CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS CONCERNING THE PROTECTION OF PERSONAL DATA

Strasbourg, 30 January 2013

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CASE LAW OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS CONCERNING THE PROTECTION OF PERSONAL DATA

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JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS (PRESS RELEASES AND LEGAL SUMMARIES)*

* The complete texts of the Court's judgments are available on the Court's website at www.echr.coe.int

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C (78) 37
6.9.78

THE EUROPEAN COURT OF HUMAN RIGHTS
DELIVERS JUDGMENT IN THE CASE OF KLASS AND OTHERS

The following information is communicated by the Registrar of the European Court of Human Rights:

On 6 September 1978, the European Court of Human Rights delivered judgment in the case of Klass and others. This case concerns the 1968 legislation in the Federal Republic of Germany restricting the secrecy of the mail, post and telecommunications - legislation which permits measures of secret surveillance under certain circumstances. The Court held unanimously that there had been no breach of the European Convention on Human Rights.

The judgment was read out at a public hearing by Mr. G.J. Wiarda, Vice-President of the Court.

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I. BACKGROUND TO THE CASE BEFORE THE COURT

1. The applicants, who are German nationals, are Gerhard Klass, a public prosecutor, Peter Lubberger, a lawyer, Jürgen Nussbruch, a judge, Hans-Jürgen Pohl and Dieter Selb, lawyers.

2. Legislation passed in 1968 - namely an amendment to Article 10 §2 of the Basic Law and an Act of 13 August 1968 restricting the right to secrecy of mail, post and telecommunications - authorises in certain circumstances secret surveillance without the need to inform the person concerned, In addition, the legislation excludes legal remedy before the courts in respect of the ordering and implementation of the surveillance measures; it institutes instead supervision by two agencies, that is a Board of five Members of Parliament appointed by the Bundestag and a Commission of three members nominated by that Board.

3. Following an appeal lodged by the applicants, the Federal Constitutional Court held on 15 December 1970 that the Act of 13 August 1968 was void insofar as it prevented notification to the subject of the surveillance even when such notification could be made without jeopardising the purpose of the restriction.

4. In June 1971, the applicants lodged a complaint with the European Commission of Human Rights. They claimed that the above-mentioned legislation involves breaches of three Articles of the European Convention on Human Rights, namely Article 6 §l (the right to a fair hearing before a court in civil or criminal proceedings), Article 8 (the right to respect for private and family life, home and correspondence) and Article 13 (the right to an effective remedy before a national authority for violations of the rights set forth in the Convention.[1]

[1] The text of all relevant articles of the Convention appear in the appendix to this document.

5. In its report of 9 March 1977, the Commission expressed the opinion:

- that there was no violation of Article 6 §l of the Convention, either insofar as the applicants rely on the notion "civil rights" (eleven votes to one with two abstentions) or insofar as they rely on the notion "criminal charge" (unanimously);

- that there was no violation of Article 8 or Article 13 (twelve votes with one abstention).

6. At the oral hearing in March 1978, the Agent of the German Government informed the Court that at no time had surveillance measures under the legislation been ordered or implemented in respect of the applicants.

II. SUMMARY OF THE JUDGMENT[2]

A. Article 25§1

7. The German Government had contended that, since the substance of the applicants' complaint was the purely hypothetical possibility of being subject to surveillance under the legislation, they could not be considered as "victims" within the meaning of Article 25 of the Convention. This Article empowers the European Commission of Human Rights, subject to certain conditions, to receive petitions from any person “claiming to be the victim of a violation" of the Convention.

Having regard to the specific circumstances of the case,, the Court concluded that the applicants were entitled to claim to be victims of a violation even though - due to the secrecy of any surveillance measures - they were not able to allege in support of their application that they had in fact been subject to surveillance.
[Paragraphs 30 to 38 of the judgment./

8. The Court then turned to the question whether the applicants were actually the victims of any violation of the Convention and examined the compatibility with the Convention of the contested legislation.

B. Article 8

9. There being no dispute that the contested legislation results in an interference with the applicants’ right to respect for their private and family life and correspondence, the cardinal issue was whether that interference is justified under paragraph 2 of Article 8. Since that paragraph provides for an exception to a right guaranteed by the Convention, it must, emphasised the Court, be narrowly interpreted. Thus, “powers of secret surveillance of citizens, characterising as they do the police State, are tolerable under the Convention only insofar as strictly necessary for safeguarding the democratic institutions".

10. The Court found that the legislation in question has an aim that is legitimate under paragraph 2 of Article 8, namely the safeguarding of national security and the prevention of disorder or crime. It then went on to consider whether the means adopted remain within the bounds of what is necessary in a democratic society in order to achieve that aim.

[2] This summary has been prepared by the Registry and in no way binds the Court.

11. (a) The Court took notice of the fact that "democratic societies nowadays find themselves threatened by highly sophisticated. forms of espionage and by terrorism, with the result that the State must be able, in order effectively to counter such threats, to undertake the secret surveillance of subversive elements operating within its jurisdiction". It had therefore to be accepted that "the existence of some legislation granting powers of secret surveillance over the mail, post and, telecommunications is, under exceptional conditions, necessary in a democratic Society in the interests of national security and/or for the prevention of disorder or crime".

(b) Although recognising that the Convention leaves to Contracting States a certain discretion as regards the fixing of the conditions under which the system of surveillance is to be operated, the judgment continues: " ... this does not mean that the Contracting States enjoy an unlimited discretion to subject persons within their jurisdiction to secret surveillance. The Court, being aware of the danger such a law poses of undermining or even destroying democracy on the ground of defending it, affirms that the Contracting States may not, in the name of the struggle against espionage and terrorism, adopt whatever measures they deem appropriate!" "The Court must be satisfied that, whatever system is adopted, there exist adequate and effective guarantees against abuse."

12. In the light of these considerations, the Court then examined the functioning of the system of secret surveillance established by the contested legislation. The judgment notes in particular that:

- according to that legislation, a series of limitative conditions have to be satisfied before a surveillance measure can be ordered ;

- strict conditions are laid down with regard to the implementation of the surveillance measures and to the processing of the information thereby obtained ;

- while "in a field where abuse is potentially so easy in individual cases and could have such harmful consequences for democratic society as a whole, it is in principle desirable to entrust supervisory control to a judge", the two supervisory bodies instituted by the legislation "may, in the circumstances of the case, be regarded as enjoying sufficient independence to give an objective ruling";

- the fact of not informing the individual once surveillance has ceased cannot itself be incompatible with Article 8 since it is this very fact which ensures the efficacy of the measure.

13. The Court accordingly found no breach of Article 8.
[Paragraphs 39 to 60 of the judgment.]

C. Article 13

14. The Court then examined the case under Article 13 which guarantees that everyone whose rights and freedoms as set forth in the Convention are violated shall have an effective remedy before a national authority. The Court found, *inter alia*, that:

- the lack of notification of surveillance measures is not, in the circumstances of the case, contrary to the concept of an "effective remedy" and does not therefore entail a violation of Article 13;

-"for the purposes of the present proceedings, an 'effective remedy' under Article must mean a remedy that is as effective as can be having regard to the restricted scope for recourse inherent in any system of secret surveillance";

- in the particular circumstances of this case, the aggregate of remedies available to the applicants under German law satisfies the requirements of Article 13.

[Paragraphs 61 to 72 of the judgment/]

D. Article 6 § 1

15. Both the German Government and the Commission considered Article 6 to be inapplicable to the facts of the case. The Court concluded that Article 6, even if applicable, had not been violated.
[Paragraphs 73 to 75 of the judgment.]

The Court gave judgment at a plenary sitting, in accordance with Rule 48 of the Rules of Court, and was composed as follows:

Mr. G. BALLADORE PALLIERI (Italian), President, Mr. G. WIARDA (Dutch), Mr. H. MOSLER (German), Mr. M. ZEKIA (Cypriot), Mr. J. CREMONA (Maltese), Mr. P. O'DONOGHUE (Irish), Mr. Thor VILHJALMSSON (Icelandic), Mr. W. GANSHOF VAN DER MEERSCH (Belgian), Sir Gerald FITZMAURICE (British), Mrs. D. BINDSCHEDLER-ROBERT (Swiss), Mr. P.-H. TEITGEN (French), Mr. G. LAGERGREN (Swedish), Mr. L. LIESCH (Luxemburger), Mr. F. GOLCUKU (Turkish), Mr. F. MATSCHER (Austrian), Mr. J. PINHEIRO FARINHA (Portuguese), Judges, and also Mr. H. PETZOLD Deputy Registrar.

There is one separate opinion attached to the judgment.

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For further information, reference should be made to the text of the judgment and to the previous press release C (78) 10. The judgment is available on request in French and English, the two official languages of the Court.

Subject to the discretion attached to his duties, the Registrar is responsible under the Rules of Court for replying to all requests for information concerning the work of the Court, and in particular to requests from the Press.

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2. *Eur. Court HR, Malone v. The United Kingdom judgment* of 2 August 1984, Series A no. 82 (Violation of Article 8 of the Convention). Interception of postal and telephone communications and release of information obtained from "metering" of telephones, both effected by or on behalf of the police within the general context of criminal investigation.

C (84) 57
2.8.84

Press release issued by the Registrar of the European Court of Human Rights

JUDGMENT IN THE MALONE CASE

On 2 August 1984 at Strasbourg, the European Court of Human Rights delivered judgment in the Malone case, which concerns the laws and practices in England and Wales allowing interception of communications and "metering" of telephones by or on behalf of the police. The Court unanimously held that there had been violation of Mr. James Malone's right to respect for his private life and his correspondence, as guaranteed by Article 8 of the European Convention on Human Rights. The Court further considered, by sixteen votes to two, that it was unnecessary in the circumstances to examine Mr. Malone's complaint under Article 13 of the Convention (right to an effective remedy before a national authority).

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I. BACKGROUND TO THE CASE

A. Principal facts

1. The applicant in the present case is Mr. James Malone, a United Kingdom citizen who currently resides in Dorking, Surrey, in England. In March 1977, he was charged with offences relating to the dishonest handling of stolen goods; he was ultimately acquitted. During his trial, it emerged that a telephone conversation to which he had been a party had been intercepted by the Post Office on behalf of the police on the authority of a warrant issued by the Home Secretary.

2. Mr. Malone further believes that, at the behest of the police, his correspondence has been intercepted, his telephone lines "tapped" and, in addition, his telephone "metered" by a device recording all the numbers dialled. Beyond admitting the interception of the one conversation adverted to in evidence at his trial, the United Kingdom Government have neither admitted nor denied the allegations concerning correspondence and tapping, and have denied that concerning metering; they have, however, accepted that the applicant, as a suspected receiver of stolen goods, was one of a class of persons whose postal and telephone communications were liable to be intercepted.

3. It has for long been the publicly known practice for interceptions of postal and telephone communications for the purposes of the detection and prevention of crime to be carried out on the authority of a warrant issued under the hand of a Secretary of State, as a general rule the Home Secretary. There is, however, no overall statutory code governing the matter. Nonetheless, various statutory provisions are relevant, including one under which the Post Office - as from 1981, the Post Office and British Telecommunications - may be required to inform the Crown about matters transmitted through the postal or telecommunication services.

4. There also exists a practice, of which Parliament has been informed, whereby the telephone service - the Post Office prior to 1921 and thereafter British Telecommunications - makes and supplies records of metering at the request of the police in connection with police enquiries into the commission of crime.

5. In October Mr. Malone instituted civil proceedings in the High Court against the Metropolitan Police Commissioner, seeking, amongst other things, a declaration that any tapping of conversations on his telephone without his consent was unlawful even if done pursuant to a warrant of the Secretary of State. The Vice-Chancellor, Sir Robert Megarry, dismissed his claim in February 1979.

B. Proceedings before the European Commission of Human Rights

The present case originated in an application against the United Kingdom lodged with the Commission by Mr. Malone in July 1979. The Commission declared the application admissible in July 1981.

In its report adopted in December 1982, the Commission expressed the opinion:

- (by eleven votes, with one abstention) that there had been a breach of the applicant's rights under Article 8 by reason of the admitted interception of one of his telephone conversations and of the law and practice in England and Wales governing the interception of postal and telephone communications on behalf of the police;

- (by seven votes against three, with two abstentions) that it was unnecessary in the circumstances of the case to investigate whether the applicant's rights had also been interfered with by the procedure known as "metering" of telephone calls;

- (by ten votes against one, with one abstention) that there had been a breach of the applicant's rights under Article 13 in that the law in England and Wales did not provide an "effective remedy before a national authority" in respect of interceptions carried out under a warrant.

The Commission referred the case to the Court in May 1983.

II. SUMMARY OF THE JUDGMENT[1]

A. ARTICLE 8 OF THE CONVENTION

1. Scope of the issues before the Court

The present case is concerned only with interception of communications and metering of telephones effected by or on behalf of the police within the general context of a criminal investigation, together with the relevant legal and administrative framework.

[see paragraphs 63 and 85 of the judgment]

2. Interception of communications

(a) Was there any interference with an Article 8 right?

[1] This summary, drafted by the Registry, does not bind the court.

The one admitted interception of a telephone call to which Mr. Malone was a party involved an "interference" with the exercise of his right to respect for his private life and his correspondence. In addition, as a suspected receiver of stolen goods, Mr. Malone was a member of a class of persons against whom measures of postal and telephone interception were liable to be employed. This being so, the existence in England and Wales of laws and practices which permit and establish a system for carrying out secret surveillance of communications amounted in itself to such an "interference", apart from any concrete measures taken against him.

[see paragraph 64 of the judgment]

(b) Were these interferences "in accordance with the law"?

(i) General principles

The expression "in accordance with the law" in paragraph 2 of Article 8 means firstly that any interference must have some basis in the law of the country concerned. However, over and above compliance with domestic law, it also requires that domestic law itself be compatible with the rule of law. It thus implies that there must be a measure of legal protection in domestic law against arbitrary interferences by public authorities with the rights safeguarded by paragraph 1.

The Court accepted the Government's contention that the requirements of the Convention cannot be exactly the same in the special context of interception of communications for the purposes of police investigations as they are in other contexts. Thus, the "law" does not have to be such that an individual should be enabled **to** foresee when his communications are likely to be intercepted so that he can adapt his conduct accordingly. Nevertheless, the law must be sufficiently clear in its terms to give citizens in general an adequate indication as to the circumstances in which and the conditions on which public authorities are empowered to resort to this secret and potentially dangerous interference with the right to respect for private life and correspondence.

Furthermore, since the implementation in practice of measures of secret surveillance of communications is not open to scrutiny by the individuals concerned or the public at large, it would be contrary to the rule of law for the legal discretion granted to the executive to be expressed in terms of an unfettered power. Consequently, the substantive law itself, as opposed to accompanying administrative practice, must indicate the scope and manner of exercise of any such discretion with sufficient clarity, having regard to the legitimate aim of the measure in question, to give the individual adequate protection against arbitrary interference.

[see paragraphs 66 to 68 of the judgment]

(ii) Application of those principles to the particular facts

It was common ground that the settled practice of intercepting communications on behalf of the police in pursuance of a warrant issued by the Secretary of State was lawful under the law of England and Wales. There were, however, fundamental differences of view between the Government, the applicant and the Commission as to the effect, if any, of certain statutory provisions in imposing legal restraints on the manner in which and the purposes for which interception of communications may lawfully be carried out.

The Court found that, on the evidence adduced, in its present state domestic law in this domain is somewhat obscure and open to differing interpretations. In particular, it cannot be said with any reasonable certainty what elements of the powers to intercept are incorporated in legal rules and what elements remain within the discretion of the executive. In the opinion of the Court, the law of England and Wales does not indicate with reasonable clarity the scope and manner of exercise of the relevant discretion conferred on the public authorities. To that extent, the minimum degree of legal protection to which citizens are entitled under the rule of law in a democratic society is lacking.

The Court therefore concluded that the interferences found were not “in accordance with the law" within the meaning of paragraph 2 of Article 8.

[see paragraphs 69 to 80 of the judgment]

(c) Were the interferences “necessary in a democratic society” for a recognised purpose?

Undoubtedly, the existence of some law granting powers of interception of communications to aid the police may be "necessary" for prevention of disorder or crime". However, “in a democratic society" the system of secret surveillance adopted must contain adequate guarantees against abuse.

In the light of its conclusion under (b), the Court considered that it did not have to examine further the content of the other guarantees required by paragraph 2 of Article 8 and whether the system complained of furnished those guarantees in the particular circumstances.

[see paragraphs 31 to 82 of the judgment]

3. "Metering" of telephones

The records of metering contain information, in particular the numbers dialled, which is an integral element in the communications made by telephone. Consequently, release of that information to the police without the consent of the subscriber amounts to an interference with the exercise of a right guaranteed by Article 8. The applicant was potentially liable to be directly affected by the practice which existed in this respect. Despite the clarification by the Government that the .police had not caused his telephone to be metered, the applicant could claim to be the victim of an interference in breach of Article 8 by reason of the very of the practice.

No rule of domestic law makes it unlawful for the telephone service to comply with a request from the police to make and supply records of metering. Apart from this absence of prohibition, there would appear to be no legal rules concerning the scope and manner of exercise of the discretion enjoyed by the public authorities. Consequently, so the Court found, although lawful in terms of domestic law, the resultant interference was not "in accordance with the law", within the meaning of paragraph 2 of Article 8.

This finding removed the need for the Court to determine whether the interference was "necessary in a democratic society".

[see paragraphs 83 to 88 of the judgment]

4. Recapitulation

There had accordingly been a breach of Article 8 in the applicant's case as regards both interception of communications and release of records of metering to the police.

[see paragraph 89 of the judgment and point 1 of the operative provisions]

B. ARTICLE 13 OF THE CONVENTION

Having regard to its decision on Article 8, the Court did not consider it necessary to rule on this issue.

[see paragraphs 90 to 91 of the judgment and point 2 of the operative provisions]

C. ARTICLE 50 OF THE CONVENTION

By way of "just satisfaction" under Article 50, the applicant had claimed reimbursement of legal costs and an award of compensation. Judging that it was not yet ready for decision, the Court reserved the question and referred it back to the Chamber originally constituted to hear the case.

[see paragraphs 92 to 93 of the judgment and point 3 of the operative provisions]

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The Court gave judgment at a plenary session, in accordance with Rule 50 of the Rules of Court, and was composed as follows: Mr G. Wiarda (Dutch) President, Mr R. Ryssdal (Norwegian), Mr J. Cremona (Maltese), Mr. Thór Vilhjálmsson (Icelandic), Mr. W. Ganshof van der Meersch (Belgian), Mrs. D. Bindschedler-Robert .(Swiss", Mr. D. Evrigenis (Greek), Mr. G. Lagergren (Swedish), Mr. F. Gö1cük1ü (Turkish), Mr. F. Matscher (Austrian), Mr. J. Pinheiro Farinha (Portuguese), Mr. E. García de Enterría (Spanish), I'~ir.. L.-E. Pettiti (French), Mr. B. Walsh (Irish), Sir Vincent Evans (British), Mr. R. Macdonald (Canadian), Mr. C. Russo (Italian) and Mr J. Gersing (Danish), Judges, and also Mr. M.A. Eissen, Registrar, and Mr H Petzold, Deputy Registrar.

Three judges expressed separate opinions which are annexed to the judgment.

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For further information, reference should be made to the text of the judgment, which is available on request and will be published shortly as volume 82 of Series A of the Publications of the Court (obtainable from Carl Heymanns Verlag K.G., Gereonstrasse 18-32, D - 5000 KOLN 1).

Subject to the discretion attached to his duties, the Registrar is responsible under the Rules of Court for replying to all requests for information concerning the work of the Court, and in particular to requests from the press.

3. *Eur. Court HR, Leander v. Sweden judgment* of 26 March 1987, Series A no.116 (Violation of Articles 8, 10 and 13 of the Convention). Use of information kept in a secret police-register when assessing a person's suitability for employment on a post of importance for national security.

C (87) 31
26.3.1987

Press release issued by the Registrar of the European Court of Human Rights

JUDGMENT IN THE LEANDER CASE

In a judgment delivered at Strasbourg on 26 March 1987 in the Leander case, which concerns Sweden, the European Court of Human Rights held:

- unanimously, that there had been no breach of either Article 8 or Article 10 of the European Convention on Human Rights;

- by four votes to three, that there had been no breach of Article 13 of the Convention.

The judgment was read out at a public hearing by Mr. Rolv Ryssdal, the President of the Court.

I. BACKGROUND TO THE CASE

A. Principal facts

In August 1979, Mr. Leander was considered for employment at the Naval Museum in Karlskrona, in the south of Sweden. Part of the Museum's premises were located within an adjacent naval base. As a consequence, appointment to the post sought by Mr. Leander had to be preceded by a security check - a so-called personnel control, which involved consulting information held on a secret register kept by the security police. The procedure to be followed was governed principally by the Personnel Control Ordinance 1969, published in the Swedish Official Journal. In Mr. Leander's case, the outcome of the control was such that his employment was refused, without his having received an opportunity to know and to comment upon the information released to the Navy from the secret police-register.

Mr. Leander complained to the Government, requesting annulment of the assessment that he constituted a security risk, a declaration that he was acceptable for employment, access to the information kept on him and an opportunity to comment on this information. The Government rejected the complaint on all points.

B. Proceedings before the European Commission of Human Rights

Mr. Leander's application was lodged with the European Commission of Human Rights on 2 November 1980 and declared admissible on 10 October 1983.

Having unsuccessfully attempted to reach a friendly settlement, the Commission drew up a report establishing the facts and stating its opinion as to whether or not the facts found disclosed a breach by

Sweden of its obligations under the Convention. In its report of 17 May 1985[1], the Commission expressed the opinion that there had been no breach of Article 8 (unanimously), that no separate issue arose under Article 10 (unanimously) and that the case did not disclose any breach of Article 13 (seven votes to five).

The Commission referred the case to the Court on 11 July 1985.

II. SUMMARY OF THE JUDGMENT[2]

A. Alleged violation of Article 8

1. Whether there was any interference with an Article 8 right

It was uncontested that the secret police register contained information relating to Mr. Leander's private life. Both the storing and the release of such information, which had been coupled with a refusal to allow Mr. Leander an opportunity to refute it, amounted to an interference with his right to respect for private life as guaranteed by Article 8 § 1.

<paragraph 48 of the judgment>

2. Whether the interference was justified

(a) Legitimate aim

The aim of the Swedish personnel control system was clearly a legitimate one for the purposes of Article 8, that is the protection of national security.

<paragraph 49 of the judgment>

(b) "In accordance with the law"

The interference had a valid base in domestic law, namely the Personnel Control Ordinance.

The Ordinance, which had been published in the Swedish Official Journal, met the further condition that the "law" in question be accessible to the individual concerned.

It is also a requirement in Article 8 that the consequences of the "law" be foreseeable for the individual concerned. This requirement, the Court pointed out, cannot be the same in the special context of secret controls of staff in sectors affecting national security as in many other fields. The Court concluded that in a system applicable to citizens generally, as under the Personnel Control Ordinance, the "law" in question has to be sufficiently clear as to the circumstances in which and the conditions on which the public authorities are empowered to resort to this kind of potentially dangerous interference with private life.

[1] The report is available to the press and the public on request to the Registrar of the Court.

[2] This summary, which has been prepared by the Registry, does not bind the Court.

Taking into account the various limitations imposed on the registration of information, in particular the prohibition on registration merely on the ground of political opinion, and the explicit and detailed provisions governing the operation of the personnel control procedure, the Court found that Swedish law satisfied the requirement of foreseeability.

<paragraphs 52-57 of the judgment>

(c) "Necessary in a democratic society in the interests of national security"

According to well-established principles in the Court's case-law, the notion of necessity implies that the interference must correspond to a pressing social need and, in particular, that it is proportionate to the legitimate aim pursued. The respondent State's interest in protecting national security had to be balanced against the seriousness of the interference with the applicant's right to respect for private life. The Court accepted that, in the circumstances, the State enjoyed a wide margin of appreciation in making its assessment.

There can be no doubt as to the necessity for the Contracting States to have a system for controlling the suitability of candidates for employment in posts of importance for national security. Nevertheless, in view of the risk that a system of secret surveillance for the protection of national security poses of undermining or even destroying democracy on the ground of defending it, the Court had to be satisfied that there existed in the system at issue adequate and effective guarantees against abuse.

The Court noted that the Swedish system was designed to reduce the effects of the personnel control procedure to an unavoidable minimum and that, leaving aside the monitoring affected by the Government themselves, supervision of its proper implementation was entrusted both to Parliament and to independent institutions. The Court attached especial importance, firstly, to the presence of parliamentarians on the police board that authorised the release of the information to the Navy and, secondly, to the supervision effected by the Chancellor of Justice and the Parliamentary Ombudsman as well as the Parliamentary Standing Committee on Justice. The safeguards contained in the Swedish personnel control system were therefore judged sufficient to meet the requirements of Article 8.

Having regard to the wide margin of appreciation available to it, the respondent State was entitled to consider that, in the particular case, the interests of national security prevailed over Mr. Leander's individual interests. Accordingly, there had been no breach of Article 8.

<paragraphs 58-68 of the judgment and point 1 of the operative provisions>

B. Alleged violation of Article 10

1. Freedom to express opinions

It appeared clearly from the provisions of the Personnel Control Ordinance that its purpose was to ensure that persons holding security-sensitive posts had the necessary personal qualifications. This being so, the right of access to the public service, a right not protected by the Convention, lay at the heart of the issue submitted to the Court. There had accordingly been no interference with Mr. Leander's freedom to express opinions.

<see paragraphs 71-73 of the judgment and point 2 of the operative provisions>

2. Freedom to receive information

Article 10 does not, in the circumstances such as those in the case at issue, confer on the individual a right of access to a register containing information on his personal position, nor does it embody an obligation on the Government to impart such information to the individual. Accordingly, there had likewise been no interference with Mr. Leander's freedom to receive information.

<paragraphs 74-75 of the judgment and point 2 of the operative provisions>

C. Alleged violation of Article 13

As established in the Court's case-law, the "national authority" referred to in Article 13 need not be a judicial authority in the strict sense. In addition, in the special context of Mr. Leander's case, an "effective remedy" must mean a remedy that is as effective as can be having regard to the restricted scope for recourse inherent in any system of secret surveillance for the protection of national security. Further, although no single remedy may itself entirely satisfy the requirements of Article 13, the aggregate of remedies provided for under domestic law may do so.
The Court noted that under Swedish law the applicant could have filed complaints with the Parliamentary Ombudsman or the Chancellor of Justice, who both had to be considered independent of the Government. Although both lacked the power to render legally binding decisions, in practice their opinions were usually followed. There also existed the remedy of complaint to the Government, to which Mr. Leander had had recourse, albeit unsuccessfully.

The Court held that even if, taken on its own, the complaint to the Government were not to be considered sufficient, the aggregate of available remedies satisfied the conditions of Article 13 in the particular circumstances of the case.

<paragraphs 76-84 of the judgment and point 3 of the operative provisions>

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In accordance with the Convention, the judgment was delivered by a Chamber composed of seven judges, namely Mr. R. Ryssdal (Norwegian), President, Mr. G. Lagergren (Swedish), Mr. F. Gölcüklu (Turkish), Mr. L.E. Pettiti (French), Sir Vincent Evans (British), Mr. C. Russo (Italian) and Mr. R. Bernhardt (German), Judges, and of Mr. M-A. Eissen, Registrar, and Mr. H. Petzold, Deputy Registrar.

Three judges expressed separate opinions which are annexed to the judgment.

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For further information, reference should be made to the text of the judgment, which is available on request and will be published shortly as volume 116 of Series A of the Publications of the Court (obtainable from Carl Heymanns Verlag K.G., Luxemburger Strasse 449, D-5000 Köln 41).

Subject to the discretion attached to his duties, the Registrar is responsible under the Rules of Court for replying to requests for information concerning the work of the Court, and in particular to requests from the press.

4. *Eur. Court HR, Gaskin v. The United Kingdom judgment* of 7 July 1989, Series A no.160 (Violation of Article 8 of the Convention). Refusal to grant former child in care unrestricted access to case records kept by social services.

C (89) 90
7.7.89

Press release issued by the Registrar of the European Court of Human Rights

JUDGMENT IN THE GASKIN CASE

By a judgment delivered in Strasbourg on 7 July 1989 in the Gaskin case, which concerns the United Kingdom, the Court held by eleven votes to six that the procedures followed in relation to access by Mr Gaskin to his case records failed to secure respect for his private and family life as required by Article 8 of the European Convention on Human Rights.

I. BACKGROUND TO THE CASE

A. Summary of the facts

Following the death of his mother, the applicant, a British citizen born in 1959, was received into care on 1 September 1960 by the Liverpool City Council under the Children Act 1948. He ceased to be in the care of the Council on attaining the age of majority (18) on 2 December 1977. During the period while the applicant was in care, he was boarded out with various foster parents. He contends that he was ill-treated.

Under the provisions of the Boarding-Out of Children Regulations 1955, the local authority was under a duty to keep certain confidential records concerning the applicant and his care.

In 1979 the applicant, wishing to bring proceedings against the local authority for damages for negligence, made an application under the Administration of Justice Act 1970 for discovery of the local authority's case records made during his period in care. Discovery was refused by the High Court on 22 February 1980, on the ground that case records compiled pursuant to the 1955 Regulations were private and confidential. This decision was confirmed by the Court of Appeal on 27 June 1980.

Between 1980 and 1983, various committees of the City Council adopted resolutions on the release of child care records. To a certain extent, these resolutions were challenged in the courts. Finally, in November 1983, Liverpool City Council adopted a further resolution which provided that the information in the applicant's file should be made available to him if the contributors to the file gave their consent to disclosure. This resolution was in line with the Circular issued by the Department of Health and Social Security in August 1983.

The applicant's case record consisted of some 352 documents contributed by 46 persons. On 23 May 1986 copies of 65 documents supplied by 19 persons were sent to the applicant's solicitors. These were documents whose authors had consented to disclosure to the applicant.

B. Proceedings before the Commission

On 17 February 1983, the applicant applied to the Commission which declared admissible the applicant's complaint concerning the continuing refusal of Liverpool City Council to give him access to his case records.

In its report of 13 November 1987, the Commission concluded, by six votes to six, with a casting vote by the acting President, that there had been a violation of Article 8 of the Convention by the procedures and decisions which resulted in the refusal to allow the applicant access to the file. It further concluded, by eleven votes to none with one abstention, that there had been no violation of Article 10 of the Convention. The Commission referred the case to the Court on 14 March 1988. The United Kingdom Government had done so on 8 March 1988.

II. SUMMARY OF THE JUDGMENT

A. Scope of the case before the Court

1. The Court held that the only issues before it were those arising under Articles 8 and 10 in relation to the procedures and decisions pursuant to which the applicant was refused access to the file subsequently to the termination of domestic proceedings brought by him for discovery of the documents in his personal file.

[paragraph 35 of the judgment]

B. Alleged breach of Article 6

1. Applicability

2. Although the Government argued that the applicant's personal file did not form part of his private life, the Court, like the Commission, found that the file did relate to Mr Gaskin's "private and family life" in such a way that the question of his access thereto fell within the ambit of Article 8. That finding was, reached without expressing any opinion on whether general rights of access to personal data may be derived from Article 8 § 1 of the Convention.

[paragraph 37 of the judgment]

2. Application of Article 8 in the present case

3. According to the Court's case-law, "although the essential object of Article 8 is to protect the individual against arbitrary interference by the public authorities, there may in addition be positive obligations inherent in an effective 'respect' for family life".

It was common ground that Mr Gaskin neither challenged the fact that information was compiled and stored about him nor alleged that any use was made of it to his detriment. He challenged rather the failure to grant him unimpeded access to that information.

Indeed, the Court found that, by refusing him complete access to his case records, the United Kingdom could not be said to have "interfered" with Mr Gaskin's private or family life. In this connection, the substance of the applicant's complaint was not that the State had acted but that it had failed to act.

It was therefore necessary to examine whether the United Kingdom, in handling the applicant's requests for access to his case records, was in breach of a positive obligation flowing from Article 8 of the Convention.

[paragraphs 38 and 41 of the judgment]

4. According to the Government, the proper operation of the child-care service depended on information supplied by professional persons and bodies, and others. If the confidentiality of these contributors were not respected, their co-operation would be lost and this would have a detrimental effect on the child-care service. There was no blanket refusal of access to case records. Access was given to confidential information in so far as the consent of the contributor could be obtained.

[paragraphs 44 and 48 of the judgment]

5. According to the applicant, however, the Access to Personal Files Act 1987 and regulations made thereunder illustrated the extent to which information of the kind sought by him would in the future be made available by public authorities. The Government pointed out that the new regulations would not apply to records compiled before the entry into force of the regulations (April 1989).

[paragraph 45 of the judgment]

6. The local authority obtained consent in respect of 65 out of some 352 documents, and those were released. The Government argued that no obligation to do more than this existed.

[paragraph 47 of the judgment]

7.In the Court's opinion, however, persons in the applicant's situation have a vital interest, protected by the Convention, in receiving the information necessary to know and understand their childhood and early development. Although a system, like the British one, which makes access to child-care records dependent on the contributor's consent, can in principle be considered to be compatible with the obligations under Article 8, the Court considered that the interests of an individual seeking access to records relating to his private and family life must be secured when a contributor to the records either is not available or improperly refuses consent. In such a case, the principle of proportionality requires that an independent authority decide whether access should be granted.

As no such system was available to Mr Gaskin, the Court held by eleven votes to six that the procedures followed had failed to secure respect for Mr Gaskin's private and family life as required by Article 8 of the Convention. There was therefore a breach of that provision.

[paragraph 49 of the judgment and point 1 of the operative provisions]

C. Alleged breach of Article 10

8. The Court unanimously held that Article 10 did not embody an obligation on the Government to impart the information in question to the individual. There had thus been no interference with Mr Gaskin's right to receive information as protected by that Article.

[paragraph 52 of the judgment and point 2 of the operative provisions]

D. Application of Article 50

1. Pecuniary damage

9. The Court rejected claims for losses in respect of future earnings.

[paragraph 56 of the judgment]

2. Non-pecuniary damage

10. The Court acknowledged that Mr Gaskin may have suffered some emotional distress and anxiety by reason of the absence of any independent review procedure as mentioned under paragraph 7 above. Making a determination on an equitable basis, the Court awarded to Mr Gaskin under this head the amount of £5,000.

[paragraph 58 of the judgment]

3. Costs and expenses

11. The applicant claimed a total sum of £117,000 for legal costs and expenses.

[paragraph 59 of the judgment]

(i) Costs incurred at domestic level

12. The Court held that only costs incurred subsequently to the termination of the domestic proceedings could be considered.

[paragraph 60 of the judgment]

(ii) Costs incurred in the European proceedings

13. The Court considered that the total amount claimed was not reasonable as to quantum. Making an equitable assessment, the Court awarded Mr Gaskin, for legal fees and expenses, the sum of £11,000 less 8,295 French francs already paid in legal aid.

[paragraph 62 of the judgment and point 3 of the operative provisions]

The Court gave judgment at a plenary sitting, in accordance with Rule 50 of the Rules of Court, and was composed as follows:

Mr R. Ryssdal (Norwegian), President, Mr J. Cremona (Maltese), Mr Th6r Vilhjálmsson (Icelandic), Mrs D. Bindschedler-Robert (Swiss), Mr F. Gökcüklü (Turkish), Mr F. Matscher (Austrian), Mr L,E. Pettiti (French), Mr B. Walsh (Irish), Sir Vincent Evans (British), Mr R. Macdonald (Canadian), Mr C. Russo (Italian), Mr R. Bernhardt (German), Mr A. Spielmann (Luxemburger), Mr J. De Meyer (Belgian), Mr J.A. Carrillo Salcedo (Spanish), Mr N. Valticos (Greek), Mr S.K. Martens (Dutch), Judges, and also Mr M,A. Eissen, Registrar, and Mr H. Petzold, Deputy Registrar.

Several judges expressed separate opinions which are annexed to the judgment.

For further information, reference should be made to the text of the judgment, which is available on request and will be published shortly as volume 160 of Series A of the Publications of the Court (obtainable from Carl Heymanns Verlag KG, Luxemburger Strasse 449, D-5000 K6ln 41).

Subject to the discretion attached to his duties, the Registrar is responsible under the Rules of Court for replying to requests for information concerning the work of the Court, and in particular to requests from the press.

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5. *Eur. Court HR, Kruslin v. France judgment* of 24 April 1990, Series A no.176-A, and *Eur. Court HR, Huvig v. France judgment* of 24 April 1990, Series A no.176-B (Violation of Article 8 of the Convention). Telephone tapping carried out by senior police officer under warrant issued by investigating judge.

C (90) 50
24.4.1990

Press release issued by the Registrar of the European Court of Human Rights

JUDGMENTS IN THE KRUSLIN AND HUVIG CASES

In two judgments delivered at Strasbourg on 24 April 1990 in the Kruslin and Huvig cases, which concern France, the Court held unanimously that there had been a violation of Article 8 of the European Convention on Human Rights, as the interception of telephone conversations had infringed the applicants' right to respect for their private life and their correspondence.

The judgments were read out in open court by Mr Rolv Ryssdal, President of the Court.

I. BACKGROUND TO THE CASE

A. Principal facts

1. Kruslin case

In April 1985 the Indictment Division of the Toulouse Court of Appeal committed Mr Kruslin for trial at the Haute-Garonne Assize Court on charges of aiding and abetting a murder, aggravated theft and attempted aggravated theft. One item of evidence was the recording of a telephone conversation that the applicant had had on a line belonging to a third party, a recording that had been made at the request of an investigating judge at Saint-Gaudens in connection with other proceedings. An appeal on points of law brought by Mr Kruslin on this ground was dismissed by the Court of Cassation.

2. Huvig case

Mr Huvig, who, with his wife's assistance, ran a business at the material time, was the subject of a complaint in December 1973 alleging tax evasion, failure to make entries in accounts and false accounting.

A judicial investigation was begun by an investigating judge at Chaumont, who issued a warrant to the gendarmerie at Langres requiring them to monitor and transcribe all Mr and Mrs Huvig's telephone calls, both business and private ones. The telephone tapping took place over a period of 28 hours in April 1974.

Charges were brought against Mr and Mrs Huvig, who were convicted on nearly all of them by the Chaumont *tribunal de grande instance* in March 1982. In March 1983 the Dijon Court of Appeal upheld the convictions and increased the sentences. In April 1984 the Court of Cassation dismissed an appeal on points of law by the applicants.

B. Proceedings before the European Commission of Human Rights

The applications made by Mr and Mrs Huvig on 9 August 1984 and by Mr Kruslin on 16 October 1985 were declared admissible by the Commission on 6 July 1988 and 6 May 1988 respectively - the Huvigs' in part and Mr Kruslin's in its entirety.

Having attempted unsuccessfully to achieve friendly settlements, the Commission drew up two reports[1] on 14 December 1988 in which it established the facts and expressed the opinion (by 10 votes to 2) that there had been a breach of Article 8 of the Convention.

The Commission referred the cases to the Court on 16 March 1989.

II. SUMMARY OF THE JUDGMENTS[2]

I. Article 8 of the Convention

The Court found that the interceptions complained of amounted to interferences by a public authority with the exercise of the applicants' right to respect for their correspondence and their private life. It proceeded to ascertain whether such interferences were justified under paragraph 2 of Article 8.

[See paragraph 26 of the Kruslin judgment and paragraph 25 of the Huvig judgment.]

A. "In accordance with the law"

The expression "in accordance with the law", within the meaning of Article 8 § 2, required firstly that the impugned measure should have some basis in domestic law, but also referred to the quality of the law in question, requiring that it should be accessible to the person concerned, who had moreover to be able to foresee its consequences for him, and compatible with the rule of law.

[See paragraph 27 of the Kruslin judgment and paragrapn 26 of the Huvig judgment.]

1. Whether there had been a legal basis in French law

It had been a matter of dispute before the Commission and the Court whether the first condition had been satisfied. The applicants had said it had not been. The Government submitted that by "law" was meant the law in force in a given legal system, in this instance a combination of the written law - essentially Articles 81, 151 and 152 of the Code of Criminal Procedure - and the case-law interpreting it.

The Delegate of the Commission considered that in the case of the Continental countries, including France, only a substantive enactment of general application - whether or not passed by Parliament - could amount to a "law" for the purposes of Article 8 § 2 of the Convention.

[See paragraph 28 of the Kruslin judgment and paragraph 27 of the Huvig judgment.]

The Court pointed out, firstly, that it was primarily for the national authorities, notably the courts, to interpret and apply domestic law. It was therefore not for the Court to express an opinion contrary to theirs on whether telephone tapping ordered by investigating judges was compatible with Article 368 of the Criminal Code. For many years now, the courts - and in particular the Court of Cassation - had regarded Articles 81, 151 and 152 of the Code of Criminal Procedure as providing a legal basis for

[1] The reports are available to the press and the public on application to the Registrar of the Court.
[2] This summary by the Registry does not bind the Court.

telephone tapping carried out by a senior police officer under a warrant issued by an investigating judge. The Court held that settled case-law of that kind could not be disregarded. In relation to paragraph 2 of Article 8 of the Convention and other similar clauses, the Court had always understood the term "law" in its substantive sense, not its formal one, and had included both enactments of lower rank than statutes and unwritten law.

In sum, the Court held that the interferences complained of had had a legal basis in French law.

[See paragraph 29 of the Kruslin judgment and paragraph 28 of the Huvig judgment.]

2. "Quality of the law,'

The second requirement which emerged from the phrase "in accordance with the law" - the accessibility of the law - did not raise any problem. The same was not true of the third requirement, the law's "foreseeability" as to the meaning and nature of the applicable measures. As the Court had pointed out in an earlier judgment, Article 8 § 2 of the Convention did not merely refer back to domestic law but also related to the quality of the law, requiring it to be compatible with the rule of law.

[See paragraph 30 of the Kruslin judgment and paragraph 29 of the Huvig judgment.]

The Government had submitted that the Court had to he careful not to rule on whether French legislation conformed to the Convention in the abstract and not to give a decision based on legislative policy.

[See paragraph 31 of the Kruslin judgment and paragraph 30 of the Huvig judgment.]

Since the Court had to ascertain whether the interferences complained of were "in accordance with the law", it had to assess the relevant French "law" in force at the material times in relation to the requirements of the fundamental principle of the rule of law. Tapping and other forms of interception of telephone conversations represented a serious interference with private life and correspondence and accordingly had to be based on a "law" that was particularly precise. It was essential to have clear, detailed rules on the subject, especially as the technology available for use was continually becoming more sophisticated.

The Government had listed seventeen safeguards which they said were provided for in French law. These related either to the carrying out of telephone tapping or to the use made of the results or to the means of having any irregularities righted, and the Government had claimed that the applicants had not been deprived of any of them.

The Court did not in any way minimise the value of several of the safeguards. It noted, however, that only some of them were expressly provided for in Articles 81, 151 and 152 of the Code of Criminal Procedure. Others had been laid down piecemeal in judgments given over years, the great majority of them after the interceptions complained of by the applicants. Some had not yet been expressly laid down in the case law at all. Above all, the system did not for the time being afford sufficient safeguards against various possible abuses. For example, the categories of people liable to have their telephones tapped by judicial order and the nature of the offences which might give rise to such an order were nowhere defined. Nothing obliged a judge to set a limit on the duration of telephone tapping. Similarly unspecified were the procedure for drawing up the summary reports containing intercepted conversations; the precautions to be taken in order to communicate the recordings intact and in their entirety for possible inspection by the judge (who could hardly verify the number and length of the

original tapes on the spot) and by the defence; and the circumstances in which recordings might be or had to be erased or the tapes be destroyed, in particular where an accused had been discharged by an investigating judge or acquitted by a court. The information provided by the Government on these various points showed at best the existence of a practice, but a practice lacking the necessary regulatory control in the absence of legislation or case law.

In short, French law, written and unwritten, did not indicate with reasonable clarity the scope and manner of exercise of the relevant discretion conferred on the public authorities. This was truer still at the material times, so that the applicants had not enjoyed the minimum degree of protection to which citizens were entitled under the rule of law in a democratic society. The Court therefore held that there had been a breach of Article 8 of the Convention.

[See paragraphs 32-36 of the Kruslin judgment and point 1 of its operative provisions; and paragraphs 31-35 of the Huvig judgment and point 1 of its operative provisions.]

B. Purpose and necessity of the interference

The Court, like the Commission, did not consider it necessary to review compliance with the other requirements of paragraph 2 of Article 8.

[See paragraph 37 of the Kruslin judgment and paragraph 36 of Huvig judgment.]

II. Article 50 of the Convention

A. Kruslin case

The applicant claimed, firstly, compensation in the amount of 1,000,000 French francs (FRF) in respect of his fifteen-year prison sentence. He also sought reimbursement of FRF 70,000 in respect of lawyer's fees and expenses in the national proceedings. He made no claim for the proceedings at Strasbourg, as the Commission and the Court had granted him legal aid. The Government and the Delegate of the Commission expressed no opinion on the matter.

The Court considered that the finding that there been a breach of Article 8 afforded Mr Kruslin sufficient just satisfaction for the alleged damage and that it was accordingly unnecessary to award pecuniary compensation.

[See paragraphs 38-39 of the judgment and point 2 of the operative provisions]

As to the costs and expenses, the Court held that France was to pay the applicant the sum of FRF 20,000 which he had sought in respect of one set of national proceedings. It dismissed the remainder of his claims.

[See paragraph 40 of the judgment and points 3 and 4 of the operative provisions.]

B. Huvig case

The applicants had asked the Commission to award them "just compensation", but before the Court they had not sought either compensation or reimbursement of costs and expenses.

As these were not matters which the Court had to examine of its own motion, it found that it was unnecessary to apply Article 50 in this case.

[See paragraphs 37-38 of the judgment and point 2 of the operative provisions.]

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In accordance with the Convention, the judgments were delivered by a Chamber composed of seven judges, namely Mr R. Ryssdal (Norwegian), President, Mrs D. Bindschedler-Robert (Swiss), Mr F. Gölcüklü (Turkish), Mr F. Matscher (Austrian), Mr L.-E. Pettiti (French), Mr B. Walsh (Irish) and Sir Vincent Evans (British), and also of Mr M.-A. Eissen, Registrar, and Mr H. Petzold, Deputy Registrar.

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For further information, reference should be made to the text of the judgments, which are available on request and will be published shortly as volume 176 of Series A of the Publications of the Court (obtainable from Carl Heymanns Verlag KG, Luxemburger Strasse 449, D - 5000 Köln 41).

Subject to his duty of discretion, the Registrar is responsible under the Rules of Court for replying to requests for information concerning the work of the Court, and in particular to enquiries from the press.

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6. *Eur. Court HR, Niemietz v. Germany judgment* of 16 December 1992, Series A no.251-B (Violation of Article 8 of the Convention). Search of a lawyer's office in course of criminal proceedings against a third party.

555
16.12.92

Press release issued by the
Registrar of the European Court of Human Rights

JUDGMENT IN THE CASE OF NIEMIETZ v. GERMANY

In a judgment delivered at Strasbourg on 16 December 1992 in the case of Niemietz v. Germany, the European Court of Human Rights held unanimously that the search of the applicant's law office had given rise to a violation of Article 8 of the European Convention on Human Rights (right to respect for private and family life, home and correspondence). It dismissed unanimously his claim for just satisfaction under Article 50.

The judgment was read out in open court by Mr Rolv Ryssdal, the President of the Court.

I. BACKGROUND TO THE CASE

A. Principal facts

On 9 December 1985 a letter concerning criminal proceedings pending before the Freising District Court was sent by telefax from the Freiburg post office to a judge of that court. It bore the signature "Klaus Wegner" - possibly a fictitious person - followed by the words "on behalf of the Anti-clerical Working Group of the Freiburg Bunte Liste". The applicant had for some years been chairman of the Bunte Liste, which is a local political party, and the colleague with whom he shared his office had also been active on its behalf.

2. In view of the contents of the letter, criminal proceedings were subsequently instituted against Klaus Wegner for insulting behaviour. In the course of the investigations the Munich District Court issued, on 8 August 1986, a warrant to search, inter alia, the applicant's office for and to seize any documents revealing the identity of Klaus Wegner; the reason given in the warrant was that mail for the Bunte Liste was sent to a post-office box the contents of which had, until 1985, been forwarded to the applicant's office. The search was effected on 13 November 1986; four cabinets with data concerning clients and six individual files were examined but no relevant documents were found.

3. On 27 March 1987 the Munich I Regional Court declared the applicant's appeal against the search warrant to be inadmissible, on the ground that it had already been executed. It considered that there was no legal interest in having the warrant declared unlawful and it also noted, amongst other things, that it could not be assumed that mail for the Bunte Liste could concern a lawyer-client relationship. On 18 August 1987 the Federal Constitutional Court declined to accept for adjudication the applicant's constitutional complaint against the search warrant and the Regional Court's decision, on the ground that it did not offer sufficient prospects of success.

B. Proceedings before the European Commission of Human Rights

The application to the Commission, which was lodged on 15 February 1988, was declared partly admissible on 5 April 1990.

Having attempted unsuccessfully to secure a friendly settlement, the Commission drew up a report[1] on 29 May 1991, in which it established the facts and expressed the unanimous opinion that there had been a violation of Article 8 of the Convention and that no separate issue arose under Article 1 of Protocol No. 1.

The Commission referred the case to the Court on 12 July 1991.

II. SUMMARY OF THE JUDGMENT[2]

I. Article 8 of the Convention

1. The Court held firstly that there had been an interference with the applicant's rights under Article 8, thereby rejecting the German Government's argument that that provision did not afford protection against the search of a lawyer's office. It noted the following in this connection.

(a) Respect for private life comprised to a certain degree the right to establish and develop relationships with others. There was no reason of principle why the notion of "private life" should be taken to exclude professional or business activities, since it was in the course of their working lives that the majority of people had a significant opportunity of developing such relationships. To deny the protection of Article 8 on the ground that the measure complained of related only to professional activities could lead to an inequality of treatment, in that such protection would remain available to a person whose professional and non-professional activities could not be distinguished.

