



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

Guide on Article 8 of the European Convention on Human Rights

Right to respect for private
and family life

1st edition

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Note to readers

This Guide is part of the series of Guides on the Convention published by the European Court of Human Rights (hereafter “the Court”, “the European Court” or “the Strasbourg Court”) to inform legal practitioners about the fundamental judgments delivered by the Strasbourg Court. This particular Guide analyses and sums up the case-law on Article 8 of the European Convention on Human Rights (hereafter “the Convention” or “the European Convention”) until 31 December 2016. Readers will find the key principles in this area and the relevant precedents.

The case-law cited has been selected among the leading, major, and/or recent judgments and decisions.*

The Court’s judgments serve not only to decide those cases brought before it but, more generally, to elucidate, safeguard and develop the rules instituted by the Convention, thereby contributing to the observance by the States of the engagements undertaken by them as Contracting Parties (*Ireland v. the United Kingdom*, § 154, 18 January 1978, Series A no. 25, and, more recently, *Jeronovičs v. Latvia* [GC], no. 44898/10, § 109, ECHR 2016).

The mission of the system set up by the Convention is thus to determine issues of public policy in the general interest, thereby raising the standards of protection of human rights and extending human rights jurisprudence throughout the community of the Convention States (*Konstantin Markin v. Russia* [GC], § 89, no. 30078/06, ECHR 2012). Indeed, the Court has emphasised the Convention’s role as a “constitutional instrument of European public order” in the field of human rights (*Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], no. 45036/98, § 156, ECHR 2005-VI).

This Guide contains references to keywords for each cited Article of the Convention and its Additional Protocols. The legal issues dealt with in each case are summarised in a [List of keywords](#), chosen from a thesaurus of terms taken (in most cases) directly from the text of the Convention and its Protocols.

The [HUDOC database](#) of the Court’s case-law enables searches to be made by keyword. Searching with these keywords enables a group of documents with similar legal content to be found (the Court’s reasoning and conclusions in each case are summarised through the keywords). Keywords for individual cases can be found by clicking on the Case Details tag in HUDOC. For further information about the HUDOC database and the keywords, please see the [HUDOC user manual](#).

* The case-law cited may be in either or both of the official languages (English and French) of the Court and the European Commission of Human Rights. Unless otherwise indicated, all references are to a judgment on the merits delivered by a Chamber of the Court. The abbreviation “(dec.)” indicates that the citation is of a decision of the Court and “[GC]” that the case was heard by the Grand Chamber. Chamber judgments that were not final when this update was published are marked with an asterisk (*).

I. The Structure of Article 8

Article 8 of the Convention– Right to respect for private and family life

- “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.”

Hudoc keywords

Expulsion (8) – Extradition (8) – Positive obligations (8)

Respect for private life (8-1) – Respect for family life (8-1) – Respect for home (8-1) – Respect for correspondence (8-1)

Public authority (8-2) – Interference (8-2) – In accordance with the law (8-2) – Accessibility (8-2) – Foreseeability (8-2) – Safeguards against abuse (8-2) – Necessary in a democratic society (8-2) – National security (8-2) – Public safety (8-2) – Economic well-being of the country (8-2) – Prevention of disorder (8-2) – Prevention of crime (8-2) – Protection of health (8-2) – Protection of morals (8-2) – Protection of the rights and freedoms of others (8-2)

1. In order to invoke Article 8, an applicant must show that his or her complaint falls within at least one of the four interests identified in the Article, namely: private life, family life, home and correspondence. Some matters, of course, span more than one interest. First, the Court determines whether the applicant’s claim falls within the scope of Article 8. Next, the Court examines whether there has been an interference with that right or whether the State’s positive obligations to protect the right have been engaged. Conditions upon which a State may interfere with the enjoyment of a protected right are set out in paragraph 2 of Article 8, namely 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. Limitations are allowed if they are “in accordance with the law” or “prescribed by law” and are “necessary in a democratic society” for the protection of one of the objectives set out above. In the assessment of the test of necessity in a democratic society, the Court often needs to balance the applicant’s interests protected by Article 8 and a third party’s interests protected by other provisions of the Convention and its Protocols.

A. The scope of Article 8

2. The Court has defined the scope of Article 8 broadly, even when a specific right is not set out in the Article. However, its scope is not limitless. In the case of access to a private beach by a person with disabilities, the Court held that “the right asserted ... concerns interpersonal relations of such broad and indeterminate scope that there can be no conceivable direct link between the measures the State was urged to take in order to make good the omissions of the private bathing establishments and the applicant’s private life. Accordingly, Article 8 is not applicable” (*Botta v. Italy*, § 35). Additionally, the Grand Chamber found that Article 8 was not engaged in a case regarding a conviction for professional misconduct because, “the offence in question has no obvious bearing on the right to respect for ‘private life’. On the contrary, it concerns professional acts and omissions by public officials in the exercise of their duties. Nor has the applicant pointed to any concrete repercussions on his private life which were directly and causally linked to his conviction for that specific offence” (*Gillberg v. Sweden* [GC], § 70).

B. Should the case be assessed from the perspective of a negative or positive obligation?

3. The primary purpose of Article 8 is to protect against arbitrary interferences with private and family life, home, and correspondence. This obligation is of the classic negative kind, described by the Court as the essential object of Article 8 (*Kroon and Others v. the Netherlands*, § 31). However, Member States also have positive obligations to ensure that Article 8 rights are respected even as between private parties. In particular, “although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference: in addition to this primarily negative undertaking, there may be positive obligations inherent in an effective respect for private life. These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves (see, for example, *Evans v. the United Kingdom* [GC], § 75, although the principle was first set out in *Marckx v. Belgium*).

4. The principles applicable to assessing a State’s positive and negative obligations under the Convention are similar. Regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole, the aims in the second paragraph of Article 8 being of a certain relevance (*Hämäläinen v. Finland* [GC], § 65; *Gaskin v. the United Kingdom*, § 42; and *Roche v. the United Kingdom* [GC], § 157). Where the case concerns a negative obligation, the Court must assess whether the interference was consistent with the requirements of Article 8 paragraph 2, namely in accordance with the law, in pursuit of a legitimate aim, and necessary in a democratic society. This is analysed in more detail below.

5. In the case of a positive obligation, the Court considers whether the importance of the interest at stake requires the imposition of the positive obligation sought by the applicant. Certain factors have been considered relevant for the assessment of the content of positive obligations on States. Specifically, “the importance of the interest at stake and whether ‘fundamental values’ or ‘essential aspects’ of private life are in issue ... or the impact on an applicant of a discordance between the social reality and the law, the coherence of the administrative and legal practices within the domestic system being regarded as an important factor in the assessment carried out under Article 8... Other factors relate to the impact of the alleged positive obligation at stake on the State concerned. The question here is whether the alleged obligation is narrow and precise or broad and indeterminate (*Hämäläinen v. Finland* [GC], § 66)”.

6. As in the case of negative obligations, in implementing their positive obligations under Article 8, the States enjoy a certain margin of appreciation. A number of factors must be taken into account when determining the breadth of that margin. Where a particularly important facet of an individual’s existence or identity is at stake, the margin allowed to the State will be restricted (for example, *X and Y v. the Netherlands*, §§ 24 and 27; *Christine Goodwin v. the United Kingdom* [GC], § 90; *Pretty v. the United Kingdom*, § 71). Where, however, there is no consensus within the Member States of the Council of Europe, either as to the relative importance of the interest at stake or as to the best means of protecting it, particularly where the case raises sensitive moral or ethical issues, the margin will be wider (*X, Y and Z v. the United Kingdom* [GC], § 44; *Fretté v. France*, § 41; and *Christine Goodwin v. the United Kingdom* [GC], § 85). There will also often be a wider margin if the State is required to strike a balance between competing private and public interests or Convention rights (*Fretté v. France*, § 42; *Odièvre v. France* [GC], §§ 44-49; *Evans v. the United Kingdom* [GC], § 77; *Dickson v. the United Kingdom* [GC], § 78; and *S.H. and Others v. Austria* [GC], § 94).

7. While the choice of the means to secure compliance with Article 8 in the sphere of protection against acts of individuals is, in principle, within the State’s margin of appreciation, effective deterrence against grave acts (such as rape), where fundamental values and essential aspects of private life are at stake, requires efficient criminal-law provisions. Children and other vulnerable

individuals, in particular, are entitled to effective protection (*X and Y v. the Netherlands*, §§ 23-24 and 27, and *August v. the United Kingdom* (dec.) and *M.C. v. Bulgaria*). Further, the State's positive obligation under Article 8 to safeguard the individual's physical integrity may extend to questions relating to the effectiveness of a criminal investigation (*Osman v. the United Kingdom* [GC], § 128 and *M.C. v. Bulgaria*, § 150). As such, States have a positive obligation inherent in Articles 3 and 8 of the Convention to enact criminal-law provisions effectively punishing rape and to apply them in practice through effective investigation and prosecution. The State has an obligation to protect a minor against malicious misrepresentation (*K.U. v. Finland*, §§ 45-49). In respect of less serious acts between individuals, which may violate psychological integrity, the obligation of the State under Article 8 to maintain and apply in practice an adequate legal framework affording protection does not always require that an efficient criminal-law provision covering the specific act be in place. The legal framework could also consist of civil-law remedies capable of affording sufficient protection (*X and Y v. the Netherlands*, §§ 24 and 27, and *K.U. v. Finland*, § 47).

8. The Court has also articulated the State's procedural obligations under Article 8, which are particularly relevant in determining the margin of appreciation afforded to the Member State. The Court's analysis includes the following considerations: "Whenever discretion capable of interfering with the enjoyment of a Convention right (...) is conferred on national authorities, the procedural safeguards available to the individual will be especially material in determining whether the respondent State has, when fixing the regulatory framework, remained within its margin of appreciation. Indeed it is settled case-law that, whilst Article 8 contains no explicit procedural requirements, the decision-making process leading to measures of interference must be fair and such as to afford due respect to the interests safeguarded to the individual by Article 8. (*Buckley v. the United Kingdom*, § 76)"

C. In the case of a negative obligation, was the interference conducted in "accordance with the law"?

9. The Court has repeatedly affirmed that "any interference by a public authority with an individual's right to respect for private life and correspondence must be 'in accordance with the law'... [T]his expression does not only necessitate compliance with domestic law, but also relates to the quality of that law, requiring it to be compatible with the rule of law (*Halford v. the United Kingdom*, § 49)".

10. The national law must be clear, foreseeable, and adequately accessible (*Silver and Others v. the United Kingdom*, § 87). This includes sufficient foreseeability that individuals are able to act in accordance with the law, as well as a clear demarcation of the scope of discretion for public authorities. As the Court articulated in the surveillance context, for example, "The law must be sufficiently clear in its terms to give citizens an adequate indication of the conditions and circumstances in which the authorities are empowered to resort to any measures of secret surveillance and collection of data" (*Shimovolos v. Russia*, § 68). In *Vukota-Bojić v. Switzerland* the Court found a violation of Article 8 due to the lack of clarity and precision in the domestic legal provisions that had served as the legal basis of her surveillance by her insurance company after an accident.

11. The clarity requirement applies to the scope of discretion exercised by public authorities. As the Court noted, "domestic law must indicate with reasonable clarity the scope and manner of exercise of the relevant discretion conferred on the public authorities so as to ensure to individuals the minimum degree of protection to which they are entitled under the rule of law in a democratic society (*Piechowicz v. Poland*, § 212)."

12. The Grand Chamber affirmed that, with regard to foreseeability, "The phrase ["in accordance with the law"] thus implies, inter alia, that domestic law must be sufficiently foreseeable in its terms

to give individuals an adequate indication as to the circumstances in which and the conditions on which the authorities are entitled to resort to measures affecting their rights under the Convention. (*Fernández Martínez v. Spain* [GC], § 117)” Foreseeability need not be certain, as the Grand Chamber has stated, “The applicants must have been able to foresee to a reasonable degree, at least with the advice of legal experts, that they would be regarded as covered by [the law]. Absolute certainty in this matter could not be expected. (*Slivenko v. Latvia* [GC], § 107)”

13. Lawfulness also requires that there be adequate safeguards to ensure that an individual’s Article 8 rights are respected. A State’s responsibility to protect private and family life often includes positive obligations that ensure adequate regard for Article 8 rights at the national level. The Grand Chamber, for example, recently found a violation of the right to private life due to the absence of clear statutory provisions criminalising the act of covertly filming a naked child (*Söderman v. Sweden* [GC], § 117).

14. A finding that the measure in question was not “in accordance with the law” suffices for the Court to hold that there has been a violation of Article 8 of the Convention. It is not therefore necessary to examine whether the interference in question pursued a “legitimate aim” or was “necessary in a democratic society” (*M.M. v. the Netherlands*, § 46).

D. Does the interference further a legitimate aim?

15. Article 8 § 2 enumerates the legitimate aims which may justify an infringement upon the rights protected in Article 8: “in the interest 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.” The Grand Chamber recently observed that, “The Court’s practice is to be quite succinct when it verifies the existence of a legitimate aim within the meaning of the second paragraphs of Articles 8 to 11 of the Convention. (*S.A.S. v. France* [GC], § 114).”

16. The Court has found, for example, that immigration measures may be justified by “the preservation of the country’s economic well-being within the meaning of paragraph 2 of Article 8 rather than the prevention of disorder... [if the government’s purpose was] because of the population density, to regulate the labour market (*Berrehab v. the Netherlands*, § 26)”. The Court has also found both economic well-being and the protection of the rights and freedom of others to be the legitimate aim of large governments projects, such as the expansion of an airport (*Hatton and Others v. the United Kingdom* [GC], § 121).

17. The Grand Chamber found that a ban on full-face veils in public places served a legitimate aim because, “The Court takes into account the respondent State’s point that the face plays an important role in social interaction... [and] is therefore able to accept that the barrier raised against others by a veil concealing the face is perceived by the respondent State as breaching the right of others to live in a space of socialisation which makes living together easier. (*S.A.S. v. France* [GC], § 122)”

18. In *Toma v. Romania*, however, the Court found that the government had provided no legitimate justification for allowing journalists to publish images of a person detained before trial, when there was no public safety reason to do so (*Toma v. Romania*, § 92).

E. Is the interference necessary in a democratic society?

19. In order to determine whether a particular infringement upon Article 8 is “necessary in a democratic society”, the Court balances the interests of the Member State against the right of the applicant. In an early and leading Article 8 case, the Court stated that: “Firstly, ‘necessary’ in this context does not have the flexibility of such expressions as ‘useful’, ‘reasonable’, or ‘desirable’, but implies the existence of a ‘pressing social need’ for the interference in question ... it is for the

national authorities to make the initial assessment of the pressing social need in each case; accordingly, a margin of appreciation is left to them. However, their decision remains subject to review by the Court ... a restriction on a Convention right cannot be regarded as "necessary in a democratic society" - two hallmarks of which are tolerance and broadmindedness - unless, amongst other things, it is proportionate to the legitimate aim pursued. (*Dudgeon v. the United Kingdom*, § 51-53)."

20. Subsequently, the Court has affirmed that, "In determining whether the impugned measures were 'necessary in a democratic society', the Court will consider whether, in the light of the case as a whole, the reasons adduced to justify them were relevant and sufficient and whether the measures were proportionate to the legitimate aims pursued. (*Z v. Finland*, § 94)" The Court has further clarified this requirement, stating: "As to the criterion 'necessary in a democratic society', the Court would reiterate that the notion of 'necessity' for the purposes of Article 8 means that the interference must correspond to a pressing social need, and, in particular, must remain proportionate to the legitimate aim pursued. Assessing whether an interference was 'necessary' the Court will take into account the margin of appreciation left to the State authorities but it is a duty of the respondent State to demonstrate the existence of the pressing social need behind the interference. (*Piechowicz v. Poland*, § 212)."

21. With regard to general measures taken by the national government, the Grand Chamber observed that, "It emerges from that case-law that, in order to determine the proportionality of a general measure, the Court must primarily assess the legislative choices underlying it ... The quality of the parliamentary and judicial review of the necessity of the measure is of particular importance in this respect, ... [as is] the risk of abuse if a general measure were to be relaxed, that being a risk which is primarily for the State to assess. (*Animal Defenders International v. the United Kingdom* [GC], § 108)."

F. Relation between Article 8 and other provisions of the Convention and its Protocols

1. Private and family life

a. Article 2 (right to life) and Article 3 (prohibition of torture)

22. Regarding the protection of the physical and psychological integrity of an individual from the acts of other persons, the Court has held that the authorities' positive obligations – in some cases under Articles 2 or 3 and in other instances under Article 8 taken alone or in combination with Article 3 of the Convention – may include a duty to maintain and apply in practice an adequate legal framework affording protection against acts of violence by private individuals (see, *inter alia*, *Söderman v. Sweden* [GC], § 80 and references therein). The Court has stated that when a measure falls short of Article 3 treatment, it may, however, fall foul of Article 8 (*Wainwright v. the United Kingdom*, § 43, as concerns strip-search).

23. In particular, conditions of detention may give rise to an Article 8 violation where they do not attain the level of severity necessary for a violation of Article 3 (*Raninen v. Finland*, § 63). The Court has frequently found a violation of Article 3 of the Convention on account of poor conditions of detention where the lack of a sufficient divide between the sanitary facilities and the rest of the cell was just one element of those conditions (*Szafrański v. Poland*, §§ 24 and 38). In *Szafrański v. Poland*, the Court found that the domestic authorities failed to discharge their positive obligation of ensuring a minimum level of privacy for the applicant and therefore had violated Article 8 where the applicant had to use the toilet in the presence of other inmates and was thus deprived of a basic level of privacy in his everyday life (§§ 39-41).

b. Article 6 (right to a fair trial)

24. The procedural aspect of Article 8 is closely linked to the rights and interests protected by Article 6 of the Convention. Article 6 affords a procedural safeguard, namely the “right to a court” in the determination of one’s “civil rights and obligations”, whereas the procedural requirement of Article 8 does not only cover administrative procedures as well as judicial proceedings, but it is also ancillary to the wider purpose of ensuring proper respect for, *inter alia*, family life (*Tapia Gasca and D. v. Spain*, §§ 111-113; *Bianchi v. Switzerland*, § 112; *McMichael v. the United Kingdom*, § 91; *B. v. the United Kingdom*, §§ 63-65; *Golder v. the United Kingdom*, § 36). The difference between the purpose pursued by the respective safeguards afforded by Articles 6 and 8 may, in the light of the particular circumstances, justify the examination of the same set of facts under both Articles (compare *O. v. the United Kingdom*, §§ 65-67; *Golder v. the United Kingdom*, §§ 41-45; *Macready v. the Czech Republic*, § 41; *Bianchi v. Switzerland*, § 113).

25. The Court is the master of the characterisation to be given in law to the facts of the case and is not bound by the characterisation given by the applicant or the Government (*Soares de Melo v. Portugal*, § 65; *Mitovi v. the former Yugoslav Republic of Macedonia*, § 49; *Macready v. the Czech Republic*, § 41; *Havelka and Others v. the Czech Republic*, § 35). Thus, the Court will consider under which Article(s) the complaints should be examined.

26. In cases where family life is at stake and the applicants invoke Articles 6 and 8, the Court can decide to examine the facts solely under Article 8. Furthermore, the Court has found that respect for family life requires that future relations between parent and child be determined solely in the light of all relevant considerations and not by the mere passing of time (*Macready v. the Czech Republic*, § 41). According to the Court, the procedural aspect of Article 8 requires the decision-making process leading to measures of interference to be fair and to afford due respect to the interests safeguarded by the Article (*Soares de Melo v. Portugal*, § 65; *Santos Nunes v. Portugal*, § 56; *Havelka and Others v. the Czech Republic*, §§ 34-35; *Wallová and Walla v. the Czech Republic*, § 47; *Kutzner v. Germany*, § 56; *McMichael v. the United Kingdom*, § 87). Therefore, the Court may also have regard, under Article 8, to the form and length of the decision-making process (*Macready v. the Czech Republic*, § 41) Also, the State has to take all appropriate measures to reunite parents and children (*Santos Nunes v. Portugal*, § 56).

27. For example, whether a case has been heard within a reasonable time – as is required by Article 6 § 1 of the Convention – also forms part of the procedural requirements implicit in Article 8 (*Ribić v. Croatia*, § 92). Also, the Court has examined a complaint about the failure to enforce a decision concerning the applicants’ right to have contact only under Article 8 (*Mitovi v. the former Yugoslav Republic of Macedonia*, § 49). Likewise, the Court decided to examine under Article 8 solely the inactivity and lack of diligence of the State and the excessive length of the proceedings for the execution of the decision to grant the applicant the custody of the child (*Santos Nunes v. Portugal*, §§ 54-56).

28. Moreover, in several cases where a close link was found between the complaints raised under Article 6 and Article 8, the Court has considered the complaint under Article 6 as being part of the complaint under Article 8 (*Anghel v. Italy*, § 69; *Diamante and Pelliccioni v. San Marino*, § 151; *Kutzner v. Germany*, § 57; *Labita v. Italy* [GC], § 187). In *G.B. v. Lithuania*, the Court did not consider it necessary to examine separately whether there had been a violation of Article 6 § 1 given that the Court had found that the applicant’s procedural rights had been respected when examining her complaints under Article 8 (§ 113).

29. In *Y. v. Slovenia*, the Court examined whether the domestic trial court struck a proper balance between the protection of the applicant’s right to respect for private life and personal integrity and the defence rights of the accused where the applicant had been cross-examined by the accused during criminal proceedings concerning alleged sexual assaults (§§ 114-116).

30. In cases concerning a person’s relationship with his or her child there is a duty to exercise exceptional diligence in view of the risk that the passage of time may result in a *de facto* determination of the matter. This duty, which is decisive in assessing whether a case has been heard within a reasonable time as required by Article 6 § 1 of the Convention, also forms part of the procedural requirements implicit in Article 8 (*Süß v. Germany*, § 100; *Strömblad v. Sweden*, § 80; *Ribić v. Croatia*, § 92).

c. Article 9 (freedom of thought, conscience and religion)

31. Although Article 9 governs freedom of thought, conscience, and religious matters, the Court has established that disclosure of information about personal religious and philosophical convictions may engage Article 8 as well, as such convictions concern some of the most intimate aspects of private life (*Folgerø and Others v. Norway* [GC], § 98, where imposing an obligation on parents to disclose detailed information to the school authorities about their religious and philosophical convictions could be seen to constitute a violation of Article 8 of the Convention, even though in the case itself there was no obligation as such for parents to disclose their own convictions).

d. Article 10 (freedom of expression)

32. In cases which require the right to respect for private life to be balanced against the right to freedom of expression, the Court considers that the outcome of the application should not, in theory, vary according to whether it has been lodged with the Court under Article 8 of the Convention by the person who was the subject of the news report, or under Article 10 by the publisher. Indeed, as a matter of principle these rights deserve equal respect (*Couderc and Hachette Filipacchi Associés v. France* [GC], § 91). Accordingly, the margin of appreciation should in theory be the same in both cases. The relevant criteria defined by the case-law are as follows: contribution to a debate of public interest, the degree of notoriety of the person affected, the subject of the news report, the prior conduct of the person concerned, the content, form and consequences of the publication, and, where appropriate, the circumstances in which the photographs were taken (*ibid.*, §§ 90-93; *Von Hannover v. Germany (no. 2)* [GC], §§ 108-113; *Axel Springer AG v. Germany* [GC], §§ 89-95).

e. Article 14 (prohibition of discrimination)

33. On many occasions, Article 8 has been read in conjunction with Article 14.

34. For instance, concerning same-sex couples, the Court has attached importance to the continuing international movement towards the legal recognition of same-sex unions (*Oliari and Others v. Italy*, §§ 178 and 180-185), but leaves open the option for States to restrict access to marriage to different-sex couples (*Schalk and Kopf v. Austria*, § 108).

35. Concerning the difference in treatment on the ground of birth out of or within wedlock, the Court has stated that very weighty reasons need to be put forward before such difference in treatment can be regarded as compatible with the Convention (*Sahin v. Germany* [GC], § 94; *Mazurek v. France*, § 49; *Camp and Bourimi v. the Netherlands*, §§ 37-38). The same is true for a difference in the treatment of the father of a child born of a relationship where the parties were living together out of wedlock as compared with the father of a child born of a marriage-based relationship (*Sahin v. Germany* [GC], § 94).

36. The Court has found a violation of Article 14 read in conjunction with Article 8 as a result of discriminatory treatment on the part of the authorities’ refusal to let a binational couple keep their own surnames after marriage (*Losonci Rose and Rose v. Switzerland*, § 26).

37. Where withdrawal of parental authority had been based on a distinction essentially deriving from religious considerations, the Court held that there had been a violation of Article 8 in

conjunction with Article 14 (*Hoffmann v. Austria*, § 36, concerning the withdrawal of parental rights from the applicant after she divorced the father of their two children because she was a Jehovah’s Witness). Furthermore, where a healthy infant was taken into care because the mother chose to leave the hospital earlier than recommended by the doctors, this decision was disproportionate and in violation of Article 8 (*Hanzelkovi v. the Czech Republic*, § 79).

2. Home and correspondence

a. Article 2 (right to life)

38. As concerns interferences with the home, the Court established parallels between the State’s positive obligations under Article 8 of the Convention, Article 1 of Protocol No. 1 and Article 2 of the Convention (*Kolyadenko and Others v. Russia*, § 216).

b. Article 10 (freedom of expression)

39. Although surveillance or telephone tapping is generally examined under Article 8 alone, such a measure may be so closely linked to an issue falling under Article 10 – for example, if special powers were used to circumvent the protection of a journalistic source – that the Court examines the case under the two Articles concurrently (*Telegraaf Media Nederland Landelijke Media B.V. and Others v. the Netherlands*). In the case cited, the Court found a violation of both Articles. It held that the law had not afforded adequate safeguards in relation to the surveillance of journalists with a view to discovering their sources.

c. Article 14 (prohibition of discrimination)

40. In *Larkos v. Cyprus* [GC] the Court examined the disadvantageous situation of tenants renting State-owned property in relation to tenants renting from private landlords as regards eviction. In *Strunjak and Others v. Croatia* (dec.), it did not find it discriminatory that only tenants occupying State-owned flats had the possibility of purchasing them, whereas tenants of privately owned flats did not. In *Bah v. the United Kingdom* it examined the conditions of access to social housing. In *Karner v. Austria* it considered the issue of the right to succeed to a tenancy within a homosexual couple (see also *Kozak v. Poland* and compare with *Korelc v. Slovenia*, where it was impossible for an individual who had provided daily care to the person he lived with to succeed to the tenancy on the latter’s death). Other cases concern Articles 14 and 8 in conjunction (*Gillow v. the United Kingdom*, §§ 64-67; *Moldovan and Others v. Romania* (no. 2)).

d. Article 34 (individual applications)

41. In cases concerning the interception of a letter addressed to or received by the Court, Article 34 of the Convention, which prevents any hindrance of the effective exercise of the right of individual petition, may also be applicable (*Yefimenko v. Russia*, §§ 152-165; *Kornakovs v. Latvia*, § 157; *Chukayev v. Russia*, § 130). As a matter of fact, for the operation of the system of individual petition instituted by Article 34 of the Convention to be effective, applicants or potential applicants must be able to communicate freely with the Court without being subjected to any form of pressure from the authorities to withdraw or modify their application (*Salman v. Turkey* [GC], § 130). Delay by the prison authorities in posting letters to the Court forms an example of hindrance prohibited by the second sentence of Article 34 of the Convention (*Poleshchuk v. Russia*, § 28), as does the authorities’ refusal to send the Court the initial letter from an applicant in detention (*Kornakovs v. Latvia*, §§ 165-167). See also the chapter on prisoners’ correspondence below.

e. Article 1 of Protocol No. 1 (protection of property)

42. There may be a significant overlap between the concept of “home” and that of “property” under Article 1 of Protocol No. 1, but the existence of a “home” is not dependent on the existence of a right or interest in respect of real property (*Surugiu v. Romania*, § 63). An individual may have a property right over a particular building or land for the purposes of Article 1 of Protocol No. 1, without having sufficient ties with the property for it to constitute his or her “home” within the meaning of Article 8 (*Khamidov v. Russia*, § 128).

43. A violation of Article 8 may result from a finding of a violation of Article 1 of Protocol No. 1 (*Doğan and Others v. Turkey* [GC], § 159; *Chiragov and Others v. Armenia* [GC], § 207; *Sargsyan v. Azerbaijan* [GC], §§ 259-260), and the Court may also find a violation of one of the two Articles (*Cyprus v. Turkey* [GC], §§ 175 and 189; *Khamidov v. Russia*, §§ 139 and 146; *Rousk v. Sweden*, §§ 126 and 142; *Kolyadenko and Others v. Russia*, § 217).

In view of the crucial importance of the rights secured under Article 8 to the individual’s identity, self-determination and physical and mental integrity, the margin of appreciation afforded to States in housing matters is narrower in relation to the rights guaranteed by Article 8 than to those protected by Article 1 of Protocol No. 1 (*Gladysheva v. Russia*, § 93). Some measures that constitute a violation of Article 8 will not necessarily lead to a finding of a violation of Article 1 of Protocol No. 1 (*Ivanova and Cherkezov v. Bulgaria*, §§ 62-76). The judgment in *Ivanova and Cherkezov v. Bulgaria* highlights the difference between the interests protected by the two Articles and hence the disparity in the extent of the protection they afford, particularly when it comes to applying the proportionality requirements to the facts of a particular case (§ 74).

The Court may also consider it unnecessary to rule separately on one of the two complaints (*Öneryıldız v. Turkey* [GC], § 160; *Surugiu v. Romania*, § 75).

44. Some measures touching on enjoyment of the home should, however, be examined under Article 1 of Protocol No. 1, particularly in standard expropriation cases (*Mehmet Salih and Abdülsamet Çakmak v. Turkey*, § 22; *Mutlu v. Turkey*, § 23).

f. Article 2 § 1 of Protocol No. 4 (freedom of movement)

45. Although there is some interplay between Article 2 § 1 of Protocol No. 4, which guarantees the right to liberty of movement within the territory of a State and freedom to choose one’s residence there, and Article 8, the same criteria do not apply in both cases. Article 8 cannot be construed as conferring the right to live in a particular location (*Ward v. the United Kingdom* (dec.); *Codona v. the United Kingdom* (dec.)), whereas Article 2 § 1 of Protocol No. 4 would be devoid of all meaning if it did not in principle require the Contracting States to take account of individual preferences in this sphere.

II. Private life

A. Sphere of private life and lack of definition

46. Private life is a broad concept incapable of exhaustive definition (*E.B. v. France* [GC], § 47; *Niemietz v. Germany*, § 29; *Pretty v. the United Kingdom*, § 61; *Peck v. the United Kingdom*, § 57). However, through its case-law, the Court has provided guidance as to the meaning and scope of private life for the purposes of Article 8. Moreover, the generous approach to the definition of personal interests has allowed the case-law to develop in line with social and technological developments.

47. In some cases the Court uses both the terms of privacy and correspondence without spelling out precisely which individual interest is at stake (*Klass and Others v. Germany*, § 41; *Kopp v. Switzerland*, § 91).

48. The notion of private life is not limited to an “inner circle” in which the individual may live his own personal life as he chooses and to exclude the outside world. Respect for private life must also comprise to a certain degree the right to establish and develop relationships with other human beings (*Von Hannover v. Germany (no. 2)* [GC], § 95; *Niemietz v. Germany*, § 29; *Botta v. Italy*, § 32).

49. Given the very wide range of issues which private life encompasses, cases falling under this notion have been grouped into three broad categories (sometimes overlapping) to provide some means of categorisation, namely: (i) a person’s physical, psychological or moral integrity, (ii) his privacy and (iii) his identity. Sub-groups and examples of cases are given in each category.

