

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

Guide on the case-law of the European Court of Human Rights

Terrorism

Updated on 31 August 2026

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Note to readers

This Guide is part of the series of Case-Law Guides 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 under Article 1 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*, 1978, § 154, 18 January 1978, Series A no. 25, and, more recently, *Jeronovičs v. Latvia* [GC], no. 44898/10, § 109, ECHR 2016).

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], § 89, no. 30078/06, ECHR 2012).

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 has recently inserted the principle of subsidiarity into the Preamble to the Convention. The principle of subsidiarity "imposes a shared responsibility between the States Parties" and the Court, and that national authorities and courts must interpret and apply domestic law in a manner that gives full effect to the Convention and the Protocols thereto (*Grzęda v. Poland* [GC], 2022, § 324).

* 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 (*).

Introduction

1. Since its first ever judgment *Lawless v. Ireland (no. 1)*, 1960, the European Court of Human Rights ("the Court") has had occasion to adjudicate a large number of cases concerning terrorism.

2. The present text summarises this case-law, describing the stages in any antiterrorist operation, from the surveillance phase, through arrest, to the punitive phase.

I. Surveillance by security services

Article 8 of the Convention

> "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 well-being 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."

3. Having regard to the structure of this provision, an applicant complaining of a violation of Article 8 must first of all demonstrate that his complaint belongs to the category of interests protected by the right to respect for his private and family life, his home and/or his correspondence. Where surveillance measures are concerned, that is not difficult. In principle, although Article 8 is not unlimited in scope, the Court defines its scope and application fairly broadly (*Uzun v. Germany*, 2010, § 43).

4. Having established that a surveillance measure falls within the scope of Article 8, the Court must then consider whether the impugned measure(s) led to an interference in the person's exercise of the right secured under Article 8 or if they were taken in accordance with the Contracting State's positive obligations. Indeed, the second paragraph of Article 8 sets out the conditions under which the authorities can interfere in the exercise of the right protected; such interference must pursue a legitimate aim and be "in accordance with the law" and "necessary in a democratic society".

A. Establishing the interference

5. With the expansion of new technology, surveillance measures have taken on a variety of forms. Such measures are almost invariably considered by the Court as interferences, albeit with varying degrees of gravity, with the right to respect for the private life, home or correspondence of the individuals concerned.

6. In that context, interception of communications (*Amann v. Switzerland* [GC], 2000, and *Kennedy v. the United Kingdom*, 2010) restrictions on the secrecy of mail, post and telecommunications (*Klass and Others v. Germany*, 1978), surveillance of telephone calls from professional premises (*Halford v. the United Kingdom*, 1997), email correspondence and Internet usage (*Copland v. the United Kingdom*, 2007) surveillance of the use of online chat services (*Bărbulescu v. Romania* [GC], 2017), police bugging of private premises (*Allan v. the United Kingdom*, 2002), in the framework of a criminal investigation (*Vetter v. France*, 2005), sound equipment installed in prisons (*Wisse v. France*, 2005), use of a listening device installed on an individual's body (*Heglas v. Czech Republic*, 2007), filming of an applicant at a police station and broadcasting of the footage on television (*Khmel v. Russia*, 2013), GPS surveillance (*Uzun v. Germany*, 2010), retention of fingerprints and DNA profiles (*S. and Marper v. the United Kingdom* [GC], 2008), and a search of premises and seizure of computer files and emails (*Sérvulo & Associados – Sociedade de Advogados, RL and Others v. Portugal*, 2015, are all typical

examples of interference by the authorities in the applicant's exercise of the right secured under Article 8 of the Convention.

7. As regards secret surveillance measures, in *Klass and Others v. Germany*, 1978, where the applicants (lawyers and judges) challenged the compatibility with the Convention of a law laying down restrictions on the secrecy of correspondence, mail and telecommunications, the Court agreed that under certain conditions an individual could claim to be a victim of a violation occasioned by the mere existence of secret measures or of legislation permitting secret measures, without having to allege that the measures were actually applied to him. In other words, according to the principles set out in this judgment, the mere risk is sufficient to claim victimhood within the meaning of the Convention.

8. In the case of *Kennedy v. the United Kingdom*, 2010, the Court further developed this approach by ruling that regard should be had to the special reasons justifying the Court's departure, in cases concerning secret measures, from its general approach denying individuals the right to challenge a law *in abstracto*. In order to assess whether an individual could claim an interference as a result of the mere existence of legislation permitting secret surveillance measures, the Court had to consider the availability of any remedies at the national level and the risk of secret surveillance measures being applied to him. It held that where there was no possibility of challenging the alleged application of secret surveillance measures at domestic level, widespread suspicion and concern among the general public that secret surveillance powers were being abused could not be said to be unjustified. In such cases, even where the actual risk of surveillance was low, there was a greater need for scrutiny by the Court (*Kennedy v. the United Kingdom*, 2010, § 124).

9. In the case of *Roman Zakharov v. Russia* [GC], 2015, the Court found that the approach set out in *Kennedy* afforded it the requisite degree of flexibility to deal with a variety of situations which might arise in the context of secret surveillance, taking into account the particularities of the legal systems in the member States, namely the available remedies, as well as the different personal situations of applicants (*Roman Zakharov v. Russia* [GC], 2015, § 172). Thus, an applicant could still claim to be a victim of a violation of the Convention if he or she fell within the scope of the legislation authorising the secret surveillance measures (because he or she belonged to a group of persons covered by that legislation or the latter applied to everyone) and had no remedy to contest such covert surveillance. Furthermore, even if remedies existed, an applicant could still claim to be a victim of the mere existence of secret measures or legislation permitting such measures if he or she could show that, due to his or her personal situation, he or she was potentially at risk of being subjected to such measures.

B. Is the interference in accordance with the law?

10. It transpires from the Court's case-law that any interference with the exercise of the right to respect for the rights protected by Article 8 must be "in accordance with the law". For further details, see the Case-Law Guide on Article 8[1].

C. Does the interference pursue a legitimate aim?

11. Article 8 § 2 lists the legitimate aims capable of justifying interference with the exercise of the right to respect for private and family life: it must be "necessary for national security, public safety, the economic well-being of the country, the prevention of crime, the protection of health or morals, or for the protection of the rights and freedoms of others". In the fight against terrorism, such interference is considered by the Court as pursuing a legitimate aim within the meaning of this provision because it is covered by considerations of national security, prevention of disorder and protection of the rights and freedoms of others (see, *inter alia*, *Klass and Others v. Germany*, 1978).

1. Guide on Article 8 – Right to respect for private and family life.

D. Is the interference necessary in a democratic society?

12. In determining whether an interference is "necessary in a democratic society", the Court balances the competing interests at stake. In terrorist cases, the national authorities must demonstrate that they struck 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* [GC], 1994, § 91). The scope of the assessment of "necessity in a democratic society" is described in the Case-Law Guide on Article 8: right to respect for private and family life[2].

II. Moving on from the surveillance stage to the active phase

A. Extraterritorial jurisdiction of States

Article 1 of the Convention

> "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of [the] Convention."

13. Although the jurisdiction of a State Party to the Convention, within the meaning of Article 1 of the Convention, is, in principle, limited to its territory, actions carried out by such State or having effects outside its territory may, under certain circumstances, amount to exercise of extraterritorial jurisdiction (see, in particular, *Al-Skeini and Others v. the United Kingdom* [GC], 2011). For further details, see the Case-Law Guide on Article 1[3].

14. The case-law of the Court indicates that in certain situations States have an obligation to cooperate in transnational investigations. In the case of *Güzelyurtlu and Others v. Chypre and Turkey* [GC], 2019, the Court held for the first time that a member State, namely Turkey, had breached its obligations under the procedural limb of Article 2 by failing to cooperate with Cyprus and, in particular, failing to provide a reasoned reply to the extradition requests submitted to it by the Cypriot authorities. In this case, since the deaths of the applicants' relatives had occurred in the territory controlled by the Republic of Cyprus and placed under its jurisdiction, the Turkish Government argued that Turkey had no "jurisdictional link" with the victims. However, the Court considered that a jurisdictional link did exist, for two reasons. First of all, it set out the principle that the fact of investigating or instituting criminal proceedings in respect of a death occurring in another State Party is sufficient to establish a jurisdictional link for the purposes of Article 1. The Court then held that in the absence of such an investigation or proceedings, it had to determine whether a jurisdictional link could nonetheless be established. In that connection, the Court considered that even though the procedural obligation under Article 2, in principle, only applied to the State within whose jurisdiction the victim was at the time of death, "special features" peculiar to the case would justify a departure from that approach, in accordance with the principles set out in the *Rantsev v. Chypre and Russia* judgment, in which, particularly in view of the fact that the Cypriot authorities had not sought any legal assistance from Russia, the Court had found a violation by Cyprus of the procedural limb of Article 2.

2. Guide on Article 8 – Right to respect for private and family life.
3. Guide on Article 1 – Obligation to respect human rights.

15. In the sphere of extradition, the European arrest warrant system is not, *per se,* incompatible with the Convention (*Pirozzi v. Belgium*, 2018). When a State applies for a European or Interpol arrest warrant for the purposes of detaining a person located in another State and the latter executes the warrant in accordance with its international obligations, the requesting State is responsible, under the Convention, for that person's detention, even if the latter was effected by the other State (*Vasiliciuc v. Republic of Moldova*, 2017, §§ 23-24 ; *Stephens v. Malta (no. 1)*, 2009, §§ 51-54). Where the arrest warrant comprises a technical irregularity which the authorities of the requested State could not have noticed, the requesting State must accept responsibility under the Convention for the unlawful arrest warrant issued by the authorities under its domestic law and executed by the other State in accordance with its international obligations (*ibid.*, § 52). In principle, where the domestic authorities are called upon to implement European Union law, particularly in the framework of a European arrest warrant, without any power of discretion and whereas the Court of Justice of the European Union has already adjudicated on respect for the fundamental rights in question, the presumption of equivalent protection will apply (*Bosphorus v. Ireland*, §§ 156-157; *Michaud v. France*, § 103; *Avotiņš v. Latvia*, 2016, §§ 105-106). Nevertheless, it transpires from its case-law that the Court must always verify that the principle of mutual recognition is not applied automatically and mechanically to the detriment of fundamental rights (*Avotiņš v. Latvia*, 2016, § 116). If a serious and substantiated complaint is raised before the national authorities to the effect that the protection of a Convention right has been manifestly deficient and that this situation cannot be remedied by European Union law, they cannot refrain from examining that complaint on the sole ground that they are applying EU law (*Avotiņš v. Latvia*, 2016, § 116 ; *Pirozzi v. Belgium*, 2018, §§ 59-64).

B. Positive obligation to protect the public from terrorist threats

Article 2 of the Convention

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
>
> 2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:
>
> (a) in defence of any person from unlawful violence;
>
> (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
>
> (c) in action lawfully taken for the purpose of quelling a riot or insurrection."

Article 8 of the Convention

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

16. Articles 2 and 8 of the Convention impose on member States certain positive obligations as regards protecting the general public from terrorism. Such an obligation was mentioned for the first time in a decision from the former European Commission on Human Rights ("the Commission"), *Dujardin and Others v. France* (dec.), 1991. As regards the Court, even though the facts of the case did not concern a terrorist threat, in *Osman v. the United Kingdom* [GC], 1998, it held that Article 2 of the Convention could, in certain well-defined circumstances, imply a positive obligation on the authorities

to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual. One must bear in mind the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources. The Court held therefore that such an obligation should be interpreted in a way which did not impose an impossible or disproportionate burden on the authorities. Indeed, it considered that not every claimed risk to life could entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising (§ 116). In that context, when an applicant submits that the authorities have violated their positive obligation to protect the right to life, the Court must determine whether the national authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and whether they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk.

17. The Court applied that case-law on prevention of terrorism in its *Tagayeva and Others v. Russia*, 2017, judgment. This case concerned a terrorist attack on a school in Beslan, Russia. The Court reiterated the *Osman* case-law, considering that the positive obligation in question could apply not only to situations concerning the requirement of personal protection of one or more individuals identifiable in advance as the potential target of a lethal act, but also in cases raising the obligation to afford general protection to society. Having observed that the information obtained by the national authorities had confirmed the existence of a real and immediate threat to life, the Court held that it could reasonably have been expected that some preventive and protective measures would be taken in order to detect, deter and neutralise the terrorists as soon as possible and with minimal risk to life. In fact, the preventive measures taken in this case had been broadly inadequate. The Court concluded that the respondent State had breached its positive obligations under Article 2 of the Convention.

18. The State's positive duty to protect also covers the protection of the lives of State agents , including members of special police squads taking part in anti-terrorist or other particularly dangerous operations (*Ribcheva and Others v. Bulgaria*, 2021).

C. Use of lethal force by agents of the State

Article 2 of the Convention

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
>
> 2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:
>
> (a) in defence of any person from unlawful violence;
>
> (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
>
> (c) in action lawfully taken for the purpose of quelling a riot or insurrection."

19. As regards the use of force by the law enforcement agencies, the Court must interpret and apply Article 2 in such a way as to make its safeguards practical and effective (*Makaratzis v. Greece* [GC], 2004, § 56), bearing in mind that the Convention is an instrument for the protection of individual human beings.

20. It emerges from Article 2 § 2 of the Convention that the use of lethal force by the law enforcement agencies may be justified under certain conditions. The Court must nevertheless satisfy itself that the force used was "absolutely necessary", in other words that it was strictly proportionate in the circumstances of the given case. On account of the cardinal importance of the right to life, the circumstances in which deprivation of life may be justified must therefore be strictly construed by the Court (*McKerr v. the United Kingdom*, 2001, § 108).