(b) In certain Contracting States the word "home" had been accepted as extending to business premises, an interpretation which was consonant with the French text of Article 8 ("domicile"). A narrow interpretation of "home" could give rise to the same risk of inequality of treatment as that mentioned at (a) above.

(c) To interpret the words "private life" and "home" as including certain professional or business activities or premises would be consonant with the object and purpose of Article 8; the entitlement of the Contracting States to "interfere" under paragraph 2 of that provision would remain and might be more far-reaching for such activities or premises than would otherwise be the case.

(d) In addition, it was clear from the particular circumstances of the case that the search operations must have covered "correspondence" within the meaning of Article 8.

[see paragraphs 27-33 of the judgment]

[1] Available to the press and the public on request to the Registrar of the Court.

[2] This summary by the Registry does not bind the Court.

2. In the Court's opinion, the interference in question was "in accordance with the law" and pursued aims that were legitimate under paragraph 2 of Article 8, but was not "necessary in a democratic society". It considered in particular that, having regard to the materials that were in fact inspected, the search impinged on professional secrecy to an extent that was disproportionate in the circumstances.

3. The Court thus concluded that there had been a breach of Article 8.

[see paragraphs 34-38 of the judgment and point 1 of the operative provisions]

II. Article 1 of Protocol No. 1

Mr Niemietz submitted that, by impairing his reputation as a lawyer, the search had violated Article 1 of Protocol No. 1. The Court concluded that no separate issue arose under this provision.

[see paragraphs 39-40 of the judgment and point 2 of the operative provisions]

III. Article 50 of the Convention

The Court dismissed the applicant's claim for compensation under Article 50: he had not established any pecuniary damage or supplied particulars of his costs and expenses, and the finding of a violation of Article 8 constituted sufficient just satisfaction for any non-pecuniary damage he might have sustained.

[see paragraphs 41-43 of the judgment and point 3 of the operative provisions]

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In accordance with the Convention the judgment was delivered by a Chamber composed of nine judges, namely, Mr R. Ryssdal (Norwegian), President, Mr R. Bernhardt (German), Mr L.-E. Pettiti (French), Mr B. Walsh (Irish), Mr C. Russo (Italian),
Mr A. Spielmann (Luxemburger), Mr N. Valticos (Greek), Mr A.N. Loizou (Cypriot) and Sir John Freeland (British), and also of Mr M.-A. Eissen, Registrar, and Mr H. Petzold, Deputy Registrar.

For further information, reference should be made to the text of the judgment, which is available on request and will be published shortly as volume 251-B of Series A of the Publications of the Court (available from Carl Heymanns Verlag KG, Luxemburger Strasse 449,
D - 5000 Köln 41).

Subject to his duty of discretion, the Registrar is responsible under the Rules of Court for replying to requests for information concerning the work of the Court, and in particular to enquiries from the press.

7. *Eur. Court HR, Murray v. The United Kingdom judgment* of 28 October 1994, Series A no. 300-A (No violation of the Convention). As far as a person suspected of terrorism is concerned, entry into and search of her home for the purpose of effecting the arrest; record of personal details and photograph without her consent.

482
28.10.1994

Press release issued by the
Registrar of the European Court of Human Rights

JUDGMENT IN THE CASE OF MURRAY v. THE UNITED KINGDOM

In a judgment delivered at Strasbourg on 28 October 1994 in the case of Murray v. the United Kingdom, the European Court of Human Rights, sitting as a Grand Chamber, found no violation of the European Convention on Human Rights in relation to a number of complaints made by the six members of the Murray family. The applicants' complaints concerned Mrs Murray's arrest and detention by the Army under special criminal legislation enacted to deal with acts of terrorism connected with the affairs of Northern Ireland. In particular, the Court held that there had been no violation of Mrs Murray's right to liberty and security of person as guaranteed by Article 5 § 1 (fourteen votes to four), or of her right under Article 5 § 2 to be informed promptly of the reasons for her arrest (thirteen votes to five), or of her right under Article 5 § 5 to compensation for wrongful arrest (thirteen votes to five), or of the six applicants' right under Article 8 to respect for their private and family life and their home (fifteen votes to three). The Court further ruled that it was not necessary to examine under Article 13 one of Mrs Murray's claims as to the lack of an effective domestic remedy for the alleged violations of the Convention and that, for the rest, there had been no violation of Article 13 (unanimously).

The judgment was read out in open court by Mr Rolv Ryssdal, President of the Court.

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I. BACKGROUND TO THE CASE

A. Principal facts

1. The six applicants are Irish citizens. The first applicant, Mrs Margaret Murray, and the second applicant, Mr Thomas Murray, are husband and wife. The other four applicants (Mark, Alana, Michaela and Rossina Murray) are their children. At the relevant time in 1982 all six applicants resided together in the same house in Belfast, Northern Ireland.

2. In June 1982 two of the first applicant's brothers were convicted in the United States of America ("USA") of arms offences connected with the purchase of weapons for the Provisional Irish Republican Army ("Provisional IRA").

3. Mrs Murray was arrested by the Army at the family home in Belfast at 7.00 a.m. on 26 July 1982, under section 14 of the Northern Ireland (Emergency Provisions) Act 1978. This provision, as construed by the domestic courts, empowered the Army to arrest and detain for up to four hours a person suspected of the commission of a criminal offence, provided that the suspicion of the arresting officer was honestly

and genuinely held. According to the Army, Mrs Murray was arrested on suspicion of involvement in the collection of money for the purchase of arms for the Provisional IRA in the USA. While she was dressing, the other applicants were roused and asked to assemble in the living room. The soldiers in the meantime recorded details concerning the applicants and their home. On being asked twice by Mrs Murray under what section of the legislation she was being arrested, the arresting officer, a woman corporal, replied, "Section 14".

Mrs Murray was then taken to Springfield Road Army screening centre and detained two hours for questioning. She refused to answer any questions, save to give her name. At some stage during her stay at the centre she was photographed without her knowledge or consent. She was released at 9.45 a.m. without charge.

4.In 1984 Mrs Murray brought an unsuccessful action before the High Court for false imprisonment and other torts against the Ministry of Defence.

Evidence was given by Mrs Murray and by the corporal. Mrs Murray acknowledged that she had been in contact with her brothers and had been to the USA. Although the corporal did not have a precise recollection of the interrogation of Mrs Murray at the Army centre, she remembered that questions had been asked about money and about America. The trial judge accepted the testimony of the corporal as being truthful.

Mrs Murray appealed, again challenging the legality of her arrest and certain related matters in the Court of Appeal, which rejected her claims in February 1987. The Court of Appeal granted her leave to appeal to the House of Lords. This appeal was dismissed in May 1988.

5. The 1978 Act under which Mrs Murray was arrested forms part of the special legislation enacted in the United Kingdom in an attempt to deal with the threat of terrorist violence in Northern Ireland. Section 14 was replaced in 1987 by a provision requiring that an arrest be based on reasonable suspicion.

B. Proceedings before the European Commission of Human Rights

1. In the application lodged with the Commission on 28 September 1988, Mrs Murray complained that her arrest and detention for questioning had given rise to a violation of Article 5 §§ 1 and 2, for which she had had no enforceable right to compensation as guaranteed by Article 5 § 5; and that the taking and keeping of a photograph and personal details about her had been in breach of her right to respect for private life under Article 8. The other five applicants alleged a violation of Article 5 §§ 1, 2 and 5 as a result of being required to assemble for half an hour in one room of their house while the first applicant prepared to leave with the Army. They further argued that the recording and retention of certain personal details about them, such as their names and relationship to the first applicant, had violated their right to respect for private life under Article 8. All six applicants claimed that the entry into and search of their home by the Army were contrary to their right to respect for their private and family life and their home under Article 8 of the Convention; and that, contrary to Article 13, no effective remedies existed under domestic law in respect of their foregoing complaints under the Convention.

2. On 10 December 1991 the Commission declared admissible all the first applicant's complaints and the other applicants' complaint under Article 8 in connection with the entry into and search of the family home. The remainder of the application was declared inadmissible.

3. In its report of 17 February 1993[1] the Commission expressed the opinion that

- in the case of the first applicant, there had been a violation of Article 5 § 1 (eleven votes to three), of Article 5 § 2 (ten votes to four) and of Article 5 § 5 (eleven votes to three);

- there had been no violation of Article 8 (thirteen votes to one);

- it was not necessary to examine further the first applicant's complaint under Article 13 concerning remedies for arrest, detention and the lack of information about the reasons for arrest (thirteen votes to one);

- in the case of the first applicant, there had been no violation of Article 13 in relation to either the entry and search of her home (unanimously) or the taking and keeping of a photograph and personal details about her (ten votes to four).

II. SUMMARY OF THE JUDGMENT[2]

A. General approach

1. As stated in previous judgments, for the purposes of interpreting and applying the relevant provisions of the Convention, due account had to be taken of the special nature of terrorist crime, the threat it poses to democratic society and the exigencies of dealing with it.

[See paragraph 47 of the judgment]

B. Alleged breach of Article 5 § 1 of the Convention

2. Mrs Murray argued that, contrary to paragraph 1 (c) of Article 5, she had not been arrested on "reasonable suspicion" of having committed a criminal offence and that the purpose of her arrest and subsequent detention had not been to bring her before a competent legal authority.

1. "Reasonable suspicion"

3. It was relevant but not decisive that the domestic legislation at the time provided for an honest and genuine, rather than reasonable, suspicion. Having a "reasonable suspicion" presupposed the existence of facts or information which would satisfy an objective observer that the person concerned might have committed the offence.

4. The level of "suspicion" required was not the same as that for the bringing of a charge. In this respect, the length of the deprivation of liberty at risk (a maximum of four hours under section 14 of the 1978 Act) might also be material.

5. What could be regarded as "reasonable" in relation to a suspicion depended on all the circumstances of the particular case. In view of the difficulties inherent in the investigation and prosecution of terrorist offences in Northern Ireland, the "reasonableness" of the suspicion justifying such arrests could not

[1] The report is available to the press and the public on request to the Registrar of the Court.

[2] This summary by the Registry does not bind the Court.

always be judged according to the same standards that were applied when dealing with conventional crime. Contracting States could not be asked to establish the reasonableness of the suspicion grounding the arrest of a suspected terrorist by disclosing information or facts leading to confidential sources, thereby placing the lives and safety of others in danger. The Court accepted that the power of arrest granted to the Army by section 14 of the 1978 Act represented a bona fide attempt by a democratically elected parliament to deal with terrorist crime under the rule of law; and it was prepared to attach some credence to the United Kingdom Government's declaration as to the existence of reliable but confidential information grounding the suspicion against Mrs Murray. Nonetheless, the Court had to be furnished with at least some facts or information capable of satisfying it that the arrested person was reasonably suspected of having committed the alleged offence, particularly where domestic law had set a lower threshold by merely requiring honest suspicion.

6. In that connection, the Court had regard to relevant findings of fact made by the domestic courts in the civil proceedings brought by Mrs Murray, to the recent conviction of her brothers in the USA of offences connected with the purchase of arms for the Provisional IRA, to her visits to the USA and her contacts with her brothers there, and to the collaboration with "trustworthy" persons residing in Northern Ireland which was implied in the offences of which her brothers were convicted.

7. The Court concluded that, in the particular circumstances, there did exist sufficient facts or information which would provide a plausible and objective basis for a suspicion that Mrs Murray may have committed the offence of involvement in the collection of funds for the Provisional IRA.

[See paragraphs 50-63 of the judgment]

2. Purpose of the arrest

8. In Mrs Murray's submission it was clear from the surrounding circumstances that she had not been arrested for the purpose of bringing her before the "competent legal authority" but merely for the purpose of interrogating her with a view to gathering general intelligence.

9. The domestic courts, after hearing witnesses, had found that the purpose of her arrest had been to establish facts concerning the offence of which she was suspected. No cogent elements had been produced in the proceedings before the Convention institutions which could lead the Court to depart from that finding of fact. It could be assumed that, had the suspicion against Mrs Murray been confirmed, she would have been charged with a criminal offence and brought before a court. Her arrest and detention had therefore been effected for the purpose specified in paragraph 1 (c) of Article 5.

[See paragraphs 64-69 of the judgment]

3. Conclusion

10. The Court therefore concluded that there had been no violation of Article 5 § 1 in respect of the first applicant.

[See paragraph 70 of the judgment and point 1 of the operative provisions]

C. Alleged breach of Article 5 § 2 of the Convention

11. Mrs Murray submitted that at no time during her arrest or detention had she been given any or sufficient information as to the grounds for her arrest.

12. The Court pointed out that whether the content and promptness of the information conveyed were sufficient had to be assessed in each case according to its special features. Whilst the reasons for the arrest had not been sufficiently indicated when Mrs Murray was taken into custody, they had been brought to her attention during her subsequent interrogation. Moreover, the interval of a few hours that had elapsed between arrest and interrogation could not be regarded as falling outside the constraints of time imposed by the notion of promptness.

13. The Court thus concluded that there had been no breach of Article 5 § 2.

[See paragraphs 71-80 of the judgment and point 2 of the operative provisions]

D. Alleged breach of Article 5 § 5 of the Convention

14. No violation of paragraphs 1 or 2 of Article 5 having been found, no issue arose under paragraph 5.

[See paragraphs 81-82 of the judgment and point 3 of the operative provisions]

E. Alleged violation of Article 8 of the Convention

15. All six applicants claimed to be the victims of a violation of Article 8. They complained about the entry into and search of their family home by the Army, including the confinement of the family members other than Mrs Murray for a short while in one room. Mrs Murray also objected to the recording (at the Army centre) of personal details concerning herself and her family, as well as the photograph which was taken of her without her knowledge or consent.

16. The Court held, however, that the resultant interferences with the applicants' exercise of their right to respect for their private and family life and their home were justified under paragraph 2 of Article 8.

17. In the first place each of the various measures complained of was found to have been "in accordance with the law".

18. The Court further considered that the measures, which pursued the legitimate aim of the prevention of crime, were "necessary in a democratic society". In striking the balance between the exercise by the individual of the right guaranteed to him or her under Article 8 § 1 and the necessity for the State to take effective measures for the prevention of terrorist crime, regard had to be had to the responsibility of an elected government in a democratic society to protect its citizens and its institutions against the threats posed by organised terrorism and to the special problems involved in the arrest and detention of persons suspected of terrorist-linked offences. The domestic courts had rightly adverted to the conditions of extreme tension under which such arrests in Northern Ireland had to be carried out. As regards the entry and search, the means employed by the authorities could not be considered to have been disproportionate to the legitimate aim pursued. A similar conclusion was arrived at as regards the recording and retaining of personal details, including the photograph of Mrs Murray.

[See paragraphs 83-95 of the judgment and point 4 of the operative provisions]

F. Alleged breach of Article 13 of the Convention

19. Mrs Murray submitted that, contrary to Article 13, she had had no remedy under domestic law in respect of her claims under Articles 5 and 8.

20. The Court first held that it was not necessary to examine under Article 13 her complaint concerning remedies for her claims as to arrest, detention and lack of information about the reasons for her arrest (Article 5 §§ 1 and 2), since she had at no stage raised any complaint under Article 5 § 4, the Convention provision which sets forth a specific entitlement to a remedy in relation to arrest and detention.

21. In relation to her claims as to entry and search and as to the taking and retention of a photograph and personal details (Article 8), the Court found that in both these regards effective remedies were available to her under domestic law. Her feeble prospects of success in the light of the particular circumstances of her case did not detract from the effectiveness of the remedies for the purpose for the purpose of Article 13. Consequently, the facts of her case did not disclose a violation of Article 13.

[See paragraphs 96-103 of the judgment and points 5 and 6 of the operative provisions]

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In accordance with the Rules of Court, judgment was delivered by a Grand Chamber composed of Mr R. Ryssdal (Norwegian), President, Mr R. Bernhardt (German), Mr F. Gölcüklü (Turkish), Mr R. Macdonald (Canadian), Mr A. Spielmann (Luxemburger), Mr S.K. Martens (Dutch), Mr I. Foighel (Danish), Mr R. Pekkanen (Finnish), Mr A.N. Loizou (Cypriot), Mr J.M. Morenilla (Spanish), Sir John Freeland (British), Mr A.B. Baka (Hungarian), Mr M.A. Lopes Rocha (Portuguese), Mr L. Wildhaber (Swiss), Mr G. Mifsud Bonnici (Maltese), Mr J. Makarczyk (Polish), Mr J. Jambrek (Slovenian) and Mr K. Jungwiert (Czech), Judges, and of Mr H. Petzold, Acting Registrar.

The joint dissenting opinion of three judges and the partly dissenting opinions of two other judges are annexed to the judgment.

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For further information, reference should be made to the text of the judgment, which is available on request and will be published shortly as volume 300-A of Series A of the Publications of the Court (available from Carl Heymanns Verlag KG, Luxemburger Strasse 449, D - 50939 Köln).

Subject to his duty of discretion, the Registrar is responsible under the Rules of Court for replying to requests for information concerning the work of the Court, and in particular to enquiries from the press.

8. *Eur. Court HR, Friedl v. Austria judgment* of 25 January 1995, application no. 15225/89 (Articles 8 and 13). (Struck out – arrangement). During a demonstration the police had photographed the applicant, checked his identity and taken down his particulars and no effective remedy had been available to him.

EUROPEAN COURT OF HUMAN RIGHTS

In the case of Friedl v. Austria ([3]),

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of Rules of Court A[4], as a Chamber composed of the following judges: Mr R. Ryssdal, President, Mr F. Matscher, Mr B. Walsh, Mr C. Russo, Mr A. Spielmann, Mr J. De Meyer, Mr R. Pekkanen, Mr A.B. Baka, Mr L. Wildhaber, and also of Mr H. Petzold, Registrar,

Having deliberated in private on 26 January 1995,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 9 September 1994, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 15225/89) against the Republic of Austria lodged with the Commission under Article 25 (art. 25) by an Austrian national, Mr Ludwig Friedl, on 5 June 1989.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Austria recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Articles 8 and 13 (art. 8, art. 13) of the Convention.

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of Rules of Court A, the applicant stated that he wished to take part in the proceedings and designated the lawyer who would represent him (Rule 30).

3. The Chamber to be constituted included ex officio Mr F. Matscher, the elected judge of Austrian nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 24 September 1994, in the presence of the Registrar, the President drew by lot the

[3] The case is numbered 28/1994/475/556. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

[4] Rules A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (P9) and thereafter only to cases concerning states not bound by that Protocol (P9). They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

names of the other seven members, namely Mr B. Walsh, Mr C. Russo, Mr A. Spielmann, Mr J. De Meyer, Mr R. Pekkanen, Mr A.B. Baka and Mr L. Wildhaber (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

4. As President of the Chamber (Rule 21 para. 5), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Austrian Government ("the Government"), the applicant and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38).

5. On 23 December 1994 the Government communicated to the Registrar the text of an agreement concluded with the applicant on 21 December 1994. On 11 and 16 January 1995 the applicant's lawyer confirmed this agreement. The Delegate of the Commission was consulted and gave his opinion on 18 January 1995.

AS TO THE FACTS

I. Circumstances of the case

6. Mr Ludwig Friedl, who lives in Vienna, was one of the participants in a demonstration that he had organised with other persons with a view to drawing public attention to the plight of the homeless. The demonstration began on 12 February 1988 in an underground passage for pedestrians, the Karlsplatz-Opera passage in Vienna. A round-the-clock sit-in of some fifty persons was organised to coincide with the demonstration, which was supposed to last until 24 February.

On 16 February another sit-in began at the same place, organised by the Kurdistan-Komitee; it was due to continue until 27 February.

During these demonstrations the authorities received numerous complaints from pedestrians concerning the nuisance caused by the demonstrators, who slept and did their cooking on the spot.

7. On 19 February 1988, at around 1 a.m., officers of the Vienna-centre police station (*Bezirkspolizeikommissariat*), accompanied by municipal officials, instructed the homeless persons to leave. They informed the persons concerned that their demonstration required an authorisation under section 82 (1) of the Road Traffic Act (*Straßenverkehrsordnung*), which prohibited any obstruction to pedestrian traffic. As the demonstrators did not immediately comply, the identities of fifty-seven of them were taken down. The demonstrators finally agreed to leave.

8. In the course of this operation, which ended at about 2.45 a.m., the police took photographs for use in the event of prosecution. The whole proceedings were also recorded on video-cassette.

The applicant claims that he was photographed individually. According to the Government, however, the police did not seek to establish the identities of the demonstrators who had been photographed. Moreover, the personal information recorded and the photographs were not entered into a data-processing system. The administrative files concerning the demonstration were, according to the normal practice, to be destroyed, together with the photographs, in the year 2001, ten years after they were consulted for the last time.

9. On 21 March 1988 Mr Friedl complained to the Constitutional Court (*Verfassungsgerichtshof*) that, in breach of his rights under in particular Articles 8 and 11 of the Convention, police officers had, on

17 and 19 February 1988, photographed him, established his identity using coercion, taken down his particulars and broken up the meeting.

10. On 13 December 1988 the Constitutional Court ruled that it lacked jurisdiction to entertain the applicant's complaints concerning the photographs, the verification of his identity and the taking down of his particulars. It noted that in this instance the police had not had recourse to physical force or coercion. According to its settled case-law concerning Article 144 para. 1 of the Constitution (*Bundesverfassungsgesetz*, see paragraph 11 below), its power of review extended only to police action which constituted an order (*Befehl mit unverzüglichem Befolgungsanspruch*) or which entailed the use of physical force (*Anwendung physischen Zwangs*), and which could accordingly be regarded as the exercise by an administrative authority of a direct power to give orders to and to use coercion against a particular individual (*Ausübung unmittelbarer verwaltungsbehördlicher Befehls- und Zwangsgewalt gegen eine bestimmte Person*). Even if there had been an interference with the exercise of a right guaranteed under Article 8 (art. 8) of the Convention, no question arose under Article 13 (art. 13) of the Convention, as that provision could not extend the scope of the jurisdiction of the Constitutional Court.

Mr Friedl's other complaints were dismissed on the ground that there was nothing to suggest that they disclosed a violation of constitutional rights.

II. Relevant domestic law

11. Article 144 para. 1 of the Federal Constitution provides that the Constitutional Court has jurisdiction to hear complaints alleging the violation of constitutional rights and directed against formal decisions of administrative authorities or against the exercise by the authorities of a direct power to give orders to and use coercion against a particular individual.

12. On 1 May 1993 the Security Services Act (*Sicherheitspolizeigesetz*) entered into force. It contains provisions dealing, inter alia, with the interrogation, arrest and detention of persons, the use of direct official coercion and the gathering, use and storing of personal data, including photographs and recordings.

By virtue of section 88 (1) of that Act, independent administrative tribunals (*Unabhängige Verwaltungssenate*) have jurisdiction to hear complaints from persons alleging a violation of their rights resulting from the exercise by a security service of a direct power to give orders and to use coercion (*Ausübung unmittelbarer sicherheitsbehördlicher Befehls- und Zwangsgewalt*). Section 88 (2) of the Act extends the jurisdiction of the independent administrative tribunals to all the other measures taken by such authorities, except decisions (*Bescheide*).

Section 88 (4) provides that a member of the competent administrative tribunal is to examine complaints lodged under section 88 (2), applying in particular section 67 c of the 1991 General Administrative Procedure Act (*Allgemeines Verwaltungs-verfahrensgesetz*). Pursuant to the latter provision, if the tribunal does not dismiss the complaint, it must declare the impugned measure unlawful. If that measure is still in force, the competent authority must without delay take steps to bring the legal position into line with the tribunal's decision.

PROCEEDINGS BEFORE THE COMMISSION

13. Mr Friedl applied to the Commission on 5 June 1989. Relying on Article 8 (art. 8) of the Convention, he complained that, during the demonstration, the police had photographed him, checked his identity and taken down his particulars. He maintained in addition that no effective remedy had been available to him in this connection, as should have been the case under Article 13 (art. 13). Finally he claimed that the breaking up of the demonstration by the police had been contrary to Article 11 (art. 11).

14. On 30 November 1992 the Commission declared the application (no. 15225/89) admissible as regards the complaints under Articles 8 and 13 (art. 8, art. 13) and inadmissible for the rest. In its report of 19 May 1994 (Article 31) (art. 31), the Commission expressed the opinion that there had been no breach of Article 8 (art. 8) (unanimously). It further took the view that there had been a breach of Article 13 (art. 13) as regards a remedy in respect of the gathering and taking down of personal data (nineteen votes to four), but not as regards a remedy in respect of the taking of photographs and their storing (fourteen votes to nine). The full text of the Commission's opinion and of the two separate opinions contained in the report is reproduced as an annex to this judgment ([5]).

AS TO THE LAW

15. On 23 December 1994 the Court received from the Agent of the Government a copy of the following text, signed on 21 December by himself and the applicant's lawyer.

"...

(1) The Federal Government of the Republic of Austria will pay to the applicant a sum amounting to altogether AS 148,787.60 inclusive of all taxes as compensation in respect of any possible claims relating to the present application. This sum includes AS 98,787.60 in respect of the counsel's fees and expenses incurred in the domestic proceedings and before the Strasbourg organs. This amount will be paid to the applicant's counsel, Mr Thomas Prader in Vienna ...

(2) All the photographs in question including the negatives will be destroyed by the Austrian Government.

(3) The applicant declares his application settled.

(4) The applicant waives any further claims against the Federal Republic of Austria relating to the present application.

(5) The Austrian Federal Government will take the necessary steps to implement the terms of the friendly settlement within one month after the Court has decided to strike the case out of its list."

In the same letter the Agent of the Government requested the Court to strike the case out of its list. He drew attention to the fact that, since the entry into force of the Security Services Act (see paragraph 12

[5] Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 305-B of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the Registry.

above), the independent administrative tribunals have had jurisdiction to hear complaints such as those raised in this instance by Mr Friedl before the Constitutional Court.

By letters of 2 and 9 January 1995 to the Registrar, the applicant's lawyer confirmed the agreement concluded and requested the Court to strike the case out of the list.

16. The Delegate of the Commission was consulted in accordance with Rule 49 para. 2 of Rules of Court A and expressed the view that the settlement was consistent with the human rights defined in the Convention.

17. The Court takes formal note of the friendly settlement reached between the Government and Mr Friedl. It discerns no reason of public policy militating against striking the case out of the list (Rule 49 paras. 2 and 4).

FOR THESE REASONS, THE COURT UNANIMOUSLY

Decides to strike the case out of the list.

Done in English and in French, and notified in writing under Rule 55 para. 2, second sub-paragraph, of Rules of Court A on 31 January 1995.

Signed: Rolv RYSSDAL President
Signed: Herbert PETZOLD Registrar

9. *Eur. Court HR, McMichael v. The United Kingdom judgment* of 24 February 1995, Series A no. 307-B (Violation of Articles 8 and 6 of the Convention). Non-disclosure to applicants of some confidential documents submitted in care proceedings.

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24.2.95

Press release issued by the
Registrar of the European Court of Human Rights

JUDGMENT IN THE CASE OF McMICHAEL v. THE UNITED KINGDOM

The European Court of Human Rights delivered judgment in Strasbourg on 24 February 1995 in the case of McMichael v. the United Kingdom. The Court held that there had been a violation of Articles 6 § 1 and 8 of the European Convention of Human Rights in respect of the second applicant, Mrs McMichael (unanimously), and of Article 8 in respect of the first applicant, Mr McMichael (by six votes to three), as a result of their inability to have sight of certain documents submitted in legal proceedings determining the custody and access arrangements in regard to their son who had been taken into the care of the local authority. The Court further held (unanimously) that there had been no violation of Articles 6 § 1 or 14 in respect of the first applicant.

The judgment was read out in open court by Mr Rolv Ryssdal, President of the Court.

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I. BACKGROUND TO THE CASE

A. Principal facts

1. The applicants, Mr Antony and Mrs Margaret McMichael, live in Glasgow, Scotland. On 29 November 1987 the second applicant gave birth to a son, A. The applicants were not then married and Mr McMichael was not named on the birth certificate as the father of the child.

2. As the mother suffered from a mental illness, A. was taken into care on 11 December 1987 at the request of the Strathclyde Regional Council. The case was brought before a children's hearing on 17 December but postponed to a later date. The function of the children's hearing is to decide whether a child requires compulsory measures of care and, if so, which measures are appropriate. The second applicant, but not the first applicant who did not have parental rights, had the status of a party to the proceedings before the children's hearing.

3. On 18 February 1988 Mr McMichael's name was added to the birth certificate, but this did not give him parental rights. He did not, in his capacity as natural father of A., ever make an application for an order for parental rights - an application which, at least as from 18 February 1988, would have been dealt with speedily, given the mother's consent.

4. From December 1987 onwards the children's hearing took a number of decisions determining the custody and access arrangements in relation to A., notably continuing the compulsory measure of care, placing A. with foster parents and refusing the applicant’s access to A. On two occasions (4 February and 13 October 1988) when the second applicant attended with the first applicant acting as her representative, the children's hearing had before it certain documents (including social reports on A.)

which - pursuant to the applicable procedural rules - were not disclosed to the applicants but the substance of which was explained to them.

5. The second applicant appealed to the Sheriff Court against the decision of 4 February 1988 by the children's hearing but she subsequently abandoned the appeal. She also appealed against a decision of 5 September 1989 by the children's hearing - a hearing at which similar non-disclosure of a report on A. had occurred. This appeal was upheld and the case remitted to the children's hearing. It would appear that, in accordance with the usual practice, in both appeals documents lodged with the Sheriff Court were not made available to her.

6. The applicants were married on 24 April 1990 and Mr McMichael thereby obtained parental rights. However, at the request of the Regional Council, A. was freed for adoption on 14 October 1990, the competent court having decided to dispense with the applicants' consent on the basis that they were unreasonably withholding it. On 25 May 1993 the court granted an application by the foster parents to adopt A.

B. Proceedings before the European Commission of Human Rights

1. In their application of 11 October 1989 to the Commission, the applicants complained that they had been deprived of the care and custody of their son A., and thereby of their right to found a family, as well as of access to the child who had ultimately been freed for adoption. They alleged that they had not received a fair hearing before the children's hearing and not had access to confidential reports and other documents submitted to the hearing. The first applicant also submitted that, as a natural father, he had no legal right to obtain custody of A. or to participate in the custody or adoption proceedings and that, accordingly, he had been discriminated against.

2. On 8 December 1992 the Commission declared inadmissible, on the ground of being manifestly ill-founded, the applicants' complaints directed against the taking of A. into care, the termination of access to A. and the freeing of A. for adoption. The remainder of the application was declared admissible. In its report[1] of 31 August 1993 it expressed the opinion:

(a) unanimously, that there had been a violation of Article 8 in respect of both applicants (right to respect for family life);

(b) by eleven votes to two, that there had been no violation of Article 6 § 1 (right to a fair trial in civil matters) in respect of the first applicant;

(c) unanimously, that there had been a violation of Article 6 § 1 in respect of the second applicant;

(d) unanimously, that there had been no violation of Article 14 (prohibition of discrimination) in respect of the first applicant.

[1] Available to the press and the public on request to the Registrar of the Court.

II. SUMMARY OF THE JUDGMENT[2]

A. Scope of the issues before the Court and admissibility of evidence

1. The Court had no jurisdiction to entertain the applicants' reiterated complaints under Article 8 concerning the merits of the care, access and adoption measures, since these complaints had been declared inadmissible at the outset by the Commission.

[See paragraph 71 of the judgment and point 1 of the operative provisions]

2. In the particular circumstances the Court did not consider it necessary to rule whether the scope of the case as referred to the Court extended to a further complaint, not dealt with in the Commission's report or admissibility decision, concerning the fairness of the adoption proceedings.

[See paragraph 72 of the judgment and point 2 of the operative provisions]

3. The Court ruled that it was not precluded from taking cognisance of certain material, submitted by the Government, to which the applicants had objected.

[See paragraph 73 of the judgment]

B. Alleged violation of Article 6 § 1

4. The applicants alleged violation of Article 6 § 1 (the right to a fair trial in the determination of one's "civil rights") by reason of both applicants' inability to have sight of certain documents submitted in the care proceedings concerning their child, A.

1. Applicability

5. It was not contested that in relation to the second applicant (Mrs McMichael) Article 6 § 1 was applicable to the care proceedings before the children's hearing and the Sheriff Court. However, the Court held that Article 6 § 1 had no application to the complaint of the first applicant (Mr McMichael). He had not sought to obtain legal recognition of his status as (natural) father of A. As a consequence, he had not been a party along with the mother in the care proceedings. Those proceedings had not therefore involved the determination of any of his "civil rights" under Scots law in respect of A.

[See paragraphs 74-77 of the judgment and point 3 of the operative provisions]

2. Compliance

6. The Government conceded the absence of a fair trial before the children's hearing on 4 February and 13 October 1988 and before the Sheriff Court.

7. As regards the children's hearing the Court recognised that in this sensitive domain of family law there may be good reasons for opting for an adjudicatory body that does not have the composition or procedures of a court of law of the classic kind. Nevertheless, the right to a fair - adversarial - trial means the opportunity to have knowledge of and comment on the observations filed or evidence adduced by the other party. The lack of disclosure to Mrs McMichael of such vital documents as social reports was

[2] This summary by the Registry does not bind the Court.

capable of affecting her ability not only to influence the outcome of the children's hearing in question but also to assess the prospects of making an appeal to the Sheriff Court.

8. As a matter of practice certain documents (notably social reports) lodged with the Sheriff Court were not made available to appellant parents. The requirement of an adversarial trial had not been fulfilled before the Sheriff Court, any more than it had been on the relevant occasions before the children's hearing.

9. In sum, Mrs McMichael had not received a "fair hearing" within the meaning of Article 6 § 1 at either of the two stages of the care proceedings.

[See paragraphs 78-84 of the judgment and point 4 of the operative provisions]

C. Alleged violation of Article 8

10. The applicants further alleged a violation of their right to respect for their family life under Article 8 by reason of the non-disclosure to both them of the confidential documents submitted in the care proceedings.

11. Whilst Article 8 contains no explicit procedural requirements, the decision-making process leading up to measures of interference with family life (such as care, custody and access measures concerning children) must be fair and such as to afford due respect to the interests protected by the Article.

12. Mr McMichael had not been associated in the care proceedings as a party, as he could have been. However, the two members of the applicant couple had acted very much in concert in their endeavour to recover custody of and have access to A. They were living together and leading a joint "family life". The Court did not deem it appropriate therefore to draw any material distinction between them as regards the interference with their family life resulting from the care proceedings, notwithstanding some differences in their legal circumstances.

13. The Court pointed to the difference in the nature of the interests protected by Articles 6 § 1 and 8 when judging that, despite its earlier finding of a violation of Article 6 § 1, examination of the same set of facts also under Article 8 was justified.

14. The unfair character of the care proceedings on specified occasions had already been conceded by the Government. Taking note of this concession, the Court found that in this respect the decision-making process determining the custody and access arrangements in regard to A. did not afford the requisite protection of the applicants' interests as safeguarded by Article 8.

[See paragraphs 85-93 of the judgment and points 5 and 6 of the operative provisions]

D. Alleged violation of Article 14 of the Convention

15. The first applicant claimed that he had been a victim of discriminatory treatment in breach of Article 14, taken together with Article 6 § 1 and/or Article 8, by reason of his lack of legal right, proor to his marriage, to custody of A. or to participate in the care proceedings.

16. According to the Court's case-law, a difference of treatment is discriminatory if it has no reasonable and objective justification, that is, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised.

17. Mr McMichael's complaint was essentially directed against his status as a natural father under Scots law. In the Court's view, the aim of the relevant legislation (to provide a mechanism for identifying "meritorious" fathers who might be accorded parental rights) is legitimate and the conditions imposed on natural fathers for obtaining legal recognition of their parental role respect the principle of proportionality. Mr McMichael had not therefore been discriminated against.

[See paragraphs 94-99 of the judgment and point 7 of the operative provisions]

E. Award of just satisfaction (Article 50)

18. The applicants, who were legally aided, did not make any claim for reimbursement of costs and expenses. They did however seek financial compensation for distress, sorrow and injury to health.

19. It could not be affirmed with certainty that no practical benefit would have accrued to the applicants if the procedural deficiency in the care proceedings had not existed. More importantly, some, although not the major part, of the evident trauma, anxiety and feeling of injustice experienced by both applicants in connection with the care proceeding was to be attributed to their inability to see the confidential documents in question. Payment of financial compensation was therefore warranted. The Court awarded the applicants jointly the sum of £8,000 under this head.

20. The applicants also asked for a number of declarations and consequential orders. The Court, however, ruled that it was not empowered to give the relief sought.

[See paragraphs 100-105 of the judgment and points 8 and 9 of the operative provisions]

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In accordance with the Convention, judgment was given by a Chamber composed of nine judges, namely Mr R. Ryssdal (Norwegian), President, Mr F. Gölcüklü (Turkish), Mr L.-E. Pettiti (French), Mr R. Macdonald (Canadian), Mr C. Russo (Italian), Mr A. Spielmann (Luxemburger), Mrs E. Palm (Swedish), Mr I. Foighel (Danish) and Sir John Freeland (British), and also of Mr H. Petzold, Registrar.

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For further information, reference should be made to the text of the judgment, which is available on request and will be published shortly as volume 307-B of Series A of the Publications of the Court (available from Carl Heymanns Verlag KG, Luxemburger Strasse 449, D - 50939 Köln).

Subject to his duty of discretion, the Registrar is responsible under the Rules of Court for replying to requests for information concerning the work of the Court, and in particular to enquiries from the press.

10. *Eur. Court HR, Z. v. Finland judgment* of 25 February 1997, *Reports of Judgments and Decisions* 1997-I (Article 8 of the Convention). Seizure of medical records and their inclusion in investigation file without the patient's prior consent in criminal proceedings; limitation of the duration of the confidentiality of the medical data concerned; publication of her identity and HIV infection in a court judgment given in those proceedings.

99
25.2.1997

Press release issued by the Registrar of the European Court of Human Rights

JUDGMENT IN THE CASE OF Z v. FINLAND

In a judgment delivered in Strasbourg on 25 February 1997 in the case of Z v. Finland, the European Court of Human Rights found by eight votes to one that there had been no violation of Article 8 of the European Convention on Human Rights in respect of orders requiring the applicant's medical advisers to give evidence or with regard to the seizure of her medical records and their inclusion in the investigation file in criminal proceedings against her husband. On the other hand, the Court unanimously found that an order to make the medical data concerned accessible to the public as early as 2002 would, if implemented, give rise to a violation of this Article and that there had been a violation thereof with regard to the publication of the applicant's identity and medical condition in a court of appeal judgment. It unanimously concluded that it was not necessary to examine the case under Article 13. Lastly, the Court awarded the applicant specified sums as compensation for non-pecuniary damage and in reimbursement of legal costs and expenses.

The judgment was read out in open court by Mr Rolv Ryssdal, the President of the Court.

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I. **BACKGROUND TO THE CASE**

A. Principal facts

The applicant was at the time of the events which gave rise to her complaints under the Convention married to X. They divorced in September 1995. They are both infected with HIV.

Between December 1991 and September 1992 Mr X committed a number of sexual offences. Following a first conviction for rape on 10 March 1992, in respect of which he received a suspended prison sentence, Mr X was charged with, among other offences, attempted manslaughter on the ground that he had knowingly exposed his victims to the risk of HIV infection. On 19 March 1992 he had been informed of the results of a blood test showing that he was HIV positive.

In the course of the subsequent criminal proceedings in the Helsinki City Court, a number of doctors and a psychiatrist who had been treating the applicant were compelled, despite their protests, to give evidence concerning, and to disclose information about, the applicant. Mrs Z had herself refused to testify and the doctors' evidence was sought with a view to establishing the date at which Mr X first became aware, or had reason to suspect, that he was HIV positive. In addition, medical records relating to Mr X and Mrs Z

were seized during a police search of the hospital where they were both receiving treatment and photocopies of the records were added to the case file. Although the proceedings were *in camera*, reports of the trial appeared in major newspapers on at least two occasions.

On 19 May 1993 the Helsinki City Court convicted Mr X, *inter alia*, on three counts of attempted manslaughter and one of rape and sentenced him to terms of imprisonment totalling seven years. The relevant legal provisions, the operative provisions of the judgment and a summary of the court's reasoning were made public. The court ordered that the full judgment and the case-documents should remain confidential for ten years despite requests from Mr X and his victims for a longer period of confidentiality.

The prosecution, Mr X and the victims all appealed and, at a hearing of the Court of Appeal on 14 September 1993, requested that the court documents should remain confidential for longer than ten years.

In a judgment of 10 December 1993 the Court of Appeal upheld the conviction of X on three counts of attempted manslaughter and, in addition, convicted him on two further such counts. It increased the total sentence to more than eleven years. The judgment, which gave the names of Mrs Z and Mr X in full and went into the circumstances of their HIV infection, was made available to the press. The Court of Appeal did not extend the period of confidentiality fixed by the first-instance court. Its judgment was widely reported in the press.

On 26 September 1994 the Supreme Court refused Mr X leave to appeal.

On 1 September 1995 the Supreme Court dismissed an application by the applicant for an order quashing or reversing the Court of Appeal's judgment in so far as it concerned the ten-year limitation on the confidentiality order. The court documents in the case are due to become public in the year 2002.

B. Proceedings before the European Commission of Human Rights

The application to the Commission, which was lodged on 21 May 1993, was declared admissible on 28 February 1995.

Having attempted unsuccessfully to secure a friendly settlement the Commission drew up a report on 2 December 1995 in which it established the facts and expressed the unanimous opinion that Article 8 had been violated and that it was not necessary also to examine whether there had been a violation of Article 13.

II. SUMMARY OF THE JUDGMENT[1]

I. Article 8 of the Convention

A. Scope of the issues before the Court

It was not established that there had been a leak of confidential medical data concerning the applicant for which the respondent State could be held responsible under Article 8 of the Convention. Nor did the

[1.] This summary by the Registry does not bind the Court.

Court have jurisdiction to entertain the applicant's allegation that she had been subjected to discriminatory treatment. It therefore confined its examination to the other matters complained of.

[see paragraphs 65, 69-70 of the judgment]

B. Was there an interference with the applicant's right to respect for her private life?

The various measures complained of constituted interferences with the applicant's right to respect for her private and family life.

[see paragraph 71 of the judgment]

C. Were the interferences justified?

1. "In accordance with the law"

There was nothing to suggest that the measures did not comply with domestic law or that the relevant law was not sufficiently foreseeable in its effects for the purposes of the quality requirement which was implied by the expression "in accordance with the law" in paragraph 2 of Article 8.

[see paragraph 73 of the judgment]

2. Legitimate aim

The orders requiring the applicant's medical advisers to give evidence, the seizure of her medical records and their inclusion in the investigation file were aimed at the "prevention of ... crime" and the "protection of the rights and freedoms of others". The ten-year limitation on the confidentiality order could be said to have been aimed at protecting the "rights and freedoms of others", but not at the prevention of crime. On the other hand, the Court had doubts as to whether the publication of the applicant's full name as well as her medical condition following their disclosure in the Court of Appeal's judgment pursued any of the legitimate aims enumerated in paragraph 2 of Article 8, but deemed it unnecessary to decide the issue.

[see paragraphs 75-78 of the judgment]

3. "Necessary in a democratic society"

In determining whether the impugned measures were "necessary in a democratic society", the Court took into account that the protection of personal data, not least medical data, was of fundamental importance to a person's enjoyment of his or her right to respect for private and family life as guaranteed by Article 8. Respecting the confidentiality of health data was a vital principle in the legal systems of all the Contracting Parties to the Convention. It was crucial not only to respect the sense of privacy of a patient but also to preserve his or her confidence in the medical profession and in the health services in general.

The above considerations were especially valid as regards protection of the confidentiality of information about a person's HIV infection, the disclosure of which could dramatically affect his or her private and family life, as well as social and employment situation, by exposing him or her to opprobrium and the risk of ostracism. For this reason it could also discourage persons from seeking diagnosis or treatment and thus undermine any preventive efforts by the community to contain the pandemic. The interests in

protecting the confidentiality of such information would therefore weigh heavily in the balance in determining whether the interference was proportionate to the legitimate aim pursued. Such interference could not be compatible with Article 8 of the Convention unless it was justified by an overriding requirement in the public interest.

Against this background, the Court examined each measure in turn, whilst noting at the outset that the decision-making process did not give rise to any misgivings and that remedies were apparently available for challenging the seizure and for having the limitation on the confidentiality order quashed.

[see paragraphs 94-101 of the judgment]

(i) The orders requiring the applicant's medical advisers to give evidence

The orders requiring the applicant's medical advisers to give evidence had been made in the context of Z availing herself of her right under Finnish law not to give evidence against her husband. The object was exclusively to ascertain from her medical advisers when X had become aware of or had reason to suspect his HIV infection. Their evidence had been at the material time potentially decisive for the question whether X was guilty of attempted manslaughter in relation to two offences committed prior to 19 March 1992, when the positive results of the HIV test had become available. There could be no doubt that very weighty public interests militated in favour of the investigation and prosecution of X for attempted manslaughter in respect of all of the five offences concerned and not just three of them. The resultant interference with the applicant's private and family life was moreover subjected to important safeguards against abuse. There was no reason to question the extent to which the doctors were required to testify. Especially because the proceedings were confidential and were highly exceptional, the contested orders were unlikely to have deterred potential and actual HIV carriers from undergoing blood tests and from seeking medical treatment. Accordingly, the Court, by eight votes to one, found no violation on this point.

[see paragraphs 102-105 of the judgment and point 1 of the operative provisions]

(ii) Seizure of the applicant's medical records and their inclusion in the investigation file

The seizure of the applicant's medical records and their inclusion in the investigation file were complementary to the orders compelling her medical advisers to give evidence. Their context and object were the same and they were based on the same weighty public interests. Furthermore, they were subject to similar limitations and safeguards against abuse. Admittedly, unlike those orders, the seizure had not been authorised by a court but had been ordered by the prosecution. However, this fact could not give rise to any breach of Article 8 since the conditions for the seizure were essentially the same as those for the orders to testify, two of which had been given by the City Court prior to the seizure and the remainder shortly thereafter. Also, it would have been possible for the applicant to challenge the seizure before the City Court. There was no reason to doubt the national authorities' assessment that it was necessary to seize all the material concerned and to include it in the investigation file.
Therefore, the Court, by eight votes to one, found no violation on this point either.

[see paragraphs 106-110 of the judgment and point 2 of the operative provisions]

(iii) Duration of the confidentiality order

The ten-year limitation on the confidentiality order did not correspond to the wishes or interests of the parties in the proceedings, all of whom had requested a longer period of confidentiality.

The Court was not persuaded that, by prescribing such a short period, the domestic courts had attached sufficient weight to the applicant's interests. As a result of the information in issue having been produced in the proceedings without her consent, she had already been subjected to a serious interference with her right to respect for private and family life. The further interference which she would suffer if the medical information were to be made accessible to the public after ten years was not supported by reasons which could be considered sufficient to override her interest in the data remaining confidential for a longer period. The Court unanimously concluded that the order to make the material accessible as early as 2002 would, if implemented, amount to a disproportionate interference with her right to respect for her private and family life, in violation of Article 8.

[see paragraphs 111-112 of the judgment and point 3 of the operative provisions]

(iv) Publication of the applicant's identity and condition in the Court of Appeal's judgment

The disclosure of the applicant's identity and HIV infection in the text of the Court of Appeal's judgment made available to the press was not supported by any cogent reasons. Accordingly, the Court unanimously found that the publication of the information concerned gave rise to a violation of the applicant's right to respect for her private and family life as guaranteed by Article 8.

[see paragraph 113 of the judgment and point 4 of the operative provisions]

II. Article 13 of the Convention

The Court, having taken the applicant's allegations as to the lack of remedies into account in relation to Article 8, did not find it necessary to examine them under Article 13.

[see paragraph 117 of the judgment and point 5 of the operative provisions]

III. Article 50 of the Convention

A. Non-pecuniary damage

The Court found it established that the applicant must have suffered non-pecuniary damage as a result of the disclosure of her identity and medical condition in the Court of Appeal's judgment and, making an assessment on an equitable basis, awarded her FIM 100,000.

[see paragraph 122 of the judgment and points 6 and 7 of the operative provisions]

B. Costs and expenses

The Court allowed in part (FIM 160,000) the applicant's claim for costs and expenses, plus any applicable VAT, less FRF 10,835 paid in legal aid by the Council of Europe.

[see paragraph 126 of the judgment and points 6 and 7 of the operative provisions]

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In accordance with the Convention, judgment was given by a Chamber composed of nine judges, namely Mr R. Ryssdal (Norwegian), *President*, Mr F. Gölcüklü (Turkish), Mr L.-E. Pettiti (French), Mr C. Russo (Italian), Mr J. De Meyer (Belgian), Mr R. Pekkanen (Finnish), Mr G. Mifsud Bonnici (Maltese), Mr J. Makarczyk (Polish) and Mr B. Repik (Slovakian), and also of Mr H. Petzold, *Registrar*, and Mr P.J. Mahoney, *Deputy Registrar*.

One judge expressed a partly dissenting opinion and this is annexed to the judgment.

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The judgment will be published shortly in the *Reports of Judgments and Decisions* for 1997 (available from Carl Heymanns Verlag KG, Luxemburger Straße 449, D-50939 Köln).

Subject to his duty of discretion, the Registrar is responsible under the Rules of Court for replying to requests for information concerning the work of the Court, and in particular to enquiries from the press.

11. *Eur. Court HR, Halford v. The United Kingdom judgment* of 25 June 1997, *Reports of Judgments and Decisions* 1997-III (Violation of Articles 8 and 13 of the Convention). Interception of telephone calls made on internal telecommunications system operated by police and on public network; lack of regulation by domestic law.

379
25.6.1997

Press release issued by the Registrar of the European Court of Human Rights

JUDGMENT IN THE CASE OF HALFORD v. THE UNITED KINGDOM

In a judgment delivered at Strasbourg on 25 June 1997 in the case of Halford v. the United Kingdom, the European Court of Human Rights unanimously held that there had been violations of Articles 8 and 13 of the European Convention on Human Rights in respect of Ms Halford's complaints that telephone calls made from her office in Merseyside Police Headquarters had been intercepted and that she had not had available to her any effective remedy for this complaint.