1. Physical, psychological or moral integrity

50. The Court indicated for the first time that the concept of private life covered the physical and moral integrity of the person in *X and Y v. the Netherlands*, § 22. That case concerned the sexual assault of a mentally disabled sixteen-year old girl and the absence of criminal law provisions to provide her with effective and practical protection. Regarding the protection of the physical and psychological integrity of an individual from other persons, the Court has held that the authorities’ positive obligations – in some cases under Articles 2 or 3 and in other instances under Article 8 taken alone or in combination with Article 3 of the Convention – may include a duty to maintain and apply in practice an adequate legal framework affording protection against acts of violence by private individuals (*Osman v. the United Kingdom*, §§ 128-130; *Bevacqua and S. v. Bulgaria*, § 65; *Sandra Janković v. Croatia*, § 45; *A v. Croatia*, § 60; *Đorđević v. Croatia*, §§ 141-143; *Söderman v. Sweden* [GC], § 80).

51. The Court has previously found that Article 8 imposes on States a positive obligation to secure to their citizens the right to effective respect for their physical and psychological integrity (*Nitecki v. Poland* (dec); *Sentges v. the Netherlands* (dec.); *Odièvre v. France* [GC], § 42; *Glass v. the United Kingdom*, §§ 74-83; *Pentiacova and Others v. Moldova*). In addition, this obligation may involve the adoption of specific measures, including the provision of an effective and accessible means of protecting the right to respect for private life (*Airey v. Ireland*, § 33; *McGinley and Egan v. the United Kingdom*, § 101; *Roche v. the United Kingdom* [GC], § 162). Such measures may include both the provision of a regulatory framework of adjudicatory and enforcement machinery protecting individuals’ rights and the implementation, where appropriate, of these measures in different contexts (*A, B and C v. Ireland* [GC], § 245). In *Hämäläinen v. Finland* [GC], § 64, the Grand Chamber, reversing the position taken by the Chamber, considered it more appropriate to examine the applicant’s complaint (to have her new gender legally recognised while remaining married) with regard to the positive aspect of Article 8, rather than as an interference by a public authority.

a. Victims of violence

52. The Court has long held that the State has an affirmative responsibility to protect individuals from violence by third parties. This has been particularly true in cases involving children and victims of domestic violence. While there are often violations of Articles 2 and 3 in such cases, Article 8 is also applied because violence threatens bodily integrity and the right to a private life. In particular, “Under Article 8 the States have a duty to protect the physical and moral integrity of an individual from other persons. To that end they are to maintain and apply in practice an adequate legal framework affording protection against acts of violence by private individuals” (*Sandra Janković v. Croatia*, § 45).

53. In respect of children, who are particularly vulnerable, the measures applied by the State to protect them against acts of violence falling within the scope of Article 8 must also be effective. This should include reasonable steps to prevent ill-treatment of which the authorities had, or ought to have had, knowledge and effective deterrence against such serious breaches of personal integrity (*Z and Others v. the United Kingdom* [GC], § 73; *M.P. and Others v. Bulgaria*, § 108). Such measures must be aimed at ensuring respect for human dignity and protecting the best interests of the child (*Pretty v. the United Kingdom*, § 65; *C.A.S. and C.S. v. Romania*, § 82).

54. Regarding serious acts such as rape and sexual abuse of children, where fundamental values and essential aspects of private life are at stake, it falls to the member States to ensure that efficient criminal law provisions are in place (*X and Y v. the Netherlands*, § 27; *M.C. v. Bulgaria*, § 150, in which the approach taken by the investigator and the prosecutors in the case fell short of the requirements inherent in the States’ positive obligations; *M.G.C. v. Romania*, § 74) as well as effective criminal investigations (*C.A.S. and C.S. v. Romania*, § 72; *M.P. and Others v. Bulgaria*, §§ 109-110; *M.C. v. Bulgaria*, § 152; *A, B and C v. Latvia*, § 174) and the possibility to obtain reparation and redress (*C.A.S. and C.S. v. Romania*, § 72). However, there is no absolute right to obtain the prosecution or conviction of any particular person where there were no culpable failures in seeking to hold perpetrators of criminal offences accountable (*Brecknell v. the United Kingdom*, § 64; *Szula v. the United Kingdom* (dec.)).

55. In cases of domestic violence, the Court also holds States responsible for protecting victims, particularly when the risks of violence are known by State officers and when officers fail to enforce measures designed to protect victims of violence (*Bevacqua and S. v. Bulgaria*; *A v. Croatia*; *Hajduová v. Slovakia*; *Kaluczka v. Hungary*; *B. v. Moldova*). The State also has a positive responsibility to protect children from witnessing domestic violence in their homes (*Eremia v. the Republic of Moldova*). The Court will also apply its child custody and care jurisprudence (see below), with particular deference to removal decisions based on patterns of domestic violence in the home (*Y.C. v. the United Kingdom*).

56. In *Y. v. Slovenia*, the Court found that in the criminal proceedings concerning alleged sexual assaults against the applicant, the State did not afford sufficient protection to her right to respect for private life, and especially for her personal integrity when being cross-examined by the accused (§§ 114-116).

57. States should also provide adequate protection for dangerous situations, such as for a woman attacked in her home or for a woman who had acid thrown on her face (*Sandra Janković v. Croatia*; *Ebcin v. Turkey*). This is particularly true when the State should have known of a particular danger. For example, the Court found a violation when a woman was attacked by stray dogs in an area where such animals were a common problem (*Georgel and Georgeta Stoicescu v. Romania*, § 62).

58. However, the Court does require a connection between the State and the injury suffered. If there is no clear link between State action (or inaction) and the alleged harm, such as fighting between school children, then the Court may declare the case inadmissible (*Đurđević v. Croatia*). The Court also requires that the violence inflicted on the individual reaches a certain threshold level and

that, for example, physical punishment in schools may constitute a violation of Article 8, but may also be proportionate and therefore not violate the individual's right to bodily integrity (*Costello-Roberts v. the United Kingdom*).

59. Conditions of detention may give rise to an Article 8 violation, in particular where the conditions do not attain the level of severity necessary for a violation of Article 3 (*Raninen v. Finland*, § 63). Also, the requirement to undergo a strip search will generally constitute an interference under Article 8 (*Milka v. Poland*, § 45).

b. Reproductive rights

60. The Court has found that the prohibition of abortion when sought for reasons of health and/or well-being falls within the scope of the right to respect for one's private life and accordingly within Article 8 (*A, B and C v. Ireland* [GC], §§ 214 and 245). In particular, the Court held in this context that the State's obligations include both the provision of a regulatory framework of adjudication and enforcement machinery protecting individuals' rights, and the implementation, where appropriate, of specific measures (*ibid.*, § 245; *Tysiąc v. Poland*, § 110; *R.R. v. Poland*, § 184). Indeed, "once the state, acting within its limits of appreciation, adopts statutory regulations allowing abortion in some situations, ... the legal framework devised for this purpose should be shaped in a coherent manner which allows the different legitimate interests involved to be taken into account adequately and in accordance with the obligations deriving from the Convention" (*A, B and C v. Ireland* [GC], § 249; *R. v. Poland*, § 187; *P. and S. v. Poland*, § 99; *Tysiąc v. Poland*, § 116).

61. In *P. and S. v. Poland*, the Court reiterated that the notion of private life within the meaning of Article 8 applies both to decisions to become and not to become a parent (*Evans v. the United Kingdom* [GC], § 71; *R.R. v. Poland*, § 180; *Dickson v. the United Kingdom* [GC], § 66).

62. The circumstances of giving birth incontestably form part of one's private life for the purposes of Article 8 (*Ternovszky v. Hungary*, § 22). The Court found in that case that the applicant was in effect not free to choose to give birth at home because of the permanent threat of prosecution faced by health professionals and the absence of specific and comprehensive legislation on the subject. However, national authorities have considerable room for manoeuvre in cases which involve complex matters of health-care policy and allocation of resources. Given that there is currently no consensus among member States of the Council of Europe in favour of allowing home births, a State's policy to make it impossible in practice for mothers to be assisted by a midwife during their home births did not lead to a violation of Article 8 (*Dubská and Krejzová v. the Czech Republic* [GC]).

63. The right of a couple to conceive a child and to make use of medically assisted procreation for that purpose is protected by Article 8, as such a choice is a form of expression of private and family life (*S.H. and Others v. Austria* [GC], § 82; *Knecht v. Romania*, § 54). The same applies for pre-implantation diagnosis when artificial procreation and termination of pregnancy on medical grounds are allowed (*Costa and Pavan v. Italy*). The latter case concerned an Italian couple who were healthy carriers of cystic fibrosis and wanted, with the help of medically-assisted procreation and genetic screening, to avoid transmitting the disease to their offspring. In finding a violation of Article 8, the Court noted the inconsistency in Italian law that denied the couple access to embryo screening but authorised medically-assisted termination of pregnancy if the foetus showed symptoms of the same disease. The Court concluded that the interference with the applicants' right to respect for their private life and family life had been disproportionate. Where applicants who, acting outside any standard adoption procedure, had brought to Italy from abroad a child who had no biological tie with either parent, and who had been conceived – according to the domestic courts – through assisted reproduction techniques that were unlawful under Italian law, the Court found that there was no family life between the applicants and the child. It considered, however, that the impugned measures pertained to the applicants' private life, but concluded no violation of Article 8 taking into consideration that the public interest at stake weighed heavily in the balance, while comparatively

less weight was to be attached to the applicants' interest in their personal development by continuing their relationship with the child (*Paradiso and Campanelli v. Italy* [GC], §§ 165 and 215).

64. With regard to prenatal medical tests, the Court found a violation of Article 8 in its procedural aspect where the domestic courts failed to investigate fully the applicant's claim that she had been denied adequate and timely medical care in the form of an antenatal screening test which would have indicated the risk of her foetus having a genetic disorder and would have allowed her to choose whether to continue the pregnancy (*A.K. v. Latvia*, §§ 93-94).

65. Article 8 also applies to sterilisation procedures, "As it concerns one of the essential bodily functions of human beings, it bears on manifold aspects of the individual's personal integrity including his or her physical and mental well-being and emotional, spiritual and family life" (*V.C. v. Slovakia*, § 106). The Court has determined that States have a positive obligation to ensure effective legal safeguards to protect women from non-consensual sterilisation, with a particular emphasis on the protection of reproductive health for women of Roma origin. In several cases, the Court has found that Roma women required protection against sterilisation because of a history of non-consensual sterilisation against this vulnerable ethnic minority (*V.C. v. Slovakia*, §§ 154-155; *I.G. and Others v. Slovakia*, §§ 143-146). This jurisprudence also applies to inadvertent sterilisation, when the doctor fails to perform adequate checks or obtain informed consent during an abortion procedure (*Csoma v. Romania*, §§ 65-68).

66. The Court also found that the ability of the applicant to exercise a conscious and considered choice regarding the fate of her embryos concerned an intimate aspect of her personal life, of her right to self-determination, and thus of her private life (*Parrillo v. Italy* [GC], § 159). The margin of appreciation of the member States on this matter is wide, given the lack of a European consensus (*ibid.*, § 180). A statutory prohibition on the donation to research of cryopreserved embryos which had been created following the applicant's *in vitro* fertilisation treatment was therefore not considered to be in violation of the applicant's right to private life.

c. Forced medical treatment

67. The Court has also addressed the implications of Article 8 for other cases involving forced medical treatment or medical injury (in addition to sterilisations). On some occasions, the Court has found that relatively minor medical tests, which are compulsory (*Acmanne and Others v. Belgium* (dec.); *Boffa and Others v. San Marino* (dec.); *Salvetti v. Italy* (dec.)) or authorised by court order (*X v. Austria* (dec.); *Peters v. the Netherlands*) may constitute a proportionate interference with Article 8 even without the consent of the patient.

68. Conversely, the Court has held that a doctor's decision to treat a severely disabled child contrary to a parent's express wishes, and without the opportunity for judicial review of the decision, violated Article 8 (*Glass v. the United Kingdom*). The Court similarly found that doctors taking blood tests and photographs of a child who presented symptoms consistent with abuse without the consent of the child's parents violated the child's right to physical integrity under Article 8 (*M.A.K. and R.K. v. the United Kingdom*). The Court also found that the State's decision to submit a woman in police custody to a non-custodial gynaecological examination was not performed in accordance with the law and violated Article 8 (*Y.F. v. Turkey*, §§ 41-44).

69. The Court further determined that there were Article 8 violations when a State failed to provide adequate information to divers about the health risks associated with decompression tables (*Vilnes and Others v. Norway*, § 244) and when another State failed to provide adequate means of ensuring compensation for injuries caused by State medical errors (*Codarcea v. Romania*). The Court, however, decided that a case against Turkey for failing to compensate individuals who were injured by a non-compulsory vaccine was inadmissible (*Baytüre and Others v. Turkey* (dec.)).

d. Mental illness

70. With regard to the positive obligations that member States have in respect of vulnerable individuals suffering from mental illness, the Court has affirmed that, “Mental health must also be regarded as a crucial part of private life associated with the aspect of moral integrity. The preservation of mental stability is in that context an indispensable precondition to effective enjoyment of the right to respect for private life” (*Bensaid v. the United Kingdom*, § 47).

71. The Court has long held that an individual’s right to refuse medical treatment falls within the scope of Article 8 (see above). This includes the rights of mentally ill patients to refuse psychiatric medication. In *X. v. Finland*, the Court reaffirmed that “a medical intervention in defiance of the subject’s will give rise to an interference with respect for his or her private life, and in particular his or her right to physical integrity.” (§ 212). In some circumstances forced medication of a mentally ill patient may be justified, in order to protect the patient and for the protection of others. However, such decisions must be made against the background of clear legal guidelines and with the possibility of judicial review (*X. v. Finland*, § 220; *Storck v. Germany*, §§ 164-169; *Shopov v. Bulgaria*, § 47).

72. The Court has also found that States have an obligation under Article 8 to provide protection for a mentally ill person’s right to private and family life, particularly when the children of a mentally ill person are taken into State care. States must ensure that mentally ill or disabled individuals are able to participate effectively in proceedings regarding the placement of their children (*B. v. Romania (no. 2)*, § 117; *K. and T. v. Finland* [GC]). Such cases are also linked to the Article 8 right to family life (see below), particularly, for example, when a mentally disabled mother was not informed about her son’s adoption and was unable to participate in, or to contest, the adoption process (*A.K. and L. v. Croatia*).

73. In cases where States impose legal incapacity on mentally ill individuals, the Court has articulated procedural requirements necessary to protect Article 8 rights. The Court often addresses these Article 8 violations in conjunction with Articles 5 and 6. The Court emphasises the quality of the decision-making procedure (*Salontaji-Drobnjak v. Serbia*, §§ 144-145). The Court has held that the deprivation of legal capacity undeniably constitutes a serious interference with the right to respect for a person’s private life protected under Article 8. A domestic court decision depriving an applicant of his capacity to act independently in almost all areas of his life: at the relevant time he was no longer able to sell or buy any property on his own, work, choose a place of residence, marry, or bring a court action in Lithuania amounted to an interference with right to respect for his private life (*A.N. v. Lithuania*, § 111). In incapacitation proceedings, decisions regarding placement in a secure facility, decisions regarding the disposition of property, and procedures related to children (see above), the Court has held that States must provide adequate safeguards to ensure that mentally disabled individuals are able to participate in the process and that the process is sufficiently individualised to meet their unique needs (*Zehentner v. Austria*, § 65; *Shtukaturov v. Russia*, §§ 94-96; *Herczegfalvy v. Austria*, § 91).

e. Health care and treatment

74. Although the right to health is not as such among the rights guaranteed under the Convention or its Protocols, the High Contracting Parties have, parallel to their positive obligations under Article 2 of the Convention, a positive obligation under its Article 8, firstly, to have in place regulations compelling both public and private hospitals to adopt appropriate measures for the protection of their patients’ physical integrity and, secondly, to provide victims of medical negligence access to proceedings in which they could, in appropriate cases, obtain compensation for damage (*Vasileva v. Bulgaria*, § 63).

75. When it comes to access to health services, the Court has been cautious to extend Article 8 in a manner that would implicate extensive State resources because, “In view of their familiarity with the

demands made on the health care system as well as with the funds available to meet those demands, the national authorities are in a better position to carry out this assessment than an international court” (*Pentiacova and Others v. Moldova* (dec.)).

76. The Court ruled that an application against a decision by UK authorities not to implement a needle-exchange programme for drug users in prisons was inadmissible (*Shelley v. the United Kingdom* (dec.)). In that case the Court held that there was no authority that placed any obligation under Article 8 on a Contracting State to pursue any particular preventive health policy. It also found that there was no violation of Article 8 as a result of Bulgaria’s refusal to allow terminally ill patients to use unauthorised, experimental drugs (*Hristozov and Others v. Bulgaria*; *Durisotto v. Italy* (dec.)). Furthermore, the Court declared a case inadmissible in which a severely disabled individual sought a robotic arm to assist his mobility (*Sentges v. the Netherlands* (dec.)). The Court did, however, find that reducing the level of care given to a woman with limited mobility violated Article 8, but only for a limited period during which the UK did not comply with its own laws (*McDonald v. the United Kingdom*).

f. End of life issues

77. In *Pretty v. the United Kingdom*, § 67, the Court first concluded that the right to decide the manner of one’s death is an element of private life under Article 8. Later case-law has articulated that “an individual’s right to decide the way in which and at which point his or her life should end, provided that he or she was in a position to freely form his or her own judgment and to act accordingly, was one of the aspects of the right to respect for private life within the meaning of Article 8 of the Convention” (*Haas v. Switzerland*, § 51).

78. The Court has found that member States have a wide margin of appreciation to treat questions of assisted suicide. Currently there is no consensus among Council of Europe member States in favour of permitting the withdrawal of life-sustaining treatment (*Lambert and Others v. France* [GC], § 148). Permissible laws include the requirement that life-ending drugs be provided only by prescription by a physician (*Haas v. Switzerland*, § 52). Indeed the Court distinguished *Haas v. Switzerland* from *Pretty v. the United Kingdom*. Unlike the *Pretty* case, the Court observed in *Haas v. Switzerland* that the applicant alleged not only that his life was difficult and painful, but also that, if he did not obtain the substance in question, the act of suicide itself would be stripped of dignity. In addition, and again in contrast to the *Pretty* case, the applicant could not in fact be considered infirm, in that he was not at the terminal stage of an incurable degenerative disease which would prevent him from taking his own life.

79. In *Koch v Germany* the applicant complained that the domestic courts’ refusal to examine the merits of his complaint about the Federal Institute’s refusal to authorise his wife to acquire a lethal dose of pentobarbital of sodium had infringed his right to respect for private and family life under Article 8 of the Convention. The Court found a violation of Article 8 on account of the domestic courts’ refusal to examine the merits of his motion.

80. The Court does not consider it appropriate to extend Article 8 so as to impose on the Contracting States a procedural obligation to make available a remedy requiring the domestic courts to decide on the merits of the claim that the ban on assisted suicide would violate the right to private and family life (*Nicklinson and Lamb v. the United Kingdom* (dec.), § 84).

g. Disability issues

81. Regarding a disabled applicant, the Court held that, “lack of access to public buildings and buildings open to the public affects her life in such a way as to interfere with her right to personal development and her right to establish and develop relationships with other human beings and the outside world” and that therefore the State might have an obligation to provide access to public buildings. However, the Court ultimately found that the “applicant has not demonstrated the

existence of a special link between the lack of access to the buildings in question and the particular needs of her private life” (*Zehnalova and Zehnal v. the Czech Republic* (dec.); *Botta v. Italy*; *Mółka v. Poland* (dec)).

82. The Court also found that the decision to remove children from two blind parents due to a finding of inadequate care was not justified by the circumstances and violated the parents’ Article 8 right to family life (*Saviny v. Ukraine*). On the other hand, the Court found no violation of Article 8 with regard to a statutory scheme developed in France to compensate parents for the costs of disabled children, even when the parents would have chosen not to have the child in the absence of a mistake by the State hospital regarding the diagnosis of a genetic defect (*Maurice v. France* [GC]; *Draon v. France* [GC]). The Court also provides a wide margin for States to determine the amount of aid given to parents of disabled children (*La Parola and Others v. Italy* (dec.)), and has held that when a State provides adequate domestic remedies for disabilities caused by inadequate care at the birth of a child, then there is no Article 8 violation (*Spyra and Kranczkowski v. Poland*, §§ 99-100).

h. Issues concerning burial

83. The Court has held that the Article 8 protection of private and family life covers the right to bury family members. Individuals have challenged the State’s failure to grant access to the remains of deceased family members in a wide range of contexts.

84. In *Hadri-Vionnet v. Switzerland*, the Court found that the municipality’s failure to inform the mother about the location and time of the burial of her still-born son was not authorised by law and violated her right to private and family life under Article 8 (*Pannullo and Forte v. France*). Similarly, in *Zorica Jovanović v. Serbia*, the Court held that the hospital’s failure to give information to the applicant regarding the death of her infant son and the subsequent disappearance of his body violated Article 8, even though the child had died in 1983, because of the State’s on-going failure to provide information about what had happened. The Court also held that Russia’s refusal to allow a still-born baby to take the name of its biological father, because of the legal presumption that the mother’s husband was the father, violated the mother’s Article 8 rights to bury her child with the name of his true father (*Znamenskaya v. Russia*).

85. Family members have also challenged the length of time between death and burial and the treatment of the deceased’s body before its return to the family. For example, the Court found that an extended delay in returning samples taken from the applicants’ daughter’s body by police, which prevented them from burying her in a timely manner, violated their Article 8 right to private and family life (*Girard v. France*). The Court also found that a hospital’s removal of a deceased person’s organs without informing his mother and without seeking her consent was not done in accordance with law and violated her right to private life under Article 8 (*Petrova v. Latvia*, §§ 97-98). In line with this case-law, the Court found a violation of Article 8 in the removal of tissue from a deceased person without the knowledge and consent of his spouse because of the lack of clarity in the domestic law and the absence of legal safeguards against arbitrariness (*Elberte v. Latvia*, § 115).

86. However, in *Elli Poluhas Dödsbo v. Sweden*, although the Court acknowledged that the applicant’s Article 8 right to private life was engaged, it found Sweden’s refusal to transfer an urn from one burial plot to another, in order that a deceased person’s remains be located with his family, did not violate Article 8 because the decision was made with due consideration to the interests of the deceased’s wife and fell within the wide margin of appreciation available in such cases. The Court also found that the representative of a deceased person who sought to prevent the State from using DNA of the deceased in a paternity suit did not have a claim that fell within the scope of private life and could not bring a suit on behalf of the deceased (*Estate of Kresten Filtenborg Mortensen v. Denmark* (dec.)).

87. The Court has also addressed a State’s policy of refusing to return the bodies of accused terrorists for burial. While recognising that the State has an interest in protecting public safety,

particularly when national security is implicated, the Court found that the absolute ban on returning the bodies of alleged terrorists did not strike a proper balance between the State and the Article 8 rights of the family members of the deceased (*Sabanchiyeva and Others v. Russia*, § 146).

i. Environmental issues

88. Although there is no explicit right to a healthy environment under the Convention (*Hatton and Others v. the United Kingdom* [GC], § 96), the Court has decided various cases in which the quality of an individual's surrounding environment is at issue, reasoning that an individual's well-being may be negatively impacted by unsafe or disruptive environmental conditions. Article 8 may apply in environmental cases whether the pollution is directly caused by the State or whether State responsibility arises from the failure to regulate private-sector activities properly. Regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole; and in both contexts the State enjoys a certain margin of appreciation in determining the steps to be taken to ensure compliance with the Convention (*Powell and Rayner v. the United Kingdom*; *López Ostra v. Spain*; § 51; *Giacomelli v. Italy*, § 78).

89. The Court has ruled that severe environmental pollution could interfere with the right to respect for private and family life (and home¹) by potentially affecting individuals' well-being and preventing them from enjoying their homes, thus adversely affecting their private and family life. In *López Ostra v. Spain*, § 51, the applicant claimed that the family home was subject to serious pollution from a private tannery reprocessing plant built with State subsidies on municipal land 12 metres from applicant's flat. In *Giacomelli v. Italy*, §§ 97-98, pollution from a privately owned toxic waste treatment plant 30 metres from the applicant's home was found to constitute a violation of Article 8, as well as in *Fadeyeva v. Russia*, §§ 133-134, where domestic authorities violated the right to home and private life of a woman by failing to offer her any effective solution to help her move away from a dangerous "sanitary security zone" around Russia's largest iron smelter in which there was high pollution and dangerous chemical emissions.

90. In several cases, the failure to provide information about environmental risks or hazards was found to constitute a violation of Article 8 (*Tătar v. Romania*, § 97, where authorities failed to carry out an adequate risk assessment of environmental hazards caused by a mining company; *Guerra and Others v. Italy*, where the local population was not provided with essential information that would have enabled them to assess the risks they and their families might run if they continued to live near a chemical factory, right up until the production of fertilisers ceased in 1994).

91. The Court has also found offensive smells from a refuse tip near a prison that reached a prisoner's cell, regarded as the only "living space" available to him for several years, to fall under the right to private and family life (*Brândușe v. Romania*, §§ 64-67), as well as the prolonged failure by authorities to ensure the collection, treatment and disposal of rubbish (*Di Sarno and Others v. Italy*, § 112).

92. The Court has established that the decision-making process leading to measures of interference must be fair and afford due respect for the interests of the individual as safeguarded by Article 8 (*Taşkın and Others v. Turkey*, § 118, where administrative authorities failed to provide applicants with effective procedural protection concerning the operation of a goldmine site; *Hardy and Maile v. the United Kingdom*, § 217).

93. The Court declared Article 8 applicable where negative environmental conditions resulted from living under the flight paths of Heathrow aircraft because "[i]n each case, albeit to greatly differing degrees, the quality of the applicant's private life and the scope for enjoying the amenities of his home ha[d] been adversely affected by the noise generated by aircraft using Heathrow Airport," allowing that environmental claims could, in appropriate circumstances be brought within the ambit

1. This chapter should be read in conjunction with those on Home.

of Article 8 (*Powell and Rayner v. the United Kingdom*, § 40). Ultimately, however, the Court concluded that the failure of the government to reduce night flights from Heathrow Airport in the interests of the economic well-being of the country did not breach the Article 8 rights of those living beneath the flight path, taking into account the small number of people afflicted by sleep disturbance (see also *Hatton and Others v. the United Kingdom* [GC], §§ 129-130).

94. In several later noise pollution cases, the Court found that the respondent State had failed to discharge its positive obligation to guarantee the applicant’s right to respect for his/her home and her private life. For example, failing to regulate the noise levels of a nightclub near the applicant’s home in Valencia was in breach of Article 8 of the Convention (*Moreno Gómez v. Spain*, §§ 62-63), as was failing to address excessive noise disturbance from heavy traffic on the applicant’s street resulting from traffic changes (*Deés v. Hungary*, § 23), or concerning noise nuisance caused by a computer club in a block of flats (*Mileva and Others v. Bulgaria*, § 97).

j. Sexual orientation and sexual life

95. The Court has held that elements such as gender identification, name and sexual orientation and sexual life are important elements of the personal sphere protected by Article 8 (*B. v. France*, § 63; *Burghartz v. Switzerland*, § 24; *Dudgeon v. the United Kingdom*, § 41; *Laskey, Jaggard and Brown v. the United Kingdom*, § 36; *P.G. and J.H. v. the United Kingdom*). Legislation criminalising sexual acts between consenting homosexuals was found to breach Article 8 (*A.D.T. v. the United Kingdom*, §§ 36-39; *Dudgeon v. the United Kingdom*, § 41). However, Article 8 does not prohibit criminalisation of all private sexual activity, such as incest (*Stübing v. Germany*), or sadomasochistic sexual activities (*Laskey, Jaggard and Brown v. the United Kingdom*).

96. An important issue has been access to gender reassignment surgery and other treatments for transgender people. Although the Court has not found a general right to access such treatment, it has found that procedures which deny insurance coverage for such treatment may violate Article 8 (*Schlumpf v. Switzerland*; *Van Kuck v. Germany*). Similarly, the Court found a violation where the absence of a law regulating gender reassignment surgery prevented medical facilities from providing access to such procedures (*L. v. Lithuania*, § 57).

97. In a series of cases, the Court held that any ban on the employment of homosexuals in the military constitutes a breach of the right to respect for private life as protected by Article 8 (*Lustig-Prean and Beckett v. the United Kingdom*; *Smith and Grady v. the United Kingdom*; *Perkins and R. v. the United Kingdom*; *Beck and Others v. the United Kingdom*).

k. Professional or business activities

98. The notion of “private life” does not exclude, in principle, activities of a professional or business nature. Indeed, private life encompasses the right for an individual to form and develop relationships with other human beings, including relationships of a professional or business nature (*C. v. Belgium*, § 25; *Oleksandr Volkov v. Ukraine*, § 165). It is, after all, in the course of their working lives that the majority of people have a significant opportunity of developing relationships with the outside world (*Niemietz v. Germany*, § 29).

99. Therefore, restrictions imposed on access to a profession have been found to affect “private life” (*Sidabras and Džiautas v. Lithuania*, § 47; *Bigaeva v. Greece*, §§ 22-25). Likewise, dismissal from office has been found to interfere with the right to respect for private life (*Özpinar v. Turkey*, §§ 43-48). In *Oleksandr Volkov v. Ukraine*, the Court found that such a dismissal for professional fault constituted an interference with his right to respect for “private life” within the meaning of Article 8 (§§ 165-167). The Court found a violation of Article 8 where the applicant was transferred to a less important post in a city which was less important in administrative terms, following a report that he had particular religious beliefs and that his wife wore the Islamic veil (*Sodan v. Turkey*, §§ 57-60). Another violation was found in a case where the applicant was removed from his teaching post

following a change affecting the equivalence of his degree obtained abroad (*Şahin Kuş v. Turkey*, §§ 51-52).

100. The Court has also noted that, although an applicant could not prove that there had been interference, in principle, Article 8 extends to private communications made in connection with one's workplace (*Halford v. the United Kingdom*). In *Fernández Martínez v. Spain* [GC], the Court noted that “the interaction between private life *stricto sensu* and professional life is especially striking” in this case, as the nature of the applicant's professional activities, and eventual dismissal, directly impacted his conduct in his private life (§ 111).

2. Privacy

101. As the Court has consistently held “the concept of private life extends to aspects relating to personal identity, such as a person's name, photo, or physical and moral integrity; the guarantee afforded by Article 8 of the Convention is primarily intended to ensure the development, without outside interference, of the personality of each individual in his relations with other human beings. There is thus a zone of interaction of a person with others, even in a public context, which may fall within the scope of private life” (*Von Hannover v. Germany (no. 2)* [GC], § 95). Furthermore, “The concept of ‘private life’ is a broad term not susceptible to exhaustive definition, which covers the physical and psychological integrity of a person and can therefore embrace multiple aspects of a person's identity, such as gender identification and sexual orientation, name or elements relating to a person's right to their image... It covers personal information which individuals can legitimately expect should not be published without their consent” (*Axel Springer AG v. Germany* [GC], § 83).

