

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

Guide on Article 8 of the European Convention on Human Rights

Right to respect for private and family life, home and correspondence

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Prepared by the Registry. It does not bind the Court.

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Note to readers

This Guide is part of the series of Guides on the Convention published by the European Court of Human Rights (hereafter "the Court", "the European Court" or "the Strasbourg Court") to inform legal practitioners about the fundamental judgments and decisions delivered by the Strasbourg Court. This particular Guide analyses and sums up the case-law on Article 8 of the European Convention on Human Rights (hereafter "the Convention" or "the European Convention"). Readers will find herein the key principles in this area and the relevant precedents.

The case-law cited has been selected among the leading, major, and/or recent judgments and decisions.*

The Court's judgments and decisions serve not only to decide those cases brought before it but, more generally, to elucidate, safeguard and develop the rules instituted by the Convention, thereby contributing to the observance by the States of the engagements undertaken by them as Contracting Parties (*Ireland v. the United Kingdom*, § 154, 18 January 1978, Series A no. 25, and, more recently, *Jeronovičs v. Latvia* [GC], 2016, § 109).

The mission of the system set up by the Convention is thus to determine issues of public policy in the general interest, thereby raising the standards of protection of human rights and extending human rights jurisprudence throughout the community of the Convention States (*Konstantin Markin v. Russia* [GC], 2012, § 89). Indeed, the Court has emphasised the Convention's role as a "constitutional instrument of European public order" in the field of human rights (*Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], no. 45036/98, § 156, ECHR 2005-VI, and more recently, *N.D. and N.T. v. Spain* [GC], nos. 8675/15 and 8697/15, § 110, 13 February 2020).

Protocol No. 15 to the Convention recently inserted the principle of subsidiarity into the Preamble to the Convention. This principle "imposes a shared responsibility between the States Parties and the Court" as regards human rights protection, and the national authorities and courts must interpret and apply domestic law in a manner that gives full effect to the rights and freedoms defined in the Convention and the Protocols thereto (*Grzęda v. Poland* [GC], § 324).

This Guide contains references to keywords for each cited Article of the Convention and its Additional Protocols. The legal issues dealt with in each case are summarised in a List of keywords, chosen from a thesaurus of terms taken (in most cases) directly from the text of the Convention and its Protocols.

The HUDOC database of the Court's case-law enables searches to be made by keyword. Searching with these keywords enables a group of documents with similar legal content to be found (the Court's reasoning and conclusions in each case are summarised through the keywords). Keywords for individual cases can be found by clicking on the Case Details tag in HUDOC. For further information about the HUDOC database and the keywords, please see the HUDOC user manual.

* The case-law cited may be in either or both of the official languages (English and French) of the Court and the European Commission of Human Rights. Unless otherwise indicated, all references are to a judgment on the merits delivered by a Chamber of the Court. The abbreviation "(dec.)" indicates that the citation is of a decision of the Court and "[GC]" that the case was heard by the Grand Chamber. Chamber judgments that were not final when this update was published are marked with an asterisk (*).

I. The structure of Article 8

Article 8 of the Convention– Right to respect for private and family life

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

HUDOC keywords

Expulsion (8) – Extradition (8) – Positive obligations (8)

Respect for private life (81) – Respect for family life (81) – Respect for home (81) – Respect for correspondence (81)

Public authority (82) – Interference (82) – In accordance with the law (82) – Accessibility (82) – Foreseeability (82) – Safeguards against abuse (82) – Necessary in a democratic society (82) – National security (82) – Public safety (82) – Economic wellbeing of the country (82) – Prevention of disorder (82) – Prevention of crime (82) – Protection of health (82) – Protection of morals (82) – Protection of the rights and freedoms of others (82)

1. In order to invoke Article 8, an applicant must show that his or her complaint falls within at least one of the four interests identified in the Article, namely: private life, family life, home and correspondence. Some matters, of course, span more than one interest. First, the Court determines whether the applicant's claim falls within the scope of Article 8. Next, the Court examines whether there has been an interference with that right or whether the State's positive obligations to protect the right have been engaged. Conditions upon which a State may interfere with the enjoyment of a protected right are set out in paragraph 2 of Article 8, namely in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. Limitations are allowed if they are "in accordance with the law" or "prescribed by law" and are "necessary in a democratic society" for the protection of one of the objectives set out above. In the assessment of the test of necessity in a democratic society, the Court often needs to balance the applicant's interests protected by Article 8 and a third party's interests protected by other provisions of the Convention and its Protocols.

A. The scope of Article 8

2. Article 8 encompasses the right to respect for private and family life, home and correspondence. In general, the Court has defined the scope of Article 8 broadly, even when a specific right is not set out in the Article. The scope of each of the four rights will be addressed in more detail below.

3. In some cases, the four interests identified in Article 8 might overlap and thus are referred to in more than one of the four chapters.

4. While Article 8 contains no explicit procedural requirements, the decision-making process involved in measures of interference must be fair and ensure due respect for the interests safeguarded by Article 8 (*Fernández Martínez v. Spain* [GC], 2014, § 147). In this connection, the Court may have regard to the length of the authorities' decision-making process and any related judicial proceedings (*T.C. v. Italy*, 2022, §§ 56-57).

B. Should the case be assessed from the perspective of a negative or positive obligation?

5. The primary purpose of Article 8 is to protect against arbitrary interferences with private and family life, home, and correspondence by a public authority (*Libert v. France*, 2018, §§ 40-42; *Drelon v. France*, 2022, § 85). This obligation is of the classic negative kind, described by the Court as the essential object of Article 8 (*Kroon and Others v. the Netherlands*, 1994, § 31). However, Member States also have positive obligations to ensure that Article 8 rights are respected even as between private parties (*Bărbulescu v. Romania* [GC], 2017, §§ 108-111 as to the actions of a private employer; *Von Hannover v. Germany (no. 2)* [GC], 2012, § 98). In particular, although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference: in addition to this primarily negative undertaking, there may be positive obligations inherent in an effective respect for private life (*Lozovyye v. Russia*, 2018, § 36). These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves (see, for example, *Evans v. the United Kingdom* [GC], 2007, § 75, although the principle was first set out in *Marckx v. Belgium*, 1979; *Nicolae Virgiliu Tănase v. Romania* [GC], 2019, § 125). A State's responsibility may be engaged because of acts which have sufficiently direct repercussions on the rights guaranteed by the Convention. In determining whether this responsibility is effectively engaged, regard must be had to the subsequent behaviour of that State (*Moldovan and Others v. Romania (no. 2)*, 2005, § 95).

6. The principles applicable to assessing a State's positive and negative obligations under the Convention are similar (and, therefore in some instances, the Court considered that it did not need to decide which obligation was at issue, see for instance, *Paketova and Others v. Bulgaria*, 2022, § 163). Regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole, the aims in the second paragraph of Article 8 being of a certain relevance (*Hämäläinen v. Finland* [GC], 2014, § 65; *Gaskin v. the United Kingdom*, 1989, § 42; *Roche v. the United Kingdom* [GC], 2005, § 157). These principles may also be relevant in the education context (*F.O. v. Croatia*, 2021, §§ 80-82; *Biba v. Albania*, 2024, §§ 58-60, both citing *Costello-Roberts v. the United Kingdom*, 1993, § 27, as regards school discipline). Where the case concerns a negative obligation, the Court must assess whether the interference was consistent with the requirements of Article 8 paragraph 2, namely in accordance with the law, in pursuit of a legitimate aim, and necessary in a democratic society. This is analysed in more detail below.

7. In the case of a positive obligation, the Court considers whether the importance of the interest at stake requires the imposition of the positive obligation sought by the applicant. Certain factors have been considered relevant for the assessment of the content of positive obligations on States. Some of them relate to the applicant. They concern the importance of the interests at stake and whether "fundamental values" or "essential aspects" of private life are in issue or the impact on an applicant of a discordance between the social reality and the law, the coherence of the administration and legal practices within the domestic system being regarded as an important factor in the assessment carried out under Article 8. Other factors relate to the impact of the alleged positive obligation at stake on the State concerned. The question is whether the alleged obligation is narrow and precise or broad and indeterminate (*Hämäläinen v. Finland* [GC], 2014, § 66).

8. As in the case of negative obligations, in implementing their positive obligations under Article 8, the States enjoy a certain margin of appreciation. A number of factors must be taken into account when determining the breadth of that margin (see, for instance, *Hämäläinen v. Finland* [GC], 2014, § 67 and *Maurice v. France* [GC], 2005, § 117). Where a particularly important facet of an individual's existence or identity is at stake, the margin allowed to the State will be restricted (for example, *X and Y v. the Netherlands*, 1985, §§ 24 and 27; *Christine Goodwin v. the United Kingdom* [GC], 2002, § 90; *Pretty v. the United Kingdom*, 2002, § 71). Where, however, there is no consensus within the Member

States of the Council of Europe, either as to the relative importance of the interest at stake or as to the best means of protecting it, particularly where the case raises sensitive moral or ethical issues, the margin will be wider (*X, Y and Z v. the United Kingdom*, 1997, § 44; *Fretté v. France*, 2002, § 41; *Christine Goodwin v. the United Kingdom* [GC], 2002, § 85). There will also often be a wider margin if the State is required to strike a balance between competing private and public interests or Convention rights (*Fretté v. France*, 2002, § 42; *Odièvre v. France* [GC], 2003, §§ 44-49; *Evans v. the United Kingdom* [GC], 2007, § 77; *Dickson v. the United Kingdom* [GC], 2007, § 78; *S.H. and Others v. Austria* [GC], 2011, § 94). Special weight has to be accorded to the role of the domestic policy-maker in matters of general policy on which opinions within a democratic society could reasonably differ widely. This is particularly true where the question is one on which society would have to make a choice (*Y v. France*, 2023, § 90).

9. While the choice of the means to secure compliance with Article 8 in the sphere of protection against acts of individuals is, in principle, within the State's margin of appreciation, effective deterrence against grave acts, where fundamental values and essential aspects of private life are at stake, requires efficient criminal law provisions. The State therefore has a positive obligation inherent in Articles 3 and 8 of the Convention to enact criminal law provisions effectively punishing rape and to apply them in practice through effective investigation and prosecution (*M.C. v. Bulgaria*, 2003). Children and other vulnerable individuals, in particular, are entitled to effective protection (*X and Y v. the Netherlands*, 1985, §§ 23-24 and 27; *August v. the United Kingdom* (dec.), 2003; *M.C. v. Bulgaria*, 2003), and in domestic law "consent" must reflect the free will to have a particular sexual relationship, at the time it takes place and taking into account its circumstances (*L and Others v. France*, 2025, § 250; *E.A. and European Association for Combating Violence Against Women at Work v. France*, 2025, §§ 134 and 150). In this regard, the Court has, for example, held that the State has an obligation to protect a minor against malicious misrepresentation (*K.U. v. Finland*, 2008, §§ 45-49). The Court has also found the following acts to be both grave and an affront to human dignity: an intrusion into the applicant's home in the form of unauthorised entry into her flat and installation of wires and hidden video cameras inside the flat; a serious, flagrant and extraordinarily intense invasion of her private life in the form of unauthorised filming of the most intimate aspects of her private life, which had taken place in the sanctity of her home, and subsequent public dissemination of those video images; and receipt of a letter threatening her with public humiliation. Furthermore, the applicant is a well-known journalist and there was a plausible link between her professional activity and the aforementioned intrusions, whose purpose was to silence her (*Khadija Ismayilova v. Azerbaijan*, 2019, § 116). The Court has also considered that, in the case of revenge pornography (online public dissemination without consent of intimate photographs of the victim by her former intimate partner), the protection of Article 8 required a criminal-law response (*M.Ș.D. v. Romania*, 2024, § 125).

10. The State's positive obligation under Article 8 to safeguard the individual's physical integrity may extend to questions relating to the effectiveness of a criminal investigation (*Osman v. the United Kingdom*, 1998, § 128; *M.C. v. Bulgaria*, 2003, § 150; *Khadija Ismayilova v. Azerbaijan*, 2019, § 117; *E.G. v. the Republic of Moldova*, 2021, §§ 39-41, *Z v. Iceland*, 2026, §§ 37-39). In *E.G.* the Court held that granting an amnesty to a perpetrator of sexual assault was in breach of the positive obligation under both Articles 3 and 8 of the Convention (§§ 41-50). In *Z v. Iceland*, 2026, the Court found that complaints about unwanted sexual touching should be subject to the most rigorous scrutiny by the authorities in accordance with the emphasis placed on sexual autonomy and the requirement that consent be expressed unambiguously (§ 47). In the *Khadija Ismayilova* case, the Court held that where the Article 8 interference takes the form of threatening behaviour towards an investigative journalist highly critical of the government, it is of the utmost importance for the authorities to investigate whether the threat was connected to the applicant's professional activity and by whom it had been made (*Khadija Ismayilova v. Azerbaijan*, 2019, §§ 119-120).

11. In respect of less serious acts between individuals, which may violate psychological integrity, the obligation of the State under Article 8 to maintain and apply in practice an adequate legal framework

affording protection does not always require that an efficient criminal law provision covering the specific act be in place. The legal framework could also consist of civil law remedies capable of affording sufficient protection (*K.U. v. Finland*, 2008,§ 47; *X and Y v. the Netherlands*, 1985, §§ 24 and 27; *Söderman v. Sweden* [GC], 2013, § 85; *Tolić and Others v. Croatia* (dec.), 2019, §§ 94-95 and § 99; *Biba v. Albania*, 2024, §§ 63-65). Moreover, as regards the right to health, the Member States have a number of positive obligations in this respect under Articles 2 and 8 (*Vasileva v. Bulgaria*, §§ 63-69; *İbrahim Keskin v. Turkey*, 2018, § 61).

12. In sum, the State's positive obligations under Article 8 implying that the authorities have a duty to apply criminal-law mechanisms of effective investigation and prosecution concern allegations of serious acts of violence by private parties. Nevertheless, only significant flaws in the application of the relevant mechanisms amount to a breach of the State's positive obligations under Article 8. Accordingly, the Court will not concern itself with allegations of errors or isolated omissions since it cannot replace the domestic authorities in the assessment of the facts of the case; nor can it decide on the alleged perpetrators' criminal responsibility (*B.V. and Others v. Croatia* (dec.), § 151). Previous cases in which the Court found that Article 8 required an effective application of criminal-law mechanisms, in relations between private parties, concerned the sexual abuse of a mentally handicapped individual; allegations of a physical attack on the applicant; the beating of a thirteen-year-old by an adult man, causing multiple physical injuries; the beating of an individual causing a number of injuries to her head and requiring admission to hospital; and serious instances of domestic violence (*ibid.*, § 154, with further references therein), including serious acts of cyberviolence (*Volodina v. Russia (no. 2)*, 2021, §§ 57-58, *M.Ş.D. v. Romania*, 2024, §§ 121 and 125). In contrast, as far as concerns less serious acts between individuals which may cause injury to someone's psychological well-being, the obligation of the State under Article 8 to maintain and apply in practice an adequate legal framework affording protection does not always require that an efficient criminal-law provision covering the specific act be in place. The legal framework could also consist of civil-law remedies capable of affording sufficient protection (*Noveski v. the former Yugoslav Republic of Macedonia* (dec.), 2016, § 61).

13. The Court has also articulated the State's procedural obligations under Article 8, which are particularly relevant in determining the margin of appreciation afforded to the Member State. The Court's analysis includes the following considerations: whenever discretion capable of interfering with the enjoyment of a Convention right is conferred on national authorities, the procedural safeguards available to the individual will be especially material in determining whether the respondent State has, when fixing the regulatory framework, remained within its margin of appreciation. Indeed it is settled case-law that, whilst Article 8 contains no explicit procedural requirements, the decision-making process leading to measures of interference must be fair and such as to afford due respect to the interests safeguarded to the individual by Article 8 (*Buckley v. the United Kingdom*, 1996, § 76; *Tanda-Muzinga v. France*, 2014, § 68; *M.S. v. Ukraine*, 2017, § 70). This requires, in particular, that the applicant be involved in that process (*Lazoriva v. Ukraine*, 2018, § 63) and that the competent authorities perform a proportionality assessment of the competing interests at stake and give consideration to the relevant rights secured by Article 8 (*Liebscher v. Austria*, 2021, §§ 64-69).

14. The procedural obligation in the context of alleged racial profiling would imply the authorities' duty to investigate the existence of a possible link between racist attitudes and a State agent's act, even of a non-violent nature. That procedural obligation can be met through appropriate criminal, civil, administrative and professional avenues, the State enjoying a margin of appreciation as to the manner in which to organise its system to ensure compliance (*Basu v. Germany*, 2022, §§ 31-39; *Muhammad v. Spain*, 2022, §§ 63-76; *Wa Baile v. Switzerland*, 2024, §§ 126-27).

15. In *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, 2024, the Court defined, for the first time, the scope of the States' positive obligations under Article 8 in the context of climate change. It proceeded on the premise that there were sufficiently reliable indications that anthropogenic climate change existed, that it posed a serious current and future threat to the enjoyment of human

rights guaranteed under the Convention, and that States were aware of it and capable of taking measures to address it effectively (§ 436). It also introduced the concept of "intergenerational burden-sharing" in this context, noting that the legal obligations of States under the Convention extended, not only to individuals currently alive, but also to future generations who were likely to bear an increasingly severe burden of the consequences of present failures to combat climate change (§§ 419-20). It furthermore distinguished three types of measures: mitigation measures, adaptation measures, and procedural safeguards, all being in principle required for the assessment of whether the State complied with the relevant obligations. As to *mitigation* measures, the Court will examine whether the competent domestic authorities, whether legislative, executive or judicial, have had due regard to the need to: (a) adopt general measures specifying a target timeline for achieving carbon neutrality in line with the overarching goal for national and/or global climate-change mitigation commitments; (b) set out intermediate carbon emissions reduction targets and pathways that are deemed capable, in principle, of meeting the overall national reduction goals within the relevant time frames; (c) provide evidence showing whether they have duly complied, or are in the process of complying, with the relevant targets; (d) keep those targets updated with due diligence and based on the best available evidence; and (e) act in good time and in an appropriate and consistent manner when devising and implementing the relevant legislation and measures. The Court's assessment of whether the above requirements have been met will, in principle, be of an overall nature, meaning that a shortcoming in one particular respect alone will not necessarily entail a finding of a violation. Furthermore, the above-noted mitigation measures must be supplemented by *adaptation* measures aimed at alleviating the most severe or imminent consequences of climate change: they must be put in place and effectively applied in accordance with the best available evidence and consistent with the general structure of the State's positive obligations in this context. Finally, the following two types of *procedural* safeguards are to be taken into account: (a) the relevant information and especially the conclusions of the relevant studies held by public authorities must be made available to the public and, in particular, to those who may be affected by the regulations and measures in question or the absence thereof; and (b) there must be procedures through which the views of the public can be taken into account in the decision-making process (§§ 549-54).

16. In some cases, when the applicable principles are similar, the Court does not find it necessary to determine whether the impugned domestic decision constitutes an "interference" with the exercise of the right to respect for private or family life or is to be seen as one involving a failure on the part of the respondent State to comply with a positive obligation (*Nunez v. Norway*, 2011, § 69; *Osman v. Denmark*, 2011, § 53; *Konstatinov v. the Netherlands*, 2007, § 47).

C. In the case of a negative obligation, was the interference conducted "in accordance with the law"?

17. The Court has repeatedly affirmed that any interference by a public authority with an individual's right to respect for private life, family life, home and correspondence must be with in accordance with the law (see notably *Vavřička and Others v. the Czech Republic* [GC], 2021, §§ 266-269 and the notion of "law" under the Convention; *Klaus Müller v. Germany*, 2020, §§ 48-51). This expression does not only necessitate compliance with domestic law but also relates to the quality of that law, requiring it to be compatible with the rule of law (*Big Brother Watch and Others v. the United Kingdom* [GC], 2021, § 332, underlining in §§ 333-334 that the meaning of "foreseeability" in the context of secret surveillance is not the same as in many other fields, see for instance, *Haščák v. Slovakia*, 2022; see also the importance of the protection of lawyer-client confidentiality in *Saber v. Norway*, 2020, § 51 and *Särgava v. Estonia*, 2021, §§ 87-88 and the lack of the appropriate procedural safeguards to protect data covered by legal professional privilege).

18. The national law must be clear, foreseeable, and adequately accessible (*Silver and Others v. the United Kingdom*, 1983, § 87; for an instruction issued by the Chief Prosecutor, see *Vasil Vasilev v. Bulgaria*, 2021, §§ 92-94; for instructions issued by the Ministry of Justice, see *Nuh Uzun and Others*

v. Turkey, 2022, § 83-99; for a regulation published on the website of a social welfare authority, see *Le Marrec v. France* (dec.), 2024, §§ 72-75). It must be sufficiently foreseeable to enable individuals to act in accordance with the law (*Lebois v. Bulgaria*, 2017, §§ 66-67 with further references therein, as regards internal orders in prison), and it must demarcate clearly the scope of discretion for public authorities. For example, as the Court articulated in the surveillance context (see the outline of the requirements in *Falzarano v. Italy* (dec.), 2021, §§ 27-29), the law must be sufficiently clear in its terms to give citizens an adequate indication of the conditions and circumstances in which the authorities are empowered to resort to any measures of secret surveillance and collection of data (*Shimovolos v. Russia*, 2011, § 68). In *Vukota-Bojić v. Switzerland*, 2016, the Court found a violation of Article 8 due to the lack of clarity and precision in the domestic legal provisions that had served as the legal basis of the applicant's surveillance by her insurance company after an accident. In *Glukhin v. Russia*, 2023 (§§ 82-83), the Court expressed strong doubts that the domestic legal provisions which authorised the processing of biometric personal data, including with the aid of facial recognition technology, "in connection with the administration of justice" met the "quality of law" requirement since they were widely formulated and would appear to allow the processing of such data in connection with any type of judicial proceedings. For the "quality of law" requirement to be met in the context of implementing facial recognition technology, it was essential to have detailed rules governing the scope and application of measures as well as strong safeguards against the risk of abuse and arbitrariness. The need for safeguards will be all the greater where the use of live facial recognition technology is concerned.

19. The clarity requirement applies to the scope of discretion exercised by public authorities (see, for instance, *Lia v. Malta*, 2022, §§ 56-57). Domestic law must indicate with reasonable clarity the scope and manner of exercise of the relevant discretion conferred on the public authorities so as to ensure to individuals the minimum degree of protection to which they are entitled under the rule of law in a democratic society (*Piechowicz v. Poland*, 2012, § 212). In *Lia v. Malta*, 2022, the Court held that an interference with the applicants' Article 8 rights, occasioned by the denial of access to IVF on account of the second applicant's age, was not in accordance with the law. According to the law, it was "desirable" that the woman be between 25 and 42 and the courts appeared to accept that this provision allowed for flexibility. However, the authority had treated the upper age-limit as mandatory. According to the Court, at the relevant time, the manner in which the provision had been interpreted by the judicial and administrative authorities was "incoherent" (§ 67). The fact that the applicant's case is the first of its kind under the applicable legislation and that the court has sought guidance from the CJEU on the interpretation of the relevant European law does not render the domestic courts' interpretation and application of the legislation arbitrary or unpredictable (*Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], 2017, § 150).

20. With regard to foreseeability, the phrase "in accordance with the law" thus implies, inter alia, that domestic law must be sufficiently foreseeable in its terms to give individuals an adequate indication as to the circumstances in which, and the conditions on which, the authorities are entitled to resort to measures affecting their rights under the Convention (*Fernández Martínez v. Spain* [GC], 2014, § 117). Foreseeability need not be certain. In *Slivenko v. Latvia* [GC], 2003, the applicants must have been able to foresee to a reasonable degree, at least with the advice of legal experts, that they would be regarded as covered by the law (see also *Dubská and Krejzová v. the Czech Republic* [GC], 2016, § 171). Absolute certainty in this matter could not be expected (§ 107). It should also be noted that the applicant's profession may be a factor to consider as it provides an indication as to his or her ability to foresee the legal consequences of his or her actions (*Versini-Campinchi and Crasnianski v. France*, 2016, § 55). In determining whether the applicable law could be considered as foreseeable in its consequences and as enabling the applicant to regulate his conduct in his specific case, the Court may be confronted with a situation of divergences in the case-law of different courts at the same level of jurisdiction (*Klaus Müller v. Germany*, 2020, §§ 54-60).

21. "Lawfulness" also requires that there be adequate safeguards to ensure that an individual's Article 8 rights are respected. Domestic law must provide adequate safeguards to offer the individual adequate protection against arbitrary interference (*Bykov v. Russia* [GC], 2009, § 81; *Vig v. Hungary*, 2021, §§ 51-62). A lack of lawfulness may stem from coercive methods and threats used by security services having collected information on an individual with the aim of coercing him to cooperate with them, which are incompatible with domestic law and fundamentally at odds with the basic principles of the rule of law (*Manukyan v. Armenia*, 2025, §§ 58-61).

22. A State's responsibility to protect private and family life often includes positive obligations that ensure adequate regard for Article 8 rights at the national level. The Court, for example, found a violation of the right to private life due to the absence of clear statutory provisions criminalising the act of covertly filming a naked child (*Söderman v. Sweden* [GC], 2013, § 117). Similarly, in a case concerning an identity check, the Court found that, without any legislative requirement of a real restriction or review of either the authorisation of an enhanced check or the police measures carried out during an enhanced check, domestic law did not provide adequate safeguards to offer the individual adequate protection against arbitrary interference (*Vig v. Hungary*, 2021, § 62).

23. Even when the letter and spirit of the domestic provision in force at the time of the events were sufficiently precise, its interpretation and application by the domestic courts to the circumstances of the applicant's case must not be manifestly unreasonable and thus not foreseeable within the meaning of Article 8 § 2. For instance, in the case of *Altay v. Turkey (no. 2)*, 2019, the extensive interpretation of the domestic provision did not comply with the Convention requirement of lawfulness (§ 57). See also *Azer Ahmadov v. Azerbaijan,* 2021, §§ 65 et seq. in relation to the tapping of a telephone without a Convention-compliant legal basis.

24. A finding that the measure in question was not "in accordance with the law" suffices for the Court to hold that there has been a violation of Article 8 of the Convention. It is not therefore necessary to examine whether the interference in question pursued a "legitimate aim" or was "necessary in a democratic society" (*M.M. v. the Netherlands*, 2003, § 46; *Solska and Rybicka v. Poland*, 2018, § 129; *A.R. v. the United Kingdom*, 2025, § 70). In *Mozer v. the Republic of Moldova and Russia* [GC], 2016, the Court found that, regardless of whether there was a legal basis for the interference with the applicant's rights, the interference did not comply with the other conditions set out in Article 8 § 2 (§ 196). The interference can also be considered not to be "in accordance with the law", as a result of an unlawful measure under Article 5 § 1 (*Blyudik v. Russia*, 2019, § 75). In *S.W. v. the United Kingdom*, 2021, the Court found that the interference with the applicant's private life had been "neither in accordance with the law nor necessary in a democratic society" (§§ 62-63). In *Selishcheva and Others v. Russia*, 2025 the Court found that the interference was neither "prescribed by law" nor "necessary in a democratic society" (§ 37). Lastly, in a number of cases the Court considered that the requirement for an interference to be "in accordance with the law" was so closely linked to the "necessary in a democratic society" criterion that the two conditions had to be discussed together (*S. and Marper v. the United Kingdom* [GC], 2008, § 99; *Kvasnica v. Slovakia,* 2009, § 84; *Kennedy v. the United Kingdom*, 2010, § 155; *Glukhin v. Russia*, 2023, § 78; *Podchasov v. Russia*, 2024, § 66).

D. Does the interference further a legitimate aim?

25. Article 8 § 2 enumerates the legitimate aims which may justify an infringement upon the rights protected in Article 8: "in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others" (see *Vavřička and Others v. the Czech Republic* [GC], 2021, § 272). The Court has however observed that its practice is to be quite succinct when it verifies the existence of a legitimate aim within the meaning of the second paragraphs of Articles 8 to 11 of the Convention (*S.A.S. v. France* [GC], 2014, § 114; *L.B. v. Hungary* [GC], 2023, § 109). It is for the respondent Government to demonstrate that the interference pursued a legitimate aim (*Mozer*

v. the Republic of Moldova and Russia [GC], 2016, § 194; *P.T. v. the Republic of Moldova*, 2020, § 29). When referring to a legitimate aim, the Government must demonstrate that, in acting to penalise an applicant, the domestic authorities had that legitimate aim in mind (see, *mutatis mutandis*, *Kilin v. Russia*, 2021, § 61).

26. The Court has found, for example, that immigration measures may be justified by the preservation of the country's economic wellbeing within the meaning of paragraph 2 of Article 8 rather than the prevention of disorder if the government's purpose was, because of the population density, to regulate the labour market (*Berrehab v. the Netherlands*, 1988, § 26). The Court has also found both economic wellbeing and the protection of the rights and freedom of others to be the legitimate aim of large governments projects, such as the expansion of an airport (*Hatton and Others v. the United Kingdom* [GC], 2003, § 121 – for the preservation of a forest/environment and the protection of the "rights and freedoms of others", see *Kaminskas v. Lithuania*, 2020, § 51).

27. The Court found that a ban on full face veils in public places served a legitimate aim taking into account the respondent State's point that the face plays an important role in social interaction. It was therefore able to accept that the barrier raised against others by a veil concealing the face was perceived by the respondent State as breaching the right of others to live in a space of socialisation which makes living together easier (*S.A.S. v. France* [GC], 2014, § 122).

28. As concerns the legitimate aim of health protection, the Court noted in *Drelon v. France*, 2022, § 89, that a large number of people had been contaminated by HIV or by hepatitis viruses through the transfusion of unsafe blood products, in many Contracting States, before techniques for the detection, inactivation and elimination of pathogens were developed and widespread. International legal instruments had been adopted in response to this major health crisis and pursued the same objective of protecting public health.

29. The interception of telephone conversations of the applicant – a prison director, who had been suspected of corruption – the storage of that information and its disclosure in the disciplinary proceedings, which ultimately had led to his dismissal, were found be aimed at preventing acts of a corrupt nature and guaranteeing the transparency and openness of the public service, and thus had pursued the legitimate aims of the prevention of disorder or crime, and the protection of the rights and freedoms of others in *Adomaitis v. Lithuania*, 2022, § 84.

30. The publication of the applicant's identifying data, including his full name and home address, on a tax authority website for failing to fulfil his tax obligations was found to be in pursuit of the "interests of ... the economic well-being of the country" as well as "the protection of the rights and freedoms of others" (*L.B. v. Hungary* [GC], 2023, §§ 111-13). In the same vein, the processing of the applicant's IP address and other "connection data" to enable the relevant social welfare authority to locate him to prevent welfare fraud, was in the interests of the economic well-being of the country and the prevention of crime (*Le Marrec v. France* (dec.), 2024, § 76).

31. In *Toma v. Romania*, 2009, however, the Court found that the Government had provided no legitimate justification for allowing journalists to publish images of a person detained before trial, when there was no public safety reason to do so (§ 92). In *Aliyev v. Azerbaijan*, 2018, the Court did not find that a search and seizure at the applicant's home and office had pursued any legitimate aims enumerated in Article 8 § 2 (§§ 183-188).

32. In some cases, the Court found that the impugned measure did not have a rational basis or connection to any of the legitimate aims foreseen in Article 8 § 2, which was in itself sufficient for a violation of the Article. Nevertheless, the Court considered that the interference raised such a serious issue of proportionality to any possible legitimate aim that it also examined this aspect (*Mozer v. the Republic of Moldova and Russia* [GC], 2016, §§ 194-196; *P.T. v. the Republic of Moldova*, 2020, §§ 30-33). The Court may also find it unnecessary to take a definitive stance on whether the disputed measure in fact pursued any of the indicated legitimate aims because it found that the measure was

not necessary in a democratic society (see for instance, *Chocholáč v. Slovakia*, 2022, § 62, concerning the notions of morality, order as well as the rights and freedoms of others, and more generally the protection of morals, §§ 70-71).

33. It has been noted that a general measure may, in some situations, be found to be a more feasible means of achieving a legitimate aim than a provision requiring a case-by-case examination, a choice that, in principle, is left to the legislature in the Member State, subject to European supervision (*Animal Defenders International v. the United Kingdom* [GC], 2013, §§ 108-109 with further references therein; *L.B. v. Hungary* [GC], 2023, § 125). A State can, consistently with the Convention, adopt general measures which apply to pre-defined situations regardless of the individual facts of each case even if it might result in individual hard cases (*ibid.*, § 117). However, the Court has indicated that such an approach cannot be sustained in cases where the interference consists in the loss of a person's only home. In such cases, the balancing exercise is of a different order, with particular significance attaching to the extent of the intrusion into the personal sphere of those concerned, and can normally only be examined on a case by case basis (*Ivanova and Cherkezov v. Bulgaria*, 2016, § 54).

E. Is the interference "necessary in a democratic society"?

34. In order to determine whether a particular infringement upon Article 8 is "necessary in a democratic society" the Court balances the interests of the Member State against the right of the applicant (see the recent summary of the relevant case-law in *Vavřička and Others v. the Czech Republic* [GC], 2021, §§ 273-275). In an early and leading Article 8 case, the Court clarified that "necessary" in this context does not have the flexibility of such expressions as "useful", "reasonable", or "desirable" but implies the existence of a "pressing social need" for the interference in question. It is for national authorities to make the initial assessment of the pressing social need in each case; accordingly, a margin of appreciation is left to them. However, their decision remains subject to review by the Court. A restriction on a Convention right cannot be regarded as "necessary in a democratic society" – two hallmarks of which are tolerance and broadmindedness – unless, amongst other things, it is proportionate to the legitimate aim pursued (*Dudgeon v. the United Kingdom*, 1981, §§ 51-53).

35. Subsequently, the Court has affirmed that in determining whether the impugned measures were "necessary in a democratic society", it will consider whether, in the light of the case as a whole, the reasons adduced to justify them were relevant and sufficient and whether the measures were proportionate to the legitimate aims pursued (*Z v. Finland*, 1997, § 94). The Court has further clarified this requirement, stating that the notion of "necessity" for the purposes of Article 8 means that the interference must correspond to a pressing social need, and, in particular, must remain proportionate to the legitimate aim pursued. When determining whether an interference was "necessary" the Court will consider the margin of appreciation left to the State authorities, but it is a duty of the respondent State to demonstrate the existence of a pressing social need behind the interference (*Piechowicz v. Poland*, 2012, § 212). The Court reiterated the guiding principles on the margin of appreciation in *M.A. v. Denmark* [GC], 2021, §§ 140-163, which elaborated on the factors of relevance to the scope of the margin of appreciation, and in which it noted that Protocol No. 15 (which reflected the principle concerning subsidiarity and the doctrine of the margin of appreciation) entered into force on 1 August 2021 (see also *Paradiso and Campanelli v. Italy* [GC], 2017, §§ 179-184 and *Klaus Müller v. Germany*, 2020, § 66. The margin of appreciation to be accorded to the competent national authorities will vary in light of the nature of the issues and the seriousness of the interests at stake (*Strand Lobben and Others v. Norway* [GC], 2019, § 211). The States must, in principle, be afforded a wide margin of appreciation regarding matters which raise delicate moral and ethical questions on which there is no consensus at European level (*Paradiso and Campanelli v. Italy* [GC], 2017, § 184).

36. With regard to general measures taken by the national government, it emerges from the Court's case-law that, in order to determine the proportionality of a general measure, the Court must primarily assess the legislative choices underlying it. The quality of the parliamentary and judicial

review of the necessity of the measure is of particular importance in this respect, including to the operation of the relevant margin of appreciation (see *M.A. v. Denmark* [GC], 2021, § 148, citing *Animal Defenders International v. the United Kingdom* [GC], 2013; *L.B. v. Hungary* [GC], 2023, §§ 117 and 125). The procedural safeguards available to the individual will be especially material in determining whether the respondent State has, when fixing the regulatory framework, remained within its margin of appreciation. In particular, the Court must examine whether the decision-making process leading to measures of interference was fair and such as to afford due respect to the interests safeguarded to the individual by Article 8 (*A.-M.V. v. Finland*, 2017, §§ 82-84).

F. Relation between Article 8 and other provisions of the Convention and its Protocols

37. The Court is the master of the characterisation to be given in law to the facts of the case and is not bound by the characterisation given by the applicant or the Government (*Soares de Melo v. Portugal*, 2016, § 65; *Mitovi v. the former Yugoslav Republic of Macedonia*, 2015, § 49; *Macready v. the Czech Republic*, 2010, § 41; *Havelka and Others v. the Czech Republic*, 2007, § 35). Thus, the Court will consider under which Article(s) the complaints should be examined (*Radomilja and Others v. Croatia* [GC], 2018, § 114; *Sudita Keita v. Hungary*, 2020, § 24).

1. Private and family life

a. Article 2 (right to life)[1] and Article 3 (prohibition of torture)[2]

38. Regarding the protection of the physical and psychological integrity of an individual from the acts of other persons, the Court has held that the authorities' positive obligations – in some cases under Articles 2 or 3 and in other instances under Article 8 taken alone or in combination with Article 3 of the Convention (see for instance, *Buturugă v. Romania*, 2020, § 44, as regards domestic violence; *N.Ç. v. Turkey*, 2021, as regards sexual abuse, and the summary of the case-law on the States' positive obligations, see §§ 94-95 and *R.B. v. Estonia*, 2021, §§ 78-84) – may include a duty to maintain and apply in practice an adequate legal framework affording protection against acts of violence by private individuals (see, inter alia, *Söderman v. Sweden* [GC], 2013, § 80 with further references therein) or against medical negligence (see § 127 in *Nicolae Virgiliu Tănase v. Romania* [GC], 2019, with further references therein). Drawing on the case-law on Article 2, the Court stated that Member States had a positive obligation inherent in Articles 3 and 8 to enforce the sentences of sex offences (*E.G. v. the Republic of Moldova*, 2021, §§ 39-41). On the other hand, in a case of a road-traffic accident in which an individual sustained unintentional life-threatening injuries, the Grand Chamber did not find Article 3 or 8 applicable but rather it applied Article 2 (*Nicolae Virgiliu Tănase v. Romania* [GC], 2019, §§ 128-32).

39. In its case-law on Articles 3 and 8, the Court emphasised the importance to children and the other vulnerable members of society of benefiting from State protection where their physical and mental well-being were threatened (*Wetjen and Others v. Germany*, 2018, § 74, *Tlapak and Others v. Germany*, 2018, § 87; *A and B v. Croatia*, 2019, §§ 106-113). The Court found a breach of both of these Articles given the failure to protect the personal integrity of a vulnerable child in the course of excessively long criminal proceedings relating to sexual abuse, which it considered to be a serious case of secondary victimisation (*N.Ç. v. Turkey*, 2021). In the two cases against Germany, the Court reiterated that the fact of regularly caning one's children was liable to attain the requisite level of severity to fall foul of Article 3 (*Wetjen and Others v. Germany*, 2018, § 76; *Tlapak and Others v. Germany*, 2018, § 89). Accordingly, in order to prevent any risk of ill-treatment under Article 3, the Court considered it commendable if Member States prohibited in law all forms of corporal punishment

[1] See the Case-law Guide on Article 2 - Right to life.
[2] See the Case-law Guide on Article 3 - Prohibition of torture.

of children. However, in order to ensure compliance with Article 8, such a prohibition should be implemented by means of proportionate measures so that it was practical and effective and did not remain theoretical (*Wetjen and Others v. Germany*, 2018, §§ 77-78; *Tlapak and Others v. Germany*, 2018, §§ 90-91).

40. In the immigration context, during periods of mass influx of asylum-seekers and substantial resource constraints, recipient States should be entitled to consider that it falls within their margin of appreciation to prioritise the provision of Article 3 protection to a greater number of such persons over the Article 8 interest of family reunification of some (*M.A. v. Denmark* [GC], 2021, §§ 145-146).

41. The Court has stated that when a measure falls short of Article 3 treatment, it may nevertheless fall foul of Article 8 (*Wainwright v. the United Kingdom*, 2006, § 43, as regards strip-search). In particular, conditions of detention may give rise to an Article 8 violation where they do not attain the level of severity necessary for a violation of Article 3 (*Raninen v. Finland*, 1997, § 63). The same would apply to verbal abuse without physical violence (see the situations in *Association ACCEPT and Others v. Romania*, 2021, §§ 55-57 and § 68, or in *F.O. v. Croatia*, 2021, § 53 as regards harassment at school). The Court has frequently found a violation of Article 3 of the Convention on account of poor conditions of detention where the lack of a sufficient divide between the sanitary facilities and the rest of the cell was just one element of those conditions (*Szafrański v. Poland*, 2015, §§ 24 and 38). In *Szafrański v. Poland*, 2015, the Court found that the domestic authorities failed to discharge their positive obligation of ensuring a minimum level of privacy for the applicant and had therefore violated Article 8 where the applicant had to use the toilet in the presence of other inmates and was thus deprived of a basic level of privacy in his everyday life (§§ 39-41).

42. Similarly, even though the right to health is not a right guaranteed by the Convention and the Protocols thereto, the Member States have a number of positive obligations in that connection under Articles 2 and 8 (*Vavřička and Others v. the Czech Republic* [GC], 2021, § 282, and see *Vilela v. Portugal*, 2021, §§ 73-79 which, in examining a case concerning alleged medical negligence under Article 8 (§§ 64-65), referred to the general principles set out under Article 2, §§ 74-79). They must, first of all, lay down regulations requiring public and private hospitals to adopt appropriate measures to protect the physical integrity of their patients, and secondly, make available to victims of medical negligence a procedure capable of providing them, if need be, with compensation for damage. Those obligations apply under Article 8 in the event of injury which falls short of threatening the right to life as secured under Article 2 (*Vasileva v. Bulgaria*, 2016, §§ 63-69; *İbrahim Keskin v. Turkey*, 2018, § 61; and *Mehmet Ulusoy and Others v. Turkey*, 2019, §§ 92-94).

43. Procedural obligations under Article 2 to carry out an effective investigation into alleged breaches of the right to life may come into conflict with a State's obligations under Article 8 (*Solska and Rybicka v. Poland*, 2018, §§ 118-119). State authorities are required to find a due balance between the requirements of an effective investigation under Article 2 and the protection of the right to respect for private and family life (under Article 8) of persons affected by the investigation (§ 121). The case of *Solska and Rybicka v. Poland*, 2018, concerned the exhumation, in the context of criminal proceedings, of the remains of deceased persons against the wishes of their families; Polish domestic law did not provide a mechanism to review the proportionality of the decision ordering exhumation. As a consequence, the Court found that the interference was not "in accordance with the law" and thus amounted to a violation of Article 8 (§§ 126-128).

b. Article 6 (right to a fair trial)[3]

44. The procedural aspect of Article 8 is closely linked to the rights and interests protected by Article 6 of the Convention. Article 6 affords a procedural safeguard, namely the "right to a court" in the determination of one's "civil rights and obligations", whereas the procedural requirement of Article 8 does not only cover administrative procedures as well as judicial proceedings, but it is also ancillary to

[3] See the Case-law Guides on Article 6 - Right to a fair trial (Civil limb and Criminal limb).

the wider purpose of ensuring proper respect for, inter alia, family life (*Tapia Gasca and D. v. Spain*, 2009, §§ 111-113; *Bianchi v. Switzerland*, 2006, § 112; *McMichael v. the United Kingdom*, 1995, § 91; *B. v. the United Kingdom*, 1987, §§ 63-65; *Golder v. the United Kingdom*, 1975, § 36). While Article 8 contains no explicit procedural requirements, the decision-making process involved in measures of interference must be fair and ensure due respect for the interests safeguarded by Article 8 (*Fernández Martínez v. Spain* [GC], 2014, § 147). The difference between the purpose pursued by the respective safeguards afforded by Articles 6 and 8 may, in the light of the particular circumstances, justify the examination of the same set of facts under both Articles (compare *O. v. the United Kingdom*, 1987, §§ 65-67; *Golder v. the United Kingdom*, 1975, §§ 41-45; *Macready v. the Czech Republic*, 2010, § 41; *Bianchi v. Switzerland*, 2006, § 113), even if viewing the procedures from the perspective of a different Article cannot lead to a different conclusion (*Jallow v. Norway*, 2021, § 75).

45. However, in some cases where family life is at stake and the applicants invoked Articles 6 and 8, the Court has decided to examine the facts solely under Article 8 (see, for instance, *T.C. v. Italy*, 2022, § 53). According to the Court, the procedural aspect of Article 8 requires the decision-making process leading to measures of interference to be fair and to afford due respect to the interests safeguarded by the Article (*Soares de Melo v. Portugal*, 2016, § 65; *Santos Nunes v. Portugal*, 2012, § 56; *Havelka and Others v. the Czech Republic*, 2007, §§ 34-35; *Wallová and Walla v. the Czech Republic*, 2006, § 47; *Kutzner v. Germany*, 2002, § 56; *McMichael v. the United Kingdom*, 1995, § 87; and *Mehmet Ulusoy and Others v. Turkey*, 2019, § 109). Therefore, the Court may also have regard, under Article 8, to the form and length of the decision-making process (*T.C. v. Italy*, 2022, § 57; *Macready v. the Czech Republic*, 2010, § 41; and for special attention and priority treatment called for in the context of sexual abuse in order to ensure the protection of the child, see *N.Ç. v. Turkey*, 2021). Also, the State has to take all appropriate measures to reunite parents and children (*Santos Nunes v. Portugal*, 2012, § 56).

46. For example, whether a case has been heard within a reasonable time – as is required by Article 6 § 1 of the Convention – also forms part of the procedural requirements implicit in Article 8 (*Ribić v. Croatia*, 2015, § 92; see also *Popadić v. Serbia*, 2022, in which the Court held that a four-year delay in determining the applicant's overnight and holiday contact with his child violated Article 8, even though he had continued to have regular but more limited contact with his child while the proceedings were ongoing). Also, the Court has examined a complaint about the failure to enforce a decision concerning the applicants' right to have contact only under Article 8 (*Mitovi v. the former Yugoslav Republic of Macedonia*, 2015, § 49). Likewise, the Court decided to examine under Article 8 solely the inactivity and lack of diligence of the State and the excessive length of the proceedings for the execution of the decision to grant the applicant the custody of the child (*Santos Nunes v. Portugal*, 2012, §§ 54-56).

47. Moreover, in several cases where a close link was found between the complaints raised under Article 6 and Article 8, the Court has considered the complaint under Article 6 as being part of the complaint under Article 8 (*Anghel v. Italy*, 2013, § 69; *Diamante and Pelliccioni v. San Marino*, 2011, § 151; *Kutzner v. Germany*, 2002, § 57; *Labita v. Italy* [GC], 2000, § 187; *A.R. v. the United Kingdom*, 2025, § 71). In *G.B. v. Lithuania*, 2016, the Court did not consider it necessary to examine separately whether there had been a violation of Article 6 § 1 given that the Court had found that the applicant's procedural rights had been respected when examining her complaints under Article 8 (§ 113). In *S.W. v. the United Kingdom*, 1987, 2021, the Court found no need to give a separate ruling on the admissibility and merits of the complaint under Article 6 § 1 since it had already examined, from the standpoint of Article 8, the applicant's complaint about a violation of her procedural rights affecting her right to respect for her private life (§ 78).

48. In *Y. v. Slovenia*, 2015, the Court examined whether the domestic trial court struck a proper balance between the protection of the applicant's right to respect for private life and personal integrity and the defence rights of the accused where the applicant had been cross-examined by the accused during criminal proceedings concerning alleged sexual assaults (§§ 114-116). *López Ribalda and Others v. Spain* [GC], 2019, addressed the question whether the use in evidence of information

obtained in violation of Article 8 or of domestic law rendered a trial as a whole unfair, contrary to Article 6 (§§ 149-152). *McCann and Healy v. Portugal*, 2022, addressed the interplay between the applicants' right to be presumed innocent, guaranteed by Article 6 § 2, and the applicants' reputation, guaranteed by Article 8 of the Convention (§§ 83-84, 95).

49. In cases concerning a person's relationship with his or her child there is a duty to exercise exceptional diligence in view of the risk that the passage of time may result in a *de facto* determination of the matter. This duty, which is decisive in assessing whether a case has been heard within a reasonable time as required by Article 6 § 1 of the Convention, also forms part of the procedural requirements implicit in Article 8 (*Süß v. Germany*, 2005, § 100; *Strömblad v. Sweden*, 2012, § 80; *Ribić v. Croatia*, 2015, § 92).

50. It the case of *Altay v. Turkey (no. 2)*, 2019, §§ 47-52 and § 56, the Court's view of the nature of the lawyer-client relationship – which falls within the scope of "private life" - weighed heavily in its assessment of whether the proceedings in which the applicant challenged the restriction on his right to communicate in confidentiality with his lawyer in prison were governed by the "civil" limb of Article 6 (§ 68). However, a conclusion in favour of the applicability of Article 6 § 1 under its civil head does not automatically bring the issue into the ambit of Article 8 (*Ballıktaş Bingöllü v. Turkey*, 2021, §§ 60-61).

51. In *Wałęsa v. Poland*, 2023, the Court examined the lawfulness of an interference with the applicant's private life (reputation) caused by the reversal by the Chamber of Extraordinary Review and Public Affairs of the Supreme Court ("CERPA") of a final civil defamation judgment in the applicant's favour delivered ten years earlier, following an extraordinary appeal by the Prosecutor General. The Court relied on its findings in respect of Article 6 that CERPA did not have the attributes of a "tribunal" that was "lawful" for the purposes of the Convention and concluded that the interference complained of could not be considered "in accordance with the law" (§ 290).

c. Article 9 (freedom of thought, conscience and religion)[4]

52. Although Article 9 governs freedom of thought, conscience, and religious matters, the Court has established that disclosure of information about personal religious and philosophical convictions may engage Article 8 as well, as such convictions concern some of the most intimate aspects of private life (*Folgerø and Others v. Norway* [GC], 2007, § 98, where imposing an obligation on parents to disclose detailed information to the school authorities about their religious and philosophical convictions could constitute a violation of Article 8 of the Convention, even though in the case itself there was no obligation as such for parents to disclose their own convictions).

53. Article 8 has been interpreted and applied in the light of Article 9, for instance in the case of *Abdi Ibrahim v. Norway* [GC], 2021, § 142 and *T.C. v. Italy*, 2022, § 30.

54. Articles 8 and 9 were both found engaged as regards the performance of a post-mortem examination despite the applicant's objections on religious grounds and her specific wishes for ritual burial (*Polat v. Austria*, 2021, §§ 48-51, § 91).

d. Article 10 (freedom of expression)[5]

55. Where the interests of the "*protection of the reputation or rights of others*" within the meaning of Article 10 bring Article 8 into play, the Court may be required to verify whether the domestic authorities struck a fair balance between the two Convention values namely, on the one hand, freedom of expression protected by Article 10 and, on the other, the right to respect for private life enshrined in Article 8 (*Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* [GC]; 2017, § 77; *Matalas v. Greece*, 2021; *M.L. v. Slovakia*, 2021, § 34).

[4] See the Case-law Guide on Article 9 - Freedom of thought, conscience and religion.
[5] See the Case-law Guide on Article 10 - Freedom of expression.

56. In cases which require the right to respect for private life to be balanced against the right to freedom of expression, the Court considers that the outcome of the application should not, in theory, vary according to whether it has been lodged with the Court under Article 8 of the Convention by the person who was the subject of the news report, or under Article 10 by the publisher. Indeed, as a matter of principle these rights deserve equal respect (*Couderc and Hachette Filipacchi Associés v. France* [GC], 2015, § 91; *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], 2017, § 123; *Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* [GC], 2017, § 77; *McCann and Healy v. Portugal*, 2022, § 80; *Toth and Crișan v. Romania*, 2025, § 50). Accordingly, the margin of appreciation should in theory be the same in both cases. The non-exhaustive criteria defined by the case-law include the following (*Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], 2017, §§ 165-166): the contribution to a debate of public interest, the degree of notoriety of the person affected, the subject of the news report, the prior conduct of the person concerned, the content, form and consequences of the publication, and, where appropriate, the circumstances in which the photographs were taken (*Couderc and Hachette Filipacchi Associés v. France* [GC], 2015, §§ 90-93; *Von Hannover v. Germany (no. 2)* [GC], 2012, §§ 108-113; *Axel Springer AG v. Germany* [GC], 2012, §§ 89-95), the order of which may be examined differently (*M.L. v. Slovakia*, 2021, §§ 35 and 36). Furthermore, in the context of an application lodged under Article 10, the Court examines the way in which the information was obtained and its veracity, and the gravity of the penalty imposed on the journalists or publishers (*Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], 2017, § 165). Some of these criteria may have more or less relevance given the particular circumstances of the case (see, for a case concerning the mass collection, processing and publication of tax data, *ibid.*, § 166), and according to the context, other criteria may also apply (*Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* [GC], 2017, § 88). With regard to the way in which the information was obtained, the Court has held that the press should normally be entitled to rely on the content of official reports without further verification of the facts presented in the document (*Bladet Tromsø and Stensaas v. Norway* [GC], 1999, § 68; *Mityanin and Leonov v. Russia*, 2019, § 109).

57. The Court ruled on the scope of the right to respect for private life safeguarded by Article 8 in relation to the freedom of expression secured by Article 10 to information society service providers such as Google Inc. in *Tamiz v. the United Kingdom* (dec.), 2017, and to Internet archives managed by media in *M.L. and W.W. v. Germany*, 2018 (see also, *Biancardi v. Italy*, 2021, and *Standard Verlagsgesellschaft mbH v. Austria (no. 3)*, 2021).

58. Defamation proceedings brought, in its own name, by a legal entity that exercises public power may not, as a general rule, be regarded to be in pursuance of the legitimate aim of "the protection of the reputation ... of others" under Article 10 § 2 of the Convention. This does not exclude that individual members of a public body, who could be "easily identifiable" in view of the limited number of its members and the nature of the allegations made against them, may be entitled to bring defamation proceedings in their own individual name (*OOO Memo v. Russia*, 2022, §§ 46-48). In *Freitas Rangel v. Portugal*, 2022, §§ 48, 53 and 58, the legitimate aim of the protection of the "reputation or rights of others" within the meaning of Article 10 § 2 was relied on to cover the reputational protection of a legal entity, namely associations of judges and prosecutors (§ 48).

e. Article 14 (prohibition of discrimination)

59. On many occasions, Article 8 has been read in conjunction with Article 14. Examples are listed below. For a detailed analysis of the Court's case-law on this topic, see the Article 14 and Article 1 of Protocol No. 12 - Prohibition of discrimination.

60. For instance, concerning same-sex couples, the Court has attached importance to the continuing international movement towards the legal recognition of same-sex unions (*Oliari and Others v. Italy*, 2016, §§ 178 and 180-185; *Koilova and Babulkova v. Bulgaria*, 2023), but leaves open the option for

States to restrict access to marriage to different-sex couples (*Schalk and Kopf v. Austria*, 2010, § 108). See also the Case-Law Guide on Rights of LGBTI persons.

61. In *Beizaras and Levickas v. Lithuania*, 2020, the applicants, two young men, posted a photograph of themselves kissing on a public Facebook page. This online post received hundreds of virulently homophobic comments. Although the applicants requested it, the prosecutors and domestic courts refused to prosecute, finding that the applicants' behaviour had been "eccentric" and did not correspond to "traditional family values" in the country. The Court stated that the hateful comments against the applicants and the homosexual community in general were instigated by a bigoted attitude towards that community and that the very same discriminatory state of mind was at the core of the failure on the part of the relevant public authorities to discharge their positive obligation to investigate in an effective manner whether those comments constituted incitement to hatred and violence. The Court concluded that the applicants had suffered discrimination on the ground of their sexual orientation (§§ 106-116, § 129). In *Association ACCEPT and Others v. Romania*, 2021, the Court reiterated the obligation on the authorities' part to offer adequate protection in respect of the applicants' dignity (§ 127). As a matter of principle, in *Oganezova v. Armenia*, 2022, the Court recalled the authorities' duty to prevent hate-motivated violence on the part of private individuals as well as to investigate the existence of a possible link between a discriminatory motive and the act of violence (whether physical or verbal) could constitute positive obligations under Articles 3 and 8 and could also be seen to as part of the authorities' positive responsibilities under Article 14 of the Convention to secure the fundamental values protected by Articles 3 and 8 without discrimination. In *Allouche v. France*, 2024 the Court found that the domestic authorities, in prosecuting an aggressor for death threats without taking into account the antisemitic dimension to the case, had failed to comply with their positive obligations under Articles 8 and 14. In *Nepomnyashchiy and Others v. Russia*, 2023, the applicants, members of the LGBTI community, complained about negative public statements made by public officials about the LGBTI community. The Court found that the applicants could claim to be victims despite the fact that they had not been directly targeted by the contested statements. Bearing in mind the history of public hostility towards the LGBTI community in Russia and the increase in homophobic hate crimes, including violent crimes, at the material time, the openly homophobic content and particularly aggressive and hostile tone of the statements, as well as the fact that they were made by influential public figures holding official posts and were published in popular newspapers with a large readership, the Court considered that the contested statements reached the "threshold of severity" required to be considered to affect the "private life" of members of the group (§§ 57 and 59-62).

62. With regard to gender-based discrimination, the Court has noted that the advancement of gender equality is today a major goal for the Member States of the Council of Europe and very weighty reasons would have to be put forward before such a difference of treatment could be regarded as compatible with the Convention. In particular, references to traditions, general assumptions or prevailing social attitudes in a particular country are insufficient justification for a difference in treatment on the grounds of sex (see, for instance, *Tapayeva and Others v. Russia*, 2021, §§ 112-118) or sexual orientation (*X. v. Poland*, 2021, §§ 90-92). For example, in a case concerning the bearing of a woman's maiden name after marriage, the Court found that the importance attached to the principle of non-discrimination prevented States from imposing traditions deriving from the man's primordial role and the woman's secondary role in the family (*Ünal Tekeli v. Turkey*, 2004, § 63; see also *León Madrid v. Spain*, 2021, concerning a rule which provided that, where the parents disagreed on the matter, the order of the surnames given to a child would be imposed automatically, with the father's first and the mother's second). The Court has also held that the issue with stereotyping of a certain group in society lies in the fact that it prohibits the individualised evaluation of their capacity and needs (*Carvalho Pinto de Sousa Morais v. Portugal*, 2017, § 46 with further references therein). In *Yocheva and Ganeva v. Bulgaria*, 2021, the Court found that the denial of a surviving parent allowance to a single mother, the father of whose children was unknown, amounted to an unjustifiable difference of treatment based on the grounds "of both sex or family status" (see § 125).

63. In *Alexandru Enache v. Romania*, 2017, the applicant, who had been sentenced to seven years' imprisonment, wanted to look after his child, who was only a few months old. However, his applications to defer his sentence were dismissed by the courts on the grounds that such a measure, which was available to convicted mothers up to their child's first birthday, was to be interpreted strictly and that the applicant, as a man, could not request its application by analogy. The Court found that the applicant could claim to be in a similar situation to that of a female prisoner (§§ 68-69). However, referring to international law, it observed that motherhood enjoyed special protection, and held that the authorities had not breached Article 14 in conjunction with Article 8 (§ 77).

64. Concerning the difference in treatment on the ground of birth out of or within wedlock, the Court has stated that very weighty reasons need to be put forward before such difference in treatment can be regarded as compatible with the Convention (*Sahin v. Germany* [GC], 2003, § 94; *Mazurek v. France*, 2000, § 49; *Camp and Bourimi v. the Netherlands*, 2000, §§ 37-38). The same is true for a difference in the treatment of the father of a child born of a relationship where the parties were living together out of wedlock as compared with the father of a child born of a marriage based relationship (*Sahin v. Germany* [GC], 2003, § 94). The Court has also held that a refusal to allow a single father to exercise parental authority in the absence of the mother's consent amounted to an unjustifiable difference in treatment *vis-à-vis* both the mother and the married or divorced father, since there was no reasonable relationship of proportionality between the refusal and the protection of the best interests of the child (*Paparrigopoulos v. Greece*, 2022, §§ 35-43).

65. The Court has found a violation of Article 14 read in conjunction with Article 8 as a result of the authorities' refusal to let a binational couple keep their own surnames after marriage (*Losonci Rose and Rose v. Switzerland*, 2010, § 26). A violation was also found as regards a ban on adoption of Russian children by US nationals in *A.H. and Others v. Russia*, 2017. Where the State had gone beyond its obligations under Article 8 and created a right to adopt in its domestic law, it could not, in applying that right, take discriminatory measures within the meaning of Article 14. According to the Court, the applicants' right to apply for adoption, and to have their applications considered fairly, fell within the general scope of private life under Article 8.

66. A refusal to grant full parental and custody rights in respect of a child, based solely or decisively on considerations regarding sexual orientation, is not acceptable under the Convention (*X. v. Poland*[6], 2021). Where withdrawal of parental authority had been based on a distinction essentially deriving from religious considerations, the Court held that there had been a violation of Article 8 in conjunction with Article 14 (*Hoffmann v. Austria*, 1993, § 36, concerning the withdrawal of parental rights from the applicant after she divorced the father of their two children because she was a Jehovah's Witness; see also *T.C. v. Italy*, 2022, in which the Court found that an order preventing the father of a child from actively involving her in his religion (he had become a Jehovah's Witness after separating from the child's mother) did not violate Article 14 read together with Article 8 because the applicant was not treated differently from the mother on the basis of religion (§§ 40-52). In *Cînța v. Romania*, 2020, the domestic courts had placed restrictions on the applicant's contact-rights in respect of his daughter. The Court found a violation of Article 14 in conjunction with Article 8 because the domestic courts had based their decisions on the applicant's mental disorder, without assessing the impact of the mental illness on his caring skills or the child's safety.

67. In a case where police had failed to protect Roma residents from a pre-planned attack on their homes by a mob motivated by anti-Roma sentiment, the Court found that there had been a violation of Article 8 taken in conjunction with Article 14 (*Burlya and Others v. Ukraine*, 2018, §§ 169-170). In a case concerning discriminatory statements made by a politician, the Court found that the authorities, despite having acknowledged the vehemence of the statements, had downplayed their capacity to stigmatise and incite hatred and prejudice. As such, the State was found to be in breach of its positive obligation to respond adequately to discrimination (*Budinova and Chaprazov v. Bulgaria*, 2021,

[6] See the Case-law Guide on the Rights of LGBTI persons.

§§ 94-95; *Behar and Gutman v. Bulgaria*, 2012, §§ 105-106). The Court also found a violation of Article 8, taken in conjunction with Article 14, in a case, where the applicants, members of several families of Roma origin, had been forced to leave their homes and prevented from returning owing to public protests against Roma inhabitants as well as to the repeated public display by officials of a lack of acceptance of the Roma and of opposition to their return, reinforcing the applicants' legitimate fear for their safety and representing a real obstacle to their peaceful return (*Paketova and Others v. Bulgaria*, 2022, §§ 148-168).

68. As regards an identity check, allegedly based on physical or ethnic motives, the Court clarified that not every identity check of a person belonging to an ethnic minority would fall within the ambit of Article 8, thus triggering the applicability of Article 14. Such a check should attain the necessary threshold of severity so as to fall within the ambit of "private life". That threshold is only attained if the person concerned has an arguable claim that he or she may have been targeted on account of specific physical or ethnic characteristics. In other words, for that threshold to be met, a certain level of substantiation of such allegations is required. Such an arguable claim may exist notably where the person concerned had submitted that he or she (or persons having the same characteristics) had been the only person(s) subjected to a check and where no other grounds for the check were apparent or where any of the explanations of the officers carrying out the check disclosed specific physical or ethnic motives. The Court observed that the public nature of the check might have an effect on a person's reputation and self-respect (*Basu v. Germany*, 2022, §§ 25-27; *Muhammad v. Spain*, 2022, §§ 49-51). In *Wa Baile v. Switzerland*, 2024, §§ 71 and 102 the Court found that, bearing in mind the circumstances in which the applicant was stopped and searched in the Zurich railway station and the domestic assessment of that check, the threshold of severity was attained and the applicant thus had an arguable claim that he had been discriminated against because of his skin colour.

69. As regards the procedural obligation in this context, the authorities' duty to investigate the existence of a possible link between racist attitudes and a State agent's act, even of a non-violent nature, is to be considered as implicit in their responsibilities under Article 14 when examined in conjunction with Article 8 of the Convention. In particular, State authorities have an obligation to take all reasonable measures to identify whether there were racist motives and to establish whether or not ethnic hatred or prejudice may have played a role in the impugned events. The authorities must do what is reasonable in the circumstances to collect and secure the evidence, explore all practical means of discovering the truth and deliver fully reasoned, impartial and objective decisions, without omitting suspicious facts that may be indicative of racially induced violence. For an investigation to be effective, the institutions and persons responsible for carrying it out must be independent of those targeted by it: this means, not only a lack of any hierarchical or institutional connection, but also practical independence. That procedural obligation can be met through appropriate criminal, civil, administrative and professional avenues, the State enjoying a margin of appreciation as to the manner in which to organise its system to ensure compliance (*Basu v. Germany*, 2022, §§ 31-39; *Muhammad v. Spain*, 2022, §§ 63-76; *Wa Baile v. Switzerland*, 2024, § 126-27).

70. The Court has also found a violation of Article 8 taken in conjunction with Article 14 where convicted prisoners could have four-hour short visits and long visits lasting days whereas remand prisoners were allowed to have three-hour short visits and no long visits (*Chaldayev v. Russia*, 2019, §§ 69-83), and where remand prisoners were prohibited from receiving unsupervised, long-term visits, despite such visits being generally authorised for convicted prisoners (*Vool and Toomik v. Estonia*, 2022, §§ 86-113[7]).

71. In *Arnar Helgi Lárusson v. Iceland*, 2022, the Court examined a complaint about a lack of accessibility of public buildings by disabled persons.

[7] See the Case-law Guide on Prisoners' rights.

2. Home and correspondence

a. Article 2 (right to life)[8]

72. As concerns interferences with the home, the Court has established parallels between the State's positive obligations under Article 8 of the Convention, Article 1 of Protocol No. 1 and Article 2 of the Convention (*Kolyadenko and Others v. Russia*, 2012, § 216).

b. Article 6 (fair trial)[9]

73. As concerns intercepted correspondence, the Court has distinguished between the question of whether Article 8 has been violated in respect of investigative measures and the question of possible ramifications of a finding to that effect on rights guaranteed under Article 6 (see, for example, *Dragoş Ioan Rusu v. Romania*, 2017, § 52 and *Dumitru Popescu v. Romania (no. 2)*, 2007, § 106, with further references). More generally, *López Ribalda and Others v. Spain* [GC], 2019, addressed the question of whether the use in evidence of information obtained in violation of Article 8 or of domestic law rendered a trial as a whole unfair, contrary to Article 6 (§§ 149-152; see also *Lysyuk v. Ukraine*, 2021, §§ 66-76).

c. Article 10 (freedom of expression)[10]

74. Although the domestic authorities and courts had classified a manuscript as "correspondence" within the meaning of the domestic provisions, that classification was not binding on the Court (*Zayidov v. Azerbaijan (no. 2)*, 2022, § 64).

75. Although surveillance or telephone tapping is generally examined under Article 8 alone, such a measure may be so closely linked to an issue falling under Article 10 – for example, if special powers were used to circumvent the protection of a journalistic source – that the Court examines the case under the two Articles concurrently (*Telegraaf Media Nederland Landelijke Media B.V. and Others v. the Netherlands*, 2012). In the case cited, the Court found a violation of both Articles. It held that the law had not afforded adequate safeguards in relation to the surveillance of journalists with a view to discovering their sources.

d. Article 13 (right to an effective remedy)[11]

76. In a case concerning home searches, the Court found that the mere possibility of disciplinary proceedings against the police officers who had carried out the searches did not constitute an effective remedy for the purposes of the Convention. In the case of interference with the right to respect for the home, a remedy is effective if the applicant has access to a procedure enabling him or her to contest the lawfulness of searches and seizures and obtain redress where appropriate (*Posevini v. Bulgaria*, 2017, § 84).

77. As regards the interception of telephone conversations, in the *İrfan Güzel v. Turkey*, 2017, judgment (§§ 94-99), after finding that there had been no violation of Article 8 on account of the tapping of the applicant's telephone calls in the course of the criminal proceedings against him, the Court held that there had been a violation of Article 13 in conjunction with Article 8 as the applicant had not been informed of the existence of the judicial decisions authorising the phone tapping and the Government had failed to produce any examples showing that in similar cases an authority had been empowered to assess retrospectively the compatibility of phone tapping with Article 8, in order to provide complainants with appropriate redress where relevant. In the sphere of secret surveillance, where abuses are potentially easy and could have harmful consequences for democratic society as a whole, it is in principle desirable to entrust supervisory control to a judge, judicial oversight offering

[8] See the Case-law Guide on Article 2 - Right to life.
[9] See the Case-law Guide on Article 6 - Fair trial.
[10] See the Case-law Guide on Article 10 - Freedom of expression.
[11] See the Case-law Guide on Article 13 - Right to an effective remedy.

the best guarantees of independence, impartiality and a proper procedure (*Roman Zakharov v. Russia* [GC], 2015, § 233; *İrfan Güzel v. Turkey*, 2017, § 96). It is advisable to notify the person concerned after the termination of surveillance measures, as soon as notification can be carried out without jeopardising the purpose of the restriction (*Roman Zakharov v. Russia* [GC], 2015, §§ 287 et seq.; *İrfan Güzel v. Turkey*, 2017, § 98). In order to be able to challenge the decision forming the basis for the interception of communications, the applicant must be provided with a minimum amount of information about the decision, such as the date of its adoption and the authority that issued it (*Roman Zakharov v. Russia* [GC], 2015, §§ 291 et seq.; *İrfan Güzel v. Turkey*, 2017, § 105). Ultimately, an "effective remedy" for the purposes of Article 13 in the context of secret surveillance must mean "a remedy that is as effective as can be having regard to the restricted scope for recourse inherent in any system of secret surveillance" (*İrfan Güzel v. Turkey*, 2017, § 99).

78. In *Mateuț v. Romania* (dec.), 2022, a lawyer complained about the interception of his telephone conversation with his client, the use of this conversation in the context of the criminal trial against his client and the subpoena to appear as a witness in his client's trial. The complaint was examined under Articles 8 and 13. The Court found that the exclusion of the transcript of the conversation from the case-file and the fact that the applicant could have sought pecuniary compensation through a separate civil action meant that he had been afforded sufficient redress and, in consequence, could no longer claim to be a 'victim' for the purposes of Article 34 of the Convention.

e. Article 14 (prohibition of discrimination)[12]

79. In *Larkos v. Cyprus* [GC], 1999, the Court held that the disadvantageous situation of tenants renting State-owned property in relation to tenants renting from private landlords as regards eviction breached Article 14 of the Convention taken in conjunction with Article 8. In *Strunjak and Others v. Croatia* (dec.), 2000, it did not find it discriminatory that only tenants occupying State-owned flats had the possibility of purchasing them, whereas tenants of privately owned flats did not. In *Bah v. the United Kingdom*, 2011, it examined the conditions of access to social housing and in *L.F. v. the United Kingdom* (dec.), 2022, the exclusion from social housing. In *Karner v. Austria*, 2003, it considered the issue of the right to succeed to a tenancy within a homosexual couple[13] (see also *Kozak v. Poland*, 2010; *Makarčeva v. Lithuania* (dec.), 2021, and compare with *Korelc v. Slovenia*, 2009, where it was impossible for an individual who had provided daily care to the person he lived with to succeed to the tenancy on the latter's death). Other cases concern Articles 14 and 8 in conjunction (for instance, *Gillow v. the United Kingdom*, 1986, §§ 64-67; *Moldovan and Others v. Romania (no. 2)*, 2005; *Paketova and Others v. Bulgaria*, 2022).

f. Article 34 (individual applications)[14]

80. In cases concerning the interception of a letter addressed to or received by the Court, Article 34 of the Convention, which prevents any hindrance of the effective exercise of the right of individual petition, may also be applicable (*Yefimenko v. Russia*, 2013, §§ 152-165; *Kornakovs v. Latvia*, 2006, § 157; *Chukayev v. Russia*, 2015, § 130). As a matter of fact, for the operation of the system of individual petition instituted by Article 34 of the Convention to be effective, applicants or potential applicants must be able to communicate freely with the Court without being subjected to any form of pressure from the authorities to withdraw or modify their application (*Salman v. Turkey* [GC], 2000, § 130). Delay by the prison authorities in posting letters to the Court forms an example of hindrance prohibited by the second sentence of Article 34 of the Convention (*Poleshchuk v. Russia*, 2004, § 28), as does the authorities' refusal to send the Court the initial letter from an applicant in detention (*Kornakovs v. Latvia*, 2006, §§ 165-167).