The Court further held, unanimously, that there had been no violation of Article 8 in relation to the alleged interception of calls made from the telephone in Ms Halford's home and, by eight votes to one, that there had been no violation of Article 13 in respect of this allegation. It also decided unanimously that it was not necessary to consider her complaints under Articles 10 and 14 of the Convention.

Under Article 50 of the Convention, the Court awarded Ms Halford £10,000 in compensation for non-pecuniary damage, together with part of the legal costs and expenses she had claimed.

The judgment was read out in open court by Mr Rudolf Bernhardt, the Vice-President of the Court.

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I. BACKGROUND TO THE CASE

A. Principal facts

Ms Alison Halford was born in 1940 and lives in the Wirral.

In May 1983 she was appointed Assistant Chief Constable with the Merseyside Police and as such was the highest ranking female police officer in the United Kingdom. After she had failed on several occasions to be appointed to a more senior post, in 1990 she commenced proceedings against the Home Office and Merseyside Police Authority in the Industrial Tribunal alleging discrimination on grounds of sex. She withdrew her complaint in August 1992, following an agreement under which she was to retire from the police force and receive *ex gratia* payments totalling £15,000.

Ms Halford alleges that certain members of the Merseyside Police Authority launched a "campaign" against her in response to her discrimination complaint. This took the form *inter alia* of leaks to the press, the bringing of disciplinary proceedings against her and the interception of her telephone calls. For the purposes of the case before the Court, the Government accepted that there was a reasonable likelihood

that calls made from her office telephones had been intercepted, but did not accept that any such likelihood had been established in relation to calls made from her home telephone.

In December 1991, Ms Halford complained to the Interception of Communications Tribunal. In February 1992 the Tribunal informed her that it was satisfied that there had been no contravention of the Interception of Communications Act 1985 in relation to her home telephone, but, under the terms of the Act, it was not empowered to specify whether this was because there had been no interception, or because there had been an interception which had been carried out pursuant to a warrant in accordance with the Act. In a letter to David Alton MP, Ms Halford's Member of Parliament, the Home Office explained that eavesdropping by the Merseyside Police on their own internal telephone system fell outside the scope of the 1985 Act and would not require a warrant.

B. Proceedings before the European Commission of Human Rights

The application to the Commission, which was lodged on 22 April 1992, was declared admissible on 2 March 1995.

Having attempted unsuccessfully to secure a friendly settlement, the Commission drew up a report on 18 April 1996 in which it established the facts and expressed the opinion that there had been violations of both Articles 8 and 13 in relation to the applicant's office telephones (26 votes to 1); that there had been no violations of Articles 8, 10 or 13 in respect of her home telephone (unanimously); that it was not necessary to examine separately her complaint under Article 10 in relation to her office telephones (unanimously); and, finally, that there had been no violation of Article 14 (unanimously).

II. SUMMARY OF THE JUDGMENT[1]

A. Article 8 of the Convention

1. Applicability of Article 8

It was clear from the Court's case-law that telephone calls made from business premises as well as from the home might be covered by the notions of "private life" and "correspondence" within the meaning of Article 8 § 1.

There was no evidence of any warning having been given to Ms Halford, as a user of the internal telecommunications system operated at the Merseyside Police Headquarters, that calls made on that system would be liable to interception and the Court considered that she would have had a reasonable expectation of privacy for such calls.

Article 8 was therefore applicable to the complaints relating to both the office and home telephones.

[see paragraphs 42-46 and 52 of the judgment and point 1 of the operative provisions]

[1] This summary by the Registry does not bind the Court.

2. The office telephones:

(i) existence of an interference

There was a reasonable likelihood, as the Government had conceded, that calls made by Ms Halford from her office had been intercepted by the Merseyside Police, probably with the primary aim of gathering material to assist in the defence of the sex discrimination proceedings brought against them. This constituted an "interference by a public authority", within the meaning of Article 8 § 2.

[see paragraphs 47-48 of the judgment]

(ii) whether the interference was "in accordance with the law"

The Interception of Communications Act 1985 did not apply to internal communications systems operated by public authorities, such as that at Merseyside Police Headquarters, and there was no other provision in domestic law to regulate the interception of calls on such systems. Since English law provided no protection to Ms Halford, it could not be said that the interference was "in accordance with the law" as required by Article 8. There had therefore been a violation of that Article.

[see paragraphs 49-51 of the judgment and point 2 of the operative provisions]

3. The home telephone: existence of an interference

The Court did not consider that the evidence established a reasonable likelihood that calls made on the telephone in Ms Halford's home had been intercepted. In view of this conclusion, it did not find a violation of Article 8 in relation to the home telephone.

[see paragraphs 53-60 of the judgment and point 3 of the operative provisions]

B. Article 13 of the Convention

The Court found a violation of Article 13 in respect of Ms Halford's complaint about the interception of calls made on her office telephones, in view of the fact that the Interception of Communications Act 1985 did not apply to the internal telephone system operated by the Merseyside Police and there was no other avenue in domestic law for her complaint.

It did not find a violation of Article 13 in relation to her complaint concerning her home telephone, because Article 13 only requires "an effective remedy before a national authority" in respect of arguable claims under the Convention. Ms Halford, however, had not adduced enough evidence to make out an arguable claim.

[see paragraphs 61-70 of the judgment and points 4 and 5 of the operative provisions]

C. Articles 10 and 14 of the Convention

The allegations in relation to these Articles were tantamount to restatements of the complaints under Article 8. It was not therefore necessary for the Court to consider them.

[see paragraphs 71-72 of the judgment and point 6 of the operative provisions]

D. Article 50 of the Convention

The Court awarded Ms Halford £10,000 in compensation for the intrusion into her privacy, and £600 towards her personal expenses incurred in bringing the case to Strasbourg. It also awarded £25,000 of the £142,875 legal costs and expenses she had claimed.

[see paragraphs 73-82 of the judgment and point 7 of the operative provisions]

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In accordance with the Convention, judgment was given by a Chamber composed of nine judges, namely Mr R. Bernhardt (German), *President*, Mr L-E Pettiti (French), Mr C. Russo (Italian), Mr A. Spielmann (Luxemburger), Mr I. Foighel (Danish), Mr J.M. Morenilla (Spanish), Sir John Freeland (British), Mr M.A. Lopes Rocha (Portuguese) and Mr P. K_ris (Lithuanian), and also of Mr H. Petzold, *Registrar*, and Mr P.J. Mahoney, *Deputy Registrar*.

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The judgment will be published shortly in the *Reports of Judgments and Decisions* for 1997 (available from Carl Heymanns Verlag KG, Luxemburger Straße 449, D-50939 Köln).

Subject to his duty of discretion, the Registrar is responsible under the Rules of Court for replying to requests for information concerning the work of the Court, and in particular to enquiries from the press.

12. *Eur. Court HR, Anne-Marie Andersson v. Sweden judgment* of 27 August 1997, *Reports of Judgments and Decisions* 1997-IV (No violation of the Convention). Lack of possibility for a patient, prior to the communication of personal and confidential medical data by medical authority to a social services authority, to challenge the measure before a court.

460
27.8.1997

Press release issued by the Registrar of the European Court of Human Rights

JUDGMENT IN THE CASE OF ANNE-MARIE ANDERSSON v. SWEDEN

In a judgment delivered at Strasbourg on 27 August 1997 in the case of Anne-Marie Andersson v. Sweden, the European Court of Human Rights held unanimously that the deceased applicant's son had sufficient interest to justify the continuation of the examination of the case, by five votes to four that Article 6 § 1 of the European Convention on Human Rights did not apply in the case, by eight votes to one that there had been no violation of that provision and unanimously that there had been no violation of Article 13.

The judgment was read out in open court by Mr Rolv Ryssdal, the President of the Court.

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I. BACKGROUND TO THE CASE

A. Principal facts

The applicant was born in 1943. She suffered from psychological and psychosomatic disorders which she attributed to court proceedings concerning her eviction from a flat. She also suffered from dental problems which aggravated her mental difficulties.

Following her eviction she and her son, who was born in 1981, lived in several different flats allocated by the welfare authorities. As from May 1988 she was on sick leave.

In April 1989, as a result of the strain caused by her dental pains, she contacted a psychiatric clinic in Göteborg. From August 1991 she was treated by its Chief Psychiatrist, who on several occasions drew her attention to the possible detrimental effects of her situation on her son and advised her to seek assistance from the children's psychiatric clinic or the social welfare authorities. Apparently, the applicant did not do so.

In January 1992 the Chief Psychiatrist informed the applicant that, since the child's health might be at risk, she (the psychiatrist) had an obligation under Swedish law to contact the welfare authorities. Accordingly, the former, acting in accordance with a reporting obligation under the Social Services Act, informed the Social Council of the applicant's health problems. She notified the applicant that she had done so. In October 1991 the headmaster and a teacher of the son's school had expressed their concern to the Social Council about his learning difficulties and general state of health. Following an investigation, the Council, with the applicant's consent, placed her son in a non-residential therapeutic school.

The applicant died on 20 November 1996.

B. Proceedings before the European Commission of Human Rights

The application to the Commission, which was lodged on 11 February 1992, was declared admissible on 22 May 1995.

Having attempted unsuccessfully to secure a friendly settlement, the Commission drew up a report on 11 April 1996 in which it established the facts and expressed the opinion that there had been no violation of Article 6 § 1 (unanimously) and that no separate issue arose under Article 13 (twenty votes to seven).

II. SUMMARY OF THE JUDGMENT[1]

A. Preliminary observations

The Court accepted that the applicant's son, Mr Stive Andersson, had sufficient interest to justify the continuation of its examination of the case. On the other hand, the applicant's complaint that the disclosure of the data in question amounted to a violation of her right to respect for private life under Article 8 had been declared inadmissible by the Commission; the Court had therefore no jurisdiction to entertain it.

[See paragraphs 29-30 of the judgment and point 1 of the operative provisions.]

B. Article 6 § 1 of the Convention

The Court had first to examine whether Article 6 § 1 was applicable to the disagreement between the applicant and the Swedish authorities as to the disclosure of her medical data.

The relevant rule on confidentiality in the Secrecy Act did not apply where a statutory obligation required the disclosure of information to another authority. In the case under consideration, if the chief psychiatrist possessed information about the applicant patient to the effect that intervention by the Social Council was necessary for the protection of her under age son, the psychiatrist was, according to the Social Services Act, under a duty to report immediately to the Social Council. That duty extended to all data in her possession which were potentially relevant to the Social Council's investigation into the need to take protective measures with respect to the son and depended exclusively on the relevance of those data.

In addition to the scope of this obligation, the Court noted that the psychiatrist enjoyed a very wide discretion in assessing what data would be of importance to the Social Council's investigation. In this regard, she had no duty to hear the applicant's views before transmitting the information to the Social Council.

Accordingly, it transpired from the terms of the legislation in issue that a "right" to prevent communication of such data could not, on arguable grounds, be said to be recognised under national law.

In view of the above, Article 6 § 1 was not applicable and had not been violated in the present case.

[1] This summary by the Registry does not bind the Court.

[See paragraphs 33-37 of the judgment and points 2 and 3 of the operative provisions.]

C. Article 13 of the Convention

A separate issue arose with regard to Article 13. That provision applied only in respect of grievances under the Convention which were arguable. Whether that was so in the case of the applicant's claim under Article 8 had to be determined in the light of the particular facts and the nature of the legal issues raised. In this connection, the Commission's decision on the admissibility of her complaint under Article 8 and the reasoning therein were not decisive but provided significant pointers. The Court for its part found, on the evidence adduced, that the applicant had no arguable claim in respect of a violation of the Convention. There had thus been no violation of Article 13.

[See paragraphs 40-42 of the judgment and point 4 of the operative provisions.]

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In accordance with the Convention, judgment was given by a Chamber composed of nine judges, namely Mr R. Ryssdal (Norwegian), *President*, Mr B. Walsh (Irish), Mr J. De Meyer (Belgian), Mrs E. Palm (Swedish), Mr A.N. Loizou (Cypriot), Sir John Freeland (British), Mr A.B. Baka (Hungarian), Mr K. Jungwiert (Czech), and Mr J. Casadevall (Andorran) and also of Mr H. Petzold, *Registrar*, and Mr P.J. Mahoney, *Deputy Registrar*.

Four judges expressed separate opinions and these are annexed to the judgment.

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The judgment will be published shortly in the *Reports of Judgments and Decisions* for 1997 (available from Carl Heymanns Verlag KG, Luxemburger Straße 449, D-50939 Köln).

Subject to his duty of discretion, the Registrar is responsible under the Rules of Court for replying to requests for information concerning the work of the Court, and in particular to enquiries from the press.

13. *Eur. Court HR, M.S. v. Sweden judgment* of 27 August 1997, *Reports of Judgments and Decisions* 1997-IV (No violation of the Convention). Communication, without the patient's consent, of personal and confidential medical data by one public authority to another and lack of possibility for patient, prior to the measure, to challenge it before a court.

461
27.8.1997

Press release issued by the Registrar of the European Court of Human Rights

JUDGMENT IN THE CASE OF M.S. v. SWEDEN

In a judgment delivered at Strasbourg on 27 August 1997 in the case of M.S. v. Sweden, the European Court of Human Rights held unanimously that there had been no violation of Article 8 of the European Convention on Human Rights, by six votes to three that Article 6 § 1 did not apply and unanimously that there had been no violation of that provision. It further concluded unanimously that there had been no violation of Article 13 of the Convention.

The judgment was read out in open court by Mr Rolv Ryssdal, the President of the Court.

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I. BACKGROUND TO THE CASE

A. Principal facts

Ms M.S. was born in 1951 and lives in Sweden.

On 9 October 1981 the applicant, who was pregnant at the time, allegedly injured her back while working at a day care centre. She attended the same day a women's clinic at the regional hospital.

Following this incident, the applicant was unable to return to work for any sustained period of time because of severe back pain. After she had been on the sick list for some time she was granted a temporary disability pension and, from October 1994, a disability pension.

In March 1991 she applied to the Social Insurance Office for compensation under the Industrial Injury Insurance Act. She claimed that, as a result of her back injury, she had been on sick leave for various periods between October 1981 and February 1991.

On receiving, at her own request, a copy of the file compiled by the Social Insurance Office, she learned that the Office had, for the purposes of examining her claim, obtained from the hospital medical records relating to the injury reported on 9 October 1981 and to treatment received thereafter. According to the records from October 1981, she had stated that she had had pains in her hips and back, but there was no indication that she considered herself to have been injured at work. Records relating to the period from October 1985 to February 1986 concerned an abortion and subsequent treatment made necessary thereby.

In May 1992 the Social Insurance Office rejected the applicant's compensation claim, finding that her sick leave had not been caused by an industrial injury. The applicant appealed against this decision to the

Social Insurance Board, which upheld it in August 1992. Further appeals by the applicant to the County Administrative Court, to the competent Administrative Court of Appeal and then to the Supreme Administrative Court were dismissed.

B. Proceedings before the European Commission of Human Rights

The application to the Commission, which was lodged on 23 September 1992, was declared admissible on 22 May 1995.

Having attempted unsuccessfully to secure a friendly settlement, the Commission drew up a report on 11 April 1996 in which it established the facts and expressed the opinion that there had been no violation of Article 8 of the Convention (twenty-two votes to five), that there had been no violation of Article 6 § 1 (twenty-four votes to three) and that no separate issue arose under Article 13 (twenty votes to seven).

II. SUMMARY OF THE JUDGMENT[1]

A. Article 8 of the Convention

1. Article 8 § 1

Under the Swedish system, the contested disclosure depended not only on the fact that the applicant had submitted her compensation claim to the Office but also on a number of factors beyond her control. It could not therefore be inferred from her request for compensation to the Office that she had waived in an unequivocal manner her right under Article 8 § 1 of the Convention to respect for private life with regard to the medical records at the clinic. Accordingly, that the provision applied to the matters under consideration.

[See paragraph 32 of the judgment.]

The medical records in question contained highly personal and sensitive data about the applicant, including information relating to an abortion. Although they remained confidential, they had been disclosed to another public authority and therefore to a wider circle of public servants. Moreover, the collection and storage of the information and its subsequent communication had served different purposes. The disclosure of the data by the clinic to the Office thus entailed an interference with the applicant's right to respect for private life guaranteed by paragraph 1 of Article 8.

[See paragraph 35 of the judgment.]

1. Article 8 § 2

(a) In accordance with the law

The interference had a legal basis and was foreseeable; it was thus in accordance with the law.

[See paragraph 37 of the judgment.]

[1] This summary by the Rregistry does not bind the Court.

(b) Legitimate aim

Since the communication of data was potentially decisive for the allocation of public funds to deserving claimants it could be said to have pursued the aim of protecting the economic well-being of the country.

[See paragraph 38 of the judgment.]

(c) Necessary in a democratic society:

The applicant's medical data were communicated by one public institution to another in the context of an assessment of whether she satisfied the legal conditions for obtaining a benefit which she herself had requested. The Office had a legitimate need to check information received from her against data in the possession of the clinic. The claim concerned a back injury which she had allegedly suffered in 1981 and all the medical records produced by the clinic to the Office, including those concerning her abortion in 1985 and the treatment thereafter, contained information relevant to the applicant's back problems. The applicant had not substantiated her allegation that the clinic could not reasonably have considered certain medical records to have been material to the Office's decision. In addition, the contested measure was subject to important limitations and was accompanied by effective and adequate safeguards against abuse.

In view of the above, there were relevant and sufficient reasons for the communication of the applicant's medical records by the clinic to the Office and the measure was not disproportionate to the legitimate aim pursued. Accordingly, there had been no violation of Article 8.
[See paragraphs 41-44 of the judgment and point 1 of the operative provisions.]

B. Article 6 § 1 of the Convention

The Court had first to examine whether Article 6 § 1 was applicable to the disagreement between the applicant and the Swedish authorities as to the disclosure of her medical records.

The relevant rule on confidentiality in the Secrecy Act did not apply where a statutory obligation required the disclosure of information to another authority. In the case under consideration, the clinic had, according to the Insurance Act, been under an obligation to supply the Office with information on the applicant concerning circumstances of importance to the application of the Act. Thus, the obligation incumbent on the imparting authority vis-à-vis the requesting authority depended exclusively on the relevance of the data in its possession; it comprised all data which the clinic had in its possession concerning the applicant and which were potentially relevant to the Office's determination of her compensation claim.

In addition to the scope of this obligation, the Court noted that the clinic enjoyed a very wide discretion in assessing what data would be of importance to the application of the Insurance Act. In this regard, it had no duty to hear the applicant's views before transmitting the information to the Office.

Accordingly, it appeared from the very terms of the legislation in issue that a "right" to prevent communication of such data could not, on arguable grounds, be said to be recognised under national law.

Having regard to the foregoing, Article 6 § 1 was not applicable and had not been violated in the present case.

[See paragraphs 47-50 of the judgment and points 2 and 3 of the operative provisions.]

C. Article 13 of the Convention

A separate issue arose under Article 13. Having regard to its findings under Article 8, the Court was satisfied that the applicant had had an arguable claim for the purposes of Article 13. It remained to examine whether she had been afforded an effective remedy.

In this regard, it was open to her to bring criminal and civil proceedings before the ordinary courts against the relevant staff of the clinic and to claim damages for breach of professional secrecy. Thus the applicant had had access to an authority empowered both to deal with the substance of her Article 8 complaint and to grant her relief. Having regard to the limited nature of the disclosure and to the different safeguards, in particular the Office's obligation to secure and maintain the confidentiality of the information, the various *ex post facto* remedies referred to satisfied the requirements of Article 13. Accordingly, there had been no violation of that provision.

[See paragraphs 54-56 of the judgment and point 4 of the operative provisions.]

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In accordance with the Convention, judgment was given by a Chamber composed of nine judges, namely Mr R. Ryssdal (Norwegian), *President*, Mr F. Gölcüklü (Turkish), Mrs E. Palm (Swedish), Mr R. Pekkanen (Finnish), Sir John Freeland (British), Mr G. Mifsud Bonnici (Maltese), Mr J. Makarczyk (Polish), Mr D. Gotchev (Bulgarian), and Mr P. Jambrek (Slovenian), and also of Mr H. Petzold, *Registrar*, and Mr P.J. Mahoney, *Deputy Registrar*.

Three judges expressed separate opinions and these are annexed to the judgment.

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The judgment will be published shortly in the *Reports of Judgments and Decisions* for 1997 (available from Carl Heymanns Verlag KG, Luxemburger Straße 449, D-50939 Köln).

Subject to his duty of discretion, the Registrar is responsible under the Rules of Court for replying to requests for information concerning the work of the Court, and in particular to enquiries from the press.

14. *Eur. Court HR, Lambert v. France judgment* of 24 August 1998, *Reports of Judgments and Decisions* 1998-V (Violation of Article 8 of the Convention). Judgment whereby Court of Cassation refused a person *locus standi* to complain of interception of some of his telephone conversations, on the ground that it was a third party's line that had been tapped.

544
24.8.1998

Press release issued by the Registrar of the European Court of Human Rights

JUDGMENT IN THE CASE OF LAMBERT v. FRANCE

In a judgment delivered at Strasbourg on 24 August 1998 in the case of Lambert v. France, the European Court of Human Rights held unanimously that there had been a violation of Article 8 of the European Convention on Human Rights and that it was unnecessary to examine the complaint based on Article 13 of the Convention. Under Article 50 of the Convention, the Court awarded the applicant specified sums for non-pecuniary damage and for legal costs and expenses.

The judgment was read out in open court by Mr Rudolf Bernhardt, the President of the Court.

I. BACKGROUND TO THE CASE

A. Principal facts

The applicant, Mr Michel Lambert, a French national, was born in 1957 and lives at Buzet-sur-Tarn.

In the course of an investigation into offences of theft, burglary, handling the proceeds of theft and aggravated theft, and unlawful possession of class 4 weapons and ammunition, an investigating judge at Riom issued a warrant on 11 December 1991 instructing the gendarmerie to arrange for the telephone line of a certain R.B. to be tapped until 31 January 1992. By means of standard-form written instructions ("*soit transmis*") dated 31 January, 28 February and 30 March 1992 the judge extended the duration of the telephone tapping until 29 February, 31 March and 31 May 1992 respectively. As a result of the interception of some of his conversations, the applicant was charged with handling the proceeds of aggravated theft. He was held in custody from 15 May to 30 November 1992, when he was released subject to judicial supervision.

On 5 April 1993 the applicant's lawyer applied to the Indictment Division of the Riom Court of Appeal for a ruling that the extensions of 31 January and 28 February 1992 were invalid, arguing that they had been ordered merely by standard-form written instructions without any reference to the offences justifying the telephone tapping. The Indictment Division dismissed the application in a judgment of 25 May 1993.

The applicant appealed on a point of law, relying solely on a violation of Article 8 of the European Convention on Human Rights. In a judgment of 27 September 1993 the Court of Cassation affirmed the decision appealed against. It held that "the applicant had no *locus standi* to challenge the manner in which the duration of the monitoring of a third party's telephone line was extended" and that accordingly "the grounds of appeal, which contest[ed] the grounds on which the Indictment Division

[had] wrongly considered it must examine [the] objections of invalidity and subsequently dismissed them, [were] inadmissible".

B. Proceedings before the European Commission of Human Rights

The application to the Commission, which was lodged on 8 February 1994, was declared admissible on 2 September 1996.

Having attempted unsuccessfully to secure a friendly settlement, the Commission adopted a report on 1 July 1997 in which it established the facts and expressed the opinion that there had been a violation of Article 8 of the Convention (20 votes to 12) and that it was unnecessary to examine the case under Article 13 of the Convention (27 votes to 5).

It referred the case to the Court on 22 September 1997.

II. SUMMARY OF THE JUDGMENT[1]

A. Article 8 of the Convention

1. Whether there had been any interference

The Court pointed out that as telephone conversations were covered by the notions of "private life" and "correspondence" within the meaning of Article 8, the admitted measure of interception had amounted to "interference by a public authority" with the exercise of a right secured to the applicant in paragraph 1 of that Article. In that connection, it was of little importance that the telephone tapping in question had been carried out on the line of a third party.

[See paragraph 21 of the judgment.]

2. Justification for the interference

(a) Had the interference been "in accordance with the law"?

(i) Whether there had been a statutory basis in French law

The Court noted that the investigating judge had ordered the telephone tapping in question on the basis of Articles 100 et seq. of the Code of Criminal Procedure.

The interference complained of had therefore had a statutory basis in French law.

[See paragraphs 24-25 of the judgment.]

(ii) "Quality of the law"

The second requirement which derived from the phrase "in accordance with the law" – the accessibility of the law – did not raise any problem in the instant case.

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2. This summary by the Registry does not bind the Court.

The Court considered, as the Commission had done, that Articles 100 et seq. of the Code of Criminal Procedure, inserted by the Act of 10 July 1991 on the confidentiality of telecommunications messages, laid down clear, detailed rules and specified with sufficient clarity the scope and manner of exercise of the relevant discretion conferred on the public authorities.

[See paragraphs 26-28 of the judgment.]

(b) Purpose and necessity of the interference

The Court considered that the interference had been designed to establish the truth in connection with criminal proceedings and therefore to prevent disorder.

It remained to be ascertained whether the interference had been "necessary in a democratic society" for achieving those objectives. The Court accordingly had to ascertain whether an "effective control" had been available to Mr Lambert to challenge the telephone tapping to which he had been made subject.

It noted firstly that the Court of Cassation in its judgment of 27 September 1993 had gone beyond the ground relied on by the applicant concerning the extension of the duration of the telephone tapping and had held that a victim of the tapping of a telephone line not his own had no standing to invoke the protection of national law or Article 8 of the Convention. It had concluded that in the instant case the Indictment Division had been wrong to examine the objections of invalidity raised by the applicant as the telephone line being monitored had not been his own.

Admittedly, the applicant had been able to avail himself of a remedy in respect of the disputed point in the Indictment Division, which had held that the investigating judge's extension of the duration of the telephone tapping had been in accordance with Articles 100 et seq. of the Code of Criminal Procedure, and it was not the Court's function to express an opinion on the interpretation of domestic law, which was primarily for the national courts to interpret. However, the Court of Cassation, the guardian of national law, had criticised the Indictment Division for having examined the merits of Mr Lambert's application.

As the Court had already said, the provisions of the Law of 1991 governing telephone tapping satisfied the requirements of Article 8 of the Convention and those laid down in the Kruslin and Huvig judgments. However, it had to be recognised that the Court of Cassation's reasoning could lead to decisions whereby a very large number of people were deprived of the protection of the law, namely all those who had conversations on a telephone line other than their own. That would in practice render the protective machinery largely devoid of substance.

That had been the case with the applicant, who had not enjoyed the effective protection of national law, which did not make any distinction according to whose line was being tapped.

The Court therefore considered that the applicant had not had available to him the "effective control" to which citizens were entitled under the rule of law and which would have been capable of restricting the interference in question to what was "necessary in a democratic society".

There had consequently been a violation of Article 8 of the Convention (unanimously).

[See paragraphs 29-41 of the judgment and point 1 of the operative provisions.]

B. Article 13 of the Convention

In view of the preceding conclusion, the Court did not consider that it needed to rule on the complaint in question (unanimously).

[See paragraphs 42-43 of the judgment and point 2 of the operative provisions.]

C. Article 50 of the Convention

1. Non-pecuniary damage

Mr Lambert had sought 500,000 French francs (FRF) for non-pecuniary damage.

The Court considered that the applicant had undeniably sustained non-pecuniary damage and awarded him the sum of FRF 10,000 under this head (unanimously).

2. Costs and expenses

The applicant had also claimed FRF 15,000 in respect of the costs and expenses incurred in the proceedings before the Court.

Making its assessment on an equitable basis and with reference to its usual criteria, the Court awarded the sum claimed (unanimously).

[See paragraphs 45, 48, 49 and 52 of the judgment and points 3 and 4 of the operative provisions.]

Judgment was given by a Chamber composed of nine judges, namely Mr R. Bernhardt (German), *President*, Mr L.-E. Pettiti (French), Mr A. Spielmann (Luxemburger), Mr N. Valticos (Greek), Sir John Freeland (British), Mr L. Wildhaber (Swiss), Mr K. Jungwiert (Czech), Mr M. Voicu (Romanian) and Mr V. Butkevych (Ukrainian), and also of Mr H. Petzold, *Registrar*, and Mr P.J. Mahoney, *Deputy Registrar*.

The judgment will be published shortly in *Reports of Judgments and Decisions* 1998 (obtainable from Carl Heymanns Verlag KG, Luxemburger Straße 449, D-50939 Köln). Judgments are available on the day of delivery on the Court's internet site.

Subject to his duty of discretion, the Registrar is responsible under the Rules of Court for replying to requests for information concerning the work of the Court, and in particular to enquiries from the press.

15. *Eur. Court HR, Amann v. Switzerland judgment* of 16 February 2000, application no. 27798/95 (Violation of Article 8 of the Convention). Recording a telephone conversation concerning business activities, and creation of a card index and storing of data, both by the Public Prosecutor.

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16.02.00

Press release issued by the Registrar

JUDGMENT IN THE CASE OF AMANN v. SWITZERLAND

In a judgment delivered at Strasbourg on 16 February 2000 in the case of Amann v. Switzerland, the European Court of Human Rights held unanimously that there had been a violation of Article 8 (right to respect for private life and correspondence) of the European Convention on Human Rights. It also held unanimously that there had not been a violation of Article 13 (right to an effective remedy) of the Convention. Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant 7,082.15 Swiss francs for legal costs and expenses.

1. Principal facts

The applicant, Hermann Amann, a Swiss national, was born in 1940 and lives in Berikon (Switzerland).

In the early 1980s the applicant, who is a businessman, imported depilatory appliances into Switzerland which he advertised in magazines. On 12 October 1981 a woman telephoned the applicant from the former Soviet embassy in Berne to order a "Perma Tweez" depilatory appliance. That telephone call was intercepted by the Federal Public Prosecutor's Office ("the Public Prosecutor's Office"), which then requested the Intelligence Service of the police of the Canton of Zürich to carry out an investigation into the applicant.

In December 1981 the Public Prosecutor's Office filled in a card on the applicant for its national security card index on the basis of the report drawn up by the Zürich police. In particular, the card indicated that the applicant had been "identified as a contact with the Russian embassy" and was a businessman. It was numbered (1153:0) 614, that code meaning "communist country" (1), "Soviet Union" (153), "espionage established" (0) and "various contacts with the Eastern block" (614).

In 1990 the applicant learned of the existence of the card index kept by the Public Prosecutor's Office and asked to consult his card. He was provided with a photocopy in September 1990, but two passages had been blue-pencilled.

After trying in vain to obtain disclosure of the blue-pencilled passages, the applicant filed an administrative-law action with the Federal Court requesting, *inter alia*, 5,000 Swiss francs in compensation for the unlawful entry of his particulars in the card index kept by the Public Prosecutor's Office. In a judgment of 14 September 1994, which was served on 25 January 1995, the Federal Court dismissed his action on the ground that the applicant had not suffered a serious infringement of his personality rights.

2. Procedure and composition of the Court

The application was lodged with the European Commission of Human Rights on 27 June 1995. Having declared the application admissible, the Commission adopted a report on 20 May 1998 in which it expressed the opinion that there had been a violation of Article 8 (nine votes to eight) and that there had not been a violation of Article 13 (unanimous). It referred the case to the Court on 24 November 1998.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Elisabeth **Palm** (Swedish), ***President,*** Luzius **Wildhaber** (Swiss), Luigi **Ferrari Bravo** (Italian), Gaukur **Jörundsson** (Icelandic), Lucius **Caflisch** (Swiss), Ireneu **Cabral Barreto** (Portuguese), Jean-Paul **Costa** (French), Willi **Fuhrmann** (Austrian), Karel **Jungwiert** (Czech), Marc **Fischbach** (Luxemburger), Boštjan **Zupancic** (Slovenian), Nina **Vajic** (Croatian), John **Hedigan** (Irish), Wilhelmina **Thomassen** (Dutch), Margarita **Tsatsa-Nikolovska** (FYROMacedonia), Egils **Levits** (Latvian), Kristaq **Traja** (Albanian), ***Judges***, and also Michele **de Salvia**, ***Registrar,***

3. Summary of the judgment

Complaints

The applicant complained that the interception of the telephone call on 12 October 1981 and the creation by the Public Prosecutor's Office of a card on him and the storage of that card in the Confederation's card index had violated Article 8 of the European Convention on Human Rights. He also complained that he had not had an effective remedy within the meaning of Article 13 of the Convention to obtain redress for the alleged violations.

Decision of the Court

Article 8 of the Convention

(a) as regards the telephone call

The Court considered that the measure in question, namely the interception by the Public Prosecutor's Office of the telephone call of 12 October 1981, amounted to an interference with the applicant's exercise of his right to respect for his private life and his correspondence.

The Court pointed out that such interference breached Article 8 unless it was "in accordance with the law", pursued one or more of the legitimate aims referred to in paragraph 2 of that provision and was, in addition, necessary in a democratic society to achieve those aims.

In determining the issue of lawfulness, the Court had to examine whether the impugned measure had a legal basis in domestic law and whether it was accessible and foreseeable to the person concerned. A rule was "foreseeable" if it was formulated with sufficient precision to enable any individual – if need be with appropriate advice – to regulate their conduct. With regard to secret surveillance measures, the Court reiterated that the "law" had to be particularly detailed.

The Court noted in the instant case that Article 1 of the Federal Council's Decree of 29 April 1958 on the Police Service of the Federal Public Prosecutor's Office and section 17(3) of the Federal Criminal Procedure Act ("FCPA"), on which the Government relied and according to which the Public Prosecutor's Office "shall provide an investigation and information service in the interests of the Confederation's internal and external security", were worded in terms too general to satisfy the requirement of "foreseeability". As regards sections 66 et seq. FCPA, which governed the monitoring

of telephone communications, the Government were unable to establish that the conditions of application of those provisions had been complied with. The Court went on to observe that, in the Government's submission, the applicant had not been the subject of the impugned measure, but had been involved "fortuitously" in a telephone conversation recorded in the course of a surveillance measure taken against a third party. The primary object of sections 66 et seq. FCPA was the surveillance of persons suspected or accused of a crime or major offence or even third parties presumed to be receiving information from or sending it to such persons, but those provisions did not specifically regulate in detail the case of persons not falling into any of those categories.

The Court concluded, in the light of the foregoing, that the interference had not been "in accordance with the law". Accordingly, there had been a violation of Article 8 of the Convention.

(b) as regards the card

The Court reiterated firstly that the storing of data relating to the "private life" of an individual fell within the application of Article 8 § 1 of the Convention. It pointed out in this connection that the term "private life" must not be interpreted restrictively.

In the present case the Court noted that a card had been filled in on the applicant on which it was stated, *inter alia*, that he was a businessman and a "contact with the Russian embassy". The Court found that those details undeniably amounted to data relating to the applicant's "private life" and that, accordingly, Article 8 was applicable.

The Court then reiterated that the storing by a public authority of data relating to an individual amounted in itself to an interference within the meaning of Article 8. The subsequent use of the stored information had no bearing on that finding and it was not for the Court to speculate as to whether the information gathered was sensitive or not or as to whether the person concerned had been inconvenienced in any way.

The Court noted that in the present case it had not been disputed that a card containing data on the applicant's private life had been filled in by the Public Prosecutor's Office and stored in the Confederation's card index. There had therefore been an interference with the applicant's exercise of his right to respect for his private life.

Such interference breached Article 8 unless it was "in accordance with the law", pursued one or more of the legitimate aims referred to in paragraph 2 and was, in addition, necessary in a democratic society to achieve those aims.

The Court observed that in the instant case the legal provisions relied on by the Government, in particular the Federal Council's Decree of 29 April 1958 on the Police Service of the Federal Public Prosecutor's Office, the Federal Criminal Procedure Act and the Federal Council's Directives of 16 March 1981 applicable to the Processing of Personal Data in the Federal Administration, did not contain specific and detailed provisions on the gathering, recording and storing of information. It also pointed out that domestic law, particularly section 66(1*ter*) FCPA, expressly provided that documents which were no longer "necessary" or had become "purposeless" had to be destroyed; the authorities had failed to destroy the data they had gathered on the applicant after it had become apparent, as the Federal Court had pointed out in its judgment of 14 September 1994, that no criminal offence was being prepared.

The Court concluded, in the light of the foregoing, that there had been no legal basis for the creation of the card on the applicant and its storage in the Confederation's card index. Accordingly, there had been a violation of Article 8 of the Convention.

Article 13 of the Convention

The Court reiterated that Article 13 of the Convention requires that any individual who considers himself injured by a measure allegedly contrary to the Convention should have a remedy before a national authority in order both to have his claim decided and, if appropriate, to obtain redress. That provision did not, however, require the certainty of a favourable outcome.

The Court noted that in the instant case the applicant was able to consult his card as soon as he asked to do so in 1990. It also observed that the applicant had complained in his administrative-law action in the Federal Court that there had been no legal basis for the interception of the telephone call and the creation of his card and, secondly, that he had had no effective remedy against those measures. In that connection the Court reiterated that the Federal Court had had jurisdiction to rule on those complaints and had duly examined them.

The Court concluded, in the light of the foregoing, that the applicant had therefore had an effective remedy under Swiss law. Accordingly, there had not been a violation of Article 13 of the Convention.

Article 41 of the Convention

The applicant did not allege any pecuniary damage. However, he claimed 1,000 Swiss francs (CHF) for non-pecuniary damage.

The Court held that the non-pecuniary damage had been adequately compensated by the finding of violations of Article 8 of the Convention.

The applicant also claimed CHF 7,082.15 in respect of his costs and expenses for the proceedings before the Convention institutions.

The Court considered that the claim for costs and expenses was reasonable and that it should be allowed in full.

16. *Eur. Court HR, Rotaru v. Romania* judgment of 4 May 2000, application no. 28341/95 (Violation of Articles 8 and 13 of the Convention). Storing and use of personal data held by the Romanian intelligence services and absence of the possibility of refuting their accuracy.

311
4.5.2000

Press release issued by the Registrar

JUDGMENT IN THE CASE OF ROTARU v. ROMANIA

In a judgment delivered at Strasbourg on 4 May 2000 in the case of Rotaru v. Romania, the European Court of Human Rights held by 16 votes to 1 that there had been a **violation of Article 8** (right to respect for private life) of the European Convention on Human Rights and unanimously that there had been a **violation of Article 13** (right to an effective remedy) **and Article 6** (right to a fair trial) of the Convention. Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant 63,450 French francs for pecuniary and non-pecuniary damage and for legal costs and expenses.

1. Principal facts

The applicant, Aurel Rotaru, a Romanian national, was born in 1921 and lives in Bârlad (Romania).

In 1992 the applicant, who in 1948 had been sentenced to a year's imprisonment for having expressed criticism of the communist regime established in 1946, brought an action in which he sought to be granted rights that Decree no. 118 of 1990 afforded persons who had been persecuted by the communist regime. In the proceedings which followed in the Bârlad Court of First Instance, one of the defendants, the Ministry of the Interior, submitted to the court a letter sent to it on 19 December 1990 by the Romanian Intelligence Service, which contained, among other things, information about the applicant's political activities between 1946 and 1948. According to the same letter, Mr Rotaru had been a member of the Christian Students' Association, an extreme right-wing "legionnaire" movement, in 1937.

The applicant considered that some of the information in question was false and defamatory – in particular, the allegation that he had been a member of the legionnaire movement – and brought proceedings against the Romanian Intelligence Service, claiming compensation for the non-pecuniary damage he had sustained and amendment or destruction of the file containing the untrue information. The claim was dismissed by the Bârlad Court of First Instance in a judgment that was upheld by the Bucharest Court of Appeal on 15 December 1994. Both courts held that they had no power to order amendment or destruction of the information in the letter of 19 December 1990 as it had been gathered by the State's former security services, and the Romanian Intelligence Service had only been a depositary.

In a letter of 6 July 1997 the Director of the Romanian Intelligence Service informed the Ministry of Justice that after further checks in their registers it appeared that the information about being a member of the "legionnaire" movement referred not to the applicant but to another person of the same name.

In the light of that letter the applicant sought a review of the Court of Appeal's judgment of 15 December 1994 and claimed damages. In a decision of 25 November 1997 the Bucharest Court of Appeal quashed the judgment of 15 December 1994 and declared the information about the applicant's past membership of the "legionnaire" movement null and void. It did not rule on the claim for damages.

2. Procedure and composition of the Court

The application was lodged with the European Commission of Human Rights on 22 February 1995. Having declared the application admissible, the Commission adopted a report on 1 March 1999 in which it expressed the unanimous opinion that there had been a violation of Articles 8 and 13 of the Convention. It referred the case to the Court on 3 June 1999. The applicant also brought the case before the Court on 20 June 1999.

Under the transitional provisions of Protocol No. 11 to the Convention, a panel of the Grand Chamber decided on 7 July 1999 that the case would be heard by the Grand Chamber. On 19 January 2000 the Grand Chamber held a public hearing.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Luzius **Wildhaber** (Swiss), ***President***, Elisabeth **Palm** (Swedish), Antonio **Pastor Ridruejo** (Spanish), Giovanni **Bonello** (Maltese), Jerzy **Makarczyk** (Polish), Riza **Türmen** (Turkish), Jean-Paul **Costa** (French), Françoise **Tulkens** (Belgian), Viera **Strážnická** (Slovakian), Peer **Lorenzen** (Danish), Marc **Fischbach** (Luxemburger), Volodymyr **Butkevych** (Ukrainian), Josep **Casadevall** (Andorran), András **Baka** (Hungarian), Rait **Maruste** (Estonian), Snejana **Botoucharova** (Bulgarian), ***Judges***, Renate **Weber** (Romanian), **ad hoc *Judge***, and also Michele **de Salvia**, ***Registrar***.

3. Summary of the judgment

Complaints

The applicant complained of an infringement of his right to private life in that the Romanian Intelligence Service held a file containing information on his private life and that it was impossible to refute the untrue information. He relied on Article 8 of the European Convention on Human Rights. He also complained of the lack of an effective remedy before a national authority which could rule on his application for amendment or destruction of the file containing untrue information and of the courts' refusal to consider his applications for costs and damages, which he said infringed his right to a court. He relied on Articles 13 and 6 of the Convention.

Decision of the Court

The Government's preliminary objections

(i) Applicant's victim status

The Court noted that the applicant complained of the holding of a secret register containing information about him, whose existence had been publicly revealed during judicial proceedings. It considered that he could on that account claim to be the victim of a violation of the Convention.

As to the Bucharest Court of Appeal's judgment of 25 November 1997, assuming that it could be considered that it did to some extent afford the applicant redress for the existence in his file of information that proved false, the Court took the view that such redress was only partial and that at all events it was insufficient under the case-law to deprive him of his status of victim.

The Court concluded that the applicant could claim to be a "victim" for the purposes of Article 34 of the Convention.

(ii) Exhaustion of domestic remedies

As to the Government's submission that the applicant had not exhausted domestic remedies, because he had not brought an action based on Decree no. 31/1954 on natural and legal persons, the Court noted that there was a close connection between the Government's argument on this point and the merits of the complaints made by the applicant under Article 13 of the Convention. It accordingly joined this objection to the merits.

Article 8 of the Convention

The Court noted that the RIS's letter of 19 December 1990 contained various pieces of information about the applicant's life, in particular his studies, his political activities and his criminal record, some of which had been gathered more than fifty years earlier. In the Court's opinion, such information, when systematically collected and stored in a file held by agents of the State, fell within the scope of "private life" for the purposes of Article 8 § 1 of the Convention. Article 8 consequently applied.

The Court considered that both the storing of that information and the use of it, which were coupled with a refusal to allow the applicant an opportunity to refute it, had amounted to interference with his right to respect for family life as guaranteed by Article 8 § 1.

If it was not to contravene Article 8, such interference had to have been "in accordance with the law", pursue a legitimate aim under paragraph 2 and, furthermore, be necessary in a democratic society in order to achieve that aim.

In that connection, the Court noted that in its judgment of 25 November 1997 the Bucharest Court of Appeal had confirmed that it was lawful for the RIS to hold the information as depositary of the archives of the former security services. That being so, the Court could conclude that the storing of information about the applicant's private life had had a basis in Romanian law.

As regards the requirement of foreseeability, the Court noted that no provision of domestic law laid down any limits on the exercise of those powers. Thus, for instance, domestic law did not define the kind of information that could be recorded, the categories of people against whom surveillance measures such as gathering and keeping information could be taken, the circumstances in which such measures could be taken or the procedure to be followed. Similarly, the Law did not lay down limits on the age of information held or the length of time for which it could be kept.

Section 45 empowered the RIS to take over for storage and use the archives that had belonged to the former intelligence services operating on Romanian territory and allowed inspection of RIS documents with the Director's consent. The Court noted that the section contained no explicit, detailed provision concerning the persons authorised to consult the files, the nature of the files, the procedure to be followed or the use that could be made of the information thus obtained.

It also noted that although section 2 of the Law empowered the relevant authorities to permit interferences necessary to prevent and counteract threats to national security, the ground allowing such interferences was not laid down with sufficient precision.

The Court also noted that the Romanian system for gathering and archiving information did not provide any safeguards, no supervision procedure being provided by Law no. 14/1992, whether while the measure ordered was in force or afterwards.

That being so, the Court considered that domestic law did not indicate with reasonable clarity the scope and manner of exercise of the relevant discretion conferred on the public authorities. The Court concluded that the holding and use by the RIS of information on the applicant's private life had not been "in accordance with the law", a fact that sufficed to constitute a violation of Article 8.

Furthermore, in the instant case that fact prevented the Court from reviewing the legitimacy of the aim pursued by the measures ordered and determining whether they had been – assuming the aim to have been legitimate – "necessary in a democratic society".

There had consequently been a violation of Article 8.

Article 13 of the Convention

The Court noted that Article 54 of the decree provided for a general action in the courts, designed to protect non-pecuniary rights that had been unlawfully infringed. The Bucharest Court of Appeal, however, had indicated in its judgment of 25 November 1997 that the RIS was empowered by domestic law to hold information on the applicant that came from the files of the former intelligence services. The Government had not established the existence of any domestic decision that had set a precedent in the matter. It had therefore not been shown that such a remedy would have been effective. That being so, the relevant preliminary objection by the Government had to be dismissed.

As to the machinery provided in Law no. 187/1999, assuming that the council provided for was set up, the Court noted that neither the provisions relied on by the respondent Government nor any other provisions of that law made it possible to challenge the holding, by agents of the State, of information on a person's private life or the truth of such information. The supervisory machinery established by sections 15 and 16 related only to the disclosure of information about the identity of some of the *Securitate*'s collaborators and agents.

The Court had not been informed of any other provision of Romanian law that made it possible to challenge the holding, by the intelligence services, of information on the applicant's private life or to refute the truth of such information.

The Court consequently concluded that the applicant had been the victim of a violation of Article 13.

Article 6 of the Convention

The applicant's claim for compensation for non-pecuniary damage and costs was a civil one within the meaning of Article 6 § 1, and the Bucharest Court of Appeal had had jurisdiction to deal with it.

The Court accordingly considered that the Court of Appeal's failure to consider the claim had infringed the applicant's right to a fair hearing within the meaning of Article 6 § 1.

There had therefore been a violation of Article 6 § 1 of the Convention also.

Article 41 of the Convention

The Court therefore considered that the events in question had entailed serious interference with Mr Rotaru's rights and that the sum of FRF 50,000 would afford fair redress for the non-pecuniary damage sustained.

The Court awarded the full amount claimed by the applicant, that is to say FRF 13,450, less the sum already paid by the Council of Europe in legal aid.

Judges Wildhaber, Lorenzen and Bonello expressed separate opinions and these are annexed to the judgment. Judges Makarczyk, Türmen, Costa, Tulkens, Casadevall and Weber joined the opinion of Judge Wildhaber.

17. *Eur. Court HR*, P.G. and J.H. v. the United Kingdom judgment of 25 September 2001, application no. 44787/98. The applicants complained, relying on Article 8, about the use of covert listening devices to monitor and record their conversations at B's flat, the monitoring of calls from B's telephone and the use of listening devices to obtain voice samples while they were at the police station.

663
25.9.2001

Press release issued by the Registrar of the European Court of Human Rights

CHAMBER JUDGMENT IN THE CASE OF P.G. AND J.H. v. THE UNITED KINGDOM

In a judgment delivered at Strasbourg on 25 September 2001 in the case of P.G. and J.H. v. the United Kingdom (no. 44787/98), the European Court of Human Rights held:

- unanimously that there had been a violation of Article 8 (right to respect for private life) of the European Convention on Human Rights concerning the use of a covert listening device at a flat;
- unanimously that there had been no violation of Article 8 concerning obtaining information about the use of a telephone;
- unanimously that there had been a violation of Article 8 concerning the use of covert listening devices at a police station;
- unanimously that there had been no violation of Article 6 § 1 (right to a fair hearing) concerning the non-disclosure of part of a report to the applicants at trial or the hearing of evidence from a police officer in the absence of the applicants or their lawyers;
- by six votes to one that there had been no violation of Article 6 § 1 concerning the use at trial of the materials obtained by the covert listening devices;
- unanimously that there had been a violation of Article 13 (right to an effective remedy) concerning the use of covert listening devices.

Under Article 41 (just satisfaction) of the Convention, the Court awarded each applicant 1,000 pounds sterling (GBP) for non-pecuniary damage and a total of GBP 12,000 for costs and expenses. (The judgment is available only in English).

I. BACKGROUND TO THE CASE BEFORE THE COURT

A. Summary of the facts

The applicants are both British nationals.

On 28 February 1995, D.I. Mann received information that an armed robbery of a Securicor cash collection van was going to be committed on or around 2 March 1995 by the first applicant and B. at one of several possible locations. Visual surveillance of B.'s home began the same day. No robbery took place.

By 3 March, however, the police had been informed the robbery was to take place 'somewhere' on 9 March 1995. In order to obtain further details, D.I. Mann prepared a report applying for authorisation to install a covert listening device in B.'s flat. On 4 March 1995, the Chief Constable gave oral authorisation and a listening device was installed in a sofa in B.'s flat the same day; the Deputy Chief Constable gave retrospective written authorisation on 8 March 1995. On 14 March 1995, the police requested itemised billing for calls from the telephone in B.'s flat. On 15 March 1995, B. and others who were with him in his home discovered the listening device and abandoned the premises. The robbery did not take place.