102. With respect to surveillance and the collection of private data by agents of the State, “such information, when systematically collected and stored in a file held by agents of the State, falls within the scope of ‘private life’ for the purposes of Article 8 § 1 of the Convention. That is all the more so in the instant case as some of the information has been declared false and is likely to injure the applicant's reputation” (*Rotaru v. Romania* [GC], § 44). In applying this principle, the Court has explained that, “there are a number of elements relevant to consideration of whether a person's private life is concerned by measures that take place outside a person's home or private premises. Since there are occasions when people knowingly or intentionally involve themselves in activities which are or may be recorded or reported in a public manner, a person's reasonable expectations as to privacy may be a significant, although not necessarily conclusive, factor. A person who walks down the street will, inevitably, be visible to any member of the public who is also present. Monitoring by technological means of the same public scene (for example, a security guard viewing through closed-circuit television) is of a similar character. Private-life considerations may arise, however, once any systematic or permanent record comes into existence of such material from the public domain. It is for this reason that files gathered by security services on a particular individual fall within the scope of Article 8, even where the information has not been gathered by any intrusive or covert method” (*P.G. and J.H. v. the United Kingdom*, § 57).

a. Right to one's image and photographs; the publishing of photos, images, and Articles

103. Regarding photographs, the Court has stated that a person's image constitutes one of the chief attributes of his or her personality, as it reveals the person's unique characteristics and distinguishes the person from his or her peers. The right to the protection of one's image is thus one of the essential components of personal development. Although freedom of expression includes the publication of photographs, the Court has nonetheless found that the protection of the rights and reputation of others takes on particular importance in this area, as photographs may contain very personal or even intimate information about an individual or his or her family (*Von Hannover v. Germany (no. 2)* [GC], § 103). The Court has articulated the key factors to consider when balancing

the right to reputation under Article 8 and freedom of expression under Article 10 as follows: contribution to a debate of general interest; how well known is the person concerned and what is the subject of the report?; prior conduct of the person concerned; content, form and consequences of the publication; circumstances in which the photos were taken; and severity of the sanction imposed (*ibid.*, §§ 108-113; *Axel Springer AG v. Germany* [GC], §§ 89-95; *Couderc and Hachette Filipacchi Associés v. France* [GC], §§ 90-93).

104. Thus, everyone, including people known to the public, has a legitimate expectation that his or her private life will be protected (*Von Hannover v. Germany (no. 2)* [GC], §§ 50-53 and 95-99; *Sciacca v. Italy*, § 29; *Reklos and Davourlis v. Greece*, § 40; *Alkaya v. Turkey*, protecting the private address of a famous actress). The Court's case-law mainly presupposes the individual's right to control the use of their image, including the right to refuse publication thereof (*Reklos and Davourlis v. Greece*, §§ 40 and 43, in which photographs of a new-born baby were taken in a private clinic without the parents' prior consent and the negatives retained; *Von Hannover v. Germany (no. 2)* [GC], § 96).

105. The State has positive obligations to ensure that efficient criminal law provisions are in place to prohibit filming without consent, particularly in the case where the victim is a minor and the incident takes place in the home (*Söderman v. Sweden* [GC], § 117, concerning the attempted covert filming of a 14-year old girl by her stepfather while she was naked, and her complaint that the Swedish legal system, which at the time did not prohibit filming without someone's consent, had not protected her against the violation of her personal integrity).

106. The Court has found video surveillance of public places where the visual data are recorded, stored and disclosed to the public to fall under Article 8 (*Peck v. the United Kingdom*, §§ 57-63). In particular, the disclosure to the media for broadcast use of video footage of an applicant whose suicide attempt was caught on surveillance television cameras was found to be a serious interference with the applicant's private life, notwithstanding that he was in a public place at the time (*ibid.*, § 87).

107. In the case of persons arrested or under criminal prosecution, the Court has held on various occasions that the recording of a video in the law enforcement context or the release of the applicants' photographs by police authorities to the media constituted an interference with their right to respect for private life. The Court has found violations of Article 8 where police made applicants' photographs from the official file available to the press without their consent (*Khuzhin and Others v. Russia*, §§ 115-118; *Sciacca v. Italy*, §§ 29-31; *Khmel v. Russia*, § 40; *Toma v. Romania*, §§ 90-93), and where the posting of an applicant's photograph on the wanted board was not in accordance with domestic law (*Giorgi Nikolaishvili v. Georgia*, §§ 129-131).

108. However, the Court has found that the taking and retention of a photograph of a suspected terrorist without her consent was not disproportionate to the legitimate terrorist-prevention aims of a democratic society (*Murray v. the United Kingdom*, § 93).

109. Article 8 does not necessarily require monetary compensation to the victim if other redress mechanisms are put in place (*Kahn v. Germany*, § 75). In this case, no award of damages was made against the publisher for breaching an injunction not to publish photographs of the two children of a former goalkeeper with the German national football team.

b. Protection of individual reputation; defamation

110. The right to protection of reputation is protected by Article 8 of the Convention as part of the right to respect for private life (*Axel Springer AG v. Germany* [GC], § 83; *Chauvy and Others v. France*, § 70; *Pfeifer v. Austria*, § 35; *Petrina v. Romania*, § 28; *Polanco Torres and Movilla Polanco v. Spain*, § 40).

111. When examining the necessity of an interference in a democratic society in the interests of the "protection of the reputation or rights of others", the Court may be required to verify whether the

domestic authorities struck a fair balance when protecting two values guaranteed by the Convention which may come into conflict with each other in certain cases, for instance freedom of expression protected by Article 10 and the right to respect for private life enshrined in Article 8 (*Hachette Filipacchi Associés v. France*, § 43; *MGN Limited v. the United Kingdom*, § 142).

112. In order for Article 8 to come into play, an attack on a person’s reputation must attain a certain level of seriousness and in a manner causing prejudice to personal enjoyment of the right to respect for private life (*Axel Springer AG v. Germany* [GC], § 83). There must also be a sufficient link between the applicant and the alleged attack on reputation (*Putistin v. Ukraine*, § 40). The Court did not find a violation of Article 8 in a case concerning an audio-visual recording which was partly broadcast without the applicant’s consent, because among other things, it criticised the commercial practices in a certain industry, rather than the applicant himself (*Haldimann and Others v. Switzerland*, § 52). A television report that described the applicant as a “foreign pedlar of religion” constituted a violation of Article 8 (*Bremner v. Turkey*, §§ 72 and 84).

113. Article 8 cannot be relied on in order to complain of a loss of reputation which is the foreseeable consequence of one’s own actions. In *Gillberg v. Sweden* [GC], § 67, the applicant maintained that a criminal conviction in itself affected the enjoyment of his “private life” by prejudicing his honour and reputation. However this line of reasoning was not accepted by the Court (see also, *inter alia*, *Sidabras and Džiautas v. Lithuania*, § 49; *Mikolajová v. Slovakia*, § 57).

114. In *Sousa Goucha v. Portugal*, the Court referred to the criterion of “the reasonable reader” when approaching issues relating to satirical material (§ 50; see also *Nikowitz and Verlagsgruppe News GmbH v. Austria*, §§ 24-26). Also, a particularly wide margin of appreciation should be given to parody in the context of freedom of expression (*Sousa Goucha v. Portugal*, § 50). In this case, a well-known celebrity alleged that he had been defamed during a television show shortly after making a public announcement concerning his sexual orientation. The Court considered that, because the joke had not been made in the context of a debate on a matter of public interest (see, *a contrario*, *Alves da Silva v. Portugal* and *Welsh and Silva Canha v. Portugal*), an obligation could arise under Article 8 for the State to protect a person’s reputation where the statement went beyond the limits of what was acceptable under Article 10 (*Sousa Goucha v. Portugal*, § 51). In a case concerning the non-consensual use of a celebrity’s first name for the purposes of a cigarette advertising campaign, the Court found that the humoristic and commercial nature and his past behaviour outweighed the applicant’s Article 8 arguments (*Bohlen v. Germany*, §§ 58-60; see also *Ernst August von Hannover v. Germany*, § 57).

115. Although the press must not overstep certain bounds, regarding in particular protection of the reputation and rights of others, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest, which the public has a right to receive, including reporting and commenting on court proceedings (*Axel Springer AG v. Germany* [GC], § 79). The Court has also stressed the importance of the proactive role of the press, namely to reveal and bring to the public’s attention information capable of eliciting such interest and of giving rise to such a debate within society (*Couderc and Hachette Filipacchi Associés v. France* [GC], § 114). When covering certain events, journalists have the duty to show prudence and caution (*ibid.*, § 140).

116. When balancing privacy rights under Article 8 with other Convention rights, the Court has found that, “the State is called upon to guarantee both rights and if the protection of one leads to an interference with the other, to choose adequate means to make this interference proportionate to the aim pursued” (*Fernández Martínez v. Spain* [GC], § 123). In this case, the Court found no violation of Article 8 from the refusal to renew the contract of a teacher of Catholic religion and morals after he publicly revealed his position as a “married priest” (§ 89). Conversely, with respect to defamation, the Court found that a failure to adequately investigate the unauthorised disclosure of

confidential information or to protect the applicant’s reputation and right to be presumed innocent (a parent suspected of child abuse) violated Article 8 (*Ageyevy v. Russia*, § 155).

c. Collection and storage of personal data

117. The storing by a public authority of information relating to an individual’s private life amounts to an interference within the meaning of Article 8, especially where such information concerns a person’s distant past (*Rotaru v. Romania* [GC], §§ 43-44). The subsequent use of the stored information has no bearing on that finding (*Amann v. Switzerland* [GC], §§ 65-67; *Leander v. Sweden*, § 48; *Kopp v. Switzerland*, § 53). “In determining whether the personal information retained by the authorities involves any of the private-life aspects ... the Court will have due regard to the specific context in which the information at issue has been recorded and retained, the nature of the records, the way in which these records are used and processed and the results that may be obtained” (*S. and Marper v. the United Kingdom* [GC], § 67). Banking documents undoubtedly amount to personal data concerning an individual, irrespective of whether or not they contain sensitive information (*M.N. and Others v. San Marino*, § 51). However, the Court will take into account the nature of the information concerned to determine the margin of appreciation of the State (*G.S.B. v. Switzerland*, § 93).

118. The Court has established that Article 8 can be engaged in cases where files or data of a personal or public nature (for example, information about a person’s political activities) are collected and stored by security services or other State authorities (*Rotaru v. Romania* [GC], §§ 43-44; *Association “21 December 1989” and Others v. Romania*, § 115); as well as in regard to entry in a national sex-offenders database (*Gardel v. France*, § 58) and the absence of safeguards for the collection, preservation and deletion of fingerprint records of persons suspected but not convicted of criminal offences (*M.K. v. France*, § 26).

119. The Court also takes into account the particular context in which information is obtained and stored and the nature of the information. In cases involving suspected terrorists, the Court has found that States enjoy a wider margin of appreciation, especially with regards to storage of information of individuals implicated in past terrorist activities (*Segerstedt-Wiberg and Others v. Sweden*, § 88). The Court has found that it falls within the legitimate bounds of the process of investigation of terrorist crime for the competent authorities to record and retain basic personal details concerning the arrested person or even other persons present at the time and place of arrest (*Murray v. the United Kingdom*, § 93).

120. With regard to the use of modern scientific techniques in the criminal-justice system, the Court has found that the protection afforded by Article 8 of the Convention would be unacceptably weakened if such techniques were allowed at any cost and without carefully balancing the potential benefits of the extensive use of such techniques against important private-life interests (*S. and Marper v. the United Kingdom* [GC], § 112).

121. The indiscriminate and open-ended collection of criminal record data is unlikely to comply with the requirements of Article 8 in the absence of clear and detailed statutory regulations clarifying the safeguards applicable and setting out the rules governing, inter alia, the circumstances in which data can be collected, the duration of their storage, the use to which they can be put and the circumstances in which they may be destroyed (*M.M. v. the United Kingdom*, § 199).

122. The taking of cellular material and its retention, as well as the determination and retention of DNA profiles extracted from cellular samples, constituted an interference with the right to respect for private life within the meaning of Article 8 § 1 of the Convention (*S. and Marper v. the United Kingdom* [GC], §§ 71-77; *Van der Velden v. the Netherlands* (dec.); *W. v. the Netherlands* (dec.)), although this does not necessarily extend to the taking and retention of DNA profiles of convicted criminals for use in possible future criminal proceedings (*Peruzzo and Martens v. Germany* (dec.), §§ 42 and 49). Such interference will be in breach of Article 8 of the Convention unless it can be

justified under its paragraph 2 as being “in accordance with the law”, as pursuing one or more of the legitimate aims listed therein, and as being “necessary in a democratic society” in order to achieve the aim or aims concerned (*Peruzzo and Martens v. Germany* (dec.)).

d. Confidentiality, use, and disclosure of personal information

123. The protection of personal data is 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 of the Convention. Thus the use and release of information relating to an individual’s private life which is stored in a secret register comes within the scope of Article 8 § 1 (*Leander v. Sweden*, § 48; *Rotaru v. Romania* [GC], § 46).

124. The domestic law must afford appropriate safeguards to prevent any such use of personal data as may be inconsistent with the guarantees of this Article (*Z v. Finland*, § 95). In line with its findings in *S. and Marper v. the United Kingdom* [GC], § 103, the Court has determined that the need for such safeguards is all the greater where the protection of personal data undergoes automatic processing, not least when such data are used for police purposes. The domestic law should notably ensure that such data are relevant and are efficiently protected from misuse and abuse (*Gardel v. France*, § 62). The Court has nevertheless concluded that entry in a national sexoffenders’ database did not breach Article 8 (*B.B. v. France*, § 60; *Gardel v. France*, § 71; *M.B. v. France*, § 62).

125. The Court found the indefinite retention and disclosure of an applicant’s caution data and the impact of this on her employment prospects to be a violation of Article 8 (*M.M. v. the United Kingdom*, § 207).

126. The Court has found a violation of Article 8 where the applicant’s past employment as a driver for the KGB was publicly disclosed 13 years later (*Sõro v. Estonia*, §§ 56-64). Likewise, illustration proceedings revealing that the applicant had been a collaborator of the secret police of the former regime and that, consequently, he had not fulfilled the additional requirement for public office breached Article 8 (*Ivanovski v. the former Yugoslav Republic of Macedonia*, § 176).

e. Right to access personal information

127. Matters of relevance to personal development include details of a person’s identity as a human being and the vital interest protected by the Convention in obtaining information necessary to discover the truth concerning important aspects of one’s personal identity, such as the identity of one’s parents, one’s origins, and aspects of one’s childhood and early development (*Mikulić v. Croatia*, §§ 54 and 64; *Odièvre v. France* [GC], §§ 42 and 44). Birth, and in particular the circumstances in which a child is born, forms part of a child’s, and subsequently the adult’s, private life guaranteed by Article 8 of the Convention (*ibid.*, § 29).

128. The Court considers that the interests of the individual seeking access to records relating to her or his private and family life must be secured when a contributor to the records either is not available or improperly refuses consent. Such a system is only in conformity with the principle of proportionality if it provides that an independent authority finally decides whether access has to be granted in cases where a contributor fails to answer or withholds consent (*Gaskin v. the United Kingdom*, § 49; *M.G. v. the United Kingdom*, § 27).

129. The issue of access to information about one’s origins and the identity of one’s natural parents is not of the same nature as that of access to a case record concerning a child in care or to evidence of alleged paternity (*Odièvre v. France* [GC], § 43).

130. With regard to accessing personal information held by security services, the Court has held that obstacles to access may constitute violations of Article 8 (*Haralambie v. Romania*, § 96). However, in cases concerning suspected terrorists, the Court has also held that the interests of national security and the fight against terrorism prevail over the applicants’ interest in having access to information

about them in the Security Police files (*Segerstedt-Wiberg and Others v. Sweden*, § 91). While the Court has recognised that, particularly in proceedings related to the operations of state security agencies, there may be legitimate grounds to limit access to certain documents and other materials, it has found this consideration loses much of its validity with respect to lustration proceedings (*Turek v. Slovakia*, § 115).

f. Information about one’s health

131. Respecting the confidentiality of health data is a vital principle in the legal systems of all the Contracting Parties to the Convention. It is 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. Without such protection, those in need of medical assistance may be deterred from revealing such information of a personal and intimate nature as may be necessary in order to receive appropriate treatment and, even, from seeking such assistance. They may thereby endanger their own health and, in the case of transmissible diseases, that of the community. The domestic law must therefore afford appropriate safeguards to prevent any such communication or disclosure of personal health data as may be inconsistent with the guarantees in Article 8 of the Convention (*Z v. Finland*, § 95).

132. The right to privacy and other considerations apply particularly when it comes to protecting the confidentiality of information relating to HIV, as the disclosure of such information can have devastating consequences for the private and family life of the individual and his social and professional situation, including exposure to stigma and possible exclusion (*Z v. Finland*, § 96; *C.C. v. Spain*, § 33; *Y v. Turkey* (dec.), § 68). The interest in protecting the confidentiality of such information will therefore weigh heavily in the balance in determining whether the interference was proportionate to the legitimate aim pursued. Such interference cannot be compatible with Article 8 unless it is justified by an overriding requirement in the public interest (*Z v. Finland*, § 96; *Y v. Turkey* (dec.), § 78), in the interest of the applicant himself or in the interest of the safety of hospital staff (*ibid.*, §§ 77-78). The disclosure by State hospitals of Jehovah’s Witnesses’ medical files to the prosecutor’s office following their refusal of a blood transfusion constituted an interference with the applicants’ right to respect for their private life (*Avilkina and Others v. Russia*, § 54). However, the publication of an article on the mental health status of a psychological expert did not violate Article 8 because of its contribution to a debate of general interest (*Fürst-Pfeifer v. Austria*, § 45).

133. The right to effective access to information concerning health and reproductive rights falls within the scope of private and family life within the meaning of Article 8 (*K.H. and Others v. Slovakia*, § 44). There may be positive obligations inherent in effective respect for private or family life which require the State to provide essential information about risks to one’s health in a timely manner (*Guerra and Others v. Italy*, §§ 58 and 60). In particular, where a State engages in hazardous activities, which might have hidden adverse consequences on the health of those involved in such activities, respect for private and family life under Article 8 requires that an effective and accessible procedure be established which enables such persons to seek all relevant and appropriate information (*McGinley and Egan v. the United Kingdom*, §§ 97 and 101; *Roche v. the United Kingdom* [GC], § 167).

g. File or data gathering by security services or other organs of the State²

134. The Court has held that where a State institutes secret surveillance, the existence of which remains unknown to the persons being controlled with the effect that the surveillance remains unchallengeable, individuals could be deprived of their Article 8 rights without being aware and without being able to obtain a remedy either at the national level or before the Convention

2. This chapter should be read in conjunction with those on “Correspondence” (surveillance of telecommunications and secret surveillance of citizens and organisations).

institutions (*Klass and Others v. Germany*, § 36). This is especially so in a climate where technological developments have advanced the means of espionage and surveillance, and where the State may have legitimate interests in preventing disorder, crime, or terrorism (*ibid.*, § 48). An applicant can claim to be the victim of a violation occasioned by the mere existence of secret surveillance measures or of legislation permitting such measures, if certain conditions are satisfied (*Roman Zakharov v. Russia* [GC], §§ 171-172). In that case, the Court found the *Kennedy* approach was best tailored to the need to ensure that the secrecy of surveillance measures did not result in the measures being effectively unchallengeable and outside the supervision of the national judicial authorities and of the Court (*Kennedy v. the United Kingdom*, § 124).

135. The mere existence of legislation which allows a system for the secret monitoring of communications entails a threat of surveillance for all those to whom the legislation may be applied (*Weber and Saravia v. Germany* (dec.), § 78). While domestic legislatures and national authorities enjoy a certain margin of appreciation in which to assess what might be the best policy in this field, the Contracting States do not enjoy unlimited discretion to subject persons within their jurisdiction to secret surveillance. The Court has affirmed that the Contracting States may not, in the name of the struggle against espionage and terrorism, adopt whatever measures they deem appropriate; rather, whatever system of surveillance is adopted, there must be adequate and effective guarantees against abuse (*ibid.*, at §§ 49-50). Powers of secret surveillance of citizens are tolerable only in so far as strictly necessary for safeguarding the democratic institutions (*ibid.*, § 42; *Rotaru v. Romania* [GC], § 47). Such interference must be supported by relevant and sufficient reasons and must be proportionate to the legitimate aim or aims pursued (*Segerstedt-Wiberg and Others v. Sweden*, § 88).

136. For instance, the Court found the interception and recording of a conversation by a remote radio-transmitting device during a police covert operation without procedural safeguards to be a violation (*Bykov v. Russia* [GC], §§ 81 and 83; *Oleynik v. Russia*, §§ 75-79). Similarly, the systematic collection and storing of data by security services on particular individuals constituted an interference with these persons' private lives, even if such data were collected in a public place (*Peck v. the United Kingdom*, § 59; *P.G. and J.H. v. the United Kingdom*, §§ 57-59) or concerned exclusively the person's professional or public activities (*Amann v. Switzerland* [GC], §§ 65-67; *Rotaru v. Romania* [GC], §§ 43-44). Collection, through a GPS device attached to a person's car, and storage of data concerning that person's whereabouts and movements in the public sphere was also found to constitute an interference with private life (*Uzun v. Germany*, §§ 51-53). Where domestic law does not indicate with sufficient clarity the scope and manner of exercise of the discretion conferred on the domestic authorities to collect and store in a surveillance database information on persons' private lives – in particular, where it does not set out in a form accessible to the public any indication of the minimum safeguards against abuse – this amounts to an interference with private life as protected by Article 8 § 1 of the Convention (*Shimovolos v. Russia*, § 66, where the applicant's name was registered in the Surveillance Database which collected information about his movements, by train or air, within Russia). Domestic legislation should provide sufficiently precise, effective and comprehensive safeguards on the ordering, execution and potential redressing of surveillance measures (*Szabó and Vissy v Hungary*). In the context of secret surveillance, the need for the interference to be "necessary in a democratic society" had to be interpreted as requiring that any measures taken should be strictly necessary both, as a general consideration, to safeguard democratic institutions and, as a particular consideration, to obtain essential intelligence in an individual operation. Any measure of secret surveillance which did not fulfil the strict necessity criterion would be prone to abuse by the authorities.

137. The Court considers the surveillance of legal consultations taking place in a police station to be analogous to the interception of a telephone call between a lawyer and client, given the need to ensure an enhanced degree of protection for that relationship and in particular for the confidentiality of the exchanges which characterise it (*R.E. v. the United Kingdom*, § 131).

138. The Court also found that consultation of a lawyer’s bank statements amounted to an interference with her right to respect for professional confidentiality, which fell within the scope of private life (*Brito Ferrinho Bexiga Villa-Nova v. Portugal*, § 59).

h. Police surveillance³

139. The Court has held that the GPS surveillance of a suspected terrorist and the processing and use of the data thus obtained did not violate Article 8 (*Uzun v. Germany*, § 81).

140. However, the Court found a violation of Article 8 where police registered in a secret surveillance security database and tracked the movements of an individual on account of his membership of a human rights organisation (*Shimovolos v. Russia*, § 66, the database in which the applicant’s name had been registered had been created on the basis of a ministerial order, which had not been published and was not accessible to the public. Therefore, the public could not know why individuals were registered in it, what type of information was included and for how long, how it was stored and used or who had control over it).

141. The Court has established that the surveillance of communications and telephone conversations (including calls made from business premises, as well as from the home) is covered by the notion of private life and correspondence under Article 8 (*Halford v. the United Kingdom*, § 44; *Malone v. the United Kingdom*, § 64; *Weber and Saravia v. Germany* (dec.), §§ 76-79). This does not necessarily extend to the use of undercover agents (*Lüdi v. Switzerland*, § 40).

142. Tapping and other forms of interception of telephone conversations represent a serious interference with private life and correspondence and must accordingly be based on a law that is precise. It is essential to have clear, detailed rules on the subject, especially as the technology available for use is continually becoming more sophisticated (*Kruslin v. France*, § 33).

143. The Court has found violations of Article 8 where applicants’ telephone conversations in connection with prosecution for criminal offenses were intercepted, “metered”, or listened to in violation of the law (*Malone v. the United Kingdom*; *Khan v. the United Kingdom*). The phrase “in accordance with the law” not only requires compliance with domestic law but also relates to the quality of that law, requiring it to be compatible with the rule of law (*Halford v. the United Kingdom*, § 49). In the context of covert surveillance by public authorities domestic law must provide protection against arbitrary interference with an individual’s right under Article 8 (*Khan v. the United Kingdom*, §§ 26-28). Moreover, the law must be sufficiently clear in its terms to give individuals an adequate indication as to the circumstances in which and the conditions on which public authorities are entitled to resort to such covert measures (*ibid.*). Where there exists no statutory system to regulate the use of covert listening devices, and guidelines concerning them are neither legally binding nor directly publicly accessible, the interference is not “in accordance with the law” as required by Article 8 § 2 of the Convention, and is therefore a violation of Article 8 (*ibid.*, §§ 27-28).

144. The recording of private (telephone) conversations by a conversation partner and the private use of such recordings does not per se offend against Article 8 if this is done by private means. However, this must be distinguished from the covert monitoring and recording of communications by a private person in the context of and for the benefit of an official inquiry – criminal or otherwise – and with the connivance and technical assistance of public investigation authorities (*Van Vondel v. the Netherlands*, § 49). The disclosure of the content of certain conversations to the media obtained through telephone tapping could constitute a violation of Article 8 depending on the circumstances of the case (*Drakšas v. Lithuania*, § 62).

3. This chapter should be read in conjunction with those on “Correspondence” (surveillance of telecommunications and secret surveillance of citizens and organisations).

i. Stop and search police powers

145. The Court has held that there is a zone of interaction between a person with others, even in a public context, which may fall within the scope of “private life” (*Gillan and Quinton v. the United Kingdom*, § 61). The Court has found that the stopping and searching of a person in a public place without reasonable suspicion of wrongdoing is a violation of Article 8 (*ibid.*, § 87).

146. The Court has also found that police officers’ entry into a home in which applicant was not present and there was little or no risk of disorder or crime was disproportionate to the legitimate aim pursued and was therefore a violation of Article 8 (*McLeod v. the United Kingdom*, § 58; *Funke v. France*, § 48).

147. With respect to persons suspected of terrorist-linked offences, governments must strike a fair balance between the exercise by the individual of the right guaranteed to him or her under paragraph 1 of Article 8 and the necessity under paragraph 2 for the State to take effective measures for the prevention of terrorist crimes (*Murray v. the United Kingdom* [GC], §§ 90-91).

j. Privacy during detention

148. In the case of *Szafrański v. Poland*, the Court found that the domestic authorities failed to discharge their positive obligation of ensuring a minimum level of privacy for the applicant and therefore had violated Article 8 where the applicant had to use a toilet in the presence of other inmates and was thus deprived of a basic level of privacy in his everyday life (§§ 39-41).

3. Identity and autonomy

a. Right to personal development and autonomy

149. Article 8 protects a right to personal development, and the right to establish and develop relationships with other human beings and the outside world (*Niemietz v. Germany*, § 29; *Pretty v. the United Kingdom*, §§ 61 and 67; *Oleksandr Volkov v. Ukraine*, §§ 165-167; *El Masri v. the former Yugoslav Republic of Macedonia* [GC], §§ 248-250, concerning the applicant’s secret and extrajudicial abduction and arbitrary detention).

150. However, the right to personal development and personal autonomy does not cover every public activity a person might seek to engage in with other human beings (for example, the hunting of wild animals with hounds in *Friend and Others v. the United Kingdom* (dec.), §§ 40-43). Indeed, not every kind of relationship falls within the sphere of private life, as the Court held that the right to keep a dog did not fall within the scope of Article 8 protection (*X. v. Iceland*, Commission decision).

151. The Court has established that Article 8 secures to individuals a sphere within which they can freely pursue the development and fulfilment of their personality (*Brüggemann and Scheuten v. Germany* (dec.)).

b. Right to discover one’s origins

152. The Court has recognised the right to obtain information in order to discover one’s origins and the identity of one’s parents as an integral part of identity protected under the right to private and family life (*Odièvre v. France* [GC], § 42; *Gaskin v. the United Kingdom*, § 39).

153. The Court has ruled that it is not compulsory for States to DNA test alleged fathers, but that the legal system must provide alternative means enabling an independent authority to speedily determine the paternity claim. For example in *Mikulić v. Croatia*, §§ 52-55, the applicant was born out of an extra-marital relationship and complained that the Croatian judicial system had been inefficient in determining the issue of paternity, leaving her uncertain as to her personal identity. In that case the Court held that the inefficiency of the domestic courts had left the applicant in a state

of prolonged uncertainty as to her personal identity. The Croatian authorities had therefore failed to secure to the applicant the “respect” for her private life to which she was entitled under the Convention. The Court has also held that procedures must exist that allow particularly vulnerable children, such as those with disabilities, to access information about their paternity (*A.M.M. v. Romania*, §§ 58-65).

154. The Court has held that there is no violation of Article 8 where the State strikes a fair balance between the public interest, a child’s personal development and right to know her/his origins, a mother’s right to protect her health by giving birth in appropriate medical circumstances, and the protection of other members of the various families involved – especially where the applicant could have requested disclosure of her mother’s identity with her consent, could inherit from her adoptive parents and was not in the same position as her mother’s other natural children (*Odièvre v. France* [GC], § 29). The applicant, who was adopted, requested access to information to identify her three biological brothers, but her request was rejected under a special procedure which allowed mothers to remain anonymous; in addition, she could not inherit from her natural mother.

155. However, where national law did not attempt to strike any balance between the competing rights and interests at stake, the inability of a child abandoned at birth to gain access to non-identifying information concerning his or her origins or the disclosure of the mother’s identity was a violation of Article 8 (*Godelli v. Italy*, §§ 57-58).

c. Religious and philosophical convictions

156. Although Article 9 governs most freedom of thought, conscience, and religious matters, the Court has established that disclosure of information about personal religious and philosophical convictions may implicate Article 8 as well, as such convictions concern some of the most intimate aspects of private life (*Folgerø and Others v. Norway* [GC], § 98, where imposing an obligation on parents to disclose detailed information to the school authorities about their religious and philosophical convictions could be seen to constitute a violation of Article 8 of the Convention).

d. Desired appearance

157. The Court has established that personal choices as to an individual’s desired appearance, whether in public or in private, relate to the expression of his or her personality and thus fall within the notion of private life. It has found to this effect previously as regards a haircut (*Popa v. Romania* (dec.), §§ 32-33), denial of access to a university for wearing a beard (*Tiğ v. Turkey* (dec.)), a ban on wearing clothing designed to conceal the face in public places for women wishing to wear a full-face veil for reasons related to their beliefs (*S.A.S. v. France* [GC], §§ 106-107), and appearing naked in public places (*Gough v. the United Kingdom*, §§ 182-184). However, it is important to note that in each of these cases, the Court found the restriction on personal appearance to be proportionate. The absolute prohibition on growing a beard in prison was considered a violation of Article 8 of the Convention, because that the Government had failed to demonstrate the existence of a pressing social need to justify an absolute prohibition (*Biržietis v. Lithuania*, §§ 54 and 57-58).

e. Right to a name/identity documents

158. The Court has established that issues concerning an individual’s first name and surname fall under the right to private life (*Mentzen v. Latvia* (dec.); *Henry Kismoun v. France*). The Court held that, “as a means of personal identification and of linking to a family, a person’s name concerns his or her private and family life” and found a violation of Article 8 where authorities refused to register the applicant’s surname after his family surname had been recorded as his wife’s surname (*Burghartz v. Switzerland*, § 24).

159. The Court has held that forenames also fall within the ambit of “private life” (*Guillot v. France*, §§ 21-22; *Güzel Erdagöz v. Turkey*, § 43; *Garnaga v. Ukraine*, § 36). However, the Court has found

that some laws relating to the registration of names strike a proper balance, while others do not (compare *Guillot v. France*, with *Johansson v. Finland*).

160. The Court has ruled that the tradition of demonstrating family unity by obliging married women to adopt the surname of their husbands is no longer compatible with the Convention (*Ünal Tekeli v. Turkey*, §§ 67-68). The Court has found a violation of Article 14 (prohibition of discrimination) read in conjunction with Article 8 as a result of discriminatory treatment on the part of the authorities' refusal to let a binational couple keep their own surnames after marriage (*Losonci Rose and Rose v. Switzerland*, § 26). The mere fact that a name could take on a negative connotation does not constitute a breach of Article 8 (*Stjerna v. Finland*, § 42; *Siskina and Siskins v. Latvia* (dec.); *Macalin Moxamed Sed Dahir v. Switzerland* (dec.), § 31).

