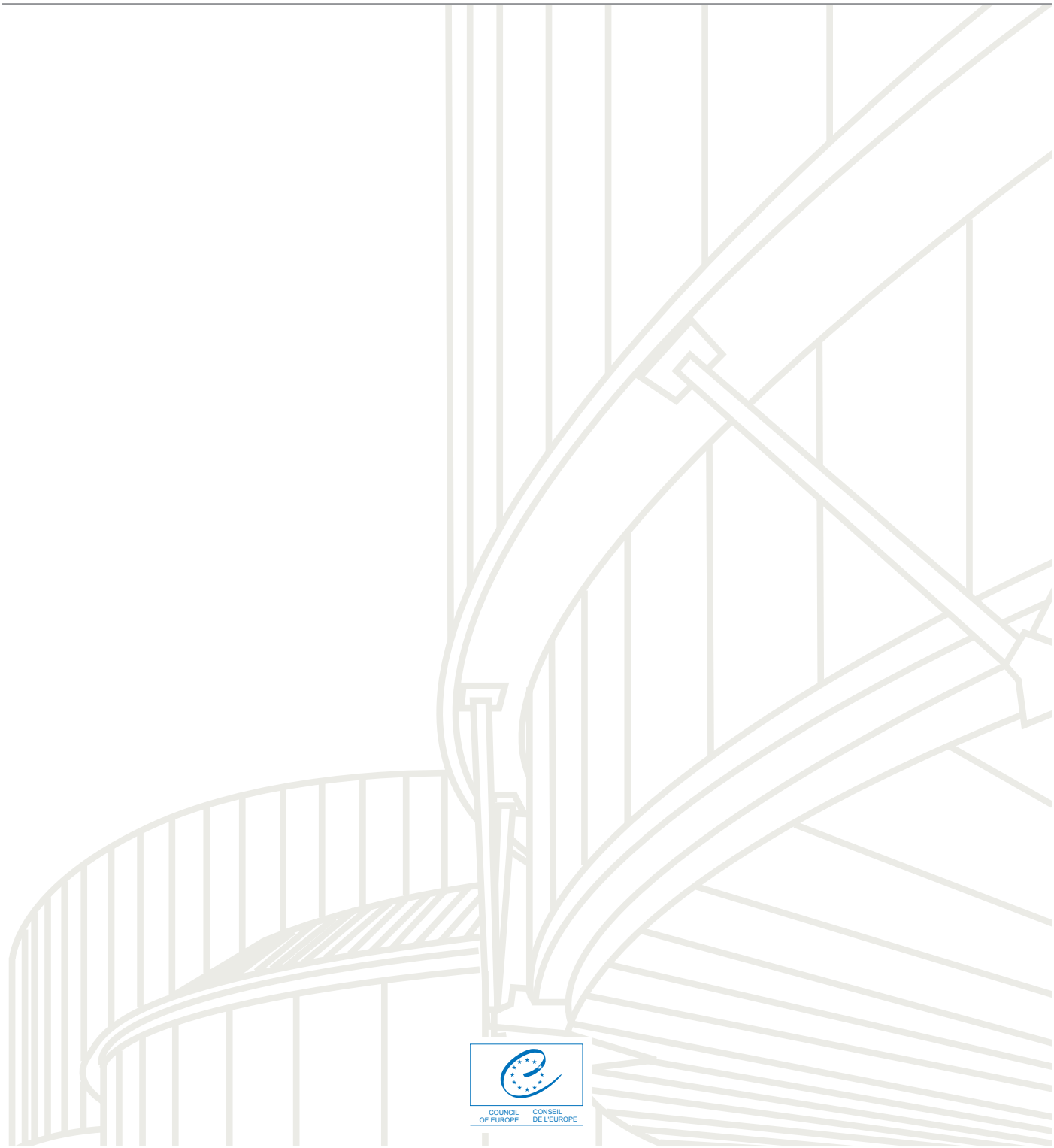
EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Information Note on the Court's case-law

No. 106 March 2008



The Information Note, compiled by the Registry's Case-Law Information and Publications Division, contains summaries of cases examined during the month in question which the Jurisconsult, the Section Registrars and the Head of the aforementioned Division have indicated as being of particular interest. The summaries are not binding on the Court. In the provisional version the summaries are normally drafted in the language of the case concerned, whereas the final single-language version appears in English and French respectively. The Information Note may be downloaded at http://www.echr.coe.int/echr/NoteInformation/en. A hard-copy subscription is available from mailto:publishing@echr.coe.int for EUR 30 (USD 45) per year, including an index.

CONTENTS

ARTICLE 1 of PROTOCOL No. 1

Judgments

ARTICLE 1 of PROTOCOL No. 12

Communicated

RULE 39 of the Rules of Court

ARTICLE 2

POSITIVE OBLIGATIONS
Failure by authorities to implement land-planning and emergency-relief policies in the light of foreseeable risk of a mudslide that would lead to loss of life: *violations*.

BUDAYEVA and Others - Russia (N^{os} 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02)
Judgment 20.3.2008 [Section II]

Facts: The town of Tyrnauz (Russia) is situated in an area where mudslides have been recorded every year since 1937. In the summer of 2000 it was hit by a succession of mudslides over a seven-day period in which there were at least 8 reported deaths, including the first applicant's husband. Her younger son was also seriously injured while the second applicant and her daughter suffered severe friction burns. The applicants' homes and belongings were destroyed and, although they were granted free replacement housing and a lump-sum emergency allowance, their health has deteriorated since the disaster. The prosecutor's office decided not to launch a criminal investigation into either the disaster or the death of the first applicant's husband, which was considered accidental. A civil action subsequently brought by the applicants against the authorities was dismissed on the grounds that the local population had been informed of the risk by the media and all reasonable measures had been taken to mitigate it.
In the proceedings before the European Court, the Government maintained that the exceptional force of the mudslides meant that they could not have been predicted or stopped while any residents who had returned to their homes after the first wave had done so in breach of orders to evacuate.
For their part, the applicants accused the authorities of having failed to make essential repairs to defective equipment, to issue advance warnings or to hold an inquiry. They produced official papers showing that no funds had been allocated for the repairs in the district budget and that well before the disaster the authorities had received a series of warnings from the mountain institute (the state agency responsible for monitoring weather hazards in high-altitude areas) urging them to carry out the repairs and to set up observation posts to facilitate the evacuation of the population if necessary. One of the last warnings had referred to possible record losses and casualties if the measures were not carried out as a matter of urgency.

Law: Article 2 – (a) *Inadequate maintenance and failure to set up a warning system*: The scope of the State's positive obligations in the sphere of emergency relief depended on the origin of the threat and the extent to which the risk was susceptible to mitigation. A relevant factor here was whether the circumstances of the case pointed to the imminence of clearly identifiable natural hazards, such as a recurring calamity affecting a distinct area developed for human habitation or use. The authorities had received a number of warnings in 1999 that should have alerted them to the increasing risks of a large-scale mudslide. Indeed, they were aware that any mudslide, regardless of its scale, was liable to have devastating consequences because of the damage to the defence infrastructure. Although the need for urgent repairs had been made quite clear, no funds had been allocated. Essential practical measures to ensure the safety of the local population were not taken: no warning had been given and no evacuation order issued, publicised or enforced; the mountain institute's persistent requests for temporary observation posts to be set up were ignored; there was no evidence of any regulatory framework, land-planning policies or specific safety measures having been put in place; and the mud-retention equipment had not been adequately maintained. In sum, the authorities had not taken any measures before the disaster. There had been no justification for their failure to implement land-planning and emergency-relief policies in view of the foreseeable risk of loss of life. The serious administrative flaws which had prevented the implementation of these policies had caused the death of the first applicant's husband and injuries to her and other members of their family. The authorities had therefore failed in their duty to establish a legislative and administrative framework to provide effective protection of the right to life.
Conclusion: violation (unanimously).