[12] See the Article 14 and Article 1 of Protocol No. 12 - Prohibition of discrimination.
[13] See the Case-law Guide on the Rights of LGBTI persons.
[14] See also Prisoners' correspondence and the Practical Guide on admissibility criteria.

g. Article 1 of Protocol No. 1 (protection of property)[15]

81. There may be a significant overlap between the concept of "home" and that of "property" under Article 1 of Protocol No. 1, but the existence of a "home" is not dependent on the existence of a right or interest in respect of real property (*Surugiu v. Romania*, 2004, § 63). An individual may have a property right over a particular building or land for the purposes of Article 1 of Protocol No. 1, without having sufficient ties with the property for it to constitute his or her "home" within the meaning of Article 8 (*Khamidov v. Russia*, 2007, § 128).

82. In view of the crucial importance of the rights secured under Article 8 to the individual's identity, self-determination and physical and mental integrity, the margin of appreciation afforded to States in housing matters is narrower in relation to the rights guaranteed by Article 8 than to those protected by Article 1 of Protocol No. 1 (*Gladysheva v. Russia*, 2011, § 93). Some measures that constitute a violation of Article 8 will not necessarily lead to a finding of a violation of Article 1 of Protocol No. 1 (*Ivanova and Cherkezov v. Bulgaria*, 2016, §§ 62-76). The judgment in *Ivanova and Cherkezov v. Bulgaria*, 2016, highlights the difference between the interests protected by the two Articles and hence the disparity in the extent of the protection they afford, particularly when it comes to applying the proportionality requirements to the facts of a particular case (§ 74[16]).

83. A violation of Article 8 may accompany a finding of a violation of Article 1 of Protocol No. 1 (*Doğan and Others v. Turkey*, 2016, § 159; *Chiragov and Others v. Armenia* [GC], 2015, § 207; *Sargsyan v. Azerbaijan* [GC], 2015, §§ 259-260; *Cyprus v. Turkey* [GC], 2001, §§ 175 and 189; *Khamidov v. Russia*, 2007, §§ 139 and 146; *Rousk v. Sweden*, 2013, §§ 126 and 142; and *Kolyadenko and Others v. Russia*, 2012, § 217). Alternatively, the Court may find a violation of one of the two Articles only (*Ivanova and Cherkezov v. Bulgaria*, 2016, §§ 62 and 76). It may also consider it unnecessary to rule separately on one of the two complaints (*Öneryıldız v. Turkey* [GC], 2004, § 160; *Surugiu v. Romania*, 2004, § 75).

84. Some measures touching on enjoyment of the home should, however, be examined under Article 1 of Protocol No. 1, particularly in standard expropriation cases (*Mehmet Salih and Abdülsamet Çakmak v. Turkey*, 2004, § 22; *Mutlu v. Turkey*, 2006, § 23).

h. Article 2 § 1 of Protocol No. 4 (freedom of movement)[17]

85. Although there is some interplay between Article 2 § 1 of Protocol No. 4, which guarantees the right to liberty of movement within the territory of a State and freedom to choose one's residence there, and Article 8, the same criteria do not apply in both cases. Article 8 cannot be construed as conferring the right to live in a particular location (*Ward v. the United Kingdom* (dec.), 2004; *Codona v. the United Kingdom* (dec.), 2006), whereas Article 2 § 1 of Protocol No. 4 would be devoid of all meaning if it did not in principle require the Contracting States to take account of individual preferences in this sphere (*Garib v. the Netherlands* [GC], 2017, §§ 140-141).

II. Private life

A. Sphere of private life

1. Applicability in general

86. Private life is a broad concept incapable of exhaustive definition (*Niemietz v. Germany*, 1992, § 29; *Pretty v. the United Kingdom*, 2002, § 61; *Peck v. the United Kingdom*, 2003, § 57). It covers the physical and psychological integrity of a person and may "embrace multiple aspects of the person's physical and social identity" (*Denisov v. Ukraine* [GC], 2018, § 95; *S. and Marper v. the United*

[15] See the Case-law Guide on Article 1 of Protocol No. 1 - Protection of property.
[16] See section Home below.
[17] See the Case-law Guide on Article 2 of Protocol No. 4 - Freedom of movement.

Kingdom [GC], 2008, § 66; *Toth and Crișan v. Romania*, 2025, § 30). However, through its case-law, the Court has provided guidance as to the meaning and scope of private life for the purposes of Article 8 (*Paradiso and Campanelli v. Italy* [GC], 2017, § 159). Moreover, the generous approach to the definition of personal interests has allowed the case-law to develop in line with social and technological developments.

87. The notion of private life is not limited to an "inner circle" in which the individual may live his own personal life as he chooses and exclude the outside world (*Denisov v. Ukraine* [GC], 2018, § 96). Article 8 protects the right to personal development, whether in terms of personality or of personal autonomy, which is an important principle underlying the interpretation of the Article 8 guarantees. It encompasses the right for each individual to approach others in order to establish and develop relationships with them and with the outside world, that is, the right to a "private social life" (*Bărbulescu v. Romania* [GC], 2017, § 71; *Botta v. Italy*, 1998, § 32). However, Article 8 does not guarantee the right as such to establish a relationship with one particular person, especially if the other person does not share the wish for contact and if the person with whom the applicant wishes to maintain contact has been the victim of behaviour which has been deemed detrimental by the domestic courts (*Evers v. Germany*, 2020, § 54).

88. There is a zone of interaction of a person with others, even in a public context, which may fall within the scope of "private life" (see, among other authorities, *Peck v. the United Kingdom*, 2003, § 62; *Uzun v. Germany*, 2010, § 43; *Von Hannover v. Germany (no. 2)* [GC], 2012, § 95; *Altay v. Turkey (no. 2)*, 2019, § 49) or not (*Nicolae Virgiliu Tănase v. Romania* [GC], 2019, §§ 128-32). However, there is nothing in the Court's established case-law which suggests that the scope of private life extends to activities "which are of an essentially public nature" (*ibid.*, § 128; see also *Centre for Democracy and the Rule of Law v. Ukraine*, 2020, as concerns the disclosure of information about political leaders' education and work history, §§ 114-116). Everyone has the right to live privately, away from unwanted attention (*Khadija Ismayilova v. Azerbaijan*, 2019, § 139). The home address of a person constitutes personal information that is a matter of private life and, as such, enjoys the protection afforded in that respect by Article 8 (*Alkaya v. Turkey*, 2012, § 30; *Samoylova v. Russia*, 2021, § 63; *L.B. v. Hungary* [GC], 2023, § 104).

89. In *Lacatus v. Switzerland*, 2021, the Court found that the imposition of a fine on the applicant for begging, and her subsequent imprisonment for non-payment, interfered with her right to respect for her "private life". Given the concept of human dignity underpinning the spirit of the Convention, by prohibiting begging in general and by imposing a fine on the applicant together with a prison sentence for failure to comply with the sentence imposed, the national authorities prevented her from making contact with other people in order to get help which was one of the ways she could meet her basic needs (§§ 56-60). It further found that the respondent State had overstepped its margin of appreciation as the penalty imposed on the applicant had not been proportionate either to the aim of combating organised crime or to the aim of protecting the rights of passers-by, residents and shopkeepers. Furthermore, in view of the fact that the applicant was an extremely vulnerable person, in a situation in which she had in all likelihood lacked any other means of subsistence, the Court found that her punishment had infringed her human dignity and impaired the very essence of the rights protected by Article 8 of the Convention. In *Dian v. Denmark* (dec.), the Court further nuanced that approach by applying the principles and criteria set out in the *Lacatus* judgment. It clarified, in particular, that it had not previously acknowledged that there was a right to beg, as such, under Article 8. If the person's economic and social situation was so inhuman and precarious that his or her human dignity had been severely compromised and if begging was a means for him or her to rise above that situation, then the right to call on others for assistance through begging went to the very essence of the rights protected by Article 8 of the Convention. Those specific circumstances should be determined on a case-by-case basis. On the facts of the case, the Court examined the two criteria developed in *Lacatus*, namely the gravity of the applicant's economic and social situation and the extent of the ban on begging. It found, firstly, that the applicant did not really depend on begging to

ensure his survival or to protect his human dignity. The Court was thus not convinced that the applicant lacked sufficient means of subsistence or that begging had been his only option to ensure his own survival or that, by the act of begging, he had adopted a particular way of life in order to rise above an inhumane and precarious situation and thus protect his human dignity. Secondly, the impugned ban was not absolute but limited to some designated places and areas. The circumstances of the present case were not therefore such as to trigger the applicability of Article 8 of the Convention.

90. Measures taken in the field of education may, in certain circumstances, affect the right to respect for private life (*F.O. v. Croatia*, 2021, § 81). The Court held that the verbal abuse of a student by his teacher, in front of his classmates, fell to be examined under the right to respect for "private life". It had no doubt that the insults caused emotional disturbance, which affected the applicant's psychological well-being, dignity and moral integrity, were capable of humiliating and belittling him in the eyes of others (§§ 59-61). In *Biba v. Albania*, 2024, §§ 41-43, the Court held that an eye injury, inflicted on the applicant's son by another pupil at a private school, resulting in 90% loss of vision in that eye, had undoubtedly had an adverse effect on the boy's private life so that Article 8 was engaged.

91. in addition, the right of a child born out of wedlock to determine the legal relationship between him or her and his or her natural parent, even if the latter has died, falls within the scope of concept of "private life" (*Mikulić v. Croatia*, 2002, § 53; *Moldovan v. Ukraine*, 2024, §§ 32 and 35).

92. The applicability of Article 8 has been determined, in some contexts, by a severity test: see, for example, the relevant case-law on environmental issues[18][19]; an attack on a person's reputation[20], dismissal, demotion, non-admission to a profession or other similarly unfavourable measures, in *Denisov v. Ukraine* [GC], 2018, §§ 111-112 and 115-117, with further references therein (see also, by way of examples, *Polyakh and Others v. Ukraine*, 2019, §§ 207-211; *Vučina v. Croatia* (dec.), 2019, §§ 44-50; *Convertito and Others v. Romania*, 2020; *Platini v. Switzerland* (dec.), 2020; *M.L. v. Slovakia*, 2021, § 24; *Budimir v. Croatia*, 2021, § 47); acts or measures of a private individual which adversely affect the physical and psychological integrity of another (*Nicolae Virgiliu Tănase v. Romania* [GC], 2019, § 128, in relation to a road-traffic accident; *C. v. Romania*, 2022, with regard to sexual harassment, §§ 50-54; *Biba v. Albania*, 2024, §§ 41-43, regarding an injury inflicted at school); and individual psychological well-being and dignity in *Beizaras and Levickas v. Lithuania*, 2020, §§ 109 and 117; *Nepomnyashchiy and Others v. Russia*, 2023, §§ 59-62[21] (see in some other fields, for instance, *S.-H. v. Poland* (dec.), 2021). Not every act or measure which may be said to affect adversely the moral integrity of a person necessarily gives rise to such an interference. However, once a measure is found to have seriously affected the applicant's private life, the complaint will be compatible *ratione materiae* with the Convention and an issue of the "right to respect for private life" will arise. In this regard, the question of applicability and the existence of interference with the right to respect for private life are often inextricably linked (*Vučina v. Croatia* (dec.), 2019, § 32).

93. In *Vučina v. Croatia* (dec.), 2019, the applicant's photograph had been published in a magazine and she was erroneously identified as the then Mayor's wife. The Court declared the application inadmissible *ratione materiae*. Although it accepted that the applicant might have been caused some distress, it considered that the level of seriousness associated with the erroneous labelling of her photograph and the inconvenience that she suffered did not give rise to an issue – either in the context of the protection of her image or her honour and reputation – under Article 8 (§§ 42-51).

[18] See the Case-law Guide on Environment.

[19]. See chapter on Environmental issues.

[20] See chapters on Professional and business activities, Right to one's image and photographs; the publishing of photos, images, and articles and Protection of individual reputation; defamation below.

[21] See also chapter on Relations between Article 8 and other provisions of the Convention and its Protocols, Article 14.

94. The Court also applied the above-mentioned severity test in cases involving identity checks, allegedly based on physical or ethnic motives. It clarified that not every identity check of a person belonging to an ethnic minority would fall within the ambit of Article 8, thus triggering the applicability of Article 14. Such a check should attain the necessary threshold of severity so as to fall within the ambit of "private life". That threshold is only attained if the person concerned has an arguable claim that he or she may have been targeted on account of specific physical or ethnic characteristics. Such an arguable claim may notably exist where the person concerned had submitted that he or she (or persons having the same characteristics) had been the only person(s) subjected to a check and where no other grounds for the check were apparent or where any of the explanations of the officers carrying out the check disclosed specific physical or ethnic motives. In this connection, the Court observed that the public nature of the check might have an effect on a person's reputation and self-respect (*Basu v. Germany*, 2022, §§ 25-27; *Muhammad v. Spain*, 2022, §§ 49-51; *Wa Baile v. Switzerland*, 2024, §§ 71 and 102).

95. The Court has also held that statements made about an applicant's finances and business dealings by judges hearing an appeal did not attain such a level of seriousness that Article 8 would be applicable. The Court considered that the impugned statements were part of the judgment's reasoning and that the complaint raised an important issue concerning the protection of judges who are fulfilling their obligation to provide reasons to avoid claims by losing parties who disagree with the judgement delivered (*De Carvalho Basso v. Portugal* (dec.), 2021, §§ 58-61; compare *Sanchez Cardenas v. Norway*, 2007, §§ 33-34, concerning a suggestion that the High Court suspected the applicant of sexually abusing a child; *Vicent Del Campo v. Spain*, 2018, §§ 47-48 and *S.W. v. the United Kingdom*, 2021, § 47, concerning comments made in relation to a third party mentioned in the proceedings; *Sousa Goucha v. Portugal*, 2016, §§ 53-54, concerning clearly discriminatory remarks; *C.C. v. Spain*, 2009, § 30, *Z v. Finland*, 1997, § 113, and *L.L. v. France*, 2006, §§ 45-46, concerning the disclosure of sensitive and personal medical or other private information).

96. Article 8 could also cover the right of victims during trials (*J.L. v. Italy*, 2021, § 119). In this case concerning gender-based violence, the Court held that judges' entitlement to express themselves freely in decisions, which was a manifestation of the judiciary's discretionary powers and of the principle of judicial independence, was limited by the obligation to protect the image and private life of persons coming before the courts from any unjustified interference. In such cases, it was essential that the judicial authorities avoided reproducing sexist stereotypes in court decisions, playing down gender-based violence and exposing women to secondary victimisation by making guilt-inducing and judgmental comments that were capable of undermining victims' trust in the justice system (*J.L. v. Italy*, 2021, §§ 134-139).

97. In *Matalas v. Greece*, 2021, § 45, the Court considered that statements contained in private documents that were not meant to be publicly disseminated and which were made known only to a restricted number of persons were not only capable of tarnishing the targeted person's reputation, but also of causing harm to both her professional and social environment. Accordingly, the Court held that such accusations attained a level of seriousness sufficient to harm one's rights under Article 8 and therefore examined whether the domestic authorities struck a fair balance between, on the one hand, the applicant's freedom of expression, as protected by Article 10, and, on the other, the recipient's right to respect for her reputation under Article 8.

98. In the case of access to a private beach by a person with disabilities, the Court held that the right asserted concerned interpersonal relations of such broad and indeterminate scope that there could be no conceivable direct link between the measures the State was being urged to take in order to make good the omissions of the private bathing establishments and the applicant's private life. Accordingly Article 8 was not applicable (*Botta v. Italy*, 1998, § 35). However, in *Arnar Helgi Lárusson v. Iceland,* 2022, the applicant complained about the accessibility of his own municipality's "main arts and cultural centre". He therefore identified a small, clearly defined number of buildings where access was lacking and explained how the lack of access to each of those buildings has affected his life.

According to evidence submitted by the Government, no other buildings in the municipality were available which had an equivalent purpose. The Court therefore accepted that his complaint fell within the "ambit" of Article 8 and, consequently, that Article 14 was applicable (§§ 43-44). However, in view of the State's wide margin of appreciation, the Court was not convinced that the lack of access to the buildings amounted to a discriminatory failure by the State to take sufficient measures to enable the applicant to exercise his right to private life on an equal basis with others (§ 63).

99. Additionally, a criminal conviction in itself would not amount to an interference with the right to respect for private life (*Gillberg v. Sweden* [GC], 2012, § 70). The Court found that Article 8 was not engaged in a case regarding a conviction for professional misconduct because the offence in question had no obvious bearing on the right to respect for "private life". On the contrary it concerned professional acts and omissions by public officials in the exercise of their duties. Neither had the applicant pointed to any concrete repercussions on his private life which had been directly and causally linked to his conviction for that specific offence (*Gillberg v. Sweden* [GC], 2012, § 70; see also *Denisov v. Ukraine* [GC], 2018, §§ 115-117 below). However, the Court expressly distinguished a case concerning the suspension of a judge for having undermined the authority of the court by investigating the independence of a first instance judge since in its view his alleged misconduct was not evident (*Juszczyszyn v. Poland*, 2022, § 231). Moreover, in the case of a police investigator who had been found guilty of a serious breach of his professional duties for having solicited and accepted bribes in return for discontinuing criminal proceedings and who had wished to practise as a trainee advocate after serving his sentence, the Court found that restrictions on registration as a member of certain professions which could to a certain degree affect that person's ability to develop relationships with the outside world fell within the sphere of his or her private life (*Jankauskas v. Lithuania (no. 2)*, 2017, §§ 57-58).

100. In *Nicolae Virgiliu Tănase v. Romania* [GC], 2019, the applicant was seriously injured as a result of a traffic accident. However, the Grand Chamber found that such personal injury did not raise an issue relating to his private life within the meaning of Article 8 since his injuries resulted from his having voluntarily engaged in an activity that took place in public, and the risk of serious harm was minimised by traffic regulations aimed at ensuring road safety for all road users. Furthermore, the accident did not occur as the result of an act of violence intended to cause harm to the applicant's physical and psychological integrity, nor could it be assimilated to any of the other types of situations where the Court has previously found the State's positive obligation to protect physical and psychological integrity engaged (§§ 125-132).

101. In *Ahunbay and Others v. Turkey* (dec.), 2019, the Court did not recognize a universal individual right to the protection of a particular cultural heritage (§§ 24-25). Although the Court was prepared to consider that there was a European and international community of opinion on the need to protect the right of access to cultural heritage, it indicated that such protection was generally aimed at situations and regulations concerning the right of minorities to freely enjoy their own culture and the right of indigenous peoples to conserve, control and protect their cultural heritage. Thus, in the current state of international law, the rights related to cultural heritage appeared to be intrinsic to the specific status of individuals who benefitted from the exercise of minority and indigenous rights.

102. On the other hand, in *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* [GC], 2024, §§ 519 and 544, the Court recognised, for the first time, that Article 8 must be seen as encompassing a right for individuals to effective protection by the State authorities from serious adverse effects of climate change on their life, health, well-being and quality of life. The assessment of the applicability of this provision will be made on a case-by-case basis subject to the same criteria as those concerning the victim status of individuals and the legal standing of associations (§ 520). In particular, individuals will have to show that they are personally and directly affected by the authorities' action or inaction in the light of two key criteria: (a) high intensity of exposure of the applicant to the adverse effects of climate change; and (b) a pressing need to ensure the applicant's individual protection, owing to the absence or inadequacy of any reasonable measures to reduce harm (§ 487). The threshold for

establishing victim status in climate change cases must be especially high (§ 488). As regards associations, in order to be recognised to have standing to lodge an application on account of the alleged failure by the relevant State to take adequate measures to protect individuals against the adverse effects of climate change on human lives and health, the association must be: (a) lawfully established in the jurisdiction concerned or have standing to act there; (b) able to demonstrate that it pursues a dedicated purpose in accordance with its statutory objectives in the defence of the human rights of its members or other affected individuals within the jurisdiction concerned, whether limited to or including collective action for the protection of those rights against the threats arising from climate change; and (c) able to demonstrate that it can be regarded as genuinely qualified and representative to act on behalf of members or other affected individuals within the jurisdiction who are subject to specific threats or adverse effects of climate change on their lives, health or well-being as protected under the Convention. In view of the specific features of recourse to legal action by associations in this context, the standing of an association to act on behalf of the members or other affected individuals within the jurisdiction concerned will not be subject to a separate requirement of showing that those on whose behalf the case has been brought would themselves have met the above-mentioned victim-status requirements for individuals in the climate-change context. In the later case of *Greenpeace Nordic and Others v. Norway*, 2025, the Court held that Article 8 was applicable to a complaint concerning alleged shortcomings in the decision-making process for granting licences for petroleum exploration. The Court found there to be a sufficiently close link between the procedure for the licensing of exploration and serious adverse effects of climate change on the lives, health, well-being and quality of life of individuals. The fact that other events and permits were necessary before extraction could take place did not break the chain of causation. Furthermore, having established the link between exploration licensing and extraction, the Court also noted that oil and gas extraction was the most important source of green-house gas emissions of Norway, and that the burning of fossil fuels, including oil and gas, was among the main causes of climate change. Although it found – in line with *Verein KlimaSeniorinnen Schweiz and Others* – that the individual applicants did not fulfil the victim status criteria in Article 34 of the Convention, it considered that the applicant organisations had the necessary *locus standi* and that Article 8 was applicable to their complaint.

103. Article 8 cannot be relied on in order to complain of personal, social, psychological and economic suffering which is a foreseeable consequence of one's own actions, such as the commission of a criminal offence or similar misconduct (*Denisov v. Ukraine* [GC], 2018, § 98 and § 121 referring to the '*Gillberg* exclusionary principle'; *Evers v. Germany*, 2020, § 55; *M.L. v. Slovakia*, 2021, § 38; *L.B. v. Hungary* [GC], 2023, § 102; see, however, *Gražulevičiūtė v. Lithuania*, 2021, in which the applicant denied any misconduct and the Court therefore declined to apply the "exclusionary principle" (§ 102)). In sum, when the negative effects complained of are limited to the consequences of the unlawful conduct which were foreseeable by the applicant, Article 8 cannot be relied upon to allege that such negative effects encroach upon private life (compare, *Ballıktaş Bingöllü v. Turkey,* 2021, § 54).

104. In sum, there is a general acknowledgment in the Court's case-law under Article 8 of the importance of privacy and the values to which it relates (see, for instance, *Denisov v. Ukraine* [GC], 2018, § 95). These values include, among others, well-being and dignity (*Hudorovič and Others v. Slovenia*, 2020, §§ 112-116 on living conditions; *Beizaras and Levickas v. Lithuania*, 2020, § 117 on psychological dignity), health issues / medical treatment (*Y.P. v. Russia*, 2022, §§ 42, 50), personality development (*Von Hannover v. Germany (no. 2)* [GC], 2012, § 95) or the right to self-determination (*Pretty v. the United Kingdom*, 2002, § 61), physical (*J.L. v. Italy*, 2021, § 118), physical and psychological integrity (*Vavřička and Others v. the Czech Republic* [GC], 2021, § 261; *Söderman v. Sweden*, [GC], § 80; *Paketova and Others v. Bulgaria*, 2022, § 154), personal identity, of which gender identity was one component (*Y v. France*, 2023, §§ 47, 75), relations with other human beings (*Paradiso and Campanelli v. Italy* [GC], 2017, § 159, *Couderc and Hachette Filipacchi Associés v. France* [GC], 2015, § 83), and the right to respect for the decisions both to have and not to have a child (*A, B and C v. Ireland* [GC], 2010, § 212; *M.L. v. Poland*, 2023, § 91); aspects of social identity

(*Mikulić v. Croatia*, 2002, § 53, including the emotional bonds created and developed between an adult and a child in situations other than the classic situations of kinship, *Jessica Marchi v. Italy*, 2021, § 62), the protection of personal data[22] (*M.L. and W.W. v. Germany*, 2018, § 87; *Liebscher v. Austria*, 2021, § 31; *Drelon v. France*, 2022, § 79; *Florindo de Almeida Vasconcelos Gramaxo v. Portugal*, 2022, §§ 95-96) and a person's image (*Reklos and Davourlis v. Greece,* 2009, § 38). It also covers personal information which individuals can legitimately expect should not be published without their consent (*M.P. v. Portugal*, 2021, §§ 33-34) and may extend to certain situations after death (*Polat v. Austria*, 2021, § 48 and the references therein).

105. Given the very wide range of issues which private life encompasses, cases falling under this notion have been grouped into three broad categories (sometimes overlapping) to provide some means of categorisation, namely: (i) a person's physical, psychological or moral integrity, (ii) his privacy and (iii) his identity and autonomy. These categories will be considered in greater detail below.

2. Professional and business activities

106. Since Article 8 guarantees the right to a "private social life", it may, under certain circumstances, include professional activities (*Fernández Martínez v. Spain* [GC], 2014, § 110; *Bărbulescu v. Romania* [GC], 2017, § 71; *Antović and Mirković v. Montenegro*, 2017, § 42; *Denisov v. Ukraine* [GC], 2018, §§ 100 with further references therein and *López Ribalda and Others v. Spain* [GC], 2019, §§ 92-95), and commercial activities (*Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], 2017, § 130). Furthermore, the exercise of public duties by a politician is akin to a "professional occupation" for the purposes of Article 8 (*Paterson v. the United Kingdom* (dec.), 2024, § 57 and *Ahmed v. the United Kingdom* (dec.), 2024, § 61).

107. While no general right to employment or to the renewal of a fixed-term contract, right of access to the civil service or a right to choose a particular profession, can be derived from Article 8, the notion of "private life" does not exclude, in principle, activities of a professional or business nature (*Bărbulescu v. Romania* [GC], 2017, § 71; *Jankauskas v. Lithuania (no. 2)*, 2017, § 56-57; *Fernández Martínez v. Spain* [GC], 2014, §§ 109-110). Indeed, private life encompasses the right for an individual to form and develop relationships with other human beings, including relationships of a professional or business nature (*C. v. Belgium*, 1996, § 25; *Oleksandr Volkov v. Ukraine*, 2013, § 165). It is, after all, in the course of their working lives that the majority of people have a significant opportunity of developing relationships with the outside world (*Niemietz v. Germany*, 1992, § 29; *Bărbulescu v. Romania* [GC], 2017, § 71 and references cited therein; *Antović and Mirković v. Montenegro*, 2017, § 42)[23].

108. Therefore, restrictions imposed on access to a profession have been found to affect "private life" (*Sidabras and Džiautas v. Lithuania*, 2004, § 47; *Bigaeva v. Greece*, 2009, §§ 22-25; see also *Jankauskas v. Lithuania (no. 2)*, 2017, § 56 and *Lekavičienė v. Lithuania*, 2017, § 36, concerning restrictions on registration with the Bar Association as a result of a criminal conviction) and the same goes for the loss of employment (*Fernández Martínez v. Spain* [GC], 2014, § 113). Likewise, dismissal from office has been found to interfere with the right to respect for private life (*Özpınar v. Turkey*, 2010, §§ 43-48). In *Oleksandr Volkov v. Ukraine*, 2013, the Court found that a judge's dismissal for professional misconduct constituted an interference with his right to respect for "private life" within the meaning of Article 8 (§§ 165-167; see also *Ovcharenko and Kolos v. Ukraine*, 2023, § 86). The Court has also found a violation of Article 8 where the applicant was transferred to a more minor role in a city which was less important in administrative terms, following a report that he had particular religious beliefs and that his wife wore an Islamic veil (*Sodan v. Turkey*, 2016, §§ 57-60; see also *Yılmaz v. Turkey*, 2019, §§ 43-49, in which the applicant's appointment to an overseas teaching post was opposed by the authorities because his wife wore a veil). Another violation was found in a case in

[22] See the Case-law Guide on Data protection.
[23] See the chapter on Correspondence of private individuals, professionals and companies.

which the applicant was removed from his teaching post following a change affecting the equivalence of the degree he obtained abroad (*Şahin Kuş v. Turkey*, 2016, §§ 51-52).

109. In *Denisov v. Ukraine* [GC], 2018, the Court, recalling a number of relevant precedents (§§ 101, 104-105, 108 and 109), set out the principles by which to assess whether employment-related disputes fall within the scope of "private life" under Article 8 (§§ 115-117; see also *J.B. and Others v. Hungary* (dec.), 2018, §§ 127-129). The Court held that there are some typical aspects of private life which may be affected in such disputes by dismissal, demotion, non-admission to a profession or other similarly unfavourable measures. In this case, the applicant was dismissed from his post as the president of a court on the basis of a failure to perform his administrative duties (managerial skills) properly. Whilst he was dismissed as president, he remained a judge in the same court. The Court did not find Article 8 applicable in this case. This was because, according to the Court, the decision concerned only his managerial skills while his professional role as a judge was not touched upon. Further, the decision did not affect his future career as a judge and neither did the decision call into question the moral or ethical aspect of his personality and character. In summary, in this situation, the dismissal had limited negative effects on the applicant's private life and did not cross the "threshold of seriousness" for an issue to be raised under Article 8 (*Denisov v. Ukraine* [GC], 2018, §§ 126-133; see also *Camelia Bogdan v. Romania*, 2020, §§ 83-92, *Miroslava Todorova v. Bulgaria*, 2012, §§ 136-145 including on the pecuniary aspect, and *Gražulevičiūtė v. Lithuania*, 2021, §§ 101-110, in which the Court found that disciplinary proceedings did not reach the "threshold of seriousness" required to engage Article 8; see also in another context, *Ballıktaş Bingöllü v. Turkey,* 2021; *Altıner Akıncı v. Türkiye*, 2026, in the context of the adverse effects of a decision not to include the applicant on the list of referees eligible for international matches §§ 105-07; *Yokuşlu v. Türkiye*, 2026, in the context of a decision of the Arbitration Committee not to revoke the termination notice by a football player of his contract with a football club). Following *Denisov*, employment-related disputes will generally only engage Article 8 either where a person loses a job because of something he or she did in private life (reason-based approach) or when the loss of job impacts on private life (consequence-based approach) (§§ 115-117). Thereafter, the consequence-based approach was applied to the prospective employment context (the consequences of a decision for the applicant's employment prospects in the civil service, and more specifically on her chances of obtaining a post as a research assistant in a public university, see *Ballıktaş Bingöllü v. Turkey,* 2021, §§ 55-62). The test was found to have been met in the case of Constitutional Court judges dismissed for "breach of oath", since their dismissal had a serious impact on their inner circle, given the ensuing pecuniary losses, and on their reputation, given that the grounds for the dismissal directly concerned their personal integrity and professional competence (*Ovcharenko and Kolos v. Ukraine*, 2023, § 86). It was also found to have been met in the case of a judge suspended for over two years for having undermined the authority of the court by investigating the independence of a first instance judge (*Juszczyszyn v. Poland*, 2022, §§ 228-237) and in the case of a judge suspended for over two years following his indictment on charges unrelated to his judicial duties (*Pengezov v. Bulgaria*, 2023, §§ 67-72). It was also found to have been met in the case of female judges who were forced into early retirement (*Pająk and Others v. Poland*, 2023, §§ 214-20) and in the case of a lawyer disbarred on account of statements that he had made to the press about the alleged ill-treatment of his client in prison (*Imanov v. Azerbaijan*, 2025, § 53). However, it was not found to have been met where Constitutional Court judges, originally appointed with life tenure, had their terms of office terminated as a result of a constitutional reform (*Gyulumyan and Others v. Armenia* (dec.), 2023). The Court also found that the test had been met in the case of a lay teacher of Orthodox religion at a secondary public school whose employment had been automatically terminated after the withdrawal of her endorsement by an Archbishop (*Ţîmpău v. Romania*, 2023). In *Simoncini v. San Marino**, 2026, the Court applied the test in the case of the annulment, on the basis of a retroactive law, of the applicant's appointment as a first-instance judge, as it considered that the cumulative effects of that decision had been sufficiently serious and had affected the applicant's private life to a very significant degree (§§ 145-51 and 177-79).

110. The reasons-based approach was used in *Mile Novaković v. Croatia*, 2020. The applicant, who was of Serbian ethnic origin, was dismissed from his post at a secondary school for failing to use the standard Croatian language when teaching. He was 55 at the time and had given 29 years of service. In the Court's view, the crucial reason for the applicant's dismissal was closely related to his Serbian ethnic origin and his age and had therefore been sufficiently linked to his private life. Consequently, Article 8 was applicable (§§ 48-49). The Court went on to find a violation of Article 8 as the measure in question had not been proportionate to the legitimate aim pursued, in part because no alternatives to dismissal had ever been contemplated (§§ 57-70).

111. In *Versaci v. Italy*, 2025, Article 8 was found to be applicable under the reasons-based approach, in the context of a refusal by the head of police to grant the applicant a "public security licence", to carry out bookmaking activities on behalf of a foreign company, for not fulfilling the "good character" requirement in domestic law. The Court found that the impugned decision had been based not on a conduct directly attributable to the applicant but on his social or family connections with certain individuals (§§ 81-85). The Court considered that, although vague and indefinite as such, the concept of "good character" was sufficiently foreseeable in view of the clarifications provided in the guidance on administrative practice and in the domestic case-law (§§ 110-20).

112. In *Polyakh and Others v. Ukraine*, 2019, the Court used the consequence-based approach to determine the applicability of Article 8 in the context of lustration proceedings (§§ 207-211). The applicants were dismissed from the civil service, they were banned from occupying positions in the civil service for ten years and their names were entered into the publicly accessible online Lustration Register. The Court considered that the combination of these measures had very serious consequences for the applicants' capacity to establish and develop relationships with others and their social and professional reputations and affected them to a very significant degree. Similarly, in *Xhoxhaj v. Albania*, 2021, the Court found that the dismissal of a judge through a vetting procedure interfered with her right to respect for her private life because the loss of remuneration had serious consequences for her inner circle and her dismissal stigmatised her in the eyes of society (§§ 363; see also *Sevdari v. Albania*, 2022 and *Nikehasani v. Albania*, 2022).

113. *Bagirov v. Azerbaijan*, 2020, is an example of the consequence-based approach where a lawyer was suspended from the practice of law and subsequently disbarred for public criticism of police brutality and disrespectful remarks about a judge and the functioning of the judicial system (§§ 91-104; with regard to the applicability of Article 8, see § 87). The Court especially took into account that the disbarment sanction constituted the harshest disciplinary sanction in the legal profession, having irreversible consequences on the professional life of a lawyer, and that lawyers play a central role in the administration of justice and in the protection of fundamental rights (§§ 99, 101). Similarly, the Court has found that the dismissal of a car mechanic by a private company after the authorities revoked his licence to carry out vehicle inspections had very serious consequences for his social and professional reputation (*Budimir v. Croatia*, 2021, § 47). The applicant's licence had been revoked after he was suspected of falsifying an inspection record, and the Court was concerned that the domestic legal framework did not provide for any sort of solution, pending the establishment of his actual liability. In particular, there was no possibility of temporary suspension from work or any provisions offering even partial remuneration for a person in his situation (§§ 59-65).

114. In *Pişkin v. Turkey,* 2020, the applicant had been dismissed from his employment with a local Development Agency pursuant to an Emergency Legislative Decree on account of allegations that he was affiliated with a terrorist organisation. In the Court's view, the grounds of dismissal affected the applicant's private life and there was no evidence to suggest that the termination of the employment contract had been the "foreseeable consequence of the applicant's own actions". Moreover, the fact that he had been stigmatised as a terrorist made it very difficult for him to find alternative employment and had serious consequences for his professional and personal reputation. The Court therefore accepted that the "threshold of seriousness" had been met (§§ 179-188). The Court proceeded to find that Article 8 had been violated as judicial review of the impugned measure had

been wholly inadequate and as such the applicant had not benefitted from the minimum degree of protection against arbitrary interference (§§ 216-229).

115. In *Platini v. Switzerland* (dec.), 2020, the Court used the consequence-based approach for the first time in the professional context of sport (§§ 54-58). The applicant had received a four-year suspension from any football-related professional activity, and the Court found that the threshold of severity had been attained on account of the repercussions of the suspension on his private life. In particular, the applicant was barred from earning a living from football (his sole source of income throughout his life) and the suspension interfered with the possibility of establishing and developing social relations with others as well as negatively impacting his reputation. However, the Court subsequently found that there were sufficient institutional and procedural guarantees available, namely a system of private (CAS) and State (Federal Court) bodies and that these bodies carried out a genuine weighing of the relevant interests at stake and responded to all of the applicant's grievances in duly reasoned decisions. Therefore, taking into account the considerable margin of appreciation enjoyed by the State, Switzerland had not failed to fulfil its obligations under Article 8 of the Convention.

116. In *Convertito and Others v. Romania*, 2020, the Court, citing *Denisov v. Ukraine* [GC], 2018, considered Article 8 applicable to the annulment of the applicants' university qualifications due to administrative flaws during the first-year registration procedure (§ 29). The annulment of their qualifications, for which they had studied for six years, had consequences not only for the way in which they had forged their social identity through the development of relations with others, but also for their professional life in so far as their level of qualification was called into question and their intention to embark on an envisaged career was suddenly frustrated.

117. In *S.W. v. the United Kingdom*, 2021, the Court considered that the decision of a judge of the Family Court to, in the first place, criticise the applicant in strong terms without giving her an adequate opportunity to respond and, then, to direct that those criticisms be shared with the local authorities where she had worked and with the relevant professional bodies, had significantly affected her ability to pursue her chosen professional activity, which in turn would have had consequential effects on the enjoyment of her right to respect for her "private life" within the meaning of Article 8 (§ 47). In *A.R. v. the United Kingdom*, 2025, the Court considered the disclosure, to a prospective employer, of a criminal charge of which the applicant had been acquitted. The Court found that the statutory regime was not in accordance with the law, and therefore in breach of Article 8, because at the relevant time the legal provisions in force, taken together with applicable guidance, left an excessively broad discretion for the competent authorities in the application of the disclosure provisions, and there was no guidance to assist employers when faced with the task of deciding how to approach information concerning criminal allegations of which an individual had been acquitted (§§ 60-70; see also *M.M. v. the United Kingdom*, 2012).

118. The Court has considered that the exercise of public duties by a politician is akin to a "professional occupation" for the purposes of Article 8 (*Paterson v. the United Kingdom* (dec.), 2024, § 57 and *Ahmed v. the United Kingdom* (dec.), 2024, § 61). Accordingly, in *Paterson* and *Ahmed* the complaint about the lack of safeguards in the disciplinary investigation process against the applicants (a Member of Parliament and a life peer of the House of Lords) was examined in line with both the reasons-based and consequence-based approach identified in *Denisov v. Ukraine* [GC], 2018 (*Paterson v. the United Kingdom* (dec.), 2024, §§ 55-71 and *Ahmed v. the United Kingdom* (dec.), 2024, §§ 62-76). In *Ahmed* the Court held that any consequences of the investigation process did not cross the threshold of seriousness for an issue to be raised under Article 8 (*Ahmed v. the United Kingdom* (dec.), 2024, §§ 66-76). In *Paterson* it was not necessary for the Court to reach a firm conclusion on this question since, even if Article 8 was applicable, the Court considered that any interference with the applicant's right to respect for his private life was accompanied by adequate procedural safeguards and was therefore proportionate to the legitimate aims pursued (*Paterson v. the United Kingdom* (dec.), 2024, §§ 55-71).

119. Communications from business premises may also be covered by the notions of "Private life" and "Correspondence" within the meaning of Article 8 (*Bărbulescu v. Romania* [GC], 2017, § 73; *Libert v. France*, 2018, §§ 23-25 and references cited therein) or the storage of private data on employees' work computers (*ibid.*, § 25). In order to ascertain whether those notions are applicable, the Court has on several occasions examined whether individuals had a reasonable expectation that their privacy would be respected and protected. In that context, it has stated that a reasonable expectation of privacy is a significant though not necessarily conclusive factor. Interestingly, in *Bărbulescu v. Romania* [GC], 2017, the Court decided to leave open the question of whether the applicant had a reasonable expectation of privacy because, in any event, "an employer's instructions cannot reduce private social life in the workplace to zero. Respect for private life and for the privacy of correspondence continues to exist, even if these may be restricted in so far as necessary". Article 8 therefore applied. In sum, whether or not an individual had a reasonable expectation of privacy, communications in the workplace are covered by the concepts of private life and correspondence (§ 80). In this case, the Court set down a detailed list of factors regarding States' positive obligation under Article 8 of the Convention when it comes to communications of a non-professional nature in the workplace (§§ 121-122)[24]. In *Libert v. France*, 2018, concerning the opening by a public employer of personal data on a work computer without the employee's knowledge and in his absence, the Court found that the domestic authorities had not overstepped their margin of appreciation and relied notably on the clear guidelines contained in the employer's Computer Charter (§§ 52-53).

120. Further, in *Antović and Mirković v. Montenegro*, 2017, the Court emphasised that video-surveillance of employees at their workplace, whether covert or not, constituted a considerable intrusion into their "private life" (§ 44). This case concerned the installation of video surveillance equipment in auditoriums at a university. *López Ribalda and Others v. Spain* [GC], 2019, concerned covert video-surveillance of employees throughout their working day in a supermarket. The Court found Article 8 ("private life") applicable because even in public places the systematic or permanent recording and the subsequent processing of images could raise questions affecting the private life of the individuals concerned (§ 93). The Court used the principles established in *Bărbulescu* and *Köpke* by listing the factors which must be taken into account when assessing the competing interests and the proportionality of the video-surveillance measures (§§ 116-117). The applicants' right to respect for their private life needs to be balanced with their employer's interest in the protection of its property rights, with a margin of appreciation being accorded to the State. Similarly, in *Florindo de Almeida Vasconcelos Gramaxo v. Portugal*, 2022, the Court found Article 8 ("private life") to be applicable where a private pharmaceutical company installed a GPS in the company vehicle of a medical representative, with his knowledge, and dismissed him based on the GPS data obtained. It noted that the GPS monitoring was permanent and systematic, and it made it possible to obtain geolocation data during the applicant's working hours and outside them, thus indisputably encroaching on his private life. Moreover, as that data led to his dismissal, it had undeniably serious repecussions for his private life. However, applying the principles established in *Bărbulescu* the Court found that the State had not overstepped its margin of appreciation and the national authorities had not failed to comply with their positive obligation to protect the applicant's right to respect for his private life.

121. Any criminal proceedings entail certain consequences for the private life of an individual who has committed a crime. These are compatible with Article 8 of the Convention provided that they do not exceed the normal and inevitable consequences of such a situation (*Jankauskas v. Lithuania (no. 2)*, 2017, § 76). Article 8 cannot be relied on in order to complain about a loss of reputation which is the foreseeable consequence of one's own actions, such as, for example, the commission of a criminal offence (*Sidabras and Džiautas v. Lithuania*, 2004, § 49 and contrast *Pişkin v. Turkey*, 2020, §§ 180-183). This principle is valid not only for criminal offences but also for other misconduct

[24] See also Correspondence.

entailing a measure of legal responsibility with foreseeable negative effects on "private life" (*Denisov v. Ukraine* [GC], 2018, § 98 with further references therein).

B. Physical, psychological or moral integrity

122. The Court indicated for the first time that the concept of private life covered the physical and moral integrity of the person in *X and Y v. the Netherlands*, 1985, § 22. That case concerned the sexual assault of a mentally disabled sixteen-year old girl and the absence of criminal law provisions to provide her with effective and practical protection (see, more recently, *Vavřička and Others v. the Czech Republic* [GC], 2021, § 261). A person's body concerns the most intimate aspect of private life (*Y.F. v. Turkey*, 2003, § 33). Regarding the protection of the physical and psychological integrity of an individual from other persons, the Court has held that the authorities' positive obligations – in some cases under Articles 2 or 3 of the Convention and in other instances under Article 8 taken alone or in combination with Article 3 (*X and Y v. the Netherlands*, 1985) – may include a duty to maintain and apply in practice an adequate legal framework affording protection against acts of violence by private individuals (*Osman v. the United Kingdom*, 1998, §§ 128-130; *Bevacqua and S. v. Bulgaria*, 2008, § 65; *Sandra Janković v. Croatia*, 2009, § 45; *A v. Croatia*, 2010, § 60; *Đorđević v. Croatia*, 2012, §§ 141-143; *Söderman v. Sweden* [GC], 2013, § 80). Furthermore, that legal framework must be implemented effectively in practice in order for the State to comply with its positive obligations under Article 8 (*Špadijer v. Montenegro*, 2021, § 101). For a recapitulation of the case-law and the limits of the applicability of Article 8 in this context, see *Nicolae Virgiliu Tănase v. Romania* [GC], 2019, §§ 125-132. In this case, the Court found Article 8 not applicable to a road-traffic accident which did not occur as the result of an act of violence intended to cause harm to the applicant's physical and psychological integrity (§§ 129-132). See also the summary of the case-law principles and references in *Špadijer v. Montenegro*, 2021, §§ 85-90.

123. A State's margin of appreciation will tend to be relatively narrow where the right at stake is crucial to the individual's effective enjoyment of intimate or key rights (*Dubská and Krejzová v. the Czech Republic* [GC], 2016, § 178; see also, for instance, *Hämäläinen v. Finland* [GC], 2014, §§ 67-68 and the case-law references cited).

124. The Court has found that Article 8 imposes on States a positive obligation to secure to their citizens the right to effective respect for their physical and psychological integrity (*Milićević v. Montenegro*, 2018, § 54; *Nitecki v. Poland* (dec.), 2002; *Sentges v. the Netherlands* (dec.), 2003; *Odièvre v. France* [GC], 2003, § 42; *Glass v. the United Kingdom*, 2004, §§ 74-83; *Pentiacova and Others v. Moldova*, 2005). This obligation may involve the adoption of specific measures, including the provision of an effective and accessible means of protecting the right to respect for private life (*Airey v. Ireland*, 1979, § 33; *McGinley and Egan v. the United Kingdom*, 1998, § 101; *Roche v. the United Kingdom* [GC], 2005, § 162). Such measures may include both the provision of a regulatory framework of adjudicatory and enforcement machinery protecting individuals' rights and the implementation, where appropriate, of these measures in different contexts (*A, B and C v. Ireland* [GC], 2010, § 245). In *Špadijer v. Montenegro*, 2021, the Court found Article 8 applicable to a situation of harassment/bullying at work by subordinates and superiors, with a concrete act of physical violence, which had had an adverse impact on the applicant's psychological integrity and well-being (§§ 80-83). It elaborated on the State's positive obligations in respect of acts of harassment at work (§§ 85-100; see also *Dolopoulos v. Greece* (dec.), 2015, with regard to a bank branch manager who complained of the deterioration of his mental health at work). In *C. v. Romania*, 2022, the Court elaborated on the State's positive obligations in the context of sexual harassment (§§ 61-88).

125. For example, in *Hadzhieva v. Bulgaria*, 2018, the authorities had arrested the applicant's parents in her presence when she was fourteen years old, leaving the young applicant to her own devices. Even though the applicable domestic law provided for the adoption of protective measures in such situations, the Court noted that the authorities had failed in their positive obligation to ensure that

the applicant was protected and cared for in the absence of her parents, having regard to the risks to her well-being (§§ 62-66). As to the positive obligation to protect physical integrity during the course of compulsory military service, see, for instance, *Demir v. Turkey* (dec.), 2017, §§ 29-40, with further references therein.

126. In *Vavřička and Others v. the Czech Republic* [GC], 2021, the Court expressly held that "there is an obligation on States to place the best interests of the child, and also those of children as a group, at the centre of all decisions affecting their health and development". In doing so, it rejected the applicants' contention that it should primarily be for the parents to determine how the best interests of the child are to be served and protected, and that State intervention could be accepted only as a last resort in extreme circumstances (§§ 286-288; see also *Parfitt v. the United Kingdom* (dec.), 2021, § 51). The disclosure of information concerning the identity of a minor could jeopardise the child's dignity and well-being even more severely than in the case of adult persons, given their greater vulnerability, which attracts special legal safeguards (*I.V.Ț. v. Romania*, 2022, § 59).

1. Victims of violence/abuse

127. The Court has long held that the State has an affirmative responsibility to protect individuals from violence by third parties (see, for a summary of the case-law, *C. v. Romania*, 2022, §§ 62-66). This has been particularly true in cases involving children (for instance, the verbal abuse of a student by his teacher, *F.O. v. Croatia*, 2021, §§ 81-82 and §§ 88-89; *Biba v. Albania*, 2024, §§ 59, 67 and 76) and victims of domestic violence, *Buturugă v. Romania*, 2020). While there are often violations of Articles 2 and 3 in such cases, Article 8 is also applied because violence threatens bodily integrity and the right to a private life (*Milićević v. Montenegro*, 2018, §§ 54-56; and *E.S. and Others v. Slovakia*, 2009, § 44). In particular, under Article 8 the States have a duty to protect the physical and moral integrity of an individual from other persons, including cyberbullying by a person's intimate partner: *Buturugă v. Romania*, 2020, §§ 74, 78-79; *Volodina v. Russia (no. 2)*, 2021, §§ 48-49, *M.Ș.D. v. Romania*, 2024, §§ 118-19; harassment/bullying by colleagues: *Špadijer v. Montenegro*, 2021, § 100, and sexual harassment in the workplace: *C. v. Romania*, 2022, §§ 67-87 (compare *Dolopoulos v. Greece* (dec.), 2015). To that end they are to maintain and apply in practice an adequate legal framework affording protection against acts of violence by private individuals (see also *Sandra Janković v. Croatia*, 2009, § 45). The national courts' dismissal of a claim by a victim of domestic violence to evict her husband from their shared social housing has also been found to breach her rights under Article 8 (*Levchuk v. Ukraine*, 2020, § 90).

128. In respect of children, who are particularly vulnerable, the measures applied by the State to protect them against acts of violence falling within the scope of Article 8 must also be effective. This should include reasonable steps to prevent ill-treatment of which the authorities had, or ought to have had, knowledge and effective deterrence against such serious breaches of personal integrity (*Z and Others v. the United Kingdom* [GC], 2001, § 73; *M.P. and Others v. Bulgaria*, 2011, § 108; *A and B v. Croatia*, 2019, §§ 106-113). Such measures must be aimed at ensuring respect for human dignity and protecting the best interests of the child (*Pretty v. the United Kingdom*, 2002, § 65; *C.A.S. and C.S. v. Romania*, 2012, § 82). In *Wetjen and Others v. Germany*, 2018, the Court found that the risk of systematic and regular caning constituted a relevant reason to withdraw parts of the parents' authority and to take the children into care (§ 78) (see also *Tlapak and Others v. Germany*, 2018, § 91).

129. In the context of the provision of an important public service such as education, the Court underlined that the essential role of the education authorities was to protect the health and well-being of the students, and that educational establishments were in principle under an obligation to supervise their students at all times during school hours and to take appropriate measures to prevent the use of dangerous objects by them on school premises or custody (*Biba v. Albania*, 2024, §§ 59, 67 and 71-73).

130. Regarding serious acts such as rape and sexual abuse of children, where fundamental values and essential aspects of private life are at stake, it falls to the Member States to ensure that efficient criminal law provisions are in place (*X and Y v. the Netherlands*, 1985, § 27; *M.C. v. Bulgaria*, 2003, § 150 and § 185, in which the approach taken by the investigator and the prosecutors in the case fell short of the requirements inherent in the States' positive obligations; *M.G.C. v. Romania*, 2016, § 74; *A and B v. Croatia*, 2019, § 112; *L and Others v. France*, 2025, § 250; *E.A. and European Association for Combating Violence Against Women at Work v. France*, 2025, §§ 134 and 150); as well as effective criminal investigations (*C.A.S. and C.S. v. Romania*, 2012, § 72; *M.P. and Others v. Bulgaria*, 2011, §§ 109-110; *M.C. v. Bulgaria*, 2003, § 152; *A, B and C v. Latvia*, 2016, § 174; *Y v. Bulgaria*, 2020, §§ 95-96; *A.J. and L.E. v. Spain*, 2025, §§ 87-98; and *Z v. Iceland*, 2026, §§ 39 and 47; *E.A. and European Association for Combating Violence Against Women at Work v. France*, 2025, §§ 153-160); that trial courts carry out a contextual assessment of consent, taking into account all the surrounding circumstances, including evidence of professional vulnerability and coercive control (*E.A. and European Association for Combating Violence Against Women at Work v. France*, 2025, §§ 161-170); that criminal sentences are enforced (*E.G. v. the Republic of Moldova*, 2021, § 49); and victims have the possibility to obtain reparation and redress (*C.A.S. and C.S. v. Romania*, 2012, § 72). However, there is no absolute right to obtain the prosecution or conviction of any particular person where there were no culpable failures in seeking to hold perpetrators of criminal offences accountable (*Brecknell v. the United Kingdom*, 2007, § 64; *Szula v. the United Kingdom* (dec.), 2007). See also as concerns other international instruments, *A, B and C v. Latvia*, 2016, § 148.

131. According to *Y. v. Slovenia*, 2015, it is first and foremost the responsibility of the presiding judge to ensure that respect for the applicant's personal integrity is adequately protected at trial when, for instance, being questioned and cross-examined by the accused (§§ 109-111). The personal integrity of the victims of crime in criminal proceedings must, by the very nature of the situation, be primarily protected by the public authorities conducting the proceedings. In this regard, the authorities are also required to ensure that other participants in the proceedings, called upon to assist them in the investigation or the decision-making process, treat victims and other witnesses with dignity, and do not cause them unnecessary inconvenience (§§ 112-116, calling for a "sensitive approach on the part of the authorities" to the conduct of a criminal proceedings concerning a minor).

132. The Court has also held that it is important for the authorities to protect the personal integrity of a vulnerable child in the course of excessively long criminal proceedings (by providing appropriate assistance and by avoiding unnecessary reconstructions and medical examinations) and in the examination of the evidence, including protection from secondary victimisation (*N.Ç. v. Turkey*, 2021). It is also essential to safeguard the victim's testimony both during the pre-trial investigation and trial. In *R.B. v. Estonia*, 2021, the applicant was four and a half years of age when she alleged that her father had sexually abused her. Although he was convicted of sexual abuse, his conviction was subsequently quashed because the applicant had not been made aware of the obligation to speak the truth and had not been advised that she could refuse to give testimony against her father. The Court found that the significant flaws in the domestic authorities' procedural response to the applicant's allegation of rape and sexual abuse was in breach of the State's positive obligations under both Articles 3 and 8 (§§ 101-104).

133. Article 8 extends to the protection of the right of adult victims during trial (*J.L. v. Italy*, 2021, § 119). For instance, in a trial for rape, it is essential that during the trial the judicial authorities avoid reproducing sexist stereotypes in court decisions, playing down gender-based violence and exposing women to secondary victimisation by making guilt-inducing and judgmental comments that were capable of undermining victims' trust in the justice system (*J.L. v. Italy*, 2021, §§ 139-141). The Court has also stressed the need for protection from secondary victimisation in the course of the proceedings/investigation and from stigmatisation due to, for example, insensitive/irreverent statements that are extensively reproduced in the prosecutor's decision or a lack of explanation by the prosecutor as to the need for a confrontation in a case concerning allegations of sexual

harassment (*C. v. Romania*, 2022, §§ 82-85). In general, the Court has emphasized the need to take measures to protect the rights and interests of victims (§ 85). In *M.Ș.D. v. Romania*, 2024, §§ 147-48, the Court noted the objectionable disdain displayed by the prosecutor's office that had a demeaning and "revictimising" effect on victims who were involved in relationships that it considered "centred on an exacerbated sexuality" owing to photographs taken of the victims in allegedly "indecent poses" which those victims had sent to their intimate partners: it further noted the apparent absence of (or a lack of quality in the) training centred on the needs of the victims of such acts and the prevention of "revictimisation".

134. In cases of domestic violence, the Court also holds States responsible for protecting victims, particularly when the risks of violence are known by State officers and when officers fail to enforce measures designed to protect victims of violence (*Levchuk v. Ukraine*, 2020; *Bevacqua and S. v. Bulgaria*, 2008; *A v. Croatia*, 2010; *Hajduová v. Slovakia*, 2010; *Kalucza v. Hungary*, 2012; *B. v. Moldova*, 2013). The State also has a positive responsibility to protect children from witnessing domestic violence in their homes (*Eremia v. the Republic of Moldova*, 2013). The Court will also apply its child custody and care jurisprudence (see below), with particular deference to removal decisions based on patterns of domestic violence in the home (*Y.C. v. the United Kingdom*, 2012; *Luca v. the Republic of Moldova*, 2023). In *Buturugă v. Romania*, 2020, the Court emphasised the need to comprehensively address the phenomenon of domestic violence in all its forms. In examining the applicant's' allegations of cyberbullying and her request to have the family computer searched, it found that the national authorities had been overly formalistic in dismissing any connection with the domestic violence which she had already reported to them. The applicant had been obliged to submit a new complaint alleging a breach of the confidentiality of her correspondence. In dealing with it separately, the authorities had failed to take into consideration the various forms that domestic violence could take. The case of *Volodina v. Russia (no. 2)*, 2021, concerned the applicant's complaint that the authorities had failed to protect her against repeated cyberviolence by her partner, who had created fake profiles in her name, had published her intimate photos, had tracked her movements with the use of a GPS device, and had sent her death threats via social media. The Court found, in particular, that even though they had the legal tools to prosecute the applicant's partner, the authorities had not conducted an effective investigation and had at no point envisaged taking appropriate measures to protect her. They had thus failed in their obligation to protect her against serious abuse.

135. States should also provide adequate protection for dangerous situations, such as for a woman attacked in her home or for a woman who had acid thrown on her face (*Sandra Janković v. Croatia*; 2009, *Ebcin v. Turkey*, 2011). This is particularly true when the State should have known of a particular danger. For example, the Court found a violation when a woman was attacked by stray dogs in an area where such animals were a common problem (*Georgel and Georgeta Stoicescu v. Romania*, 2011, § 62).

136. However, the Court does require a connection between the State and the injury suffered. If there is no clear link between State action (or inaction) and the alleged harm, such as fighting between school children, then the Court may declare the case inadmissible (*Đurđević v. Croatia*, 2011).

137. Conditions of detention may give rise to an Article 8 violation, in particular where the conditions do not attain the level of severity necessary for a violation of Article 3 (*Raninen v. Finland*, 1997, § 63; *Szafrański v. Poland*, 2015, § 39). Also, the requirement to undergo a strip search will generally constitute an interference under Article 8 (*Milka v. Poland*, 2015, § 45).

2. Reproductive rights[25]

138. The Court has found that the prohibition of abortion when sought for reasons of health and/or well-being falls within the scope of the right to respect for one's private life and accordingly within Article 8 (*A, B and C v. Ireland* [GC], 2010, §§ 214 and 245; *M.L. v. Poland*, 2023, §§ 93-94). In particular, the Court held in this context that the State's obligations include both the provision of a regulatory framework of adjudication and enforcement machinery protecting individuals' rights, and the implementation, where appropriate, of specific measures (*A, B and C v. Ireland* [GC], 2010, § 245; *Tysiąc v. Poland*, 2007, § 110; *R.R. v. Poland*, 2011, § 184). Indeed, once the State, acting within its limits of appreciation, adopts statutory regulations allowing abortion in some situations, the legal framework derived for this purpose should be shaped in a coherent manner which allows the different legitimate interests involved to be taken into account adequately and in accordance with the obligations deriving from the Convention (*A, B and C v. Ireland* [GC], 2010, § 249; *R. R. v. Poland*, § 187; *P. and S. v. Poland*, 2012, § 99; *Tysiąc v. Poland*, 2007, § 116). Also, individuals must not be left in a state of ambiguity and uncertainty regarding the applicable legal framework (in the case of *A.R. v. Poland*, 2025, §§ 118-120, the uncertainty was created by the delayed publication of a Constitutional Court's ruling).

139. In *P. and S. v. Poland*, 2012, the Court reiterated that the notion of private life within the meaning of Article 8 applies both to decisions to become and not to become a parent (see also *Evans v. the United Kingdom* [GC], 2007, § 71; *R.R. v. Poland*, 2011, § 180; *Dickson v. the United Kingdom* [GC], 2007, § 66; *Paradiso and Campanelli v. Italy* [GC], 2017, §§ 163 and 215; *M.L. v. Poland*, 2023, § 91). In fact, the concept of "private life" does not exclude the emotional bonds created and developed between an adult and a child in situations other than the classic situations of kinship. This type of bond also pertains to individuals' life and social identity. In certain cases involving a relationship between adults and a child where there are no biological or legal ties the facts may nonetheless fall within the scope of "private life" (*Paradiso and Campanelli v. Italy* [GC], 2017, § 161).

140. The circumstances of giving birth incontestably form part of one's private life for the purposes of Article 8 (*Ternovszky v. Hungary*, 2010, § 22). The Court found in that case that the applicant was in effect not free to choose to give birth at home because of the permanent threat of prosecution faced by health professionals and the absence of specific and comprehensive legislation on the subject. However, national authorities have considerable room for manoeuvre in cases which involve complex matters of healthcare policy and allocation of resources. Given that there is currently no consensus among Member States of the Council of Europe in favour of allowing home births, a State's policy to make it impossible in practice for mothers to be assisted by a midwife during their home births did not lead to a violation of Article 8 (*Dubská and Krejzová v. the Czech Republic* [GC], 2016).

141. The right of a couple to conceive a child and to make use of medically assisted procreation for that purpose is protected by Article 8, as such a choice is a form of expression of private and family life (*S.H. and Others v. Austria* [GC], 2011, § 82; *Knecht v. Romania*, 2012, § 54). The same applies for preimplantation diagnosis when artificial procreation and termination of pregnancy on medical grounds are allowed (*Costa and Pavan v. Italy*, 2012). The latter case concerned an Italian couple who were healthy carriers of cystic fibrosis and wanted, with the help of medically assisted procreation and genetic screening, to avoid transmitting the disease to their offspring. In finding a violation of Article 8, the Court noted the inconsistency in Italian law that denied the couple access to embryo screening but authorised medically assisted termination of pregnancy if the foetus showed symptoms of the same disease. The Court concluded that the interference with the applicants' right to respect for their private life and family life had been disproportionate.

With regard to prenatal medical tests, the Court found a violation of Article 8 in its procedural aspect where the domestic courts failed to investigate fully the applicant's claim that she had been denied

[25] See also Medically assisted procreation/right to become genetic parents and Surrogacy under Family life.

adequate and timely medical care in the form of an antenatal screening test which would have indicated the risk of her foetus having a genetic disorder and would have allowed her to choose whether to continue the pregnancy (*A.K. v. Latvia*, 2014, §§ 93-94).

142. Where applicants who, acting outside any standard adoption procedure, had brought to Italy from abroad a child who had no biological tie with either parent, and who had been conceived - according to the domestic courts – through assisted reproduction techniques that were unlawful under Italian law, the Court found that there was no family life between the applicants and the child. It considered, however, that the impugned measures pertained to the applicants' private life, but found no violation of Article 8 since the public interest at stake weighed heavily in the balance, while comparatively less weight was to be attached to the applicants' interest in their personal development by continuing their relationship with the child (*Paradiso and Campanelli v. Italy* [GC], 2017, §§ 165 and 215). The facts of the case touched on ethically sensitive issues – adoption, the taking of a child into care, medically assisted reproduction and surrogate motherhood – in which Member States enjoyed a wide margin of appreciation (§§ 182-184 and 194).[26]

143. Article 8 also applies to sterilisation procedures. As it concerns one of the essential bodily functions of human beings, sterilisation bears on manifold aspects of the individual's personal integrity, including his or her physical and mental wellbeing and emotional, spiritual and family life (*V.C. v. Slovakia*, 2011, § 106; *Y.P. v. Russia*, 2022, § 51). The Court has determined that States have a positive obligation to ensure effective legal safeguards to protect women from non-consensual sterilisation, with a particular emphasis on the protection of reproductive health for women of Roma origin. In several cases, the Court has found that Roma women required protection against sterilisation because of a history of non-consensual sterilisation against this vulnerable ethnic minority (*V.C. v. Slovakia*, §§ 154-155; *I.G. and Others v. Slovakia*, 2012, §§ 143-146). This jurisprudence also applies in a more general context, including inadvertent sterilisation, when the doctor fails to perform adequate checks or obtain informed consent during an abortion procedure (*Csoma v. Romania*, 2013, §§ 65-68), or where the health professionals, faced with an unexpected and urgent situation in the context of a routine medical intervention, have to decide on sterilisation (*Y.P. v. Russia*, 2022, § 54 and below).

144. The Court also found that the ability of an applicant to exercise a conscious and considered choice regarding the fate of her embryos concerned an intimate aspect of her personal life, of her right to self-determination, and thus of her private life (*Parrillo v. Italy* [GC], 2015, § 159). The margin of appreciation of the Member States on this matter is, however, wide, given the lack of a European consensus (*ibid.*, §§ 180-183). A statutory prohibition on the donation to research of cryopreserved embryos which had been created following the applicant's in vitro fertilisation treatment was therefore not considered to be in violation of the applicant's right to private life.

145. In *Paic and Wernersson v. Sweden* (dec.), 2025, a complaint was brought before the Court under Article 8 of the Convention about the unauthorised use of samples of the applicants' sperm, given at a public hospital in the context of fertility evaluations, to inseminate two women, resulting in conception and birth of two children. The complaint was declared inadmissible for non-exhaustion of domestic remedies, the applicants having failed to lodge a civil action for compensation before the domestic courts, which was found to be an effective remedy offering reasonable prospects of success for violations of Article 8 even when they had occurred, like in the present case, before the Convention was incorporated into domestic law, §§ 61-62.

[26] See also Medically assisted procreation/right to become genetic parents under Family life.

3. Forced medical treatment and compulsory medical procedures[27]

146. The Court has also addressed the implications of Article 8 for other cases involving forced medical treatment or medical injury (in addition to sterilisations). On some occasions, the Convention organs have found that relatively minor medical tests, which are compulsory (*Acmanne and Others v. Belgium*, Commission decision, 1984; *Boffa and Others v. San Marino*, Commission decision, 1998; *Salvetti v. Italy* (dec.), 2000) or authorised by court order (*X v. Austria*, Commission decision, 1979; *Peters v. the Netherlands*, Commission decision, 1994), may constitute a proportionate interference with Article 8 even without the consent of the patient. In *Vavřička and Others v. the Czech Republic* [GC], 2021, concerning a fine of a parent and the exclusion of children from preschool for their refusal to comply with a statutory child vaccination duty, the Court found an 'interference' with the right to respect for "private life" of both the children and the parents (§§ 263-264). Moreover, emergency medical interventions on life-saving grounds performed in the absence of the patients' consent are not, as such, incompatible with the Convention (*Mayboroda v. Ukraine*, 2023, § 55).

147. In *Y.P. v. Russia*, 2022, the Court reiterated that an individual's involvement in the choice of medical care provided and consent to such treatment falls within the scope of Article 8 (§ 42). It found a violation of Article 8 on account of the failure by doctors to seek and obtain express, free and informed consent for sterilisation, as required by domestic law, and of domestic courts to establish responsibility and provide redress (§ 42, §§ 53-59 and for the summary of the general principles, §§ 49-51).

148. The Court has held that a doctor's decision to treat a severely disabled child contrary to a parent's express wishes, and without the opportunity for judicial review of the decision, violated Article 8 (*Glass v. the United Kingdom*, 2004). The Court similarly found that doctors taking blood tests and photographs of a child who presented symptoms consistent with abuse without the consent of the child's parents violated the child's right to physical integrity under Article 8 (*M.A.K. and R.K. v. the United Kingdom*, 2010). On the other hand, in *Gard and Others v. the United Kingdom* (dec.), 2017, the Court found that the withdrawal of treatment from a terminally ill infant against the wishes of his parents did not violate their rights under Article 8.

149. The Court also found that the State's decision to submit a woman in police custody to a noncustodial gynaecological examination was not performed in accordance with the law and violated Article 8 (*Y.F. v. Turkey*, 2003, §§ 41-44). The Court has, however, found that an abortion performed against a woman's will reached the threshold of severity required to fall within the scope of Article 3 of the Convention. In reaching that conclusion, it referred to her vulnerability at the relevant time (given in particular her young age and the fact that it was her first pregnancy) and to the absence of the necessary medical supervision and care either before or after the intervention, which put her health at risk (*S.F.K. v. Russia*, 2022, §§ 65-68).

150. While the Convention does not establish any particular form of consent, where domestic law lays down certain express requirements, they should be complied with in order for the interference to be considered prescribed by law (see, *Reyes Jimenez v. Spain*, 2022, in which the applicants had given verbal consent to a procedure but the law required written consent). More generally, the setting up of some standard guidelines and formalised procedures - either at the national or the local institutional level, detailing key elements of the right to informed consent such as "the risks" to be discussed with patients and the scope of the practitioners' duty to contact their relatives or designated persons - is instrumental in discharging the respondent State's positive duty to set up an appropriate regulatory framework and ensure high professional standards in this area (*Mayboroda v. Ukraine*, 2023, § 62). The absence of such specific regulatory instruments, which would have elaborated on key aspects of the right to informed consent, was found to be in breach of the State's relevant obligation under Article 8 (*ibid.*, § 64).

[27] See section "Victims of violence/abuse" above.

151. The Court further determined that there were Article 8 violations when a State failed to provide adequate information to divers about the health risks associated with decompression tables (*Vilnes and Others v. Norway*, 2013, § 244) and when another State failed to provide adequate means of ensuring compensation for injuries caused by State medical errors (*Codarcea v. Romania*, 2009). The Court, however, declared inadmissible a case against Turkey concerning the failure to compensate individuals who were injured by a non-compulsory vaccine (*Baytüre and Others v. Turkey* (dec.), 2013).

152. In the context of taking evidence in criminal proceedings, the taking of a blood and saliva sample against a suspect's will constitutes a compulsory medical procedure which, even if it is of minor importance, must consequently be considered as an interference with his right to privacy (*Jalloh v. Germany* [GC], 2006, § 70; *Schmidt v. Germany* (dec.), 2006; *D.H. and Others v. North Macedonia*, 2023, § 49). However, the Convention does not, as such, prohibit recourse to such a procedure in order to obtain evidence of a suspect's involvement in the commission of a criminal offence (*Jalloh v. Germany* [GC], 2006, § 70; *D.H. and Others v. North Macedonia*, 2023, § 52). In *Caruana v. Malta* (dec.), 2018, the Court considered that the taking of a buccal swab, was not a priori prohibited in order to obtain evidence related to the commission of a crime when the subject of the test was not the offender, but a relevant witness (§ 32). In *D.H. and Others v. North Macedonia*, 2023 (§§ 52-53) the Court rejected as manifestly ill-founded a complaint about the taking of blood samples of the applicants, all sex workers, on suspicion of an offence of spreading sexually transmitted diseases. It observed that the medical act in question had been ordered by a judge; had been performed by a medical doctor at a clinic; and it had never been alleged by the applicant that it had involved the excessive use of force or had been detrimental to their health.

153. In *Vavřička and Others v. the Czech Republic* [GC], 2021, the Grand Chamber considered several complaints concerning a statutory duty to vaccinate children against common childhood diseases. One applicant was a parent who had been fined for failing to comply: the others were lodged by parents on behalf of their underage children after they had been refused permission to enrol them in preschools or nurseries. The Court accepted that both compulsory vaccination and the consequences of non-compliance interfered with the right to respect for private life. However, it went on to find no violation of Article 8. First of all, the Court considered this to be an area where the State had a wide margin of appreciation. Not only was it a matter of healthcare policy, but there was no consensus among member States on a model of child vaccination; it was accepted that vaccination was a successful and cost-effective intervention; and under domestic law no vaccinations could be administered forcibly. The Court further considered the Czech policy to be consistent with the best interests of children, as a group, and proportionate to the legitimate aim pursued. Although it acknowledged that the exclusion of children from pre-school meant the loss of an important opportunity to develop their personalities and to begin to acquire social and learning skills, it considered this loss to be the direct consequence of their parents' choice not to comply with the vaccination duty.

154. In *Pasquinelli and Others v. San Marino*, 2024, a group of health care and social health workers had refused to be vaccinated against COVID-19, with the result that they had been affected by various measures, mainly related to their employment, in particular relocation to another position, or suspension from their posts. The Court distinguished the case from *Vavřička and Others v. the Czech Republic* [GC], 2021, noting that vaccinations had been voluntary under the relevant law and non-compliance had not entailed statutory sanctions or led to automatic consequences on the applicants (§§ 57-63). It further noted that vaccination choice was sufficiently linked to personal autonomy, with the result that Article 8 was applicable to the situation in question on the basis of the *Denisov* "reason-based approach" (§§ 77-78). The Court further accepted that the series of restrictive measures in the health sector, adapted to the constant evolution of the Covid-19 pandemic, had pursued the legitimate aim of protecting the health, rights and freedoms of others (§§ 95-97). Furthermore, the measures were temporary and applicants were offered alternate work. In addition, those measures resulted in little financial loss for most applicants, with more substantial losses only suffered by those

who refused to undertake any other socially useful work which they were offered. Such losses were considered an unavoidable consequence of a global pandemic and the exceptional and unforeseeable context in which States found themselves in at the relevant time. The Court thus concluded that there had been no violation of Article 8 (§§ 101-09).