161. As concerns the seizure of documents needed to prove one's identity, the Court has found an interference with private life as a result of a domestic court's withholding of identity papers following the applicant's release from custody, as papers were needed often in everyday life in order to prove one's identity (*Smirnova v. Russia*, §§ 95-97). The Court has also held, however, that a government may refuse to issue a new passport to a citizen living abroad, if the decision is one made because of public safety, even if the failure to issue a new passport will have negative implications for the applicants' private and family life (*M. v. Switzerland*, § 67).

f. Gender identity

162. The Court has dealt with a series of cases concerning the official recognition of transsexuals post gender reassignment surgery in the United Kingdom (*Rees v. the United Kingdom*; *Cossey v. the United Kingdom*; *X, Y and Z v. the United Kingdom*; *Sheffield and Horsham v. the United Kingdom*; *Christine Goodwin v. the United Kingdom* [GC]; *I. v. the United Kingdom* [GC]). In *Christine Goodwin v. the United Kingdom* [GC] and *I. v. the United Kingdom* [GC], the Court found a violation of Article 8 on the basis that European and International consensus favoured the legal recognition of a transsexual's acquired gender. "In the twenty first century the right of transsexuals to personal development and to physical and moral security in the full sense enjoyed by others in society cannot be regarded as a matter of controversy requiring the lapse of time to cast clearer light on the issues involved. In short, the unsatisfactory situation in which post-operative transsexuals live in an intermediate zone as not quite one gender or the other is no longer sustainable" (*Christine Goodwin v. the United Kingdom* [GC], § 90; *Grant v. the United Kingdom*, § 40; *L. v. Lithuania*, § 59).

163. In *Y.Y. v. Turkey*, the applicant sought authorisation to undergo gender reassignment surgery. This was refused because the applicant did not satisfy the prior requirement of permanent inability to procreate (§ 44). In denying the applicant the possibility of undergoing gender assignment surgery for many years, the State breached his right to respect for his private life (*ibid.*, §§ 121-122).

164. In *Hämäläinen v. Finland* [GC], the applicant complained that the full recognition of her new gender was made conditional on the transformation of her marriage into a registered partnership. The Court noted that the case involved issues which may have had implications for the applicant's family life since under domestic law the conversion of the existing marriage into a registered partnership required the consent of her wife and the fact that the applicant and her wife had a child together. Accordingly Article 8 of the Convention was found to apply under both its private-life and family-life aspects. (§§ 60-61).

g. Right to ethnic identity

165. The Court has considered ethnic identity, in particular the right of members of a national minority to maintain their identity and to lead a private and family life in accordance with their tradition, to constitute part of the Article 8 right to private and family life, with a consequent obligation placed upon States to facilitate, and not obstruct disproportionately, the traditional lifestyles of minorities. The Court has found that the authorities' refusal to register an individual's

ethnicity as declared by the individual constituted a failure to comply with the State’s positive obligation to secure to the applicant the effective respect for his private life (*Ciubotaru v. Moldova*, § 53). The conducting of a meaningful inquiry into the discrimination behind an event that formed part of a general hostile attitude against the Roma community and the implementation of effective criminal-law mechanisms are also considered to be part of the positive obligation of a State to protect respect for ethnic identity (*R.B. v. Hungary*, §§ 88-91).

166. The occupation by a Gypsy woman of her caravan was found to comprise an integral part of her ethnic identity, one which the State should take into account when instituting measures of forced eviction from the land (*Chapman v. the United Kingdom* [GC], § 73; *McCann v. the United Kingdom*, § 55). The Court also found an Article 8 violation on procedural grounds as a result of a family’s summary eviction from the local authority caravan site where the applicant and his family had lived for more than 13 years; the Court stated that such a serious interference necessitated “particularly weighty reasons of public interest” and a narrow margin of appreciation (*Ezeh and Connors v. the United Kingdom*, § 86). However, the Court has in the past found that national planning policies may displace caravan sites if a fair balance is struck between the individual rights of the families living in the site and the environmental (and other) rights of the community (*Jane Smith v. the United Kingdom* [GC], §§ 119-120; *Lee v. the United Kingdom* [GC]; *Beard v. the United Kingdom* [GC]; *Coster v. the United Kingdom* [GC]).

167. The Court has found that the authorities’ continued retention of applicants’ fingerprints, cellular samples, and DNA profiles after criminal proceedings against them had ended and the usage of those data to infer ethnic origin implicated and violated the applicants’ right to ethnic identity under Article 8 (*S. and Marper v. the United Kingdom* [GC], § 66).

168. The Court has also found that any negative stereotyping of a group, when it reaches a certain level, is capable of impacting the group’s sense of identity and the feelings of self-worth and self-confidence of members of the group. In this sense it can be seen as affecting the private life of members of the group (*Aksu v. Turkey* [GC], §§ 58-61 where the applicant, who is of Roma origin, felt offended by certain passages of the book “The Gypsies of Turkey”, which focused on the Roma community). Finally, the social ties between settled migrants and the community in which they are living, regardless of the existence or otherwise of a family life constitutes part of an individual’s social identity and falls within the meaning of Article 8 (*Üner v. the Netherlands* [GC], § 59).

h. Statelessness and the right to citizenship

169. The right to citizenship has been recognised by the Court, under certain circumstances, as falling under private life (*Genovese v. Malta*). Although the right to acquire a particular nationality is not guaranteed as such by the Convention, the Court has found that an arbitrary refusal of citizenship and the revocation of acquired citizenship may, in certain circumstances, raise an issue under Article 8 by impacting private life (*Karashev and family v. Finland* (dec.); *Ramadan v. Malta*, § 85). The Court has also confirmed that the expulsion of settled migrants would amount to an interference with their right to respect for private life. It has held the failure to regulate the residence of persons who had been “erased” from the permanent residents register following Slovenian independence to be a violation of Article 8 (*Kurić and Others v. Slovenia* [GC], § 339).

170. Article 8 cannot be construed as guaranteeing, as such, the right to a particular type of residence permit; the choice of permit is in principle a matter for the domestic authorities alone (*Kaftailova v. Latvia* (striking out) [GC], § 51).

171. Where there is an arguable claim that expulsion threatens to interfere with a non-citizen’s right to respect for his private and family life, Article 13 in conjunction with Article 8 of the Convention requires that States must make available to the individual concerned the effective possibility of challenging the deportation or refusal of residence order and of having the relevant issues examined with sufficient procedural safeguards and thoroughness by an appropriate domestic forum offering

adequate guarantees of independence and impartiality (*De Souza Ribeiro v. France* [GC], § 83; *M. and Others v. Bulgaria*, §§ 122-132; *Al-Nashif v. Bulgaria*, § 133).

i. Marital and parental status

172. The Court has considered cases concerning the marital or parental status of individuals to fall within the ambit of private and family life. In particular, it found that the registration of a marriage, being a recognition of an individual's legal civil status, undoubtedly concerns both private and family life and comes within the scope of Article 8 § 1 (*Dadouch v. Malta*, § 48). An Austrian court's decision to nullify the applicant's marriage had implications for her legal status and in general on her private life. However, since the marriage had been fictitious, the interference with her private life was found to be proportionate (*Benes v. Austria*, Commission decision).

173. Similarly, proceedings relating to one's identity as a parent fall under private and family life. The Court has found cases involving the determination of the legal provisions governing a father's relations with his putative child to come within the scope of private life (*Rasmussen v. Denmark*, § 33; *Yildirim v. Austria* (dec.); *Krušković v. Croatia*, § 20; *Ahrens v. Germany*, § 60; *Tsvetelin Petkov v. Bulgaria*, §§ 49-59; *Marinis v. Greece*, § 58).

III. Family life

A. Definition of family life and the meaning of family

174. The essential ingredient of family life is the right to live together so that family relationships may develop normally (*Marckx v. Belgium*, § 31) and members of the family may enjoy each other's company (*Olsson v. Sweden (no. 1)*, § 59). The notion of family life is an autonomous concept (*Marckx v. Belgium*, § 31). Consequently, whether or not "family life" exists is essentially a question of fact depending upon the real existence in practice of close personal ties (*K. v. the United Kingdom* (dec.)). The Court will therefore look at *de facto* family ties, such as applicants living together, in the absence of any legal recognition of family life (*Johnston and Others v. Ireland*, § 56). Other factors will include the length of the relationship and, in the case of couples, whether they have demonstrated their commitment to each other by having children together (*X, Y and Z v. the United Kingdom*, § 36). In *Ahrens v. Germany*, § 59, the Court found no *de facto* family life where the relationship between the mother and the applicant had ended approximately one year before the child was conceived and the ensuing relations were of a sexual nature only.

175. A child born of a marital relationship is *ipso jure* part of that "family" unit from the moment and by the very fact of his or her birth (*Berrehab v. the Netherlands*, § 21). Thus, there exists between the child and its parents a bond amounting to family life. The existence or non-existence of "family life" within the meaning of Article 8 is a question of fact depending upon the real existence in practice of close personal ties, for instance the demonstrable interest and commitment by the father to the child both before and after birth (*L. v. the Netherlands*, § 36).

176. Where the existence of a family tie with a child has been established, the State must act in a manner calculated to enable that tie to be developed and legal safeguards must be established that render possible as from the moment of birth, or as soon as practicable thereafter, the child's integration in his family (*Kroon and Others v. the Netherlands*, § 32).

177. Where family life is not found, Article 8 may still be applicable under its private life head (*Paradiso and Campanelli v. Italy* [GC], § 165).

B. Procedural obligation

178. Whilst Article 8 contains no explicit procedural requirements (as noted above), the decision-making process involved in measures of interference must be fair and sufficient to afford due respect to the interests safeguarded by Article 8, in particular in relation to children being taken into care (*W. v. the United Kingdom*, §§ 62 and 64; *McMichael v. the United Kingdom*, § 92; *T.P. and K.M. v. the United Kingdom* [GC], §§ 72-73). Also, the Court has stated that in cases in which the length of proceedings has a clear impact on the applicant's family life, a more rigorous approach is called for, and the remedy available in domestic law should be both preventive and compensatory (*Macready v. the Czech Republic*, § 48; *Kuppinger v. Germany*, § 137).

C. Margin of appreciation in relation to family life

179. The Court recognises that the authorities enjoy a wide margin of appreciation, in particular when assessing the necessity of taking a child into care by way of an emergency order (*R.K. and A.K. v. the United Kingdom*). However, authorities have a much narrower margin of appreciation when it comes to prolonged separation of a parent and child. In such cases, States have an obligation to take measures to reunite parents and children (*Elsholz v. Germany* [GC]; *K.A. v. Finland*).

D. Sphere of application of family life

1. Couples

a. Marriages not according to custom, *de facto* cohabitation

180. The notion of “family” under Article 8 of the Convention is not confined solely to marriage-based relationships and may encompass other *de facto* “family ties” where the parties are living together outside marriage (i.e. out of wedlock) (*Johnston and Others v. Ireland*, § 56; *Van der Heijden v. the Netherlands* [GC], § 50, which dealt with the attempt to compel the applicant to give evidence in criminal proceedings against her long term co-habiting partner). Even in the absence of cohabitation there may still be sufficient ties for family life (*Kroon and Others v. the Netherlands*, § 30).

181. The Court has further considered that intended family life may exceptionally fall within the ambit of Article 8, notably in cases where the fact that family life has not yet fully been established is not attributable to the applicant (*Pini and Others v. Romania*, §§ 143 and 146). In particular, where the circumstances warrant it, family life must extend to the potential relationship which may develop between a child born out of wedlock and the biological father. Relevant factors which may determine the real existence in practice of close personal ties in these cases include the nature of the relationship between the natural parents and a demonstrable interest in and commitment by the father to the child both before and after the birth (*Nylund v. Finland* (dec.); *L. v. the Netherlands*, § 36; *Anayo v. Germany*, § 57).

182. In general, however, cohabitation is not a *sine qua non* of family life between parents and children (*Berrehab v. the Netherlands*, § 21). Marriages which are not in accordance with national law are not a bar to family life (*Abdulaziz, Cabales and Balkandali v. the United Kingdom*, § 63). A couple who enters into a purely religious marriage not recognised by domestic law may come within the scope of family life within the meaning of Article 8. However, Article 8 cannot be interpreted as imposing an obligation on the State to recognise religious marriage, for example in relation to inheritance rights and survivors’ pensions (*Şerife Yiğit v. Turkey* [GC], §§ 97-98 and 102) or where the marriage was contracted by a 14 year old child (*Z.H. and R.H. v. Switzerland*, § 44).

183. Finally, engagement does not in itself create family life (*Wakefield v. the United Kingdom* (dec.)).

b. Same sex couples

184. A same-sex couple living in a stable relationship fall within the notion of family life, as well as private life, in the same way as a heterosexual couple (*Vallianatos and Others v. Greece* [GC], § 73-74; *X and Others v. Austria* [GC], § 95; *P.B. and J.S. v. Austria*, § 30; *Schalk and Kopf v. Austria*, §§ 92-94). This principle was first set out in the case of *Schalk and Kopf v. Austria* where the Court held that “the Court considers it artificial to maintain the view that, in contrast to a different-sex couple, a same-sex couple cannot enjoy “family life” for the purposes of Article 8. Consequently, the relationship of the applicants, a cohabiting same-sex couple living in a stable *de facto* partnership, falls within the notion of “family life”, just as the relationship of a different-sex couple in the same situation would”. The Court has also established that the relationship between two women who were living together and had entered into a civil partnership, and the child conceived by one of them by means of assisted reproduction but being brought up by both of them, constituted family life within the meaning of Article 8 (*Gas and Dubois v. France* (dec.)).

185. The Court has noted that there is an emerging European consensus towards legal recognition of same-sex couples, which has developed rapidly over the past decade (*Schalk and Kopf v. Austria*, § 105). Nevertheless, there is not yet a majority of States providing for legal recognition of same-sex

couples, and the area in question must be regarded as one of evolving rights with no established consensus, where States enjoy a margin of appreciation in the timing of the introduction of legislative changes (*Courten v. the United Kingdom* (dec.); *M.W. v. the United Kingdom* (dec.), both relating to the introduction of the Civil Partnership Act in the United Kingdom). Thus, States are still free, under Article 14 taken in conjunction with Article 8, to restrict access to marriage to different-sex couples (*Schalk and Kopf v. Austria*, § 108; *Chapin and Charpentier v. France*, § 48).

186. However, the Court has found a violation of Article 14 taken together with Article 8 where a law barred same-sex couples from entering into civil unions, noting that of the 19 State parties to the Convention which authorised some form of registered partnership other than marriage, only two states reserved it exclusively to different-sex couples (*Vallianatos and Others v. Greece* [GC], §§ 91-92). Noting the continuing international movement towards legal recognition and taking into account the specific circumstances in Italy, the Court found that the Italian authorities failed to comply with the positive obligation under Article 8 to ensure that the applicants have available a specific legal framework providing for the recognition and protection of their same-sex unions (*Oliari and Others v. Italy*, § 178 and 180-185).

187. In two cases, the Court considered same-sex couples to be in a different situation than heterosexual couples. In *Aldeguer Tomás v. Spain*, the Court found no violation of Article 14 read in conjunction with Article 8 of the Convention and Article 1 of Protocol No. 1 where the surviving partner of a same-sex couple, contrary to the surviving partner of a heterosexual couple, could not obtain a survivor's pension where the other partner had died before the recognition of same-sex marriage in 2005 (§§ 88-90). In *Taddeuci and McCall v. Italy*, the Court found a violation of Article 14 of the Convention read in conjunction with Article 8 where a same-sex couple was prevented from living together in Italy as a result of the refusal to grant one applicant, a non-EU national, a residence permit for family purposes (§§ 98-99). The Court considered that a same-sex couple where one of the partners was a non-EU national was in a different situation than an unmarried heterosexual couple where one of the partners was a non-EU national and, therefore, needed to be treated differently (§ 85).

188. In another case concerning the regulation of residence permits for family reunification, however, the Court considered same-sex and different sex couples as being in a similar position (*Pajić v. Croatia*, § 73). The Court stated that by tacitly excluding same-sex couples from its scope, the domestic legislation introduced a difference in treatment based on sexual orientation and thus violated Article 8 of the Convention (*ibid.*, §§ 79-84).

189. In a case where the applicant sought to have her identity number changed from a male to a female one after having undergone gender reassignment surgery, family life was implicated by the fact that full recognition of her new gender required the transformation of her marriage into a registered partnership (*Hämäläinen v. Finland* [GC], §§ 60-61). However, the Court found that the conversion of the applicant's marriage into a registered partnership would not constitute a violation of family life under Article 8 (*ibid.*, § 86).

2. Parents

a. Medically assisted procreation/right to become genetic parents

190. Like the notion of private life (see "Reproductive rights" above), the notion of family life incorporates the right to respect for decisions to become a parent in the genetic sense (*Dickson v. the United Kingdom* [GC], § 66; *Evans v. the United Kingdom* [GC], § 72). Accordingly, the right of a couple to make use of medically assisted procreation comes within the ambit of Article 8, as an expression of private and family life (*S.H. and Others v. Austria* [GC], § 82). However, the provisions of Article 8 taken alone do not guarantee either the right to found a family or the right to adopt (*E.B. v. France* [GC], § 41).

191. The Court considers that concerns based on moral considerations or on social acceptability must be taken seriously in a sensitive domain like artificial procreation (*S. H. and Others v. Austria* [GC], § 100). However, they are not in themselves sufficient reasons for a complete ban on a specific artificial procreation techniques such as ovum donation; notwithstanding the wide margin of appreciation afforded to the Contracting States, the legal framework devised for this purpose must be shaped in a coherent manner which allows the different legitimate interests involved to be adequately taken into account (*ibid.*).

192. The Court found no violation of Article 8 where domestic law permitted the applicant's former partner to withdraw his consent to the storage and use by her of embryos created jointly by them, preventing her from ever having a child to whom she would be genetically related (*Evans v. the United Kingdom* [GC], § 82).

193. Article 8 also protects children born to a surrogate mother outside the member State in question, whose legal mother according to the foreign State could not register as a legal mother under French law. However, the Court does not require that States legalise surrogacy and, furthermore, States may demand proof of parentage for children born to surrogates before issuing the child's identity papers (*Menesson v. France*; *Labassee v. France*; *D. and Others v. Belgium*; *Foulon and Bouvet v. France*, §§ 55-58).

3. Children

a. Mutual enjoyment

194. The mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life within the meaning of Article 8 of the Convention (even if the relationship between the parents has broken down), and domestic measures hindering such enjoyment amount to an interference with the right protected by Article 8 of the Convention (*Monory v. Romania and Hungary*, § 70; *Zorica Jovanović v. Serbia*, § 68; *Kutzner v. Germany*, § 58; *Elsholz v. Germany* [GC], § 43; *K. and T. v. Finland* [GC], § 151).

195. The Court has found that an applicant's secret and extrajudicial abduction and arbitrary detention resulted in the deprivation of mutual enjoyment between family members and was therefore a violation of Article 8 (*El-Masri v. the former Yugoslav Republic of Macedonia* [GC], §§ 248-250). The Court has also found a violation of Article 8 where the applicant was kept in isolation for more than a year, separated from his family, who did not have any information on his situation (*Nasr and Ghali v. Italy*, § 305).

196. The Court has also found that a State's continuing failure to provide an applicant with credible information as to the fate of her son constituted a continuing violation of the right to mutual enjoyment and respect for her family life (*Zorica Jovanović v. Serbia*, §§ 74-75).

197. A refusal to allow a child to accompany her mother to another country for the purposes of the latter's postgraduate education based on the absence of the consent of both parents needs to be examined in the light of the child's best interest, avoiding a formalistic and mechanical approach (*Penchevi v. Bulgaria*, § 75).

b. Ties between natural mother and children

198. A natural mother's standing suffices to afford her the necessary power to apply to the Court on her child's behalf too, in order to protect his or her interests (*M.D. and Others v. Malta*, § 27).

199. The Court regards a single woman and her child as one form of family no less than others. In acting in a manner calculated to allow the family life of an unmarried mother and her child to develop normally, the State must avoid any discrimination on grounds of birth (*Marckx v. Belgium*, §§ 31 and 34). The development of the family life of an unmarried mother and her child whom she

has recognised may be hindered if the child does not become a member of the mother’s family and if the establishment of affiliation has effects only as between the two of them (*ibid.*, § 45; *Kearns v. France*, § 72).

200. A natural parent who knowingly gives consent to adoption may later be legally prevented from rescinding that waiver (*I.S. v. Germany*), but a parent must have the legal capacity to make such a waiver. Where there is insufficient legislation to protect parental rights, then an adoption decision violates the mother’s right to family life (*Zhou v. Italy*). Similarly, where a child was unjustifiably taken into care and separated from her mother and the local authority failed to submit the issue to the court for determination, the natural mother was deprived of an adequate involvement in the decision-making process concerning the care of her daughter and thereby of the requisite protection of their interests, resulting in a failure to respect family life (*T.P. and K.M. v. the United Kingdom* [GC], § 83).

c. Ties between natural father and children

201. The Court recalls that the notion of family life in Article 8 is not confined solely to marriage-based relationships and may encompass other *de facto* “family” ties where the parties are living together outside marriage (*Keegan v. Ireland*, § 44; *Kroon and Others v. the Netherlands*, § 30). The application of this principle has been found to extend equally to the relationship between natural fathers and their children born out of wedlock. Further, the Court considers that Article 8 cannot be interpreted as only protecting family life which has already been established but, where the circumstances warrant it, must extend to the potential relationship which may develop between a natural father and a child born out of wedlock (*Nylund v. Finland* (dec.); *Shavdarov v. Bulgaria*, § 40). In the latter case, the Court accepted that the presumption of paternity meant that the applicant was not able to establish paternal affiliation by law, but that he could have taken other steps to establish a parental link, hence finding no violation of Article 8.

202. Where the existence or non-existence of family life concerns a potential relationship which could develop between a child born out of wedlock and its natural father, relevant factors include the nature of the relationship between the natural parents and the demonstrable interest in and commitment by the father to the child both before and after its birth (*Nylund v. Finland* (dec.)). Mere biological kinship, without any further legal or factual elements indicating the existence of a close personal relationship, is not sufficient to attract the protection of Article 8 (*L. v. the Netherlands*, §§ 37-40). On the other hand, the complete and automatic exclusion of the applicant from his child’s life after the termination of his paternity, without properly considering the child’s best interests, amounted to a failure to respect the applicant’s family life (*Nazarenko v. Russia*, §§ 65-66; compare *Mandet v. France*, § 58). The Court has also found a violation of Article 8 where the applicants were unable to establish their paternity due to a strict statute of limitations (*Călin and Others v. Romania*, § 98).

203. There exists between the child and his or her parents a bond amounting to family life even if at the time of his or her birth the parents are no longer co-habiting or if their relationship has then ended (*Berrehab v. the Netherlands*, § 21). Where the relationship between the applicant and the child’s mother had lasted for two years, during one of which they co-habited and planned to get married, and the conception of their child was the result of a deliberate decision, it followed that from the moment of the child’s birth there existed between the applicant and his daughter a bond amounting to family life, regardless of the status of the relationship between the applicant and the child’s mother (*Keegan v. Ireland*, §§ 42-45). Thus, permitting the applicant’s child to have been placed for adoption shortly after the child’s birth without the father’s knowledge or consent constituted an Article 8 violation (*ibid.*, § 55).

204. The Court found that the domestic courts did not exceed their wide margin of appreciation when they took into account the applicant’s refusal to abide by a court-ordered genetic testing and

declared him the father of the child, giving priority to the latter's right to respect for private life over that of the applicant (*Canonne v. France* (dec.), § 34).

d. Parental allowances, custody/access, and contact rights

205. The Court has stated that while Article 8 does not include a right to parental leave or impose any positive obligation on States to provide parental leave allowances, at the same time, by enabling one of the parents to stay at home to look after the children, parental leave and related allowances promote family life and necessarily affect the way in which it is organised; thus, parental leave and parental allowances come within the scope of Article 8 of the Convention (*Konstantin Markin v. Russia* [GC], § 130; *Petrovic v. Austria*, §§ 26-29; *Di Trizio v. Switzerland*, §§ 60-62).

206. The Court has found that the failure to disclose relevant documents to parents during the procedures instituted by the authorities in placing and maintaining a child in care meant that the decision-making process determining the custody and access arrangements did not afford the requisite protection of the parents' interests as safeguarded by Article 8 (*T.P. and K.M. v. the United Kingdom* [GC], § 73). The refusal to order an independent psychological report and the absence of a hearing before a regional court insufficiently involved the applicant in the decision-making process regarding his parental access and thereby violated the applicant's rights under Article 8 (*Elsholz v. Germany* [GC], § 53).

207. A parent cannot be entitled under Article 8 to have such measures taken as would harm the child's health and development (*Elsholz v. Germany* [GC], § 50; *T.P. and K.M. v. the United Kingdom* [GC], § 71; *Ignaccolo-Zenide v. Romania*, § 94; *Nuutinen v. Finland*, § 128). Thus, where a thirteen-year-old girl had expressed her clear wish not to see her father, and had done so for several years, and where forcing her to see him would seriously disturb her emotional and psychological balance; the decision to refuse contact with the father can be taken to have been made in the interests of the child (*Sommerfeld v. Germany* [GC], §§ 64-65; *Buscemi v. Italy*, § 55). The Court also found that the right to private and family life of a divorced couple's daughter had been violated as regards the length of the custody proceedings and, taking into account her age and maturity, the failure of the domestic courts to allow her to express her views on which parent should take care of her (*M. and M. v. Croatia*, §§ 171-172).

208. In cases concerning a parent's relationship with his or her child, there is a duty to exercise exceptional diligence in view of the risk that the passage of time may result in a *de facto* determination of the matter. This duty, which is decisive in assessing whether a case has been heard within a reasonable time as required by Article 6 § 1 of the Convention, also forms part of the procedural requirements implicit in Article 8 (*Ribić v. Croatia*, § 92).

209. States must also provide measures to ensure that custody determinations and parental rights are enforced (*Raw and Others v. France*; *Vorozhba v. Russia*, § 97; *Malec v. Poland*, § 78). This may, if necessary, include investigation into the whereabouts of the child whose location has been hidden by the other parent (*Hromadka and Hromadkova v. Russia*, § 168). The Court also found that in placing reliance on a series of automatic and stereotyped measures in order to secure the exercise of the father's contact rights in respect of his child, the domestic courts had not taken the appropriate measures to establish a meaningful relationship between the applicant and his child and to make the full exercise of his contact rights possible (*Giorgioni v. Italy*, §§ 75-77; *Macready v. the Czech Republic*, § 66; *Bondavalli v. Italy*, §§ 81-84). Likewise, a violation was found where no new independent psychiatric evidence concerning the applicant had been taken for around 10 years (*Cincimo v. Italy*, §§ 73-75). Another violation was found in the case where, over seven years, the applicant was unable to exercise his contact rights under the conditions set by the courts, owing to the opposition of the child's mother and the lack of appropriate measures taken by the domestic courts (*Strumia v. Italy*, §§ 122-125).

210. With regard to measures which prevented the applicants from leaving confined areas and made it more difficult for them to exercise their right to maintain contact with family members living outside the enclave, the Court has found violations of Article 8 (*Nada v. Switzerland* [GC], §§ 165 and 198; *Agraw v. Switzerland*, § 51; *Mengesha Kimfe v. Switzerland*, §§ 69-72).

e. International child abduction

211. In matters of international child abduction, the obligations that Article 8 imposes on the Contracting States must be interpreted taking into account, in particular, the Hague Convention on the Civil Aspects of International Child Abduction of 25 October 1980 (*Iglesias Gil and A.U.I. v. Spain*, § 51; *Ignaccolo-Zenide v. Romania*, § 95) and the Convention on the Rights of the Child of 20 November 1989 (*Maire v. Portugal*, § 72).

212. In this area the decisive issue is whether a fair balance between the competing interests at stake – those of the child, of the two parents, and of the public order – has been struck, within the margin of appreciation afforded to States in such matters (*Maumousseau and Washington v. France*, § 62; *Rouiller v. Switzerland*), bearing in mind, however, that the child’s best interests must be the primary consideration (*Gnahoré v. France*, § 59; *X v. Latvia* [GC], § 95). In the latter case the Court found that there exists a broad consensus – including in international law – in support of the idea that in all decisions concerning children, their best interests must be paramount (§ 96). The parents’ interests, especially in having regular contact with their child, nevertheless remain a factor when balancing the various interests at stake (*ibid.*, § 95; *Haase v. Germany*, § 89; *Kutzner v. Germany*, § 58). For example, parents must have an adequate opportunity to participate in the decision-making process (*López Guió v. Slovakia*).

213. In order to achieve a harmonious interpretation of the European Convention and the Hague Convention, the factors capable of constituting an exception to the child’s immediate return in application of Articles 12, 13 and 20 of the Hague Convention have, first of all, genuinely to be taken into account by the requested court, which has to issue a decision that is sufficiently reasoned on this point, and then to be evaluated in the light of Article 8 of the European Convention. It follows that Article 8 of the Convention imposes on the domestic authorities a procedural obligation, requiring that, when assessing an application for a child’s return, the courts have to consider arguable allegations of a “grave risk” for the child in the event of return and make a ruling giving specific reasons. As to the exact nature of the “grave risk”, the exception provided for in Article 13 (b) of the Hague Convention concerns only the situations which go beyond what a child could reasonably bear (*X v. Latvia* [GC], §§ 106-107).

214. The Court considers that exceeding the non-obligatory six-week time limit in Article 11 of the Hague Convention by a significant time, in the absence of any circumstances capable of exempting the domestic courts from the duty to strictly observe it, is not in compliance with the positive obligation to act expeditiously in proceedings for the return of children (*G.S. v. Georgia*, § 63; *G.N. v. Poland*, § 68; *K.J. v. Poland*, § 72; *Carlson v. Switzerland*, § 76; *Karrer v. Romania*, § 54; *R.S. v. Poland*, § 70; *Blaga v. Romania*, § 83; *Monory v. Romania and Hungary*, § 82).

215. Execution of judgments regarding child abduction must also be adequate and effective in light of their urgent nature (*V.P. v. Russia*, § 154).

f. Adoption

216. A lawful and genuine adoption may constitute family life, even in the absence of cohabitation or any real ties between an adopted child and the adoptive parents (*Pini and Others v. Romania*, §§ 143-48; *Topčić-Rosenberg v. Croatia*, § 38).

217. However, the provisions of Article 8 taken alone do not guarantee either the right to found a family or the right to adopt (*E.B. v. France* [GC]). Nor must a member State grant recognition to all

forms of guardianship as adoption, such as “kafala” (*Harroudj v. France*, § 51; *Chbihi Loudoudi and Others v. Belgium*).

218. The Court has stated that the obligations imposed by Article 8 in the field of adoption and to the effects of adoption on the relationship between adopters and those being adopted must be interpreted in the light of the Hague Convention of 29 May 1993 on Protection of Children and Cooperation in respect of Intercountry Adoption, the United Nations Convention of 20 November 1989 on the Rights of the Child and the European Convention on the Adoption of Children (*Pini and Others v. Romania*, §§ 139-40).

219. The Court has also established that although the right to adopt is not, as such, included among the rights guaranteed by the Convention, the relations between an adoptive parent and an adopted child are as a rule of the same nature as the family relations protected by Article 8 of the Convention (*X. v. France* (dec.); *X. v. Belgium and the Netherlands*; *Kurochkin v. Ukraine*; *Ageyevy v. Russia*). There is no obligation under Article 8 to extend the right to second-parent adoption to unmarried couples (*X and Others v. Austria* [GC], § 136; *Gas and Dubois v. France*, §§ 66-69; *Emonet and Others v. Switzerland*, §§ 79-88). With respect to child adoption by one or more homosexual parents, the Court has noted divided opinion both within and between individual countries, and concluded that national authorities could legitimately and reasonably have considered the right to adopt asserted by the applicant to be circumscribed by the interests of adoptable children (*Fretté v. France*, § 42).

