

Year	Date	Name	Link	App.no.	Body	Judge citing	Opinion	who submitted	Countries	C/R/F	type	Document	Quotes
2019	12/10/2019	KAVALA v. TURKEY	http://hudoc.echr.coe.int/eng/?i=001-199515	28749/18	52	BOŠNIAK	concurring		0 Canada	C	SC	R. v. Fenney (Supreme Court of Canada), 1997 CarswellBC 1015 (1997)	1. As the standard of reasonable suspicion refers to an objective observer and therefore implies impartiality, it is precisely the domestic court which must act as this objective observer when ordering or extending detention in a given case. If the domestic court, acting as an objective observer, is to be satisfied that reasonable suspicion exists, the elements submitted to it in this respect must be articulable, in the sense that they specify the act the suspect has allegedly committed and explain the evidentiary link between the suspect and that act. A mere suspicion on the part of the investigative authorities will not suffice.[2] The elements satisfying the standard of reasonable suspicion must exist and must be available to an objective observer prior to a procedural act for which reasonable suspicion is required (such as a detention order or search and seizure warrant).[3] Under no circumstances can evidence subsequently collected, or other elements subsequently produced, substitute for the initial lack of reasonable suspicion. [3] From a comparative perspective, see, for example, for the US legal system, Devenpeck v. Alford (US Supreme Court) 543 U.S. 146 (2004); for the Canadian legal system, R. v. Fenney (Supreme Court of Canada), 1997 CarswellBC 1015 (1997); and for the French legal system, Court of Cassation, Criminal Division, 1 October 2003 (03-82.909).
2019	12/10/2019	KAVALA v. TURKEY	http://hudoc.echr.coe.int/eng/?i=001-199515	28749/18	52	BOŠNIAK	concurring		0 US	C	SC	Terry v. Ohio (US Supreme Court), 392 U.S. 1 (1968)	3. As the standard of reasonable suspicion refers to an objective observer and therefore implies impartiality, it is precisely the domestic court which must act as this objective observer when ordering or extending detention in a given case. If the domestic court, acting as an objective observer, is to be satisfied that reasonable suspicion exists, the elements submitted to it in this respect must be articulable, in the sense that they specify the act the suspect has allegedly committed and explain the evidentiary link between the suspect and that act. A mere suspicion on the part of the investigative authorities will not suffice.[2] The elements satisfying the standard of reasonable suspicion must exist and must be available to an objective observer prior to a procedural act for which reasonable suspicion is required (such as a detention order or search and seizure warrant).[3] Under no circumstances can evidence subsequently collected, or other elements subsequently produced, substitute for the initial lack of reasonable suspicion. [3] From a comparative perspective, see, for example, Terry v. Ohio (US Supreme Court), 392 U.S. 1 (1968). In this respect, I would argue that the US standard of "probable cause" is very much in line with this Court's interpretation of "reasonable suspicion"; the same position is advanced by Van Kempen, P.H.P.H.M.C. (ed.): Pre-Trial Detention (Intersentia 2012), p. 33. [3] From a comparative perspective, see, for example, for the US legal system, Devenpeck v. Alford (US Supreme Court) 543 U.S. 146 (2004); for the Canadian legal system, R. v. Fenney (Supreme Court of Canada), 1997 CarswellBC 1015 (1997); and for the French legal system, Court of Cassation, Criminal Division, 1 October 2003 (03-82.909). [4] The standard introduced in comparative law by Brinegar v. US (US Supreme Court) 338 U.S. 160 (1949), and confirmed relatively recently in Maryland v. Pringle (US Supreme Court) 540 U.S. 366 (2003).
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2019	12/10/2019	KAVALA v. TURKEY	http://hudoc.echr.coe.int/eng/?i=001-199515	28749/18	52	BOŠNIAK	concurring		0 US	C	SC	Maryland v. Pringle (US Supreme Court) 540 U.S. 366 (2003)	3. As the standard of reasonable suspicion refers to an objective observer and therefore implies impartiality, it is precisely the domestic court which must act as this objective observer when ordering or extending detention in a given case. If the domestic court, acting as an objective observer, is to be satisfied that reasonable suspicion exists, the elements submitted to it in this respect must be articulable, in the sense that they specify the act the suspect has allegedly committed and explain the evidentiary link between the suspect and that act. A mere suspicion on the part of the investigative authorities will not suffice.[2] The elements satisfying the standard of reasonable suspicion must exist and must be available to an objective observer prior to a procedural act for which reasonable suspicion is required (such as a detention order or search and seizure warrant).[3] Under no circumstances can evidence subsequently collected, or other elements subsequently produced, substitute for the initial lack of reasonable suspicion. [3] From a comparative perspective, see, for example, Terry v. Ohio (US Supreme Court), 392 U.S. 1 (1968). In this respect, I would argue that the US standard of "probable cause" is very much in line with this Court's interpretation of "reasonable suspicion"; the same position is advanced by Van Kempen, P.H.P.H.M.C. (ed.): Pre-Trial Detention (Intersentia 2012), p. 33. [3] From a comparative perspective, see, for example, for the US legal system, Devenpeck v. Alford (US Supreme Court) 543 U.S. 146 (2004); for the Canadian legal system, R. v. Fenney (Supreme Court of Canada), 1997 CarswellBC 1015 (1997); and for the French legal system, Court of Cassation, Criminal Division, 1 October 2003 (03-82.909). [4] The standard introduced in comparative law by Brinegar v. US (US Supreme Court) 338 U.S. 160 (1949), and confirmed relatively recently in Maryland v. Pringle (US Supreme Court) 540 U.S. 366 (2003).
2019	10/17/2019	LÓPEZ RIBALDA AND OTHERS v. SPAIN	http://hudoc.echr.coe.int/eng/?i=001-197098	nos. 1874/13 and 8567/13	GC	DE GAETANO, YUDKIVSKA AND	dissenting		0 Canada	C	SC	R v. Oakes ([1986] 1 S.C.R. 103)	14. Similar criteria, of importance for an assessment of proportionality in relation to covert video-surveillance, have been developed in other jurisdictions. For example, in the case of R. v. Oakes ([1986] 1 S.C.R. 103) the Canadian Supreme Court considered the following factors: whether the measure is necessary to meet a specific need; whether it is effective in meeting that need; and whether the loss is proportionate to the benefit. This is an appropriate approach to follow in order to determine whether there has been a fair balance between competing Convention rights. Also of note is the same court's finding in Ross v. Rosedale Transport Ltd ([2003] C.L.A.D. No. 237) that "surveillance is an extraordinary step which can only be resorted to where there is, beforehand, reasonable and probable cause to justify it".
2019	10/17/2019	LÓPEZ RIBALDA AND OTHERS v. SPAIN	http://hudoc.echr.coe.int/eng/?i=001-197098	nos. 1874/13 and 8567/13	GC	DE GAETANO, YUDKIVSKA AND	dissenting (join)		0 Canada	C	SC	Ross v. Rosedale Transport Ltd ([2003] C.L.A.D. No. 237)	14. Similar criteria, of importance for an assessment of proportionality in relation to covert video-surveillance, have been developed in other jurisdictions. For example, in the case of R. v. Oakes ([1986] 1 S.C.R. 103) the Canadian Supreme Court considered the following factors: whether the measure is necessary to meet a specific need; whether it is effective in meeting that need; and whether the loss is proportionate to the benefit. This is an appropriate approach to follow in order to determine whether there has been a fair balance between competing Convention rights. Also of note is the same court's finding in Ross v. Rosedale Transport Ltd ([2003] C.L.A.D. No. 237) that "surveillance is an extraordinary step which can only be resorted to where there is, beforehand, reasonable and probable cause to justify it".
2019	9/10/2019	PRYANISHNIKOV v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-195805	25047/05	53	PINTO DE ALBUQUERQUE	concurring		0 Canada	C	SC	R v. Butler [1992] DLR (4th) 44.9	20. The Court's case-law is also not in line with that of the Canadian Supreme Court. Canadian law criminalises the fabrication and distribution of obscene pornographic material, as well as its possession for the purposes of distribution. The definition of obscenity is laid down in section 163(8) of the Canadian Criminal Code: "For the purposes of this Act, any publication a dominant characteristic of which is the undue exploitation of sex, or of sex and any one or more of the following subjects, mainly, crime, horror, cruelty and violence, shall be deemed to be obscene". In a famous case from 1992, the Canadian Supreme Court upheld the anti-pornography legislation on the basis that there is a "substantial body of opinion that holds that the portrayal of persons being subjected to degrading or dehumanizing sexual treatment results in harm, particularly to women and therefore to society as a whole"[24]. [24] R v. Butler [1992] DLR (4th) 44.9. [25] 413 U.S. 15 (1973). [26] 481 U.S. 497 (1987). [27] New York v. Ferber, 458 U.S. 747 (1982). The Court ruled that the First Amendment right to free speech did not forbid states from banning the sale of material depicting children engaged in sexual activity, even if the material was not obscene. [28] Osborne v. Ohio, 495 U.S. 103 (1990). [29] Reno v. American Civil Liberties Union, 521 U.S. 844 (1997). [30] Ashcroft v. Free Speech Coalition, 535 U.S. 234 (2002).

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2019	9/10/2019	PRYANISHNIKOV v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-195605	25047/05	S3	PINTO DE ALBUQUERQUE	concurring		0 US	C	SC	Miller v. California 413 U.S. 15 (1973)	21. In the United States, pornography is lawful unless it meets the three-pronged obscenity test set out in the case of Miller v. California: "(a) whether 'the average person, applying contemporary community standards' would find that the work, taken as a whole, appeals to the prurient interest; (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (c) whether the work, taken as a whole, lacks serious literary, artistic, political or scientific value"[25]. The standards established by Miller were refined in Pope v. Illinois[26], which held that the first two prongs of the Miller test were to be evaluated according to a "community standard", but not the third, which was to be held to the higher standard of a "reasonable person" evaluating the work for value. In 1982, the Supreme Court held that the distribution of child pornography was unprotected by the First Amendment[27] and subsequently extended this case-law to the mere possession of child pornography[28]. The tide turned in 1997, when the Supreme Court ruled that the anti-indecency provisions of the Communications Decency Act were unconstitutional[29]. The Act had criminalised the sending of "obscene or indecent" material to minors over the internet. In 2002 the Supreme Court went even further and held that sexually explicit material that only appears to depict minors, but actually does not, might be exempt from obscenity rulings[30]. [24] R v. Butler [1992] DLR (4th) 44.9. [25] 413 U.S. 15 (1973). [26] 481 U.S. 497 (1987). [27] New York v. Ferber, 458 U.S. 747 (1982). The Court ruled that the First Amendment right to free speech did not forbid states from banning the sale of material depicting children engaged in sexual activity, even if the material was not obscene. [28] Osborne v. Ohio, 495 U.S. 103 (1990). [29] Reno v. American Civil Liberties Union, 521 U.S. 844 (1997). [30] Ashcroft v. Free Speech Coalition, 535 U.S. 234 (2002).
2019	9/10/2019	PRYANISHNIKOV v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-195605	25047/05	S3	PINTO DE ALBUQUERQUE	concurring		0 US	C	SC	Pope v. Illinois 481 U.S. 497 (1987)	21. In the United States, pornography is lawful unless it meets the three-pronged obscenity test set out in the case of Miller v. California: "(a) whether 'the average person, applying contemporary community standards' would find that the work, taken as a whole, appeals to the prurient interest; (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (c) whether the work, taken as a whole, lacks serious literary, artistic, political or scientific value"[25]. The standards established by Miller were refined in Pope v. Illinois[26], which held that the first two prongs of the Miller test were to be evaluated according to a "community standard", but not the third, which was to be held to the higher standard of a "reasonable person" evaluating the work for value. In 1982, the Supreme Court held that the distribution of child pornography was unprotected by the First Amendment[27] and subsequently extended this case-law to the mere possession of child pornography[28]. The tide turned in 1997, when the Supreme Court ruled that the anti-indecency provisions of the Communications Decency Act were unconstitutional[29]. The Act had criminalised the sending of "obscene or indecent" material to minors over the internet. In 2002 the Supreme Court went even further and held that sexually explicit material that only appears to depict minors, but actually does not, might be exempt from obscenity rulings[30]. [24] R v. Butler [1992] DLR (4th) 44.9. [25] 413 U.S. 15 (1973). [26] 481 U.S. 497 (1987). [27] New York v. Ferber, 458 U.S. 747 (1982). The Court ruled that the First Amendment right to free speech did not forbid states from banning the sale of material depicting children engaged in sexual activity, even if the material was not obscene. [28] Osborne v. Ohio, 495 U.S. 103 (1990). [29] Reno v. American Civil Liberties Union, 521 U.S. 844 (1997). [30] Ashcroft v. Free Speech Coalition, 535 U.S. 234 (2002).