155. In *Pindo Mulla v. Spain* [GC], 2024, the Court considered, for the first time, how the State's obligations – on the one hand, to safeguard patients' lives and physical integrity and, on the other, to respect patients' personal autonomy – were to be reconciled in an emergency situation (§ 146). In that case the applicant, a Jehovah's Witness, complained about blood transfusions which she had received during an urgent life-saving surgery, despite having previously signed documents confirming her refusal of blood transfusion in all healthcare situations. The Court underlined that:

(a) in the ordinary health care context, a competent, adult patient had the right to refuse, freely and consciously, medical treatment notwithstanding the very serious, even fatal, consequences that such a decision might have (§ 146);

(b) in an emergency situation, where the right to life would also be in play along with an individual's right to decide autonomously on medical treatment: (i) a decision to refuse life-saving treatment must be made freely and autonomously by a person with the requisite legal capacity who was conscious of the implications of such decision; (ii) it must also be ensured that that decision – the existence of which must be known to the medical personnel – was applicable in the circumstances, in the sense that it was clear, specific and unambiguous in refusing treatment and represented the current position of the patient on the matter; and (iii) where doubts existed regarding any of the said aspects, "reasonable efforts" should be made to dispel those doubts or uncertainty surrounding the refusal of treatment and, where despite such efforts it was impossible to establish to the extent necessary the patient's will, it was the duty to protect that patient's life by providing essential care - that should prevail (§§ 147-150); and

(c) the Contracting States had considerable discretion as regards advance medical directives and similar instruments in the medical sphere: whether to give binding legal effect to such instruments, and the related formal and practical modalities, came within their margin of appreciation (§ 151-153).

On the fact of the case, the Court found a violation of Article 8, considering that the decision-making process, as it had operated in the case, had not afforded sufficient procedural safeguards to the applicant so that her personal autonomy had not been respected (§§ 154-184). Conversely, in a similar case *Lindholm and the Estate after Leif Lindholm v. Denmark*, 2024, concerning the administration of a blood transfusion to an unconscious Jehovah's Witness in an emergency situation for his survival, despite his advanced medical directive refusing such measure, the Court found no violation of Article 8 of the Convention. On the basis of the criteria developed in *Pindo Mulla v. Spain* [GC], 2024, the Court observed that the relevant person's advanced directive had been issued more than two years prior to the emergency situation at hand, whereas the relevant national law clearly required that a refusal of blood transfusion be made in the context of the *current* health situation, which conditions had not been met in the present case (§§ 85-101).

4. Mental illness[28]/measure of protection

156. With regard to the positive obligations that Member States have in respect of vulnerable individuals suffering from mental illness, the Court has affirmed that mental health must also be regarded as a crucial part of private life associated with the aspect of moral integrity. The preservation of mental stability is in that context an indispensable precondition to effective enjoyment of the right to respect for private life (*Bensaid v. the United Kingdom*, 2001, § 47).

[28] See also other chapters of the Guide for further references.

157. The Court has long held that an individual's right to refuse medical treatment falls within the scope of Article 8 (see above). This includes the rights of mentally ill patients to refuse psychiatric medication. A medical intervention in defiance of the subject's wishes will give rise to an interference with his or her private life and in particular his or her right to physical integrity (*X. v. Finland*, 2012, § 212). In some circumstances forced medication of a mentally ill patient may be justified, in order to protect the patient and/or others. However, such decisions must be made against the background of clear legal guidelines and with the possibility of judicial review (*ibid.*, § 220; *Storck v. Germany*, 2005, §§ 164-169; *Shopov v. Bulgaria*, 2010, § 47).

158. The Court has also found that States have an obligation under Article 8 to provide protection for a mentally ill person's right to private and family life, particularly when the children of a mentally ill person are taken into State care. States must ensure that mentally ill or disabled individuals are able to participate effectively in proceedings regarding the placement of their children (*B. v. Romania (no. 2)*, 2013, § 117; *K. and T. v. Finland* [GC], 2001). Such cases are also linked to the Article 8 right to family life (see below), particularly, for example, when a mentally disabled mother was not informed about her son's adoption and was unable to participate in, or to contest, the adoption process (*A.K. and L. v. Croatia*, 2013). The case of *S.S. v. Slovenia*, 2018, concerned the withdrawal of parental rights from a mentally-ill mother based on her inability to take care of her child. It contains a recapitulation of the case-law on the rights of mentally ill persons in the context of deprivation of parental responsibilities and subsequent adoption of the child (§§ 83-87).

159. In cases where legal incapacity is imposed on mentally ill individuals, the Court has articulated procedural requirements necessary to protect Article 8 rights. The Court often addresses these Article 8 violations in conjunction with Articles 5 and 6. The Court emphasises the quality of the decision-making procedure (*Salontaji-Drobnjak v. Serbia*, 2009, §§ 144-145). The Court has held that the deprivation of legal capacity undeniably constitutes a serious interference with the right to respect for a person's private life protected under Article 8. In *A.N. v. Lithuania*, 2016, the Court considered a domestic court decision depriving an applicant of his capacity to act independently in almost all areas of his life. At the relevant time he was no longer able to sell or buy any property on his own, work, choose a place of residence, marry, or bring a court action in Lithuania. The Court found that this amounted to an interference with his right to respect for his private life (§ 111). However, in *A.A.K. v. Türkiye* (2023) the Court found no violation of Article 8. Emphasising the need for the domestic authorities to strike a balance between respect for the dignity and self-determination of the individual and the need to protect and safeguard the interests of vulnerable individuals, on the facts it considered that a fair balance had been struck. There were effective safeguards in the domestic procedure to prevent abuse by ensuring that the applicant's rights and interests were taken into account, and the applicant was involved at all stages of the proceedings, was heard in person and was able to present her arguments. The interference was a matter for competent and impartial domestic courts, and the measure they took was consistent with the legitimate objective of protecting the applicant's property interests and her well-being. Having regard to the fact that the measure was limited in time and purpose, and remedies were available under domestic law to have it lifted, there was nothing to suggest that it was disproportionate and/or unsuitable for the applicant's situation (§ 86). Interestingly, in *M.K. v. Luxembourg*, 2021, the Court considered the placing of an elderly person under protective supervision, not because of a mental illness, but rather on account of her extravagant spending. The Court found that the interference had remained within the margin of appreciation afforded to the judicial authorities. In particular, it noted that they had endeavoured to strike a balance between respect for the applicant's dignity and self-determination and the need to protect her and safeguard her interests in the face of her vulnerability (§§ 64-67). Likewise, in *Calvi and C.G. v. Italy*, 2023, the Court considered the placing of an elderly person under supervision in a "medicalised" nursing home, not because of his health, but because of excessive profligacy and weakening of his physical and psychical condition. It found a violation of Article 8 on the ground that, while the measure was aimed at protecting the applicant's well-being, it was neither proportionate

nor adapted to his individual situation, bearing in mind the choice of measures at the authorities' disposal (§§ 90 and 108).

160. In incapacitation proceedings, decisions regarding placement in a secure facility, decisions regarding the disposition of property, and procedures related to children (see above), the Court has held that States must provide adequate safeguards to ensure that mentally ill individuals are able to participate in the process and that the process is sufficiently individualised to meet their unique needs (*Zehentner v. Austria*, 2009, § 65; *Shtukaturov v. Russia*, 2008, §§ 94-96; *Herczegfalvy v. Austria*, 1992, § 91; *N. v. Romania (no.2)*, § 74). For instance, in proceedings concerning legal incapacity the medical evidence of the mental illness needs to be sufficiently recent (*Nikolyan v. Armenia*, 2019, § 124). Furthermore, in *Nikolyan v. Armenia*, 2019, § 122, the Court found that the existence of a mental disorder, even a serious one, could not be the sole reason to justify a full deprivation of legal capacity. By analogy with the cases concerning deprivation of liberty, in order to justify full deprivation of legal capacity the mental disorder had to be "of a kind or degree" warranting such a measure.

161. As regards the choice of place of residence for a person with intellectual disabilities, the Court has noted the need to reach a fair balance between respect for the dignity and self-determination of the individual and to protect and safeguard his or her interests, especially where the individual's capacities or situation place him or her in a particularly vulnerable position (*A.-M.V. v. Finland*, 2017, § 90). The Court has emphasised the importance of existing procedural safeguards (§§ 82-84). In the case cited it observed that there had been effective safeguards in the domestic proceedings to prevent abuse, as required by the standards of international human rights law. These safeguards had ensured that the applicant's rights, will and preferences were taken into account. The applicant had been involved at all stages of the proceedings, had been heard in person and had been able to express his wishes. The fact that the authorities had not complied with the applicant's wishes, in the interests of protecting his health and wellbeing, was found not to have breached Article 8.

5. Health care and treatment[29] [30]

162. Although the right to health is not as such among the rights guaranteed under the Convention or its Protocols, Contracting States are under a positive obligation to take appropriate measures to protect the life and health of those within their jurisdiction (see notably *Vavřička and Others v. the Czech Republic* [GC], 2021, § 282, and their obligation "to place the best interests of the child, and also those of children as a group, at the centre of all decisions affecting their health and development", § 288). The High Contracting Parties have, parallel to their positive obligations under Article 2 of the Convention, a positive obligation under Article 8 firstly, to have in place regulations compelling both public and private hospitals to adopt appropriate measures for the protection of their patients' physical integrity and, secondly, to provide victims of medical negligence access to proceedings in which they could, in appropriate cases, obtain compensation for damage (*Vasileva v. Bulgaria*, 2016, § 63; *Jurica v. Croatia*, 2017, § 84; *Mehmet Ulusoy and Others v. Turkey*, 2019, § 82, and *Vilela v. Portugal*, 2021, §§ 73-79, § 87 in relation to a child born with a 100% disability). Positive obligations are therefore limited to the duty to establish an effective regulatory framework obliging hospitals and health professionals to adopt appropriate measures to protect the integrity of patients. Consequently, even where medical negligence has been established, the Court will not normally find a violation of the substantive aspect of Article 8 - or of Article 2[31]. However, in very exceptional circumstances State responsibility may be engaged because of the actions and omissions of health care providers. Such exceptional circumstances may arise where a patient's life is knowingly endangered by the denial of access to life-saving treatment; and where a patient did not have access to such treatment because of systemic or structural dysfunction in hospital services, and where the

[29] See chapter Forced medical treatment and compulsory medical procedures above.
[30] See also chapter Disability issues.
[31] See the Case-law Guide on Article 2 - Right to life.

authorities knew or ought to have known of this risk and did not take the necessary measures to prevent it from being realized (*Mehmet Ulusoy and Others v. Turkey*, 2019, §§ 83-84, citing *Lopes de Sousa Fernandes v. Portugal* [GC], 2017). Those principles emerging from the Court's Article 2 case-law also apply under Article 8 in the event of injury which falls short of threatening the right to life as secured under Article 2 (*İbrahim Keskin v. Turkey*, 2018, § 61).

163. The Court's task is to verify the effectiveness of the remedies used by the applicants and thus to determine whether the judicial system ensured the proper implementation of the legislative and statutory framework designed to protect patients' physical integrity (*İbrahim Keskin v. Turkey*, 2018, § 68 and *Mehmet Ulusoy and Others v. Turkey*, 2019, § 90). In all cases, the system put in place to determine the cause of the violation of the integrity of the person under the responsibility of health professionals must be independent. This presupposes not only a lack of a hierarchical or institutional link, but also the formal as well as the concrete independence of all the parties responsible for assessing the facts in the context of the procedure to establish the cause of the impugned infringement (*Mehmet Ulusoy and Others v. Turkey*, 2019, § 93). There is a requirement of promptness and reasonable diligence in the context of medical negligence (*Vilela v. Portugal*, 2021, §§ 87-88; *Eryiğit v. Turkey*, 2018, § 49). For example, proceedings lasting almost seven years are incompatible with Article 8 (*İbrahim Keskin v. Turkey*, 2018, §§ 69-70). For the information and consent before a surgical operation, see *Reyes Jimenez v. Spain*, 2022; *Mayboroda v. Ukraine*, 2023.

164. The objectivity of expert opinions in cases of medical negligence cannot automatically be called into doubt on account of the fact that the experts are medical practitioners working in the domestic health-care system. Moreover, the very fact that an expert is employed in a public medical institution specially designated to provide expert reports on a particular issue and financed by the State does not in itself justify the fear that such experts will be unable to act neutrally and impartially in providing their expert opinions. What is important in this context is that the participation of an expert in the proceedings is accompanied by adequate procedural safeguards securing his or her formal and de facto independence and impartiality (*Jurica v. Croatia*, 2017, § 93). Furthermore, in view of the fact that medical expertise belongs to a technical field beyond the knowledge of judges, and is therefore likely to have a predominant influence on their assessment of the facts, the extent to which the parties are permitted to comment on that evidence, and the extent to which the courts take their comments into account, will be crucial (*Mehmet Ulusoy and Others v. Turkey*, 2019, §§ 109-110).

165. When it comes to access to health services, the Court has been cautious to extend Article 8 in a manner that would implicate extensive State resources because in view of their familiarity with the demands made on the healthcare system as well as with the funds available to meet those demands, the national authorities are in a better position to carry out this assessment than an international court (*Pentiacova and Others v. Moldova* (dec.), 2005).

166. The Court ruled that an application against a decision by UK authorities not to implement a needle exchange programme for drug users in prisons was inadmissible (*Shelley v. the United Kingdom* (dec.), 2008). In that case the Court held that there was no authority that placed any obligation under Article 8 on a Contracting State to pursue any particular preventive health policy. It also found that there was no violation of Article 8 as a result of a refusal to allow terminally ill patients to use unauthorised, experimental drugs (*Hristozov and Others v. Bulgaria*, 2012; see also *Durisotto v. Italy* (dec.), 2014); or a refusal of health insurance to cover the very high cost of a specific medication for the applicant who suffered from a rare disease (spinal amyotrophy), the domestic courts having ruled that that medication did not provide, according to general scientific standards, a significant benefit for people suffering from the same condition (*B.R. v. Switzerland*, 2025); and rejected an application challenging legislation on the prescription of cannabis-based medication (*A.M. and A.K.v. Hungary* (dec.), 2017), while referring to the State's obligations in this area (§§ 46-47). In *Abdyusheva and Others v. Russia*, 2019, the Court ruled that a lack of access to replacement therapy with methadone or buprenorphine for opioid addicts did not violate Article 8 because it was within the State's margin of appreciation to assess the risks of replacement therapy for public health and the

applicant's individual situation. Likewise, in *Thörn v. Sweden*, 2022, concerning the applicant's criminal conviction for manufacturing cannabis for personal treatment of severe chronic pain, the Court considered that the authorities had remained within their wide margin of appreciation in striking the balance between the applicant's interest in having access to pain relief and the general interest in enforcing the system of control of narcotics and medicines (§§ 50-59). The Court has underlined that, given the subsidiary nature of its role, it is not its task to rule on issues that fall exclusively within the realm of medical expertise (*Abdyusheva and Others v. Russia*, 2019, §§ 118; *B.R. v. Switzerland*, 2025, § 66).

167. Regarding access to health care for people with disabilities, the Court declared a case inadmissible in which a severely disabled individual sought a robotic arm to assist his mobility (*Sentges v. the Netherlands* (dec.), 2003). The Court did, however, find that reducing the level of care given to a woman with limited mobility violated Article 8, but only for a limited period during which the UK did not comply with its own laws (*McDonald v. the United Kingdom*, 2014). In *Jivan v. Romania*, 2022, which concerned the authorities failure to classify an elderly and disabled man as requiring a personal carer, the Court did not consider that the State had struck a fair balance between the competing public and private interests at stake (§ 51; see also *Diaconeasa v. Romania*, 2024, § 64).

168. In *Gard and Others v. the United Kingdom* (dec.), 2017, the Court rejected the arguments submitted by the parents of a seriously ill child that the question of their son's treatment was not a matter for the courts to decide, holding on the contrary that it had been appropriate for the treating hospital to turn to the courts in the event of conflict between the parents and the hospital (§ 117). The Court left open the question of whether the appropriate test was the "best interests of the child" or whether the courts should instead ask if following the parents' wishes would give rise to a risk of "significant harm" to the child (§§ 118-119). However, in *Parfitt v. the United Kingdom* (dec.), 2021, the Court found that the decision to apply the "best interests of the child" test in a case similar to that of *Gard* did not fall outside the margin of appreciation afforded to States in striking a balance between the protection of patients' right to life and the protection of their right to respect for their private life and their personal autonomy (§ 51 - see *Vavřička and Others v. the Czech Republic* [GC], 2021, §§ 279, 280, 286-288).

6. End of life issues

169. In *Pretty v. the United Kingdom*, 2002, the Court first concluded that the right to decide the manner of one's death is an element of private life under Article 8 (§ 67). Later case-law has articulated that an individual's right to decide the way in which and at which point his or her life should end, provided that he or she is in a position to freely form his or her own judgement and to act accordingly, is one of the aspects of the right to respect for private life within the meaning of Article 8 of the Convention (*Haas v. Switzerland*, 2011, § 51).

170. The Court has found that Member States have a wide margin of appreciation in respect of questions of assisted suicide. Permissible laws include the requirement that life ending drugs be provided only by prescription by a physician (*Haas v. Switzerland*, 2011, § 52). Indeed the Court distinguished *Haas v. Switzerland*, 2011, from *Pretty v. the United Kingdom*, 2002. Unlike the Pretty case, in *Haas v. Switzerland*, 2011, the applicant alleged not only that his life was difficult and painful, but also that, if he did not obtain the substance in question, the act of suicide itself would be stripped of dignity. In addition, and again in contrast to the Pretty case, the applicant could not in fact be considered infirm, in that he was not at the terminal stage of an incurable degenerative disease which would prevent him from taking his own life.

171. In *Koch v. Germany*, 2012, the applicant complained that the domestic courts' refusal to examine the merits of his complaint about the Federal Institute's refusal to authorise his wife to acquire a lethal dose of pentobarbital of sodium had infringed his right to respect for private and family life under

Article 8 of the Convention. The Court found a violation of Article 8 on account of the domestic courts' refusal to examine the merits of his motion.

172. In *Mortier v. Belgium*, 2022, the applicant complained about his mother's death by euthanasia and the authorities' failure to ensure his involvement in that process. The Court observed that the applicant's mother had not wished to inform her children, including the applicant, of her euthanasia request in spite of repeated advice from doctors. Noting the conflicting interests at stake, notably the applicant's wish to accompany his mother during the last moments of her life and his mother's right to respect of her will and personal autonomy, the Court considered that the authorities did not fail in their positive obligation to ensure respect of the Article 8 rights of the applicant (§§ 200-208).

173. In *Dániel Karsai v. Hungary*, 2024, concerning the impossibility for the terminally ill applicant suffering from an uncurable progressive neurodegenerative disease, to avail himself of physician-assisted dying ("PAD"), the Court examined his complaint under Article 8 in the light of both the negative and positive obligations of the respondent State, considering them to be intertwined, without clearly separating them in the specific circumstances of the case: more emphasis was placed on the positive obligation with respect to the provision of PAD at home and on the negative obligation when considering the prohibition which applied to access to PAD abroad, even if the Court noted that the latter could not be entirely separated from the positive aspect. It focused, in particular, on the deep ethical and societal implications of PAD, agreeing that the impugned criminal ban pursued the legitimate aims of, in particular, protecting the lives of vulnerable individuals at risk of abuse, maintaining the medical profession's ethical integrity and protecting the morals of society as a whole with regard to the meaning and value of human life (§§ 137-52). The Court further refused the argument that the existential suffering of a terminally ill patient could, as such, create an obligation for the State under Article 8 to legalise PAD. It emphasised palliative care as ensuring a dignified end of life and that the heightened state of vulnerability of a terminally ill patient warranted a fundamentally humane approach, necessarily including palliative care which is guided by compassion and high medical standards (§§ 154-58). The applicant's refusal to receive sedation constituted a legitimate personal choice which could not, in itself, require authorities to provide alternative solutions or legalise PAD (§ 155). It did not consider that criminal liability for an act of assisted suicide committed abroad, a practice that is not unusual among the Contracting States, would make the alleged interference disproportionate, but noted that the need for appropriate legal measures in the area of PAD is to be kept under review, having regard to developments in European societies and relevant international standards on medical ethics (§ 167). It concluded that, given the very complex and sensitive ethical nature of the issue at stake and the lack of a European consensus in this area (while there is a growing trend towards the legalisation of PAD, the majority of member States continue to prohibit and prosecute any assistance for suicide, including PAD), the Hungarian authorities did not overstep their wide margin of appreciation in balancing, on the one hand, the applicant's right to personal autonomy guaranteed by Article 8 and, on the other, the interest in, in particular, protecting the lives of vulnerable individuals at risk of abuse and the morals of society with regard to the value of human life. The Court found no violation of Article 8 of the Convention.

174. The Court does not consider it appropriate to extend Article 8 so as to impose on the Contracting States a procedural obligation to make available a remedy requiring the domestic courts to decide on the merits of the claim that the ban on assisted suicide would violate the right to private and family life (*Nicklinson and Lamb v. the United Kingdom* (dec.), 2015, § 84).

175. In *Gard and others v. the United Kingdom* (dec.), 2017, doctors had sought to withdraw life-sustaining treatment from an infant child suffering from a fatal genetic disease. This decision, taken against the parents' wishes, was not found by the Court to amount to arbitrary or disproportionate interference in breach of Article 8, following a thorough examination of the procedure and the reasons given by the domestic authorities for their decisions (§§ 118-124). The Court came to the same conclusion in *Parfitt v. the United Kingdom* (dec.), 2021, as regards the withdrawal of treatment from a five-year old child in a permanent vegetative state. It emphasised that the decisions of the domestic

courts had had due regard to the best interests of the child, there being a broad consensus both in international law and in the Court's case-law that in all decisions concerning children, their best interests must be paramount (see also § 51, and above).

7. Disability issues[32]

176. The case of *Jivan v. Romania,* 2022, concerned the applicability of Article 8 to the mobility and quality of life of a disabled applicant/elderly person and the notions of "personal autonomy" and "dignity" under the Convention (see the review of the case-law in §§ 30-35 and the reference made to UN Convention on the Rights of Persons with Disabilities, §§ 44-45).

177. The 2006 UN Convention on the Rights of Persons with Disabilities lays down the principle of "full and effective participation and integration in society" for persons with disabilities (see, for instance, *Arnar Helgi Lárusson v. Iceland*, 2022, § 59). However, Article 8 is only applicable in exceptional cases where the lack of access to establishments open to the public prevented applicants from leading their lives in breach of their right to personal development as well as the right to establish and develop relationships with other human beings and the outside world (*Glaisen v. Switzerland* (dec.), 2019, §§ 43-46, with further references therein; see also *Zehnalova and Zehnal v. the Czech Republic* (dec.), 2002; *Botta v. Italy,* 1998, and *Mółka v. Poland* (dec.), 2006. In *Arnar Helgi Lárusson v. Iceland*, 2022, for the first time, the Court considered a complaint about a lack of accessibility of public buildings by disabled persons to fall within the ambit of "private life", which allowed it to examine the issue under Article 14 in conjunction with Article 8 (§§ 40-46).

178. The Court found that the decision to remove children from two blind parents due to a finding of inadequate care was not justified by the circumstances and violated the parents' Article 8 right to family life (*Saviny v. Ukraine*, 2008). On the other hand, the Court found no violation of Article 8 with regard to a statutory scheme developed in France to compensate parents for the costs of disabled children, even when the parents would have chosen not to have the child in the absence of a mistake by the State hospital regarding the diagnosis of a genetic defect (*Maurice v. France* [GC], 2005; *Draon v. France* [GC], 2006). The Court also provides a wide margin for States to determine the amount of aid given to parents of disabled children (*La Parola and Others v. Italy* (dec.), 2000), and has held that when a State provides adequate domestic remedies for disabilities caused by inadequate care at the birth of a child, then there is no Article 8 violation (*Spyra and Kranczkowski v. Poland*, 2012, §§ 99-100).

179. The case of *Kholodov v. Ukraine* (dec.), 2016, concerned the suspension of a driving licence for a traffic offence concerning an applicant with a physical disability (multiple ailments of his joints) who alleged an excessive penalty given his medical condition. The Court admitted that the nine-month driving ban had repercussions on the applicant's everyday life. In that sense it could be admitted that such a penalty constituted an 'interference' with the applicant's right under Article 8. The case of *X and Y v. the Netherlands*, 1985, concerned the sexual assault of a mentally disabled sixteen-year old girl and the absence of criminal-law provisions to provide her with effective and practical protection.

180. In *Belli and Arquier-Martinez v. Switzerland*, 2018, the first applicant was born deaf and had difficulty expressing herself in her native language. She had a severe disability, which made her incapable of discernment. As a result, she had always required full-time care. The second applicant, her mother and guardian, provided this care. Their situation therefore entailed "further elements of dependency, involving more than the normal emotional ties". Their circumstances created a situation where the guarantees under the "family life" aspect of Article 8 applied, exceptionally, to a relationship between adults (§§ 65-66).

181. In *Calvi and C.G. v. Italy*, 2023, the Court examined a measure recognising the partial legal incapacity of an elderly person and his placement in a "medicalised" nursing home in social isolation

[32] See also Health care and treatment, notably.

for three years, and reiterated that States are required to promote the participation of disabled or "dependent" elderly people in the life of the community and to prevent their isolation or segregation (§ 107).

8. Issues concerning burial and deceased persons

182. The exercise of Article 8 rights concerning family and private life pertains, predominantly, to relationships between living human beings. However, the Court has also held that dealing appropriately with the dead out of respect for the feelings of the deceased's relatives falls within the scope of Article 8 (see *M.L. v. Slovakia*, 2021, § 23, with further references therein). In particular, the Court has found that the way in which the body of a deceased relative is treated, as well as issues regarding the ability to attend the burial and pay respects at the grave of a relative, come within the scope of the right to respect for family or private life (*Solska and Rybicka v. Poland*, 2018, §§ 104-108 and the references cited therein). Other circumstances concerning surviving family members are covered by Article 8 (see the recent summary in *Polat v. Austria*, 2021, §§ 93-94) including an applicant's complaint about the hospital's failure to disclose information relating to her son's post-mortem examination (§ 95).

183. The case of *Lozovyye v. Russia*, 2018, for instance, concerned a murder victim who had been buried before his parents had been informed of his death. In that case, the Court reiterated that everyone had a right to access to information relating to their private and/or family life (§ 32), and that a person's right to attend the funeral of a member of his family fell under Article 8. Where the authorities, but not other family members, are aware of a death, there is an obligation for the relevant authorities to at least undertake reasonable steps to ensure that members of the family are informed (§ 38). The Court considered that the relevant domestic law and practice lacked clarity, but that that was not sufficient in itself to find a violation of Article 8 (§ 42). On the other hand, it concluded that the authorities had not acted with reasonable diligence to comply with the aforementioned positive obligation, given the information that was available to the domestic authorities in order to identify, locate and inform the deceased's parents (§ 46).

184. In *Hadri-Vionnet v. Switzerland*, 2008, the Court found that the municipality's failure to inform the mother about the location and time of the burial of her stillborn son was not authorised by law and violated her right to private and family life under Article 8 (*Pannullo and Forte v. France*, 2001). Similarly, in *Zorica Jovanović v. Serbia*, 2013, the Court held that the hospital's failure to give information to the applicant regarding the death of her infant son and the subsequent disappearance of his body violated Article 8, even though the child had died in 1983, because of the State's ongoing failure to provide information about what had happened (see also *Petrović v. Croatia*, 2025). The Court also held that Russia's refusal to allow a stillborn baby to take the name of its biological father, because of the legal presumption that the mother's husband was the father, violated the mother's Article 8 rights to bury her child with the name of his true father (*Znamenskaya v. Russia*, 2005).

185. Family members have also challenged the length of time between death and burial and the treatment of the deceased's body before its return to the family. For example, the Court found that an extended delay in returning samples taken from the applicants' daughter's body by police, which prevented them from burying her in a timely manner, violated their Article 8 right to private and family life (*Girard v. France*, 2011). It has also found a violation of Article 8 of the Convention where domestic law did not require the courts to assess – and did not permit the parents to challenge – and initial refusal to permit them to transfer their sons' bodies to Türkiye while an investigation into their murder was ongoing (*Aygün v. Belgium*, 2022, §§ 68-92). The Court also found that a hospital's removal of a deceased person's organs without informing his mother and without seeking her consent was not done in accordance with law and violated her right to private life under Article 8 (*Petrova v. Latvia*, 2014, §§ 97-98). In line with this case-law, the Court found a violation of Article 8 in the removal of tissue from a deceased person without the knowledge and consent of his spouse because of the lack of clarity in the domestic law and the absence of legal safeguards against arbitrariness (*Elberte*

v. Latvia, 2015, § 115). However, the Court found that a delay of thirty-eight days before the body of an Azerbaijani soldier killed in Armenia was returned to his family did not violate Article 8 of the Convention (*Gurbanov v. Armenia*, 2023). The Armenian authorities had been trying to establish the cause of death and, in view of the hostile relations between Armenia and Azerbaijan, were waiting for a specialist from the ICRC to participate in the examination of the body. In the circumstances, the overall period of thirty-eight days which passed before the Armenian authorities returned the applicant's son's body to Azerbaijan could not be seen as unreasonable (§ 63-69).

186. In *Elli Poluhas Dödsbo v. Sweden*, 2006, the Court found that Sweden's refusal to transfer an urn from one burial plot to another in order to locate a deceased person's remains with his family did not violate Article 8 because the decision was made with due consideration to the interests of the deceased's wife and fell within the wide margin of appreciation available in such cases. Interestingly, the Court did not determine whether such a refusal involved the notions of "family life" or "private life" but instead only proceeded on the assumption of an interference (§ 24). In *Drašković v. Montenegro*, 2020, the Court found that a request by a close family relative to exhume the remains of a deceased family member for transfer to a new resting place fell in principle under both "private life" and "family life" However, the Court made it clear that the nature and scope of this right, and the extent of the State's obligations under the Convention in cases of this type, will depend on the particular circumstances and the facts adduced (§ 48). Although States are afforded a wide margin of appreciation in such an important and sensitive issue (§ 52), the Court found that the lack of a substantive examination by the national courts of the applicant's claim in civil proceedings against a third party violated Article 8. The Court also found that the representative of a deceased person who sought to prevent the State from using DNA of the deceased in a paternity suit did not have a claim that fell within the scope of private life and could not bring a suit on behalf of the deceased (*Estate of Kresten Filtenborg Mortensen v. Denmark* (dec.), 2006).

187. The Court has also addressed a State's policy of refusing to return the bodies of accused terrorists for burial. While recognising that the State has an interest in protecting public safety, particularly when national security is implicated, the Court found that the absolute ban on returning the bodies of alleged terrorists did not strike a proper balance between the State and the Article 8 rights of the family members of the deceased (*Sabanchiyeva and Others v. Russia*, 2013, § 146).

188. In *Solska and Rybicka v. Poland*, 2018, the Court held that Article 8 applied to the exhumation of deceased persons against the will of their families in the context of criminal proceedings (§§ 107-108). With regard to the prosecutorial decision ordering exhumation, the Court found that the domestic law did not provide sufficient safeguards against arbitrariness. The applicants were thus deprived of the minimum degree of protection to which they were entitled, in violation of Article 8 (§§ 124-127). However, in *Beljic and Others v. Serbia* (dec.), 2024, the Court found the applicants' Article 8 claims concerning the exhumation of their relatives' remains to be manifestly ill-founded. The exhumation was to take place as part of the relocation of a cemetery in order to enable the exploitation of coal reserves and thus to provide the necessary electricity for households. The domestic bodies had examined the applicants' relevant submissions and reviewed both the lawfulness of the impugned decisions and the necessity of the impugned measure and the Administrative Court had considered the interference and found it to be lawful (§§ 98-101).

189. The case of *Polat v. Austria*, 2021, concerned the carrying out of a post-mortem on the applicant's infant son, who had been born with a rare birth defect, contrary to her wishes and those of her husband. On account of their religious beliefs, the parents wished the child's body to be as unscathed as possible. However, the post-mortem was carried out without their consent for the purposes of the "safeguarding of scientific interests". Although the Court saw no reason to call into question domestic law, which permitted post-mortems to be carried out without the consent of close relatives where it was necessary for those purposes, on the facts of the case it considered that the wish of the applicant and her husband to bury their son in accordance with their religious beliefs had not been properly weighed in the balance. It therefore found that there had been a breach of both

Article 8 and Article 9 (§§ 80-91). It found a further violation of Article 8 on account of the hospital omitting to provide the applicant with sufficient information on the extent of her son's post-mortem, and of the removal and whereabouts of his organs (§ 120).

9. Environmental issues[33]

190. Although there is no explicit right to a healthy environment under the Convention (*Hatton and Others v. the United Kingdom* [GC], 2003, § 96), the Court has decided various cases in which the quality of an individual's surrounding environment is at issue, reasoning that an individual's wellbeing may be negatively impacted by unsafe or disruptive environmental conditions (*Cordella and Others v. Italy*, 2019, §§ 157-160). However, an issue under Article 8 only arises if individuals are directly and seriously affected by the nuisance in question and able to prove the direct impact on their quality of life (*Çiçek and Others v. Turkey* (dec.), 2020, § 32 and §§ 22-29 for a summary of the relevant case-law in the context of air pollution; *Fadeyeva v. Russia*, 2005, §§ 68-69, where the Court stated that a certain minimum level of adverse effects of pollution on the individual's health or quality of life must be demonstrated to engage Article 8; *Chiş v. Romania* (dec.), 2014, concerning the noise of a bar in the building; *Thibaut v. France* (dec.), 2022, concerning potential exposure to electromagnetic fields; *Đorđević v. Serbia*, 2025, concerning the erection of a building in such close proximity to the applicant's as to effectively transform her ground floor flat into a basement, with little access to natural light or ventilation). Article 8 may apply in environmental cases whether the pollution is directly caused by the State or whether State responsibility arises from the failure to regulate private sector activities properly. The applicability of Article 8 has been determined by a severity test: see the relevant case-law on environmental issues in *Denisov v. Ukraine* [GC], 2018, §§ 111. For instance, in *Hudorovič and Others v. Slovenia*, 2020, the Court clarified its case-law on health and environmental risks resulting from water pollution (§§ 112-115). Notably, it made clear that even though access to safe drinking water is not, as such, a right protected by Article 8, "a persistent and long-standing lack of access to safe drinking water" can have adverse consequences for health and human dignity effectively eroding the core of private life. Therefore, when these stringent conditions are fulfilled, a State's positive obligation might be triggered, depending on the specific circumstances of the case (§ 116).

191. On the merits, regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole; and the State enjoys a certain margin of appreciation in determining the steps to be taken to ensure compliance with the Convention (*Powell and Rayner v. the United Kingdom*, 1990; *López Ostra v. Spain*, 1994, § 51; *Giacomelli v. Italy*, 2006, § 78).

192. In *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* [GC], 2024, the Court addressed, for the first time, the issue of climate change and its impact on the rights secured by the Convention. In particular, it emphasised that, to date, there had been sufficiently reliable indications that anthropogenic climate change existed, that it posed a serious current and future threat to the enjoyment of the Convention rights, and that States were aware of it and were capable of taking measures to address it effectively (§ 436). The Court introduced the concept of "intergenerational burden-sharing", pointing out that the relevant obligations of States extended not only to individuals currently alive, but also to future generations who were likely to bear an increasingly severe burden of the consequences of the present failures to combat climate change (§§ 419-20). It went on to recognise, for the first time, that Article 8 must be seen as encompassing a right for individuals to effective protection by the State authorities from serious adverse effects of climate change on their life, health, well-being and quality of life (§§ 519 and 544). In that connection, the Court emphasised the difference between climate change cases and "classic" environmental cases and established specific criteria for the assessment, in this special context, of the victim status of individuals (§§ 487-

[33] See also section Home.

488) as well as the determination of the legal standing of associations to bring climate change cases before the Court (§§ 502-3). As regards States' positive obligations, they would include putting in place, and implementing, mitigation measures, which must be supplemented by adaptation measures aimed at alleviating the most severe or imminent consequences of climate change, as well as certain procedural safeguards as regards States' decision-making process (§§ 549-554). Subsequently, in *Greenpeace Nordic and Others v. Norway*, 2025, the Court considered the decision-making process for the licensing of petroleum exploration. It considered the following procedural safeguard to be "especially material" in determining whether the respondent State had remained within its margin of appreciation: namely, whether an adequate, timely and comprehensive environmental impact assessment in good faith and based on the best available science was conducted before authorising a potentially dangerous activity that might be harmful to the right of individuals to effective protection by the State authorities from serious adverse effects of climate change on their life, health, well-being and quality of life.

193. For a detailed analysis of the Court's case-law on this topic, see the Case-law Guide on Environment.

10. Sexual orientation and sexual life[34]

194. The margin of appreciation has been found to be narrow as regards interferences in the intimate area of an individual's sexual life (*Dudgeon v. the United Kingdom*, 1981, § 52; *A.K. v. Russia*, 2024, § 30; *H.W. v. France*, 2025, § 85). The Court has held that elements such as gender identification, name and sexual orientation and sexual life are important elements of the personal sphere protected by Article 8 (*Drelon v. France*, 2022, § 86; *Beizaras and Levickas v. Lithuania*, 2020, § 109; *Sousa Goucha v. Portugal*, 2016, § 27; *B. v. France*, 1992, § 63; *Burghartz v. Switzerland*, 1994, § 24; *Dudgeon v. the United Kingdom*, 1981, § 41; *Laskey, Jaggard and Brown v. the United Kingdom*, 1997, § 36; *P.G. and J.H. v. the United Kingdom*, 2001; *A.K. v. Russia*, 2024, § 30; *H.W. v. France*, 2025, § 62).

195. The Court has held that a ban on the possession by prisoners of pornographic material for their private use breached Article 8 (*Chocholáč v. Slovakia*, 2022). As the applicant kept the material as a stimulant for auto-eroticism in his private sphere, the Court found that its seizure, and the reprimand the applicant received for its possession, constituted an interference with that right. It expressed doubts that the ban pursued a legitimate aim (§ 62 on the protection of morals) but, in any event, concluded that in the absence of any real weighing of the competing individual and public interests, the ban amounted to a general and indiscriminate restriction not permitting the required proportionality assessment in an individual case (§§ 52-78).

196. The relationship of a same-sex couple falls within the notion of "private life" within the meaning of Article 8 and the relationship of a cohabiting same-sex couple living in a stable *de facto* partnership falls within the notion of "family life" (*Orlandi and Others v. Italy*, 2017, § 143). Legislation criminalising sexual acts between consenting homosexuals was found to breach Article 8 (*A.D.T. v. the United Kingdom*, 2000, §§ 36-39; *Dudgeon v. the United Kingdom*, 1981, § 41). Article 8 does not prohibit criminalisation of all private sexual activity, such as incest (*Stübing v. Germany*, 2012), or sadomasochistic sexual activities (*Laskey, Jaggard and Brown v. the United Kingdom*, 1997).

197. In a series of cases, the Court held that any ban on the employment of homosexuals in the military constituted a breach of the right to respect for private life as protected by Article 8 (*Lustig-Prean and Beckett v. the United Kingdom*, 1999; *Smith and Grady v. the United Kingdom*, 1999; *Perkins and R. v. the United Kingdom*, 2002)[35]. In *A.K. v. Russia*, 2024, §§ 40-46, the dismissal of a teacher for posting photos on social media showing affection to intimate partners was considered by the Court to be a disproportionate interference with her rights under Article 8 of the Convention. The Court

[34] See Same-sex couples and the Case-law Guide on Rights of LGBTI persons.
[35] See Identity and autonomy and Home.

held, in particular, that the dismissal of a teacher with appropriate qualifications, of good repute with students and parents and without a prior history of complaints, could not have been the necessary, sole and immediate sanction for the images whether they had stayed private or became public. Moreover, the dismissal amounted to a difference in treatment based solely on considerations of sexual orientation without particularly convincing and weighty reasons. The school administration's position and the judicial decisions referred explicitly to "lesbian scenes" and "lesbian content", "unethically close same-sex relations" and "non-traditional sexual orientation". The Court reiterated that an individual's sexual orientation may not be isolated from the private and public expressions of it, which are evidently protected elements of an individual's private life. The posting of travel and partying photos showing affection towards intimate partners is a commonplace practice on social media. Consequently, the authorities' hostile reaction was unmistakably driven by the lack of acceptance of the applicant's sexuality and was, therefore, patently discriminatory. The Court found accordingly a violation of Article 14 taken in conjunction with Article 8 of the Convention.

198. In a case concerning the refusal of the French blood donation service to accept the applicant as a blood donor based on his presumed homosexuality, the Court observed that the relevant conclusion about his sexual practices had been made only because he had refused to answer the questions about his sex life during the pre-donation medical interview. It noted that the data in question contained explicit indications of the applicant's sex life and supposed sexual orientation, reflecting the applicant's presumed sexual orientation without a proven factual basis, and that, having been collected in 2004, it was to be retained until 2278, with the result that there had been an interference with the applicant's "private life" (and a mere reference to a code rather than an explicit description of sexual conduct was not considered decisive, § 86). Whilst that interference had been based on relevant and sufficient reasons, notably the protection of health and the importance of ensuring blood safety (§§ 93-95), the data collected was based on mere speculation without any proven factual basis. It also noted the excessive length of the retention of the data which made it possible for the data to be used repeatedly against the applicant, resulting in his automatic exclusion from donating blood. Accordingly, the Court found a violation of Article 8 of the Convention (*Drelon v. France*, 2022, §§ 86-100).

199. In *H.W. v. France*, 2025, § 71, the Court held that a fault-based divorce with blame, attributed solely to the applicant for failure to fulfil marital duties by refusing to have sexual relations with her husband, affected her sexual life and sexual freedom and thus constituted an interference with her private life. The Court considered that the marital duty imposed on the applicant also breached the State's obligation to combat domestic and sexual violence against women (§ 89): it further found that consent to marriage did not imply consent to future sexual relations and reiterated, with reference to the obligation to prosecute marital rape, that consent must reflect the free will to engage in a specific sexual act at the time it occurs and taking into account the circumstances (§ 91). It therefore found a violation of Article 8 of the Convention (§§ 92-93).

C. Privacy[36] [37]

200. As the Court has consistently held, the concept of "private life" extends to aspects relating to personal identity, such as a person's name, photo, or physical and moral integrity (*Vavřička and Others v. the Czech Republic* [GC], 2021, § 261); the guarantee afforded by Article 8 is primarily intended to ensure the development, without outside interference, of the personality of each individual in his relations with other human beings. There is thus a zone of interaction of a person with others, even in a public context, which may fall within the scope of private life (*Von Hannover v. Germany (no. 2)* [GC], 2012, § 95). Furthermore, the concept of "private life" is a broad term not susceptible to exhaustive definition, which covers the physical and psychological integrity of a person and can

[36] See also the Case-law Guide on Data protection.
[37] See chapter Telephone conversations.

therefore embrace multiple aspects of a person's identity, such as gender identification and sexual orientation, name or elements relating to a person's right to their image. It covers personal information which individuals can legitimately expect should not be published without their consent (*Axel Springer AG v. Germany* [GC], 2012, § 83). The concept of "private life" also encompasses the right to confidential information relating to the adoption of a child (*X and Others v. Russia*, 2020, §§ 62-67, as regards the publication on the Internet of a judicial decision, mentioning the applicants' names and the names of their adopted children). A decision by a private individual to place an anonymous advertisement seeking a surrogate did not serve as an argument for reducing the level of the protection that should have been afforded to him under Article 8 (*Hájovský v. Slovakia*, 2021, § 35).

201. With respect to surveillance and the collection of private data by agents of the State, such information, when systematically collected and stored in a file held by agents of the State, falls within the scope of "private life" for the purposes of Article 8 § 1 of the Convention. That was all the more so in a case where some of the information had been declared false and was likely to injure the applicant's reputation (*Rotaru v. Romania* [GC], 2000, § 44). In applying this principle, the Court has explained that there are a number of elements relevant to consideration of whether a person's private life is concerned by measures that take place outside a person's home or private premises. Since there are occasions when people knowingly or intentionally involve themselves in activities which are or may be recorded or reported in a public manner, a person's reasonable expectations as to privacy may be a significant, although not necessarily conclusive, factor (*Benedik v. Slovenia*, 2018, § 101). A person who walks down the street will, inevitably, be visible to any member of the public who is also present. Monitoring by technological means of the same public scene (for example, a security guard viewing through closed circuit television) is of a similar character. Private life considerations may arise, however, once any systematic or permanent record comes into existence of such material from the public domain. It is for this reason that files gathered by security services on a particular individual fall within the scope of Article 8, even where the information has not been gathered by any intrusive or covert method (*P.G. and J.H. v. the United Kingdom*, 2001, § 57). See also with respect to bulk interception regimes, *Big Brother Watch and Others v. the United Kingdom* [GC], 2021, and *Centrum för rättvisa v. Sweden* [GC], 2022.

202. Users of telecommunications and Internet services must have a guarantee that their own privacy will be respected, although such a guarantee cannot be absolute and must yield on occasion to other legitimate imperatives, such as the prevention of disorder and crime or the protection of the rights and freedoms of others (*Podchasov v. Russia*, 2024, § 65). In particular, as regards online activities, information associated with specific dynamic IP addresses facilitating the identification of the author of such activities, constitutes, in principle, personal data which are not accessible to the public. The use of such data may therefore fall within the scope of Article 8 (*Benedik v. Slovenia*, 2018, §§ 107-108; *Le Marrec v. France* (dec.), 2024, §§ 51 and 54, as regards an IP address masked by a VPN). In that regard, the fact that the applicant had not concealed his dynamic IP address had not been a decisive factor for assessing whether his expectation of privacy had been reasonable (*Benedik v. Slovenia*, 2018, § 116). Conversely, the anonymity linked to online activities is an important factor which must be taken into account (§ 117).

1. Right to one's image and photographs; the publishing of photos, images, and articles[38]

203. Regarding photographs, the Court has stated that a person's image constitutes one of the chief attributes of his or her personality, as it reveals the person's unique characteristics and distinguishes the person from his or her peers. The right to the protection of one's image is thus one of the essential components of personal development (*López Ribalda and Others v. Spain* [GC], 2019, §§ 87-91 and the references cited therein, and the limits to the protection afforded, see for instance, *Vučina*

[38] See also the Case-law Guide on Data protection.

v. Croatia (dec.), 2019). Although freedom of expression includes the publication of photographs, the Court has nonetheless found that the protection of the rights and reputation of others takes on particular importance in this area, as photographs may contain very personal or even intimate information about an individual or his or her family (*Von Hannover v. Germany (no. 2)* [GC], 2012, § 103). Even a neutral photograph accompanying a story portraying an individual in a negative light constitutes a serious intrusion into the private life of a person who does not seek publicity (*Rodina v. Latvia*, 2020, § 131). The Court has articulated non-exhaustive (*Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], 2017, § 166) key factors to consider when balancing the right to reputation under Article 8 and freedom of expression under Article 10 which include the following: contribution to a debate of general interest; how well known is the person concerned and what is the subject of the report; prior conduct of the person concerned; content, form and consequences of the publication; circumstances in which the photos were taken; and severity of the sanction imposed (*Von Hannover v. Germany (no. 2)* [GC], 2012, §§ 108-113; *Axel Springer AG v. Germany* [GC], 2012, §§ 89-95; *Couderc and Hachette Filipacchi Associés v. France* [GC], 2015, §§ 90-93; *Dupate v. Latvia*, 2011, §§ 49-76; *Rodina v. Latvia*, 2020, § 104).

204. Thus, everyone, including people known to the public, has a legitimate expectation that his or her private life will be protected (*Von Hannover v. Germany (no. 2)* [GC], 2012, §§ 50-53 and 95-99; *Sciacca v. Italy*, 2005, § 29; *Reklos and Davourlis v. Greece*, 2009, § 40; *Alkaya v. Turkey*, 2012, protecting the private address of a famous actress - compare with a lawyer and wife of a retired prosecutor, *Samoylova v. Russia,* 2021, § 101 and see also the disclosure of images of the interior of a house). However, this is not necessarily a conclusive factor (*Bărbulescu v. Romania* [GC], 2017, §§ 73). The Court's case-law mainly presupposes the individual's right to control the use of their image, including the right to refuse publication thereof (*Reklos and Davourlis v. Greece*, 2009, §§ 40 and 43, in which photographs of a newborn baby were taken in a private clinic without the parents' prior consent and the negatives retained; *I.V.Ţ. v. Romania*, 2022, in which an eleven-year old child was interviewed by a private television channel without her parents' consent; *Von Hannover v. Germany (no. 2)* [GC], 2012, § 96; *Dupate v. Latvia*, 2011, §§ 49-76, in which a magazine had published covertly-taken photographs of the applicant, who was the partner of a public figure, when she was leaving hospital following the birth of their child; *Hájovský v. Slovakia*, 2021, § 29, in which a newspaper published private information and non-blurred photographs of a private individual taken covertly under false pretences).

205. The Court has clarified, regarding the rights of minors to private life and image, that an appropriate balancing exercise requires taking into account the particular vulnerabilities of young persons, as the disclosure of information concerning their identity may more severely impact their dignity and well-being than in the case of adult persons. Special legal safeguards are required (*M.G.C. v. Romania*, 2016, § 73; *I.V.Ţ. v. Romania*, 2022, § 59). In *I.V.Ţ. v. Romania*, 2022, the Court found a violation concerning the televised interview of an eleven-year-old, obtained without parental consent and broadcast without adequate protection of her identity. The Court found that the domestic courts failed to give due consideration to the applicant's vulnerability when balancing the right to a private life and image against the right of freedom of expression (§§ 46-63).

206. While the fact that someone's picture has already appeared in an earlier publication might be considered in the balancing process, the fact that information is already in the public domain does not necessarily remove the protection of Article 8, especially if the person concerned neither revealed the information nor consented to its disclosure. Even with respect to a further dissemination of "public information", the Court has found that the interest in publication of that information had to be weighed against privacy considerations. Thus, notwithstanding that the information in question was already known to the public, a further dissemination of such "public information" had still to be weighed against the applicant's right to privacy (*Hájovský v. Slovakia*, 2021, § 48).

207. As regards the expectation of privacy of police officers acting in their official capacity, the Court has pointed out that, whereas there is no general rule under Article 8 requiring that police officers

should generally not be recognisable in press publications, there may be circumstances in which the interest of the individual officer in the protection of his or her private life prevails. This would be the case, for example, if publication of the image of a recognisable officer, irrespective of any misconduct, is likely to lead to specific adverse consequences for his or her private or family life (*Bild GmbH & Co. KG v. Germany*, 2023, § 35; *Toth and Crișan v. Romania*, 2025, § 73). The Court has also clarified that, where the activity conducted by ordinary public servants, and in particular by police officers acting in their official capacity, does not exceed a level that such activity can reasonably be expected to generate, such public servants cannot be considered public figures in the same sense as politicians or any other persons who, through their acts or their position, have entered the public arena, or even well-known figures in their professional field for that matter (*Toth and Crișan v. Romania*, 2025, §§ 67 and 69; see also, *Bild GmbH & Co. KG v. Germany*, 2023, § 32, examined under Article 10). At the same time, such civil servants acting in their official capacity cannot claim protection of their right to respect for their private life in the same way as ordinary individuals (*Toth and Crișan v. Romania*, 2025, §§ 71 and 75). In *Toth and Crișan v. Romania*, 2025, §§ 75-79, where a private individual posted on Facebook a photograph of two police officers performing their professional activities and disclosed the name of one of them, the Court took into account, in particular, the fact that the police officers in question acted in their official capacity, that the photograph was taken on a public street without the use of any covert techniques, and that the photograph was published to lend support to that private individual's comments on matters of public concern, to find that there had been no violation of those police officers' rights under Article 8 of the Convention.

208. The State has positive obligations to ensure that efficient criminal or civil law provisions are in place to prohibit filming without consent. *Söderman v. Sweden* [GC], 2013, concerned the attempted covert filming of a 14-year-old girl by her stepfather while she was naked, and her complaint that the Swedish legal system, which at the time did not prohibit filming without someone's consent, had not protected her against the violation of her personal integrity. *Khadija Ismayilova v. Azerbaijan*, 2019, on the other hand, concerned the covert filming of a journalist inside her home and the subsequent public dissemination of the videos. In that case, the acts in question were punishable under criminal law, and criminal proceedings were in fact initiated. However, the Court found that the authorities failed to comply with their positive obligation to ensure the adequate protection of the applicant's private life by carrying out an effective criminal investigation into the very serious interferences with her private life.

209. The Court has found video surveillance of public places where the visual data are recorded, stored and disclosed to the public to fall under Article 8 (*Peck v. the United Kingdom*, 2003, §§ 57-63; *Glukhin v. Russia*, 2023, § 67). In particular, the disclosure to the media for broadcast use of video footage of an applicant whose suicide attempt was caught on surveillance television cameras was found to be a serious interference with the applicant's private life, notwithstanding that he was in a public place at the time (*Peck v. the United Kingdom*, 2003, § 87). Video-surveillance in a supermarket by an employer (*López Ribalda and Others v. Spain* [GC], 2019, § 93) and in a university amphitheatre (*Antović and Mirković v. Montenegro*, 2017) also fall within the scope of Article 8 of the Convention.

210. In the case of persons arrested or under criminal prosecution, the Court has held on various occasions that the recording of a video in the law enforcement context or the release of the applicants' photographs by police authorities to the media constituted an interference with their right to respect for private life. The Court has found violations of Article 8 where police made applicants' photographs from the official file available to the press without their consent (*Khuzhin and Others v. Russia*, 2008, §§ 115-118; *Sciacca v. Italy*, 2005, §§ 29-31; *Khmel v. Russia*, 2013, § 40; *Toma v. Romania*, 2009, §§ 90-93; *Margari v. Greece*, 2023, §§ 54-60), where the Ministry of the Interior published on its website the applicants' photographs, taken while there were in police custody, in which their identity was not concealed (*D.H. and Others v. North Macedonia*, 2023, §§ 63-65), and where the posting of an applicant's photograph on the wanted board was not in accordance with domestic law (*Giorgi Nikolaishvili v. Georgia*, 2009, §§ 129-131; *Negru v. the Republic of Moldova*, 2023, §§ 29-35).

211. In *Gaughran v. the United Kingdom*, 2020, the applicant's custody photograph was taken on his arrest; it was to be held indefinitely on a local database for use by the police and the police were able to apply facial recognition and facial mapping techniques to it. Therefore, the Court found that the taking and retention of the applicant's photograph amounted to an interference with the right to one's image (§ 70). It went on to find that the interference was not necessary in a democratic society (§ 97). However, the Court found that the five-year retention of a photograph of a repeat offender did not constitute a violation of Article 8 because the duration of the retention was limited, the domestic courts had conducted an individualised assessment of whether it was likely that the applicant might reoffend in the future and there existed the possibility of review of the necessity of further retention of the data in question (*P.N. v. Germany*, 2020, §§ 76-90). In addition, the Court found that the taking and retention of a photograph of a suspected terrorist without her consent was not disproportionate to the legitimate terrorist-prevention aims of a democratic society (*Murray v. the United Kingdom*, 1994, § 93).

212. Article 8 does not necessarily require monetary compensation to the victim if other redress mechanisms are put in place (*Kahn v. Germany*, 2016, § 75). In this case, no award of damages was made against the publisher for breaching an injunction not to publish photographs of the two children of a former goalkeeper with the German national football team (see also *Egill Einarsson v. Iceland (no. 2)*, 2018, §§ 36-37, and § 39 and the references cited therein).

2. Protection of individual reputation; defamation

213. Reputation is protected by Article 8 of the Convention as part of the right to respect for private life (*Axel Springer AG v. Germany* [GC], 2012, § 83; *Chauvy and Others v. France*, 2004, § 70; *Pfeifer v. Austria*, 2007, § 35; *Petrina v. Romania*, 2008, § 28; *Polanco Torres and Movilla Polanco v. Spain*, 2010, § 40).

214. In order for Article 8 to come into play, an attack on a person's reputation must attain a certain level of seriousness and be made in a manner causing prejudice to personal enjoyment of the right to respect for private life (*Axel Springer AG v. Germany* [GC], 2012, § 83; *Bédat v. Switzerland* [GC], 2016, § 72; *Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* [GC], 2017, § 76; *Denisov v. Ukraine* [GC], 2018, § 112; *Balaskas v. Greece*, 2020, § 40; *Vučina v. Croatia* (dec.), 2019, § 31; *Miljević v. Croatia*, 2020, §§ 61-62; *De Carvalho Basso v. Portugal* (dec.), 2021, § 43; *M.L. v. Slovakia*, 2021, § 24; *Angerjärv and Greinoman v. Estonia*, 2022, §§ 118-128; *McCann and Healy v. Portugal*, 2022, § 69; *Oleg Balan v. the Republic of Moldova*, 2024, § 20; *Toth and Crișan v. Romania*, 2025, §§ 32-34). This requirement pertains to both social and professional reputation (*Denisov v. Ukraine* [GC], 2018, § 112). There must also be a sufficient link between the applicant and the alleged attack on his or her reputation (*Putistin v. Ukraine*, 2013, § 40). The Court has accepted that an attack on a deceased's reputation may directly affect such person's close relatives (*M.L. v. Slovakia*, 2021, § 34). In cases that concerned allegations of criminal conduct, the Court also took into account the fact that under Article 6 § 2 of the Convention, individuals have a right to be presumed innocent of any criminal offence until proven guilty (*Jishkariani v. Georgia*, 2018, § 41; see also *McCann and Healy v. Portugal*, 2022, § 95, since the statements about the applicants' alleged involvement in the disappearance of their daughter who had gone missing in 2007 in Portugal, had in fact been made after the case had been discontinued and after the inspector, who had made those statements, had retired, it was the applicants' reputation guaranteed by Article 8 and the public's perception of them which had been at stake rather than their right to be presumed innocent under Article 6 § 2 of the Convention). Furthermore, in a case where the decision-making process leading to the applicant being found guilty of a corruption-related administrative offence was seriously flawed, and in breach of Article 6 § 1 of the Convention, the Court found that the decision to include his name, for an indefinite period, in a publicly accessible register of corrupt officials lacked "relevant and sufficient" reasons and was in violation of Article 8 (*Sytnyk v. Ukraine*, 2025, § 122).

215. It is also noteworthy that a criminal conviction does not deprive the convicted person of his or her right to be forgotten, all the more so if that conviction has become spent. Even if a person may indeed acquire a certain notoriety during a trial, the public's interest in the offence and, consequently, the person's notoriety, can decline with the passage of time. Thus, after a certain period of time has elapsed, persons who have been convicted have an interest in no longer being confronted with their acts, with a view to their reintegration in society. This may be especially true once a convicted person has been finally released (*M.L. and W.W. v. Germany*, 2018, § 100; *M.L. v. Slovakia*, 2021, § 38).

216. The Court did not find a violation of Article 8 in a case concerning an audiovisual recording which was partly broadcast without the applicant's consent, because among other things, it criticised the commercial practices in a certain industry, rather than the applicant himself (*Haldimann and Others v. Switzerland*, 2015, § 52). On the other hand, a television report that described the applicant as a "foreign pedlar of religion" constituted a violation of Article 8 (*Bremner v. Turkey*, 2015, §§ 72 and 84).

217. The Court takes into account how well-known an applicant was at the time of the alleged defamatory statements, the extent of acceptable criticism in respect of a public figure being wider than in respect of ordinary citizens, and the subject-matter of the statements (*Jishkariani v. Georgia*, 2018; *Oleg Balan v. the Republic of Moldova*, 2024, § 31). University professors specialising in human rights appointed as experts by the public authorities, in a public body responsible for advising the Government on human rights issues, could not be compared to politicians who had to display a greater degree of tolerance (*Kaboğlu and Oran v. Turkey*, 2018, § 74). However, individuals who are not public figures may nevertheless expose themselves to journalistic criticism by publicly expressing ideas or beliefs likely to give rise to considerable controversy (*Balaskas v. Greece*, 2020, § 50). A private person can also enter the public domain by virtue of his or association with a public person, and thereby become susceptible to certain exposure, but the domestic courts should exercise a degree of caution where a partner of a public person attracts media attention merely on account of his or her private or family life relations (*Dupate v. Latvia*, 2011, §§ 54-57). In *M.L. v. Slovakia*, 2021, § 37, the Court implicitly accepted the national courts' findings that a parish priest, although not a well-known public figure or a high-ranking church dignitary, could not be treated as an ordinary person but rather as a public figure expected to be more tolerant of criticism. In *McCann and Healy v. Portugal*, 2022, § 86, the Court observed that following their daughter's disappearance, the applicants had contacted the press and had applied to communication agencies and hired press attachés. Although it was understandable that they had done so in an attempt to use all possible means to find their daughter, they had voluntarily exposed themselves to the media attention and thus had become public persons, with the result that they should display greater tolerance in that connection. It must be borne in mind, however, that in certain circumstances, even where a person is known to the general public, he or she may rely on a "legitimate expectation" of protection of, and respect for, his or her private life (*ibid*., § 87)

218. In a case where a President had made a derogatory statement about a lawyer, the Court held that the domestic courts might be required to take into account the applicant's status as a politician and as a high-ranking State official, as well as the claimant's status as an advocate, since the statement was capable of causing greater harm to the claimant's reputation (see *Mesić v. Croatia*, 2022, §§ 84 and 102, and specifically as regards high-ranking State officials attacking the reputation of lawyers and making them objects of derision with a view to isolating them and damaging their credibility, see § 109). While the Court emphasised the importance of freedom of expression for high-ranking officials, it also recognised that their words carry more weight (§§ 103-110). Moreover, the Convention cannot be interpreted to require individuals to tolerate being publicly accused of criminal acts by Government officials, who are expected by the public to possess verifiable information concerning those accusations, without such statements being supported by facts (*Jishkariani v. Georgia*, 2018, §§ 59-62; see also, regarding accusations of serious misconduct in respect of the Minister of the Interior published by the leader of an opposition political party on his personal Facebook page, *Oleg Balan v. the Republic of Moldova*, 2024, §§ 36-42). In the same vein, *Egill*

Einarsson v. Iceland, 2017, a well-known figure in Iceland had been the subject of an offensive comment on Instagram, an online picture-sharing application, in which he had been called a "rapist" alongside a photograph. The Court held that a comment of this kind was capable of constituting interference with the applicant's private life in so far as it had attained a certain level of seriousness (§ 52). It pointed out that Article 8 was to be interpreted to mean that even where they had prompted heated debate on account of their behaviour and public comments, public figures should not have to tolerate being publicly accused of violent criminal acts without such statements being supported by facts (§ 52). Conversely, in *McCann and Healy v. Portugal*, 2022, §§ 89-97, the Court found no violation of Article 8 on account of the publication by a retired investigator of a book alleging the applicants' involvement in the disappearance of their daughter. The Court pointed out, in particular, that those were the inspector's value judgments based on the materials of the relevant case file which had been made public before the release of his book.

219. At the same time, the case-law under Article 8 does not require States as a general rule to provide a right-of-reply procedure for redressing grievances (*Gülen v. Turkey* (dec.), 2020, § 64). In that case, the Court held that the exercise of the right of reply, as stipulated in Turkish law, was part of an exceptional emergency procedure. The applicant, having used that remedy to challenge an alleged breach of his right to reputation, instead of bringing a claim for compensation, was found not to have exhausted domestic remedies.

220. In the context of the Internet, the Court has emphasised that the test of the level of seriousness is important (*Tamiz v. the United Kingdom* (dec.), 2017, §§ 80-81; *Çakmak v. Turkey* (dec.), 2021, §§ 42 and 50). After all, millions of Internet users post comments online every day and many of these users express themselves in ways that might be regarded as offensive or even defamatory. However, the majority of comments are likely to be too trivial in character, and/or the extent of their publication is likely to be too limited, for them to cause any significant damage to another person's reputation. In this particular case, the applicant complained that his reputation had been damaged as a result of comments on a blog. In deciding whether that threshold had been met, the Court was inclined to agree with the national courts that while the majority of comments about which the applicant complained were undoubtedly offensive, in large part they were little more than "vulgar abuse" of a kind – albeit belonging to a low register of style – which was common in communication on many Internet portals. Furthermore, many of the comments complained of, which made more specific – and potentially injurious – allegations would, in the context in which they were written, likely be understood by readers as conjecture which should not be taken seriously (see also *Çakmak v. Turkey* (dec.), 2021, §§ 42, 47-50 and 58).

221. In *Tamiz v. the United Kingdom* (dec.), 2017, the Court ruled on the scope of the right to respect for private life safeguarded by Article 8 in relation to the freedom of expression secured by Article 10 to information society service providers such as Google Inc. (§§ 83-84). It found that the State concerned had a wide margin of appreciation and emphasised the important role that such service providers performed on the Internet in facilitating access to information and debate on a wide range of political, social and cultural topics (§ 90). As regards third-party comments on a blog, the Court has emphasised that Article 8 encompasses a positive obligation on the Contracting States to ensure the effective protection of the right to respect for reputation to those within their jurisdiction (*Pihl v. Sweden* (dec.), 2017, § 28; see also *Høiness v. Norway*, 2019). In *Egill Einarsson v. Iceland (no. 2)*, 2017, the domestic courts declared defamatory statements on Facebook null and void, but, having regard to the circumstances of the case, declined to award the applicant damages or costs. For the Court, the decision not to grant compensation does not in itself amount to a violation of Article 8. Among other factors, the fact that the statements were published as a comment on a Facebook page amongst hundreds or thousands of other comments, and the fact that they had been removed by their author as soon as the applicant had so requested, were taken into account to examine the sufficiency of protection of the applicant's right to reputation (§§ 38-39). In *Çakmak v. Turkey* (dec.), 2021, the applicant sought to have criminal proceedings instituted in connection with a statement

which he considered to be damaging to his reputation and which had been made on an anonymous account on Twitter; he also sought to have that statement blocked. The Court found that the authorities had not failed in their positive obligation to protect the applicant's reputation by not blocking, for technical reasons, access to the statement in question and by refusing to institute criminal proceedings, with reference to the fact that it was impossible to establish the identity of the author of the impugned statement given that the necessary information was kept on the servers of Twitter in California, and that the authorities of the United States refused to provide that information in the absence of the relevant agreement between the United States and Turkey.

222. In the context of employment disputes, *Denisov v. Ukraine* [GC], 2018, set out the existing guiding case-law principles on "professional and social reputation" (§§ 115-117 and see above 'professional or business activities').

223. Article 8 cannot be relied on in order to complain of a loss of reputation which is the foreseeable consequence of one's own actions. In *Gillberg v. Sweden* [GC], 2012, §§ 67-68, the applicant maintained that a criminal conviction in itself affected the enjoyment of his "private life" by prejudicing his honour and reputation. However this line of reasoning was not accepted by the Court (see also, inter alia, *Sidabras and Džiautas v. Lithuania*, 2004, § 49; *Mikolajová v. Slovakia*, 2011, § 57; *Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* [GC], 2017, § 76). A criminal conviction in itself does not amount to an interference with the right to respect for "private life" and this also relates to other misconduct entailing a measure of legal responsibility with foreseeable negative effects on "private life" (*Denisov v. Ukraine* [GC], 2018, § 98 and see above 'professional or business activities').

224. By contrast, in *Vicent Del Campo v. Spain*, 2018, the applicant was not a party to proceedings, unaware of them and was not summoned to appear. Nevertheless, the judgment in those proceedings referred to him by name and to details of harassment he allegedly committed. The Court noted that this could not be considered to be a foreseeable consequence of his own doing and that it was not supported by any cogent reasons. Hence, the interference was disproportionate (§§ 39-42 and 48-56).

225. In the specific context of court proceedings, it is first and foremost the responsibility of the presiding judge to ensure that the Article 8 rights of persons giving evidence are adequately protected (*S.W. v. the United Kingdom*, 2021, § 61 regarding a judge's direction to disseminate his adverse findings as to applicant's professional conduct to relevant local authorities and professional bodies without giving the applicant an opportunity to address them in the course of the hearing).

226. The Court has found that any negative stereotyping of a group, when it reaches a certain level, is capable of impacting the group's sense of identity and the feelings of self-worth and self-confidence of members of the group. In this sense it can be seen as affecting the private life of members of the group (*Aksu v. Turkey* [GC], 2012, §§ 58-61, where the applicant, who is of Roma origin, felt offended by certain passages of the book "The Gypsies of Turkey", which focused on the Roma community; and *Király and Dömötör v. Hungary*, 2017, § 43, which concerned anti-Roma demonstrations not involving violence but rather verbal intimidation and threats). The Court also held the principle of negative stereotyping applicable when it came to the defamation of former Mauthausen prisoners, who, as survivors of the Holocaust, could be seen as constituting a (heterogeneous) social group (*Lewit v. Austria*, 2019, § 46).

227. The relevant factors for deciding whether that level has been reached include, but are not necessarily limited to: (a) the characteristics of the group (for instance its size, its degree of homogeneity, its particular vulnerability or history of stigmatisation, and its position *vis-à-vis* society as a whole); (b) the precise content of the negative statements regarding the group (in particular, the degree to which they could convey a negative stereotype about the group as a whole, and the specific content of that stereotype); and (c) the form and context in which the statements were made, their reach (which may depend on where and how they have been made), the position and status of their author, and the extent to which they could be considered to have affected a core aspect of the group's

identity and dignity. It cannot be said that one of those factors invariably takes precedence: it is the interplay of all of them that leads to the ultimate conclusion on whether the "certain level" required under *Aksu v. Turkey* [GC], 2012, § 58, and the "threshold of severity" required under *Denisov v. Ukraine* [GC], 2018, §§ 112-14, has been reached, and on whether Article 8 is thus applicable. The overall context of each case – in particular the social and political climate prevalent at the time when the statements were made – may also be an important consideration (*Budinova and Chaprazov v. Bulgaria*, 2021, § 63 ; *Behar and Gutman v. Bulgaria*, 2012, § 67, *Nepomnyashchiy and Others v. Russia*, 2023, § 59 in the context of negative public statements made by public officials about the LGBTI community).

228. When balancing privacy rights under Article 8 with other Convention rights, the Court has found that the State is called upon to guarantee both rights and if the protection of one leads to an interference with the other, to choose adequate means to make this interference proportionate to the aim pursued (*Fernández Martínez v. Spain* [GC], 2014, § 123). This case concerned the right to private/family life and the right of religious organisations to autonomy. The Court found that the refusal to renew the contract of a teacher of Catholic religion and morals after he publicly revealed his position as a "married priest" did not violate Article 8 (§ 89). The Court reached the same conclusion in a case where the employment of a lay teacher of Orthodox religion was automatically terminated following the withdrawal of her endorsement by the local Archbishop (*Ţîmpău v. Romania*, 2023). As for a parent suspected of child abuse, the Court found that a failure to adequately investigate the unauthorised disclosure of confidential information or to protect the applicant's reputation and right to be presumed innocent (Article 6 § 2) violated Article 8 (*Ageyevy v. Russia*, 2013, § 155).

229. When balancing freedom of expression protected by Article 10 and the right to respect for private life enshrined in Article 8, the Court has applied several criteria. They include the contribution to a debate of general interest; how well known is the person concerned and what is the subject of the report; his or her prior conduct; the method of obtaining the information and its veracity; the content, form and consequences of the publication; and the severity of the sanction imposed (*Axel Springer AG v. Germany* [GC], 2012, § 89-95). These criteria are not exhaustive and should be transposed and adapted in the light of the particular circumstances of the case (*Axel Springer SE and RTL Television GmbH v. Germany*, 2017, § 42; *Jishkariani v. Georgia*, 2018, § 46; see also *McCann and Healy v. Portugal*, 2022, §§ 80-81 and 98-101). For instance, in *Mesić v. Croatia*, 2022, the Court took into account certain additional criteria: on the one hand, the applicant's status as a politician and a high-ranking State official, and on the other, the complainant's status as an advocate (§ 86). In *Roşca v. the Republic of Moldova*, 2025, concerning accusations of professional misconduct made by the then President of the Superior Council of Magistrates and affecting the applicant's reputation as a legal professional and former judge, the Court considered that, while the professionalism of judges in the context of judicial reform is a matter of general interest, a member of the judiciary should show restraint in exercising freedom of expression in all cases where the authority of the judiciary is called into question: furthermore, disrespectful language used towards the applicant personally made no contribution to a debate on a matter of public interest and went beyond the limits of acceptable criticism (§ 74).

