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European Court of Human Rights]

SHORT SURVEY
OF THE MAIN JUDGMENTS AND DECISIONS DELIVERED BY THE COURT IN 2008

Introduction

In 2008 the Court delivered a total of 1,543 judgments, a figure that represents a slight increase compared with the 1,503 judgments delivered in 2007. 18 judgments were delivered by the Court in its composition as a Grand Chamber (compared with 15 in 2007).

Many of the judgments concerned so-called "repetitive" cases: the number of judgments classed as importance level 1 or 2 in the Court's case-law database (HUDOC) represents 23% of all the judgments delivered in 2008[1].

The number of cases declared admissible was 1,671, including 76 in which the declaration was made in a decision (compared with 185 in 2007) and 1,595 (compared with 1,441) in a judgment on the merits (joint examination of the admissibility and merits).

In Chamber and Grand Chamber compositions, 693 applications were declared inadmissible (compared with 491 in 2007) and 1,269 were struck out of the list (compared with 764).

Of the Chamber and Grand Chamber judgments and decisions adopted in 2008, a total of 80 judgments and decisions were accepted by the Court's Publications Committee with a view to publication in the *Reports of Judgments and Decisions* of the Court (ECHR) (figure on 11 February 2009, excluding the Chamber judgments subsequently referred to the Grand Chamber), compared with 116 for 2007.

The Convention provision which gave rise to the greatest number of violations was Article 6, firstly with regard to the right to a fair trial, then the right to a hearing within a reasonable time. This was followed by Article 1 of Protocol No. 1 (protection of property) and Article 5 of the Convention (right to liberty and security).

The highest number of judgments finding at least one violation of the Convention was delivered in respect of Turkey (257), followed by Russia (233), Romania (189), Poland (129) and Ukraine (110).

1 1 = High importance – judgments which the Court considers make a significant contribution to the development, clarification or modification of its case-law, either generally or in relation to a particular State.
2 = Medium importance – judgments which do not make a significant contribution to the case-law but nevertheless do not merely apply existing case-law.
3 = Low importance – judgments with little legal interest: those applying existing case-law, friendly settlements and striking-out judgments (unless these have a particular point of interest).

Jurisdiction and admissibility

Victim status (Article 34)

In *Burden v. the United Kingdom*[i], the Grand Chamber addressed the situation of individuals who feared they would suffer directly from the effects of legislation without there being any individual acts of enforcement. Two unmarried sisters in their eighties complained that when one of them died the survivor would have to pay a considerable amount in inheritance tax, unlike the survivor of a married couple or civil partnership. The Grand Chamber found that, given the applicants' age, the wills they had made and the value of the property each owned, they had established that there was a real risk that, in the not too distant future, one would be required to pay substantial inheritance tax on the property inherited from her sister. In those circumstances, the Court held that the applicants could claim to be "victims".

"Core" rights

Right to life (Article 2)

In *Dodov v. Bulgaria*[ii], the Court, for the first time, examined the case of the disappearance of an elderly Alzheimer's patient from the medical wing of a State-run nursing home, apparently as a result of staff negligence. The Court stated that Article 2 was applicable and held that there had been a violation of that Article on account of the State's failure to comply with its positive obligation to provide judicial remedies capable of establishing the facts and securing the accountability of those who had placed the patient's life in danger. The Court also found that there had been no violation with regard to the police response following news of the disappearance.

The case of *Renolde v. France*[iii] concerned the suicide of a man in pre-trial detention who had been punished by confinement for forty-five days in a disciplinary cell, despite the fact that he suffered from an acute psychotic illness and had attempted suicide three days prior to the confinement. The Court found that the authorities had failed in their positive obligation to protect the detainee's right to life by not considering at any point his placement in a psychiatric institution, by not supervising the administration of his medication (given for several days at a time), and by imposing the heaviest disciplinary sanction without taking into account his condition. It held, for the first time in this type of situation, that there had been a violation of Article 2.

The Court was also called upon to rule on the effects of a natural disaster in a case concerning a mudslide in a mountain region which devastated a town and caused deaths, injuries and the destruction of homes. In *Budayeva and Others v. Russia*[iv], the Court thus highlighted the difference between the State's positive obligations in the sphere of regulating dangerous activities and positive obligations in the sphere of natural disasters. Referring to *Öneryıldız v. Turkey*[v], the Court applied to natural disasters the principle that all possible steps had to be taken to mitigate risks to people's lives. It held that there had been a violation of Article 2 under its substantive and procedural heads.

Prohibition of torture (Article 3)

The Court examined a number of cases in which it had occasion to clarify the scope of Article 3.

In *Kafkaris v. Cyprus*[vi], for example, after pointing out that the sentencing of an adult to an irreducible term of life imprisonment could raise an issue under Article 3, the Court indicated how it determined, in a given case, whether or not a life sentence could be regarded as irreducible.