The applicants were arrested on 16 March 1995 in a stolen car containing two black balaclavas, five black plastic cable ties, two pairs of leather gloves, and two army kitbags.

As they wished to obtain speech samples to compare with the tapes, the police applied for authorisation to use covert listening devices in the applicants' cells and to attach listening devices to the police officers who were to be present when the applicants were charged. Written authorisation was given by the Chief Constable and samples of the applicants' speech were recorded without their knowledge or permission. An expert concluded it was 'likely' the first applicant's voice featured on the taped recordings and 'very likely' the second applicant's voice featured on them.

B. and the applicants were charged with conspiracy to rob. During their trial, evidence derived from the use of the covert listening devices was deemed admissible and some documents, including parts of D.I. Mann's report, were withheld from the applicants and their lawyers. Oral evidence was also taken from D.I. Mann in the absence of the applicants or their lawyers. The applicants were convicted on 9 August 1996 of conspiracy to rob and sentenced to 15 years' imprisonment. Their application to the Court of Appeal for leave to appeal was rejected.

The application was lodged with the European Commission of Human Rights on 7 May 1997. The case was transmitted to the European Court of Human Rights on 1 November 1998 and declared admissible on 24 October 2000.

II. SUMMARY OF THE JUDGMENT

The applicants complained, relying on Article 8, about the use of covert listening devices to monitor and record their conversations at B's flat, the monitoring of calls from B's telephone and the use of listening devices to obtain voice samples while they were at the police station.

Relying on Article 6 § 1, they complained that part of the evidence relating to the authorisation of a listening device was not disclosed to the defence during the trial, that part of the police officer's oral evidence was heard by the judge alone and that information obtained from the listening device at B's flat and the voice samples were used in evidence at their trial. They also relied on Article 13.

Article 8

Use of a covert listening device at B.'s flat

Noting that the UK Government had conceded that the police surveillance of B's flat was not in accordance with the law existing at the time in question, the Court held that there had been a violation of Article 8.

Obtaining information about the use of B.'s telephone

Observing that the information about the use of B.'s telephone was obtained and used in the context of an investigation and trial concerning a suspected conspiracy to commit armed robberies, the Court found that the measure was necessary in a democratic society. There had therefore been no violation of Article 8.

Use of covert listening devices at the police station

Noting that, at the relevant time, there existed no statutory system to regulate the use of covert listening devices by the police on their own premises, the Court found the interference with the applicants' right to a private life was not in accordance with the law. There had therefore been a violation of Article 8.

Article 6 § 1

Non-disclosure of evidence during the trial

The Court was satisfied that the defence were kept informed and permitted to make submissions and participate in the decision-making process as far as was possible without revealing to them the material which the prosecution sought to keep secret on public interest grounds. The questions which the defence counsel had wished to put to the witness D.I. Mann were asked by the judge in chambers. The Court also noted that the material which was not disclosed in the present case formed no part of the prosecution case whatever, and was never put to the jury. The fact that the need for disclosure was at all times under assessment by the trial judge provided a further, important safeguard in that it was his duty to monitor throughout the trial the fairness or otherwise of the evidence being withheld.

In conclusion, therefore, the Court found that, as far as possible, the decision-making procedure complied with the requirements of adversarial proceedings and equality of arms and incorporated adequate safeguards to protect the interests of the accused. It followed that there had been no violation of Article 6 § 1.

Use of taped evidence obtained by covert surveillance devices

The Court observed that the taped evidence at the trial was not the only evidence against the applicants. Furthermore, they had had ample opportunity to challenge both the authenticity and the use of the recordings. It was also clear that, had the domestic courts been of the view that the admission of the evidence would have given rise to substantive unfairness, they would have had a discretion to exclude it. The Court further considered that there was no unfairness in leaving it to the jury, on the basis of a thorough summing-up by the judge, to decide where the weight of the evidence lay.

Insofar as the applicants complained that the way in which the voice samples were obtained infringed their right not to incriminate themselves, the Court considered that the voice samples, which did not include any incriminating statements, might be regarded as akin to blood, hair or other physical or objective specimens used in forensic analysis, to which the right did not apply. There had therefore been no violation of Article 6 § 1.

Article 13

The Court observed that the domestic courts were not capable of providing a remedy because it was not open to them either to deal with the complaint that the interference with the applicants' right to respect for their private lives was not in accordance with the law or to grant appropriate relief in connection with the complaint.

The Court further found that the system of investigation of complaints did not meet the standards of independence necessary to constitute sufficient protection against the abuse of authority and to provide an effective remedy within the meaning of Article 13. There had therefore been a violation of Article 13.

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In accordance with the Convention, judgment was given by a Chamber of seven judges, composed as follows: Jean-Paul Costa (French),President, Willi Fuhrmann (Austrian), Pranas Kūris (Lithuanian), Françoise Tulkens (Belgian), Karel Jungwiert (Czech), Nicolas Bratza (British), Kristaq Traja (Albanian),judges, Noteand also Sally Dollé, Section Registrar. Judge Tulkens expressed a dissenting opinion, which is annexed to the judgment.

18. *Eur. Court HR, M.G v. the United Kingdom judgment* of 24 September 2002, no. 39393/98 (Violation of Article 8 of the Convention) Requested access to his social service records.

448
24.9.2002

Press release issued by the Registrar

CHAMBER JUDGMENTS CONCERNING FINLAND AND THE UNITED KINGDOM,

The European Court of Human Rights has today notified in writing four Chamber judgments, none of which is final.[fn]

Section 2

…

(2) M.G. v. the United Kingdom (no. 39393/98) ***Violation Article 8***

M.G., a United Kingdom national, was born in 1960 and lives in Leicester. He was in local authority voluntary care from: 8 September to 6 November 1961, 15 February to 20 July 1962, 26 October to 23 December 1962, 4 April 1963 to 4 April 1966 and 16 January to 8 April 1967. During these periods his mother was receiving periodic psychiatric treatment and his father had some difficulty coping with the children on his own. M.G. had contact with both parents while in care.

By letter dated 10 April 1995, the applicant requested access to his social service records. By letters dated 5 and 9 June 1995, he requested specific information including whether he had ever been on the "risk register", whether his father had been investigated or convicted of crimes against children and about the responsibility of the local authority for abuse he had suffered as a child.

By letter dated 12 June 1996 to the local authority the applicant's legal representatives noted that the applicant had been provided with summary information and certain documents. They requested that he be allowed full access to his file. In reply, the local authority indicated that the social service records had been created prior to the entry into force of the Access to Personal Files Act 1987. Further to the applicant's queries, the local authority confirmed that there were no detailed records relating to him after 1967 and little mention of ill-treatment.

In his letter of 21 January 1997, the applicant stated that he was undergoing counselling for abuse he had received as a child and that he had consulted solicitors about a negligence action against the local authority. He requested specific information about allegations of ill-treatment made in November 1966 and about his being abused by his father for eight years thereafter. The local authority responded by letter dated 17 February 1997, referring the applicant to the information already provided in 1995 and to the differences between social work standards and procedures in 1997 and in the 1960s.

The applicant complained, in particular, about inadequate disclosure by the local authority of his social service records, records which related to his time spent in local authority care. He pointed out that he

had not yet received all his social service records and referred, in particular, to the period from April 1967 - 1976 for which he has received no records whatsoever. He maintained that the failure to allow him unimpeded access to all social service records relating to him during those periods constituted a violation of Article 8 (right to respect for private and family life).

The Court noted that one of the main reasons the applicant sought access to his records was his sincere belief that he had been physically abused when he was a child by his father and his need to obtain as much information as possible about that period in order to come to terms with the emotional and psychological impact of any such abuse and to understand his own subsequent and related behaviour.

The Court observed that the applicant was only given limited access to his records in 1995, compared to the records submitted to the Court by the United Kingdom Government. In addition, he had no statutory right of access to those records or clear indication by way of a binding circular or legislation of the grounds upon which he could request access or challenge a denial of access. Most importantly, he had no appeal against a refusal of access to any independent body. The records disclosed by the Government demonstrated the need for such an independent appeal, given that significant portions of the records were blanked out and certain documents had been retained on the basis that non-disclosure was justified by the duty of confidence to third parties.

In such circumstances, the Court concluded that there had been a failure to fulfil the positive obligation to protect the applicant's private and family life in respect of his access to his social service records from April 1995. However, from 1 March 2000 (the date of entry into force of the Data Protection Act 1998) the applicant could have, but had not, appealed to an independent authority against the non-disclosure of certain records on grounds of a duty of confidentiality to third parties. Accordingly, the Court held, unanimously, that there had been a violation of Article 8 in respect of the applicant's access, between April 1995 and 1 March 2000, to his social service records. The applicant was awarded 4,000 euros (EUR) for non-pecuniary damage. (The judgment is available only in English.)

19. *Eur. Court HR, Taylor-Sabori v. the United Kingdom judgment* of 22 October 2002, no. 47114/99 (Violation of Articles 8 and 13 of the Convention) Interception of pager messages by the police and subsequent reference to them at the trial.

518
22.10.2002

Press release issued by the Registrar

**CHAMBER JUDGMENTS CONCERNING
ROMANIA, TURKEY AND THE UNITED KINGDOM**

The European Court of Human Rights has today notified in writing the following six Chamber judgments, none of which is final [fn].

Section 2

…

(3) Taylor-Sabori v. the United Kingdom (no. 47114/99) ***Violation Article 8 & Violation Article 13***

Sean-Marc Taylor-Sabori is a United Kingdom national. Between August 1995 and the applicant's arrest on 21 January 1996, he was kept under police surveillance. Using a "clone" of the applicant's pager, the police were able to intercept messages sent to him.

The applicant was arrested and charged with conspiracy to supply a controlled drug. The prosecution alleged that he had been a principal organiser in the importation to the United Kingdom from Amsterdam of over 22,000 ecstasy tablets worth approximately GBP 268,000. He was tried, along with a number of alleged co-conspirators, at Bristol Crown Court in September 1997.

Part of the prosecution case against the applicant consisted of the contemporaneous written notes of the pager messages, which had been transcribed by the police. The applicant's counsel submitted that these notes should not be admitted in evidence because the police had not had a warrant under section 2 of the Interception of Communications Act 1985 for the interception of the pager messages. However, the trial judge ruled that, since the messages had been transmitted via a private system, the 1985 Act did not apply and no warrant had been necessary.

The applicant pleaded not guilty. He was convicted and sentenced to ten years' imprisonment.

The applicant appealed against conviction and sentence. One of the grounds was the admission in evidence of the pager messages. The Court of Appeal, dismissing the appeal on 13 September 1998, upheld the trial judge's ruling that the messages had been intercepted at the point of transmission on the private radio system, so that the 1985 Act did not apply and the messages were admissible despite having been intercepted without a warrant.

The applicant complained, principally, under Articles 8 (right to respect for private and family life) and 13 (right to an effective remedy) that the interception of his pager messages by the police and

subsequent reference to them at his trial amounted to an unjustified interference with his private life and correspondence which was not "in accordance with the law" and in respect of which there was no remedy under English law.

The European Court of Human Rights noted that, at the time of the events in question, there was no statutory system to regulate the interception of pager messages transmitted via a private telecommunication system. It followed, as the Government had accepted, that the interference was not "in accordance with the law". The Court, therefore, held, unanimously, that there had been a violation of Article 8.

Concerning Article 13, the Court recalled that in its finding in the case ***Khan v. the United Kingdom*** (application no. 35394/97, judgment 12/5/2000), in circumstances similar to those in the applicant's case, the courts in the criminal proceedings were not capable of providing a remedy because, although they could consider questions of the fairness of admitting the evidence in the criminal proceedings, it was not open to them to deal with the substance of the Convention complaint that the interference with the applicant's right to respect for his private life was not "in accordance with the law"; still less, to grant appropriate relief in connection with the complaint. As it did not appear that there was any other effective remedy available to Mr Taylor-Sabori for his Article 8 complaint, the Court held, unanimously, that there had been a violation of Article 13.

The Court further held unanimously that the finding of a violation constituted sufficient just satisfaction for any non-pecuniary damage sustained by the applicant and awarded him EUR 4,800 for costs and expenses. (The judgment is in English only.)

20. *Eur. Court HR, Allan v. the United Kingdom judgment* of 5 November 2002, application no. 48539/99 (Violation of Articles 6, 8, and 13 of the Convention). The use of covert audio and video surveillance within a prison cell and the prison visiting area.

5.11.2002

Press release issued by the Registrar

CHAMBER JUDGMENTS CONCERNING:

AUSTRIA, BELGIUM, CYPRUS, THE CZECH REPUBLIC, FINLAND, FRANCE, ITALY, THE NETHERLANDS, POLAND, SWITZERLAND AND THE UNITED KINGDOM

The European Court of Human Rights has today notified in writing the following 11 Chamber judgments, none of which is final.[fn1]

Section 2

…

(11) Allan v. the United Kingdom (no. 48539/99)

 Violation Article 8 Violation Article 6 Violation Article 13

Richard Roy Allan is a United Kingdom national. On or about 20 February 1995, an anonymous informant told the police that Mr Allan had been involved in the murder of David Beesley, a store manager, who was shot dead in a Kwik-Save supermarket in Greater Manchester on 3 February 1995.

On 8 March 1995, the applicant was arrested for the murder. In the police interviews which followed, the applicant availed himself of his right to remain silent.

Around this time, recordings were made of the applicant's conversations with his female friend while in the prison visiting area and with his co-accused in the prison cell they shared.

On 23 March 1995, H., a long-standing police informant with a criminal record, was placed in the applicant's cell for the purpose of eliciting information from the applicant. The applicant maintains that H. had every incentive to inform on him. Telephone conversations between H. and the police included comments by the police instructing H. to "push him for what you can" and disclosed evidence of concerted police coaching. After 20 April 1995, he associated regularly with the applicant, who was remanded at Strangeways Prison.

On 25 July 1995, in a 59-60 page witness statement, H. claimed that the applicant had admitted his presence at the murder scene. This asserted admission was not part of the recorded interview and was disputed. No evidence, other than the alleged admissions, connected the applicant with the killing of Mr Beesley.

On 17 February 1998 the applicant was convicted of murder before the Crown Court at Manchester by a 10-2 majority and sentenced to life imprisonment. He appealed unsuccessfully.

The applicant complained of the use of covert audio and video surveillance within his cell, the prison visiting area and upon a fellow prisoner and of the use of materials gained by these means at his trial. He relied on Articles 6 (right to a fair trial), 8 (right to respect for private life) and 13 (right to an effective remedy).

Recalling that, at the relevant time, there existed no statutory system to regulate the use of covert recording devices by the police, the European Court of Human Rights held, unanimously, that there had been violations of Article 8 concerning the use of these devices.

The Government having accepted that the applicant did not enjoy an effective remedy in domestic law at the relevant time in respect of the violations of his right to private life under Article 8, the Court also held, unanimously, that there had been a violation of Article 13.

Concerning the complaint under Article 6, the Court noted that, in his interviews with the police following his arrest, the applicant had, on the advice of his solicitor, consistently availed himself of his right to silence.

H., who was a longstanding police informer, had been placed in the applicant's cell and later at the same prison for the specific purpose of eliciting from the applicant information implicating him in the offences of which he was suspected. The evidence adduced at the applicant's trial showed that the police had coached H. The admissions allegedly made by the applicant to H. were not spontaneous and unprompted statements volunteered by the applicant, but were induced by the persistent questioning of H., who, at the instance of the police, had channelled their conversations into discussions of the murder in circumstances which could be regarded as the functional equivalent of interrogation, without any of the safeguards of a formal police interview, including the attendance of a solicitor and the issuing of the usual caution.

The Court considered that the applicant would have been subject to psychological pressures which impinged on the "voluntariness" of the disclosures that he had allegedly made to H.: he was a suspect in a murder case, in detention and under direct pressure from the police in interrogations about the murder, and would have been susceptible to persuasion to take H., with whom he shared a cell for some weeks, into his confidence. In those circumstances, the information gained by the use of H. in this way might be regarded as having been obtained in defiance of the will of the applicant and its use at trial to have impinged on the applicant's right to silence and privilege against self-incrimination. The Court, therefore, held, unanimously, that there had been a violation of Article 6 concerning the admission at the applicant's trial of the evidence obtained through the informer H.

The Court awarded the applicant EUR 1,642 for non-pecuniary damage and EUR 12,800 for costs and expenses. (The judgment is in English only.)

21. *Eur. Court HR, Peck v. the United Kingdom*, judgment of 28 January 2003, application no. 44647/98 (Violation of Articles 8 and 13 of the Convention). The applicant complained about the disclosure of the CCTV footage to the media, which resulted in images of himself being published and broadcast widely, and about a lack of an effective domestic remedy. He relied on Articles 8 and 13 of the Convention.

046
28.1.2003

Press release issued by the Registrar of the European Court of Human Rights

CHAMBER JUDGMENT IN THE CASE OF PECK v. THE UNITED KINGDOM

In a judgment delivered at Strasbourg on 28 January 2003, the European Court of Human Rights has notified in writing a judgment[1] in the case of Peck v. the United Kingdom (application no. 44647/98).

The Court held unanimously that there had been:

- a violation of Article 8 (right to respect for private life) of the European Convention on Human Rights;
- a violation of Article 13 (right to an effective remedy) taken in conjunction with Article 8.

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant 11,800 euros (EUR) for non-pecuniary damage and EUR 18,075 for costs and expenses.

I. BACKGROUND TO THE CASE

A. Summary of the facts

The applicant, Geoffrey Dennis Peck, is a United Kingdom national, who was born in 1955 and lives in Essex.

On the evening of 20 August 1995, at a time when he was suffering from depression, Mr Peck walked alone down Brentwood High Street, with a kitchen knife in his hand, and attempted suicide

[1] Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its Protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

by cutting his wrists. He was unaware that he had been filmed by a closed-circuit television (CCTV) camera installed by Brentwood Borough Council.

The CCTV footage did not show the applicant cutting his wrists; the operator was solely alerted to an individual in possession of a knife. The police were notified and arrived at the scene, where they took the knife, gave the applicant medical assistance and brought him to the police station, where he was detained under the Mental Health Act 1983. He was examined and treated by a doctor, after which he was released without charge and taken home by police officers.

On 9 October 1995 the Council issued two photographs taken from the CCTV footage with an article entitled "Defused – the partnership between CCTV and the police prevents a potentially dangerous situation". The applicant's face was not specifically masked. The article noted that an individual had been spotted with a knife in his hand, that he was clearly unhappy but not looking for trouble, that the police had been alerted, that the individual had been disarmed and brought to the police station where he was questioned and given assistance.

On 12 October 1995 the "Brentwood Weekly News" newspaper used a photograph of the incident on its front page to accompany an article on the use and benefits of the CCTV system. The applicant's face was not specifically masked.

On 13 October 1995 an article entitled "Gotcha" appeared in the "Yellow Advertiser", a local newspaper with a circulation of approximately 24,000. The article, accompanied by a photograph of the applicant taken from the CCTV footage, referred to the applicant having been intercepted with a knife and a potentially dangerous situation having being defused. It was noted that the applicant had been released without charge. On 16 February 1996 a follow-up article entitled "Eyes in the sky triumph" was published by the newspaper using the same photograph. It appears that a number of people recognised the applicant.

On 17 October 1995 extracts from the CCTV footage were included in an Anglia Television programme, a local broadcast to an average audience of 350,000. The applicant's face had been masked at the Council's oral request.

In late October or November 1995 the applicant became aware that he had been filmed on CCTV and that footage had been released because a neighbour said he had seen him on television. He did not take any action as he was still suffering from severe depression.

The CCTV footage was also supplied to the producers of "Crime Beat", a BBC series on national television with an average of 9.2 million viewers. The Council imposed orally a number of conditions, including that no one should be identifiable in the footage and that all faces should be masked.

However, in trailers for an episode of "Crime Beat", the applicant's image was not masked at all. After being told by friends that they had seen him on 9 March 1996 in the trailers, the applicant complained to the Council about the forthcoming programme. The Council contacted the producers who confirmed that his image had been masked in the main programme. On 11 March the CCTV footage was shown on "Crime Beat". However, although the applicant's image was masked in the main programme, he was recognised by friends and family.

The applicant made a number of media appearances thereafter to speak out against the publication of the footage and photographs.

B. Proceedings before the European Commission of Human Rights

On 25 April 1996 the applicant complained to the Broadcasting Standards Commission (BSC) in relation to, among other things, the "Crime Beat" programme, alleging an unwarranted infringement of his privacy and that he had received unjust and unfair treatment. On 13 June 1997 the BSC upheld both complaints. On 1 May 1996 the applicant complained to the ITC concerning the Anglia Television broadcast. The ITC found that the applicant's identity was not adequately obscured and that the ITC code had been breached. Given an admission and apology by Anglia Television, however, no further action was taken. On 17 May 1996 the applicant complained unsuccessfully to the Press Complaints Commission concerning the articles in the "Yellow Advertiser".

On 23 May 1996 he applied to the High Court for leave to apply for judicial review concerning the Council's disclosure of the CCTV material. His request and a further request for leave to appeal to the Court of Appeal were both rejected.

The application was lodged with the European Commission of Human Rights on 22 April 1996 and transmitted to the Court on 1 November 1998. It was declared admissible on 15 May 2001.

II. SUMMARY OF THE JUDGMENT[2]

A . Article 8 of the Convention

The applicant complained about the disclosure of the CCTV footage to the media, which resulted in images of himself being published and broadcast widely, and about a lack of an effective domestic remedy. He relied on Articles 8 and 13 of the Convention.

The Court observed that, following the disclosure of the CCTV footage, the applicant's actions were seen to an extent which far exceeded any exposure to a passer-by or to security observation and to a degree surpassing that which the applicant could possibly have foreseen. The disclosure by the Council of the relevant footage therefore constituted a serious interference with the applicant's right to respect for his private life.

The Court did not find that there were relevant or sufficient reasons which would justify the direct disclosure by the Council to the public of stills of the applicant in "CCTV News", without the Council having obtained the applicant's consent or masking his identity, or which would justify its disclosures to the media without the Council taking steps to ensure so far as possible that his identity would be masked. Particular scrutiny and care was needed given the crime prevention objective and context of the disclosures.

[2.] This summary by the Registry does not bind the Court.

Neither did the Court find that the applicant's later voluntary media appearances diminished the serious nature of the interference and nor did these appearances reduce the need for care concerning disclosures. The applicant was the victim of a serious interference with his right to privacy involving national and local media coverage: it could not therefore be held against him that he tried afterwards to expose and complain about that wrongdoing through the media.

Accordingly, the Court considered that the disclosures by the Council of the CCTV material in "CCTV News" and to the "Yellow Advertiser", Anglia Television and the BBC were not accompanied by sufficient safeguards and, therefore, constituted a disproportionate and unjustified interference with the applicant's private life and a violation of Article 8.

In the light of this finding, the Court did not consider it necessary to consider separately the applicant's other complaints under Article 8.

B. Article 13 in conjunction with Article 8

The Court found that judicial review did not provide the applicant with an effective remedy in relation to the violation of his right to respect for his private life.

In addition, the lack of legal power of the BSC and ITC to award damages to the applicant meant that those bodies could not provide an effective remedy to him. The ITC's power to impose a fine on the relevant television company did not amount to an award of damages to the applicant. And, although the applicant was aware of the Council's disclosures prior to the "Yellow Advertiser" article of February 1996 and the BBC broadcasts, neither the BSC nor the PCC had the power to prevent such publications or broadcasts.

The Court further found that the applicant did not have an actionable remedy for breach of confidence at the relevant time.

Finding, therefore, that the applicant had no effective remedy in relation to the violation of his right to respect for his private life, the Court concluded that there had been a violation of Article 13.

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In accordance with the Convention, judgment was given by a Chamber of 7 judges, namely Matti Pellonpää (Finnish), President, Nicolas Bratza (British), Antonio Pastor Ridruejo (Spanish), Marc Fischbach (Luxemburger), Rait Maruste (Estonian), Stanislav Pavlovschi (Moldovan), Lech Garlicki (Polish), judges, and also Michael O'Boyle, Section Registrar.

22. *Eur. Court HR*, Cotlet v. Romania judgment of 3 June 2003, application no. 38565/97. The applicant complained under Article 8 of the Convention of interference with his correspondence with the Convention institutions. He also complained of a violation of his right of individual application, as guaranteed by Article 34 of the Convention.

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3.6.2003

Press release issued by the Registrar of the European Court of Human Rights

CHAMBER JUDGMENT IN THE CASE OF COTLET V. ROMANIA

In a judgment delivered at Strasbourg on 3 June 2003, the European Court of Human Rights has notified in writing a judgment in the case of Cotlet v. Romania (application no. 38565/97).

The Court held unanimously that:

● there had been a violation of Article 8 (right to respect for correspondence) of the European Convention on Human Rights on account of the delays in forwarding the applicant's letters to the Commission;
● there had also been a violation of Article 8 of the Convention on account of the fact that the applicant's correspondence with the Commission and the Court had been opened;
● there had also been a violation of Article 8 of the Convention on account of the prison authority's refusal to supply the applicant with the necessary materials for his correspondence with the Court;
● there had been a violation of Article 34 (right of individual application) of the Convention; and
● it was unnecessary to examine the complaint of a violation of Article 8 taken together with Article 34 of the Convention.

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant 2,500 euros (EUR) for pecuniary and non-pecuniary damage and EUR 3,300 for costs and expenses, less the EUR 920 he had already received in legal aid.

I. BACKGROUND TO THE CASE BEFORE THE COURT

A. Summary of the facts

The applicant, Silvestru Cotleţ, is a Romanian national who was born in 1964 and lives at Gura-Humorului. The case concerns his difficulties in corresponding with the Convention institutions after lodging his application.

On 23 July 1992 he was convicted of murder by the Caraş-Severin County Court and sentenced to 17 years' imprisonment. He was sent to Drobeta Turnu-Severin Prison and subsequently transferred to penal institutions in Timişoara, Gherla, Jilava, Rahova, Craiova, Tg. Ocna and Mărgineni. He lodged an application with the European Commission of Human Rights from prison in November 1995 complaining about the allegedly unfair nature of the proceedings that had ended with his conviction.

The applicant complained under Article 8 of the Convention of interference with his correspondence with the Convention institutions, including delays in forwarding his letters to the Court and the Commission, the opening of his letters to those institutions, and the prison authorities' refusal to provide him with paper, envelopes and stamps for his letters to the Court. He also complained of a violation of his right of individual application, as guaranteed by Article 34 of the Convention.

II. SUMMARY OF THE JUDGMENT

A. Article 8 of the Convention

Delays in forwarding the applicant's letters to the Commission and the Court

The Court noted that between November 1995 and October 1997 the applicant's correspondence had taken between 1 month and 10 days and 2 months and 6 days to reach its destination. Such delays amounted to an interference with his right to respect for his correspondence. Referring to its case-law, the Court observed that it had previously held that the Romanian legislation on the monitoring of prisoners' correspondence was incompatible with the requirement under Article 8 § 2 of the Convention for an interference to be "in accordance with the law". Consequently, finding that that requirement was not satisfied, the Court held that there had been a violation of the Convention under this head.

Opening of the applicant's correspondence with the Commission and the Court

As regards the period up to 24 November 1997, when a decree was issued guaranteeing the confidentiality of prisoners' correspondence, the Court found that the fact that the applicant's letters had been opened amounted to an interference with his right to respect for his correspondence: that interference had been based on national provisions which had not amounted to a "law" for the purposes of Article 8 paragraph 2 of the Convention. Consequently, it held that there had been a violation of the Convention under that head.

With regard to the period after 24 November 1997, the Court noted that the facts were in dispute. The case file showed that the interference with the applicant's right to respect for his correspondence had continued. In the absence of any specific information from the parties on the point, the Court assumed that the basis for the interference was the Minister of Justice's decree of 24 November 1997. It noted that the decree was referred to under various different numbers and did not appear to have been published. Accordingly, the Court found that the interference was not "in accordance with the law" and that there had been a violation of Article 8 of the Convention.

The prison authority's refusal to provide the applicant with writing materials for his correspondence with the Court

The Court noted that inherent in the right to respect for correspondence, as guaranteed by Article 8 of the Convention, was the right to writing materials. It noted that several letters in which the applicant had related the difficulties he was experiencing had arrived in envelopes from other prisoners. The Court did not find the Government's submission that the applicant had been entitled to two free envelopes a month substantiated. It also found that the applicant's right to respect for his correspondence was not adequately protected by the provision of envelopes. It noted that the Government had not disputed that the applicant's requests had been turned down because there were no stamped envelopes for overseas correspondents available. In the circumstances, the Court found that the authorities had not discharged their positive obligation to supply the applicant with writing materials for his correspondence with the Court and, accordingly, held that there had been a violation of Article 8 of the Convention.

B. Article 34 of the Convention

The Court found that the applicant's fears about being transferred to another prison or encountering other problems as a result of lodging his application could amount to intimidation. When combined with the failure to provide him with the necessary writing materials for his correspondence with the Court, the delays in forwarding his correspondence to the Court and the Commission and the systematic opening of that correspondence constituted a form of unlawful and unacceptable pressure that violated the applicant's right of individual application. Consequently, the Court held that there had been a violation of Article 34 of the Convention.

C. Article 8 taken together with Article 34 of the Convention

In view of its findings on the other complaints, the Court held that no separate examination of this complaint was necessary.

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In accordance with the Convention, judgment was given by a Chamber of 7 judges, composed as follows: Nicolas Bratza (British), President, Matti Pellonpää (Finnish), Corneliu Bîrsan (Romanian), Viera Strážnická (Slovakian), Rait Maruste (Estonian), Stanislav Pavlovschi (Moldovan), Lech Garlicki (Polish), judges, and also Michael O'Boyle, Section Registrar.

23. *Eur. Court HR, Odièvre v. France [GC], application* no. 42326/98, ECHR 2003-III of 13 February 2003. Applicant complained about his inability to find out about origins of her mother. The Court ruled that the request for disclosure of her mother's identity, was subject to the latter's consent being obtained

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***no.* 42326/98**
13.2.2003

Press release issued by the Registrar

ODIÈVRE v. FRANCE

Refusal to divulge identity of biological parents

Facts
The applicant was born in 1965. She was abandoned by her natural mother at birth and left with the Health and Social Security Department. Her mother requested -that her identity be kept secret from the applicant, who was placed in State care and later adopted under a full adoption order. The applicant subsequently tried to find out the identity of her natural parents and brothers, but was only able to obtain non-identifying information about her natural family.

Law – Article 8
The Court examined the case from the perspective of private life, not family life, since the applicant's claim to be entitled, in the name of biological truth, to know her personal history was based on her inability to gain access to information about her origins and to related identifying data.
The Court reiterated that Article 8 protected, among other interests, the right to personal development. Matters of relevance to personal development included details of a person's identity as a human being and the vital interest protected by the Convention in obtaining information necessary to discover the truth concerning important aspects of one's personal identity, such as the identity of one's parents. Birth, and in particular the circumstances in which a child was born, formed part of a child's, and subsequently the adult's, private life guaranteed by Article 8 of the Convention. That provision was therefore applicable in the instant case.
It was noted that the French legislation aimed to protect the mother's and child's health at birth and to avoid abortions, in particular illegal abortions, and children being abandoned other than under the proper procedure. The right to respect for life was thus one of the aims pursued by the French system.
The Court observed that the applicant had been given access to non-identifying information about her mother and natural family that had enabled her to trace some of her roots, while ensuring the protection of third-party interests. In addition, while preserving the principle that mothers were entitled to give birth anonymously, the law of 22 of January 2002 facilitated searches for information about a person's biological origins by setting up a National Council on Access to Information about Personal Origins. The legislation was already in force and the applicant could use it to request disclosure of her mother's identity, subject to the latter's consent being obtained.
The French legislation thus sought to strike a balance and to ensure sufficient proportion between the competing interests.

Conclusion: no violation (ten votes to seven).

24. *Eur. Court HR, A. v. the United Kingdom judgment of 17 July 2003,* no. 63737/00 (violation of Article 8 of the Convention). Use of videotape by the Police for identification and prosecution purposes.

394
17.07.2003

Press release issued by the Registrar

CHAMBER JUDGMENTS CONCERNING ITALY AND THE UNITED KINGDOM

The European Court of Human Rights has today notified in writing the following Chamber judgments, none of which is final.[fn]

7) Perry v. the United Kingdom (no. 63737/00) ***Violation Article 8***

Videotaping for identification purposes

The applicant, Stephen Arthur Perry, is a UK national, born in 1964 and currently detained in HM Prison Brixton. He was arrested on 17 April 1997 in connection with a series of armed robberies of mini-cab drivers in and around Wolverhampton and released pending an identification parade. When he failed to attend that and several further identification parades, the police requested permission to video him covertly.

On 19 November 1997 he was taken to the police station to attend an identity parade, which he refused to do. Meanwhile, on his arrival, he was filmed by the custody suite camera. An engineer had adjusted it to ensure that it took clear pictures during his visit. The pictures were inserted in a montage of film of other persons and shown to witnesses. Two witnesses of the armed robberies subsequently identified him from the compilation tape. Neither Mr Perry nor his solicitor was informed that a tape had been made or used for identification purposes. He was convicted of robbery on 17 March 1999 and sentenced to five years' imprisonment. His subsequent appeals were unsuccessful.

Mr Perry complained, under Article 8 (right to respect for private life) of the Convention, that the police had covertly videotaped him for identification purposes and used the videotape in the prosecution against him.

The Court noted that there was no indication that Mr Perry had had any expectation that footage would be taken of him in the police station for use in a video identification procedure and, potentially, as evidence prejudicial to his defence at trial. That ploy adopted by the police had gone beyond the normal use of this type of camera and amounted to an interference with the applicant's right to respect for his private life. The interference had not been in accordance with the law because the police had failed to comply with the procedures set out in the applicable code: they had not obtained the applicant's consent or informed him that the tape was being made; neither had they informed him of his rights in that respect. The Court held unanimously that there had been a violation of Article 8 of the Convention and awarded the applicant EUR 1,500 for non-pecuniary damage and EUR 9,500 for costs and expenses. (The judgment is available only in English.)

25. *Eur. Court HR*, Matwiejczuk v. Poland judgment of 2 December 2003, application no. 37641/97 (No violation of Article 34). The applicant complained about the length of his pre-trial detention, the length of the criminal proceedings against him and that his letters. He relied on: Article 5 § 3 (right to be brought promptly before a judge), Article 6 § 1 (right to a fair trial within a reasonable time), Article 8 (right to respect for correspondence) and Article 34 (effective exercise of the right to file individual applications).

614
2.12.2003

Press release issued by the Registrar of the European Court of Human Rights

CHAMBER JUDGMENT IN THE CASE OF MATWIEJCZUK V. POLAND

On 2 December 2003, the European Court of Human Rights has notified in three Chamber judgments, of which only *Stańczyk v. Poland* is final.

A. BACKGROUND TO THE CASE BEFORE THE COURT

The applicant, Tomasz Matwiejczuk, is a Polish national born in 1966. He is currently detained in Radom Prison (Poland).

He complained about the length of his pre-trial detention (lasting two years, seven months and 22 days), the length of the criminal proceedings against him (almost three years and two months) and that his letters, including correspondence with the European Court of Human Rights, were monitored during his detention. He relied on: Article 5 § 3 (right to be brought promptly before a judge), Article 6 § 1 (right to a fair trial within a reasonable time), Article 8 (right to respect for correspondence) and Article 34 (effective exercise of the right to file individual applications).

B. SUMMARY OF THE JUDGMENT

The Court noted that the monitoring of the applicant's correspondence before 1 September 1998 was in breach of Article 8, as Polish law in force at that time did not clearly indicate the scope and manner of the discretion conferred on public authorities to control correspondence. In addition, the opening of a letter from the European Court of Human Rights to the applicant on 23 February 1999 – which had not taken place in the applicant's presence – was also in breach of Article 8, not being in accordance with the law. The Court therefore held, unanimously, that there had been a violation of Article 8.

Given this finding, the Court did not consider it necessary to examine the applicant's claim that there was an interference with the exercise of his right of individual petition. The Court further found that the delivery of the applicants' correspondence had not been delayed and that there had been no violation of Articles 8 or 34 in that respect.

Finding that both the length of the applicant's pre-trial detention and the length of the proceedings against him were not reasonable, the Court held, unanimously, that there had been a violation of Article 5 § 3 and Article 6 § 1.

The applicant was awarded EUR 2,000 for non-pecuniary damage and EUR 1,500 less EUR 790 for costs and expenses. (The judgment is available only in English.)

26. *Eur. Court HR, Von Hannover v. Germany*, application no. 59320/00, judgment of 24 June 2004. Applicant complained about obligation of states to protect an individual's image, even for photos taken of public figures in public spaces.

24.6.2004

VON HANNOVER v. GERMANY
no. 59320/00 24.6.2004

Obligation of states to protect an individual's image, even for photos taken of public figures in public spaces

Facts
The applicant was the eldest daughter of Prince Rainier III of Monaco. A number of German tabloid magazines published photos taken without her knowledge showing her outside her home going about her daily business, either alone or in company. The applicant sought an injunction in the German courts against any further publication of the photos in Germany. This was refused as the lower courts held that due to the applicant's status she had to tolerate the publication without her consent of photos taken outside her home. The Federal Court of Justice held that figures of contemporary society were entitled to respect for their private life even outside their home, but only if they had retired to a secluded place where it was objectively clear to everyone that they wanted to be alone, and where they behaved in a given situation in a manner in which they would not behave in a public place.

Law – Article 8
The publication of photos showing the applicant engaged in purely private activities in her daily life fell within the scope of her private life. The photos and accompanying commentaries had been published for the purposes of an article designed to satisfy the curiosity of a particular readership regarding the details of the private life of the princess, who was not a public figure and did not fulfil any official function on behalf of Monaco. In short, the publications in question had not contributed to any debate of general interest to society despite the applicant being known to the public. The Court also stressed that everyone, even if they were known to the general public, had to have a legitimate expectation of protection and respect for their private life, which included a social dimension. The photos in question, which concerned exclusively details of the applicant's private life, had been taken without her knowledge or consent and in the context of daily harassment by photographers. Moreover, increased vigilance in protecting private life was necessary to contend with new communication technologies which, among other things, made possible the systematic taking of photos and their dissemination to a broad section of the public. In defining the applicant as a figure of contemporary society, the domestic courts did not allow her to rely on her right to protection of her private life unless she was in a secluded place out of the public eye. In the Court's view, the criterion of spatial isolation was in reality too vague and difficult for the person concerned to determine in advance. The State, which had a positive obligation under the Convention to protect private life and the right to control the use of one's image, had failed to ensure the effective protection of the applicant's private life.

Conclusion: violation (unanimously).

27. *Eur. Court HR, Sciacca v. Italy*, judgment of 11 January 2005, application no. 50774/99. The applicant submits that the dissemination of the photograph at a press conference organised by the public prosecutor's office and the tax inspectors infringed her right to respect for her private life, contrary to Article 8.

007
11.1.2005

Press release issued by the Registrar

CHAMBER JUDGMENTS CONCERNING
THE CZECH REPUBLIC, FRANCE, ITALY, TURKEY AND UKRAINE

The European Court of Human Rights has today notified in writing the following ten Chamber judgments, of which only the friendly-settlement judgments are final[1]
…

3) Sciacca v. Italy (no. 50774/99) ***Violation Article 8***

The applicant, Carmela Sciacca, is an Italian national who was born in 1948 and lives in Syracuse (Italy). She was a teacher at a private school in Lentini which owned a company of which she and other teachers were members.

During an investigation into irregularities of management of the school's activities, Mrs Sciacca was prosecuted for criminal conspiracy, tax evasion and forgery. She was arrested and was made subject to a compulsory residence order in November 1998. The tax inspectors drew up a file on her containing photographs and her fingerprints.

Following a press conference on 4 December 1998 given by the public prosecutor's office and the tax inspectors, the dailies *le Giornale di Sicilia* and *la Sicilia* published articles on the facts giving rise to the prosecution which were illustrated by a photograph of the four arrested women, including the applicant. The photograph of Mrs Sciacca, which was published four times, was the one that had been taken by the tax inspectors when the file was drawn up on her and released by them to the press.

At the end of the proceedings the applicant was sentenced to one year and ten months' imprisonment and fined EUR 300.

The applicant submitted that the dissemination of her photograph at the press conference had infringed her right to respect for her private life, contrary to Article 8 (right to respect for private life) of the Convention.

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1 Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

The Court noted that the photograph, taken for the purposes of drawing up an official file, had been released to the press by the tax inspectors. According to the information in its possession, there was no law governing the taking of photographs of people under suspicion or arrested and assigned to residence and the release of photos to the press. It was rather an area in which a practice had developed.

As the interference with the applicant's right to respect for her private life had not been "in accordance with the law" within the meaning of Article 8, the Court concluded that there had been a breach of that provision. It considered that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage alleged by the applicant and awarded her EUR 3,500 for costs and expenses. (The judgment is available only in French).

28. *Eur. Court HR, Pisk-Piskowski v. Poland* judgment of 14 January 2005, application no. 92/03 (Violation of Articles 8 of the Convention). The applicant complained that the proceedings resulting in his conviction had been unfair and that his right to respect for his correspondence had been infringed. He relied in particular on Article 6 § 1 (right to a fair hearing).

327
14.6.2005

Press release issued by the Registrar of the European Court of Human Rights

CHAMBER JUDGMENT IN THE CASE OF PISK- PISKOWSKI V. POLAND

On 14 June 2005, the European Court of Human Rights has notified in writing five Chamber judgments, none of which are final.

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A. BACKGROUND TO THE CASE BEFORE THE COURT

1. The applicant, Andrzej Pisk-Piskowski, is a Polish national who was born in 1967 and lives in Opole (Poland).

2. On 11 December 2001 the Opole District Court found the applicant guilty of making threats and sentenced him to one year and six months' imprisonment. Neither the applicant nor his officially assigned counsel was present at the delivery of the judgment but both the applicant and his lawyer were present at an earlier hearing held by the trial court. The applicant further failed to lodge an appeal against the judgment given on 11 December 2001 in accordance with the procedural requirements.

3. The first letter sent by the applicant from the Wrocław Detention Centre to the European Court of Human Rights arrived at the Registry on 6 December 2002, stamped "District Court in Legnica, censored on 22.11.02" (*Sąd Rejonowy w Legnicy, cenzurowano dnia 22.11.02*) and "252, 14 NOV 2002, register number 2738/01" (*252, 14 LIS 2002, numer ewid. 2738/01*).

4. The applicant complained, in particular, that the proceedings resulting in his conviction had been unfair and that his right to respect for his correspondence had been infringed. He relied in particular on Article 6 § 1 (right to a fair hearing).

B. SUMMARY OF THE JUDGMENT[2]

The Court raised ex officio the issues under Articles 8 (right to respect for correspondence) and 34 (right of individual petition) concerning the censorship of his correspondence. It considered that there was a reasonable likelihood that the first letter sent by the applicant had been opened by the domestic authorities, even if there was no stamp to that effect on the envelope. In reaching that conclusion, the Court took into account the fact that the Polish word *ocezurowano*, which had appeared on the envelope, meant that a competent authority had allowed the dispatch or delivery of the letter after monitoring its content. As long as the authorities continued the practice of marking prisoners' letters with the *ocezurowano* stamp, the Court had no alternative but to presume that those letters had been opened and their contents read.

The Court noted that Article 103 § 1 of the 1997 Code on the Execution of Criminal Sentences expressly prohibited censorship of, or other forms of interference with, correspondence between convicted detainees and "institutions set up by international treaties ratified by the Republic of Poland concerning the protection of human rights". Since the authorities had disregarded that statutory prohibition, the Court held unanimously that there had been a violation of Article 8. It further considered that it was not necessary to carry out a separate examination of the applicant's complaint under Article 34. The Court declared the applicant's other complaints inadmissible and considered that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage he had sustained. (The judgment is available only in English.)

[2] This summary has been prepared by the Registry and in no way binds the Court.

29. *Eur. Court HR, Matheron v. France,* judgment of 29 March 2005, application no. 57752/00. The applicant complains under Article 8 of the Convention (right to respect for his private life) that evidence was used against him that had been obtained by telephone tapping in separate proceedings. Not being a party to those proceedings, he had been unable to contest their validity.

159
29.3.2005

Press release issued by the Registrar

CHAMBER JUDGMENTS CONCERNING
FRANCE, POLAND, SAN MARINO, SLOVAKIA AND TURKEY

The European Court of Human Rights has today notified in writing the following 11 Chamber judgments, of which only the friendly-settlement judgment is final[1]

…

3) Matheron v. France (no. 57752/00) ***Violation of Article 8***

The applicant, Robert Matheron, is a French national who was born in 1949. He is currently in Salon de Provence Prison (France).

In 1993 criminal proceedings were instituted against him for international drug-trafficking. Evidence obtained from telephone tapping that had been used in proceedings against a co-defendant was also used against the applicant. The applicant argued that that evidence was inadmissible, but the indictment division ruled that it had no jurisdiction to verify whether evidence obtained from telephone tapping in separate proceedings had been properly communicated and recorded in writing.

On 6 October 1999 the Court of Cassation dismissed an appeal by the applicant, holding that the indictment division only had jurisdiction to determine the validity of the application to adduce the telephone records in evidence, but not to decide whether the telephone tapping was lawful.

On 23 June 2000 the applicant was sentenced to 15 years' imprisonment.

He complained under Article 8 of the Convention (right to respect for his private life) that evidence had been used against him that had been obtained from telephone tapping in separate proceedings. Not being a party to those proceedings, he had been unable to contest their validity.

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[1] Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

The main task of the Court was to ascertain whether an "effective control" had been available to the applicant to challenge the telephone tapping to which he had been made subject. It was clear that he had been unable to intervene in the proceedings in which the order to monitor telephone calls had been made. Furthermore, the Court of Cassation had ruled that in such cases the role of the indictment division was confined to checking whether the application to adduce evidence obtained from the telephone tapping had been made in the proper form.
The Court reiterated that the 1991 Act regulating telephone tapping in France was consistent with the Convention. However, it said that the reasoning followed by the Court of Cassation could lead to decisions that would deprive a number of people, namely those against whom evidence obtained from telephone tapping in separate proceedings was used, of the protection afforded by the Act. That was what had happened in the case before the Court in which the applicant had not enjoyed the effective protection of the Act, which made no distinction on the basis of the proceedings in which the taped telephone conversations were used.

In those circumstances, the Court found that the applicant had not had access to "effective control" allowing him to contest the validity of the evidence obtained through telephone tapping. It accordingly held unanimously that there had been a violation of Article 8 of the Convention and awarded the applicant EUR 3,500 for non-pecuniary damage and EUR 5,500 for costs and expenses. (The judgment is available only in French.)

30. *Eur. Court HR, Vetter v. France*, judgment of 31 May 2005, application no. 59842/00, Complains under Article 8 (right to respect for private life), and Article 6 § 1 (right to a fair trial).

290
31.5.2005

Press release issued by the Registrar

CHAMBER JUDGMENT CONCERNING FRANCE

…

3) Vetter v. France (no. 59842/00) ***Violation of Article 8 Violation of Article 6 § 1***
The applicant, Christophe Vetter, is a French national who was born in 1975. He is currently serving a prison sentence.

Following the discovery of a body with gunshot wounds, the police installed listening devices in a flat which the applicant, whom they suspected of the homicide, visited regularly. On the strength of the conversations that were recorded, the applicant was placed under formal investigation for intentional homicide and remanded in custody until 30 December 1997.

The applicant argued that there was no statutory basis for the use of listening devices and that the evidence that had thereby been obtained was inadmissible. The Indictment Division of the Montpellier Court of Appeal and subsequently the Criminal Division of the Court of Cassation rejected that argument, holding that the monitoring of his conversations had not contravened Articles 81 and 100 et seq. of the Code of Criminal Procedure on the confidentiality of telephone communications.

Partly on the basis of the evidence obtained from the recordings, the applicant was committed for trial in the Hérault Assize Court. On 23 October 2000 he was convicted and sentenced to twenty years' imprisonment.

The applicant complained under Article 8 of the Convention (right to respect for private life) that there was no statutory basis in French law for the installation of the listening devices in the flat or the recording of his conversations and that his right to respect for his private life had accordingly been violated. He also complained under Article 6 § 1 (right to a fair hearing) that the procedure followed in the Court of Cassation was unfair in that neither the report of the reporting judgment nor the submissions of the advocate general had been communicated to him and that his complaint under Article 8 of the Convention had been dismissed on the ground that he had no standing.

The Court noted that the matters complained of by the applicant amounted to interference with his right to respect for his private life. However, it was not satisfied that Articles 100 et seq. of the Code of Criminal Procedure had afforded any statutory basis for the order to install the listening devices at the time it was made and implemented, as those provisions only regulated the interception of telephone communications and did not refer to listening devices. Even assuming that the provisions of the Code Criminal Procedure had constituted a basis for the measure, the Court considered that the "law" so identified did not have the requisite quality required by the Court's case-law.

In conclusion, the Court noted that French law did not set out the extent of the authorities' discretion with regard to listening devices or the procedure by which it was to be exercised with sufficiently clarity. In those circumstances, it held unanimously that there had been a violation of Article 8 of the Convention.

The Court held that no separate question arose under Article 6 of the Convention in respect of the decision by the Criminal Division of the Court of Cassation to dismiss the applicant's appeal under Article 8 on the grounds that he had no standing.

Lastly, referring to its settled case-law, the Court held unanimously that there had been a violation of Article 6 § 1 in the proceedings in the Court of Cassation as the reporting judge's report had not been communicate to the applicant or his counsel before the hearing, whereas the advocate general had received a copy.

Under Article 41 (just satisfaction) the Court awarded the applicant EUR 1,500 for non-pecuniary damage. (The judgment is available only in French.)