230. Although the press must not overstep certain bounds, regarding in particular protection of the reputation and rights of others (*Kaboğlu and Oran v. Turkey*, 2018, § 74), its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest, which the public has a right to receive, including reporting and commenting on court proceedings (*Axel Springer AG v. Germany* [GC], 2012, § 79). The Court has also stressed the importance of the proactive role of the press, namely to reveal and bring to the public's attention information capable of eliciting such interest and of giving rise to such a debate within society (*Couderc and Hachette Filipacchi Associés v. France* [GC], 2015, § 114). When covering certain events, journalists have the duty to show prudence and caution (§ 140). In particular, the Court has held that

that there is a distinction to be drawn between reporting facts – even if controversial – capable of contributing to a debate of general public interest in a democratic society and making tawdry allegations about an individual's private life. In respect of the former, the pre-eminent role of the press in a democracy and its duty to act as a "public watchdog" are important considerations in favour of a narrow construction of any limitations on freedom of expression. However, different considerations apply to press reports concentrating on sensational and, at times, lurid news, intended to titillate and entertain, which are aimed at satisfying the curiosity of a particular readership regarding aspects of a person's strictly private life. Thus, in *M.L. v. Slovakia*, 2021, which concerned publication in the media of information regarding the conviction of the applicant's deceased son – a parish priest – of sexual offences, the Court observed that the revealed information had been particularly intrusive as it had concerned the intimate sphere of the private life of the applicant's late son life and that his picture had also been published. It found a violation of Article 8 on the basis that such publication was not justified by considerations of the general interest (§ 53).

231. The case of *Green v. the United Kingdom*, 2025 concerned the general framework for balancing rights of privacy and freedom of expression in Parliament in the domestic legal order. The applicant's name was linked to allegations of "serious and repeated sexual harassment, racist abuse and bullying" in Parliament, by a member of the House of Lords, even though this information was subject to a court injunction. The applicant complained to the Court that the absence of *ex ante* and *ex post* controls on the power to use parliamentary privilege to reveal such confidential information was not compatible with Article 8. However, in keeping with the well-established constitutional principle of the autonomy of Parliament, the Court held that it was, in the first instance, for national parliaments to assess the need to restrict conduct by their Members. It should therefore be left to the State, and Parliament in particular, to determine whether and to what extent *ex ante* and *ex post* controls might be necessary to prevent its Members from revealing information subject to privacy injunctions (§§ 81-94).

232. In *Sousa Goucha v. Portugal*, 2016, the Court referred to the criterion of "the reasonable reader" when approaching issues relating to satirical material (§ 50; see also *Nikowitz and Verlagsgruppe News GmbH v. Austria*, 2007, §§ 24-26). Also, a particularly wide margin of appreciation should be given to parody in the context of freedom of expression (*Sousa Goucha v. Portugal*, 2016, § 50). In this case, a well-known celebrity alleged that he had been defamed during a television show shortly after making a public announcement concerning his sexual orientation. The Court considered that, because the joke had not been made in the context of a debate on a matter of public interest (see, *a contrario*, *Alves da Silva v. Portugal*, 2009, and *Welsh and Silva Canha v. Portugal*, 2013), an obligation could arise under Article 8 for the State to protect a person's reputation where the statement went beyond the limits of what was acceptable under Article 10 (*Sousa Goucha v. Portugal*, 2016, § 51). In a case concerning the non-consensual use of a celebrity's first name for the purposes of a cigarette advertising campaign, the Court found that the humoristic and commercial nature and his past behaviour outweighed the applicant's Article 8 arguments (*Bohlen v. Germany*, 2015, §§ 58-60; see also *Ernst August von Hannover v. Germany*, 2015, § 57).

233. The Court has, to date, expressly left open the question of whether the private life aspect of Article 8 protects the reputation of a company (*Firma EDV für Sie, EfS Elektronische Datenverarbeitung Dienstleistungs GmbH v. Germany* (dec.), 2014, § 23). However, under Article 10[39], it is worth mentioning that for the Court, the "dignity" of an institution could not be equated to that of human beings (*Kharlamov v. Russia*, 2015, § 29). Similarly, in *Margulev v. Russia*, 2019, § 45, the Court emphasised that there is a difference between the reputation of a legal entity and the reputation of an individual as a member of society. Whereas the latter may have repercussions on one's dignity, the former is devoid of that moral dimension (see also *Freitas Rangel v. Portugal*, 2022, §§ 48, 53 and 58). Subsequently, in *OOO Memo v. Russia*, 2022, the Court stated that the interests of a body of the executive vested with State powers in maintaining a good reputation essentially differ from both the

[39] See the Case-law Guide on Article 10 - Freedom of expression.

right to reputation of natural persons and the reputational interests of legal entities, private or public, that compete in the marketplace (§§ 46-48).

234. Although Article 8 rights are non-transferable[40], the reputation of a deceased member of a person's family may, in certain circumstances, affect that person's private life and identity, and thus come within the scope of Article 8 (*Jakovljević v. Serbia* (dec.), 2020, §§ 30-31).

3. Data protection[41]

235. The protection of personal data is of fundamental importance to a person's enjoyment of his or her right to respect for private and family life as guaranteed by Article 8 and the fact that information is already in the public domain will not necessarily remove the protection of Article 8 (*Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], 2017, §§ 133-134; *L.B. v. Hungary* [GC], 2023, §§ 103-104). This Article provides for the right to a form of informational self-determination, allowing individuals to rely on their right to privacy as regards data which, albeit neutral, is collected, processed and disseminated collectively and in such a form or manner that their Article 8 rights may be engaged. Where there has been compilation of data on a particular individual, processing or use of personal data or publication of the material concerned in a manner or degree beyond that normally foreseeable, private life considerations arise. The Court has also held that the transmission of data, including that which was lawfully obtained, constitutes a separate interference with Article 8 (*Ships Waste Oil Collector B.V. and Others v. the Netherlands*, 2025, § 149, and *Bousaid and Lokchiri v. France* (dec.), 2025, § 48). The domestic law must afford appropriate safeguards to prevent any such use of personal data as may be inconsistent with the guarantees of Article 8 (*Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], 2017, §§ 136-138; *L.B. v. Hungary* [GC], 2023, § 122). This subject-matter is fully examined in the relevant Case-law Guide: Data protection.

4. Right to access personal information[42]

236. Matters of relevance to personal development include details of a person's identity as a human being and the vital interest protected by the Convention in obtaining information necessary to discover the truth concerning important aspects of one's personal identity, such as the identity of one's parents, one's origins, and aspects of one's childhood and early development (*Mikulić v. Croatia*, 2002, §§ 54 and 64; *Odièvre v. France* [GC], 2003, §§ 42 and 44; *Cherrier v. France*, 2024, § 50). Birth, and in particular the circumstances in which a child is born, forms part of a child's, and subsequently the adult's, private life guaranteed by Article 8 of the Convention (*Odièvre v. France* [GC], 2003, § 29; *Mitrevska v. North Macedonia*, 2024, § 40).

237. The Court considers that the interests of the individual seeking access to records relating to her or his private and family life must be secured when a contributor to the records either is not available or improperly refuses consent. Such a system is only in conformity with the principle of proportionality if it provides that an independent authority finally decides whether access has to be granted in cases where a contributor fails to answer or withholds consent (*Gaskin v. the United Kingdom*, 1989, § 49; *M.G. v. the United Kingdom*, 2002, § 27).

238. The issue of access to information about one's origins and the identity of one's natural parents is not of the same nature as that of access to a case record concerning a child in care or to evidence of alleged paternity (*Odièvre v. France* [GC], 2003, § 43).

239. With regard to accessing personal information held by security services, the Court has held that obstacles to access may constitute violations of Article 8 (*Haralambie v. Romania*, 2009, § 96; *Joanna Szulc v. Poland*, 2012, § 87; see also *Centrum för rättvisa v. Sweden* [GC], 2022, §§ 236-278, and *Big*

[40] See the Practical Guide on admissibility criteria.
[41] See the Case-law Guide on Data protection.
[42] See also the Case-law Guide on Data protection.

Brother Watch and Others v. the United Kingdom [GC], 2021). However, in cases concerning suspected terrorists, the Court has also held that the interests of national security and the fight against terrorism prevail over the applicants' interest in having access to information about them in the Security Police files (*Segerstedt-Wiberg and Others v. Sweden*, 2006, § 91)[43]. While the Court has recognised that, particularly in proceedings related to the operations of state security agencies, there may be legitimate grounds to limit access to certain documents and other materials, it has found this consideration loses much of its validity with respect to lustration proceedings (*Turek v. Slovakia*, 2006, § 115).

240. The law must provide an effective and accessible procedure enabling applicants to have access to any important information concerning them (*Yonchev v. Bulgaria*, 2017, §§ 49-53). In this particular case, the applicant, a police officer, had applied for a position in an international mission, but following two psychological assessments, had been declared unfit for the position in question. He complained that he had been refused access to his personnel file at the Ministry of the Interior, and in particular the assessments, on the grounds that certain documents were classified.

5. Information about one's health[44]

241. Respecting the confidentiality of health data is a vital principle in the legal systems of all the Contracting Parties to the Convention (*Y.G. v. Russia*, 2022, §§ 40-45; *L.L. v. France*, 2006, §§ 445-45 in the context of divorce proceedings). It is crucial not only to respect the privacy of a patient, but also to preserve his or her confidence in the medical profession and in the health services in general (*Mortier v. Belgium*, 2022, § 207). Without such protection, those in need of medical assistance may be deterred from revealing such information of a personal and intimate nature as may be necessary in order to receive appropriate treatment and, even, from seeking such assistance. They may thereby endanger their own health and, in the case of communicable diseases, that of the community. The domestic law must therefore afford appropriate safeguards to prevent any such communication or disclosure of personal health data as may be inconsistent with the guarantees in Article 8 of the Convention (*Y.G. v. Russia*, 2022, § 44; *Z v. Finland*, 1997, § 95; *Mockutė v. Lithuania*, 2018, §§ 93-94; *Kotilainen and Others v. Finland*, 2020, § 83). Even the mere storing of data relating to the private life of an individual amounts to an 'interference' within the meaning of Article 8 (*Leander v. Sweden*, 1987, § 48) and the need for safeguards will be all the greater where the protection of personal data undergoing automatic processing is concerned (*S. and Marper v. the United Kingdom* [GC], 2008, § 103). For the collection and retention by the blood donation service of personal data reflecting the applicant's presumed sexual orientation without a proven factual basis, see *Drelon v. France*, 2022, §§ 79-100.

242. The right to privacy and other considerations also apply particularly when it comes to protecting the confidentiality of information relating to HIV, as the disclosure of such information can have devastating consequences for the private and family life of the individual and his or her social and professional situation, including exposure to stigma and possible exclusion (*Z v. Finland*, 1997, § 96; *C.C. v. Spain*, 2009, § 33; *Y v. Turkey* (dec.), 2015, § 68; *Y.G. v. Russia*, 2022, § 44). The interest in protecting the confidentiality of such information will therefore weigh heavily in the balance in determining whether the interference was proportionate to the legitimate aim pursued. Such interference cannot be compatible with Article 8 unless it is justified by an overriding requirement in the public interest (*Z v. Finland*, 1997, § 96; *Y v. Turkey* (dec.), 2015, § 78), in the interest of the applicant himself or in the interest of the safety of hospital staff (*ibid.*, § 77-78). The unnecessary disclosure of sensitive medical data in a certificate, which has to be produced in various situations such as obtaining a driving licence and applying for a job, is disproportionate to any possible legitimate aim (*P.T. v. the Republic of Moldova,* 2020, §§ 31-32). Similarly, the disclosure by State hospitals of

[43] See the Case-law Guide on Terrorism.
[44] See also the Case-law Guide on Data protection.

Jehovah's Witnesses' medical files to the prosecutor's office following their refusal of a blood transfusion constituted a disproportionate interference with the applicants' right to respect for their private life in breach of Article 8 (*Avilkina and Others v. Russia*, 2013, § 54). However, the publication of an Article on the mental health status of a psychological expert did not violate Article 8 because of its contribution to a debate of general interest (*Fürst-Pfeifer v. Austria*, 2016, § 45).

243. The Court has found that the collection and storage of a person's health-related data for a very long period, together with the disclosure and use of such data for purposes unrelated to the original reasons for their collection, constituted a disproportionate interference with the right to respect for private life (*Surikov v. Ukraine*, 2017, §§ 70 and 89, concerning the disclosure to an employer of the medical grounds for an employee's dispensation from military service).

244. The disclosure – without a patient's consent – of medical records, including information relating to an abortion, by a clinic to the Social Insurance Office, and therefore to a wider circle of public servants, constituted an interference with the patient's right to respect for private life (*M.S. v. Sweden*, 1997, § 35). A criminal court's dismissal of a defendant's application to hear evidence which contained sensitive medical information *in camera* was also found to have breached Article 8 as the court had not carried out any individualised assessment of proportionality (*Frâncu v. Romania*, 2020, §§ 63-75). The disclosure of medical data by medical institutions to journalists and to a prosecutor's office, and the collection of a patient's medical data by an institution responsible for monitoring the quality of medical care were also held to have constituted an interference with the right to respect for private life (*Mockutė v. Lithuania*, 2018, § 95). In this case there had also been an interference with Article 8 concerning the information disclosed to the applicant's mother, given the tense relations between the latter and her daughter (§ 100). In *Y.G. v. Russia*, 2022, the applicant had apparently purchased at a market a database containing his confidential health information, and that of over 400,000 others, which appeared to come from the Information Centre of the Moscow Department of the Interior. The Court held that the authorities had failed to protect the confidentiality of his health data and had failed to investigate the data leak (§§ 46-53). In *Mortier v. Belgium*, 2022, the Court found that the authorities had not failed in their positive obligation to ensure respect for the applicant's Article 8 rights by failing to ensure his involvement in the process of his mother's death by euthanasia. It noted the conflicting interests at stake, notably the applicant's wish to accompany his mother during the last moments of her life and the latter's right to respect of her will and personal autonomy, given that she had not wished to inform her children, including the applicant, of her euthanasia request in spite of repeated advice from doctors. In that connection, the Court stressed that the doctors were under an obligation to maintain medical confidentiality and could not contact the applicant without his mother's consent (§§ 200-208).

245. The right to effective access to information concerning health and reproductive rights falls within the scope of private and family life within the meaning of Article 8 (*K.H. and Others v. Slovakia*, 2009, § 44). There may be positive obligations inherent in effective respect for private or family life which require the State to provide essential information about risks to one's health in a timely manner (*Guerra and Others v. Italy*, 1998, §§ 58 and 60). In particular, where a State engages in hazardous activities, which might have hidden adverse consequences on the health of those involved in such activities, respect for private and family life under Article 8 requires that an effective and accessible procedure be established which enables such persons to seek all relevant and appropriate information (*McGinley and Egan v. the United Kingdom*, 1998, §§ 97 and 101; *Roche v. the United Kingdom* [GC], 2005, § 167, for instance to assess any risk to which a person may be exposed).

6. File or data gathering by security services or other organs of the State[45]

246. This chapter should be read in conjunction with the one on Special secret surveillance of citizens/organisations, referring notably to the principles set out in the cases of *Centrum för rättvisa*

[45] See also Special secret surveillance of citizens/organisations, and the Case-law Guide on Data protection.

v. Sweden [GC], 2022, and *Big Brother Watch and Others v. the United Kingdom* [GC], 2021. The Court has held that where a State institutes secret surveillance, the existence of which remains unknown to the persons being controlled with the effect that the surveillance remains unchallengeable, individuals could be deprived of their Article 8 rights without being aware and without being able to obtain a remedy either at the national level or before the Convention institutions (*Klass and Others v. Germany*, 1978, § 36). This is especially so in a climate where technological developments have advanced the means of espionage and surveillance, and where the State may have legitimate interests in preventing disorder, crime, or terrorism[46] (*ibid.*, § 48). An applicant can claim to be the victim of a violation occasioned by the mere existence of secret surveillance measures or of legislation permitting such measures, if certain conditions are satisfied (*Roman Zakharov v. Russia* [GC], 2015, §§ 171-172). In that case, the Court found the *Kennedy* approach was best tailored to the need to ensure that the secrecy of surveillance measures did not result in the measures being effectively unchallengeable and outside the supervision of the national judicial authorities and of the Court (*Kennedy v. the United Kingdom*, 2010, § 124).

247. The mere existence of legislation which allows a system for the secret monitoring of communications entails a threat of surveillance for all those to whom the legislation may be applied (*Weber and Saravia v. Germany* (dec.), 2006, § 78). While domestic legislatures and national authorities enjoy a certain margin of appreciation in which to assess what system of surveillance is required, the Contracting States do not enjoy unlimited discretion to subject persons within their jurisdiction to secret surveillance (*Zoltán Varga v. Slovakia*, 2021, § 151). The Court has affirmed that the Contracting States may not, in the name of the struggle against espionage and terrorism, adopt whatever measures they deem appropriate; rather, whatever system of surveillance is adopted, there must be adequate and effective guarantees against abuse (*Weber and Saravia v. Germany* (dec.), 2006, § 106; see also *Podchasov v. Russia*, 2024, § 62). Powers of secret surveillance of citizens are tolerable only in so far as strictly necessary for safeguarding the democratic institutions (*Klass and Others v. Germany*, 1978, § 42; *Szabó and Vissy v. Hungary*, 2016, §§ 72-73). Such interference must be supported by relevant and sufficient reasons and must be proportionate to the legitimate aim or aims pursued (*Segerstedt-Wiberg and Others v. Sweden*, 2006, § 88).

248. The Court found the recording of a conversation by a remote radio-transmitting device during a police covert operation without procedural safeguards to be a violation (*Bykov v. Russia* [GC], 2009, §§ 81 and 83; *Oleynik v. Russia*, 2016, §§ 75-79). Similarly, the systematic collection and storing of data by security services on particular individuals constituted an interference with these persons' private lives, even if such data were collected in a public place (*Peck v. the United Kingdom*, 2003, § 59; *P.G. and J.H. v. the United Kingdom*, 2001, §§ 57-59) or concerned exclusively the person's professional or public activities (*Amann v. Switzerland* [GC], 2000, §§ 65-67; *Rotaru v. Romania* [GC], 2000, §§ 43-44). The Court has also held that the use in criminal proceedings against an applicant, of recordings made by a co-accused at the registered office of the applicant's company, interfered with his rights under Article 8 (*Sârbu v. Romania*, 2023, § 39-43). In the context of a collection, through a GPS device attached to a person's car, and storage of data concerning that person's whereabouts and movements in the public sphere was also found to constitute an interference with private life (*Uzun v. Germany*, 2010, §§ 51-53). A storage of Internet communications and related communications data required by law, even if carried out by private actors (Internet communications organisers), will be attributable to the relevant State and thus will amount to an interference (*Podchasov v. Russia*, 2024, § 51).

249. Where domestic law does not indicate with sufficient clarity the scope and manner of exercise of the discretion conferred on the domestic authorities to collect and store in a surveillance database information on persons' private lives – in particular, where it does not set out in a form accessible to the public any indication of the minimum safeguards against abuse – this amounts to an interference with private life as protected by Article 8 § 1 of the Convention (*Shimovolos v. Russia*, 2011, § 66,

[46] See the Case-law Guide on Terrorism.

where the applicant's name was registered in the Surveillance Database which collected information about his movements, by train or air, within Russia). Domestic legislation should provide sufficiently precise, effective and comprehensive safeguards on the ordering, execution and potential redressing of surveillance measures (*Szabó and Vissy v. Hungary*, 2016). According to that case, the need for the interference to be "necessary in a democratic society" had to be interpreted as requiring that any measures taken should be strictly necessary both, as a general consideration, to safeguard democratic institutions and, as a particular consideration, to obtain essential intelligence in an individual operation. Any measure of secret surveillance which did not fulfil the strict necessity criterion would be prone to abuse by the authorities (§§ 72-73).

250. In *Zoltán Varga v. Slovakia*, 2021, (§ 162) the applicant was a businessman whose activities - which included meetings - were surveyed at a flat belonging to him. The operation was authorised by three warrants issued by the Regional Court and at the request of the Slovak Intelligence Service. The Court noted that the lack of clarity of the applicable jurisdictional rules, and the lack of procedures for the implementation of the existing rules and flaws in their application, meant that when implementing the three warrants the intelligence service had practically enjoyed a discretion amounting to unfettered power, not being accompanied by a measure of protection against arbitrary interference as required by the rule of law. Thus, those measures were not "in accordance with the law" for the purposes of Article 8 § 2. The applicant in the case of *Haščák v. Slovakia*, 2022, was the business partner of the applicant in *Zoltán Varga*. His complaints were similar to those of Mr Varga. However, as there was nothing to indicate that he was himself the subject of any warrant, he also complained that the applicable framework provided no protection to persons randomly affected by surveillance measures. In finding a violation of Article 8, the Court identified this as an "aggravating factor" (§ 95; see also, as regards the continued storage by the authorities of surveillance material concerning the applicant collected in the course of a security operation of which she, herself, had not been a subject, and her inability to have that material destroyed, *Kaczmarek v. Poland*, 2024, §§ 93-96).

251. The Court also found that consultation of a lawyer's bank statements amounted to an interference with her right to respect for professional confidentiality, which fell within the scope of private life (*Brito Ferrinho Bexiga Villa-Nova v. Portugal*, 2015, § 59). In *Ferrieri and Bonassisa v. Italy*, 2026, the Tax Authority gained access to the applicants' banking data, including to bank account information, transaction histories, and other financial operations related to or traceable to them. It examined those data for tax audit purposes. The Court found that that amounted to an interference with the applicants' rights (§§ 55-56). In the absence of procedural safeguards against abuse or arbitrariness, and of an *ex post* judicial or independent review, that interference was not found to be "in accordance with the law" (§§ 83-99 and 105).

252. In *Ukraine and the Netherlands v. Russia* [GC], 2025, the Court found that systematic and extensive data gathering from civilians in the context of filtration measures was not "in accordance with the law" within the meaning of Article 8 § 2 of the Convention. Such measures entailed downloading phone contact lists, registering identification numbers of the telephones, including IMEI numbers, collecting passport numbers, scanning for biometric indicators and questioning people on their background and political beliefs, and allowed for a creation of extensive database of the persons subjected to such measures.

253. In *Manukyan v. Armenia*, 2025, the Court found that both the collection and storage of the applicant's personal information by security services, and the use of threats and coercion to pressure the applicant into cooperating with them, amounted to an interference with the applicant's private life. That interference was found to have no legal basis as coercive methods and threats were incompatible with domestic law and fundamentally at odds with the basic principles of the rule of law. Moreover, the circumstances of the case were found to be sufficient to trigger the State's positive obligation under Article 8 to conduct an effective investigation.

7. Police surveillance[47]

254. The Court has held that the GPS surveillance of a suspected terrorist and the processing and use of the data thus obtained did not violate Article 8 (*Uzun v. Germany*, 2010, § 81).

255. However, the Court found a violation of Article 8 where police registered an individual's name in a secret surveillance security database and tracked his movements on account of his membership of a human rights organisation (*Shimovolos v. Russia*, 2011, § 66, the database in which the applicant's name had been registered had been created on the basis of a ministerial order, which had not been published and was not accessible to the public. Therefore, the public could not know why individuals were registered in it, what type of information was included and for how long, how it was stored and used or who had control over it).

256. The Court has also found a violation of Article 8 as regards the drawing up by the police of a report on serving judges not suspected of any criminal activity (*M.D. and Others v. Spain*, 2022, concerning also the leak to the press and ensuing investigation). Included in the report were personal data, photographs and certain professional information (partially extracted from the police ID database) as well as (for some judges) data pertaining to their political views (data revealing political opinions falls within the special categories of sensitive data attracting a heightened level of protection, § 55). In the Court's view, the mere existence of the report violated Article 8 since the interference with the applicants' private life was not in accordance with any domestic law, and the public authorities had used the personal data for a purpose other than that which justified the collection (*M.D. and Others v. Spain*, 2022, §§ 61-64). The report had been leaked to the press and the Court found a further violation of the positive obligation under Article 8 to investigate the unlawful disclosure (§§ 65-72).

257. The Court has established that the surveillance of communications and telephone conversations (including calls made from business premises, as well as from the home) is covered by the notion of private life and correspondence under Article 8 (*Halford v. the United Kingdom*, 1997, § 44; *Malone v. the United Kingdom*, 1984, § 64; *Weber and Saravia v. Germany* (dec.), 2006, §§ 76-79; *Potoczka and Adamco v. Slovakia*, 2023, § 69). This does not necessarily extend to the use of undercover agents (*Lüdi v. Switzerland*, 1992, § 40).

258. Tapping and other forms of interception of telephone conversations represent a serious interference with private life and correspondence (see, for instance *Dragojević v. Croatia*, 2015, §§ 94-98) and must accordingly be based on a law that is precise. It is essential to have clear, detailed rules on the subject, especially as the technology available for use is continually becoming more sophisticated (*Kruslin v. France*, 1990, § 33). When balancing the respondent State's interest in protecting its national security through secret surveillance measures against the seriousness of the interference with an applicant's right to respect for his or her private life, the national authorities enjoy a certain margin of appreciation in choosing the means for achieving the legitimate aim of protecting national security. However, there must be adequate and effective safeguards against abuse. The Court thus takes into account the circumstances of the case, such as the nature, scope and duration of the possible measures, the grounds required for ordering them, the authorities competent to authorise, carry out and supervise them, and the kind of remedy provided by the national law (*Roman Zakharov v. Russia* [GC], 2015, § 232; *İrfan Güzel v. Turkey*, 2017, § 85, *Ekimdzhiev and Others v. Bulgaria,* 2022, §§ 418 and 419[f]; see also *Big Brother Watch and Others v. the United Kingdom* [GC], 2021; *Centrum för rättvisa v. Sweden* [GC], 2022; *Podchasov v. Russia*, 2024, § 64). In *Contrada v. Italy (no. 4)*, 2024, concerning the interception of the applicant's telephone communications for the purposes of criminal proceedings not concerning him, the Court found that the relevant domestic law lacked adequate and effective safeguards to protect the applicant from the

[47] See also Special secret surveillance of citizens/organisations, and the Case-law Guide on Data protection.

risk of abuse given the absence of a possibility of *a posteriori* judicial review of the contested measure in situations such as this one (§§ 91-96).

259. In *Hambardzumyan v. Armenia*, 2019, §§ 63-68, the warrant authorising surveillance did not state the applicant's name as the person in respect of whom the police were permitted to carry out audio and video recording. In addition, the police had carried out surveillance and interception of telephone communications even though the warrant did not specify those measures. The Court held that the judicial authorisation serving as the basis of secret surveillance could not be drafted in such vague terms as to leave room for speculation and assumptions with regard to its content and, most importantly, as to the identity of the person to whom the measure was to be applied. Since the secret surveillance in this case had not been the subject of proper judicial supervision, the Court ruled it was not "in accordance with the law" within the meaning of Article 8 § 2 of the Convention (see also *Azer Ahmadov v. Azerbaijan,* 2021, §§ 63-74).

260. The Court has found violations of Article 8 where applicants' telephone conversations in connection with prosecution for criminal offences were intercepted, "metered", or listened to in violation of the law (*Malone v. the United Kingdom*, 1984; *Khan v. the United Kingdom*, 2000). The phrase "in accordance with the law" not only requires compliance with domestic law but also relates to the quality of that law, requiring it to be compatible with the rule of law (*Halford v. the United Kingdom*, 1997, § 49). In the context of covert surveillance by public authorities, the Court has found that "foreseeability" cannot be understood in the same way as in many other fields. In its view, it cannot mean that an individual should be able to foresee when the authorities are likely to have recourse to such measures so that he or she can adapt his or her conduct accordingly (*Adomaitis v. Lithuania*, 2022, § 83). However, especially where a power vested in the executive is exercised in secret, the risks of arbitrariness are evident. It is therefore essential that domestic law provides protection against arbitrary interference with an individual's right under Article 8 (*Khan v. the United Kingdom*, 2000, §§ 26-28). Moreover, the law must be sufficiently clear in its terms to give individuals an adequate indication as to the circumstances in which and the conditions on which public authorities are entitled to resort to such covert measures (*ibid.*). Where there exists no statutory system to regulate the use of covert listening devices, and guidelines concerning them are neither legally binding nor directly publicly accessible, the interference is not "in accordance with the law" as required by Article 8 § 2 of the Convention, and is therefore a violation of Article 8 (*ibid.*, §§ 27-28).

261. The recording of private (telephone) conversations by a conversation partner and the private use of such recordings does not per se offend against Article 8 if this is done by private means. However, this must be distinguished from the covert monitoring and recording of communications by a private person in the context of and for the benefit of an official inquiry - criminal or otherwise - and with the connivance and technical assistance of public investigation authorities (*Van Vondel v. the Netherlands*, 2007, § 49; *Lysyuk v. Ukraine*, 2021, § 51). The disclosure of the content of certain conversations to the media obtained through telephone tapping could constitute a violation of Article 8 depending on the circumstances of the case (*Drakšas v. Lithuania*, 2012, § 62).

262. The Court considers the surveillance of legal consultations taking place in a police station to be analogous to the interception of a telephone call between a lawyer and client, given the need to ensure an enhanced degree of protection for that relationship and in particular for the confidentiality of the exchanges which characterise it (*R.E. v. the United Kingdom*, 2015, § 131).

263. In the case of *Glukhin v. Russia*, 2023, the Court examined for the first time the question of the use by the police of facial recognition technology. That technology had been used, in the first place, to identify the applicant from the photographs and the video published on a public Telegram channel, and, secondly, to locate and arrest him while he had been travelling on the city underground. The Court noted the very intrusive nature of those measures, emphasising that a high level of justification was therefore required in order for them to be considered "necessary in a democratic society", with the highest level of justification required for the use of live facial recognition technology (*ibid*., § 86).

In that connection, it observed that the applicant had been prosecuted for a minor offence consisting of holding a solo demonstration without a prior notification. He had never been accused of committing any reprehensible acts during his demonstration (such as the obstruction of traffic, damage to property or acts of violence). It had never been claimed that his actions presented any danger to public order or transport safety. In such circumstances, the Court considered that the use of facial recognition technology to identify the applicant, and *a fortiori* the use of live facial recognition technology to locate and arrest him, had not corresponded to a "pressing social need" and thus could not be regarded as "necessary in a democratic society (*ibid*., §§ 88-90).

8. Stop and search police powers[48]

264. The Court has held that there is a zone of interaction between a person with others, even in a public context, which may fall within the scope of "private life" (*Gillan and Quinton v. the United Kingdom*, 2010, § 61 concerning the power to stop and search individuals). For instance, the use of the coercive powers conferred by the legislation requiring an individual to submit, anywhere and at any time, to an identity check and a detailed search of his person, his clothing and his personal belongings amounts to an "interference" with the right to respect for private life (*Vig v. Hungary*, 2021, § 49 as regards enhanced police checks).

265. In these cases, the measures complained of were not "in accordance with the law" within the meaning of Article 8. In *Gillan and Quinton v. the United Kingdom*, 2010, the Court found that the stopping and searching of a person in a public place without reasonable suspicion of wrongdoing was a violation of Article 8 as the powers were not sufficiently circumscribed and contained inadequate legal safeguards to be in accordance with the law (§ 87). In *Vig v. Hungary,* 2021, in the absence of any real restriction or review of either the authorisation, of an enhanced check or the police measures carried out during an enhanced check, domestic law did not provide adequate safeguards to offer the individual adequate protection against arbitrary interference (§ 62).

266. In *Beghal v. the United Kingdom*, 2019, the Court considered a power given to police, immigration officers and designated customs officers under anti-terrorism legislation to stop, examine and search passengers at ports, airports and international rail terminals. No prior authorisation was required for the use of the power, and it could be exercised without suspicion of involvement in terrorism. In assessing whether domestic law sufficiently curtailed the power so as to offer adequate protection against arbitrary interference with the applicant's right to respect for her private life, the Court had regard to the following factors: the geographic and temporal scope of the powers; the discretion afforded to the authorities in deciding if and when to exercise the powers; any curtailment on the interference occasioned by the exercise of the powers; the possibility of judicially reviewing the exercise of the powers; and any independent oversight of the use of the powers. Although the Court acknowledged the importance of controlling the international movement of terrorists and accepted that the national authorities enjoyed a wide margin of appreciation in matters relating to national security, it nevertheless held that the power was neither sufficiently circumscribed nor subject to adequate legal safeguards against abuse.

267. In *Basu v. Germany* (§ 27) and *Muhammad v. Spain* (§ 51), 2022, the Court elaborated on the right to respect for "private life" regarding identity checks by the police, on a train or in the street, of persons belonging to an ethnic minority, where the applicants subjected to the check complained of racial profiling (see also *Wa Baile v. Switzerland*, 2024, § 102, in the context of an identity check and search of a person in a railway station because of his skin colour).

268. The Court has also found that police officers' entry into a home in which applicant was not present and there was little or no risk of disorder or crime was disproportionate to the legitimate aim

[48] See also the Case-law Guide on Terrorism.

pursued and was therefore a violation of Article 8 (*McLeod v. the United Kingdom*, 1998, § 58; *Funke v. France*, 1993, § 48).

269. With respect to persons suspected of terrorism-related offences, governments must strike a fair balance between the exercise by the individual of the right guaranteed to him or her under paragraph 1 of Article 8 and the necessity under paragraph 2 for the State to take effective measures for the prevention of terrorist crimes (*Murray v. the United Kingdom*, 1994, §§ 90-91).

9. Home visits, searches and seizures[49]

270. In some cases, the Court examines evictions from the perspective of "private" and/or "family" life" and not of the "right to home" (*Hirtu and Others v. France*, 2020, §§ 65-66; *Khadija Ismayilova v. Azerbaijan*, 2019, § 107 and compare *Sabani v. Belgium*, 2022, § 41).

271. The Court can examine searches not only from the perspective of the "right to home" or the "right to family life", but also from the perspective of the "right to private life" (*Vinks and Ribicka v. Latvia*, 2020, § 92; *Yunusova and Yunusov v. Azerbaijan (no. 2)*, 2020, with regard to the inspection of the applicants' luggage and handbags, § 148; *Aydın Sefa Akay v. Türkiye*, 2024, § 140; *Anti-Corruption Foundation (FBK) and Others v. Russia*, nos. 13505/20 and 138 others, 2025, § 69, in the context of mass searches of homes and offices of persons and entities carried out and property seized during such searches). The interference must be justified under paragraph 2 of Article 8 – in other words it must be "in accordance with the law", pursue one or more of the legitimate aims set out in that paragraph and be "necessary in a democratic society" to achieve that aim (*Vinks and Ribicka v. Latvia*, 2020, §§ 93-104 with further references therein). The *Vinks and Ribicka* case concerned an early-morning raid at the applicants' home involving a special anti-terrorist unit against the background of charges of economic crimes. The Member States, when taking measures to prevent crime and protect the rights of others, may well consider it necessary, for the purposes of special and general prevention, to resort to measures such as searches and seizures in order to obtain evidence of certain offences where it is otherwise impossible to identify a person guilty of an offence. Although the involvement of special police units may be considered necessary, in certain circumstances, having regard to the severity of the interference with the right to respect for private life of the individuals affected by such measures as well as the risk of abuse of authority and violation of human dignity, adequate and effective safeguards against abuse must be put in place (§§ 113-114, 118). As concerns the handcuffing of the applicant during her arrest in her home in her daughter's presence, see *Sabani v. Belgium*, 2022, §§ 59-60.

10. Lawyer-client relationship

272. The Court has emphasised that professional secrecy is the basis of the relationship of trust existing between a lawyer and his client and that the safeguarding of professional secrecy is in particular the corollary of the right of a lawyer's client not to incriminate himself, which presupposes that the authorities seek to prove their case without resorting to evidence obtained through methods of coercion or oppression in defiance of the will of the "person charged" (*André and Another v. France*, 2008, § 41). Moreover, the Court has stressed that it is clearly in the general interest that any person who wishes to consult a lawyer should be free to do so under conditions which favour full and uninhibited discussion and that it is for that reason that the lawyer-client relationship is, in principle, privileged. It has not limited that consideration to matters relating to pending litigation only and has emphasised that, whether in the context of assistance for civil or criminal litigation or in the context of seeking general legal advice, individuals who consult a lawyer can reasonably expect their communication to be private and confidential (*Altay v. Turkey (no. 2)*, 2019, §§ 49-51, and the further references therein).

[49] See also Home below, and the Case-law Guide on Data protection.

273. In the case of *Altay v. Turkey (no. 2)*, 2019, the Court ruled for the first time that a person's communication with a lawyer in the context of legal assistance falls within the scope of "private life" since the purpose of such interaction is to allow an individual to make informed decisions about his or her life. The Court considered that more often than not the information communicated to the lawyer involves intimate and personal matters or sensitive issues. It therefore follows that whether it be in the context of assistance for civil or criminal litigation or in the context of seeking general legal advice, individuals who consult a lawyer can reasonably expect that their communication is private and confidential (§ 49).

274. It is clearly in the general interest that any person who wishes to consult a lawyer should be free to do so under conditions which favour full and uninhibited discussion (§ 50 with reference to *Campbell v. the United Kingdom*, 1992, § 46). In principle, oral communication as well as correspondence between a lawyer and his or her client is privileged under Article 8 (§ 51).

275. In the case of *Černý and Others v. the Czech Republic*, 2025, lodged by criminal defence lawyers on account of a seizure of their privileged communications with their client stored on the latter's electronic device, the Court found that the applicants did not waive their rights to privacy and protection of correspondence simply because there was a hypothetical possibility that the data they sent to their client's device could be obtained by the authorities. Thus, the extraction of such communications from the client's electronic devices and their placement in the latter's criminal case file amounted to an interference with the applicants' rights under Article 8 (§§ 60-63). In the absence of a clear and foreseeable domestic framework and of procedural safeguards for the protection of privileged data on seized electronic devices, the interference was found not to have a sufficient basis in domestic law (§§ 70-74).

276. In spite of its importance, the right to confidential communication with a lawyer is not absolute but may be subject to restrictions. In order to ensure that the restrictions that are imposed do not curtail the right in question to such an extent as to impair its very essence and deprive it of its effectiveness, the Court must satisfy itself that they are foreseeable for those concerned and pursue a legitimate aim or aims under paragraph 2 of Article 8, and are "necessary in a democratic society", in the sense that they are proportionate to the aims sought to be achieved.

277. The margin of appreciation of the State in the assessment of the permissible limits of interference with the privacy of consultation and communication with a lawyer is narrow in that only exceptional circumstances, such as to prevent the commission of serious crime or major breaches of prison safety and security, might justify the necessity of limitation of these rights (§ 52).

11. Privacy during detention and imprisonment[50] [51]

278. Since any detention which is lawful and justified inevitably entails some limitations on Article 8 rights, the assessment of compliance with that Article in the case of detainees is somewhat particular. Thus, for example, with respect to a detainees contacts with the outside world, regard must be had to the ordinary and reasonable requirements of imprisonment since some restrictions on those contacts, such as limitations on the number and duration of visits, are not of themselves incompatible with Article 8 (*Khoroshenko v. Russia* [GC], 2015, §§ 106, 109, 116-149).

279. The Court has held that, while the surveillance of communication in the visitation area in prison may legitimately be done for security reasons, a systemic surveillance and recording of communication for other reasons represents an interference with Article 8. In this context, the Court has placed particular emphasis on the requirement of lawfulness, including clarity and foreseeability of the relevant law (*Wisse v. France*, 2005, §§ 29-34; *Doerga v. the Netherlands*, 2004, §§ 44-54).

[50] See the Case-law Guide on Prisoners' rights.
[51] See also Prisoners' correspondence.

280. In the context of persons deprived of their liberty, the Court emphasized for the first time the confidentiality of lawyer-client communication in the case of *Altay v. Turkey (no. 2)*, 2019. It ruled that an individual's oral communications with his or her lawyer in the context of legal assistance falls within the scope of "private life" since the purpose of such interaction is to allow that individual to make informed decisions about his or her life (§§ 49-50). In principle, oral, face-to-face communication and correspondence between a lawyer and his or her client are privileged under Article 8 (§ 51). The Court also noted that a prisoner's right to communicate with counsel out of earshot of the prison authorities would be relevant in the context of Article 6 § 3 (c) of the Convention vis-à-vis a person's rights of defence. Prisoners may feel inhibited in discussing with their lawyers in the presence of an official not only matters relating to pending litigation but also in reporting abuses they may be suffering through fear of retaliation. In addition, the privilege of lawyer-client relationship and the national authorities' obligation to ensure the privacy of communications between a prisoner and his or her chosen representative are among recognised international norms (§ 50).

281. This case concerns the mandatory presence of an official during consultations between a prisoner and his lawyer. The right to confidential communication between a detainee and his/her lawyer is not absolute but might be subject to restrictions. The margin of appreciation of the State in the assessment of the permissible limits of interference with the privacy of consultation and communication with a lawyer is narrow in that only exceptional circumstances, such as to prevent the commission of serious crime or major breaches of prison safety and security, might justify the necessity of limitation of these rights (§ 52).

282. In the case at hand, the domestic courts had ordered the presence of an official during the applicant's consultations with his lawyer in prison because they had found that the lawyer's behaviour had been incompatible with the profession of a lawyer in so far as she had sent books and periodicals to the applicant which had not been defence-related. The Court found that the measure in question constituted an interference with the applicant's right to respect for his private life. The Court reiterated in this context that the Convention does not prohibit the imposition on lawyers of certain obligations likely to concern their relationships with their clients. That is the case in particular where credible evidence had been found of the participation of a lawyer in an offence, or in connection with efforts to combat certain practices. On that account, however, it is vital to provide a strict framework for such measures, since lawyers occupy a vital position in the administration of justice and can, by virtue of their role as intermediary between litigants and the courts, be described as officers of the law (§ 56).

283. In contrast, the Court found a complaint about the monitoring of communications between a remand prisoner and his family members in a visiting area, for the purposes of the ongoing criminal investigation, during which family members disclosed information they had exchanged with the applicant's lawyer, to be manifestly ill-founded (*Falzarano v. Italy* (dec.), 2021, §§ 33-34 and §§ 38-39).

284. The Court has held that placing a person under permanent video surveillance whilst in detention - which already entails a considerable limitation on a person's privacy - has to be regarded as a serious interference with the individual's right to respect for his or her privacy, and thus brings Article 8 into play (*Van der Graaf v. the Netherlands* (dec.), 2004; *Vasilică Mocanu v. Romania*, 2016, §§ 39-40). In *Gorlov and Others v. Russia*, 2019, the Court held that the permanent video surveillance of prisoners when confined to their cells was not "in accordance with the law" as required by Article 8 § 2 since it did not define the scope of those powers and the manner of their exercise with sufficient clarity to afford an individual adequate protection against arbitrariness. In this regard, the Court found that the authorities had an unrestricted power to place every individual in pre-trial or post-conviction detention under permanent video surveillance, unconditionally, in any area of the institution, for an indefinite period of time, with no periodic reviews, and the national law offered virtually no safeguards against abuse by State officials.

285. In the case of *Szafrański v. Poland*, 2015, the Court found that the domestic authorities failed to discharge their positive obligation of ensuring a minimum level of privacy for the applicant and therefore had violated Article 8 where the applicant had to use a toilet in the presence of other inmates and was thus deprived of a basic level of privacy in his everyday life (§§ 39-41).

286. In *Chocholáč v. Slovakia*, 2022, the Court held that a general and indiscriminate ban on prisoners possessing pornographic material, that did not permit any proportionality assessment in an individual case, had breached Article 8 (§§ 52-76).

12. Identity and autonomy

287. Article 8 secures to individuals a sphere within which they can freely pursue the development and fulfilment of their personality (*A.-M.V. v. Finland*, 2017, § 76; *Brüggemann and Scheuten v. Germany*, Commission decision, 1976; *National Federation of Sportspersons' Associations and Unions (FNASS) and Others v. France*, 2018, § 153). The notion of personal autonomy is an important principle underlying the interpretation of Article 8 (*Christine Goodwin v. the United Kingdom* [GC], 2002, § 90; *Jivan v. Romania*, 2022, § 30; see also *Y v. France*, 2023, §§ 75-76 and the approach to the margin of appreciation regarding questions relating to an essential aspect of an individuals' intimate identity which are open to discussion or even controversy and on which opinions in a democratic society could reasonably differ widely in the absence of a European consensus, §§ 75-80, 90-91)[52].

13. Right to personal development and autonomy

288. Article 8 protects a right to personal development, and the right to establish and develop relationships with other human beings and the outside world (*Niemietz v. Germany*, 1992, § 29; *Pretty v. the United Kingdom*, 2002, §§ 61 and 67; *Oleksandr Volkov v. Ukraine*, 2013, §§ 165-167; *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], 2012, §§ 248-250, concerning the applicant's secret and extrajudicial abduction and arbitrary detention). The right to personal autonomy was relied upon, for instance, in a case of death by euthanasia where the Court had to weigh up the various competing interests at stake namely, the applicant's wish to accompany his mother in the last moments of her life and his mother's right to respect for her wishes and her personal autonomy (*Mortier v. Belgium*, 2022, § 124 and § 204; for personal autonomy in the context of physician-assisted suicide, see also *Dániel Karsai v. Hungary*, § 85; for personal autonomy in the context of vaccination, see *Pasquinelli and Others v. San Marino*, 2024, § 77).

289. The right to apply for adoption, and to have such an application considered fairly, falls within the scope of "private life" taking into account the couple's decision to become parents (*A.H. and Others v. Russia*, 2017, § 383). In *Paradiso and Campanelli v. Italy* [GC], 2017, the Court examined a couple's immediate and irreversible separation from a child born abroad under a surrogacy agreement, and its impact on their right to respect for their private life. The Court balanced the general interest at stake against the applicants' interest in ensuring their personal development by continuing their relationship with the child and held that the Italian courts, in separating the applicants from the child, had struck a fair balance between the competing interests at stake (§ 215). In the case of *Lazoriva v. Ukraine*, 2018, the Court held that the applicant's wish to maintain and develop her relationship with her five-year-old nephew by becoming his legal tutor, a wish which had an adequate legal and factual basis, was also a matter of private life (§ 66). Consequently, the child's adoption by third persons, which had had the effect of severing the legal ties between the boy and the applicant and to impede her request to take him into her care, amounted to an interference with her right to respect for her private life (§ 68).

290. *Jivan v. Romania,* 2022, clarified the case-law concerning funding for care and medical treatment of elderly dependent people and the States' margin of appreciation in that regard (see §§ 41-52,

[52] See the Case-law Guide on the Rights of LGBTI persons.

concerning the situation of a complete loss of autonomy of an old person, § 50). In *Diaconeasa v. Romania*, 2024 the Court further clarified the case-law in a case concerning the withdrawal of the provision of a State-funded personal assistant for a physically disabled individual resulting in a severe loss of autonomy (see §§ 49-51). It found a violation of Article 8 because of the absence of a thorough assessment of the severity of the applicant's disability and of alternative practical arrangements, where her situation had not improved and she required assistance for the most basic tasks (§§ 58-64).

291. *Y v. France*, 2023, concerned the issue of discrepancy between the applicant's biological identity and his legal identity and, more generally, the issue of recognition of a non-binary gender on his birth certificate in the absence of a European consensus in this area (§§ 75, 90-92).

292. The right to personal development and personal autonomy does not cover every public activity a person might seek to engage in with other human beings (for example, the hunting of wild animals with hounds in *Friend and Others v. the United Kingdom* (dec.), 2009, §§ 40-43; and the right to hunt on one's own land, or on the land of others, is not as such protected by any provision of the Convention, *Advisory opinion on the difference in treatment between landowners' associations "having a recognised existence on the date of the creation of an approved municipal hunters' association" and landowners' associations set up after that date* [GC], 2022, § 80). Indeed, not every kind of relationship falls within the sphere of private life. Thus, the right to keep a dog does not fall within the scope of Article 8 protection (*X. v. Iceland*, Commission decision, 1976).

293. In *M.A. and Others v. France*, 2024, the Court examined for the first time the general and absolute criminalisation of the purchase of sexual services as part of a comprehensive legislative system to combat prostitution and human trafficking. The complaints had been brought by applicants who engaged in prostitution. The Court found that the legislation constituted an interference with the applicants' right to respect for private life, as well as their personal autonomy and sexual freedom, as it created a situation whose effects were directly felt by the applicants (§ 138). The Court acknowledged a wide margin of appreciation considering the lack of a general consensus on both the approach to prostitution and the use of absolute criminalisation of the purchase of sexual services as an instrument for combating human trafficking (§§ 149-153). When considering the proportionality of the measure, the Court noted the long and complex legislative process and careful examination by Parliament of all cultural, social, political and legal aspects of a complex phenomenon raising sensitive moral and ethical questions (§ 158). Additionally, it highlighted that the law intended to combat the stigmatisation and stereotypes surrounding prostitution, strengthen public policies on reducing health risks for the benefit of all persons practising prostitution, combat the prostitution of minors, and gradually eradicate prostitution by offering alternatives without prohibiting its practice (§§ 161-164). The Court thus held that, given the current state of development in the understanding, reflected in domestic law, of the issues raised by prostitution, a fair balance had been struck between the competing interests at stake in the present case. However, that approach had to be kept under review so that it could be nuanced in view of developments in European and international standards in this field (§§ 166-167).

14. Right to discover one's origins[53] [54]

294. The Court has recognised the right to obtain information in order to discover one's origins and the identity of one's parents as an integral part of identity protected under the right to private and family life (*Odièvre v. France* [GC], 2003, § 29; *Cherrier v. France*, 2024, § 50; *Gaskin v. the United Kingdom*, 1989, § 39; *Çapın v. Turkey*, 2019, §§ 33-34; *Boljević v. Serbia*, 2020, § 28; *Gauvin-Fournis and Silliau v. France*, 2023, § 109; *Mitrevska v. North Macedonia*, 2024, § 40).

[53] See chapter on Legal parent-child relationship and Surrogacy.
[54] See also the Case-law Guide on Data protection.

295. The private life of a deceased person from whom a DNA sample would have to be taken could not be adversely affected by a request to that effect made following his death (*Jäggi v. Switzerland*, 2006, § 42; *Boljević v. Serbia*, 2020, § 54).

296. The Court has stated on a number of occasions that DNA testing to establish paternity now constitutes a simple and very reliable method and that "its probative value substantially outweighs any other evidence presented by the parties to prove or disprove the fact of an intimate relationship" (*Moldovan v. Ukraine*, 2024, § 47). Whilst it is not compulsory for States to DNA test alleged fathers, the legal system must provide alternative means enabling an independent authority to speedily determine a paternity claim. For example in *Mikulić v. Croatia*, 2002, §§ 52-55, the applicant was born out of an extramarital relationship and complained that the Croatian judicial system had been inefficient in determining the issue of paternity, leaving her uncertain as to her personal identity. In that case the Court held that the inefficiency of the domestic courts had left the applicant in a state of prolonged uncertainty as to her personal identity. The Croatian authorities had therefore failed to secure to the applicant the "respect" for her private life to which she was entitled under the Convention (*ibid.*, § 68). Likewise, in *Moldovan v. Ukraine*, 2024, §§ 46, 52-53, the applicant was unable to have the paternity of his biological father recognised by the national courts despite the fact that the DNA test had confirmed parentage. The domestic courts refused to consider the DNA test results as conclusive evidence, with reference to the then Family Code of 1969 which made proof of cohabitation indispensable for the recognition of paternity. The Court observed that the effects of such an approach were comparable with those of inflexible time-limits or other procedural limitations which made it impossible to establish or challenge paternity, in particular using new testing methods. It concluded that that approach of the domestic courts, combined with their failure to deal with the DNA evidence with sufficient thoroughness, amounted to a breach of their positive obligations under Article 8 of the Convention.

297. The Court has also held that procedures must exist that allow particularly vulnerable children, such as those with disabilities, to access information about their paternity (*A.M.M. v. Romania*, 2012, §§ 58-65). In *Jäggi v. Switzerland*, 2006, the Court found the refusal by the authorities to authorise a DNA test on a deceased person, requested by the putative son wishing to establish his parentage with certainty, to violate Article 8. In that case, the applicant's interest in ascertaining the identity of his biological father prevailed over that of the remaining family of the deceased which opposed the taking of DNA samples (§§ 40-44). In *Boljević v. Serbia*, 2020, the Court found that, in the very specific circumstances of the case, a time-bar, which precluded the DNA test of a deceased man and the review of the final judgment approving his disavowal of paternity, constituted a violation of Article 8. In this case, the judgment had been rendered before DNA tests became available and without the applicant's knowledge. He only became aware of it decades after the applicable deadline for the reopening of the paternity proceedings had already expired. The Court held that the preservation of legal certainty could not suffice in itself as a ground for depriving the applicant of the right to ascertain his parentage (§ 55). In *Scalzo v. Italy*, 2022, the Court found that a system, under which an action to contest paternity was of a preliminary nature in relation to proceedings to establish paternity, could in principle be considered compatible with Article 8 (§ 65). However, it found a violation on the facts of that case since the action to contest paternity had lasted for more than twelve years and there was no means of speeding them up (§ 66).

298. The Court also found a violation of Article 8 where domestic courts rejected the application to reopen proceedings to establish the paternity of a child, when all the parties concerned were in favour of establishing the biological truth concerning the filiation, on the basis of scientific evidence which had not been available at the date of the paternity proceedings (*Bocu v. Romania*, 2020, §§ 33-36). Similarly, it has found a violation of Article 8 where an applicant claiming to be the biological father was unable to seek to establish paternity because another man had already recognised the child, and where there had been no detailed assessment by the domestic courts (*Koychev v. Bulgaria*, 2020, §§ 59-68).

299. The Court has held that the introduction of a time-limit for instituting paternity proceedings is justified by the desire to ensure legal certainty and thus not per se incompatible with the Convention. However, in *Çapın v. Turkey*, 2019, the Court ruled that a fair balance needs to be struck between the child who has the right to know his or her identity and the putative father's interest in being protected from allegations concerning circumstances that date back many years (§ 87). In that case, the Court found that the national courts had not properly balanced the competing interests at stake because they had not assessed the exceptional circumstances of the case namely, the applicant's claim that he had been told as a child that his father was dead and that, once he was eighteen years of age, he had left his home country and lived abroad for twenty-five years, estranged from his mother and his relatives (§§ 75-76). The Court also reiterated that everyone has a vital interest to know the truth about his or her identity and to eliminate any uncertainty about it. On the other hand, in *Lavanchy v. Switzerland*, 2021, the Court found that the national courts had properly balanced the competing interests at stake. They had dismissed the applicant's action to establish a legal parent-child relationship with her biological father, which had been brought thirty-one years after she discovered his identity, as there were no "valid reasons" for the delay that would have justified extending the time-limit. They had not rigidly applied the time-limit but instead considered whether the applicant's interests were such as to outweigh the competing interests at stake. They had taken into account the case-law of the Court and their decisions were carefully reasoned.

300. In *Odièvre v. France* [GC], 2003, the applicant, who was adopted, requested access to information to identify her natural mother and natural family, but her request was rejected under a special procedure which allowed mothers to remain anonymous. The Court held that there was no violation of Article 8 as the State had struck a fair balance between the competing interests (§§ 44-49; see also *Cherrier v. France*, 2024, §§ 62-66, § 77 and § 82).

301. However, where national law did not attempt to strike any balance between the competing rights and interests at stake, the inability of a child abandoned at birth to gain access to non-identifying information concerning his or her origins or the disclosure of the mother's identity was a violation of Article 8 (*Godelli v. Italy*, 2012, §§ 57-58).

302. In *Gauvin-Fournis and Silliau v. France*, 2023, the applicants, who were born through medically assisted reproduction involving a third-party donor, unsuccessfully sought access to information about that donor. The Court found no violation of Article 8 as it considered that the rule guaranteeing anonymity in gamete donations for children thus conceived before 1 September 2022 struck a fair balance between the conflicting interests at stake (§ 126). The choice by the State of the pace of the introduction of legislative reform in this field fell within its margin of appreciation (§ 123).

15. Legal parent-child relationship[55]

303. Respect for private life requires that everyone should be able to establish details of their identity as individual human beings, which includes the legal parent-child relationship (*Mennesson v. France*, 2014, § 96). Therefore, Article 8 protects children born to a surrogate mother outside the member State in question, whose legal parents according to the foreign State could not register as such under domestic law (see, for a summary of the principle, for instance, *D v. France*, 2020, §§ 45-54). The Court does not require that States legalise surrogacy and, furthermore, States may demand proof of parentage for children born to surrogates before issuing the child's identity papers. However, the child's right to respect for his or her private life requires that domestic law provide a possibility of recognition of the legal relationship between a child born through a surrogacy arrangement abroad and the intended father, where he is the biological father (*Mennesson v. France*, 2014; *Labassee v. France*, 2014; *Foulon and Bouvet v. France*, 2016; *C v. Italy*, 2023; *R.F. and Others v. Germany*, 2024).

[55] See Medically assisted procreation/right to become genetic parents.

304. In its first Advisory Opinion, the Court clarified that where a child is born through a gestational surrogacy arrangement abroad, in a situation where he or she was conceived using the eggs of a third-party donor, and the intended mother is designated in a birth certificate legally established abroad as the "legal mother", the child's right to respect for his or her private life also requires that domestic law provide a possibility of recognition of a legal parent-child relationship with the intended mother. The choice of means by which to achieve recognition of the legal relationship between the child and the intended mother falls within the State's margin of appreciation. However, once the relationship between the child and the intended mother has become a "practical reality" the procedure laid down to establish recognition of the relationship in domestic law must be capable of being "implemented promptly and efficiently" (*Advisory opinion concerning the recognition in domestic law of a legal parent-child relationship between a child born through a gestational surrogacy arrangement abroad and the intended mother* [GC], 2019). Applying the principles of *Mennesson v. France*, 2014, and the before-mentioned *Advisory opinion*, the Court found that the obligation for children born under a surrogacy arrangement to be adopted in order to ensure the legal recognition between the genetic mother and her child did not violate the mother's right to private life (*D v. France*, 2020; *R.F. and Others v. Germany*, 2024). However, in *K.K. and Others v. Denmark*, 2022, it found that the refusal of the intended mother's application to adopt, where domestic law did not provide for other possibilities of recognition of a legal parent-child relationship with the intended mother, violated the children's right to respect for their private lives (§§ 56-77). In *A.M. v. Norway*, 2022, the applicant was the intended mother of a child born in the US *via* a surrogacy arrangement. After returning to Norway, the biological father (her former partner) cut off her contact with the child and the domestic courts rejected her claims to have her parental status under US law recognised in Norway, and to be allowed to adopt the child. Although the Court accepted that the applicant's situation was "particularly harsh" it found it difficult to attribute this consequence to the authorities. Moreover, while the applicant had been put in a difficult situation, the domestic courts had examined the interests of all the parties involved and, in its view, the outcome had to be considered to fall within the margin of appreciation afforded to domestic authorities (see the States' margin of appreciation on the issue of surrogacy, § 131).

305. In *Paradiso and Campanelli v. Italy* [GC], 2017, the Court did not find a breach as regards the removal of a child -born by way of surrogacy abroad- from its intended parents shortly after their arrival in their home country, followed by it being taken into State care and later adopted by another family. In *Valdís Fjölnisdóttir and Others v. Iceland*, 2021, the Court found that the refusal to recognise a formal parental link between a same-sex couple and a non-biological child born abroad *via* a surrogate mother had struck a fair balance between the applicants' right to respect for "family life" and the general interests which the State had sought to protect by the national ban on surrogacy. It stressed, in particular, that the State had taken steps to ensure that the three applicants could continue to lead a family life, notably by a permanent foster care arrangement (§§ 71-75 [56]). In *H. v. the United Kingdom* (dec.), 2022, the applicant was a child born *via* a surrogacy arrangement. Prior to her birth, there was a breakdown in relations between, on the one hand, the intended fathers, one of whom was also the genetic father, and, on the other, the surrogate and her husband. Although the domestic courts granted parental responsibility to all four individuals, and custody to the intended fathers, by law the surrogate's husband was named as "father" on the applicant's birth certificate. Although there was a mechanism for amending the birth certificate, it required the consent of the surrogate and her husband. The applicant had not challenged the "consent" requirement before the domestic courts. Before the Court she complained only that her biological father was not accurately recorded on her birth certificate at the time of her birth. More specifically, she argued that there should have been a "normative presumption" that the birth registration of a child would accurately record the identity of the biological father, where consent was provided for conception and identification as the father. The Court declared the application inadmissible as manifestly ill-founded.

[56] See the Case-law Guide on Rights of LGBTI persons.

There was no support in its case-law for the existence of such a presumption. To date, it had not held that the intended parents had to immediately and automatically be recognised as such in law and, in its view, the State had to be afforded a wide margin of appreciation in this regard (§§ 44-58).

306. In *C.E. and Others v. France*, 2022, the Court considered the respondent State's refusal to permit the adoption of children born either through assisted reproductive technology or via a sperm donor by the former partners of the children's biological mothers. The Court found that the domestic authorities had not breached its obligation to ensure effective respect for the family life or private life of the applicants. Material to its decision was the fact that none of the applicants had reported difficulties in pursuing their de facto family life and alternative legal instruments existed in France, under which it was possible to attain a degree of legal recognition capable of meeting the applicants' legitimate expectations (§§ 99-116).

307. In *A.L. v. France,* 2022, the Court reiterated, in the context of surrogacy, that in cases involving a relationship between a person and his or her child, the lapse of a considerable amount of time could lead to the legal issue being determined on the basis of a *fait accompli*. Consequently, such proceedings must be carried out with exceptional diligence (§ 54). In *D.B. and others v. Switzerland*, 2022, a case concerning a same-sex couple where the biological father had been allowed to adopt the child but the intended father had had to wait over seven years before the legislature provided him with the possibility to obtain legal recognition, the Court found that there had been a violation of the child's Article 8 rights.

308. In *C v. Italy*, 2023, which was brought on behalf of a child born *via* surrogacy arrangements, the Court found a breach of the applicant's right to respect for her private life in so far as the domestic courts refused to enter, in the Italian register of births, the name of her biological father, as recorded in the applicant's foreign birth certificate. As far as the intended mother was concerned, the Court found that, since she had the right, under the domestic law, to adopt the child born *via* surrogacy, the refusal to enter the foreign birth certificate in the register of births did not constitute violation of the child's right to respect for her private life. More recently, in *X v. Italy*, 2025, the Court considered the annulment of the transcription of the birth certificate of a minor, born in Italy in 2018 as a result of medically assisted procreation abroad, insofar as it concerned his intended mother, who was the same-sex partner of the birth mother. The Court found that there had been no violation of Article 8 , since as soon as the domestic court had ordered the correction of the applicant child's birth certificate, the intended mother had had the opportunity to make an application for the adoption of the applicant and, thus, to put an end to the legal uncertainty in which he found himself.

16. Religious and philosophical convictions

309. Although Article 9 governs most freedom of thought, conscience, and religious matters, the Court has established that disclosure of information about personal religious and philosophical convictions may implicate Article 8 as well, as such convictions concern some of the most intimate aspects of private life (*Folgerø and Others v. Norway* [GC], 2007, § 98, where imposing an obligation on parents to disclose detailed information to the school authorities about their religious and philosophical convictions could be seen to constitute a violation of Article 8). Religion beliefs and privacy can also be closely interrelated (*Polat v. Austria*, 2021, § 91).

17. Desired appearance

310. The Court has established that personal choices as to an individual's desired appearance, whether in public or in private, relate to the expression of his or her personality and thus fall within the notion of private life. This has included a haircut (*Popa v. Romania* (dec.), 2013, §§ 32-33), denial of access to a university for wearing a beard (*Tığ v. Turkey* (dec.), 2005), a ban on wearing clothing designed to conceal the face in public places for women wishing to wear a full-face veil for reasons related to their beliefs (*S.A.S. v. France* [GC], 2014, §§ 106-107), and appearing naked in public places

(*Gough v. the United Kingdom*, 2014, §§ 182-184). However, it is important to note that in each of these cases, the Court found the restriction on personal appearance to be proportionate. The Court declared inadmissible a case where the applicant complained about a ban on wearing a particular clothing symbol to demonstrate his belonging to a specific group. Referring to the specific social and political context, the authorities' margin of appreciation and the fact that the ban in question was not a blanket one and allowed for a wide range of exceptions, the Court found the national authorities had not overstepped their margin of appreciation (*Borzykh v. Ukraine* (dec.), 2024, §§ 49-54). The absolute prohibition on growing a beard in prison was considered a violation of Article 8 because that the Government had failed to demonstrate the existence of a pressing social need to justify an absolute prohibition (*Biržietis v. Lithuania*, 2016, §§ 54 and 57-58).

18. Right to a name/identity documents[57]

311. The Court has established that issues concerning an individual's first name and surname fall under the right to private life (*Mentzen v. Latvia* (dec.), 2004; *Henry Kismoun v. France*, 2013). The Court held that as a means of personal identification and of linking to a family, a person's name concerns his or her private and family life, and found a violation of Article 8 where authorities refused to register the applicant's surname after his family surname had been recorded as his wife's surname (*Burghartz v. Switzerland*, 1994, § 24). It has also found a violation of Article 8 where the domestic authorities' refused to allow two Turkish men to change their surnames to names which were not "of Turkish language", since the courts had conducted a purely formalistic examination of the legislative and statutory texts instead of taking into account the arguments and the specific and personal situations of the applicants, or balancing the competing interests at stake (*Aktaş and Aslaniskender v. Turkey*, 2019). Similarly, it has found that the change of a surname to remove a "von" prefix, which was initiated by the authorities after long periods of accepted use, violated Article 8 of the Convention (*Künsberg Sarre v. Austria*, 2023). The measure had been taken pursuant to the Abolition of Nobility Act 1919, with the stated aim of ensuring equal treatment of all, but that could not outweigh the applicants' interest in keeping a surname with which they identified themselves and which they had borne for (very) long periods of time (*ibid.*, § 67-73). However, Article 8 does not guarantee an unconditional right to change one's name, and in regulating this issue, the Contracting States enjoy a wide margin of appreciation. Consequently, the Court found that the refusal by the Belgian authorities to permit a man in his thirties and his child to change their surname to that of the former's mother, on the basis that the reasons given for the request were not "sufficiently serious", fell within the State's wide margin of appreciation (*Jacquinet and Embarek Ben Mohamed v. Belgium*, 2023, §§ 61-80).

312. The Court has held that forenames also fall within the ambit of "private life" (*Guillot v. France*, 1996, §§ 21-22; *Güzel Erdagöz v. Turkey*, 2008, § 43; *Garnaga v. Ukraine*, 2013, § 36; *Ismayilzade v. Azerbaijan*, 2024, § 25). However, the Court has found that some laws relating to the registration of names strike a proper balance, while others do not (compare *Guillot v. France*, 1996 and *Sahiner v. Austria*, 2025, with *Johansson v. Finland*, 2007). In *Ismayilzade v. Azerbaijan*, 2024, the Court agreed with the domestic courts that the forename chosen by the applicant for her newborn son had not been in the child's best interests and found that the refusal by the authorities² to register that name had not violated Article 8 (§§ 35 42). In relation to a change of name in the process of gender reassignment, see *S.V. v. Italy*, 2018, §§ 70-75 (under Gender identity below).

313. The Court has ruled that the tradition of demonstrating family unity by obliging married women to adopt the surname of their husbands is no longer compatible with the Convention (*Ünal Tekeli v. Turkey*, 2004, §§ 67-68). The Court has found a violation of Article 14 (prohibition of discrimination) read in conjunction with Article 8 as a result of discriminatory treatment on the part of the authorities' refusal to let a binational couple keep their own surnames after marriage (*Losonci Rose and Rose*

[57] See also the Case-law Guides on Data protection; on Immigration; and on Terrorism.

v. Switzerland, 2010, § 26). The mere fact that an existing name could take on a negative connotation does not mean that the refusal to permit a change of name will automatically constitute a breach of Article 8 (*Stjerna v. Finland*, 1994, § 42; *Siskina and Siskins v. Latvia* (dec.), 2001; *Macalin Moxamed Sed Dahir v. Switzerland* (dec.), 2015, § 31). The margin of appreciation of the State in this filed is wide since the process whereby surnames and forenames are given, recognised and used is a domain in which national particularities are the strongest and in which there are virtually no points of convergence between the domestic rules of States: in each State, the use of names is influenced by a multitude of factors of an historical, linguistic, religious and cultural nature (*Ismayilzade v. Azerbaijan*, 2024, § 33).

314. As regards one's identity, the Court held that respect for private life requires that everyone should be able to establish details of their identity as individual human being, and has acknowledged the important repercussions that access to identity documents can have on personal autonomy (*G.T.B. v. Spain*, 2023, § 113). In particular, the right to respect for private life should be seen as including, in principle, an individual right to have one's birth registered and consequently, where relevant, to have identity documents. Although the States generally enjoy a wide margin of appreciation concerning the appropriate means of securing the enjoyment of that right, some adaptability in the standard procedures for the delivery of identity documents may be required when the circumstances make that imperative in order to safeguard important interests protected under Article 8 of the Convention. Thus the authorities were under a positive obligation to act with due diligence in order to assist the applicant, a vulnerable minor neglected by his only parent, in obtaining his birth certificate and identity documents (*G.T.B. v. Spain*, 2023, §§ 118-19, 122-24).

315. As concerns the seizure of documents needed to prove one's identity, the Court has found an interference with private life as a result of a domestic court's withholding of identity papers following the applicant's release from custody, as papers were needed often in everyday life in order to prove one's identity (*Smirnova v. Russia*, 2003, §§ 95-97). The Court has also held, however, that a government may refuse to issue a new passport to a citizen living abroad, if the decision is one made because of public safety, even if the failure to issue a new passport will have negative implications for the applicants' private and family life (*M. v. Switzerland*, 2011, § 67).

316. The Court considered that the age of a person is a means of personal identification and that the procedure to assess the age of someone claiming to be a minor (including its procedural safeguards) is essential to guarantee all the rights deriving from his or her minor status (*Darboe and Camara v. Italy*, 2022, § 124 on the importance of age-assessment procedures in the migration context).

19. Gender identity

317. Under Article 8, protection is given to the personal sphere of each individual, including the right to establish details of their identity as individual human beings (*Christine Goodwin v. the United Kingdom* [GC], 2002, § 90; see also *Hämäläinen v. Finland* [GC], 2014).However, the State's margin of appreciation may be wider where the complaint does not concern the entry in an official document concerning the applicant personally but rather information on a birth certificates relating to others. In this regard, the Court has held that the legal impossibility for a transgender parent's current gender to be indicated on the birth certificate of a child conceived after gender reclassification did not violate Article 8 of the Convention (*O.H. and G.H. v. Germany* and *A.H. and Others v. Germany*, 2023). For a detailed analysis of the Court's case-law on this topic, see the Case-law Guide on the Rights of LGBTI persons.

20. Right to ethnic identity[58]

318. The Court has considered ethnic identity, in particular the right of members of a national minority to maintain their identity and to lead a private and family life in accordance with their tradition, to constitute part of the Article 8 right to private and family life, with a consequent obligation placed upon States to facilitate, and not obstruct disproportionately, the traditional lifestyles of minorities. Referring to its recent considerations about the positive and negative aspects of the right to free self-identification of members of national minorities in international law — not only in the Council of Europe Framework Convention for the Protection of National Minorities —, the Court reiterated that any member of a national minority had a full right to choose not to be treated as such (*Tasev v. North Macedonia*, 2019, §§ 32-33). The right to free self-identification is the "cornerstone" of international law on the protection of minorities in general. This applies especially to the negative aspect of the right: no bilateral or multilateral treaty or other instrument requires anyone to submit against his or her wishes to a special regime in terms of protection of minorities (§ 33).

319. The Court has found that the authorities' refusal to register an individual's ethnicity as declared by the individual constituted a failure to comply with the State's positive obligation to secure to the applicant the effective respect for his private life (*Ciubotaru v. Moldova*, 2010, § 53). The conducting of a meaningful inquiry into the discrimination behind an event that formed part of a general hostile attitude against the Roma community and the implementation of effective criminal law mechanisms are also considered to be part of the positive obligation of a State to protect respect for ethnic identity (*R.B. v. Hungary*, 2016, §§ 88-91).

320. In the specific context of demonstrations motivated by hostility towards an ethnic group, mostly involving intimidation rather than physical violence, the Court drew inspiration from the principles established in cases concerning Article 10 of the Convention. Thus, the key factors to determine are whether the offending statements were made against a tense political and social background, whether they amounted to a direct or indirect call for violence, hatred or intolerance, and their capacity to lead to harmful consequences (*Király and Dömötör v. Hungary*, 2017, §§ 72 et seq). A legal framework should be in place for criminalising antiminority demonstrations and should afford effective protection against harassment, threats and verbal abuse; otherwise, there may be a perception that the authorities tolerate such verbal intimidation and disturbances (§ 80).

321. The Court found that there had been a violation of Article 8 taken in conjunction with Article 14 in a case where the authorities had failed to protect the applicants from an attack on their homes, had a certain role in the attack, where there was no effective domestic investigation, and taking into account the general background of prejudice against Roma in the country (*Burlya and Others v. Ukraine*, 2018, §§ 169-170). In *Paketova and Others v. Bulgaria*, 2022, the applicants, members of several families of Roma origin, alleged that they had been forced to leave their homes and prevented from returning subsequently in the context of public protests against Roma inhabitants and that the authorities had refused them protection in an environment of racially based hostility. Emphasising the applicants' vulnerability and their need for special protection (§§ 161 and 166 *in fine*), the Court observed that the recurrent anti-Roma marches in the village could have legitimately made the applicants fearful even if it has not been established that the protestors actually came in close proximity to the applicants; and the repeated public display of opposition by officials to the return of the Roma families represented a real obstacle to the applicants' peaceful return (§§ 162-163). The authorities' omissions (mayors, police and prosecutor's offices) to deal with the individual complaints of recurring acts of intolerance impeding the peaceful enjoyment of their homes (§§ 164-167) led the Court to find a violation of Article 8, taken in conjunction with Article 14 of the Convention.