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2019	7/18/2019	RUSTAVI 2 BROADCASTING COMPANY LTD AND OTHERS v. GEORGIA	http://hudoc.echr.coe.int/eng/?i=001-194445	16812/17	55		0 majority	government	Australia	R	general		0 326. As regards the independence and impartiality of the appellate level of jurisdiction involved in the examination of the ownership dispute, and in particular the complaints made against Judge N.G., the Government first acknowledged that at the time of the examination of the ownership dispute, Judges T.U. and N.G. had been members of the association of judges together with approximately fifty other acting judges. The Government argued that nothing in the association's statements of 31 August and 20 October 2015 had demonstrated any indication of personal bias or a predetermined position on the part of Judge N.G. or Judge T.U. The impugned statements had not concerned the merits of the ownership dispute. Rather, they had been aimed at protecting the judiciary from the virulent attacks in the media at that time. In general, the Government argued, with reference to relevant comparative material relating to such countries as Australia, the Czech Republic, Hungary and Portugal, that the practice of protecting individual judges from attacks in the media by non-governmental organisations and associations of judges was not uncommon.

Year	Date	Name	Link	App.no.	Body	Judge citing	Opinion	who submitted	Countries	C/R/P	type	Document	Quotes
2019	7/8/2019	MIHALACHE v. ROMANIA	http://hudoc.echr.coe.int/eng/?i=001-194512	54012/10	GC	PINTO DE ALBUQUERQUE	concurring		US	R	constitution	Fifth Amendment to the United States Constitution	11. In 32 European States, the Codes of Criminal Procedure contain a list of grounds for a public prosecutor to discontinue criminal proceedings. These member States are: Albania[15], Armenia[16], Austria[17], Azerbaijan[18], Belgium[19], Bosnia and Herzegovina[20], Croatia[21], Czech Republic[22], Estonia[23], Finland[24], France[25], Georgia[26], Germany[27], Hungary[28], Latvia[29], Liechtenstein[30], Lithuania[31], Luxembourg[32], North Macedonia[33], Moldova[34], Montenegro[35], Norway[36], Poland[37], Portugal[38], Russian Federation[39], San Marino[40], Serbia[41], Slovakia[42], Slovenia[43], Spain[44], Switzerland[45] and Ukraine[46]. The most common reasons that can be given by a public prosecutor to justify a decision to discontinue criminal proceedings belong to two main groups: in mandatory prosecution systems, they include lack of elements of crime (32 States), lack of evidence (28 States), statute of limitation (21 States), amnesty or immunity (17 member States), lack of criminal responsibility/criminal liability age (17 States), adjudication by a final court decision for the same act (13 States), death of the suspect (13 States), lack of complaint by the victim (10 States); and in discretionary prosecution systems they include lack of sufficient seriousness (10 States), the accused is already charged with several (more serious) criminal acts (5 States), and, finally, lack of public interest (6 States). In 5 States[47], no specific grounds are mentioned in the CCPs but in practice the same applies. [14] It is to be noted that in A and B v. Norway (GC), nos. 24130/11 and 29758/11, 15 November 2016, the Court also neglected the comparative law information and in Sergey Zolothukin v. Russia (GC), no. 14939/03, ECHR 2009, only referred to the double-jeopardy rule under the Fifth Amendment to the United States Constitution. It is true that Article 4 of Protocol 7 is a provision from which no derogation is permissible, and therefore there is no margin of appreciation for Contracting Parties to the Convention based on the lack of a European consensus on issues regarding ne bis in idem (see my opinion in A and B v. Norway, cited above, § 22). But this does not mean that the comparative-law information on the legal situation prevailing in the Contracting Parties to the Convention should be entirely neglected, as it was in the present case.
2019	6/25/2019	STOIAN v. ROMANIA	http://hudoc.echr.coe.int/eng/?i=001-194062	289/14)	s4		0 majority	intervener	Australia	C	lower-level co	Hurst v. State of Queensland	94. In its submissions, Amnesty International referred to the standards developed by other jurisdictions in the field of inclusive education. The United States Supreme Court, in Endrew F. v. Douglas County School District RE-1, had ruled that simply passing a child with disabilities from grade level to grade level with no actual educational benefit was not sufficient under the relevant legislation. In Hurst v. State of Queensland, the Federal Court of Australia had found that teaching English and English sign language to a child with a hearing impairment whose first language was Auslan (Australian sign language) did not afford the child adequate conditions to enable her to learn to her full potential, and considered that the child in question would suffer serious disadvantage if she was required to simply cope with the conditions imposed. Lastly, the House of Lords decided in Regina v. East Sussex County Council Ex Parte Tandy, HL 21 May 1998, that when assessing the appropriate educational needs for a student with disabilities, the local authority must not consider its financial constraints as a reason not to provide appropriate education.
2019	6/25/2019	STOIAN v. ROMANIA	http://hudoc.echr.coe.int/eng/?i=001-194062	289/14)	s4		0 majority	intervener	US	C	SC	Endrew F. v. Douglas County School District RE-1	94. In its submissions, Amnesty International referred to the standards developed by other jurisdictions in the field of inclusive education. The United States Supreme Court, in Endrew F. v. Douglas County School District RE-1, had ruled that simply passing a child with disabilities from grade level to grade level with no actual educational benefit was not sufficient under the relevant legislation. In Hurst v. State of Queensland, the Federal Court of Australia had found that teaching English and English sign language to a child with a hearing impairment whose first language was Auslan (Australian sign language) did not afford the child adequate conditions to enable her to learn to her full potential, and considered that the child in question would suffer serious disadvantage if she was required to simply cope with the conditions imposed. Lastly, the House of Lords decided in Regina v. East Sussex County Council Ex Parte Tandy, HL 21 May 1998, that when assessing the appropriate educational needs for a student with disabilities, the local authority must not consider its financial constraints as a reason not to provide appropriate education.
2019	6/4/2019	SIGURDUR EINARSSON AND OTHERS v. ICELAND	http://hudoc.echr.coe.int/eng/?i=001-193494	39757/15)	s2	PAVLI	dissenting (par		US	C	SC	United States v. Skilling, 554 F.3d 529 (5th Circuit 2009)	11. A basic review of comparative law in jurisdictions with relevant experience in this field – a more extensive version of which would have been helpful in the novel context of this case – suggests that the presumption is required to provide the defence with the fullest possible access to electronic investigative materials, including the ability to conduct their own searches, in terms and with capacities comparable to those of the prosecution. This is considered the minimum or baseline safeguard required in complex cases by the principle of equality of arms. [2][2] See, for example, the leading U.S. case of United States v. Skilling, 554 F.3d 529 (5th Circuit 2009) (involving several hundred million electronic records).
2019	5/23/2019	DOYLE v. IRELAND	http://hudoc.echr.coe.int/eng/?i=001-193983	51979/17)	S5		0 majority	ECtHR	US	C	SC	general	54. On the main question raised in the Gormley case Clarke J stated: "8.7. The first issue which perhaps arises is as to whether it is appropriate to regard any part of the investigative stage of a criminal process as forming part of a 'trial in due course of law'. It is clear that the ECtHR takes such a view. It must, of course, be recalled that, in many civil law countries, there are formal parts of the investigative process which are judicial or involve prosecutors who have a quasi-judicial status. The line between investigation and trial is not necessarily the same in each jurisdiction. Furthermore, it is important to emphasise a potential distinction between a formal investigation directly involving an arrested suspect and what might be termed a pure investigative stage where the police or other relevant prosecuting authorities are simply gathering evidence. 8.8. I am persuaded that the point at which the coercive power of the State, in the form of an arrest, is exercised against a suspect represents an important juncture in any potential criminal process. Thereafter the suspect is no longer someone who is simply being investigated by the gathering of whatever evidence might be available. Thereafter the suspect has been deprived of his or her liberty and, in many cases, can be subjected to mandatory questioning for various periods and, indeed, in certain circumstances, may be exposed to a requirement, under penal sanction, to provide forensic samples. It seems to me that once the power of the State has been exercised against a suspect in that way, it is proper to regard the process thereafter as being intimately connected with a potential criminal trial rather than being one at a pure investigative stage. It seems to me to follow that the requirement that persons only be tried in due course of law, therefore, requires that the basic fairness of process identified as an essential ingredient of that concept by this Court in State (Healy) v. Donoghue applies from the time of arrest of a suspect. The precise consequences of such a requirement do, of course, require careful and detailed analysis. It does not, necessarily, follow that all of the rights which someone may have at trial (in the sense of the conduct of a full hearing of the criminal charge before a judge with or without a jury) apply at each stage of the process leading up to such a trial. However, it seems to me that the fundamental requirement of basic fairness does apply from the time of arrest such that any breach of that requirement can lead to an absence of a trial in due course of law. In that regard it seems to me that the Irish position is the same as that acknowledged by the ECtHR and by the Supreme Court of the United States." 55. Later in his judgment he observed: "9.10 ... [T]he question as to whether a suspect is entitled to have a lawyer present during questioning does not arise on the facts of this case for the questioning in respect of which complaint is made occurred before the relevant lawyer even arrived. However, it does need to be noted that the jurisprudence of both the ECtHR and the United States Supreme Court clearly recognises that the entitlements of a suspect extend to having the relevant lawyer present."
2019	5/2/2019	PASQUINI v. SAN MARINO	http://hudoc.echr.coe.int/eng/?i=001-192787	50956/16	S1		0 majority	government	Canada	R	general		0 (ii) The Government 155. In the Government's opinion, the need to seek leave to appeal from the President of the Court for Trusts had not violated the applicant's right to a court. They explained that its purpose was to ensure that only those appeals deserving to be heard were selected, to ensure an efficient allocation of judicial resources. Moreover, it had to be noted that often appeal proceedings ended up being de facto second proceedings, which were not justified since they were not instituted immediately after the gathering of evidence. They pointed out that, in this connection, the domestic law was definitely in line with the legislation in force in other European and non-European countries, such as the United Kingdom, Finland, Sweden, the United States of America and Canada. In particular, under the law applicable in the United Kingdom, in order to lodge an appeal before the civil division of the Court of Appeal against decisions of local or higher courts, prior permission of the judge was necessary. Moreover, the judge was not obliged to grant such leave, the latter being granted only when strong reasons existed as to why the appeal should be heard or when the judge considered that the appellant had a real chance of success. Relying on the case Dobric v. Serbia (nos. 2611/07 and 15276/07, 21 June 2011) the Government considered that leave to appeal a judgment of the Court for Trusts had the legitimate aim of providing for a simplified procedure to deal with appeals without a reasonable chance of success and to rationally allocate judicial resources.
2019	5/2/2019	PASQUINI v. SAN MARINO	http://hudoc.echr.coe.int/eng/?i=001-192787	50956/16	S1		0 majority	government	US	R	general		0 155. In the Government's opinion, the need to seek leave to appeal from the President of the Court for Trusts had not violated the applicant's right to a court. They explained that its purpose was to ensure that only those appeals deserving to be heard were selected, to ensure an efficient allocation of judicial resources. Moreover, it had to be noted that often appeal proceedings ended up being de facto second proceedings, which were not justified since they were not instituted immediately after the gathering of evidence. They pointed out that, in this connection, the domestic law was definitely in line with the legislation in force in other European and non-European countries, such as the United Kingdom, Finland, Sweden, the United States of America and Canada. In particular, under the law applicable in the United Kingdom, in order to lodge an appeal before the civil division of the Court of Appeal against decisions of local or higher courts, prior permission of the judge was necessary. Moreover, the judge was not obliged to grant such leave, the latter being granted only when strong reasons existed as to why the appeal should be heard or when the judge considered that the appellant had a real chance of success. Relying on the case Dobric v. Serbia (nos. 2611/07 and 15276/07, 21 June 2011) the Government considered that leave to appeal a judgment of the Court for Trusts had the legitimate aim of providing for a simplified procedure to deal with appeals without a reasonable chance of success and to rationally allocate judicial resources.
2019	3/12/2019	DRELINGAS v. LITHUANIA	http://hudoc.echr.coe.int/eng/?i=001-191702	28859/16	S4	MOTOC	dissenting		Belarus	R	general		06. A significant number of countries have opted for including an extensive list of groups in national legislation (Cote d'Ivoire, Colombia, Poland, Ethiopia, Peru, Lithuania, Costa Rica, Estonia, Romania, France, Belarus, Burkina Faso, Congo and Finland). Most cases of such definition extension have concerned social or political groups, although some countries have also opted for an open category of "groups determined by any other arbitrary criterion" (e.g. France and Romania). Therefore, we must acknowledge that these examples do not provide sufficient evidence of the adoption under international customary law of a wider definition of genocide.