31. ***Eur. Court HR, Perrin v. The United Kingdom, judgment of 18 October 2005, application no.5446/03. Relying on Article 10 (right to freedom of expression), the applicants complained about his conviction and sentence for publishing an obscene article on an internet site.***

Legal summary

Information Note on the Court's case-law No. 79

October 2005

Perrin v. the United Kingdom (dec.) - 5446/03

Decision 18.10.2005 [Section IV]

Article 10

Article 10-1

Freedom of expression

Conviction for publishing obscene material on a free preview page of a website: inadmissible

The applicant was convicted and sentenced to 30 months imprisonment for publishing a free preview page on a website which contained scenes of coprophilia, coprophagia and homosexual fellation. A police officer had previously accessed this page in the course of his duties, which led to the arrest of the applicant. The applicant stated in his interviews with the police that the internet site viewed by the officer was operated and controlled by a company based in the United States of America of which he was a majority shareholder. The applicant's conviction fell under the Obscene Publications Act 1959, on grounds of having published an obscene article. The Court of Appeal dismissed the applicant's appeal claiming that his conviction had breached Article 10. It found that the 1959 Act was sufficiently precise for the interference with the applicant's freedom of expression to be considered as having been prescribed by law. It also found the interference proportional and justified.

Inadmissible under Article 10: The applicant's conviction and sentence for publishing an obscene article had constituted an interference with his right to freedom of expression. As to whether the interference had been prescribed by law, the applicant maintained that the 1959 Act was not sufficiently foreseeable because the major steps towards publication had taken place in the United States, where the 1959 Act did not apply. However, the applicant was a resident of the United Kingdom and could not therefore argue that the laws of the United Kingdom were not reasonably accessible to him. Moreover, concerning the precision of the amended 1959 Act, the Act made it clear that it applied to the transmission of data that was stored electronically, and also clarified the definition of what material was "obscene". Hence, the impugned interference was "prescribed by law" within the meaning of Article 10(2). It was not disputed that the legitimate aim of the interference had been to protect the

morals and/or the rights of others. On the question of proportionality, the fact that the dissemination of the images in question may have been legal in other States, such as the United States, did not mean that in proscribing such dissemination within its own territory the respondent State had exceeded its margin of appreciation. Likewise, the fact that there were other means to protect against the harm of such material (such as parental control software packages, making the accessing of the sites illegal and requiring Internet Service Providers ("ISPs") to block access) did not render it disproportionate for a Government to resort to criminal prosecution, particularly when other measures had not been shown to be more effective. As to the applicant's further argument that websites were rarely accessed by accident and normally had to be sought out by the user, the web page in respect of which the applicant was convicted was freely available to anyone surfing the internet and could be sought out by young persons whom the national authorities were trying to protect. It would have been possible for the applicant to have avoided harm by ensuring that none of the photographs were available on the free preview page. In conclusion, the applicant's criminal conviction could be regarded as having been necessary in a democratic society in the interests of the protection of morals and/or the rights of others. The length of the sentence imposed had not been disproportionate either: manifestly ill-founded.

32. *Eur. Court HR, Wisse v. France*, judgment of 20 December 2005, application no. 71611/01. Relying on Article 8 (right to respect for private and family life), the applicants contend that the recording of their conversations in the prison visiting rooms constituted interference with their right to respect for their private and family life.

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20.12.2005

Press release issued by the Registrar

CHAMBER JUDGMENT CONCERNING FRANCE

…
3) Wisse v. France (no. 71611/01) ***Violation of Article 8***

The applicants, Jean-François Wisse and his brother Christian Wisse, are French nationals who were born in 1959 and 1952 respectively. They are currently detained in France in Ploemeur Detention Centre and Brest Prison, where they are serving sentences of 25 years and 20 years respectively following their conviction in 1992 for armed robbery and attempted murder.

The applicants were arrested on 9 October 1998 on suspicion of committing armed robberies at the branches of the Crédit Agricole bank in Tinténiac and Combourg, and were placed in pre-trial detention. Under a warrant issued by the investigating judge, the telephone conversations between the applicants and their relatives in the prison visiting rooms were recorded between November 1998 and February 1999.

The applicants made an unsuccessful application to have the steps in the proceedings relating to the recording of their conversations declared invalid. The Court of Cassation dismissed an appeal lodged by them on that point on 12 December 2000.

Relying on Article 8 (right to respect for private and family life), the applicants argued that the recording of their conversations in the prison visiting rooms constituted interference with their right to respect for their private and family life.

In the Court's view, the systematic recording of conversations in a visiting room for purposes other than prison security deprived visiting rooms of their sole *raison d'être*, namely to allow detainees to maintain some degree of "private life", including the privacy of conversations with their families. The conversations conducted in a prison visiting room, therefore, could be regarded as falling within the scope of the concepts of "private life" and "correspondence".

The recording and subsequent use of the conversations between the applicants and their relatives in the visiting rooms amounted to an interference with their private lives which was not in accordance with the law within the meaning of Article 8 § 2. French law did not indicate with sufficient clarity how and to what extent the authorities could interfere with detainees' private lives, or the scope and manner of exercise of their powers of discretion in that sphere.

Accordingly, the Court held, by six votes to one, that there had been a violation of Article 8. It considered that the finding of a violation of the Convention constituted in itself sufficient just satisfaction for the alleged non-pecuniary damage. (The judgment is available only in French.)

33. *Eur. Court HR, Turek v. Slovakia,* judgment of 14 February 2006, application no. 57986/00. The applicant complains about being registered as a collaborator with the former Czechoslovak Communist Security Agency, the issuing of a security clearance to that effect and the dismissal of his action challenging that registration. He relies on Article 8 (right to respect for private and family life) and Article 6 § 1 (right to a fair hearing within a reasonable time).

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14.2.2006

Press release issued by the Registrar

CHAMBER JUDGMENT TUREK v. SLOVAKIA

The European Court of Human Rights has today notified in writing its Chamber judgment[1] in the case of ***Turek v. Slovakia*** (application no. 57986/00).

The Court held:

- by six votes to one, that there had been **a violation of Article 8** (right to respect for private life) of the European Convention on Human Rights; and
- unanimously, that there had been **a violation of Article 6 § 1** (right to a fair hearing within a reasonable time) of the Convention.

Under Article 41 (just satisfaction), the Court awarded the applicant 8,000 euros (EUR) in respect of non-pecuniary damage and EUR 900 for costs and expenses. (The judgment is available in English and in French.)

1. Principal facts

The applicant, Ivan Turek, is a Slovakian national who was born in 1944 and lives in Prešov (Slovakia). He held a senior public sector post dealing with the administration of education in schools.

In March 1992, in response to a request made by his employer under the Lustration Act, an Act of 1991 which defined supplementary requirements for holding certain posts in the public sector, the Ministry of the Interior of the Czech and Slovak Federal Republic issued a negative security certificate in respect of the applicant. As a consequence, he felt compelled to leave his job.

The document stated that he had been registered by the former State Security Agency (*Štátna bezpečnosť*, "StB") as its collaborator within the meaning of the Act and that he was therefore disqualified from holding certain posts in the public sector. The applicant claimed he had unwillingly

[1] Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

met up with StB agents before and after trips he had made abroad in the mid 80s but had never passed on to them any confidential information and had not operated as an informer for the agency.

The applicant initially lodged an action against the Federal Ministry on 25 May 1992, but subsequently directed his action against the Slovak Intelligence Service (*Slovenská informačná služba* – "the SIS"), which had in effect taken over the StB archives. He sought a judicial ruling declaring that his registration as a collaborator with the StB had been wrongful.

In August 1995, at the request of Kolšice Regional Court, the SIS handed over all ex-StB documents concerning the applicant in its possession with the indication that the documents were top secret and that the rules on confidentiality were to be observed. The court then held a number of hearings where it heard the testimonies of several former StB agents. At a hearing held on 24 September 1998 the SIS submitted the Internal Guidelines of the Federal Ministry of 1972 concerning secret collaboration. That document was classified and the applicant was therefore denied access to it. The applicant's action was dismissed on 19 May 1999.

In October 1999 the Supreme Court upheld the regional court's judgment. It found, in particular, that only unjustified registration in the StB files would amount to a violation of an individual's good name and reputation. It had therefore been crucial for the applicant to prove that his registration had been contrary to the rules applicable at the material time, which he had failed to do.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 15 April 2000 and declared admissible on 14 December 2004. In addition, third-party comments were received from the Helsinki Foundation for Human Rights (Warsaw, Poland), which had been given leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 2).

Judgment was given by a Chamber of seven judges, composed as follows:

Nicolas **Bratza** (British), ***President***,
Josep **Casadevall** (Andorran),
Matti **Pellonpää** (Finnish),
Rait **Maruste** (Estonian),
Kristaq **Traja** (Albanian),
Ljiljana **Mijović** (citizen of Bosnia and Herzegovina),
Ján **Šikuta** (Slovakian), ***judges***,

and also Michael **O'Boyle**, ***Section Registrar***.

3. Summary of the judgment[2]

Complaints

The applicant alleged that the continued existence of a former Czechoslovak Communist Security Agency file registering him as one of its agents, the issuance of a security clearance to that effect, the

[2] This summary by the Registry does not bind the Court.

dismissal of his action challenging that registration and the resultant effects constituted a violation of his right to respect for his private life. He also complained about the length of the proceedings. He relied on Article 8 (right to respect for private life) and Article 6 § 1 (right to a fair hearing within a reasonable time).

Decision of the Court

Article 8
The Court recognised that, particularly in proceedings related to the operations of state security agencies, there might be legitimate grounds to limit access to certain documents and other materials. However, in respect of lustration proceedings, that consideration lost much of its validity, particularly since such proceedings were by their nature orientated towards the establishment of facts dating from the communist era and were not directly linked to the current functions of the security services. Furthermore, it was the legality of the agency's actions which was in question.

It noted that the domestic courts considered it of crucial importance for the applicant to prove that the State's interference with his rights was contrary to the applicable rules. Those rules were, however, secret and the applicant did not have full access to them. On the other hand, the State – the SIS – did have full access. The Court found that that requirement placed an unrealistic and excessive burden on the applicant and did not respect the principle of equality. There had therefore been a violation of Article 8 concerning the lack of a procedure by which the applicant could seek protection for his right to respect for his private life.

The Court found it unnecessary to examine separately the effects on the applicant's private life of his registration in the StB files and of his negative security clearance.

Article 6 § 1
With particular regard to what was at stake for the applicant, the Court found that the length of the proceedings, lasting seven years and some five months for two levels of jurisdiction, was excessive and failed to meet the reasonable time requirement in breach of Article 6.

Judge Maruste expressed a dissenting opinion, which is annexed to the judgment.

34. *Eur. Court HR*, Segerstedt-Wiberg and Others v. Sweden judgment of 6 June 2006, application no 62332/00. The applicants complain about the storage of certain information about them in Swedish Security Police files and the refusal to reveal the extent of the information stored. They rely on Article 8 (right to respect for private life) Article 10 (freedom of expression), Article 11 (freedom of assembly and association) and Article 13 (right to an effective remedy) of the Convention.

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6.6.2006

Press release issued by the Registrar of the European Court of Human Rights

CHAMBER JUDGMENT IN THE CASE OF SEGERSTEDT-WIBERG AND OTHERS v. SWEDEN

In a judgment delivered at Strasbourg on 6 June 2006 in the case of Segerstedt-Wiberg. and Others. v. Sweden (no. 62332/00), the European Court of Human Rights held unanimously that there had been:

- a **violation of Article 8** (right to respect for private and family life) of the European Convention on Human Rights;
- a **violation of Article 10** (freedom of expression) of the Convention; and
- a **violation of Article 11** (freedom of assembly and association).

Concerning all five applicants (including Ingrid Segerstedt-Wiberg), the Court held unanimously that there had been:

- a **violation of Article 13** (right to an effective remedy).

Under Article 41 (just satisfaction), the Court awarded 3,000 euros (EUR) to Ms Segerstedt-Wiberg, EUR 7,000 each to Mr Nygren and Mr Schmid and EUR 5,000 each to Mr Ehnebom and Mr Frejd in respect of non-pecuniary damage. It awarded EUR 20,000 to the applicants, jointly, for costs and expenses. (The judgment is available in English and in French.)

I.BACKGROUND TO THE CASE BEFORE THE COURT

The applicants, Swedish nationals, all made unsuccessful requests to view in their entirety the records held about them by the Swedish Security Police. Their requests were refused on the ground that making them available might jeopardise crime prevention or national security. The authorities and domestic courts relied on Chapter 5, section 1(2), of the 1980 Secrecy Act; that it was "not clear that the information may be imparted without jeopardising the purpose of the decision or measures planned or without harm to future activities".

Ms Segerstedt-Wiberg is the daughter of a well-known publisher and anti-Nazi activist, Torgny Segerstedt. From 1958 to 1970 she was a Liberal Member of Parliament. She is a prominent public figure in Sweden.

On 22 April 1998 she asked to view her Security Police records, claiming that damaging information was being circulated about her, including rumours that she was "unreliable" in respect of the Soviet Union. Her request was refused.

In the light of an amendment to the Secrecy Act, she asked whether or not her name was on the Security Police register and was subsequently granted authorisation to view certain records which concerned letter bombs which had been sent to her in 1990.

On 8 October 1999 she brought proceedings to be allowed to consult her file in its entirety. Her request was refused under Chapter 5, section 1(2).

On 13 December 2002 the Swedish Security Service decided to release all information (51 pages) stored on Ms Segerstedt-Wiberg up until 1976.

The Swedish Government has also informed the European Court of Human Rights that, in 2001, Ms Segerstedt-Wiberg was registered by the Security Service because of a new incident that could have been interpreted as a threat against her.

II. SUMMARY OF THE JUDGMENT

The applicants complain about the storage of certain information about them in Swedish Security Police files and the refusal to reveal the extent of the information stored. They rely on Article 8 (right to respect for private life) Article 10 (freedom of expression), Article 11 (freedom of assembly and association) and Article 13 (right to an effective remedy) of the Convention.

Article 8

Storage of the information released to applicants

The Court was satisfied that the storage of the information at issue had a legal basis in the 1998 Police Data Act. It noted in particular that Section 33 of the Act allowed the Security Police register to include personal information concerning a person suspected of a crime threatening national security or a terrorist offence, or undergoing a security check or where "there are other special reasons". While the Security Police had some discretion in deciding what constituted "special reasons", that discretion was not unfettered. For example, under the Swedish Constitution, no entry regarding a citizen could be made in a public register exclusively on the basis of that person's political opinion, without his or her consent. And, among other things, a general prohibition of registration on the basis of political opinion was set out in section 5 of the Police Data Act. Against that background, the Court found that the scope of the discretion conferred on the competent authorities and the manner of its exercise was indicated with sufficient clarity, having regard to the legitimate aim of the measure in question, to give the individual adequate protection against arbitrary interference. Accordingly, the interference with the respective applicants' private life was "in accordance with the law", within the meaning of Article 8.

The Court also accepted that the storage of the information in question pursued legitimate aims, namely the prevention of disorder or crime, in the case of Ms Segerstedt-Wiberg, and the protection of national security, for the other applicants.

While the Court recognised that intelligence services might legitimately exist in a democratic society, it reiterated that powers of secret surveillance of citizens were tolerable under the Convention only in so far as strictly necessary for safeguarding democratic institutions. Such interference had to be supported by relevant and sufficient reasons and be proportionate to the legitimate aim or aims pursued. In the applicants' case, Sweden's interest in protecting national security and combating terrorism had to be balanced against the seriousness of the interference with the respective applicants' right to respect for private life.

Concerning Ms Segerstedt-Wiberg, the Court found no reason to doubt that the reasons for keeping on record the information relating to bomb threats in 1990 against her were relevant and sufficient as regards the aim of preventing disorder or crime. The measure was at least in part intended to protect her; there was therefore no question of any disproportionate interference with her right to respect for her private life.

However, as to the information released to Mr Nygren (his participation in a political meeting in Warsaw in 1967), the Court, bearing in mind the nature and age of the information, did not find its continued storage to be supported by reasons which were relevant and sufficient as regards the protection of national security.

Similarly, the storage of the information released to Mr Schmid (that he, in 1969, had allegedly advocated violent resistance to police control during demonstrations) could in most part hardly be deemed to correspond to any actual relevant national security interests for Sweden. Its continued storage, though relevant, could not be deemed sufficient 30 years later.

Therefore, the Court found that the continued storage of the information released to Mr Nygren and Mr Schmid entailed a disproportionate interference with their right to respect for private life.

The information released to Mr Ehnebom and Mr Frejd raised more complex issues in that it related to their membership of the *KPML(r)*, a political party which, the Swedish Government stressed, advocated the use of violence and breaches of the law in order to bring about change in the existing social order. The Court observed that the relevant clauses of the *KPML(r)* party programme rather boldly advocated establishing the domination of one social class over another by disregarding existing laws and regulations. However, the programme contained no statements amounting to an immediate and unequivocal call for the use of violence as a means of achieving political ends. Clause 23, for instance, which contained the most explicit statements on the matter, did not propose violence as either a primary or an inevitable means in all circumstances. Nonetheless, it affirmed the principle of armed opposition.

The Court reiterated its position that the constitution and programme of a political party could not be taken into account as the sole criterion for determining its objectives and intentions; the contents of the programme had to be compared with the actions of the party's leaders and the positions they defended.

The *KPML(r)* party programme was the only evidence relied upon by the Government, however. Beyond that they did not point to any specific circumstance indicating that the impugned programme clauses were reflected in actions or statements by the party's leaders or members or that they constituted an actual or even potential threat to national security when the information was released in 1999, almost 30 years after the party had come into existence. The reasons for the continued storage of the information about Mr Ehnebom and Mr Frejd, although relevant, could not be considered sufficient and therefore amounted to a disproportionate interference with their right to respect for private life.

The Court concluded that the continued storage of the information that had been released was necessary concerning Ms Segerstedt-Wiberg, but not for any of the remaining applicants. Accordingly, the Court found that there has been no violation of Article 8 concerning Ms Segerstedt-Wiberg, but that there had been a violation concerning the other four applicants.

Refusal to grant applicants full access to information stored about them by Security Police

The Court reiterated that a refusal of full access to a national secret police register was necessary where the State might legitimately fear that the provision of such information might jeopardise the efficacy of a secret surveillance system designed to protect national security and to combat terrorism. In the applicants' case the national administrative and judicial authorities involved had all found that full access would jeopardise the purpose of the system. The Court did not find any ground on which it could arrive at a different conclusion.

The Court concluded that Sweden was entitled to consider that the interests of national security and the fight against terrorism prevailed over the interests of the applicants in being advised of the full extent to which information was kept about them on the Security Police register. Accordingly, the Court found that there had been no violation of Article 8.

Articles 10 and 11

The Court considered that the storage of personal data related to political opinion, affiliations and activities that had been deemed unjustified for the purposes of Article 8 § 2 *ipso facto* constituted an unjustified interference with the rights protected by Articles 10 and 11. Having regard to its findings under Article 8, the Court therefore found that there had been violations of Articles 10 and 11 concerning all the applicants except Ms Segerstedt-Wiberg.

Article 13

Considering the applicants' access to an effective remedy under Article 13, the Court observed that the Parliamentary Ombudsman and Chancellor of Justice could receive individual complaints and had a duty to investigate them in order to ensure that the relevant laws had been properly applied. By tradition, their opinions commanded great respect in Swedish society and were usually followed. However, as the Court had found previously, they lacked the power to render a legally-binding decision. In addition, they exercised general supervision and did not have specific responsibility for inquiries into secret surveillance or into the entry and storage of information on the Secret Police register. The Court had already found neither remedy, when considered on its own, to be effective within the meaning of Article 13.

In the meantime, a number of steps had been taken to improve the remedies, notably authorising the Chancellor of Justice to pay compensation, with the possibility of judicial appeal against the dismissal of a compensation claim, and the establishment of the Records Board (empowered to monitor on a day-to-day basis the Secret Police's entry and storage of information and compliance with the Police Data Act). The Data Inspection Board had also been set up. Moreover, a decision by the Security Police whether to advise a person of information kept about him or her on its register could form the subject of an appeal to the County Administrative Court and the Supreme Administrative Court.

The Court noted that the Records Board had no competence to order the destruction of files or the erasure or rectification of information kept in the files.

It appeared the Data Inspection Board had wider powers. It could examine complaints made by individuals. Where it found that data was being processed unlawfully, it could order the processor, on pain of a fine, to stop processing the information other than for storage. The Board was not itself empowered to order the erasure of unlawfully stored information, but could make an application for such a measure to the County Administrative Court. However, the Court had received no information indicating the effectiveness of the Data Inspection Board in practice. It had therefore not been shown that that remedy was effective.

In addition the applicants had no direct access to any legal remedy as regards the erasure of the information in question. In the view of the Court, those shortcomings were not consistent with the requirements of effectiveness in Article 13 and were not offset by any possibilities for the applicants to seek compensation.

The Court found that the applicable remedies, whether considered on their own or together, could not satisfy the requirements of Article 13 and that there had therefore been a violation of Article 13.

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In accordance with the Convention, judgment was given by a Chamber of seven judges, composed as follows: Jean-Paul Costa (French), President, András Baka (Hungarian),
Ireneu Cabral Barreto (Portuguese),Antonella Mularoni (San Marinese),
Elisabet Fura-Sandström (Swedish), Danutė Jočienė (Lithuanian),
Dragoljub Popović (citizen of Serbia and Montenegro), judges, and also Sally Dollé, Section Registrar.

35. *Eur. Court HR, L.L. v. France*, judgment of 10 October 2006, application no. 7508/02. The applicant complains about the production and use in court proceedings of documents from his medical records, without his consent and without a medical expert having been appointed in that connection. He relied on Article 8 (right to respect for private and family life).

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10.10.2006

Press release issued by the Registrar

CHAMBER JUDGMENTS CONCERNING FRANCE

…

The applicant is a French national who was born in 1957 and lives in France.

In 1996 the applicant's wife filed a petition for divorce on the grounds of his repeated acts of domestic violence and chronic alcoholism. In 1998 the *tribunal de grande instance*, having noted in particular that she had produced medical certificates in support of those allegations, granted the divorce on grounds of fault by the applicant and confirmed the interim measures whereby the mother had been given custody of the couple's two children, who were born in 1985 and 1988.

The applicant appealed against that decision, claiming that his ex-wife had acted fraudulently in obtaining a report of an operation that he had undergone to remove his spleen, and arguing that she was therefore not entitled to use it in court proceedings. He further maintained that he had never given her a copy of that report, nor had he released the doctor who signed it from his duty of medical secrecy in that connection. In February 2000 the Court of Appeal upheld the judgment under appeal. It found in particular that the medical certificates produced by the applicant's ex-wife confirmed that he was an alcoholic and that he was violent as a result. With a view to appealing on points of law, the applicant lodged an application for legal aid with the Court of Cassation's legal aid office, but his request was denied.

In the meantime, following a report of ill-treatment filed by the applicant, the children's judge ordered a measure of educational assistance in an open environment for the couple's children.

The applicant complained about the production and use in court proceedings of documents from his medical records, without his consent and without a medical expert having been appointed in that connection. He relied on Article 8 (right to respect for private and family life).

The Court noted that, by basing its decision on the details of the operation report and quoting the passages that it found relevant, the Court of Appeal had disclosed and rendered public personal data concerning the applicant.

The Court further observed that in their decisions the French courts had first referred to the witness statements testifying to the applicant's drink problem and to the "duly detailed" medical certificates recording the "reality of the violence inflicted on the wife", concluding that the conduct taken into account had constituted a serious and repeated breach of marital duties and obligations and had led to an irretrievable breakdown in the marriage. It was only on a subsidiary basis that the courts had

referred to the impugned medical report in support of their decisions, and it therefore appeared that they could have reached the same conclusion without it. The Court therefore considered that the impugned interference with the applicant's right to respect for his private life, in view of the fundamental importance of the protection of personal data, was not proportionate to the aim pursued and was not "necessary in a democratic society", "for the protection of the rights and freedoms of others". The Court further noted that domestic law did not provide sufficient safeguards as regards the use in this type of proceedings of data concerning the parties' private lives, thus justifying *a fortiori* the need for a strict review as to the necessity of such measures. The Court accordingly found, unanimously, that there had been a violation of Article 8. It considered that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage alleged by the applicant. (The judgment is available only in French.

36. *Eur. Court HR, Copland v. United Kingdom*, judgment of 3 April 2007, application no. 62617/00, Complains under Article 8 (right to respect for private life), and Article 6 § 1 (right to a fair trial) that, during her employment at the College, her telephone, e-mail and internet usage had been monitored at the Deputy Principal's instigation

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3.4.2007

Press release issued by the Registrar

CHAMBER JUDGMENT CONCERNING UNITED KINGDOM

The applicant, Lynette Copland, is a United Kingdom national who was born in 1950 and lives in Llanelli (United Kingdom).

In 1991 Ms Copland was employed by Carmarthenshire College, a statutory body administered by the State. In 1995 she became the personal assistant to the College Principal and from the end of 1995 she was required to work closely with the newly-appointed Deputy Principal.

Relying on Article 8 (right to respect for private life and correspondence) and 13 (right to an effective remedy), Ms Copland complained that, during her employment at the College, her telephone, e-mail and internet usage had been monitored at the Deputy Principal's instigation.

The Court considered that the collection and storage of personal information relating to Ms Copland through her use of the telephone, e-mail and internet interfered with her right to respect for her private life and correspondence, and that that interference was not "in accordance with the law", there having been no domestic law at the relevant time to regulate monitoring. While the Court accepted that it might sometimes have been legitimate for an employer to monitor and control an employee's use of telephone and internet, in the present case it was not required to determine whether that interference was "necessary in a democratic society". The Court therefore held, unanimously, that there had been a violation of Article 8 and that it was not necessary to examine the case under Article 13. It awarded Ms Copland EUR 3,000 in respect of non-pecuniary damage and EUR 6,000 for costs and expenses. (The judgment is available only in English.)

37. *Eur. Court HR, I. v. Finland*, judgment of 3 April 2007, application no. 20511/03, Complains under Article 8 (right to respect for private life), and Article 6 § 1 (right to a fair trial) and Article 13 (right to an effective remedy).that, that colleagues had unlawfully consulted her confidential patient records and that the district health authority had failed to provide adequate safeguards against unauthorised access of medical data.

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17.7.2008

Press release issued by the Registrar

CHAMBER JUDGMENT CONCERNING FINLAND

The applicant, I., is a Finnish national who was born in 1960 and lives in Finland.

Between 1989 and 1994 the applicant worked on fixed-term contracts as a nurse in a public hospital. From 1987 onwards she consulted that hospital's polyclinic for infectious diseases as she had been diagnosed as HIV-positive.

The case concerned the applicant's allegation that, following certain remarks made at work at the beginning of 1992, she suspected that colleagues had unlawfully consulted her confidential patient records and that the district health authority had failed to provide adequate safeguards against unauthorised access of medical data. She relied on Article 8 (right to respect for private life), Article 6 § 1 (right to a fair hearing) and Article 13 (right to an effective remedy).

The Court held unanimously that there had been a violation of Article 8 on account of the domestic authorities' failure to protect, at the relevant time, the applicant's patient records against unauthorised access. The Court further held unanimously that there was no need to examine the complaints under Articles 6 and 13. The applicant was awarded EUR 5,771.80 in respect of pecuniary damage, EUR 8,000 in respect of non-pecuniary damage and EUR 20,000 for costs and expenses. (The judgment is available only in English.)

38. *Eur. Court HR, Liberty and others v. United Kingdom, Liberty and Others v. the United Kingdom*, application no. 58243/00, judgment of 1 July 2008. Interception by the Ministry of Defence of the external communications of civil-liberties organisations.

***no.* 58243/00**
1.7.2008

LIBERTY AND OTHERS v. THE UNITED KINGDOM

Interception by the Ministry of Defence of the external communications of civil-liberties organisations

Facts
The Interception of Communications Act 1985 made it an offence intentionally to intercept communications by post or by means of a public telecommunications system. However, the Secretary of State was authorised to issue a warrant permitting the examination of communications if it was considered necessary in the interests of national security, to prevent or detect serious crime or to safeguard the State's economic well-being. Warrants could be issued in respect of communications (whether internal or external) linked to a particular address or person, or (under section 3(2) of the Act) to external communications generally, with no restriction on the person or premises concerned. Section 6 of the Act required the Secretary of State to make such arrangements as he considered necessary to ensure safeguards against abuses of power. Arrangements were reportedly put in place, but their precise details were not disclosed in the interests of national security. The Act also provided for a tribunal (the Interception of Communications Tribunal – ICT) to investigate complaints from any person who believed their communications had been intercepted and for the appointment of a Commissioner with reporting and review powers.
The applicants were a British and two Irish civil-liberties organisations. They alleged that between 1990 and 1997 their telephone, facsimile, e-mail and data communications, including legally privileged and confidential information, had been intercepted by an Electronic Test Facility operated by the British Ministry of Defence. Although they had lodged complaints with the ICT, the Director of Public Prosecutions and the Investigatory Powers Tribunal (IPT) challenging the lawfulness of the interceptions, the domestic authorities found that there had been no contravention of the 1985 Act. The IPT specifically found that the right to intercept and access material covered by a warrant, and the criteria by reference to which it was exercised, were sufficiently accessible and foreseeable to be in accordance with law. (The 1985 Act has now been replaced).

Law – Article 8
The mere existence of legislation which allowed communications to be monitored secretly entailed a surveillance threat for all those to whom it might be applied and so constituted an interference with the applicants' rights. Section 3(2) of the 1985 Act allowed the British authorities a virtually unlimited discretion to intercept any communications between the United Kingdom and an external receiver described in the warrant. Warrants covered very broad classes of communications and, in principle, any person who sent or received any form of telecommunication outside the British Islands during the period in question could have had their communication intercepted. The authorities also had wide discretion to decide which communications from those physically captured should be listened to or read.

Although during the relevant period there had been internal regulations, manuals and instructions to provide for procedures to protect against abuse of power, and although the Commissioner appointed under the 1985 Act to oversee its workings had reported each year that the "arrangements" were satisfactory, the nature of those "arrangements" had not been contained in legislation or otherwise made available to the public. Further, although the Government had expressed concern that the publication of information regarding the arrangements during the period in question might have damaged the efficiency of the intelligence-gathering system or given rise to a security risk, the Court noted that extensive extracts from the Interception of Communications Code of Practice were now in the public domain, which suggested that it was possible to make public certain details about the operation of a scheme of external surveillance without compromising national security. In conclusion, domestic law at the relevant time had not indicated with sufficient clarity, so as to provide adequate protection against abuse of power, the scope or manner of exercise of the very wide discretion conferred on the State to intercept and examine external communications. In particular, it had not set out in a form accessible to the public any indication of the procedure to be followed for examining, sharing, storing and destroying intercepted material. The interference was not therefore "in accordance with the law".

Conclusion: violation (unanimously).

39. *Eur. Court HR, Cemalettin Canlı v. Turkey,* judgment of 18 November April 2008, application no. 22427/04. The applicant complained that the records kept by the police and the publication in the national press of the details of those records had had adverse effects on his private life within the meaning of Article 8 (right to respect for private and family life). He further relied on Article 6 § 2 (presumption of innocence) and Article 13 (right to an effective remedy).

812
18.11.2008

Press release issued by the Registrar

CHAMBER JUDGMENT TURKEY

The applicant, Cemalettin Canlı, is a Turkish national who was born in 1969 and lives in Ankara. In 2003 while criminal proceedings were pending against him, a police report entitled "information form on additional offences" was submitted to the court, mentioning two sets of criminal proceedings brought against him in the past for membership of illegal organisations. However, in 1990, the applicant had been acquitted in the first criminal case and the second set of proceedings had been discontinued. The applicant complained that the records kept by the police and the publication in the national press of the details of those records had had adverse effects on his private life within the meaning of Article 8 (right to respect for private and family life). He further relied on Article 6 § 2 (presumption of innocence) and Article 13 (right to an effective remedy).

The Court noted that Mr Canlı had never been convicted by a court of law concerning the allegations of membership of illegal organisations. It thus considered that referring to the applicant as a "member" of such organisations in the police report had been potentially damaging to his reputation, and that the keeping and forwarding to the criminal court of that inaccurate police report had constituted an interference with Mr Canlı's right to respect for his private life. The Court observed that the relevant Regulations obliged the police to include in their records all information regarding the outcome of any criminal proceedings relating to the accusations. Nevertheless, not only had the information in the report been false, but it had also omitted any mention of the applicant's acquittal and the discontinuation of the criminal proceedings in 1990. Moreover, the decisions rendered in 1990 had not been appended to the report when it had been submitted to the court in 2003. Those failures, in the opinion of the Court, had been contrary to the unambiguous requirements of the Police Regulations and had removed a number of substantial procedural safeguards provided by domestic law for the protection of the applicant's rights under Article 8. Accordingly, the Court found that the drafting and submission to the court by the police of the report in question had not been "in accordance with the law". The Court concluded unanimously that there had been a violation of Article 8, and that there was no need to examine separately the complaints under Articles 6 and 13. Mr Canlı was awarded EUR 5,000 in respect of non-pecuniary damage and EUR 1,500 for costs and expenses. (The judgment is available only in English.)

40. *Eur. Court HR, K.U. v. Finland*, judgment of 2 December 2008, application no. 2872/02. The applicant complains about being the invasion of his private life and the fact that no effective remedy existed under Finnish law to reveal the identity of the person who had posted the ad about him on the Internet dating site. He relies on Article 8 (right to respect for private and family life) and Article 13 (right to an effective remedy).

862
2.12.2008

Press release issued by the Registrar

CHAMBER JUDGMENT
K.U. v. FINLAND

The European Court of Human Rights has today notified in writing its Chamber judgment[1] in the case of ***K.U. v. Finland*** (application no. 2872/02).

The Court held unanimously that there had been a **violation of Article 8** (right to respect for private and family life) of the European Convention on Human Rights concerning the Finnish authorities' failure to protect a child's right to respect for private life following an advertisement of a sexual nature being posted about him on an Internet dating site.

Under Article 41 (just satisfaction) of the Convention, the Court awarded K.U. 3,000 euros (EUR) in respect of non-pecuniary damage. (The judgment is available only in English.)

1. Principal facts

The applicant, K.U., is a Finnish national who was born in 1986.

The case concerned the applicant's complaint that an advertisement of a sexual nature was posted about him on an Internet dating site and that, under Finnish legislation in place at the time, the police and the courts could not require the Internet provider to identify the person who had posted the ad.

In March 1999 an unknown individual posted the ad on an Internet dating site in the name of the applicant without his knowledge. The applicant was 12 years old at the time. The ad mentioned his age and year of birth and gave a detailed description of his physical characteristics. There was also a link to the applicant's web page where his picture and telephone number, accurate save for one digit, could be found. The ad announced that he was looking for an intimate relationship with a boy of his age or older "to show him the way".

The applicant became aware of that announcement when he received an e-mail from a man, offering to meet him and "to then see what he wanted".

[1] Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

./..
The applicant's father requested the police to identify the person who had posted the ad in order to bring charges. The service provider, however, refused as it considered itself bound by the confidentiality of telecommunications as defined under Finnish law.

In a decision issued on 19 January 2001, Helsinki District Court also refused the police's request under the Criminal Investigations Act to oblige the service provider to divulge the identity of the person who had posted the ad. It found that there was no explicit legal provision in such a case, considered under domestic law to concern calumny, which could oblige the service provider to disregard professional secrecy and disclose such information.

Subsequently the Court of Appeal upheld that decision and the Supreme Court refused leave to appeal.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 1 January 2002 and declared admissible on 27 June 2006.

Judgment was given by a Chamber of seven judges, composed as follows:

Nicolas **Bratza** (United Kingdom), ***President***,
Lech **Garlicki** (Poland),
Giovanni **Bonello** (Malta),
Ljiljana **Mijović** (Bosnia and Herzegovina),
David Thór **Björgvinsson** (Iceland),
Ján **Šikuta** (Slovakia),
Päivi **Hirvelä** (Finland), ***judges***,
and also Lawrence **Early**, ***Section Registrar***.

3. Summary of the judgment[2]

Complaints

Relying on Articles 8 (right to respect for private and family life) and 13 (right to an effective remedy), the applicant complained about the invasion of his private life and the fact that no effective remedy existed under Finnish law to reveal the identity of the person who had posted the ad about him on the Internet dating site.

Decision of the Court

Article 8

Although in terms of domestic law the applicant's case was considered from the point of view of calumny, the Court preferred to highlight the notion of private life, given the potential threat to the boy's physical and mental welfare and his vulnerable age.

[2] This summary by the Registry does not bind the Court.

The Court considered that the posting of the Internet advertisement about the applicant had been a criminal act which had resulted in a minor having been a target for paedophiles. It recalled that such conduct called for a criminal-law response and that effective deterrence had to be reinforced through adequate investigation and prosecution. Moreover, children and other vulnerable individuals were entitled to protection by the State from such grave interferences with their private life.

The incident had taken place in 1999, that is, at a time when it had been well-known that the Internet, precisely because of its anonymous character, could be used for criminal purposes. The widespread problem of child sexual abuse had also become well-known over the preceding decade. It could not therefore be argued that the Finnish Government had not had the opportunity to put in place a system to protect children from being targeted by paedophiles via the Internet.

Indeed, the legislature should have provided 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. Although such a framework has subsequently been introduced under the Exercise of Freedom of Expression in Mass Media Act, it had not been in place at the relevant time, with the result that Finland had failed to protect the right to respect for the applicant's private life as the confidentiality requirement had been given precedence over his physical and moral welfare. The Court therefore found that there had been a violation of Article 8.

Article 13

Given the finding under Article 8, the Court considered that there was no need to examine the complaint under Article 13.

41. *Eur. Court HR, S. and Marper v. the United Kingdom*, judgment of 4 December 2008, applications nos. 30562/04 and 30566/04. The applicants complain under Articles 8 (right to respect for private and family life) and 14 (prohibition of discrimination) of the Convention about the retention by the authorities of their fingerprints, cellular samples and DNA profiles after their acquittal or discharge.

880
4.12.2008

Press release issued by the Registrar

GRAND CHAMBER JUDGMENT
S. AND MARPER v. THE UNITED KINGDOM

The European Court of Human Rights has today delivered at a public hearing its Grand Chamber judgment[1] in the case of ***S. and Marper v. the United Kingdom*** (application nos. 30562/04 and 30566/04).

The Court held unanimously that:

there had been **a violation of Article 8** (right to respect for private and family life) of the European Convention on Human Rights;

it was **not necessary to examine separately the complaint under Article 14** (prohibition of discrimination) of the Convention.

Under Article 41 (just satisfaction), the Court considered that the finding of a violation, with the consequences that this would have for the future, could be regarded as constituting sufficient just satisfaction in respect of the non-pecuniary damage sustained by the applicants. It noted that, in accordance with Article 46 of the Convention, it would be for the respondent State to implement, under the supervision of the Committee of Ministers, appropriate general and/or individual measures to fulfil its obligations to secure the right of the applicants and other persons in their position to respect for their private life. The Court awarded the applicants 42,000 euros (EUR) in respect of costs and expenses, less the EUR 2,613.07 already paid to them in legal aid. (The judgment is available in English and French.)

1. Principal facts

The applicants, **S**. and Michael **Marper**, are both British nationals, who were born in 1989 and 1963 respectively. They live in Sheffield, the **United Kingdom**.

The case concerned the retention by the authorities of the applicants' fingerprints, cellular samples and DNA profiles after criminal proceedings against them were terminated by an acquittal and were discontinued respectively.

On 19 January 2001 **S**. was arrested and charged with attempted robbery. He was aged eleven at the time. His fingerprints and DNA samples[2] were taken. He was acquitted on 14 June 2001. Mr **Marper** was arrested on 13 March 2001 and charged with harassment of his partner. His fingerprints and DNA samples were taken. On 14 June 2001 the case was formally discontinued as he and his partner had become reconciled.

Once the proceedings had been terminated, both applicants unsuccessfully requested that their fingerprints, DNA samples and profiles be destroyed. The information had been stored on the basis of a law authorising its retention without limit of time.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 16 August 2004 and declared admissible on 16 January 2007. The Chamber to which the case was assigned decided to relinquish jurisdiction to the Grand Chamber on 10 July 2007[3].

The National Council for Civil Liberties and Privacy International were granted leave to intervene in the written procedure before the Grand Chamber.

A public hearing took place in the Human Rights building, Strasbourg, on 27 February 2008.

The judgment was given by the Grand Chamber of 17 judges, composed as follows:

Jean-Paul **Costa** (France), ***President***,
Christos **Rozakis** (Greece),
Nicolas **Bratza** (**United Kingdom**),
Peer **Lorenzen** (Denmark),
Françoise **Tulkens** (Belgium),
Josep **Casadevall** (Andorra),
Giovanni **Bonello** (Malta)
Corneliu **Bîrsan** (Romania),
Nina **Vajić** (Croatia),
Anatoly **Kovler** (Russia),
Stanislav **Pavlovschi** (Moldova),
Egbert **Myjer** (Netherlands),
Danutė **Jočienė** (Lithuania),
Ján **Šikuta** (Slovakia),
Mark **Villiger** (Switzerland)[4],
Päivi **Hirvelä** (Finland),
Ledi **Bianku** (Albania), ***judges***,
and also Michael **O'Boyle**, ***Deputy Registrar***.

3. Summary of the judgment

Complaints

The applicants complained under Articles 8 and 14 of the Convention about the retention by the authorities of their fingerprints, cellular samples and DNA profiles after their acquittal or discharge.

Decision of the Court

Article 8

The Court noted that cellular samples contained much sensitive information about an individual, including information about his or her health. In addition, samples contained a unique genetic code of great relevance to both the individual concerned and his or her relatives. Given the nature and the amount of personal information contained in cellular samples, their retention *per se* had to be regarded as interfering with the right to respect for the private lives of the individuals concerned.

In the Court'**s** view, the capacity of DNA profiles to provide a means of identifying genetic relationships between individuals was in itself sufficient to conclude that their retention interfered with

the right to the private life of those individuals. The possibility created by DNA profiles for drawing inferences about ethnic origin made their retention all the more sensitive and susceptible of affecting the right to private life.

The Court concluded that the retention of both cellular samples and DNA profiles amounted to an interference with the applicants' right to respect for their private lives, within the meaning of Article 8 § 1 of the Convention.

The applicants' fingerprints were taken in the context of criminal proceedings and subsequently recorded on a nationwide database with the aim of being permanently kept and regularly processed by automated means for criminal-identification purposes. It was accepted that, because of the information they contain, the retention of cellular samples and DNA profiles had a more important impact on private life than the retention of fingerprints. However, the Court considered that fingerprints contain unique information about the individual concerned and their retention without his or her consent cannot be regarded as neutral or insignificant. The retention of fingerprints may thus in itself give rise to important private-life concerns and accordingly constituted an interference with the right to respect for private life.

The Court noted that, under section 64 of the 1984 Act, the fingerprints or samples taken from a person in connection with the investigation of an offence could be retained after they had fulfilled the purposes for which they were taken. The retention of the applicants' fingerprint, biological samples and DNA profiles thus had a clear basis in the domestic law.

At the same time, Section 64 was far less precise as to the conditions attached to and arrangements for the storing and use of this personal information.

The Court reiterated that, in this context, it was essential to have clear, detailed rules governing the scope and application of measures, as well as minimum safeguards. However, in view of its analysis and conclusions as to whether the interference was necessary in a democratic society, the Court did not find it necessary to decide whether the wording of section 64 met the "quality of law" requirements within the meaning of Article 8 § 2 of the Convention.

The Court accepted that the retention of fingerprint and DNA information pursued a legitimate purpose, namely the detection, and therefore, prevention of crime.

The Court noted that fingerprints, DNA profiles and cellular samples constituted personal data within the meaning of the Council of Europe Convention of 1981 for the protection of individuals with regard to automatic processing of personal data.

The Court indicated that the domestic law had to afford appropriate safeguards to prevent any such use of personal data as could be inconsistent with the guarantees of Article 8 of the Convention. The Court added that the need for such safeguards was all the greater where the protection of personal data undergoing automatic processing was concerned, not least when such data were used for police purposes.

The interests of the individuals concerned and the community as a whole in protecting personal data, including fingerprint and DNA information, could be outweighed by the legitimate interest in the prevention of crime (the Court referred to Article 9 of the Data Protection Convention). However, the intrinsically private character of this information required the Court to exercise careful scrutiny of any State measure authorising its retention and use by the authorities without the consent of the person concerned.

The issue to be considered by the Court in this case was whether the retention of the fingerprint and DNA data of the applicants, as persons who had been suspected, but not convicted, of certain criminal offences, was necessary in a democratic society.

The Court took due account of the core principles of the relevant instruments of the Council of Europe and the law and practice of the other Contracting States, according to which retention of data was to be proportionate in relation to the purpose of collection and limited in time. These principles had been consistently applied by the Contracting States in the police sector, in accordance with the 1981 Data Protection Convention and subsequent Recommendations by the Committee of Ministers of the Council of Europe.

As regards, more particularly, cellular samples, most of the Contracting States allowed these materials to be taken in criminal proceedings only from individuals suspected of having committed offences of a certain minimum gravity. In the great majority of the Contracting States with functioning DNA databases, samples and DNA profiles derived from those samples were required to be removed or destroyed either immediately or within a certain limited time after acquittal or discharge. A restricted number of exceptions to this principle were allowed by some Contracting States.

The Court noted that England, Wales and Northern Ireland appeared to be the only jurisdictions within the Council of Europe to allow the indefinite retention of fingerprint and DNA material of any person of any age suspected of any recordable offence.

It observed that the protection afforded by Article 8 of the Convention would be unacceptably weakened if the use of modern scientific techniques in the criminal-justice system were allowed at any cost and without carefully balancing the potential benefits of the extensive use of such techniques against important private-life interests. Any State claiming a pioneer role in the development of new technologies bore special responsibility for striking the right balance in this regard.

The Court was struck by the blanket and indiscriminate nature of the power of retention in England and Wales. In particular, the data in question could be retained irrespective of the nature or gravity of the offence with which the individual was originally suspected or of the age of the suspected offender; the retention was not time-limited; and there existed only limited possibilities for an acquitted individual to have the data removed from the nationwide database or to have the materials destroyed.

The Court expressed a particular concern at the risk of stigmatisation, stemming from the fact that persons in the position of the applicants, who had not been convicted of any offence and were entitled to the presumption of innocence, were treated in the same way as convicted persons. It was true that the retention of the applicants' private data could not be equated with the voicing of suspicions. Nonetheless, their perception that they were not being treated as innocent was heightened by the fact that their data were retained indefinitely in the same way as the data of convicted persons, while the data of those who had never been suspected of an offence were required to be destroyed.

The Court further considered that the retention of unconvicted persons' data could be especially harmful in the case of minors such as the first applicant, given their special situation and the importance of their development and integration in society. It considered that particular attention had to be paid to the protection of juveniles from any detriment that could result from the retention by the authorities of their private data following acquittals of a criminal offence.

In conclusion, the Court found that the blanket and indiscriminate nature of the powers of retention of the fingerprints, cellular samples and DNA profiles of persons suspected but not convicted of offences, as applied in the case of the present applicants, failed to strike a fair balance between the competing public and private interests, and that the respondent State had overstepped any acceptable margin of

appreciation in this regard. Accordingly, the 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. The Court concluded unanimously that there had been a violation of Article 8 in this case.

Article 14 in conjunction with Article 8

In the light of the reasoning that led to its conclusion under Article 8 above, the Court considered unanimously that it was not necessary to examine separately the complaint under Article 14.

42. *Eur. Court HR, Bykov v. Russia,* judgment of 10 March 2009, application no. 4378/02. The applicant complains under Article 5 § 3 (right to liberty and security), Article 8 (right to respect for private and family life) and Article 6 (right to a fair trial) of the European Convention on Human Rights about the insufficient reasons given for extending the applicant's pre-trial detention, the use of a surveillance technique which was not accompanied by adequate safeguards against possible abuses.

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10.3.2009

Press release issued by the Registrar

GRAND CHAMBER JUDGMENT[1]
BYKOV v. RUSSIA

The European Court of Human Rights has today delivered at a public hearing its Grand Chamber judgment[1] in the case of ***Bykov v. Russia*** (application no. 4378/02).

The Court held:

 unanimously that there had been a **violation of Article 5 § 3** (right to liberty and security) of the European Convention on Human Rights on account of the insufficient reasons given for extending the applicant's pre-trial detention;

 unanimously that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention on account of the use of a surveillance technique which was not accompanied by adequate safeguards against possible abuses;

 by 11 votes to six that there had been **no violation of Article 6** (right to a fair trial).

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant, by 12 votes to five, 1,000 euros (EUR) in respect of non-pecuniary damage and, unanimously, EUR 25,000 for costs and expenses. (The judgment is available in English and French.)

1. Principal facts

The applicant, Anatoliy Petrovich Bykov, is a Russian national who was born in 1960 and lives in Krasnoyarsk (Russia). He was chairman of the board of the Krasnoyarsk Aluminium Plant from 1997 to 1999. At the time of his arrest in October 2000 he was a major shareholder and an executive of a corporation called OAO Krasenergomash-Holding. He was also a member of the Krasnoyarsk Regional Parliamentary Assembly.

The applicant complained, in particular, about a covert recording used as evidence in the criminal proceedings against him and about the length of his pre-trial detention.

[1] Grand Chamber judgments are final (Article 44 of the Convention).

In September 2000 Mr Bykov allegedly ordered V., a member of his entourage, to kill Mr S., a former business associate. V. did not comply with the order, but on 18 September 2000 he reported the applicant to the Federal Security Service ("the FSB").

The FSB and the police decided to conduct a covert operation to obtain evidence of the applicant's intention to murder S. On 29 September 2000 the police staged the discovery of two dead bodies at S.'s home. They officially announced in the media that one of those killed had been identified as S. The other man was his business partner, Mr I.

On 3 October 2000 V. went to see the applicant at his home. He carried a hidden radio-transmitting device while a police officer outside received and recorded the transmission. Following the instructions he had been given, V. engaged the applicant in conversation, telling him that he had carried out the murder. As proof he handed the applicant several objects borrowed from S. and I. The police obtained a 16-minute recording of the conversation between V. and the applicant.

On 4 October 2000 the applicant's house was searched. The objects V. had given him were seized. The applicant was arrested and remanded in custody. He was charged with conspiracy to commit murder and conspiracy to acquire, possess and handle firearms.

