



DP (2009) CASE LAW

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

Strasbourg, March 2009

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>)

**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)***

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

1. *Eur. Court HR, Klass and others v. Germany judgment of 6 September 1978, Series A no.28 (No violation of the Convention). Law authorising secret services to carry out secret monitoring of communications (postal and telephone).*

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.

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 §1 (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 these Articles is set out in an appendix to this release.

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

- that there was no violation of Article 6 §1 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 JUDGMENT²

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.

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.

APPENDIX

Text of the Articles of the, Convention whose violation was alleged by the applicants.

Article 6 § 1

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

Article 8

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 13

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

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 Rights¹. 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)².

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

¹ The text of this article is set out in an appendix to the present release.

² The text of this article is set out in an appendix to the present release.

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 JUDGMENT³

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]

³ This summary, drafted by the registry, does not bind the court.

2. Interception of communications

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

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 CONVENTION⁴

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]

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. Gölcük1ü (Turkish), Mr. F. Matscher (Austrian), Mr. J. Pinheiro Farinha (Portuguese), Mr. E. García de Enterría (Spanish), 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.

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).

⁴ The text of Article 50 is set out in the appendix to the present release.

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.

A P P E N D I X

Text of the Convention Articles referred to in the release

Article 8

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 13

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

Article 50

If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the present Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party.

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.¹

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.

¹ The text of the Convention Articles in question is set out in the appendix hereto.

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 1985², 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 JUDGMENT³

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.

² The report is available to the press and the public on request to the Registrar of the Court.

³ 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>

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.

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.

A P P E N D I X

Extracts from the Convention Articles referred to

Article 8

- "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 10

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

Article 13

"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

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.

* The text of the Convention Articles referred to in this release is set out in the Appendix.

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 Thór 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.

A P P E N D I X

Text of the Convention Articles referred to in the release

Article 8

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

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

Article 10

"1.. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

Article 50

"If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the present Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

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 Rights¹, 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.

¹ The text of the Articles mentioned in this release is appended.

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 reports² 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 JUDGMENTS³

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 paragraph 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 8 of the Convention.

² The reports are available to the press and the public on application to the Registrar of the Court.

³ This summary by the registry does not bind the Court.

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 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 be 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.]

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.

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.

A P P E N D I X

Convention Articles referred to in the release

Article 8

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 50

If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party.

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.*
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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 50¹.

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.

¹ The text of the Articles mentioned in this release is appended.

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 report² 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 JUDGMENT³

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.

² Available to the press and the public on request to the Registrar of the Court.

³ This summary by the registry does not bind the Court.

[see paragraphs 27-33 of the judgment]

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]

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.

A P P E N D I X

Articles mentioned in the release

Article 8 of the Convention

- "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 50 of the Convention

"If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the (...) Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

Article 1 of Protocol No. 1

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

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.*

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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).¹

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

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").

¹ The text of the relevant Convention provisions is appended.

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 1993² 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 JUDGMENT³

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.

² The report is available to the press and the public on request to the Registrar of the Court.

³ This summary by the registry does not bind the Court.

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 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]

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.

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.

APPENDIX

Convention Articles referred to in the release

Article 5

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

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence...;

...

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

...

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

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

Article 8

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

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

Article 13

"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

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.*
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EUROPEAN COURT OF HUMAN RIGHTS

In the case of *Friedl v. Austria* (¹),

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 A², 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 names of the other seven members, namely Mr B. Walsh, Mr C. Russo, Mr A. Spielmann, Mr J. De

¹ 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.

² 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 sub-sequently.

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 ⁽³⁾.

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

³ 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 Rights¹ 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.

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 applicants access to A. On two occasions (4 February and

¹ The text of the Convention Articles mentioned in the release is appended.

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 report² 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.

² Available to the press and the public on request to the Registrar of the Court.

II. SUMMARY OF THE JUDGMENT³

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

³ 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, prior 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]

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.

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.

A P P E N D I X

Convention Articles referred to in the release

Article 6 § 1

"1. In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law..."

Article 8

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

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

Article 14

"The enjoyment of the rights and freedoms set forth in the Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

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.*
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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 Rights¹ 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.

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

¹The text of the Convention Articles mentioned in this release is appended.

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 JUDGMENT²

I. Article 8 of the Convention

A. Scope of the issues before the Court

²This summary by the registry does not bind 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 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]

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.

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.*

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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 Rights¹ 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.

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

¹ The Convention Articles referred to in this press release are appended.

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 JUDGMENT²

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]

²This 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]

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*.

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.*

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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 Rights¹ 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.

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

¹ The text of the Convention provisions mentioned in this release is appended.

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 JUDGMENT²

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.

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

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.

[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.]

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.

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.*

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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 Rights¹, 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.

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.

¹ The text of the Convention provisions mentioned in this release is appended.

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 JUDGMENT²

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.

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

[See paragraph 37 of the judgment.]

(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.]

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.

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.*

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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 Rights¹ 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

¹ The text of the Convention Articles mentioned in this release is appended.

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 JUDGMENT²

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”

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

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.

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 (www.dhcour.coe.fr).

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 **Caflich** (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.

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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, 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.)

18. *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.)

19. *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.)

20. *Eur. Court HR, A. v. the United Kingdom judgment of 17 July 2032, no. 63737/00 (violation of Article 8 of the Convention). Use of videotape by the Police for identification and prosecution purposes.*

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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.)

21. *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 final¹

...

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.

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).

22. *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.

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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 final¹

...

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.

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.)

23. *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).

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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.)

24. *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.)

25. *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 judgment¹ 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 judgment²

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.

26. *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.

27. 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.)

28. *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.)

29. *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).

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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.)

30. *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).

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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 judgment¹ 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.

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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 judgment²

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.

31. *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.

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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 judgment¹ 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 samples² 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 2007³.

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 judgment⁵

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.