2019	3/12/2019	DRELINGAS v. LITHUANIA	http://hudoc.echr.coe.int/eng/?i=001-191702	28859/16	S4	MOTOC	dissenting		Burkina Faso	R	general		06. A significant number of countries have opted for including an extensive list of groups in national legislation (Cote d'Ivoire, Colombia, Poland, Ethiopia, Peru, Lithuania, Costa Rica, Estonia, Romania, France, Belarus, Burkina Faso, Congo and Finland). Most cases of such definition extension have concerned social or political groups, although some countries have also opted for an open category of "groups determined by any other arbitrary criterion" (e.g. France and Romania). Therefore, we must acknowledge that these examples do not provide sufficient evidence of the adoption under international customary law of a wider definition of genocide.
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Year	Date	Name	Link	App.no.	Body	Judge citing	Opinion	who submitted	Countries	C/R/F	type	Document	Quotes
2019	3/12/2019	PETUKHOV v. UKRAINE (No. 2)	http://hudoc.echr.coe.int/eng/?i=001-191703	41216/13	S4		0 majority	ECtHR	Kazakhstan	F		0	0103. In their joint report "Tuberculosis surveillance and monitoring in Europe 2018 – 2016 data", the Regional Office for Europe of the World Health Organisation and the European Centre for Disease Prevention and Control stated: TB in prisons "In the 2015 cohort of all clinically-diagnosed and bacteriologically-confirmed new TB and relapse cases, a total of 17 403 (8.0%) cases were reported to have died, 4.6% to have been lost to follow-up and 4.2% to have had treatment that failed. [...] Countries reporting the highest failure rates were Ukraine (8.2%) and Russia (7.0%). The WHO European Region is the most affected area for MDR TB in the entire world. Of the 30 countries in the world with the highest MDR TB burden, nine are in the Region (Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Ukraine and Uzbekistan)."
2019	3/12/2019	PETUKHOV v. UKRAINE (No. 2)	http://hudoc.echr.coe.int/eng/?i=001-191703	41216/13	S4		0 majority	ECtHR	Kyrgyzstan	F		0	0103. In their joint report "Tuberculosis surveillance and monitoring in Europe 2018 – 2016 data", the Regional Office for Europe of the World Health Organisation and the European Centre for Disease Prevention and Control stated: TB in prisons "In the 2015 cohort of all clinically-diagnosed and bacteriologically-confirmed new TB and relapse cases, a total of 17 403 (8.0%) cases were reported to have died, 4.6% to have been lost to follow-up and 4.2% to have had treatment that failed. [...] Countries reporting the highest failure rates were Ukraine (8.2%) and Russia (7.0%). The WHO European Region is the most affected area for MDR TB in the entire world. Of the 30 countries in the world with the highest MDR TB burden, nine are in the Region (Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Ukraine and Uzbekistan)."
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2018	12/19/2018	MOLLA SALI v. GREECE	http://hudoc.echr.coe.int/eng/?i=001-188985	no. 20452/14)	GC		0 majority	intervener	Canada	R		general	0118. The Hellenic League stated that European and international practice did not justify granting the Greek authorities a margin of appreciation tending towards the compulsory application of Sharia law. Recourse to Sharia Councils, which was provided for by law in some States (the United Kingdom and the United States) and some infra-State entities (Ontario Province in Canada and the territory of Mayotte), was an option and not an obligation for Muslims living there. Such councils operated as arbitration tribunals, whose decisions enabled the civil courts to take Sharia law into consideration in their own decisions, but recourse to them was not compulsory and did not undermine the application of civil law and the jurisdiction of the civil courts.
2018	12/19/2018	MOLLA SALI v. GREECE	http://hudoc.echr.coe.int/eng/?i=001-188985	no. 20452/14)	GC		0 majority	intervener	US	R		general	0118. The Hellenic League stated that European and international practice did not justify granting the Greek authorities a margin of appreciation tending towards the compulsory application of Sharia law. Recourse to Sharia Councils, which was provided for by law in some States (the United Kingdom and the United States) and some infra-State entities (Ontario Province in Canada and the territory of Mayotte), was an option and not an obligation for Muslims living there. Such councils operated as arbitration tribunals, whose decisions enabled the civil courts to take Sharia law into consideration in their own decisions, but recourse to them was not compulsory and did not undermine the application of civil law and the jurisdiction of the civil courts.
2018	12/18/2018	MURTAZALIYEVA v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-187932	36658/05)	GC	PINTO DE ALBUQUERQUE	dissenting	0 US	C		SC	United States v. Gonzalez-Lopez, 548 U.S. 140, 149 (2006)	50. A more modest account of overall fairness fails in a similar way. One might say that the violation is "cured" when it did not change the final result of the procedure – when the applicant would have been convicted and sentenced in the same manner had the procedure been flawless. But this is logically impossible, even if one concedes that this assessment can be conducted without an illegitimate extra-procedural account of the material truth. In performing this test, the Court is asked to examine the fairness of a procedure that should not have existed the way it did: for example, had the defendant had counsel of his or her choice, or had the defendant represented him or herself, then the procedure would probably have taken a different path, the defendant would have made different statements, different items of evidence would have been admitted. Ultimately, as the United States Supreme Court has put it, "[t]he error – error [or, in the Court's jargon, "overall fairness"] analysis in such a context would be a speculative inquiry into what might have occurred in an alternate universe". [119] [119]. Supreme Court of the United States, v. Gonzalez-Lopez, 548 U.S. 140, 149 (2006).
2018	12/18/2018	MURTAZALIYEVA v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-187932	36658/05)	GC	BOŠNIAK	dissenting (par	0 US	R		statute	Rule 401 of the United States Federal Rules of Evidence	5. While it is understandable that the trial court should only hear evidence that is relevant and that the defence may be expected, subject to the caveat in the point 4 of this dissenting opinion, to provide sufficient reasons for its motions in this respect, one should not limit the concept of relevance to those items of evidence which, taken alone, could overturn the course or the outcome of the proceedings. At this point, I wish to turn the reader's attention to Rule 401 of the United States Federal Rules of Evidence, stipulating that evidence is relevant if (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action. This may serve as a comparative source of inspiration in the matter.
2018	12/18/2018	MURTAZALIYEVA v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-187932	36658/05)	GC		0 majority	applicant	US	C	SC	Cruz v. New York, 481 US 186 (1987)	104. In support of the above argument the applicant referred to the evolution of the applicable standard for prosecution witnesses in Al-Khawaja and Tahery v. the United Kingdom (GC), nos. 26766/05 and 22228/06, ECHR 2011, and Schatschaschwili v. Germany (GC), no. 9154/10, ECHR 2015, as well as the current trends in entrapment and peaceful assembly case-law (she referred to Bannikova v. Russia, no. 18757/06, § 73, 4 November 2010, and Navalnyy and Yashin v. Russia, no. 76204/11, § 83, 4 December 2014). In her opinion, these developments indicated that domestic courts were required to employ a heightened standard of review in verifying incriminating evidence. Referring to the practice of the Inter-American Court (Canese v. Paraguay and Norin Catrimán et al. v. Chile, paragraphs 80-83 above), the ICTY Appeals Chamber (Prosecutor v. Martić, Prosecutor v. Halilović, and Prosecutor v. Krstić, paragraphs 73-75 above) and the United States Supreme Court (Cruz v. New York, 481 US 186 (1987), and Lilly v. Virginia 527 US 116 (1999)), she argued that international law concerning the examination of witnesses had advanced beyond the Perna standard and that it was necessary to call not only witnesses who could give evidence capable of leading to acquittal, but "generally witnesses of fact".
2018	12/18/2018	MURTAZALIYEVA v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-187932	36658/05)	GC		0 majority	applicant	US	C	SC	Lilly v. Virginia 527 US 116 (1999)	104. In support of the above argument the applicant referred to the evolution of the applicable standard for prosecution witnesses in Al-Khawaja and Tahery v. the United Kingdom (GC), nos. 26766/05 and 22228/06, ECHR 2011, and Schatschaschwili v. Germany (GC), no. 9154/10, ECHR 2015, as well as the current trends in entrapment and peaceful assembly case-law (she referred to Bannikova v. Russia, no. 18757/06, § 73, 4 November 2010, and Navalnyy and Yashin v. Russia, no. 76204/11, § 83, 4 December 2014). In her opinion, these developments indicated that domestic courts were required to employ a heightened standard of review in verifying incriminating evidence. Referring to the practice of the Inter-American Court (Canese v. Paraguay and Norin Catrimán et al. v. Chile, paragraphs 80-81 above), the ICTY Appeals Chamber (Prosecutor v. Martić, Prosecutor v. Halilović, and Prosecutor v. Krstić, paragraphs 73-75 above) and the United States Supreme Court (Cruz v. New York, 481 US 186 (1987), and Lilly v. Virginia 527 US 116 (1999)), she argued that international law concerning the examination of witnesses had advanced beyond the Perna standard and that it was necessary to call not only witnesses who could give evidence capable of leading to acquittal, but "generally witnesses of fact".
2018	12/11/2018	BELLI AND ARQUIER-MARTINEZ v. SWITZERLAND	http://hudoc.echr.coe.int/eng/?i=001-188649	no. 65550/13)	S3		0 majority	ECtHR	Canada	R		general	031. Comparison of legislation in thirty-four member States of the Council of Europe (Albania, Armenia, Austria, Belgium, Bosnia-Herzegovina, Bulgaria, Cyprus, Croatia, Estonia, France, Germany, Greece, Hungary, Ireland, Iceland, Italy, Liechtenstein, Lithuania, the former Yugoslav Republic of Macedonia, the Republic of Moldova, Monaco, the Netherlands, Poland, Portugal, Romania, the Russian Federation, San Marino, Serbia, Slovenia, Spain, Sweden, Turkey, Ukraine and the United Kingdom) and three non-member States (Canada, Hong Kong and the United States) led to the following conclusions. (1) The general rule in seventeen of the States compared is that contributory pensions are exportable, but that permanent residence is a precondition for entitlement to non-contributory benefits (Albania, Armenia, Austria, Belgium, Canada, the United States, France, Germany, Hong Kong, Ireland, Italy, Lithuania, Poland, Portugal, San Marino, Turkey and Ukraine). Some of those States, however, lay down special rules on the exportability of non-contributory benefits. In Austria and Germany, people with severe disabilities may apply for a "severely disabled pass" (Schwerbehindertenausweis) stating their degree of disability and facilitating the receipt of benefits. Foreign residents can also obtain this pass if there is a "sufficient link" with the State of origin. Italy allows beneficiaries of some benefits to retain them abroad, albeit only for six months or for serious medical reasons. Poland also permits the exportation of specific benefits in the event of a temporary absence from the country. Belgium and Ireland allow for derogations from the general rule of non-exportability, particularly in cases of extreme necessity. In Portugal, exportation is exceptionally possible where the disabled person is accompanying a close relative working abroad in the Portuguese national interest.
2018	12/11/2018	BELLI AND ARQUIER-MARTINEZ v. SWITZERLAND	http://hudoc.echr.coe.int/eng/?i=001-188649	no. 65550/13)	S3		0 majority	ECtHR	Hong Kong	R		general	031. Comparison of legislation in thirty-four member States of the Council of Europe (Albania, Armenia, Austria, Belgium, Bosnia-Herzegovina, Bulgaria, Cyprus, Croatia, Estonia, France, Germany, Greece, Hungary, Ireland, Iceland, Italy, Liechtenstein, Lithuania, the former Yugoslav Republic of Macedonia, the Republic of Moldova, Monaco, the Netherlands, Poland, Portugal, Romania, the Russian Federation, San Marino, Serbia, Slovenia, Spain, Sweden, Turkey, Ukraine and the United Kingdom) and three non-member States (Canada, Hong Kong and the United States) led to the following conclusions. (1) The general rule in seventeen of the States compared is that contributory pensions are exportable, but that permanent residence is a precondition for entitlement to non-contributory benefits (Albania, Armenia, Austria, Belgium, Canada, the United States, France, Germany, Hong Kong, Ireland, Italy, Lithuania, Poland, Portugal, San Marino, Turkey and Ukraine). Some of those States, however, lay down special rules on the exportability of non-contributory benefits. In Austria and Germany, people with severe disabilities may apply for a "severely disabled pass" (Schwerbehindertenausweis) stating their degree of disability and facilitating the receipt of benefits. Foreign residents can also obtain this pass if there is a "sufficient link" with the State of origin. Italy allows beneficiaries of some benefits to retain them abroad, albeit only for six months or for serious medical reasons. Poland also permits the exportation of specific benefits in the event of a temporary absence from the country. Belgium and Ireland allow for derogations from the general rule of non-exportability, particularly in cases of extreme necessity. In Portugal, exportation is exceptionally possible where the disabled person is accompanying a close relative working abroad in the Portuguese national interest.