The applicant's pre-trial detention was extended several times and his numerous appeals and requests for release were rejected because of the gravity of the charges against him and the risk that he might abscond and bring pressure to bear on the witnesses.

Two voice experts were appointed to examine the recording of the applicant's conversation with V. They found that V. had shown subordination to the applicant, that the applicant had shown no sign of mistrusting V.'s confession to the murder and that he had insistently questioned V. on the technical details of its execution. They established that V. and the applicant had a close relationship and that the applicant had played an instructive role in the conversation.

On 19 June 2002 the applicant was found guilty on both counts and sentenced to six and a half years' imprisonment. He was conditionally released on five years' probation. The sentence was upheld on appeal on 1 October 2002.

On 22 June 2004 the Supreme Court of the Russian Federation examined the case in supervisory proceedings. It found the applicant guilty of "incitement to commit a crime involving a murder", and not "conspiracy to murder". The rest of the judgment, including the sentence, remained unchanged.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 21 December 2001 and declared admissible on 7 September 2006. On 22 November 2007 the Chamber to which the case was assigned relinquished jurisdiction in favour of the Grand Chamber[1]. A hearing was held in Strasbourg on 18 June 2008.

[1] Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Jean-Paul **Costa** (France), ***President***,
Christos **Rozakis** (Greece),
Nicolas **Bratza** (United Kingdom),
Peer **Lorenzen** (Denmark),
Françoise **Tulkens** (Belgium),
Josep **Casadevall** (Andorra),
Ireneu **Cabral Barreto** (Portugal)
Nina **Vajić** (Croatia),
Anatoly **Kovler** (Russia),
Elisabeth **Steiner** (Austria),
Khanlar **Hajiyev** (Azerbaijan),
Ljiljana **Mijović** (Bosnia and Herzegovina),
Dean **Spielmann** (Luxemburg),
David Thór **Björgvinsson** (Iceland),
George **Nicolaou** (Cyprus),
Mirjana **Lazarova Trajkovska** ("the former Yugoslav Republic of Macedonia"),
Nona **Tsotsoria** (Georgia), ***judges***,

and also Michael **O'Boyle**, ***Deputy Registrar***.

3. Summary of the judgment[1]

Complaints

Relying on Article 5 § 3 (right to liberty and security), the applicant alleged that his pre-trial detention had been excessively long and that it had been successively extended without any indication of relevant and sufficient reasons. Under Article 6 § 1 (right to a fair trial), he complained that the proceedings against him had been unfair, as the police had set a trap to trick him into incriminating himself in his conversation with V. and the court had admitted the recording of the conversation in evidence at the trial. The applicant also complained that the covert operation by the police had involved an unlawful intrusion into his home and that the interception and recording of his conversation with Mr V. amounted to interference with his private life and his correspondence, in breach of Article 8 (right to respect for private and family life).

Decision of the Court

Article 5 § 3

The Court reiterated that continued pre-trial detention could be justified only if there were specific indications of a genuine public-interest requirement which, notwithstanding the presumption of innocence, outweighed the rule of respect for individual liberty laid down in Article 5 of the Convention. It noted that in the present case the applicant had been kept in pre-trial detention for one year, eight months and 15 days and that all his applications for release had been refused on the grounds

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point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

[1] This summary by the Registry does not bind the Court.

of the gravity of the charges and the likelihood of his fleeing, obstructing the course of justice or exerting pressure on witnesses. The Court found, however, that those grounds had not been at all substantiated by the courts concerned, particularly during the initial stages of the proceedings, and that there had therefore been a violation of Article 5 § 3.

Article 6 § 1

The Court reiterated that Article 6 guaranteed the right to a fair trial as a whole, and did not lay down any rules on the admissibility of evidence as such, even evidence obtained unlawfully in terms of domestic law. In that connection it observed that the applicant had been able to challenge the methods employed by the police, in the adversarial procedure at first instance and on appeal. He had thus been able to argue that the evidence adduced against him had been obtained unlawfully and that the disputed recording had been misinterpreted. The domestic courts had addressed all these arguments in detail and had dismissed each of them in reasoned decisions. The Court further noted that the statements by the applicant that had been secretly recorded had not been made under any form of duress; had not been directly taken into account by the domestic courts, which had relied more on the expert report drawn up on the recording; and had been corroborated by a body of physical evidence. The Court thus concluded that the applicant's defence rights and his right not to incriminate himself had been respected and that, accordingly, there had been no violation of Article 6 § 1.

Article 8

The Court observed that it was not disputed that the measures carried out by the police had amounted to interference with the applicant's right to respect for his private life. It pointed out that for such interference to be compatible with the Convention, it had to be in accordance with the law and necessary in a democratic society for one of the purposes listed in paragraph 2 of Article 8.

The Court noted that the Russian Operational-Search Activities Act was expressly intended to protect individual privacy by requiring judicial authorisation for any operational activities that might interfere with the privacy of the home or the privacy of communications by wire or mail services. In Mr Bykov's case, the domestic courts had held that since V. had been invited to the applicant's home and no wire or mail services had been involved (as the conversation had been recorded by a remote radio-transmitting device), the police operation had not breached the regulations in force.

In that connection the Court reiterated that in order for the lawfulness requirement in Article 8 to be satisfied with regard to the interception of communications for the purpose of a police investigation, the law had to give a sufficiently clear indication as to the circumstances in which and the conditions on which the police authorities were empowered to resort to such measures. In the present case it considered that the use of a remote radio-transmitting device to record the conversation between V. and the applicant was virtually identical to telephone tapping, in terms of the nature and degree of the intrusion into the privacy of the individual concerned. It noted in that connection that since the law regulated only the interception of communications by wire and mail services, the legal discretion enjoyed by the police authorities had been too broad and had not been accompanied by adequate safeguards against various possible abuses. As this risk of arbitrariness was inconsistent with the requirement of lawfulness, there had been a violation of Article 8.

Two concurring opinions were expressed, by Judges Cabral Barreto and Kovler. Judge Costa expressed a partly dissenting opinion. Judge Spielmann, joined by Judges Rozakis, Tulkens, Casadevall and Mijović, also expressed a partly dissenting opinion. The opinions are attached to the judgment.

43. *Eur. Court HR, Társaság A Szabadságjogokért v. Hungary*, judgment of 14 April 2009, application no. 37374/05. The applicant complains under Article 10 (freedom of expression) of the European Convention on Human Rights about having been denied access to a complaint lodged by a parliamentarian with the Constitutional Court asking it to review recent legislative amendments.

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14.04.09

Press release issued by the Registrar

CHAMBER JUDGMENT
TÁRSASÁG A SZABADSÁGJOGOKÉRT v. HUNGARY

The European Court of Human Rights has today notified in writing its Chamber judgment[1] in the case of Társaság a Szabadságjogokért v. Hungary (application no. 37374/05).

The Court held unanimously that there had been a **violation of Article 10** (freedom of expression) of the European Convention on Human Rights, on account of the applicant organisation having been denied access to a complaint lodged by a parliamentarian with the Constitutional Court asking it to review recent legislative amendments.

Under Article 41 (just satisfaction) of the Convention, the Court held that the finding of a violation constituted sufficient just compensation for any non-pecuniary damage suffered. The applicant association was awarded 3,000 euros (EUR) for costs and expenses. (The judgment is available only in English.)

1. Principal facts

The applicant, Társaság a Szabadságjogokért (the Hungarian Civil Liberties Union), is an association founded in 1994 and registered in Hungary with its seat in Budapest. It is a non-governmental organisation which aims to promote fundamental rights as well as to strengthen civil society and the rule of law in Hungary; it is active in the field of drug policy.

The case concerned the claim of the applicant organisation that it was refused access to a complaint which was pending before the Constitutional Court and in which a parliamentarian requested constitutional review of amendments to the Criminal Code with regard to drug-related offences.

In October 2004, after the Constitutional Court denied the applicant organisation access to the above-mentioned complaint, the organisation brought proceedings in which it sought to oblige the

[1] Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

Constitutional Court to change its decision. While those proceedings were pending, on 13 December 2004 the Constitutional Court publicly delivered a decision on the constitutionality of that complaint; the decision contained a summary of the complaint itself.

More than a month after the Constitutional Court's decision, the court dealing with the proceedings brought by the applicant organisation dismissed its request; this dismissal was confirmed on appeal. The courts considered in particular that the information requested by the applicant was personal and could not be accessed without the author's approval. Such protection of personal data could not be overridden by other lawful interests, including the accessibility of public information.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 11 October 2005 and declared admissible on 13 November 2008.

Judgment was given by a Chamber of seven judges, composed as follows:

Francoise Tulkens (Belgium), ***President***,
Ireneu Cabral Barreto (Portugal),
Vladimiro Zagrebelsky (Italy),
Danutė Jočienė (Lithuania),
Dragoljub Popović (Serbia),

Andras Sajo (Hungary),

Nona Tsotsoria, ***judges***,

and also Sally Dollé, ***Section Registrar***.

3. Summary of the judgment[1]

Complaint

Relying on Article 10 (freedom of expression) of the Convention, Társaság a Szabadságjogokért alleged that the refusal with regard to the constitutional complaint breached its right to have access to information of public interest.

Decision of the Court

The Court first noted that the case essentially concerned an interference with the functioning of a social watchdog, such as the press, and was not to be examined as a denial of a general right of access to official documents. It emphasised that the State's obligations under Article 10 included the breaking down of barriers to the press exercising its right to freedom of expression on matters of public interest, especially when such barriers existed solely because of an information monopoly held by the authorities. The information sought by the applicant had been ready and available and had not required the collection of any data by the Government; consequently, the State had had an obligation not to impede the flow of information sought. If public figures were allowed to censor the press and public debate in the name of their own personal rights, it would be disastrous for freedom of expression in the

[1] This summary by the Registry does not bind the Court.

sphere of politics. Therefore, in this case, the obstacles that had been created in order to hinder access to information of public interest had been capable of discouraging those working in the media or related fields from pursuing such a matter. The Court held accordingly that the applicant organisation had been prevented from exercising its role of a public watchdog, and from providing accurate and reliable information to the public, in violation of Article 10.

44. *Eur. Court HR, K.H. and others v. Slovakia,* judgment of 28 April 2009, application no. 32881/04. The applicants complain under Article 8 (right to respect for private and family life), and Article 6§ 1 (access to court) and Article 13 (right to an effective remedy) of the European Convention on Human Rights about not having been allowed to make photocopies of their medical records, the impossibility for the applicants or their lawyers to obtain photocopies of their medical records having limited their effective access to court and not guaranteeing a remedy to challenge a law itself.

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28.04.09

Press release issued by the Registrar

CHAMBER JUDGMENT
K.H. AND OTHERS v. SLOVAKIA

The European Court of Human Rights has today notified in writing its Chamber judgment[1] in the case of ***K.H. and Others v. Slovakia*** (application no. 32881/04).

The Court held:

- unanimously that there had been a **violation of Article 8** (right to respect for private and family life) of the European Convention on Human Rights, on account of the applicants not having been allowed to make photocopies of their medical records;
- by a majority that there had been a **violation of Article 6 § 1** (access to court) of the Convention, on account of the impossibility for the applicants or their lawyers to obtain photocopies of their medical records having limited their effective access to court;
- unanimously that there had been **no violation of Article 13** (right to an effective remedy) **in combination with Article 8**, on account of Article 13 not guaranteeing a remedy to challenge a law itself;
- unanimously that it was not necessary to examine separately the complaint under Article 13 in combination with Article 6 § 1, on account of the requirements of Article 13 being less strict and absorbed by those of Article 6 § 1.

Under Article 41 (just satisfaction) of the Convention, the Court awarded to each applicant 3,500 euros (EUR) in respect of non-pecuniary damage and jointly to all applicants EUR 8,000 for costs and expenses. (The judgment is available only in English.)

[1] Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

1. Principal facts

The applicants are eight female Slovak nationals of Roma ethnic origin. They were treated in two hospitals in eastern Slovakia during their pregnancies and deliveries, following which none of them could conceive a child again despite their repeated attempts. The applicants suspected that the reason for their infertility might be that a sterilisation procedure was performed on them during their caesarean delivery by medical personnel in the hospitals concerned.

In order to obtain a medical analysis of the reasons for their infertility and possible treatment, the applicants authorised their lawyers to review and photocopy their medical records as potential evidence in future civil proceedings for damages, and to ensure that such documents and evidence were not destroyed or lost. The lawyers made two attempts, in August and September 2002 respectively, to obtain photocopies of the medical records, but were not allowed to do so by the hospitals' management.

The applicants sued the hospitals concerned, asking the courts to order them to release the medical records to the applicants' authorised legal representatives and to allow the latter to obtain photocopies of the documents included in the records.

In June 2003, the courts ordered the hospitals to permit the applicants and their authorised representatives to consult the medical records and to make handwritten excerpts thereof, but dismissed their request to photocopy the documents with a view to preventing their abuse. They also held that the applicants were not prevented to have any future claim, which they might bring for damages, determined in accordance with the requirements of the Convention. In particular, under the relevant law the medical institutions were obliged to submit the required information to, among others, the courts, for example in the context of civil proceedings concerning a patient's claim for damages.

Subsequently seven applicants were able to access their files and to make photocopies of them in accordance with the newly introduced Health Care Act of 2004. As regards the eighth applicant, the hospital only provided her with a simple record of a surgical procedure indicating that surgery had been performed on her and that she had been sterilised during the procedure.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 30 August 2004 and declared partly admissible on 9 October 2007.

Judgment was given by a Chamber of seven judges, composed as follows:

Nicolas **Bratza** (United Kingdom), *President,*

Lech **Garlicki** (Poland),

Giovanni **Bonello**(Malta),

Ljiljana **Mijović** (Bosnia and Herzegovina),

Ján **Šikuta** (Slovakia),

Mihai **Poalelungi** (Moldova),

Nebojša **Vučinić** (Montenegro), ***judges***,

and Lawrence **Early,** ***Section Registrar***,

3. Summary of the judgment[1]

Complaints

Relying on Article 8 (right to respect for private and family life), Article 6 § 1 (right to a fair hearing) and Article 13 (right to an effective remedy), the applicants complained of not being able to obtain photocopies of their medical records, which they needed in order to establish the reason for their infertility; they also complain of being thus denied access to court as they were unable to assess in a qualified manner the position in their cases for later civil litigation, the prospects of success of any such litigation and to produce these photocopies of medical records as evidence.

Decision of the Court

Article 8

The Court noted that the applicants had complained that they had been unable to exercise their right of effective access to information concerning their health and reproductive abilities at a certain moment in time. This question had been linked to their private and family lives, and thus protected under Article 8 of the Convention. The Court considered that persons who, like the applicants, wished to obtain photocopies of documents containing their personal data, should not have been obliged to make specific justification as to why they needed the copies. It should have been rather for the authority in possession of the data to show that there had been compelling reasons for not providing that facility.

Given that the applicants had obtained judicial orders permitting them to consult their medical records in their entirety, having denied them the possibility to make photocopies of those records had not been sufficiently justified by the authorities. To avoid the risk of abuse of medical data it would have been sufficient to put in place legislative safeguards with a view to strictly limiting the circumstances under which such data could be disclosed, as well as the scope of persons entitled to have access to the files. The Court observed that the new Health Care Act adopted in 2004 had been compatible with that requirement, however, it had come into play too late to affect the situation of the applicants in this case. Accordingly, there had been a violation of Article 8.

Article 6 § 1

The Court accepted the applicants' argument that they had been in a state of uncertainty as regards their state of health and reproductive ability following their treatment in the hospitals concerned. It also agreed that obtaining the photocopies had been essential for their assessment of the perspectives of seeking redress before the courts in respect of any shortcoming in their medical treatment. As the domestic law applicable at the time had limited excessively the possibility of the applicants or their lawyers to present their cases to the court in an effective manner, and the Government had not presented reasons sufficient to justify this restriction, the Court held that there had been a violation of Article 6 § 1.

Article 13

The Court found no violation of this Article noting that it did not guarantee a remedy to challenge a law as such before a domestic authority. It also considered unnecessary to examine separately the

[1] This summary by the Registry does not bind the Court.

applicants' complaint under Article 13 in combination with Article 6 § 1, as it held that the requirements of Article 13 were less strict and absorbed by those of Article 6 § 1.

Judge Šikuta expressed a partly dissenting opinion, which is annexed to the judgment.

45. *Eur. Court HR, Szuluk v. The United Kingdom*, judgment of 2 June 2009, application no. 36936/05. The applicant complains under Article 8 (right to respect for private and family life and for correspondence) of the European Convention on Human Rights about the monitoring by prison authorities of medical correspondence between the applicant – a convicted prisoner – and his external specialist doctor.

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02.06.2009

Press release issued by the Registrar

CHAMBER JUDGMENT
SZULUK v. THE UNITED KINGDOM

The European Court of Human Rights has today notified in writing its Chamber judgment[1] in the case of ***Szuluk v. the United Kingdom*** (application no. 36936/05) concerning the monitoring by prison authorities of medical correspondence between the applicant – a convicted prisoner – and his external specialist doctor.

The Court held unanimously that there had been a **violation of Article 8** (right to respect for private and family life and for correspondence) of the European Convention on Human Rights. Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant 1,000 euros (EUR) for non-pecuniary damage and EUR 6,000 for costs and expenses. (The judgment is available only in English.)

1. Principal facts

The applicant, Edward Szuluk, is a British national who was born in 1955 and is currently in prison in Staffordshire (United Kingdom).

Mr Szuluk was sentenced in November 2001 to 14 years' imprisonment for drugs offences. In April 2001, while on bail pending trial, the applicant suffered a brain haemorrhage for which he had two operations. Following his discharge back to prison, he was required to go to hospital every six months for a specialist check-up.

The applicant complained, unsuccessfully, before the local courts that his correspondence with the neuro-radiology specialist who was supervising his hospital treatment had been monitored by a prison medical officer.

2. Procedure and composition of the Court

[1] Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

The application was lodged with the European Court of Human Rights on 14 October 2005.

Judgment was given by a Chamber of seven judges, composed as follows:

Lech **Garlicki** (Poland), ***President***,
Nicolas **Bratza** (the United Kingdom),
Giovanni **Bonello** (Malta),
Ljiljana **Mijović** (Bosnia and Herzegovina),
Päivi **Hirvelä** (Finland),
Ledi **Bianku** (Albania),
Nebojša **Vučinić** (Montenegro), ***judges***,

and also Fatoş **Aracı**, ***Deputy Section Registrar***.

3. Summary of the judgment[1]

Complaint

Relying on Article 8, Mr Szuluk complained that the prison authorities had intercepted and monitored his medical correspondence.

Decision of the Court

Article 8

The Court noted that it was clear and not contested that there had been an "interference by a public authority" with the exercise of the applicant's right to respect for his correspondence. It further observed that it was accepted by the parties that the reading of the applicant's correspondence had been governed by law and that it had been aimed at the prevention of crime and the protection of the rights and freedoms of others.

Mr Szuluk submitted that the monitoring of his correspondence with his medical specialist inhibited their communication and prejudiced reassurance that he was receiving adequate medical treatment while in prison. Given the severity of his medical condition, the Court found the applicant's concerns to be understandable. Moreover, there had not been any grounds to suggest that Mr Szuluk had ever abused the confidentiality given to his medical correspondence in the past or that he had any intention of doing so in the future. Furthermore, although he had been detained in a high security prison which also held Category A (high risk prisoners), he had himself always been defined as Category B (prisoners for whom the highest security conditions were not considered necessary).

Nor did the Court share the Court of Appeal's view that the applicant's medical specialist, whose *bona fides* had never been challenged, could be "intimidated or tricked" into transmitting illicit messages or that that risk had been sufficient to justify the interference with the applicant's rights. This was particularly so since the Court of Appeal had further acknowledged that the importance of unimpeded correspondence with secretarial staff of MPs (Members of Parliament), although subject to the same kind of risks, outweighed any risk of abuse.

[1] This summary by the Registry does not bind the Court.

Indeed, uninhibited correspondence with a medical specialist in the context of a prisoner suffering from a life-threatening condition should be given no less protection than the correspondence between a prisoner and an MP. Moreover, the Court of Appeal had conceded that it could, in some cases, be disproportionate to refuse confidentiality to a prisoner's medical correspondence and changes had since been enacted to the relevant domestic law to that effect. The Court also found that the Government had failed to provide sufficient reasons to explain why the risk of abuse involved in correspondence with named doctors whose exact address, qualifications and *bona fides* were not in question should be perceived as greater than the risk involved in correspondence with lawyers.

The Court therefore concluded that the monitoring of Mr Szuluk's medical correspondence had not struck a fair balance with his right to respect for his correspondence. Accordingly, there had been a violation of Article 8.

46. *Eur. Court HR, Iordachi and others v. Moldova,* judgment of 14 September 2009, application no. 25198/02. Respect for private life Status of potential victims; lack of clarity or adequate safeguards in legislation on interception of communications: violation.

14.09.2009

Press release issued by the Registrar

CHAMBER JUDGMENT

IORDACHI AND OTHERS v. MOLDOVA

Facts: The applicants believed that they were at serious risk of having their telecommunications tapped as they were members of a Moldovan non-governmental organisation specialising in the representation of applicants before the Court. Although they did not claim that any of their communications had in fact been intercepted, they considered that the domestic legislation did not contain sufficient guarantees against abuse and pointed to Supreme Court statistics showing that over 98% of all requests by the investigating bodies for permission to monitor communications had been authorised by the domestic courts in the years 2005-2007. The relevant legislation is contained in the Operational Investigators Activities Act 1994 and the Code of Criminal Procedure, both as amended. It permits the authorities, inter alia, to intercept telephone and other conversations with a view to preventing crime and protecting national security.

Law: Article 8 – (a) Interference: An individual could, under certain conditions, claim to be the victim of a violation occasioned by the mere existence of secret measures or of legislation permitting secret measures, without having to allege that such measures had in fact been applied to him. The relevant conditions were to be determined in each case according to the Convention rights alleged to have been infringed, the secret character of the measures objected to, and the connection between the applicant and those measures. The Court could not exclude the possibility that secret surveillance measures had been applied to the applicants as (i) under the Operational Investigative Activities Act the authorities were authorised to intercept communications of categories of persons with whom the applicants, in their capacity as human-rights lawyers, had extensive contact; (b) the NGO of which the applicants were members had acted in a representative capacity in roughly half the Moldovan cases communicated to the Government; and (c) in a move that had been endorsed by the Government, the Prosecutor General had threatened to prosecute any lawyer who damaged the image of the Republic of Moldova by complaining to international human-rights organisations (see Colibaba v. Moldova, 23 October 2007, Information Note no. 101). The mere existence of the legislation thus entailed a menace of surveillance that necessarily struck at freedom of communication and so constituted interference.

(b) "In accordance with the law": The issue here was whether the domestic legislation satisfied the foreseeability requirement. As regards the initial stage of the telephone-surveillance procedure (the grant of authorisation), despite improvements made by amendments in 2003, the legislation lacked clarity and detail; in particular, it did not define clearly the nature of the offences for which interception might be sought or the categories of persons liable to have their telephones tapped, which, in addition to suspects and defendants, included "any other person involved in a criminal offence". Further, the law

did not prevent the prosecution authorities from seeking a new interception warrant after the expiry of the initial six-month period and the legislation was unclear as to under what circumstances and against whom a warrant could be obtained in non-criminal cases. In respect of the second stage (surveillance proper), the investigating judge's role was unduly limited as the law made no provision for acquainting him with the results of the surveillance and did not require him to review whether the statutory requirements had been complied with. Indeed, it appeared to place such supervisory duties on the prosecuting authorities. Moreover, the interception procedure and guarantees appeared only to apply in the context of pending criminal proceedings and not to other cases. There were no clear rules on the procedures for screening, preserving and destroying collected data. Lastly, there was no procedure governing the activity of the Parliamentary special commission responsible for exercising overall control of the system or for protecting the secrecy of lawyer-client communications. In the light of the fact that the Moldovan courts had authorised virtually all requests for interception made by the prosecuting authorities in 2007, the Court concluded that the investigating judges did not address themselves to the existence of compelling justification for authorising measures of secret surveillance and that the system was largely overused. In conclusion, the law did not provide adequate protection against abuse of State power and so was not "in accordance with the law".

Conclusion: violation (unanimously).

47. *Court HR, Tsourlakis v. Greece,* judgment of 15 October 2009, application no. 50796/07. The applicant complains under Article 8 (right to respect for private and family life and for correspondence) of the European Convention on Human Rights about being prevented from consulting the report of the Child Welfare Society about his son.

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15.10.2009

Press release issued by the Registrar

Chamber judgment[1]

TSOURLAKIS V. GREECE

FATHER PREVENTED FROM CONSULTING WELFARE REPORT ABOUT HIS SON

The European Court of Human Rights has today notified in writing its Chamber judgment in the case of ***Tsourlakis v. Greece*** (application no. 50796/07).

The Court held unanimously that there had been a **violation of Article 8** (right to respect for private and family life) of the European Convention on Human Rights.

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant 5,000 euros (EUR) in respect of non-pecuniary damage. (The judgment is available only in French)

Principal facts

The applicant, Mr Konstantinos Tsourlakis, was born in 1956 and lives in Athens. In 1989 he married and the couple had a son. In August 2000 he and his wife separated.

By a judgment of 21 November 2001 the applicant's wife was awarded sole custody of the child, while the applicant was given the use of the matrimonial home. The applicant and his wife appealed. In an interlocutory decision of 31 March 2004 a welfare report was ordered, to be prepared by the Athens Child Welfare Society ("the Society").

In November 2004 the Society's report was filed at the hearing before the Court of Appeal. In a judgment of 19 May 2005 the Court of Appeal granted permanent custody of the child to his mother.

Mr Tsourlakis attempted to obtain a copy of the Society's report. The Society informed him that the report was a confidential document prepared for the exclusive attention of the Court of Appeal. After

[1] Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

applying to the Ombudsman's office, which informed him that he could not obtain a copy of the report because he had not addressed his request via the competent prosecutor, Mr Tsourlakis applied to the prosecutor at the Criminal Court. The latter rejected his request, indicating in two sentences added by hand to the applicant's letter that the request concerned personal information about a minor, of which the applicant had no legitimate interest in being apprised.

Complaints, procedure and composition of the Court

Relying on Article 6 (right to a fair hearing) and Article 8, Mr Tsourlakis complained that he had been prevented from consulting the report of the Child Welfare Society.

The application was lodged with the European Court of Human Rights on 8 November 2007.

Judgment was given by a Chamber of seven judges, composed as follows:

Nina **Vajić** (Croatia), ***President***,
Christos **Rozakis** (Greece),
Khanlar **Hajiyev** (Azerbaijan),
Dean **Spielmann** (Luxembourg),
Sverre Erik **Jebens** (Norway),
Giorgio **Malinverni** (Switzerland),
George **Nicolaou** (Cyprus), ***judges***,

and also André **Wampach**, ***Deputy Section Registrar***.

Decision of the Court

With regard to the complaint under Article 6, the Court noted that Mr Tsourlakis had not complained at any point during the proceedings that his inability to consult the Society's report had infringed his procedural rights and his right to a fair hearing. This complaint therefore had to be rejected for failure to exhaust domestic remedies, in accordance with Article 35 of the Convention.

The Court further observed that the part of the applicant's Article 8 complaint relating to the use of the Society's report before the Court of Appeal covered the same ground as his complaint under Article 6, which the Court had declared inadmissible.

With regard to the exercise by Mr Tsourlakis of his right to effective access to information concerning his private and family life following the Court of Appeal judgment, the Court noted that the domestic legislation concerning the use made of welfare reports was less than clear and that the only explanations which the applicant had received had come from the Ombudsman's office.

The information contained in the welfare report had been relevant to Mr Tsourlakis' relationship with his son. In that regard, the courts had acknowledged the affection shown by the father towards his child, which was reaffirmed by his persistent efforts to obtain custody. Being informed of any negative findings contained in the report would have enabled the applicant to take them into account in order to improve the relationship. Moreover, Mr Tsourlakis had had a legitimate claim to be informed of the use made of the details he had provided for the purposes of compiling the report.

The Government had not given reasons for the refusal to allow the applicant to consult the report and had not adduced any compelling reasons to justify the failure to disclose the contents of the document, which contained personal information of direct concern to the applicant. Accordingly, the authorities had not ensured effective observance of the applicant's right to respect for his private and family life. The Court therefore held unanimously that there had been a violation of Article 8.

48. *Eur. Court HR, Haralambie v. Romania*, judgment of 27 October 2009, application no. 21737/03. The applicant complains under Article 6§ 1 (access to court) and Article 8 (right to respect for private and family life and for correspondence) of the European Convention on Human Rights about the proceedings concerning the restoration of the land that had belonged to his mother and the obstacles to his right of access to the personal file created on him by the former secret services.

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27.10.2009

Press release issued by the Registrar

Chamber judgment[1]

HARALAMBIE V. ROMANIA

SIX YEARS TO ACCESS A PERSONAL FILE DRAWN UP BY THE SECRET SERVICES DURING THE COMMUNIST PERIOD

The European Court of Human Rights has today notified in writing its Chamber judgment in the case of ***Haralambie v. Romania*** (application no. 21737/03).

The Court held unanimously that there had been a **violation of Article 8** (right to respect for private and family life) and of **Article 6** (access to court) of the European Convention on Human Rights.

Under Article 41 (just satisfaction), the Court awarded the applicant 4,000 euros (EUR) in respect of pecuniary damage and EUR 2,000 in respect of non-pecuniary damage. (The judgment is available only in French).

Principal facts

The applicant, Mr Nicolae Haralambie, is a Romanian national who was born in 1930 and lives in Bucharest.

He claimed that he continued to suffer the consequences of the persecution to which he was subjected after the communist regime was established in 1945. At the time this had taken the form, among other things, of the confiscation of agricultural land belonging to his mother. Following a final decision against him by a county court in 2003 concerning a request for restoration of those plots of land, Mr Haralambie asked the National Council for the Study of the Archives of the former Secret Services of

[1] Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

the Communist Regime - the *Securitate* - ("the CNSAS"), whether he had been subjected to surveillance measures in the past.

On 28 March 2003 he was informed that a file in his name did exist but that, since the archives were held by the Romanian Intelligence Service, it was necessary to wait for his file to be transferred by that Service.

On 19 October 2005 a file in the applicant's name was transmitted to the CNSAS by the Romanian Intelligence Service.

On 19 May 2008 the CNSAS indicated that the date of birth in the file did not correspond to that of the applicant and that checks were therefore necessary. A few days later the CNSAS invited the applicant to come and consult the file created in his name by the *Securitate*, which he did on 23 June 2008. He was given a copy of the file, which bore the annotations "opened on 12 April 1983" and "the file was microfilmed on 23 July 1996".

A note indicated that Mr Haralambie had commented unfavourably on politics and on the economic situation. An undertaking by the applicant, dating from 1979, to collaborate with the *Securitate* had also been included, with official comments to the effect that he was evading his security work and that he would be placed under investigation and that his correspondence would be monitored.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 and Article 1 of Protocol No. 1, the applicant complained about the proceedings concerning the restoration of the land that had belonged to his mother. Under Article 8, he complained about the obstacles to his right of access to the personal file created on him by the former secret services.

The application was lodged with the European Court of Human Rights on 30 May 2003.

Judgment was given by a Chamber of seven judges, composed as follows:

Josep **Casadevall** (Andorra), ***President***,
Elisabet **Fura** (Sweden),
Corneliu **Bîrsan** (Romania),
Boštjan M. **Zupančič** (Slovenia),
Alvina **Gyulumyan** (Armenia),
Egbert **Myjer** (the Netherlands),
Luis **López Guerra** (Spain), ***judges***,

and also Stanley **Naismith**, ***Deputy Section Registrar***.

Decision of the Court

Article 6 § 1 – Article 1 of Protocol No. 1

The fact that Mr Haralambie's action concerning the location of the disputed land had been dismissed by the courts without an examination of the merits of the case, on the ground that the administrative authorities had sole jurisdiction in that area, had impaired the very essence of his right of access to a court. Accordingly, the Court concluded unanimously that there had been a violation of Article 6 § 1.

Having regard to this finding, he Court found it unnecessary to examine the cases under Article1 of Protocol No. 1.

Article 8

The Court reiterated the vital interest for individuals who were the subject of personal files held by the public authorities to be able to have access to them and emphasised that the authorities had a duty to provide an effective procedure for obtaining access to such information.

A Romanian law, amended in 2006, had established an administrative procedure for access to the *Securitate* files, which set the time-limit for transfer of archives at 60 days. However, it was not until six years after his first request – and thus well beyond this time-limit – that Mr Haralambie was invited to consult his file. The legislative amendment in 2006 indicated the need for speed in such a procedure, a fact recognised by the Romanian authorities, especially since, in this particular case, the applicant was already elderly.

Mr Haralambie's file had been available since 1996 in the form of microfilms, and had been in the possession of the CNSAS since October 2005. The Court considered that neither the quantity of files transferred nor shortcomings in the archive system justified a delay of six years in granting his request. As the authorities had not provided Mr Haralambie with an effective and accessible procedure to enable him to obtain access to his personal files within a reasonable time, the Court concluded unanimously that there had been a violation of Article 8.

49. *Eur. Court HR, B.B. v. France, Gardel v. France, M.B. v. France,* judgments of 17 December 2009, applications nos. 5335/06, 16428/05, 22115/06. The applicants complain under Article 8 (right to respect for private and family life and for correspondence) of the European Convention on Human Rights about their inclusion in the Sex Offender Database and the retroactive application of the legislation under which it was created.

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17.12.2009

Press release issued by the Registrar

Chamber judgments[1]

B.B. V. FRANCE

GARDEL V. FRANCE

M.B. V. FRANCE

INCLUSION IN NATIONAL SEX OFFENDER DATABASE DID NOT INFRINGE THE RIGHT TO RESPECT FOR PRIVATE LIFE

The European Court of Human Rights has today notified in writing its Chamber judgments in the cases of ***B.B. v. France, Gardel v. France, M.B. v. France*** (applications nos. 5335/06, 16428/05, 22115/06).

The Court held unanimously that there had been **no violation of Article 8** (right to respect for private and family life) of the European Convention on Human Rights.

Principal facts

The applicants are three French nationals who live in France: Bernard B.B., who was born in 1959 and lives in Toulouse; Fabrice Gardel, who was born in 1962 and is currently held in Monmédy Prison; and M.B., who was born in 1943 and lives in Millau. They were sentenced, in 1996, 2003 and 2001 respectively, to terms of imprisonment for rape of 15 year old minors by a person in a position of authority.

On 9 March 2004 Law no. 2004-204 "adapting the judicial system to the evolution of criminality" created a national judicial database of sex offenders (later extended to include violent offenders). The

[1] Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

provisions of the Code of Criminal Procedure concerning this Sex Offender Database entered into force on 30 June 2005.

In August 2005, November 2005 and February 2006, respectively, the applicants were notified of their inclusion in this database on account of their convictions and on the basis of the transitional provisions of the Law of 9 March 2004.

Complaints, procedure and composition of the Court

Relying on Article 7 (no punishment without law) and Article 8 (right to respect for private and family life), the applicants complained, in particular, about their inclusion in the Sex Offender Database and the retroactive application of the legislation under which it was created.

The applications were lodged with the European Court of Human Rights on 30 April 2005 (Mr Gardel), 26 January 2006 (Mr B.B.) and 23 May 2006 (M.B.).

The judgments were given in the *B.B.* and *Gardel* cases by a Chamber of seven judges, composed as follows:

Peer **Lorenzen** (Denmark), ***President***,
Renate **Jaeger** (Germany),
Jean-Paul **Costa** (France),
Rait **Maruste** (Estonia),
Mark **Villiger** (Liechtenstein),
Isabelle **Berro-Lefèvre** (Monaco),
Mirjana **Lazarova Trajkovska** (the Former Yugoslav Republic of Macedonia), ***judges***,

and also Claudia **Westerdiek**, ***Section Registrar***.

The judgment in the *M.B.* case was given by a Chamber of seven judges, composed as follows:

Peer **Lorenzen** (Denmark), ***President***,
Renate **Jaeger** (Germany),
Jean-Paul **Costa** (France),
Rait **Maruste** (Estonia),
Mark **Villiger** (Liechtenstein),
Isabelle **Berro-Lefèvre** (Monaco),
Mirjana **Lazarova Trajkovska** (the Former Yugoslav Republic of Macedonia), ***judges***,
Karel **Jungwiert** (Czech Republic),

Zdravka **Kalaydjieva** (Bulgaria), ***substitute judges***,

and also Claudia **Westerdiek**, ***Section Registrar***.

Decision of the Court

Article 7

The obligation arising from registration in the national Sex Offender Database pursued a purely preventive and dissuasive aim and could not be regarded as punitive in nature or as constituting a criminal sanction. The fact of having to prove one's address every year and to declare changes of address within a fortnight, albeit for a period of thirty years, was not serious enough for it to be treated as a "penalty".

The Court thus took the view that inclusion in the national Sex Offender Database and the corresponding obligations for those concerned did not constitute a "penalty" within the meaning of Article 7 § 1 of the Convention and that they had to be regarded as a preventive measure to which the principle of non-retrospective legislation, as provided for in that Article, did not apply. This complaint was thus rejected.

Article 8

The protection of personal data was of fundamental importance to a person’s enjoyment of respect for his or her private and family life, all the more so where such data underwent automatic processing, not least when such data were used for police purposes.

The Court could not call into question the prevention-related objectives of the database. Sexual offences were clearly a particularly reprehensible form of criminal activity from which children and other vulnerable people had the right to be protected effectively by the State.

Moreover, as the applicants had an effective possibility of submitting a request for the deletion of the data, the Court took the view that the length of the data conservation – thirty years maximum – was not disproportionate in relation to the aim pursued by the retention of the information.

Lastly, the consultation of such data by the court, police and administrative authorities, was subject to a duty of confidentiality and was restricted to precisely determined circumstances.

The Court concluded that the system of inclusion in the national judicial database of sex offenders, as applied to the applicants, had struck a fair balance between the competing private and public interests at stake, and held unanimously that there had been no violation of Article 8.

50. Eur. Court HR, Dalea v. France no. 964/07judgment of 2 February 2010. Inability to access or secure rectification of personal data in Schengen database. The Court ruled that applicant's inability to gain personal access to all the information he had requested could not in itself prove that the interference was not justified by national security interests

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no. 58243/00
1.7.2008

DALEA v. FRANCE

Inability to access or secure rectification of personal data in Schengen database

Facts
The applicant, a Romanian national, was denied a visa in 1997 for a visit to Germany, and the following year for a visit to France, on the ground that he had been reported by the French authorities to the Schengen Information System for the purposes of being refused entry. The applicant applied to the French National Data-Protection Commission ("the CNIL") seeking access to his personal data in the French Schengen database and the rectification or deletion of that data. The CNIL carried out the requested checks and then indicated that the procedure before it was now exhausted. The applicant brought an action for judicial review before the *Conseil d'Etat*, which found that he had received information concerning his data entry in the French Schengen database and that his action had therefore become devoid of object. The *Conseil d'Etat* further found that, on the basis of the investigation carried out, it was impossible to ascertain the reasons for the applicant's inclusion in the database and that it could not therefore be assessed whether the CNIL's denial of his request for rectification or deletion had been lawful. The CNIL indicated that the applicant had been reported to the Schengen Information System at the request of the French Security Intelligence Agency ("the DST"), which alone could provide the relevant information to enable the *Conseil d'Etat* to ascertain whether or not the applicant's request for rectification of his data had been well-founded. In 2006 the *Conseil d'Etat* observed that, having regard to all the material in the case file, the grounds given by the CNIL for its decision not to rectify or delete the data concerning the applicant provided valid justification for that decision. Accordingly, the applicant's action for the annulment of the CNIL's decision had been ill-founded.

Law – Article 8
The Convention did not as such guarantee the right of an alien to enter or to reside in a particular country. In so far as the applicant's professional relations, especially with French and German companies and with figures from political and economic circles in France, could be regarded as constituting "private life" within the meaning of Article 8, the interference with this right caused by the reporting of the applicant by the French authorities to the Schengen Information System had been in accordance with the law and had pursued the legitimate aim of protecting national security. The applicant had not shown how he had actually suffered as a result of his inability to travel in the Schengen area. He had merely referred, without giving particulars, to a considerable loss on account of the effect on his company's performance, and had pointed out that he had not been able to go to France for surgery that he had ultimately obtained in Switzerland, but this had not apparently had any particular consequences for his state of health. The French authorities' interference with the applicant's right to respect for his private life had therefore been proportionate to the aim pursued and necessary in a democratic society. In so far as the applicant had complained of interference with his private life solely on account of his inclusion in the Schengen Information System for a long period, the Court reiterated that everyone affected by a measure based on national security grounds had to be guaranteed

protection against arbitrariness. Admittedly, his inclusion in the database had barred him access to all countries that applied the Schengen Agreement. However, in the area of entry regulation, States had a broad margin of appreciation in taking measures to secure the protection against arbitrariness that an individual in such a situation was entitled to expect. The applicant had been able to apply for review of the measure at issue, first by the CNIL, then by the *Conseil d'Etat*. Whilst the applicant had never been given the opportunity to challenge the precise grounds for his inclusion in the Schengen database, he had been granted access to all the other data concerning him and had been informed that considerations relating to State security, defence and public safety had given rise to the report on the initiative of the DST. The applicant's inability to gain personal access to all the information he had requested could not in itself prove that the interference was not justified by national security interests. The French authorities' interference with the applicant's right to respect for his private life had therefore been proportionate to the aim pursued and necessary in a democratic society.

Conclusion: inadmissible (unanimously).

51. *Eur. Court HR, Ciubotaru v. Moldova,* judgment of 27 April 2010, application no. 27138/04. The applicant complains under Article 8 (right to respect for private and family life and for correspondence) of the European Convention on Human Rights about the authorities' refusal to register his Romanian ethnic identity in his identity papers.

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27.04.2010

Press release issued by the Registrar

Chamber judgment[1]

CIUBOTARU V. MOLDOVA

REFUSAL TO CHANGE ETHNIC IDENTITY IN PERSONAL IDENTITY PAPERS BREACHED THE CONVENTION

The European Court of Human Rights has today notified in writing its Chamber judgment in the case of ***Ciubotaru v. Moldova*** (application no. 27138/04).

The Court held unanimously that there had been a **violation of Article 8** (right to respect for private and family life) of the European Convention on Human Rights.

Under Article 41 (just satisfaction), the Court held that Moldova was to pay Mr Ciubotaru 1.500 euros (EUR) in respect of non-pecuniary damage and EUR 3.500 for costs and expenses.

Principal facts

The applicant, Mihai Ciubotaru, is a Moldovan national who was born in 1952 and lives in Chişinău. He is a writer and a professor of French.

In 2002, when applying to have his old Soviet identity card replaced with a Moldovan one, he submitted that his ethnicity was Romanian. As he was advised that his application would not be accepted unless he indicated his identity was Moldovan, he complied.

Shortly afterwards he requested the relevant State authority to change his identity from "Moldovan" to "Romanian". His request was refused with the argument that since his parents had not been recorded as ethnic Romanians in their birth and marriage certificates, it was impossible for him to be recorded as an ethnic Romanian. Mr Ciubotaru complained unsuccessfully numerous times about it to various

[1] Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

officials, following which he brought proceedings in court against the relevant State authority. He asked to have his identity changed in his papers as he did not consider himself an ethnic Moldovan. His request was dismissed by the domestic courts with the same argument as the one advanced by the State administrative authority.

Complaints, procedure and composition of the Court

Relying in particular on Article 8, Mr Ciubotaru complained of the authorities' refusal to register his Romanian ethnic identity in his identity papers.

The application was lodged with the European Court of Human Rights on 19 July 2004

Judgment was given by a Chamber of seven, composed as follows:

Nicolas **Bratza** (the United Kingdom), ***President***,

Lech **Garlicki** (Poland),

Ljiljana **Mijović** (Bosnia and Herzegovina),

David Thór **Björgvinsson** (Iceland),

Ján **Šikuta** (Slovakia),

Päivi **Hirvelä** (Finland),

Mihai **Poalelungi** (Moldova), ***judges***,

and also Fatoş **Aracı**, ***Deputy Section Registrar***

Decision of the Court

The Court noted that, along with such aspects as name, gender, religion and sexual orientation, an individual's ethnic identity constituted an essential aspect of his or her private life and identity, and thus fell under the protection of Article 8.

Aware of the highly sensitive nature of the issues involved in the present case, the Court distanced itself from the debate within Moldovan society concerning the ethnic identity of the main ethnic group. It took as a working basis the legislation of the Republic of Moldova and the official position of the Moldovan authorities when referring to Moldovans and Romanians.

As regards the requirement by the Moldovan authorities of proof of the ethnic origin of the applicant's parents, the Court did not dispute the right of a Government to require the existence of objective evidence of a claimed ethnicity. It was also ready to accept that it should be open to the authorities to refuse a claim to be officially recorded as belonging to a particular ethnicity where such a claim was based on purely subjective and unsubstantiated grounds.

However, Mr Ciubotaru appeared to have been confronted with a legal requirement making it impossible for him to support his claim. The relevant law and practice of recording ethnic identity had created insurmountable barriers before people who wished to have a different ethnic identity registered in respect of themselves as compared to that recorded in respect of their parents by the Soviet

authorities in the past. According to the law, the applicant could have changed his ethnic identity only if he had shown that one of his parents had been recorded in the official records as being of Romanian ethnicity. However, during the Soviet times, the population of Moldova had been systematically registered as being of Moldovan ethnicity, with very few exceptions the criteria for which had been unclear. Therefore, by asking Mr Ciubotaru to show that his parents had been registered as being of Romanian ethnicity, the authorities had placed a disproportionate burden on him in view of the historical realities of the Republic of Moldova.

The Court further observed that Mr Ciubotaru's claim was based on more than his subjective perception of his own ethnicity. It was clear that he was able to provide objectively verifiable links with the Romanian ethnic group such as language, name, empathy and others. However, no such objective evidence could be relied upon under the Moldovan law in force.

The applicant had been unable to have his claim that he belonged to a certain ethnic group examined in the light of the objectively verifiable evidence presented in support of that claim. Having had regard to the circumstances of the case as a whole, the Court concluded that the existing procedure for Mr Ciubotaru to have his recorded ethnicity changed did not comply with Moldova's obligations under the Convention to safeguard his right to respect for his private life. There has therefore been a breach of Article 8.

52. *Eur. Court HR, Uzun v. Germany*, application no. 35623/05, judgment of 2 September 2010. Applicant complained about information obtained on him via GPS surveillance. The Court considered that adequate and effective safeguards against abuse had been in place.

***no.* 35623/05**
2.9.2010

Press release issued by the Registrar

UZUN v. GERMANY

Information obtained via GPS surveillance is private data

Facts
In October 1995 the applicant and another man (S.) were placed under surveillance on the orders of an investigating judge because of their suspected involvement in bomb attacks that had been carried out by an extreme left-wing group to which they belonged. Realising that they were under surveillance, the two men sought to escape detection by destroying transmitters that had been installed in S.'s car and by avoiding use of the telephone. To counteract this, in December 1995 the Federal Public Prosecutor General authorised their surveillance by a Global-Positioning System device (GPS) which the authorities arranged to be fitted in S.'s car. The applicant and S. were arrested in February 1996 and subsequently found guilty of various bomb attacks between January and December 1995 on the basis of the evidence obtained through their surveillance, including GPS evidence linking the location of S.'s car to the scene of one of the attacks.

Law – Article 8
The GPS surveillance in the applicant's case had been used systematically to collect and store data on his whereabouts and movements over a three-month period. That data had enabled the authorities to draw up a pattern of his movements, conduct additional investigations and collect further evidence that had been used at his trial. Accordingly, the GPS surveillance and the processing and use of the data thereby obtained had interfered with the applicant's right to respect for his private life.
As to whether the interference was in accordance with the law, the surveillance had a basis in a statutory provision that was accessible to the applicant. The questions whether that provision was sufficiently precise to satisfy the foreseeability requirement and whether it afforded adequate safeguards against abuse were not to be judged by reference to the rather strict standards that applied in the context of surveillance by telecommunications, as GPS surveillance of movements in public places was less intrusive.
The Court considered that adequate and effective safeguards against abuse had been in place. The measures had pursued the legitimate aims of protecting national security, public safety and the rights of the victims, and of preventing crime. It had also been proportionate: GPS surveillance had been ordered only after less intrusive methods of investigation had proved insufficient, had been carried out for a relatively short period (some three months), and had affected the applicant only when he was travelling in his accomplice's car. The applicant could not be said to have been subjected to total and comprehensive surveillance. Given that the investigation had concerned very serious crimes, the applicant's surveillance by GPS had thus been necessary in a democratic society.

Conclusion: no violation (unanimously).

53. *Eur. Court HR, Kennedy v. The United Kingdom*, judgment of 18 May 2010, application no. 26839/05. The applicant complains under Article 8 (right to respect for private and family life and for correspondence), Article 6 § 1 (right to a fair trial) and Article 13 (right to an effective remedy) about the alleged interception of his communications, the unfair hearing before the IPT, and having been denied an effective remedy.

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18.05.2010

Press release issued by the Registrar

Chamber judgment[1]

KENNEDY V. THE UNITED KINGDOM

SECRET SURVEILLANCE MEASURES DID NOT INTERFERE WITH THE APPLICANT'S PRIVATE LIFE

The European Court of Human Rights has today notified in writing its Chamber judgment in the case of ***Kennedy v. The United Kingdom*** (application no. 26839/05).

The Court held unanimously that there had been **no violation of Article 6 § 1** *(right to a fair trial)*, of **Article 8** (right to respect for private and family life), nor of **Article 13** *(right to an effective remedy)* of the European Convention on Human Rights.

Principal facts

The applicant, Malcolm Kennedy, is a British national who was born in 1946 and lives in London. When arrested for drunkenness in 1990 he spent the night in detention with an inmate who was found dead the next day. Mr Kennedy was subsequently found guilty of the man's murder and sentenced to life imprisonment. His case was controversial in the United Kingdom on account of missing and conflicting evidence.