In *Riad and Idiab v. Belgium*[vii], the Court described as inhuman and degrading treatment the placement of illegal immigrants in the transit zone of an international airport for more than ten days. It found in particular that it was unacceptable for anyone to be detained in conditions involving a total lack of provision for basic needs, adding that the possibility of having three meals a day did not in itself alter that conclusion. The Court also underlined the feeling of humiliation that must have resulted from the obligation to live in a public place without proper support.

Lastly, in *Chember v. Russia*[viii], the Court found for the first time that "inhuman punishment" had been inflicted in the context of military service, in the form of physical exercise imposed as a disciplinary measure on a conscript by his superior, with the result that the applicant had been left disabled.

Expulsion and extradition

According to the Court's established Article 3 case-law, when an expulsion decision has been enforced before the Court delivers its judgment, the existence of a risk for the applicant in the country to which he has been deported must be assessed with reference to those facts which were known or ought to have been known to the Contracting State at the time of deportation. As pointed out in *Saadi v. Italy*[ix], if the applicant has not yet been extradited or deported when the Court examines the case, the relevant time will be that of the proceedings before the Court, which does not confine itself to analysing the situation on the date of the final domestic decision ordering the measure. In that case, which concerned a deportation order made under legislation enacted to combat international terrorism, the Grand Chamber confirmed the principle of the absolute nature of Article 3 and indicated the requisite standard of proof in this connection. As regards the risk that an alien threatened with expulsion might be subjected to treatment in breach of Article 3 in the receiving country, the Grand Chamber observed that the existence of domestic laws and accession to international treaties guaranteeing, in principle, respect for fundamental rights were not in themselves sufficient to ensure adequate protection against the risk of ill-treatment where reliable sources had reported practices resorted to or tolerated by the authorities which were manifestly contrary to Convention principles.

Moreover, in *Ismoilov and Others v. Russia*[x], which concerned the extradition of aliens suspected of offences including acts of terrorism, the Court considered that the diplomatic assurances from the requesting authorities had failed to offer a reliable guarantee against the risk of ill-treatment, given that the practice of torture was described by reputable international experts as systematic.

In *N. v. the United Kingdom*[xi], the Court examined the situation of a person with an HIV and Aids-related condition who faced expulsion from the United Kingdom, where she had been receiving treatment, to Uganda, where she feared that her life expectancy would be reduced. The Court clarified its Article 3 case-law in respect of the expulsion of persons afflicted with serious illnesses. It noted that, since its judgment in *D. v. the United Kingdom*[xii] of 2 May 1997, it had never found, in a case where a State's decision to remove an alien was in dispute, that the enforcement of that decision would entail a violation of Article 3 on account of the alien's poor health. It considered that the case of *N. v. the United Kingdom* did not present very exceptional circumstances, unlike those that characterised the case of *D. v. the United Kingdom* and that the enforcement of the decision to remove the applicant to Uganda would not give rise to a violation of Article 3. Observing that the level of treatment available in the Contracting State and the country of origin might vary considerably, the Court found that Article 3 did not place an obligation on the Contracting State to alleviate such disparities through the provision of free and unlimited health care to all aliens without leave to remain within its jurisdiction.

Detention

As in previous years, the Court has had to deal with allegations of Article 3 violations sustained by persons in custodial facilities.

Thus, in *Dedovskiy and Others v. Russia*[xiii], it ruled on the systematic and indiscriminate use of rubber truncheons by members of a special prison security unit on convicted prisoners serving their sentences, by way of retaliation or punishment. The Court found that the use of truncheons had no basis in law. It moreover classified the treatment suffered by the detainees as torture and saw in it gratuitous violence intended to cause fear and humiliation, in addition to the actual intense physical suffering, even though the prisoners' health had not been permanently affected.

Right to liberty and security (Article 5)

Placement in a transit zone

The Court indicated, in *Riad and Idiab* (cited above), that the placement of aliens in a transit zone, not immediately upon their arrival in the country but over a month later, after decisions ordering their release, and the fact that they had been held there for fifteen and eleven days respectively, no time-limit having been set, amounted to *de facto* deprivation of liberty prohibited by Article 5, and not simply to a restriction of their liberty. The judgment added that "detaining" a person in the transit zone for an unspecified and unforeseeable length of time without the detention being based on any actual legal provision or valid judicial decision, and with limited possibility of judicial control in view of the difficulties of maintaining sufficient contact for proper judicial supervision, was in itself contrary to the principle of legal certainty.