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2018	12/4/2018	MAGYAR JETI ZRT v. HUNGARY	http://hudoc.echr.coe.int/eng/?i=001-187930	11257/16	54	PINTO DE ALBUQUERQUE	concurring		0 Canada	C	SC	Crookes v. Newton (2011, SCC 47, [2011] 3 S.C.R. 269)	3. Firstly, hyperlinking does not convey "the linked statements to the audience or communicate its content"[6]. Instead, it merely communicates the existence of such information. This is also the position of the German Federal Constitutional Court, the Canadian Supreme Court, in Crookes v. Newton, and the United States Court of Appeals for the Third Circuit, in Philadelphia Newspapers, LLC, whose jurisprudence the Court cites and adopts[7]. Accordingly, referencing via hyperlink "by itself, is content-neutral – it expresses no opinion ..."[8]. 6. Secondly, as also stressed by the Canadian Supreme Court, inserting a hyperlink gives the author "no control over the content in the secondary article to which he or she has linked"[13]. The content of the destination can change, even radically so, from the point in time when the hyperlink is first posted, without the hyperlinker having any control over it[14]. This line of argument is shared by the Court's reasoning, which nevertheless introduces a caveat: the "natural exception being if the hyperlink points to content controlled by the same person"[15]. In that case, however, liability is not vicarious[16]. Furthermore, hyperlinking can often involve limited or no human editorial action, since most modern Web publication services, content management systems and social media applications include tools which enable automated or otherwise machine-assisted hyperlinking.
2018	12/4/2018	MAGYAR JETI ZRT v. HUNGARY	http://hudoc.echr.coe.int/eng/?i=001-187930	11257/16	54	PINTO DE ALBUQUERQUE	concurring		0 India	C	SC	Shreya Singhal v. Union of India (2015) 5 SCC 1, at paragraphs 138-140, 180, 181	17. The simple use of a hyperlink, without endorsing or even repeating the unlawful content to which it leads, is not equated to traditional forms of publication. Hyperlinking in this case does not make the journalist liable for that content, save in the very exceptional circumstance of non-compliance with a binding judicial decision[31]. In this specific situation of non-compliance with a domestic court order declaring such content unlawful and prohibiting its use, the journalist can be said to have deliberately contravened the ethics of responsible journalism and acted in bad faith[32]. [32] Paragraph 28 of the judgment. This standard was also established by the Supreme Court of India in the landmark judgment of Shreya Singhal v. Union of India, where the court ruled that Internet intermediaries should not be required to exercise their own judgment as to whether content was unlawful and that the "actual knowledge" standard of liability could only be triggered after a party received knowledge through the medium of a court order or a notification from the appropriate government agency acting under the law (2015) 5 SCC 1, at paragraphs 138-140, 180, 181).
2018	12/4/2018	MAGYAR JETI ZRT v. HUNGARY	http://hudoc.echr.coe.int/eng/?i=001-187930	11257/16	54	PINTO DE ALBUQUERQUE	concurring		0 South Korea	C	SC	Decision 2012 D013748	17. The simple use of a hyperlink, without endorsing or even repeating the unlawful content to which it leads, is not equated to traditional forms of publication. Hyperlinking in this case does not make the journalist liable for that content, save in the very exceptional circumstance of non-compliance with a binding judicial decision[31]. In this specific situation of non-compliance with a domestic court order declaring such content unlawful and prohibiting its use, the journalist can be said to have deliberately contravened the ethics of responsible journalism and acted in bad faith[32]. [31] Paragraphs 28 and 81 of the judgment. A delicate situation may obtain in the case of illegal use of copyright-protected music, films and computer games by means of links to the copyrighted materials. In Nelj and Sundé Kolmispää v. Sweden (dec.), no. 40397/12, 19 February 2013, the Court held that there were weighty reasons for the restriction of the applicants' freedom of expression, because the applicants' activities within the commercially run website "The Pirate Bay" amounted to criminal conduct requiring appropriate punishment. The aforesaid website made it possible for users to come into contact with each other through torrent files, which in practice function as internet links. The Court had regard to the domestic courts' finding that the applicants had not taken any action to remove the torrent files in question, despite having been urged to do so. This is not an undisputed view. The Supreme Court of Korea, in its judgment of 12 March 2015, decided that "even if users clicking on the link are forwarded to such web pages, etc., which may infringe a copyright holder's right to reproduction or public transmission by posting copyrighted materials or transmitting copyrighted materials to Internet users without having obtained any license or permission of the copyright holders, the act of linking cannot by itself facilitate commission of infringement. As such, it shall not be deemed as aiding and abetting an act of copyright infringement" (Decision 2012 D013748). http://eng.scourt.go.kr/eng/supreme/decisions/NewDecisionsView.work?seq=934&pageIndex=1&mode=6&searchWord=
2018	12/4/2018	MAGYAR JETI ZRT v. HUNGARY	http://hudoc.echr.coe.int/eng/?i=001-187930	11257/16	54	PINTO DE ALBUQUERQUE	concurring		0 US	C	lower-level co	Philadelphia Newspapers, LLC (No. 11-3257, 2012 U.S. App. LEXIS 15419 (3d Cir. July 26, 2012) (precedential)	3. Firstly, hyperlinking does not convey "the linked statements to the audience or communicate its content"[6]. Instead, it merely communicates the existence of such information. This is also the position of the German Federal Constitutional Court, the Canadian Supreme Court, in Crookes v. Newton, and the United States Court of Appeals for the Third Circuit, in Philadelphia Newspapers, LLC, whose jurisprudence the Court cites and adopts[7]. Accordingly, referencing via hyperlink "by itself, is content-neutral – it expresses no opinion ..."[8]. [7] Paragraphs 30, 31 and 32 of the judgment. 6. Secondly, as also stressed by the Canadian Supreme Court, inserting a hyperlink gives the author "no control over the content in the secondary article to which he or she has linked"[13]. The content of the destination can change, even radically so, from the point in time when the hyperlink is first posted, without the hyperlinker having any control over it[14]. This line of argument is shared by the Court's reasoning, which nevertheless introduces a caveat: the "natural exception being if the hyperlink points to content controlled by the same person"[15]. In that case, however, liability is not vicarious[16]. Furthermore, hyperlinking can often involve limited or no human editorial action, since most modern Web publication services, content management systems and social media applications include tools which enable automated or otherwise machine-assisted hyperlinking.
2018	12/4/2018	MAGYAR JETI ZRT v. HUNGARY	http://hudoc.echr.coe.int/eng/?i=001-187930	11257/16	54	PINTO DE ALBUQUERQUE	concurring		0 US	C	SC	Crookes v. Newton, [2011] 3 R.C.S. 269, 286	3. Firstly, hyperlinking does not convey "the linked statements to the audience or communicate its content"[6]. Instead, it merely communicates the existence of such information. This is also the position of the German Federal Constitutional Court, the Canadian Supreme Court, in Crookes v. Newton, and the United States Court of Appeals for the Third Circuit, in Philadelphia Newspapers, LLC, whose jurisprudence the Court cites and adopts[7]. Accordingly, referencing via hyperlink "by itself, is content-neutral – it expresses no opinion ..."[8].
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2018	12/4/2018	MAGYAR JETI ZRT v. HUNGARY	http://hudoc.echr.coe.int/eng/?i=001-187930	11257/16	54		0 majority	intervener	Australia	C	general		0 [c] The third parties 50. Article 19 argued that there was a fundamental difference between the use of a hyperlink to another web page and the publication of the content on the linked web page, since hyperlinks only referred readers to content that had already been published elsewhere. Without hyperlinks, most of the information on the internet would be difficult or impossible to find and accessibility of information on the internet would be reduced. Article 19 referred to comparative-law material concerning judicial decisions in Canada, the United Kingdom, Australia and the United States, in particular, showing that hyperlinks alone did not constitute publication but were merely reference tools, similar to footnotes, offering readers the possibility of pursuing further reading of separate publications. Another reason, in the intervener's opinion, to exclude liability for hyperlinking was that the linked content was liable to change over time without the person who used the hyperlink being made aware of it. Furthermore, in Article 19's submission, no liability should be imposed unless the person who used the hyperlink was aware that the linked content was unlawful and where the hyperlink was presented in such a way as to expressly endorse the linked content. Lastly the intervener emphasised that holding someone who used a hyperlink liable for third-party content would have the far-reaching consequence that a wide range of groups could be penalised for the content of websites over which they had no control, resulting in a chilling effect limiting Internet users' access to information.
2018	12/4/2018	MAGYAR JETI ZRT v. HUNGARY	http://hudoc.echr.coe.int/eng/?i=001-187930	11257/16	54		0 majority	intervener	Canada	C	general		0 [c] The third parties 50. Article 19 argued that there was a fundamental difference between the use of a hyperlink to another web page and the publication of the content on the linked web page, since hyperlinks only referred readers to content that had already been published elsewhere. Without hyperlinks, most of the information on the internet would be difficult or impossible to find and accessibility of information on the internet would be reduced. Article 19 referred to comparative-law material concerning judicial decisions in Canada, the United Kingdom, Australia and the United States, in particular, showing that hyperlinks alone did not constitute publication but were merely reference tools, similar to footnotes, offering readers the possibility of pursuing further reading of separate publications. Another reason, in the intervener's opinion, to exclude liability for hyperlinking was that the linked content was liable to change over time without the person who used the hyperlink being made aware of it. Furthermore, in Article 19's submission, no liability should be imposed unless the person who used the hyperlink was aware that the linked content was unlawful and where the hyperlink was presented in such a way as to expressly endorse the linked content. Lastly the intervener emphasised that holding someone who used a hyperlink liable for third-party content would have the far-reaching consequence that a wide range of groups could be penalised for the content of websites over which they had no control, resulting in a chilling effect limiting Internet users' access to information.
2018	12/4/2018	MAGYAR JETI ZRT v. HUNGARY	http://hudoc.echr.coe.int/eng/?i=001-187930	11257/16	54		0 majority	ECtHR	Canada	C	SC	Crookes v. Newton (2011, SCC 47, [2011] 3 S.C.R. 269)	31. In Crookes v. Newton (2011, SCC 47, [2011] 3 S.C.R. 269) the Supreme Court of Canada considered the issue of whether creating a hyperlink to defamatory material constituted publication of the defamatory statements. It held that a person could not defame someone merely by publishing a hyperlink to a third-party website or document containing defamatory material. It stated, in particular: "Hyperlinks are in essence references, which are fundamentally different from other acts of 'publication'. Hyperlinks and references both communicate that something exists, but do not themselves communicate its content. ... A hyperlink, by itself should never be seen as 'publication' of the content to which it refers. ... Only when the person or organisation doing so presents content from the hyperlinked material in a way that actually repeats the defamatory content, should that content be considered to be 'published' by that person or organisation." — 50. Article 19 argued that there was a fundamental difference between the use of a hyperlink to another web page and the publication of the content on the linked web page, since hyperlinks only referred readers to content that had already been published elsewhere. Without hyperlinks, most of the information on the internet would be difficult or impossible to find and accessibility of information on the internet would be reduced. Article 19 referred to comparative-law material concerning judicial decisions in Canada, the United Kingdom, Australia and the United States, in particular, showing that hyperlinks alone did not constitute publication but were merely reference tools, similar to footnotes, offering readers the possibility of pursuing further reading of separate publications. Another reason, in the intervener's opinion, to exclude liability for hyperlinking was that the linked content was liable to change over time without the person who used the hyperlink being made aware of it. Furthermore, in Article 19's submission, no liability should be imposed unless the person who used the hyperlink was aware that the linked content was unlawful and where the hyperlink was presented in such a way as to expressly endorse the linked content. Lastly the intervener emphasised that holding someone who used a hyperlink liable for third-party content would have the far-reaching consequence that a wide range of groups could be penalised for the content of websites over which they had no control, resulting in a chilling effect limiting Internet users' access to information.