220. The principles relating to adoption are applicable even when the parties seek to enforce a foreign adoption decision, which is prohibited under the law of their native country (*Negrepontis-Giannis v. Greece*).

221. A vacuum in Turkish civil law in relation to single parent adoption constituted a violation of Article 8; at the time the applicant had made her request, there had been no regulatory framework for recognition of the adoptive single parent’s forename in place of that of the natural parent (*Gözüm v. Turkey*, § 53).

222. Where the revocation of the applicants’ adoption of children completely deprived the applicants of their family life with the children and was irreversible and inconsistent with the aim of reuniting them, such a measure could only be applied in exceptional circumstances and justified by an overriding requirement pertaining to the children’s best interests (*Ageyevy v. Russia*, § 144; *Johansen v. Norway*; *Scozzari and Giunta v. Italy* [GC], § 148; *Zaiet v. Romania*, § 50).

g. Foster families

223. The Court may recognise the existence of *de facto* family life between foster parents and a child placed with them, having regard to the time spent together, the quality of the relationship and the role played by the adult *vis-à-vis* the child (*Moretti and Benedetti v. Italy*, §§ 48-52, in which the Court found a violation of the state’s positive obligation in that the applicants’ request for a special adoption order in respect of the foster-child who had been placed with their family immediately after her birth for a period of five months had not been examined carefully before the baby had been declared free for adoption and another couple had been selected; see also *Jolie and Others v. Belgium* (dec.), for examination of the relationship between foster parents and children for whom they have been caring).

224. The Court has also held (in the context of determining whether there existed a right to see files relating to fostering arrangements) that persons in the situation of the applicant (a former foster child) had a vital interest, protected by the Convention, in receiving the information necessary to know and to understand their childhood and early development (*Gaskin v. the United Kingdom*, § 49).

h. Parental authority and State care

225. Family life does not end when a child is taken into public care (*Johansen v. Norway*, § 52; *Eriksson v. Sweden*, § 58), or the upon the parents' divorce (*Mustafa and Armağan Akin v. Turkey*, § 19). It is well established that removing children from the care of their parents to place them in the care of the state constitutes an interference with respect for family life that requires justification under paragraph 2 of Article 8.

226. The Court has established that the authorities enjoy a wide margin of appreciation when assessing the necessity of taking a child into care (*B.B. and F.B. v. Germany*, § 47; *Johansen v. Norway*, § 64). Moreover, it must be borne in mind that the national authorities have the benefit of direct contact with all the persons concerned (*Olsson v. Sweden (no. 2)*, § 90), often at the very stage when care measures are being envisaged or immediately after their implementation. A stricter scrutiny is called for, however, in respect of any further limitations, such as restrictions placed by those authorities on parental rights of access (*Elsholz v. Germany* [GC], § 64; *A.D. and O.D. v. the United Kingdom*, § 83).

227. Mistaken judgments or assessments by professionals do not *per se* render childcare measures incompatible with the requirements of Article 8 (*B.B. and F.B. v. Germany*, § 48). The authorities, both medical and social, have a duty to protect children and cannot be held liable every time genuine and reasonably held concerns about the safety of children *vis-à-vis* members of their family are proved, retrospectively, to have been misguided (*R.K. and A.K. v. the United Kingdom*, § 36; *A.D. and O.D. v. the United Kingdom*, § 84). It follows that the domestic decisions can only be examined in the light of the situation such as it presented itself to the domestic authorities at the time these decisions were taken (*B.B. and F.B. v. Germany*, § 48).

228. Thus, where domestic authorities were confronted with at least *prima facie* credible allegations of severe physical abuse, the temporary withdrawal of parental authority was sufficiently justified (*B.B. and F.B. v. Germany*, § 49). However, a decision to withdraw parental authority permanently did not provide sufficient reasons in the main proceedings and was thus an Article 8 violation (*ibid.*, §§ 51-52). Where withdrawal of parental authority had been based on a distinction essentially deriving from religious considerations, the Court held that there had been a violation of Article 8 in conjunction with Article 14 (*Hoffmann v. Austria*, § 36, concerning the withdrawal of parental rights from the applicant after she divorced the father of their two children because she was a Jehovah's Witness). Furthermore, where a healthy infant was taken into care because the mother chose to leave the hospital earlier than recommended by the doctors, this decision was disproportionate and in violation of Article 8 (*Hanzelkovi v. the Czech Republic*, § 79).

229. The fact that a child could be placed in a more beneficial environment for his or her upbringing will not on its own justify a compulsory measure of removal from the care of the biological parents; there must exist other circumstances pointing to the "necessity" for such an interference with the parents' right under Article 8 to enjoy a family life with their child (*K. and T. v. Finland* [GC], § 173). Nor can a mother's financial situation, without regard for changed circumstances, justify the removal of a child from her mother's care (*R.M.S. v. Spain*, § 92). Likewise, a breach was found where domestic authorities had merely based their decision on the applicant's financial and social difficulties, without providing him with appropriate social assistance (*Akinnibosun v. Italy*, §§ 83-84). In *Soares De Melo v. Portugal*, the Court found a violation of Article 8 where the children of a woman living in precarious conditions were placed in care with a view to adoption, resulting in the severance of the family ties (§§ 118-123).

230. A care order should be regarded as a temporary measure, to be discontinued as soon as circumstances permit, and any measures implementing temporary care should be consistent with the ultimate aim of reuniting the natural parents and the child (in particular, *Olsson v. Sweden (no. 1)*, § 81). The positive duty to take measures to facilitate family reunification as soon as reasonably feasible will begin to weigh on the competent authorities with progressively increasing

force as from the commencement of the period of care, subject always to its being balanced against the duty to consider the best interests of the child (*K. and T. v. Finland* [GC], § 178). The Court found a violation of Article 8 where the domestic authorities, by declaring the children of the applicant adoptable, did not make all the necessary efforts to preserve the parent-child relationship (*S.H. v. Italy*, § 58).

231. Article 8 demands that decisions of courts aimed in principle at facilitating visits between parents and their children, so that they can re-establish relations with a view to reunification of the family, must be implemented in an effective and coherent manner. No logical purpose would be served in deciding that visits may take place if the manner in which the decision is implemented means that *de facto* the child is irreversibly separated from its natural parent. Accordingly, authorities failed to strike a fair balance between the interests of an applicant and her children under Article 8 as a result of the absence of any time-limit on a care order and the negative conduct and attitudes of those at the care centre which drove the first applicant's children towards an irreversible separation from their mother (*Scozzari and Giunta v. Italy* [GC], §§ 181 and 215).

232. An emergency care order placing an applicant's child in public care and the authorities' failure to take sufficient steps towards a possible reunification of the applicants' family regardless of any evidence of a positive improvement in the applicants' situation was also a violation of the right to family life, but subsequent normal care orders and access restrictions were not (*K. and T. v. Finland* [GC], §§ 170, 174, 179 and 194).

4. Other family relationships

a. As between siblings, grandparents

233. Family life can also exist between siblings (*Moustaquim v. Belgium*, § 36; *Mustafa and Armağan Akin v. Turkey*, § 19) and aunts/uncles and nieces/nephews (*Boyle v. the United Kingdom*, §§ 41-47). However, the traditional approach is that close relationships short of family life generally fall within the scope of private life (*Znamenskaya v. Russia*, § 27 and the references cited therein).

234. The Court has recognised the relationship between adults and their parents and siblings as constituting family life protected under Article 8 even where the adult did not live with his parents or siblings (*Boughanemi v. France*, § 35) and the adult had formed a separate household and family (*Moustaquim v. Belgium*, §§ 35 and 45-46; *El Boujaïdi v. France*, § 33).

235. The Court has stated that family life includes at least the ties between near relatives, for instance those between grandparents and grandchildren, since such relatives may play a considerable part in family life (*Marckx v. Belgium*, § 45; *Price v. the United Kingdom* (dec.)). The right to respect for family life of grandparents in relation to their grandchildren primarily entails the right to maintain a normal grandparent-grandchild relationship through contact between them (*Kruškić v. Croatia* (dec.), § 111; *Mitovi v. the Former Yugoslav Republic of Macedonia*, § 58). However, the Court considers that contact between grandparents and grandchildren normally take place with the agreement of the person who has parental responsibility, which means that access of a grandparent to his or her grandchild is normally at the discretion of the child's parents (*Kruškić v. Croatia* (dec.), § 112).

236. The principle of mutual enjoyment by parent and child of each other's company also applies in cases involving relations between a child and its grandparents (*L. v. Finland*, § 101). Particularly where the natural parents are absent, family ties have been held to exist between uncles and aunts and nieces and nephews (*Butt v. Norway*, §§ 4 and 76; *Jucius and Juciuvienė v. Lithuania*, § 27). However, in normal circumstances the relationship between grandparents and grandchildren is different in nature and degree from the relationship between parent and child and thus by its very nature generally calls for a lesser degree of protection (*Kruškić v. Croatia* (dec.), § 110; *Mitovi v. the Former Yugoslav Republic of Macedonia*, § 58).

237. In more recent jurisprudence, the Court has stated that family ties between adults and their parents or siblings attract lesser protection unless there is evidence of further elements of dependency, involving more than the normal emotional ties (*Benhebba v. France*, § 36; *Mokrani v. France*, § 33; *Onur v. the United Kingdom*, § 45; *Slivenko v. Latvia* [GC], § 97; *A.H. Khan v. the United Kingdom*, § 32).

b. Prisoner’s right to contact

238. It is an essential part of a prisoner’s right to respect for family life that the prison authorities assist him or her in maintaining contact with his or her close family (*Messina v. Italy (no. 2)*, § 61; *Kurkowski v. Poland*, § 95; *Vintman v. Ukraine*, § 78). The Court attached considerable importance to the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), which noted that long-term prison regimes “should seek to compensate for the desocialising effects of imprisonment in a positive and proactive way” (*Khoroshenko v. Russia* [GC], § 144). Restrictions such as limitations put on the number of family visits, supervision of those visits and, subjection of a detainee to a special prison regime or special visit arrangements constitute an interference with his rights under Article 8 (*Piechowicz v. Poland*, § 212; *Van der Ven v. the Netherlands*, § 69; *Khoroshenko v. Russia* [GC], §§ 106 and 146; *Mozer v. the Republic of Moldova and Russia* [GC], §§ 193-195; *Vidish v. Russia*, § 40). Likewise, the refusal to transfer the applicant to a prison closer to his parents’ home constituted a violation of Article 8 (*Rodzevillo v. Ukraine*, §§ 85-87).

239. However, in *Serce v. Romania*, § 56, the applicant, a Turkish national serving an 18-year prison sentence in Romania, complained about the refusal of the Romanian authorities to transfer him to another Council of Europe member State, Turkey, to serve the remainder of his sentence there, close to his wife and children. Despite having found that the unhygienic conditions in which he had been detained in Romania, the lack of activities or work and the prison overcrowding to which he was subject breached his Article 3 rights, the Court confirmed that Article 8 of the Convention was not applicable to his request for an inter-State prison transfer.

240. A refusal to allow a prisoner to attend the funerals of his parents was held to amount to an interference with the respect for private and family life (*Płoski v. Poland*, § 39). However, the Court deemed a decision to restrict visitation rights for a prisoner to be necessary and proportionate given the necessity of the specific prison regime that was in force at the time (*Enea v. Italy* [GC], §§ 131-135).

5. Immigration and expulsion

241. The Court has affirmed that a State is entitled, as a matter of international law and subject to its treaty obligations, to control the entry of aliens into its territory and their residence there (*Abdulaziz, Cabales and Balkandali v. the United Kingdom*, § 67; *Boujlifa v. France*, § 42). Moreover, the Convention does not guarantee the right of a foreign national to enter or to reside in a particular country. Thus, there is no obligation for the domestic authorities to allow an alien to settle in their country (*Jeunesse v. the Netherlands* [GC], § 103). The corollary of a State’s right to control immigration is the duty of aliens such as the applicant to submit to immigration controls and procedures and leave the territory of the Contracting State when so ordered if they are lawfully denied entry or residence (*ibid.*, § 100). However, the Court has found a violation of Article 8 where the authorities had failed to secure the applicant’s right to respect for his private life by not putting in place an effective and accessible procedure, which would have allowed the applicant’s asylum request to be examined within a reasonable time, thus reducing as much as possible the precariousness of his situation (*B.A.C. v. Greece*, § 46).

a. Children in detention centres

242. The States' interest in foiling attempts to circumvent immigration rules must not deprive foreign minors, especially if unaccompanied, of the protection their status warrants (*Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, § 81). Where the risk of the second applicant's seeking to evade the supervision of the Belgian authorities was minimal, her detention in a closed centre for adults was unnecessary (*ibid.*, § 83).

b. Family reunification

243. Where immigration is concerned, Article 8, taken alone, cannot be considered to impose on a State a general obligation to respect a married couple's choice of country for their matrimonial residence or to authorise family reunification on its territory (*Jeunesse v. the Netherlands* [GC], § 107; *Biao v. Denmark* [GC], § 117). Nevertheless, in a case which concerns family life as well as immigration, the extent of a State's obligations to admit to its territory relatives of persons residing there will vary according to the particular circumstances of the persons involved and the general interest (*Abdulaziz, Cabales and Balkandali v. the United Kingdom*, §§ 67-68; *Gül v. Switzerland*, § 38; *Ahmut v. the Netherlands*, § 63; *Sen v. the Netherlands*; *Osman v. Denmark*, § 54; *Berisha v. Switzerland*, § 60).

244. Factors to be taken into account in this context are the extent to which family life is effectively ruptured, the extent of the ties in the Contracting State, whether there are insurmountable obstacles in the way of the family living in the country of origin of one or more of them and whether there are factors of immigration control (for example, a history of breaches of immigration law) or considerations of public order weighing in favour of exclusion (*Rodrigues da Silva and Hoogkamer v. the Netherlands*, § 38; *Ajayi and Others v. the United Kingdom* (dec.); *Solomon v. the Netherlands* (dec.)).

245. Another important consideration is whether family life was created at a time when the persons involved were aware that the immigration status of one of them was such that the persistence of that family life within the host State would from the outset be precarious (*Sarumi v. the United Kingdom* (dec.); *Shebashov v. Latvia* (dec.)). Where this is the case the removal of the non-national family member would be incompatible with Article 8 only in exceptional circumstances (*Abdulaziz, Cabales and Balkandali v. the United Kingdom*, § 68; *Mitchell v. the United Kingdom* (dec.); *Ajayi and Others v. the United Kingdom* (dec.); *Rodrigues da Silva and Hoogkamer v. the Netherlands*; *Biao v. Denmark* [GC], § 138). The family reunification process must also be adequately transparent and processed without undue delays (*Tanda-Muzinga v. France*, § 82).

c. Deportation and expulsion decisions

246. A State's entitlement to control the entry of aliens into its territory and their residence there applies regardless of whether an alien entered the host country as an adult or at a very young age, or was perhaps even born there (*Üner v. the Netherlands* [GC], § 54). While a number of Contracting States have enacted legislation or adopted policy rules to the effect that long-term immigrants who were born in those States or who arrived there during early childhood cannot be expelled on the basis of their criminal record, such an absolute right not to be expelled cannot be derived from Article 8 (*ibid.*, § 55). However, very serious reasons are required to justify expulsion of a settled migrant who has lawfully spent all or the major part of his or her childhood and youth in a host country (*Maslov v. Austria*, § 75). Taking into account the applicant's family life and the fact that he only committed one serious crime in 1999, the Court stated that the expulsion of the applicant to Albania and a lifetime ban on returning to Greece violated Article 8 of the Convention (*Kolonja v. Greece*, §§ 57-58).

247. In assessing such cases, the Court also examines the best interests and well-being of the children, in particular the seriousness of the difficulties which any children of the applicant are likely to encounter in the country to which the applicant is to be expelled; and the solidity of social, cultural and family ties with the host country and with the country of destination (*Maslov v. Austria*, § 58; *Udeh v. Switzerland*, § 52). The Court has affirmed that the best interests of minor children should be taken into account in the balancing exercise with regard to expulsion of a parent, including the hardship of returning to the country of origin of the parent (*Jeunesse v. the Netherlands* [GC], §§ 117-118).

248. In immigration cases, there will be no family life between parents and adult children unless they can demonstrate additional elements of dependence other than normal emotional ties (*Kwakyie-Nti and Dufie v. the Netherlands* (dec.); *Slivenko v. Latvia* [GC], § 97; *A.S. v. Switzerland*, § 49). However, such ties may be taken into account under the head of “private life” (*Slivenko v. Latvia* [GC]). The Court has accepted in a number of cases concerning young adults who have not yet founded a family of their own that their relationship with their parents and other close family members also constitutes family life (*Maslov v. Austria*, § 62).

249. Where expulsions are challenged on the basis of alleged interference with private and family life, it is not imperative, in order for a remedy to be effective, that it should have automatic suspensive effect (*De Souza Ribeiro v. France* [GC], § 83). Nevertheless, in immigration matters, where there is an arguable claim that expulsion threatens to interfere with the alien’s right to respect for his private and family life, Article 13 in conjunction with Article 8 of the Convention requires that States must make available to the individual concerned the effective possibility of challenging the deportation or refusal-of-residence order and of having the relevant issues examined with sufficient procedural safeguards and thoroughness by an appropriate domestic forum offering adequate guarantees of independence and impartiality (*M. and Others v. Bulgaria*, §§ 122-132; *Al-Nashif v. Bulgaria*, § 133).

250. The Court has found a violation of the applicant’s right to respect for his private and family life where the obligation not to abscond and the seizure of the applicant’s international travel passports prevented the applicant from travelling to Germany, where he had lived for several years and where his family continued to live (*Kotiy v. Ukraine*, § 76).

251. The proposed deportation of a person suffering from serious illness to his country of origin in face of doubts as to the availability of appropriate medical treatment there, would have constituted a violation of Article 8 (*Paposhvili v. Belgium* [GC], §§ 221-226).

6. Material interests

252. “Family life” does not include only social, moral or cultural relations; it also comprises interests of a material kind, as is shown by, among other things, maintenance obligations and the position occupied in the domestic legal systems of the majority of the Contracting States by the institution of the reserved portion of an estate (in French, “*réserve héréditaire*”). The Court has thus accepted that the right of succession between children and parents, and between grandchildren and grandparents, is so closely related to family life that it comes within the ambit of Article 8 (*Marckx v. Belgium*, § 52; *Pla and Puncernau v. Andorra*, § 26). Article 8 does not, however, require that a child should be entitled to be recognised as the heir of a deceased person for inheritance purposes (*Haas v. the Netherlands*, § 43).

253. The Court has held that the granting of family allowance enables States to “demonstrate their respect for family life” within the meaning of Article 8; the allowance therefore comes within the scope of that provision (*Fawsie v. Greece*, § 28).

254. However, the Court has found that the concept of family life is not applicable to a claim for damages against a third party following the death of the applicant's fiancée (*Hofmann v. Germany* (dec.)).

IV. Home

A. General points

1. Scope of the notion of “home”

255. The notion of “home” is an autonomous concept which does not depend on the classification under domestic law (*Chiragov and Others v. Armenia* [GC], § 206). Accordingly, the answer to the question whether a habitation constitutes a “home” under the protection of Article 8 § 1 depends on the factual circumstances, namely the existence of sufficient and continuous links with a specific place (*Winterstein and Others v. France*, § 141 and the references cited therein; *Prokopovich v. Russia*, § 36; *McKay-Kopecka v. Poland* (dec.); for the case of a forced displacement, see *Chiragov and Others v. Armenia* [GC], §§ 206-207, and *Sargsyan v. Azerbaijan* [GC], § 260). Furthermore, the word “home” appearing in the English version of Article 8 is a term that is not to be strictly construed as the equivalent French term, “*domicile*”, has a broader connotation (*Niemietz v. Germany*, § 30).

256. “Home” is not limited to property of which the applicant is the owner or tenant. It may extend to long-term occupancy, on an annual basis, for long periods, of a house belonging to a relative (*Menteş and Others v. Turkey*, § 73). “Home” is not limited to those which are lawfully established (*Buckley v. the United Kingdom*, § 54) and may be claimed by a person living in a flat whose lease is not in his or her name (*Prokopovich v. Russia*, § 36). It may apply to a council house occupied by the applicant as tenant, even if, under domestic law, the right of occupation had ended (*McCann v. the United Kingdom*, § 46), or to occupancy for several years (*Brežec v. Croatia*, § 36).

257. “Home” is not limited to traditional residences. It therefore includes, among other things, caravans and other unfixed abodes (*Chapman v. the United Kingdom* [GC], §§ 71-74). It includes cabins or bungalows stationed on land, regardless of the question of the lawfulness of the occupation under domestic law (*Winterstein and Others v. France*, § 141; *Yordanova and Others v. Bulgaria*, § 103). Article 8 may also apply to second homes or holiday homes (*Demades v. Turkey*, §§ 32-34).

258. This concept extends to a professional person’s office or business premises (*Buck v. Germany*, § 31; *Niemietz v. Germany*, §§ 29-31), a newspaper’s premises (*Saint-Paul Luxembourg S.A. v. Luxembourg*, § 37), a notary’s practice (*Popovi v. Bulgaria*, § 103), or a university professor’s office (*Steeg v. Germany* (dec.)). It also applies to a registered office, and to the branches or other business premises of a company (*Société Colas Est and Others v. France*, § 41; *Kent Pharmaceuticals Limited and Others v. the United Kingdom* (dec.)). Whilst the Court has acknowledged the existence of a “home” in favour of an association complaining of surveillance measures (*Association for European Integration and Human Rights and Ekimdzhev v. Bulgaria*), an association cannot itself claim to be a victim of a violation of the right to respect for one’s home on account of pollution (*Asselbourg and Others v. Luxembourg* (dec.)).

259. The Court has laid down certain limits on the extension of the protection of Article 8. It does not apply to property on which it is intended to build a house, or to the fact of having roots in a particular area (*Loizidou v. Turkey*, § 66); neither does it extend to a laundry room, jointly owned by the co-owners of a block of flats, designed for occasional use (*Chelu v. Romania*, § 45); an artist’s dressing-room (*Hartung v. France* (dec.)); land used by the owners for sports purposes or over which the owner permits a sport to be conducted (for example, hunting, *Friend and Others v. the United Kingdom* (dec.), § 45); industrial buildings and facilities (mill, bakery or storage facility used exclusively for professional purposes: *Khamidov v. Russia*, § 131) or for housing farm animals (*Leveau and Fillon v. France* (dec.)).

260. Additionally, where “home” is claimed in respect of property in which there has never been any, or hardly any, occupation by the applicant or where there has been no occupation for some considerable time, it may be that the links to that property are so attenuated as to cease to raise any issue under Article 8 (for example, *Andreou Papi v. Turkey*, § 54). The possibility of inheriting title to property is not a sufficiently concrete link for the Court to conclude that there is a “home” (*Demopoulos and Others v. Turkey* (dec.) [GC], §§ 136-37). Moreover, Article 8 does not extend to guaranteeing the right to buy a house (*Strunjak and Others v. Croatia* (dec.)) or imposing a general obligation on the authorities to comply with the choice of joint residence elected by a married couple (*Mengesha Kimfe v. Switzerland*, § 61). Article 8 does not in terms recognise a right to be provided with a home (*Ward v. the United Kingdom* (dec.); *Codona v. the United Kingdom* (dec.)).

2. Examples of “interference”

261. The following can be cited as examples of possible interference with the right to respect for one’s home: deliberate destruction of the home by the authorities (*Selçuk and Asker v. Turkey*, § 86; *Akdivar and Others v. Turkey* [GC], § 88; (*Menteş and Others v. Turkey* § 73) or confiscation (*Aboufadda v. France* (dec.)); refusal to allow displaced persons to return to their homes (*Cyprus v. Turkey* [GC], § 174) which may amount to a “continuing violation” of Article 8; the transfer of the inhabitants of a village by decision of the authorities (*Noack and Others v. Germany* (dec.)); police entry into a person’s home (*Gutsanovi v. Bulgaria*, § 217) and search (*Murray v. the United Kingdom*, § 86); searches and seizures (*Chappell v. the United Kingdom*, §§ 50-51; *Funke v. France*, § 48), knowing that cooperation with the police not to be construed as meaning there was no “interference” (*Saint-Paul Luxembourg S.A. v. Luxembourg*, § 38) and that the offence giving rise to the search had been committed by a third party is irrelevant (*Buck v. Germany*); occupation or damaging of property (*Khamidov v. Russia*, § 138) or expulsion from home (*Orlić v. Croatia*, § 56 and the references therein), including an eviction order which has not yet been enforced (*Gladysheva v. Russia*, § 91; *Cosic v. Croatia*, § 22).

262. Other examples of “interference” are: changes to the terms of a tenancy (*Berger-Krall and Others v. Slovenia*, § 264); loss of one’s home on account of a deportation order (*Slivenko v. Latvia* [GC], § 96); impossibility for a couple, under the immigration rules, to set up home together and live together in a family unit (*Hode and Abdi v. the United Kingdom*, § 43); decisions regarding planning permission (*Buckley v. the United Kingdom*, § 60); compulsory purchase orders (*Howard v. the United Kingdom* (dec.)) and an order to companies to provide tax auditors with access to premises and to enable them to take a copy of data on a server (*Bernh Larsen Holding AS and Others v. Norway*, § 106).

263. The Court has found other instances of interference with the right to respect for home, such as, for example, an order to vacate from land caravans, cabins or bungalows that had been illegally stationed there for many years (*Winterstein and Others v. France*, § 143) or illegal makeshift homes (*Yordanova and Others v. Bulgaria*, § 104); a person’s inability to have their name removed from the register of permanent residences (*Babylonová v. Slovakia*, § 52); obligation to obtain a licence to live in one’s own house and imposition of a fine for unlawful occupation of own property (*Gillow v. the United Kingdom*, § 47). The Court has also found that the inability of displaced persons, in the context of a conflict, to return to their homes amounted to an “interference” with the exercise of their rights under Article 8 (*Chiragov and Others v. Armenia* [GC], § 207; *Sargsyan v. Azerbaijan* [GC], § 260).

3. Margin of appreciation

264. In so far as, in this area, the questions in issue may depend on a multitude of local factors and pertain to the choice of town and country planning policies, the Contracting States in principle enjoy

a wide margin of appreciation (*Noack and Others v. Germany* (dec.)). However, it remains open to the Court to conclude that there has been a manifest error of appreciation (*Chapman v. the United Kingdom* [GC], § 92). The implementation of these choices may infringe the right to respect for one's home, without however raising an issue under the Convention where certain conditions are satisfied and accompanying measures implemented (*Noack and Others v. Germany* (dec.)). However, where the right at stake is crucial to the individual's effective enjoyment of intimate or key rights, the margin of appreciation will tend to be narrower (*Ezeh and Connors v. the United Kingdom*, § 82).

B. Housing

265. Article 8 cannot be construed as recognising a right to be provided with a home (*Chapman v. the United Kingdom* [GC], § 99). The right to respect for one's home means not just the right to the actual physical area, but also to the quiet enjoyment of that area. This may involve measures that are required to be taken by the authorities, particularly regarding the enforcement of court decisions (*Cvijetić v. Croatia*, §§ 51-53). An interference may be either physical, such as unauthorised entry into a person's home (*Cyprus v. Turkey* [GC], § 294), or not physical, such as noise, smells, etc. (*Moreno Gómez v. Spain*, § 53).

266. Whilst Article 8 protects individuals against interference by public authorities, it may also entail the State's adoption of measures to secure the right to respect for one's "home" (*Novoseletskiy v. Ukraine*, § 68), even in the sphere of relations between individuals (*Surugiu v. Romania*, § 59). The Court has found a breach by the State of its positive obligations on account of failure by the authorities to take action following the repeated complaints by an applicant that people were coming into his courtyard and emptying cartloads of manure in front of his door and windows (*Surugiu v. Romania*, §§ 67-68; see, for a case in which the authorities were found not to have failed to comply with their positive obligation, *Osman v. the United Kingdom*, §§ 129-130). Failure by the national authorities to enforce an eviction order from a flat, in favour of the owner, was deemed to amount to a failure by the State to comply with its positive obligations under Article 8 (*Pibernik v. Croatia*, § 70). Late restitution by the public authorities of a flat in a condition unfit for human habitation was held to infringe the right to respect for the applicant's home (*Novoseletskiy v. Ukraine*, §§ 84-88).

267. The Court requires the member States to weigh up the competing interests at stake (*Hatton and Others v. the United Kingdom* [GC], § 98), whether the case is examined from the point of view of an interference by a public authority that has to be justified under paragraph 2 of Article 8, or from that of positive obligations requiring the State to adopt a legal framework to protect the right to respect for one's home under paragraph 1.

268. With regard to the scope of the State's margin of appreciation in this area, particular significance has to be attached to the extent of the intrusion into the applicant's personal sphere (*Ezeh and Connors v. the United Kingdom*, § 82; *Gladysheva v. Russia*, §§ 91-96). Having regard to the crucial importance of the rights guaranteed under Article 8 to the individual's identity, self-determination, and physical and moral integrity, the margin of appreciation in housing matters is narrower when it comes to the rights guaranteed by Article 8 compared to those in Article 1 of Protocol No. 1 (*Gladysheva v. Russia*, § 93).

269. The Court will have particular regard to the procedural guarantees in determining whether the State has exceeded its margin of appreciation when defining the applicable legal framework (*Ezeh and Connors v. the United Kingdom*, § 92). It has held, *inter alia*, that "[t]he loss of one's home is a most extreme form of interference with the right to respect for the home. Any person at risk of an interference of this magnitude should in principle be able to have the proportionality of the measure determined by an independent tribunal in the light of the relevant principles under Article 8 of the Convention, notwithstanding that, under domestic law, his right of occupation has come to an end" (*McCann v. the United Kingdom*, § 50).

1. Property owners

270. Where a State authority is dealing with a bona fide purchaser of property that had been fraudulently acquired by the previous owner, the national courts cannot automatically order eviction without examining more closely the proportionality of the measure or the particular circumstances of the case. The fact that the house is repossessed by the State, and not by another private party whose interests in that particular flat would have been at stake, is also of particular importance (*Gladysheva v. Russia*, §§ 90-97).

271. It will sometimes be necessary for a member State to attach and sell an individual's home in order to secure the payment of taxes due to the State. However, these measures must be enforced in a manner which ensures that the individual's right to his or her home is respected. In a case concerning the conditions of an enforced sale at auction of a house, to repay a tax debt, the Court found a violation because the owner's interests had not been adequately protected (*Rousk v. Sweden*, §§ 137-42). With regard, more generally, to reconciliation of the right to respect for one's home with the enforced sale of a house for the purposes of paying debts, see *Vrzić v. Croatia*, § 13.

272. The obligation to seek a licence to occupy a house owned on an island, in order to prevent overpopulation of the island, is not in itself contrary to Article 8. However, the proportionality requirement is not satisfied if the national authorities fail to give sufficient weight, *inter alia*, to the particular circumstances of the property owners (*Gillow v. the United Kingdom*, §§ 56-58).

273. The Court has examined the question of the imminent loss of a house following a decision to demolish it on the grounds that it had been built without a permit in breach of the applicable building regulations (*Ivanova and Cherkeзов v. Bulgaria*). The Court mainly examined whether the demolition was "necessary in a democratic society". It relied on the judgments it had delivered in previous cases in which it had found that proceedings to evict from a house had to comply with the interests protected by Article 8, the loss of one's home being a most extreme form of interference with the right to respect for the home, whether or not the person concerned belonged to a vulnerable group. In concluding that there had been a violation of Article 8 in this case, the Court based itself on the finding that the issue before the national courts was only that of illegality and they had confined themselves to examining that question, without examining the potentially disproportionate effect of enforcement of the demolition order on the applicants' personal situation (*ibid.*, §§ 49-62).