1. Evidential issues

21. In assessing evidence, the Court has adopted the standard of proof "beyond reasonable doubt". It transpires from the Court's case-law that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Moreover, the level of persuasion necessary for reaching a particular conclusion is intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake (*Natchova and Others v. Bulgaria* [GC], 2005, § 147). Thus, the Court is free to assess not only the admissibility and relevance but also the probative value of each item of evidence before it. Moreover, when assessing evidence, it is not bound by formulae and adopts the conclusions supported by the free evaluation of all evidence, including such inferences as may follow from the facts and the parties' submissions (see, *mutatis mutandis*, *Merabishvili v. Georgia* [GC], 2017, § 315).

22. As a general rule, the burden of proof is not borne by one or the other party because the Court examines all material before it irrespective of its origin, and because it can, if necessary, obtain material of its own motion. Nevertheless, having regard to the particular circumstances of each case, it avoids recourse to a rigid application of the principle *affirmanti incumbit probatio*. In that connection, the Court may of its own motion invite the parties to provide evidence capable of corroborating or refuting the allegations before it, and in the event of refusal, in particular by a respondent Government, it may draw inferences as to the well-foundedness of the allegations (*Janowiec and Others v. Russia* [GC], 2013, § 202).

23. The fact that the Court draws inferences from the actions of respondent Governments is even more important in cases where only the authorities have access to the relevant information and documents (*Timurtaş v. Turkey*, 2000, § 66). In particular, in a situation where an individual was being held in police custody, if injuries or death were caused during that custody there will be strong

presumptions and the burden of proof will be borne by the respondent Government, which must provide a satisfactory and convincing explanation (*Semache v. France*, 2018, § 71). The same principle also applies to the case of an arrestee who disappeared while he was under the control of the security forces, despite the absence of proof that he had ever been placed in custody (*Tanış and Others v. Turkey*, 2005, § 160).

24. In a similar vein, in cases concerning armed conflict, in particular between security forces and members of a terrorist organisation, the Court extended this principle to situations where individuals had died, disappeared or been injured in an area within the exclusive control of the authorities of the State (*Akkum and Others v. Turkey*, 2005, § 211). In *Mansuroğlu v. Turkey*, 2008, § 80, the Court considered that in all cases where it had been prevented from discovering the exact circumstances of a case for reasons objectively imputable to the State authorities, it was incumbent on the respondent Government to describe satisfactorily and convincingly the course of events and to put forward solid arguments to refute the applicants' allegations. Failing that, the Court could draw inferences as to their well-foundedness.

2. The State's obligations concerning the use by its agents of lethal force

25. Under the terms of Article 2 of the Convention, lethal force can be used to the extent that it is "absolutely necessary": in defence of any person from unlawful violence; in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or in action lawfully taken for the purpose of quelling a riot or insurrection. The case-law of the Court emphasises that the term "absolutely necessary" in Article 2 points to a stricter necessity test than in the expression "necessary in a democratic society", within the meaning of Articles 8 to 11 of the Convention (*McCann and Others v. the United Kingdom* [GC], 1995, § 149).

26. Nevertheless, the Court has voiced its awareness of the difficulties faced by States in protecting their populations from terrorist violence, recognising the complexity of this problem (*Finogenov and Others v. Russia*, 2011, § 212). Having regard to those difficulties, the Court differentiates between the political choices made in the course of fighting terrorism, which remain by their nature outside of such supervision, and other, more operational aspects of the authorities' actions that have a direct bearing on the protected rights. The absolute necessity test formulated in Article 2 is bound to be applied with different degrees of scrutiny, depending on whether and to what extent the authorities were in control of the situation and other relevant constraints inherent in operative decision-making in this sensitive sphere (*Tagayeva and Others v. Russia*, 2017, § 481).

a. Legal framework

27. One of the primary duties on the State in relation to the use of force by its agents is to secure the right to life by having in place an appropriate legal and administrative framework to deter the commission of offences against the person, backed up by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions (*Makaratzis v. Greece* [GC], 2004, § 57). That legal framework must secure a system of adequate and effective safeguards against arbitrariness and abuse of force (*Giuliani and Gaggio v. Italy* [GC], 2011, § 209). Even though the Court's case-law differentiates between "routine police operations" and situations of large-scale anti-terrorist operations, it nonetheless states that within the legal framework, the use of lethal force must remain governed by the strict rules of "absolute necessity", in particular evaluating the threat posed by the person against whom force is being used (*Tagayeva and Others v. Russia*, 2017, § 595).

b. Training and selection of State agents

28. Moreover, according to the case-law of the Court, governments must select members of the security forces with the utmost care (see, *mutatis mutandis*, *Abdullah Yılmaz v. Turkey*, 2008, §§ 56-57), and must undertake to provide adequate training for the members of those forces in order

to comply with international human rights and law enforcement standards (*McCann and Others v. the United Kingdom* [GC], 1995, § 211-213). In that regard, police should receive clear and precise instructions as to the manner and circumstances in which they should make use of firearms (*Şimşek and Others v. Turkey*, 2005, § 109). In its judgment in the non-terrorist case of *Giuliani and Gaggio v. Italy* [GC], 2011, the Court pointed out that whenever possible, warning shots should be fired before any real exchange of fire (*ibid.*, § 177).

c. Preparation of the operation

29. The planning and conduct of anti-terrorist operations are important in determining whether the use of force was compatible with Article 2 of the Convention. In that context, in *McCann and Others v. the United Kingdom* [GC], 1995, the Court held that in view of the importance of this provision in a democratic society, it should scrutinise not only the actions of the agents of the State who actually administered the force but also all the surrounding circumstances, including such matters as the planning and control of the actions under examination. The Court had, in particular, to consider whether the preparation and conduct of the operation demonstrate that the authorities had taken appropriate care to ensure that any risk to his life had been minimised and that they had not been negligent in their choice of action (see, *mutatis mutandis*, *Ayvazyan v. Armenia*, § 93). It also considers whether, at the material time, a balance had been struck between the aim pursued by the authorities and the means used to that end. In the case of *Güleç v. Turkey*, 1998, which concerned allegations of unlawful homicide by the security forces during a non-peaceful demonstration and the failure to conduct an appropriate investigation into the circumstances of the death, the Court accepted that the use of force might have been justified. It pointed out, however, that in the circumstances of the case there had been no balance between the aim pursued and the means used. Indeed, the gendarmes had fired live cartridges because they had not been equipped with batons, shields, water cannon, rubber bullets or tear gas. Similarly, the Court considers that the legitimate aim of effecting a lawful arrest can only justify putting human life at risk in circumstances of absolute necessity. In principle, there can be no such necessity where it is known that the person to be arrested poses no threat to life or limb and is not suspected of having committed a violent offence (*Kakoulli v. Turkey*, 2005, § 108). In *Benladghem v. Belgium*, 2026, however, which concerned the shooting of a terrorism suspect deemed particularly dangerous by the authorities and under investigation in two separate terrorism cases, the Court found no reason to call into question the authorities' decision to effect the interception on the motorway with the carriageway closed, which domestic courts had deemed safer than an urban stop that could endanger bystanders. On the use of force, forensic evidence supported the officers' accounts that the suspect rammed a police vehicle, ignored a stop order before drawing and pointing a firearm at an officer, prompting a few seconds of gunfire. Reaffirming that it will not substitute its own assessment of the situation for that of officers who were required to react in the heat of the moment to what they genuinely perceived as a danger in order to save their own lives or those of others, the Court rejected the applicant's allegations that the officers should have aimed to incapacitate rather than kill or that firing 24 shots by five officers was disproportionate, noting the shooting stopped once the threat ended.

30. Furthermore, the Court accepts the use of special heavily armed forces, including non-conventional weapons such as a potentially lethal incapacitating gas where required to free hostages while minimising the risk of explosions (*Finogenov and Others v. Russia*, 2011, §§ 234-236). On the other hand, in a case where special forces involved in a hostage liberation operation had engaged in the massive use of indiscriminate weapons it found a violation of Article 2 of the Convention (*Tagayeva and Others v. Russia*, 2017, § 609). Outside the terrorist context, the use of special forces can be problematic *per se* in terms of planning a police operation (*Castellani v. France*, 2020, §§ 58-63).

d. Control of the operation

31. Since its judgment in the case of *McCann and Others v. the United Kingdom* [GC], 1995, § 200, the Court has held that the use of force by State agents in pursuit of one of the aims set out in Article 2 § 2 of the Convention may be justified if it is based on an honest belief which is perceived, for good reasons, to be valid at the time but which subsequently turns out to be mistaken (see also *Armani Da Silva v. the United Kingdom* [GC], 2016, § 248, relating to procedural obligations). Moreover, to hold otherwise would be to impose an unrealistic burden on the State and its law-enforcement personnel in the execution of their duty, perhaps to the detriment of their lives and those of others. In that connection, the Court has stated that it should not substitute its own opinion of the situation for that of police officers on the ground. Indeed, if the State agents used their weapons with a view to defending themselves from attack and saving other persons' lives, and if the Court is convinced that they honestly believed in such a danger, it will conclude that there was no disproportionate use of lethal force (*Brady v. the United Kingdom* (dec.)). On the other hand, if the facts of the case point to a failure to take due precautions in organising and controlling the operation, the Court will find a violation of Article 2 of the Convention (*McCann and Others v. the United Kingdom* [GC], 1995, §§ 202-214).

32. By the same token, where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts, and as a general rule it is for those courts to assess the evidence before them. Though the Court is not bound by the domestic authorities' findings, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those authorities (*Yüksel Erdoğan v. Turkey*, 2007, § 87).

D. Prohibition of ill-treatment

Article 3 of the Convention

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

33. Where allegations are made under Article 3 of the Convention the Court must apply a "particularly thorough scrutiny" (*El-Masri v. North Macedonia* [GC], 2012, § 155), as the prohibition in question is "a value of civilisation closely bound up with respect for human dignity" (*Bouyid v. Belgium* [GC], 2015, § 81).

34. Article 3 of the Convention makes no provision for exceptions, and no derogation from it is permissible under Article 15 § 2 even in the event of a public emergency threatening the life of the nation. Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment (*Gäfgen v. Germany* [GC], 2010, § 87).

35. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative, depending on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (*Ireland v. the United Kingdom*, 1978). Although the question whether the purpose of the treatment was to humiliate or debase the victim is a factor to be taken into account, the absence of any such purpose cannot conclusively rule out a finding of violation of Article 3 (*Svinarenko and Slyadnev v. Russia* [GC], 2014, § 114).

36. Ill-treatment that attains the requisite minimum level of severity usually involves actual bodily injury or intense physical or mental suffering. However, even in the absence of these, where treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or her human

dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, the Court may consider it as degrading (see, among other authorities, *Vasyukov v. Russia*, 2011, § 59; *Gäfgen v. Germany* [GC], 2010, § 89; *Svinarenko and Slyadnev v. Russia* [GC], 2014, § 115). In that context, It may suffice that the victim is humiliated in his or her own eyes, even if not in the eyes of others (*M.S.S. v. Belgium and Greece* [GC], 2011, § 220).

37. Nevertheless, there is one specific situation in which the Court will not assess whether the minimum level of severity has been attained: where a person has been deprived of his liberty, or, more generally, is confronted with law-enforcement officers, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is, in principle, an infringement of the right set forth in Article 3 (*Bouyid v. Belgium* [GC], 2015, § 88).

38. Persons detained in connection with terrorism offences may, for reasons of protection or security, be placed in prolonged solitary confinement. In *Sekour v. France*, 2026, the Court reiterated that such a measure, even where relative rather than complete, must be used only in exceptional circumstances and with great caution, and cannot be imposed on a detainee indefinitely, and that decisions renewing it must be substantiated in an increasingly detailed and compelling manner over time and accompanied by regular medical review (*Ramirez Sanchez v. France* [GC], 2006, §§ 125-150). It went on to find no violation of Article 3 in respect of the successive renewals of an applicant's solitary confinement, imposed as a protective and security measure over several years while he was detained, and later convicted, for participation in a conspiracy to prepare an act of terrorism. It attached particular weight to the procedural safeguards surrounding each renewal, such as written notification of the grounds relied upon, the opportunity to submit written or oral observations with legal assistance as well as periodic medical and judicial review. The Court found these safeguards capable of preventing a prolonged placement in solitary confinement from producing effects contrary to Article 3 of the Convention and noted that the applicant did not complain of the material conditions of his confinement or allege complete sensory or social isolation (*ibid*, §§ 121-37).

E. Arrest and detention of terrorists or persons presumed to be terrorists

Article 5 of the Convention

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for noncompliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

1. "Stop and search"

39. Powers to stop, search and question persons suspected of terrorist acts fall within the ambit of Articles 5 and 8 of the Convention.

40. In *Beghal v. the United Kingdom*, 2019, the applicant was a French national who had her habitual residence in the United Kingdom. She had been visiting her husband, who was suspected of having committed a terrorist offence and had been detained in prison in France. Returning to the United Kingdom, she had been stopped at the airport under Schedule 7 of the Terrorism Act 2000, by police and immigration officers. They told her that they needed to speak to her to establish if she might be a person concerned in the commission, preparation or instigation of acts of terrorism. They added that she was not under arrest and that they did not suspect her of being a terrorist. They searched the applicant and her luggage. She refused to answer most of the questions put to her. After about two hours the officers told her that she was free to go. Subsequently, the applicant was charged with wilfully failing to comply with a duty under Schedule 7 by refusing to answer the questions. Her appeal against the measures imposed on her was ultimately dismissed by the Supreme Court. In her

application to the Court the applicant alleged, in particular, that the police powers under Schedule 7 of the counter-terrorism legislation had breached her rights under Articles 5 and 8 of the Convention.