Notion of arbitrary detention

In *Saadi v. the United Kingdom*[xiv], the Court consolidated the key principles it had developed on a case-by-case basis concerning the attitudes of authorities that could potentially be characterised as "arbitrary" within the meaning of Article 5 § 1 (a), (b), (d), (e) and the

second part of (f). The judgment pointed out that it was clear from the case-law that the notion of arbitrariness in the context of Article 5 varied to a certain extent depending on the type of detention involved. The notion of arbitrariness in the respective contexts of sub-paragraphs (b), (d) and (e) thus required the Court to ascertain, among other things, whether the detention was necessary to fulfil the declared aim.

As to sub-paragraph (c) of Article 5 § 1, the *Ladent v. Poland*[xv] judgment added that detention should also be a proportionate measure.

Immigration control

In the above-mentioned *Saadi v. the United Kingdom* judgment, the Court interpreted for the first time the meaning of the words used in the first limb of Article 5 § 1 (f), which refers to "the lawful ... detention of a person to prevent his effecting an unauthorised entry into the country". It concluded that Article 5 § 1 (f) permitted the detention of an asylum-seeker or other immigrant prior to the State's grant of leave to enter. To interpret it as permitting detention only of a person who is shown to be trying to evade entry restrictions would be to place too narrow a construction on the terms of the provision and on the power of the State to exercise its undeniable right to control immigration. The Grand Chamber rejected the idea that, as soon as an asylum-seeker has surrendered himself to the immigration authorities, he is seeking to effect an "authorised" entry, with the result that detention cannot be justified under the first limb of Article 5 § 1 (f). In addition, the type of detention covered by the first limb of Article 5 § 1 (f) should not be arbitrary, any more than that covered by the second limb. The Court went on to clarify the criteria to be applied in ascertaining whether or not a detention measure in the context of the first limb is arbitrary (see, above, the findings in the same judgment as to the other sub-paragraphs). Referring to the difficult administrative problems with which the United Kingdom was confronted during the period in question, with a huge increase in the number of asylum-seekers, the Court did not find that it had been incompatible with Article 5 § 1 (f) to detain the applicant for seven days in suitable conditions to enable his asylum claim to be processed speedily.

Procedural rights

Right to a fair hearing (Article 6)

Applicability

In *Emine Araç v. Turkey*[xvi], the Court acknowledged specifically and for the first time that the right of access to higher education was a right of a civil nature. The applicant had not been allowed to enrol in a university on account of her failure to supply an identity photo on which she appeared without a headscarf. The Court found that she was not affected in her relations with the public authorities as such, acting in the exercise of their discretionary powers, but in her personal capacity as a private user of a public service. The Court thus abandoned the case-law of the Commission (see *Simpson v. the United Kingdom*[xvii], 4 December 1989), which had concluded that Article 6 was not applicable to proceedings concerning the laws on education, on the ground that the right not to be denied elementary education fell within the domain of public law.

Fair trial

In *Ramanauskas v. Lithuania*[xviii], the Court was called upon to rule on the intervention of undercover agents and police entrapment. It considered that the use of special investigative techniques – and infiltration in particular – did not necessarily infringe the right to a fair trial. However, on account of the risk of incitement by the police to commit an offence, the Court found that such methods had to be kept within clear limits. While the use of undercover agents could be tolerated provided that it was subject to clear restrictions and safeguards, the public interest could not justify the use of evidence obtained as a result of police incitement, as to do so would expose the accused to the risk of being definitively deprived of a fair trial from the outset.

Public pronouncement

In *Ryakib Biryukov v. Russia*[xix], the Court had occasion to determine whether the requirement to deliver judgments publicly had been met by the reading in open court of no more than the operative part of a decision. Noting that the reasoning on which the domestic court had based its judgment had remained inaccessible to the public, the Court found that there had been a violation of Article 6 § 1. The judgment thus implies that the requirement to deliver judgments publicly encompasses public access to the full text of judgments adopted in civil cases.

Presumption of innocence

The Court examined for the first time the question of the applicability of Article 6 § 2 to statements made in the context of extradition proceedings in the case of *Ismoilov and Others* (cited above), which concerned the extradition of foreign nationals who were suspected of having committed offences including acts of terrorism. It considered that the wording of the extradition decisions amounted to a declaration of the applicants' guilt which could encourage the public to believe them guilty and which prejudged the assessment of the facts by the competent judicial authority in the requesting State.

Defence rights

After observing among other things that individuals who have been arrested, especially minors, are in a particularly vulnerable situation at the investigative stage, the Court found in *Salduz v. Turkey*[xx] that, in order for the right to a fair trial to remain sufficiently "practical and effective", it was necessary as a rule to provide access to a lawyer from the first interview of a suspect by the police, unless it was demonstrated in the light of the particular circumstances of each case that there were compelling reasons to restrict this right. It added that the rights of the defence would in principle be irretrievably prejudiced where incriminating statements made during a police interview without a lawyer were subsequently used for a conviction.