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2018	12/4/2018	MAGYAR JETI ZRT v. HUNGARY	http://hudoc.echr.coe.int/eng/?i=001-187930	11257/16	14		0 majority	intervener	Unites States	C	general		0 (c) The third parties 50. Article 19 argued that there was a fundamental difference between the use of a hyperlink to another web page and the publication of the content on the linked web page, since hyperlinks only referred readers to content that had already been published elsewhere. Without hyperlinks, most of the information on the Internet would be difficult or impossible to find and accessibility of information on the Internet would be reduced. Article 19 referred to comparative-law material concerning judicial decisions in Canada, the United Kingdom, Australia and the United States, in particular, showing that hyperlinks alone did not constitute publication but were merely reference tools, similar to footnotes, offering readers the possibility of pursuing further reading of separate publications. Another reason, in the intervener's opinion, to exclude liability for hyperlinking was that the linked content was liable to change over time without the person who used the hyperlink being made aware of it. Furthermore, in Article 19's submission, no liability should be imposed unless the person who used the hyperlink was aware that the linked content was unlawful and where the hyperlink was presented in such a way as to expressly endorse the linked content. Lastly the intervener emphasised that holding someone who used a hyperlink liable for third-party content would have the far-reaching consequence that a wide range of groups could be penalised for the content of websites over which they had no control, resulting in a chilling effect limiting Internet users' access to information.
2018	12/4/2018	MAGYAR JETI ZRT v. HUNGARY	http://hudoc.echr.coe.int/eng/?i=001-187930	11257/16	14		0 majority	ECtHR	US	C	lower-level co	Philadelphia Newspapers, LLC (No. 11-3257, 2012 U.S. App. LEXIS 15419 (3d Cir. July 26, 2012) (precedential) "that providing a link to a website to an allegedly defamatory article [was] not republication for purposes of the single publication rule or the statute of limitations". Rather, the court found that the principles of traditional publication, according to which a mere reference to an article did not republish the material, as long as it did not restate the defamatory statement, were also applicable to internet publication. It held that "[t]aken together, though a link and reference m[ight] bring readers' attention to the existence of an article, they d[id] not republish the article". 50. Article 19 argued that there was a fundamental difference between the use of a hyperlink to another web page and the publication of the content on the linked web page, since hyperlinks only referred readers to content that had already been published elsewhere. Without hyperlinks, most of the information on the Internet would be difficult or impossible to find and accessibility of information on the Internet would be reduced. Article 19 referred to comparative-law material concerning judicial decisions in Canada, the United Kingdom, Australia and the United States, in particular, showing that hyperlinks alone did not constitute publication but were merely reference tools, similar to footnotes, offering readers the possibility of pursuing further reading of separate publications. Another reason, in the intervener's opinion, to exclude liability for hyperlinking was that the linked content was liable to change over time without the person who used the hyperlink being made aware of it. Furthermore, in Article 19's submission, no liability should be imposed unless the person who used the hyperlink was aware that the linked content was unlawful and where the hyperlink was presented in such a way as to expressly endorse the linked content. Lastly the intervener emphasised that holding someone who used a hyperlink liable for third-party content would have the far-reaching consequence that a wide range of groups could be penalised for the content of websites over which they had no control, resulting in a chilling effect limiting Internet users' access to information.	
2018	6/19/2018	CENTRUM FÖR RÄTTVISA v. SWEDEN	http://hudoc.echr.coe.int/eng/?i=001-183963	35252/08	13		0 majority	ECtHR	US	R	general		0 70. According to the report, the two most significant safeguards were the authorisation process (of collection and access) and the oversight process. It was clear from the Court's case-law that the latter must be performed by an independent, external body. While the Court had a preference for judicial authorisation, it had not found this to be a necessary requirement. Rather, the system had to be assessed as a whole, and where independent controls were absent at the authorisation stage, particularly strong safeguards had to exist at the oversight stage. In this regard, the Venice Commission considered the example of the system in the United States, where authorisation was given by the Foreign Intelligence Surveillance Court. However, it noted that despite the existence of judicial authorisation, the lack of independent oversight of the court's conditions was problematic.
2018	5/22/2018	SVETINA v. SLOVENIA	http://hudoc.echr.coe.int/eng/?i=001-183124	38059/13	14	PINTO DE ALBUQUERQUE	concurring	0	US	C	SC	Brewer v. Williams, 430 U.S. 387 (1977)	3. In <i>Gilgen</i> the Court set forth the only exceptions to the exclusionary rule that are acceptable under the Convention. On the one hand, the Court admitted evidence that had been "secured independently" of the unlawfully obtained evidence[5]. On the other hand, the Court asserted that evidence could be admitted where "there was a break in the causal chain leading from the prohibited methods of investigation to the applicant's conviction and sentence"[6]. These situations correspond to what in American doctrine are called the "independent source"[7] and the "purged taint"[8] exceptions. I think this state of the Court's case-law should be preserved and no new exceptions should be added to the exclusionary rule.4. The "inevitable discovery" doctrine was formulated by the United States Supreme Court ("the Supreme Court") in the case <i>Nix v. Williams</i> [9]. The facts of the case are dramatic. A ten-year old girl disappeared on Christmas Eve in 1968 in Des Moines, Iowa. After a witness report, the police obtained an arrest warrant against the suspect Robert Williams and started a large-scale search for the child's body in the area where it was thought to be. On 26 December Williams surrendered himself to the police in Davenport. Williams' attorneys and the police came to an arrangement whereby he would not be questioned while he was being transported back to Des Moines. However, on the ride back to Des Moines, one of the detectives convinced Williams to reveal where the body was hidden so that the girl's family could give her a proper Christian burial. Ultimately, Williams was convinced and took the police to the body. The defendant was convicted of first-degree murder, but his conviction was reversed by the Supreme Court in <i>Brewer</i> [10] on the basis that the conviction was based on the defendant's self-incriminating statements which had been unlawfully provoked by the police[11]. Yet the majority of the <i>Brewer</i> court gave an indication for the subsequent procedure. Writing for the 4-3 majority, Justice Stewart suggested, in a footnote, that the evidence provided by Williams could still be used in a trial: "While neither Williams' incriminating statements themselves nor any testimony describing his having led the police to the victim's body can constitutionally be admitted into evidence, evidence of where the body was found and of its condition might well be admissible on the theory that the body would have been discovered in any event, even had incriminating statements not been elicited from Williams. ... In the event that a retrial is instituted, it will be for the state courts in the first instance to determine whether particular items of evidence may be admitted"[12]. In the new trial the judge decided to include the victim's body as evidence, holding that, even though it had been found through a violation of counsel rights, it would have been discovered anyway by the police search that had been in progress in the area at the time. The Supreme Court upheld this rationale, writing as follows: "If the prosecution can establish by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means ... then the deterrence rationale has so little basis that the evidence should be received. Anything less would reject logic, experience, and common sense"[13]. No deterrence 16. The most frequent reason invoked to justify the exclusionary rule, both in the United States[44] and in this Court[45], is that the exclusion of illegally obtained evidence is an effective means of deterring State authorities in general, and law-enforcement forces in particular, from obtaining evidence through unlawful means. Allowing the introduction of unlawfully obtained evidence through the "inevitable discovery" exception greatly undermines the deterrent effect of the exclusionary rule. A thorough analysis of the utilisation of the doctrine in the United States can show this. 17. Firstly, take the case in which the discovery of evidence has been postulated as inevitable because it would have been found by means of a routine procedure that is invariably applied in the circumstances of the case[46]. For example, when there are numerous, lawfully obtained indicia that a person may be hiding a prohibited substance in her house, police protocol may indicate that a home search be conducted after obtaining a judicial warrant. The police, however, skip the warrant and search the house directly, finding the prohibited substance. When the evidence is challenged in court, the prosecution may invoke the "inevitable discovery" doctrine and argue that, under the circumstances of the case, the warrant would have been asked for and obtained, and the evidence would have been found in any case. Even if one conceded that this were true, the seemingly automatic application of this doctrine in this type of cases deprives the police of any incentive to actually request a warrant[47]. More generally, the surer the police are that in a routine procedure they will find what they are looking for, the more likely they are to halt the formal procedures and the less likely they are to behave in a lawful way. To put it simply, the doctrine provides a strong incentive for the calculating police officer to wilfully violate the rules of procedure and especially the rights of the defence.
2018	5/22/2018	SVETINA v. SLOVENIA	http://hudoc.echr.coe.int/eng/?i=001-183124	38059/13	14	PINTO DE ALBUQUERQUE	concurring	0	US	C	SC	Brown v. Illinois, 422 U.S. 590, at 599 (1975);	4. The "inevitable discovery" doctrine was formulated by the United States Supreme Court ("the Supreme Court") in the case <i>Nix v. Williams</i> [9]. The facts of the case are dramatic. A ten-year old girl disappeared on Christmas Eve in 1968 in Des Moines, Iowa. After a witness report, the police obtained an arrest warrant against the suspect Robert Williams and started a large-scale search for the child's body in the area where it was thought to be. On 26 December Williams surrendered himself to the police in Davenport. Williams' attorneys and the police came to an arrangement whereby he would not be questioned while he was being transported back to Des Moines. However, on the ride back to Des Moines, one of the detectives convinced Williams to reveal where the body was hidden so that the girl's family could give her a proper Christian burial. Ultimately, Williams was convinced and took the police to the body. The defendant was convicted of first-degree murder, but his conviction was reversed by the Supreme Court in <i>Brewer</i> [10] on the basis that the conviction was based on the defendant's self-incriminating statements which had been unlawfully provoked by the police[11]. Yet the majority of the <i>Brewer</i> court gave an indication for the subsequent procedure. Writing for the 4-3 majority, Justice Stewart suggested, in a footnote, that the evidence provided by Williams could still be used in a trial: "While neither Williams' incriminating statements themselves nor any testimony describing his having led the police to the victim's body can constitutionally be admitted into evidence, evidence of where the body was found and of its condition might well be admissible on the theory that the body would have been discovered in any event, even had incriminating statements not been elicited from Williams. ... In the event that a retrial is instituted, it will be for the state courts in the first instance to determine whether particular items of evidence may be admitted"[12]. In the new trial the judge decided to include the victim's body as evidence, holding that, even though it had been found through a violation of counsel rights, it would have been discovered anyway by the police search that had been in progress in the area at the time. The Supreme Court upheld this rationale, writing as follows: "If the prosecution can establish by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means ... then the deterrence rationale has so little basis that the evidence should be received. Anything less would reject logic, experience, and common sense"[13]. No deterrence 16. The most frequent reason invoked to justify the exclusionary rule, both in the United States[44] and in this Court[45], is that the exclusion of illegally obtained evidence is an effective means of deterring State authorities in general, and law-enforcement forces in particular, from obtaining evidence through unlawful means. Allowing the introduction of unlawfully obtained evidence through the "inevitable discovery" exception greatly undermines the deterrent effect of the exclusionary rule. A thorough analysis of the utilisation of the doctrine in the United States can show this. [7]. <i>Sagua v. United States</i> , 468 U.S. 796 (1984). The Supreme Court first formulated this doctrine in <i>Silverthorne Lumber Co. v. United States</i> , 251 U.S. 385, at 392 (1920), when it stated that, when evidence is obtained by unlawful police conduct, "this does not mean that the facts thus obtained become sacred and inaccessible. If knowledge of them is gained from an independent source they may be proved like any others ...". See also <i>Murray v. United States</i> , 487 U.S. 533, at 537 (1988). [8]. <i>Wong Sun v. United States</i> , 371 U.S. 471 (1963). This is also known as the attenuation exception, first formulated in <i>Nardone v. United States</i> , 308 U.S. 338, at 341 (1939): "Sophisticated argument may prove a causal connection between information obtained through illicit wiretapping and the Government's proof. As a matter of good sense, however, such connection may have become so attenuated as to dissipate the taint." [9]. <i>Nix v. Williams</i> , 467 U.S. 431 (1984). [10]. <i>Brewer v. Williams</i> , 430 U.S. 387 (1977). On the federal courts' case-law prior to this case see B. Connelly and E. Murphy, "Inevitable Discovery: The Hypothetical Independent Source Exception to the Exclusionary Rule" (1976) 5 <i>Hofstra Law Review</i> 1.