41. The Court considered the applicant's complaints under Article 8. It held that there had been an interference in the applicant's exercise of her right to respect for her private life. In that connection, it drew a distinction between the applicant's situation and the routine search to which passengers uncomplainingly submit at airports (cf. *Gillan and Quinton v. the United Kingdom*, 2010). The Court also noted that Schedule 7 powers were clearly wider than the immigration powers to which travellers might reasonably expect to be subjected. The Court went on to analyse the powers in question in the context of the States' legitimate need to combat international terrorism and the importance of preventing terrorists from travelling from one country to another. The Court reiterated that the States enjoyed a wide margin of appreciation in that sphere. Nevertheless, it concluded that the safeguards provided by domestic law at the material time had not been sufficient to constrain the Schedule 7 powers such as to provide the applicant with adequate protection from arbitrary interference in her exercise of the right to respect for private life. In that regard the Court emphasised that the authorities had wide latitude in deciding whether and when to exercise the powers in question. In particular, it observed that the Schedule 7 regime could not be deemed compatible with the Convention for the following reasons:

i. persons who had been stopped could be questioned for up to nine hours and were required to answer the questions put to them without the assistance of a lawyer;

ii. it had transpired that owing to the lack of any obligation on the officer questioning the persons concerned to prove that he had a legitimate suspicion, it was difficult for persons being questioned to obtain judicial review of the lawfulness of the decision to exercise Schedule 7 powers;

iii. although the use of those powers was subject to the supervision of the Independent Reviewer of antiterrorist legislation, it was not apparent to the Court that that supervision was such as to offset the insufficiency of the safeguards on the application of the Schedule 7 regime.

42. For those reasons the Court found that, in the absence of adequate safeguards, the interference in the applicant's exercise of her rights was not "prescribed by law". Given that the complaint under Article 5 was based on the same facts as that under Article 8, the Court considered that it too should be declared admissible. However, having regard to the finding on the complaint under Article 8, it held that it was not necessary to consider whether, in the instant case, there had also been a violation of Article 5.

2. Detention and "reasonable suspicion"

43. The "reasonableness" of the suspicion on which an arrest must be based forms an essential part of the safeguard laid down in Article 5 § 1 (c) (*Mehmet Hasan Altan v. Turkey*, 2018, § 124). For further details, see Guide on Article 5.

3. Preventive detention

44. The Court has had occasion to rule on the issue of preventive detention, in particular, in *A. and Others v. the United Kingdom* [GC], 2009). After the 11 September 2001 terrorist attacks, the British Government considered that certain foreign nationals present in the United Kingdom had been involved in terrorist operations linked to al-Qaeda and thus threatened the life of the nation. Those individuals could not be deported because there was a risk that each would be ill-treated in his country of origin. Accordingly, the Government considered that it was necessary to create an extended power permitting the detention of foreign nationals, where the Secretary of State reasonably believed that the person's presence in the United Kingdom was a risk to national security and reasonably suspected

that the person was an "international terrorist". Furthermore, the Government had issued a notice of derogation under Article 15 of the Convention to the Secretary General of the Council of Europe.

45. The Court considered that the detention of a "person against whom action is being taken with a view to deportation or extradition" was justified only for as long as deportation or extradition proceedings were in progress and being conducted with due diligence. Considering that the second and fourth applicants had only been in detention briefly before leaving the country, it found no violation of Article 5 § 1 (f) in their case. As regards the other nine applicants, however, the Court observed that there was no evidence that during the period of the applicants' detention there had been any realistic prospect of their being expelled without this giving rise to a real risk of ill-treatment. In those circumstances, the Court did not consider that the respondent Government's policy of keeping the possibility of deporting the applicants "under active review" had been sufficiently certain or determinative to amount to "action ... being taken with a view to deportation" within the meaning of that provision. Therefore, it concluded that their detention did not fall with the derogation to the right to liberty set forth in Article 5 § 1 (f).

46. More recently, in its judgment in the case of *S., v. and A. v. Danemark* [GC], 2018, concerning the arrest and preventive detention of three persons in the framework of confrontations between hooligans, the Grand Chamber considered that the second strand of Article 5 § 1 (c), which concerns cases in which there are reasonable grounds for believing that an individual must be prevented from committing an offence, was a separate ground of deprivation of liberty applicable to preventive detention outside criminal proceedings. Thus, it noted that the requirement to bring detained persons before a court should not be an obstacle to a short period of preventive detention and should therefore be applied flexibly. The Court took the view that an overly strict interpretation of the "purpose" requirement in Article 5 § 1 (c) might unduly prolong the detention and make it practically impossible for the police to fulfil their duty in terms of preventing disorder and protecting the public. Considering that the Danish authorities had struck a fair balance between the applicants' right to liberty and the importance of preventing hooliganism, and that the courts had carefully assessed the strategy implemented by the police to prevent confrontations on the date of the applicants' arrest and had produced concrete evidence as to the time, place and potential victims of the offence of hooliganism in the commission of which the applicants would in all likelihood have been involved had their detention not prevented them from doing so, the Court found no violation of Article 5 § 1 of the Convention.

4. Secret detention

47. The unacknowledged detention of an individual is a most grave violation of Article 5, being a complete negation of the fundamental guarantees laid down in that provision (*El-Masri v. North Macedonia* [GC], 2012, § 233). In its *Kurt v. Turkey*, 1998, judgment, the Court concluded that the absence of holding data recording such matters as the date, time and location of detention, the name of the detainee as well as the reasons for the detention and the name of the person effecting it must be seen as incompatible with the very purpose of Article 5 of the Convention (*ibid.*, § 125).

48. As regards the phenomenon of the "extraordinary renditions" conducted in Europe by US intelligence agents, the Court found that the respondent Governments had been responsible under the Convention. The first relevant case was that of *El-Masri v. North Macedonia* [GC], 2012, in which the applicant, a German national of Lebanese origin, alleged that he had been the victim of a secret "rendition" operation. During the latter the applicant had allegedly been arrested, placed in solitary confinement, questioned, ill-treated in a hotel in Skopje for 23 days and then handed over to US intelligence agents, who had taken him to a secret detention centre in Afghanistan, where he had sustained further ill-treatment for over four months. Having noted that the facts as described by the applicant had been established beyond any reasonable doubt, the Court considered that the respondent Government was responsible not only for the ill-treatment sustained by the applicant but also for his twenty-three days' detention in a Skopje hotel and his subsequent captivity in Afghanistan.

The Court held that the unacknowledged detention inflicted on the applicant, in complete disregard of the guaranties enshrined in Article 5, had amounted to a particularly serious violation of his right to liberty and security protected by that provision. It also found a violation of Article 3 of the Convention on account of the absence of an effective investigation into the applicant's allegations of arbitrary detention.

49. The cases of *Al Nashiri v. Poland*, 2014, and *Husayn (Abu Zubaydah) v. Poland*, 2014, concerned complaints about torture, ill-treatment and secret detention inflicted on the applicants, who were suspected of committing terrorist offences. The applicants submitted, in particular, that they had been detained in a "black site" belonging to the US intelligence department in Polish territory. According to the applicants, the respondent Government had authorised the US agents to detain them in secret for six and nine months respectively, without any legal basis or supervision. The Court considered that in the circumstances of the case it had been established that the Polish Government had cooperated in preparing and implementing the rendition, secret detention and interrogation operations conducted by the US secret agents in its territory, and that the said Government should have known that by permitting the latter to detain such persons in its territory it was exposing them to a serious risk of sustaining treatment contrary to the Convention. As in the case of *El-Masri v. North Macedonia* [GC], 2012, the Court found a violation of Article 5 on account of the applicants' detention in Poland, but also on account of their transfer from Polish territory to the American naval base in Guantanamo Bay, Cuba.

50. In the case of *Abu Zubaydah v. Lithuania*, 2018, the applicant submitted that the national authorities had allowed US intelligence agents to transfer him to Lithuanian territory in the framework of the secret "extraordinary rendition" programme and to subject him to ill-treatment and arbitrary detention in a CIA secret prison. The applicant also complained that no effective investigation had been initiated into his allegations. In this case the Court had had to establish the facts itself because the applicant was still being detained by the US authorities. It found a violation of Article 3 on account, firstly, of the lack of an effective investigation into the applicant's allegations, and secondly, of the State's complicity in the CIA's actions. It also found a violation of Articles 5, 8, and 13 read in conjunction with Article 3. More specifically, the Court noted that the Lithuanian authorities had known that the CIA had a secret prison in their territory, that it had detained the applicant for over a year and that it had subjected the latter to treatment contrary to Article 3. Furthermore, the national authorities had permitted the applicant's transfer to another US detention site in Afghanistan (see also *Al-Hawsawi v. Lithuania*, 2024, *Nasr and Ghali v. Italy*, 2016, and *Al Nashiri v. Poland*, 2014).

5. Safeguards for persons deprived of their liberty

51. Paragraphs 2 to 5 of Article 5 lay down a number of safeguards for persons deprived of their liberty, whether in the context of the fight against terrorism or in any other context. For further details, see the Case-Law Guide on Article 5[4].

4. Guide on Article 5 – Right to liberty and security.

III. Conduct of criminal proceedings

A. Nature of the offences

1. Characterisation and scope of penalties and sanctions

Article 7 of the Convention

> "1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
>
> 2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations."

52. Article 7 of the Convention prohibits the retroactive application of criminal law to the disadvantage of an accused person. Moreover, this provision also embodies the principle that only the law can define a crime and prescribe a penalty (*nullum crimen, nulla poena sine lege*) and the principle that the criminal law must not be extensively construed to an accused's detriment, for instance by analogy (*Kokkinakis v. Greece*, 1993, § 52). Consequently, an offence must be clearly defined in the law, be it national or international. This requirement is satisfied where the individual can know from the wording of the relevant provision – if need be, with the assistance of the courts' interpretation of it and with informed legal advice – what acts and omissions will make him criminally liable. In that connection, the notion of "law" in Article 7 is the very same concept as that to which the Convention refers elsewhere when using that term, a concept which comprises written as well as unwritten law and implies qualitative requirements, notably those of accessibility and foreseeability (*Vasiliauskas v. Lithuania* [GC], 2015, § 154). The Court must therefore verify that at the time when an accused person performed the act which led to his being prosecuted and convicted there was in force a legal provision which made that act punishable, and that the punishment imposed did not exceed the limits fixed by that provision (*Del Río Prada v. Spain* [GC], 2013, § 80). See the application of these principles in *Mørck Jensen v. Denmark*, 2022, §§ 40-43, concerning a conviction for breach of the prohibition on entry and stay in a specific conflict zone (see also §§ 44-54 regarding the application of the criminal law applicable at the time of the offence).

53. The guarantee against retroactive criminal liability under Article 7 also embodies the principle of *nulla poena sine culpa*, protecting the right of every individual not to be punished without his personal liability, including the mental element (*mens rea*) of the offence, having been duly established (*G.I.E.M. S.r.l. and Others v. Italy* [GC], 2018). In *Yüksel Yalçınkaya v. Türkiye* [GC], 2023, the Grand Chamber found a violation of Article 7 where a conviction for membership of an armed terrorist organisation had been based essentially on the applicant's use of an encrypted messaging application, without an individualised assessment of whether the constituent elements of the offence, including its mental element, were established in his particular case. In *Yasak v. Türkiye* [GC], 2026, concerning a similar conviction based on a considerably wider range of evidence relating to the applicant's activities within the same organisation's educational branch between 2011 and 2014, the Grand Chamber again found a violation of Article 7 of the Convention. It held that criminal liability for membership of an armed terrorist organisation cannot rest on collective guilt or guilt by association and requires an individualised finding that the accused was aware, at the relevant time, of the

organisation's objectives and violent methods, and knowingly and willingly wished to belong to it. The mere holding of a position of responsibility within the organisation, before its transformation into a terrorist entity had become apparent, could not by itself found the requisite *mens rea*. The Court underlined that, although a public emergency threatening the life of the nation may justify preventive and prosecutorial measures against terrorism, the non-derogable guarantees of Article 7 must be observed with equal rigour even in the most difficult of circumstances, including in the prosecution of terrorist offences (see Part VI below).

For further details, see the Case-Law Guide on Article 7[5].

2. Interaction with other Articles of the Convention

54. Owing to the specific nature of terrorist-type crimes and offences, the Court is often called upon to balance a State's interest in suppressing terrorism with, in particular, the freedoms of religion, expression and association.

a. Article 9

Article 9 of the Convention

> "1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
>
> 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

55. In *Güler and Uğur v. Turkey*, 2014, the Court faced the question of the applicability of Article 9 to a religious ceremony tenue in honour of deceased members of a terrorist organisation. The case concerned the applicants' participation in a religious ceremony (*mevlût*) held in memory of three members of the PKK (the Kurdistan Workers' Party, an illegal armed organisation) who had been killed by the security forces. The impugned ceremony had been held on the premises of a left-wing pro-Kurdish political party where the PKK flag and photographs of the members of the organisation had been placed on tables. The applicants had been prosecuted and convicted under section 7 (2) of Law No. 3713 on the prevention of terrorism, which criminalised propaganda in favour of terrorist organisations. The Court found Article 9 applicable to the case and held that there had been an interference with the applicants' freedom to manifest their religion collectively. It noted that that *mevlût* was a religious ceremony commonly celebrated by Muslims in Turkey and considered that the mere fact that the ceremony in question was organised on the premises of a political party in which symbols of a terrorist organisation were displayed did not deprive the participants of the protection guaranteed by Article 9 of the Convention. In that regard, the Court relied, in particular, on General Comment 22 as adopted by the UN Human Rights Committee at its 48th session, which stated that:

> " ... [T]he concept of worship extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including ... the use of ritual formulae and objects, the display of symbols .... The observance and practice of religion or belief may include not only ceremonial acts but also such customs as ... participation in rituals associated with certain stages of life...".