No punishment without law (Article 7)

In *Kafkaris* (cited above), it is pointed out that a distinction has been made in the case-law between a measure that constitutes in substance a "penalty" and a measure that concerns the "execution" or "enforcement" of a "penalty". Thus, where the nature and purpose of a

measure relates to the remission of a sentence or a change in a regime for early release, this does not form part of the "penalty" within the meaning of Article 7.

In *Korbely v. Hungary*[xxi], a retired military officer had been convicted for participating in the quelling of a riot during the 1956 revolution. The domestic courts, relying on Article 3 § 1 of the 1949 Geneva Convention, found him guilty of multiple homicide constituting a crime against humanity. The Court observed that the commission of murder, within the meaning of common Article 3 of the Geneva Conventions, could have provided a basis for conviction for a crime against humanity committed in 1956, but that other criteria needed to be satisfied for such a characterisation to be made out. Those criteria derived not from common Article 3 but from the international-law elements inherent in the notion of crime against humanity as it existed at the relevant time. The Court found that the domestic courts, however, had not examined whether the killing had met the additional criteria necessary for it to constitute a crime against humanity. Accordingly, it had not been shown that the constituent elements of a crime against humanity were present in this case. The Hungarian courts had found that one of the victims, who was killed at the time, was a non-combatant for the purposes of common Article 3. However, the Court was not convinced that, in the light of the commonly accepted international-law standards applicable at the time, the victim in question could be said to have laid down his arms within the meaning of common Article 3. It was therefore of the opinion that he did not fall within any of the categories of non-combatants protected by that Article. Since no conviction for crimes against humanity could reasonably have been based on that provision, in the light of the relevant international-law standards applicable at the time, there had been a violation of Article 7.

Right to an effective remedy (Article 13)

In the *Chember* judgment (cited above), the Court observed that when misconduct by an agent of the State could not be proved, on account of a criminal investigation not being effective, with the criminal proceedings having been closed at the investigation stage, a claim could not be filed with the civil courts based on the same facts. The Court thus found ineffective the action for damages in Russian law.

Compensation for wrongful conviction (Article 3 of Protocol No. 7)

The question of compensation for wrongful conviction was dealt with for the first time in *Matveyev v. Russia*[xxii], where the outcome of two compensation claims filed with the same courts by the same victim of a wrongful conviction had been different. The Court, relying on the explanatory report to Protocol No. 7, ruled on the applicability of Article 3 of that Protocol, finding that the reversal of the conviction had been based not on "a new or newly discovered fact" but on the review of evidence used in the criminal proceedings.

Civil and political rights

Right to respect for private and family life (Article 8)

Applicability

The right of parents to organise a decent funeral for their children is protected by Article 8. In *Hadri-Vionnet v. Switzerland*[xxiii], concerning the burial of a stillborn child in a common grave after it was transported to the cemetery in an ordinary delivery van, without the mother's consent, the Court also found that lack of intent or of bad faith on the part of municipal employees did not absolve the State of its international obligations in respect of the Convention. The Court further declared in that case that the duty of the Contracting States to organise their services and train their employees to meet the requirements of the Convention obtained "all the more in such private and sensitive matters as dealing with the death of a close relative, where a particularly high level of diligence and caution must be shown".

Private life

E.B. v. France[xxiv] concerned the refusal to grant approval for adoption to a homosexual in a stable and long-term relationship, having regard among other things to her "lifestyle". The Court found that the domestic authorities, in rejecting the application for adoption, had made a distinction based on her sexual orientation and thus held that there had been a violation of Article 14 of the Convention taken in conjunction with Article 8.

In *Shtukaturov v. Russia*[xxv], a schizophrenic adult had been declared as lacking legal capacity in a decision made without his knowledge at the request of his mother, who had become his guardian. He had not been able to challenge the decision in court and had subsequently been confined to a psychiatric hospital. The Court found that the interference with the applicant's private life had been considerable. It had made him totally dependent on his guardian for most aspects of his life and for an indefinite duration. Moreover, that interference could only be disputed through the intermediary of his guardian, who had opposed any attempt to lift the measure. In addition, the proceedings in which the applicant had been deprived of his legal capacity had been vitiated because he had been unable to participate in them. Lastly, the reasoning of the decision had been insufficient because it was based solely on a medical report which had not analysed in sufficient depth the applicant's degree of incapacity. The report had not considered the consequences of the applicant's illness on his social life, health and financial interests, or analysed in exactly what way he was unable to understand or control his actions. The Court found that the existence of a mental disorder, even a serious one, could not be the sole reason to justify full incapacitation, and held that there had been a violation of Article 8.