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2018	5/22/2018	SVETINA v. SLOVENIA	http://hudoc.echr.coe.int/eng/?i=001-183124	38059/13	54	PINTO DE ALBUQUERQUE	concurring		0 US	C	SC	Chapman v. California, 386 U.S. 18, at 22 (1967)	4. The "inevitable discovery" doctrine was formulated by the United States Supreme Court ("the Supreme Court") in the case <i>Nix v. Williams</i>[9]. The facts of the case are dramatic. A ten-year old girl disappeared on Christmas Eve in 1968 in Des Moines, Iowa. After a witness report, the police obtained an arrest warrant against the suspect Robert Williams and started a large-scale search for the child's body in the area where it was thought to be. On 26 December Williams surrendered himself to the police in Davenport. Williams' attorneys and the police came to an arrangement whereby he would not be questioned while he was being transported back to Des Moines. However, on the ride back to Des Moines, one of the detectives convinced Williams to reveal where the body was hidden so that the girl's family could give her a proper Christian burial. Ultimately, Williams was convinced and took the police to the body. The defendant was convicted of first-degree murder, but his conviction was reversed by the Supreme Court in <i>Brewer</i>[10] on the basis that the conviction was based on the defendant's self-incriminating statements which had been unlawfully provoked by the police[11]. Yet the majority of the Brewer court gave an indication for the subsequent procedure. Writing for the 4-3 majority, Justice Stewart suggested, in a footnote, that the evidence provided by Williams could still be used in a trial: "While neither Williams' incriminating statements themselves nor any testimony describing his having led the police to the victim's body can constitutionally be admitted into evidence, evidence of where the body was found and of its condition might well be admissible on the theory that the body would have been discovered in any event, even had incriminating statements not been elicited from Williams. ... In the event that a retrial is instituted, it will be for the state courts in the first instance to determine whether particular items of evidence may be admitted"[12]. In the new trial the judge decided to include the victim's body as evidence, holding that, even though it had been found through a violation of counsel rights, it would have been discovered anyway by the police search that had been in progress in the area at the time. The Supreme Court upheld this rationale, writing as follows: "If the prosecution can establish by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means ... then the deterrence rationale has so little basis that the evidence should be received. Anything less would reject logic, experience, and common sense"[13]. No deterrence 16. The most frequent reason invoked to justify the exclusionary rule, both in the United States[44] and in this Court[45], is that the exclusion of illegally obtained evidence is an effective means of deterring State authorities in general, and law-enforcement forces in particular, from obtaining evidence through unlawful means. Allowing the introduction of unlawfully obtained evidence through the "inevitable discovery" exception greatly undermines the deterrent effect of the exclusionary rule. A thorough analysis of the utilisation of the doctrine in the United States can show this. [7]. <i>Segura v. United States</i>, 468 U.S. 796 (1984). The Supreme Court first formulated this doctrine in <i>Silverthorne Lumber Co. v. United States</i>, 251 U.S. 385, at 392 (1920), when it stated that, when evidence is obtained by unlawful police conduct, "this does not mean that the facts thus obtained become sacred and inaccessible. If knowledge of them is gained from an independent source they may be proved like any others. ...". See also <i>Murray v. United States</i>, 487 U.S. 533, at 537 (1988). [8]. <i>Wong Sun v. United States</i>, 371 U.S. 471 (1963). This is also known as the attenuation exception, first formulated in <i>Nardone v. United States</i>, 308 U.S. 338, at 341 (1939): "Sophisticated argument may prove a causal connection between information obtained through illicit wiretapping and the Government's proof. As a matter of good sense, however, such connection may have become so attenuated as to dissipate the taint." [9]. <i>Nix v. Williams</i>, 467 U.S. 431 (1984). [10]. <i>Brewer v. Williams</i>, 430 U.S. 387 (1977). On the federal courts' case-law prior to this case see B. Connelly and E. Murphy, "Inevitable Discovery: The Hypothetical Independent Source Exception to the Exclusionary Rule" (1976) 5 <i>Hofstra Law Review</i> 1.
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2018	5/22/2018	SVETINA v. SLOVENIA	http://hudoc.echr.coe.int/eng?i=001-183124	38059/13	54	PINTO DE ALBUQUERQUE	concurring		0 US	C	SC	Massiah v. United States, 377 U.S. 201 (1964).	4. The "inevitable discovery" doctrine was formulated by the United States Supreme Court ("the Supreme Court") in the case <i>Nix v. Williams</i>[9]. The facts of the case are dramatic. A ten-year old girl disappeared on Christmas Eve in 1968 in Des Moines, Iowa. After a witness report, the police obtained an arrest warrant against the suspect Robert Williams and started a large-scale search for the child's body in the area where it was thought to be. On 26 December Williams surrendered himself to the police in Davenport. Williams' attorneys and the police came to an arrangement whereby he would not be questioned while he was being transported back to Des Moines. However, on the ride back to Des Moines, one of the detectives convinced Williams to reveal where the body was hidden so that the girl's family could give her a proper Christian burial. Ultimately, Williams was convinced and took the police to the body. The defendant was convicted of first-degree murder, but his conviction was reversed by the Supreme Court in <i>Brewer</i>[10] on the basis that the conviction was based on the defendant's self-incriminating statements which had been unlawfully provoked by the police[11]. Yet the majority of the Brewer court gave an indication for the subsequent procedure. Writing for the 4-3 majority, Justice Stewart suggested, in a footnote, that the evidence provided by Williams could still be used in a trial: "While neither Williams' incriminating statements themselves nor any testimony describing his having led the police to the victim's body can constitutionally be admitted into evidence, evidence of where the body was found and of its condition might well be admissible on the theory that the body would have been discovered in any event, even had incriminating statements not been elicited from Williams. ... In the event that a retrial is instituted, it will be for the state courts in the first instance to determine whether particular items of evidence may be admitted"[12]. In the new trial the judge decided to include the victim's body as evidence, holding that, even though it had been found through a violation of counsel rights, it would have been discovered anyway by the police search that had been in progress in the area at the time. The Supreme Court upheld this rationale, writing as follows: "If the prosecution can establish by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means ... then the deterrence rationale has so little basis that the evidence should be received. Anything less would reject logic, experience, and common sense"[13]. No deterrence 16. The most frequent reason invoked to justify the exclusionary rule, both in the United States[44] and in this Court[45], is that the exclusion of illegally obtained evidence is an effective means of deterring State authorities in general, and law-enforcement forces in particular, from obtaining evidence through unlawful means. Allowing the introduction of unlawfully obtained evidence through the "inevitable discovery" exception greatly undermines the deterrent effect of the exclusionary rule. A thorough analysis of the utilisation of the doctrine in the United States can show this. [7]. <i>Segura v. United States</i>, 468 U.S. 796 (1984). The Supreme Court first formulated this doctrine in <i>Silverthorne Lumber Co. v. United States</i>, 251 U.S. 385, at 392 (1920), when it stated that, when evidence is obtained by unlawful police conduct, "this does not mean that the facts thus obtained become sacred and inaccessible. If knowledge of them is gained from an independent source they may be proved like any others. ...". See also <i>Murray v. United States</i>, 487 U.S. 533, at 537 (1988). [8]. <i>Wong Sun v. United States</i>, 371 U.S. 471 (1963). This is also known as the attenuation exception, first formulated in <i>Nardone v. United States</i>, 308 U.S. 338, at 341 (1939): "Sophisticated argument may prove a causal connection between information obtained through illicit wiretapping and the Government's proof. As a matter of good sense, however, such connection may have become so attenuated as to dissipate the taint." [9]. <i>Nix v. Williams</i>, 467 U.S. 431 (1984). [10]. <i>Brewer v. Williams</i>, 430 U.S. 387 (1977). On the federal courts' case-law prior to this case see B. Connelly and E. Murphy, "Inevitable Discovery: The Hypothetical Independent Source Exception to the Exclusionary Rule" (1976) 5 <i>Hofstra Law Review</i> 1.

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2018	5/22/2018	SVETINA v. SLOVENIA	http://hudoc.echr.coe.int/eng/?i=001-183124	38059/13	54	PINTO DE ALBUQUERQUE	concurring		0 US	C	SC	<i>Segura v. United States</i> , 468 U.S. 796 (1984)	4. The "inevitable discovery" doctrine was formulated by the United States Supreme Court ("the Supreme Court") in the case <i>Nix v. Williams</i>[9]. The facts of the case are dramatic. A ten-year old girl disappeared on Christmas Eve in 1968 in Des Moines, Iowa. After a witness report, the police obtained an arrest warrant against the suspect Robert Williams and started a large-scale search for the child's body in the area where it was thought to be. On 26 December Williams surrendered himself to the police in Davenport. Williams' attorneys and the police came to an arrangement whereby he would not be questioned while he was being transported back to Des Moines. However, on the ride back to Des Moines, one of the detectives convinced Williams to reveal where the body was hidden so that the girl's family could give her a proper Christian burial. Ultimately, Williams was convinced and took the police to the body. The defendant was convicted of first-degree murder, but his conviction was reversed by the Supreme Court in <i>Brewer</i>[10] on the basis that the conviction was based on the defendant's self-incriminating statements which had been unlawfully provoked by the police[11]. Yet the majority of the Brewer court gave an indication for the subsequent procedure. Writing for the 4-3 majority, Justice Stewart suggested, in a footnote, that the evidence provided by Williams could still be used in a trial: "While neither Williams' incriminating statements themselves nor any testimony describing his having led the police to the victim's body can constitutionally be admitted into evidence, evidence of where the body was found and of its condition might well be admissible on the theory that the body would have been discovered in any event, even had incriminating statements not been elicited from Williams. ... In the event that a retrial is instituted, it will be for the state courts in the first instance to determine whether particular items of evidence may be admitted"[12]. In the new trial the judge decided to include the victim's body as evidence, holding that, even though it had been found through a violation of counsel rights, it would have been discovered anyway by the police search that had been in progress in the area at the time. The Supreme Court upheld this rationale, writing as follows: "If the prosecution can establish by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means ... then the deterrence rationale has so little basis that the evidence should be received. Anything less would reject logic, experience, and common sense"[13]. No deterrence 16. The most frequent reason invoked to justify the exclusionary rule, both in the United States[44] and in this Court[45], is that the exclusion of illegally obtained evidence is an effective means of deterring State authorities in general, and law-enforcement forces in particular, from obtaining evidence through unlawful means. Allowing the introduction of unlawfully obtained evidence through the "inevitable discovery" exception greatly undermines the deterrent effect of the exclusionary rule. A thorough analysis of the utilisation of the doctrine in the United States can show this. [7]. <i>Segura v. United States</i>, 468 U.S. 796 (1984). The Supreme Court first formulated this doctrine in <i>Silverthorne Lumber Co. v. United States</i>, 251 U.S. 385, at 392 (1920), when it stated that, when evidence is obtained by unlawful police conduct, "this does not mean that the facts thus obtained become sacred and inaccessible. If knowledge of them is gained from an independent source they may be proved like any others. ...". See also <i>Murray v. United States</i>, 487 U.S. 533, at 537 (1988). [8]. <i>Wong Sun v. United States</i>, 371 U.S. 471 (1963). This is also known as the attenuation exception, first formulated in <i>Nardone v. United States</i>, 308 U.S. 338, at 341 (1939): "Sophisticated argument may prove a causal connection between information obtained through illicit wiretapping and the Government's proof. As a matter of good sense, however, such connection may have become so attenuated as to dissipate the taint." [9]. <i>Nix v. Williams</i>, 467 U.S. 431 (1984). [10]. <i>Brewer v. Williams</i>, 430 U.S. 387 (1977). On the federal courts' case-law prior to this case see B. Connelly and E. Murphy, "Inevitable Discovery: The Hypothetical Independent Source Exception to the Exclusionary Rule" (1976) 5 <i>Hofstra Law Review</i> 1.