5. Guide on Article 7 – No punishment without law.

56. The Court took the view that the concept of worship extended to ritual and ceremonial acts, including ceremonies following deaths, and under Article 9 it was unimportant whether or not the deceased had been members of an illegal organisation. Having observed that neither the reasoning of the national courts nor the Government's observations had shown that the applicants had played a role in choosing the venue for the religious service or had been responsible for the presence of the symbols of an illegal organisation on the premises where the ceremony was held, the Court noted that the criminal act of which the applicants had been convicted was merely their participation in the *mevlût* ceremony, which had been organised following the death of members of the terrorist organisation in question. Having regard to the wording of section 7(2) of the Law on the prevention of terrorism and to its interpretation by the Ankara Assize Court and the Court of Cassation when convicting the applicants of the offence of propaganda, the Court took the view that the interference with the applicants' freedom of religion had not been "prescribed by law" in the sense that it did not meet the requirements of clarity and foreseeability, since it had not been possible to foresee that mere participation in a religious service would fall within the scope of section 7(2) of the aforementioned law.

b. Article 10

> Article 10 of the Convention
>
> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

57. The Court has delivered many judgments relating to terrorism from the standpoint of Article 10 of the Convention. For example, in the case of *Gözel and Özer v. Turkey*, 2010, the applicants were the owner's publishers and editors-in-chief of two periodical magazines. They had been fined, their publications had been suspended for a week and a monthly magazine had been closed down for a fortnight, on the grounds that they had published three Articles which the domestic courts had characterised as statements by a terrorist organisation, namely the PKK. The Court considered that the reasons put forward by the domestic courts in convicting the applicants could not be considered as sufficient to justify the interference in question. More particularly, the Court observed that the judgments in question had lacked any reasoning, which was but a consequence of the very tenor of the domestic legislation, which provided for the conviction of "anyone who printed or published statements or leaflets of terrorist organisations" and therefore did not impose any obligation on the domestic courts to conduct a textual or contextual analysis of the articles, taking due account of the criteria set out and implemented by the Court in the framework of Article 10 of the Convention. The Court held that such virtually automatic punishment, without even minimum analysis of the content or context of the impugned articles, and without considering the aim of the media professionals involved or the general public's right to be informed of a different point of view on a situation of conflict, was incompatible with the freedom to receive and communicate information and ideas.

58. In *Leroy v. France*, 2008, the Court considered the publication of a cartoon which had led to its auteur's criminal conviction. Two days after the 11 September 2001 terrorist attack, the applicant, a cartoonist, had published a drawing depicting the attack, with the caption "We have all dreamt of it

... Hamas did it". The domestic courts had convicted the applicant on charges of condoning terrorism, considering that the offence had been made out by the explicit mention of the destruction of the Manhattan Twin Towers by an act of violence, accompanied by an "unequivocally laudatory" caption.

59. As regards the necessity of the interference, while having regard to the circumstances bound up with the difficulties of combating terrorism, the Court closely scrutinised the words used to illustrate the drawing and the context in which they had been published. It observed, in particular, that the 11 September 2001 attacks had led to global chaos and that the issues raised on that occasion had been subject to discussion as a matter of public interest. It held that the applicant's intentions had been unimportant because, taken together with the accompanying text, the cartoon had supported and glorified the violent destruction of "American imperialism". Reiterating that whoever exercises his freedom of expression undertakes duties and responsibilities, and that the drawing had been published two days after the attacks, with no precautions as to the language used, at a time when the whole world was in shock at the news of the event, the Court considered that the impact of such a message in a politically sensitive region (the French Basque country) should not be overlooked. Moreover, considering that the penalty imposed had been based on relevant and sufficient grounds and that the fine imposed on the applicant had been modest, the Court found that the measure had not been disproportionate to the legitimate aim pursued.

60. The 11 September 2001 terrorist attacks also gave rise to another similar French case, *Z.B. v. France*, 2021. In 2012, 11 years after the attacks, the applicant had given his nephew a T-shirt with the words "I am a bomb!" on the front and "Jihad, born on 11 September" on the back. He had been found guilty of condoning crime. In its judgment, the Court found no violation of Article 10 in view of the general context in which the impugned events had taken place, including the Toulouse terrorist attacks in which three children had been killed outside their school, and also the specific context, that is to say the instrumentalisation of a three-year-old child.

61. In *Stomakhin v. Russia*, 2018, the applicant, a journalist, had published a newsletter containing a number of statements on the Chechen conflict. The national courts had sentenced him to five years imprisonment and banned him from exercising journalism for three years for having infringed the Law on the prevention of extremism. The courts considered that he had issued calls to violence and extremism and incited to racial, religious and social hatred. The Court examined the impugned statements and found that they had been made in the context of a debate on a matter of general public interest, in respect of which any restrictions to freedom of expression had to be strictly regulated. As regards the content of the statements, the Court divided the statements into three groups. It noted that while some of them had gone beyond the limits of acceptable criticism and therefore constituted incitement to violence and glorification of terrorism, that had not been the case with all of them. The Court took the view that in imposing a severe penalty on the applicant for all the statements he had made, the domestic courts had infringed his rights in a manner which had not met any pressing social need.

62. In the case of *Rouillan v. France*, 2022, the applicant, a former member of a terrorist group who had already served a long prison term, was sentenced to eighteen months' imprisonment for publicly defending an act of terrorism, after having characterised the perpetrators of the 2015 Paris and Seine-Saint-Denis terrorist attacks as "brave" and stating that they had "fought bravely" during a radio programme that was recorded and subsequently released on a newspaper website. The Court considered that although the applicant's remarks had not amounted to a direct incitement to violence, they had conveyed a positive image of the perpetrators of terrorist attacks and had been uttered at a time when French society was still reeling from the deadly 2015 attacks and the level of terrorist threat remained high. It further emphasised that the dissemination of the remarks over the radio and online had been capable of reaching a wide audience. It concluded that the remarks in issue ought to be regarded, in view of their laudatory character, as an indirect incitement to terrorist violence, and saw no reasonable basis on which to depart from the meaning and scope attached to them by the national judicial authorities (*ibid.*, §§ 70-71). The Court held that the national authorities enjoyed a wide margin

of appreciation, in the present case, when it came to determining whether the interference in issue had been necessary.

63. That being so, and reiterating that the nature and length of the sentence were elements to be taken into consideration when it came to assessing the proportionality of an interference, the Court noted that the penalty imposed on the applicant had been a custodial sentence, which was not proportionate in the present case to the legitimate aim pursued and thus not "necessary in a democratic society" (violation of Article 10).

64. Moreover, in *Ete v. Türkiye*, 2022, the Court examined a complaint concerning a conviction for propaganda in favour of a terrorist organisation for cutting and handing out slices of cake on plates at a demonstration purported to have been held in celebration of the birthday of the leader of the PKK. The Court reiterated that opinions may also be expressed through behaviour and that in the circumstances of the case such behaviour amounted to a form of expression covered by Article 10 of the Convention (§§ 16-17). It found that those acts, viewed as a whole, could not be seen as incorporating a call to violence, armed resistance or insurrection, nor as constituting hate speech. Accordingly, the applicant's criminal conviction had not been proportionated to the legitimate aims of protecting national security and territorial integrity, and preventing disorder and crime, and had been therefore in breach of Article 10 (§§ 27-31).

c. Article 11[6]

Article 11 of the Convention

> "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
>
> 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, 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. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

6. See the section on "Dissolution of political parties" below.

B. Right to a fair trial

Article 6 of the Convention

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
>
> 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
>
> (b) to have adequate time and facilities for the preparation of his defence;
>
> (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
>
> (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court."

1. Qualification of courts

65. A "tribunal" within the meaning of Article 6 of the Convention, must always be "established by law". This expression reflects the principle of the rule of law, which is inherent in the system of protection established by the Convention and its Protocols (*Jorgic v. Germany*, 2007, § 64). The expression "established by law" concerns not only the legal basis of the very existence of the tribunal, but also the composition of the bench in each individual case (*Lavents v. Latvia*, 2002, § 114).

66. Although States may have recourse to special courts, particularly State Security Courts or Military Courts, that choice does not exempt them from their obligations under Article 6 of the Convention, particularly as regards the independence and impartiality of judges and the fairness of proceedings (see, for example, *Incal v. Turkey* [GC], 1998, and *Öcalan v. Turkey* [GC], 2005, §§ 112-118 and 130-149).

67. In the case of *Ramda v. France*, 2017, the applicant, an Algerian national, had been extradited from the United Kingdom to France on the basis of accusations relating to a series of terrorist attacks in France. He had been tried and convicted by a criminal court for conspiracy to prepare terrorist attacks. Subsequently he had been tried and convicted by an assize court for aiding and abetting a series of specific crimes, including murder and attempted murder. The assize court in question had used a "special" composition, that is to say that the lay jury had been replaced by a professional jury of judges on the grounds that lay jurors might have risked reprisals if they had sat in a terrorist case. Applying the principles established in the case of *Taxquet v. Belgium*, 2010, concerning professional juries, the Court found no violation of Article 6 as regards the fact that no reasons had been given by the Assize Court's professional jury for the finding of guilt (see, in this connection, the case-law on *Diplock courts* in *McKeown v. the United Kingdom*, 2011, as well as a special criminal court in the judgments in the cases of *Donohoe v. Ireland*, 2013 and *Heaney and McGuinness v. Ireland*, 2000).

68. For further details on the independence and impartiality of courts, see the case-law Guide on Article 6 (criminal limb).

2. Evidence obtained in breach of domestic law and the Convention

69. Under the terms of Article 19 of the Convention, it is the Court's task to ensure the observance of the engagements undertaken by the Contracting States in the Convention. In that regard, it is not its function to deal with errors of fact or of law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. More specifically, while Article 6 guarantees the right to a fair hearing, it does not lay down rules on the admissibility of evidence as such, which is primarily a matter for regulation under national law. The Court therefore cannot exclude as a matter of principle and in the abstract that unlawfully obtained evidence may be admissible (*Galip Doğru v. Turkey*, 2015, §§ 73-74). In other words, the admission in evidence of information obtained in breach of domestic law or the Convention, particularly of Article 8 thereof, does not automatically conflict with the requirements of fairness guaranteed by Article 6 § 1. The Court must seek to ascertain whether the proceedings as a whole were fair. It will consider whether the proceedings, including the manner in which evidence was gathered, were fair as a whole, which involves an examination of the "unlawfulness" in question and, where a violation of another Convention right is concerned, the nature of the violation found (*Allan v. the United Kingdom*, 2002, § 42).

70. As regards the question whether the proceedings as a whole were fair, the Court must consider whether the rights of the defence were respected, and in particular whether the applicant was given the opportunity of challenging the authenticity of the evidence and of opposing its use. The quality of the evidence should also be considered, including whether the circumstances in which it was obtained cast doubts on its reliability or accuracy. While no problem of fairness necessarily arises where the evidence obtained was unsupported by other material, it may be noted that where the evidence is very strong and there is no risk of its being unreliable, the need for supporting evidence is correspondingly weaker (*Allan v. the United Kingdom*, 2002, § 43). Furthermore, the case-law of the Court also attaches major importance to whether the evidence in question was decisive for the outcome of the criminal proceedings (*Ibrahim and Others v. the United Kingdom* [GC], 2016, § 254).

71. However, these considerations differ when evidence obtained by means of a measure deemed contrary to Article 3 of the Convention is used in the framework of criminal proceedings. The Court has on several occasions stated that the use of evidence obtained in breach of Article 3 always raises serious doubts about the fairness of the proceedings, even if the admission of such evidence was not decisive in securing the conviction (*Jalloh v. Germany* [GC], 2006, § 99). As regards confessions obtained as a result of torture or of other ill-treatment in breach of Article 3, the Court has ruled that no matter whether the acts in question were classified as torture, inhuman treatment or degrading treatment, using such confessions automatically results in a violation of Article 6 (*Ibrahim and Others v. the United Kingdom* [GC], 2016, § 254). The same applies to the use of incriminating evidence obtained as a result of acts of torture (*Jalloh v. Germany* [GC], 2006, § 105). On the other hand, the use of such evidence obtained by means of treatment contrary to Article 3 that falls short of torture only contravenes Article 6 if it has been demonstrated that the violation of Article 3 influenced the outcome of the proceedings, that is, if it had an impact on the person's conviction or the penalty imposed (see, *mutatis mutandis*, *El Haski v. Belgium*, 2012, § 85). These principles apply not only where the victim of the treatment contrary to Article 3 is the actual defendant but also where third parties are concerned (*ibid.*, § 85). In particular, the Court has held that it would be a flagrant denial of justice if evidence obtained by means of torture were admitted in a criminal trial, even where the person from whom the evidence had been extracted in this way is someone other than the accused (*Othman (Abu Qatada) v. the United Kingdom*, 2012, §§ 263 and 267).

72. In the case of *Sassi and Benchellali v. France*, 2021, the applicants, French nationals suspected of terrorism, had been captured in Pakistan, handed over to the US authorities and detained in the

Guantanamo base, where they had been questioned on several occasions by the French Domestic Intelligence Agency (DGSI) and External Intelligence Agency (DGSE). They had then been repatriated to France, where they had been convicted of terrorism during proceedings in which evidence gathered during the interviews had been added to the case file. As regards the conduct of those interviews, the Court held that they had been part of an administrative mission aimed at identifying the applicants and gathering intelligence and had therefore been unrelated to the judicial proceedings brought against them in France. The applicants thus had not had a "criminal charge" laid against them, which ruled out the application of Article 6 to the conduct of the interviews. As regards the use in the criminal proceedings in France of the evidence gathered in Guantanamo, the Court pointed out that the domestic courts shall take into consideration the allegations that the applicants had been ill-treated, even though such treatment had allegedly been inflicted outside the forum State.