The Court also dealt, in *K.U. v. Finland*[xxvi], with the protection of minors from abuse via the Internet. A 12-year-old child was the subject of an advertisement of a sexual nature posted on an Internet dating site by an unknown person. The child's father was unable to have the perpetrator prosecuted, as under the legislation in place at the time the police and the courts could not require the Internet service provider to identify the person who posted the advertisement. The Court, after reaffirming the principle that certain types of conduct called for a criminal-law response, found that the State had failed in its positive obligation to protect the child's right to respect for his private life, as the protection of his physical and moral

welfare had not been given precedence over the confidentiality requirement. It considered that the legislature had to provide a framework for reconciling the confidentiality of Internet services with the prevention of disorder or crime and the protection of the rights and freedoms of others.

Lastly, in the case of *S. and Marper v. the United Kingdom*[xxvii], the Grand Chamber found that the blanket and indiscriminate nature of the powers of retention by the authorities of the fingerprints, cellular samples and DNA profiles of persons suspected of committing offences but not convicted, as applied in the present case, particularly in respect of a minor, failed to strike a fair balance between the competing public and private interests. Accordingly, the indefinite retention in question constituted a disproportionate interference with the applicants' right to respect for private life and could not be regarded as necessary in a democratic society.

Home

In *McCann v. the United Kingdom*[xxviii], the Court expressly held for the first time that, as regards the procedural safeguards required by Article 8, whenever a person risked losing his or her home there must be a possibility of having the proportionality of the eviction measure determined by an independent tribunal.

Expulsion

In *Maslov v. Austria*[xxix], concerning a juvenile delinquent, the Grand Chamber observed that, where an offence committed by a minor was the underlying reason for an exclusion order, the State had to have regard to the best interests of the child, and that this included an obligation to facilitate his or her reintegration. However, that aim could not be achieved by severing family or social ties through expulsion, which had to remain a last resort in the case of a juvenile offender. In sum, the Court saw little room for justifying the expulsion of a settled migrant on account of mostly non-violent offences committed as a minor. By contrast, very serious violent offences could justify expulsion even if they were committed by a minor.

Freedom of religion (Article 9)

In the *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*[xxx] judgment, which supplemented existing case-law, the Court found that a length of time of twenty years for granting legal personality to a religious community was not justified. It further considered that a ten-year wait before a registered religious community was able to apply for the status of a "religious society" could be acceptable in exceptional circumstances, such as in the case of newly established and unknown religious groups, but that such a period was discriminatory in the case of religious groups such as the Jehovah's Witnesses that were well-established nationally and internationally.

In *Leela Förderkreis e.V. and Others v. Germany*[xxxi], the Court dealt with criticism voiced against religious beliefs and movements, not by private groups or individuals, but by public authorities. It accepted that the meaning of terms such as "sect" could change with time and take on a pejorative or defamatory connotation. Such terms had, in the present case, been used in an information campaign launched by the government to warn the public and young

people about the practices of religious or meditation movements that emerged in Germany in the 1960s.

Freedom of expression (Article 10)

This year the Court has dealt with a large number of new situations covered by Article 10.

Its judgment in *Vajnai v. Hungary*[xxxii], for example, was the first to concern symbols and national legislation prohibiting their display in certain cases. This case arose from the conviction of a leader of a political party for having displayed a red star on his jacket during an authorised demonstration on the public highway. The conviction had been based on a provision in the Criminal Code banning "totalitarian symbols". The Court found that symbols could have many different meanings, and in this case the red star did not represent only a totalitarian communist regime but also the International Workers' Movement and certain legal political parties in various Contracting States.

The Court also ruled for the first time on the disclosure by a civil servant of in-house information. In *Guja v. Moldova*[xxxiii], the Grand Chamber found that the reporting by a civil servant or an employee in the public sector of illegal conduct or wrongdoing in the workplace should, in certain circumstances, enjoy protection. This may be called for where the civil servant concerned is the only person, or belongs to a small category of persons, aware of what is happening at work and is thus best placed to act in the public interest by alerting the employer or the public at large. Civil servants are generally bound by a very strong duty of discretion. Thus disclosure should be made in the first place to the person's superior or other competent authority or body. It is only where this is clearly impracticable that the information could, as a last resort, be disclosed to the public. A certain number of other factors were also laid down by the Court for the purposes of ascertaining whether or not a civil servant's action should benefit from protection.

TV Vest AS and Rogaland Pensjonistparti v. Norway[xxxiv] concerned the imposition of a fine on a local television station for having broadcast an advertisement by the regional section of a small political party shortly before local and regional elections, in breach of the legislation prohibiting all televised advertising for "political opinions". This judgment was particularly innovative and important because the Court ruled for the first time on the prohibition of political advertising for a political party. It ruled against such a prohibition, which was both permanent (not applicable only during election periods) and absolute (valid only for television, since political advertising in other media was permitted). The Court noted that the absence of a European consensus in this area argued in favour of granting States a wider margin of appreciation than is normally granted with regard to restrictions on political debate. However, it considered paid-for television broadcasts the sole means by which the applicant party could make itself known to the public, in contrast to large parties which received wide television coverage, and did not find that the disputed advertisement was such as to lower the quality of political debate or to offend various sensibilities.