274. The Court has also held that where a State adopts a legal framework obliging a private individual to share his or her home with persons foreign to his or her household, it must put in place thorough regulations and necessary procedural safeguards to enable all the parties concerned to protect their Convention interests (*Irina Smirnova v. Ukraine*, § 94).

2. Tenants

275. The Court has ruled on a number of disputes relating to the eviction of tenants (see the references cited in *Ivanova and Cherkeзов v. Bulgaria*, § 52). A notice to quit issued by the authorities must be necessary and comply with procedural guarantees as part of a fair decision-making process before an independent tribunal complying with the requirements of Article 8 (*Ezeh and Connors v. the United Kingdom*, §§ 81-84; *Bjedov v. Croatia*, §§ 70-71). It is insufficient merely to indicate that the measure is prescribed by domestic law, without taking into account the individual circumstances in question (*Ćosić v. Croatia*, § 21). The measure must also pursue a legitimate objective and loss of the home must be shown to be proportionate to the legitimate aims pursued, in accordance with Article 8 § 2. Regard must therefore be had to the factual circumstances of the occupant whose legitimate interests are to be protected (*Orlić v. Croatia*, § 64; *Gladysheva v. Russia*, §§ 94-95; *Kryvitska and Kryvitsky v. Ukraine*, § 50; *Andrey Medvedev v. Russia*, § 55).

276. The Court has thus decided that a *summary procedure* for eviction of a tenant that does not offer adequate procedural guarantees would entail a violation of the Convention, even if the measure was legitimately seeking to ensure due application of the statutory housing regulations (*McCann v. the United Kingdom*, § 55). Termination of a lease without any possibility of having the proportionality of the measure determined by an independent tribunal was held to infringe Article 8 (*Kay and Others v. the United Kingdom*, § 74). Furthermore, continuing occupation of a person's property in breach of an enforceable eviction order issued by a court after finding that the occupation in question was illegal infringes Article 8 (*Khamidov v. Russia*, § 145).

277. In its judgment *Larkos v. Cyprus* [GC], the Court held that offering differential protection to tenants against eviction – according to whether they are renting State-owned property or renting from private landlords – entailed a violation of Article 14 taken in conjunction with Article 8 (§§ 31-32). However, it is not discriminatory to make provisions only for tenants of publicly owned property to purchase their flat, with tenants of privately owned flats which they occupy being unable to do so (*Strunjak and Others v. Croatia* (dec.)). Moreover, it is legitimate to put in place criteria according to which *social housing* can be allocated, when there is insufficient supply available to satisfy demand, so long as such criteria are not arbitrary or discriminatory (*Bah v. the United Kingdom*, § 49; see, more generally, on tenants of social housing *Paulić v. Croatia*; *Kay and Others v. the United Kingdom*).

278. The Court did not find a violation of Article 8 regarding a reform of the housing sector, following the transition from a socialist regime to a market economy, resulting in a general weakening of legal protection for holders of “*specialty protected tenancies*”. Despite an increase in rent and a reduced guarantee of being able to stay in their flats, the tenants continued to enjoy special protection to a degree that was higher than that normally afforded to tenants (*Berger-Krall and Others v. Slovenia*, § 273 and the references cited therein; compare, however, *Galović v. Croatia* (dec.), § 65).

3. Tenants’ partners/unauthorised occupancy

279. The protection provided by Article 8 of the Convention is not confined to lawful/authorised occupancy of a building pursuant to domestic law (*McCann v. the United Kingdom*, § 46; *Bjedov v. Croatia*, § 58; *Ivanova and Cherkezov v. Bulgaria*, § 49). As a matter of fact, the Court extended the protection of Article 8 to the occupant of a flat to which only her partner held the tenancy rights (*Prokopovich v. Russia*, § 37; see also *Korelc v. Slovenia*, § 82), and to a person who had been living unlawfully in her flat for almost 40 years (*Brežec v. Croatia*, § 36). On the other hand, when considering whether a requirement that the individual leave his or her home is proportionate to the legitimate aim pursued, it is highly relevant whether or not the home was established unlawfully (*Chapman v. the United Kingdom* [GC], § 102).

280. The Court found a violation of Article 8 taken in conjunction with Article 14 where an occupant was prohibited from succeeding to a tenancy after the death of his same-sex partner (*Karner v. Austria*, §§ 41-43, and *Kozak v. Poland*, § 99).

4. Minorities and vulnerable persons

281. The Court also takes into account an occupant's vulnerability, with case-law protecting minorities' lifestyles. It has, in particular, emphasised the vulnerability of Roma and Travellers, and the need to pay particular attention to their specific needs and ways of life (*Ezeh and Connors v. the United Kingdom*, § 84). That may impose positive obligations on the national authorities (*Chapman v. the United Kingdom* [GC], § 96; *Yordanova and Others v. Bulgaria*, §§ 129-130 and 133), albeit within certain limits (*Codona v. the United Kingdom* (dec.)). Measures affecting the stationing of Gypsy caravans have an impact on their right to respect for their “home” (*Chapman v. the United*

Kingdom [GC], § 73). Where problems arise, the Court places the emphasis on action by the national authorities to find a solution (*Stenegry and Adam v. France* (dec.)).

282. In that connection, the Court reiterated the criteria for assessing compliance with the requirements of Article 8 in its *Winterstein and Others v. France* judgment (see § 148 and the references therein). It found no violation where the applicants' difficult situation was duly taken into account, the reasons relied on by the responsible planning authorities were relevant and sufficient and the means employed were not disproportionate (*Buckley v. the United Kingdom*, § 84, and *Chapman v. the United Kingdom* [GC], § 114). As regards measures to remove persons from their living environment, the Court found a violation in the cases of *Ezeh and Connors v. the United Kingdom*, § 95; *Yordanova and Others v. Bulgaria*, § 144; *Winterstein and Others v. France*, §§ 156 and 167; *Buckland v. the United Kingdom*, § 70; *Bagdonavicius and Others v. Russia*, § 107 (concerning forced evictions and the destruction of houses without any rehousing plans).

283. The Court has also ruled that the authorities' general attitude perpetuating the feelings of insecurity of Roma whose houses and property had been destroyed, and the repeated failure of the authorities to put a stop to interference with their home life, in particular, amounted to a serious violation of Article 8 (*Moldovan and Others v. Romania (no. 2)*, §§ 108-109).

284. A measure which affects a minority does not amount ipso facto to a violation of Article 8 (*Noack and Others v. Germany* (dec.)). In this case, the Court has considered whether the arguments put forward to justify transferring the residents of a municipality, some of whom belonged to a national minority, to another municipality were relevant, and whether that interference had been proportionate to the aim pursued, bearing in mind that it had affected a minority.

285. Individuals who lack legal capacity are also particularly vulnerable. Article 8 therefore imposes on the State the positive obligation to afford them special protection. Accordingly, the fact that a person who lacked legal capacity was dispossessed of her home without being able to participate effectively in the proceedings or to have the proportionality of the measure determined by the courts amounted to a violation of Article 8 (*Zehentner v. Austria*, §§ 63 and 65).

286. The Court has held that the fact that children who had been psychologically affected by repeatedly witnessing their father's violence against their mother in the family home amounted to an interference with their right to respect for their home (*Eremia v. Republic of Moldova*, § 74). The Court found a violation of Article 8 in that case on the grounds of the failure of the judicial system to react decisively to the serious domestic violence committed (§§ 78-79).

287. A refusal by the welfare authorities to provide housing assistance to an individual suffering from a serious disease might in certain circumstances raise an issue under Article 8 because of the impact of such a refusal on the private life of the individual in question (*O'Rourke v. the United Kingdom* (dec.)).

5. Home visits, searches and seizures

288. In order to secure physical evidence on certain offences, the domestic authorities may consider it necessary to implement measures which entail entering a private home. The actions of the police when entering homes must be proportionate to the aim pursued (*McLeod v. the United Kingdom*, §§ 53-57), as must any action taken inside the individual home (*Vasylichuk v. Ukraine*, § 83, concerning the ransacking of private premises).

289. Citizens must be protected from the risk of undue police intrusions into their homes. The Court found a violation of Article 8 where members of a special intervention unit wearing balaclavas and armed with machine guns had entered a private home at daybreak in order to serve charges on the applicant and escort him to the police station. The Court pointed out that that safeguards should be in place in order to avoid any possible abuse and protect human dignity in such circumstances (*Kučera v. Slovakia*, §§ 119 and 122; see also *Rachwalski and Ferenc v. Poland*, § 73). Those

safeguards might even include requiring the State to conduct an effective investigation if that is the only legal means of shedding light on allegations of unlawful searches of property (*H.M. v. Turkey*, §§ 26-27 and 29: violation of the procedural limb of Article 8 owing to the inadequacy of the investigation; regarding the importance of such procedural protection, see *Vasylchuk v. Ukraine*, § 84).

290. Measures involving entering private homes must be “in accordance with the law”, which entails compliance with legal procedure (*L.M. v. Italy*, §§ 29 and 31) and with the existing safeguards (*Panteleyenko v. Ukraine*, §§ 50-51; *Kilyen v. Romania*, § 34), must pursue one of the legitimate aims listed in Article 8 § 2 (*Smirnov v. Russia*, § 40), and must be “necessary in a democratic society” to achieve that aim (*Camenzind v. Switzerland*, § 47).

291. The following are examples of measures which pursue legitimate aims: action by the Competition Authority to protect economic competition (*DELTA PEKÁRNY a.s. v. the Czech Republic*, § 81); suppression of tax evasion (*Keslassy v. France* (dec.), and *K.S. and M.S. v. Germany*, § 48); seeking circumstantial and material evidence in criminal cases, for example involving forgery, breach of trust and the issuing of uncovered cheques (*Van Rossem v. Belgium*, § 40), drug trafficking (*Işıldak v. Turkey*, § 50), and illegal trade in medicines (*Wieser and Bicos Beteiligungen GmbH v. Austria*, § 55).

292. The Court also assesses the relevance and adequacy of the arguments advanced to justify such measures, and compliance with the proportionality principle in the specific circumstances of the case (*Buck v. Germany*, § 45), and whether the relevant legislation and practice provide appropriate and relevant safeguards to prevent the authorities from taking arbitrary action (*Gutsanovi v. Bulgaria*, § 220; regarding the applicable criteria, see *Iliya Stefanov v. Bulgaria*, §§ 38-39 and *Smirnov v. Russia*, § 44). For example, judges cannot simply sign a record, add the official court seal and enter the date and time of the decision with the word “approved” on the document without a separate order setting out the grounds for such approval (*Gutsanovi v. Bulgaria*, § 223). Regarding a home search which was carried out under a warrant likely to have been obtained in breach of domestic and international law, see *K.S. and M.S. v. Germany*, §§ 49-53.

293. The Court is particularly vigilant where domestic law authorises house searches without a judicial warrant. It accepts such searches where the lack of a warrant is offset by effective subsequent judicial scrutiny of the lawfulness and necessity of the measure (*Işıldak v. Turkey*, § 51, and *Gutsanovi v. Bulgaria*, § 222). This requires those concerned to be able to secure effective *de facto* and *de jure* judicial scrutiny of the lawfulness of the measure and appropriate redress should the measure be found unlawful (*DELTA PEKÁRNY a.s. v. the Czech Republic*, § 87). A house search ordered by a prosecutor without scrutiny by a judicial authority is in breach of Article 8 (*Varga v. Romania*, §§ 70-74).

294. The Court considers that a search warrant has to be accompanied by certain limitations, so that the interference which it authorises is not potentially unlimited and therefore disproportionate. The wording of the warrant must specify its scope (in order to ensure that the search concentrates solely on the offences under investigation) and the criteria for its enforcement (to facilitate scrutiny of the extent of the operations). A broadly worded warrant lacking information on the investigation in question or the items to be seized fails to strike a fair balance between the rights of the parties involved because of the wide powers which it confers on the investigators (*Van Rossem v. Belgium*, §§ 44-50 and the references therein, and *Bagiyeva v. Ukraine*, § 52).

295. A police search may be deemed disproportionate where it has not been preceded by reasonable and available precautions (*Keegan v. the United Kingdom*, §§ 33-36: lack of adequate prior verification of the identities of the residents of the premises searched), or where the action taken was excessive (*Vasylchuk v. Ukraine*, §§ 80 and 84). A police raid at 6 a.m., without adequate reason, of the home of an absent person who was not the prosecuted person but the victim, was found not to have been “necessary” in a democratic society (the Court also noted the impact on the

reputation of the person concerned; *Zubal' v. Slovakia*, §§ 41-45). The Court has also found a violation of Article 8 in a case of searches and seizures in a private home in connection with an offence purportedly committed, moreover, by another person (*Buck v. Germany*, § 52).

296. The Court may take into account the presence of the applicant and other witnesses during a house search (*Bagiyeva v. Ukraine*, § 53) as a factor enabling the applicant effectively to control the extent of the searches carried out (*Maslák and Michálková v. the Czech Republic*, § 79). On the other hand, a search conducted in the presence of the person concerned, his lawyer, two other witnesses and an expert but in the absence of prior authorisation by a court and of effective subsequent scrutiny is insufficient to prevent the risk of abuse of authority by the investigating agencies (*Gutsanovi v. Bulgaria*, § 225).

297. Conversely, the safeguards established by domestic law and the practicalities of the search may lead to a finding of no violation of Article 8 (regarding a search of limited scope geared to seizing an unauthorised telephone: *Camenzind v. Switzerland*, § 46, and *Paulić v. Croatia*; regarding the existence of appropriate safeguards: *Cronin v. the United Kingdom* (dec.); *Ratushna v. Ukraine*, § 82).

298. As regards visits to homes and seizures by customs officers, the Court has deemed disproportionate the extensive powers conferred on the customs authorities combined with the lack of a judicial warrant (*Mialhe v. France (no. 1)*; *Funke v. France*; *Crémieux v. France*).

299. The Court considers the protection of citizens and institutions against the threats of terrorism and the specific problems bound up with the arrest and detention of persons suspected of terrorist-linked offences when examining the compatibility of an interference with Article 8 § 2 of the Convention (*Murray v. the United Kingdom*, § 91; *H.E. v. Turkey*, §§ 48-49). Anti-terrorist legislation must provide adequate protection against abuse and be complied with by the authorities (*Khamidov v. Russia*, § 143). For an anti-terrorist operation, see also *Menteş and Others v. Turkey*, § 73.

300. In the case of *Sher and Others v. the United Kingdom*, the authorities had suspected an imminent terrorist attack and initiated extremely complex investigations in order to foil the attack. The Court agreed that the search warrant had been couched in fairly broad terms. However, it considered that the fight against terrorism and the urgency of the situation could justify a search based on terms that were wider than would otherwise have been permissible. In cases of this nature, the police should be permitted some flexibility in assessing, on the basis of what is encountered during the search, which items might be linked to terrorist activities, and in seizing them for further examination (§§ 174-176).

C. Commercial premises

301. The rights guaranteed by Article 8 of the Convention may include the right to respect for a company's registered office, branches or other business premises (*Société Colas Est and Others v. France*, § 41). See also *Chappell v. the United Kingdom*, in connection with an individual's premises which were also the headquarters of a company which he controlled (§ 63).

302. The margin of appreciation afforded to the State in assessing the necessity of an interference is wider where the search measure concerns legal entities rather than individuals (*DELTA PEKÁRNY a.s. v. the Czech Republic*, § 82; *Bernh Larsen Holding AS and Others v. Norway*, § 159).

303. House searches or visits to and seizures on business premises may comply with the requirements of Article 8 (*Keslassy v. France* (dec.); *Société Canal Plus and Others v. France*, §§ 55-57). Such measures are disproportionate to the legitimate aims pursued and therefore contrary to the rights protected by Article 8, where there are no "relevant and sufficient" reasons to justify them and no appropriate and sufficient safeguards against abuse (*Société Colas Est and Others v. France*, §§ 48 and 49).

304. As regards the extent of the tax authorities' powers of investigation regarding computer servers, for example, the Court has emphasised the public interest in ensuring efficiency in the inspection of information provided by applicant companies for tax assessment purposes and the importance of the existence of effective and adequate safeguards against abuse by the tax authorities (*Bernh Larsen Holding AS and Others v. Norway*, §§ 172-174, no violation).

305. As regards inspections of premises in the context of anti-competitive practices, the Court found a violation of Article 8 where no prior authorisation had been sought or given for an inspection by a judge, no effective ex post scrutiny had been conducted of the necessity of the interference, and no regulations existed on the possible destruction of the copies seized during the inspection (*DELTA PEKÁRNY a.s. v. the Czech Republic*, § 92).

D. Law firms

306. The concept of "home" in Article 8 § 1 of the Convention embraces not only a private individual's home but also a lawyer's office or a law firm (*Buck v. Germany*, §§ 31-32; *Niemietz v. Germany*, §§ 30-33). Searches of the premises of a lawyer may breach professional secrecy, which is the basis of the relationship of trust existing between a lawyer and his client (*André and Another v. France*, § 41). Consequently, such measures must be accompanied by "special procedural guarantees" and the lawyer must have access to "effective scrutiny" to contest them. That is not the case where a remedy fails to provide for the cancellation of the impugned search (*Xavier Da Silveira v. France*, §§ 37, 42 and 48).

307. In view of the impact of such measures, their adoption and implementation must be subject to very clear and precise rules (*Petri Sallinen and Others v. Finland*, § 90). The role played by lawyers in defending human rights is a further reason why searches of their premises should be subject to especially strict scrutiny (*Heino v. Finland*, § 43, and *Kolesnichenko v. Russia*, § 31).

308. Such measures may concern offences which directly involve the lawyer or, on the contrary, have nothing to do with him or her. In some cases, the search in question was designed to obviate the difficulties encountered by the authorities in gathering incriminating evidence (*André and Another v. France*, § 47), in breach of legal professional secrecy (*Smirnov v. Russia*, §§ 46 and 49). The importance of legal professional secrecy has always been emphasised in relation to Article 6 of the Convention (rights of the defence) since *Niemietz v. Germany* (§ 37). The Court also refers to the protection of the lawyer's reputation (*Niemietz v. Germany*, § 37, and *Buck v. Germany*, § 45).

309. The Convention does not prohibit the imposition on lawyers of certain obligations likely to concern their relationships with their clients. This is the case, in particular, where credible evidence is found of a lawyer's participation in an offence, or in connection with efforts to combat certain unlawful practices. The Court has emphasised that it is vital to provide a strict framework for such measures (*André and Another v. France*, § 42). For an example of a search conducted in a law firm in accordance with the requirements of the Convention, see *Jacquier v. France* (dec.).

310. The fact that a visit to a home took place in the presence of the chairman of the Bar Association is a "special procedural guarantee" (*André and Another v. France*, §§ 42-43, and *Roemen and Schmit v. Luxembourg*, § 69), but the presence of that chairman is insufficient on its own (*André and Another v. France*, §§ 44-46). The Court has found a violation on the grounds of the lack of a judicial warrant and of effective ex post judicial scrutiny (*Heino v. Finland*, § 45).

311. The existence of a search warrant providing relevant and sufficient reasons for issuing letters rogatory does not necessarily safeguard against all risks of abuse, because regard must also be had to its scope and the powers conferred on the inspectors. The Court has thus found a violation in cases of search warrants which were too broad in scope and conferred too much power on the investigators, and where no regard was had to the person's status as a lawyer and no action taken to

properly protect his or her professional secrecy (*Kolesnichenko v. Russia*, §§ 32-35; *Iliya Stefanov v. Bulgaria*, §§ 39-44; *Smirnov v. Russia*, § 48; *Aleksanyan v. Russia*, § 216).

312. The Court has also taken issue with seizures and searches which, although accompanied by special procedural guarantees, were nonetheless disproportionate to the legitimate aim pursued (*Roemen and Schmit v. Luxembourg*, §§ 69-72).

313. It should be noted that under Article 8 a search can raise issues from the angle of respect for both the home and correspondence (*Golovan v. Ukraine*, § 51).

E. Journalists' homes

314. Searches of press premises aimed at obtaining information on journalists' sources can raise an issue under Article 8 (and are therefore not liable solely to assessment under Article 10 of the Convention).

Searches of lawyers' premises may be aimed at discovering journalists' sources (*Roemen and Schmit v. Luxembourg*, §§ 64-72).

315. The Court has considered disproportionate a series of searches conducted of journalists' professional and private premises, even though it acknowledged that they had afforded some procedural guarantees. As a matter of fact, the journalists had not been charged with any offences, and the search warrants had been couched in broad terms and had not included any information on the investigation in question, the premises to be inspected and the items to be seized. Consequently, those warrants conferred too many powers on the investigators, who had thus been able to copy and seize extensive data. Moreover, the journalists had not been informed of the reasons for the searches (*Ernst and Others v. Belgium*, §§ 115-116).

316. The Court has assessed a search of the headquarters of a company which published a newspaper with a view to confirming the identity of the author of an article published in the press. It held that the fact that the journalists and the employees of the company had cooperated with the police did not make the search and the associated seizure any less intrusive. The competent authorities should show restraint in implementing such measures, having regard to the practical requirements of the case (*Saint-Paul Luxembourg S.A. v. Luxembourg*, §§ 38 and 44).

F. Home environment

1. General approach

317. The Convention does not explicitly secure the right to a healthy, calm environment (*Kyrtatos v. Greece*, § 52), but where an individual is directly and seriously affected by noise or other pollution, an issue may arise under Article 8 (*Hatton and Others v. the United Kingdom* [GC], § 96; *Moreno Gómez v. Spain*, § 53). Article 8 may be applicable whether the pollution is directly caused by the State or the latter is responsible in the absence of appropriate regulations governing the activities of the private sector in question.

318. However, in order to raise an issue under Article 8, the environmental pollution must have direct and immediate consequences for the right to respect for the home (*Hatton and Others v. the United Kingdom* [GC], § 96). For example, a reference to risks of pollution from a future industrial activity is insufficient in itself to confer victim status on an applicant (*Asselbourg and Others v. Luxembourg* (dec.)).

319. The consequences of the environmental pollution must reach a certain severity threshold, without necessarily seriously endangering the person's health (*López Ostra v. Spain*, § 51). Assessment of that threshold depends on the circumstances of the case, such as the intensity and

duration of the nuisance (*Udovičić v. Croatia*, § 139), and its physical or mental effects (*Fadeyeva v. Russia*, § 69).

320. Consequently, Article 8 covers neither “general deterioration of the environment” (*Martínez Martínez and Pino Manzano v. Spain*, § 42) nor the case of detriment which is negligible in comparison to the environmental hazards inherent to life in every modern city (*Hardy and Maile v. the United Kingdom*, § 188).

321. The requisite severity threshold is not reached where a pulsating noise from wind turbines (*Fägerskiöld v. Sweden* (dec.)) or the noise emanating from a dentist’s surgery (*Galev and Others v. Bulgaria* (dec.)) are insufficient to cause serious harm to residents and prevent them from enjoying the amenities of their home (see also, regarding a meat-processing plant, *Koceniak v. Poland* (dec.)). On the other hand, the noise level of letting off fireworks near homes in the countryside can reach the requisite severity threshold (*Zammit Maempel v. Malta*, § 38).

322. The mere fact that the activity causing the alleged nuisance is unlawful is insufficient in itself to bring it within the scope of Article 8. The Court must decide whether the nuisance reached the requisite severity threshold (*Furlepa v. Poland* (dec.)). The case of *Dzemyuk v. Ukraine* concerned a cemetery close to the applicant’s house and water supply. The high level of bacteria found in the drinking water from the applicant’s well, coupled with a blatant violation of environmental health safety regulations, confirmed the existence of environmental risks, in particular of serious water pollution, reaching a sufficient level of severity to trigger the application of Article 8. The unlawfulness of the siting of the cemetery had been recognised in various domestic court decisions, but the competent local authorities had failed to comply with the final judicial decision ordering the closure of the cemetery. The Court ruled that the interference with the applicant’s right to respect for his home and his private and family life was not “in accordance with the law” (§§ 77-84 and 87-92).

323. The Court allows some flexibility in terms of proving the harmful effect of pollution on the right to respect for the home (*Fadeyeva v. Russia*, § 79). The fact that the applicant was unable to provide an official document from the domestic authorities certifying the danger does not necessarily make his application inadmissible (*Tătar v. Romania*, § 96).

324. When dealing with an allegation of environmental pollution affecting the right to the “home”, the Court adopts a two-stage approach. First of all, it considers the substantive merits of the domestic authorities’ decisions, and secondly, it scrutinises the decision-making process (*Hatton and Others v. the United Kingdom* [GC], § 99). The violation may involve an arbitrary interference by the public authorities or a failure to honour their positive obligations. The Court reiterates that “in both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole” (*Moreno Gómez v. Spain*, § 55).

325. The State has a margin of appreciation in this sphere (*Hatton and Others v. the United Kingdom* [GC], §§ 100-103). Environmental protection should be taken into consideration by States in acting within their margin of appreciation and by the Court in its review of that margin, but it would not be appropriate for the Court to adopt a special approach in this respect by reference to a special status of environmental human rights (*ibid.*, § 122).

326. The effective enjoyment of the right to respect for one’s home requires the State adopt all the reasonable and appropriate measures needed to protect individuals from serious damage to their environment. That presupposes putting in place a legislative and administrative framework to prevent such damage (*Tătar v. Romania*, § 88).

327. The State must strike a fair balance between the competing interests at stake (*Fadeyeva v. Russia*, § 93, and *Hardy and Maile v. the United Kingdom*, § 218). In the sphere of noise pollution, the Court has accepted the argument concerning the economic interests of operating major international airports close to residential areas (*Powell and Rayner v. the United Kingdom*, § 42),

including night flights (*Hatton and Others v. the United Kingdom* [GC], § 126). However, the Court found that such a fair balance had not been struck in a case where the authorities had failed to offer an effective solution involving moving residents away from the dangerous area surrounding a major steel plant or to take action to reduce the industrial pollution to acceptable levels (*Fadeyeva v. Russia*, § 133).

328. The Court takes into account the measures implemented by the domestic authorities. It found a violation of the right to respect for the home in the case of *López Ostra v. Spain*, §§ 56-58, where the authorities had impeded the closure of a plant treating hazardous wastewater. Local authority inertia *vis-à-vis* continuous noise pollution from a nightclub, where the noise exceeded permitted levels, led to a finding of a violation in *Moreno Gómez v. Spain*, § 61. The Court also found a violation of the right to respect for the home on account of the protracted inability of the Italian authorities to ensure the proper functioning of the waste collection, treatment and disposal service (*Di Sarno and Others v. Italy*, § 112).

329. The decision-making process must necessarily involve appropriate investigations and studies in order to assess the environmentally damaging effects of the impugned activities (*Hatton and Others v. the United Kingdom* [GC], § 128). In the case cited, however, the Court pointed out that that did not mean that the authorities could only take decisions if comprehensive and measurable data were available in relation to each and every aspect of the matter to be decided. The investigations must strike a fair balance between the competing interests at stake (*ibid.*).

330. The Court has emphasised the importance of public access to the findings of the investigations and studies conducted and to information enabling them to assess the danger to which the public are exposed (*Giacomelli v. Italy*, § 83). The Court accordingly criticised the fact that people living close to an extraction plant using sodium cyanide had not been allowed to take part in the decision-making process. Unlike in *Hatton and Others v. the United Kingdom* [GC] (§ 120), the local residents had not had access to the conclusions of the study forming the basis for granting operational authorisation to the plant, and they had been provided with no other official information on the subject. The domestic provisions governing public debates had been flouted (*Tătar v. Romania*, §§ 115-124). In another case, however, the Court noted that the public had had access to the necessary information to identify and assess the hazards associated with the operation of two liquefied natural gas terminals (*Hardy and Maile v. the United Kingdom*, §§ 247-250).

331. All individuals should also be able to appeal to a court if they consider that their interests have not been sufficiently taken into consideration in the decision-making process (*Tătar v. Romania*, § 88). This presupposes that the authorities concerned must enforce final and binding decisions. The Court found a violation of Article 8 in a case where the local authorities had failed to enforce a final judicial decision to close a cemetery whose proximity to the applicant's home had caused bacteriological contamination of his water supply (*Dzemyuk v. Ukraine*, § 92).

332. The choice of the means of dealing with environmental issues is left to the discretion of the States, which are not required to implement any specific measure requested by individuals (in relation, for example, to protecting their health against particle emissions from motor vehicles: *Greenpeace E.V. and Others v. Germany* (dec.)). In such a complex sphere, Article 8 does not require the national authorities to ensure that every individual enjoys housing that meets particular environmental standards (*Grimkovskaya v. Ukraine*, § 65).

2. Noise disturbance, problems with neighbours and other nuisances

333. Where such nuisances go beyond the ordinary difficulties of living with neighbours (*Apanasewicz v. Poland*, § 98), they may affect peaceful enjoyment of one's home, whether they be caused by private individuals, business activities or public agencies (*Martínez Martínez v. Spain*, §§ 42 and 51). If the requisite severity threshold is reached, the domestic authorities, having been duly informed about the nuisances, have an obligation to take effective measures to ensure respect

for the right to the peaceful enjoyment of the home (*Mileva and Others v. Bulgaria*, § 97, violation owing to a failure to prevent the unlawful operation of a computer club causing a nuisance in a block of flats). The Court also found a violation of Article 8 on the grounds of night-time disturbances caused by a discotheque (*Martínez Martínez v. Spain*, §§ 47-54 and the references therein) or a bar (*Udovičić v. Croatia*, § 159), or of the absence of an effective response by the authorities to complaints about serious and repetitive neighbourhood disturbances (*Surugiu v. Romania*, §§ 67-69). There is also a violation where the State has taken inadequate action to reduce excessive road traffic noise level in a home (*Deés v. Hungary*, §§ 21-24). Introducing a sanction system requiring the building of a noise barrier wall is not enough if the system is not applied in a timely and effective manner (*Bor v. Hungary*, § 27).

334. The Court examines the practical consequences of alleged nuisances and the situation as a whole (*Zammit Maempel v. Malte*, § 73, no violation). For example, it did not find any issue under Article 8 where the appropriate technical measurements had been omitted (*Oluić v. Croatia*, § 51), or where the applicants had not shown that they had sustained any specific damage from the impugned nuisance (*Borysiewicz v. Poland*, concerning a tailoring workshop; *Frankowski v. Poland* (dec.), concerning road traffic and *Chiş c. Romania* (dec.), concerning the operation of a bar). Nor is there a violation where the authorities have taken action to limit the impact of nuisances and there has been an adequate decision-making process (*Flamenbaum and Others v. France*, §§ 141-160; see also the reminder of the applicable general principles in §§ 133-138).

3. Pollutant and potentially dangerous activities

335. The resultant environmental hazards must have direct repercussions on the right to respect for the home and reach a minimum severity threshold. One case in point is serious water pollution (*Dubetska and Others v. Ukraine*, §§ 110 and 113). Unsubstantiated fears and claims are insufficient (*Ivan Atanasov v. Bulgaria*, § 78; see also *Furlepa v. Poland* (dec.) regarding the operation of a car accessory shop and a car repair garage; *Walkuska v. Poland* (dec.) concerning a pig farm). Furthermore, applicants may be partly responsible for the impugned situation (*Martínez Martínez and Pino Manzano v. Spain*, §§ 48-50, no violation).

336. The Court has, in particular, found violations of Article 8 owing to shortcomings attributable to the authorities in cases involving the use of dangerous industrial procedures (*Tătar v. Romania*) and toxic emissions (*Fadeyeva v. Russia*), as well as the flooding of housing located downstream of a water, attributable to negligence on the part of the authorities (*Kolyadenko and Others v. Russia*). In the case of *Giacomelli v. Italy*, the Court found a violation in the absence of a prior environmental-impact assessment and the failure to suspend the activities of a plant generating toxic emissions close to a residential area. On the other hand, it found no violation where the competent authorities had fulfilled their obligations to protect and inform residents (*Hardy and Maile v. the United Kingdom*). Sometimes the authorities have to take reasonable and adequate action, even in cases where they are not directly responsible for the pollution caused by a factory, if so required in order to protect the rights of individuals. For instance, pursuant to Article 8, domestic authorities must strike a fair balance between the economic interest of a municipality in maintaining the activities of its main job-provider – a factory discharging dangerous chemical substances into the atmosphere - and the residents' interest in protecting their homes (*Băcilă v. Romania*, §§ 66-72, violation).