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2018	5/22/2018	SVETINA v. SLOVENIA	http://hudoc.echr.coe.int/eng/?i=001-183124	38059/13	54	PINTO DE ALBUQUERQUE	concurring		0 US	C	lower-level co	United States v. Cherry, 759 F.2d 1196, at 1204 (5th Cir. 1985).	4. The "inevitable discovery" doctrine was formulated by the United States Supreme Court ("the Supreme Court") in the case <i>Nix v. Williams</i>[9]. The facts of the case are dramatic. A ten-year old girl disappeared on Christmas Eve in 1968 in Des Moines, Iowa. After a witness report, the police obtained an arrest warrant against the suspect Robert Williams and started a large-scale search for the child's body in the area where it was thought to be. On 26 December Williams surrendered himself to the police in Davenport. Williams' attorneys and the police came to an arrangement whereby he would not be questioned while he was being transported back to Des Moines. However, on the ride back to Des Moines, one of the detectives convinced Williams to reveal where the body was hidden so that the girl's family could give her a proper Christian burial. Ultimately, Williams was convinced and took the police to the body. The defendant was convicted of first-degree murder, but his conviction was reversed by the Supreme Court in <i>Brewer</i>[10] on the basis that the conviction was based on the defendant's self-incriminating statements which had been unlawfully provoked by the police[11]. Yet the majority of the Brewer court gave an indication for the subsequent procedure. Writing for the 4-3 majority, Justice Stewart suggested, in a footnote, that the evidence provided by Williams could still be used in a trial: "While neither Williams' incriminating statements themselves nor any testimony describing his having led the police to the victim's body can constitutionally be admitted into evidence, evidence of where the body was found and of its condition might well be admissible on the theory that the body would have been discovered in any event, even had incriminating statements not been elicited from Williams. ... In the event that a retrial is instituted, it will be for the state courts in the first instance to determine whether particular items of evidence may be admitted"[12]. In the new trial the judge decided to include the victim's body as evidence, holding that, even though it had been found through a violation of counsel rights, it would have been discovered anyway by the police search that had been in progress in the area at the time. The Supreme Court upheld this rationale, writing as follows: "If the prosecution can establish by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means ... then the deterrence rationale has so little basis that the evidence should be received. Anything less would reject logic, experience, and common sense"[13]. No deterrence 16. The most frequent reason invoked to justify the exclusionary rule, both in the United States[44] and in this Court[45], is that the exclusion of illegally obtained evidence is an effective means of deterring State authorities in general, and law-enforcement forces in particular, from obtaining evidence through unlawful means. Allowing the introduction of unlawfully obtained evidence through the "inevitable discovery" exception greatly undermines the deterrent effect of the exclusionary rule. A thorough analysis of the utilisation of the doctrine in the United States can show this. [7]. <i>Segura v. United States</i>, 468 U.S. 796 (1984). The Supreme Court first formulated this doctrine in <i>Silverthorne Lumber Co. v. United States</i>, 251 U.S. 385, at 392 (1920), when it stated that, when evidence is obtained by unlawful police conduct, "this does not mean that the facts thus obtained become sacred and inaccessible. If knowledge of them is gained from an independent source they may be proved like any others. ...". See also <i>Murray v. United States</i>, 487 U.S. 533, at 537 (1988). [8]. <i>Wong Sun v. United States</i>, 371 U.S. 471 (1963). This is also known as the attenuation exception, first formulated in <i>Nardone v. United States</i>, 308 U.S. 338, at 341 (1939): "Sophisticated argument may prove a causal connection between information obtained through illicit wiretapping and the Government's proof. As a matter of good sense, however, such connection may have become so attenuated as to dissipate the taint." [9]. <i>Nix v. Williams</i>, 467 U.S. 431 (1984). [10]. <i>Brewer v. Williams</i>, 430 U.S. 387 (1977). On the federal courts' case-law prior to this case see B. Connelly and E. Murphy, "Inevitable Discovery: The Hypothetical Independent Source Exception to the Exclusionary Rule" (1976) 5 <i>Hofstra Law Review</i> 1.
2018	5/22/2018	SVETINA v. SLOVENIA	http://hudoc.echr.coe.int/eng/?i=001-183124	38059/13	54	PINTO DE ALBUQUERQUE	concurring		0 US	C	lower-level co	United States v. Horn, 970 F.2d 728 (10th Cir. 1992)	4. The "inevitable discovery" doctrine was formulated by the United States Supreme Court ("the Supreme Court") in the case <i>Nix v. Williams</i>[9]. The facts of the case are dramatic. A ten-year old girl disappeared on Christmas Eve in 1968 in Des Moines, Iowa. After a witness report, the police obtained an arrest warrant against the suspect Robert Williams and started a large-scale search for the child's body in the area where it was thought to be. On 26 December Williams surrendered himself to the police in Davenport. Williams' attorneys and the police came to an arrangement whereby he would not be questioned while he was being transported back to Des Moines. However, on the ride back to Des Moines, one of the detectives convinced Williams to reveal where the body was hidden so that the girl's family could give her a proper Christian burial. Ultimately, Williams was convinced and took the police to the body. The defendant was convicted of first-degree murder, but his conviction was reversed by the Supreme Court in <i>Brewer</i>[10] on the basis that the conviction was based on the defendant's self-incriminating statements which had been unlawfully provoked by the police[11]. Yet the majority of the Brewer court gave an indication for the subsequent procedure. Writing for the 4-3 majority, Justice Stewart suggested, in a footnote, that the evidence provided by Williams could still be used in a trial: "While neither Williams' incriminating statements themselves nor any testimony describing his having led the police to the victim's body can constitutionally be admitted into evidence, evidence of where the body was found and of its condition might well be admissible on the theory that the body would have been discovered in any event, even had incriminating statements not been elicited from Williams. ... In the event that a retrial is instituted, it will be for the state courts in the first instance to determine whether particular items of evidence may be admitted"[12]. In the new trial the judge decided to include the victim's body as evidence, holding that, even though it had been found through a violation of counsel rights, it would have been discovered anyway by the police search that had been in progress in the area at the time. The Supreme Court upheld this rationale, writing as follows: "If the prosecution can establish by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means ... then the deterrence rationale has so little basis that the evidence should be received. Anything less would reject logic, experience, and common sense"[13]. No deterrence 16. The most frequent reason invoked to justify the exclusionary rule, both in the United States[44] and in this Court[45], is that the exclusion of illegally obtained evidence is an effective means of deterring State authorities in general, and law-enforcement forces in particular, from obtaining evidence through unlawful means. Allowing the introduction of unlawfully obtained evidence through the "inevitable discovery" exception greatly undermines the deterrent effect of the exclusionary rule. A thorough analysis of the utilisation of the doctrine in the United States can show this. [7]. <i>Segura v. United States</i>, 468 U.S. 796 (1984). The Supreme Court first formulated this doctrine in <i>Silverthorne Lumber Co. v. United States</i>, 251 U.S. 385, at 392 (1920), when it stated that, when evidence is obtained by unlawful police conduct, "this does not mean that the facts thus obtained become sacred and inaccessible. If knowledge of them is gained from an independent source they may be proved like any others. ...". See also <i>Murray v. United States</i>, 487 U.S. 533, at 537 (1988). [8]. <i>Wong Sun v. United States</i>, 371 U.S. 471 (1963). This is also known as the attenuation exception, first formulated in <i>Nardone v. United States</i>, 308 U.S. 338, at 341 (1939): "Sophisticated argument may prove a causal connection between information obtained through illicit wiretapping and the Government's proof. As a matter of good sense, however, such connection may have become so attenuated as to dissipate the taint." [9]. <i>Nix v. Williams</i>, 467 U.S. 431 (1984). [10]. <i>Brewer v. Williams</i>, 430 U.S. 387 (1977). On the federal courts' case-law prior to this case see B. Connelly and E. Murphy, "Inevitable Discovery: The Hypothetical Independent Source Exception to the Exclusionary Rule" (1976) 5 <i>Hofstra Law Review</i> 1.

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2018	5/22/2018	SVETINA v. SLOVENIA	http://hudoc.echr.coe.int/eng?i=001-183124	38059/13	54	PINTO DE ALBUQUERQUE	concurring		0 US	C	lower-level co	United States v. Whitehorn, 829 F.2d 1225 (2d Cir. 1987)	4. The "inevitable discovery" doctrine was formulated by the United States Supreme Court ("the Supreme Court") in the case <i>Nix v. Williams</i>[9]. The facts of the case are dramatic. A ten-year old girl disappeared on Christmas Eve in 1968 in Des Moines, Iowa. After a witness report, the police obtained an arrest warrant against the suspect Robert Williams and started a large-scale search for the child's body in the area where it was thought to be. On 26 December Williams surrendered himself to the police in Davenport. Williams' attorneys and the police came to an arrangement whereby he would not be questioned while he was being transported back to Des Moines. However, on the ride back to Des Moines, one of the detectives convinced Williams to reveal where the body was hidden so that the girl's family could give her a proper Christian burial. Ultimately, Williams was convinced and took the police to the body. The defendant was convicted of first-degree murder, but his conviction was reversed by the Supreme Court in <i>Brewer</i>[10] on the basis that the conviction was based on the defendant's self-incriminating statements which had been unlawfully provoked by the police[11]. Yet the majority of the Brewer court gave an indication for the subsequent procedure. Writing for the 4-3 majority, Justice Stewart suggested, in a footnote, that the evidence provided by Williams could still be used in a trial: "While neither Williams' incriminating statements themselves nor any testimony describing his having led the police to the victim's body can constitutionally be admitted into evidence, evidence of where the body was found and of its condition might well be admissible on the theory that the body would have been discovered in any event, even had incriminating statements not been elicited from Williams. ... In the event that a retrial is instituted, it will be for the state courts in the first instance to determine whether particular items of evidence may be admitted"[12]. In the new trial the judge decided to include the victim's body as evidence, holding that, even though it had been found through a violation of counsel rights, it would have been discovered anyway by the police search that had been in progress in the area at the time. The Supreme Court upheld this rationale, writing as follows: "If the prosecution can establish by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means ... then the deterrence rationale has so little basis that the evidence should be received. Anything less would reject logic, experience, and common sense"[13]. No deterrence 16. The most frequent reason invoked to justify the exclusionary rule, both in the United States[44] and in this Court[45], is that the exclusion of illegally obtained evidence is an effective means of deterring State authorities in general, and law-enforcement forces in particular, from obtaining evidence through unlawful means. Allowing the introduction of unlawfully obtained evidence through the "inevitable discovery" exception greatly undermines the deterrent effect of the exclusionary rule. A thorough analysis of the utilisation of the doctrine in the United States can show this. [7]. <i>Segura v. United States</i>, 468 U.S. 796 (1984). The Supreme Court first formulated this doctrine in <i>Silverthorne Lumber Co. v. United States</i>, 251 U.S. 385, at 392 (1920), when it stated that, when evidence is obtained by unlawful police conduct, "this does not mean that the facts thus obtained become sacred and inaccessible. If knowledge of them is gained from an independent source they may be proved like any others. ...". See also <i>Murray v. United States</i>, 487 U.S. 533, at 537 (1988). [8]. <i>Wong Sun v. United States</i>, 371 U.S. 471 (1963). This is also known as the attenuation exception, first formulated in <i>Nardone v. United States</i>, 308 U.S. 338, at 341 (1939): "Sophisticated argument may prove a causal connection between information obtained through illicit wiretapping and the Government's proof. As a matter of good sense, however, such connection may have become so attenuated as to dissipate the taint." [9]. <i>Nix v. Williams</i>, 467 U.S. 431 (1984). [10]. <i>Brewer v. Williams</i>, 430 U.S. 387 (1977). On the federal courts' case-law prior to this case see B. Connelly and E. Murphy, "Inevitable Discovery: The Hypothetical Independent Source Exception to the Exclusionary Rule" (1976) 5 <i>Hofstra Law Review</i> 1.

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The technical possibilities that exist nowadays are far more intrusive than Justice Douglas could even have imagined some fifty years ago. But the wide expansion of the internet merely presents a new degree of intensity in respect of an old problem. The notion of a "reasonable expectation of privacy" has been used by the Court in several cases, including the present one, but this notion came to us from the United States Supreme Court, where it appeared in the case of Katz v. United States[6], which concerned the use by the FBI of eavesdropping devices for receiving conversations on illegal gambling made by a suspect from a public telephone booth. As the Supreme Court observed, "no less than an individual in a business office, in a friend's apartment, or in a taxicab, a person in a telephone booth may rely upon the protection of the Fourth Amendment. One who occupies it, shuts the door behind him, and pays the toll that permits him to place a call is surely entitled to assume that the words he utters into the mouthpiece will not be broadcast to the world." It was a concurring opinion by Justice Harlan which introduced this particular concept: he wrote that his "understanding of the rule that has emerged from prior decisions is that there is a twofold requirement": (1) a person "has demonstrated the actual (subjective) expectation of privacy", and (2) society is ready to admit that this expectation is (objectively) reasonable. It is this test which has subsequently been cited in the Supreme Court's Fourth Amendment case-law. The concept of a "reasonable expectation of privacy" was first used by this Court in Halford v. the United Kingdom[7]. There, the Court concluded that a police officer had reasonable expectations about the privacy of phone calls made at the workplace, in the absence of any warning that those calls could be intercepted. The Court referred to the same concept ten years later in Copland v. the United Kingdom[8], finding that, in the absence of any warning, a college employee also had reasonable expectations about the privacy of the emails she had sent from her college mailbox account. More recently, the concept was mentioned in the Grand Chamber case of Bărbulescu v. Romania[9]. The case concerned the applicant's dismissal following the monitoring of his electronic communications, mainly through his Yahoo Messenger account, which the applicant was instructed to create for communicating with clients. It was found that he used the Internet for personal purposes during the working day, in violation of internal rules. The Court left open the question of whether the applicant had a reasonable expectation of privacy, notwithstanding the employer's clear instructions for abstaining from any personal activity in the workplace, because an "employer's instructions cannot reduce private social life in the workplace to zero". The present case raises the issue of a reasonable expectation of privacy when it comes to traffic data (metering or metadata), and I regret that the Court missed the opportunity to take a clear stance on it. An interesting discussion of this topic within the Constitutional Court of Slovenia (see paragraphs 28-34 of the judgment) was left unaddressed. Similar discussions are ongoing among the American judiciary. Under the original conception of US constitutional law, the Supreme Court has clearly proceeded on the basis that while there can be said to be a reasonable expectation of privacy with respect to content, there is no such expectation when it comes to metadata (traffic data). Some forty years ago, in the case of Smith v. Maryland[10], the Supreme Court considered the handling of metadata by telephone companies, which have information on the numbers dialled and the duration of conversations. It observed that "it is too much to believe that telephone subscribers, under these circumstances, harbor any general expectation that the numbers they dial will remain secret." Under this concept, therefore, an individual does not have a reasonable expectation of privacy with regard to this type of information.