(b) *The judicial response to the disaster*: Within a week of the disaster the prosecutor's office had already decided to dispense with a criminal investigation into the death of the first applicant's husband. The inquest had been limited to the immediate cause of death and had not examined questions of safety compliance or the authorities' responsibility. Nor had those questions been the subject of any criminal, administrative or technical inquiry. In particular, no action had ever been taken to verify the numerous allegations of inadequate maintenance and a failure to set up a warning system. The applicants' claims for damages had effectively been dismissed by the domestic courts because they had failed to demonstrate to what extent State negligence had caused damage exceeding what was inevitable in a natural disaster. That question could, however, only have been answered by a complex expert investigation and the establishment of facts to which only the authorities had access. The applicants had therefore been required to provide proof which was beyond their reach. In any event, the domestic courts had not made full use of their powers to establish the facts by calling witnesses or seeking expert opinions, when the evidence produced by the applicants included reports which suggested that their concerns were shared by certain officials. Thus, the question of the State's responsibility for the accident had never been investigated or examined by any judicial or administrative authority.
Conclusion: violation (unanimously).

Article 1 of Protocol No. 1 – It was unclear to what extent proper maintenance of the defence infrastructure could have mitigated the exceptional force of the mudslides. Nor had it be shown that the damage to the applicants' homes or possessions would have been prevented by a warning system, so that it could not be unequivocally attributed to State negligence. Moreover, a State's obligation to protect private property could not be seen as synonymous with an obligation to compensate the full market value of the destroyed property. The compensation offered by the State had to be assessed in the light of all the other measures implemented by the authorities, the complexity of the situation, the number of owners, and the economic, social and humanitarian issues inherent in providing disaster relief. The housing compensation offered to the applicants was not manifestly out of proportion. Given also the large number of victims and the scale of the emergency relief operations, the upper limit (RUB 13,200, approximately EUR 530) on compensation for household belongings appeared justified. Access to the benefits had been direct and automatic and had not involved a contentious procedure or the need to prove the actual losses. The conditions under which compensation was granted had not, therefore, imposed a disproportionate burden on the applicants.
Conclusion: no violation (unanimously).

Article 41 – Awards in respect of non-pecuniary damage of EUR 30,000 to the first applicant, EUR 15,000 to the second applicant and EUR 10,000 to each of the remaining applicants.

ARTICLE 3

DEGRADING TREATMENT
Obligation for a seventy-one year old to perform military service: *violation.*

TAŞTAN - Turkey (N° 63748/00)
Judgment 4.3.2008 [Section II]

Facts: The applicant, who was born in 1929, was obliged to do his military service at the age of 71. On 15 February 2000 he was called up for military service and taken by the gendarmes to the military recruitment office. A medical check-up found him fit for military service. The applicant underwent a month's training for new recruits. He was forced to take part in the same activities and physical exercises as 20-year-old recruits. The applicant alleged that he was subjected to degrading treatment during his training and was the target of various jokes. As he had no teeth, he had problems eating at army barracks. He also suffered from heart and lung problems on account of temperatures dropping to as low as minus 30°C. Lastly, he alleged that he had had no means of communicating with his son throughout the entire period of his military service. After his military training the applicant was transferred to an infantry

brigade, where his state of health deteriorated. He was examined by a doctor on two occasions and then admitted to a military hospital, before being transferred to another hospital where, on 26 April 2000, he finally obtained a certificate exempting him from military service on grounds of heart failure and old age. The Turkish Government maintained that, in accordance with the practice followed in similar cases, the applicant's personal records relating to his military service had been destroyed.

Law: Article 3 together with Article 13 – It was the responsibility of the State to provide a plausible explanation for the cause of any harm to the physical or mental integrity of persons placed under the control of the authorities. In this case that requirement had not been satisfied. Noting that the authorities had destroyed the records of the applicant's military service, the Court had little information in its possession, apart from the applicant's statements, regarding the circumstances of his military service or how the applicant, who spoke only Kurdish, had been able to communicate his complaints to the doctors and his hierarchical superiors. It was established and undisputed, however, that the applicant, who was 71 years old at the material time, had performed part of his military service between 15 March and 26 April 2000, including a month's training. While he had shown no signs of any particular illness when called up for military service, after a month's forced participation in military training intended for 20-year-old conscripts he had had to be admitted to hospital. Moreover, the Turkish Government had not referred to any particular measure taken with a view to alleviating, in the applicant's specific case, the difficulties inherent in military service, or adapting compulsory service to his case. Nor had they specified whether there had been any public interest in forcing him to perform his military service at such an advanced age. The Government had confined themselves to emphasising the applicant's share of responsibility in the matter, in so far as he had failed to register himself in the civil status register until 1986.
Calling the applicant up to do military service and keeping him there and making him take part in training tailored for much younger recruits had been a particularly distressing experience and had affected his dignity. It had caused him suffering in excess of that which any man might experience when obliged to perform military service and had, in itself, amounted to degrading treatment within the meaning of Article 3.
Considering that there was no provision in domestic law for appeal in the applicant's particular situation, and that the destruction of his records would, in any event, have prevented him from seeking any redress, the Court dismissed the Government's preliminary objection of failure to exhaust domestic remedies (Article 35 § 1) and found that the applicant had not had access to an effective remedy (article 13).
Conclusion: violation (unanimously).

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

INHUMAN OR DEGRADING TREATMENT
Racially motivated ill-treatment of a Roma minor by a police officer during an incident between officials and Roma and lack of effective investigation: *violation*.

STOICA - Romania (N° 42722/02)
Judgment 4.3.2008 [Section III]

Facts: During a clash between officials and a group of Roma, the 14-year-old applicant, a Romanian national of Roma origin, was allegedly beaten by a police officer despite a warning that he had recently undergone head surgery. The Government denied this, claiming that villagers armed with bats had attacked the deputy mayor's car. The applicant was taken to hospital the same evening. A subsequent medical report certified that he had bruises and grazes caused by a blunt instrument and thoracic concussion. Shortly afterwards he was declared severely disabled. Upon the investigation into the applicant's criminal complaint, a military prosecutor decided not to prosecute the police officers involved as the evidence against them was insufficient, and concluded that that the conflict had not been of a racist nature. The villagers' statements corroborating the applicant's version of the events were disregarded as biased and unreliable. In the meantime the local police informed the military prosecutor that no report had been filed with a view to bringing criminal proceedings for insulting behaviour against the Roma involved in the incident because it was considered to be "pure Gypsy behaviour".