V. Correspondence

A. General points

1. Scope of the concept of “correspondence”

337. The right to respect for “correspondence” within the meaning of Article 8 § 1 aims to protect the confidentiality of communications in a wide range of different situations. This concept obviously covers letters of a private or professional nature (*Niemietz v. Germany*, § 32 *in fine*), including where the sender or recipient is a prisoner (*Silver and Others v. the United Kingdom*, § 84; *Mehmet Nuri Özen and Others v. Turkey*, § 41), but also packages seized by customs officers (*X v. the United Kingdom* (dec.)). It also covers telephone conversations between family members (*Margareta and Roger Andersson v. Sweden*, § 72), or with others (*Lüdi v. Switzerland*, §§ 38-39; *Klass and Others v. Germany*, §§ 21 and 41; *Malone v. the United Kingdom*, § 64), telephone calls from private or business premises (*Halford v. the United Kingdom*, §§ 44-46; *Copland v. the United Kingdom*, § 41; *Kopp v. Switzerland*, § 50) and from a prison (*Petrov v. Bulgaria*, § 51), and the “interception” of information relating to such conversations (date, duration, numbers dialled) (*P.G. and J.H. v. the United Kingdom*, § 42).

338. *New technologies* also come within the scope of Article 8, in particular electronic messages (emails) (*Copland v. the United Kingdom*, § 41), Internet use (*Copland v. the United Kingdom*, §§ 41-42), and data stored on computer servers (*Wieser and Bicos Beteiligungen GmbH v. Austria*, § 45), including hard drives (*Petri Sallinen and Others v. Finland*, § 71) and floppy disks (*Iliya Stefanov v. Bulgaria*, § 42).

339. Older forms of electronic communication are likewise concerned, such as telexes (*Christie v. the United Kingdom* (dec.)), pager messages (*Taylor-Sabori v. the United Kingdom*), and private radio broadcasting (*X and Y v. Belgium* (dec.)), not including broadcasts on a public wavelength that are thus accessible to others (*B.C. v. Switzerland* (dec.)).

Examples of “interference”:

340. The content and form of the correspondence is irrelevant to the question of interference (*A. v. France*, §§ 35-37; *Frérot v. France*, § 54). There is no *de minimis* principle for interference to occur: opening one letter is enough (*Narinen v. Finland*, § 32; *Idalov v. Russia* [GC], § 197).

341. All forms of censorship, interception, monitoring, seizure and other hindrances come within the scope of Article 8. Impeding someone from even initiating correspondence constitutes the most far-reaching form of “interference” with the exercise of the “right to respect for correspondence” (*Golder v. the United Kingdom*, § 43).

342. Other forms of interference with the right to respect for correspondence may include the following acts attributable to the public authorities: screening of correspondence (*Campbell v. the United Kingdom*, § 33), the making of copies (*Foxley v. the United Kingdom*, § 30) or the deletion of certain passages (*Pfeifer and Plankl v. Austria*, § 43); interception by various means and recording of personal or business-related conversations (*Amann v. Switzerland* [GC], § 45), for example by means of telephone tapping (*Malone v. the United Kingdom*, § 64, and as regards metering, §§ 83-84; see also *P.G. and J.H. v. the United Kingdom*, § 42), even when carried out on the line of a third party (*Lambert v. France*, § 21); and storage of intercepted data concerning telephone, email and Internet use (*Copland v. the United Kingdom*, § 44). The mere fact that such data may be obtained legitimately, for example from telephone bills, is no bar to finding an “interference”; the fact that the information has not been disclosed to third parties or used in disciplinary or other proceedings against the person concerned is likewise immaterial (*Copland v. the United Kingdom*, § 43).

This may also concern the forwarding of mail to a third party (with regard to a trustee in bankruptcy, see *Luordo v. Italy*, §§ 72 and 75; with regard to the guardian of a psychiatric detainee, see *Herczegfalvy v. Austria*, §§ 87-88); the copying of electronic files, including those belonging to companies (*Bernh Larsen Holding AS and Others v. Norway*, § 106); the copying of documents containing banking data and their subsequent storage by the authorities (*M.N. and Others c. Saint-Marin*, § 52); and secret surveillance measures (*Kennedy v. the United Kingdom*, §§ 122-124; *Roman Zakharov v. Russia* [GC], and the references cited therein).

343. A “crucial contribution” by the authorities to a recording made by a private individual amounts to interference by a “public authority” (*A. v. France*, § 36; *Van Vondel v. the Netherlands*, § 49; and *M.M. v. the Netherlands*, § 39, concerning a recording by a private individual with the prior permission of the public prosecutor).

2. Positive obligations

344. To date, the Court has identified the following positive obligations in connection with the right to respect for correspondence: an obligation to prevent disclosure into the public domain of private conversations (*Craxi v. Italy (n° 2)*, §§ 68-76); an obligation to provide prisoners with the necessary materials to correspond with the Court in Strasbourg (*Cotleț v. Romania*, §§ 60-65; *Gagiu v. Romania*, §§ 91-92); an obligation to execute a Constitutional Court judgment ordering the destruction of audio cassettes containing recordings of telephone conversations between a lawyer and his client (*Chadimová v. the Czech Republic*, § 146); and an obligation to strike a fair balance between the right to respect for correspondence and the right to freedom of expression (*Benediktsdottir v. Iceland* (dec.)).

3. General approach

345. The situation complained of may fall within the scope of Article 8 § 1 both from the standpoint of respect for correspondence and from that of the other spheres protected by Article 8 (right to respect for the home, private life and family life) (for example, *Chadimová v. the Czech Republic*, § 143, and the references cited therein).

346. An interference can only be justified if the conditions set out in the second paragraph of Article 8 are satisfied. Thus, if it is not to contravene Article 8, the interference must be “in accordance with the law”, pursue one or more “legitimate aims” and be “necessary in a democratic society” in order to achieve them.

347. The concept of “law” in Article 8 § 2 covers common-law and “continental” countries alike (*Kruslin v. France*, § 29). Where the Court considers that an interference is not “in accordance with the law”, it will generally refrain from reviewing whether the other requirements of Article 8 § 2 have been complied with (*Messina v. Italy (no. 2)*, § 83; *Enea v. Italy* [GC], § 144; *Meimanis v. Latvia*, § 66).

348. The Court affords the Contracting States a margin of appreciation under Article 8 in regulating matters in this sphere, but this margin remains subject to the Court’s review of compliance with the Convention (for example, *Szuluk v. the United Kingdom*, § 45 and the references cited therein).

349. The Court has emphasised the importance of the relevant international instruments in this field, including the European Prison Rules (*Nusret Kaya and Others v. Turkey*, §§ 26-28 and 55).

B. Prisoners' correspondence

1. General principles

350. Some measure of control over prisoners' correspondence is acceptable and is not of itself incompatible with the Convention, regard being paid to the ordinary and reasonable requirements of imprisonment (*Silver and Others v. the United Kingdom*, § 98; *Golder v. the United Kingdom*, § 45). However, such control must not exceed what is required by the legitimate aim pursued in accordance with Article 8 § 2 of the Convention. While it may be necessary to monitor detainees' contact with the outside world, including telephone contact, the rules applied must afford the prisoner appropriate protection against arbitrary interference by the national authorities (*Doerga v. the Netherlands*, § 53).

351. The opening (*Demirtepe v. France*, § 26), monitoring (*Kornakovs v. Latvia*, § 158) and seizure (*Birznieks v. Latvia*, § 124) of a prisoner's correspondence with the Court fall under Article 8. So too may the refusal to provide a prisoner with the materials needed for correspondence with the Court (*Cotlet v. Romania*, § 65).

352. In assessing the permissible extent of such control, it should be borne in mind that the opportunity to write and to receive letters is sometimes the prisoner's only link with the outside world (*Campbell v. the United Kingdom*, § 45). General, systematic monitoring of the entirety of prisoners' correspondence, without any rules as to the implementation of such a practice and without any reasons being given by the authorities, would breach the Convention (*Petrov v. Bulgaria*, § 44).

353. Examples of "interference" within the meaning of Article 8 § 1 include: interception by the prison authorities of a letter (*McCallum v. the United Kingdom*, § 31) or failure to post a letter (*Faulkner v. the United Kingdom*, § 11; *Mehmet Nuri Özen and Others v. Turkey*, § 42); restrictions on (*Campbell and Fell v. the United Kingdom*, § 110) or the destruction of mail (*Fazil Ahmet Tamer v. Turkey*, § 52; see also § 54 for a filtering system); opening of a letter (*Narinen v. Finland*, § 32) – including where there are operational defects within the prison mail service (*Demirtepe v. France*, § 26) or the mail is simply opened before being handed over straight away (*Faulkner v. the United Kingdom* (dec.)); and delays in delivering mail (*Cotlet v. Romania*, § 34) or a refusal to forward emails sent to the prison's address to a particular prisoner (*Helander v. Finland* (dec.), § 48). Exchanges between two prisoners are also covered (*Pfeifer and Plankl v. Austria*, § 43), as is the refusal to hand over a book to a prisoner (*Ospina Vargas v. Italy*, § 44).

354. "Interference" may also result from: deleting certain passages (*Fazil Ahmet Tamer v. Turkey*, §§ 10 and 53; *Pfeifer and Plankl v. Austria*, § 47); limiting the number of parcels and packets a prisoner is allowed to receive (*Aliiev v. Ukraine*, § 180); and recording and storing a prisoner's telephone conversations (*Doerga v. the Netherlands*, § 43) or conversations between a prisoner and his relatives during visits (*Wisse v. France*, § 29). The same applies to the imposition of a disciplinary penalty entailing an absolute ban on sending or receiving mail for 28 days (*McCallum v. the United Kingdom*, § 31) and to a restriction concerning prisoners' use of their mother tongue during telephone conversations (*Nusret Kaya and Others v. Turkey*, § 36).

355. The interference must satisfy the requirements of lawfulness set forth in Article 8 § 2. The law must be sufficiently clear in its terms to give everyone an indication as to the circumstances in which and the conditions on which public authorities are empowered to resort to such measures (*Lavents v. Latvia*, § 135). It is for the respondent Government before the Court to indicate the statutory provision on which the national authorities based their monitoring of the prisoner's correspondence (*Di Giovine v. Italy*, § 25).

356. The lawfulness requirement refers not only to the existence of a legal basis in domestic law but also to the quality of the law, which should be clear, foreseeable as to its effects and accessible to

the person concerned, who must be in a position to foresee the consequences of his or her acts (*Silver and Others v. the United Kingdom*, § 88).

357. Legislation is incompatible with the Convention if it does not regulate either the duration of measures to monitor prisoners' correspondence or the reasons that may justify them, if it does not indicate with sufficient clarity the scope and manner of exercise of the discretion conferred on the authorities in the relevant sphere, or if it leaves them too wide a margin of appreciation (*Labita v. Italy* [GC], §§ 176 and 180-184; *Niedbała v. Poland*, §§ 81-82; *Lavents v. Latvia*, § 136).

358. The following measures, among others, are not "in accordance with the law":

- censorship carried out in breach of provisions expressly prohibiting it (*Idalov v. Russia* [GC], § 201) or in the absence of provisions authorising it (*Demirtepe v. France*, § 27), or by an authority exceeding its powers under the applicable legislation (*Labita v. Italy* [GC], § 182);
- censorship on the basis of an unpublished instrument not accessible to the public (*Poltoratskiy v. Ukraine*, §§ 158-160);
- rules on the monitoring of prisoners' telephone calls that are not sufficiently clear and detailed to afford the applicant appropriate protection (*Doerga v. the Netherlands*, § 53).

359. The Court has also found a violation of Article 8 on account of the refusal to pass on a letter from one prisoner to another, on the basis of an internal instruction without any binding force (*Frérot v. France*, § 59).

360. Where domestic law allows interference, it must include safeguards to prevent abuses of power by the prison authorities. A law that simply identifies the category of persons whose correspondence "may be censored" and the competent court, without saying anything about the length of the measure or the reasons that may warrant it, is not sufficient (*Calogero Diana v. Italy*, §§ 32-33).

361. The Court finds a violation where the domestic provisions concerning the monitoring of prisoners' correspondence leave the national authorities too much latitude and give prison governors the power to keep any correspondence "unsuited to the process of rehabilitating a prisoner", with the result that "monitoring of correspondence therefore seems to be automatic, independent of any decision by a judicial authority and unappealable" (*Petra v. Romania*, § 37). However, although a law which confers a discretion must indicate the scope of that discretion (*Domenichini v. Italy*, § 32), the Court accepts that it is impossible to attain absolute certainty in the framing of the law (*Calogero Diana v. Italy*, § 32).

362. Amendments to an impugned law do not serve to redress violations which occurred before they entered into force (*Enea v. Italy* [GC], § 147; *Argenti v. Italy*, § 38).

363. Interference with a prisoner's right to respect for his or her correspondence must also be necessary in a democratic society (*Yefimenko v. Russia*, § 142). Such "necessity" must be assessed with regard to the ordinary and reasonable requirements of imprisonment. The "prevention of disorder or crime" (*Kwiek v. Poland*, § 47; *Jankauskas v. Lithuania*, § 21), in particular, may justify more extensive interference in the case of a prisoner than for a person at liberty. Thus, to this extent, but to this extent only, lawful deprivation of liberty within the meaning of Article 5 will impinge on the application of Article 8 to persons deprived of their liberty (*Golder v. the United Kingdom*, § 45). In any event, the measure in question must be proportionate within the meaning of Article 8 § 2. The extent of the monitoring and the existence of adequate safeguards against abuse are fundamental criteria in this assessment (*Tsonyo Tsonnev v. Bulgaria*, § 42).

364. The nature of the correspondence subject to monitoring may also be taken into consideration. Certain types of correspondence, for example with a lawyer, should enjoy an enhanced level of confidentiality, especially where it contains complaints against the prison authorities (*Yefimenko v. Russia*, § 144). As regards the extent and nature of the interference, monitoring of the entirety of

a prisoner’s correspondence, without any distinction between different types of correspondent, upsets the balance between the interests at stake (*Petrov v. Bulgaria*, § 44). The mere fear of the prisoner evading trial or influencing witnesses cannot in itself justify an open licence for routine checking of all of a prisoner’s correspondence (*Jankauskas v. Lithuania*, § 22).

365. The interception of private letters because they contained “material deliberately calculated to hold the prison authorities up to contempt” was found not to have been “necessary in a democratic society” in the case of *Silver and Others v. the United Kingdom* (§§ 64, 91 and 99).

366. Furthermore, it is important to distinguish between minors placed under educational supervision and prisoners when assessing restrictions on correspondence and telephone communications. The authorities’ margin of appreciation is narrower in the former case (*D.L. v. Bulgaria*, §§ 104-109).

2. Where interference with prisoners’ correspondence may be necessary

367. Since the *Silver and Others v. the United Kingdom* judgment, the Court’s case-law has acknowledged that some measure of control over prisoners’ correspondence is called for and is not of itself incompatible with the Convention. The Court has held in particular that:

- the monitoring of prisoners’ correspondence may be legitimate on the grounds of maintaining order in prisons (*Kepeneklioglu v. Turkey*, § 31; *Silver and Others v. the United Kingdom*, § 101);
- some measure of control – as opposed to automatic, routine interference – aimed at preventing disorder or crime may be justified, for example in the case of correspondence with dangerous individuals or concerning non-legal matters (*Jankauskas v. Lithuania*, §§ 21-22; *Faulkner v. the United Kingdom* (dec.));
- where access to a telephone is permitted, it may – having regard to the ordinary and reasonable conditions of prison life – be subjected to legitimate restrictions, for example in the light of the need for the facilities to be shared with other prisoners and the requirements of the prevention of disorder and crime (*A.B. v. the Netherlands*, § 93; *Coşcodar v. Romania* (dec.), § 30);
- a prohibition on sending a letter not written on an official form does not raise an issue, provided that such forms are readily available (*Faulkner v. the United Kingdom* (dec.));
- a prohibition on a foreign prisoner sending a letter to his relatives in a language not understood by the prison authorities does not raise an issue where the applicant did not give a convincing reason for declining the offer of a translation free of charge and was allowed to send two other letters (*Chishti v. Portugal* (dec.));
- limiting the number of packages and parcels may be justified to safeguard prison security and avoid logistical problems, provided that a balance is maintained between the interests at stake (*Aliev v. Ukraine*, §§ 181 and 182);
- a minor disciplinary penalty of withholding a parcel sent to a prisoner – for breaching the requirement to send correspondence via the prison authorities – was not found to be disproportionate (*Puzinas v. Lithuania (no. 2)*, § 34; compare, however, with *Buglov v. Ukraine*, § 137);
- a delay of three weeks in posting a non-urgent letter because of the need to seek instructions from a superior official was likewise not found to constitute a violation (*Silver and Others v. the United Kingdom*, § 104).

3. Written correspondence

368. Article 8 does not guarantee prisoners the right to choose the materials to write with. The requirement for prisoners to use official prison paper for their correspondence does not amount to interference with their right to respect for their correspondence, provided that the paper is immediately available (*Cotleț v. Romania*, § 61).

369. Article 8 does not require States to pay the postage costs of all correspondence sent by prisoners (*Boyle and Rice v. the United Kingdom*, §§ 56-58). However, this matter should be assessed on a case-by-case basis as an issue could arise if a prisoner's correspondence was seriously hindered for lack of financial resources. Thus, the Court has held that:

- the refusal by the prison authorities to provide an applicant lacking the financial resources to buy such materials with the envelopes, stamps and writing paper needed for correspondence with the Court in Strasbourg may constitute a failure by the respondent State to comply with its positive obligation to ensure effective respect for the right to respect for correspondence (*Cotleț v. Romania*, §§ 59 and 65).

- in the case of a prisoner without any means or any support who is entirely dependent on the prison authorities, those authorities must provide him with the necessary material, in particular stamps, for his correspondence with the Court (*Gagiu v. Romania*, §§ 91-92).

370. An interference with the right to correspondence that is found to have occurred *by accident* as a result of a mistake on the part of the prison authorities and is followed by an explicit acknowledgement and sufficient redress (for example, the adoption by the authorities of measures ensuring that the mistake will not be repeated) does not raise an issue under the Convention (*Armstrong v. the United Kingdom* (dec.); *Tsonyo Tsonev v. Bulgaria*, § 29).

371. Proof of actual receipt of mail by the prisoner is the State's responsibility; in the event of a disagreement between the applicant and the respondent Government before the Court as to whether a letter was actually handed over, the Government cannot simply produce a record of incoming mail addressed to the prisoner, without ascertaining that the item in question did in fact reach its addressee (*Messina v. Italy*, § 31).

372. The authorities responsible for posting outgoing letters and receiving incoming mail should inform prisoners of any problems in the postal service (*Grace v. the United Kingdom*, § 97).

4. Telephone conversations

373. Article 8 of the Convention does not confer on prisoners the right to make telephone calls, in particular where the facilities for communication by letter are available and adequate (*A.B. v. the Netherlands*, § 92; *Ciszewski v. Poland* (dec.)). However, where domestic law allows prisoners to speak by telephone, for example to their relatives, under the supervision of the prison authorities, a restriction imposed on their telephone communications may amount to "interference" with the exercise of their right to respect for their correspondence within the meaning of Article 8 § 1 of the Convention (*Nusret Kaya and Others v. Turkey*, § 36). In practice, consideration should be given to the fact that prisoners have to share a limited number of telephones and that the authorities have to prevent disorder and crime (*Daniliuc v. Romania* (dec.); see also *Davison v. the United Kingdom* (dec.), as regards the charges for telephone calls made from prison).

374. Prohibiting a prisoner from using the prison telephone booth for a certain period to call his partner of four years, with whom he had a child, on the grounds that they were not married was found to breach Articles 8 and 14 taken together (*Petrov v. Bulgaria*, § 54).

375. In a high-security prison, the storage of the numbers that a prisoner wished to call – a measure of which he had been notified – was considered necessary for security reasons and to avoid the

commission of further offences (the prisoner had other ways of remaining in contact with his relatives, such as letters and visits) (*Coşcodar v. Romania* (dec.), § 30).

5. Correspondence between prisoners and their lawyer

376. Article 8 applies indiscriminately to correspondence with a lawyer who has already been instructed by a client and a potential lawyer (*Schönenberger and Durmaz v. Switzerland*, § 29).

377. Correspondence between prisoners and their lawyer is “privileged under Article 8 of the Convention” (*Campbell v. the United Kingdom*, § 48; *Piechowicz v. Poland*, § 239). It may constitute a preliminary step to the exercise of the right of appeal, for example in respect of treatment during detention (*Ekinci and Akalin v. Turkey*, § 47), and may have a bearing on the preparation of a defence, in other words the exercise of another Convention right set forth in Article 6 (*Golder v. the United Kingdom*, § 45 *in fine*).

378. The Court considers observance of the principle of lawyer-client confidentiality to be fundamental (*Helander v. Finland* (dec.), § 53). Systematic monitoring of such correspondence sits ill with this principle (*Petrov v. Bulgaria*, § 43).

379. The Court accepts, however, that the prison authorities may “open a letter from a lawyer to a prisoner when they have reasonable cause to believe that it contains an illicit enclosure which the normal means of detection have failed to disclose. The letter should, however, only be opened and should not be read” (*Campbell v. the United Kingdom*, § 48; *Erdem v. Germany*, § 61). The protection of the prisoner’s correspondence with the lawyer requires the member States to provide “suitable guarantees preventing the reading of the letter ... such as opening the letter in the presence of the prisoner” (*Campbell v. the United Kingdom*, § 48).

380. The reading of a prisoner’s mail to and from a lawyer should only be permitted in exceptional circumstances when the authorities have reasonable cause to believe that the “privilege is being abused” in that the contents of the letter endanger prison security or the safety of others or are otherwise of a criminal nature. What may be regarded as “reasonable cause” will depend on all the circumstances but it “presupposes the existence of facts or information which would satisfy an objective observer that the privileged channel of communication is being abused” (*Campbell v. the United Kingdom*, § 48; *Petrov v. Bulgaria*, § 43). Any exceptions to this privilege must be accompanied by adequate and sufficient safeguards against abuse (*Erdem v. Germany*, § 65).

381. The prevention of terrorism is an exceptional context and involves pursuing the legitimate aims of protecting “national security” and preventing “disorder or crime” (*Erdem v. Germany*, §§ 60 and 66-69). In the case cited, the context of the ongoing trial, the terrorist threat, security requirements, the procedural safeguards in place and the existence of another channel of communication between the accused and his lawyer led the Court to find no violation of Article 8.

382. The interception of letters complaining of prison conditions and certain actions by the prison authorities was found not to comply with Article 8 § 2 (*Ekinci and Akalin v. Turkey*, § 47).

383. The withholding by the public prosecutor of a letter from a lawyer informing an arrested person of his rights was held to breach Article 8 § 2 (*Schönenberger and Durmaz v. Switzerland*, §§ 28-29).

384. *Article 34 of the Convention* (see above) may also be applicable in the case of a restriction of correspondence between a prisoner and a lawyer concerning an application to the Court and participation in proceedings before it (see, for example, *Shtukaturv v. Russia*, § 140, concerning in particular a ban on telephone calls and correspondence). Yet, correspondence between an actual or prospective applicant and his or her representative before the Court should be privileged (*Boris Popov v. Russia*, §§ 43 and 112).

385. The Court has nevertheless specified that the State retains a certain margin of appreciation in determining the means of correspondence to which prisoners must have access. Thus, the refusal by the prison authorities to forward to a prisoner an email sent by his lawyer to the prison email address is justified where other effective and sufficient means of transmitting correspondence exist (see *Helander v. Finland* (dec.), § 54, where domestic law provided that contact between prisoners and their lawyers had to take place by post, telephone or visits).

6. Correspondence with the Court

386. A prisoner’s correspondence with the Convention institutions falls within the scope of Article 8. The Court has found that there was interference with the right to respect for correspondence where letters sent to prisoners by the Convention institutions had been opened (*Peers v. Greece*, § 81; *Valašinas v. Lithuania*, §§ 128-129; *Idalov v. Russia* [GC], §§ 197-201). As in other cases, such interference will breach Article 8 unless it is “in accordance with the law”, pursued one of the legitimate aims set forth in Article 8 § 2 and was “necessary in a democratic society” in order to achieve that aim (*Petra v. Romania*, § 36).

387. In a specific case where only one of a significant number of letters had been “opened by mistake” at a facility to which the applicant had just been transferred, the Court found that there was no evidence of any deliberate intention on the authorities’ part to undermine respect for the applicant’s correspondence with the Convention institutions such as to constitute interference with his right to respect for his correspondence within the meaning of Article 8 § 1 (*Touroude v. France* (dec.); see also *Sayoud v. France* (dec.)).

388. On the other hand, where monitoring of correspondence is automatic, unconditional, independent of any decision by a judicial authority and unappealable, it is not “in accordance with the law” (*Petra v. Romania*, § 37; *Kornakovs v. Latvia*, § 159).

389. Disputes concerning correspondence between prisoners and the Court may also raise an issue under *Article 34 of the Convention* where there is hindrance of the “effective exercise” of the right of individual petition (for example, *Shekhov v. Russia*, § 53 and the references cited therein; *Yefimenko v. Russia*, § 164).

390. The Contracting Parties to the Convention have undertaken to ensure that their authorities do not hinder “in any way” the effective exercise of the right to apply to the Court. It is therefore “of the utmost importance ... that applicants or potential applicants are able to communicate freely with the Court” without being dissuaded or discouraged by the authorities from pursuing a Convention remedy and without being subjected to any form of pressure to withdraw or modify their complaints (*Ilaşcu and Others v. Moldova and Russia* [GC], § 480; *Cotlet v. Romania*, § 69). Refusing to forward correspondence from an applicant that serves in principle to determine the issue of compliance with the six-month rule for the purposes of Article 35 § 1 of the Convention is a typical example of hindrance of the effective exercise of the right of application to the Court (*Kornakovs v. Latvia*, § 166). Situations falling under Article 34 of the Convention include the following:

- interception by the prison authorities of letters from or to the Court (*Maksym v. Poland*, §§ 31-33 and the references cited therein), even involving simple acknowledgments of receipt (*Yefimenko v. Russia*, § 163);
- imposition of a punishment on a prisoner for sending a letter to the Court (*Kornakovs v. Latvia*, §§ 168 and 169);
- acts constituting pressure or intimidation (*Ilaşcu and Others v. Moldova and Russia* [GC], § 481);

- refusal by the prison authorities to supply photocopies needing to be appended to the application form, or unjustified delays in doing so (*Igors Dmitrijevs v. Latvia*, §§ 91 and 100; *Gagiu v. Romania*, §§ 95-96; *Moisejevs v. Latvia*, § 184);
- in general, the lack of effective access to documents required for an application to the Court (*Vasiliy Ivashchenko v. Ukraine*, §§ 123 and 125).

391. It should be borne in mind that since they are confined within an enclosed space, have little contact with their relatives or the outside world and are constantly subject to the authority of the prison management, prisoners are undoubtedly in a position of vulnerability and dependence (*Cotleț v. Romania*, § 71; *Kornakovs v. Latvia*, § 164). Accordingly, as well as the undertaking to refrain from hindering the exercise of the right of petition, the authorities may in certain circumstances have an obligation to furnish the necessary facilities to a prisoner who is in a position of particular vulnerability and dependence *vis-à-vis* the prison management (*Naydyon v. Ukraine*, § 64) and is unable to obtain by his own means the documents required by the Registry of the Court in order to submit a valid application (*Vasiliy Ivashchenko v. Ukraine*, §§ 103-107).

392. In accordance with Rule 47 of the *Rules of Court*, the application form must be accompanied by relevant documents enabling the Court to reach its decision. In these circumstances, the authorities have an obligation to provide applicants, on request, with the documents they need in order for the Court to carry out an adequate and effective examination of their application (*Naydyon v. Ukraine*, § 63 and the references cited therein). Failure to provide the applicant in good time with the documents needed for the application to the Court entails a breach by the State of its obligation under Article 34 of the Convention (*Iambor v. Romania (no. 1)*, § 216; and contrast *Ustyantsev v. Ukraine*, § 99). It should nevertheless be pointed out that:

- as the Court has emphasised, there is no automatic right to receive copies of all documents from the prison authorities (*Chaykovskiy v. Ukraine*, §§ 94-97);
- not all delays in posting mail to the Court are worthy of criticism (for 4 to 5 days: *Yefimenko v. Russia*, §§ 131 and 159; for 6 days: *Shchebetov v. Russia*, § 84), particularly where there is no deliberate intention to hinder the applicant's complaint to the Court (for a slightly longer delay: *Valašinas v. Lithuania*, § 134), but the authorities have an obligation to forward correspondence without undue delay (*Sevastyanov v. Russia*, § 86);
- allegations by an applicant of hindrance of correspondence with the Court must be sufficiently substantiated (*Valašinas v. Lithuania*, § 136; *Michael Edward Cooke v. Austria*, § 48) and must attain a minimum level of severity to qualify as acts or omissions in breach of Article 34 of the Convention (*Kornakovs v. Latvia*, § 173; *Moisejevs v. Latvia*, § 186);
- the respondent Government must provide the Court with a reasonable explanation in response to consistent and credible allegations of a hindrance of the right of petition (*Klyakhin v. Russia*, §§ 120-21);
- the possibility of envelopes from the Court being forged in order to smuggle prohibited material into the prison constitutes such a negligible risk as to be discounted (*Peers v. Greece*, § 84).

7. Correspondence with journalists

393. The right to freedom of expression in the context of correspondence is protected by Article 8 of the Convention. In principle, a prisoner may send material for publication (*Silver and Others v. the United Kingdom*, § 99; *Fazil Ahmet Tamer v. Turkey*, § 53). In practice, the content of the material is a factor to be taken into consideration.

394. For example, an order prohibiting a remand prisoner from sending two letters to journalists was found to constitute interference. However, the national authorities had noted that they

contained defamatory allegations against witnesses and the prosecuting authorities while the criminal proceedings were in progress. Moreover, the applicant had had the opportunity to raise those allegations in the courts and had not been deprived of contact with the outside world. The prohibition of his correspondence with the press was therefore found by the Court to have been proportionate to the legitimate aim pursued, namely the prevention of crime (*Jöcks v. Germany* (dec.)).

395. More broadly, in the case of a letter that has not been sent to the press but is liable to be published, the protection of the rights of the prison staff named in the letter may be taken into consideration (*W. v. the United Kingdom*, §§ 52-57).

8. Correspondence between a prisoner and a doctor

396. The Court dealt for the first time with the monitoring of a prisoner's medical correspondence in the case of *Szuluk v. the United Kingdom* (§§ 49-53). The case concerned the monitoring by the prison medical officer of the prisoner's correspondence with the specialist supervising his treatment in hospital, relating to his life-threatening medical condition. The Court accepted that a prisoner with a life-threatening medical condition would want to be reassured by an outside specialist that he was receiving adequate medical treatment in prison. Taking into account the circumstances of the case, the Court found that although the monitoring of the prisoner's medical correspondence had been limited to the prison medical officer, it had not struck a fair balance with his right to respect for his correspondence.

9. Correspondence with close relatives or other individuals

397. It is essential for the authorities to help prisoners maintain contact with their close relatives. In this connection the Court has stressed the importance of the recommendations set out in the European Prison Rules (*Nusret Kaya and Others v. Turkey*, § 55).

398. Some measure of control over prisoners' interaction with the outside world may be necessary (*Baybaşın v. the Netherlands* (dec.)), in the case of detention in a maximum-security facility (*Coşcodar v. Romania* (dec.)).