The Court found a violation of Article 10 in *Frankowicz v. Poland*[xxxv], where a reprimand had been imposed on a doctor as a disciplinary measure by medical tribunals for having drawn up and sent to one of his patients a report criticising the treatment, prescribed by another doctor, being followed by that patient, in violation of the code of medical ethics.

Whilst it accepted that the relationship between doctors and patients might imply the need to preserve solidarity between members of the medical profession, the Court recognised nonetheless that all patients had the right to consult another doctor for a second opinion on the treatment they had received, and for an honest and objective evaluation of their doctor's actions. Dealing for the first time with a doctor's freedom of expression in relation to his colleagues with regard to diagnosis and treatment, the Court considered that the absolute prohibition on any criticism between doctors was likely to discourage them from providing their patients with an objective opinion on their health and any treatment received, and criticised the authorities for not having attempted to verify the truthfulness of the findings in the disputed medical opinion. The judgment is not final.

Lastly, the Court made a noteworthy and innovative contribution on the subject of journalists' sources in *Saygılı and Others v. Turkey*[xxxvi]. The case concerned an award of damages against the proprietor, the editor and a journalist of a daily newspaper on account of articles alleging misconduct by a public prosecutor responsible for an investigation into the disappearance of a suspect in police custody. The articles were based on the Court's judgment in *İrfan Bilgin v. Turkey*[xxxvii] and on the prosecutor's statements to a delegation from the European Commission of Human Rights in that case. The Court considered that when the press contributed to a public debate on questions of legitimate concern it should, in principle, be able to rely on official reports without having to conduct its own independent research. That was undeniably so in the case of factual and legal findings from the Court's judgments.

Freedom of assembly and association (Article 11)

The case of *Demir and Baykara v. Turkey*[xxxviii] concerned a failure to recognise the right of municipal civil servants to form a trade union and the annulment with retrospective effect of a collective agreement between the trade union and the employing authority. The Court first pointed out that the consensus emerging from specialised international instruments and from the practice of Contracting States could constitute a relevant consideration when it interpreted Convention provisions in specific cases. Summarising the development of its case-law concerning the right of association, the Court pointed out that the list of its essential elements was not finite but was subject to evolution depending on particular developments in labour relations. As regards, more specifically, the right to bargain collectively, the Court departed from its previous case-law and considered that, having regard to the developments in labour law, both international and national, and to the practice of Contracting States in such matters, the right to bargain collectively with the employer had, in principle, become one of the essential elements of the "right to form and to join trade unions for the protection of [one's] interests" set forth in Article 11 of the Convention. Like other workers, civil servants, except in very specific cases, should enjoy such rights.

Right to free elections (Article 3 of Protocol No. 1)

In *Yumak and Sadak v. Turkey*[xxxix], the Court examined for the first time the question of an electoral threshold applied nationwide in parliamentary elections. It was a threshold of 10% imposed nationally for the representation of political parties in Parliament. The Court found that, generally speaking, such a high threshold appeared excessive. It being the highest among the member States of the Council of Europe, the Court had to establish whether or not it was disproportionate, for which purpose it assessed first the significance of the threshold in comparison with those in other European States and then the effects of the correctives and

other safeguards by which the impugned system was attended. This led the Court to conclude that, when assessed in the light of the specific political context of the elections in question, and attended as it was by correctives and other guarantees under Turkish law which had limited its effects in practice, the threshold had not had the effect of impairing in their essence the applicants' electoral rights.

Kovach v. Ukraine[xl] is one of the few cases in which the Court has been called upon to rule on the result of an election and on the manner in which it was handled by the authorities. The case concerned the invalidation – on account of irregularities which were not attributable to the candidate in question – of votes obtained by the leading candidate in several electoral divisions of a parliamentary constituency, resulting in victory for his opponent. The Court found that the legislation was unclear since it empowered electoral commissions to invalidate votes on the basis of "other circumstances which ma[de] it impossible to establish the wishes of the voters". It noted moreover that neither the decision declaring the votes invalid nor the subsequent decisions of the Central Election Commission or the Supreme Court contained a discussion of the conflict between two provisions of electoral law, or of the credibility of the various protagonists. The Court thus found the invalidation "arbitrary" and applied the proportionality test in relation to Article 3 of Protocol No. 1.