Law: Article 3 – The degree of bruising found by the doctor indicated that the applicant's injuries, whether caused by the police or by someone else, were sufficiently serious to amount to ill-treatment within the scope of Article 3. It remained for the Court to consider whether the State should be held responsible in respect of those injuries. The applicant's allegations were coherent and supported by the medical report drawn up after the incident and some witness testimonies. It was nonetheless true that the witnesses had given conflicting testimonies; all the officials and some of the passers-by had denied that any violence had occurred while all the villagers had stated the contrary. Lastly, the criminal investigation had concluded that the officers were not responsible for the injuries. There had been no official admission of any act of violence against the applicant. However, the Court was concerned about the effectiveness of that investigation. Firstly, although 20 to 30 villagers were present during the incident, only three had testified before the local police and five before the military prosecutor. On the other hand, all the police officers and public guards had given evidence. There was no explanation as to why the other villagers had not testified during the investigation. They had either not been called, or, as the applicant claimed, had been intimidated. In any event, the fact that they had not testified cast doubt on how thoroughly the police had investigated the case. Secondly, the prosecutor had not explained why the villagers' statements would be less credible than those of the police officers, as all those involved could be considered equally biased. Moreover, the prosecutor's conclusion that the villagers were not present during the incident was contradicted by the evidence in the case. He had also only briefly examined the differences in the evidence concerning the beating of the applicant and had failed to address the common points in the statements, notably those which indicated that the applicant had sustained injuries all over his body. Thirdly, the fact that the police officers had not reported the Roma's alleged insulting behaviour cast doubt on their version of events. Lastly, the investigators had merely exonerated the police officers and failed to identify those responsible for the applicant's injuries, a serious failing given that the applicant was a minor at the time and severely disabled. Moreover, the applicable law at the relevant time had made the hierarchical and institutional independence of the military prosecutor doubtful. The Romanian authorities had therefore failed to conduct a proper investigation into the applicant's allegations of ill-treatment, in violation of Article 3. Given those deficiencies, the Court also considered that Romania had not satisfactorily established that the applicant's injuries had been caused otherwise than by the treatment inflicted on him by police officers and concluded that his injuries were the result of inhuman and degrading treatment, in violation of Article 3.
Conclusion: violation both under substantial and procedural limbs (unanimously).

Article 14 in conjunction with Article 3 – The dispute, as described by the villagers and, to a certain extent, as reported by the police officers, had not been racially neutral. Notably, one of the villagers had allegedly been asked whether he was "Gypsy or Romanian" and, at the deputy mayor's request, had been beaten to teach him "a lesson". Similarly, another villager's dispute with the deputy mayor had at its core racist elements. The stereotypical remark made in the police report which had described the villagers' alleged aggressive behaviour as "purely Gypsy" was further proof that the police officers were not racially neutral, either during the incident or throughout the investigation. The Court found no reason to consider that the attack on the applicant by the police officers had been removed from that racist context. It was therefore concerned by the ease with which the authorities had concluded that the incident had not been motivated by racism, relying solely on the statements by the police officers and by one other witness. Moreover, the prosecutor had considered only the villagers, who were mainly of Roma origin, to be biased in their statements, whereas he had fully integrated the police officers' statements into his reasoning and conclusions. Neither had he addressed the "pure Gypsy" remark in the police report. Consequently, the authorities had ignored evidence of discrimination and the investigation had been racially biased. Given that finding, the Court considered that it was the Government's responsibility to prove that there had been no racist motivation behind the incident at issue. Neither the prosecutor in charge of the criminal investigation nor the Government could put forward any argument to show that the incident had been racially neutral. On the contrary, the evidence indicated that the police officers' behaviour had clearly been motivated by racism.
Conclusion: violation (unanimously).

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

For more details, see Press Release no. 154.
(see also *Cobzaru v. Romania*, n° 48254/99, in Information Note No. 99).

ARTICLE 5

Article 5 § 1

LAWFUL ARREST OR DETENTION
Arbitrary detention based on erroneous conclusion that the applicant sought to evade justice: *violation*.

LADENT - Poland (N° 11036/03)
Judgment 18.3.2008 [Section IV]

Facts: The applicant is a Frenchman married to a Polish national. In March 2001 the administrator of a building in which the applicant and his wife had lived in Poland brought a private prosecution against the applicant for slander. After the applicant left Poland to return to live in France, a district court sent summonses in connection with those proceedings to his former address in Poland. These were never received by the applicant. In July 2002 the district court ordered that the applicant be remanded in custody and issued a wanted notice. On 3 January 2003 the applicant was arrested during a routine passport check at the Polish border. He was questioned but could not understand what the officers said and refused to sign any documents. The applicant alleged that various requests he had made through his wife, such as contacting the French Embassy or providing him with an interpreter or a lawyer, were refused. He was remanded in custody. Six days later the applicant, after appointing a lawyer filed an application for release and appealed against the detention order. His counsel submitted, in particular, that following the applicant's departure to France the district court had sent the summonses to his former address in Poland and to another address where he had never lived and that the applicant had not known about the criminal proceedings or been served with the private bill of indictment. The following day the district court ordered the applicant's release on condition that he did not leave the country. The detention centre where the applicant was detained, refused to execute that order as it had only received a facsimile, not the original documents. The applicant was ultimately released on 13 January 2003. He alleged that he only learnt of the charges against him on that date. One month later the district court lifted the ban on the applicant leaving the country and he was eventually acquitted of all charges in January 2005.
Subsequently a local MP from Kraków wrote a letter to the President of Kraków Court of Appeal requesting explanations for the applicant's arrest and detention. The President informed the MP that the principal error committed by the district court was the unfounded assumption that the applicant had tried to evade justice.

Law: Article 5 § 1 – The district court had eventually agreed with the applicant's counsel's submissions and replaced the detention order with non-custodial preventive measures. Furthermore, the Court attached considerable importance both to the statement of the President of the Kraków Court of Appeal and to the Polish Government's concession that the district court had erred in finding that the applicant had been evading justice. It therefore concluded that the district court had failed to apply the relevant domestic legislation correctly and that the applicant's detention had not been effected in accordance with "a procedure prescribed by law". The detention was also arbitrary. The district court's finding had been manifestly without foundation, as the applicant was never duly notified of the proceedings against him. Nonetheless, without giving consideration to any other form of preventive measure, the district court decided to penalise the applicant for allegedly evading justice even though he had not been aware of the proceedings against him. The detention order imposed on the applicant could not be considered a proportionate measure aimed at securing the proper conduct of criminal proceedings, considering in particular the petty nature of the offence he had allegedly committed. Finally, the administrative formalities concerning the applicant's release could and should have been carried out more swiftly.
Conclusion: violations (unanimously).

Article 5 § 2 – The Court found that the applicant had not been informed promptly and in a language which he understood of the reasons for his arrest and the charges against him until his release.
Conclusion: violation (unanimously).

Article 5 § 3 – The Court found that, following the applicant's arrest on the reasonable suspicion that he had committed an offence, there was no automatic judicial review of his detention.
Conclusion: violation (unanimously).

Article 41 – EUR 10,000 in respect of non-pecuniary damage.

Article 5 § 3

BROUGHT PROMPTLY BEFORE JUDGE OR OTHER OFFICER
Suspects in criminal proceedings not brought before a judge for a review of the lawfulness of their detention until nine days after their arrest: *violation*.

SAMOILA and CIONCA - Romania (N° 33065/03)
Judgment 4.3.2008 [Section III]

(see Article 6 § 2 below).

Article 5 § 4

REVIEW OF LAWFULNESS OF DETENTION
Refusal of Supreme Court to review the lawfulness of continued detention: *violation*.

SAMOILA and CIONCA - Romania (N° 33065/03)
Judgment 4.3.2008 [Section III]

(see Article 6 § 2 below).

ARTICLE 6

Article 6 § 1 [civil]

EQUALITY OF ARMS
Refusal to hear witnesses called by one party to a civil action for reasons which contradicted the court's decision to hear witnesses called by the other party: *violation*.