[58] See also Home.

322. The occupation by a Roma woman of her caravan was found to comprise an integral part of her ethnic identity, one which the State should take into account when instituting measures of forced eviction from the land (*Chapman v. the United Kingdom* [GC], 2001, § 73; *McCann v. the United Kingdom*, 2008, § 55). In *Hirtu and Others v. France*, 2020, as regards the eviction of Roma from an unauthorised camp, the Court also stated that national authorities, when carrying out the proportionality assessment, must take into account that Roma belong to a socially disadvantaged group and that they have particular needs in that respect (§ 75; see also *Paketova and Others v. Bulgaria*, 2022, §§ 161 and 166 *in fine*). The Court also found an Article 8 violation on procedural grounds as a result of a family's summary eviction from the local authority caravan site where the applicant and his family had lived for more than 13 years; the Court stated that such a serious interference necessitated "particularly weighty reasons of public interest" and a narrow margin of appreciation (*Connors v. the United Kingdom*, 2004, § 86). However, the Court has in the past found that national planning policies may displace caravan sites if a fair balance is struck between the individual rights of the families living in the site and the environmental (and other) rights of the community (*Jane Smith v. the United Kingdom* [GC], 2001, §§ 119-120; *Lee v. the United Kingdom* [GC], 2001; *Beard v. the United Kingdom* [GC], 2001; *Coster v. the United Kingdom* [GC], 2001).

323. The Court has found that the authorities' continued retention of applicants' fingerprints, cellular samples, and DNA profiles after criminal proceedings against them had ended and the usage of those data to infer ethnic origin implicated and violated the applicants' right to ethnic identity under Article 8 (*S. and Marper v. the United Kingdom* [GC], 2008, § 66).

324. The Court has also found that any negative stereotyping of a group, when it reaches a certain level, is capable of impacting the group's sense of identity and the feelings of self-worth and self-confidence of members of the group. In this sense it can be seen as affecting the private life of members of the group (*Aksu v. Turkey* [GC], 2012, §§ 58-61 where the applicant, who is of Roma origin, felt offended by certain passages of the book "The Gypsies of Turkey", which focused on the Roma community; *Király and Dömötör v. Hungary*, 2017, § 43, for anti Roma demonstrations not involving violence but rather verbal intimidation and threats; *Budinova and Chaprazov v. Bulgaria*, 2021, §§ 64-68, and *Behar and Gutman v. Bulgaria*, 2012, §§ 68-73 where the applicants, who are of Roma and Jewish origin respectively, were affected by xenophobic statements of a well known politician). In these cases, the Court developed the principle laid down by the Grand Chamber in *Aksu v. Turkey* [GC], 2012, cited above, by setting out the relevant factors by which to assess whether negative public statements about a social group affect the "private life" of an individual member of that group to the point of triggering the application of Article 8 in relation to them. The Court also held the principle of negative stereotyping applicable when it comes to the defamation of former Mauthausen prisoners, who, as survivors of the Holocaust, can be seen as constituting a (heterogeneous) social group (*Lewit v. Austria*, 2019, § 46).

325. In *Zăicescu and Fălticineanu v. Romania*, 2024, the applicants complained that the acquittal of two high-ranking military officials, previously convicted of crimes connected with the Holocaust, in extraordinary appeal proceedings not disclosed to the applicants or to the public had breached their right to private life and psychological integrity. The Court considered that the applicants, Jews and Holocaust survivors, could claim to have personally suffered emotional distress when they had found out about the relevant reopening (§§ 101-03) and that their suffering had attained the "threshold of severity" to fall within the scope of Article 8 (§§ 114-19). It further held that the domestic courts' failure to adduce relevant and sufficient reasons for actions leading to the revision of historical convictions, in the absence of new evidence, by reinterpreting historically established facts and denying the responsibility of State officials for the Holocaust, contrary to international law principles, as well as their failure to bring the acquittals to the public's attention or make judgments accessible, could have legitimately provoked in the applicants feelings of humiliation and vulnerability and caused

them psychological trauma, with the result that Article 8, read in conjunction with Article 14, had been violated (§§ 146-155).

326. In the context of the positive duty to take measures to facilitate family reunification, the Court has pointed out that it is imperative to consider the long-term effects which a permanent separation of a child from her natural mother might have, especially since it could lead to an alienation of the child from her Roma identity (*Jansen v. Norway*, 2018, § 103).

21. Statelessness, citizenship and residence[59]

327. The right to citizenship has been recognised by the Court, under certain circumstances, as falling under private life (*Genovese v. Malta*, 2011). Although the right to acquire a particular nationality is not guaranteed as such by the Convention (see, for example, *S.-H. v. Poland* (dec.), 2021, § 65 as concerns children born through surrogacy), the Court has found that an arbitrary refusal of citizenship may, in certain circumstances, raise an issue under Article 8 by impacting on private life (*Karassev v. Finland* (dec.), 1999; *Slivenko and Others v. Latvia* (dec.) [GC], 2002; *Genovese v. Malta*, 2011; *Abo v. Estonia* (dec.), 2024). The loss of citizenship that has already been acquired may entail similar – if not greater – interference with the person's right to respect for his or her private and family life (*Ramadan v. Malta*, 2016, § 85; in the context of terrorism-related activities, see for instance, *K2 v. the United Kingdom* (dec.), 2017, § 49; *Ghoumid and Others v. France*, 2020, § 43 (with regard to private life); *Usmanov v. Russia*, 2020, §§ 59-62; *Laraba v. Denmark* (dec.), 2022.[60] Nonetheless, the revocation or annulment of citizenship as such is not incompatible with the Convention (*Usmanov v. Russia*, 2020, § 65). In *Usmanov v. Russia*, 2020, the Court clarified and consolidated the two-pronged approach to be applied in this context (having noted the existence of various approaches to the examination of the issue). It examined (i) the consequences for the applicant and (ii) whether the measure was arbitrary (see § 58, but see also *Johansen v. Denmark* (dec.), 2022, and *Laraba v. Denmark* (dec.), 2022, in the context of terrorism). The same principles apply to the refusal of the domestic authorities to issue an applicant with an identity card (*Ahmadov v. Azerbaijan*, 2020, § 45). In this case, the domestic authorities found that the applicant had never acquired Azerbaijani citizenship and was not a citizen of the Republic of Azerbaijan in spite of the fact that he had been considered a citizen of the Republic of Azerbaijan by various State authorities from 1991 to 2008 and that there was a stamp confirming his Azerbaijani citizenship in his Soviet passport. The denial of citizenship to the applicant was not accompanied by the necessary procedural safeguards and was both arbitrary and in breach of Article 8 (see also *Hashemi and Others v. Azerbaijan*, 2022, §§ 46-49, in which the authorities had refused to grant identity cards to and acknowledge the citizenship of children born in Azerbaijan to refugees who were settled there). Compare the approach taken in *Johansen v. Denmark* (dec.), 2022, § 45 and *Laraba v. Denmark* (dec.), 2022, §§ 15-26. In *Abo v. Estonia* (dec.), 2024 the domestic authorities refused to grant the applicant an Estonian citizen's identity document, on the ground that her grandmother, who had opted for Estonian citizenship in 1920 (an "optant"), had not settled in Estonia to validate her citizenship (§§ 4-5). Bearing in mind that the applicant continued to hold a valid Estonian long-term residence permit, the Court concluded that the impugned measure did not cross the threshold of seriousness for an issue to be raised under Article 8 of the Convention (§§ 79-80).

328. Article 8 cannot be construed as guaranteeing, as such, the right to a particular type of residence permit; the choice of permit is in principle a matter for the domestic authorities alone (*Kaftailova v. Latvia* (striking out) [GC], 2007, § 51). However, the solution proposed must enable the individual in question to exercise unhindered his right to private and/or family life (*B.A.C. v. Greece*, 2016, § 35; *Hoti v. Croatia*, 2018, § 121). Measures restricting the right to reside in a country may, in certain cases,

[59] See the Case-law Guide on Immigration.
[60] See the Case-law Guide on Terrorism.

entail a violation of Article 8 if they create disproportionate repercussions on the private or family life, or both, of the individuals concerned (*Hoti v. Croatia*, 2018, § 122).

329. Moreover, in this context, Article 8 may involve a positive obligation to ensure effective enjoyment of the applicant's private and/or family life (*Hoti v. Croatia*, 2018, § 122). In the same case, the national authorities infringed a stateless immigrant's right to private life by failing, for years, to regularise his resident's status and leaving him in a situation of insecurity (§ 126). The State had not complied with its positive obligation to provide an effective and accessible procedure or combination of procedures enabling the applicant to have the issues of his further stay and status in Croatia determined with due regard to his private-life interests under Article 8 (§ 141). In *Sudita Keita v. Hungary*, 2020, the State also failed to comply with its positive obligation to provide an effective and accessible procedure, or a combination of procedures, enabling the *de facto* stateless applicant to have the issue of his status in Hungary determined with due regard to his private-life interests under Article 8 (§ 41). In particular, the applicant had had protracted difficulties in regularising his legal situation for fifteen years, with adverse repercussions on his access to healthcare and employment and his right to get married.

330. The Court has held the failure to regulate the residence of persons who had been "erased" from the permanent residents register following Slovenian independence to be a violation of Article 8 (*Kurić and Others v. Slovenia* [GC], 2012, § 339).

331. Where there is an arguable claim that expulsion threatens to interfere with a non-citizen's right to respect for his private and family life, Article 13 in conjunction with Article 8 of the Convention requires that States must make available to the individual concerned the effective possibility of challenging the deportation or refusal of residence order and of having the relevant issues examined with sufficient procedural safeguards and thoroughness by an appropriate domestic forum offering adequate guarantees of independence and impartiality (*De Souza Ribeiro v. France* [GC], 2012, § 83; *M. and Others v. Bulgaria*, 2011, §§ 122-132; *Al-Nashif v. Bulgaria*, 2002, § 133).

22. Deportation and expulsion decisions[61]

332. As Article 8 protects the right to establish and develop relationships with other human beings and the outside world and can sometimes embrace aspects of an individual's social identity, the Court has held that that the totality of social ties between settled migrants and the community in which they are living constitutes part of the concept of "private life" within the meaning of Article 8. Therefore, regardless of the existence of a "family life", the expulsion of a settled migrant constitutes an interference with his or her right to respect for private life (*Maslov v. Austria* [GC], 2008, § 63).[62] The same holds true for compelled departures resulting in separation with the other members of the family who stayed behind, even where the family remained separated for a short period of time and could later reunite in another State (*Corley and Others v. Russia*, 2021, § 95).

333. In order to determine whether the interference is necessary in a democratic society, it is important to bear in mind that States are entitled to control the entry of aliens into their territory and their residence there. The Convention does not guarantee the right of an alien to enter or to reside in a particular country and, in pursuance of their task of maintaining public order, Contracting States have the power to expel an alien convicted of criminal offences (*Maslov v. Austria* [GC], 2008, § 68; *Üner v. the Netherlands* [GC], 2006, § 68). When assessing the proportionality of the interference under the right to private life, the Court has generally applied the criteria established in *Üner v. the Netherlands* [GC], 2006, (see, for example, *Zakharchuk v. Russia*, 2019, §§ 46 – 49) as regards settled migrants. For instance, in *Levakovic v. Denmark*, 2018, §§ 42-45, applying the Üner criteria, the Court did not find a violation of the "private life" of an adult migrant convicted of serious offences,

[61] See also the Case-law Guide on Immigration.
[62] See also Deportation and expulsion decisions.

who had no children, no elements of dependence with his parents or siblings, and had consistently demonstrated a lack of will to comply with the law.

334. Very serious reasons are required to justify the expulsion of a settled migrant who has lawfully spent all or the major part of his or her childhood and youth in a host country (*Maslov v. Austria* [GC], 2008, § 75). In the very specific case of a foreigner, who had arrived in the host country as a child with a tourist visa, which expired shortly after his arrival, and who had not known about his unlawful stay until he was 17 years old, the Court did not consider the applicant a "settled migrant" because his residence in the host country had not been lawful. In such a case, it could neither be said that the refusal of a residence permit would require very serious reasons to be justified under Article 8 nor that it would violate that provision only in very exceptional circumstances. Instead, the assessment has to be carried out from a neutral starting point, taking into account the specific circumstances of the applicant's case (*Pormes v. the Netherlands*, 2020, § 61). For a detailed analysis of the Court's case-law on this topic, see the Case-Law Guide on Immigration.

23. Marital and parental status

335. The Court has considered cases concerning the marital or parental status of individuals to fall within the ambit of private and family life. In particular, it found that the registration of a marriage, being a recognition of an individual's legal civil status, undoubtedly concerns both private and family life and comes within the scope of Article 8 § 1 (*Dadouch v. Malta*, 2010, § 48). An Austrian court's decision to nullify the applicant's marriage had implications for her legal status and in general on her private life. However, since the marriage had been fictitious, the interference with her private life was found to be proportionate (*Benes v. Austria*, Commission decision, 1992).

336. Similarly, proceedings relating to one's identity as a parent fall under private and family life. The Court has found cases involving the determination of the legal provisions governing a father's relations with his putative child to come within the scope of private life (*Rasmussen v. Denmark*, 1984, § 33; *Yildirim v. Austria* (dec.), 1999; *Krušković v. Croatia*, 2011, § 20; *Ahrens v. Germany*, 2012, § 60; *Tsvetelin Petkov v. Bulgaria*, 2014, §§ 49-59; *Marinis v. Greece*, 2014, § 58; *I.V. v. Estonia*, 2023, § 75; *A.W. v. Poland*, 2025, § 98), as does a putative father's attempt to disavow paternity (*R.L. and Others v. Denmark*, 2017, § 38; *Shofman v. Russia*, 2005, §§ 30-32; *C.P. and M.N. v. France*, 2023, § 33). In addition, the right to apply for adoption with a view to becoming parents falls within the scope of private life (*A.H. and Others v. Russia*, 2017, § 383). For a detailed analysis of the Court's case-law on this topic, see the Case-law Guide on Article 12.

337. In the *Advisory opinion on the procedural status and rights of a biological parent in proceedings for the adoption of an adult* [GC], 2023, the Court reiterated that, in the absence of any factors of dependence between the biological mother and the adopted adult or by a pecuniary or patrimonial aspect, the matter pertains to the private life of the adopter and of the adoptee (§§ 50-54). It considered that the procedure in question may be regarded as affecting a biological parent's private life, under Article 8, and consequently that parent must be given the opportunity to be heard. It went on to find, having regard to the wide margin of appreciation to which the State is entitled in the regulation of the procedure for adult adoption, that respect for Article 8 does not require that a biological parent be granted the status of a party or the right to appeal the granting of the adoption (§ 62).

III. Family life

A. Definition of family life and the meaning of family[63]

338. The essential ingredient of family life is the right to live together so that family relationships may develop normally (*Marckx v. Belgium*, 1979, § 31) and members of the family may enjoy each other's company (*Olsson v. Sweden (no. 1)*, 1988, § 59). Regard for family unity and for family reunification in the event of separation are inherent considerations in the right to respect for family life under Article 8 (*Strand Lobben and Others v. Norway* [GC], 2019, § 204).

339. The notion of family life is an autonomous concept (*Marckx v. Belgium*, 1979, § 31). Consequently, whether or not "family life" exists is essentially a question of fact depending upon the real existence in practice of close personal ties (*Paradiso and Campanelli v. Italy* [GC], 2017, § 140). The Court will therefore look at *de facto* family ties, such as applicants living together, in the absence of any legal recognition of family life (*Johnston and Others v. Ireland*, 1986, § 56). Other factors will include the length of the relationship and, in the case of couples, whether they have demonstrated their commitment to each other by having children together (*X, Y and Z v. the United Kingdom*, 1997, § 36; *Andronache v. Romania* (dec.), 2025, § 54). Therefore, the notion of "family" in Article 8 concerns marriage-based relationships, and also other *de facto* "family ties", including between same-sex couples, where the parties are living together outside marriage or where other factors demonstrated that the relationship had sufficient constancy (*Paradiso and Campanelli v. Italy* [GC], 2017, § 140 and *Oliari and Others v. Italy*, 2016, § 130)[64]. "Family life" can extend after the age of majority on account of "additional elements of dependence" allowing for the existence of "family life" between parents and adult children (see, for instance, *Belli and Arquier-Martinez v. Switzerland*, 2018, § 65; *Emonet and Others v. Switzerland*, 2007, § 80; *Bierski v. Poland*, 2022, § 47; *Advisory opinion on the procedural status and rights of a biological parent in proceedings for the adoption of an adult* [GC], 2023, § 50, and, in the immigration context, *Savran v. Denmark* [GC], 2021, § 174 and the references therein).

340. A biological kinship between a natural parent and a child alone, without any further legal or factual elements indicating the existence of a close personal relationship, is insufficient to attract the protection of Article 8. As a rule, "family life" requires cohabitation. Exceptionally, other factors may also serve to demonstrate that a relationship has sufficient constancy to create *de facto* "family ties" (see the summary of the case-law in *Katsikeros v. Greece*, 2022, § 43). Moreover, the Court has considered that intended family life may, exceptionally, fall within the ambit of Article 8, in particular in cases in which the fact that family life has not yet fully been established was not attributable to the applicant: where the circumstances warrant it, "family life" must extend to the potential relationship which may develop between a child born out of wedlock and the natural father. Relevant factors that determine the existence in practice of close personal ties in these cases include the nature of the relationship between the natural parents and a demonstrable interest in, and commitment from, the father to the child both before and after the birth (§ 44).

341. In *Ahrens v. Germany*, 2012, § 59, the Court found no *de facto* family life where the relationship between the mother and the applicant had ended approximately one year before the child was conceived and the ensuing relations were of a sexual nature only. In *Evers v. Germany*, 2020, the Court held that, in the very specific circumstances of the case, the mere fact that the applicant had been living in a common household with his partner and her mentally disabled daughter and that he was the daughter's biological father did not constitute a family link which was protected by Article 8 (§ 52). In this case, the applicant had likely sexually abused the mentally disabled daughter, which is why the domestic courts deemed the contact to the daughter detrimental and issued a contact ban. The Court held that Article 8 cannot be relied on in order to complain about the foreseeable negative

[63] See also other chapters of the Guide for further references.
[64] See the Case-law Guide on the Rights of LGBTI persons.

consequences on "private life" as a result of criminal offences or other misconduct entailing a measure of legal responsibility (*ibid*, § 55). The Court stated also in *Paradiso and Campanelli v. Italy* [GC], 2017, that the conformity of the applicants' conduct with the law is a factor to be considered.

342. A child born of a marital relationship is *ipso jure* part of that "family" unit from the moment and by the very fact of his or her birth (*Berrehab v. the Netherlands*, 1988, § 21; *Naltakyan v. Russia*, 2021, §§ 157-58). Thus, there exists between the child and its parents a bond amounting to family life. The existence or non-existence of "family life" within the meaning of Article 8 is a question of fact depending upon the real existence in practice of close personal ties, for instance the demonstrable interest and commitment by the father to the child both before and after birth (*L. v. the Netherlands*, 2004, § 36).

343. Where the existence of a family tie with a child has been established, the State must act in a manner calculated to enable that tie to be developed and legal safeguards must be established that render possible as from the moment of birth, or as soon as practicable thereafter, the child's integration in his family (*Kroon and Others v. the Netherlands*, 1994, § 32).

344. In spite of the absence of a biological tie and of a parental relationship legally recognised by the respondent State, the Court found that there existed family life between the foster parents who had cared for a child on a temporary basis and the child in question, on account of the close personal ties between them, the role played by the adults vis-à-vis the child, and the time spent together (*Moretti and Benedetti v. Italy*, 2010, § 48; *Kopf and Liberda v. Austria*, 2012, § 37; *V.D. and Others v. Russia*, 2019, §§ 92-93; *Jírová and Others v. the Czech Republic*, 2023, §§ 71-74 - compare *Jessica Marchi v. Italy*, 2021, where the Court found that family life did not exist between a foster mother who had obtained pre-adoption approval and the child that had lived with her for one year in the context of a "legal risk" placement, §§ 49-59 and the references therein).

345. The Court found that there existed family ties between a child and the mother's former partner who was neither the biological nor legal parent of the child but who took care of the child for two years – such a relationship being often referred as "social parenthood" (*Vinškovský v. the Czech Republic* (dec.), 2023, §§ 40-42). The existence of a "family life" was also established in a case where the applicant had been raising a child in a marriage with that child's mother for five years, before, at the mother's request, it was established that he was not the child's biological father and his legal paternity was annulled (*Nazarenko v. Russia*, 2015, § 58).

346. In addition, in the case of *Wagner and J.M.W.L. v. Luxembourg*, 2007 – which concerned the inability to obtain legal recognition in Luxembourg of a Peruvian judicial decision pronouncing the second applicant's full adoption by the first applicant – the Court recognised the existence of family life in the absence of legal recognition of the adoption. It took into consideration that *de facto* family ties had existed for more than ten years between the applicants and that the first applicant had acted as the minor child's mother in every respect. In these cases, the child's placement with the applicants was respectively recognised or tolerated by the authorities. On the contrary, in *Paradiso and Campanelli v. Italy* [GC], 2017, having regard to the absence of any biological tie between the child and the intended parents, the short duration of the relationship with the child (about eight months) and the uncertainty of the ties from a legal perspective, and in spite of the existence of a parental project and the quality of the emotional bonds, the Court considered that the conditions enabling it to conclude that there had existed a *de facto* family life had not been met (§§ 156-157) (compare and contrast, *D. and Others v. Belgium* (dec.), 2014, and *Valdís Fjölnisdóttir and Others v. Iceland*, 2021, §§ 59-62 applying the test for the applicability of "family life" as laid down in *Paradiso and Campanelli v. Italy* [GC], 2017; *C.E. and Others v. France*, 2022, §§ 49-55).

347. Article 8 does not guarantee either the right to found a family or the right to adopt. The right to respect for "family life" does not safeguard the mere desire to found a family; it presupposes the existence of a family, or at the very least the potential relationship between, for example, a child born out of wedlock and his or her natural father, or the relationship that arises from a genuine marriage,

even if family life has not yet been fully established, or the relationship between a father and his legitimate child even if it proves, years later, to have had no biological basis (*Paradiso and Campanelli v. Italy* [GC], 2017, § 141). An applicant's intention to develop a previously non-existent "family life" with her nephew by becoming his legal tutor lies outside the scope of "family life" as protected by Article 8 (*Lazoriva v. Ukraine*, 2018, § 65).

348. Where *de facto* family life exists, and a State has failed to provide for the legal recognition of the relationships between the parties, the Court will consider the difficulties faced by the parties in their enjoyment of their family life in order to determine whether there has been a breach of the State's positive obligations under Article 8 of the Convention (*C.E. and Others v. France*, 2022, §§ 52, and 93-94; see also *Labassee v. France*, 2014, §§ 71-73).

349. Where either family life is not found or no breach is found regarding the right to respect for family life, Article 8 may still be applicable under its private life head (*Paradiso and Campanelli v. Italy* [GC], 2017, § 165; *Lazoriva v. Ukraine*, 2018, §§ 61 and 66 concerning the applicant's nephew; *Azerkane v. the Netherlands*, 2020, § 65; *C.E. and Others v. France*, 2022, § 99). The applicants' "private and family life" can also been affected along with the right to respect for home (see, for example, *Paketova and Others v. Bulgaria*, 2022, § 153). Finally, although the exercise of Article 8 rights pertains, predominantly, to relationships between living human beings, it may extend to certain situations after death (*Polat v. Austria,* 2021, § 48 and the references therein).

B. Procedural obligation

350. Whilst Article 8 contains no explicit procedural requirements (as noted above), the decision-making process involved in measures of interference must be fair and sufficient to afford due respect to the interests safeguarded by Article 8 (*Petrov and X v. Russia*, 2018, § 101; *Q and R v. Slovenia*, 2022, § 96), for instance in relation to children being taken into care (*W. v. the United Kingdom*, 1987, §§ 62 and 64; *McMichael v. the United Kingdom*, 1995, § 92; *T.P. and K.M. v. the United Kingdom* [GC], 2001, §§ 72-73) and the withdrawal of parental responsibility and consent to adoption (*Strand Lobben and Others v. Norway* [GC], 2019, §§ 212-213, 220). Also, the Court has stated that in cases in which the length of proceedings has a clear impact on the applicant's family life, a more rigorous approach is called for, and the remedy available in domestic law should be both preventive and compensatory (*Macready v. the Czech Republic*, 2010, § 48; *Kuppinger v. Germany*, 2015, § 137).

C. Margin of appreciation in relation to family life[65]

351. The authorities have a wide margin of appreciation in matters of parental responsibility and the point of departure in the majority of Member States seemed to be that decisions as to parental responsibility were to be based on the child's best interests and had to be subject to scrutiny by the domestic courts in the event of a conflict between the parents (*Paparrigopoulos v. Greece*, 2022, § 40).

352. A number of factors must be taken into account when determining the width of the margin of appreciation to be enjoyed by the State when deciding any case under Article 8. The Court recognises that the authorities enjoy a wide margin of appreciation, in particular when deciding on custody, when assessing the necessity of taking a child into care by way of an emergency order (*R.K. and A.K. v. the United Kingdom*, 2008) or when framing their divorce laws and implementing them in specific cases (*Babiarz v. Poland*, 2017, § 47) or in respect of the determination of a child's legal status (*Fröhlich v. Germany*, 2018, § 41).

353. However, stricter scrutiny is called for as regards any further limitations, such as restrictions placed by those authorities on parental rights of access, and as regards any legal safeguards designed to secure an effective protection of the right of parents and children to respect for their family life.

[65] See also Parental allowances, custody/access, and contact-rights.

Such further limitations entail the danger that the family relations between a young child and one or both parents would be effectively curtailed (*Sahin v. Germany* [GC], 2003, § 65; *Sommerfeld v. Germany* [GC], 2003, § 63; *Kutzner v. Germany*, 2002, § 67).

354. The margin of appreciation is more limited regarding questions of contact and information rights (*Fröhlich v. Germany*, 2018) and much narrower when it comes to prolonged separation of a parent and child. In such cases, States have an obligation to take measures to reunite parents and children (*Elsholz v. Germany* [GC], 2000; *K.A. v. Finland*, 2003).

355. In *Vavřička and Others v. the Czech Republic* [GC], 2021, the Court expressly held that "there is an obligation on States to place the best interests of the child, and also those of children as a group, at the centre of all decisions affecting their health and development". In doing so, it rejected the applicants' contention that it should primarily be for the parents to determine how the best interests of the child are to be served and protected, and that State intervention could be accepted only as a last resort in extreme circumstances (see §§ 286-288). Consequently, the decision to apply the "best interests of the child" test in a case cannot be said to fall outside the margin of appreciation afforded to States in striking a balance between the protection of the right to life of patients' and the protection of their right to respect for their private life and their personal autonomy (*Parfitt v. the United Kingdom* (dec.), 2021, §§ 46 and 51).

D. Sphere of application of family life

1. Couples

a. Marriages not according to custom, *de facto* cohabitation

356. The notion of "family" under Article 8 of the Convention is not confined solely to marriage based relationships and may encompass other de facto "family ties" where the parties are living together outside marriage (i.e. out of wedlock) (*Johnston and Others v. Ireland*, 1969, § 56; *Van der Heijden v. the Netherlands* [GC], 2012, § 50, which dealt with the attempt to compel the applicant to give evidence in criminal proceedings against her long term cohabiting partner). Even in the absence of cohabitation there may still be sufficient ties for family life (*Kroon and Others v. the Netherlands*, 1994, § 30; contrast with *Azerkane v. the Netherlands*, 2020, § 65, where the couple did not live together and there was no information available on the nature of their relationship) as the existence of a stable union may be independent of cohabitation (*Vallianatos and Others v. Greece* [GC], 2013, §§ 49 and 73). However, that does not mean that de facto families and relationships have to be granted specific legal recognition (*Babiarz v. Poland*, 2017, § 54): thus, the State's positive obligations do not include an obligation to accept a petition for divorce filed by an applicant wishing to remarry after having a child with his new partner (§§ 56-57). Moreover, while nowadays cohabitation might not be a defining criterion for establishing the stability of a long-lasting relationship, it certainly is a factor which could help rebut other indications which raise doubts about the sincerity of a marriage (*Concetta Schembri v. Malta* (dec.), 2017, § 52 concerning a marriage that was considered not genuine).

357. The Court has further considered that intended family life may exceptionally fall within the ambit of Article 8, notably in cases where the fact that family life has not yet fully been established is not attributable to the applicant (*Pini and Others v. Romania*, 2004, §§ 143 and 146). In particular, where the circumstances warrant it, family life must extend to the potential relationship which may develop between a child born out of wedlock and the biological father. Relevant factors which may determine the real existence in practice of close personal ties in these cases include the nature of the relationship between the natural parents and a demonstrable interest in and commitment by the father to the child both before and after the birth (*Nylund v. Finland* (dec.), 1999; *L. v. the Netherlands*, 2004, § 36; *Anayo v. Germany*, 2010, § 57).

358. In general, however, cohabitation is not a sine qua non of family life between parents and children (*Berrehab v. the Netherlands*, 1988, § 21). Marriages which are not in accordance with

national law are not a bar to family life (*Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 1985, § 63). A couple who enters into a purely religious marriage not recognised by domestic law may come within the scope of family life within the meaning of Article 8. However, Article 8 cannot be interpreted as imposing an obligation on the State to recognise religious marriage, for example in relation to inheritance rights and survivors' pensions (*Şerife Yiğit v. Turkey* [GC], 2010, §§ 97-98 and 102) or where the marriage was contracted by a 14 year old child (*Z.H. and R.H. v. Switzerland*, 2015, § 44).

359. Finally, engagement does not in itself create family life (*Wakefield v. the United Kingdom*, Commission decision, 1990).

b. Same-sex couples

360. A same-sex couple living in a stable relationship falls within the notion of family life, as well as private life, in the same way as a heterosexual couple (*Vallianatos and Others v. Greece* [GC], 2013, § 73-74; *X and Others v. Austria* [GC], 2013, § 95; *P.B. and J.S. v. Austria*, 2010, § 30; *Schalk and Kopf v. Austria*, 2010, §§ 92-94). For a detailed analysis of the Court's case-law on this topic, see the Case-law Guide on the Rights of LGBTI persons.

2. Parents

Medically assisted procreation/right to become genetic parents[66]

361. Like the notion of private life (see "Reproductive rights" above), the notion of family life incorporates the right to respect for decisions to become a parent in the genetic sense (*Dickson v. the United Kingdom* [GC], 2007, § 66; *Evans v. the United Kingdom* [GC], 2007, § 72). Accordingly, the right of a couple to make use of medically assisted procreation comes within the ambit of Article 8, as an expression of private and family life (*S.H. and Others v. Austria* [GC], 2011, § 82). However, the provisions of Article 8 taken alone do not guarantee either the right to found a family or the right to adopt (*E.B. v. France* [GC], 2008, § 41; *Petithory Lanzmann v. France* (dec.), 2019, § 18). In addition, however worthy an applicant's personal aspiration to continue the family line, Article 8 does not encompass the right to become a grandparent (*Petithory Lanzmann v. France* (dec.), 2019, § 20).

362. The Court considers that concerns based on moral considerations or on social acceptability must be taken seriously in a sensitive domain like artificial procreation (*S. H. and Others v. Austria* [GC], § 100). However, they are not in themselves sufficient reasons for a complete ban on a specific artificial procreation techniques such as ovum donation; notwithstanding the wide margin of appreciation afforded to the Contracting States, the legal framework devised for this purpose must be shaped in a coherent manner which allows the different legitimate interests involved to be adequately taken into account (*ibid.*).

363. The Court found no violation of Article 8 where domestic law permitted the applicant's former partner to withdraw his consent to the storage and use by her of embryos created jointly by them, preventing her from ever having a child to whom she would be genetically related (*Evans v. the United Kingdom* [GC], 2007, § 82). It also found no violation of Article 8 where a woman (whose partner had his sperm collected since the couple wished to conceive a child through artificial fertilisation) was refused permission to use the cryopreserved sperm after the man's death (*Pejřilová v. the Czech Republic*, 2022). The legislature only permitted the use of assisted reproduction techniques for couples whose consent was less than six months old, and the applicant's husband had died more than six months after giving his consent, with the consequence that the applicant ceased to satisfy both of the above-mentioned conditions (§ 57). The Court observed that the aim of the legislation was to protect the free will of the man who had consented to assisted reproduction, and the right of the unborn child to know his parents (§ 59). For the Court, the State had not overstepped its wide margin

[66] See also Legal parent-child relationship.

of appreciation (§ 63). Similarly, the Court found that the legislature did not overstep its wide margin of appreciation in prohibiting, not only the use of cryopreserved sperm or embryos for posthumous assisted reproduction, but also the transfer of cryopreserved sperm or embryos to a jurisdiction where they could be used for that purpose (*Baret and Caballero v. France*, 2023). The export ban was intended to prevent the risk of circumvention of the domestic prohibition and the Court accepted that it pursued the legitimate aims of the "protection of the rights and freedoms of others" and the "protection of morals". Although the applicants' husbands had consented to the posthumous use of the gametes and embryos, it could not be said that there had been an excessive interference with their right to respect for their wishes. The domestic authorities had struck a fair balance between the competing interests at stake (§§ 81-88).

364. Article 8 does not require States to legalise surrogacy (see "Legal parent-child relationship" above). Therefore, the refusal to recognise a legal relationship between a child born through a surrogacy arrangement abroad and the intended parents does not violate the parents' and children's right to family life if this inability to obtain recognition of the legal parent-child relationship does not prevent them from enjoying their family life together. In particular, there is no violation of their right to family life if the family is able to settle in the respective member State shortly after the birth of their children born abroad and if there is nothing to suggest that the family is at risk of being separated by the authorities on account of their situation (*Mennesson v. France*, 2014, §§ 92-94; *Labassee v. France*, 2014, §§ 71-73; *Foulon and Bouvet v. France*, 2016, § 58). In addition, the Court found that the Convention could not oblige States to authorise entry to their territory of children born to a surrogate mother without the national authorities having a prior opportunity to conduct certain relevant legal checks (*D. and Others v. Belgium*, 2014, § 59). Therefore, an application concerning the refusal to provide the applicants with a travel document to enable their child, born abroad as a result of a surrogacy arrangement, to travel back with them to their country of origin, was considered to be manifestly ill-founded although the refusal had resulted in an effective separation of the parents and their child (*D. and Others v. Belgium*, 2014, § 64).[67] The Court has also rejected (this time, as *ratione materiae*) a complaint concerning the refusal to grant Polish citizenship to two children born by way of a surrogacy arrangement in the United States. The parents were a same-sex couple who lived in Israel and who both held Israeli citizenship, although one also had Polish citizenship. The Court found that Article 8 was not applicable as the family lived together in Israel, where their family ties were legally recognised (*S.-H. v. Poland*, 2021).

365. *Paradiso and Campanelli v. Italy* [GC], 2017, concerned the separation and placement for adoption of a child conceived abroad through surrogacy and brought back to Italy in violation of Italian adoption laws (§ 215). The Court found that no family life had existed in this particular case and considered it under the notion of "private life"[68](compare and contrast, under "family life", *Valdís Fjölnisdóttir and Others v. Iceland*, 2021, concerning the non-recognition of a parental link with a non-biological child born abroad *via* surrogacy, while preserving bond through foster care).

3. Children

366. According to well-established case-law, "in all decisions concerning children their best interests are of paramount importance. (...) It follows that there is an obligation on States to place the best interests of the child, and also those of children as a group, at the centre of all decisions affecting their health and development" (*Vavřička and Others v. the Czech Republic* [GC], 2021, §§ 287-288; *Neulinger and Shuruk v. Switzerland* [GC], 2010, § 135 and, *X v. Latvia* [GC], 2013, § 96). The margin of appreciation is wide in cases concerning the recognition in law of filiation between children and

[67] See also Legal parent-child relationship

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[68] See also Right to personal development and autonomy

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persons with whom they have no biological link. Such cases raise ethical issues on which there is no European consensus. However, the margin may be reduced when the child-parent bond is touched. This is particularly the case of the bond of filiation, which unites a person to his parent, especially when this person is a minor. Moreover, even when the State is within its margin, its decisions are not beyond the control of the Court, which will undertake a careful examination of the arguments to ensure that an appropriate balance has been struck with regard to the child's interests (*C.E. and Others v. France,* 2022, §§ 85-90; *Vinškovský v. the Czech Republic* (dec.), 2023, § 51 in the context of social parenthood).

367. Article 8 requires that the domestic authorities strike a fair balance between the interests of the child and those of the parents and that, in the balancing process, particular importance should be attached to the best interests of the child, which, depending on their nature and seriousness, may override those of the parents (see the recapitulation of the general principles in *Abdi Ibrahim v. Norway* [GC], 2021, § 145).

a. Mutual enjoyment

368. Regard for family unity and for family reunification in the event of separation are inherent considerations in the right to respect for family life under Article 8 (*Strand Lobben and Others v. Norway* [GC], 2019, § 204; see also *Abdi Ibrahim v. Norway* [GC], 2021, § 145). The mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life within the meaning of Article 8 of the Convention (even if the relationship between the parents has broken down), and domestic measures hindering such enjoyment amount to an interference with the right protected by Article 8 of the Convention (*Monory v. Romania and Hungary*, 2005, § 70; *Zorica Jovanović v. Serbia*, 2013, § 68; *Kutzner v. Germany*, 2002, § 58; *Elsholz v. Germany* [GC], 2000, § 43; *K. and T. v. Finland* [GC], 2001, § 151). The parent's conduct can be a factor taken into consideration by the Court (*Katsikeros v. Greece*, 2022, § 57, a case where the Court found the reasons given by the domestic courts, in relation to contact arrangements, to be relevant and sufficient, §§ 56-63).

369. The Court has found that an applicant's secret and extrajudicial abduction and arbitrary detention resulted in the deprivation of mutual enjoyment between family members and was therefore a violation of Article 8 (*El-Masri v. the former Yugoslav Republic of Macedonia* [GC], 2012, §§ 248-250). The Court has also found a violation of Article 8 where the applicant was kept in isolation for more than a year, separated from his family, who did not have any information on his situation (*Nasr and Ghali v. Italy*, 2016, § 305).

370. The Court has also found that a State's continuing failure to provide an applicant with credible information as to the fate of her newborn son – who had gone missing from a State-run maternity ward shortly after birth – constituted a continuing violation of the right to mutual enjoyment and respect for her family life (*Zorica Jovanović v. Serbia*, 2013, §§ 74-75; and for the measures taken by the State in implementation of the said judgment, see *Mik and Jovanović v. Serbia* (dec.), 2021). In the same vein, in the case of newborn babies having been transferred from a hospital in Croatia to a hospital Serbia, the Court considered that each State could be held accountable for its share of the responsibility for the breach in question, and asserted its jurisdiction to examine, under Article 8, the Croatian State's continued failure to provide the applicants with information as to the fate of their babies who were transferred from Croatia to Serbia (*Petrović v. Croatia*, 2025, §§ 107-13).

371. A refusal to allow a child to accompany her mother to another country for the purposes of the latter's postgraduate education based on the absence of the consent of both parents needs to be examined in the light of the child's best interest, avoiding a formalistic and mechanical approach (*Penchevi v. Bulgaria*, 2015, § 75).

372. With respect to transgender parenthood, *A.M. and Others v. Russia*, 2021, highlighted several elements to be factored in when assessing the restriction of transgender persons' parental rights and deprivation of contact with children following gender transitioning (see §§ 53-61[69]).

b. Ties between natural mother and children

373. A natural mother's standing suffices to afford her the necessary power to apply to the Court on her child's behalf too, in order to protect his or her interests (*M.D. and Others v. Malta*, 2012, § 27; *Strand Lobben and Others v. Norway* [GC], 2019, §§ 156-159).

374. The Court regards a single woman and her child as one form of family no less than others. In acting in a manner calculated to allow the family life of an unmarried mother and her child to develop normally, the State must avoid any discrimination on grounds of birth (*Marckx v. Belgium*, 1979, §§ 31 and 34). The development of the family life of an unmarried mother and her child whom she has recognised may be hindered if the child does not become a member of the mother's family and if the establishment of affiliation has effects only as between the two of them (*ibid.*, § 45; *Kearns v. France*, 2008, § 72).

375. A natural parent who knowingly gives consent to adoption may later be legally prevented from being granted a right to contact with and information about the child (*I.S. v. Germany*, 2014). Where there is insufficient legislation to protect parental rights, then an adoption decision violates the mother's right to family life (*Zhou v. Italy*, 2014). Similarly, where a child was unjustifiably taken into care and separated from her mother and the local authority failed to submit the issue to the court for determination, the natural mother was deprived of an adequate involvement in the decision-making process concerning the care of her daughter and thereby of the requisite protection of their interests, resulting in a failure to respect family life (*T.P. and K.M. v. the United Kingdom* [GC], 2001, § 83).

376. In addition, in the decision-making process concerning the withdrawal of parental responsibility and consent to adoption, the domestic authorities have to perform a genuine balancing exercise between the interests of the child and his biological family and seriously contemplate any possibility of the child's reunification with the biological family. The Court reiterated that authorities have to take measures to facilitate family reunification as soon as reasonably feasible (*Strand Lobben and Others v. Norway* [GC], 2019, § 205). In this context, it is important that domestic authorities take steps to maintain contact between a child and its biological parents even after its initial removal from their care; and that they rely on fresh expert evidence (*Strand Lobben and Others v. Norway* [GC], 2019, §§ 220-225). In *Y.I. v. Russia*, 2020, the applicant, who had been taking drugs and had been unemployed, was deprived of parental authority over her three children with her two youngest being placed in public care. The Court found a violation of Article 8 (§ 96): in its view, the domestic authorities had not sufficiently justified the measures because the children were not neglected or in danger despite the mother's situation (§§ 88-91). In addition, the childcare authorities did not provide the applicant with appropriate assistance to facilitate eventual family reunification. In this context, the Court reaffirmed that the authorities' role in the social welfare field is to help persons in difficulty, to provide them with guidance in their contact with the welfare authorities and to advise them, *inter alia*, on how to overcome their difficulties (§ 87). The Court also took into account that the children were not only separated from their mother but also separated from each other (§ 94). Separating a newborn baby from his mother and taking him into State care against the mother's will immediately after his birth is an extremely harsh measure, requiring extraordinarily compelling reasons (*B.T. and B.K.Cs. v. Hungary*, 2025, §§ 77 and 88).

377. In comparison, in the case of *E.M. and Others v. Norway,* 2022, the Court found no violation of Article 8, since there were no shortcomings in the original care order proceedings, there was no basis on which to find that ending contact between the mother and her children had not been justified in

[69] See the Case-law Guide on the Rights of LGBTI persons.

their best interests, and the domestic authorities had paid considerable attention to maintaining the mother-child relationship (§ 62).

378. The applicant in *Abdi Ibrahim v. Norway* [GC], 2021, was a Somali refugee whose child was taken into foster care and placed with a Christian family, despite her having expressly asked that he be placed with a relative or at least a Somali or Muslim family. The foster carers were subsequently permitted to adopt the child and the applicant lost all contact. She appealed, seeking contact so that her son could maintain his cultural and religious roots, but her appeal was dismissed. The Court noted that Article 8 of the Convention, as interpreted in the light of Article 9, could not be complied with only by finding a foster home which corresponded to the applicant's cultural and religious background. The domestic authorities were bound by an obligation of means, not one of result. It also did not question the fact that, on the basis of the information available, the actions of the authorities had included efforts to find a more suitable foster home for the child at the outset. However, in the Court's view, the arrangements made thereafter regarding contact, culminating in the decision to allow for the child's adoption, had failed to take due account of the applicant's interest in allowing him to retain at least some ties to his cultural and religious origins. Considering the case as a whole, the Court concluded that the reasons advanced had not justified a complete and definite severance of the ties between the applicant and her son (§§ 146-162). In comparison, in *Kilic v. Austria*, 2023, the Court found that there had been no indication of any indoctrination on the part of the foster parents of Muslim children, and the foster families had not deprived the applicant parents of their right to maintain a relationship with, and to pass on their cultural heritage to, their children. The domestic authorities had also complied with their positive obligations and provided for regular contact between the parents and their children and for support through well-prepared foster parents and social workers, taking into account the applicants' interest in maintaining their cultural, linguistic and religious bonds with their children.

379. The applicant in *A.I. v. Italy,* 2021, was a victim of trafficking whose children had been removed from her care and declared eligible for adoption. She was denied contact, even before the judgment on adoption had become final. In the Court's view, the authorities did not seek to engage in a real balancing exercise between the interests of the two children and the applicant and they did not seriously consider the possibility of maintaining a link between them, even though the adoption proceedings were still pending and an expert report had indicated that the maintenance of contact was in the children's best interests. The Court further noted that the domestic courts had assessed the applicant's parental skills without taking into account her Nigerian origin or the different model of attachment between parents and children that can be found in African culture, despite this fact having been highlighted in the expert report (§ 104).

c. Ties between natural father and children

380. The Court observes that the notion of family life in Article 8 is not confined solely to marriage-based relationships and may encompass other de facto "family" ties where the parties are living together outside marriage (*Keegan v. Ireland*, 1994, § 44; *Kroon and Others v. the Netherlands*, 1994, § 30; *C.P. and M.N. v. France*, 2023, § 32). The application of this principle has been found to extend equally to the relationship between natural fathers and their children born out of wedlock. Further, the Court considers that Article 8 cannot be interpreted as only protecting family life which has already been established but, where the circumstances warrant it, must extend to the potential relationship which may develop between a natural father and a child born out of wedlock (*Nylund v. Finland* (dec.), 1999; *Shavdarov v. Bulgaria*, 2010, § 40). In the latter case, the Court accepted that the presumption of paternity meant that the applicant was not able to establish paternal affiliation by law, but that he could have taken other steps to establish a parental link, hence finding no violation of Article 8.

381. Where the existence or non-existence of family life concerns a potential relationship which could develop between a child born out of wedlock and its natural father, relevant factors include the nature of the relationship between the natural parents and the demonstrable interest in and commitment

by the father to the child both before and after its birth (*Nylund v. Finland* (dec.), 1999; *A and Others v. Italy*, 2023, §§ 73-77; see also *Katsikeros v. Greece*, 2022, where the applicant, despite having expressed his wish through his applications to the domestic courts to be recognised as the child's father to share parental responsibility with the mother and to have regular contact with the child, had refused to exercise his contact rights under the conditions set out in the domestic decisions and, as a result, only saw the child once during the period covered by the domestic decisions). Mere biological kinship, without any further legal or factual elements indicating the existence of a close personal relationship, is not sufficient to attract the protection of Article 8 (*L. v. the Netherlands*, 2004, §§ 37-40). On the other hand, the complete and automatic exclusion of the applicant from his child's life - where they had been living as a family for several years - after the termination of his paternity, without properly considering the child's best interests, amounted to a failure to respect the applicant's family life (*Nazarenko v. Russia*, 2015, §§ 65-66; compare *Mandet v. France*, 2016, § 58).

382. The Court has also found a violation of Article 8 where the applicants were unable to establish their paternity due to a strict statute of limitations (*Călin and Others v. Romania*, 2016, §§ 96-99; see conversely *C.P. and M.N. v. France*, 2023, §§ 47-57, where the Court found no violation of Article 8, since the applicant, a biological father, had found out about his paternity well before the expiration of the five-year time-limit established in the relevant statute of limitation and, could thus have taken a timely action); and it has found a violation of Article 8, read together with Article 14, where the domestic legislation treated a single father of an illegitimate child differently – vis-à-vis both the mother and the married or divorced father – by refusing to allow him to exercise parental authority without the mother's consent since there was no reasonable relationship of proportionality between the refusal and the protection of the best interests of the child (*Paparrigopoulos v. Greece*, 2022, §§ 35-43).

383. In *Shofman v. Russia*, 2005, concerning a father's decision to bring an action contesting paternity once he had discovered that he was not the biological father of a child born two years previously, the Court found that the introduction of a time-limit for the institution of paternity proceedings could be justified by the desire to ensure legal certainty in family relations and to protect the interests of the child (§ 39). However, it held that it was not necessarily proportionate to set a time-limit of one year from the child's birth with no exceptions permitted, especially where the person concerned had not been aware of the biological reality (§ 43) (see also *Paulík v. Slovakia*, 2006, §§ 45-47; and, conversely, *C.P. and M.N. v. France*, 2023, §§ 47-57, where the relevant time-limit was five years).

384. In the case of children born outside marriage who wish to bring an action for recognition of paternity before the domestic courts, the existence of a limitation period per se is not incompatible with the Convention (*Phinikaridou v. Cyprus*, 2007, §§ 51-52). Nevertheless, States must strike a fair balance between the competing rights and interests at stake (§§ 53-54). The application of a rigid time-limit for instituting paternity proceedings, regardless of the circumstances of an individual case and, in particular, the knowledge of the facts concerning paternity, impairs the very essence of the right to respect for private life under Article 8 (§ 65).

385. A situation in which a legal presumption is allowed to prevail over biological and social reality, without regard to both established facts and the wishes of those concerned and without actually benefiting anyone, is not compatible, even having regard to the margin of appreciation left to the State, with the obligation to secure effective "respect" for private and family life (*Kroon and Others v. the Netherlands*, 1994, § 40).

386. There exists between the child and his or her parents a bond amounting to family life even if at the time of his or her birth the parents are no longer cohabiting or if their relationship has then ended (*Berrehab v. the Netherlands*, 1988, § 21). Where the relationship between the applicant and the child's mother had lasted for two years, during one of which they cohabited and planned to get married, and the conception of their child was the result of a deliberate decision, it followed that from the moment of the child's birth there existed between the applicant and his daughter a bond

amounting to family life, regardless of the status of the relationship between the applicant and the child's mother (*Keegan v. Ireland*, 1994, §§ 42-45). Thus, permitting the applicant's child to have been placed for adoption shortly after the child's birth without the father's knowledge or consent constituted an Article 8 violation (*ibid.*, § 55).

387. The legal system, where a putative biological father does not have a possibility directly to challenge another man's paternity established in respect of his biological child either by legal presumption or by recognition, and where the authorities have discretionary powers to decide whether to initiate such a procedure, is not as such irreconcilable with Article 8, provided that domestic law contains safeguards allowing for the examination of all interests involved (*Vagdalt v. Hungary*, 2024, § 53 and 68. At the same time, Article 8 was violated where those safeguards were not adequately applied in practice with the result that the putative father's interests were not given due consideration, and he was effectively precluded from challenging the legal father's paternity and having his own paternity recognised (*ibid.*, §§ 69-70). Similarly, the Court has found a violation of Article 8 in a case where the applicant (being the putative biological father) was not able to be involved in court proceedings to challenge the presumption of paternity in respect of the mother's husband, and where the proceedings challenging the presumption of paternity were marked by a grave lack of expedition (*A.W. v. Poland*, 2025, §§ 110-119).

388. In two cases where natural fathers had unsuccessfully attempted to have adoption of their children by third persons – which had been ordered for reasons outside of those fathers' control and without their knowledge, let alone consent – annulled, the Court reproached the domestic authorities' lack of diligence, and, in particular, failure to establish all relevant circumstances before allowing the adoption (*Uzbyakov v. Russia*, 2020, §§ 116-18; *I.V. v. Estonia*, 2023, §§ 88, 103-106) as well as the excessive formalism in the subsequent examination of those fathers' requests for annulment of the adoption orders. In the latter respect, the Court observed that the domestic courts' reliance on the absence under domestic law of formal grounds for revoking the adoption orders could not be regarded as a "sufficient" consideration in seeking to strike a fair balance between the competing interests at stake (*Uzbyakov v. Russia*, 2020, §§ 122-23, 126; *I.V. v. Estonia*, 2023, §§ 114-15; see also as regards the failure of the domestic courts to perform an in-depth examination of all relevant facts in a similar context, *Naltakyan v. Russia*, 2021, §§ 185-92).

389. The Court found that the domestic courts did not exceed their wide margin of appreciation when they took into account the applicant's refusal to abide by a court-ordered genetic testing and declared him the father of the child, giving priority to the latter's right to respect for private life over that of the applicant (*Canonne v. France* (dec.), 2015, § 34 and § 30 for DNA tests). The Court found no violation of Article 8 in a case involving the refusal, in the best interests of the children concerned, to recognise their biological father (*R.L. and Others v. Denmark*, 2017). The Court observed that the domestic courts had taken account of the various interests at stake and prioritised what they believed to be the best interests of the children, in particular their interest in maintaining the family unit. (§§ 47-48). In *Fröhlich v. Germany*, 2018, the Court accepted the importance that the question of paternity might have for the child in the future, when she would start to ask about her origin, but held that at that time it was not in the best interest of the six-year-old child to be confronted with the paternity issue. As a result, a court's refusal to grant contact rights or order legal parents to provide information about a child's personal circumstances to potential biological father did not breach Article 8 (§§ 62-64). In the case of *Kyrian v. the Czech Republic*, 2025, acknowledging that the right to information about a child belongs primarily to those with parental responsibility, the Court considered nevertheless that such a right could be granted to an individual who is not a legal parent as an autonomous form of contact, provided that it suits the best interests of the child (§§ 62-64).

390. In the specific context of a 'passive parent' and, in particular, the lack of contact between a natural father and his very young child during a long period of time with no attempts to resume contact, the Court found that the removal of parental authority did not constitute a violation of Article 8 (*Ilya Lyapin v. Russia*, 2020). The Court especially took into account that it was the father's

own inaction that led to the severance of ties between him and his son and that, given the absence of any personal relations for a period of seven years prior, the removal of his parental authority did no more than cancel the legal link between the natural father and his son (§ 54). Similarly, in *Pavel Shishkov v. Russia,* 2021, the Court held that the authorities' refusal to order the immediate transfer of a young child into her father's care corresponded to her best interests, was taken within their margin of appreciation and was based on "relevant and sufficient" reasons (§ 97). In its view, it was the applicant's own inaction that led to the severance of ties between he and his daughter and resulted in the child, who had no memory of him, becoming deeply attached to her foster family (§ 91). On the other hand, in *T.A. and Others v. the Republic of Moldova,* 2021, the Court held that decisions resulting in the imminent transfer of a young child with special care needs from the care of his grandparents to the care of his biological father violated Article 8 because the domestic courts did not carry out a sufficiently thorough examination of the depth of the relationship between father and child, the possible risk to the father-child relationship of maintaining the status quo, and the risk to the health and well-being of the child if he were suddenly transferred to his father's care (§§ 55-64).

391. In the context of medically assisted reproduction, the Court found no violation of Article 8 when the intended father successfully contested the recognition of his paternity of a child conceived *via* IVF using gametes and an egg from donors (the second applicant), while the divorce proceedings from his spouse (the first applicant) were ongoing (*A and B v. France*, 2023). The Court reiterated that the margin of appreciation was wider in matters concerning the legal status of a child than in matters concerning the relationship between parents and children, and it was a "significant one" in matters concerning the balancing of competing interests (§ 47). The Court found that the domestic courts gave relevant and sufficient reasons for their decisions which took into account the child's best interest (§§ 50-57).

d. Parental allowances, custody/access, and contact-rights

392. The Court has stated that while Article 8 does not include a right to parental leave or impose any positive obligation on States to provide parental leave allowances, at the same time, by enabling one of the parents to stay at home to look after the children, parental leave and related allowances promote family life and necessarily affect the way in which it is organised; thus, parental leave and parental allowances come within the scope of Article 8 (*Konstantin Markin v. Russia* [GC], 2012, § 130; *Petrovic v. Austria*, 1998, §§ 26-29; *Di Trizio v. Switzerland*, 2016, §§ 60-62; see also *Yocheva and Ganeva v. Bulgaria*, 2021, § 72).

393. There is a broad consensus – including in international law – in support of the idea that in all decisions concerning children, their best interests must be paramount (*Strand Lobben and Others v. Norway* [GC], 2019, § 207; *Neulinger and Shuruk v. Switzerland* [GC], 2010, § 135; *X v. Latvia* [GC], 2013, § 96). The child's best interests may, depending on their nature and seriousness, override those of the parents (*Sahin v. Germany* [GC], 2003, § 66). The parents' interests, especially in having regular contact with their child, nevertheless remain a factor when balancing the various interests at stake (*Neulinger and Shuruk v. Switzerland* [GC], 2010, § 134). The child's interests dictate that the child's ties with the family must be maintained, except in cases where the family has proved particularly unfit. It follows that family ties may only be severed in very exceptional circumstances and that everything must be done to preserve personal relations and, if and when appropriate, to "rebuild" the family (*Gnahoré v. France*, 2000, § 59 and for a review of the case-law, *Jansen v. Norway*, 2018, §§ 88-93).

394. While Article 8 of the Convention contains no explicit procedural requirements, the decision-making process must be fair and such as to ensure due respect for the interests safeguarded by Article 8. The parents ought to be sufficiently involved in this process seen as a whole, to be provided with the requisite protection of their interests and fully able to present their case. The domestic courts must conduct an in-depth examination of the entire family situation and of a whole series of factors, particularly those of a factual, emotional, psychological, material and medical nature, and make a balanced and reasonable assessment of the respective interests of each person, with a constant

concern for determining what would be the best solution for the child, as this consideration is in every case of crucial importance. The margin of appreciation to be accorded to the competent national authorities will vary in accordance with the nature of the issues and the importance of the interests at stake (*Petrov and X v. Russia*, 2018, §§ 98-102)[70]. In *Strand Lobben and Others v. Norway* [GC], 2019, the Court pointed out that domestic authorities have to perform a genuine balancing exercise between the interests of the child and the biological family in the process leading to the withdrawal of parental responsibilities and consent to adoption (see also *Kilic v. Austria*, 2023, §§ 124-137).

395. The Court has found that the failure to disclose relevant documents to parents during the procedures instituted by the authorities in placing and maintaining a child in care meant that the decision-making process determining the custody and access arrangements did not afford the requisite protection of the parents' interests as safeguarded by Article 8 (*T.P. and K.M. v. the United Kingdom* [GC], 2001, § 73). The refusal to order an independent psychological report and the absence of a hearing before a regional court insufficiently involved the applicant in the decision-making process regarding his parental access and thereby violated the applicant's rights under Article 8 (*Elsholz v. Germany* [GC], 2000, § 53). In *Petrov and X v. Russia*, 2018, there was an insufficient examination of a father's application for a residence order and no relevant and sufficient reasons were adduced for a decision to make the residence order in favour of the child's mother, in violation of Article 8 (see §§ 105-114 and the review of the case-law therein). In *Bierski v. Poland*, 2022, the Court found the respondent State to be in breach of its positive obligation under Article 8 to take measures aimed at re-establishing contact between the applicant and his son, who had been declared incapacitated. Once the applicant's son had turned eighteen, his mother was appointed as a guardian and refused to allow the applicant's contact to continue, and the applicant had no standing before the domestic courts to protect his family life with his son (§§ 46-54). The court has also found that the failure of the domestic authorities to take into account incidents of domestic violence in the determination of child contact rights and, consequently, their failure to take prompt measures to support the applicant, victim of domestic violence, in maintaining contact with her children, breached their Article 8 obligations (*Luca v. the Republic of Moldova*, 2023, §§ 90-95).

396. As regards contact-rights, the Court held that the decision-making process of the domestic courts had to be fair, it must allow the concerned parties to present their case fully and the best interests of the child must be defended. In *Cînța v. Romania*, 2020, the applicant's contact-rights in respect of his four-year old daughter were restricted and the domestic courts based their decision on his mental illness. However, there had been no evidence before the courts that the applicant would pose a threat to his daughter's well-being (§§ 47-48) and the courts had not established or assessed the child's best interests (§§ 52-55). In *Popadić v. Serbia*, 2022, §§ 86-101, the Court held that a four-year delay in determining the applicant's overnight and holiday contact with his child violated Article 8, even though he had continued to have regular but more limited contact with his child while the proceedings were ongoing.

397. The Court has found that the right to private and family life of a divorced couple's daughter had been violated as regards the length of the custody proceedings and, taking into account her age and maturity, the failure of the domestic courts to allow her to express her views on which parent should take care of her (*M. and M. v. Croatia*, 2015, §§ 171-172; compare *Q and R v. Slovenia*, 2022, in which a child psychiatrist had assessed the children and considered that they were not capable of forming a view. In *C. v. Croatia*, 2020, it found that the authorities had breached the right to family life of a child at the centre of custody proceedings because he did not have an opportunity to be heard by the competent judicial authorities and a guardian *ad litem* had not been represented to represent his views (§§ 77-82). The applicants in *N.V. and C.C. v. Malta*, 2022, were a co-habiting couple, who had a child together. A child (E) from the first applicant's previous marriage to J also lived with them. Following a complaint by J, a court decreed that the first applicant should not expose E to the second

[70] See also Margin of appreciation in relation to family life.

applicant. This meant that the applicants could no longer live together or see each other in E's presence. The decree remained in place for over four years. The Court found that there had been a violation of Article 8, since the decree had been issued without the second applicant being heard and without the court carrying out a proper assessment of risk to E (§§ 61-69).

398. A parent cannot be entitled under Article 8 to have measures taken as would harm the child's health and development (*Elsholz v. Germany* [GC], 2000, § 50; *T.P. and K.M. v. the United Kingdom* [GC], 2001, § 71; *Ignaccolo-Zenide v. Romania*, 2000, § 94; *Nuutinen v. Finland*, 2000, § 128). Thus, where a 13 year-old girl had expressed her clear wish not to see her father, and had done so for several years, and where forcing her to see him would seriously disturb her emotional and psychological balance, the decision to refuse contact with the father can be taken to have been made in the interests of the child (*Sommerfeld v. Germany* [GC], 2003, §§ 64-65; *Buscemi v. Italy*, 1999, § 55). In a case of a putative father who asked to be provided with information about his alleged child and be allowed contact with her, despite her legal parents' refusal, the Court accepted that this would likely result in a breakup of the marriage of the child's legal parents, thereby endangering the wellbeing of the child who would lose her family unit and her relationships (*Fröhlich v. Germany*, 2018, §§ 42 and 62-63). Similarly, in *Suur v. Estonia*, 2020, the Court found no breach of Article 8 where the domestic courts had fully considered the best interests of the child and had put forward relevant and sufficient reasons why – at that point in time – the child should not be forced to have contact with his biological father (§ 98). The Court did, however, consider it relevant that the father could, in future, reapply to the domestic courts for revision of the contact arrangements. In the same vein, the Court found no breach of Article 8 where the domestic courts ascertained that there had been no strong interest on the part of a child in maintaining contact with his social father, the mother's former partner who raised the child for two years but had no biological links with her (*Vinškovský v. the Czech Republic* (dec.), 2023, §§ 48-49). On the other hand, the Court found a violation of Article 8 were children were compelled to have contact with their father, an addict with a history of aggressive behaviour, despite those sessions not taking place in a secured environment and in the presence of a psychologist, as ordered by the Youth Court (*I.M. and Others v. Italy*, 2022, §§ 109-126). In the same case, it also found that there had been a breach of the mother's rights, as her parental responsibility had been suspended for three years due to her allegedly hostile attitude to the contact sessions (§§ 127-141).

399. In cases concerning a parent's relationship with his or her child, there is a duty to exercise exceptional diligence in view of the risk that the passage of time may result in a *de facto* determination of the matter (*T.C. v. Italy*, 2022, § 58). This duty, which is decisive in assessing whether a case has been heard within a reasonable time as required by Article 6 § 1 of the Convention, also forms part of the procedural requirements implicit in Article 8 (*Ribić v. Croatia*, 2015, § 92; *Paparrigopoulos v. Greece*, 2022, § 49). In assessing what is considered to be in the best interests of the child, the potential negative long-term consequences of losing contact with the child's parents and the positive duty to take measures to facilitate family reunification as soon as reasonably feasible have to be sufficiently weighed in the balance. It is imperative to consider the long-term effects which a permanent separation of a child from its natural mother might have (*Jansen v. Norway*, 2018, § 104). As the Court pointed out in this case, the risk of abduction of the applicant's child by her father (and hence the issue of the child's protection) should not prevail over addressing sufficiently the mother's contact-rights with her child (§ 103).

400. States must also provide measures to ensure that custody determinations and parental rights are enforced (*Raw and Others v. France*, 2013; *Vorozhba v. Russia*, 2014, § 97; *Malec v. Poland*, 2016, § 78). This may, if necessary, include investigation into the whereabouts of the child whose location has been hidden by the other parent (*Hromadka and Hromadkova v. Russia*, 2014, § 168). The Court also found that in placing reliance on a series of automatic and stereotyped measures in order to secure the exercise of the father's contact rights in respect of his child, the domestic courts had not taken the appropriate measures to establish a meaningful relationship between the applicant and his

child and to make the full exercise of his contact rights possible (*Giorgioni v. Italy*, 2016, §§ 75-77; *Macready v. the Czech Republic*, 2010, § 66; *Bondavalli v. Italy*, 2015, §§ 81-84). Likewise, a violation was found where no new independent psychiatric evidence concerning the applicant had been taken for around 10 years (*Cincimino v. Italy*, 2016, §§ 73-75). Another violation was found in the case where, over seven years, the applicant was unable to exercise his contact rights under the conditions set by the courts, owing to the opposition of the child's mother and the lack of appropriate measures taken by the domestic courts (*Strumia v. Italy*, 2016, §§ 122-125; see also *Luca v. the Republic of Moldova*, 2023, §§ 90-94). The role of the domestic courts is thus to ascertain what steps can be taken to overcome existing barriers and to facilitate contact between the child and the noncustodial parent; for example, the fact that the domestic courts had failed to consider any means that would have assisted an applicant in overcoming the barriers arising from his disability (deafness with communication by sign language, while his son was also deaf but could communicate orally) led the Court to find a violation (*Kacper Nowakowski v. Poland*, 2017, § 95).

401. Contact disputes are by their very nature extremely sensitive for all the parties concerned and it is not necessarily an easy task for the domestic authorities to ensure enforcement of a court order where the conduct of one or both parents is far from constructive (*Krasicki v. Poland*, 2014, § 90). However, a lack of cooperation between separated parents is not a factor which can, of itself, exempt the authorities from their positive obligation under Article 8: rather it imposes on the authorities an obligation to take measures to reconcile the conflicting interests of the parties (*A. and Others v. Italy*, 2023, § 97; *Anagnostakis v. Greece*, 2023, § 58). Thus, in a case concerning the impossibility for a father, beneficiary of a witness protection programme, to exercise his contact rights with respect to his two children, the Court found a violation of Article 8. Without overlooking the specific context of the case, the Court noted the lack of diligence of the relevant national authorities to organise visits between the applicant and his children despite existing court orders to that effect. Such visits had not been organised because of the mother's enduring opposition and the negative opinions of social services, who had stated that such visits would be detrimental to the children's phycological state: however no attempts had been made to set in place any arrangements for the provision of psychological assistance and support to facilitate such visits (*A. and Others v. Italy*, 2023, §§ 94-104, 121-22). Conversely, in another case about the non-enforcement of contact orders, the Court was satisfied that the domestic authorities had taken sufficient steps towards enabling the applicant's contact with his son, despite the tense relationship between the parents and the fact that the child had refused to meet with his father, and found no violation of Article 8 (*Anagnostakis v. Greece*, 2023, § 59-68). It must also be noted, in this connection that, while the national authorities must do their utmost to facilitate cooperation between separated parents, any obligation to apply coercion in this area must be limited, since the interests, as well as the rights and freedoms, of all concerned must be taken into account, and more particularly the best interests of the child and his or her rights under Article 8 (*ibid*., § 62).

402. With regard to measures which prevented the applicants from leaving confined areas and made it more difficult for them to exercise their right to maintain contact with family members living outside the enclave, the Court has found violations of Article 8 (*Nada v. Switzerland* [GC], 2012, §§ 165 and 198; *Agraw v. Switzerland*, 2010, § 51; *Mengesha Kimfe v. Switzerland*, 2010, §§ 69-72).

e. International child abduction

403. In matters of international child abduction, the obligations that Article 8 imposes on the Contracting States must be interpreted taking into account, in particular, the Hague Convention on the Civil Aspects of International Child Abduction of 25 October 1980 (*Iglesias Gil and A.U.I. v. Spain*, 2003, § 51; *Ignaccolo-Zenide v. Romania*, 2000, § 95) and the Convention on the Rights of the Child of 20 November 1989 (*Maire v. Portugal*, 2003, § 72).

404. In this area the decisive issue is whether a fair balance between the competing interests at stake - those of the child, of the two parents, and of the public order - has been struck, within the

margin of appreciation afforded to States in such matters (*Maumousseau and Washington v. France*, 2007, § 62; *Rouiller v. Switzerland*, 2014), bearing in mind, however, that the child's best interests must be the primary consideration (*Gnahoré v. France*, 2000, § 59; *X v. Latvia* [GC], 2013, § 95). In the latter case the Court found that there exists a broad consensus – including in international law – in support of the idea that in all decisions concerning children, their best interests must be paramount (§ 96; see also *X v. the Czech Republic*, 2022, § 60). The parents' interests, especially in having regular contact with their child, nevertheless remain a factor when balancing the various interests at stake (*X v. Latvia* [GC], 2013, § 95; *Kutzner v. Germany*, 2002, § 58). For example, parents must have an adequate opportunity to participate in the decision-making process (*López Guió v. Slovakia*, 2014).

405. In order to achieve a harmonious interpretation of the European Convention and the Hague Convention, the factors capable of constituting an exception to the child's immediate return in application of Articles 12, 13 and 20 of the Hague Convention have, first of all, genuinely to be taken into account by the requested court, which has to issue a decision that is sufficiently reasoned on this point, and then to be evaluated in the light of Article 8 of the European Convention. It follows that Article 8 of the Convention imposes on the domestic authorities a procedural obligation, requiring that, when assessing an application for a child's return, the courts have to consider arguable allegations of a "grave risk" for the child in the event of return and make a ruling giving specific reasons. As to the exact nature of the "grave risk", the exception provided for in Article 13 (b) of the Hague Convention concerns only the situations which go beyond what a child could reasonably bear (*X v. Latvia* [GC], 2013, §§ 106-107 and *Vladimir Ushakov v. Russia*, 2019, § 103). In *Y.S. and O.S. v. Russia,* 2021, a court had ordered the return of a child under the Hague Convention to an ongoing military conflict zone. The Court found a violation of Article 8 since, in its view, the court had not adequately taken into account the risk to the child from the security situation there.

406. The Court considers that exceeding the non-obligatory six-week time-limit in Article 11 of the Hague Convention by a significant time, in the absence of any circumstances capable of exempting the domestic courts from the duty to strictly observe it, is not in compliance with the positive obligation to act expeditiously in proceedings for the return of children (*G.S. v. Georgia*, 2015, § 63; *G.N. v. Poland*, 2016, § 68; *K.J. v. Poland*, 2016, § 72; *Carlson v. Switzerland*, 2008, § 76; *Karrer v. Romania*, 2012, § 54; *R.S. v. Poland*, 2015, § 70; *Blaga v. Romania*, 2014, § 83; *Monory v. Romania and Hungary*, 2005, § 82). However, in *Rinau v. Lithuania*, 2020, the Court found that rendering a decision five months after the first applicant's request for his daughter's return, thereby exceeding the afore-mentioned six-week time limit, did not violate Article 8. The domestic courts had to reconcile their two obligations under this Article. On the one hand, they had a positive obligation towards the first applicant father to act expeditiously and, on the other, they had a procedural obligation towards the child's mother to effectively examine plausible allegations that returning the daughter to Germany would expose her to psychological harm. The Court stated that those questions required detailed and to an extent time-consuming examination by the domestic courts, which was necessary in order to reach a decision on the requisite balance between the competing interests at stake, the best interests of the child being the primary consideration (§ 194). Nevertheless, the Court found that the domestic authorities had not fulfilled their procedural obligations under Article 8: in particular, political interventions and procedural vagaries intended to impede the court-ordered return of the child constituted a violation of Article 8, as they had impacted on the fairness of the decision-making process and resulted in lengthy delays. On the other hand, the Court has found that an abducting parent did not suffer a disproportionate interference with her Article 8 rights on account of the "regrettable" delay in the proceedings (*G.K. v. Cyprus*, 2022, §§ 53-54).

407. Execution of judgments regarding child abduction must also be adequate and effective in light of their urgent nature (*V.P. v. Russia*, 2014, § 154). In *X v. the Czech Republic*, 2022, the Court assessed, not the proceedings which led to the adoption of the return order, but rather the subsequent enforcement proceedings in which the domestic courts concluded that the order was capable of being enforced. Although the domestic court had not reopened the decision to make a return order, which

was final, it had taken into account subsequent developments. The Court therefore accepted that the enforcement proceedings satisfied the procedural requirements imposed by Article 8 (§§ 54-64).

