contract was not abusive if it was justified in the employer's interests.

Law – Article 14 in conjunction with Article 8: The applicant complained that his dismissal was discriminatory and based on his co-workers' prejudice regarding his HIV status, and that the Court of Cassation's argument that his dismissal was justified by the need to maintain a good atmosphere at work could not serve as a basis for differential treatment contrary to Article 14. Furthermore, the Court of Cassation had clearly been called upon to rule primarily on the employer's appeal on points that had been examined by the lower courts, that is to say the reasons for and the effects of the applicant's dismissal. The Court of Cassation had quashed the decision of the Court of Appeal, finding that the applicant's dismissal was justified by the employer's concern to restore a peaceful atmosphere in the workplace in the face of the applicant's co-workers' concern about his HIV status, which had caused them to demand his dismissal. The complaints submitted to the Court under Article 8 had thus been raised in substance before the domestic courts.

Conclusion: admissible (unanimously).

ARTICLE 35

Article 35 § 3 (a)

Competence *ratione temporis*

Court's temporal jurisdiction in respect of deaths that occurred 58 years before the Convention entered into force in respondent State: *case referred to the Grand Chamber*

Janowiec and Others v. Russia - 55508/07 and 29520/09 Judgment 16.4.2012 [Section V]

(See Article 3 above, page 7)

Competence *ratione materiae*

Complaint relating to implementation of previous European Court judgment and raising no new facts: *inadmissible*

Egmez v. Cyprus - 12214/07
Decision 18.9.2012 [Section IV]

Facts – In a judgment of 21 December 2000,[1] the Court found that the applicant in the present case had been ill-treated contrary to Article 3, and that there had been a breach of Article 13 of the Convention as the authorities had not conducted an investigation capable of leading to the punishment of the officers involved in the applicant's ill-treatment. Two years after the judgment became final, the Government began an investigation into the applicant's case. This investigation subsequently lapsed into inactivity, allegedly due to the inability to obtain a statement from the applicant. In a fresh application to the Court, the applicant claimed that this investigation had not been adequate.

Law

Article 35 § 3 (a): The Court had consistently emphasised that it does not have jurisdiction to verify whether a Contracting Party has complied with the obligations imposed on it by one of the Court's judgments. However there may be certain circumstances where measures taken by a respondent State to remedy a violation found by the Court raise a new issue undecided by the initial judgment. The determination of the existence of a "new issue" very much depends on the specific circumstances of a given case.

In its judgment of 21 December 2000 concerning the applicant's first application the Court found that the domestic authorities would have discharged their obligations under the Convention by instituting criminal proceedings. The subsequent appointment of the investigator and the ensuing investigation constituted the individual measures adopted by the Government in order to execute that judgment. Consequently, those steps could not be considered as new factual developments as they formed part of the measures adopted in pursuance of the Court's initial judgment and thus fell within the supervision exercised by the Committee of Ministers. The Court did not, therefore, have jurisdiction to review those measures. The Court then noted from the Government's observations that the investigation had lapsed into inaction once difficulties were encountered in obtaining a statement from the applicant. In light of this inactivity it was clear that there had been no developments or any new events that could revive a procedural obligation under Article 3 and thus trigger a possible breach of that provision. Therefore the Court had no jurisdiction to examine the applicant's complaint.

Conclusion: inadmissible (incompatible *rationae materiae*).

(See also *Verein Gegen Tierfabriken Schweiz (VGT) v. Switzerland* [GC], no. 32772/02, 30 June 2009, Information Note no. 120; *Steck-Risch and Others v. Liechtenstein* (dec.), no. 29061/08, 11 May 2010, Information Note no. 130; and *Ivantoç and Others v. Moldova and Russia*, no. 23687/05, 15 November 2011, Information Note no. 146.)

1. *Egmez v. Cyprus*, no. 30873/96, 21 December 2000, Information Note no. 25.

Article 35 § 3 (b)

No significant disadvantage

EUR 50 fine for refusing to participate in organisation of elections: *inadmissible*

Boelens and Others v. Belgium - 20007/09 et al.
Decision 11.9.2012 [Section II]

Facts – The applicants were allocated various tasks in the course of the federal elections of June 2007. They sent registered letters refusing to take part on the grounds that the elections were manifestly unconstitutional. They relied in their letter on a judgment of the Administrative Jurisdiction and Procedure Court (subsequently the "Constitutional Court") of 26 May 2003. The applicants were then prosecuted for failing to carry out their duties without "valid grounds". They were acquitted at first instance, but the criminal division of the court of appeal set aside convicted them on appeal and ordered each applicant to pay a fine of EUR 50. Their appeals on points of law were dismissed.

Law – Article 35 § 3 (b): The applicants complained of their prosecution for refusing to take part in the organisation of the federal elections. They further complained that the domestic courts had failed to take into consideration the unconstitutional nature of the elections. Having regard to the wording of the complaints, the Court, as master of the characterisation to be given in law to the facts of the case, decided to examine the case solely in terms of the right to a fair trial.