The Court dealt for the first time with the impact of multiple nationality on the right to free elections in *Tănase and Chirtoacă v. Moldova*[xli], which concerned the inability of persons with multiple nationality to stand as candidates in parliamentary elections and to take their seats in Parliament if elected. Basing its arguments on the European Convention on Nationality and the activities of the Council of Europe (particularly those of the Parliamentary Assembly, the Venice Commission and the European Commission against Racism and Intolerance), the Court referred to the concept, in a democracy, of MPs' "loyalty to the State" and stressed the interdependent nature of the "active" aspect of the guarantee provided by Article 3 of Protocol No. 1 (the right to vote) and its "passive" aspect (the right to stand for election). It concluded that there had been a violation of this provision. The case was referred to the Grand Chamber on 6 April 2009.

Lastly, in the case of *The Georgian Labour Party v. Georgia*[xlii], a political party complained about the organisation of parliamentary elections. Its complaint concerned in particular the compilation of electoral rolls, the composition of electoral commissions and the annulment of elections in two constituencies, which had disenfranchised approximately 60,000 voters and prevented it from obtaining the 7% of votes required to secure a seat in Parliament. The Court clarified the scope of its supervision in matters concerning electoral rolls and voter registration. It considered, firstly, that the unexpected change in the rules on voter registration one month before the election could not be criticised in the very specific circumstances of the country's political situation, and, secondly, that the active system of voter registration, which did not in itself amount to a breach of the applicant party's right to stand for election, was not the cause of ballot fraud but represented a reasonable attempt to remedy it. The Court also emphasised the importance of the composition of electoral commissions, indicating that they should not become a forum for political confrontation between candidates. Lastly, it found a violation of the applicant party's right to stand for election on account of the annulment of the parliamentary elections in two constituencies.

Protection of property (Article 1 of Protocol No. 1)

The Court has dealt with a variety of questions arising under this Article.

In *Budayeva and Others* (cited above), it considered that in situations of natural disaster all reasonable steps – rather than all possible steps – had to be taken to mitigate risks to people's property. It thus held that there had been no violation of this Article.

In *Epstein and Others v. Belgium*[xliii], the Court examined domestic legislation which provided for measures in favour of Jewish and Gypsy victims of the Second World War but required claimants to have been Belgian nationals on 1 January 2003. The Court confirmed its case-law (*Woś v. Poland*[xliv], decision of 1 March 2005, and *Associazone nazionale Reduci dalla Prigionia dall'Internamento e dalla Guerra di Liberazione and Others v. Germany*[xlv], decision of 4 September 2007) and added two points of clarification. It indicated, firstly, that the State had to be able to decide freely on the criteria for awarding compensation to civilians who had sustained war damage caused by another State, and that claimants had to fulfil the conditions laid down in the legislation to be entitled to the statutory award. Secondly, it stated that, as regards the nationality requirement, war-victim compensation was to be distinguished from entitlement to social benefits, whether contributory or not.

The Court also examined, in the case of *Carson and Others v. the United Kingdom*[xlvi], a failure to increase in line with inflation the pensions paid to retired persons having worked and contributed in the United Kingdom but now living in other countries not bound by reciprocal bilateral agreements with the United Kingdom. The Court considered that, as people were free to choose where they lived, less weighty grounds were required to justify a difference of treatment based on residence than one based on an inherent personal characteristic, such as race or sex. It accordingly held that there had been no violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1. The case was referred to the Grand Chamber on 6 April 2009.

Lastly, the Court was called upon to rule on the question of Internet access. In the case of *Megadat.com SRL v. Moldova*[xlvii], it found that there had been a violation on account of the withdrawal of the licences of the country's largest Internet access provider for failing to notify the authorities of a change of address.

Just satisfaction and execution of judgments (Articles 41 and 46)

Article 41

The question of awards for non-pecuniary damage in respect of the excessive length of domestic proceedings brought jointly by a large number of claimants, who subsequently complained about the matter to the Court, was dealt with in *Arvanitaki-Roboti and Others v. Greece*[xlviii] and *Kakamoukas and Others v. Greece*[xlix]. In such cases the Court takes account of the manner in which the number of participants in such proceedings may influence the level of distress, inconvenience and uncertainty affecting each of them, as a high number of participants will very probably have an impact on the amount of just satisfaction to be awarded in respect of non-pecuniary damage. Certain factors may justify a reduction, others an increase, in the amount awarded.

Article 46

The case of *Gülmez v. Turkey*[l] concerned the imposition of six successive disciplinary penalties on a person in pre-trial detention, with the result that the applicant was deprived of visits for one year. The Court considered that the violation of Article 6, on account of the lack of public hearings during the proceedings, revealed a systemic problem arising out of the legislation itself and invited the respondent State to bring it into line with the European Prison Rules adopted by the Committee of Ministers of the Council of Europe on 11 January 2006.