408. In *Veres v. Spain*, 2022, the applicant had brought proceedings in Spain under Article 21et seq. of the Brussels IIa Regulation with the aim of securing the recognition and enforcement of a Hungarian decision ordering his estranged wife to return their child to Hungary pending the final judgment in the custody proceedings. Even though the Brussels IIa Regulation did not provide specific time limits (unlike the Hague Convention), domestic courts were expected to deal swiftly with applications lodged under that provision. The Court found that excessive delay by the Spanish courts had violated Article 8, since it interrupted his family life with his child for over two years and contributed to the decision to award custody to the mother (§§ 80-89).

409. The case of *Ukraine and the Netherlands v. Russia* [GC], 2025 addressed a particular form of abduction of children: the administrative practice of transferring Ukrainian children to Russia (which did not qualify as lawful evacuation under the international humanitarian law) without parental or legal consent, coupled with the absence of any steps by the Russian authorities to secure the children's reunification with their parents or caregivers. This was followed by the facilitation of the children's adoption in Russia by way of the automatic imposition of Russian nationality on them. The Court found that this practice amounted to an interference with the children's right to respect for their private and family lives and was not "in accordance with the law" within the meaning of Article 8 § 2 of the Convention (§§ 1567-1594).

f. Adoption[71]

410. The Court has established that although the right to adopt is not, as such, included among the rights guaranteed by the Convention, the relations between an adoptive parent and an adopted child are as a rule of the same nature as the family relations protected by Article 8 (*Kurochkin v. Ukraine*, 2010; *Ageyevy v. Russia*, 2013. A lawful and genuine adoption may constitute family life, even in the absence of cohabitation or any real ties between an adopted child and the adoptive parents (*Pini and Others v. Romania*, 2004, §§ 143-148; *Topčić-Rosenberg v. Croatia*, 2013, § 38).

411. However, the provisions of Article 8 taken alone do not guarantee either the right to found a family or the right to adopt (*Paradiso and Campanelli v. Italy* [GC], 2017, § 141; *E.B. v. France* [GC], 2008). Nor must a member State grant recognition to all forms of guardianship as adoption, such as "kafala" (*Harroudj v. France*, 2012, § 51; *Chbihi Loudoudi and Others v. Belgium*, 2014). The margin of appreciation to be accorded to the competent national authorities will vary in the light of the nature of the issues and the seriousness of the interests at stake (see *Strand Lobben and Others v. Norway* [GC], 2019, § 211 concerning the removal of mother's parental authority and adoption of her son; *A.I. v. Italy*, 2021, §§ 86-89). The best interests of the children are paramount in this area also (*ibid.*, §§ 94, 98; where the siblings were separated and placed in two different families, § 94 and § 101; and see also the role of the expert report, §§ 99-101). The vulnerable position of the parent is also an element of consideration (*ibid.*, §§ 102-104 where the mother was a victim of trafficking).

412. The Court has stated that the obligations imposed by Article 8 in the field of adoption and the effects of adoption on the relationship between adopters and those being adopted must be interpreted in light of the Hague Convention of 29 May 1993 on Protection of Children and Cooperation in respect of Intercountry Adoption, the United Nations Convention of 20 November 1989 on the Rights of the Child and the European Convention on the Adoption of Children (*Pini and Others v. Romania*, 2004, §§ 139-140).

413. There is no obligation under Article 8 to extend the right to second-parent adoption to unmarried couples (*X and Others v. Austria* [GC], 2013, § 136; *Gas and Dubois v. France*, 2012, §§ 66-69; *Emonet and Others v. Switzerland*, 2007, §§ 79-88). States do not have an obligation to treat

[71]. See also Surrogacy; Same-sex couples; Case-law Guide on the Rights of LGBTI persons.

married different-sex couples and unmarried same-sex couples on an equal footing as regards the conditions of access to adoption (*Gas and Dubois v. France*, 2012, § 68, compare *Fretté v. France*, 2002). However, once States have made adoption available to unmarried couples, it must become accessible to both different-sex and same-sex couples, provided that they are in a relevantly similar situation (*X and Others v. Austria* [GC], 2013, §§ 112 and 130). See the Case-law Guide on Rights of LGBTI persons.

414. The principles relating to adoption are applicable even when the parties seek to enforce a foreign adoption decision, which is prohibited under the law of their native country (*Negrepontis-Giannisis v. Greece*, 2011).

415. A vacuum in Turkish civil law in relation to single parent adoption constituted a violation of Article 8; at the time the applicant had made her request, there had been no regulatory framework for recognition of the adoptive single parent's forename in place of that of the natural parent (*Gözüm v. Turkey*, 2015, § 53).

416. The revocation of the applicants' adoption of children, which completely deprived the applicants of their family life with the children and was irreversible and inconsistent with the aim of reuniting them, was a measure which could only be applied in exceptional circumstances and justified by an overriding requirement pertaining to the children's best interests (*Ageyevy v. Russia*, 2013, § 144; *Johansen v. Norway*, 1994; *Scozzari and Giunta v. Italy* [GC], 2000, § 148; *Zaieţ v. Romania*, 2015, § 50).

417. *Paradiso and Campanelli v. Italy* [GC], 2017, concerned the separation and placement for adoption of a child conceived abroad through surrogacy and brought back to Italy in violation of Italian adoption laws (§ 215). The facts of the case touched on ethically sensitive issues – adoption, the taking of a child into care, medically assisted reproduction and surrogate motherhood – in which Member States enjoyed a wide margin of appreciation (§ 194). The Court found that no family life had existed in this particular case and considered it under the notion of "private life".

g. Foster families

418. The Court may recognise the existence of de facto family life between foster parents and a child placed with them, having regard to the time spent together, the quality of the relationship and the role played by the adult vis-à-vis the child (see *Moretti and Benedetti v. Italy*, 2010, §§ 48-52). In this case, the Court found a violation of the State's positive obligation as the applicants' request for a special adoption order in respect of the foster child, who had been placed with their family immediately after her birth for a period of five months, had not been examined carefully before the baby had been declared free for adoption and another couple had been selected (see also *Jolie and Others v. Belgium*, Commission decision, 1986, for examination of the relationship between foster parents and children for whom they have been caring; and *V.D. and Others v. Russia,* 2019, in which a foster family complained about the decisions of the national authorities to return a child in their care to his biological parents, terminate guardianship and to refuse them contact with him).

419. In *Pavel Shishkov v. Russia*, 2021, the applicant's daughter had been placed in a foster family without the applicant's knowledge or consent. The Court reiterated that the national authorities' obligation to take measures to facilitate their reunion was not absolute. The reunion of a parent with a child who has not lived for some time with that parent may not be possible immediately and may require preparatory measures (§ 94).

420. The Court has also held (in the context of determining whether there existed a right to see files relating to fostering arrangements) that persons in the situation of the applicant (a former foster child) had a vital interest, protected by the Convention, in receiving the information necessary to know and to understand their childhood and early development (*Gaskin v. the United Kingdom*, 1989, § 49).

421. In *Jírová and Others v. the Czech Republic*, 2023, the applicants are the former foster parents and their former foster child who complained about a court-ordered prohibition on contact between them brought about by the foster parents' manipulative behaviour towards the child and by their attitude which was considered as causing distress and as being detrimental to the child (§§ 126-28). The Court found that the measure had corresponded to the child's best interest and that reasons adduced by the domestic courts had been relevant and sufficient.

h. Parental authority and State care

422. Family life does not end when a child is taken into public care (*Johansen v. Norway*, 1994, § 52; *Eriksson v. Sweden*, 1989, § 58), or the upon the parents' divorce (*Mustafa and Armağan Akın v. Turkey*, 2010, § 19). It is well established that removing children from the care of their parents to place them in the care of the state constitutes an interference with respect for family life that requires justification under paragraph 2 of Article 8 (*Strand Lobben and Others v. Norway* [GC], 2019, § 202; *Kutzner v. Germany*, 2002, §§ 58-60). *Strand Lobben and Others v. Norway* [GC], 2019, has recapitulated the relevant case-law principles (§§ 202-13). Notably, the Court has emphasized the following guiding principles: the paramount importance of the child's best interests, the necessity to facilitate family reunification as soon as reasonably feasible, the care order being regarded as a temporary measure, to be discontinued as soon as circumstances permit, the necessity of an adequate decision-making process. In the case of public care restricting family life, a positive duty lies on the authorities to take measures to facilitate family reunification as soon as reasonably feasible (*Strand Lobben and Others v. Norway* [GC], 2019§ 204; *Kilic v. Austria*, 2023, §§ 119-123).

423. The Court has established that the authorities enjoy a wide margin of appreciation when assessing the necessity of taking a child into care (*B.B. and F.B. v. Germany*, 2013, § 47; *Johansen v. Norway*, 1994, § 64, *Wunderlich v. Germany*, 2019, § 47). Moreover, it must be borne in mind that the national authorities have the benefit of direct contact with all the persons concerned (*Olsson v. Sweden (no. 2)*, 1992, § 90), often at the very stage when care measures are being envisaged or immediately after their implementation. A stricter scrutiny is called for, however, in respect of any further limitations, such as restrictions placed by those authorities on parental rights of access (*Elsholz v. Germany* [GC], 2000, § 64; *A.D. and O.D. v. the United Kingdom*, 2010, § 83).

424. In two cases concerning systematic recourse to corporal punishment in child-rearing, the Court's main aim was to determine whether the decision-making process, seen as a whole, had provided the parents with the requisite protection of their interests and whether the measures chosen had been proportionate (*Wetjen and Others v. Germany*, 2018, § 79; *Tlapak and Others v. Germany*, 2018, § 92) Thus, the withdrawal of parental authority, which should only be applied as a measure of last resort, must be confined to the aspects strictly necessary to prevent any real and imminent risk of degrading treatment and only used in respect of children running such a risk (*Wetjen and Others v. Germany*, 2018, § 84; *Tlapak and Others v. Germany*, 2018, § 97). Moreover, the domestic courts must give detailed reasons why there was no other option available to protect the children which entailed less of an infringement of the family's rights (*Wetjen and Others v. Germany*, 2018, § 85; *Tlapak and Others v. Germany*, 2018, § 98). The procedural obligations implicit in Article 8 also include ensuring that the parents are in a position to put forward all their arguments (*Wetjen and Others v. Germany*, 2018, § 80; *Tlapak and Others v. Germany*, 2018, § 93). Those obligations also require the findings of the domestic courts to be based on a sufficient factual foundation and not to appear arbitrary or unreasonable (*Wetjen and Others v. Germany*, 2018, § 81). For instance, in *Wetjen and Others v. Germany*, 2018, the domestic authorities relied on statements by the parents and the children themselves in finding that the latter had been, or were liable to be, caned.

425. Mistaken judgments or assessments by professionals do not per se render childcare measures incompatible with the requirements of Article 8 (*B.B. and F.B. v. Germany*, 2013, § 48). The authorities, both medical and social, have a duty to protect children and cannot be held liable every time genuine and reasonably held concerns about the safety of children vis-à-vis members of their

family are proved, retrospectively, to have been misguided (*R.K. and A.K. v. the United Kingdom*, 2008, § 36; *A.D.* and *O.D. v. the United Kingdom*, 2010, § 84). It follows that the domestic decisions can only be examined in the light of the situation such as it presented itself to the domestic authorities at the time these decisions were taken (*B.B. and F.B. v. Germany*, 2013, § 48).

426. Thus, where domestic authorities were confronted with at least prima facie credible allegations of severe physical abuse, the temporary withdrawal of parental authority was sufficiently justified (*B.B. and F.B. v. Germany*, 2013, § 49). However, a decision to withdraw parental authority permanently did not provide sufficient reasons in the main proceedings and was thus an Article 8 violation (*ibid.*, §§ 51-52). In *Wetjen and Others v. Germany*, 2018, the Court found that the risk of systematic and regular caning constituted a relevant reason to withdraw parts of the parents' authority and to take the children into care (§ 78) (see also *Tlapak and Others v. Germany*, 2018, § 91). The Court assessed whether the domestic courts had struck a fair balance between the parents' interests and the best interests of the children (*Wetjen and Others v. Germany*, 2018, §§ 79-85).

427. Where withdrawal of parental authority had been based on a distinction essentially deriving from religious considerations, the Court held that there had been a violation of Article 8 in conjunction with Article 14 (*Hoffmann v. Austria*, 1993, § 36, concerning the withdrawal of parental rights from the applicant after she divorced the father of their two children because she was a Jehovah's Witness). Furthermore, the Court considered disproportionate the decision to take a healthy infant into care because the mother chose to leave hospital earlier than recommended by doctors (*Hanzelkovi v. the Czech Republic*, 2014, § 79). However, it has held that the withdrawal of certain aspects of parental authority and the forcible removal children from their parents' care for three weeks on account of the parents' persistent refusal to send the children to school "struck a proportionate balance between the best interests of the children and those of the applicants, which did not fall outside the margin of appreciation granted to the domestic authorities" (*Wunderlich v. Germany*, 2019, § 57).

428. The fact that a child could be placed in a more beneficial environment for his or her upbringing will not on its own justify a compulsory measure of removal from the care of the biological parents; there must exist other circumstances pointing to the "necessity" of such an interference with the parents' right under Article 8 to enjoy a family life with their child (*Strand Lobben and Others v. Norway* [GC], 2019, § 208; *K. and T. v. Finland* [GC], 2001, § 173). Furthermore, the application of the relevant provisions of national law must be devoid of any arbitrariness (*Zelikha Magomadova v. Russia*, 2019, § 112).

429. The judgment in *Strand Lobben and Others v. Norway* [GC], 2019, summarised the case-law principles (§§ 202-213) applicable to cases where the authorities have decided to replace the foster home arrangement with a more far-reaching type of measure, namely deprivation of parental responsibilities and authorisation of adoption. The Court has had regard to the principle that "such measures should only be applied in exceptional circumstances and could only be justified if they were motivated by an overriding requirement pertaining to the child's best interests" (*S.S. v. Slovenia*, 2018, §§ 85-87, 96 and 103; *Aune v. Norway*, 2010, § 66). A mother's financial situation cannot, without regard for changed circumstances, justify the removal of a child from her mother's care (*R.M.S. v. Spain*, 2013, § 92). Likewise, a breach was found where domestic authorities had merely based their decision on the applicant's financial and social difficulties, without providing him with appropriate social assistance (*Akinnibosun v. Italy*, 2015, §§ 83-84). In *Soares De Melo v. Portugal*, 2016, the Court found a violation of Article 8 where the children of a woman living in precarious conditions were placed in care with a view to adoption, resulting in the severance of the family ties (§§ 118-123). Further, the absence of skills and experience in rearing children could hardly in itself be regarded as a legitimate ground for restricting parental authority or keeping a child in public care (*Kocherov and Sergeyeva v. Russia*, 2016, § 106, concerning a father with a mild intellectual disability). In *Van Slooten v. the Netherlands*, 2025, § 73, the domestic authorities having put considerable weight on the child's vulnerability without any in-depth analysis thereof when terminating the mother's parental authority, contributed to the finding of a violation of Article 8 of the Convention. In *Andronache*

v. Romania (dec.), 2025, the nature of the crimes committed by the father, who was the only surviving parent and serving a prison term at that time, was taken into account, among other things, in the domestic courts' assessment (§§ 54-67).

430. In *Strand Lobben and Others v. Norway* [GC], 2019, the Court found a violation because the decision-making process leading to the withdrawal of parental responsibility and consent to adoption did not take all views and interests of the applicants into account. In particular, the authorities had failed to facilitate contact after the child was initially taken into care, and they had also failed to order a fresh expert examination of the mother's capacity to provide proper care (§§ 220-225; compare *Kilic v. Austria*, 2023, §§ 124-137 and *V.Y.R. and A.V.R. v. Bulgaria*, 2022, §§ 74-101). Similarly, in *Omorefe v. Spain*, 2020, the Court found that the decisions to place a baby under guardianship at the mother's request and to authorise an adoption six years later, despite the mother's opposition, were not conducted in such a way as to ensure that the mother's views and interests were duly taken into account and were not surrounded by safeguards proportionate to the gravity of the interference and the interests at stake (§ 60). In particular, the authorities did not consider the possibility of reuniting the child with his mother, they did not envisage less radical measures such as temporary reception or simple, non-pre-adoptive foster care and the applicant's contact rights were withdrawn from her without any psychological expertise. Moreover, pre-adoptive foster care for the child was implemented 20 days after the applicant was informed that she would have a period of six months in which to achieve certain objectives in order to reunite with her son. No violation, however, was found in a case where parental rights were withdrawn from a mentally-ill mother (with subsequent adoption) as there was no realistic possibility of the applicant resuming care of the child despite the positive steps taken to assist the mother (*S.S. v. Slovenia*, 2018, §§ 97 and 103-104).

431. A care order should be regarded as a temporary measure, to be discontinued as soon as circumstances permit, and any measures implementing temporary care should be consistent with the ultimate aim of reuniting the natural parents and the child (*Strand Lobben and Others v. Norway* [GC], 2019, § 208; *Olsson v. Sweden (no. 1)*, 1988, § 81). The positive duty to take measures to facilitate family reunification as soon as reasonably feasible will begin to weigh on the competent authorities with increasing force as from the commencement of the period of care, subject always to its being balanced against the duty to consider the best interests of the child (*K. and T. v. Finland* [GC], 2001, § 178 and *Haddad v. Spain*, 2019, § 54). The Court found a violation of Article 8 where the domestic authorities, by declaring the children of the applicant adoptable, did not make all the necessary efforts to preserve the parent-child relationship (*S.H. v. Italy*, 2015, § 58). A violation was found where a mother was denied contact rights in respect of her child in foster care because of abduction risk by the father. As the Court pointed out, the risk of abduction of the applicant's child by her father (and hence the issue of his protection) should not prevail over sufficiently addressing the mother's contact rights with her child (*Jansen v. Norway*, 2018, §§ 103-104). The Court also found a violation of Article 8 where the authorities did not re-establish contact between a child and her father following his acquittal of charges of domestic violence and the return of two older children to his care. The Court did not find convincing the reasons relied on by the authorities and domestic courts to justify the child's placement in pre-adoption care (*Haddad v. Spain*, 2019, §§ 57-74). In comparison, in *A and Others v. Iceland*, 2022, the Supreme Court had not based its decision to deprive the first and second applicants of custody on a finding that the allegations against the first applicant were true. On the contrary, the Supreme Court recognised the final binding force of the first applicant's acquittal, but noted that that acquittal alone could not be determinative of the childcare proceedings. It proceeded to carry out an assessment of the facts of the case and the available expert evidence, without any further reference to the criminal proceedings against the first applicant or any allegedly criminal behaviour on his part. The Court therefore concluded that the domestic authorities had acted within their margin of appreciation (§§ 84-97). In *Van Slooten v. the Netherlands*, 2025, §§ 74-77, proceedings for terminating a mother's parental authority were at stake. In giving up on family reunification as the ultimate goal at a very early stage, without a proper assessment of the applicant's parenting capacity or adequately demonstrating why reunification would no longer be compatible

with the child's best interests, the domestic authorities contributed to finding a violation of Article 8 (see also paragraph 429 above).

432. Article 8 demands that decisions of courts aimed in principle at facilitating visits between parents and their children, so that they can reestablish relations with a view to reunification of the family, must be implemented in an effective and coherent manner. No logical purpose would be served in deciding that visits may take place if the manner in which the decision is implemented means that de facto the child is irreversibly separated from its natural parent. Accordingly, authorities failed to strike a fair balance between the interests of an applicant and her children under Article 8 as a result of the absence of any time-limit on a care order and the negative conduct and attitudes of those at the care centre which drove the first applicant's children towards an irreversible separation from their mother (*Scozzari and Giunta v. Italy* [GC], 2000, §§ 181 and 215).

433. An emergency care order placing an applicant's child in public care and the authorities' failure to take sufficient steps towards a possible reunification of the applicants' family regardless of any evidence of a positive improvement in the applicants' situation was also a violation of the right to family life, but subsequent normal care orders and access restrictions were not (*K. and T. v. Finland* [GC], 2001, § 170, § 174, § 179 and § 194).

434. In *Blyudik v. Russia*, 2019, the Court held that the placement of the applicant's daughter in a closed educational facility 2,500km from his home was unlawful in the absence of any grounds under domestic law for such placement.

4. Other family relationships

a. As between siblings, grandparents

435. Family life can also exist between siblings (*Moustaquim v. Belgium*, 1991, § 36; *Mustafa and Armağan Akın v. Turkey*, 2010, § 19) and aunts/uncles and nieces/nephews (*Boyle v. the United Kingdom*, 1994, §§ 41-47). However, the traditional approach is that close relationships short of family life generally fall within the scope of private life (*Znamenskaya v. Russia*, 2005, § 27 and the references cited therein).

436. The Court has recognised the relationship between adults and their parents and siblings as constituting family life protected under Article 8 even where the adult did not live with his parents or siblings (*Boughanemi v. France*, 1996, § 35) and the adult had formed a separate household and family (*Moustaquim v. Belgium*, 1991, §§ 35 and 45-46; *El Boujaïdi v. France*, 1997, § 33). In more recent jurisprudence, the Court has stated that family ties between adults and their parents or siblings attract lesser protection unless there is evidence of further elements of dependency, involving more than the normal emotional ties (*Benhebba v. France*, 2003, § 36; *Mokrani v. France*, 2003, § 33; *Onur v. the United Kingdom*, 2009, § 45; *Slivenko v. Latvia* [GC], 2003, § 97; *A.H. Khan v. the United Kingdom*, 2011, § 32).

437. The Court has stated that family life includes at least the ties between near relatives, for instance those between grandparents and grandchildren, since such relatives may play a considerable part in family life (*Marckx v. Belgium*, 1979, § 45; *Bronda v. Italy*, 1998, § 51; *T.S. and J.J. v. Norway* (dec.), 2016, § 23). The relationship between grandparents and grandchildren is different in nature and degree from the relationship between parent and child and thus by its very nature generally calls for a lesser degree of protection. Therefore, the right to respect for family life of grandparents in relation to their grandchildren primarily entails the right to maintain a normal grandparent-grandchild relationship through contact between them (*Kruškić v. Croatia* (dec.), 2014, § 111; *Mitovi v. the Former Yugoslav Republic of Macedonia*, 2015, § 58; *Q and R v. Slovenia*, 2022, § 94). However, the Court considers that contact between grandparents and grandchildren normally take place with the agreement of the person who has parental responsibility, which means that access of a grandparent to his or her grandchild is normally at the discretion of the child's parents (*Kruškić v. Croatia* (dec.),

2014, § 112). Where a grandmother took care of her grandchild since her birth, and behaved in all respects like her mother, the Court has accepted that the relationship between the applicant and her granddaughter was in principle of the same nature as the other family relationships protected by Article 8 (*Terna v. Italy*, 2021, § 64). The Court found that the failure to facilitate the applicant grandmother's right to contact, after the child was removed from her care, violated her right to respect for her "family life". Although the Court accepted that there were concerns about the risk of child abduction, it nevertheless found that the authorities had not made adequate and sufficient efforts to enforce the applicant's rights (§§ 72-76). As concerns the right to respect for family life of grandparents in relation to their grandchild's best interests in a situation where the young grandchild has lived all his life with them, *vis-à-vis* the rights of the biological father who requested his transfer to him, the Court stressed the obligation for the domestic courts to find a solution which reflects the best interests of the child, notably on the basis of reports from specialists (*T.A. and Others v. the Republic of Moldova*, 2021, §§ 59 and 63).

438. In *Petithory Lanzmann v. France* (dec.), 2019, the Court held that Article 8 does not grant a right to become a grandparent (§ 20).

439. The principle of mutual enjoyment by parent and child of each other's company also applies in cases involving relations between a child and its grandparents (*L. v. Finland*, 2000, § 101; *Manuello and Nevi v. Italy*, 2015, § 54, §§ 58-59, as concerns a suspension of grandparents' contact rights with granddaughter; *Q and R v. Slovenia*, 2022, § 95). Particularly where the natural parents are absent, family ties have been held to exist between uncles and aunts and nieces and nephews (*Butt v. Norway*, 2012, §§ 4 and 76; *Jucius and Juciuvienė v. Lithuania*, 2008, § 27). However, in normal circumstances the relationship between grandparents and grandchildren is different in nature and degree from the relationship between parent and child and thus by its very nature generally calls for a lesser degree of protection (*Kruškić v. Croatia* (dec.), 2014, § 110; *Mitovi v. the Former Yugoslav Republic of Macedonia*, 2015, § 58).

b. Prisoners' and other detainees' right to contact[72]

440. It is an essential part of a prisoner's right to respect for family life that the prison authorities assist him or her in maintaining contact with his or her close family (*Chaldayev v. Russia*, 2019, § 59; *Messina v. Italy (no. 2)*, 2000, § 61; *Kurkowski v. Poland*, 2013, § 95; *Vintman v. Ukraine*, 2014, § 78). There is also a particular obligation under that Article to enable a detainee to contact his or her family rapidly after being taken into custody (*Lebois v. Bulgaria*, 2017, § 53). The Court attached considerable importance to the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), which noted that long term prison regimes "should seek to compensate for the desocialising effects of imprisonment in a positive and proactive way" (*Khoroshenko v. Russia* [GC], 2015, § 144), and to the relevant instruments of the Council of Europe highlighting the importance of preventing the breakdown of the familiy ties of prisoners by maintaining all forms of contact, in particular by written correspondence, telephone and visits (*Danilevich v. Russia*, 2021, § 60).

441. Restrictions such as limitations put on the number of family visits, supervision of those visits and, subjection of a detainee to a special prison regime or special visit arrangements constitute an "interference" with his rights under Article 8 (*Mozer v. the Republic of Moldova and Russia* [GC], 2016, §§ 193-195). Similarly, decisions of the national authorities to restrict prisoners' visiting rights with their school-age children at weekends were found to interfere disproportionately with their right to respect for their family life (*Subaşı and Others v. Türkiye*, 2022, §§ 77-93).The subjecting of a detainee to a special prison regime which involved more restrictions on his private and family life than a regular prison regime constitutes an interference (*Danilevich v. Russia*, 2021, § 51). However, where applicants complain about limitations on the number of family visits, in order to establish "victim"

[72] See the Case-law Guides on Prisoners' Rights and on Terrorism.

status under Article 34 of the Convention, they need to demonstrate that they had relatives or other persons with whom they wished to maintain contact while in detention (*Chernenko and Others v. Russia* (dec.), 2019, §§ 46-47). The "interference" has to be justified under the second paragraph of Article 8 (see, for instance, the recapitulation of the case-law on visiting rights in *Khoroshenko v. Russia* [GC], 2015, §§ 123-126, where a ban on long-term family visits to life prisoners was found a violation, § 148, and *Mozer v. the Republic of Moldova and Russia* [GC], 2016, where the restriction of prison visits from the applicant's parents did not comply with Article 8 § 2, §§ 193-196; *Khodorkovskiy and Lebedev v. Russia (no. 2)*, 2020, § 598 and *Resin v. Russia*, 2018, §§ 39-41 as regards the unavailability of long-stay visits in a remand prison). *Öcalan v. Turkey (no. 2)*, 2014, concerned stricter security regimes for dangerous prisoners. The Court considered that the restrictions on the applicant's right to respect for his family life had not exceed those which are necessary in a democratic society for the protection of public safety and the prevention of disorder and crime, within the meaning of Article 8 § 2 (§§ 161-164). The Court has also deemed a decision to restrict visitation rights for dangerous prisoners able to maintain their positions within their criminal organisations to be necessary and proportionate given the necessity of the specific prison regime that was in force at the time (*Enea v. Italy* [GC], 2009, §§ 125-131). In addition, it has held that the restriction of visits by the unmarried partner of the prisoner could be justified if the partner was registered in the police records as a perpetrator of a criminal offence (*Ulemek v. Croatia*, 2019, § 151).

442. The Court has confirmed that the Convention does not require the Contracting States to make provision for "conjugal visits". Accordingly, this is an area in which the Contracting States enjoy a wide margin of appreciation in determining the steps to be taken to ensure compliance with the Convention with due regard to the needs and resources of the community and of individuals (*Lesław Wójcik v. Poland*, 2021, §§ 113-114). Furthermore, where such visits are provided for, refusal may be regarded as justified for the prevention of disorder and crime within the meaning of Article 8 § 2 (*Aliev v. Ukraine,* 2003, §§ 185-190; *Lesław Wójcik v. Poland*, 2021, §§ 122 and §§ 123-135, as concerns the refusal of a convicted prisoner's requests for unsupervised conjugal visits which constituted a privilege in domestic law).

443. In *Ciupercescu v. Romania (no. 3)*, 2020, concerning a prisoner's online communication with his wife, the Court considered that Article 8 could not be interpreted as guaranteeing prisoners the right to communicate with the outside world by way of online devices, particularly where facilities for contact by alternative means were available and adequate (§ 105; see also *Subaşı and Others v. Türkiye*, § 105). In *Ciupercescu*, while domestic law allowed inmates to maintain contact with the outside world, particularly family members, through online communication and domestic courts had also acknowledged this right, the applicant could not exercise that right due to the lack of implementing regulations. Nevertheless, the Court concluded that the restriction of the right concerned a relatively short period of time and the applicant, who could receive visits from his wife and make telephone calls, could maintain contact with her *via* alternative means of communication (§§ 106-110).

444. In *Danilevich v. Russia*, 2021, the Court recapitulated its case-law concerning the right of prisoners to communicate with their families by telephone (see §§ 48-51 with further references therein, *Bădulescu v. Portugal*, 2020, §§ 35-36 and *Lebois v. Bulgaria*, 2017, § 61). It held that a total ban on telephone communications between prisoners with a life-sentence and their relatives, except in an emergency and imposed without any references to personal circumstances, breached Article 8 (§§ 56-63). It reiterated that the State does not have a free hand to introduce restrictions in a general manner without affording any degree of flexibility for determining whether the limitations in specific cases are appropriate or indeed necessary, and that the principle of proportionality requires a discernible and sufficient link between the application of such measures and the conduct and circumstances of the individual concerned (§ 58). In this context, the relevant instruments of the Council of Europe highlight the importance of preventing the breakdown of prisoners' family ties by

maintaining all forms of contact, in particular through written correspondence, telephone, and visits (§§ 60-61).

445. In *Mirgadirov v. Azerbaijan and Turkey*, 2020, there were restrictions on the applicant's meetings with persons other than his lawyer. The Court found that there had been a *de facto* outright ban on the applicant having any contact (meetings, telephone calls or correspondence) with the outside world, except for contact with his lawyers. In the absence of any explanation as to why such extreme measures had been necessary, and without any apparent indications that there was a risk of secret information being transferred through his family members, a breach of Article 8 was found (§ 123).

446. The Court held that the refusal to transfer the applicant to a prison closer to his parents 'home had constituted a violation of Article 8 (*Rodzevillo v. Ukraine*, 2016, §§ 85-87; *Khodorkovskiy and Lebedev v. Russia*, 2013, §§ 831-851). As concerns an applicant serving a 25-year prison sentence for collaboration with a terrorist organisation, the Court declared a similar complaint inadmissible as manifestly ill-founded, noting, in particular, the legitimate aim of the authorities in severing the applicant links with the terrorist organisation, and the fact that the journeys his close relatives had to make did not appear to have raised any insurmountable or particularly difficult problems (*Fraile Iturralde v. Spain* (dec.), 2019, §§ 26-33). In *Polyakova and Others v. Russia*, 2017, the Court found a breach of Article 8 on account of the failure of the applicable domestic law to provide sufficient safeguards against abuse in the field of geographical distribution of prisoners (§ 116).

447. In the context of intra-State transfers, while the domestic authorities have a wide discretion in matters relating to execution of sentences, such discretion is not absolute, particularly as regards the distribution of the prison population (*Rodzevillo v. Ukraine*, 2016, § 83). The Court has also ruled on inter-State prison transfer requests. In *Serce v. Romania*, 2015, § 56, the applicant, a Turkish national serving an 18-year prison sentence in Romania, complained about the refusal of the Romanian authorities to transfer him to another Council of Europe member State, Turkey, to serve the remainder of his sentence there, close to his wife and children. Despite having found that the unhygienic conditions in which he had been detained in Romania, the lack of activities or work and the prison overcrowding to which he was subject breached his Article 3 rights, the Court confirmed that Article 8 of the Convention was not applicable to his request for an inter State prison transfer. In *Palfreeman v. Bulgaria* (dec.), 2017, concerning the authorities' refusal to transfer a prisoner to a non-member State of the Council of Europe, the Court pointed out that the Convention did not grant prisoners the right to choose their place of detention (§ 36) and examined the question of the applicability of Article 8 in the light of the provisions of the relevant treaty on the transfer of sentenced prisoners (§§ 33-36).

448. The refusal of leave to attend a relative's funeral will constitute an interference with the right to respect for family life (see *Schemkamper v. France*, 2005, § 31; *Lind v. Russia*, 2007, § 92; and *Feldman v. Ukraine (no. 2)*, 2012, § 32; *G.T. v. Greece*, 2022, § 68). Although Article 8 does not guarantee an unconditional right to leave prison to attend a relative's funeral (or to leave prison to visit a sick relative - see *Ulemek v. Croatia*, 2019, § 152) every such limitation must be justifiable as being "necessary in a democratic society" (see *Lind v. Russia*, 2007, § 94, and *Feldman v. Ukraine (no. 2)*, 2012, § 34). The authorities can therefore refuse an individual the right to attend the funeral of his parents only if there are compelling reasons for such refusal and if no alternative solution can be found (see *Płoski v. Poland*, 2002, § 37; *Guimon v. France*, 2019, §§ 44-51; *G.T. v. Greece*, 2022, § 69). For example, a refusal to allow a prisoner to attend the funerals of close relatives was held to amount to an unjustified interference with the respect for private and family life in *Płoski v. Poland*, 2002, § 39; in *Vetsev v. Bulgaria*, 2019, §§ 25-26; and in *G.T. v. Greece*, 2022, §§ 75-76 (concerning the authorities' refusal to allow the applicant to visit his mother at hospital and eventually to attend her funeral). On the other hand, in an anti-terrorism context, the Court found no violation of Article 8 as the judicial authorities had carried out a balancing exercise between the interests at stake, namely the applicant's right to respect for her family life on the one hand and public safety and the prevention of disorder and crime on the other (*Guimon v. France*, 2019, § 50).

449. *Solcan v. Romania*, 2019, §§ 24-35 concerned a request by a detainee in a psychiatric facility for temporary release to attend a relative's funeral. The Court stressed that perpetrators of criminal acts who suffer from mental disorders and are placed in psychiatric facilities are in a fundamentally different situation than other detainees, in terms of the nature and purpose of their detention. Consequently, there are different risks to be assessed by the authorities. On the facts of the case, the Court found, in particular, that an unconditional denial by the domestic courts of compassionate leave or another solution to enable the applicant to attend her mother's funeral was not compatible with the State's duty to assess each individual request on its merits and to demonstrate that the restriction on the individual's right to attend a relative's funeral was "necessary in a democratic society" within the meaning of Article 8 § 2.

5. Immigration and expulsion

450. The Court has affirmed that a State is entitled, as a matter of international law and subject to its treaty obligations, to control the entry of aliens into its territory and their residence there (*Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 1985, § 67; *Boujlifa v. France*, 1997, § 42). Moreover, the Convention does not guarantee the right of a foreign national to enter or to reside in a particular country. Thus, there is no obligation for the domestic authorities to allow an alien to settle in their country (*Jeunesse v. the Netherlands* [GC], 2014, § 103). Nonetheless, the Court has accepted that the expulsion of settled migrants and foreigners unlawfully present on the territory of a Contracting State may interfere with their right to respect for their private and family life and, in certain circumstances, be incompatible with their rights under Article 8 of the Convention (*Üner v. the Netherlands* [GC], 2006,; *Maslov v. Austria* [GC], 2008; *Jeunesse v. the Netherlands* [GC]; 2014, and *Savran v. Denmark* [GC], 2021).

For a detailed analysis of the Court's case-law on this topic, see the Case-Law Guide on Immigration.

a. Children in detention centres[73]

451. The Court has recognised that the national authorities' assessment of the age of an individual might be a necessary step in the event of doubt as to his or her status as a minor, and that the principle of presumption implies that sufficient procedural guarantees must accompany the relevant procedure. These safeguards included the appointment of a legal representative or guardian, access to a lawyer and informed participation of the person whose age was in doubt in the age-assessment procedure (*Darboe and Camara v. Italy*, 2022, §§ 154-155).

452. Whilst mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life (*Olsson v. Sweden (no. 1)*, 1988, § 59), it cannot be inferred from this that the sole fact that the family unit is maintained necessarily guarantees respect for the right to a family life, particularly where the family is detained (*Popov v. France*, 2012, § 134; *Bistieva and Others v. Poland*, 2018, § 73; and, by way of comparison, *B.G. and Others v. France*, 2020, where the family was neither separated nor detained). A measure of confinement must be proportionate to the aim pursued by the authorities; where families are concerned, the authorities must, in assessing proportionality, take account of the child's best interests (*Popov v. France*, 2012, § 140). Where a State systematically detained accompanied immigrant minors in the absence of any indication that the family was going to abscond, the measure of detention for fifteen days in a secure centre was disproportionate to the aim pursued and a violation of Article 8 (*ibid.*, §§ 147-148). The Court also found a violation of Article 8 where families were held in administrative detention for eighteen and nine days respectively while the authorities did not take all necessary measures to execute the decision of expulsion and there was no particular flight risk (*A.B. and Others v. France*, 2016, §§ 155-156; *R.K. and Others v. France*, 2016, §§ 114 and 117). In two other cases, however, the detention of

[73] See the Case-law Guide on Immigration.

families for a period of eight and ten days was not considered disproportionate (*A.M. and Others v. France*, 2016, § 97; *R.C. and V.C. v. France*, 2016, § 83).

453. In the case of *Bistieva and Others v. Poland*, 2018, the application was lodged by a family who had been held in a secure centre for five months, twenty days following their transfer from Germany. They had fled there shortly after their first asylum application had been rejected by the Polish authorities (§ 79). The Court held that even in light of the risk that the family might abscond, the authorities had failed to provide sufficient reasons to justify their detention for such a long period (§ 88). Indeed, the detention of minors calls for greater speed and diligence on the part of the authorities (§ 87).

454. The States' interest in foiling attempts to circumvent immigration rules must not deprive foreign minors, especially if unaccompanied, of the protection their status warrants (*Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, 2006, § 81). Where the risk of the second applicant's seeking to evade the supervision of the Belgian authorities was minimal, her detention in a closed centre for adults was unnecessary (*ibid*., § 83).

455. In *Moustahi v. France*, 2020, the domestic authorities placed two young children alone in administrative detention, refusing to entrust them to their father or even to come into contact with him. The Court held that the fact of placing certain members of the same family in a detention centre while other members of that family were free could be construed as interference with the exercise of their right to family life, regardless of the duration of the measure in question. If there had been a legal basis for the applicants' forced separation, it was conceivable that a State might refuse to entrust the children to a person claiming to be a member of their family, or to arrange a meeting between them, on grounds related to the children's best interests (such as the precaution of ascertaining beforehand, beyond all reasonable doubt, the reality of the alleged links). However, the refusal to reunite the applicants had not sought to ensure respect for the best interests of the children, but only to implement their removal as quickly as possible and in a manner contrary to domestic law, which could not be accepted as a legitimate aim (§ 114).

b. Family reunification[74]

456. Where immigration is concerned, Article 8, taken alone, cannot be considered to impose on a State a general obligation to respect a married couple's choice of country for their matrimonial residence or to authorise family reunification on its territory (*Jeunesse v. the Netherlands* [GC], 2014, § 107; *Biao v. Denmark* [GC], 2016, § 117). Nevertheless, in a case which concerns family life as well as immigration, the extent of a State's obligations to admit to its territory relatives of persons residing there will vary according to the particular circumstances of the persons involved and the general interest (*Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 1985, §§ 67-68; *Gül v. Switzerland*, 1996, § 38; *Ahmut v. the Netherlands*, 1969, § 63; *Sen v. the Netherlands*, 2001; *Osman v. Denmark*, 2011, § 54; *Berisha v. Switzerland*, 2013, § 60).

457. Factors to be taken into account in this context are the extent to which family life is effectively ruptured, the extent of the ties in the Contracting State, whether there are insurmountable obstacles in the way of the family living in the country of origin of one or more of them and whether there are factors of immigration control (for example, a history of breaches of immigration law) or considerations of public order weighing in favour of exclusion (*Rodrigues da Silva and Hoogkamer v. the Netherlands*, 2006, § 38; *Ajayi and Others v. the United Kingdom* (dec.), 1999; *Solomon v. the Netherlands* (dec.), 2000).

458. Another important consideration is whether family life was created at a time when the persons involved were aware that the immigration status of one of them was such that the persistence of that family life within the host State would from the outset be precarious (*Sarumi v. the United*

[74] See the Case-law Guide on Immigration.

Kingdom (dec.), 1999; *Shebashov v. Latvia* (dec.), 2000). Where this is the case the removal of the non-national family member would be incompatible with Article 8 only in exceptional circumstances (*Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 1985, § 68; *Mitchell v. the United Kingdom* (dec.), 1998; *Ajayi and Others v. the United Kingdom* (dec.), 1999; *Rodrigues da Silva and Hoogkamer v. the Netherlands*, 2006; *Biao v. Denmark* [GC], 2016, § 138). For instance, in *Jeunesse v. the Netherlands* [GC], 2014, viewing several factors cumulatively, the Court found that the circumstances of the applicant's case were indeed exceptional. The family reunification process must also be adequately transparent and processed without undue delays (*Tanda-Muzinga v. France*, 2014, § 82). The Court also found that special circumstances existed where an 83-year-old applicant, who had been resident in Switzerland for 54 years, was refused a residence permit and his expulsion was ordered. He had a number of criminal convictions, the last 16 years of his residence were unlawful, and he was divorced from his wife. Nevertheless, those factors were not sufficient in view of the extremely long total duration of his stay in the country, his ties in that country established during his legal residence (including his children and grandchildren, who lived there), his advanced age, the uncertainty about his relations still remaining in his country of origin, the absence of serious criminal offences since 2005 and insufficient efforts by the national authorities for more than 20 years to expel him (*Ghadamian v. Switzerland*, 2023, §§ 61-64).

459. In *M.A. v. Denmark* [GC], 2021, the Grand Chamber considered the Article 8 compatibility of a three-year waiting period for applying for family reunion. It accepted that States had a wide margin of appreciation in this area. In particular, it acknowledged that resource constraints caused by an influx of asylum seekers might justify the prioritisation of Article 3 protection over and above the interests of refugees and persons in receipt of subsidiary protection to family reunification. It did not, therefore, consider that a waiting period *per se* offenced against Article 8 (see §§ 145-146). However, the discretion enjoyed by States in this area was not unlimited and on the facts of the case before it considered that a waiting period of three years was by any standard a long time to be separated from one's family, when (as in the applicant's case) the family member left behind remained in a country characterised by arbitrary violent attacks and ill-treatment of civilians and when insurmountable obstacles to reunification there had been recognised. This was especially so given that the actual separation period would inevitably be even longer than the waiting period. Furthermore, beyond very limited exceptions the impugned legislation had not allowed for an individualised assessment of the interest of family unity in the light of the concrete situation of the persons concerned. Nor had it provided for a review of the situation in the country of origin with a view to determining the actual prospect of return. Thus, the Court found that in the applicant's case a fair balance had not been struck between the relevant interests at stake. *In B.F. and Others v. Switzerland*, 2023 the four applicants had been recognised as refugees, but granted provisional admission rather than asylum, since the grounds for their refugee status arose because of their illegal exit from those countries. As a consequence, they were not entitled to family reunification: it was discretionary and subject to certain conditions being met, including their non-reliance on social assistance. Their applications for family reunification were rejected as they had not satisfied the financial independence criteria. The Court noted that the margin of appreciation was narrower that in *M.A.*, since there was no support in the Refugee Convention, or at national, international and European levels, for distinguishing between different types of refugee. It went on to find a violation of Article 8 in three of the four cases. These applicants had done all that could reasonably be expected of them to earn a living and to cover their and their family members' expenses, and therefore a fair balance had not been struck between the competing interests at stake. It found no violation in the case of the fourth applicant, as the Administrative Court had not overstepped its margin of appreciation in taking into account her lack of initiative in improving her financial situation.

c. Deportation and expulsion decisions[75]

460. A State's entitlement to control the entry of aliens into its territory and their residence there applies regardless of whether an alien entered the host country as an adult or at a very young age, or was perhaps even born there (*Üner v. the Netherlands* [GC], 2006, §§ 54-60). While a number of Contracting States have enacted legislation or adopted policy rules to the effect that long-term immigrants who were born in those States or who arrived there during early childhood cannot be expelled on the basis of their criminal record, such an absolute right not to be expelled cannot be derived from Article 8 (*ibid.*, § 55). However, very serious reasons are required to justify expulsion of a settled migrant who has lawfully spent all or the major part of his or her childhood and youth in a host country (*Maslov v. Austria* [GC], 2008, § 75). Taking into account the applicant's family life and the fact that he only committed one serious crime in 1999, the Court stated that the expulsion of the applicant to Albania and a lifetime ban on returning to Greece violated Article 8 (*Kolonja v. Greece*, 2016, §§ 57-58). By contrast, in *Levakovic v. Denmark*, 2018, §§ 42-45, the Court did not find a violation of the "private life" of an adult migrant convicted, after entering adulthood, of serious offences, who had no children, no elements of dependence with his parents or siblings, and had consistently demonstrated a lack of will to comply with the law. The Court made clear that unlike in Maslov, the authorities did not base their decision to expel the applicant on crimes perpetrated when the applicant was a juvenile (see notably §§ 44-45). Although applications are usually lodged by the person being deported, the Court has made it clear that expulsion interferes not only with the rights of the person who is being expelled but also with those of family members who stay behind (see *Corley and Others v. Russia*, 2021, § 95).

461. In assessing such cases, the Court has generally understood the margin of appreciation to mean that, where the independent and impartial domestic courts have carefully examined the facts, applying the relevant human rights standards consistently with the Convention and its case-law, and adequately balanced the applicant's personal interests against the more general public interest in the case, it is not for the Court to substitute its own assessment of the merits (including, in particular, its own assessment of the factual details of proportionality) for that of the competent national authorities. The only exception to this is where there are shown to be "strong reasons" for doing so (*Ndidi v. the United Kingdom*, 2017, § 76). For instance, in two cases concerning the expulsion of settled migrants, the Court declined to substitute its conclusions for those of the domestic courts, which had thoroughly assessed the applicants' personal circumstances, carefully balanced the competing interests and took into account the criteria set out in its case law, and reached conclusions which were "neither arbitrary nor manifestly unreasonable" (*Hamesevic v. Denmark* (dec.), 2017, § 43; *Alam v. Denmark* (dec.), 2017, § 35; see, by way of comparison, *I.M. v. Switzerland*, 2019, in which the proportionality of the expulsion order had only been examined superficially). More recently, the Court considered a case in which the authorities had integrated the proportionality test into domestic legislation, which the applicant argued precluded those courts from conducting an individualised assessment of proportionality (*Unuane v. the United Kingdom*, 2020). The Court did not consider that the national courts were necessarily precluded from carrying out a Convention-compliant Article 8 assessment, but found that, on the facts of the case, the Court had failed to conduct the requisite balancing exercise (§§ 78-84; by way of comparison, see *M.M. v. Switzerland*, 2020). The Court therefore carried out the balancing exercise itself and concluded that the applicant's expulsion had breached Article 8 (§§ 85-90).

462. The Court also examines the best interests and wellbeing of the children, in particular the seriousness of the difficulties which any children of the applicant are likely to encounter in the country to which the applicant is to be expelled; and the solidity of social, cultural and family ties with the host country and with the country of destination (*Üner v. the Netherlands* [GC], 2006, § 58; *Udeh v. Switzerland*, 2013, § 52). The Court has affirmed that the best interests of minor children should be

[75] See the Case-law Guide on Immigration.

taken into account in the balancing exercise with regard to expulsion of a parent, including the hardship of returning to the country of origin of the parent (*Jeunesse v. the Netherlands* [GC], 2014, §§ 117-118).

463. In immigration cases, there will be no "family life" between parents and adult children unless they can demonstrate additional elements of dependence other than normal emotional ties (*Kwakye-Nti and Dufie v. the Netherlands* (dec.), 2000; *Slivenko v. Latvia* [GC], 2003, § 97; *A.S. v. Switzerland*, 2015, § 49; *Levakovic v. Denmark*, 2018, §§ 35 and 44; *Demirci v. Hungary*, 2025, §§ 72-74). However, such ties may be taken into account under the head of "private life" (*Slivenko v. Latvia* [GC], 2003). Furthermore, the Court has accepted in a number of cases concerning young adults who have not yet founded a family of their own that their relationship with their parents and other close family members also constituted family life (*Maslov v. Austria* [GC], 2008, § 62; *Azerkane v. the Netherlands*, 2020, §§ 63-64; *Bousarra v. France*, 2010, § 38). In other cases, the Court found that the applicants could not invoke family relationships to their adult children due to the non-existence of elements of dependency. Nevertheless, the Court has considered that family relations with adult children are not completely irrelevant to the assessment of the applicants' family situation (see notably *Savran v. Denmark* [GC], 2021, § 174 and the references therein).

464. Where expulsions are challenged on the basis of alleged interference with private and family life, it is not imperative, in order for a remedy to be effective, that it should have automatic suspensive effect (*De Souza Ribeiro v. France* [GC], 2012, § 83). Nevertheless, in immigration matters, where there is an arguable claim that expulsion threatens to interfere with the alien's right to respect for his or her private and family life, Article 13 in conjunction with Article 8 of the Convention requires that States must make available to the individual concerned the effective possibility of challenging the deportation or refusal of residence order and of having the relevant issues examined with sufficient procedural safeguards and thoroughness by an appropriate domestic forum offering adequate guarantees of independence and impartiality (*M. and Others v. Bulgaria*, 2011, §§ 122-132; *Al-Nashif v. Bulgaria*, 2002, § 133). Moreover, a person subject to a measure based on national security considerations must not be deprived of all guarantees against arbitrariness. On the contrary, he or she must be able to have the measure in question scrutinised by an independent and impartial body competent to review all the relevant questions of fact and law, in order to determine the lawfulness of the measure and censure a possible abuse by the authorities. Before that review body the person concerned must have the benefit of adversarial proceedings in order to present his or her point of view and refute the arguments of the authorities (*Ozdil and Others v. the Republic of Moldova*, 2019, § 68).

465. The Court has found a violation of an applicant's right to respect for his private and family life where the obligation not to abscond and the seizure of the applicant's international travel passports prevented the applicant from travelling to Germany, where he had lived for several years and where his family continued to live (*Kotiy v. Ukraine*, 2015, § 76).

466. The proposed deportation of a person suffering from serious illness to his country of origin in face of doubts as to the availability of appropriate medical treatment there, without any assessment of his Article 8 rights, would constitute a violation of Article 8 (*Paposhvili v. Belgium* [GC], 2016, §§ 221-226). Moreover, where a person with serious mental health problems is facing deportation following a criminal conviction, his or her state of his health should be taken into account as one of the balancing factors, including its impact on culpability and the impact of treatment on the risk of reoffending (*Savran v. Denmark* [GC], 2021, §§ 190-202).

d. Residence permits[76]

467. Neither Article 8 nor any other provision of the Convention can be construed as guaranteeing, as such, the right to the granting of a particular type of residence permit, provided that a solution

[76] See the Case-law Guide on Immigration.

offered by the authorities allows the individual concerned to exercise without obstacles his or her right to respect for private and/or family life (*B.A.C. v. Greece*, 2016, § 35). In particular, if a residence permit allows the holder to reside within the territory of the host country and to exercise freely there the right to respect for his or her private and family life, the granting of such a permit represents in principle a sufficient measure to meet the requirements of Article 8. In such cases, the Court is not empowered to rule on whether the individual concerned should be granted one particular legal status rather than another, that choice being a matter for the domestic authorities alone (*Hoti v. Croatia*, 2018, § 121).

6. Material interests

468. "Family life" does not include only social, moral or cultural relations; it also comprises interests of a material kind (*Belli and Arquier-Martinez v. Switzerland*, 2018, § 59; *Di Trizio v. Switzerland*, 2016, § 60), as is shown by, among other things, maintenance obligations and the position occupied in the domestic legal systems of the majority of the Contracting States by the institution of the reserved portion of an estate (in French, "réserve héréditaire"). The Court has thus accepted that the right of succession between children and parents, and between grandchildren and grandparents, is so closely related to family life that it comes within the ambit of Article 8 (*Marckx v. Belgium*, 1979, § 52; *Pla and Puncernau v. Andorra*, 2004, § 26; *Colombier v. France*, 2024, § 35). According to *Şerife Yiğit v. Turkey* [GC], 2010, questions of inheritance and voluntary dispositions between near relatives appear to be intimately connected with family life (§ 95) (see also *Makarčeva v. Lithuania*, 2021, § 58). Article 8 does not, however, require that a child should be entitled to be recognised as the heir of a deceased person for inheritance purposes (*Haas v. the Netherlands*, 2004, § 43). Conversely, where the applicant, who had sought to have the paternity of his deceased biological father recognised, had claimed before the domestic courts that he wished to inherit from his father but also sought to show that the deceased had maintained relations with him and his mother, the Court considered that the right claimed by the applicant disclosed sufficient relevant elements to fall within the scope of "private life" (*Moldovan v. Ukraine*, 2024, § 35).

469. Complaints concerning social welfare benefits may fall within the ambit of family life for the purposes of Article 8 if the subject matter of the alleged disadvantage constitutes one of the modalities of exercising the right to respect for family life, in the sense that the measures seek to promote family life and necessarily affect the way in which it is organised. A range of factors are relevant for determining the nature of the benefit in question and they should be examined as a whole. These will include, in particular: the aim of the benefit, as determined by the Court in the light of the legislation concerned; the criteria for awarding, calculating and terminating the benefit as set forth in the relevant statutory provisions; the effects on the way in which family life is organised, as envisaged by the legislation; and the practical repercussions of the benefit, given the applicant's individual circumstances and family life throughout the period during which the benefit is paid (*Beeler v. Switzerland* [GC], 2022, § 72; *Berisha v. Switzerland* (dec.), 2023, §§ 39-45; *X and others v. Ireland*, 2023, §§ 73-75). Difficulties of a purely financial nature are not encompassed in the right to respect for private life (*Berisha v. Switzerland* (dec.), 2023, §§ 46-49).

470. The Court has found that the concept of family life is not applicable to a claim for damages against a third party following the death of the applicant's fiancée (*Hofmann v. Germany* (dec.), 2010).

471. Article 8 or the Convention cannot be interpreted as imposing a positive obligation on States to continue to pay social benefits regardless of ordinary residence. On the other hand, regard must be had to the specific features of the individual case, particularly the social and family situations in which the applicants find themselves (*Belli and Arquier-Martinez v. Switzerland*, 2018, §§ 63-67 concerning the discontinuation of non-contributory disability benefits owing to residence abroad).

472. "Family life" is also closely interrelated with the protection of "home" or "private life" when it comes, for instance, to attack on houses and destruction of belongings (*Burlya and Others v. Ukraine*, 2018) or to eviction (*Hirtu and Others v. France*, 2020, § 66[77]).

7. Testimonial privilege

473. An attempt to compel an individual to give evidence in criminal proceedings against someone with whom that individual had a relationship amounting to family life constituted an interference with his or her right to respect for his or her "family life" (*Van der Heijden v. the Netherlands* [GC], 2012, § 52; *Kryževičius v. Lithuania*, 2018, § 51). Such witnesses are relieved of the moral dilemma of having to choose between giving truthful evidence and thereby, possibly, jeopardising their relationship with the suspect or giving unreliable evidence, or even perjuring themselves, in order to protect that relationship (*Van der Heijden v. the Netherlands* [GC], 2012, § 65). For this reason, it can only apply to oral evidence (testimony), as opposed to real evidence, which exists independently of a person's will (*Caruana v. Malta* (dec.), 2018, § 35).

474. The right not to give evidence constitutes an exemption from a normal civic duty acknowledged to be in the public interest. Therefore, where recognised, it may be made subject to conditions and formalities, with the categories of its beneficiaries clearly set out. It requires balancing two competing public interests, i.e. the public interest in the prosecution of serious crime and the public interest in the protection of family life from State interference (*Van der Heijden v. the Netherlands* [GC], 2012, §§ 62 and 67).

475. The Court, for example, accepted that restricting the exercise of the testimonial privilege to individuals whose ties with the suspect could be objectively verified by drawing the line at marriage or registered partnerships (but not extending it to long-term relationships) was acceptable (*Van der Heijden v. the Netherlands* [GC], 2012, §§ 67-68). *Kryževičius v. Lithuania*, 2018, concerned a spouse compelled to testify in criminal proceedings in which his wife was a "special witness". The exemption from testifying under the domestic law only related to family members of a "suspect" or "accused" but not of a "special witness". Nonetheless, as this status was sufficiently similar to the status of a suspect, the criminal proceedings could be said to have been "against" the applicant's wife. Hence, punishing the applicant for refusing to testify in the criminal proceedings involving his wife as a suspect, constituted an interference with his right to respect for his "family life" (§ 51). Refusing testimonial privilege to the spouse was found to be in violation of Article 8 in this case (§§ 65 and 69).

[77] See relevant chapters of this Guide.

IV. Home[78]

A. General points

1. Scope of the notion of "home"

476. The notion of "home" is an autonomous concept which does not depend on the classification under domestic law (*Chiragov and Others v. Armenia* [GC], 2015, § 206). Accordingly, the answer to the question whether a habitation constitutes a "home" under the protection of Article 8 § 1 depends on the factual circumstances, namely the existence of sufficient and continuous links with a specific place (*Winterstein and Others v. France*, 2013, § 141 with further references therein; *Prokopovich v. Russia*, 2004, § 36; *McKay-Kopecka v. Poland* (dec.), 2006, and compare and contrast, *Hasanali Aliyev and Others v. Azerbaijan*, 2022, § 38; for the case of a forced displacement, see *Chiragov and Others v. Armenia* [GC], 2015, §§ 206-207, and *Sargsyan v. Azerbaijan* [GC], 2015, § 260; for people living illegally in caravans in an unauthorised camp for only six months, lacking sufficient and continuous links with the place, see *Hirtu and Others v. France*, 2020, § 65; compare and contrast *Faulkner and McDonagh v. Ireland* (dec.), 2022, § 91). Furthermore, the word "home" appearing in the English version of Article 8 is a term that is not to be strictly construed as the equivalent French term, "domicile", has a broader connotation (*Niemietz v. Germany*, 1992, § 30).

477. "Home" is not limited to property of which the applicant is the owner or tenant. It may extend to long-term occupancy, on an annual basis, for long periods, of a house belonging to a relative (*Menteş and Others v. Turkey*, 1997, § 73). "Home" is not limited to those which are lawfully established (*Ghailan and Others v. Spain*, 2012, § 55; *Buckley v. the United Kingdom*, 1996, § 54) and may be claimed by a person living in a flat whose lease is not in his or her name (*Prokopovich v. Russia*, 2004, § 36) or registered as living elsewhere (*Yevgeniy Zakharov v. Russia*, 2017, § 32). It may apply to a council house occupied by the applicant as tenant, even if, under domestic law, the right of occupation had ended (*McCann v. the United Kingdom*, 2008, § 46), or to occupancy for several years (*Brežec v. Croatia*, 2013, § 36).

478. A person who has unlawfully established their home, while still retaining the protections of Article 8, occupies a comparatively weaker position than a lawful occupant (*Chapman v. the United Kingdom* [GC], 2001, § 102; *Faulkner and McDonagh v. Ireland* (dec.), 2022, § 111).

479. "Home" is not limited to traditional residences. It therefore includes, among other things, caravans and other unfixed abodes (*Chapman v. the United Kingdom* [GC], 2001, §§ 71-74; compare and contrast with *Hirtu and Others v. France*, 2020, § 65). It includes cabins or bungalows stationed on land, regardless of the question of the lawfulness of the occupation under domestic law (*Winterstein and Others v. France*, 2013, § 141; *Yordanova and Others v. Bulgaria*, 2012, § 103). Even though the link between a person and a place which she inhabits only occasionally might be weaker, Article 8 may also apply to a secondary residence or holiday homes (*Demades v. Turkey*, 2003, §§ 32-34; *Fägerskiöld v. Sweden* (dec.), 2008; *Sagan v. Ukraine*, 2018, §§ 51-54; *Samoylova v. Russia*, 2021, § 66) or to partially furnished residential premises (*Halabi v. France*, 2019, §§ 41-43). As to a cold storage room in the courtyard of the applicant's house, see *Bostan v. the Republic of Moldova*, 2020, § 19.

480. This concept extends to an individual's business premises (*DELTA PEKÁRNY a.s. v. the Czech Republic*, 2014, § 77), such as the office of a member of a profession (*Buck v. Germany*, 2005, § 31; *Niemietz v. Germany*, 1992, §§ 29-31), a newspaper's premises (*Saint-Paul Luxembourg S.A. v. Luxembourg*, 2013, § 37), a notary's practice (*Popovi v. Bulgaria*, 2016, § 103), or a university professor's office (*Steeg v. Germany* (dec.), 2008). It also applies to a registered office, and to the

[78] See also Environmental issues and the Case-law Guide on Data protection.

branches or other business premises of a company (*Société Colas Est and Others v. France*, 2002, § 41; *Kent Pharmaceuticals Limited and Others v. the United Kingdom* (dec.), 2005).

481. Furthermore, the Court does not rule out the possibility that training centres and venues for sports events and competitions, and their annexes, such as a hotel room in the case of away events, may be treated as equivalent to "home" within the meaning of Article 8 (*National Federation of Sportspersons' Associations and unions (FNASS) and Others v. France*, 2018, § 158).

482. Whilst the Court has acknowledged the existence of a "home" in favour of an association complaining of surveillance measures (*Association for European Integration and Human Rights and Ekimdzhiev v. Bulgaria*, 2007) an association cannot itself claim to be a victim of a violation of the right to respect for one's home on account of pollution (*Asselbourg and Others v. Luxembourg* (dec.), 1999).

483. The Court has laid down certain limits on the extension of the protection of Article 8. It does not apply to property on which it is intended to build a house, or to the fact of having roots in a particular area (*Loizidou v. Turkey* (merits), 1996, § 66); neither does it extend to a laundry room, jointly owned by the co-owners of a block of flats, designed for occasional use (*Chelu v. Romania*, 2010, § 45); an artist's dressing room (*Hartung v. France* (dec.), 2009; land used by the owners for sports purposes or over which the owner permits a sport to be conducted (for example, hunting, *Friend and Others v. the United Kingdom* (dec.), 2009, § 45); industrial buildings and facilities, such as a mill, bakery or storage facility used exclusively for professional purposes (*Khamidov v. Russia*, 2007, § 131 and compare and contrast *Bostan v. the Republic of Moldova*, 2020, § 19 and *Surugiu v. Romania*, 2004) or for housing farm animals (*Leveau and Fillon v. France* (dec.), 2005). Similarly, a building that is not inhabited, empty or under construction may not be qualified as a "home" (*Halabi v. France*, 2019, § 41).

484. Additionally, where "home" is claimed in respect of property in which there has never been any, or hardly any, occupation by the applicant or where there has been no occupation for some considerable time, it may be that the links to that property are so attenuated as to cease to raise any issue under Article 8 (*Andreou Papi v. Turkey*, 2009, § 54). The possibility of inheriting title to property is not a sufficiently concrete link for the Court to conclude that there is a "home" (*Demopoulos and Others v. Turkey* (dec.) [GC], 2010, §§ 136-137). Moreover, Article 8 does not extend to guaranteeing the right to buy a house (*Strunjak and Others v. Croatia* (dec.), 2000) or imposing a general obligation on the authorities to comply with the choice of joint residence elected by a married couple (*Mengesha Kimfe v. Switzerland*, 2010, § 61). Article 8 does not in terms recognise a right to be provided with a home (*Chapman v. the United Kingdom* [GC], 2001, § 99; *Ward v. the United Kingdom* (dec.), 2004; *Codona v. the United Kingdom* (dec.), 2006), let alone a specific home or category of home – for instance, one in a particular location (*Faulkner and McDonagh v. Ireland* (dec.), 2022, § 98). An intrusion into a person's home can be examined in the light of the requirements of protection of "private life" (*Khadija Ismayilova v. Azerbaijan*, 2019, § 107).

485. While in principle it is not the Court's role to replace the national courts in their assessment of evidence, for purposes of determining whether the flat from which the applicants were evicted was their "home", it must examine the relevant facts, including the manner in which the domestic courts came to their conclusions (*Hasanali Aliyev and Others v. Azerbaijan*, 2022, § 32 and § 35). When deciding whether the flat in question constituted the applicants' home, the fact that some applicants had been registered at a different address during a certain period could not be decisive, and all the relevant circumstances must be taken into account (§ 34). The Court has accepted material such as documents from the local administration, plans, photographs and maintenance receipts, as well as proof of mail deliveries, statements of witnesses or any other relevant evidence (*Prokopovich v. Russia*, 2004, § 37), as examples of *prima facie* evidence of residence at a particular property (*Nasirov and Others v. Azerbaijan*, 2020, where the applicant did not submit any evidence in order to support the existence of sufficient and continuous links with an apartment, §§ 72-75).

486. Positive obligations inherent in effective respect for the home may involve the adoption of measures in the sphere of relations between individuals. A State's responsibility may be engaged because of acts which have sufficiently direct repercussions on the rights guaranteed by the Convention. In determining whether this responsibility is effectively engaged, regard must be had to the subsequent behaviour of that State (*Moldovan and Others v. Romania (no. 2)*, 2005, § 95). Whatever approach is adopted – positive duty or interference – the applicable principles regarding justification under Article 8 § 2 are broadly similar (*Paketova and Others v. Bulgaria*, 2022, §§ 150-151).

487. Along with the right to respect for home, the applicants' "private and family life" can also been affected (see, for example, *Paketova and Others v. Bulgaria*, 2022, § 153).

2. Examples of "interference"

488. The following can be cited as examples of possible "interference" with the right to respect for one's home:

- deliberate destruction of the home by the authorities (*Selçuk and Asker v. Turkey*, 1998, § 86; *Akdivar and Others v. Turkey* [GC], 1996, § 88; *Menteş and Others v. Turkey*, 1997, § 73) or confiscation (*Aboufadda v. France* (dec.), 2014); demolition of home unlawfully built (*Ghailan and Others v. Spain*, 2012, § 55);
- refusal to allow displaced persons to return to their homes (*Cyprus v. Turkey* [GC], 2001, § 174) which may amount to a "continuing violation" of Article 8;
- the transfer of the inhabitants of a village by decision of the authorities (*Noack and Others v. Germany* (dec.), 2000);
- civilians being "evacuated" by being gathered, directed and at times escorted from their homes by armed men in circumstances where the alleged "evacuation" was not lawful under international humanitarian law (*Ukraine and the Netherlands v. Russia* [GC], 2025, § 1165-1167);
- civilians being forced to leave their homes due to fear of violence, duress, detention, psychological oppression and abuse of power: the absence of direct physical force did not render the displacement voluntary given that, in the circumstances, the civilians were deprived of a genuine choice between remaining in their homes and fleeing for safety (*Ukraine and the Netherlands v. Russia* [GC], 2025, § 1166 and 1168-1171);
- police entry into a person's home (*Gutsanovi v. Bulgaria*, 2013, § 217; *Sabani v. Belgium*, 2022, § 41) and a search (*Murray v. the United Kingdom*, 1994, § 86), even where the applicant has cooperated to the extent of opening the door for the unannounced police, because a waiver of the fundamental right to protection of one's home can only be made free of coercion and on the basis of unequivocal and informed consent (*Sabani v. Belgium*, 2022, § 46); and a police operation to return an elderly, dependent and highly vulnerable woman to her care home (*Jarrand v. France*, 2021, § 75);
- searches and seizures (*Chappell v. the United Kingdom*, 1989, §§ 50-51; *Funke v. France*, 1993, § 48), even where the applicant has co-operated with the police (*Saint-Paul Luxembourg S.A. v. Luxembourg*, 2013, § 38) and where the offence giving rise to the search had been committed by a third party (*Buck v. Germany*, 2005), and, more generally, any measure, if it is no different in its manner of execution and its practical effects from a search, regardless of its characterisation under domestic law (*Kruglov and Others v. Russia*, 2020, § 123);
- home visits of public officials without permission, even when no search is carried out and the visit does not lead to a seizure of documents or other objects (*Halabi v. France*, 2019, §§ 54-56);

- occupation or damaging of property (*Khamidov v. Russia*, 2007, § 138) or expulsion from home (*Orlić v. Croatia*, 2011, § 56 with further references therein), including an eviction order which has not yet been enforced (*Gladysheva v. Russia*, 2011, § 91; *Ćosić v. Croatia*, 2009, § 22);
- the dissemination of photographic images of the interior of a country house (*Samoylova v. Russia,* 2021, § 66).

489. Other examples of "interference" are:

- changes to the terms of a tenancy (*Berger-Krall and Others v. Slovenia*, 2014, § 264);
- loss of one's home on account of a deportation order (*Slivenko v. Latvia* [GC], 2003, § 96);
- impossibility for a couple, under the immigration rules, to set up home together and live together in a family unit (*Hode and Abdi v. the United Kingdom*, 2012, § 43);
- decisions regarding planning permission (*Buckley v. the United Kingdom*, 1996, § 60);
- disturbance to the peaceful enjoyment of one's home by public authorities such as, for instance, noise and other nuisances emanating from the everyday activities of a police station and temporary detention facilities situated in the basement of the applicant's apartment building (*Yevgeniy Dmitriyev v. Russia*, 2020, §§ 33 and 53);
- disruption of an individual's living conditions of a certain level, such as overcrowded and unsanitary living conditions, or other situations having adverse consequences for health and human dignity, effectively eroding the core of the enjoyment of a home (*Hudorovič and Others v. Slovenia*, 2020, §§ 112-116, concerning access to safe drinking water and sanitation).
- compulsory purchase orders (*Howard v. the United Kingdom*, Commission decision, 1985) and an order to companies to provide tax auditors with access to premises and to enable them to take a copy of data on a server (*Bernh Larsen Holding AS and Others v. Norway*, 2013, § 106).
- an order to vacate from land caravans, cabins or bungalows that had been illegally stationed there for many years (*Winterstein and Others v. France*, 2013, § 143; *Faulkner and McDonagh v. Ireland* (dec.), 2022, § 91) or illegal makeshift homes (*Yordanova and Others v. Bulgaria*, 2012, § 104) and compare and contrast, *Hirtu and Others v. France*, 2020, § 65);
- displacement from home as a result an attack motivated by anti-Roma sentiment (*Burlya and Others v. Ukraine*, 2018, § 166);
- a person's inability to have their name removed from the register of permanent residences (*Babylonová v. Slovakia*, 2006, § 52);
- obligation to obtain a licence to live in one's own house and imposition of a fine for unlawful occupation of own property (*Gillow v. the United Kingdom*, 1986, § 47).

The Court has also found that the inability of displaced persons, in the context of a conflict, to return to their homes amounted to an "interference" with the exercise of their rights under Article 8 (*Chiragov and Others v. Armenia* [GC], 2015, § 207; *Sargsyan v. Azerbaijan* [GC], 2015, § 260).

490. Conversely, the mere fact that construction or reconstruction carried out by an applicant's neighbour may not have been lawful is not sufficient grounds for asserting that the applicant's rights under Article 8 have been interfered with. For Article 8 to apply, the Court must be convinced that the difficulties caused by the neighbour's construction were serious enough to affect adversely, to a sufficient extent, the applicant's enjoyment of the amenities of her home and the quality of her private and family life (*Cherkun v. Ukraine* (dec.), 2019, §§ 77-80).

491. The disclosure on television, without the applicant's consent, of her residential address and of the images of the interior of her country house, was assessed in the framework of the balance to be struck between the rights protected by Articles 8 and 10 (*Samoylova v. Russia,* 2021, §§ 101 and 103).

492. Where accounts of the alleged interference differ, the Court allocates the initial burden of proof of establishing the interference on the applicant, who must submit *prima facie* evidence in favour of their version of the facts. If the Court finds that the applicant's *prima facie* burden has been met, the burden will then be reversed and placed on the Government, which must convincingly refute the applicant's evidence that an interference occurred (*Sabani v. Belgium*, 2022, §§ 42-45).