Applying the admissibility criterion set out in Article 35 § 3 (b), the Court had to examine whether the applicants had suffered a "significant disadvantage" and if not, whether either of the two protection clauses was applicable. The applicants were each ordered to pay a fine of EUR 50. The financial loss was therefore very minor. Beyond that aspect, there was no evidence that, in the circumstances of the case, their conviction had had any significant impact on their personal situation. Accordingly, they had not suffered a "significant disadvantage" with regard to their right to a fair trial. As to the issue of whether respect for human rights as defined in the Convention and the Protocols thereto required an examination of the application on the merits, the disputed provisions of the Constitutional Court's judgment of 26 May 2003 on the constitutionality of the electoral constituency had been amended by a law of 19 July 2012. In those circumstances, and given that the case was now only of historical interest, respect for human rights did not require continued examination of this complaint. Finally, having regard to the third condition in the new admissibility criterion, which required that the case had been "duly considered" by a domestic tribunal, the applicants' actions had been examined on the merits by the national courts. Thus, they had had an opportunity to make their submissions in adversarial proceedings.

Conclusion: inadmissible (majority).

ARTICLE 1 OF PROTOCOL No. 1

Possessions

Frustrated legitimate expectation that a tax liability that was not certain or of a fixed amount would become time-barred:
inadmissible

Optim and Industerre v. Belgium - 23819/06
Decision 11.9.2012 [Section II]

Facts – Between 1989 and 1997 corporation tax liabilities were registered in the names of the two applicant companies. They submitted administrative complaints to challenge the payments, requesting that the amount of the tax that, according to the relevant terminology, remained "indisputably due" (i.e. while the complaints were pending) be set at zero, and their requests were granted. The applicants were subsequently issued with payment orders that stopped time running for the purposes of the statutory limitation period. However, a judgment of the Court of Cassation in 2002 found that a payment order did not stop time running if the registered tax liabilities were disputed. The legislature then intervened to prevent disputed tax liabilities from becoming time-barred. In particular, a new interpretative legal provision was adopted to the effect that "payment orders must be interpreted as also constituting an act interrupting the limitation period ... even when the disputed tax liability is not certain or of a fixed amount". The applicant companies' complaints were rejected and they lodged appeals. The proceedings are still pending.

Law – Article 1 of Protocol No. 1: The applicant companies had claimed not that they had a right to receive a payment but that they had a right to be released from tax liabilities by the statute of limitations, a right that in their view thus had a pecuniary value. They had argued that, before the legislative intervention in question, they had had a legitimate expectation that their tax liabilities would become time-barred. In certain circumstances, a debtor's right to be released from his liability could be described as an "asset" and therefore as a "possession". It was necessary, first, for this right to be sufficiently established in domestic law, such that the debtor could claim to have a "legitimate expectation" in this connection; and, second, for the reality and amount of the debt itself to be established. An expectation – however legitimate – of being released from a "potential" liability could not be regarded as a possession within the meaning of Article 1 of Protocol No. 1. The first of those conditions had been satisfied in the present case. In view of the case-law of the Court of Cassation, the applicant companies could legitimately have expected their liabilities to become time-barred, as the payment notices served on them would not have interrupted the limitation period. However, the opposite was true for the second condition. Under Belgian law, where a complaint was filed in respect of a tax payment and the "amount remaining indisputably due" was set at zero, as in the case of the applicant companies, the disputed payment could not be regarded as a liability that was "certain and of a fixed amount" and could not be recovered by enforcement procedures. In such a case, neither the reality nor the amount of the tax liability was established until the final determination of the dispute. In the present case, the proceedings brought by the applicant companies against the rejection of their complaints were still pending before the domestic courts. Accordingly, whilst the applicant companies

had had a "legitimate expectation" that their tax liabilities would become time-barred, as they were merely potential liabilities the applicant companies had not been deprived of a "possession" within the meaning of Article 1 of Protocol No. 1.

Conclusion: inadmissible (incompatible *ratione materiae*).

The Court also declared inadmissible the complaints under Article 6 § 1 and under Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1.

Peaceful enjoyment of possessions

Absence of machinery to implement Government regulations providing for the restitution of property: *violation*

Catholic Archdiocese of Alba Iulia v. Romania - 33003/03
Judgment 25.9.2012 [Section III]

Facts – The applicant association, the Catholic Archdiocese of Alba Iulia, is a Roman Catholic community. In 1798 it received, as a donation, the Batthyaneum Library, one of the richest collections of historical books in Romania, the building housing this collection, and an astronomical institute, also housed in this building. In 1947 the library and the institute, which had become an Astronomical Museum, were closed and sealed, but the applicant association was not informed of any expropriation decision. A 1961 judgment held that the State had become owner of those properties, having occupied them for more than two years. In July 1998 an emergency order stated that certain assets, including the library and the museum, were to be returned to the national minorities from whom they had been confiscated. However, the applicant association was still waiting to be given possession of the properties in question.