PERIĆ - Croatia (N°34499/06)
Judgment 27.3.2008 [Section I]

Facts: In 1993 the applicant drew up a contract for two carers to look after her in return for her property when she died. In October 2002 she brought civil proceedings seeking to terminate that contract claiming that the carers had not provided her with the requisite care. During the proceedings, the first-instance court took statements from both parties. At the next hearing held in March 2003, which the applicant's counsel was unable to attend pending urgent surgery, the court heard two witnesses who had been called by the defence. At the next hearing the court heard two other defence witnesses, but refused the applicant's counsel's request to call five other witnesses. Shortly afterwards, the court gave judgment

dismissing the applicant's claim. The judgment stated, *inter alia*, that the factual background of the case had already been fully established on the basis of the parties' statements and enclosed documents – notably the impugned contract – and that it had therefore been unnecessary to hear the witnesses called on behalf of the plaintiff. The applicant challenged that judgment, but to no avail.

Law: During the course of the proceedings the applicant had sought to call six witnesses, who, in her view, could have shown that the defendants had failed to provide her with adequate care and therefore to fulfil their contractual obligations. Even though a domestic court had a certain margin of appreciation in admitting evidence, it was nonetheless obliged to give reasons for its decisions. In the applicant's case the proposed witnesses were not heard because the factual background of the case had apparently already been clearly established solely on the basis of the parties' testimonies and the impugned contract. Despite that, the first-instance court subsequently heard four witnesses called by the defence. Bearing in mind that the concept of equality of arms attached significant importance to appearances, the Court concluded that the applicant had not been afforded a fair trial in so far as the domestic courts had refused to hear the applicant's witnesses for reasons which were in contradiction with its willingness to hear witnesses proposed by the defendants.
Conclusion: violation (unanimously).

Article 41 – EUR 2,000 in respect of non-pecuniary damage.

Article 6 § 2

PRESUMPTION OF INNOCENCE
Remand prisoner forced to wear convicted prisoner's uniform at hearing of an application for his release on bail: *violation*.

SAMOILA and CIONCA - Romania (N° 33065/03)
Judgment 4.3.2008 [Section III]

Facts: The applicants are police officers who were accused by a tobacconist of obliging him to pay them a sum of money to avoid sanctions when the second applicant carried out an inspection. The police ordered an internal inquiry and the press were informed by press release that the applicants had been transferred to other police units for disciplinary reasons after committing certain abuses in the course of their duties. A local weekly magazine published an interview with the commanding officer, who had allegedly declared that he had no doubts about their guilt. Witnesses of the inspection and the first applicant's cohabiting partner made statements in the applicants' favour before a notary, for the purposes of the internal inquiry ordered by the police. The military prosecutor's office instituted criminal proceedings against the applicants for corruption. They were charged with corruption and remanded in custody, on the grounds that they had attempted to influence witnesses in order to prevent the truth from emerging and were a threat to public order. The witnesses were summoned to the prosecutor's office. The first two declared that the content of their statements before the notary had been suggested in part by the second applicant. The third witness said that his statement had been drafted by the same applicant and he had merely signed it. The same day, on the local television news, the prosecutor said that, although the sums involved had not been very high, the applicants' remand in custody had been ordered as public order had been seriously affected. Furthermore, the applicants had endeavoured to prevent the truth from emerging by influencing, and even threatening witnesses. In the presence of the applicants and their lawyer the County Court held that it had no jurisdiction to examine the applicants' appeal against the remand order and referred the case to the Court of Appeal. The Court of Appeal examined it in chambers and in the presence of the applicants and their lawyer, nine days after the applicants' arrest, and ordered their release. The prosecution appealed to the Supreme Court of Justice, which, in the presence of the applicants and their lawyer, ordered their continued detention. The applicants were committed for trial in the Court of Appeal on charges of corruption, abuse of authority and inciting witnesses to make false statements. At the request of the prosecuting authorities, the Court of Appeal prolonged their detention on remand. Appeals

lodged by the applicants with the Supreme Court of Justice against their continued detention were dismissed. The Court of Appeal again prolonged their detention on remand. In the course of the proceedings the court heard several witnesses, including those the prosecuting authorities claimed had been influenced by the applicants. They maintained the statements they had made before the notary. They also alleged that the prosecuting authorities had exerted pressure on them to change their statements. The applicants lodged an appeal against their continued detention, which the Supreme Court allowed, on the ground that the Court of Appeal did not have the right to extend the detention by more than thirty days. However, the applicants were not released: on an application by the prosecuting authorities, the Court of Appeal examined the lawfulness of the detention on remand and maintained it, considering that the reasons that had given rise to it still existed. The Supreme Court of Justice dismissed an appeal by the applicants after examining it in their presence and that of their lawyer. On an application by the prosecution and in the presence of the applicants and their lawyers, the Court of Appeal examined the lawfulness of their continued detention on remand and ordered its continuation. The applicants lodged appeals against the above-mentioned decisions. They received summonses to appear at the hearings before the Supreme Court of Justice. The second applicant replied that he wished to attend the Supreme Court hearing. However, the prison governor informed the Supreme Court that the applicants could not be transferred as the public prosecutor required their presence at a hearing of the Court of Appeal. The Supreme Court of Justice dismissed their appeals. As neither the applicants nor their lawyers were present at the hearings, the Supreme Court applied the Code of Criminal Procedure, which authorised appeals to be heard in the absence of the parties, and assigned lawyers to represent them forthwith. A representative of the public prosecutor was present at these hearings. He called for the appeals to be dismissed. The Court of Appeal examined the applicants' requests for release in their presence and dismissed them, considering that in view of the nature of the offences their release would be a threat to public order. The applicants appealed against these decisions. They were served with several summonses to appear before the Supreme Court of Justice, which declared their appeals inadmissible. The Supreme Court examined these appeals in the presence of a representative of the public prosecutor, who called for their dismissal. The applicants being absent, the Supreme Court appointed a lawyer to represent them. The applicants complained to the president of the Court of Appeal that they had been brought before the court in prison clothes, attire normally worn only by convicts. They requested permission to wear their own clothes. The president refused without any explanation. The Court of Appeal sentenced the applicants to six months' imprisonment for corruption, abuse of authority and attempting to influence witnesses. The applicants lodged an appeal, which was dismissed by a final judgment of the Supreme Court of Justice. They have since been released.

Law: Article 6 § 2 – When informing the press of the reasons why the applicants had been remanded in custody, the public prosecutor had said that they had tried to influence witnesses and threatened them. The impugned statements had been made outside the context of the criminal proceedings proper, in an interview broadcast on the television news. Emphasising once again the importance of the choice of wording used by public officials, the Court found that the prosecutor's words, clearly suggesting that the applicants had been guilty of inciting witnesses to make false statements, had encouraged the public to consider them guilty, prejudging the examination of the facts by the competent courts.

As to the declaration allegedly made by the commanding police officer, it was the object of a dispute between the parties. However, the police officer had not retracted it publicly or asked for the publication of a denial. This led the Court to assume that the impugned comments had actually been made. Moreover, the Court could not accept the Government's argument that the comments had referred only to the applicants' professional errors. In that connection it observed that what mattered for the purposes of Article 6 § 2 of the Convention was the real meaning of the statements in question, not their literal form. Thus, although the police commander had spoken of misconduct, without specifying its nature, he could only have been referring to what the prosecution had called the acts of corruption for which the applicants had been committed for trial in the Court of Appeal. The police commander had definitely stated, however, in no uncertain terms, that the applicants were guilty of those acts.

Finally, concerning the presentation of the applicants before the court in prison garments, it was clear from the refusal of the president of the Court of Appeal to allow them to wear their own clothes that the applicants had been presented before the court wearing prison clothes usually worn only by convicts. That practice was against the law, however, and at variance with a decision of the Constitutional Court. As it

had not been established that the applicants had no suitable clothes of their own, this practice had been quite unjustified and likely to confirm the public's impression that the applicants were guilty.
Conclusion: violation (unanimously).