B. Margin of appreciation

493. In so far as, in this area, the questions in issue may depend on a multitude of local factors and pertain to the choice of town and country planning policies, the Contracting States in principle enjoy a wide margin of appreciation (*Noack and Others v. Germany* (dec.), 2000; see also the wide margin of appreciation for housing matters (*L.F. v. the United Kingdom* (dec.), 2022, § 40) and more specifically access to water and sanitation, *Hudorovič and Others v. Slovenia*, 2020, §§ 141, 144, 158 and the references cited therein, or road works of importance to the local community, *Faulkner and McDonagh v. Ireland* (dec.), 2022, § 109). However, it remains open to the Court to conclude that there has been a manifest error of appreciation (*Chapman v. the United Kingdom* [GC], 2001, § 92). The implementation of these choices may infringe the right to respect for one's home, without however raising an issue under the Convention where certain conditions are satisfied and accompanying measures implemented (*Noack and Others v. Germany* (dec.), 2000). On the other hand, where the right at stake is crucial to the individual's effective enjoyment of intimate or key rights, the margin of appreciation will tend to be narrower (*Yordanova and Others v. Bulgaria*, 2012, § 118 (i)-(v), with further references; *Faulkner and McDonagh v. Ireland* (dec.), 2022, § 95 (i)-(ii)). In particular, where general social and economic policy considerations arise in the context of Article 8, the scope of the margin of appreciation afforded to the State will depend on the context of the case, with particular significance attaching to the extent of the intrusion into the personal sphere of the applicant. This is because Article 8 concerns rights of central importance to the individual's identity, self-determination, physical and moral integrity, maintenance of relationships with others and to a persons' settled and secure place in the community (*L.F. v. the United Kingdom* (dec.), 2022, § 40). In short, in this domain, the margin will vary according to different factors as recapitulated, for instance, in *Szczypinski v. Poland* (dec), 2022, §§ 56-58, where the Court highlighted that where there is no reason to doubt the domestic procedure followed, the margin of appreciation allowed to the domestic courts in such cases will therefore be a wide one (§ 67).

C. Housing

494. Article 8 cannot be construed as recognising a right to be provided with a home (*Chapman v. the United Kingdom* [GC], 2001, § 99) or as conferring a right to live in a particular location (*Garib v. the Netherlands* [GC], 2017, § 141; *Faulkner and McDonagh v. Ireland* (dec.), 2022, § 98). Moreover, the scope of any positive obligation to house the homeless is limited (*Hudorovič and Others v. Slovenia*, 2020, § 114).

495. The right to respect for one's home means not just the right to the actual physical area, but also to the quiet enjoyment of that area. This may involve measures that are required to be taken by the authorities, particularly regarding the enforcement of court decisions (*Cvijetić v. Croatia*, 2004, §§ 51-53). An interference may be either physical, such as unauthorised entry into a person's home (*Cyprus v. Turkey* [GC], 2001, § 294; *National Federation of Sportspersons' Associations and Unions (FNASS) and Others v. France*, 2018, § 154), or not physical, such as noise, smells, etc. (*Moreno Gómez v. Spain*, 2004, § 53). Where noise disturbances or other nuisances go beyond the ordinary difficulties of living with neighbours, they may affect the peaceful enjoyment of one's home, whether they be caused by private individuals, business activities or public agencies (*Kapa and Others v. Poland*, 2021, § 151 with further references therein).

496. Whilst Article 8 protects individuals against interference by public authorities, it may also entail the State's adoption of measures to secure the right to respect for one's "home" (*Novoseletskiy v. Ukraine*, 2005, § 68), even in the sphere of relations between individuals (*Surugiu v. Romania*, 2004, § 59). The Court has found a breach by the State of its positive obligations on account of failure by the authorities to take action following the repeated complaints by an applicant that people were coming into his courtyard and emptying cartloads of manure in front of his door and windows (*ibid.*, §§ 67-68; see also *Irina Smirnova v. Ukraine*, 2016, §§ 90-99 about unwanted intrusions into the applicant's personal space and home - for a case in which the authorities were found not to have failed to comply with their positive obligation, see *Osman v. the United Kingdom*, 1998, §§ 129-130, concerning harassment and vandalism, or *Chiş v. Romania* (dec.), 2014, regarding noise disturbance[79]). Failure by the national authorities to enforce an eviction order from a flat, in favour of the owner, was deemed to amount to a failure by the State to comply with its positive obligations under Article 8 (*Pibernik v. Croatia*, 2004, § 70). Late restitution by the public authorities of a flat in a condition unfit for human habitation was held to infringe the right to respect for the applicant's home (*Novoseletskiy v. Ukraine*, 2005, §§ 84-88). Although the Convention does not protect access to safe drinking water as such, a persistent and long-standing lack of access to safe drinking water could have adverse consequences for health and human dignity effectively eroding the core of private life and the enjoyment of a home, meaning that a State's positive obligations might be triggered, depending on the specific circumstances of the case and their level of seriousness (*Hudorovič and Others v. Slovenia*, 2020, §§ 116, 158, and §§ 145-146).

497. The Court requires the Member States to weigh up the competing interests at stake (*Hatton and Others v. the United Kingdom* [GC], 2003, § 98), whether the case is examined from the point of view of an interference by a public authority that has to be justified under paragraph 2 of Article 8, or from that of positive obligations requiring the State to adopt a legal framework to protect the right to respect for one's home under paragraph 1.

498. With regard to the scope of the State's margin of appreciation in this area, particular significance has to be attached to the extent of the intrusion into the applicant's personal sphere (*Connors v. the United Kingdom*, 2004, § 82; *Gladysheva v. Russia*, 2011, §§ 91-96). Having regard to the crucial importance of the rights guaranteed under Article 8 to the individual's identity, self-determination, and physical and moral integrity, the margin of appreciation in housing matters is narrower when it comes to the rights guaranteed by Article 8 compared to those in Article 1 of Protocol No. 1 (*ibid.*, § 93). The procedural safeguards available to the individual will be especially material in determining whether the respondent State has remained within its margin of appreciation. In particular, the Court must examine whether the decision-making process leading to measures of interference was fair and such as to afford due respect to the interests safeguarded to the individual by Article 8 (*Yordanova and Others v. Bulgaria*, 2012, § 118). Where relevant arguments concerning the proportionality of the interference have been raised by the applicants, the domestic courts should examine them in detail and provide adequate reasons (*Ahmadov v. Azerbaijan*, 2020, § 46).

499. The Court will have particular regard to the procedural guarantees in determining whether the State has exceeded its margin of appreciation when defining the applicable legal framework (*Connors v. the United Kingdom*, 2004, § 92). It has held, *inter alia*, that the loss of one's home is a most extreme form of interference with the right to respect for the home (see for a demolition, *Ivanova and Cherkezov v. Bulgaria*, 2016, §§ 52-54). Any person at risk of an interference of this magnitude should in principle be able to have the proportionality of the measure determined by an independent tribunal in the light of the relevant principles under Article 8 of the Convention, notwithstanding that, under domestic law, his right of occupation has come to an end (*McCann v. the United Kingdom*, 2008, § 50 - concerning the removal of Travellers from living on the roadside, see *Faulkner and McDonagh v. Ireland* (dec.), 2022, §§ 101-107). This principle has been developed in the context of State-owned

[79] See the Case-law Guide on Environment.

or socially-owned accommodation (*F.J.M. v. the United Kingdom* (dec.), 2018, § 37 with further references therein). However, a distinction has been drawn between public authority landlords and private landlords to the effect that the principle does not automatically apply in cases where possession is sought by a private individual or enterprise (§ 41). In particular, where possession is sought by a private individual or body, the balancing of the parties' competing interests can be embodied in domestic legislation which makes it unnecessary for a tribunal to weigh up those interests again when considering a claim for possession (§ 45).

500. According to *Ivanova and Cherkezov v. Bulgaria*, 2016, given that the right to respect for one's home under Article 8 touches upon issues of "central importance to the individual's physical and moral integrity, of maintenance of relationships with others and a settled and of a secure place in the community", the balancing exercise under that provision in cases where the interference consists of the loss of a person's only home is of a different order, with particular significance attaching to the extent of the intrusion into the personal sphere of those concerned. This can normally only be examined on a case-by-case basis. The mere possibility of obtaining judicial review of the administrative decision causing the loss of the home is thus not enough: the person concerned "must be able to challenge that decision on the ground that it is disproportionate in view of his or her personal circumstances". In such proceedings, the national courts must have regard to all relevant factors and weigh the competing interests in line with the case-law principles, in which instance the margin of appreciation allowed to those courts will be a wide one and the Court will be reluctant to gainsay their assessment (*Ivanova and Cherkezov v. Bulgaria*, 2016, § 53 (violation); see also *Simonova v. Bulgaria*, 2023, §§ 51-52, and *Alif Ahmadov and Others v. Azerbaijan*, 2023, §§ 61-64, but compare and contrast, *Szczypiński v. Poland* (dec.), 2022, §§ 66-71, where the courts did balance, on the one hand, the interest of the applicant in keeping his house and, on the other, the interests of society). Based on their decisions, the Court must be satisfied that domestic authorities assessed all the relevant circumstances and adequately addressed the applicant's arguments regarding his individual situation (*Kaminskas v. Lithuania*, 2020, §§ 58-65). An attempt by the authorities at the enforcement stage to negotiate with the applicant, and/or to discuss resettlement, will not remedy the situation if the negotiations did not take place within a formal procedure entailing a comprehensive review of the proportionality of the interference in the light of the applicant's individual circumstances, and did not offer a comprehensive solution (*Simonova v. Bulgaria*, 2023, § 53). However, in *Ayala Flores v. Italy*, 2025, the Court made it clear that it was for the individual concerned to specifically mention and (if possible) to support with appropriate evidence his or her statements as to the specific individual factors that should prevent the authorities from carrying out measures aimed at removing unauthorised or unsafe constructions. That was particularly so when – as in the case at hand – the demolition order was issued with or upheld by a final judgment and the individual concerned had several years to comply but did not take any initiative. In the Court's view, to find otherwise would be to allow the individual to benefit from a protracted unlawful situation to the detriment of the community.

501. An eviction which took place in the context of the management of State-owned housing could, in principle, be seen as aiming at the fair distribution of the State housing and, therefore, as pursuing a legitimate aim in the interest of the economic well-being of the country and the protection of the rights of others, within the meaning of Article 8 (*Hasanali Aliyev and Others v. Azerbaijan*, 2022, §§ 46-47). However, an adequate review of the proportionality of the interference, in the light of the applicants' personal circumstances, is called for and the domestic courts' refusal to examine the reality of the applicants' housing situation and the formalistic reliance on administrative registrations was found incompatible with the States' duties under Article 8 (§ 48).

1. Property owners

502. Where a State authority is dealing with a bona fide purchaser of property that had been fraudulently acquired by the previous owner, the national courts cannot automatically order eviction

without examining more closely the proportionality of the measure or the particular circumstances of the case. The fact that the house is repossessed by the State, and not by another private party whose interests in that particular flat would have been at stake, is also of particular importance (*Gladysheva v. Russia*, 2011, §§ 90-97).

503. It will sometimes be necessary for a member State to attach and sell an individual's home in order to secure the payment of taxes due to the State. However, these measures must be enforced in a manner which ensures that the individual's right to his or her home is respected. In a case concerning the conditions of an enforced sale at auction of a house, to repay a tax debt, the Court found a violation because the owner's interests had not been adequately protected (*Rousk v. Sweden*, 2013, §§ 137-142). With regard, more generally, to reconciliation of the right to respect for one's home with the enforced sale of a house for the purposes of paying debts, see *Vrzić v. Croatia*, 2016, § 13.

504. The obligation to seek a licence to occupy a house owned on an island, in order to prevent overpopulation of the island, is not in itself contrary to Article 8. However, the proportionality requirement is not satisfied if the national authorities fail to give sufficient weight, inter alia, to the particular circumstances of the property owners (*Gillow v. the United Kingdom*, 1986, §§ 56-58).

505. The Court has examined the question of the imminent loss of a house following a decision to demolish it on the grounds that it had been built without a permit, in breach of the applicable building regulations (*Ivanova and Cherkezov v. Bulgaria*, 2016). The Court mainly examined whether the demolition for illegal construction was "necessary in a democratic society" and set forth the relevant criteria (see § 53, and more recently, *Ghailan and Others v. Spain*, 2012, §§ 63-64). It relied on the judgments it had delivered in previous cases in which it had found that eviction proceedings had to comply with the interests protected by Article 8, the loss of one's home being a most extreme form of interference with the right to respect for the home, whether or not the person concerned belonged to a vulnerable group. In finding a violation of Article 8 in this case, the Court considered that the national courts had confined themselves to examining the question of illegality, without examining the potentially disproportionate effect of enforcement of the demolition order on the applicants' personal situation (*Ivanova and Cherkezov v. Bulgaria*, 2016, §§ 49-62). By contrast, in *Szczypiński v. Poland* (dec.), 2022, the Court held a similar application inadmissible, having found that the domestic courts, in making their assessment of the necessity of the demolition order, met their procedural requirements in striking an appropriate balance between the applicant's personal circumstances and interests in keeping his house and the public interest in the legal certainty of the regulations which the applicant had knowingly breached by building his house (§§ 66-72). In *Kaminskas v. Lithuania*, 2020, the Court deemed satisfactory the domestic authorities' assessment of the applicant's relevant individual circumstances and arguments regarding the proportionality of a demolition order vis-à-vis the general interest in the preservation of forests and the environment (§§ 64-65).

In *Ghailan and Others v. Spain*, 2012, the lack of an exhaustive and thorough examination of the proportionality of the demolition was to be attributed to the fact that the applicants had not made use of the existing legal remedies available to them (which provided an effective opportunity to challenge the proportionality of the demolition), and was thus a consequence of their own conduct (§ 72). The Court specified that, when the proportionality and reasonableness of the interference with the right to home is determined by an independent tribunal in conformity with Article 8, it is however for the applicant to raise an Article 8 defence to prevent eviction/demolition and then for a court to uphold or dismiss the claim (§§ 76-80). In its assessment, the Court referred also to the existing possibilities of alternative accommodation (*Ivanova and Cherkezov v. Bulgaria*, 2016, § 60; *Ghailan and Others v. Spain,* 2012, §§ 78-79).

506. The Court has also held that where a State adopts a legal framework obliging a private individual to share his or her home with persons foreign to his or her household, it must put in place thorough

regulations and necessary procedural safeguards to enable all the parties concerned to protect their Convention interests (*Irina Smirnova v. Ukraine*, 2016, § 94).

2. Tenants

507. The Court has ruled on a number of disputes relating to the eviction of tenants (see the references cited in *Ivanova and Cherkezov v. Bulgaria*, 2016, § 52). A notice to quit issued by the authorities must be necessary and comply with procedural guarantees as part of a fair decision-making process before an independent tribunal complying with the requirements of Article 8 (*Connors v. the United Kingdom*, 2004, §§ 81-84; *Bjedov v. Croatia*, 2012, §§ 70-71). It is insufficient merely to indicate that the measure is prescribed by domestic law, without taking into account the individual circumstances in question (*Ćosić v. Croatia*, 2009, § 21). The measure must also pursue a legitimate objective and loss of the home must be shown to be proportionate to the legitimate aims pursued, in accordance with Article 8 § 2. Regard must therefore be had to the factual circumstances of the occupant whose legitimate interests are to be protected (*Orlić v. Croatia*, 2011, § 64; *Gladysheva v. Russia*, 2011, §§ 94-95; *Kryvitska and Kryvitskyy v. Ukraine*, 2010, § 50; *Andrey Medvedev v. Russia*, 2016, § 55).

508. The Court has thus decided that a summary procedure for eviction of a tenant that does not offer adequate procedural guarantees would entail a violation of the Convention, even if the measure was legitimately seeking to ensure due application of the statutory housing regulations (*McCann v. the United Kingdom*, 2008, § 55). Termination of a lease without any possibility of having the proportionality of the measure determined by an independent tribunal was held to infringe Article 8 in cases where the landlord was a public body (*Kay and Others v. the United Kingdom*, 2010, § 74; see also *Nafornita v. the Republic of Moldova*, 2024, in which the Supreme Court of Justice did not weigh up the competing interests at stake, despite the fact that the evicted applicants had been lawfully resident in State-owned apartments for over eleven years). In cases where the landlord was a private individual or body, this principle did not apply automatically (*Vrzić v. Croatia*, 2016, § 67; *F.J.M. v. the United Kingdom* (dec.), 2018, § 41). Furthermore, continuing occupation of a person's property in breach of an enforceable eviction order issued by a court after finding that the occupation in question was illegal infringes Article 8 (*Khamidov v. Russia*, 2007, § 145).

509. In its judgment *Larkos v. Cyprus* [GC], 1999, the Court held that offering differential protection to tenants against eviction – according to whether they are renting State-owned property or renting from private landlords – entailed a violation of Article 14 taken in conjunction with Article 8 (§§ 31-32). However, it is not discriminatory to make provisions only for tenants of publicly owned property to purchase their flat, with tenants of privately owned flats which they occupy being unable to do so (*Strunjak and Others v. Croatia* (dec.), 2000). Moreover, it is legitimate to put in place criteria according to which social housing can be allocated, when there is insufficient supply available to satisfy demand, so long as such criteria are not arbitrary or discriminatory (*Bah v. the United Kingdom*, 2011, § 49; see, more generally, on tenants of social housing *Paulić v. Croatia*, 2009; *Kay and Others v. the United Kingdom*, 2010).

510. The Court did not find a violation of Article 8 regarding a reform of the housing sector, following the transition from a socialist regime to a market economy, resulting in a general weakening of legal protection for holders of "specially protected tenancies". Despite an increase in rent and a reduced guarantee of being able to stay in their flats, the tenants continued to enjoy special protection to a degree that was higher than that normally afforded to tenants (*Berger-Krall and Others v. Slovenia*, 2014, § 273 and the references cited therein; compare, however, *Galović v. Croatia* (dec.), 2013, § 65).

3. Tenants' partners/unauthorised occupancy

511. The protection provided by Article 8 of the Convention is not confined to lawful/authorised occupancy of a building pursuant to domestic law (*McCann v. the United Kingdom*, 2008, § 46; *Bjedov*

v. Croatia, 2012, § 58; *Ivanova and Cherkezov v. Bulgaria*, 2016, § 49). As a matter of fact, the Court extended the protection of Article 8 to the occupant of a flat to which only her partner held the tenancy rights (*Prokopovich v. Russia*, 2004, § 37; see also *Korelc v. Slovenia*, 2009, § 82 and *Yevgeniy Zakharov v. Russia*, 2017, § 32), and to a person who had been living unlawfully in her flat for almost 40 years (*Brežec v. Croatia*, 2013, § 36). On the other hand, when considering whether a requirement that the individual leave his or her home is proportionate to the legitimate aim pursued, it is highly relevant whether or not the home was established unlawfully.

512. The Court found a violation where the domestic court had given paramount importance to the fact that the applicant had been registered as living elsewhere throughout the ten years he had been living with his partner, without seeking to weigh this against his arguments concerning his need for the room in question (*Yevgeniy Zakharov v. Russia*, 2017, §§ 35-37).

513. The Court found a violation of Article 14 taken in conjunction with Article 8 where an occupant was prohibited from succeeding to a tenancy after the death of his same-sex partner (*Karner v. Austria*, 2003, §§ 41-43; *Kozak v. Poland*, 2010, § 99, and, *mutatis mutandis*, *Makarčeva v. Lithuania* (dec.), 2021[80]).

4. Minorities and vulnerable persons

514. The Court also takes into account an occupant's vulnerability, with case-law protecting minorities' lifestyles (see, for instance, *Hudorovič and Others v. Slovenia*, 2020, § 142). It has, in particular, emphasised the vulnerability of Roma and Travellers, and the need to pay particular attention to their specific needs and ways of life (*Connors v. the United Kingdom*, 2004, § 84; *Paketova and Others v. Bulgaria*, 2022, § 161). That may impose positive obligations on the national authorities (*Chapman v. the United Kingdom* [GC], 2001, § 96; *Yordanova and Others v. Bulgaria*, 2012, §§ 129-130 and § 133), albeit within certain limits (*Codona v. the United Kingdom* (dec.), 2006; *Hudorovič and Others v. Slovenia*, 2020, § 158). Measures affecting the stationing of Gypsy caravans have an impact on their right to respect for their "home" (*Chapman v. the United Kingdom* [GC], 2001, § 73, compare and contrast *Hirtu and Others v. France*, 2020, § 65). Where problems arise, the Court places the emphasis on action by the national authorities to find a solution (*Stenegry and Adam v. France* (dec.), 2007). In *Paketova and Others v. Bulgaria*, 2022, the officials' repeated public display of opposition to the Roma's return to their homes, after they had been forced to leave, was considered a factor of special relevance. Given that the authorities knew of the danger for the applicants, they should have taken reasonable measures in order to protect the individuals exposed to it, so as to ensure effective respect for their private and family life and home; such positive obligations being even more important in light of the fact that the applicants claimed they had been targeted on ethnic grounds (§§ 160-163).

515. In that connection, the Court reiterated the criteria for assessing compliance with the requirements of Article 8 in its *Winterstein and Others v. France*, 2013, judgment (§ 148 with further references therein) and provided a recapitulation of the case-law in *Faulkner and McDonagh v. Ireland* (dec.), 2022, §§ 94-115. It found no violation where the applicants' difficult situation was duly taken into account, the reasons relied on by the responsible planning authorities were relevant and sufficient and the means employed were not disproportionate (*Buckley v. the United Kingdom*, 1996, § 84; *Chapman v. the United Kingdom* [GC], 2001, § 114). In finding inadmissible the case of *Faulkner and McDonagh v. Ireland* (dec.), 2022, the Court also assessed whether the applicants had benefitted from sufficient procedural safeguards and whether the decision-making process had been fair such as to afford due respect to their rights under Article 8 and whether the domestic authorities had acted within their margin of appreciation (§§ 101-109); it took also into account the efforts made by the local authority to secure alternative accommodation (§§ 110-113; see also *Chapman v. the United Kingdom* [GC], 2001, §§ 103-104). As regards measures to remove persons from their

[80] See the Case-law Guide on the Rights of LGBTI persons.

living environment, the Court found a violation in the cases of *Connors v. the United Kingdom*, 2004, § 95; *Yordanova and Others v. Bulgaria*, 2012, § 144; *Winterstein and Others v. France*, 2013, §§ 156 and 167; *Buckland v. the United Kingdom*, 2012, § 70; *Bagdonavicius and Others v. Russia*, 2016, § 107 (concerning forced evictions and the destruction of houses without any rehousing plans).

516. The Court has also ruled that the authorities' general attitude perpetuating the feelings of insecurity of Roma whose houses and property had been destroyed, and the repeated failure of the authorities to put a stop to interference with their home life, in particular, amounted to a serious violation of Article 8 (*Moldovan and Others v. Romania (no. 2)*, 2005, §§ 108-109; *Burlya and Others v. Ukraine*, 2018, §§ 169-170). The Court held that such disadvantaged social groups, and outcast communities, may need assistance in order to be able effectively to enjoy the same rights as the majority population (*Yordanova and Others v. Bulgaria*, 2012, § 129).

517. A measure which affects a minority does not amount *ipso facto* to a violation of Article 8 (*Noack and Others v. Germany* (dec.), 2000). In this case, the Court has considered whether the arguments put forward to justify transferring the residents of a municipality, some of whom belonged to a national minority, to another municipality were relevant, and whether that interference had been proportionate to the aim pursued, bearing in mind that it had affected a minority. In *Hudorovič and Others v. Slovenia*, 2020, the Court addressed the scope of the State's positive obligation to provide access to utilities to a socially disadvantaged group, namely members of the Roma community (§§ 143-158). It found that the measures adopted by the State in order to ensure the applicants' access to safe drinking water and sanitation had taken account of their vulnerable position and satisfied the requirements of Article 8 (§ 158). The same conclusion was reached in *Faulkner and McDonagh v. Ireland* (dec.), 2022, concerning the displacement of members of a Travellers' community from an illegally occupied site, at the side of a public road which was having works carried out on it, as part of a new road scheme. The Court emphasised that a broader margin of appreciation had to be allowed, given that the interference had arisen in the context of road works of importance to the local community, and which pertained to the sphere of social and economic policy.

518. Individuals who lack legal capacity are also particularly vulnerable. Article 8 therefore imposes on the State the positive obligation to afford them special protection. Accordingly, the fact that a person who lacked legal capacity was dispossessed of her home without being able to participate effectively in the proceedings or to have the proportionality of the measure determined by the courts amounted to a violation of Article 8 (*Zehentner v. Austria*, 2009, §§ 63 and 65). Reference should be made to the safeguards existing in domestic law (*A.-M.V. v. Finland*, 2017, §§ 82-84 and 90). In the case cited, the Court found no violation of Article 8 on account of the refusal to comply with the wishes of an adult with intellectual disabilities regarding his education and place of residence.

519. Elderly dependent persons may also be vulnerable and a police intervention at their home could be deemed necessary for a compelling social need, for instance in the context of 'ill-treatment of a vulnerable person' by a private party (*Jarrand v. France*, 2021, §§ 84-87). As pointed out, the State may bear responsibility under the Convention in a situation of inaction while being aware of the very vulnerable state of an individual being at risk at home (§ 85).

520. The fact that children had been psychologically affected by repeatedly witnessing their father's violence against their mother in the family home amounted to an interference with their right to respect for their "home" (*Eremia v. the Republic of Moldova*, 2013, § 74). The Court found a violation of Article 8 in that case on the grounds of the failure of the judicial system to react decisively to the serious domestic violence committed (§§ 78-79; compare *Ghișoiu v. Romania* (dec.), 2022, §§ 50-65, in which the Court found insufficient evidence of the alleged acts of violence to trigger the State's obligation to protect). The particular vulnerability of victims of domestic violence and the need for active State involvement in their protection has been emphasised both in international instruments and in the Court's well-established case-law (*Bevacqua and S. v. Bulgaria*, 2008; *A v. Croatia*, 2010, § 65). In *Levchuk v. Ukraine*, 2020, the dismissal of an eviction claim brought by a woman against her

ex-husband, as he had repeatedly subjected her to psychological and physical violence in the presence of their minor children, was found to breach Article 8 (§ 90). In particular, the domestic judicial authorities had not conducted a comprehensive analysis of the risk of future psychological and physical violence faced by the applicant and her children. The Court clarified that, if an eviction is the most extreme measure of interference with one's right to respect for the home guaranteed by Article 8, an interference might be necessary in order to protect the health and rights of the others (§ 84).

521. Article 8 does not in terms give a right to be provided with a home and, accordingly, any positive obligation to house the homeless must be limited (*B.G. and Others v. France*, 2020, § 93; *Faulkner and McDonagh v. Ireland* (dec.), 2022, § 98, and as concerns alternative accommodations: §§ 112-113). However, an obligation to secure shelter to particularly vulnerable individuals may flow from Article 8 in exceptional cases (*Yordanova and Others v. Bulgaria*, 2012, § 130 with further references therein). A refusal by the welfare authorities to provide housing assistance to an individual suffering from a serious disease might in certain circumstances raise an issue under Article 8 because of the impact of such a refusal on the private life of the individual in question (*O'Rourke v. the United Kingdom* (dec.), 2001).

522. In its case-law, the Court takes into account the relevant international-law material and determines the scope of the Member States' margin of appreciation (*A.-M.V. v. Finland*, 2017, §§ 73-74 and § 90). While generally, in housing matters, States are accorded a wide margin of appreciation (*Hudorovič and Others v. Slovenia*, 2020, §§ 141 and 158), when the right at stake is crucial to the individual's effective enjoyment of fundamental or "intimate" rights, particularly under Article 8, the margin of appreciation tends to be narrower and requires that domestic authorities have examined the relevant arguments concerning proportionality and have provided adequate reasons for the decision (*Yordanova and Others v. Bulgaria*, 2012, § 118 (i)-(v), with further references; *Faulkner and McDonagh v. Ireland* (dec.), 2022, § 95 (i)-(ii)). In the case of *Jarrand v. France*, 2021, the Court asserted that any failure of the authorities to act, while being aware of the very vulnerable state of an individual at home and of the risks for his/her life or well-being, could engage the respondent State's responsibility under the Convention (§ 85). In the case of *B.G. and Others v. France*, 2020, concerning the accommodation of children, the Court clarified that that there is currently a broad consensus – including in international law – in support of the idea that in all decisions concerning children, their best interests must be paramount (§ 94).

5. Home visits, searches and seizures[81]

523. In order to secure physical evidence on certain offences, the domestic authorities may consider it necessary to implement measures which entail entering a private home (*Dragan Petrović v. Serbia*, 2020, § 74). The actions of the police when entering homes must be "lawful" (*Bostan v. the Republic of Moldova*, 2020, §§ 21-30) and proportionate to the aim pursued (*McLeod v. the United Kingdom*, 1998, §§ 53-57, in which a violation was found; for an example of a case in which no violation was found, see *Dragan Petrović v. Serbia*, 2020, §§ 75-77), as must any action taken inside the individual home (*Vasylchuk v. Ukraine*, 2013, § 83, concerning the ransacking of private premises).

524. The law in question must be "compatible with the rule of law". In the context of searches and seizures, it must provide some protection to the individual against arbitrary interference with Article 8 rights. Thus, domestic law must be sufficiently clear in its terms to give citizens an adequate indication as to the circumstances and conditions under which public authorities are empowered to resort to any such measures. Moreover, search and seizure represent a serious interference with private life, home and correspondence and must accordingly be based on a "law" that is particularly precise. It is essential to have clear, detailed rules on the subject (*Petri Sallinen and Others v. Finland*, 2005, §§ 82 and 90). In *Aydın Sefa Akay v. Türkiye*, 2024, §§ 140-44, the Court found that a search and seizure of

[81] See also the Case-law Guide on Data protection.

certain items at a private residence of the applicant, a judge serving at the United Nations International Residual Mechanism for Criminal Tribunals, had not been "prescribed by law" since the domestic courts' interpretation of the applicant's diplomatic immunity had not been foreseeable, as the ordinary reading of the relevant international treaty provisions, officially confirmed by the President of the Mechanism (acting on behalf of the Secretary General of the UN) and the UN Office of Legal Affairs, had made it safe to consider that the applicant, and consequently his private residence, had in fact enjoyed full diplomatic immunity.

525. The judgment in the case of *National Federation of Sportspersons' Associations and Unions (FNASS) and Others v. France*, 2018, concerned the obligation imposed on high-level athletes falling within a "target group" to give advance notification of their whereabouts so that unannounced anti-doping tests could be carried out. The Court emphasised that home visits for the purposes of such testing were very different from those carried out under court supervision, which were geared to investigating offences or seizing items of property. Such searches, by definition, struck at the heart of respect for the home and could not be treated as equivalent to the visits to the athletes' homes (§ 186). The Court considered that reducing or cancelling the obligations of which the applicant had complained could increase the dangers of doping to their health and to that of the whole sporting community, and would run counter to the European and international consensus on the need to carry out unannounced tests (§ 190). Compare with an unannounced home arrest in the immigration context: *Sabani v. Belgium*, 2022, §§ 41-58.

526. Citizens must be protected from the risk of undue police intrusions into their homes. The Court found a violation of Article 8 where members of a special intervention unit wearing balaclavas and armed with machine guns had entered a private home at daybreak in order to serve charges on the applicant and escort him to the police station. The Court pointed out that that safeguards should be in place in order to avoid any possible abuse and protect human dignity in such circumstances (*Kučera v. Slovakia*, 2007, §§ 119 and 122; see also *Rachwalski and Ferenc v. Poland*, 2009, § 73). Those safeguards might even include requiring the State to conduct an effective investigation if that is the only legal means of shedding light on allegations of unlawful searches of property (*H.M. v. Turkey*, 2006, §§ 26-27 and 29: violation of the procedural limb of Article 8 owing to the inadequacy of the investigation; regarding the importance of such procedural protection, see *Vasylchuk v. Ukraine*, 2013, § 84).

527. Measures involving entering private homes must be "in accordance with the law", which entails compliance with legal procedure (*L.M. v. Italy*, 2005, §§ 29 and 31) and with the existing safeguards (*Panteleyenko v. Ukraine*, 2006, §§ 50-51; *Kilyen v. Romania*, 2014, § 34), must pursue one of the legitimate aims listed in Article 8 § 2 (*Smirnov v. Russia*, 2007, § 40), and must be "necessary in a democratic society" to achieve that aim (*Camenzind v. Switzerland*, 1997, § 47).

528. The following are examples of measures which pursue legitimate aims: action by the Competition Authority to protect economic competition (*DELTA PEKÁRNY a.s. v. the Czech Republic*, 2014, § 81); suppression of tax evasion (*Keslassy v. France* (dec.), 2002, and *K.S. and M.S. v. Germany*, 2016, § 48); seeking circumstantial and material evidence in criminal cases, for example involving forgery, breach of trust and the issuing of uncovered cheques (*Van Rossem v. Belgium*, 2004, § 40), murder (*Dragan Petrović v. Serbia*, 2020, § 74), drug trafficking (*Işıldak v. Turkey*, 2008, § 50) and illegal trade in medicines (*Wieser and Bicos Beteiligungen GmbH v. Austria*, 2007, § 55); environmental protection and prevention of nuisance (*Halabi v. France*, 2019, §§ 60-61); and protecting health and the "rights and freedoms of others" in the context of combating doping in sport (*National Federation of Sportspersons' Associations and Unions (FNASS) and Others v. France*, 2018, §§ 165-166).

529. The Court also assesses the relevance and adequacy of the arguments advanced to justify such measures, compliance with the proportionality principle in the specific circumstances of the case (*Buck v. Germany*, 2005, § 45), and whether the relevant legislation and practice provide appropriate and relevant safeguards to prevent the authorities from taking arbitrary action (*Gutsanovi v. Bulgaria*,

2013, § 220; regarding the applicable criteria, see *Iliya Stefanov v. Bulgaria*, 2008, §§ 38-39; *Smirnov v. Russia*, 2007, § 44). For example, judges cannot simply sign a record, add the official court seal and enter the date and time of the decision with the word "approved" on the document without a separate order setting out the grounds for such approval (*Gutsanovi v. Bulgaria*, 2013, § 223). Regarding a home search which was carried out under a warrant likely to have been obtained in breach of domestic and international law, see *K.S. and M.S. v. Germany*, 2016, §§ 49-53.

530. The Court is particularly vigilant where domestic law authorises house searches without a judicial warrant. It accepts such searches where the lack of a warrant is offset by effective subsequent judicial scrutiny of the lawfulness and necessity of the measure (*Işıldak v. Turkey*, 2008, § 51; *Gutsanovi v. Bulgaria*, 2013, § 222). This requires those concerned to be able to secure effective de facto and de jure judicial scrutiny of the lawfulness of the measure and appropriate redress should the measure be found unlawful (*DELTA PEKÁRNY a.s. v. the Czech Republic*, 2014, § 87). A house search ordered by a prosecutor without scrutiny by a judicial authority is in breach of Article 8 (*Varga v. Romania*, 2008, §§ 70-74).

531. The Court considers that a search warrant has to be accompanied by certain limitations, so that the interference which it authorises is not potentially unlimited and therefore disproportionate. The wording of the warrant must specify its scope (in order to ensure that the search concentrates solely on the offences under investigation) and the criteria for its enforcement (to facilitate scrutiny of the extent of the operations). A broadly worded warrant lacking information on the investigation in question or the items to be seized fails to strike a fair balance between the rights of the parties involved because of the wide powers which it confers on the investigators (*Van Rossem v. Belgium*, 2004, §§ 44-50 with further references therein; *Bagiyeva v. Ukraine*, 2016, § 52).

532. A police search may be deemed disproportionate where it has not been preceded by reasonable and available precautions (*Keegan v. the United Kingdom*, 2006, §§ 33-36 in which there had been a lack of adequate prior verification of the identities of the residents of the premises searched), or where the action taken was excessive (*Vasylchuk v. Ukraine*, 2013, §§ 80 and 84). A police raid at 6 a.m., without adequate reason, of the home of an absent person who was not the prosecuted person but the victim, was found not to have been "necessary" in a democratic society (*Zubaľ v. Slovakia*, 2010, §§ 41-45, where the Court also noted the impact on the reputation of the person concerned). The Court has also found a violation of Article 8 in a case of searches and seizures in a private home in connection with a offence purportedly committed, by another person (*Buck v. Germany*, 2005, § 52).

533. The Court may take into account the presence of the applicant and other witnesses during a house search (*Bagiyeva v. Ukraine*, 2016, § 53) as a factor enabling the applicant effectively to control the extent of the searches carried out (*Maslák and Michálková v. the Czech Republic*, 2016, § 79). On the other hand, a search conducted in the presence of the person concerned, his lawyer, two other witnesses and an expert but in the absence of prior authorisation by a court and of effective subsequent scrutiny is insufficient to prevent the risk of abuse of authority by the investigating agencies (*Gutsanovi v. Bulgaria*, 2013, § 225).

534. Adequate and sufficient safeguards must also be in place when a search is carried out at such an early stage of the criminal proceedings as the preliminary police investigation preceding the pretrial investigation (*Modestou v. Greece*, 2017, § 44). The Court found that a search at this stage had been disproportionate on account of the imprecise wording of the warrant, the lack of prior judicial scrutiny, the fact that the applicant had not been physically present during the search, and the lack of immediate retrospective judicial review (§§ 52-54).

535. Conversely, the safeguards established by domestic law and the practicalities of the search may lead to a finding of no violation of Article 8 (*Camenzind v. Switzerland*, 1997, § 46, and *Paulić v. Croatia*, 2009, regarding a search of limited scope geared to seizing an unauthorised telephone;

Cronin v. the United Kingdom (dec.), 2004, and *Ratushna v. Ukraine*, 2010, § 82, regarding the existence of appropriate safeguards).

536. As regards visits to homes and seizures, the Court has deemed disproportionate the extensive powers conferred on the customs authorities combined with the lack of a judicial warrant (*Miailhe v. France (no. 1)*, 1993; *Funke v. France*, 1993; *Crémieux v. France*, 1993).

537. The Court considers the protection of citizens and institutions against the threats of terrorism and the specific problems bound up with the arrest and detention of persons suspected of terrorist linked offences when examining the compatibility of an interference with Article 8 § 2 of the Convention (*Murray v. the United Kingdom*, 1994, § 91; *H.E. v. Turkey*, 2005, §§ 48-49). Anti-terrorist legislation must provide adequate protection against abuse and be complied with by the authorities (*Khamidov v. Russia*, 2007, § 143). For an anti-terrorist operation, see also *Menteş and Others v. Turkey*, 1997, § 73.[82]

538. In the case of *Sher and Others v. the United Kingdom*, 2015, the authorities had suspected an imminent terrorist attack and initiated extremely complex investigations in order to foil the attack. The Court agreed that the search warrant had been couched in fairly broad terms. However, it considered that the fight against terrorism and the urgency of the situation could justify a search based on terms that were wider than would otherwise have been permissible. In cases of this nature, the police should be permitted some flexibility in assessing, on the basis of what is encountered during the search, which items might be linked to terrorist activities, and in seizing them for further examination (§§ 174-176).

D. Commercial premises

539. The rights guaranteed by Article 8 of the Convention may include the right to respect for a company's registered office, branches or other business premises (*Société Colas Est and Others v. France*, 2002, § 41;). In connection with an individual's premises which were also the headquarters of a company which he controlled, see *Chappell v. the United Kingdom*, 1989, § 63.

540. The margin of appreciation afforded to the State in assessing the necessity of an interference is wider where the search measure concerns legal entities rather than individuals (*DELTA PEKÁRNY a.s. v. the Czech Republic*, 2014, § 82; *Bernh Larsen Holding AS and Others v. Norway*, 2013, § 159)[83].

541. House searches or visits to and seizures on business premises may comply with the requirements of Article 8 (*Keslassy v. France* (dec.), 2002; *Société Canal Plus and Others v. France*, 2010, §§ 55-57). Such measures are disproportionate to the legitimate aims pursued and therefore contrary to the rights protected by Article 8, where there are no "relevant and sufficient" reasons to justify them and no appropriate and sufficient safeguards against abuse (*Posevini v. Bulgaria*, 2017, §§ 65-73 with further references therein; *Société Colas Est and Others v. France*, 2002, §§ 48-49). The Court found a violation of Article 8 of the Convention where the administrative court refused to examine the applicant company's complaint that the Competition Council had seized or copied a large number of physical and electronic documents, and restricted the rights of its employees during the inspection, on the ground that the impugned decision had not led to any legal consequences for the applicant company (*UAB Kesko Senukai Lithuania v. Lithuania*, 2023, §§ 116-127).

542. As regards the extent of the tax authorities' powers of investigation regarding computer servers, for example, the Court has emphasised the public interest in ensuring efficiency in the inspection of information provided by applicant companies for tax assessment purposes and the importance of the existence of effective and adequate safeguards against abuse by the tax authorities (*Bernh Larsen Holding AS and Others v. Norway*, 2013, §§ 172-174, no violation).

[82] See the Case-law Guide on Terrorism.
[83] See the Case-law Guide on Data protection.

543. As regards inspections of premises in the context of anticompetitive practices, the Court found a violation of Article 8 where no prior authorisation had been sought or given for an inspection by a judge, no effective ex post facto scrutiny had been conducted of the necessity of the interference, and no regulations existed on the possible destruction of the copies seized during the inspection (*DELTA PEKÁRNY a.s. v. the Czech Republic*, 2014, § 92).

E. Law firms

544. The concept of "home" in Article 8 § 1 of the Convention embraces not only a private individual's home but also a lawyer's office or a law firm (*Buck v. Germany*, 2005, §§ 31-32; *Niemietz v. Germany*, 1992, §§ 30-33). Moreover, in *Aydın Sefa Akay v. Türkiye*, 2024, § 142, the Court considered that where the applicant, an international judge, had worked from home remotely, his place of residence had been in an analogous position to that of an office, and thus had been subject of a heightened protection, similar to that afforded to a lawyer's office. Searches of the premises of a lawyer may breach legal professional privilege, which is the basis of the relationship of trust existing between a lawyer and his client (*André and Another v. France*, 2008, § 41)[84]. Consequently, such measures must be accompanied by "special procedural guarantees" and the lawyer must have access to a remedy affording "effective scrutiny" to contest them. That is not the case where a remedy fails to provide for the cancellation of the impugned search (*Xavier Da Silveira v. France*, 2010, §§ 37, 42 and 48). In *Kruglov and Others v. Russia*, 2020, the Court recapitulated its case-law on effective safeguards against abuse or arbitrariness and the elements to be taken into consideration in this regard (§§ 125-132). As persecution and harassment of members of the legal profession strikes at the very heart of the Convention system, searches of lawyers' homes or offices should be subject to "especially strict scrutiny" (see also, §§ 102-105, concerning international legal materials on the protection of the lawyer-client relationship). Particular safeguards are also required to protect the professional confidentiality of legal advisers who are not members of the Bar (§ 137).

545. In view of the impact of such measures, their adoption and implementation must be subject to very clear and precise rules (*Petri Sallinen and Others v. Finland*, 2005, § 90; *Wolland v. Norway*, 2018, § 62). The role played by lawyers in defending human rights is a further reason why searches of their premises should be subject to especially strict scrutiny (*Heino v. Finland*, 2011, § 43; *Kolesnichenko v. Russia*, 2009, § 31).

546. Such measures may concern offences which directly involve the lawyer or, on the contrary, have nothing to do with him or her. In some cases, the search in question was designed to obviate the difficulties encountered by the authorities in gathering incriminating evidence (*André and Another v. France*, 2008, § 47), in breach of legal professional privilege (*Smirnov v. Russia*, 2007, §§ 46 and 49, see also § 39). The importance of legal professional privilege has always been emphasised in relation to Article 6 of the Convention (rights of the defence) since *Niemietz v. Germany,* 1992, § 37). The Court also refers to the protection of the lawyer's reputation (*ibid.*, § 37; *Buck v. Germany*, 2005, § 45).

547. The Convention does not prohibit the imposition on lawyers of certain obligations likely to concern their relationships with their clients. This is the case, in particular, where credible evidence is found of a lawyer's participation in an offence, or in connection with efforts to combat certain unlawful practices. The Court has emphasised that it is vital to provide a strict framework for such measures (*André and Another v. France*, 2008, § 42). For an example of a search conducted in a law firm in accordance with the requirements of the Convention, see *Jacquier v. France* (dec.), 2009, and *Wolland v. Norway*, 2018, and contrast *Leotsakos v. Greece*, 2018, §§ 51-57.

548. The fact that a visit to a home took place in the presence of the chairman of the Bar Association is a "special procedural guarantee" (*Roemen and Schmit v. Luxembourg*, 2003, § 69; *André and Another v. France*, 2008, §§ 42-43) but the presence of that chairman is insufficient on its own (*ibid.*,

[84] See the Case-law Guide on Data protection.

§§ 44-46; and more generally, as to the need for an independent observer, *Leotsakos v. Greece*, 2018, §§ 40 and 52). The Court has found a violation on the grounds of the lack of a judicial warrant and of effective ex post facto judicial scrutiny (*Heino v. Finland*, 2011, § 45).

549. The existence of a search warrant providing relevant and sufficient reasons for issuing letters rogatory does not necessarily safeguard against all risks of abuse, because regard must also be had to its scope and the powers conferred on the inspectors. The Court has thus found a violation in cases of search warrants which were too broad in scope and conferred too much power on the investigators, and where no regard was had to the person's status as a lawyer and no action taken to properly protect his or her professional secrecy (*Kolesnichenko v. Russia*, 2009, §§ 32-35; *Iliya Stefanov v. Bulgaria*, 2008, §§ 39-44; *Smirnov v. Russia*, 2007, § 48; *Aleksanyan v. Russia*, 2008, § 216). Similarly, it has found a violation in the case of a search warrant issued against journalists and dissidents where the purpose of the search was to discover and seize any documents containing information about funds received from the owners of several offshore companies, including Mr Mikhail Khodorkovskiy. In light of the extremely wide time frame of the criminal proceedings and the fact that the applicants were not themselves suspected of any criminal behaviour, the Court considered that the general and broad terms gave the police unrestricted discretion in determining which items and documents were to be seized, and could not be considered "necessary in a democratic society" (*Svetova and Others v. Russia*, 2023, §§ 36-46). In *Kruglov and Others v. Russia*, 2020, the Court found a violation of Article 8 because the national courts had issued a search warrant believing that the only safeguard to be ensured during the search of a lawyer's premises was a prior judicial authorization. The Court held that national courts could not authorise a breach of lawyer-client confidentiality in every case where there was a criminal investigation, even where such investigation was not against the lawyers but against their clients. Furthermore, the Court stated that national courts have to weigh the obligation to protect lawyer-client confidentiality against the needs of criminal investigations (*ibid.*, §§ 126-129).

550. The Court has also taken issue with seizures and searches which, although accompanied by special procedural guarantees, were nonetheless disproportionate to the legitimate aim pursued (*Roemen and Schmit v. Luxembourg*, 2003, §§ 69-72). In assessing whether the extent of the interference was proportionate and therefore "necessary in a democratic society", the Court has taken into account the amount of documents that needed to be examined by the authorities, the time it took them to do so and the level of inconvenience the applicant had to suffer (*Wolland v. Norway*, 2018, § 80).

551. It should be noted that under Article 8 a search can raise issues from the angle of respect for "home", "correspondence" and "private life" (*Golovan v. Ukraine*, 2012, § 51 ; *Wolland v. Norway*, 2018, § 52).

F. Journalists' homes

552. Searches of press premises aimed at obtaining information on journalists' sources can raise an issue under Article 8 (and are therefore not liable solely to assessment under Article 10 of the Convention). Searches of lawyers' premises may be aimed at discovering journalists' sources (*Roemen and Schmit v. Luxembourg*, 2003, §§ 64-72).

553. In *Ernst and Others v. Belgium*, 2003, the Court considered disproportionate a series of searches conducted of journalists' professional and private premises, even though it acknowledged that they had afforded some procedural guarantees. The journalists had not been charged with any offences, and the search warrants had been couched in broad terms and had not included any information on the investigation in question, the premises to be inspected and the items to be seized. Consequently, those warrants conferred too many powers on the investigators, who had thus been able to copy and seize extensive data. Moreover, the journalists had not been informed of the reasons for the searches (§§ 115-116).

554. The Court has assessed a search of the headquarters of a company which published a newspaper with a view to confirming the identity of the author of an Article published in the press. It held that the fact that the journalists and the employees of the company had cooperated with the police did not make the search and the associated seizure any less intrusive. The competent authorities should show restraint in implementing such measures, having regard to the practical requirements of the case (*Saint-Paul Luxembourg S.A. v. Luxembourg*, 2013, §§ 38 and 44).

555. As regards search-and-seizure operations during criminal proceedings against journalists, in *Man and Others v. Romania* (dec.), 2019, the Court listed the elements it has taken into account in examining whether domestic law and practice afforded adequate and effective safeguards against any abuse and arbitrariness (§ 86).

G. Home environment[85]

556. The Convention does not explicitly secure the right to a healthy, calm environment (*Kyrtatos v. Greece*, 2003, § 52), but where an individual is directly and seriously affected by noise or other pollution, problems with neighbours and other nuisances, pollutant and potentially dangerous activities, an issue may arise under Article 8 (see, for instance, *Hatton and Others v. the United Kingdom* [GC], 2003, § 96; *Moreno Gómez v. Spain*, 2004, § 53; *Grimkovskaya v. Ukraine*, 2011; *Kolyadenko and Others v. Russia*, 2012; *Đorđević v. Serbia*, 2025). Article 8 may be applicable whether the pollution is directly caused by the State or the latter is responsible in the absence of appropriate regulations governing the activities of the private sector in question (*Jugheli and Others v. Georgia*, 2017, §§ 73-75). Article 8 may involve public authorities adopting measures designed to secure respect for home (positive obligations) even in the sphere of relations between private individuals (see, for instance, *Surugiu v. Romania*, 2004, as concerns the effective response by the authorities to complaints about serious and repetitive neighbourhood disturbances, or for excessive road traffic noise level, *Kapa and Others v. Poland*, 2021; *Deés v. Hungary*, 2010; *Grimkovskaya v. Ukraine*, 2011).

557. The choice of the means of dealing with environmental issues is left to the discretion of the States, which are not required to implement any specific measure requested by individuals (in relation, for example, to protecting their health against particle emissions from motor vehicles: *Greenpeace e.V. and Others v. Germany* (dec.), 2009). In such a complex sphere, Article 8 does not require the national authorities to ensure that every individual enjoys housing that meets particular environmental standards (*Grimkovskaya v. Ukraine*, 2011, § 65).

For a detailed analysis of the Court's case-law on this provision, see the Case-law Guide on Environment.

[85] See also above.

V. Correspondence[86]

A. General points

1. Scope of the concept of "correspondence"[87]

558. The right to respect for "correspondence" within the meaning of Article 8 § 1 aims to protect the confidentiality of communications in a wide range of different situations. This concept obviously covers letters of a private or professional nature (*Niemietz v. Germany*, 1992, § 32 in fine), including where the sender or recipient is a prisoner (*Silver and Others v. the United Kingdom*, 1983, § 84; *Mehmet Nuri Özen and Others v. Turkey*, 2011, § 41; *Nuh Uzun and Others v. Turkey*, 2022, § 80; compare with *Zayidov v. Azerbaijan (no. 2)*, 2022, §§ 62-65, where the Court rejected the domestic authorities' classification of a manuscript intended for publication, seized from the incarcerated author by prison authorities, as falling within the ambit of "correspondence" under Article 8), but also packages seized by customs officers (*X v. the United Kingdom*, Commission decision, 1978). It also covers telephone conversations between family members (*Margareta and Roger Andersson v. Sweden*, 1992, § 72), or with others (*Lüdi v. Switzerland*, 1992, §§ 38-39; *Klass and Others v. Germany*, 1978, §§ 21 and 41; *Malone v. the United Kingdom*, 1984, § 64; *Azer Ahmadov v. Azerbaijan*, 2021, § 62 *in fine*, regardless of whether it occurred on only one occasion or over a certain period of time), telephone calls from private or business premises (*Amann v. Switzerland* [GC], 2000, § 44; *Halford v. the United Kingdom*, 1997, §§ 44-46; *Copland v. the United Kingdom*, 2007, § 41; *Kopp v. Switzerland*, 1998, § 50) and from a prison (*Petrov v. Bulgaria*, 2008, § 51), and the "interception" of information relating to such conversations (date, duration, numbers dialled) (*P.G. and J.H. v. the United Kingdom*, 2001, § 42).

559. Technologies also come within the scope of Article 8, in particular data from a smart phone/lap top and/or the mirror image copy of it (*Saber v. Norway*, 2020, § 48; *Särgava v. Estonia*, 2021), electronic messages (emails) (*Copland v. the United Kingdom*, 2007, § 41; *Bărbulescu v. Romania* [GC], 2017, § 72; *Tena Arregui v. Spain*, 2024, § 31; for emails exchanged with correspondents on a casual dating site, see *M.P. v. Portugal*, 2021, § 34), Internet use (*Bărbulescu v. Romania* [GC], 2017, § 81 and *Copland v. the United Kingdom*, 2007, §§ 41-42), and data stored on computer servers (*Wieser and Bicos Beteiligungen GmbH v. Austria*, 2007), including hard drives (*Petri Sallinen and Others v. Finland*, 2005, § 71) and floppy disks (*Iliya Stefanov v. Bulgaria*, 2008, § 42).

560. Older forms of electronic communication are likewise concerned, such as telexes (*Christie v. the United Kingdom*, Commission decision, 1994), pager messages (*Taylor-Sabori v. the United Kingdom*, 2002), and private radio broadcasting (*X and Y v. Belgium*, Commission decision, 1982), not including broadcasts on a public wavelength that are thus accessible to others (*B.C. v. Switzerland*, Commission decision, 1995).

Examples of "interference"

561. The content and form of the correspondence is irrelevant to the question of interference (*A. v. France*, 1993, §§ 35-37; *Frérot v. France*, 2007, § 54). For instance, opening and reading a folded piece of paper on which a lawyer had written a message and handed it to his clients is considered an "interference" (*Laurent v. France*, 2018, § 36). There is no de minimis principle for interference to occur: opening one letter is enough (*Narinen v. Finland*, 2004, § 32; *Idalov v. Russia* [GC], 2012, § 197).

562. All forms of censorship, interception, monitoring, seizure and other hindrances come within the scope of Article 8 (*Potoczka and Adamco v. Slovakia*, 2023, § 69). The mail and other communications of legal entities are covered by the notion of "correspondence". Impeding someone from even

[86] See also the Case-law Guide on Data protection.
[87] See also the Case-law Guide on Data protection.

initiating correspondence constitutes the most far reaching form of "interference" with the exercise of the "right to respect for correspondence" (*Golder v. the United Kingdom*, 1975, § 43).

563. Other forms of interference with the right to respect for "correspondence" may include the following acts attributable to the public authorities:

- screening of correspondence (*Campbell v. the United Kingdom*, 1992, § 33), the making of copies (*Foxley v. the United Kingdom*, 2000, § 30) or the deletion of certain passages (*Pfeifer and Plankl v. Austria*, 1992, § 43);
- interception by various means and recording of personal or business related conversations (*Amann v. Switzerland* [GC], 2000, § 45), for example by means of telephone tapping (*Malone v. the United Kingdom*, 1984, § 64, and, as regards metering, §§ 83-84, *Azer Ahmadov v. Azerbaijan*, 2021, § 62; see also *P.G. and J.H. v. the United Kingdom*, 2001, § 42), even when carried out on the line of a third party (*Lambert v. France*, 1998, § 21; *Potoczka and Adamco v. Slovakia*, 2023, and also for the individual not concerned by the criminal proceedings, §§ 1, 46-51);
- copying the full content of the hard drive of the applicant's laptop on to an external hard drive, the mirror-image copy (*Särgava v. Estonia*, 2021), or the seizure of a smart phone and the search of its mirror image copy (*Saber v. Norway*, 2020, § 48);
- storage of intercepted data concerning telephone, email and Internet use (*Copland v. the United Kingdom*, 2007, § 44). The mere fact that such data may be obtained legitimately, for example from telephone bills, is no bar to finding an "interference"; the fact that the information has not been disclosed to third parties or used in disciplinary or other proceedings against the person concerned is likewise immaterial (*ibid*., § 43);

This may also concern:

- the forwarding of mail to a third party (*Luordo v. Italy*, 2003, §§ 72 and 75, with regard to a trustee in bankruptcy; *Herczegfalvy v. Austria*, 1992, §§ 87-88, with regard to the guardian of a psychiatric detainee);
- the copying of electronic files, including those belonging to companies (*Bernh Larsen Holding AS and Others v. Norway*, 2013, § 106;);
- the copying of documents containing banking data and their subsequent storage by the authorities (*M.N. and Others v. San Marino*, 2015, § 52);
- secret surveillance measures (*Big Brother Watch and Others v. the United Kingdom* [GC], 2021; *Centrum för rättvisa v. Sweden* [GC], 2022; *Roman Zakharov v. Russia* [GC], 2015, and the references cited therein). A situation where an individual under secret surveillance happens to be a member of a company's management board does not automatically lead to an interference with that company's Article 8 rights (*Liblik and others v. Estonia*, 2019, § 112, in which, however, the Court saw no reason to distinguish between the correspondence of a member of the management board of the applicant companies and that of the applicant companies themselves even if no secret surveillance authorisations had been formally issued in respect of the companies).

564. A "crucial contribution" by the authorities to a recording made by a private individual amounts to interference by a "public authority" (*A. v. France*, 1993, § 36; *Van Vondel v. the Netherlands*, 2007, § 49; *M.M. v. the Netherlands*, 2003, § 39, concerning a recording by a private individual with the prior permission of the public prosecutor; *Lysyuk v. Ukraine*, 2021, §§ 51 concerning a recording was made in a private home by the police).

2. Positive obligations

565. To date, the Court has identified several positive obligations for States in connection with the right to respect for correspondence, for instance:

- the State's positive obligation when it comes to communications of a non-professional nature in the workplace (*Bărbulescu v. Romania* [GC], 2017, §§ 113 and 115-120);
- an obligation to prevent disclosure into the public domain of private conversations (*Craxi v. Italy (no 2)*, §§ 68-76; *mutatis mutandis*, *M.D. and Others v. Spain*, 2022, § 57*);*
- an obligation to provide prisoners with the necessary materials to correspond with the Court in Strasbourg (*Cotleţ v. Romania*, 2003, §§ 60-65; *Gagiu v. Romania*, 2009, §§ 91-92);
- an obligation to execute a Constitutional Court judgment ordering the destruction of audio cassettes containing recordings of telephone conversations between a lawyer and his client (*Chadimová v. the Czech Republic*, 2006, § 146);
- an obligation to strike a fair balance between the right to respect for correspondence and the right to freedom of expression (*Benediktsdóttir v. Iceland* (dec.), 2009);
- a positive obligation in the context of monitoring by a political party of emails of its members (*Tena Arregui v. Spain*, 2024, § 35)
- an obligation to investigate the violation of the confidentiality of the applicant's correspondence in the context of domestic violence (*Buturugă v. Romania*, 2020, where the applicant's former husband had improperly consulted her electronic accounts, including her Facebook account, and had made copies of her private conversations, documents and photographs);
- an obligation to protect the confidentiality of emails exchanged by the applicant on a dating website, produced without her consent by her ex-husband in civil proceedings regarding parental responsibility and divorce (*M.P. v. Portugal*, 2021, § 44).

3. General approach

566. The situation complained of may fall within the scope of Article 8 § 1 both from the standpoint of respect for correspondence and from that of the other spheres protected by Article 8 (right to respect for the home, private life and family life) (*Chadimová v. the Czech Republic*, 2006, § 143 and the references cited therein).

567. An interference can only be justified if the conditions set out in the second paragraph of Article 8 are satisfied. Thus, if it is not to contravene Article 8, the interference must be "in accordance with the law", pursue one or more "legitimate aims" and be "necessary in a democratic society" in order to achieve them.

568. The concept of "law" in Article 8 § 2 covers common law and "continental" countries alike (*Kruslin v. France*, 1990, § 29). Where the Court considers that an interference is not "in accordance with the law", it will generally refrain from reviewing whether the other requirements of Article 8 § 2 have been complied with (*Messina v. Italy (no. 2)*, 2000, § 83; *Enea v. Italy* [GC], 2009, § 144; *Meimanis v. Latvia*, 2015, § 66).

569. A measure must have some basis in domestic law, the term "law" being understood in its "substantive" rather than its "formal" sense. In a sphere covered by statutory law, the "law" is the enactment in force as the competent courts have interpreted it. Domestic law must further be compatible with the rule of law and accessible to the person concerned, and the person affected must be able to foresee the consequences of the domestic law for him or her (*Big Brother Watch and Others v. the United Kingdom*, 2021, § 332).

570. As search and seizure represent a serious interference with correspondence, they must be based on a "law" that is particularly precise (*Saber v. Norway*, 2020, § 50). Domestic law must provide some

protection to the individual against arbitrary interference with Article 8 rights. It must thus be sufficiently clear in its terms to give citizens an adequate indication as to the circumstances and conditions under which public authorities are empowered to resort to any such measures (*Särgava v. Estonia*, 2021, § 87).

571. The Court affords the Contracting States a margin of appreciation under Article 8 in regulating matters in this sphere, but this margin remains subject to the Court's review of compliance with the Convention (*Szuluk v. the United Kingdom*, 2009, § 45 and the references cited therein).

572. The Court has emphasised the importance of the relevant international instruments in this field, including the European Prison Rules (*Nusret Kaya and Others v. Turkey*, 2014, §§ 26-28 and § 55).

B. Prisoners' correspondence[88]

1. General principles

573. Some measure of control over prisoners' correspondence is acceptable and is not of itself incompatible with the Convention, regard being paid to the ordinary and reasonable requirements of imprisonment (*Silver and Others v. the United Kingdom*, 1983, § 98; *Golder v. the United Kingdom*, 1975, § 45; *A.V. v. Switzerland*, 2025, §§ 37-39). However, such control must not exceed what is required by the legitimate aim pursued in accordance with Article 8 § 2 of the Convention. While it may be necessary to monitor detainees' contact with the outside world, including telephone contact, the rules applied must afford the prisoner appropriate protection against arbitrary interference by the national authorities (*Doerga v. the Netherlands*, 2004, § 53).

574. The opening (*Demirtepe v. France*, 1999, § 26), monitoring (*Kornakovs v. Latvia*, 2006, § 158) and seizure (*Birznieks v. Latvia*, 2011, § 124) of a prisoner's correspondence with the Court fall under Article 8. So too may the refusal to provide a prisoner with the materials needed for correspondence with the Court (*Cotleţ v. Romania*, 2003, § 65).

575. In assessing the permissible extent of such control, it should be borne in mind that the opportunity to write and to receive letters is sometimes the prisoner's only link with the outside world (*Campbell v. the United Kingdom*, 1992, § 45). General, systematic monitoring of the entirety of prisoners' correspondence, without any rules as to the implementation of such a practice and without any reasons being given by the authorities, would breach the Convention (*Petrov v. Bulgaria*, 2008, § 44). There is, however, no need for the authorities to justify the necessity of systematic monitoring of non-privileged correspondence (excluding correspondence with lawyers and some public institutions) in each individual case (*A.V. v. Switzerland*, 2025, § 37).

576. Examples of "interference" within the meaning of Article 8 § 1 include:

- interception by the prison authorities of a letter (*McCallum v. the United Kingdom*, 1990, § 31) or failure to post a letter (*William Faulkner v. the United Kingdom*, 2002, § 11; *Mehmet Nuri Özen and Others v. Turkey*, 2011, § 42);
- restrictions on (*Campbell and Fell v. the United Kingdom*, § 110) or the destruction of mail (*Fazıl Ahmet Tamer v. Turkey*, 2006, §§ 52 and 54 for a filtering system);
- opening of a letter (*Narinen v. Finland*, 2004, § 32) – including where there are operational defects within the prison mail service (*Demirtepe v. France*, 1999, § 26) or the mail is simply opened before being handed over straight away (*Faulkner v. the United Kingdom* (dec.), 2002);
- delays in delivering mail (*Cotleţ v. Romania*, 2003, § 34) or a refusal to forward emails sent to the prison's address to a particular prisoner (*Helander v. Finland* (dec.), 2013, § 48); and

[88] See also section individual applications and the Guide on Prisoners' Rights; and above.

- scanning and uploading of prisoners' private correspondence, both incoming and outgoing, onto the National Judicial Network Server, even where the authorities have not accessed it directly (*Nuh Uzun and Others v. Turkey*, 2022, §§ 80-82);

Exchanges between two prisoners are also covered (*Pfeifer and Plankl v. Austria*, 1992, § 43), as is the refusal to hand over a book to a prisoner (*Ospina Vargas v. Italy*, 2004, § 44) or restrictions on a detainee's right to receive and subscribe to socio-political magazines and newspapers (*Mirgadirov v. Azerbaijan and Turkey*, 2020, §§ 115 and 118).

577. "Interference" may also result from:

- deleting certain passages (*Fazıl Ahmet Tamer v. Turkey*, 2006, §§ 10 and 53; *Pfeifer and Plankl v. Austria*, 1992, § 47);
- limiting the number of parcels and packets a prisoner is allowed to receive (*Aliev v. Ukraine*, 2003, § 180); and
- recording and storing a prisoner's telephone conversations (*Doerga v. the Netherlands*, 2004, § 50) or conversations between a prisoner and his relatives during visits (*Wisse v. France*, 2005, § 29).

The same applies to the imposition of a disciplinary penalty entailing an absolute ban on sending or receiving mail for 28 days (*McCallum v. the United Kingdom*, 1990, § 31) and to a restriction concerning prisoners' use of their mother tongue during telephone conversations (*Nusret Kaya and Others v. Turkey*, 2014, § 36).

578. The interference must satisfy the requirements of lawfulness set forth in Article 8 § 2. The law must be sufficiently clear in its terms to give everyone an indication as to the circumstances in which and the conditions on which public authorities are empowered to resort to such measures (*Lavents v. Latvia*, 2022, § 135). It is for the respondent Government before the Court to indicate the statutory provision on which the national authorities based their monitoring of the prisoner's correspondence (*Di Giovine v. Italy*, 2001, § 25).

579. The lawfulness requirement refers not only to the existence of a legal basis in domestic law but also to the quality of the law, which should be clear, foreseeable as to its effects and accessible to the person concerned, who must be in a position to foresee the consequences of his or her acts (*Lebois v. Bulgaria*, 2017, §§ 66-67; *Silver and Others v. the United Kingdom*, 1983, § 88).

580. Legislation is incompatible with the Convention if it does not regulate either the duration of measures to monitor prisoners' correspondence or the reasons that may justify them, if it does not indicate with sufficient clarity the scope and manner of exercise of the discretion conferred on the authorities in the relevant sphere, or if it leaves them too wide a margin of appreciation (*Labita v. Italy* [GC], 2000, §§ 176 and 180-184; *Niedbała v. Poland*, 2000, §§ 81-82; *Lavents v. Latvia*, 2022, § 136).

581. The following measures, among others, are not "in accordance with the law":

- censorship carried out in breach of provisions expressly prohibiting it (*Idalov v. Russia* [GC], 2012, § 201) or insufficiently comprehensive (*Enea v. Italy* [GC], 2009, § 143), or in the absence of provisions authorising it (*Demirtepe v. France*, 1999, § 27), or by an authority exceeding its powers under the applicable legislation (*Labita v. Italy* [GC], 2000, § 182);
- censorship on the basis of an unpublished instrument not accessible to the public (*Poltoratskiy v. Ukraine*, 2003, §§ 158-160);
- scanning and uploading of prisoners' correspondence onto the National Judicial Network Server on the basis of instructions issued by the Ministry of Justice, directly and specifically addressed to the public prosecutors and prison authorities, which had not been made accessible to the public in general or to the applicants in particular (*Nuh Uzun and Others v. Turkey*, 2022, §§ 83-99);

- rules on the monitoring of prisoners' telephone calls that are not sufficiently clear and detailed to afford the applicant appropriate protection (*Doerga v. the Netherlands*, 2004, § 53).

582. The Court has also found a violation of Article 8 on account of the refusal to pass on a letter from one prisoner to another, on the basis of an internal instruction without any binding force (*Frérot v. France*, 2007, § 59).

583. Where domestic law allows interference, it must include safeguards to prevent abuses of power by the prison authorities. A law that simply identifies the category of persons whose correspondence "may be censored" and the competent court, without saying anything about the length of the measure or the reasons that may warrant it, is not sufficient (*Calogero Diana v. Italy*, 1996, §§ 32-33).

584. The Court finds a violation where the domestic provisions concerning the monitoring of prisoners' correspondence leave the national authorities too much latitude and give prison governors the power to keep any correspondence "unsuited to the process of rehabilitating a prisoner", with the result that "monitoring of correspondence therefore seems to be automatic, independent of any decision by a judicial authority and unappealable" (*Petra v. Romania*, 1998, § 37). However, although a law which confers a discretion must indicate the scope of that discretion (*Domenichini v. Italy*, 1996, § 32), the Court accepts that it is impossible to attain absolute certainty in the framing of the law (*Calogero Diana v. Italy*, 1996, § 32).

585. Amendments to an impugned law do not serve to redress violations which occurred before they entered into force (*Enea v. Italy* [GC], 2009, § 147; *Argenti v. Italy*, 2005, § 38).

586. Interference with a prisoner's right to respect for his or her correspondence must also be necessary in a democratic society (*Yefimenko v. Russia*, 2013, § 142). Such "necessity" must be assessed with regard to the ordinary and reasonable requirements of imprisonment. The "prevention of disorder or crime" (*Kwiek v. Poland*, 2006, § 47; *Jankauskas v. Lithuania*, 2005, § 21), in particular, may justify more extensive interference in the case of a prisoner than for a person at liberty. Thus, to this extent, but to this extent only, lawful deprivation of liberty within the meaning of Article 5 will impinge on the application of Article 8 to persons deprived of their liberty (*Golder v. the United Kingdom*, 1975, § 45). In any event, the measure in question must be proportionate within the meaning of Article 8 § 2. The extent of the monitoring and the existence of adequate safeguards against abuse are fundamental criteria in this assessment (*Tsonyo Tsonev v. Bulgaria*, 2009, § 42).

587. The nature of the correspondence subject to monitoring may also be taken into consideration. Certain types of correspondence, for example with a lawyer, should enjoy an enhanced level of confidentiality, especially where it contains complaints against the prison authorities (*Yefimenko v. Russia*, 2013, § 144). As regards the extent and nature of the interference, monitoring of the entirety of a prisoner's correspondence, without any distinction between different types of correspondent, upsets the balance between the interests at stake (*Petrov v. Bulgaria*, 2008, § 44). The mere fear of the prisoner evading trial or influencing witnesses cannot in itself justify an open licence for routine checking of all of a prisoner's correspondence (*Jankauskas v. Lithuania*, 2005, § 22).

588. The interception of private letters because they contained "material deliberately calculated to hold the prison authorities up to contempt" was found not to have been "necessary in a democratic society" in the case of *Silver and Others v. the United Kingdom*, 1983, §§ 64, 91 and 99.

589. Furthermore, it is important to distinguish between minors placed under educational supervision and prisoners when assessing restrictions on correspondence and telephone communications. The authorities' margin of appreciation is narrower in the former case (*D.L. v. Bulgaria*, 2016, §§ 104-109).

590. Article 8 cannot be interpreted as guaranteeing prisoners the right to communicate with the outside world by way of online devices, particularly where facilities for contact *via* alternative means

are available and adequate (*Ciupercescu v. Romania (no. 3)*, 2020, § 105, and concerning the right to telephone calls, *Lebois v. Bulgaria*, 2017, § 61).

2. Where interference with prisoners' correspondence may be necessary

591. Since the *Silver and Others v. the United Kingdom*, 1983, judgment, the Court's case-law has acknowledged that some measure of control over prisoners' correspondence is called for and is not of itself incompatible with the Convention. The Court has held in particular that:

- the monitoring of prisoners' correspondence may be legitimate on the grounds of maintaining order in prisons (*Kepenekliоğlu v. Turkey*, 2007, § 31; *Silver and Others v. the United Kingdom*, 1983, § 101; *A.V. v. Switzerland*, 2025, § 36);
- some measure of control – as opposed to automatic, routine interference – aimed at preventing disorder or crime may be justified, for example in the case of correspondence with dangerous individuals or concerning non-legal matters (*Jankauskas v. Lithuania*, 2005, §§ 21-22; *Faulkner v. the United Kingdom* (dec.), 2002);
- where access to a telephone is permitted, it may – having regard to the ordinary and reasonable conditions of prison life – be subjected to legitimate restrictions, for example in the light of the need for the facilities to be shared with other prisoners and the requirements of the prevention of disorder and crime (*A.B. v. the Netherlands*, 2002, § 93; *Coşcodar v. Romania* (dec.), 2010, § 30);
- a prohibition on sending a letter not written on an official form does not raise an issue, provided that such forms are readily available (*Faulkner v. the United Kingdom* (dec.), 2002);
- a prohibition on a foreign prisoner sending a letter to his relatives in a language not understood by the prison authorities does not raise an issue where the applicant did not give a convincing reason for declining the offer of a translation free of charge and was allowed to send two other letters (*Chishti v. Portugal* (dec.), 2003);
- limiting the number of packages and parcels may be justified to safeguard prison security and avoid logistical problems, provided that a balance is maintained between the interests at stake (*Aliev v. Ukraine*, 2003, §§ 181-182);
- a minor disciplinary penalty of withholding a parcel sent to a prisoner – for breaching the requirement to send correspondence *via* the prison authorities – was not found to be disproportionate (*Puzinas v. Lithuania (no. 2)*, 2007, § 34; compare, however, with *Buglov v. Ukraine*, 2014, § 137);
- a delay of three weeks in posting a nonurgent letter because of the need to seek instructions from a superior official was likewise not found to constitute a violation (*Silver and Others v. the United Kingdom*, 1983, § 104).