73. It should also be pointed out that the absence of a finding of a violation of Article 3 does not, in principle, preclude the Court from taking into consideration the applicant's allegations that police statements had been obtained using methods of coercion or oppression and that their admission to the case file, relied upon by the trial court, therefore constituted a violation of the fair trial guarantee of Article 6 (*Mehmet Duman v. Turkey*, 2018, § 42). Even where a complaint under Article 3 of the Convention has been declared inadmissible the Court can consider the case under Article 6 and find a violation of that provision on account of the use of evidence obtained in violation of Article 3.

3. Evidence covered by secrecy and the holding of hearings in camera

74. As a matter of principle, Article 6 § 1 requires that the prosecution authorities disclose to the defence all material evidence in their possession for or against the accused (*Rowe and Davis v. the United Kingdom* [GC], 2000, § 60). A number of relevant principles can thus be derived from Article 6 § 3 (b), which provides that the applicant must "have adequate time and facilities for the preparation of his defence". However, in the field of combating terrorism, given the importance of the role played by the security forces, including intelligence services, specified types of evidence are liable to be covered by secrecy.

75. The principles relating to the obligation to disclose relevant evidence during criminal proceedings, as set out by the Grand Chamber in the *Rowe and Davis judgment* (§§ 60-62), also apply to terrorist cases. In *McKeown v. the United Kingdom*, 2011, the Court reiterated that criminal proceedings, including the elements of such proceedings which relate to procedure, should be adversarial and that there should be equality of arms between the prosecution and defence. Indeed, the right to an adversarial trial means, in a criminal case, that both prosecution and defence must be given the opportunity to have knowledge of and comment on the observations filed and the evidence adduced by the other party. In addition, Article 6 § 1 requires that the prosecution authorities disclose to the defence all material evidence in their possession for or against the accused. However, the entitlement to disclosure of relevant evidence is not an absolute right. In any criminal proceedings there may be competing interests, such as national security or the need to protect witnesses at risk of reprisals or keep secret police methods of investigation of crime, which must be weighed against the rights of the accused. In some cases, it may be necessary to withhold certain evidence from the defence so as to preserve the fundamental rights of another individual or to safeguard an important public interest. However, only such measures restricting the rights of the defence which are strictly necessary are permissible under Article 6 § 1. Moreover, in order to ensure that the accused receives a fair trial, any difficulties caused to the defence by a limitation on its rights must be sufficiently counterbalanced by the procedures followed by the judicial authorities. It transpires from the Court's case-law that in cases where evidence has been withheld from the defence on public interest grounds, it is not the role of the Court to decide whether or not such non-disclosure was strictly necessary since, as a general rule, it is for the national courts to assess the evidence before them. Instead, the Court's task is to ascertain whether the decision-making procedure applied in each case complied, as far as possible, with the

requirements of adversarial proceedings and equality of arms and incorporated adequate safeguards to protect the interests of the accused.

76. Furthermore, in some situations the domestic judicial authorities may decide to hold hearings in camera (*Belashev v. Russia*, 2008, §§ 79-88). As stated in Article 6 § 1 itself, "the press and public may be excluded from all or part of the trial ... where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice". The total or partial exclusion of the public from the hearing must be decided strictly in accordance with the circumstances of the case. Holding a hearing in camera can sometimes prove necessary in the light of Article 6, in order, for example, to protect the safety or privacy of witnesses or to promote the free exchange of information and opinion in the pursuit of justice (*Doorson v. Netherlands*, 1996, § 70; *Jasper v. the United Kingdom* [GC], 2000, § 52; and *B. and P. v. the United Kingdom*, 2001, § 37).

77. The Court found in particular in *Riepan v. Austria*, 2000, that security problems were a common feature of many criminal proceedings, but that cases in which security concerns justified excluding the public from a trial were nevertheless rare (*ibid.*, § 34). Indeed, the requisite security measures should be narrowly tailored and comply with the principle of necessity. The judicial authorities should thoroughly consider all possible alternatives to ensure safety and security in the courtroom and give preference to a less strict measure over a stricter one when it can achieve the same purpose (*Krestovskiy v. Russia*, 2010, §§ 24-36). Where a domestic court decides to bar the public from a hearing, it must provide sufficient reasons for its decision to demonstrate that the measure is strictly necessary within the meaning of Article 6 § 1 (*Chaushev and Others v. Russia*, 2016, §§ 22-24).

4. Right of access to a lawyer during police custody

78. The right of everyone charged with a criminal offence to be effectively defended by a lawyer is one of the fundamental features of a fair trial (*Salduz v. Turkey* [GC], 2008, § 51, *Ibrahim and Others v. the United Kingdom* [GC], 2016, § 255, *Simeonovi v. Bulgaria* [GC], 2017, § 112, *Beuze v. Belgium* [GC], 2018, § 123). That right becomes applicable as soon as there is a "criminal charge" and, in particular, from the time of the suspect's arrest, whether or not that person is interviewed or participates in any other investigative measure during the relevant period (*Beuze v. Belgium* [GC], 2018, § 123).

79. However, prompt access to a lawyer is not an absolute right and it can be delayed in exceptional circumstances. The Court must first of all assess whether there were compelling reasons for the restriction. Secondly, it must evaluate the prejudice caused to the rights of the defence by that restriction, having regard to the overall fairness of the proceedings (*Ibrahim and Others v. the United Kingdom* [GC], 2016, § 257). Such compelling reasons exist, for example, where a respondent Government have convincingly demonstrated the existence of an urgent need to avert serious adverse consequences for life, liberty or physical integrity in a given case. In such circumstances, there is a pressing duty on the authorities to protect the rights of potential or actual victims under Articles 2, 3 and 5 § 1 of the Convention in particular, as in the case of a potential terrorist attack (*ibid.,* § 259). On the other hand, a non-specific claim of a risk of leaks cannot constitute compelling reasons such as to justify a restriction on access to a lawyer (*ibid.,* § 259); the same applies where the restriction on access to a lawyer corresponds to an administrative practice on the part of the authorities (*Simeonovi v. Bulgaria* [GC], 2017, § 130).

80. In the case of *Atristain Gorosabel v. Spain*, 2022, the authorities had held the applicant incommunicado, and the police interviews, during which he had made self-incriminatory statements, took place without the presence of a lawyer. The applicant had also been denied access during the proceedings to a lawyer of his own choosing. His statements during the police interviews formed part of the evidence which justified his conviction for terrorist offences and resulted in his being sentenced to 17 years' imprisonment. The Court noted that, in contrast to the cases involving denial of access,

the more lenient requirement of "relevant and sufficient" reasons applied in situations raising the less serious issue of "denial of choice" (see, *inter alia*, *Dvorski v. Croatia* [GC], 2015,§ 81). In such cases the Court's task was to assess whether, in the light of the proceedings as a whole, the rights of the defence had been "adversely affected" to such an extent as to undermine their overall fairness. In the present case, it noted that the authorities had not assessed and justified on an individual basis the need to restrict the applicant's access to a lawyer of his own choosing, and even, at one point, to any lawyer at all (§§ 58-63). It also noted that the applicant's conviction had been largely based on his statements at the police station, and that the domestic courts had not addressed the applicant's complaint that his court-appointed lawyer had not been allowed to communicate with him at that time. From the perspective of the fairness of the proceedings as a whole, it considered that the fact of having prevented the court-appointed lawyer from seeing his client during the interviews, and of having prevented the applicant from being assisted by a lawyer of his own choosing, had undermined the overall fairness of the subsequent criminal proceedings in so far as the applicant's incriminating initial statement had been admitted in evidence. Noting that no remedial measures had been taken during the trial, the Court concluded that the applicant's defence rights, protected by Article 6 §§ 1 and 3 (c) of the Convention, had been irretrievably prejudiced.

81. For further details on the right of access to a lawyer, see the Case-law Guide on Article 6 (criminal limb)[7].

5. Trial *in absentia* and waiver of the right to appear in person

82. Article 6 § 1 of the Convention, read together with paragraph 3 (c), guarantees the right of an accused person to take part in the hearing of his case. A trial conducted in the accused's absence is not, of itself, incompatible with the Convention where it is established that the person concerned unequivocally waived his right to appear and defend himself, or that he sought to escape trial. Such a waiver must be established in an unequivocal manner and be attended by safeguards commensurate with its importance, and it must not run counter to any important public interest (*Sejdovic v. Italy* [GC], 2006, §§ 81, 82 and 86).

83. In *Khattab v. Belgium*, 2026, the applicant, convicted at first instance of participation in the activities of a terrorist organisation, absconded to Türkiye, where he was arrested while attempting to cross into Syria under a false identity, while his appeal was pending, and was consequently convicted *in absentia* by the appellate court in Belgium, which declined to sever the proceedings against him. His subsequent challenge to that conviction was declared admissible but devoid of purpose (*non avenu*). The domestic courts found that he had, through his own conduct, placed himself in the situation of which he complained. He had initially chosen to be represented before the appellate court – which presupposed that he knew of the summons – and had subsequently, in full knowledge of the facts, chosen to no longer be represented. The Court found no violation of Article 6 and observed that, while the applicant could not be regarded as an accused notified in person and a waiver could not be inferred from the mere fact of being a fugitive without a sufficient factual basis, certain established facts unequivocally demonstrated that he knew of the proceedings and did not intend to take part in the trial. He had in fact himself lodged the appeal, had been represented by counsel at the introductory hearing and had deliberately left Belgian territory under a false identity notwithstanding the pending appeal. As regards the applicant's related complaint that he had lacked adequate time and facilities to prepare his defence, contrary to Article 6 § 3 (b) of the Convention, the Court found that the Belgian authorities could not be held responsible for the consequences of the applicant's own voluntary conduct, including any difficulties he faced in communicating with his

7. Guide on Article 6 (criminal limb) – Right to a fair trial.

lawyers while detained abroad, and that they had not hindered — and had in fact facilitated, including by providing consular assistance and promptly relaying correspondence — communication between the applicant and his counsel, including counsel appointed to represent him in the foreign proceedings, during his detention in Türkiye.

IV. Various measures against terrorism

A. House arrest/restrictions on freedom of movement

Article 5 of the Convention

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for noncompliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

Article 2 of Protocol No. 4

> "1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
>
> 2. Everyone shall be free to leave any country, including his own.
>
> 3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of *ordre public*, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
>
> 4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society."

84. In the case of *De Tommaso v. Italy* [GC], 2017, the Court had occasion to adjudicate the application of policing measures to an individual deemed to pose a danger to society. In this case the Bari District Court, having noted that the applicant posed a danger to society, had placed him under special supervision for two years. This measure involved such obligations as reporting once a week to the police authority responsible for his supervision, starting looking for work within a month, living in a specific municipality and not changing his place of residence, not associating with persons who had a criminal record and who were subject to preventive or security measures, not returning home later than 10 p.m. or leaving home before 6 a.m., not keeping or carrying weapons, not going to bars, nightclubs, amusement arcades or brothels and not attending public meetings, not using mobile phones or radio communication devices, and having with him at all times the document setting out his obligations (*carta precettiva*) and presenting it to the police authority on request.

85. The Court ruled that the measures imposed had not amounted to a deprivation of liberty for the purposes of Article 5. It emphasised, in particular, that there had been no restrictions on the applicant's freedom to leave home during the day, and that he was able to have a social life and maintain relations with the outside world (cf. *Guzzardi v. Italy*, 1980). Nevertheless, it held that Article 2 of Protocol No. 4 had applied to the measures in question and that it had been breached in the instant case. It noted that the applicable law was couched in vague and excessively broad terms. Neither the individuals to whom preventive measures were applicable nor the content of certain of those measures were defined by law with sufficient precision and clarity to satisfy the foreseeability requirements of Article 2 of Protocol No. 4 to the Convention.

86. In contrast, in *Pagerie v. France*, 2023, concerning a series of compulsory residence orders imposed on a radicalised Islamist during a state of emergency in France following terrorist attacks in 2015, the Court did not find a violation of Article 2 of Protocol No. 4. The Court initially found Article 2 of Protocol No. 4 applicable, noting that the applicant was the subject of several compulsory residence orders (*assignations à résidence*) which had lasted for a total of thirteen months and which had prohibited him from leaving the municipality where he lived, confined him to his home between 8 p.m. and 6 a.m., and obliged him to report to a police station three times a day at specified times (§§ 153-160).

87. On the merits, the Court attached particular importance to the fact that the legal provisions in issue were foreseeable in that it laid down with sufficient clarity the scope and manner of exercise of the authorities' discretion, as well as prescribed suitable safeguards against abuse and arbitrariness – the curfew order were subject to effective scrutiny by the courts and open to legal challenge (§§ 187-191). In addition, the Court noted that the orders had relied on a set of factors that gave rise to substantial grounds to believe that a threat was posed to public order and security. The first order had been made a few days after the attacks of 13 November 2015, when protecting the public and preventing further terrorism had constituted a pressing need. Subsequently, the applicant's curfew had been reviewed on a regular basis – eight times – in which the accumulated body of evidence had

shown that the risk of engagement in terrorism which the order had been meant to obviate still existed (the evidence had included the applicant's public statements, conduct, association with jihadists, and jihadist propaganda videos found on his devices which promoted the use of lethal violence). Furthermore, neither the residence requirement nor the other terms of the curfew order had prevented the applicant from maintaining contact with the outside world, and his personal circumstances and alleged health problems were also taken into account. Lastly, the applicant had never applied for permission to leave the area in which he was required to live, or for a variation of the terms of the order. In view of all the foregoing, the Court concluded that the measure had not been disproportionate and thus not in breach of Article 2 of Protocol No. 4 (§§ 197-209).