Article 5 § 3 – The applicants had been brought before the County Court. At the hearing on the same day, however, the question of the lawfulness of their detention had not been raised. The court had simply referred the case to the Court of Appeal. There was no evidence at all that the court had examined the lawfulness of their detention, so the applicants had not had the benefit of the guarantees enshrined in Article 5 § 3 of the Convention. It followed that in this case, the circumstances of which were not at all exceptional, the applicants had not appeared before the Court of Appeal until nine days after their arrest, so they had not been brought promptly before a judge or other officer authorised by law to exercise judicial power.
Conclusion: violation (unanimously).

Article 5 § 4 – (a) *Inadmissibility of the appeal against the decision of the Court of Appeal prolonging their detention on remand*: The existence in domestic law of a remedy against a decision prolonging detention on remand was not contested. Moreover, in the course of the same proceedings the Supreme Court of Justice had examined several such appeals lodged by the applicants. It followed that the refusal of the Supreme Court to examine the applicants' appeal against the Court of Appeal's order prolonging their detention on remand had deprived them of the possibility of having the lawfulness of their continued detention verified. The fact that the Court of Appeal had given reasons for its decision did not alter that finding in so far as the applicants had been deprived of a remedy open to them in domestic law.
Conclusion: violation (unanimously).

(b) *Non-attendance at hearings before the Supreme Court of Justice*: The hearings before the Supreme Court of Justice concerned, firstly, the applicants' appeals against the decisions of the Court of Appeal prolonging their detention on remand at the prosecutor's request. The applicants' right to lodge an appeal against those decisions was not in dispute between the parties. Other hearings concerned the applicants' appeals against the decisions of the Court of Appeal dismissing their applications for release. The Supreme Court had declared those appeals inadmissible because the Code of Criminal Procedure made no provision for appeals against such decisions. At the material time, however, the case-law of the domestic courts had been far from uniform, some courts – even including the Supreme Court of Justice itself at times – allowing such appeals. This legal uncertainty could not be permitted to prejudice the applicants to the point of denying them the right to appeal against decisions rejecting their requests for release. A State which instituted the possibility of appealing against decisions concerning detention on remand must accord to the detainees the same guarantees on appeal as at first instance. So the fact that the applicants and their lawyers had attended hearings before the Court of Appeal did not exonerate the State from the obligation to ensure that they also attended in person, or were represented at, the hearings before the Supreme Court of Justice, in order to guarantee equality of arms with the public prosecutor, who had been present at all hearings and had requested their continued detention. As to the defence provided by the various lawyers officially appointed on the spot, they had been unfamiliar with the case-file, had not known their clients and had not even had time to prepare their defence properly, as the Supreme Court delivered its judgment the same day. In the light of these circumstances, and regardless of how well the court-appointed lawyers had actually performed their duty, the applicants had not had the benefit of an effective defence before the Supreme Court of Justice. On the question of advance notification of summonses to appear and the possibility for the applicants' lawyers to attend the hearings in the Supreme Court, four out of seven summonses had been served on the applicants on the day before, or on the day of, the hearings. That being so, and bearing in mind that the prison was about 600 kilometres from the Supreme Court, the lawyers had had little if any possibility of getting to the hearings in time. Moreover, according to the information supplied by the Government, the applicants had been entitled to only one telephone conversation per week and their correspondence was processed by the prison's administrative services, which had inevitably slowed down the distribution of their mail. So, in the case of the summonses to appear in court which had been served on the applicants respectively four, eight and two days in advance, the possibility of informing their lawyers and the chances of the lawyers being able to attend had also been very limited. Furthermore, even when the applicants had expressly stated their wish

to attend the hearings at the Supreme Court the prosecutor had objected, stating that their presence was required at hearings in the Court of Appeal. In consequence, having failed to allow the applicants to attend hearings the outcome of which would determine whether or not they remained in detention, the authorities had deprived the applicants of the possibility of properly challenging the prosecution's arguments in favour of their continued detention.
Conclusion: violation (unanimously).

Article 41 – EUR 2,000 to each applicant in respect of non-pecuniary damage.

ARTICLE 8

PRIVATE LIFE
Fairness of proceedings for an order depriving a patient suffering from borderline mental illness of his legal capacity, and inability of the patient to challenge that order or his subsequent confinement in a psychiatric hospital: *violation*.

SHTUKATUROV - Russia (N° 44009/05)
Judgment 27.3.2008 [Section I]

Facts: The applicant, an adult male, had a history of mental illness and was declared officially disabled. His mother applied to a district court for an order depriving him of his legal capacity on the grounds that he was incapable of leading an independent life and required a guardian. The applicant was not officially notified of the proceedings. In December 2004 the district court examined the application at a hearing which was attended by the district prosecutor and a representative of a psychiatric hospital where the applicant had been placed earlier in the year. The applicant was not notified of the hearing and so did not attend. After deliberations lasting ten minutes the district court declared him legally incapable under Article 29 of the Civil Code, which prescribed such a measure if a person could not understand the meaning of his actions or control them. In reaching its decision, the district court relied on a psychiatric report which concluded that he was suffering from schizophrenia. His mother was appointed his guardian and so was authorised by law to act on his behalf in all matters. The applicant later contacted a lawyer whom he met to discuss his case and draft an appeal. The lawyer considered that the applicant was fully capable of understanding complex legal issues and giving relevant instructions. The appeal was rejected without being examined on the ground that the applicant had no legal capacity and could only appeal through his official guardian. In November 2005 the applicant's mother had the applicant admitted to a psychiatric hospital. The applicant and his lawyer were refused permission to meet, but the applicant managed to get a form to his lawyer authorising him to lodge an application with the European Court on his behalf. From December 2005 onwards, the applicant was refused all contact with the outside world. He and his lawyer both made a series of requests to various authorities, including the district prosecutor, for his discharge from hospital, but without success. The district prosecutor advised the lawyer that the applicant had been placed in the hospital at the request of his official guardian, and that all questions related to his eventual release should be decided by her. In March 2006 the European Court indicated to the Russian Government under Rule 39 of its Rules of Court that the applicant and his lawyer should be provided with the necessary time and facilities to meet and prepare the case pending before it. However, the authorities refused to comply with that measure as they did not regard it as binding on them. The applicant was discharged from hospital in May 2006 but appears to have been later readmitted on his mother's request.

Law: (a) *Decision to deprive the applicant of his legal capacity*: Article 6 § 1 – The outcome of the proceedings was important to the applicant as it affected his personal autonomy in almost all areas of life and entailed potential restrictions on his liberty. Moreover, the applicant played a dual role in the proceedings as in addition to being an interested party he was the main subject of the court's examination. His participation had therefore been necessary both to enable him to present his case and to allow the judge to form a personal opinion about his mental capacity. Accordingly, the judge's decision to decide

the case on the basis of documentary evidence without seeing or hearing the applicant – who, despite his condition, was relatively autonomous – was unreasonable and in breach of the principle of adversarial proceedings. The presence of a hospital representative and the district prosecutor, who had remained passive throughout the ten-minute hearing, had not made the proceedings truly adversarial. Nor had the applicant been able to challenge the decision as his appeal was rejected without examination. In sum, the proceedings before the district court were unfair.
Conclusion: violation (unanimously).