Law – Article 1 of Protocol No. 1

(a) *Existence of an asset protected by Article 1 of Protocol No. 1* – The 1998 emergency order, which was still in force and had been confirmed in its entirety and without amendment by statute five years after its adoption, included an explicit reference to the obligation to return "the Batthyaneum Library and the astrological institute to the Roman Catholic Diocese", and expressly mentioned their ownership by the Roman Catholic Diocese of Alba Iulia. In consequence, the applicant association enjoyed at least a "legitimate expectation", based on the said order, that the issue of ownership of those assets would be decided rapidly, in view of their importance not only for the applicant association, but also given the general interest in question.

(b) *Compliance with Article 1 of Protocol No. 1* – Although the applicant association had followed the preliminary procedure provided for by the 1998 order, almost fourteen years later the protocol of transfer of ownership, to which the order referred, had not been drawn up, nor had the applicant association been informed of any other decision. The 1998 order had not indicated either a deadline or the procedure to be followed to ensure the transfer of property. Nor did it provide for any judicial review with regard to the application of those legislative provisions. Those shortcomings had encouraged delays in the intial procedure, which, given its binding nature, could block *sine die* the applicant association's legitimate expectation of having the issue of the status of the property in question finally resolved. The committee with responsibility for transferring property under the order had never been set up. As a result, it had not been possible to bring legal action against it. In addition, the pre-existing committee to which responsibility had subsequently been transferred had never informed the applicant association of the result of its deliberations or of the date when they would be resumed. In the light of the foregoing, the State's prolonged failure to act, which had thwarted implementation of the 1998 order, had had no legitimate justification. The fourteen years of uncertainty the applicant association had had to contend with regarding the legal status of the properties was all the more incomprehensible in view of their cultural and historical importance, which ought to have called for rapid action to ensure their preservation and appropriate use in the general interest.

Conclusion: violation (unanimously).

Article 41: EUR 15,000 in respect of non-pecuniary damage. With regard to pecuniary damage, it was for the national authorities, under the supervision of the Committee of Ministers, to determine the appropriate remedial measures in order to put an end to the violation found by the Court.

REFERRAL TO THE GRAND CHAMBER

Article 43 § 2

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

Janowiec and Others v. Russia - 55508/07 and 29520/09 Judgment 16.4.2012 [Section V]

(See Article 3 above, page 7)

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

(See Article 8 above, page 14)

RELINQUISHMENT IN FAVOUR OF THE GRAND CHAMBER

ARTICLE 30

Vallianatos and Others v. Greece 29381/09 and 32684/09 [Section I]

(See Article 8 above, page 15)

COURT NEWS

Elections

On 10 September 2012 the Plenary Court elected Dean Spielmann (Luxembourg) as its new President. He will take up his three-year term of office on 1 November 2012, thus succeeding Sir Nicolas Bratza, whose mandate comes to an end on 31 October.

The Plenary Court also elected Guido Raimondi (Italy) as its Vice-President for a three-year term commencing on 1 November 2012.

Rules of Court

A new edition of the Rules of Court entered into force on 1 September 2012. It incorporates amendments made by the Plenary Court on 2 April 2012 relating to the calculation of judges' terms in office (Rule 2), the appointment of non-judical rapporteurs (Rule 18A), the Court's powers to strike out applications from the list (Rule 43) and unilateral declarations (Rule 62A).

COURT RECENT PUBLICATIONS

Practical guide on admissibility criteria

Print editions in English and in French of *Bringing a case to the European Court of Human Rights - A practical guide on admissibility criteria* are now available for purchase from Council of Europe publishing at a price of EUR 13.

New Albanian, Armenian and Greek translations of the guide as updated in 2011 have now been published on the Court's Internet site (<www.echr.coe.int> – Case-Law).

Research report

A new research report has been published on the Court's Internet site (<www.echr.coe.int> – Jurisprudence). It provides a compilation of references to the Inter-American Court of Human Rights and to the American Convention on Human Rights in the case-law of the Strasbourg Court. It is available only in English.

References to the Inter-American Court of Human Rights in the case-law of the European Court of Human Rights (eng)

Human rights factsheets by country

The "country profiles", which provide wide-ranging information on human-rights issues in each respondent State, have been updated to include developments in the first half of 2012. They can be downloaded from the Court's Internet site (<www.echr.coe.int> – Press – Information sheets – Country profiles).

Thematic factsheets on the Court's case-law

Three new factsheets on the Court's case-law (concerning the right to life, companies and taxation) have just been issued, bringing their total number to 41. Almost all the factsheets are also available in Russian and German. They can be downloaded from the Court's Internet site (<www.echr.coe.int> – Press – Information sheets – Factsheets)

The Court in brief

This leaflet, which provides an overview of the Court, the Convention and the Human Rights Building, is now available in print and electronically in the following languages: Bosnian, Dutch, Greek, Latvian, Romanian, Slovenian and Swedish. It will ultimately be translated into all the languages of the Member States of the Council of Europe. PDF versions can be downloaded from the Court's Internet site (<www.echr.coe.int> – The Court).

Sud ukratko (bos)

Het Hof in het kort (nld)

Το Δικαστηριο με μια (ell)

Tiesa īsumā (lav)

Curtea pe scurt (ron)

Sodišče na kratko (slv)

Domstolen i korthet (swe)