88. The Court assessed an order for the administrative control and monitoring of an individual (*mesure individuelle de contrôle administratif et de surveillance* – "MICAS") in *M.B. v. France*, 2024. The authorities issued the MICAS order in respect of the applicant on counter-terrorism grounds in 2020, prohibiting the applicant from leaving an area corresponding to four departments of the Paris region and requiring him to report daily to the police station nearest to his home for two months and eight days.

Assessing the legal basis for a MICAS order, the Court found the law to be clear, as it was strictly limited to the fight against terrorism, was addressed to a relatively small number of individuals, and could not entail house arrest but only prohibit leaving a given territory and an obligation to report to the police daily. Furthermore, for a MICAS order to be issued, the authorities had to demonstrate, cumulatively, substantial grounds to believe that a person's conduct poses a particularly grave threat to public safety and order, and that that person had links to terrorism in one of the ways defined by the law. It noted that such a measure could only be justified by concrete and tangible acts or behaviours. The Court also found that the law provided sufficient safeguards against abuse, as it regulated the duration of a MICAS, its terms and the obligations stemming from it and provided for periodic review. The MICAS order had to be reasoned and was amenable to judicial review within a particularly short period (§§ 52-56).

89. Having found that the MICAS was lawful and pursued the legitimate aims of preserving national security, public safety, and public order, the Court assessed the necessity of the measure. It noted that the measure was of limited duration, limiting the applicant's movement to four departments in the Paris region and requiring him to report to the police daily. It also found that, at the relevant time, the terrorist threat was significant in France, necessitating the prevention of a new terroristic attack. Furthermore, it found that the extensive material collected by the authorities, showing that the applicant frequently consulted brutal images and jihadist propaganda, in conjunction with the applicant's psychologically unstable profile and the fact that he maintained contact with radicalised persons, demonstrate that an individualised and detailed risk assessment was conducted to justify the measure. The authorities carefully reasoned the MICAS order, bringing the facts justifying the measure to the applicant's attention from the outset. Finally, the applicant benefited from judicial review of both the legality and proportionality of the MICAS. The Court concluded that the measure was proportionate to the aims pursued and found no violation of Article 2 of Protocol No. 4 (§§ 58-63).

90. In the case of *Timofeyev and Postupkin v. Russia*, 2021, the Court considered that since the main aim of the impugned administrative supervision measures had been to prevent recidivism, they had been preventive in nature and could not be deemed punitive, amounting to a penalty for the purposes of Article 7 of the Convention (no punishment without law). Comparing "administrative supervision" to a criminal penalty, the Court noted that the penalty had been fixed with due regard to the aggravating and mitigating circumstances of the perpetration of the offence, and therefore to the extent of the perpetrator's guilt, whereas the imposition of administrative supervision had not depended on the extent of the person's guilt but had been based on the "dangerousness" of a person convicted as a recidivist. Therefore, the administrative supervision measures had not fallen within the scope of Article 7 or, for similar reasons, within that of Article 4 of Protocol No. 7 to the Convention (right not to be tried or punished twice).

B. Confiscation of property

Article 1 of Protocol No. 1 to the Convention

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

91. Confiscation of property can be used as a deterrent in the fight against organised crime (*Phillips v. the United Kingdom*, 2001, § 52). That having been said, confiscation can raise issues under Article 1 of Protocol No. 1 (see, among other authorities, *Grifhorst v. France*, 2009, §§ 81-106) inasmuch as it falls within the ambit of the second paragraph of that provision, which allows Contracting States, for instance, to regulate the use of property in order to secure payment of fines. However, the second paragraph must be interpreted in the light of the general principle set out in the first sentence of the first paragraph, and there must be a reasonable relationship of proportionality between the means employed and the aim pursued (*Aboufadda v. France* (dec.), 2014, § 22).

92. It is apparent from the Court's relevant case-law that any infringement of the right to the peaceful enjoyment of property must strike a "fair balance" between the demands of the general interest of the community and the protection of the individual's fundamental rights. In this context States enjoy a wide margin of appreciation with regard both to choosing the means of enforcement and to ascertaining whether the consequences of enforcement are justified in the general interest for the purpose of achieving the object of the law in question (*Grifhorst v. France*, 2009, §§ 82-83). Any confiscation of property must be provided for by law and pursue a public-interest aim. In principle, the fight against crime and terrorism pursues such an aim. As regards proportionality, the Court has emphasised that the confiscation of assets in criminal cases has become more widespread both in the legal systems of several Contracting States and at the international level, and that it is currently being used not only in evidence but also as a separate penalty for an offence (*Aboufadda v. France* (dec.), 2014, § 27).

93. In *Aboufadda v. France* (dec.), 2014, the Court examined a legal presumption. According to the law concerned, persons who have regular contacts with an individual having committed crimes or offences punishable with a minimum five years' imprisonment, and who cannot provide vouchers for the resources corresponding to their lifestyle or for the property they own, are presumed to be knowingly benefiting from assets of fraudulent origin. Consequently, all or part of the property for whose origin he cannot vouch may be confiscated as an additional penalty. In this case the Court considered that the infringement of the applicants' right to the peaceful enjoyment of their property had not been disproportionate to the public-interest aim pursued. It noted, in particular, that the domestic courts' decision to confiscate the whole house belonging to the applicants as a penalty was an expression of a legitimate desire to punish them severely for the serious offences which they had committed, concerning large-scale drug trafficking at the local level.

C. Withdrawal of a broadcasting licence

Article 10 of the Convention

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

94. The Court has long accepted that certain modes of identification with a terrorist organisation, especially the glorification of such an organisation, can be considered as manifesting support for terrorism and as an incitement to violence and hatred. Similarly, the Court accepts that the dissemination of messages praising the perpetrator of a terrorist attack, denigration of the victims of such attacks, appeals to finance terrorist organisations and other similar actions can amount to incitation to terrorist violence (*Yavuz and Yaylalı v. Turkey*, 2013, § 51).

95. In *ROJ TV A/S v. Danemark* (dec.), 2018, the Court had occasion to rule on the transmission of TV programmes promoting a terrorist organisation. A television corporation had been convicted of broadcasting programmes promoting the terrorist organisation PKK. The national courts had held that the PKK (which was included on the list of terrorist organisations in the European Union, Canada, the United States, Australia and the United Kingdom) had committed or intended to comet terrorist acts within the meaning of the Penal Code. The applicant company had been found guilty of condoning terrorist acts committed by that organisation and had lost its licence. The Court first of all held that there was nothing to suggest that the national courts had failed to base their decision on an acceptable assessment of the relevant facts.

96. As regards whether Article 17 of the Convention (prohibition of abuse of rights) was applicable in the instant case, the Court attached significant weight to the findings of the national courts to the effect that the one-sided coverage with repetitive incitement to participate in fights and actions, incitement to join the PKK or the guerrilla, and the portrayal of deceased guerrilla members as heroes, had amounted to propaganda for the terrorist organization in question, and that it could not have been considered only a declaration of sympathy. The Court held that in the light of the nature of the programmes, their presentation and the interlinks between them, the case concerned the promotion of the PKK's terrorist activities. It also agreed with the national courts that at the material time the PKK had been financing the applicant company to a significant extent. Accordingly, the Court found that having regard to Article 17 of the Convention the application did not fall within the scope of freedom of expression as secured under Article 10.

D. Dissolution of political parties[8]

Article 11 of the Convention

> "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
>
> 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, 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. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

97. Political parties are entitled to freedom of association as protected by Article 11 of the Convention (*United Communist Party of Turkey and Others v. Turkey*, 1998, § 25). In view of the role played by political parties, any measure taken against them affects the freedom of association and, consequently, democracy in the State concerned (*ibid.*, § 31).

98. At the same time, the freedoms guaranteed by Article 11, as well as by Articles 9 and 10 of the Convention, cannot deprive the authorities of a State in which an association, through its activities, jeopardises that State's institutions, of the right to protect those institutions. In this connection, the Court's case-law shows that some compromise between the requirements of defending democratic society and individual rights is inherent in the Convention system. For there to be a compromise of that sort any intervention by the authorities must be in accordance with paragraph 2 of Article 11 freedoms guaranteed by Article 11 of the Convention (see, *mutatis mutandis*, *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], 2003, § 96).

99. In that connection, the Court's case-law lays down two major principles with which all political parties must comply. Firstly, the means which they use must be scrupulously legal and democratic. Secondly, the political change proposed by the party must itself be compatible with fundamental democratic principles. It necessarily follows that a political party whose leaders incite to violence or put forward a policy which fails to respect democracy or which is aimed at the destruction of democracy and the flouting of the rights and freedoms recognised in a democracy cannot lay claim to the Convention's protection against penalties imposed on those grounds (*Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], 2003, § 98).

100. In the case of *Herri Batasuna and Batasuna v. Spain*, 2009, the Court had occasion to further develop its case-law on the dissolution of political parties on grounds of their links with a terrorist organisation. The Spanish Supreme Court had decided to dissolve two political parties on the grounds of their support for a terrorist organisation, particularly by condoning the latter's acts and methods. That decision had been subsequently upheld by the Constitutional Court. The Court subscribed to the findings of the national courts. It had held that the acts and statements attributable to the applicant parties had formed a whole which gave a clear picture of a model of society conceived and advocated by the party which was incompatible with the concept of a "democratic society". Consequently, it stated that the national courts' decision could reasonably be considered, even in the context of the narrower margin of appreciation enjoyed by the States, as meeting a "pressing social need".

8. See the section on "Article 11" in the present Guide.

E. Ban on leaving the national territory

Article 2 of Protocol No. 4

> "1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
>
> 2. Everyone shall be free to leave any country, including his own.
>
> 3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
>
> 4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society."

101. Measures banning individuals from leaving the country in the framework of the fight against terrorism may raise issues under both Article 8 of the Convention and Article 2 of Protocol No. 4.

102. In practice, such a ban may be imposed explicitly or implicitly, as happens in cases where a citizen's passport is withdrawn or an application to extend the passport is rejected.

103. The case of *İletmiş v. Turkey*, 2005, concerned the confiscation of, and the prolonged failure to return, the passport of an applicant who had been charged with separatist activities to the detriment of the State. The Court considered that such a measure amounted to an interference in the exercise of the applicant's right to respect for private life, inasmuch as he had been living with his family for seventeen years in Germany, where he had married and where his two children had been born. As regards the necessity of the interference in a democratic society, the Court held that the longer the proceedings had gone on without any progress being made and without any evidence against the applicant being produced, the less compelling the legitimate aim had become. It followed that with the passing of time the applicant's right to freedom of movement, considered here as an aspect of his right to respect for his private life, increasingly outweighed the imperatives of national security and the prevention of crime. In this case, the Court came to the conclusion that continuing to prohibit the applicant from leaving the country had no longer met a "pressing social need" within the meaning of Article 8 of the Convention (see also *Paşaoğlu v. Turkey*, 2008, which concerned an administrative restriction on the issue of a passport and a refusal by the national authorities to extend the passport of an applicant living abroad with his family).

104. The case of *Mørck Jensen v. Denmark*, 2022 concerned the conviction of a Danish national for entering and staying, without permission, in a prohibited area in which a terrorist organisation was a party to an ongoing armed conflict. The Court examined the applicant's complaints under Article 2 of Protocol No. 4. Among others, the Court noted that the disputed restriction was not absolute, subject to periodical revision and only concerned areas in which a terrorist organisation was a party to an ongoing armed conflict. In addition, the restriction ensured that Danish nationals or habitually resident within the Danish State did not independently join any of the parties to the ongoing armed conflict and pose a threat to the society upon their return to Denmark. Accordingly, the interference with the right to freedom of movement was deemed necessary in a democratic society and therefore not in breach of Article 2 of Protocol No. 4 (§§ 65-69).

105. In the case *Cimpaka Kapeta v. Belgium* (2025), the Court assessed the domestic authorities' refusal to issue the applicant, who had a suspended conviction for terrorism, a passport on national-security and public-safety grounds based partly on a Daesh flag found at his home and the risk of returning to Syria in light of his status as a former jihadist fighter. The Court considered this an

interference with his freedom of movement under Article 2 § 2 of Protocol No. 4, which was necessary in a democratic society, given the relevant and sufficient grounds from State Security Service notes and police evidence. The Court also noted that the measure was less severe than a total travel ban, as it allowed ID-card travel to Schengen countries; was not excessively long; and was subject to effective judicial review by the Council of State, which examined the measure's legality and proportionality with full access to the administrative file, including confidential documents. In the present case, the applicant had been informed of the substance of the reasons on which the refusal of the disputed passport was based so that the fact that the applicant did not have access to a report contained in the file did not infringe the very substance of his procedural rights under Article 2 of Protocol No. 4. Consequently, taking into account the margin of appreciation accorded to the national authorities in this field, the Court considered that the refusal to -issue of a passport to the applicant was not disproportionate to the aims pursued. It therefore concluded that there had been no violation of Article 2 of Protocol No. 4.

F. Deprivation of nationality

Article 8 of the Convention

> "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 well-being 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."

106. In the case of *K2 v. the United Kingdom* (dec.), 2017, the Court dealt for the first time with the issue of deprivation of nationality in the context of terrorism and national security. The applicant in this case was a naturalised British citizen. He had left the United Kingdom in breach of his bail conditions. He had been deprived of his British citizenship by order of the Secretary of State for the Home Department while he was abroad. The national authorities had also excluded him from the United Kingdom on the ground that he had been "involved in terrorism-related activities" and had "links to a number of Islamic extremists". Before the Court the applicant had complained about the measures taken against him, which he considered as a violation of his right to respect for his family and private life (Article 8). He also submitted that there had been no adequate procedural safeguards to ensure effective respect for his Article 8 rights, given that, in his view, there had been very limited disclosure of the national security case against him and he had been unable to participate effectively in the legal proceedings because of his exclusion from the national territory.