Article 8 – There had been a very serious interference with the applicant's private life which had resulted in him having become fully dependent on his official guardian in almost all areas of his life for an indefinite period. That interference could only be challenged through his guardian, who had opposed all attempts to discontinue the measure. The Court had already found that the proceedings were flawed procedurally, with the applicant being totally excluded from the decision-making process. The district court's reasoning had also been inadequate, as it had relied solely on a medical report which had not sufficiently analysed the degree of the applicant's incapacity, the consequences of his illness on his social life, health and pecuniary interests and his ability to understand or control his actions. Contrary to a Committee of Ministers' recommendation that legislation should provide a "tailor-made response" to each individual case of mental illness, Russian law only made a distinction between full capacity and full incapacity and made no allowances for borderline situations. The interference with the applicant's private life had therefore been disproportionate to the legitimate aim of protecting the interests and health of others.
Conclusion: violation (unanimously).

(b) *Placement in psychiatric hospital*: Article 5 § 1 (e) – On the question of admissibility, the Government had argued that the applicant's hospitalisation was "voluntary" under domestic law and so did not constitute a "deprivation of liberty". However, having regard to the facts, and in particular the applicant's attempts to secure his discharge from the hospital, the Court found that even though the applicant was legally incapable of expressing his opinion, he could not be said to have agreed to his continued stay in the hospital. The complaint was therefore admissible. As to the merits, the Government had not "reliably shown" that the applicant was of unsound mind at the time of his confinement: they had not explained why his mother had requested his hospitalisation and no medical records had been provided to show his condition on admission. Accordingly, it had not been "reliably shown" that his mental condition had necessitated his confinement.
Conclusion: violation (unanimously).

Article 5 § 4 – The courts had had no involvement in the decisions to confine the applicant and domestic law did not provide for the automatic judicial review of confinement in a psychiatric hospital in situations such as his. Nor could he challenge his continued detention independently, as he had been deprived of the legal capacity to do so, or bring proceedings through his mother, as she opposed his release. Lastly, while it was unclear whether the inquiry by the prosecution authorities concerned the "lawfulness" of his detention, it could not be regarded as a form of judicial review. Given that the applicant's confinement was not voluntary and that the only court assessment of his mental capacity had taken place ten months previously – in proceedings which were seriously flawed and in which the need for confinement was not examined – his inability to obtain judicial review of his detention infringed Article 5 § 4.
Conclusion: violation (unanimously).

Article 34 and Rule 39 – The ban on contact with his lawyer had lasted throughout the period of the applicant's hospitalisation and the ban on communications with other parties for most of it. Those restrictions had made it almost impossible for the applicant to pursue his case before the Court, even though the authorities must have been aware of his application. The authorities had also refused to comply with the interim measure indicated to the Government under Rule 39, on the grounds that it was addressed to the State as a whole, not to any particular body, that Russian law did not recognise the binding force of such measures, that the applicant could not act without his mother's consent and that his lawyer was not regarded as his lawful representative. Such an interpretation was contrary to the Convention. It was for the Court, not the domestic courts, to determine who was the applicant's representative for the purposes of

proceedings before it. An interim measure was binding to the extent that non-compliance could lead to a finding of a violation under Article 34 and it made no difference whether it was the State as a whole or any of its bodies which refused to implement it. In sum, by preventing the applicant from meeting his lawyer or communicating with him over a lengthy period and by failing to comply with the interim measure the State was in breach of its Article 34 obligations.
Conclusion: failure to comply (unanimously).

Article 41 – Not ready for decision.

PRIVATE LIFE
HOME
Alleged failure by the authorities to prevent nuisance caused by activities of a car-repair garage illegally built in a residential area: *inadmissible*.

FURLEPA - Poland (N° 62101/00)
Decision 18.3.2008 [Section IV]

A car-repair garage and shop were built on land adjoining the applicant's house in a residential area after various applications for planning permission and building permits had been made and granted. However, the Supreme Administrative Court, sitting as the final court of appeal, later declared the construction illegal as it did not comply with the designation of the zone as residential in the local-development plan. An order by a buildings inspector for the demolition of the garage was stayed pending a further appeal by the garage owner. The inspector noted that the garage was not being used to carry out repair works. The applicant complained to the European Court of the State's failure to protect her private life and home from the severe nuisance the activities allegedly carried on at the garage caused her.

Inadmissible: The mere fact that the garage and shop had been built illegally was not enough to make the applicant a victim of a Convention breach. The Court had to determine whether the nuisance had attained the minimum level of severity required for it to constitute a violation of Article 8. The applicant had not substantiated her complaint of environmental nuisance in either the national proceedings or the proceedings before the Court, and had not furnished any medical certificates to substantiate her claims that her health had been adversely affected. Accordingly, it had not been established that the operation of the garage had caused an environmental hazard, or that the pollution it caused had exceeded the applicable safety levels or was of such a degree or character as to have adversely affected either the applicant's or her family's health. In those circumstances, it had not been established that the State had failed to take reasonable measures to secure the applicant's rights under Article 8: *manifestly ill-founded*.

ARTICLE 9

MANIFEST RELIGION OR BELIEF
Dismissal of a doctor for refusing to perform a medical examination owing to a "moral dilemma": *inadmissible*.

BLUMBERG - Germany (N°14618/03)
Decision 18.3.2008 [Section V]

Facts: The applicant, who is a doctor, was employed by a medical service which provided expert reports to health insurance companies. In 1999 the applicant was ordered to examine an apprentice with a view to her employment in one of the client companies. He refused to do so for reasons of "possible bias" in case he had to work with the apprentice in the future. He was subsequently dismissed. He challenged that decision in court, but to no avail. The appeal court found that the applicant had failed to substantiate the

alleged "moral dilemma" he was facing and that his fears of a possible conflict of interest were unjustified because he would only have had to work with the apprentice if he had recommended her for employment.

Inadmissible: Since Article 9 primarily protected the sphere of personal beliefs, that is views that attain a certain level of cogency, seriousness, cohesion and importance, the question arose whether the applicant's refusal to conduct a medical examination in the present case had amounted to a "manifestation of his personal beliefs". The appeal court had given a convincing explanation when dismissing the applicant's claim, in particular concerning the lack of substantiation of his moral dilemma. In those circumstances, the Court concluded that the applicant's refusal to examine the apprentice had not constituted an expression of a coherent view on a fundamental problem and that both his dismissal and the subsequent dismissal of his appeal by the competent courts could not be regarded as incompatible with the requirements of Article 9 of the Convention: *manifestly ill-founded*.

MANIFEST RELIGION OR BELIEF

Refusal of an entry visa for France because of the unwillingness of the applicant, a Moroccan national, to remove her veil at the security checkpoint at the consular offices: *inadmissible*.

EL MORSLI - France (N° 15585/06)
Decision 4.3.2008 [Section III]

The applicant, a woman of the Muslim faith who wears a veil or headscarf, is married to a French national who lives in France. She went to the Consulate General of France in Marrakesh to apply for an entry visa so that she could join her husband in France, but when she refused to remove her headscarf for an identity check she was not allowed into the consulate. She then submitted a visa application by registered letter. Her application was refused. On the applicant's behalf, her husband lodged an appeal against that refusal with the visa Appeals Board. The appeal was rejected for non-compliance by the applicant with the regulations in force. The applicant's husband lodged a new appeal, on points of law, with the *Conseil d'Etat* on his wife's behalf, relying, in particular, on his wife's right to respect for her family life and her freedom of religion. The *Conseil d'Etat* dismissed the appeal.