Released from prison in 1996, Mr Kennedy started a removal business. He alleged that his business mail, telephone and email communications were being intercepted because of his high profile case and his subsequent involvement in campaigning against miscarriages of justice.

The applicant complained to the Investigatory Powers Tribunal ("IPT") that his communications were being intercepted in "challengeable circumstances" amounting to a violation of his private life. Mr

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[1] Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

Kennedy sought the prohibition of any communication interception by the intelligence agencies and the "destruction of any product of such interception". He also requested specific directions to ensure the fairness of the proceedings before the IPT, including an oral hearing in public, and a mutual inspection of witness statements and evidence between the parties.

The IPT proceeded to examine the applicant's specific complaints in private, and in 2005 ruled that no determination had been made in his favour in respect of his complaints. This meant either that there had been no interception or that any interception which took place was lawful.

Complaints, procedure and composition of the Court

Relying on Article 8 the applicant complained about the alleged interception of his communications. He further complained, under Article 6 § 1, that the hearing before the IPT had not been fair, and, under Article 13, that as a result he had been denied an effective remedy.

The application was lodged with the European Court of Human Rights on 12 July 2005.

Judgment was given by a Chamber of seven judges, composed as follows:

Lech **Garlicki** (Poland), ***President***,
Nicolas **Bratza** (the United Kingdom),
Giovanni **Bonello** (Malta),
Ljiljana **Mijović** (Bosnia and Herzegovina),
Päivi **Hirvelä** (Finland),
Ledi **Bianku** (Albania),
Nebojša **Vučinić** (Montenegro), ***judges***,

and also Lawrence **Early**, ***Section Registrar***.

Decision of the Court

Article 8

The Court reiterated that, based on the principle of effective protection by the Convention's system, an individual might – under certain conditions to be determined in each case – claim to be the victim of a violation as a result of the mere existence of secret measures, even if they were not applied to him. This departure from the Court's general approach was to ensure that such measures, although secret, could be challenged and judicially supervised. In the applicant's case, the Court considered that it could not be excluded that secret surveillance measures were applied to him or that he was, at the material time, potentially at risk of being subjected to such measures. Accordingly, the Court concluded that he could complain of an interference with his Article 8 rights.

The Court considered it clear that the interference in question pursued the legitimate aims of protecting national security and the economic well-being of the country and preventing crime. In addition, it was carried out on the basis of the Regulation of Investigatory Powers Act 2000 ("RIPA"), supplemented by the Interception of Communications Code of Practice ("the Code"). The RIPA was available on the Internet, and hence accessible. It defined with sufficient precision the cases in which communications

could be intercepted. While the offences allowing interception were not set out by name, the Court noted that States were not compelled to exhaustively list national security offences as those were by nature difficult to define in advance. Finally, as only communications within the United Kingdom were concerned in the present case – unlike in *Liberty and Others v. the UK*[1] – the domestic law described more fully the categories of persons who could be subject to an interception of their communications.

As regards the processing, communication and destruction of data, the Court noted that the overall duration of interception measures had to be left to the discretion of the domestic authorities, as long as adequate safeguards were put in place. In the present case the renewal or cancellation of interception warrants were under the systematic supervision of the Secretary of State. In addition, contrary to the practice for communications with other countries, the domestic law provided that warrants for internal communications related to one person or one set of premises only, thereby limiting the scope of the authorities' discretion to intercept and listen to private communications. The law – more specifically the Code – also strictly limited the number of persons who had access to the intercept material, of which only a summary would be disclosed whenever sufficient. It also required the data to be destroyed as soon as they were no longer necessary, and detailed records of the warrants to be kept.

In terms of supervision of the RIPA regime, under the legislation a Commissioner was appointed who was independent from the executive and legislative authorities. His annual report to the Prime Minister was a public document and was laid before Parliament. The Court found his role in ensuring that the legal provisions were applied correctly very valuable, as well as his biannual review of a random selection of specific cases in which interception had been authorized. The Court further highlighted the extensive jurisdiction of Investigatory Powers Tribunal to examine any complaint of unlawful interception of communications. Unlike in many other countries, any person could apply to the IPT, which was an independent and impartial body. It had access to closed material and could require the Commissioner to order disclosure of all documents it considered relevant. When the IPT found in the applicant's favour, it could quash any interception order, require destruction of intercepted material and order compensation. The publication of the IPT's legal rulings further enhanced the level of scrutiny over secret surveillance activities in the United Kingdom.

The Court concluded that in the present case the relevant domestic provisions indicated with sufficient clarity the procedures concerning interception warrants as well as the processing, communicating and destruction of data collected. The Court further observed that there was no evidence of any significant shortcomings in the application and operation of the surveillance regime. Therefore there had been no violation of Article 8.

Article 6 § 1

The Court reiterated that there might be restrictions on the right to fully adversarial proceedings where strictly necessary in the light of a strong countervailing public interest. Restrictions in the IPT proceedings were justified by confidentiality considerations and the nature of the issues justified the absence of an oral hearing. The Court further noted that according to Article 6 § 1 of the Convention, national security might justify the exclusion of the public from the proceedings. As to the policy of the authorities to "neither confirm nor deny", the Court found it was sufficient that an applicant be informed in those terms.

[1] Liberty and Others v. the United Kingdom, no. 58243/00

The Court emphasised the breadth and convenience of access to the IPT enjoyed by those complaining about interception within the United Kingdom. Bearing in mind the importance of secret surveillance to the fight against terrorism and serious crime, the Court considered that the restrictions on the applicant's rights in the context of the proceedings before the IPT were both necessary and proportionate and were not contrary to Article 6.

Article 13

Having regard to its conclusions in respect of Article 8 and Article 6 § 1, the Court considered that the IPT offered to the applicant an effective remedy insofar as his complaint was directed towards the alleged interception of his communications. In respect of the applicant's general complaint under Article 8, the Court reiterated that Article 13 did not go so far as to guarantee a remedy allowing a Contracting State's laws as such to be challenged before a national authority on the ground of being contrary to the Convention or to equivalent domestic legal norms. The Court therefore dismissed the applicant's complaint under this Article.

54. *Eur.Court HR, Köpke v. Germany*, judgment of 5 October 2010. Case number: 420/07, Video surveillance of supermarket cashier suspected of theft

Legal summary

FIFTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 420/07
by Karin KÖPKE
against Germany

The European Court of Human Rights (Fifth Section), sitting on
5 October 2010

Facts – The applicant, a supermarket cashier, was dismissed without notice for theft, following a covert video surveillance operation carried out by her employer with the help of a private detective agency. She unsuccessfully challenged her dismissal before the labour courts. Her constitutional complaint was likewise dismissed.

Law – Article 8: A video recording of the applicant's conduct at her workplace had been made without prior notice on the instruction of her employer. The images thereby obtained had been processed and examined by several fellow employees and used in the public proceedings before the labour courts. The applicant's "private life" within the meaning of Article 8 § 1 had therefore been concerned by these measures. The Court had to examine whether the State, in the context of its positive obligations under Article 8, had struck a fair balance between the applicant's right to respect for her private life and both her employer's interest in the protection of its property rights, guaranteed by Article 1 of Protocol No. 1, and the public interest in the proper administration of justice. At the relevant time, the conditions under which an employer could resort to the video surveillance of an employee in order to investigate a criminal offence the employee was suspected of having committed in the course of his or her work had not yet been laid down in statute law. However, the Federal Labour Court had developed in its case-law important safeguards against arbitrary interference with the employee's right to privacy. This case-law had been applied by the domestic courts in the applicant's case. Moreover, covert video surveillance at the workplace following substantiated suspicions of theft did not affect a person's private life to such an extent as to require a State to set up a legislative framework in order to comply with its positive obligations under Article 8. As noted by the German courts, the video surveillance of the applicant had only been carried out after losses had been detected during stocktaking and irregularities discovered in the accounts of the department where she worked, raising an arguable suspicion of theft committed by

the applicant and another employee, who were the only employees to have been targeted by the surveillance measure. The measure had been limited in time (two weeks) and had only covered the area surrounding the cash desk and accessible to the public. The visual data obtained had been processed by a limited number of persons working for the detective agency and by staff members of the employer. They had been used only in connection with the termination of her employment and the proceedings before the labour courts. The interference with the applicant's private life had thus been restricted to what had been necessary to achieve the aims pursued by the video surveillance. The domestic courts had further considered that the employer's interest in the protection of its property rights could only be effectively safeguarded by collecting evidence in order to prove the applicant's criminal conduct in the court proceedings. This had also served the public interest in the proper administration of justice. Furthermore, the covert video surveillance of the applicant had served to clear from suspicion other employees. Moreover, there had not been any other equally effective means to protect the employer's property rights which would have interfered to a lesser extent with the applicant's right to respect for her private life.

The stocktaking could not clearly link the losses discovered to a particular employee. Surveillance by superiors or colleagues or open video surveillance did not have the same prospects of success in discovering a covert theft. In sum, there was nothing to indicate that the domestic authorities had failed to strike a fair balance, within their margin of appreciation, between the applicant's right to respect for her private life and both her employer's interest in the protection of its property rights and the public interest in the proper administration of justice. However, the balance struck between the interests at issue by the domestic authorities did not appear to be the only possible way for them to comply with their obligations under the Convention. The competing interests concerned might well be given a different weight in the future, having regard to the extent to which intrusions into private life were made possible by new, more sophisticated technologies.

Conclusion: inadmissible (manifestly-ill-founded).

55. *Eur. Court HR Mikolajová v. Slovakia,* judgment of 18 January 2011. Case number: 4479/03
Disclosure of police decision stating that the applicant had committed an offence, even though no criminal proceedings were ever brought

Legal summary

Article 8

Article 8-1

Respect for private life

Facts – In 2000 the applicant's husband filed a criminal complaint with the police alleging that the applicant had beaten and wounded him. Several days later, the police dropped the case because the applicant's husband did not agree to criminal proceedings being brought against her. In their decision, which was never served on the applicant, the police stated that their investigation had established that the applicant had committed the criminal offence of inflicting bodily injury. A year and a half later, relying on the police decision, an insurance company wrote to the applicant requesting her to reimburse the costs of her husband's medical treatment. The applicant protested to the police about their decision and filed a constitutional complaint alleging the violation of her rights, but to no avail.

Law – Article 8: Given the gravity of the conclusion contained in the police decision, namely that the applicant was guilty of a violent criminal offence, coupled with its disclosure to the insurance company, the Court considered that there had been an interference with the applicant's rights protected by Article 8. The police decision had been formulated as a statement of fact thus indicating that the police considered the applicant guilty of the alleged offence. Even though she had never been charged with a criminal offence, the applicant was nonetheless placed on record as a criminal offender possibly for an indefinite period, which must have caused damage to her reputation. Moreover, the Court could not but note the lack of any procedural safeguards in that the applicant had no available recourse to obtain a subsequent retraction or clarification of the impugned police decision. The domestic authorities had thus failed to strike a fair balance between the applicant's Article 8 rights and any interests relied on by the Government to justify the terms of the police decision and its disclosure to a third party.

Conclusion: violation (unanimously).

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

56. *Eur. Court HR Wasmuth v. Germany,* judgment of 17 February 2011 (application no. 12884/03). Requirement to indicate on wage-tax card possible membership of a Church or religious society entitled to levy church tax.

Press release

Taxpayer's obligation to disclose non-affiliation with church to employer did not violate his right to freedom of religion

In today's Chamber judgment in the case Wasmuth v. Germany (application no. 12884/03), which is not final[1], the European Court of Human Rights held, by a majority, that there had been:

No violation of Article 9 (freedom of thought, conscience and religion) of the European Convention on Human Rights;

No violation of Article 8 (right to respect for private and family life).

The case concerned Mr Wasmuth's complaint of the compulsory reference on his wage-tax card to the fact that he does not belong to a religious society authorised to levy religious tax.

Principal facts

The applicant, Johannes Wasmuth, is a German national who was born in 1956 and lives in Munich. He is a lawyer in private practice and is also employed as a lector in a publishing house. On his wage-tax cards of the last few years, the entry "--" could be found in the field "Church tax deducted", informing his employer that he did not have to deduct any church tax for Mr Wasmuth.

After having unsuccessfully requested the local authorities to issue him a wage-tax card without any information concerning his religious affiliation for the fiscal year of 1997 and 1998 and having unsuccessfully brought proceedings before the German courts in that matter, Mr Wasmuth again unsuccessfully made such a request concerning his tax card to be issued for 2002. He subsequently brought proceedings before the finance court, arguing that the information on the tax card violated his right not to indicate his religious convictions, that there was no legal basis for the public treasury to levy church tax and that it could not be expected of him as a homosexual to participate in a tax collection system which benefited social groups – the churches - whose stated goal was to question and to debase an integral aspect of his personality.

The finance court rejected Mr Wasmuth's claim in February 2002, holding that the local fiscal authorities were entitled under the relevant provisions of Bavarian law and German federal law to obtain information about employees' affiliation or non-affiliation with a religious society authorised to

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levy church tax and to submit that information to the employer in charge of deducting the tax. The entry "--" served to avoid him having to unduly pay church tax. In the court's view, the interference with Mr Wasmuth's fundamental rights was minimal and he had to accept it in the interest of the proper collection of church tax. The court further pointed out that the views of the Catholic and Protestant churches in Germany did not interfere with Mr Wasmuth's personality rights and that their position on homosexual marriage was shared by many other groups. The churches' position did not give Mr Wasmuth the right to refuse to participate in the church tax system. The decision was upheld by the Federal Court of Finance. By decision of 30 September 2002 (1 BvR 1744/02), the Federal Constitutional Court rejected Mr Wasmuth's constitutional complaint, referring to its decision of 25 May 2001 (1 BvR 2253/00) not to accept his earlier complaint, in which it had found that the disclosure of a taxpayer's non-affiliation with a religious society authorised to levy religious tax did not place an unacceptable burden on him.

Complaints, procedure and composition of the Court

Mr Wasmuth complained that the compulsory disclosure on his wage-tax card of his non-affiliation with a religious society authorised to levy religious tax amounted to a breach of Article 8 and Article 9, and also of Article 14 (prohibition of discrimination) taken together with Article 9.

The application was lodged with the European Court of Human Rights on 14 April 2003.

The Protestant Church of Germany and the (Catholic) Association of German Dioceses were granted leave to intervene in the proceedings as third parties and submitted written statements.

Judgment was given by a Chamber of seven, composed as follows:
Peer **Lorenzen** (Denmark), *President*,
Karel **Jungwiert** (the Czech Republic),
Rait **Maruste** (Estonia),
Mark **Villiger** (Liechtenstein),
Isabelle **Berro-Lefèvre** (Monaco),
Zdravka **Kalaydjieva** (Bulgaria), *judges*,
Eckart **Klein** (Germany), *ad hoc Judge*,
and also Claudia **Westerdiek**, *Section Registrar*.

Decision of the Court

Article 9
In accordance with its recent case-law, the Court found that the obligation to inform the authorities of his non-affiliation with churches or religious societies authorised to levy religious tax constituted an interference with Mr Wasmuth's right not to indicate his religious convictions. The Court was satisified that that obligation had a basis in German law, as the domestic courts had consistently held. The interference had further served the legitimate aim of ensuring the right of churches and religious societies to levy religious tax. It remained to be established whether the interference had been proportionate to that aim.

The German courts had been called on to balance the negative aspect of Mr Wasmuth's right to freedom of religion against the right of churches and religious societies to levy religious tax as guaranteed by the constitution. The Court agreed with the German Government that the reference on

the tax card at issue was only of limited informative value as regards his religious or philosophic conviction, as it simply indicated to the fiscal authorities that he did not belong to one of the six churches or religious societies which were authorised to levy religious tax in Bavaria and exercised that right in practice. The tax card was not in principle used in public; it did not serve any purpose outside the relation between the taxpayer and his employer or the tax authorities. In contrast to other cases in which the Court had found a violation of Article 9, the authorities had not asked Mr Wasmuth to explain why he did not belong to one of the religious societies authorised to levy religious tax and did not verify what his religious or philosophic conviction was. The Court therefore found that the obligation imposed on Mr Wasmuth was, in the circumstances of his case, not disproportionate to the aims pursued.

As regards Mr Wasmuth's complaint that by providing the required information he contributed to the functioning of the church tax system and thereby indirectly supported the churches whose positions he rejected, the Court took note of the German courts' arguments that his participation in the system was minimal and that it served precisely to avoid him having to unduly pay church tax. The Court further had regard to the fact that there was no European standard in the area of funding of churches and religious groups, a question which was closely linked to each country's history and tradition.

In view of those considerations the Court concluded that there had been no violation of Article 9.

Article 8

The Court reiterated that the collection, storage and transfer of data linked to an individual's private life fell within the remit of Article 8 § 1. The obligation imposed on Mr Wasmuth thus constituted an interference with his rights under that Article. However, in the light of its findings under Article 9 the Court held that that interference had been in accordance with the law and that it had been proportionate to a legitimate aim pursued for the purpose of Article 8 § 2. There had accordingly been no violation of Article 8.

Article 14

As regards Mr Wasmuth's complaint under Article 14 that he had been discriminated against as a homosexual, the Court observed that he had not raised that point before the German Federal Constitutional Court. That part of his complaint therefore had to be rejected as inadmissible for non-exhaustion of domestic remedies.

Separate opinion

57. *Eur. Court HR Sipoş v. Romania,* judgment of 3 May 2011 (application no. 26125/04). Judge Berro-Lefèvre expressed a dissenting opinion, joined by Judge Kalaydjieva. This opinion is annexed to the judgment. Journalist's right to respect for reputation should have prevailed over TV channel's freedom of expression.

Press release

In today's Chamber judgment in the case Sipoş v. Romania (application no. 26125/04), which is not final[1], the European Court of Human Rights held, by a majority, that there had been:

a violation of Article 8 (right to respect for private life) of the European Convention on Human Rights.

The case concerns a press release published by the management of the Romanian State TV channel, after removing the applicant from a programme that she produced and presented. She claimed that the press release had infringed her right to her reputation and should have been condemned by the Romanian courts.

Principal facts

The applicant, Maria Sipoş, is a Romanian national who was born in 1949 and lives in Bucharest. She is a journalist, writer and translator. In 2002, when she was making and presenting a television programme for the Romanian Television Company (SRTV) called "Event", which was broadcast on the national State channel România 1, she was replaced by the channel's management without explanation. Not having received any response to her protest, she made statements to the press alluding to the restoration of censorship in State television.

On 20 March 2003 Ms Sipoş brought criminal proceedings before the Bucharest District Court against the channel's director and the coordinator of the SRTV's press office, accusing both of insults and defamation. She joined the proceedings as a civil party and sought compensation for the non-pecuniary damage that she alleged had been caused to her. On 26 June 2003 the District Court acquitted the defendants on the ground that they had not acted with the intention of insulting or defaming Ms Sipoş but to express an official position of the SRTV concerning her accusations of censorship. Her compensation claim was dismissed. Ms Sipoş appealed against that decision. In a judgment of 3 December 2003 Bucharest County Court acknowledged that the press release contained defamatory assertions about Ms Sipoş. However, having regard to the fact that the defendants had not intended to insult or defame her, and in view of their good faith, it dismissed Ms Sipoş' appeal in a final judgment.

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Complaints, procedure and composition of the Court

Ms Sipoş complained that the Romanian authorities had failed in their obligation, under Article 8, to protect her right to respect for her reputation and private life against the assertions contained in the press release issued by the SRTV.

The application was lodged with the European Court of Human Rights on 24 May 2004.

Judgment was given by a Chamber of seven, composed as follows:
Josep **Casadevall** (Andorra), *President*,
Corneliu **Bîrsan** (Romania),
Egbert **Myjer** (the Netherlands),
Ján **Šikuta** (Slovakia),
Ineta **Ziemele** (Latvia),
Nona **Tsotsoria** (Georgia),
Kristina **Pardalos** (San Marino), *Judges*,
and also Santiago **Quesada**, *Section Registrar*.

Decision of the Court

The Court first reiterated that Article 8 did not merely compel the State to abstain from arbitrary interference with the right to respect for private life. The State also had "positive obligations" that might involve the adoption of measures designed to secure respect for private life even in the sphere of the relations between individuals. To be precise, in the case of Ms Sipoş, the Court had to determine whether Romania had struck a fair balance between, on the one hand, the protection of her right to her reputation and to respect for her private life, and on the other, the freedom of expression (Article 10) of those who had issued the impugned press release.

For that purpose it examined the content of the press release.

It first noted that, in its final judgment, Bucharest County Court had admitted that the offending press release contained defamatory remarks about Ms Sipoş.

It further noted that the press release, which had been drafted by a specialised department of Romanian State television and could not therefore be compared to comments made spontaneously, was not confined to a factual statement or explanations. It also contained assertions about political manipulation to which Ms Sipoş had allegedly been subjected, and about her emotional state, which was described in particular as being marked by family problems and as creating difficulties in her relations at work.

The Court took the view in this connection that the assertions presenting Ms Sipoş as a victim of political manipulation were devoid of any proven factual basis, since there was no indication that she had acted under the influence of any particular vested interest. As regards the remarks on her emotional state, the Court noted that they were based on elements of her private life whose disclosure did not seem necessary. As to the assessment about Ms Sipoş' discernment, it could not be regarded as providing an indispensable contribution to the position of the SRTV, as expressed through the press release, since it was based on elements of the applicant's private life known to the SRTV's management.

In conclusion, the assertions complained of by Ms Sipoș had overstepped the acceptable limit and the Romanian courts had not struck a fair balance between the protection of her right to her reputation and the freedom of expression protected by Article 10.

Article 8 had thus been breached.

Article 41
Under Article 41 (just satisfaction) of the Convention, the Court held that Romania was to pay the applicant 3,000 euros (EUR) in respect of non-pecuniary damage.

Separate opinion

Judge Myjer expressed a dissenting opinion, which is annexed to the judgment.

58. *Eur. Court HR Mosley v. the United Kingdom,* judgment of 10 May 2011, (application no. 48009/08). The European Convention on Human Rights does not require media to give prior notice of intended publications to those who feature in them.

Press release

In today's Chamber judgment in the case Mosley v. the United Kingdom (application no. 48009/08), which is not final[1], the European Court of Human Rights held, unanimously, that there had been:

No violation of Article 8 (right to protection of private and family life) of the European Convention on Human Rights.

The case concerned a complaint that the United Kingdom failed to impose a legal duty on newspapers to notify the subjects of intended publications in advance to give them an opportunity to prevent such publications by seeking an interim court injunction.

Principal facts

The applicant, Max Rufus Mosley, is a British national who was born in 1940 and lives in Monaco. He is the former president of the International Automobile Federation, a nonprofit association that represents the interests of motoring organisations and car users worldwide and is also the governing body for Formula One.

In March 2008, the Sunday newspaper *News of the World* published on its front page an article entitled "F1 boss has sick Nazi orgy with 5 hookers". Several pages inside the newspaper were also devoted to the story which included still photographs taken from video footage secretly recorded by one of the participants in the sexual activities.

An edited extract of the video, in addition to still images, were also published on the newspaper's website and reproduced elsewhere on the internet.

On 4 April 2008, Mr Mosley brought legal proceedings against the newspaper claiming damages for breach of confidence and invasion of privacy. In addition, he sought an injunction to restrain the *News of the World* from making available on its website the edited video footage.

On 9 April 2008, the High Court refused to grant the injunction because the material was no longer private as it had been published extensively in print and on the Internet. In subsequent privacy

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proceedings before the High Court, the court found that the images did not carry any Nazi connotations. Consequently there was no public interest and thus no justification for publishing that article and accompanying images, which had breached Mr Mosley's right to privacy. The court ruled that News of the World had to pay to Mr Mosley 60,000 GBP in damages.

Complaints, procedure and composition of the Court

Relying on 8 (right to private life) and Article 13 (right to an effective remedy), Mr Mosley complained that, despite the monetary compensation awarded to him by the courts, he remained a victim of Article 8 of the Convention as a result of the absence of a legal duty on the *News of the World* to notify him in advance of their intention to publish material concerning him thus giving him the opportunity to ask a court for an interim injunction and prevent the material's publication.

The application was lodged with the European Court of Human Rights on 29 September 2008.

Judgment was given by a Chamber of seven, composed as follows:
Lech **Garlicki** (Poland), *President*,
Nicolas **Bratza** (the United Kingdom),
Ljiljana **Mijović** (Bosnia and Herzegovina),
David Thór **Björgvinsson** (Iceland),
Päivi **Hirvelä** (Finland),
Ledi **Bianku** (Albania),
Nebojša **Vučinić** (Montenegro), *Judges*,
and also Lawrence **Early**, *Section Registrar*.

Decision of the Court

Admissibility

Victim status

The British Government considered that Mr Mosley was no longer a victim of a Convention violation given, in particular, that he had been compensated by the newspaper as ordered by the UK courts: 60,000 British pounds (GBP) in damages and GBP 420,000 for legal costs.

Mr Mosley insisted that he had remained a victim of a violation by the UK of his right to privacy, as the damages awarded were unable to restore his privacy to him after millions of people in the world had seen the embarrassing material in which he featured.

The Court found that no sum of money awarded after disclosure of the material which had caused Mr Mosley humiliation could be a remedy for his specific complaint that no legal requirement existed in the UK obliging the media to give advance warning to a person of a publication related to their private life.

Consequently, Mr Mosley could claim to still be a victim of a Convention violation.

Exhaustion of domestic remedies

The Government claimed that Mr Mosley had not exhausted a number of domestic remedies before taking his complaint before the Court. In particular, they argued that he had not appealed against the UK judge's ruling on exemplary damages, that he could have pursued an account of profits claim as opposed to a claim for damages as he had done, and that he had failed to complain under the Data Protection Act about the unauthorised processing of his personal information and to seek rectification or destruction of his personal data.

Mr Mosley considered the proposed remedies irrelevant to his complaint. The Court found that none of the remedies relied upon by the Government could have addressed Mr Mosley's specific complaint about the absence of a UK law requiring prenotification of the publication of the article which had interfered with his right to respect for his private life.

Private life

The Court noted that the UK courts had found no Nazi element in Mr Mosley's sexual activities and had therefore concluded that there had been no public interest in, and therefore justification for, the publication of the articles and images. In addition, the newspaper had not appealed against the judgment. The Court therefore considered that the publications in question had resulted in a flagrant and unjustified invasion of Mr Mosley's private life. Given that Mr Mosley had achieved a finding in his favour before the domestic court, the Court's own assessment concerned the balancing act to be conducted between the right to privacy and the right to freedom of expression not in the circumstances of the applicant's particular case but in relation to the UK legal system.

It was clear that the UK authorities had been obliged under the Convention not only to refrain from interfering with Mr Mosley's private life, but also to take measures to ensure his effective enjoyment of that right. The question which remained to be answered was whether a legally binding pre-notification rule was required.

The Court observed that it had implicitly accepted in its earlier case law that damages obtained following a defamatory publication provided an adequate remedy for right-toprivate- life breaches arising out of newspaper publications of private information.

It then recalled that States enjoyed a certain margin of appreciation in respect of the measures they put in place to protect people's right to private life. Notwithstanding the potential merits of Mr Mosley's individual case, given that a pre-notification requirement would inevitably affect political reporting and serious journalism, in addition to the sensationalist reporting at issue in Mr Mosley's case, the Court stressed that any restriction on journalism required careful scrutiny.

In the United Kingdom, the right to private life had been protected with a number of measures: there was a system of self-regulation of the press; people could claim damages in civil court proceedings; and, if individuals were aware of an intended publication touching upon their private life, they could seek an interim injunction preventing publication of the material. In addition, in the context of private life and freedom of expression, a parliamentary inquiry on privacy issues had been recently held in the

UK with the participation of various interested parties, including Mr Mosley himself, and the ensuing report had rejected the need for a pre-notification requirement.

The Court further noted that Mr Mosley had not referred to a single jurisdiction in which a pre-notification requirement as such existed, nor had he indicated any international legal texts requiring States to adopt such a requirement. Last and not least, the current UK system fully corresponded to the resolutions of the Parliamentary Assembly of the Council of Europe on media and privacy.

As to the clarity of any pre-notification requirement, the Court was of the view that the concept of "private life" was sufficiently well understood for newspapers and reporters to be able to identify when a publication could infringe the right to respect for private life. It further considered that a satisfactory definition of those subject to the obligation could be found. However, any pre-notification obligation would have to allow for an exception if public interest was at stake. Thus, a newspaper could opt not to notify an individual if it believed that it could subsequently defend its decision on the basis of the public interest in the information published.

The Court observed in that regard that a narrowly defined public interest exception would increase the chilling effect of any pre-notification 4 duty. In Mr Mosley's case, given that the *News of the World* had believed that the sexual activities they were disclosing had had Nazi overtones, hence were of public interest, they could have chosen not to notify Mr Mosley, even if a legal pre-notification requirement had been in place. Alternatively, a newspaper could choose, in any future case to which a pre-notification requirement was applied, to run the same risk and decline to notify, preferring instead to pay a subsequent fine. The Court emphasised that any pre-notification requirement would only be as strong as the sanctions imposed for failing to observe it; however, particular care had to be taken when examining constraints which might operate as a form of censorship prior to publication. Although punitive fines and criminal sanctions could be effective in encouraging pre-notification, that would have a chilling effect on journalism, even political and investigative reporting, both of which attracted a high level of protection under the Convention. That ran the risk of being incompatible with the Convention requirements of freedom of expression.

The Court concluded by recognising that the private lives of those in the public eye had become a highly lucrative commodity for certain sectors of the media. The publication of news about such people contributed to the range of information available to the public. Although the dissemination of that information was generally for the purposes of entertainment rather than education, it undoubtedly benefitted from the protection of Article 10. The Article 10 protection afforded to publications might cede to the requirements of Article 8 where the information was of a private and intimate nature and there was no public interest in its dissemination.

However, looking beyond the facts of Mr Mosley's case, and having regard to the chilling effect to which a pre-notification requirement risked giving rise, to the doubts about its effectiveness and to the wide margin of appreciation afforded to the UK in that area, the Court concluded that Article 8 did not require a legally binding pre-notification requirement. Therefore, its absence in UK law had not breached Article 8.

59. Eur. Court HR, Shimovolos v. Russia, application no. 30194/09, judgment of 21 June 2011. Applicant complained about police listing and surveillance on his account of membership in a human rights organisation.

***no.* 30194/09**
21.6.2011

Press release issued by the Registrar

SHIMOVOLOS v. RUSSIA

Police listing and surveillance on account of membership in a human rights organisation

Facts
In May 2007 a European Union-Russia Summit was scheduled to take place in Samara (Russia). At about the same time the applicant's name was registered as a human-rights activist in the so-called "surveillance database". The local authorities were informed that protests were planned during the summit and that it was necessary to stop all members of organisations planning such protests in order to prevent unlawful and extremist acts. They were also informed that the applicant was coming to Samara by train several days before the summit and that he might be carrying extremist literature. When the applicant arrived in Samara, he was stopped by the police and escorted to the police station at around 12.15 p.m. under the threat of force. At the police station the officers drew up an attendance report using a standard template entitled "Attendance report in respect of a person who has committed an administrative offence". However, they crossed out the phrase "who has committed an administrative offence". The applicant was released some 45 minutes later. The police officer who had escorted the applicant to the police station later stated that he had done so in order to prevent him from committing administrative and criminal offences.

Law – Article 8
The applicant's name was registered in the "surveillance database", which collected information about his movements, by train or air, within Russia and therefore amounted to an interference with his private life. The creation and maintenance of the database and the procedure for its operation were governed by a ministerial order which had never been published or otherwise made accessible to the public. Consequently, the Court found that the domestic law did not indicate with sufficient clarity the scope and manner of exercise of the discretion conferred on the domestic authorities to collect and store information on individuals' private lives in the database. In particular, it did not set out in a form accessible to the public any indication of the minimum safeguards against abuse.

Conclusion: violation (unanimously).

60. *Eur. Court HR Avram and Others v. Moldova,* judgment of 05 July 2011 (application no. 41588/05). Five women broadcast on national television in a sauna romp with police officers should have received higher compensation.

Press release

In today's Chamber judgment in the case Avram and Others v. Moldova (application no. 41588/05), which is not final[1], the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights

Principal facts

The applicants, Ala Avram, Elena Vrabie, Eugenia Buzu, Ana Moraru and Alina Frumusachi, are five Moldovan nationals who were born in 1979, 1976, 1979, 1979 and 1979 respectively and live in Chişinău.

Friends, the five women complained about the broadcasting on national television on 10 May 2003 of intimate video footage of them in a sauna with five men, four of whom were police officers. At the time, three of the applicants were journalists, the first two for the investigative newspaper *Accente*, one was a French teacher and the other was a librarian. The women claim that they first had contact with the police officers in October 2002 when the editor in chief of *Accente* was arrested on charges of corruption and that, from that point on, the officers provided them with material for their articles. One of the applicants had even become romantically involved with one of the officers.

The footage was used in a programme about corruption in journalism, and notably in the newspaper *Accente*. It showed the applicants, apparently intoxicated, in a sauna in their underwear, with two of them kissing and touching one of the men, and one of them performing an erotic dance. The men in the video had their faces blacked out. It also showed a document concerning Ms Avram's collaboration with the Ministry of Internal Affairs.

The applicants alleged in particular that the video had been secretly filmed by the police officers and used to try to blackmail them into not publishing an article on illegalities at the Moldovan Ministry of Internal Affairs. The officers had given the video to the national television service when the first two applicants had had the article published in their newspaper.

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On 17 and 20 May 2003 Ms Avram lodged a criminal complaint alleging blackmail and abuse of power on the part of the police. Both the applicants and the police officers were questioned. The officers denied any implication in the secret filming or blackmail, or indeed ever having had a relationship with the five applicants. In June 2004 the prosecuting authorities dismissed the complaint on the ground that dissemination of defamatory information was not an offence under Moldovan law. That decision was upheld on extraordinary appeal in October 2005.

In the meantime, the applicants also brought civil proceedings against the Ministry of Internal Affairs (for arranging the secret filming and giving documents of a private nature to national television) and National Television (for then broadcasting the images of a private nature). They requested compensation for a breach of their right to respect for their private and family life under Article 8 of the European Convention. In August 2008 the Supreme Court of Justice gave a final ruling in which it dismissed the complaint against the Ministry of Internal Affairs concerning the secret filming on account of lack of evidence. It held, however, that the Ministry was responsible for handing documents of a private nature concerning Ms Avram over to the National Television Service and that National Television was then responsible for the broadcasting of the sauna scene, in breach of Article 8 of the Convention.

The Supreme Court ordered the National Television Service to pay each applicant 3,600 Moldovan lei (MDL – the equivalent of 214 euros (EUR)), the Ministry of Internal Affairs a further MDL 3,600 to Ms Avram and a guest of the broadcasted programme MDL 1,800 (the equivalent of EUR 107) to Ms Vrabie, the maximum amounts allowed under Article 7/1 of the Moldovan old Civil Code by way of compensation for damage to a person's honour or dignity.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life), the applicants complained that the domestic authorities had failed to properly investigate the secret filming in the sauna and that the compensation awarded to them for the broadcasting was not proportionate to the severity of the breach of their right to respect for their private lives.

The application was lodged with the European Court of Human Rights on 7 November 2005.

Judgment was given by a Chamber of seven, composed as follows:
Josep **Casadevall** (Andorra), *President*,
Corneliu **Bîrsan** (Romania),
Alvina **Gyulumyan** (Armenia),
Ján **Šikuta** (Slovakia),
Luis **López Guerra** (Spain),
Nona **Tsotsoria** (Georgia),
Mihai **Poalelungi** (Moldova), *Judges*,
and also Marialena **Tsirli**, *Deputy Section Registrar*.

Decision of the Court
Article 8
The Court noted that the interference with the applicant' right to privacy was not in dispute. It had been acknowledged by the national courts and the applicants awarded compensation. The principal issue then was whether the ensuing awards made had been proportionate to the damage the applicants had sustained and whether the Supreme Court had fulfilled its Convention obligations under Article 8 when applying domestic law, which limited the amount of compensation payable to victims of defamation.

The Court was not persuaded that the Supreme Court had not any other possibility – other than under Article 7/1 of the old Civil Code – to decide on compensation. On the contrary, there were several examples of cases where the Supreme Court had relied on the European Court's practice to compensate breaches of Convention rights and damages were given which were comparable to those awarded by this Court.

In any case, the amounts awarded had been too low to be proportionate to such a serious interference with the applicants' right to respect for their private lives as a broadcast of intimate video footage of them on national television. Indeed, the Court saw no reason to doubt what a dramatic affect that had to have had on their private, family and social lives. The applicants could therefore still claim the status of victim and, accordingly, held that there had been a violation of Article 8.

Article 41 (just satisfaction)
The Court held that Moldova was to pay Ms Avram EUR 5,000, Ms Vrabie EUR 6,000 and Ms Buzu, Ms Moraru and Ms Frumusachi EUR 4,000, each, in respect of non-pecuniary damage. EUR 1,500 was awarded for costs and expenses.

Separate opinion
Judge Poalelungi expressed a concurring opinion which is annexed to the judgment.

61. *Eur. Court HR Khelili v. Switzerland,* judgment of 18 October 2011 (application no. 16188/07). A French woman classified as a "prostitute" for fifteen years in Geneva police database violated her right to respect for private life.

Press release

In today's Chamber judgment in the case of Khelili v. Switzerland (application no. 16188/07), which is not final[1], the European Court of Human Rights held, unanimously, that there had been:

A violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

The case concerned the classification of a French woman as a "prostitute" in the computer database of the Geneva police for five years.

Principal facts

The applicant, Sabrina Khelili, is a French national who was born in 1959 and lives in Saint Priest (France).

During a police check in Geneva in 1993, the police found Ms Khelili to be carrying calling cards which read: "Nice, pretty woman, late thirties, would like to meet a man to have a drink together or go out from time to time. Tel. no. …" Following this discovery Ms Khelili alleged that the Geneva police entered her name in their records as a prostitute, despite her insistence that she had never been one. The police attested that they were basing their work on the cantonal law on data protection which authorised the police to manage records that might contain personal data for as long as was necessary to enable them to carry out their duties (namely to punish offences and prevent crimes and misdemeanours). In November 1993, as a preventive measure, the Federal Aliens Office issued a two-year ban on her residing in Switzerland.

In 2001 two criminal complaints of threatening and insulting behaviour were lodged against Ms Khelili. In 2003 she found out from a letter issued by the Geneva police that the word "prostitute" still figured in the police files. In May 2005 Ms Khelili was given a suspended sentence for 20 days for two additional complaints of insulting and abusive use of telecommunication installations lodged against her in 2002 and 2003.

In July 2005 the chief of police certified that the word describing her profession in the police database had been replaced with "dressmaker". After having found out, in 2006, during a telephone conversation that the word "prostitute" still figured in the police computer files, Ms Khelili requested that the

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[1] Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

information relating to prostitution be deleted from the police records. In 2006 the chief of police confirmed in a letter that that had been done. Ms Khelili also requested that data concerning criminal complaints of threatening and insulting behaviour lodged against her in 2001, which also included the word "prostitute", be deleted. That request was refused on the ground that such information had to be kept as a preventive measure, given her previous infringements. Ms Khelili argued that maintaining that word in her files would make her day-today life more problematic, because such information would be communicated to her potential future employers.

Complaints, procedure and composition of the Court

Ms Khelili complained that since the discovery of her calling cards by the Geneva police in 1993, she has continued to be described in the police computer records as a "prostitute" and that that word is maintained in her file related to two criminal complaints of threatening and insulting behaviour, in breach of Article 8 of the Convention.

The application was lodged with the European Court of Human Rights on 5 April 2007.

Judgment was given by a Chamber of seven, composed as follows:
Françoise **Tulkens** (Belgium), *PRESIDENT*,
Danutė **Jočienė** (Lithuania),
Dragoljub **Popović** (Serbia),
Giorgio **Malinverni** (Switzerland),
Işıl **Karakaş** (Turkey),
Guido **Raimondi** (Italy),
Paulo **Pinto de Albuquerque** (Portugal), *JUDGES*,
and also Françoise **Elens-Passos**, *DEPUTY SECTION REGISTRAR.*

Decision of the Court
Article 8 (right to respect for private and family life)

The Court agreed that in today's case, the interference with Ms Khelili's rights had a legal basis in domestic law. The Court also recognised that Ms Khelili's data was retained for the purpose of the prevention of disorder or crime and the protection of the rights of others.

However, the Court noted that the word "prostitute" as a profession had been deleted from the police database but that that word had not been corrected in connection with criminal proceedings relating to the complaints lodged against Ms Khelili. The Court reiterated that the word at issue could damage Ms Khelili's reputation and make her dayto- day life more problematic, given that the data contained in the police records might be transferred to the authorities. That was all the more significant because personal data was currently subject to automatic processing, thus considerably facilitating access to and the distribution of such data. Ms Khelili therefore had a considerable interest in having the word "prostitute" removed from the police records.

The Court took account, firstly, of the fact that the allegation of unlawful prostitution appeared to be very vague and genera and that the link between Ms Khelili's conviction for threatening and insulting behaviour and retention of the word "prostitute" was not sufficiently close. It further noted the contradictory behaviour of the authorities; despite confirmation from the police that the word

“prostitute” had been corrected, Ms Khelili learned that that word had been retained on the police computer records.

Consequently, the Court concluded that the storage in the police records of allegedly false data concerning her private life had breached Ms Khelili’s right to respect for her private life and considered that the retention of the word “prostitute” for years was neither justified nor necessary in a democratic society.

Article 41 (just satisfaction)

The Court ordered Switzerland to pay Ms Khelili 15,000 euros (EUR) in respect of nonpecuniary damage and rejected the application in respect of costs and expenses.

62. *Eur. Court HR Axel Springer AG v. Germany,* judgment of 7 February 2012 (application no. 39954/08); Von Hannover v. Germany (no. 2), 7 February 2012 (application nos. 40660/08 and 60641/08). Media coverage of celebrities' private lives: acceptable if in the general interest and if in reasonable balance with the right to respect for private life.

Press release

The European Court of Human Rights has today delivered two Grand Chamber judgments, in the cases of **Axel Springer AG v. Germany** (application no. 39954/08) and **Von Hannover v. Germany** (no. 2) (application nos. 40660/08 and 60641/08), which are both final.

In the case **Axel Springer AG**, the Court held, by a majority, that there had been:
A violation of Article 10 (freedom of expression) of the European Convention on Human Rights

In the case **Von Hannover** (no. 2), the Court held, unanimously, that there had been: No violation of **Article 8 (right to respect for private and family life)** of the Convention

Both cases concerned the publication in the media of articles and, in the second case, of photos depicting the private life of well-known people.

Principal facts

Axel Springer AG

The applicant company, Axel Springer AG ("Springer"), is registered in Germany. It is the publisher of the *Bild*, a national daily newspaper with a large circulation.

In September 2004, the *Bild* published a front-page article about X, a well-known television actor, being arrested in a tent at the Munich beer festival for possession of cocaine. The article was supplemented by a more detailed article on another page and was illustrated by three pictures of X. It mentioned that X, who had played the role of a police superintendent in a popular TV series since 1998, had previously been given a suspended prison sentence for possession of drugs in July 2000. The newspaper published a second article in July 2005, which reported on X being convicted and fined for illegal possession of drugs after he had made a full confession. Immediately after the first article appeared, X brought injunction proceedings against Springer with the Hamburg Regional Court, which granted his request and prohibited any further publication of the article and the photos. The prohibition to publish the article was eventually upheld by the court of appeal in June 2005, the judgment concerning the photos was not challenged by Springer.

In November 2005, Hamburg Regional Court prohibited any further publication of almost the entire article, on pain of penalty for non-compliance, and ordered Springer to pay an agreed penalty. The court held in particular that the right to protection of X's personality rights prevailed over the public's interest in being informed, even if the truth of the facts related by the daily had not been disputed. The case had not concerned a serious offence and there was no particular public interest in knowing about

X's offence. The judgment was upheld by the Hamburg Court of Appeal and, in December 2006, by the Federal Court of Justice.

In another set of proceedings concerning the second article, about X's conviction, the Hamburg Regional Court granted his application on essentially the same grounds as those set out in its judgment on the first article. The judgment was upheld by the Hamburg Court of Appeal and, in June 2007, by the Federal Court of Justice.

In March 2008, the Federal Constitutional Court declined to consider constitutional appeals lodged by the applicant company against the decisions.

Von Hannover (no. 2)

The applicants are Princess Caroline von Hannover, daughter of the late Prince Rainier III of Monaco, and her husband Prince Ernst August von Hannover.

Since the early 1990s Princess Caroline has been trying to prevent the publication of photos of her private life in the press. Two series of photos, published in 1993 and 1997 respectively in German magazines had been the subject of three sets of proceedings before the German courts. In particular, leading judgments of the Federal Court of Justice of 1995 and of the Federal Constitutional Court of 1999 dismissed her claims. Those proceedings were the subject of the European Court of Human Rights' judgment in *Caroline von Hannover v. Germany* (no. 59320/00) of 24.06.2004, in which the Court held that the court decisions had infringed Princess Caroline's right to respect for her private life under Article 8.

Relying on that judgment, Princess Caroline and Prince Ernst August subsequently brought several sets of proceedings before the civil courts seeking an injunction against the publication of further photos, showing them during a skiing holiday and taken without their consent, which had appeared in the German magazines *Frau im Spiegel* and *Frau Aktuell* between 2002 and 2004.

While the Federal Court of Justice granted Princess Caroline's claim as regards the publication of two of the photos in dispute in a judgment of 6 March 2007 (no. VI ZR 51/06) – stating that they did not contribute to a debate of general interest - it dismissed her claim as regards another photo which had appeared in February 2002 in *Frau im Spiegel*. It showed the couple taking a walk during their skiing holiday in St. Moritz and was accompanied by an article reporting, among other issues, on the poor health of Prince Rainier of Monaco. The Federal Court found that the reigning prince's poor health was a subject of general interest and that the press had been entitled to report on the manner in which his children reconciled their obligations of family solidarity with the legitimate needs of their private life, among which was the desire to go on holiday. In a judgment of 26 February 2008, the Federal Constitutional Court dismissed Princess Caroline's constitutional complaint, rejecting in particular the allegation that the German courts had disregarded or taken insufficient account of the Court's case-law. On 16 June 2008, the Federal Constitutional Court declined, without giving reasons, to consider further constitutional complaints brought by the applicants concerning the same photo and a similar photo published in *Frau aktuell*.

Complaints, procedure and composition of the Court

Springer AG complained, under Article 10, about the injunction prohibiting any further publication of the articles.

Princess Caroline von Hannover and Prince Ernst August von Hannover complained, under Article 8, of the German courts' refusal to prohibit any further publication of the photos in dispute. They alleged in particular that the courts had not taken sufficient account of the European Court of Human Rights' judgment in *Caroline von Hannover v. Germany* of 2004.

The application in the case *Axel Springer AG* was lodged with the European Court of Human Rights on 18 August 2008. The case *Von Hannover v. Germany* (no. 2) originated in two applications which were lodged with the Court on 22 August and 15 December 2008 respectively, and which were joined on 24 November 2009.

On 30 March 2010, the Chamber to which all three applications had been allocated joined the application Springer to the applications of Von Hannover and relinquished jurisdiction in favour of the Grand Chamber. A Grand Chamber hearing, in both cases jointly, was held on 13 October 2010.

The following organisations were granted the right to submit written comments:

In both cases:
Media Lawyers Association
Media Legal Defence Initiative
International Press Institute
World Association of Newspapers and News Publishers

In the case of Von Hannover (no. 2):
Association of German Magazine Publishers (*Verband Deutscher Zeitungsverleger*)
Ehrlich & Sohn GmbH & Co. KG publishing company

Judgment was given by the Grand Chamber of 17, composed as follows:

Nicolas **Bratza** (the United Kingdom), *President,*
Jean-Paul **Costa** (France),
Françoise **Tulkens** (Belgium),
Josep **Casadevall** (Andorra),
Lech **Garlicki** (Poland),
Peer **Lorenzen** (Denmark),
Karel **Jungwiert** (the Czech Republic),
Renate **Jaeger** (Germany),
David Thór **Björgvinsson** (Iceland),
Ján **Šikuta** (Slovakia),
Mark **Villiger** (Liechtenstein),
Luis **López Guerra** (Spain),
Mirjana **Lazarova Trajkovska** ("The former Yugoslav Republic of Macedonia"),
Nona **Tsotsoria** (Georgia),
Zdravka **Kalaydjieva** (Bulgaria),

Mihai **Poalelungi** (The Republic of Moldova),
Kristina **Pardalos** (San Marino), *Judges*,
and also Michael **O'Boyle**, *Deputy Registrar*.

Decision of the Court

Axel Springer AG

It was undisputed between the parties that the German courts' decisions had constituted an interference with Springer's right to freedom of expression under Article 10. It was further common ground that the interference was prescribed by German law and that it had pursued a legitimate aim, namely the protection of the reputation of others.

As regards the question whether the interference had been necessary in a democratic society, the Court noted that the articles in question, about the arrest and conviction of the actor, concerned public judicial facts, of which the public had an interest in being informed. It was in principle for the national courts to assess how well known a person was, especially where that person, as the actor concerned, was mainly known at national level. The court of appeal had found that, having played the role of a police superintendent over a long period of time, the actor was well known and very popular. The Court thus considered that he was sufficiently well known to qualify as a public figure, which reinforced the public's interest in being informed of his arrest and the proceedings against him.

While the Court could broadly agree with the German courts' assessment that Springer's interest in publishing the articles was solely due precisely to the fact that it was a wellknown actor who had committed an offence – which would not have been reported on if committed by a person unknown to the public – it underlined that the actor had been arrested in public at the Munich beer festival. The actor's expectation that his private life would be effectively protected had furthermore been reduced by the fact that he had previously revealed details about his private life in a number of interviews.

According to a statement by one of the journalists involved, the truth of which had not been contested by the German Government, the information published in the *Bild* in September 2004 about the actor's arrest had been obtained from the police and the Munich public prosecutor's office. It therefore had a sufficient factual basis, and the truth of the information related in both articles was not in dispute between the parties.