107. The Court considered the case in the light of the principles established in its judgment in the case of *Ramadan v. Malta*, 2016. It sought to ascertain whether the decision taken against the applicant had been arbitrary and whether the consequences of that decision had amounted to a violation of Article 8. In that regard, it noted that in order to establish whether the deprivation of nationality had been arbitrary, it had to have regard to whether the latter had been in accordance with the law, whether it had been accompanied by the necessary procedural safeguards, and whether the authorities had acted diligently and swiftly. It had further noted that the standard of "arbitrariness" was a stricter standard than that of proportionality.

108. In this case the Court considered that the deprivation of the applicant's nationality had not been arbitrary. As regards the applicant's complaint that he had not benefited from procedural safeguards in the framework of the domestic proceedings inasmuch as he had not had access to some of the evidence in the case file and that his exclusion from the territory had prevented him from effectively

participating in the appeal proceedings, the Court observed that the domestic proceedings had been conducted in a manner compatible with the requirements of Article 8 and that it was not its function to challenge the conclusions of the domestic courts. Lastly, in connection with the consequences of the deprivation of nationality, the Court noted that the applicant had obtained Sudanese nationality and that therefore the impugned measure had not rendered him stateless. It added that the applicant had failed to provide evidence in support of his claim that his wife and child were living in the United Kingdom. Nonetheless, it pointed out that the latter could freely visit Sudan and even live there if they so wished. Consequently, the Court had declared the application inadmissible as manifestly ill-founded.

109. In the case of *Ghoumid and Others v. France*, 2020, the Court confirmed the "major importance" which it attached to the fact that the applicants, who had been deprived of their French nationality after their conviction for terrorism, all had another nationality as well, and consequently the impugned decision had not had the effect of rendering them stateless.

Even though that measure had been imposed on the applicants long after their conviction (ten years after the facts and almost seven years after the judgment on appeal), the Court held that under the particular circumstances of the case, the time which had elapsed was insufficient in itself to render the deprivation arbitrary. It also accepted that following the terrorist attacks in France in 2015, the country had had to step up its action against terrorism. The Court underlined the Government's argument that persons convicted of terrorism should no longer enjoy the special bond with their country of residence constituted by holding the latter's nationality.

Finally, the Court found that deprivation of nationality as set forth in Article 25 of the French Civil Code could not be considered as a criminal sanction for the purposes of Article 4 of Protocol No. 7 to the Convention.

110. In the same vein, in the case of *Johansen v. Denmark* (dec.), 2022, the Court declared manifestly ill-founded an application lodged by a man who had joined the "Islamic State" in Syria and had been stripped of his Danish citizenship following his criminal conviction for terrorism. In its decision, the Court noted, in particular, that the applicant was also a Tunisian national and that the domestic courts had examined his situation thoroughly and without arbitrariness.

G. Measures taken in the framework of an international sanctions regime

Article 6 of the Convention

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
>
> 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
>
> (b) to have adequate time and facilities for the preparation of his defence;
>
> (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
>
> (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court."

111. The fight against terrorism, particularly in its current form, may lead States to adopt punitive administrative and judicial measures outside the normal system for penalising criminal offences, particularly in the framework of an international sanctions regime (*Nada v. Switzerland* [GC], 2012, and *Al-Dulimi and Montana Management Inc. v. Switzerland* [GC], 2016).

112. The judgment delivered by the Court in *Al-Dulimi and Montana Management Inc. v. Switzerland* [GC], 2016, a non-terrorist case, concerned access to a court in order to contest a confiscation of property carried out pursuant to Resolution 1483 of the United Nations Security Council. The applicant had been the Director of the second applicant, a company, and, according to the Security Council, he had also been Head of Finance for the Iraqi secret services under the regime of Saddam Hussein. In the framework of the sanctions regime put in place by the Security Council, the applicants had been placed on the sanctions list and their assets frozen with a view to their transfer to the Development Fund for Iraq. The applicants had unsuccessfully contested the confiscation of their assets before the Swiss courts, which had felt obliged to confine themselves to verifying whether the applicants' names did in fact appear on the lists established by the Sanctions Committee and whether the assets in question belonged to them. Before the Court, the applicants had complained of a disproportionate restriction on their right of access to a tribunal, in violation of Article 6 (civil limb). The Court had sought to ascertain whether there was a normative conflict between Security Council Resolution 1483 and Article 6 of the Convention requiring determination of the hierarchy between obligations under the Convention, on the one hand, and those set out in the United Nations Charter, on the other. The Court considered that since Article 24 § 2 of the Charter required the Security Council to act in conformity with the aims and principles of the UN, it had to be assumed that the Security Council had not intended to impose on member States any obligation liable to contravene the fundamental principles relating to human rights protection. Consequently, unless the Security

Council used clear and explicit language to express its wish for States to adopt measures contrary to international human rights law, the Court would assume, "in a spirit of systemic harmonisation", that there is no conflict of obligations capable of engaging the primacy rule in Article 103 of the UN Charter. Consequently, in the event of any ambiguity in the terms of a UN Security Council resolution, the Court must, if possible, choose the interpretation which is most in harmony with the requirements of the Convention and which avoids any conflict of obligations. In the circumstances of this case, the Court held that there was nothing in Resolution 1483 that explicitly prevented the national courts from verifying, in terms of human rights protection, the measures taken at national level pursuant to that Resolution. Indeed, when a resolution did not explicitly rule out the possibility of judicial review, it always had to be interpreted as authorising States to carry out such review in order to prevent its arbitrary implementation; this was aimed at preserving a fair balance between the competing interests. In a similar vein, any implementation of the Security Council Resolution without the possibility of judicial review in order to guarantee that there was no arbitrariness would engage the responsibility of the State under Article 6 of the Convention. In the absence of conflict between the obligations established in the United Nations Charter and Convention obligations, the Court considered that there was no need to decide the question of the hierarchy of legal obligations deriving from Article 103 or, in fact, the issue of the application of the equivalent protection rule (see *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], 2005).

113. The Court concluded that in the present case the applicants had had no opportunity to adduce evidence to show that their inclusion on the Sanctions Committee's lists had been arbitrary. The Court took the view that their inability to contest the confiscation measure over a period of ten years was "hardly conceivable in a democratic society". It further noted that the delisting procedures before the Sanctions Committee could not therefore replace appropriate judicial scrutiny at the level of the respondent State or even partly compensate for the lack of such scrutiny, having regard to the "very serious, reiterated and consistent criticisms" levelled at those procedures by numerous international bodies. Consequently, it found a violation of Article 6 of the Convention.

H. Expulsions

Article 1 of Protocol No. 7

> "1. An alien lawfully resident in the territory of a State shall not be expelled therefrom except in pursuance of a decision reached in accordance with law and shall be allowed:
>
> (a) to submit reasons against his expulsion,
>
> (b) to have his case reviewed, and
>
> (c) to be represented for these purposes before the competent authority or a person or persons designated by that authority.
>
> 2. An alien may be expelled before the exercise of his rights under paragraph 1.(a), (b) and (c) of this Article, when such expulsion is necessary in the interests of public order or is grounded on reasons of national security."

114. In principle, the States must be allowed, in the context of the fight against terrorism, to deport non-nationals whom they consider to be threats to national security. It is not the Court's function to review whether an individual is in fact such a threat; its only task is to consider whether that individual's deportation would be compatible with his or her rights under the Convention (see, among other cases, *X v. Sweden*, 2018, § 46, and *W. v. France*, 2022, § 65).

115. In the case of *Muhammad and Muhammad v. Romania* [GC], 2020, the applicants were Pakistani nationals who had been resident in Romania, where they had obtained student visas. They had been

expelled from Romania for reasons of national security. Yet they had not had access to the classified documents on the basis of which the expulsion decision had been taken. Furthermore, they had received no detailed information on the facts and grounds on which their expulsion had been based. The Court had found a violation of Article 1 of Protocol No. 7 on the grounds that the applicants' right to be informed of the factual elements and the content of the documents used to expel them had been severely restricted, and those restrictions had not been counterbalanced in the domestic proceedings.

116. In this case the Court pointed out that communication of the grounds of expulsion was confined to the information essential to ensure that the aliens in question could effectively exercise their right to rely on the relevant facts which had led the competent domestic authorities to consider that they represented a threat to national security. The Court recognised a right of access to the documents on file, demanding that the alien in question be informed, preferably in writing, and in any case in such a way as to enable him effectively to defend himself, of the content of the documents and information on file on which the competent authority had relied in ordering the expulsion, without prejudging the possibility of imposing, if necessary, duly reasoned restrictions on that type of information.

117. Since the procedural right of aliens subject to expulsion were not absolute, the Court set a threshold which no restriction should exceed: restrictions should not negate the procedural protection provided under Article 1 of Protocol No. 7 by affecting the very substance of the safeguards set out in that provision, such as the alien's right to submit reasons against his expulsion and protection against arbitrariness. In order to determine the extent of the procedural rights, the Court relied on its own case-law concerning Articles 5 and 6 of the Convention. It thus applied a dual criterion consisting in ascertaining, first of all, whether the restrictions in question had been deemed duly reasoned by the competent independent authority in the light of the circumstances of the case, and secondly, whether the resultant difficulties for the alien in question were adequately counterbalanced by compensatory factors such as procedural safeguards. In the Court's view, the fact that the necessity of the impugned restrictions had not been considered or been inadequately assessed was insufficient on its own for a finding of a violation of Article 1 of Protocol No. 7. However, in that situation the Court would conduct stricter scrutiny of the counterbalancing factors put in place. In that context, the Court's assessment would be guided by basic two principles: the more the information available to the alien was limited, the more the safeguards would be important, and where the circumstances of a case revealed particularly significant repercussions for the alien's situation, the counterbalancing safeguards had to be strengthened accordingly.

118. In the case of *K.I. v. France*, 2021, the applicant, a Russian national of Chechen origin, had obtained refugee status but later had been found guilty of acts of terrorism and had been sentenced to five years' imprisonment. The French authorities had also decided to return him to Russia, where, according to the applicant, he would have been exposed to a real risk of treatment contrary to Article 3 on the grounds of his conviction for terrorist offences in France. The judgment reaffirmed the full protection conferred by Article 3 of the Convention, which, despite a change in the applicant's refugee status and the fact that the expelling State had to manage the security risks associated with persons convicted of terrorism, called for a full *ex nunc* assessment of any real risk, in the event of the applicant's expulsion, of treatment contrary to Article 3 in the territory of the receiving State.

119. In the case of *Johansen v. Denmark* (see *supra* § 110), the Court found that the Danish Supreme Court has ordered the applicant's expulsion after an in-depth analysis, examining his personal situation and carefully weighing up the competing interests, while also having regard to the criteria set out in the Court's case-law. With regard to the applicant's complaint about his private life, it noted that the Supreme Court had emphasised that the applicant's wife, who had converted to Islam at the age of 18, and his son, who had attended an Islamic school in Denmark, were not entirely hesitant about accompanying him to Tunisia and that, in any event, they could visit him there and communicate with him by telephone and on the Internet. It noted that the national authorities had adduced "very solid reasons" for his expulsion, and the contested decision could not be said to be disproportionate

to the legitimate aim pursued, namely, the protection of the public from the threat of terrorism. In consequence, it declared the applicant's complaint under Article 8 of the Convention inadmissible as manifestly ill-founded.

120. In *Fal v. Spain*, 2026, the Court found no violation of Article 8 in respect of the expulsion, accompanied by a ten-year entry ban, of a long-term resident whom the domestic authorities had found to have held a leadership role in a network responsible for recruiting and radicalising individuals for a terrorist organisation. Reiterating that the prevention of terrorism responds to a pressing social need and that States enjoy a wide margin of appreciation where the interference is grounded on a reliable national-security assessment concerning involvement in jihadist terrorism, the Court attached weight to the fact that the applicant had been informed, from the outset of the proceedings, of the concrete factual basis for the measure, including reference to specific criminal investigations, and that the domestic administrative authority had not merely applied an external risk assessment but had conducted its own examination and balancing exercise, subject to a full adversarial judicial review before the domestic courts. The Court further observed that the absence of a criminal conviction, while a relevant factor, is not decisive where the impugned measure is an administrative one grounded on national-security considerations distinct from criminal liability, and that the domestic authorities had adequately weighed the applicant's family ties (including the practical possibility for his wife and children to relocate with him or to maintain contact with him from Spain) and his limited social and economic integration (notwithstanding lengthy lawful residence), against the gravity of the threat identified, and had given adequate reasons for the length of the entry ban.

121. In its judgment in the case of *W. v. France*, 2022, the refugee status of the applicant, a Russian national of Chechen origin, had been revoked on the grounds that he had returned to Russia (at least twice) and had obtained and used a Russian passport while there. Deportation proceedings (to Russia) were subsequently brought against him because of his role in the radical Islamist movement in France. The deportation order contained detailed reasoning, noting in particular that the applicant had allegedly undergone paramilitary training in Pakistan in 2010 with a view to acquiring skills in the manufacture, installation and detonation of home-made explosive devices. The prefect's office had subsequently transmitted to the Russian consulate information about the applicant's personal situation, including his history as a fighter in a Chechen terrorist organisation, and his commitment to international jihad. On the basis of this information in particular, the Court concluded that if the applicant were to be deported to Russia, he would be exposed to a real risk of treatment in breach of Article 3 of the Convention.

122. For detailed information on the rules concerning extradition, expulsion and any other type of transfer, including in terrorist cases, see the Case-Law Guide on immigration[9] and the Guide on Article 1 of Protocol No. 7 to the European Convention on Human Rights[10].