399. The Court makes a distinction between a prisoner's correspondence with criminals or other dangerous individuals and correspondence relating to private and family life (*Čiapas v. Lithuania*, § 25). However, the interception of letters from a close relative of a prisoner charged with serious offences may be necessary to prevent crime and to ensure the proper conduct of the ongoing trial (*Kwiek v. Poland*, § 48).

400. A prisoner in a maximum-security facility may be prohibited from corresponding with relatives in the language of his choice for particular security reasons – such as the prevention of the risk of escaping – where the prisoner speaks one or more of the languages permitted for contact with close relatives (*Baybaşın v. the Netherlands* (dec.)).

401. However, the Court has not accepted the practice of requiring prisoners wishing to speak to relatives on the telephone in the only language used within their family to undergo a preliminary procedure, at their own expense, to determine whether they were genuinely unable to speak the official language (*Nusret Kaya and Others v. Turkey*, §§ 59 and 60). The Court also found that it was contrary to Article 8 to require a prisoner to supply an advance translation into the official language, at his own expense, of his private letters written in his mother tongue (*Mehmet Nuri Özen and Others v. Turkey*, § 60).

402. A letter from a prisoner to his or her family (or a private letter from one prisoner to another - *Pfeifer and Plankl v. Austria*, § 47) cannot be intercepted simply because it contains criticism of or inappropriate language about prison staff (*Vlasov v. Russia*, § 138), unless there is a threat to use violence (*Silver and Others v. the United Kingdom*, §§ 65 and 103).

10. Correspondence between a prisoner and other addressees

403. Prisoners' correspondence with other addressees may be censored, for example with the Ombudsman (*Niedbala v. Poland*, § 81) or non-governmental organisations (*Jankauskas v. Lithuania*, § 19).

C. Lawyers' correspondence⁴

404. Correspondence between a lawyer and his or her client, whatever its purpose, is protected under Article 8 of the Convention, such protection being enhanced as far as confidentiality is concerned (*Michaud v. France*, §§ 117-119). This is justified by the fact that lawyers are assigned a fundamental role in a democratic society, that of defending litigants. Professional secrecy is "the basis of the relationship of confidence between lawyer and client" (*ibid.*) and any risk of impingement on it may have repercussions on the proper administration of justice, and hence on the rights guaranteed by Article 6 of the Convention (*Niemietz v. Germany*, § 37; *Wieser and Bicos Beteiligungen GmbH v. Austria*, § 65). Indirectly but necessarily dependent on the principle of professional secrecy is the right of everyone to a fair trial, including the right of anyone "charged with a criminal offence" not to incriminate themselves (*Michaud v. France*, § 118).

405. The Court has, for example, examined the compatibility with Article 8 of the Convention of the failure to forward a letter from a lawyer to his client (*Schönenberger and Durmaz v. Switzerland*) and the tapping of a law firm's telephone lines (*Kopp v. Switzerland*).

406. The term "correspondence" is construed broadly. It also covers lawyers' written files (*Niemietz v. Germany*, §§ 32-33; *Roemen and Schmit v. Luxembourg*, § 65), computer hard drives (*Petri Sallinen and Others v. Finland*, § 71) and electronic data (*Wieser and Bicos Beteiligungen GmbH v. Austria*, §§ 66-68; *Robathin v. Austria*, § 39; *Vinci Construction and GTM Génie Civil et Services v. France*, § 69: computer files and email accounts) belonging to a law firm.

407. Although professional privilege is of great importance for the lawyer, the client and the proper administration of justice, it is not inviolable (*Michaud v. France*, §§ 123 and 128-129). In the case cited, the Court examined whether the obligation for lawyers to report their suspicions of unlawful money-laundering activities by their clients, where such suspicions came to light outside the context of their defence role, amounted to disproportionate interference with legal professional privilege (no violation). In *Versini-Campinchi and Crasnianski v. France* the Court examined the interception of a lawyer's conversation with a client whose telephone line had been tapped, thus disclosing the commission of an offence by the lawyer. The Court held that in certain circumstances an exception could be made to the principle of lawyer-client privilege (§§ 79-80).

408. Legislation requiring a lawyer to report suspicions amounts to a "continuing" interference with the lawyer's right to respect for professional exchanges with clients (*Michaud v. France*, § 92). Interference may also occur in the context of proceedings against lawyers themselves (*Robathin v. Austria*; *Sérvulo & Associados - Sociedade de Advogados, RL and Others v. Portugal*).

409. A search of a lawyer's office in the context of criminal proceedings against a third party may, even if it pursues a legitimate aim, encroach disproportionately on the lawyer's professional privilege (*Niemietz v. Germany*, § 37).

410. Interference with a lawyer's "correspondence" will result in a violation of Article 8 if it is not duly justified. To that end, it must be in accordance with the law (*Robathin v. Austria*, §§ 40-41), pursue one of the legitimate aims listed in paragraph 2 of Article 8 (*Tamosius v. the United Kingdom* (dec.); *Michaud v. France*, §§ 99 and 131) and be "necessary in a democratic society" in order to achieve that aim. The notion of necessity within the meaning of Article 8 implies that there is a

4. Not including the case of correspondence with prisoners, which is addressed in the previous chapter.

pressing social need and, in particular, that the interference is proportionate to the legitimate aim pursued (*Michaud v. France*, § 120). Where a lawyer or law firm is affected by the interference, particular safeguards must be in place.

411. The Court has emphasised that since telephone tapping constitutes serious interference with the right to respect for a lawyer’s correspondence, it must be based on a “law” that is particularly precise, especially as the technology available for use is continually becoming more sophisticated (*Kopp v. Switzerland*, §§ 73-75). In the case cited, the Court found a violation of Article 8, firstly because the law did not state clearly how the distinction was to be drawn between matters specifically connected with a lawyer’s work and those relating to activity other than that of counsel, and secondly, the telephone tapping had been carried out by the authorities without any supervision by an independent judge (see also, regarding the protection afforded by the “law”, *Petri Sallinen and Others v. Finland*, § 92).

412. Above all, legislation and practice must afford adequate and effective safeguards against any abuse and arbitrariness (*Iliya Stefanov v. Bulgaria*, § 38). Factors taken into consideration by the Court include whether the search was based on a warrant issued on the basis of reasonable suspicion (for a case where the accused was subsequently acquitted, see *Robathin v. Austria*, § 46). The scope of the warrant must be reasonably limited. The Court has stressed the importance of carrying out the search in the presence of an independent observer in order to ensure that materials covered by professional secrecy are not removed (*Wieser and Bicos Beteiligungen GmbH v. Austria*, § 57; *Tamosius v. the United Kingdom* (dec.); *Robathin v. Austria*, § 44). Furthermore, there must be sufficient scrutiny of the lawfulness and the execution of the warrant (*Iliya Stefanov v. Bulgaria*, § 44; *Robathin v. Austria*, § 51).

413. When examining substantiated allegations that specifically identified documents have been seized even though they were unconnected to the investigation or were covered by lawyer-client privilege, the judge must conduct a “specific review of proportionality” and order their restitution where appropriate (*Vinci Construction and GTM Génie Civil et Services v. France*, § 79).

414. Failure to observe the relevant procedural safeguards when conducting searches and seizures of data entails a violation of Article 8 (*Wieser and Bicos Beteiligungen GmbH v. Austria*, §§ 66-68; contrast *Tamosius v. the United Kingdom* (dec.)).

415. There is extensive case-law concerning the degree of precision of the warrant: it must contain sufficient information about the purpose of the search to allow an assessment of whether the investigation team acted unlawfully or exceeded their powers. The search must be carried out under the supervision of a sufficiently qualified and independent legal professional (*Iliya Stefanov v. Bulgaria*, § 43), whose task is to identify which documents are covered by legal professional privilege and should not be removed. There must be a practical safeguard against any interference with professional secrecy and with the proper administration of justice (*ibid.*).

416. The Court has criticised the following:

- a search warrant formulated in excessively broad terms, which left the prosecution authorities unrestricted discretion in determining which documents were “of interest” for the criminal investigation (*Aleksanyan v. Russia*, § 216);
- a search warrant based on reasonable suspicion but worded in excessively general terms (*Robathin v. Austria*, § 52);
- a warrant authorising the police to seize, for a period of two full months, the applicant’s entire computer and all his floppy disks, containing material covered by legal professional privilege (*Iliya Stefanov v. Bulgaria*, §§ 41-42).

417. The fact that protection of confidential documents is afforded by a judge is an important safeguard (*Tamosius v. the United Kingdom* (dec.)). The same applies where the impugned legislation

preserves the very essence of the lawyer’s defence role and introduces a filter protecting professional privilege (*Michaud v. France*, §§ 126-129).

418. In many cases, the question of lawyers’ correspondence has been closely linked to that of searches of their offices (reference is accordingly made to the chapter of this guide concerning lawyers’ professional premises).

419. Lastly, secret surveillance of consultations between a lawyer and a client at a police station must be examined from the standpoint of the principles established by the Court in relation to the interception of telephone communications between a lawyer and a client, in view of the need to afford enhanced protection of this relationship, and in particular of the confidentiality of the exchanges characterising it (*R.E. v. the United Kingdom*, § 131).

D. Surveillance of telecommunications in a criminal context

420. The above-mentioned requirements of Article 8 § 2 must of course be satisfied in this context (*Kruslin v. France*, § 26; *Huvig v. France*, § 25). In particular, such surveillance must serve to uncover the truth. Since it represents a serious interference with the right to respect for correspondence, it must be based on a “law” that is particularly precise (*Huvig v. France*, § 32) and must form part of a legislative framework affording sufficient legal certainty (*ibid.*). The rules must be clear and detailed (the technology available for use is continually becoming more sophisticated), as well as being both accessible and foreseeable, so that anyone can foresee the consequences for themselves (*Valenzuela Contreras v. Spain*, §§ 59 and 61). This requirement of sufficiently clear rules concerns both the circumstances in which and the conditions on which the surveillance is authorised and carried out. Since the implementation of measures of secret surveillance of communications is not open to scrutiny by the individuals concerned or the public at large, the “law” would run counter to the rule of law if there were no limits to the legal discretion granted to the executive, or to a judge. Consequently, the law must indicate the scope of any such discretion and the manner of its exercise with sufficient clarity to give the individual adequate protection against arbitrary interference (*Roman Zakharov v. Russia* [GC], § 230). If there is any risk of arbitrariness in its implementation, the law will not be compatible with the lawfulness requirement (*Bykov v. Russia* [GC], §§ 78-79). In such a sensitive area as recourse to secret surveillance, the competent authority must state the compelling reasons justifying such an intrusive measure, while complying with the applicable legal instruments (*Dragojević v. Croatia*, §§ 94-98).

421. The Court has found a violation of the right to respect for correspondence in the following cases, for example: *Kruslin v. France*, § 36; *Huvig v. France*, § 35; *Malone v. the United Kingdom*, § 79; *Valenzuela Contreras v. Spain*, §§ 60-61; *Prado Bugallo v. Spain*, § 30; *Matheron v. France*, § 43; *Dragojević v. Croatia*, § 101; *Šantare and Labazņikovs v. Latvia*, § 62.

422. A person who has been subjected to telephone tapping must have access to “effective scrutiny” to be able to challenge the measures in question (*Marchiani v. France* (dec.)). To deny a person the standing to complain of the interception of his or her telephone conversations, on the ground that it was a third party’s line that had been tapped, infringes the Convention (*Lambert v. France*, §§ 38-41).

423. The Court has held that the lawful steps taken by the police to obtain the numbers dialled from a telephone in a flat were necessary in the context of an investigation into a suspected criminal offence (*P.G. and J.H. v. the United Kingdom*, §§ 42-51). It reached a similar conclusion where telephone tapping constituted one of the main investigative measures for establishing the involvement of individuals in a large-scale drug-trafficking operation, and where the measure had been subjected to “effective scrutiny” (*Coban v. Spain* (dec.)).

424. In general, the Court acknowledges the role of telephone tapping in a criminal context where it is in accordance with the law and necessary in a democratic society for, *inter alia*, public safety or

the prevention of disorder or crime. Such measures assist the police and the courts in their task of preventing and punishing criminal offences. However, the State must organise their practical implementation in such a way as to prevent any abuse or arbitrariness (*Dumitru Popescu v. Romania* (no. 2)).

425. In the context of a criminal case, telephone tapping operations that were ordered by a judge, carried out under the latter's supervision, accompanied by adequate and sufficient safeguards against abuse and subject to subsequent review by a court have been deemed proportionate to the legitimate aim pursued (for example, *Aalmoes and Others v. the Netherlands* (dec.); *Coban v. Spain* (dec.)).

426. Furthermore, the State must ensure effective protection of the data thus obtained and of the right of persons whose purely private conversations have been intercepted by the law-enforcement authorities (*Craxi v. Italy* (no. 2), §§ 75 and 83 – violation). In *Drakšas v. Lithuania* the Court found a violation on account of leaks to the media and the broadcasting of a private conversation recorded, with the authorities' approval, on a telephone line belonging to a politician who was under investigation by the prosecuting authorities (§ 60). However, the lawful publication, in the context of constitutional proceedings, of recordings of conversations that were not private but professional and political was not found to have breached Article 8 (*ibid.*, § 61).

E. Correspondence of private individuals, professionals and companies

427. The right to respect for correspondence covers the private, family and professional sphere. In *Margareta and Roger Andersson v. Sweden* the Court found a violation on account of the restrictions imposed on communications by letter and telephone between a mother and her child who was in the care of social services, depriving them of almost all means of remaining in contact for a period of approximately one and a half years (§§ 95-97).

428. In *Copland v. the United Kingdom* the Court found a violation on account of the monitoring, without any legal basis, of a civil servant's telephone calls, email and Internet use (§§ 48-49). In another case concerning workplace monitoring by a public employer, *Halford v. the United Kingdom*, the Court found a violation in that no legal instrument regulated the interception of calls made on the telephone of the civil servant concerned (§ 51).

429. The case-law also covers the monitoring of correspondence in the context of a commercial bankruptcy (*Foxley v. the United Kingdom*, §§ 30 and 43). In *Luordo v. Italy* (§ 78) the Court found a violation of Article 8 on account of the repercussions of excessively lengthy bankruptcy proceedings on the bankrupt's right to respect for his correspondence. However, the introduction of a system for monitoring the bankrupt's correspondence is not in itself open to criticism (see also *Narinen v. Finland*).

430. The question of companies' correspondence is closely linked to that of searches of their premises (please refer to the chapter on company premises). For example, in *Bernh Larsen Holding AS and Others v. Norway* (cited above) the Court found no violation on account of a decision ordering a company to hand over a copy of all data on the computer server it used jointly with other companies. Although the applicable law did not require prior judicial authorisation, the Court took into account the existence of effective and adequate safeguards against abuse, the interests of the companies and their employees and the public interest in effective tax inspections (§§ 172-175). However, the Court found a violation in the case of *DELTA PEKÁRNY a.s. v. the Czech Republic*, concerning an inspection of business premises with a view to finding circumstantial and material evidence of an unlawful pricing agreement in breach of competition rules. The Court referred to the lack of prior judicial authorisation, the lack of *ex post facto* review of the necessity of the measure, and the lack of rules governing the possibility of destroying the data obtained (§§ 92-93).

F. Special secret surveillance of citizens/organisations

431. In its first judgment concerning secret surveillance, *Klass and Others v. Germany*, § 48, the Court stated, in particular: “... *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. The Court has therefore to accept 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.*” However, powers of secret surveillance of citizens, characterising as they do the police state, are tolerable under the Convention “*only in so far as strictly necessary for safeguarding the democratic institutions*” (*ibid.*, § 42; *Szabó and Vissy v. Hungary*, §§ 72-73). In the latter case, the Court clarified the concept of “strict necessity”. Thus, a measure of secret surveillance must, in general, be strictly necessary for the safeguarding of democratic institutions and, in particular, for the obtaining of vital intelligence in an individual operation. Otherwise, there will be “abuse” on the part of the authorities (§ 73).

432. In principle, the Court does not recognise an *actio popularis*, with the result that in order to be able to lodge an application in accordance with Article 34, an individual must be able to show that he or she was “directly affected” by the measure complained of. However, in recognition of the particular features of secret surveillance measures and the importance of ensuring effective control and supervision of them, the Court has permitted general challenges to the relevant legislative regime (*Roman Zakharov v. Russia* [GC], § 165). In the case cited, it clarified the conditions in which an applicant could claim to be the “victim” of a violation of Article 8 without having to prove that secret surveillance measures had in fact been applied to him. It based its approach on the one taken in *Kennedy v. the United Kingdom*, which it found to be best tailored to the need to ensure that the secrecy of surveillance measures did not result in the measures being effectively unchallengeable and outside the supervision of the national judicial authorities and of the Court. Accordingly, an applicant can claim to be the victim of a violation of the Convention if he or she falls within the scope of the legislation permitting secret surveillance measures (either because he or she belongs to a group of persons targeted by the legislation or because the legislation directly affects everyone) and if no remedies are available for challenging the secret surveillance. Furthermore, even where remedies do exist, an applicant may still claim to be a victim on account of the mere existence of secret measures or of legislation permitting them, if he or she is able to show that, because of his or her personal situation, he or she is potentially at risk of being subjected to such measures (§§ 171-172). See also, in relation to “victim” status, *Szabó and Vissy v. Hungary*, §§ 32-39 and the references cited therein.

433. The judgment in *Roman Zakharov v. Russia* [GC] (§§ 227-303) contains a thorough overview of the Court’s case-law under Article 8 concerning the “lawfulness” (“quality of law”) and “necessity” (adequacy and effectiveness of guarantees against arbitrariness and the risk of abuse) of a system of secret surveillance. In this case, the deficiencies in the domestic legal framework governing the secret surveillance of mobile telephone communications gave rise to a finding of a violation of Article 8 (§§ 302-303).

434. Secret surveillance of an individual can only be justified under Article 8 if it is in accordance with the law, pursues one or more of the legitimate aims to which paragraph 2 of Article 8 refers and is “necessary” in a democratic society in order to achieve such aims (*Szabó and Vissy v. Hungary*, § 54; *Kennedy v. the United Kingdom*, § 130).

435. As to the first point, this means that the surveillance measure must have some basis in domestic law and be compatible with the rule of law. The law must therefore meet quality requirements: it must be accessible to the person concerned and foreseeable as to its effects (*ibid.*, § 151). In the context of the interception of communications, “foreseeability” cannot be understood

in the same way as in many other fields. Foreseeability in the special context of secret measures of surveillance cannot mean that individuals should be able to foresee when the authorities are likely to intercept their communications so that they can adapt their conduct accordingly (*Weber and Saravia v. Germany*, § 93). However, to avoid arbitrary interference, it is essential to have clear, detailed rules on the interception of telephone conversations. The law must be sufficiently clear to give citizens an adequate indication as to the circumstances in which and the conditions on which public authorities are empowered to resort to any such secret measures (*Roman Zakharov v. Russia* [GC], § 229; *Association for European Integration and Human Rights and Ekimdzhiev v. Bulgaria*, § 75). In addition, the law must indicate the scope of the discretion granted to the executive or to a judge and the manner of its exercise with sufficient clarity to give the individual adequate protection against arbitrary interference (*ibid.*, § 230; *Malone v. the United Kingdom*, § 68; *Huvig v. France*, § 29; *Weber and Saravia v. Germany* (dec.), § 94).

A law on measures of secret surveillance must provide the following minimum safeguards against abuses of power: a definition of the nature of offences which may give rise to an interception order and the categories of people liable to have their telephones tapped; a limit on the duration of the measure; the procedure to be followed for examining, using and storing the data obtained; the precautions to be taken when communicating the data to other parties; and the circumstances in which recordings may or must be erased or destroyed (*Roman Zakharov v. Russia* [GC], §§ 231 and 238-301; *Amann v. Switzerland* [GC], §§ 56-58).

436. Lastly, the use of secret surveillance must pursue a legitimate aim and be “necessary in a democratic society” in order to achieve that aim.

The national authorities enjoy a certain margin of appreciation in choosing the means for achieving the legitimate aim of protecting national security through secret surveillance measures. However, this margin is subject to European supervision embracing both legislation and decisions applying it. The Court must be satisfied that there are adequate and effective guarantees against abuse (*Klass and Others v. Germany*, § 50). The assessment of this question depends on all the circumstances at issue in the case, such as the nature, scope and duration of the possible measures, the grounds required for ordering them, the authorities competent to authorise, carry out and supervise them, and the kind of remedy provided by the national law. The procedures for supervising the ordering and implementation of restrictive measures must be such as to keep the “interference” to what is “necessary in a democratic society” (*Roman Zakharov v. Russia* [GC], § 232 and the references cited therein).

Review and supervision of secret surveillance measures may come into play at three stages: when the surveillance is first ordered, while it is being carried out, or after it has been terminated (*ibid.*, §§ 233-234 and the references cited therein). As regards the first two stages, the existing procedures must themselves provide adequate and equivalent guarantees safeguarding the individual’s rights. Since abuses are potentially easy, it is in principle desirable to entrust supervisory control to a judge, as judicial control offers the best guarantees of independence, impartiality and a proper procedure. As regards the third stage – after the surveillance has been terminated – the question of subsequent notification of surveillance measures is inextricably linked to the effectiveness of remedies before the courts and hence to the existence of effective safeguards against the abuse of monitoring powers. There is in principle little scope for recourse to the courts by the individual concerned unless the latter is advised of the measures taken without his or her knowledge and thus able to challenge their legality retrospectively or, in the alternative, unless any person who suspects that his or her communications are being or have been intercepted can apply to the courts, which retain jurisdiction even where the interception subject has not been notified of the measure (*Roman Zakharov v. Russia* [GC], §§ 233-234).

437. It should be noted that in cases where the legislation permitting secret surveillance is itself contested, the lawfulness of the interference is closely related to the question whether the

“necessity” test has been complied with, and it is therefore appropriate to address jointly the “in accordance with the law” and “necessity” requirements (*Kennedy v. the United Kingdom*, § 155; *Kvasnica v. Slovakia*, § 84). The “quality of law” in this sense implies that the domestic law must not only be accessible and foreseeable in its application, it must also ensure that secret surveillance measures are applied only when “necessary in a democratic society”, in particular by providing for adequate and effective safeguards and guarantees against abuse (*Roman Zakharov v. Russia* [GC], § 236). In the case cited, it was not disputed that the interceptions of mobile telephone communications had a basis in domestic law and pursued legitimate aims for the purposes of Article 8 § 2, namely the protection of national security and public safety, the prevention of crime and the protection of the economic well-being of the country. However, that is not enough. It is necessary to assess in addition the accessibility of the domestic law, the scope and duration of the secret surveillance measures, the procedures to be followed for storing, accessing, examining, using, communicating and destroying the intercepted data, the authorisation procedures, the arrangements for supervising the implementation of the measures, any notification mechanisms and the remedies provided for by national law (see the clarifications provided in §§ 238-301 of *Roman Zakharov v. Russia* [GC]).

438. *Scope of application of secret surveillance measures*: citizens must be given an adequate indication as to the circumstances in which public authorities are empowered to resort to such measures. In particular, it is important to set out clearly the nature of the offences which may give rise to an interception order and a definition of the categories of people liable to have their telephones tapped (*Roman Zakharov v. Russia* [GC], §§ 243 and 247). As regards the nature of the offences, the condition of foreseeability does not require States to set out exhaustively, by name, the specific offences which may give rise to interception. However, sufficient detail should be provided as to the nature of the offences in question (*Kennedy v. the United Kingdom*, § 159). Interception measures in respect of a person who has not been suspected of an offence but might possess information about such an offence may be justified under Article 8 of the Convention (*Greuter v. the Netherlands* (dec.), concerning telephone tapping ordered and supervised by a judge, of which the applicant had been informed). However, the categories of persons liable to have their telephones tapped are not defined sufficiently clearly where they cover not only suspects and defendants but also “any other person involved in a criminal offence”, without any explanation as to how this term is to be interpreted (*Iordachi and Others v. Moldova*, § 44, where the applicants maintained that they ran a serious risk of having their telephones tapped because they were members of a non-governmental organisation specialising in the representation of applicants before the Court; see also *Roman Zakharov v. Russia* [GC], § 245; *Szabó and Vissy v. Hungary*, §§ 67 and 73). In the case of *Amann v. Switzerland* [GC], concerning a file opened and stored by the authorities following the interception of a telephone conversation, the Court found a violation because, among other things, the relevant law did not regulate in detail the case of individuals who were monitored “fortuitously” (§ 61).

439. *Duration of surveillance*: the question of the overall duration of interception measures may be left to the discretion of the authorities responsible for issuing and renewing interception warrants, provided that adequate safeguards exist, such as a clear indication in domestic law of the period after which an interception warrant will expire, the conditions under which a warrant can be renewed and the circumstances in which it must be revoked (*Roman Zakharov v. Russia* [GC], § 250; *Kennedy v. the United Kingdom*, § 161). In *Iordachi and Others v. Moldova*, § 45, the domestic legislation was criticised because it did not lay down a clear limitation in time for the authorisation of a surveillance measure.

440. *Procedures to be followed for storing, accessing, examining, using, communicating and destroying intercepted data* (*Roman Zakharov v. Russia* [GC], §§ 253-256). The automatic storage for six months of clearly irrelevant data cannot be considered justified under Article 8 (*ibid.*, § 255). The case of *Liberty and Others v. the United Kingdom* concerned the interception by the Ministry of

Defence, on the basis of a warrant, of the external communications of civil-liberties organisations. The Court found a violation, holding in particular that no indication of the procedure to be followed for selecting for examination, sharing, storing and destroying intercepted material had been accessible to the public (§ 69).

441. *Authorisation procedures*: in assessing whether the authorisation procedures are capable of ensuring that secret surveillance is not ordered haphazardly, unlawfully or without due and proper consideration, regard should be had to a number of factors, including in particular the authority competent to authorise the surveillance, the scope of its review and the contents of the interception authorisation (*Roman Zakharov v. Russia* [GC], §§ 257-267; see also *Szabó and Vissy v. Hungary*, §§ 73 and 75-77, concerning surveillance measures subject to prior judicial authorisation by the Minister of Justice and the question of emergency measures, §§ 80-81). Where a system allows the secret services and the police to intercept directly the communications of any citizen without requiring them to show an interception authorisation to the communications service provider, or to anyone else, the need for safeguards against arbitrariness and abuse appears particularly strong (*Roman Zakharov v. Russia* [GC], § 270).

442. *Supervision of the implementation of secret surveillance measures*: an obligation on the intercepting agencies to keep records of interceptions is particularly important to ensure that the supervisory body has effective access to details of surveillance activities undertaken (*Kennedy v. the United Kingdom*, § 165; *Roman Zakharov v. Russia* [GC], §§ 275-285). Although it is in principle desirable to entrust supervisory control to a judge, supervision by non-judicial bodies may be deemed compatible with the Convention, provided that the supervisory body is independent of the authorities carrying out the surveillance, and is vested with sufficient powers and competence to perform effective and continuous supervision (*Klass and Others v. Germany*, § 56; *Roman Zakharov v. Russia* [GC], § 272). The supervisory body's powers with respect to any breaches detected are also an important aspect for the assessment of the effectiveness of its supervision (*Klass and Others v. Germany*, § 53, where the intercepting agency was required to terminate the interception immediately if the G10 Commission found it illegal or unnecessary; *Kennedy v. the United Kingdom*, § 168, where any intercept material was to be destroyed as soon as the Interception of Communications Commissioner discovered that the interception was unlawful; and *Roman Zakharov v. Russia* [GC], § 282).

443. *Notification of interception of communications and available remedies* (*Roman Zakharov v. Russia* [GC], §§ 286-301). The secret nature of surveillance measures raises the question of notification of the person concerned so that the latter may challenge their lawfulness. Although the fact that persons affected by secret surveillance measures are not subsequently notified once the surveillance has ceased cannot by itself constitute a violation, it is nevertheless desirable to inform them after the termination of the measures "as soon as notification can be carried out without jeopardising the purpose of the restriction" (*Roman Zakharov v. Russia* [GC], §§ 287-290; *Cevat Özel v. Turkey*, §§ 34-37). The question whether it is necessary to notify an individual that he or she has been subjected to interception measures is inextricably linked to the effectiveness of domestic remedies (*Roman Zakharov v. Russia* [GC], § 286).

444. With regard to secret anti-terrorist surveillance operations, the Court accepts that it is a natural consequence of the forms taken by present-day terrorism that governments resort to cutting-edge technologies, including mass surveillance of communications, in order to pre-empt impending incidents. Nevertheless, legislation governing such operations must provide the necessary safeguards against abuse regarding the ordering and implementation of surveillance measures and any potential redress (*Szabó and Vissy v. Hungary*, §§ 64, 68 and 78-81). Although the Court accepts that there may be situations of extreme urgency in which the requirement of prior judicial authorisation would entail a risk of wasting precious time, in such cases any measures authorised in advance by a non-judicial authority must be subject to an *ex post facto* judicial review (§ 81).

445. The case of *Kennedy v. the United Kingdom* concerned a former prisoner campaigning against miscarriages of justice and claiming to be the victim of surveillance measures. The Court pointed out that the power to order secret surveillance of citizens was not acceptable under Article 8 unless there were adequate and effective guarantees against abuse.

446. In the case of *Association for European Integration and Human Rights and Ekimdzhiiev v. Bulgaria*, a non-profit association and a lawyer who represented applicants in proceedings before the European Court of Human Rights alleged that they could be subjected to surveillance measures at any point in time without any notification. The Court observed that the relevant domestic legislation did not afford sufficient guarantees against the risk of abuse inherent in any system of secret surveillance and that the interference with the applicants' Article 8 rights was therefore not "in accordance with the law".

447. The case of *Association "21 December 1989" and Others v. Romania* concerned an association protecting the interests of participants in and victims of anti-government demonstrations. The Court found a violation of Article 8 (§§ 171-175) (contrast *Kennedy v. the United Kingdom*, § 169 – no violation).

List of cited cases

The case-law cited in this Guide refers to judgments or decisions delivered by the Court and to decisions or reports of the European Commission of Human Rights (“the Commission”).

Unless otherwise indicated, all references are to a judgment on the merits delivered by a Chamber of the Court. The abbreviation “(dec.)” indicates that the citation is of a decision of the Court and “[GC]” that the case was heard by the Grand Chamber.

Chamber judgments that were not final within the meaning of Article 44 of the Convention when this update was published are marked with an asterisk (*) in the list below. Article 44 § 2 of the Convention provides: “The judgment of a Chamber shall become final (a) when the parties declare that they will not request that the case be referred to the Grand Chamber; or (b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or (c) when the panel of the Grand Chamber rejects the request to refer under Article 43”. In cases where a request for referral is accepted by the Grand Chamber panel, it is the subsequent Grand Chamber judgment, not the Chamber judgment, that becomes final.

The hyperlinks to the cases cited in the electronic version of the Guide are directed to the HUDOC database (<http://hudoc.echr.coe.int>) which provides access to the case-law of the Court (Grand Chamber, Chamber and Committee judgments and decisions, communicated cases, advisory opinions and legal summaries from the Case-Law Information Note) and of the Commission (decisions and reports), and to the resolutions of the Committee of Ministers.

The Court delivers its judgments and decisions in English and/or French, its two official languages. HUDOC also contains translations of many important cases into more than thirty non-official languages, and links to around one hundred online case-law collections produced by third parties.

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- [A v. Croatia](#), no. 55164/08, 14 October 2010
- [A. v. France](#), no. 14838/89, 23 November 1993
- [A, B and C v. Latvia](#), no. 30808/11, 31 March 2016
- [A, B and C v. Ireland](#) [GC], no. 25579/05, ECHR 2010
- [A. v. the United Kingdom](#), no. 9054/80, Commission decision of 8 October 1982
- [A.B. v. the Netherlands](#), no. 37328/97, 29 January 2002
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- [A.D. and O.D. v. the United Kingdom](#), no. 28680/06, 16 March 2010
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