Inadmissible under Article 9: The measure complained of – requiring the applicant to remove her headscarf for an identity check – amounted to a restriction. The applicant did not suggest that the measure was not prescribed by law. It pursued at least one of the legitimate aims provided for in Article 9 § 2, namely public safety and the protection of public order. As to whether the interference was necessary in a democratic society, the Court saw no reason to depart from its reasoning in the *Phull v. France* case, concerning security checks at the entrance to a consulate, including the identification of persons wishing to enter, which it considered necessary for public safety. Furthermore, the security check required the headscarf to be removed only for a very brief moment. As to the applicant's offer to remove her headscarf only in the presence of a woman, even assuming that the question had been put to the consular authorities, the fact that they had not instructed a female staff member to verify the applicant's identity had not overstepped the margin of appreciation left to the State in the matter. There had thus been no disproportionate interference with the exercise of the applicant's right to freedom of religion: *manifestly ill-founded*.

(see also *Phull v. France* (dec.), no. 35753/03, 11 January 2005, Information Note no. 71).

ARTICLE 10

FREEDOM OF EXPRESSION
Refusal to revise a judgment prohibiting a television commercial from being broadcast which had previously given rise to a finding of a violation of Article 10 by the European Court of Human Rights: *case referred to the Grand Chamber*.

VEREIN GEGEN TIERFABRIKEN SCHWEIZ (VgT) - Switzerland (N° 32772/02)
Judgment 4.10.2007 [Section V]

In a Chamber judgment the Court found by five votes to two that there had been a violation of Article 10. The case was accepted for referral to the Grand Chamber at the request of the respondent Government.

(for more information, see Information Note no. 101 and press release no. 653 of 4 October 2007).

FREEDOM OF EXPRESSION
Imposition of a fine, with imprisonment in default, on the applicant, who was a researcher and the co-author of a book, for the criminal libel of the author of a scientific work on the same subject: *violation*.

AZEVEDO - Portugal (N° 20620/04)
Judgment 27.3.2008 [Section II]

Facts: The applicant was the co-author of a book entitled *Gardens of the Episcopal Palace of Castelo Branco*, published by the municipal authorities. In one part of the book, which was presented as a work of research for the general public, the applicant commented on what he regarded as the poor quality of previous works on the gardens in question. Mrs S., the author of one of the earlier works which was particularly targeted by the criticisms, filed a criminal complaint for defamation against the applicant. The applicant was given a suspended sentence of one month's imprisonment and ordered to pay a token euro to the complainant, as well as the cost of publishing an extract from the judgment in two regional newspapers. The following passage from the book was found to be defamatory: "Confusion about the role attributed to art, in this case poetry, which is said to be a vector for *explaining* [original emphasis] reality, would justify attendance for an extended season at a primary [school] for the study of literature and aesthetics, with an obligation to read and analyse Aristotle, Horace and Goethe – not forgetting W. Benjamin and H. Broch if extra tuition is required." The Court of Appeal dismissed an appeal lodged by Mr Azevedo against his conviction, considering that freedom of expression was not more important than the complainant's right to protect her honour and reputation. However, the court replaced the suspended prison sentence by a daily fine of 10 euros for 100 days, or 66 days' imprisonment in the event of default.

Law: The applicant's criminal conviction constituted interference with his right to freedom of expression. That interference was prescribed by the Portuguese Criminal Code and had the legitimate aim of protecting the reputation or rights of others. As to whether that interference had been "necessary in a democratic society", the Court considered that the controversy in issue – the historical and symbolic study of a significant local monument – was a matter of public interest. Bearing in mind that Mrs S. was the author of an academic work that had been published and was available on the market, she had laid herself open to potential criticism by readers or by other members of the academic community and could not be regarded as a "private individual". Moreover, the Court found that the applicant's comments, while admittedly having a negative connotation, sought mainly to question the assumed quality of the complainant's analysis of the monument concerned. They were value judgments and, accordingly, were not susceptible of proof. Lastly, the imposition of a criminal penalty on the type of criticism made by the applicant would substantially restrict the freedom that researchers needed in the context of their scientific

work. To allow for the possibility of a prison sentence in such a classic defamation case would inevitably have a disproportionate and chilling effect.
Conclusion: violation (unanimously).

Article 41 – EUR 2,947.65 in respect of pecuniary damage. Non-pecuniary damage: finding of a violation sufficient.

FREEDOM OF EXPRESSION
Removal from judicial office for making critical media statements about the Russian judiciary: *admissible*.

KUDESHKINA - Russia (N° 29492/05)
Decision 28.2.2008 [Section I]

In 2003 the applicant, who at the time held judicial office at the Moscow City Court, was appointed to sit in a high-profile criminal case concerning abuse of powers by a police investigator. Following a public prosecutor's challenge of both the applicant and the lay assessors on the grounds of bias, the applicant was eventually removed from sitting in the case. She subsequently requested that the President of the Moscow City Court, Mrs Yegorova, be charged with a disciplinary offence for having allegedly exercised unlawful pressure on the applicant during the above proceedings. She accused Mrs Yegorova, *inter alia*, of allegedly requesting information on the merits of the case while it was still pending, removing certain documents from the case file, forcing her to forge minutes of the hearing and giving her instructions on how to proceed in the case. Having examined the applicant's allegations, the competent authority decided not to institute disciplinary proceedings against Mrs Yegorova because there were no grounds for doing so.
Several months later the applicant stood as a candidate in general elections to the Russian Duma. During her campaign, which included a programme for judicial reform, she gave interviews to two newspapers and a radio station in which she was highly critical of the Russian judiciary. Among other things, she expressed doubts as to the independence of the courts in Russia and fears of "judicial lawlessness" within the country. She was not elected to the Duma but was reinstated to her previous judicial office.
Meanwhile, the President of the Moscow Judicial Council sought the applicant's removal from office claiming that during her election campaign she had behaved in a manner that was incompatible with the authority and standing of a judge. In May 2004, without hearing representations from the applicant who was absent, apparently without a valid excuse, the competent authority decided to remove her from office, stating that she had "disseminated deceptive, concocted and insulting perceptions of the judges and judicial system… [thus] degrading the authority of the judiciary". The applicant subsequently appealed against that decision to the Moscow City Court and requested a transfer of jurisdiction in her case for lack of impartiality, but to no avail.
Admissible under Article 10.

ARTICLE 14

DISCRIMINATION (Article 3)
Racially motivated ill-treatment of a Roma minor by a police officer during an incident between officials and Roma and lack of effective investigation: *violation*.

STOICA - Romania (N° 42722/02)
Judgment 4.3.2008 [Section III]

(see Article 3 above).

DISCRIMINATION (Article 8 and Article 1 of Protocol No. 1)
Exclusion of person in homosexual relationship from insurance cover as dependant of a civil servant: *admissible*.

P.B. and J.S. - Austria (N° 18984/02)
Decision 20.3.2008 [Section I]

The applicants live together in a homosexual relationship. The second applicant is a civil servant and has accident and sickness insurance cover with the Civil Servants Insurance Corporation (CSIC). A request by the first applicant for the CSIC to recognise him as the second applicant's dependant for insurance purposes was turned down as the legislation applicable at the time defined "dependants" as either a related person or as an unrelated person of the opposite sex and so excluded persons living in a homosexual relationship. The Constitutional Court declined to interfere with that decision as it considered that the legislature had acted within the bounds of its wide margin of appreciation in that sphere. An administrative court to which the case was subsequently transferred held that there was no issue under Article 14 read in conjunction with Article 8 of the European Convention as the latter provision did not guarantee specific social rights and the difference in treatment was in any event justified by differences in the factual situation. In a separate case, the Constitutional Court later ruled that two similar statutory provisions were discriminatory after expressly citing the European Court's judgment of 24 July 2003 in the case of *Karner v. Austria* (no. 40016/98, see Information Note no. 55).
Admissible under Article 14, read in conjunction with Article 8 and in conjunction with Article 1 of Protocol No. 1.