Nothing suggested that Springer had not undertaken a balancing exercise between its interest in publishing the information and the actor's right to respect for his private life. Given that Springer had obtained confirmation of the information conveyed by the prosecuting authorities, it did not have sufficiently strong grounds for believing that it should preserve the actor's anonymity. It could therefore not be said to have acted in bad faith. In that context, the Court also noted that all the information revealed by Springer on the day on which the first article appeared was confirmed by the prosecutor to other magazines and to television channels.

The Court noted, moreover, that the articles had not revealed details about the actor's private life, but had mainly concerned the circumstances of his arrest and the outcome of the criminal proceedings against him. They contained no disparaging expression or unsubstantiated allegation, and the Government had not shown that the publication of the articles had resulted in serious consequences for the actor. While the sanctions imposed on Springer had been lenient, they were capable of having a

chilling effect on the company. The Court concluded that the restrictions imposed on the company had not been reasonably proportionate to the legitimate aim of protecting the actor's private life. There had accordingly been a violation of Article 10.

Von Hannover (no. 2)

It was not the Court's task to examine whether Germany had satisfied its obligations in executing the Court's judgment in *Caroline von Hannover v. Germany* of 2004, as that task was the responsibility of the Council of Europe's Committee of Ministers.2 Today's case only concerned the new proceedings brought by the applicants. The Court observed that following its 2004 judgment in *Caroline von Hannover v. Germany*, the German Federal Court of Justice had made changes to its earlier case-law. In particular, it had stated that it was significant whether a report in the media contributed to a factual debate and whether its contents went beyond a mere desire to satisfy public curiosity. The Federal Court of Justice had noted that the greater the information value for the public the more the interest of a person in being protected its publication had to yield, and vice versa, and that the reader's interest in being entertained generally carried less weight than the interest in protecting the private sphere. The German Federal Constitutional Court had confirmed that approach.

The fact that the German Federal Court of Justice had assessed the information value of the photo in question – the only one against which it had not granted an injunction – in the light of the article that was published together with it could not be criticised under the Convention. The Court could accept that the photo, in the context of the article, did at least to some degree contribute to a debate of general interest. The German courts' characterisation of Prince Rainier's illness as an event of contemporary society could not be considered unreasonable. It was worth underlining that the German courts had granted the injunction prohibiting the publication of two other photos showing the applicants in similar circumstances, precisely on the grounds that they were being published for entertainment purposes alone.

Furthermore, irrespective of the question to what extent Caroline von Hannover assumed official functions on behalf of the Principality of Monaco, it could not be claimed that the applicants, who were undeniably very well known, were ordinary private individuals. They had to be regarded as public figures.

The German courts had concluded that the applicants had not provided any evidence that the photos had been taken in a climate of general harassment, as they had alleged, or that they had been taken secretly. In the circumstances of the case, the question as to how the pictures had been taken had required no more detailed examination by the courts, as the applicants had not put forward any relevant arguments in that regard.

In conclusion, the German courts had carefully balanced the right of the publishing companies to freedom of expression against the right of the applicants to respect for their private life. In doing so, they had explicitly taken into account the Court's case-law, including its 2004 judgment in *Caroline von Hannover v. Germany*. There had accordingly been no violation of Article 8.

Article 41 (just satisfaction)
The Court held that Germany was to pay Axel Springer AG 17,734.28 euros (EUR) in respect of pecuniary damage and EUR 32,522.80 in respect of costs and expenses.

Separate opinions

In the case *Axel Springer AG*, Judge López Guerra expressed a dissenting opinion, joined by Judges Jungwiert, Jaeger, Villiger and Poalelungi, which is annexed to the judgment.

63. Eur. Court HR, *Von Hannover v. Germany (no. 2)* [GC], applications nos. 40660/08 and 60641/08, judgment of 7 February 2012. Applicant complained about refusal of domestic courts to issue injunction restraining further publication of a photograph of a famous couple taken without their knowledge

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***no.s* 40660/08 *and* 60641/08**
7.2.2012

Press release issued by the Registrar

VON HANNOVER v. GERMANY (No. 2)

Refusal of domestic courts to issue injunction restraining further publication of a photograph of a famous couple taken without their knowledge

Facts
The applicants were Princess Caroline von Hannover, daughter of the late Prince Rainier III of Monaco, and her husband Prince Ernst August von Hannover. Since the early 1990s Princess Caroline had sought, often through the courts, to prevent the publication of photographs of her private life in the press. Two series of photographs, published in German magazines in 1993 and 1997, had been the subject of litigation in the German courts that had led to leading judgments of the Federal Court of Justice in 1995 and of the Federal Constitutional Court in 1999 dismissing her claims. Those proceedings were the subject of the European Court's judgment in *Von Hannover v. Germany* (the first *Von Hannover* judgment, no. 59320/00, 24 June 2004), in which the Court found a violation of Princess Caroline's right to respect for her private life under Article 8.
Following that judgment the applicants brought further proceedings in the domestic courts for an injunction restraining further publication of three photographs which had been taken without their consent during skiing holidays between 2002 and 2004 and had already appeared in two German magazines. The Federal Court of Justice granted an injunction in respect of two of the photographs, which it considered did not contribute to a debate of general interest. However, it refused an injunction in respect of the third photograph, which showed the applicants taking a walk during a skiing holiday in St Moritz and was accompanied by an article reporting on, among other issues, Prince Rainier's poor health. That decision was upheld by the Federal Constitutional Court, which found that the Federal Court of Justice had had valid grounds for considering that the reigning prince's poor health was a subject of general interest and that the press had been entitled to report on the manner in which his children reconciled their obligations of family solidarity with the legitimate needs of their private life, among which was the desire to go on holiday. The Federal Court of Justice's conclusion that the photograph had a sufficiently close link with the event described in the article was constitutionally unobjectionable.

Law – Article 8
In response to the applicants' submission that the domestic courts had not taken sufficient account of the Court's decision in the first *Von Hannover* judgment, the Court observed that it was not its task to examine whether Germany had satisfied its obligations under Article 46 of the Convention regarding execution of that judgment: that was the responsibility of the Committee of Ministers. The present applications thus concerned only the new proceedings. Likewise, it was not the Court's task to review the relevant domestic law and practice in abstracto following the changes the Federal Court of Justice

had made to its earlier case-law in the wake of the first Von Hannover judgment; instead its role was to determine whether the manner in which the law and practice had been applied to the applicants had infringed Article 8.

In applying its new approach the Federal Court of Justice had granted an injunction in respect of two of the photographs on the grounds that neither they, nor the articles accompanying them, contributed to a debate of general interest. As regards the third photograph, however, it had found that Prince Rainier's illness and the conduct of the members of his family at the time qualified as an event of contemporary society on which the magazines were entitled to report and to include the photograph to support and illustrate the information being conveyed. The Court found that the domestic courts' characterisation of Prince Rainier's illness as an event of contemporary society could not be considered unreasonable and it was able to accept that the photograph, considered in the light of the article, did at least to some degree contribute to a debate of general interest (in that connection, it noted that the injunctions restraining publication of the other two photographs, which showed the applicants in similar circumstances, had been granted precisely because they were being published purely for entertainment purposes). Furthermore, irrespective of the question to what extent Princess Caroline assumed official functions on behalf of the Principality of Monaco, it could not be claimed that the applicants, who were undeniably very well known, were ordinary private individuals. They had to be regarded as public figures. As to the circumstances in which the photographs had been taken, this had been taken into account by the domestic courts, which found that the applicants had not adduced any evidence to show that the photographs had been taken surreptitiously, in secret or in otherwise unfavourable conditions.

In conclusion, the domestic courts had carefully balanced the publishing companies' right to freedom of expression against the applicants' right to respect for their private life. In so doing, they had attached fundamental importance to the question whether the photographs, considered in the light of the accompanying articles, had contributed to a debate of general interest and had also examined the circumstances in which they had been taken. The Federal Court of Justice had changed its approach following the first *Von Hannover* judgment and the Federal Constitutional Court, for its part, had not only confirmed that approach, but had also undertaken a detailed analysis of the Court's case-law in response to the applicants' complaints that the Federal Court of Justice had disregarded it. In those circumstances, and regard being had to the margin of appreciation enjoyed by the national courts when balancing competing interests, the domestic courts had not failed to comply with their positive obligations under Article 8.

Conclusion: no violation (unanimously).

64. *Eur. Court HR, Gillberg v. Sweden,* judgment of 03 April 2012, application no. 41723/06 Professor's criminal conviction for refusal to make research material available did not affect his Convention rights

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Press release

In today's Grand Chamber judgment in the case Gillberg v. Sweden (application no. 41723/06), which is final, the European Court of Human Rights held, unanimously, that **Article 8 (right to respect for private and family life) and Article 10 (freedom of expression)** of the European Convention on Human Rights **did not apply in the case**.

The case essentially concerned a professor's criminal conviction for misuse of office in his capacity as a public official, for refusing to comply with two administrative court judgments granting access, under specified conditions, to the University of Gothenburg's research on hyperactivity and attention deficit disorders in children to two named researchers.

The Court found in particular that the professor could not rely on Article 8 to complain about his criminal conviction and that he could not rely on a "negative" right to freedom of expression, the right not to give information, under Article 10.

Principal facts

The applicant, Christopher Gillberg, is a Swedish national, who was born in 1950. He is a professor and Head of the Department of Child and Adolescent Psychiatry at the University of Gothenburg. For several years, he was responsible for a long-term research project on hyperactivity and attention-deficit disorders in children. Certain assurances were made to the children's parents, and later to the young people themselves, concerning confidentiality. According to Mr Gillberg, the university's ethics committee had made it a precondition for the project that sensitive information about the participants would be accessible only to him and his staff, and he had therefore promised absolute confidentiality to the patients and their parents.

In 2002, requests by a sociological researcher and a paediatrician to be granted access to the research material were refused by the University of Gothenburg. Both researchers appealed against the decisions and, in February 2003, the Administrative Court of Appeal found that they should be granted access to the material, as they had shown a legitimate interest and could be assumed to be well acquainted with the handling of confidential data. The university was to specify the conditions for access in order to protect the interests of the individuals concerned. In August 2003, the Administrative Court of Appeal lifted some of the conditions imposed by the university and subsequently a new list of conditions was set for each of the two researchers, which included restrictions on the use of the material and prohibited the removal of copies from the university premises.

Notified in August 2003 that the two researchers were entitled to immediate access by virtue of the judgments, Mr Gillberg refused to hand over the material. Following discussions about the matter, the university decided in January and February 2004 to refuse access to the sociological researcher and to impose a new condition on the paediatrician, asking him to demonstrate that his duties required access

to the research material in question. Those university decisions were annulled by two judgments of the Administrative Court of Appeal on 4 May 2004. A few days later, colleagues of Mr Gillberg destroyed the research material.

In January 2005, the Swedish Parliamentary Ombudsman brought criminal proceedings against Mr Gillberg, and in June he was convicted of misuse of office. He was given a suspended sentence and a fine of the equivalent of 4,000 euros. The university's vicechancellor and the officials who had destroyed the research material were also convicted. Mr Gillberg's conviction was upheld in February 2006 by the Court of Appeal. In April 2006, leave to appeal to the Supreme Court was refused.

Complaints, procedure and composition of the Court

Mr Gillberg complained in particular that his criminal conviction breached his rights under Articles 8 and 10.

The application was lodged with the European Court of Human Rights on 10 October 2006. In its Chamber judgment of 2 November 2010 the Court held that there had been no violation of Articles 8 and 10 of the Convention. On 11 April 2011 the case was referred to the Grand Chamber at the request of the applicant2 and a hearing was held on 28 September 2011.

Judgment was given by the Grand Chamber of 17, composed as follows:
Nicolas **Bratza** (the United Kingdom), *President*,
Jean-Paul **Costa** (France),
Françoise **Tulkens** (Belgium),
Nina **Vajić** (Croatia),
Dean **Spielmann** (Luxembourg),
Corneliu **Bîrsan** (Romania),
Karel **Jungwiert** (the Czech Republic),
Elisabeth **Steiner** (Austria),
Elisabet **Fura** (Sweden),
Egbert **Myjer** (the Netherlands),
Danutė **Jočienė** (Lithuania),
Päivi **Hirvelä** (Finland),
Ledi **Bianku** (Albania),
Mihai **Poalelungi** (Moldova),
Nebojša **Vučinić** (Montenegro),
Kristina **Pardalos** (San Marino),
Paulo **Pinto de Albuquerque** (Portugal), *Judges*,
and also Erik **Fribergh**, *Registrar*.

Decision of the Court

The Court underlined that the Grand Chamber had jurisdiction to examine only the parts of the case that had been declared admissible by the Chamber judgment of 2 November 2010, namely the question whether Mr Gillberg's criminal conviction had infringed his rights under Article 8 and 10. His complaints concerning the outcome of the civil proceedings before the administrative courts could not be examined, as they had been declared inadmissible as being lodged out of time.

In its Chamber judgment, the Court had left open whether the complaint fell within the scope of Article 8 and Article 10, and whether there had been an interference with Mr Gillberg's right to respect for his private life and with his right to freedom of expression, because even assuming that there had been an interference with those rights, it had found that there had been no violation of Article 8 or Article 10.

Article 8

The Court recalled that Mr Gillberg was not the children's doctor or psychiatrist, and that he did not represent the children or their parents. The issue for the Court to examine was whether his criminal conviction for misuse of office amounted to an interference with his "private life" under Article 8.

The Court noted that according to its case-law, Article 8 could not be relied on – as Mr Gillberg did - in order to complain of a loss of reputation which was the foreseeable consequence of one's own actions such as committing a criminal offence. Furthermore, there was no case-law in which the Court had accepted that a criminal conviction in itself – which might entail personal suffering - constituted an interference with the convict's right to respect for private life.

Mr Gillberg's conviction of misuse of office in his capacity as a public official under the penal code had not been the result of an unforeseeable application of the relevant provisions. The offence in question had no obvious bearing on his right to respect for private life, as it concerned professional acts and omissions by public officials in the exercise of their duties. Mr Gillberg had furthermore not pointed to any concrete repercussions on his private life directly linked to his conviction, nor had he defined the nature and extent of his suffering connected to it. However, he had pointed out that he had chosen to refuse to comply with the court rulings obliging him to grant access to the research material, with the risk that he would be convicted of misuse of office. His conviction and the suffering it might have entailed were therefore foreseeable consequences of his committing the criminal offence.

Likewise, the fact that Mr Gillberg might have lost income as a consequence of the criminal conviction, as he had argued, had been a foreseeable consequence of committing a criminal offence. In any event, he had not shown that there had been any causal link between his conviction and his dismissal by the Norwegian Institute of Public Health. His claim that he had lost income from at least five books he could have written during the time taken up by the court proceedings remained unsubstantiated. Finally, he had maintained his position as professor and head of Department at the University of Gothenburg, and according to his own statements he was supported by numerous renowned and highly respected scientists who agreed with his conduct. The repercussions of the conviction on his professional activities had thus not gone beyond the foreseeable consequences of the criminal offence for which had been convicted.

The Court therefore concluded that Mr Gillberg's rights under Article 8 had not been affected.

Article 10

The Court did not rule out that a "negative" right to freedom of expression, as relied on by Mr Gillberg, was protected under Article 10. However, as regards the circumstances of his case, the Court noted that the material he had refused to make available belonged to the University of Gothenburg. It accordingly consisted of public documents subject to the principle of public access under the applicable Swedish legislation, namely the Freedom of the Press Act and the Secrecy Act. That entailed that secrecy could

not be determined until a request for access was submitted, and it was impossible in advance for a public authority to enter into an agreement with a third party exempting certain official documents from the right to public access.

The Swedish courts convicting Mr Gillberg had held that the assurances of confidentiality given to the participants in the study had gone further than permitted by the Secrecy Act. Moreover, the criminal courts were bound by the administrative courts' judgments, which had settled the question of whether and on what conditions the documents were to be released to the two researches. According to the Swedish courts, international declarations drawn up by the World Medical Association, on which Mr Gillberg relied in arguing that research ethics prevented him from disclosing the material, did not take precedence over Swedish law. In that context, the Court noted that Mr Gillberg was not bound by professional secrecy as if he had been the research participants' doctor or psychiatrist.

Furthermore, Mr Gillberg had not been prevented from complying with the administrative courts' judgments by any statutory duty of secrecy or any order from his public employer. He had not submitted any evidence to support his claim that his assurances of confidentiality to the research participants had been a requirement of the university's ethics committee.

The Court could not share Mr Gillberg's view that he had an independent "negative" right to freedom of expression, despite the fact that the research was owned by the university. Finding so would have run counter to the university's property rights. It would have also impinged on the two researchers' rights under Article 10 to receive information and on their rights under Article 6 of the Convention (right to a fair trial) to have the final judgments of the administrative courts implemented.

Finally, the Court found that Mr Gillberg's situation could not be compared to that of journalists protecting their sources or that of a lawyer bound by a duty vis-à-vis his clients. The information diffused by a journalist based on his or her source generally belonged to the journalist or the media, whereas in Mr Gillberg's case the research material was owned by the university and thus in the public domain. Since he had not been mandated by the research participants he had no duty of professional secrecy towards them, as a lawyer would have.

The Court therefore concluded that Mr Gillberg's rights under Article 10 had not been affected.

65. *Eur. Court HR E.S. v. Sweden,* judgment of 21 June 2012 (application no. 5786/08). Sweden did not fail to protect 14-year old girl after her stepfather attempted to film her naked.

Press release

In today's Chamber judgment in the case of E.S. v. Sweden (application no. 5786/08), which is not final[1], the European Court of Human Rights held, by a majority, that there had been:

no violation of Article 8 (right to private life) of the European Convention on Human Rights.

The case concerned a complaint that the Swedish legal system, which does not prohibit filming without someone's consent, had not provided the applicant any protection against her stepfather's violation of her personal integrity by attempting to secretly film her naked when she was 14 years old.

The Court found that, at least in theory, the applicant's stepfather could have been convicted under the Penal Code either for child molestation or for attempted child pornography. In addition, Sweden had adopted a proposal criminalising certain aspects of illicit filming. Therefore, the Swedish system was not deficient to an extent of being incompatible with the Convention requirements.

Principal facts

The applicant, E. S., is a Swedish national who was born in 1987 and lives in Ludvika (Sweden).

In 2002, when she was 14 years old, she discovered that her stepfather had hidden a video camera in the laundry basket in the bathroom, which was in recording mode and directed towards the spot where she normally undressed.

E.S.'s mother reported the incident to the police about two years later and the stepfather was prosecuted for sexual molestation. The district court found that he had had a sexual intent when filming his stepdaughter nude, despite there being no film as it was burnt by the mother after she discovered the incident.

The stepfather was convicted of sexual molestation by the first instance court. He was finally acquitted on appeal. The appeal court concluded that while his motive had been to film the girl for a sexual purpose, filming someone was not a crime in itself as in Swedish law there was no general prohibition against filming an individual without his or her consent. While the act in question was a violation of the

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[1] Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

girl's personal integrity, the stepfather could not be held criminally responsible for the isolated act of filming her without her knowledge. His appeal on cassation was dismissed.

Complaints, procedure and composition of the Court

Relying in particular on Article 8, E.S. complained that Sweden had failed to comply with its obligations to provide her with remedies with which to challenge her stepfather secretly filming her.

The application was lodged with the European Court of Human Rights on 21 January 2008.

Judgment was given by a Chamber of seven judges, composed as follows:
Dean **Spielmann** (Luxembourg), *President*,
Elisabet **Fura** (Sweden),
Karel **Jungwiert** (the Czech Republic),
Mark **Villiger** (Liechtenstein),
Ann **Power-Forde** (Ireland),
Ganna **Yudkivska** (Ukraine),
André **Potocki** (France),
and also Claudia **Westerdiek**, *Section Registrar*.

Decision of the Court

Right to private life (Article 8)
The Court recalled that, under the European Convention, States were not only expected to do no harm, but they were also obliged to act in order to protect. That included the sphere of relations between individuals themselves.

While States enjoyed in principle a wide discretion as to what measures to take in order to ensure respect for private life, putting in place effective criminal law provisions was required to deter people from harming others, especially when the most intimate aspects of people's private lives were concerned. At the same time, only significant flaws in law and practice would result in a breach of Article 8 of the Convention.

The Court was satisfied that, although Swedish law contained no provision about covert filming, laws were in place which could, at least in theory, cover acts such as the one in this case. Thus, following the incident and its reporting to the police, a criminal investigation had been opened. The matter had been examined by courts of three levels of jurisdiction before which the girl had been legally represented and in a position to claim damages. The first instance court had convicted E.S.'s stepfather and the second instance court had acquitted him.

Furthermore, the court of appeal, in its judgment acquitting the stepfather of sexual molestation, had pointed out that his acts, at least theoretically, might have represented the crime of attempted child pornography under the Penal Code. The Court concluded that, at the relevant time, E.S. could have been practically and effectively protected under the Penal Code, as the stepfather could have been convicted either for child molestation or for attempted child pornography.

In addition, the Court recalled that its task was not to review legislation in the abstract. Instead, it had to confine itself to examining issues raised by the cases brought before it. It then considered whether, in the present case, the absence of a provision in the Penal Code on attempted covert filming was a significant flaw in Swedish legislation. It then noted that Sweden had taken active steps in order to combat the general problem of illicit or covert filming of individuals by issuing a proposal to criminalise certain acts of such filming in situations where the act violated personal integrity.

In the light of the above, and having regard to the fact that at the relevant time the stepfather's act was in theory covered by the Penal Code's provisions concerning sexual molestation and attempted child pornography, the Court concluded that there were no significant flaws in Swedish legislation and practice that could amount to a breach of Sweden's positive obligations under Article 8.

There had, therefore, been no violation of Article 8.

Separate opinion
Judges Spielmann, Villiger and Power-Forde expressed a joint dissenting opinion, the text of which is annexed to the judgment.

66. *Eur. Eur. Court HR Nada v. Switzerland,* judgment of 12 September 2012 (application no. 10593/08). Implementation by Switzerland of United Nations counterterrorism resolutions entailed a violation of human rights

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Press release

In today's Grand Chamber judgment in the case of **Nada v. Switzerland** (application no. 10593/08), which is final[1], the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights, and

a violation of Article 8 taken together with Article 13 (right to an effective remedy) of the Convention.

The case concerns the restricting of the applicant's cross-border movement and the addition of his name to a list annexed to a federal Ordinance, in the context of the implementation by Switzerland of United Nations Security Council counter-terrorism resolutions.

The Court observed that Switzerland could not simply rely on the binding nature of the Security Council resolutions, but should have taken all possible measures, within the latitude available to it, to adapt the sanctions regime to the applicant's individual situation. As Switzerland had failed to harmonise the international obligations that appeared contradictory, the Court found that there had been a violation of Article 8.

Principal facts

The applicant, Youssef Moustafa Nada, is an Italian and Egyptian national who was born in 1931 and has lived since 1970 in Campione d'Italia, an Italian enclave of about 1.6 sq. km inside the Swiss Canton of Ticino, separated from the rest of Italy by Lake Lugano.

On 15 October 1999, in response to attacks by Osama bin Laden and his network, the UN Security Council adopted Resolution 1267 (1999) imposing sanctions on the Taliban and creating a committee to monitor the sanctions. On 2 October 2000 the Swiss Federal Council adopted an Ordinance instituting measures against the Taliban ("the Taliban Ordinance").

By Resolution 1333 (2000) the Security Council extended the sanctions regime, requesting the UN Sanctions Committee to draw up a list of persons and organisations associated with Osama bin Laden and al-Qaeda. The Taliban Ordinance was amended accordingly by the Swiss Government.

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[1] Grand Chamber judgments are final (Article 44 of the Convention).
All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here:
www.coe.int/t/dghl/monitoring/execution

On 24 October 2001 the Swiss Federal Prosecutor opened an investigation into Mr Nada's activities. In November 2001 the applicant and a number of organisations associated with him were added to the Sanctions Committee's list, then to the list in the Annex to the Taliban Ordinance. In January 2002 the Security Council adopted Resolution 1390 (2002) introducing a travel ban for all individuals, groups, undertakings and associated entities on the sanctions list. The Swiss Taliban Ordinance was amended accordingly, so that all persons listed in Annex 2, including the applicant, were banned from entering or transiting through Switzerland.

When he visited London in November 2002, the applicant was arrested and deported back to Italy, his money also being seized. In October 2003 the Canton of Ticino revoked the applicant's special border-crossing permit and in November the Swiss Federal Office for Immigration, Integration and Emigration (the "IMES") informed him that he was no longer authorised to cross the border. In March 2004 Mr Nada lodged a request with the IMES for leave to enter or transit through Switzerland for the purposes of medical treatment in that country and legal proceedings in both Switzerland and Italy, but the request was dismissed as ill-founded.

In May 2005 the Swiss Federal Prosecutor closed the investigation concerning the applicant, finding that the accusations against him were unfounded. The applicant then asked the Federal Council to delete his name and those of the organisations associated with him from the Annex to the Taliban Ordinance. His request was rejected on the grounds that Switzerland could not delete names from its national list while they still appeared on the UN Sanctions Committee's list.

Mr Nada unsuccessfully lodged an administrative appeal with the Federal Department for Economic Affairs then appealed to the Federal Council, which referred his case to the Federal Court. That court dismissed his appeal on the merits, finding that, under Article 25 of the United Nations Charter, the UN member States had undertaken to accept and carry out the decisions of the Security Council.

On 22 February 2008, at a meeting between the applicant's lawyer and a representative of the Federal Department of Foreign Affairs, the latter indicated that Mr Nada could ask the Sanctions Committee for a more extensive exemption on account of his particular situation, also repeating that Switzerland could not itself apply for delisting. The Swiss Government would nevertheless be prepared to support him, in particular by providing him with an attestation confirming that the criminal proceedings against him had been discontinued. The representative lastly suggested that the lawyer contact the Italian Permanent Mission to the United Nations.

On 5 July 2008 the Italian Government submitted to the Sanctions Committee a request for the applicant's delisting on the ground that the case against him in Italy had been dismissed, but the Committee denied that request.

In August 2009, in accordance with the procedure laid down by Security Council Resolution 1730 (2006), the applicant submitted a request for the deletion of his name from the Sanctions Committee's list. On 23 September 2009 Mr Nada's name was finally deleted from the list annexed to the Security Council resolutions and on 29 September 2009 the Annex to the Taliban Ordinance was amended accordingly. By a motion introduced on 12 June 2009 by Dick Marty and passed on 1 March 2010 by the Swiss Parliament, the Foreign Policy Commission of the National Council requested the Federal Council to inform the UN Security Council that from the end of 2010 the sanctions prescribed against individuals under the counter-terrorism resolutions would no longer be applied.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life), the applicant argued that the ban imposed on him, preventing him from entering or transiting through Switzerland, had breached his right to respect for his private, professional and family life. As a result of the ban, he had been unable to see his doctors in Italy or in Switzerland or visit family and friends. The addition of his name to the list annexed to 3 the Taliban Ordinance had damaged his honour and reputation. Relying on Article 13 (right to an effective remedy) he complained that there had been no effective remedy by which to have his complaints examined in the light of the Convention. Under Article 5 § 1 (right to liberty and security) the applicant argued that by preventing him from entering or transiting through Switzerland, because his name was on the UN Sanctions Committee's blacklist, the authorities had deprived him of his liberty. Lastly, under Article 5 § 4 (right to a prompt decision on the lawfulness of detention) he complained that the Swiss authorities had not reviewed the lawfulness of the restrictions on his freedom of movement.

The application was lodged with the European Court of Human Rights on 19 February 2008. On 30 September 2010 the Chamber relinquished jurisdiction in favour of the Grand Chamber.

Under Article 36 of the Convention, the President of the Grand Chamber authorised the French and United Kingdom Governments, together with the non-governmental organisation JUSTICE, to submit written comments as third parties, and the United Kingdom Government also took part in the hearing.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Nicolas **Bratza** (the United Kingdom), *President*,
Jean-Paul **Costa** (France),
Françoise **Tulkens** (Belgium),
Josep **Casadevall** (Andorra),
Nina **Vajić** (Croatia),
Dean **Spielmann** (Luxembourg),
Christos **Rozakis** (Greece),
Corneliu **Bîrsan** (Romania),
Karel **Jungwiert** (the Czech Republic),
Khanlar **Hajiyev** (Azerbaijan),
Ján **Šikuta** (Slovakia),
Isabelle **Berro-Lefèvre** (Monaco),
Giorgio **Malinverni** (Switzerland),
George **Nicolaou** (Cyprus),
Mihai **Poalelungi** (the Republic of Moldova),
Kristina **Pardalos** (San Marino),
Ganna **Yudkivska** (Ukraine),
and also Michael **O'Boyle**, *Deputy Registrar*.

Decision of the Court

Article 8
The Court reiterated that a State was entitled, as a matter of well-established international law and subject to its treaty obligations, to control the entry of nonnationals into its territory. The Convention did not guarantee the right of an alien to enter a particular country.

However, the Federal Court itself had found that the measure in question constituted a significant restriction on Mr Nada's freedom, as he was in a very specific situation on account of the location of Campione d'Italia, an enclave surrounded by the Swiss Canton of Ticino. Agreeing with that opinion, the Court observed that the measure preventing Mr Nada from leaving the enclave for at least six years was likely to make it more difficult for him to exercise his right to maintain contact with other people living outside the enclave. There had thus been an interference with the applicant's right to respect for his private and family life.

The aim of the restrictions was to prevent crime and, as the relevant Security Council resolutions had been adopted to combat international terrorism under Chapter VII of the United Nations Charter, they could also contribute to Switzerland's national security and public safety.

As to the necessity of the measures, the Court was prepared to take account of the fact that the threat of terrorism was particularly serious at the time of the adoption of the resolutions imposing the sanctions. However, the maintaining or reinforcement of those measures had to be justified convincingly.

The investigations conducted by the Swiss and Italian authorities had concluded that the suspicions about the applicant were unfounded. The Swiss Federal Prosecutor had closed the relevant criminal investigation that had been started in October 2001, and in July 2008 the Italian Government had submitted to the UN Sanctions Committee a request for the applicant's delisting on the ground that the proceedings against him in Italy had been discontinued. The Court was surprised that the Swiss authorities had not informed the Sanctions Committee until September 2009 of the conclusions of investigations closed in May 2005. More prompt communication might have led to the deletion of the applicant's name from the United Nations list, and accordingly from the Swiss list, at an earlier stage. The Court further noted that the case had a medical aspect, because the applicant was elderly and had health problems: the IMES and the ODM had denied a number of requests for exemption from the entry and transit ban that had been submitted by the applicant for medical reasons, among others.

During the meeting of 22 February 2008 the representative of the Federal Department of Foreign Affairs had indicated that the applicant could ask the Sanctions Committee to grant a broader exemption in view of his particular situation. The applicant had not made any such request, but it did not appear that the Swiss authorities had offered him any assistance to that end.

It was established that the applicant's name had been added to the United Nations list on the initiative of the USA, not that of Switzerland. In any event, it was not for the Swiss authorities to approach the Sanctions Committee to trigger the delisting procedure, Switzerland not being the State of the applicant's nationality or residence. However, it did not appear that Switzerland had ever sought to encourage Italy to undertake such action or to offer it assistance for that purpose. The Swiss authorities had merely suggested that the applicant contact the Italian Permanent Mission to the United Nations.

In conclusion, the Court considered that the Swiss authorities had not sufficiently taken into account the realities of the case, especially the geographical situation of the Campione d'Italia enclave, the

duration of the measures imposed or the applicant's nationality, age and health. As it had been possible for Switzerland to decide how the Security Council resolutions were to be implemented in its legal order, it could have been less harsh in imposing the sanctions regime on the applicant.

The Court observed that Switzerland could not simply rely on the binding nature of the Security Council resolutions, but should have taken all possible measures, within the latitude available to it, to adapt the sanctions regime to the applicant's individual situation. As Switzerland had failed to harmonise the international obligations that appeared contradictory, the Court found that there had been a violation of Article 8.

Article 13
The Court observed that the applicant had been able to apply to the Swiss authorities to have his name deleted from the list annexed to the Taliban Ordinance. However, the Federal Court had taken the view that it could not by itself lift the sanctions, observing that the UN Sanctions Committee alone was competent to take such a decision. The Court thus concluded that the applicant did not have any effective means of obtaining the removal of his name and therefore no remedy in respect of the violations of his rights. It found that there had been a violation of Article 13 taken together with Article 8.

Article 5
The Court acknowledged that the restrictions had been imposed on Mr Nada for a considerable length of time, but found that they had not prevented him from freely living and moving within the territory of his permanent residence, which he had chosen of his own free will. Mr Nada had not been in a situation of detention, nor formally under house arrest: he had only been prohibited from entering or transiting through a given territory. He had not been subjected to any surveillance by the Swiss authorities and had not been obliged to report regularly to the police. Nor did it appear that he had been restricted in his freedom to receive visitors. Lastly, the sanctions regime had permitted him to seek exemptions from the entry or transit ban and that when two such exemptions had been granted he had not made use of them.

The Court, like the Federal Court, thus found that the applicant had not been "deprived of his liberty" within the meaning of Article 5 § 1 by the measure prohibiting him from entering and transiting through Switzerland.

Just satisfaction (Article 41)
The Court held that Switzerland was to pay the applicant 30,000 euros in respect of costs and expenses.

Separate opinions
Judges Bratza, Nicolaou and Yudkivska expressed a joint concurring opinion; Judge Rozakis expressed a concurring opinion, joined by Judges Spielmann and Berro-Lefèvre; and Judge Malinverni also expressed a concurring opinion. These opinions are annexed to the judgment.

67. *Court. HR Godelli v. Italy,* judgment of 25 September 2012 (application no. 33783/09). Confidentiality of information concerning a child's origins: the Italian system does not take account of the child's interests

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Press release

In today's Chamber judgment in the case of **Godelli v. Italy** (application no. 33783/09), which is not final[1], the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

The case concerned the confidentiality of information concerning a child's birth and the inability of a person abandoned by her mother to find out about her origins.

The Court considered, among other things, that a fair balance had not been struck between the interests at stake since the legislation, in cases where the mother had opted not to disclose her identity, did not allow a child who had not been formally recognised at birth and was subsequently adopted to request either non-identifying information about his or her origins or the disclosure of the birth mother's identity with the latter's consent.

Principal facts

The applicant, Anita Godelli, is an Italian national who was born in 1943 and lives in Trieste (Italy). She was abandoned at birth by her mother, who did not agree to be identified. After being placed in an orphanage she was adopted by the Godelli family (simple adoption).

At the age of ten, after learning that she had been adopted, the applicant asked her adoptive parents to provide her with details of her origins, without success. She alleged that her childhood had been very difficult because she had not known about her roots.

When she was 63 the applicant again took steps to discover her origins. Her request was refused as Italian law guarantees the right to keep a child's origins secret and the mother's right to have her wishes respected[2].

Complaints, procedure and composition of the

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[1] Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

[2] Law no 184/1983 guarantees the right to keep a child's origins secret in the absence of express authorisation by the judicial authority **.**

Relying on Article 8 (right to respect for private and family life), Ms Godelli complained of her inability to obtain non-identifying information about her birth family. She maintained that she had suffered severe damage as a result of not knowing her personal history, having been unable to trace any of her roots while ensuring the protection of third-party interests.

The application was lodged with the European Court of Human Rights on 16 June 2009.

Judgment was given by a Chamber of seven judges, composed as follows:
Françoise **Tulkens** (Belgium), *President*,
Dragoljub **Popović** (Serbia),
Isabelle **Berro-Lefèvre** (Monaco),
András **Sajó** (Hungary),
Guido **Raimondi** (Italy),
Paulo **Pinto de Albuquerque** (Portugal),
Helen **Keller** (Switzerland),
and also Françoise **Elens-Passos**, *Deputy Section Registrar*.

Decision of the Court
Article 8

The Court pointed out that Article 8 protected a right to identity and personal development; establishing the truth concerning one's personal identity, including the identity of one's parents, was a contributory factor in that development. The circumstances in which a child was born formed part of the child's, and subsequently the adult's, private life guaranteed by Article 8.

The Court reiterated[1] that the issue of access to information about one's origins and the identity of one's natural parents was not of the same nature as that of access to a case record concerning a child in care or to evidence of alleged paternity. Ms Godelli had sought to trace her birth mother, who had abandoned her at birth and had expressly requested that her identity be kept secret. The interests at stake were the mother's interest in preserving her anonymity, that of the child in learning about her origins and the general interest in preventing illegal abortions and the abandonment of children other than under the proper procedure.

The Court stressed that an individual's interest in discovering his or her parentage did not disappear with age, quite the reverse. Although by the age of 69 Ms Godelli's personality was already formed, she had nevertheless shown a genuine interest in ascertaining her mother's identity; such conduct implied mental and psychological suffering.

In contrast to the French system examined in Odièvre, the Italian system, which provided no mechanism for balancing the competing interests at stake, inevitably gave blind preference to the sole interests of the birth mother, preventing Ms Godelli from requesting, as was possible under French law, the disclosure of her mother's identity with the latter's consent. A proposal to amend the relevant legislation had been before the Italian Parliament since 2008.

[1] See the Grand Chamber judgment in Odièvre v. France, 13 February 2003.

In principle, the choice of the means calculated to secure compliance with Article 8 in the sphere of the relations of individuals between themselves was a matter falling within States' discretion (margin of appreciation). However, in so far as the Italian legislation did not allow a child who had not been formally recognised at birth and who was subsequently adopted to request either access to non-identifying information concerning his or her origins or the disclosure of the mother's identity, the Court considered that the Italian authorities had failed to strike a fair balance between the interests at stake and had overstepped their margin of appreciation. There had therefore been a violation of Article 8.

Just satisfaction (Article 41)

The Court held that Italy was to pay the applicant 5,000 euros (EUR) in respect of non-pecuniary damage and EUR 10,000 in respect of costs and expenses.

Separate opinion

Judge Sajó expressed a dissenting opinion, which is annexed to the judgment.

68. ***Eur. Court HR. Mitkus v. Latvia,*** **judgment of 2 October 2012 (no. 7259/03). The applicant complains under Article 8 of the Convention that a newspaper article disclosed information about his HIV infection and published his photo.**

Press release

The applicant, Andris Mitkus, is a Latvian national who was born in 1959. Convicted of extortion in April 2001 and of robbery in July 2002, and sentenced to two and a half years' and eight years' imprisonment respectively, he alleged that he had been infected with HIV and hepatitis C while in prison, when medical staff had used a multiple-use syringe to take a sample of his blood, and complained that no adequate investigation had been conducted by the authorities into his allegation. He relied on Article 3 (prohibition of inhuman or degrading treatment). Further relying on Article 6 § 1 (right to a fair trial within reasonable time), he complained about the excessive length of the criminal proceedings against him. Relying on Article 6 § 3 (d) (right to examine or have examined witnesses against oneself), he also complained that the criminal courts had not heard witnesses on his behalf. Under Article 6 § 1, he further complained in particular that he had not been transported to an appeal court hearing concerning two civil claims he had brought for damages. Finally, he complained that a newspaper article which had disclosed information about his HIV infection, and had published his photo, had violated his rights under Article 8 (right to respect for private life).
Violation of Article 3 (investigation)
Violation of Article 6§3 (d)
Violation of Article 6§1
Violation of Article 8
Just satisfaction: EUR 16,000 (non-pecuniary damage)

69. *Eur. Court. HR Alkaya v. Turkey,* judgment of 9 October 2012 (application no. 42811/06) Press disclosure of a celebrity's address breached her right to respect for her private and family life.

Press release

In today's Chamber judgment in the case of **Alkaya v. Turkey** (application no. 42811/06), which is not final[1], the European Court of Human Rights held, unanimously, that there had been:

A violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

The case concerned the disclosure by the press of the home address of a Turkish actress whose apartment had been burgled. Whereas the domestic courts considered that the applicant, as a well-known personality, was a public figure, the Court held that the choice of one's place of residence was an essentially private matter and that the free exercise of that choice formed an integral part of the sphere of personal autonomy protected by Article 8. A person's home address constituted personal data or information which fell within the scope of private life and as such was eligible for the protection granted to the latter.

Principal facts

The applicant, Ms Yasemin Alkaya, is a Turkish national who was born in 1964 and lives in Istanbul (Turkey). She is well known in Turkey as a cinema and theatre actress. On the morning of 12 October 2002 her home was broken into while she was there. She alerted the police and lodged a complaint.

On 15 October 2002 the daily newspaper *Akşam* published an article on the break-in, by a photograph of the applicant and giving her exact address.

On 3 December 2002 Ms Alkaya brought an action for damages against the newspaper in the Zeytinburnu District Court ("the District Court"). On 29 March 2005 the District Court dismissed the action, holding that Ms Alkaya, because of her celebrity status, was a public figure and that the disclosure of her address could not be considered capable of infringing her rights. Ms Alkaya lodged an appeal on points of law. Her lawyer submitted that, since the publication of the article in question, the applicant had been regularly disturbed in her home and that she had become fearful and afraid of staying at home on her own. The lawyer further argued that her client's personality rights had been infringed. On 12 June 2006 the Court of Cassation upheld the first-instance judgment.

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[1] Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

Complaints, procedure and composition of the Court

Relying on Article 8 of the Convention (right to respect for private and family life), the applicant alleged interference with her right to respect for her private life and her home. She considered the interference to be discriminatory since it had been based on her celebrity status. She complained of the publication of her address in the press and that the State had failed in its obligation to protect her.

The application was lodged with the European Court of Human Rights on 13 October 2006.

Judgment was given by a Chamber of seven judges, composed as follows:
Ineta **Ziemele** (Latvia), *President*,
Danutė **Jočienė** (Lithuania),
Isabelle **Berro-Lefèvre** (Monaco),
András **Sajó** (Hungary),
Işıl **Karakaş** (Turkey),
Paulo **Pinto de Albuquerque** (Portugal),
Helen **Keller** (Switzerland),
and also Stanley **Naismith**, *Section Registrar*.

Decision of the Court

Article 8
The Court pointed out that the concept of private life was a broad term which encompassed the right to personal autonomy and personal development, the person's physical and moral integrity and the right to live privately. The guarantee afforded by Article 8 was intended to ensure the development, without outside interference, of the personality of each individual in his relations with other human beings.

The Court further reiterated that Article 8 protected the individual's right to respect for his or her home, meaning not just the right to the actual physical area, but also to the quiet enjoyment of that area. Accordingly, breaches of the right to respect of the home included those that were not concrete or physical. The choice of one's place of residence was an essentially private matter and the free exercise of that choice formed an integral part of the sphere of personal autonomy protected by Article 8. A person's home address constituted personal data or information which fell within the scope of private life and as such was eligible for the protection granted to the latter.

The Court observed that, whereas private individuals unknown to the public could claim particular protection of their right to private life, the same did not apply to public figures. Nevertheless, in certain circumstances, even where a person was known to the general public, he or she could rely on a "legitimate expectation" of protection of and respect for his or her private life.

In the present case the Court noted that it was not a State act that was at issue, but the level of protection afforded by the domestic courts to Ms Alkaya's private life, a level she considered to be insufficient. The Court had to ascertain whether the State had struck a fair balance between Ms Alkaya's right to protection of her private life under Article 8 of the Convention and the right of the opposing party to freedom of expression under Article 10 of the Convention. Ms Alkaya had in no way

sought to challenge the publication of an article reporting on the burglary in her home, but rather had complained of the disclosure of her home address which, in her view, was of no public interest.

In that regard the Court reiterated that, while the public had a right to be informed, articles aimed solely at satisfying the curiosity of a particular readership regarding the details of a person's private life, however well known that person might be, could not be deemed to contribute to any debate of general interest to society. In the present case the Court could not discern any evidence shedding light on the supposed public-interest grounds underlying the newspaper's decision to disclose Ms Alkaya's home address.

The Court observed that the District Court had merely referred to Ms Alkaya's celebrity status in finding that the disclosure of her address could not be considered capable of infringing her personality rights. Likewise, the national courts had not taken into consideration the repercussions on the applicant's life of the disclosure of her private address in the press. In the Court's view, this failure by the domestic courts to weigh the interests at stake could not be considered compatible with the State's positive obligations under Article 8 of the Convention.

Just satisfaction (Article 41)
The Court held that Turkey was to pay the applicant 7,500 euros (EUR) in respect of non-pecuniary damage.

70. *Eur. Court of HR. M.M. v. the United Kingdom*, application no. 24029/07, judgment of 13 November 2012. The applicant complained about retention of caution on criminal record for life. The Court ruled that the retention and disclosure of the applicant's caution data accordingly could not be regarded as having been in accordance with the law.

***no.* 24029/07**
13.11.2012

Press release issued by the Registrar

M.M. v. THE UNITED KINGDOM

Retention of caution on criminal record for life

Facts
In 2000 the applicant, who lived in Northern Ireland, was arrested by the police after disappearing with her baby grandson for a day in an attempt to prevent his departure to Australia following the breakup of her son's marriage. In view of the circumstances in which the incident had occurred, the authorities decided not to prosecute and the applicant was instead cautioned for child abduction. The caution was initially intended to remain on her record for five years, but owing to a change of policy in cases where the injured party was a child, that period was later extended to life. In 2006 the applicant was offered employment as a health worker subject to vetting, but the offer was withdrawn following a criminal-record check by the prospective employer after she disclosed the caution. In her application to the European Court, the applicant complained that the change in policy regarding retention of caution data had adversely affected her employment prospects, in breach of her right to respect for her private life.

Law – Article 8
Although data contained in the criminal record were, in one sense, public information, their systematic storing in central records meant that they were available for disclosure long after the event. In the present case, the administration of the caution had occurred almost twelve years earlier. The fact that disclosure had followed upon a request by the applicant or with her consent did not deprive her of the protection afforded to Article 8, as individuals had no real choice if the prospective employer insisted, and was entitled to insist, on disclosure.
Article 8 was thus applicable to the retention and disclosure of the caution, which amounted to interference with the applicant's right to respect for her private life. The scope and application of the system for retention and disclosure in Northern Ireland was extensive: the recording system included non-conviction disposals such as cautions, warnings and reprimands and there was a general presumption in favour of the retention of data in central records until the data subject's hundredth birthday. While there might be a need for a comprehensive record, the indiscriminate and open-ended collection of criminal record data was unlikely to comply with the requirements of Article 8 in the absence of clear and detailed statutory regulations clarifying the safeguards applicable and setting out the rules governing, *inter alia*, the circumstances in which data can be collected, the duration of their storage, the use to which they can be put and the circumstances in which they may be destroyed. In the instant case however there was no statutory law in respect of Northern Ireland governing the collection and storage of data on cautions. Under the applicable guidelines the recording and initial retention of such data were intended in practice to be automatic. The criteria for review appeared to be very restrictive and to focus on whether the data were adequate and up to date. Deletion requests would be

granted only in exceptional circumstances and not where the data subject had admitted the offence and the data were accurate. As to the legislation requiring disclosure in the context of a standard or enhanced criminal-record check it made no distinction based on the seriousness or circumstances of the offence, the time which had elapsed since its commission, and whether the caution was spent. The legislation did not allow for any assessment at any stage in the disclosure process of the relevance of conviction or caution data to the employment sought, or of the extent to which the data subject could be perceived as continuing to pose a risk. As a result of the cumulative effect of these shortcomings, the Court was not satisfied that there were sufficient safeguards in the system for retention and disclosure of criminal record data to ensure that data relating to the applicant's private life would not be disclosed in violation of her right to respect for her private life. The retention and disclosure of the applicant's caution data accordingly could not be regarded as having been in accordance with the law.

Conclusion: violation (unanimously).

71. *Eur. Court of HR. Michaud v. France*, application no. 12323/11, judgment of 6 December 2012. The applicant alleged that the information protected by lawyer – client privilege is particularly sensitive. The Court noted that the impugned interference was "in accordance with the law" within the meaning of Article 8.

***no.* 12323/11**
6.12.2012

Press release issued by the Registrar

MICHAUD v. FRANCE
no. 12323/11 6.12.2012

Information protected by lawyer – client privilege is particularly sensitive

Facts
The applicant was a French national and was a member of the Paris Bar and of the Bar Council (*Conseil de l'Ordre*). In July 2007 the National Bar Council (CNB) took a decision concerning the adoption of a professional regulation which placed obligations on lawyers pursuant to European Union Directives aimed at the prevention of money laundering.
This resulted in an obligation on lawyers to report possible suspicions in the area in respect of their clients where, in the context of their professional activities, they assisted them in preparing or carrying out transactions or acted as trustees. They were not subject to this obligation where the activity in question was related to court proceedings and, in principle, where they provided legal advice. Failure to comply with this regulation rendered lawyers liable to disciplinary sanctions.
An application to the *Conseil d'État* to have the decision set aside was dismissed.

Law – Article 8
The measure in question constituted an interference with the right to respect for correspondence. It also amounted to an interference with lawyers' right to respect for their "private life", as that concept covers activities of a professional or business nature.
The Court noted, firstly, that the impugned interference was "in accordance with the law" within the meaning of Article 8, and that, as it was intended to combat money
laundering and related criminal offences, it pursued one of the legitimate aims set out in Article 8, namely the prevention of disorder and the prevention of crime.
When considering the nature of the relationship between lawyers and their clients, the Court reiterated that while Article 8 protects the confidentiality of all "correspondence" between individuals, it affords strengthened protection to exchanges between lawyers and their clients.
This was justified by the fact that lawyers were assigned a fundamental role in a democratic society, that of defending litigants. Yet lawyers could not carry out this essential task if they were unable to guarantee to those they were defending that their exchanges would remain confidential.
Two elements were decisive in assessing the proportionality of the measures.
Firstly, lawyers were subject to the obligation to report suspicions only in two cases: where they acted on behalf of their clients in financial or property transactions or acted as trustees; and where they assisted their clients in preparing or carrying out transactions concerning certain defined operations. Thus, the obligation to report suspicions concerned only activities which were remote from the role of

defence entrusted to lawyers, and which resembled those carried out by other professionals who were also subject to this obligation.
Secondly, the legislation specified that lawyers were not subject to the obligation where the activity in question was related to court proceedings and, in principle, when they were providing legal advice. The obligation to report suspicions did not therefore go to the very essence of the defence role which underlay legal professional privilege.
The Court also noted the fact that safeguards were in place to protect how the information was reported.

Conclusion: no violation (unanimously).