3. Written correspondence

592. Article 8 does not guarantee prisoners the right to choose the materials to write with. The requirement for prisoners to use official prison paper for their correspondence does not amount to interference with their right to respect for their correspondence, provided that the paper is immediately available (*Cotleţ v. Romania*, 2003, § 61).

593. Article 8 does not require States to pay the postage costs of all correspondence sent by prisoners (*Boyle and Rice v. the United Kingdom*, 1988, §§ 56-58). However, this matter should be assessed on a case-by-case basis as an issue could arise if a prisoner's correspondence was seriously hindered for lack of financial resources. Thus, the Court has held that:

- the refusal by the prison authorities to provide an applicant lacking the financial resources to buy such materials with the envelopes, stamps and writing paper needed for

correspondence with the Court in Strasbourg may constitute a failure by the respondent State to comply with its positive obligation to ensure effective respect for the right to respect for correspondence (*Cotleţ v. Romania*, 2003, §§ 59 and 65);

- in the case of a prisoner without any means or any support who is entirely dependent on the prison authorities, those authorities must provide him with the necessary material, in particular stamps, for his correspondence with the Court (*Gagiu v. Romania*, 2009, §§ 91-92).

594. An interference with the right to correspondence that is found to have occurred by accident as a result of a mistake on the part of the prison authorities and is followed by an explicit acknowledgement and sufficient redress (for example, the adoption by the authorities of measures ensuring that the mistake will not be repeated) does not raise an issue under the Convention (*Armstrong v. the United Kingdom* (dec.), 2001; *Tsonyo Tsonev v. Bulgaria*, 2009, § 29).

595. Proof of actual receipt of mail by the prisoner is the State's responsibility; in the event of a disagreement between the applicant and the respondent Government before the Court as to whether a letter was actually handed over, the Government cannot simply produce a record of incoming mail addressed to the prisoner, without ascertaining that the item in question did in fact reach its addressee (*Messina v. Italy*, 1993, § 31).

596. The authorities responsible for posting outgoing letters and receiving incoming mail should inform prisoners of any problems in the postal service (*Grace v. the United Kingdom*, Commission report, 1988, § 97).

4. Telephone conversations[89] [90]

597. Article 8 of the Convention does not confer on prisoners the right to make telephone calls, in particular where the facilities for communication by letter are available and adequate (*A.B. v. the Netherlands*, 2002, § 92; *Ciszewski v. Poland* (dec.), 2004). However, where domestic law allows prisoners to speak by telephone, for example to their relatives, under the supervision of the prison authorities, a restriction imposed on their telephone communications may amount to "interference" with the exercise of their right to respect for their correspondence within the meaning of Article 8 § 1 of the Convention (*Lebois v. Bulgaria*, 2017, §§ 61 and 64; *Nusret Kaya and Others v. Turkey*, 2014, § 36). In practice, consideration should be given to the fact that prisoners have to share a limited number of telephones (*Bădulescu v. Portugal*, 2020, on limited duration of the daily phone calls, §§ 35 and 36) and that the authorities have to prevent disorder and crime (*Daniliuc v. Romania* (dec.), 2012; see also *Davison v. the United Kingdom* (dec.), 2010, as regards the charges for telephone calls made from prison).

598. Prohibiting a prisoner from using the prison telephone booth for a certain period to call his partner of four years, with whom he had a child, on the grounds that they were not married was found to breach Articles 8 and 14 taken together (*Petrov v. Bulgaria*, 2008, § 54).

599. In a high security prison, the storage of the numbers that a prisoner wished to call – a measure of which he had been notified – was considered necessary for security reasons and to avoid the commission of further offences (the prisoner had other ways of remaining in contact with his relatives, such as letters and visits) (*Coşcodar v. Romania* (dec.), 2010, § 30 – see also in an ordinary prison, *Ciupercescu v. Romania (no. 3)*, 2020, §§ 114-117).

[89] See the Case-law Guide on Prisoners' rights.
[90] See chapter Privacy.

5. Correspondence between prisoners and their lawyer[91]

600. Article 8 applies indiscriminately to correspondence with a lawyer who has already been instructed by a client and a potential lawyer (*Schönenberger and Durmaz v. Switzerland*, 1998, § 29).

601. Correspondence between prisoners and their lawyer is "privileged" under Article 8 of the Convention" (*Campbell v. the United Kingdom*, 1992, § 48; *Piechowicz v. Poland*, 2012, § 239). It may constitute a preliminary step to the exercise of the right of appeal, for example in respect of treatment during detention (*Ekinci and Akalın v. Turkey*, 2007, § 47), and may have a bearing on the preparation of a defence, in other words the exercise of another Convention right set forth in Article 6 (*Golder v. the United Kingdom*, 1975, § 45 in fine; *S. v. Switzerland*, 1991, § 48; *Beuze v. Belgium* [GC], 2018, § 193).

602. The Court considers observance of the principle of lawyer-client confidentiality to be fundamental (*Helander v. Finland* (dec.), 2013, § 53). See also the Recommendation of the Committee of Ministers to Member States of the Council of Europe on the European Prison Rules Rec(2006)2. Systematic monitoring of such correspondence sits ill with this principle (*Petrov v. Bulgaria*, 2008, § 43).

603. The Court accepts, however, that the prison authorities may open a letter from a lawyer to a prisoner when they have reasonable cause to believe that it contains an illicit enclosure which the normal means of detection have failed to disclose. The letter should, however, only be opened and should not be read (*Campbell v. the United Kingdom*, 1992, § 48; *Erdem v. Germany*, 2001, § 61). The protection of the prisoner's correspondence with the lawyer requires the Member States to provide suitable guarantees preventing the reading of the letter such as opening the letter in the presence of the prisoner (*Campbell v. the United Kingdom*, 1992, § 48).

604. The reading of a prisoner's mail to and from a lawyer should only be permitted in exceptional circumstances when the authorities have reasonable cause to believe that the "privilege is being abused" in that the contents of the letter endanger prison security or the safety of others or are otherwise of a criminal nature. What may be regarded as "reasonable cause" will depend on all the circumstances but it presupposes the existence of facts or information which would satisfy an objective observer that the privileged channel of communication is being abused (*Campbell v. the United Kingdom*, 1992, § 48; *Petrov v. Bulgaria*, 2008, § 43; *Boris Popov v. Russia*, 2010, § 111). Any exceptions to this privilege must be accompanied by adequate and sufficient safeguards against abuse (*Erdem v. Germany*, 2001, § 65).

605. The prevention of terrorism is an exceptional context and involves pursuing the legitimate aims of protecting "national security" and preventing "disorder or crime" (*Erdem v. Germany*, 2001, §§ 60 and 66-69). In the case cited, the context of the ongoing trial, the terrorist threat, security requirements, the procedural safeguards in place and the existence of another channel of communication between the accused and his lawyer led the Court to find no violation of Article 8.

606. The interception of letters complaining of prison conditions and certain actions by the prison authorities was found not to comply with Article 8 § 2 (*Ekinci and Akalın v. Turkey*, 2007, § 47).

607. The withholding by the public prosecutor of a letter from a lawyer informing an arrested person of his rights was held to breach Article 8 § 2 (*Schönenberger and Durmaz v. Switzerland*, 1998, §§ 28-29).

608. Article 34 of the Convention (see below Correspondence with the Court) may also be applicable in the case of a restriction of correspondence between a prisoner and a lawyer concerning an application to the Court and participation in proceedings before it (*Shtukaturov v. Russia*, 2008, § 140, concerning in particular a ban on telephone calls and correspondence[92]). For instance, the Court

[91] See also Section individual applications and the Case-law Guide on Prisoners' Rights; and above/below.
[92] See the Practical Guide on admissibility criteria.

examined a case under Article 34 which dealt with the interception of letters sent to prisoners by their lawyers concerning applications before the Court (*Mehmet Ali Ayhan and Others v. Turkey*, 2019, §§ 39-45).

609. The Court has nevertheless specified that the State retains a certain margin of appreciation in determining the means of correspondence to which prisoners must have access. Thus, the refusal by the prison authorities to forward to a prisoner an email sent by his lawyer to the prison email address is justified where other effective and sufficient means of transmitting correspondence exist (*Helander v. Finland* (dec.), 2013, § 54, where domestic law provided that contact between prisoners and their lawyers had to take place by post, telephone or visits). The Court has also accepted that compliance by a representative with certain formal requirements might be necessary before obtaining access to a detainee, for instance for security reasons or in order to prevent collusion or perversion of the course of the investigation or justice (*Melnikov v. Russia*, 2010, § 96).

610. There is no reason to distinguish between the different categories of correspondence with lawyers. Whatever their purpose, they concerned matters of a private and confidential character. In the case of *Altay v. Turkey (no. 2)*, 2019, the Court ruled for the first time that, in principle, oral, face-to-face communication with a lawyer in the context of legal assistance falls within the scope of "private life" (§ 49 and § 51).[93]

6. Correspondence with the Court[94]

611. A prisoner's correspondence with the Convention institutions falls within the scope of Article 8. The Court has found that there was interference with the right to respect for correspondence where letters sent to prisoners by the Convention institutions had been opened (*Peers v. Greece*, 2001, § 81; *Valašinas v. Lithuania*, 2001, §§ 128-129; *Idalov v. Russia* [GC], 2012, §§ 197-201). As in other cases, such interference will breach Article 8 unless it is "in accordance with the law", pursued one of the legitimate aims set forth in Article 8 § 2 and was "necessary in a democratic society" in order to achieve that aim (*Petra v. Romania*, 1998, § 36).

612. In a specific case where only one of a significant number of letters had been "opened by mistake" at a facility to which the applicant had just been transferred, the Court found that there was no evidence of any deliberate intention on the authorities' part to undermine respect for the applicant's correspondence with the Convention institutions such as to constitute interference with his right to respect for his correspondence within the meaning of Article 8 § 1 (*Touroude v. France* (dec.), 2000; *Sayoud v. France* (dec.), 2007).

613. On the other hand, where monitoring of correspondence is automatic, unconditional, independent of any decision by a judicial authority and unappealable, it is not "in accordance with the law" (*Petra v. Romania*, 1998, § 37; *Kornakovs v. Latvia*, 2006, § 159).

614. Disputes concerning correspondence between prisoners and the Court may also raise an issue under Article 34 of the Convention where there is hindrance of the "effective exercise" of the right of individual petition (*Shekhov v. Russia*, 2014, § 53 and the references cited therein; *Yefimenko v. Russia*, 2013, § 164[95]; *Mehmet Ali Ayhan and Others v. Turkey*, 2019, §§ 39-45).

615. The Contracting Parties to the Convention have undertaken to ensure that their authorities do not hinder "in any way" the effective exercise of the right to apply to the Court. It is therefore of the utmost importance that applicants or potential applicants are able to communicate freely with the Court without being dissuaded or discouraged by the authorities from pursuing a Convention remedy and without being subjected to any form of pressure to withdraw or modify their complaints (*Ilaşcu*

[93] See also Privacy during detention and imprisonment, and below.
[94] See also Section individual applications and the Case-law Guide on Prisoners' Rights; and above.
[95] See the Practical Guide on admissibility criteria.

and Others v. Moldova and Russia [GC], 2004, § 480; *Cotleţ v. Romania*, 2003, § 69). See also the European Agreement relating to Persons Participating in Proceedings of the European Court of Human Rights, the Resolution CM/Res(2010)25 on Member States' duty to respect and protect the right of individual application to the European Court of Human Rights and the Recommendation of the Committee of Ministers to Member States of the Council of Europe on the European Prison Rules Rec(2006)2.

616. Refusing to forward correspondence from an applicant that serves in principle to determine the issue of compliance with the six-month rule for the purposes of Article 35 § 1 of the Convention is a typical example of hindrance of the effective exercise of the right of application to the Court (*Kornakovs v. Latvia*, 2006, § 166). Situations falling under Article 34 of the Convention include the following (contrast with, for instance, *Dimcho Dimov v. Bulgaria*, 2014, §§ 94-102):

- interception by the prison authorities of letters from or to the Court (*Maksym v. Poland*, 2006, §§ 31-33 and the references cited therein), even simple acknowledgments of receipt (*Yefimenko v. Russia*, 2013, § 163);
- measures limiting an applicant's contacts with her/his representative (*Shtukaturov v. Russia*, 2008, § 140; *Mehmet Ali Ayhan and Others v. Turkey*, 2019, §§ 39-45[96])
- punishment of a prisoner for sending a letter to the Court (*Kornakovs v. Latvia*, 2006, §§ 168-169);
- acts constituting pressure or intimidation (*Ilaşcu and Others v. Moldova and Russia* [GC], 2004, § 481);
- refusal by the prison authorities to supply photocopies needing to be appended to the application form, or unjustified delays in doing so (*Igors Dmitrijevs v. Latvia*, 2006, §§ 91 and 100; *Gagiu v. Romania*, 2009, §§ 95-96; *Moisejevs v. Latvia*, 2006, § 184);
- in general, the lack of effective access to documents required for an application to the Court (*Vasiliy Ivashchenko v. Ukraine*, 2012, §§ 123 and 125).

617. It should be borne in mind that since they are confined within an enclosed space, have little contact with their relatives or the outside world and are constantly subject to the authority of the prison management, prisoners are undoubtedly in a position of vulnerability and dependence (*Cotleţ v. Romania*, 2003, § 71; *Kornakovs v. Latvia*, 2006, § 164). Accordingly, as well as the undertaking to refrain from hindering the exercise of the right of petition, the authorities may in certain circumstances have an obligation to furnish the necessary facilities to a prisoner who is in a position of particular vulnerability and dependence vis-à-vis the prison management (*Naydyon v. Ukraine*, 2010, § 64) and is unable to obtain by his own means the documents required by the Registry of the Court in order to submit a valid application (*Vasiliy Ivashchenko v. Ukraine*, 2012, §§ 103-107).

618. In accordance with Rule 47 of the Rules of Court, the application form must be accompanied by relevant documents enabling the Court to reach its decision. In these circumstances, the authorities have an obligation to provide applicants, on request, with the documents they need in order for the Court to carry out an adequate and effective examination of their application (*Naydyon v. Ukraine*, 2010, § 63 and the references cited therein). Failure to provide the applicant in good time with the documents needed for the application to the Court entails a breach by the State of its obligation under Article 34 of the Convention (*Iambor v. Romania (no. 1)*, 2008, § 216; and contrast *Ustyantsev v. Ukraine*, 2012, § 99). It should nevertheless be pointed out that:

- as the Court has emphasised, there is no automatic right to receive copies of all documents from the prison authorities (*Chaykovskiy v. Ukraine*, 2009, §§ 94-97);
- not all delays in posting mail to the Court are worthy of criticism (for 4 to 5 days: *Yefimenko v. Russia*, 2013, §§ 131 and 159; for 6 days: *Shchebetov v. Russia*, 2012, § 84), particularly

[96] See also Correspondence between prisoners and their lawyer.

where there is no deliberate intention to hinder the applicant's complaint to the Court (for a slightly longer delay, *Valašinas v. Lithuania*, 2001, § 134), but the authorities have an obligation to forward correspondence without undue delay (*Sevastyanov v. Russia*, 2010, § 86);

- allegations by an applicant of hindrance of correspondence with the Court must be sufficiently substantiated (*Valašinas v. Lithuania*, 2001, § 136; *Michael Edward Cooke v. Austria*, 2000, § 48) and must attain a minimum level of severity to qualify as acts or omissions in breach of Article 34 of the Convention (*Kornakovs v. Latvia*, 2006, § 173; *Moisejevs v. Latvia*, 2006, § 186);
- the respondent Government must provide the Court with a reasonable explanation in response to consistent and credible allegations of a hindrance of the right of petition (*Klyakhin v. Russia*, 2004, §§ 120-121);
- the possibility of envelopes from the Court being forged in order to smuggle prohibited material into the prison constitutes such a negligible risk as to be discounted (*Peers v. Greece*, 2001, § 84).

7. Correspondence with journalists

619. The right to freedom of expression in the context of correspondence is protected by Article 8 of the Convention. In principle, a prisoner may send material for publication (*Silver and Others v. the United Kingdom*, 1983, § 99; *Fazıl Ahmet Tamer v. Turkey*, 2006, § 53). In practice, the content of the material is a factor to be taken into consideration.

620. For example, an order prohibiting a remand prisoner from sending two letters to journalists was found to constitute an interference. However, the national authorities had noted that they contained defamatory allegations against witnesses and the prosecuting authorities while the criminal proceedings were in progress. Moreover, the applicant had had the opportunity to raise those allegations in the courts and had not been deprived of contact with the outside world. The prohibition of his correspondence with the press was therefore found by the Court to have been proportionate to the legitimate aim pursued, namely the prevention of crime (*Jöcks v. Germany* (dec.), 2006).

621. More broadly, in the case of a letter that has not been sent to the press but is liable to be published, the protection of the rights of the prison staff named in the letter may be taken into consideration (*W. v. the United Kingdom*, 1987, §§ 52-57).

8. Correspondence between a prisoner and a doctor

622. The Court dealt for the first time with the monitoring of a prisoner's medical correspondence in the case of *Szuluk v. the United Kingdom*, 2009. The case concerned the monitoring by the prison medical officer of the prisoner's correspondence with the specialist supervising his treatment in hospital, relating to his life-threatening medical condition. The Court accepted that a prisoner with a life-threatening medical condition would want to be reassured by an outside specialist that he was receiving adequate medical treatment in prison. Taking into account the circumstances of the case, the Court found that although the monitoring of the prisoner's medical correspondence had been limited to the prison medical officer, it had not struck a fair balance with his right to respect for his correspondence (§§ 49-53).

9. Correspondence with close relatives or other individuals

623. It is essential for the authorities to help prisoners maintain contact with their close relatives. In this connection the Court has stressed the importance of the recommendations set out in the European Prison Rules (*Nusret Kaya and Others v. Turkey*, 2014, § 55).

624. Some measure of control over prisoners' interaction with the outside world may be necessary (*Coşcodar v. Romania* (dec.), 2010; *Baybaşın v. the Netherlands* (dec.), 2005, in the case of detention in a maximum-security facility).

625. The Court makes a distinction between a prisoner's correspondence with criminals or other dangerous individuals and correspondence relating to private and family life (*Čiapas v. Lithuania*, 2006, § 25). However, the interception of letters from a close relative of a prisoner charged with serious offences may be necessary to prevent crime and to ensure the proper conduct of the ongoing trial (*Kwiek v. Poland*, 2006, § 48; see also *Falzarano v. Italy* (dec.), 2021, §§ 5, 24, 37-39).

626. A prisoner in a maximum-security facility may be prohibited from corresponding with relatives in the language of his choice for particular security reasons – such as the prevention of the risk of escaping – where the prisoner speaks one or more of the languages permitted for contact with close relatives (*Baybaşın v. the Netherlands* (dec.), 2005).

627. However, the Court has not accepted the practice of requiring prisoners wishing to speak to relatives on the telephone in the only language used within their family to undergo a preliminary procedure, at their own expense, to determine whether they were genuinely unable to speak the official language (*Nusret Kaya and Others v. Turkey*, 2014, §§ 59-60). The Court also found that it was contrary to Article 8 to require a prisoner to supply an advance translation into the official language, at his own expense, of his private letters written in his mother tongue (*Mehmet Nuri Özen and Others v. Turkey*, 2011, § 60).

628. A letter from a prisoner to his or her family (or a private letter from one prisoner to another as in *Pfeifer and Plankl v. Austria*, 1992, § 47) cannot be intercepted simply because it contains criticism of or inappropriate language about prison staff (*Vlasov v. Russia*, 2008, § 138), unless there is a threat to use violence (*Silver and Others v. the United Kingdom*, 1983, §§ 65 and 103).

10. Correspondence between a prisoner and other addressees

629. The Court dealt with correspondence between prisoners and other addressees notably in *Niedbała v. Poland*, 2000. In this case, the Court found that national law which allowed for automatic censorship of prisoners' correspondence, without drawing any distinction between different categories such as correspondence with the Ombudsman, violated Article 8 (§ 81). Similarly, the indiscriminate, routine checking of all of the applicant's correspondence, including letters to State authorities and non-governmental organisations, constituted a violation of Article 8 (*Jankauskas v. Lithuania*, 2005, § 22; *Dimcho Dimov v. Bulgaria*, 2014, § 90 with regard to letters addressed to the Bulgarian Helsinki Committee).

C. Lawyers' correspondence[97]

630. Correspondence between a lawyer and his or her client, whatever its purpose, is protected under Article 8 of the Convention, such protection being enhanced as far as confidentiality is concerned (*Michaud v. France*, 2012, §§ 117-119). This is justified by the fact that lawyers are assigned a fundamental role in a democratic society, that of defending litigants. The content of the documents intercepted is immaterial (*Laurent v. France*, 2018, § 47). Professional secrecy is "the basis of the relationship of confidence between lawyer and client" (*Michaud v. France*, 2012) and any risk of impingement on it may have repercussions on the proper administration of justice, and hence on the rights guaranteed by Article 6 of the Convention (*Niemietz v. Germany*, 1992, § 37; *Wieser and Bicos Beteiligungen GmbH v. Austria*, 2007, § 65). Indirectly but necessarily dependent on the principle of professional secrecy is the right of everyone to a fair trial, including the right of anyone "charged with a criminal offence" not to incriminate themselves (*Michaud v. France*, 2012, § 118). While lawyer-

[97] Not including the case of correspondence with prisoners, which is addressed in the previous chapter Prisoners' correspondence.

client communications may concern matters which have little or nothing to do with litigation, there is no reason to distinguish between them, since they all concern matters of a private and confidential character; as a result, even though the conversation accidentally intercepted between the applicant and his client, did not consist, strictly speaking, of legal advice, the applicant was still entitled to the strengthened protection of lawyer-client communications (*Vasil Vasilev v. Bulgaria*, 2021, § 90). See also as regards an exchange between the applicant's lawyer and a third party (*Falzarano v. Italy* (dec.), 2021, §§ 5, 24, 32-34). Furthermore, the specific protection guaranteed to lawyer-client communications applies regardless of whether those are stored on the lawyer's or on the client's device (*Černý and Others v. the Czech Republic*, 2025, § 62).

631. In *Kruglov and Others v. Russia*, 2020, the Court examined the protection of professional confidentiality of practising lawyers who are not members of the Bar and found a violation of Article 8. It held that it would be incompatible with the rule of law to leave without any particular safeguards at all the entire relationship between clients and legal advisers who, with few limitations, practise professionally and often independently, including by representing litigants before the courts (§ 137).

632. The Court has, for example, examined the compatibility with Article 8 of the Convention of the failure to forward a letter from a lawyer to his client (*Schönenberger and Durmaz v. Switzerland*, 1998) and the tapping of a law firm's telephone lines (*Kopp v. Switzerland*, 1998) or the seizure and subsequent examination of a lawyer's laptop and mobile telephone (*Särgava v. Estonia*, 2021).

633. The term "correspondence" is construed broadly (see for instance, *Klaus Müller v. Germany*, 2020, §§ 37-41 as concerns general business exchanges between a lawyer and the representatives of his law firm's clients). It also covers lawyers' written files (*Niemietz v. Germany*, 1992, §§ 32-33; *Roemen and Schmit v. Luxembourg*, 2003, § 65), computer hard drives (*Petri Sallinen and Others v. Finland*, 2005, § 71), electronic data (*Wieser and Bicos Beteiligungen GmbH v. Austria*, 2007, §§ 66-68; *Robathin v. Austria*, 2012, § 39), USB keys (*Kırdök and Others v. Turkey*, 2019, § 32), computer files and email accounts (*Vinci Construction and GTM Génie Civil et Services v. France*, 2015, § 69) and a folded piece of paper on which a lawyer had written a message and handed it to his clients (*Laurent v. France*, 2018, § 36). It also concerns correspondence between an applicant and his lawyers contained in the applicant's own device (*Saber v. Norway*, 2020, § 52; see also *Versini-Campinchi and Crasnianski v. France*, 2016).

634. The simple fact that the authorities possessed a copy of professional data seized in the applicant's law firm constitutes an interference, regardless of whether the data was decrypted or not (*Kırdök and Others v. Turkey*, 2019, §§ 33 and 36-37)

635. Although professional privilege is of great importance for the lawyer, the client and the proper administration of justice, it is not inviolable (*Michaud v. France*, 2012, §§ 123 and 128-129). In the case cited, the Court examined whether the obligation for lawyers to report their suspicions of unlawful money laundering activities by their clients, where such suspicions came to light outside the context of their defence role, amounted to disproportionate interference with legal professional privilege (no violation). In *Versini-Campinchi and Crasnianski v. France*, 2016, the Court examined the interception of a lawyer's conversation with a client whose telephone line had been tapped, thus disclosing the commission of an offence by the lawyer. The Court held that in certain circumstances an exception could be made to the principle of lawyer client privilege (§§ 79-80). In *Klaus Müller v. Germany,* 2020, the Court addressed limitations on the scope of legal professional privilege under national law whereby lawyers no longer had a right not to testify as witnesses in criminal proceedings in respect of information gained in the course of professional activities, if they had been released from their obligation of secrecy by their client through a confidentiality waiver (§§ 67-73).

636. Legislation requiring a lawyer to report suspicions amounts to a "continuing" interference with the lawyer's right to respect for professional exchanges with clients (*Michaud v. France*, 2012, § 92). The obligation by means of an administrative fine to testify as a witness and provide in criminal proceedings information gained in course of professional activities constitutes an interference (*Klaus*

Müller v. Germany, 2020, §§ 40-41). Interference may also occur in the context of proceedings against lawyers themselves (*Robathin v. Austria*, 2012; *Sérvulo & Associados - Sociedade de Advogados, RL and Others v. Portugal*, 2015).

637. A search of a lawyer's office in the context of criminal proceedings against a third party may, even if it pursues a legitimate aim, encroach disproportionately on the lawyer's professional privilege (*Kruglov and Others v. Russia*, 2020, §§ 125-129; *Kırdök and Others v. Turkey*, 2019, §§ 52-58; *Niemietz v. Germany*, 1992, § 37).

638. Interference with a lawyer's "correspondence" will result in a violation of Article 8 if it is not duly justified. To that end, it must be "in accordance with the law" (*Klaus Müller v. Germany,* 2020, §§ 48-51 citing notably *Robathin v. Austria*, 2012, §§ 40-41; and for a lack of clarity in the legal framework and a lack of procedural guarantees relating concretely to the protection of legal professional privilege, *Saber v. Norway*, 2020, § 57 and *Särgava v. Estonia*, 2021, § 109), pursue one of the "legitimate aims" listed in paragraph 2 of Article 8 (*Tamosius v. the United Kingdom* (dec.), 2002; *Michaud v. France*, 2012, §§ 99 and 131) and be "necessary in a democratic society" in order to achieve that aim. The notion of necessity within the meaning of Article 8 implies that there is a pressing social need and, in particular, that the interference is proportionate to the legitimate aim pursued (*ibid.*, § 120). Where a lawyer or law firm is affected by the interference, particular safeguards must be in place. Indeed, the Court has acknowledged the importance of specific procedural guarantees when it comes to protecting the confidentiality of exchanges between lawyers and their clients and of legal professional privilege (*Michaud v. France*, 2012, §§ 117-119 and 130).

639. The Court has emphasised that since telephone tapping constitutes serious interference with the right to respect for a lawyer's correspondence, it must be based on a "law" that is particularly precise (see *Vasil Vasilev v. Bulgaria*, 2021, §§ 92-93, as concerns an instruction issued by the Chief Prosecutor), especially as the technology available for use is continually becoming more sophisticated (*Kopp v. Switzerland*, 1998, §§ 73-75). In the case cited, the Court found a violation of Article 8, firstly because the law did not state clearly how the distinction was to be drawn between matters specifically connected with a lawyer's work and those relating to activity other than that of counsel, and secondly, the telephone tapping had been carried out by the authorities without any supervision by an independent judge (see also, regarding the protection afforded by the "law", *Petri Sallinen and Others v. Finland*, 2005, § 92). Further, domestic law must provide for safeguards against abuse of power in cases where, when tapping a suspect's telephone, the authorities accidentally intercept the suspect's conversations with his or her counsel (*Dudchenko v. Russia*, 2017, §§ 109-110).

640. Above all, legislation and practice must afford adequate and effective safeguards against any abuse and arbitrariness (see, for a recapitulation of the effective safeguards, *Kruglov and Others v. Russia*, 2020, §§ 125-132; *Iliya Stefanov v. Bulgaria*, 2008, § 38; *Särgava v. Estonia*, 2021, § 109). Factors taken into consideration by the Court include whether the search was based on a warrant issued on the basis of reasonable suspicion (for a case where the accused was subsequently acquitted, see *Robathin v. Austria*, 2012, § 46). The Court takes into account the severity of the offence in connection with which the search was carried out (*Kruglov and Others v. Russia,* 2020, § 125). The scope of the warrant must be reasonably limited. The Court has stressed the importance of carrying out the search in the presence of an independent observer in order to ensure that materials covered by professional secrecy are not removed (*Wieser and Bicos Beteiligungen GmbH v. Austria*, 2007, § 57; *Tamosius v. the United Kingdom* (dec.), 2002; *Robathin v. Austria*, 2012, § 44). Furthermore, there must be sufficient scrutiny of the lawfulness and the execution of the warrant (*ibid.*, § 51; *Iliya Stefanov v. Bulgaria*, 2008, § 44; *Wolland v. Norway*, 2018, §§ 67-73). In addition, the Court considers whether other special safeguards were available to ensure that material covered by legal professional privilege was not removed. Lastly, the Court takes into account the extent of the possible repercussions on the work and the reputation of the persons affected by the search (*Kruglov and Others v. Russia*, 2020, § 125).

641. In *Särgava v. Estonia*, 2021, the Court elaborated on the question of sifting and separating privileged and non-privileged files, on mirror-image copy of content, and on the search of the content on the basis of a keyword-based search (§§ 99-109). Against the background of a scarce legislative framework, the Court found that the practical relevance as a safeguard of the presence of the lawyer concerned or another lawyer during the search – or even during the actual examination of the copied content of data carriers – had been of limited effect.

642. When examining substantiated allegations that specifically identified documents have been seized even though they were unconnected to the investigation or were covered by lawyer-client privilege, the judge must conduct a "specific review of proportionality" and order their restitution where appropriate (*Vinci Construction and GTM Génie Civil et Services v. France*, 2015, § 79; *Kırdök and Others v. Turkey*, 2019, § 51 and § 57). For instance in *Wolland v. Norway*, 2018, (no violation), the Court emphasized that the electronic documents had been available to the applicant while the search process was ongoing, in so far as the hard disk and the laptop had been returned to him two days after the initial search at his premises (§§ 55-80; compare *Kırdök and Others v. Turkey*, 2019, §§ 55-58, in which there was no mechanism for filtering data covered by professional secrecy, no explicit prohibition of their seizure, and the Assize Court had refused - without good reason - to order the restitution or the destruction of the seized copies of the data).

643. Failure to observe the relevant procedural safeguards when conducting searches and seizures of data entails a violation of Article 8 (*Wieser and Bicos Beteiligungen GmbH v. Austria*, 2007, §§ 66-68; contrast *Tamosius v. the United Kingdom* (dec.), 2002).

644. There is extensive case-law concerning the degree of precision of the warrant: it must contain sufficient information about the purpose of the search to allow an assessment of whether the investigation team acted unlawfully or exceeded their powers. The search must be carried out under the supervision of a sufficiently qualified and independent legal professional (*Iliya Stefanov v. Bulgaria*, 2008, § 43), whose task is to identify which documents are covered by legal professional privilege and should not be removed. There must be a practical safeguard against any interference with professional secrecy and with the proper administration of justice (*ibid.*).

645. For example, the Court has criticised the following:

- a search warrant formulated in excessively broad terms, which left the prosecution authorities unrestricted discretion in determining which documents were “of interest” for the criminal investigation (*Kruglov and Others v. Russia*, 2020, § 127; *Aleksanyan v. Russia*, 2008, § 216; *Svetova and Others v. Russia*, 2023, §§ 41-46);
- a search warrant based on reasonable suspicion but worded in excessively general terms (*Robathin v. Austria*, 2012, § 52);
- a warrant authorising the police to seize, for a period of two full months, the applicant’s entire computer and all his floppy disks, containing material covered by legal professional privilege (*Iliya Stefanov v. Bulgaria*, 2008, §§ 41-42).
- a warrant allowing for the seizure of electronic data protected by lawyer-client professional secrecy for the purposes of criminal proceedings against another lawyer who had shared the applicant’s office; and the refusal to return or destroy them in the absence of sufficient procedural guarantees in the relevant legislation as interpreted and applied by the judicial authorities (*Kırdök and Others v. Turkey*, 2019, §§ 52-58).

646. The fact that protection of confidential documents is afforded by a judge is an important safeguard (*Tamosius v. the United Kingdom* (dec.), 2002). The same applies where the impugned legislation preserves the very essence of the lawyer’s defence role and introduces a filter protecting professional privilege (*Michaud v. France*, 2012, §§ 126-129).

647. In many cases, the question of lawyers’ correspondence has been closely linked to that of searches of their offices (reference is accordingly made to the chapter on Law firms).

648. Lastly, covert surveillance of a detainee's consultations with his lawyer at a police station must be examined from the standpoint of the principles established by the Court in relation to the interception of telephone communications between a lawyer and a client, in view of the need to afford enhanced protection of this relationship, and in particular of the confidentiality of the exchanges characterising it (*R.E. v. the United Kingdom*, 2015, § 131).

649. As regard persons who had been formally charged and placed under police escort, control of their correspondence with a lawyer is not of itself incompatible with the Convention. However, such control is only permissible when the authorities have reasonable cause to believe that it contains an illicit enclosure (*Laurent v. France*, 2018, §§ 44 and 46).

D. Correspondence of private individuals, professionals and companies[98]

650. The right to respect for correspondence covers the private, family and professional sphere. It also covers cyberbullying or cyber-surveillance by a person's intimate partner (*Buturugă v. Romania*, 2020, § 74).

651. In *Margareta and Roger Andersson v. Sweden*, 1992, the Court found a violation on account of the restrictions imposed on communications by letter and telephone between a mother and her child who was in the care of social services, depriving them of almost all means of remaining in contact for a period of approximately one and a half years (§§ 95-97).

652. In *Copland v. the United Kingdom*, 2007, the Court found a violation on account of the monitoring, without any legal basis, of a civil servant's telephone calls, email and Internet use (§§ 48-49). In *Halford v. the United Kingdom*, 1997, concerning workplace monitoring by a public employer, the Court found a violation in that no legal instrument regulated the interception of calls made on the telephone of the civil servant concerned (§ 51).

653. Communications from private business premises may be covered by the notion of "correspondence" (*Bărbulescu v. Romania* [GC], 2017, § 74). In this particular case, an employer had accused an employee of using an internet instant messaging service for private conversations on a work computer. The Court held that an employer's instructions could not reduce private social life in the workplace to zero. The right to respect for private life and for the privacy of correspondence continue to exist, even if these may be restricted in so far as necessary (*Bărbulescu v. Romania* [GC], 2017, § 80).

654. Contracting States have to be granted "a wide margin of appreciation" as regards the legal framework for regulating the conditions in which an employer may regulate electronic or other communications of a non-professional nature by its employees in the workplace. That said, the States' discretion is not unlimited; there is a positive obligation on the authorities to ensure that the introduction by an employer of measures to monitor correspondence and other communications, irrespective of the extent and duration of such measures, are "accompanied by adequate and sufficient safeguards against abuse". Proportionality and procedural guarantees against arbitrariness are essential in this regard (*Bărbulescu v. Romania* [GC], 2017, §§ 119-120).

655. In this context, the Court has set down a detailed list of factors by which compliance with this positive obligation should be assessed: (i) whether the employee has been notified clearly and in advance of the possibility that the employer might monitor correspondence and other communications, and of the implementation of such measures; (ii) the extent of the monitoring by the employer and the degree of intrusion into the employee's privacy (traffic and content); (iii) whether the employer has provided legitimate reasons to justify monitoring the communications and accessing their actual content; (iv) whether there is a possibility of establishing a monitoring system based on less intrusive methods and measures; (v) the seriousness of the consequences of the

[98] See also the Case-law Guide on Data protection.

monitoring for the employee subjected to it as well as the use made of the results of monitoring; and (vi) whether the employee has been provided with adequate safeguards including, in particular, prior notification of the possibility of accessing the content of communications. Lastly, an employee whose communications have been monitored should have access to a "remedy before a judicial body with jurisdiction to determine, at least in substance, how the criteria outlined above were observed and whether the impugned measures were lawful" (*Bărbulescu v. Romania* [GC], 2017, §§ 121-122).

656. Similar principles are also applicable in other contexts, in particular, as regards monitoring by a political party of the electronic communications of its members, even though internal organisational structures of political parties are distinguishable from those of private companies and that the legal links existing between an employer and employee and between a political party and its members are fundamentally different (*Tena Arregui v. Spain*, 2024, §§ 38 and 41).

657. The case-law also covers the monitoring of correspondence in the context of a commercial bankruptcy (*Foxley v. the United Kingdom*, 2000, §§ 30 and 43). In *Luordo v. Italy*, 2003, the Court found a violation of Article 8 on account of the repercussions of excessively lengthy bankruptcy proceedings on the bankrupt's right to respect for his correspondence (§ 78). However, the introduction of a system for monitoring the bankrupt's correspondence is not in itself open to criticism (see also *Narinen v. Finland*, 2004).

658. The question of companies' correspondence is closely linked to that of searches of their premises (reference is accordingly made to the chapter on Commercial premises). For example, in *Bernh Larsen Holding AS and Others v. Norway*, 2013, the Court found no violation on account of a decision ordering a company to hand over a copy of all data on the computer server it used jointly with other companies. Although the applicable law did not require prior judicial authorisation, the Court took into account the existence of effective and adequate safeguards against abuse, the interests of the companies and their employees and the public interest in effective tax inspections (§§ 172-175). However, the Court found a violation in the case of *DELTA PEKÁRNY a.s. v. the Czech Republic*, 2014, concerning an inspection of business premises with a view to finding circumstantial and material evidence of an unlawful pricing agreement in breach of competition rules. The Court referred to the lack of prior judicial authorisation, the lack of ex post facto review of the necessity of the measure, and the lack of rules governing the possibility of destroying the data obtained (§§ 92-93).

E. Surveillance of telecommunications in a criminal context[99]

659. The abovementioned requirements of Article 8 § 2 must of course be satisfied in this context (*Kruslin v. France*, 1990, § 26; *Huvig v. France*, 1990, § 25). In particular, such surveillance must serve to uncover the truth. Since it represents a serious interference with the right to respect for correspondence, it must be based on a "law" that is particularly precise (*Huvig v. France*, 1990, § 32) and must form part of a legislative framework affording sufficient legal certainty (*ibid.*). The rules must be clear and detailed (the technology available for use is continually becoming more sophisticated), as well as being both accessible and foreseeable, so that anyone can foresee the consequences for themselves (*Valenzuela Contreras v. Spain*, 1998, §§ 59 and 61). This requirement of sufficiently clear rules concerns both the circumstances in which and the conditions on which the surveillance is authorised and carried out. Since the implementation of measures of secret surveillance of communications is not open to scrutiny by the individuals concerned or the public at large, the "law" would run counter to the rule of law if there were no limits to the legal discretion granted to the executive, or to a judge (*Karabeyoğlu v. Turkey*, 2016, §§ 67-69 and §§ 86-88, with further references therein; *Potoczka and Adamco v. Slovakia*, 2023, §§ 71-73). Consequently, the law must indicate the scope of any such discretion and the manner of its exercise with sufficient clarity to give the individual adequate protection against arbitrary interference (*Roman Zakharov v. Russia* [GC], 2015, §§ 229-

[99] See also File or data gathering by security services or other organs of the State, and the Case-law Guide on Data protection.

230). If there is any risk of arbitrariness in its implementation, the law will not be compatible with the lawfulness requirement (*Bykov v. Russia* [GC], 2009, §§ 78-79). In such a sensitive area as recourse to secret surveillance, the competent authority must state the compelling reasons justifying such an intrusive measure, while complying with the applicable legal instruments (*Dragojević v. Croatia*, 2015, §§ 94-98; see also *Liblik and others v. Estonia*, 2019, §§ 132-143, as to the duly reasoning of authorisations of secret surveillance). In addition, the interception of telephone conversations is not to be based on an overly broad and imprecise decision, for instance, merely authorising secret surveillance of a stabbing victim and his "contacts" (*Azer Ahmadov v. Azerbaijan*, 2021, §§ 66, §§ 71-72; see also *Potoczka and Adamco v. Slovakia*, 2023, § 76).

660. In this connection, the Court has emphasised the need for safeguards (for a summary, see *Big Brother Watch and Others v. the United Kingdom* [GC], 2021, §§ 335). The Court must be satisfied that there exist guarantees against abuse which are adequate and effective (*Karabeyoğlu v. Turkey*, 2016, §§ 101-103, § 106). This assessment depends on all the circumstances of the case, such as the nature, scope and duration of the possible measures, the grounds required for ordering them, the authorities competent to permit, carry out and supervise them, and the kind of remedy provided by the national law (*Roman Zakharov v. Russia* [GC], 2015, § 232; *Falzarano v. Italy* (dec.), 2021, §§ 27-29)). Review and supervision of secret surveillance measures may come into play at three stages: when the surveillance is first ordered, while it is being carried out, or after it has been terminated. As regards the first two stages, the very nature and logic of secret surveillance dictate that not only the surveillance itself but also the accompanying review should be affected without the individual's knowledge. Consequently, since the individual will necessarily be prevented from seeking an effective remedy of his or her own accord or from taking a direct part in any review proceedings, it is essential that the procedures established should themselves provide adequate and equivalent guarantees safeguarding his or her rights (*Roman Zakharov v. Russia* [GC], 2015, § 233). This is particularly significant in deciding whether an interference was "necessary in a democratic society" in pursuit of a legitimate aim, since the Court has held that powers to instruct secret surveillance of citizens are only tolerated under Article 8 to the extent that they are strictly necessary for safeguarding democratic institutions (*Rotaru v. Romania* [GC], 2000, § 47). In assessing the existence and extent of such necessity, the Contracting States enjoy a certain margin of appreciation. However, this margin is subject to European supervision embracing both the legislation and the decisions applying it (*Roman Zakharov v. Russia* [GC], 2015, § 232).

661. The phone-tapping operations can only be ordered on the basis of suspicions that can be regarded as objectively reasonable (*Karabeyoğlu v. Turkey*, 2016, § 103). The Court has also underlined the importance of an authority empowered to authorise the use of secret surveillance being capable of verifying "the existence of a reasonable suspicion against the person concerned, in particular, whether there are factual indications for suspecting that person of planning, committing or having committed criminal acts or other acts that may give rise to secret surveillance measures" and "whether the requested interception meets the requirement of 'necessity in a democratic society' ... for example, whether it is possible to achieve the aims by less restrictive means" (*Roman Zakharov v. Russia* [GC], 2015, § 260; *Dragojević v. Croatia*, 2015, § 94). Such verification, together with the requirement to set out the relevant reasons in the decisions by which secret surveillance is authorised, constitute an important guarantee, ensuring that the measures are not ordered haphazardly, irregularly or without due and proper consideration. Hence, the authorisation and extension of a measure of telephone tapping must not be without grounds or "general" or "exploratory" (*Adomaitis v. Lithuania*, 2022, § 85; *Drakšas v. Lithuania*, 2012, § 56).

662. The Court has found a violation of the right to respect for correspondence, for example, in the following cases: *Kruslin v. France*, 1990, § 36; *Huvig v. France*, 1990, § 35; *Malone v. the United Kingdom*, 1984, § 79; *Valenzuela Contreras v. Spain*, 1998, §§ 60-61; *Prado Bugallo v. Spain*, 2003, § 30; *Matheron v. France*, 2005, § 43; *Dragojević v. Croatia*, 2015, § 101; *Šantare and Labazņikovs v. Latvia*, 2016, § 62; *Liblik and others v. Estonia*, 2019, §§ 140-142 concerning the retrospective

justification of orders authorising secret surveillance during criminal proceedings. As for a non-violation, see, for instance, *Adomaitis v. Lithuania*, 2022, §§ 81-86 and *Karabeyoğlu v. Turkey*, 2016, §§ 104-110 and below.

663. A person who has been subjected to telephone tapping must have access to "effective scrutiny" to be able to challenge the measures in question (*Marchiani v. France* (dec.), 2008). To deny a person the standing to complain of the interception of his or her telephone conversations, on the ground that it was a third party's line that had been tapped, infringes the Convention (*Lambert v. France*, 1998, §§ 38-41; compare *Bosak and Others v. Croatia*, 2019, §§ 63 and 65).

664. The Court has held that the lawful steps taken by the police to obtain the numbers dialled from a telephone in a flat were necessary in the context of an investigation into a suspected criminal offence (*P.G. and J.H. v. the United Kingdom*, 2001, §§ 42-51). It reached a similar conclusions where telephone tapping constituted one of the main investigative measures for establishing the involvement of individuals in a largescale drug trafficking operation, and where the measure had been subjected to "effective scrutiny" (*Coban v. Spain* (dec.), 2006).

665. In general, the Court acknowledges the role of telephone tapping in a criminal context where it is in accordance with the law and necessary in a democratic society for, inter alia, public safety or the prevention of disorder or crime. Such measures assist the police and the courts in their task of preventing and punishing criminal offences, or, in the context of corruption-related activity, to guarantee transparency of a public institution (*Adomaitis v. Lithuania*, 2022, § 84). However, the State must organise their practical implementation in such a way as to prevent any abuse or arbitrariness (*Dumitru Popescu v. Romania (no. 2)*, 2007).

666. In the context of a criminal case, telephone tapping operations that were ordered by a judge, carried out under the latter's supervision, accompanied by adequate and sufficient safeguards against abuse and subject to subsequent review by a court have been deemed proportionate to the legitimate aim pursued (*Aalmoes and Others v. the Netherlands* (dec.), 2004; *Coban v. Spain* (dec.), 2006). The Court also found that there had been no violation of Article 8 where there was no indication that the interpretation and application of the legal provisions relied on by the domestic authorities had been so arbitrary or manifestly unreasonable as to render the telephone tapping operations unlawful (*İrfan Güzel v. Turkey*, 2017, § 88). In *Adomaitis v. Lithuania*, 2022, the Court found no violation as regards the interception of telephone communications during a criminal intelligence investigation against a prison director and the use of that information in disciplinary proceedings leading to his dismissal (§§ 85-89).

667. Furthermore, the State must ensure effective protection of the data thus obtained and of the right of persons whose purely private conversations have been intercepted by the law-enforcement authorities (*Craxi v. Italy (no. 2)*, 2003, §§ 75 and 83, violation; compare *Man and Others v. Romania* (dec.), 2019, §§ 104-111). In *Drakšas v. Lithuania*, 2012, the Court found a violation on account of leaks to the media and the broadcasting of a private conversation recorded, with the authorities' approval, on a telephone line belonging to a politician who was under investigation by the prosecuting authorities (§ 60). However, the lawful publication, in the context of constitutional proceedings, of recordings of conversations that were not private but professional and political was not found to have breached Article 8 (*ibid.,* § 61).

F. Special secret surveillance of citizens/organisations[100]

1. Secret measures of surveillance

668. The relevant case-law principles were set out in detail in *Roman Zakharov v. Russia* [GC], 2015, §§ 227-34, 236, 243, 247, 250, 257-58, 275, 278 and 287-288, as applied for instance in *Ekimdzhiev*

[100] See the Case-law Guide on Data protection.

and Others v. Bulgaria, 2022, §§ 291-293). Many of those principles were recently reiterated, although in relation to a somewhat different context – bulk interception (see below) – in *Big Brother Watch and Others v. the United Kingdom* [GC], 2021, §§ 322-339; *Centrum för rättvisa v. Sweden* [GC], 2022, §§ 246-253).

669. In its first judgment concerning secret surveillance, *Klass and Others v. Germany*, 1978, § 48, the Court stated, in particular: "Democratic societies nowadays find themselves threatened by highly sophisticated forms of espionage and by terrorism, with the result that the State must be able, in order effectively to counter such threats, to undertake the secret surveillance of subversive elements operating within its jurisdiction. The Court has therefore to accept that the existence of some legislation granting powers of secret surveillance over the mail, post and telecommunications is, under exceptional conditions, necessary in a democratic society in the interests of national security and/or for the prevention of disorder or crime." However, powers of secret surveillance of citizens, characterising as they do the police state, are tolerable under the Convention only in so far as strictly necessary for safeguarding the democratic institutions (*ibid.*, § 42; *Szabó and Vissy v. Hungary*, 2016, §§ 72-73). In the latter case, the Court clarified the concept of "strict necessity". Thus, a measure of secret surveillance must, in general, be strictly necessary for the safeguarding of democratic institutions and, in particular, for the obtaining of vital intelligence in an individual operation. Otherwise, there will be "abuse" on the part of the authorities (§ 73).

670. In principle, the Court does not recognise an *actio popularis,* with the result that in order to be able to lodge an application in accordance with Article 34, an individual must be able to show that he or she was "directly affected" by the measure complained of. However, in recognition of the particular features of secret surveillance measures and the importance of ensuring effective control and supervision of them, the Court has permitted general challenges to the relevant legislative regime (*Roman Zakharov v. Russia* [GC], 2015, § 165). In the case cited, it clarified the conditions in which an applicant could claim to be the "victim" of a violation of Article 8 without having to prove that secret surveillance measures had in fact been applied to him (see also *Centrum för rättvisa v. Sweden* [GC], 2022, § 167). It based its approach on the one taken in *Kennedy v. the United Kingdom*, 2010, which it found to be best tailored to the need to ensure that the secrecy of surveillance measures did not result in the measures being effectively unchallengeable and outside the supervision of the national judicial authorities and of the Court. Accordingly, an applicant can claim to be the victim of a violation of the Convention if he or she falls within the scope of the legislation permitting secret surveillance measures (either because he or she belongs to a group of persons targeted by the legislation or because the legislation directly affects everyone) and if no remedies are available for challenging the secret surveillance. Furthermore, even where remedies do exist, an applicant may still claim to be a victim on account of the mere existence of secret measures or of legislation permitting them, if he or she is able to show that, because of his or her personal situation, he or she is potentially at risk of being subjected to such measures (§§ 171-172, and for an application, *Ekimdzhiev and Others v. Bulgaria*, 2022, §§ 263-277). See also, in relation to "victim" status, *Szabó and Vissy v. Hungary*, 2016, §§ 32-39 and the references cited therein.

671. The judgments in *Big Brother Watch and Others v. the United Kingdom* [GC], 2021, §§ 333-334 and *Roman Zakharov v. Russia* [GC], 2015, §§ 227-303) contain a thorough overview of the Court's case-law under Article 8 concerning the "lawfulness" ("quality of law") and "necessity" (adequacy and effectiveness of guarantees against arbitrariness and the risk of abuse) of a system of secret surveillance). The meaning of "foreseeability" in this particular context is not the same as in many other fields. In *Roman Zakharov v. Russia* [GC], 2015, the deficiencies in the domestic legal framework governing the secret surveillance of mobile telephone communications gave rise to a finding of a violation of Article 8 (§§ 302-303).

672. Secret surveillance of an individual can only be justified under Article 8 if it is "in accordance with the law", pursues one or more of the "legitimate aims" to which paragraph 2 of Article 8 refers and is

"necessary in a democratic society" in order to achieve such aims (*Roman Zakharov v. Russia* [GC], 2015, § 227; *Szabó and Vissy v. Hungary*, 2016, § 54; *Kennedy v. the United Kingdom*, 2010, § 130).

673. As to the first point, this means that the surveillance measure must have some basis in domestic law and be compatible with the rule of law. The law must therefore meet quality requirements: it must be accessible to the person concerned and foreseeable as to its effects (*Kennedy v. the United Kingdom*, 2010, § 151; *Roman Zakharov v. Russia* [GC], 2015, § 229). In the context of the interception of communications, "foreseeability" cannot be understood in the same way as in many other fields. Foreseeability in the special context of secret measures of surveillance cannot mean that individuals should be able to foresee when the authorities are likely to intercept their communications so that they can adapt their conduct accordingly (*Weber and Saravia v. Germany* (dec.), 2006, § 93). However, to avoid arbitrary interference, it is essential to have clear, detailed rules on the interception of telephone conversations. The law must be sufficiently clear to give citizens an adequate indication as to the circumstances in which and the conditions on which public authorities are empowered to resort to any such secret measures (*Roman Zakharov v. Russia* [GC], 2015, § 229; *Association for European Integration and Human Rights and Ekimdzhiev v. Bulgaria*, 2007, § 75). In addition, the law must indicate the scope of the discretion granted to the executive or to a judge and the manner of its exercise with sufficient clarity to give the individual adequate protection against arbitrary interference (*Roman Zakharov v. Russia*, § 230; *Malone v. the United Kingdom*, 1984, § 68; *Huvig v. France*, 1990, § 29; *Weber and Saravia v. Germany* (dec.), 2006, § 94).

674. A law on measures of secret surveillance must provide the following minimum safeguards against abuses of power: a definition of the nature of offences which may give rise to an interception order and the categories of people liable to have their telephones tapped; a limit on the duration of the measure; the procedure to be followed for examining, using and storing the data obtained; the precautions to be taken when communicating the data to other parties; and the circumstances in which recordings may or must be erased or destroyed (*Roman Zakharov v. Russia* [GC], 2015, §§ 231 and 238-301; *Amann v. Switzerland* [GC], 2000, §§ 56-58).

675. Lastly, the use of secret surveillance must pursue a legitimate aim and be "necessary in a democratic society" in order to achieve that aim.

The national authorities enjoy a certain margin of appreciation. However, this margin is subject to European supervision embracing both legislation and decisions applying it. The Court must be satisfied that there are adequate and effective guarantees against abuse (*Klass and Others v. Germany*, 1978, § 50). The assessment of this question depends on all the circumstances at issue in the case, such as the nature, scope and duration of the possible measures, the grounds required for ordering them, the authorities competent to authorise, carry out and supervise them, and the kind of remedy provided by the national law. The procedures for supervising the ordering and implementation of restrictive measures must be such as to keep the "interference" to what is "necessary in a democratic society" (*Roman Zakharov v. Russia* [GC], 2015, § 232 and the references cited therein).

676. Review and supervision of secret surveillance measures may come into play at three stages: when the surveillance is first ordered, while it is being carried out, or after it has been terminated (*Roman Zakharov v. Russia* [GC], 2015, §§ 233-234 and the references cited therein). As regards the first two stages, the existing procedures must themselves provide adequate and equivalent guarantees safeguarding the individual's rights. Since abuses are potentially easy, it is in principle desirable to entrust supervisory control to a judge, as judicial control offers the best guarantees of independence, impartiality and a proper procedure. As regards the third stage – after the surveillance has been terminated – the question of subsequent notification of surveillance measures is inextricably linked to the effectiveness of remedies before the courts and hence to the existence of effective safeguards against the abuse of monitoring powers. There is in principle little scope for recourse to the courts by the individual concerned unless the latter is advised of the measures taken without his or her knowledge and thus able to challenge their legality retrospectively or, in the alternative, unless

any person who suspects that his or her communications are being or have been intercepted can apply to the courts, which retain jurisdiction even where the interception subject has not been notified of the measure (*ibid.*, §§ 233-234).

677. It should be noted that in cases where the legislation permitting secret surveillance is itself contested, the lawfulness of the interference is closely related to the question whether the "necessity" test has been complied with, and it is therefore appropriate to address jointly the "in accordance with the law" and "necessity" requirements (*Kennedy v. the United Kingdom*, 2010, § 155; *Kvasnica v. Slovakia*, 2009, § 84). The "quality of law" in this sense implies that the domestic law must not only be accessible and foreseeable in its application, it must also ensure that secret surveillance measures are applied only when "necessary in a democratic society", in particular by providing for adequate and effective safeguards and guarantees against abuse (*Roman Zakharov v. Russia* [GC], 2015, § 236). In the case cited, it was not disputed that the interceptions of mobile telephone communications had a basis in domestic law and pursued legitimate aims for the purposes of Article 8 § 2, namely the protection of national security and public safety, the prevention of crime and the protection of the economic wellbeing of the country. However, that is not enough. It is necessary also to assess the accessibility of the domestic law, the scope and duration of the secret surveillance measures, the procedures to be followed for storing, accessing, examining, using, communicating and destroying the intercepted data, the authorisation procedures, the arrangements for supervising the implementation of the measures, and any notification mechanisms and the remedies provided for by national law (*ibid.*, §§ 238-301), but also to verify, in so far as the available information permits, whether any shortcomings have an impact on the actual operation of the system of secret surveillance which exists (*Association for European Integration and Human Rights, and Ekimdzhiev v. Bulgaria*, 2007, § 92; see also, as regards bulk regimes, *Centrum för rättvisa v. Sweden* [GC], 2022, § 274 and *Big Brother Watch and Others v. The United Kingdom* [GC], 2021, § 360).

678. Scope of application of secret surveillance measures: citizens must be given an adequate indication as to the circumstances in which public authorities are empowered to resort to such measures. In particular, it is important to set out clearly the nature of the offences which may give rise to an interception order and a definition of the categories of people liable to have their telephones tapped (*Roman Zakharov v. Russia* [GC], 2015, §§ 243 and 247). As regards the nature of the offences, the condition of foreseeability does not require States to set out exhaustively, by name, the specific offences which may give rise to interception. However, sufficient detail should be provided as to the nature of the offences in question (*Kennedy v. the United Kingdom*, 2010, § 159). Interception measures in respect of a person who has not been suspected of an offence but might possess information about such an offence may be justified under Article 8 of the Convention (*Greuter v. the Netherlands* (dec.), 2002, concerning telephone tapping ordered and supervised by a judge, of which the applicant had been informed). However, the categories of persons liable to have their telephones tapped are not defined sufficiently clearly where they cover not only suspects and defendants but also "any other person involved in a criminal offence", without any explanation as to how this term is to be interpreted (*Iordachi and Others v. Moldova*, 2009, § 44, where the applicants maintained that they ran a serious risk of having their telephones tapped because they were members of a non-governmental organisation specialising in the representation of applicants before the Court; see also *Roman Zakharov v. Russia* [GC], 2015, § 245; *Szabó and Vissy v. Hungary*, 2016, §§ 67 and 73). In the case of *Amann v. Switzerland* [GC], 2000, concerning a file opened and stored by the authorities following the interception of a telephone conversation, the Court found a violation because, among other things, the relevant law did not regulate in detail the case of individuals who were monitored "fortuitously" (§ 61). In *Haščák v. Slovakia*, 2022, the applicable law provided no protection to persons randomly affected by covert surveillance measures (§ 95; see also, in a similar context, *Kaczmarek v. Poland*, 2024, §§ 93-96).

679. Duration of surveillance: the question of the overall duration of interception measures may be left to the discretion of the authorities responsible for issuing and renewing interception warrants,

provided that adequate safeguards exist, such as a clear indication in domestic law of the period after which an interception warrant will expire, the conditions under which a warrant can be renewed and the circumstances in which it must be revoked (*Roman Zakharov v. Russia* [GC], 2015, § 250; *Kennedy v. the United Kingdom*, 2010, § 161). In *Iordachi and Others v. Moldova*, 2009, the domestic legislation was criticised because it did not lay down a clear limitation in time for the authorisation of a surveillance measure (§ 45).

680. Procedures to be followed for storing, accessing, examining, using, communicating and destroying intercepted data (*Roman Zakharov v. Russia* [GC], 2015, §§ 253-256): The automatic storage for six months of clearly irrelevant data cannot be considered justified under Article 8 (*ibid.*, § 255). Timelines and procedures to be followed in the selection of data for examination and the sharing, storage, and destruction of intercepted material should be clear and accessible to the public (*Liberty and Others v. the United Kingdom*, 2008, § 69; *Ekimzhiev and Others v. Bulgaria*, §§ 408-409). In *Zoltán Varga v. Slovakia*, 2021, §§ 169-171, the storing of the intercepted data on the basis of confidential rules which had been both adopted and applied by the intelligence service, with no element of external control, was found to be lacking sufficient basis in law. The Court observed, in particular, that those rules lacked accessibility and provided the applicant with no protection against arbitrary interference with his right to respect for his private life.

681. Authorisation procedures: in assessing whether the authorisation procedures are capable of ensuring that secret surveillance is not ordered haphazardly, unlawfully or without due and proper consideration, regard should be had to a number of factors, including in particular the authority competent to authorise the surveillance, the scope of its review and the contents of the interception authorisation (*Roman Zakharov v. Russia* [GC], 2015, §§ 257-267; see also *Szabó and Vissy v. Hungary*, 2016, § 73 and §§ 75-77, concerning surveillance measures subject to prior judicial authorisation by the Minister of Justice and the question of emergency measures, §§ 80-81). Where a system allows the secret services and the police to intercept directly the communications of any citizen without requiring them to show an interception authorisation to the communications service provider, or to anyone else, the need for safeguards against arbitrariness and abuse appears particularly strong (*Roman Zakharov v. Russia* [GC], 2015, § 270).

682. Supervision of the implementation of secret surveillance measures: an obligation on the intercepting agencies to keep records of interceptions is particularly important to ensure that the supervisory body has effective access to details of surveillance activities undertaken (*Kennedy v. the United Kingdom*, 2010, § 165; *Roman Zakharov v. Russia* [GC], 2015, §§ 275-285). Although it is in principle desirable to entrust supervisory control to a judge, supervision by nonjudicial bodies may be deemed compatible with the Convention, provided that the supervisory body is independent of the authorities carrying out the surveillance, and is vested with sufficient powers and competence to perform effective and continuous supervision (*ibid.*, § 272; *Klass and Others v. Germany*, 1978, § 56). The supervisory body's powers with respect to any breaches detected are also an important aspect for the assessment of the effectiveness of its supervision (*ibid.*, § 53, where the intercepting agency was required to terminate the interception immediately if the G10 Commission found it illegal or unnecessary; *Kennedy v. the United Kingdom*, 2010, § 168, where any intercept material was to be destroyed as soon as the Interception of Communications Commissioner discovered that the interception was unlawful; *Roman Zakharov v. Russia* [GC], 2015, § 282). Where a supervising judge or court merely endorses the actions of security services without genuinely checking the facts or providing adequate oversight, such supervision will fall short of the requirements of Article 8 (*Zoltán Varga v. Slovakia*, 2021, §§ 155-160*; Ekimdzhiev and Others v. Bulgaria*, 2022, § 337).

683. Notification of interception of communications and available remedies (*Roman Zakharov v. Russia* [GC], 2015, §§ 286-301): The secret nature of surveillance measures raises the question of notification of the person concerned so that the latter may challenge their lawfulness. Although the fact that persons affected by secret surveillance measures are not subsequently notified once the surveillance has ceased cannot by itself constitute a violation, it is nevertheless desirable to inform

them after the termination of the measures "as soon as notification can be carried out without jeopardising the purpose of the restriction" (*Roman Zakharov v. Russia* [GC], 2015, §§ 287-290; *Cevat Özel v. Turkey*, 2016, §§ 34-37). In *Ekimdzhiev and Others v. Bulgaria*, 2022, § 349) the Court observed that in Bulgaria there was only a requirement to notify the subject of surveillance if the surveillance was conducted unlawfully, whereas under the Court's case-law such notification was, in the absence of a remedy available without prior notification, required in all cases, as soon as it could be made without jeopardising the purpose of the surveillance. The question whether it is necessary to notify an individual that he or she has been subjected to interception measures is inextricably linked to the effectiveness of domestic remedies (*Roman Zakharov v. Russia* [GC], 2015, § 286).

684. With regard to secret anti-terrorist surveillance operations, adequate and effective guarantees against abuses of the State's strategic monitoring powers should exist (*Weber and Saravia v. Germany* (dec.), 2006, with further references therein): The Court accepts that it is a natural consequence of the forms taken by present day terrorism that governments resort to cutting edge technologies, including mass surveillance of communications, in order to pre-empt impending incidents. Nevertheless, legislation governing such operations must provide the necessary safeguards against abuse regarding the ordering and implementation of surveillance measures and any potential redress (*Szabó and Vissy v. Hungary*, 2016, §§ 64, 68 and 78-81). Although the Court accepts that there may be situations of extreme urgency in which the requirement of prior judicial authorisation would entail a risk of wasting precious time, in such cases any measures authorised in advance by a nonjudicial authority must be subject to an ex post facto judicial review (§ 81).

685. The case of *Kennedy v. the United Kingdom*, 2010, concerned a former prisoner campaigning against miscarriages of justice and claiming to be the victim of surveillance measures. The Court pointed out that the power to order secret surveillance of citizens was not acceptable under Article 8 unless there were adequate and effective guarantees against abuse.

686. In the case of *Association for European Integration and Human Rights and Ekimdzhiev v. Bulgaria*, 2007, a nonprofit association and a lawyer who represented applicants in proceedings before the Strasbourg Court alleged that they could be subjected to surveillance measures at any point in time without any notification. The Court observed that the relevant domestic legislation did not afford sufficient guarantees against the risk of abuse inherent in any system of secret surveillance and that the interference with the applicants' Article 8 rights was therefore not "in accordance with the law".

687. The case of *Association "21 December 1989" and Others v. Romania*, 2011, concerned an association protecting the interests of participants in and victims of anti-government demonstrations. The Court found a violation of Article 8 (§§ 171-175; contrast *Kennedy v. the United Kingdom*, 2010, § 169, no violation).

688. The case of *Green Alliance v. Bulgaria**, 2026, concerned the legal framework permitting the infiltration of "agents on cover", employees of the State's National Security Agency, into private organisations and "liberal professions". The Court applied by analogy the case-law principles developed in relation to covert surveillance (§§ 120-21) and found that the work of "agents on cover", as well as the mere existence of legislation permitting the infiltration, can interfere with the applicant association's right to respect for its correspondence and for its home (§§ 113-18 and 135). It considered that the legal framework examined in the abstract, fell short of the minimum safeguards against arbitrariness and abuse and thus concluded to a violation of Article 8 (§§ 145-67).

689. In *Szelényi and Others v. Hungary**, 2026, the Court found that the "integrity testing" of certain categories of State employees and the use of secret intelligence gathering measures in that regard constituted interference with the applicants' Article 8 rights (§ 66). The Court considered that the integrity testing cannot be used indiscriminately and must be based on intelligence suggesting that the employee or employees in question may be corrupt (§ 72). The Court found a violation of Article 8, as testing was indiscriminate and lacked adequate safeguards against broadening the scope of

possible secret surveillance beyond what was strictly necessary for protecting democratic institutions (§§ 73-76). Furthermore, relevant information about the testing remained inaccessible to the person concerned who had no effective access to an independent and impartial body with jurisdiction to examine relevant complaints (§§ 77-79).

2. Bulk interception regimes

690. In the cases of *Centrum för rättvisa v. Sweden* [GC], 2022, §§ 254-278) and *Big Brother Watch and Others v. the United Kingdom* [GC], 2021, §§ 340-364, the Court considered the safeguards necessary in bulk interception regimes (sometimes called "signals intelligence") as compared to targeted interception regimes. Unlike most targeted interception, the purpose of which is generally to investigate a specific target or an identifiable criminal offence, bulk interception regimes are in generally used for foreign intelligence gathering and the identification of new threats from both known and unknown actors (see also *Ekimdzhiev and Others v. Bulgaria*, 2022). This being the case, the requirement to define clearly in domestic law the categories of people liable to have their communications intercepted and the nature of the offences which might give rise to such an order is not readily applicable to a bulk interception regime: nor is the requirement of "reasonable suspicion". Nevertheless, it is imperative that the domestic law should set out with sufficient clarity and detail the grounds upon which bulk interception might be authorised and the circumstances in which an individual's communications might be intercepted. Furthermore, in the context of bulk interception, the importance of supervision and review is amplified, because of the inherent risk of abuse and the legitimate need for secrecy. Article 8 applies at each stage of the bulk interception process, and the degree of interference with privacy rights increased as the process moves through the different stages. These stages include, notably: 1) interception and initial retention of communications and related communications data; 2) application of specific selectors to the retained communications/related communications data; 3) examination of selected communications/related communications data by analysts; and 4) subsequent retention of data and use of the "final product", including the sharing of data with third parties.

691. The need for safeguards is at its highest at the end of the process, where information about a particular person is analysed or the content of the communications is examined by an analyst. Therefore, the process must be subject to "end-to-end safeguards". In assessing whether the respondent State had acted within its narrow margin of appreciation, the Court must take account of a wider range of criteria than the *Weber* safeguards. In addressing jointly "in accordance with the law" and "necessity", the Court must examine whether the domestic legal framework clearly defines: 1) the grounds on which bulk interception might be authorised; 2) the circumstances in which an individual's communications might be intercepted; 3) the procedure to be followed for granting authorisation; 4) the procedures to be followed for selecting, examining and using intercept material; 5) the precautions to be taken when communicating the material to other parties; 6) the limits on the duration of interception, the storage of intercept material and the circumstances in which such material must be erased and destroyed; 7) the procedures and modalities for supervision by an independent authority of compliance with the above safeguards and its powers to address non-compliance; and 8) the procedures for independent *ex post facto* review of such compliance and the powers vested in the competent body in addressing instances of non-compliance.

3. Communications service providers

692. The general retention of communications data by communications service providers, as well as access by the authorities in individual cases for certain law-enforcement purposes, must be accompanied, *mutatis mutandis*, by the same safeguards against arbitrariness and abuse as secret surveillance (*Ekimdzhiev and Others v. Bulgaria*, 2022, § 395). In this case, domestic law expressly required that communications service providers store and process retained communications data in line with the rules governing the protection of personal data, and that various technical and

organisational safeguards be put in place to ensure that such data is not unduly accessed, disclosed or altered, and that it is destroyed when the statutory period for its retention expires. However, the Court noted that the law fell short of the minimum safeguards against arbitrariness and abuse required under Article 8 (§§ 419-421)

693. In *Podchasov v. Russia*, 2024, domestic law imposed an obligation on Internet communications service providers to retain and store the contents of all Internet communications for six months and the related communications data for one year as well as to give law-enforcement authorities or security services access to the stored data at their request, together with information necessary to decrypt electronic messages if they were encrypted. The Court noted that it was struck by the extremely broad duty of retention required by law and found that the interference to be exceptionally wide-ranging and serious (§ 70). Under domestic law the law-enforcement or security services were not required to show the judicial authorisation to the relevant communications service provider before obtaining access to a person's communications: in fact, communications service providers were under an obligation to install equipment giving the said authorities direct access to the data stored (§ 72). Although in such a system the need for safeguards against arbitrariness and abuse was particularly great, domestic law did not provide for such safeguards (§§ 73-75). As regards a statutory requirement to decrypt communications, it would appear that any such measures would not be limited to specific individuals and would weaken encryption for all users thus affecting everyone indiscriminately, including individuals who posed no threat to legitimate interests: such measures therefore could not be regarded as proportionate (§§ 77-79).

List of cited cases

The case-law cited in this Guide refers to judgments or decisions delivered by the Court and to decisions or reports of the European Commission of Human Rights ("the Commission").

Unless otherwise indicated, all references are to a judgment on the merits delivered by a Chamber of the Court. The abbreviation "(dec.)" indicates that the citation is of a decision of the Court and "[GC]" that the case was heard by the Grand Chamber.

Chamber judgments that were not final within the meaning of Article 44 of the Convention when this update was published are marked with an asterisk (*) in the list below. Article 44 § 2 of the Convention provides: "The judgment of a Chamber shall become final (a) when the parties declare that they will not request that the case be referred to the Grand Chamber; or (b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or (c) when the panel of the Grand Chamber rejects the request to refer under Article 43". In cases where a request for referral is accepted by the Grand Chamber panel, it is the subsequent Grand Chamber judgment, not the Chamber judgment, that becomes final.

The hyperlinks to the cases cited in the electronic version of the Guide are directed to the HUDOC database (http://hudoc.echr.coe.int) which provides access to the case-law of the Court (Grand Chamber, Chamber and Committee judgments and decisions, communicated cases, advisory opinions and legal summaries from the Case-Law Information Note) and of the Commission (decisions and reports), and to the resolutions of the Committee of Ministers.

The Court delivers its judgments and decisions in English and/or French, its two official languages. HUDOC also contains translations of many important cases into more than thirty nonofficial languages, and links to around one hundred online case-law collections produced by third parties.

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