9. Guide on Immigration
10. Guide on Article 1 of Protocol No. 7 - Procedural safeguards relating to expulsion of aliens.

V. Private and family life

Article 8 of the Convention

"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 well-being 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."

1. Return of the bodies of presumed terrorists for burial

123. The Court has dealt with many cases concerning refusals by the national authorities to return the bodies of presumed terrorists to their families (see, in particular, *Sabanchiyeva and Others v. Russia*, 2013, and *Gülbahar Özer and Yusuf Özer v. Turkey*, 2018). In *Sabanchiyeva and Others v. Russia*, 2013, close relatives of the applicants had been killed during confrontations with the security forces. Following the identification of the bodies by the applicants, the national authorities had decided to cremate the bodies despite the fact that the applicants had requested their return with a view to organising their burial. In that framework, the national authorities had relied on domestic law provisions prohibiting the return of the bodies of terrorists who had died "following interception of terrorist acts".

124. In its assessment under Article 8 of the Convention, the Court held that the impugned decision might be justified in the interests of public security, in order to prevent disorder and protect the rights and freedoms of others, including those of victims of acts of terrorism. It further noted that in organising the impugned operation the authorities had been entitled to act with a view to minimising the informational and psychological impact of the terrorist act on the population and protecting the feelings of relatives of the victims. The Court considered that such intervention could certainly limit the applicants' ability to choose the time, place and manner in which the relevant funeral ceremonies and burials were to take place or even directly regulate such proceedings.

125. Nevertheless, the Court, observing that the applicants had been totally excluded from the funerals and had had no opportunity to pay their last respects to their relatives, found that the domestic authorities had not conducted a case-by-case assessment of the circumstances. Indeed, the law as interpreted by the courts provided for automatic refusal, and therefore the authorities had been unable to seek other means of attaining the legitimate aims pursued. Accordingly, the Court ruled that the impugned measure had not struck a fair balance between the competing interests.

2. Right of prisoners to maintain family contacts

126. The Court has had occasion to rule on the right of prisoners to maintain contacts with their families, particularly in the context organised crime (see, among other authorities *Messina v. Italy (no. 2)*). For further details, see also the Case-Law Guide on Article 8)[11]. In that context, the national authorities can, for example, limit the number of family visits, monitor such visits and impose a special prison regime on a detainee.

127. In the case of *Öcalan v. Turkey (no. 2)*, 2014, the applicant, the PKK leader, alleged a violation of his right to respect for his family life on account of restrictions on his contacts with members of his family, his telephone calls, his correspondence and his visits. The Court pointed out that many States Parties to the Convention had stricter security regimes for dangerous prisoners. It added that those

11. Guide on Article 8 – Right to respect for private and family life.

regimes were based on stepping up surveillance of communications with the outside in respect of prisoners posing a particular threat to internal order in the prison and law and order outside. Consequently, the Court could not doubt the need for the special detention regime as applied to the applicant. As regards striking a balance between the applicant's individual interest in communicating with his family and the general interest of limiting his contact with the outside, the Court noted that the prison authorities had attempted to help the applicant as far as possible to remain in contact with his immediate family, authorising visits once a week without any limit on the number of visitors. Furthermore, in response to the CPT's observations, the prison authorities had allowed the applicant to sit at a table with his visitors. It also transpired from the case file that telephone calls had been authorised. Correspondence between the applicant and his family had been functioning normally, apart from the inspections and censorship carried out in order to prevent exchanges relating to the activities of the PKK, the terrorist organisation founded by the applicant. In the light of those considerations, the Court considered that the restrictions on the applicant's right to respect for his family life had not exceeded what was necessary in a democratic society for the prevention of disorder or crime within the meaning of Article 8 § 2 of the Convention.

128. The places of detention of individuals may also, under certain conditions, raise issues under Article 8 of the Convention. For further details, see the Case-Law Guide on Article 8[12].

129. On the other hand, in *Labaca Larrea and Others v. France* (dec.), 2017, § 52, which concerned the detention in France of members of the ETA in a remand prison located some 800 kilometres from their families' residences, the Court had held that the applicants' transfer to that prison had not been such as to interfere significantly with their visiting rights. The Court had accepted that the fact of detaining a person in a prison so far from his family that it was very difficult, indeed impossible, for them to visit him could, under certain circumstances, amount to an interference with the prisoner's family life. However, it did not consider that those circumstances had existed in the instant case. In fact, it transpired from the case file that the applicants had been in hiding in northern and central France for a long period before their arrest. They had subsequently been detained in a prison in the Paris area, near the investigating court responsible for the case, before being transferred to Lyon-Corbas. The Court pointed out that the remand prisons in Paris where the applicants had originally been placed had been just as far from their families' residences as the Lyon-Corbas Prison in which they had been detained following the impugned transfer. Moreover, the Court observed that, apart from the distance issue, the applicants had not alleged that they had been subject to a special detention regime entailing restrictions on the frequency of family visits or imposing monitoring of such visits. Nor had they been subject, in any other way, to measures restriction or limiting their visiting rights or access to telephone calls. On the contrary, the documents presented by the Government, and uncontested by the applicants, had proved that they had received a great number of visits and telephone calls from their relatives. Furthermore, there was no evidence that their families' journeys had raised any very difficult or insuperable problems. For those reasons the Court concluded that the disadvantages complained of by the applicants had been insufficient to amount to "interference" with their right to respect for family life under Article 8 § 1 of the la Convention and declared that complaint inadmissible as manifested ill-founded.

130. In the case of *Fraile Iturralde v. Spain* (dec.), 2019, the Court accepted the Spanish authorities' refusal to transfer the applicant, a member of the ETA who had been convicted of terrorism, to a prison closer to his family's home, considering, firstly, that the policy implemented had aimed at cutting the links between prisoners and their original criminal environment, and secondly, that the applicant had never denied his membership of the ETA. The Court also noted that since the ETA had given up the armed struggle, the Spanish authorities had undertaken to reconsider the issue of prisoner transfers.

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131. The Court has also ruled on the issue of whether or not a prisoner should be allowed to attend a family funeral. It found that a refusal in such cases amounted to interference with his right to respect for his private and family life (*Płoski v. Poland*, 2002, § 32). In the recent case of *Guimon v. France*, 2019, the applicant had been in prison for eleven years for serious terrorist offences. She had requested authorisation for escorted leave in order to travel to a funeral home to pay her respects to her deceased father. That request and the applicant's subsequent appeals had been rejected on logistical grounds. The Court stated that the judicial authorities had considered the applicant's request with due diligence and had ruled that the father's death had constituted exceptional grounds that could justify a measure authorising her to leave the prison under escort, but that they had nonetheless rejected the request for two main reasons: firstly, on account of the criminal profile of the applicant, who had been convicted of terrorist acts and continued to assert her membership of ETA; and secondly, because it had not been physically possible to organise a reinforced escort team, given the time available, namely six days. In the circumstances of the case the Court held that the judicial authorities had weighed up the competing interests, that is to say, on the one hand, the applicant's right to respect for her family life, and on the other, public safety and the prevention of disorder and crime. Consequently, it found that there had been no violation of Article 8 of the Convention.

132. For information on international transfers of prisoners, see the Case-Law Guide on Article 8.

3. Family reunion and exclusion from the territory of a State

133. In the framework of the fight against terrorism, States may have occasion to exclude persons from their territory, including individuals who have been deprived of their nationality, as in the case of *K2 v. the United Kingdom* (dec.), 2017.

134. In *Dalea v. France* (dec.), 2010, the Court had to rule on the registration of an applicant's name in the Schengen Information System on national security grounds for the purposes of being refused entry to France.

135. In *S.L. v. Romania* (dec.), 2022, the Court examined a complaint concerning the inability to consult classified documents underlying an exclusion measure issued on the grounds of national security. The Court reiterated that the procedural safeguards imposed by Article 8 did not guarantee an alien an absolute right to be informed of the reasons underlying the exclusion order or to have access to classified information and documents in his case. Nevertheless, there had to be a review, by an independent authority, to verify the absence of arbitrariness in assessing the threat to national security and the proportionality of the measure, combined with some form of adversarial proceedings, where appropriate through a special representative who had received security clearance (§ 47). On the facts of the case, however, the Court found that while the applicant had been unable to enjoy some form of adversarial proceedings, this failure arose from the manner in which his lawyer had decided to conduct his defence, and not from an absence of procedural safeguards available under domestic law (§§ 48-54).

136. The Court has also had to consider the effects of a travel ban imposed on an individual who had been added to a UN Sanctions Committee list annexed to the Security Council resolutions concerning terrorist suspects (*Nada v. Switzerland* [GC], 2012). In this case the Swiss authorities had adopted a Federal Ordonnance pursuant to several Security Council resolutions in order to prevent the applicant, an Egyptian national, from entering or transiting through Switzerland on account of the fact that his name appeared on the list of persons suspected of association with the Taliban or al-Qaeda. The applicant had been living in a small Italian enclave in the Swiss Canton of Ticino, separated from Italian territory by a lake. One of the applicant's complaints concerned the exclusion order inasmuch as it prevented him, first of all, from leaving the enclave to see his family, and secondly, from receiving the medical treatment which he needed. The Court observed that the impugned measures had forced the applicant to stay in this enclave for some six years, preventing him from seeing his relatives and doctors. It had therefore amounted to an interference with the applicant's exercise of his right to respect for private and family life. The Court reiterated that under Article 1 of the Convention the

Contracting States were responsible for all acts and omissions of their organs. As regards the relationship between the Convention and the Security Council's resolutions, in *Al-Jedda v. the United Kingdom* [GC], 2011, the Court had held that there had to be a presumption that the Security Council did not intend to impose any obligation on member States to breach fundamental principles of human rights. In the instant case, however, such presumption had been rebutted inasmuch as the resolution in question explicitly required States to prevent the listed individuals from entering or transiting through their territory. Nevertheless, the Court observed that the resolution gave member States a free choice among the various possible models for transposition of the resolutions into their domestic legal order. The States therefore had some latitude, which was admittedly limited but nevertheless real, in implementing the resolutions. The Court considered that the restrictions imposed on the applicant's freedom of movement for a considerable period of time had not struck a fair balance between his right to the protection of his private and family life and the legitimate aims pursued.

137. As regards family reunion, see the thematic Case-Law Guide on immigration and the Case-Law Guide on Article 8[13].

VI. Derogations in emergency situations

Article 15 of the Convention

> "1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.
>
> 2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.
>
> 3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed."

138. Under Article 15 of the Convention, in the event of exceptional circumstances Contracting States may derogate, on a limited and closely supervised basis, from their obligation to guarantee certain rights and freedoms protected by the Convention. In its very first judgment, *Lawless v. Ireland (no. 3)*, 1961, the Court was faced with a derogation relied upon by the respondent Government in the context of combating terrorism. Ever since then, most of the cases in which the Court has considered the validity of a derogation have concerned terrorism.

139. It transpires from the Court's case-law that the words "public emergency threatening the life of the nation" refer to "an exceptional situation of crisis or emergency which affects the whole population and constitutes a threat to the organised life of the community of which the State is composed" (*Lawless v. Ireland (no. 3)*, 1961, § 28). That danger must be ongoing or imminent. A crisis affecting only one region of a State may amount to a public emergency threatening "the life of the nation" (see, for example, derogations relating to Northern Ireland in *Ireland v. the United Kingdom*, 1978, § 205, and south-eastern Turkey in *Aksoy v. Turkey*, 1996, § 70).

140. The Court had ruled that terrorism in Northern Ireland constituted a public emergency because it had for a number of years represented "a particularly far-reaching and acute danger for the territorial integrity of the United Kingdom, the institutions of the six counties and the lives of the

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province's inhabitants" (*Ireland v. the United Kingdom*, 1978, §§ 205 and 212; *Brannigan and McBride v. the United Kingdom*, 1993, § 48; *Marshall v. the United Kingdom* (dec.), 2001). It reached the same conclusions in respect to the PKK's terrorist actions in south-eastern Turkey (*Aksoy v. Turkey*, 1996, § 70), the imminent threat of serious terrorist attacks in the United Kingdom after 11 September 2001 (*A. and Others v. the United Kingdom* [GC], 2009, § 181) and the attempted military coup in Turkey in 2016 (*Mehmet Hasan Altan v. Turkey*, 2018, §§ 91-93; *Şahin Alpay v. Turkey*, 2018, §§ 75-77). It further specified that the requirement of imminence cannot be interpreted so narrowly as to require a State to wait for disaster to strike before taking measures to deal with it (*A. and Others v. the United Kingdom* [GC], 2009, § 177). We should also point out that in November 2015 the French authorities informed the Secretary General of the Council of Europe of their decision to derogate from the Convention pursuant to Article 15 thereof in the framework of the state of emergency introduced following the large-sale terrorist attacks perpetrated in Paris. In *Domenjoud v. France*, 2024, the Court was asked to assess a situation where an individual measure was implemented for reasons different from those that justified declaring the state of emergency. It clarified that emergency laws could not be used by domestic authorities to impose restrictions on freedoms unless they were directly related to the circumstances that prompted the enactment of that legislation. However, it acknowledged that authorities might need to make operational decisions during an emergency situation to fulfil their responsibilities. Thus, there could be an indirect link between the aim pursued when declaring a state of emergency, and the justification for measures taken on the basis thereof, provided that the link was strong enough to eliminate any possibility of abuse. Furthermore, the Court emphasised the importance of ensuring that protection against arbitrariness had been effective in this case, particularly by reviewing the adequacy of the link between the measures and the state of emergency framework.

141. For the procedure for applying Article 15 of the Convention, see the Case-Law Guide on Article 15 - Derogation in time of emergency[14].

14. Guide on Article 15 – Derogation in time of emergency.

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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 non-official languages, and links to around one hundred online case-law collections produced by third parties.

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