ARTICLE 34

HINDER THE EXERCISE OF THE RIGHT OF PETITION
Refusal by authorities to allow the applicant, a psychiatric patient, to contact his lawyer, even after the Court had issued an interim measure requesting them to do so: *failure to comply*.

SHTUKATUROV - Russia (N° 44009/05)
Judgment 27.3.2008 [Section I]

(see Article 8 above).

ARTICLE 1 OF PROTOCOL No. 1

DEPRIVATION OF PROPERTY
Failure to take into account historic value of a building in calculation of compensation due for its expropriation: *case referred to the Grand Chamber*.

KOZACIOĞLU - Turkey (N° 2334/03)
Judgment 31.7.2007 [Section II]

In a Chamber judgment the Court found by four votes to three that there had been a violation of Article 1 of Protocol No. 1.
The case was accepted for referral to the Grand Chamber at the request of the respondent Government.
For more information, see Information Note no. 99 and press release no. 541 of 31 July 2007.

PEACEFUL ENJOYMENT OF POSSESSIONS
Adequacy of measures taken by the authorities to provide alternative accommodation and emergency relief for victims of property damage caused by mudslide: *no violation*.

BUDAYEVA AND OTHERS - Russia (N^os 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02)
Judgment 20.3.2008 [Section I]

(see Article 2 above).

ARTICLE 1 OF PROTOCOL No. 12

GENERAL PROHIBITION OF DISCRIMINATION
Inability of a Roma and a Jew to stand for election to highest political posts in the country: *communicated*.

SEJDIĆ AND FINCI - Bosnia and Herzegovina (N° 27996/06 and 34836/06)
[Section IV]

The applicants, who are both citizens of Bosnia and Herzegovina, are respectively of Roma and Jewish origin. They have held in the past, and still hold, prominent public positions. Under the 1995 Constitution of Bosnia and Herzegovina only Bosniacs, Croats and Serbs are eligible to stand for election to the tripartite State presidency and the upper chamber of the State parliament. The applicants complain that, despite possessing experience comparable to the highest elected officials in the country, they are prevented by the Constitution from being candidates for such posts solely on the grounds of their ethnic origin.
Communicated under Article 14 (read in conjunction with Article 3 of Protocol No. 1) and under Article 1 of Protocol No. 12.

RULE 39 OF THE RULES OF COURT

INTERIM MEASURES
Refusal of State authorities to comply with an interim measure: *failure to comply with Article 34*.

SHTUKATUROV - Russia (N° 44009/05)
Judgment 27.3.2008 [Section I]

(see Article 8 above).

Referral to the Grand Chamber

Article 43 § 2

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

VEREIN GEGEN TIERFABRIKEN SCHWEIZ (VGT) –Switzerland (N° 32772/02)
Judgment 4.10.2007 [Section V]

(see Article 10 above).

KOZACIOĞLU – Turkey (N° 2334/03)
Judgment 31.7.2007 [Section II]

(see Article 1 of Protocol No. 1 above).

Judgments having become final under Article 44 § 2 (c)[1]

On 31 March 2008 the Panel of the Grand Chamber rejected requests for referral of the following judgments, which have consequently become final:

ABDÜLKERIM ARSLAN - Turkey (N° 67136/01)
AKYÜZ - Turkey (N° 35837/02)
ANGHEL - Romania (N° 28183/03)
ASLAN and Others - Turkey (N^os 75202/01, 9820/02 and 27942/02)
BHANDARI - the United Kingdom (N° 42341/04)
BLIDARU - Romania (N° 8695/02)
BULGAKOV -. Ukraine (N° 59894/00)
CAPONE and CENTRELLA - Italy (N° 45836/99)
CORABIAN - Romania (N° 4305/03)
CZMARKÓ - Hungary (N° 26242/04)
DRĂCULET - Romania (N° 20294/02)
GJONBOCARI and Others - Albania (N° 10508/02)
GONCHARUK - Russia (N° 58643/00)
GOYGOVA - Russia (N° 74240/01)
GUSOVSCHI - Moldova (N° 35967/03)
HERDADE DA COMPORTA – ACTIVIDADES AGRO SILVÍCOLAS E TURÍSTI-AS, S. A. - Portugal (N° 41453/02)
HOUSING ASSOCIATION OF WAR DISABLED AND VICTIMS OF WAR OF ATTICA and Others - Greece (N° 35859/02)
ISAR - Romania (N° 42212/04)
IVANOVSKA - the former Yusgoslav Republic of Macedonia (N° 10541/03)
KANELLOPOULOU - Greece (N° 28504/05)
KARI UOTI - Finland (N° 21422/02)
KRASNOV and SKURATOV - Russia (N^os 17864/04 and 21396/04)
KUDRINA - Russia (N° 27790/03)
L. - Lithuania (N° 27527/03)
LARCO and Others - Romania (N° 30200/03)
LELIEVRE - Belgium (N° 11287/03)
LEPOJIĆ - Serbia (N° 13909/05)
LESNINA D.D. - Croatia (N° 18421/05
LEVOCHKINA - Russia (N° 944/02)
LEWAK - Poland (N° 21890/03)
MAGOMADOV and MAGOMADOV - Russia (N° 68004/01)
MAKHAURI - Russia (N° 58701/00)
MEHMET PEKER - Turkey (N° 49276/99)
MORGUNENKO - Ukraine (N° 43382/02)
MUŞAT - Romania (N° 33353/03)
MOUSSAÏEV and Others - Russia (N^os 57941/00, 58699/00 and 60403/00)
MOUSSAÏEVA and Others - Russia (N° 74239/01)

[1] The list of judgments having become final pursuant to Article 44(2)(b) of the Convention has been discontinued. Please refer to the Court's database HUDOC which will indicate when a given judgment has become final.

NEVOLIN - Russia (N° 38103/05)
NICOLAI DE GORHEZ - Belgium (N° 11013/05)
NIKOLAY ZHUKOV - Russia (N° 560/02)
OSHER and OSHER - Russia (N° 31296/02)
PIĄTKIEWICZ - Poland (N° 39958/02)
RUDYSH - Ukraine (N° 18957/03)
SCHMIDT - France (N° 35109/02)
SMATANA - the Czech Republic (N° 18642/04)
SMIRNITSKAYA and Others - Russia (N° 852/02)
STANKOVÁ - Slovakia (N° 7205/02)
ŠTITIĆ - Croatia (N° 29660/03)
TIBERNEAC - Moldova (N° 18893/04)
TSYKHANOVSKYY - Ukraine (N° 3572/03)
VÁRNAI - Hungary (N° 14282/04)
VEDERNIKOVA - Russia (N° 25580/02)
VOLKOVA and BASOVA . Russia (N° 842/02)
VOLOVIK - Ukraine (N° 15123/03)
ZAICHENKO - Ukraine (N° 29875/02)

Statistical information

The Analysis of statistics 2007 is now available on the Court's website at:

http://www.echr.coe.int/NR/rdonlyres/C8F656AA-94C4-4A3F-A69D-0E4C6D510CA8/0/Analysis_of_statistics_2007.pdf

This Analysis provides a statistical overview of developments in the Court's caseload in 2007, such as pending applications, case processing and backlog applications.