In *Viaşu v. Romania*[li], the Court dealt with the impossibility for the owner of a plot of land, transferred by the State to an agricultural cooperative, to obtain its return or compensation for it under the applicable legislation. It noted the existence of a structural problem resulting both from shortcomings in the legislation and from administrative practice, and invited the respondent State to put an end to the problem by adopting general measures, by removing any obstacle to the effective exercise of the right to restitution, or by compensating the wronged owners.

Notes

i. [GC], no. 13378/05, 29 April 2008, to be reported in ECHR 2008.
ii. No. 59548/00, 17 January 2008, to be reported in ECHR 2008.
iii. No. 5608/05, 16 October 2008, to be reported in ECHR 2008 (extracts).
iv. Nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, 20 March 2008, to be reported in ECHR 2008 (extracts).
v. [GC], no. 48939/99, ECHR 2004-XII.
vi. [GC], no. 21906/04, 12 February 2008, to be reported in ECHR 2008.
vii. Nos. 29787/03 and 29810/03, 24 January 2008, to be reported in ECHR 2008 (extracts).
viii. No. 7188/03, 3 July 2008, to be reported in ECHR 2008.
ix. [GC], no. 37201/06, 28 February 2008, to be reported in ECHR 2008.
x. No. 2947/06, 24 April 2008, to be reported in ECHR 2008 (extracts).
xi. [GC], no. 26565/05, 27 May 2008, to be reported in ECHR 2008.
xii. 2 May 1997, *Reports of Judgments and Decisions* 1997-III.
xiii. No. 7178/03, 15 May 2008, to be reported in ECHR 2008 (extracts).
xiv. [GC], no. 13229/03, 29 January 2008, to be reported in ECHR 2008.
xv. No. 11036/03, 18 March 2008, to be reported in ECHR 2008 (extracts).
xvi. No. 9907/02, 23 September 2008, to be reported in ECHR 2008.
xvii. No. 14688/89, Commission decision of 4 December 1989, Decisions and Reports 64.
xviii. [GC], no. 74420/01, 5 February 2008, to be reported in ECHR 2008.
xix. No. 14810/02, 17 January 2008, to be reported in ECHR 2008.
xx. [GC], no. 36391/02, 27 November 2008, to be reported in ECHR 2008.
xxi. [GC], no. 9174/02, 19 September 2008, to be reported in ECHR 2008.
xxii. No. 26601/02, 3 July 2008.
xxiii. No. 55525/00, 14 February 2008, to be reported in ECHR 2008.
xxiv. [GC], no. 43546/02, 22 January 2008, to be reported in ECHR 2008.
xxv. No. 44009/05, 27 March 2008, to be reported in ECHR 2008.
xxvi. No. 2872/02, 2 December 2008, to be reported in ECHR 2008.
xxvii. [GC], nos. 30562/04 and 30566/04, 4 December 2008, to be reported in ECHR 2008.
xxviii. No. 19009/04, 13 May 2008, to be reported in ECHR 2008.
xxix. [GC], no. 1638/03, 23 June 2008, to be reported in ECHR 2008.
xxx. No. 40825/98, 31 July 2008.
xxxi. No. 58911/00, 6 November 2008.
xxxii. No. 33629/06, 8 July 2008, to be reported in ECHR 2008.
xxxiii. [GC], no. 14277/04, 12 February 2008, to be reported in ECHR 2008.
xxxiv. No. 21132/05, 11 December 2008, to be reported in ECHR 2008 (extracts).
xxxv. No. 53025/99, 16 December 2008.

xxxvi. No. 19353/03, 8 January 2008.
xxxvii. No. 25659/94, ECHR 2001-VIII.
xxxviii. [GC], no. 34503/97, 12 November 2008, to be reported in ECHR 2008.
xxxix. [GC], no. 10226/03, 8 July 2008, to be reported in ECHR 2008.
xl. No. 39424/02, 7 February 2008, to be reported in ECHR 2008.
xli. No. 7/08, 18 November 2008.
xlii. No. 9103/04, 8 July 2008, to be reported in ECHR 2008.
xliii. (dec.), no. 9717/05, 8 January 2008, to be reported in ECHR 2008 (extracts).
xliv. (dec.), no. 22860/02, ECHR 2005-IV.
xlv. (dec.), no. 45563/04, 4 September 2007.
xlvi. No. 42184/05, 4 November 2008.
xlvii. No. 21151/04, 8 April 2008, to be reported in ECHR 2008.
xlviii. [GC], no. 27278/03, 15 February 2008, to be reported in ECHR 2008.
xlix. [GC], no. 38311/02, 15 February 2008.
l. No. 16330/02, 20 May 2008.
li. No. 75951/01, 9 December 2008.