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The technical possibilities that exist nowadays are far more intrusive than Justice Douglas could even have imagined some fifty years ago. But the wide expansion of the internet merely presents a new degree of intensity in respect of an old problem. The notion of a "reasonable expectation of privacy" has been used by the Court in several cases, including the present one, but this notion came to us from the United States Supreme Court, where it appeared in the case of <i>Katz v. United States</i>[6], which concerned the use by the FBI of eavesdropping devices for receiving conversations on illegal gambling made by a suspect from a public telephone booth. As the Supreme Court observed, "no less than an individual in a business office, in a friend's apartment, or in a taxicab, a person in a telephone booth may rely upon the protection of the Fourth Amendment. One who occupies it, shuts the door behind him, and pays the toll that permits him to place a call is surely entitled to assume that the words he utters into the mouthpiece will not be broadcast to the world." It was a concurring opinion by Justice Harlan which introduced this particular concept: he wrote that his "understanding of the rule that has emerged from prior decisions is that there is a twofold requirement": (1) a person "has demonstrated the actual (subjective) expectation of privacy", and (2) society is ready to admit that this expectation is (objectively) reasonable. It is this test which has subsequently been cited in the Supreme Court's Fourth Amendment case-law. The concept of a "reasonable expectation of privacy" was first used by this Court in <i>Halford v. the United Kingdom</i>[7]. There, the Court concluded that a police officer had reasonable expectations about the privacy of phone calls made at the workplace, in the absence of any warning that those calls could be intercepted. The Court referred to the same concept ten years later in <i>Copland v. the United Kingdom</i>[8], finding that, in the absence of any warning, a college employee also had reasonable expectations about the privacy of the emails she had sent from her college mailbox account. More recently, the concept was mentioned in the Grand Chamber case of <i>Bărbulescu v. Romania</i>[9]. The case concerned the applicant's dismissal following the monitoring of his electronic communications, mainly through his Yahoo Messenger account, which the applicant was instructed to create for communicating with clients. It was found that he used the Internet for personal purposes during the working day, in violation of internal rules. 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2018	4/19/2018	OTTAN v. FRANCE	http://hudoc.echr.coe.int/eng/?i=001-182627	no. 41841/12	S5		0 majority	ECtHR	Canada	C	CC decision	R v. Kokopenace, 2015 SCC 28	33. The Court notes that the issue of the diversity and representativeness of the judiciary is the subject of debate in several Council of Europe member States, some of which have chosen to address the issue in a very different way to that chosen by France. In the United Kingdom, for instance, the under-representation of women and persons from visible minority groups among judges, especially in the higher courts, prompted the authorities to implement a proactive policy to promote diversity, with the creation in 2013 of a Judicial Diversity Committee under the authority of the Lord Chief Justice. In April 2017 the Committee published its first official statistics on the composition of the judiciary, together with an action plan to encourage greater diversity (Judicial Diversity Committee of the Judges' Council – Report on Progress and Action Plan 2016-17, 13 April 2017). In the Netherlands the Council for the Judiciary, as far back as 2007, commissioned a study into the representation of ethnic minorities in the judiciaries of several traditional and more recent immigration countries (the Netherlands, Germany, France, Canada and the United States). A handbook published by the Council for the Judiciary in 2015 on reforming the process for the selection, recruitment and training of judges set out the clear objective of ensuring that the diversity within society was reflected in the judiciary ("Judicial reform in the Netherlands: A new process for the recruitment, selection and training of judges", Scientific Magazine for the Judiciary Organisation of the Netherlands, 2015). 34. By way of comparison, in North America the diversity of juries and its impact on decision-making is the subject of numerous studies and court decisions. For example, in the United States the Supreme Court held in its decision in Batson v. Kentucky (476 US 79 (1986)) that the right of defence and prosecution lawyers to challenge jurors could not be exercised on the basis of "racial" criteria (see also, for a recent example, Timothy Thorne Foster v. Bruce Chatman (578 U.S. – (2016)). In the Supreme Court's decision in Peters v. Kiff (407 US 493 (1972)) regarding the systematic exclusion of African Americans from juries, Justice Thurgood Marshall issued a dissenting opinion in which he argued that removing a large part of the community from the jury reduced the diversity of human experiences and qualities that could be expressed during the deliberations. In Canada, in several recent cases, individuals accused of murdering "Aboriginal" people have been acquitted by juries with no Aboriginal members. These judgments triggered a debate on the representativeness of Canadian juries and the need to reform jury selection in order to promote the participation of members of Aboriginal communities; in particular, a former Supreme Court judge delivered a report in 2013 concerning the province of Ontario. In 2015 the Supreme Court ruled (R v. Kokopenace, 2015 SCC 28) that provinces had an obligation to make "reasonable efforts" to provide "a fair opportunity for a broad cross-section of society to participate in the jury process". However, they are not required to ensure that the final composition of the jury accurately and proportionately reflects the different groups making up the Canadian population.
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2018	4/4/2018	CORREIA DE MATOS v. PORTUGAL	http://hudoc.echr.coe.int/eng/?i=001-182243	no. 56402/12	GC	PINTO DE ALBUQUERQUE	dissenting		0 Canada	C	SC	See Faretta v. California, 422 U.S. 806 (1975)	72. The Court has also reviewed some important countries outside the Council of Europe. Canada and Hong Kong allow self-representation in all cases, while the United States of America allows it as a general rule, with a few exceptions, such as in proceedings before the Supreme Court.[163] [163] See Faretta v. California, 422 U.S. 806 (1975).
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2018	4/4/2018	CORREIA DE MATOS v. PORTUGAL	http://hudoc.echr.coe.int/eng/?i=001-182243	no. 56402/12	GC	PINTO DE ALBUQUERQUE	dissenting		0 Hong Kong	R	general		0 72. The Court has also reviewed some important countries outside the Council of Europe. Canada and Hong Kong allow self-representation in all cases, while the United States of America allows it as a general rule, with a few exceptions, such as in proceedings before the Supreme Court.[163] [163] See Faretta v. California, 422 U.S. 806 (1975).
2018	4/4/2018	CORREIA DE MATOS v. PORTUGAL	http://hudoc.echr.coe.int/eng/?i=001-182243	no. 56402/12	GC	PINTO DE ALBUQUERQUE	dissenting		0 Sierra Leone	C	lower-level co	Prosecutor v. Norman, Fofana, and Kondewa, Case No. SCSL-04-14-T, Decision on the Application of Samuel Hinga Norman for Self-Representation under Article 17(4)(d) of the Statute of the Special Court, 8 June 2004	74. The Special Court for Sierra Leone (SCSL) took a more restrictive approach to the right to self-representation, although never calling into question the principle that "Article 17(4)(d) [substantially identical to Article 6 § 3 (c) of the Convention] does guarantee to an accused person, first and foremost, the right to self-representation. This is clear from the plain and literal meaning of that provision." However, it held that this right was not absolute, and that counsel could be imposed when the interests of justice so required. The Trial Chamber identified, therefore, a list of reasons that justified the imposition of counsel in that particular case, such as the fact that it was a joint trial [169] In another case, the Appeals Chamber of the SCSL upheld the mandatory assignment of counsel to a defendant who was obstructing the proceedings against him.[170] [169] Prosecutor v. Norman, Fofana, and Kondewa, Case No. SCSL-04-14-T, Decision on the Application of Samuel Hinga Norman for Self-Representation under Article 17(4)(d) of the Statute of the Special Court, 8 June 2004. [170] Prosecutor v. Sesay, Kallon and Gbao, Case No. SCSL-04-15-T, Decision on Application for Leave to Appeal: Gbao – Decision on Application to Withdraw Counsel, 4 August 2004.
2018	4/4/2018	CORREIA DE MATOS v. PORTUGAL	http://hudoc.echr.coe.int/eng/?i=001-182243	no. 56402/12	GC	PINTO DE ALBUQUERQUE	dissenting		0 Sierra Leone	C	lower-level co	Prosecutor v. Sesay, Kallon and Gbao, Case No. SCSL-04-15-T, Decision on Application for Leave to Appeal: Gbao – Decision on Application to Withdraw Counsel, 4 August 2004	74. The Special Court for Sierra Leone (SCSL) took a more restrictive approach to the right to self-representation, although never calling into question the principle that "Article 17(4)(d) [substantially identical to Article 6 § 3 (c) of the Convention] does guarantee to an accused person, first and foremost, the right to self-representation. This is clear from the plain and literal meaning of that provision." However, it held that this right was not absolute, and that counsel could be imposed when the interests of justice so required. The Trial Chamber identified, therefore, a list of reasons that justified the imposition of counsel in that particular case, such as the fact that it was a joint trial [169] In another case, the Appeals Chamber of the SCSL upheld the mandatory assignment of counsel to a defendant who was obstructing the proceedings against him.[170] [169] Prosecutor v. Norman, Fofana, and Kondewa, Case No. SCSL-04-14-T, Decision on the Application of Samuel Hinga Norman for Self-Representation under Article 17(4)(d) of the Statute of the Special Court, 8 June 2004. [170] Prosecutor v. Sesay, Kallon and Gbao, Case No. SCSL-04-15-T, Decision on Application for Leave to Appeal: Gbao – Decision on Application to Withdraw Counsel, 4 August 2004.

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2018	4/4/2018	CORREIA DE MATOS v. PORTUGAL	http://hudoc.echr.coe.int/eng/?i=001-187243	no. 56402/12)	GC	BOŠNIAK	dissenting		0 US	C	SC	Faretta v. California, 422 U. S. 806 (1975)	6. As an autonomous subject of criminal proceedings an accused can, at least in principle, decide on the manner in which he wishes to be defended. Consequently, he is entitled to determine whether he needs legal assistance in his defence or not(178). In a particular case, his choice may seem to be counterproductive, irrational or simply incompatible with what an independent observer would consider to be in the accused's best interest. However, in a democratic society an individual is in principle entitled to such choices for various reasons. First and foremost, the State is not omniscient. It might not necessarily understand the rationale behind the accused's actions and is not necessarily best placed to know what is good for his position in a particular set of criminal proceedings. Furthermore, the State's intervention is not necessarily designed in good faith. It might interfere with the defence in order to impose its own interests in a particular set of proceedings. Finally, autonomy as such is incompatible with outside interference. Just as a patient may in principle refuse medical assistance, an accused may refuse legal assistance. The right to choose counsel also implies a right not to choose any(179). (178) From a comparative perspective, autonomy was considered by the Supreme Court of the United States as grounds for the right to decline representation, in Faretta v. California, 422 U. S. 806 (1975). The Supreme Court derived a right to self-representation from the Sixth Amendment, grounding it on the commitment to freedom of choice.
2018	3/20/2018	IRELAND v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-181585	5310/71)	S3		0 majority	government	Israel	R	general		0 77. Lastly, the applicant Government argued that the revision request served a wider purpose and had current relevance. Although the Court's case-law had evolved in respect of torture, the Ireland v. the United Kingdom judgment had a continuing life of its own, being relied on by other Governments, including Israel and the United States of America in 1999 and 2002, to classify conduct as not amounting to torture. The evolution of the Court's case-law had not prevented the use of its findings in the original judgment for what did or did not constitute torture. The applicant Government stressed that both in 1977, when it had sought a ruling from the Court, and today, its chief concern was to establish clear guidance regarding what constituted torture under Article 3 of the Convention. Neither then nor now did it seek to embarrass the respondent Government.
2018	3/20/2018	IRELAND v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-181585	5310/71)	S3		0 majority	government	US	R	general		0 77. Lastly, the applicant Government argued that the revision request served a wider purpose and had current relevance. Although the Court's case-law had evolved in respect of torture, the Ireland v. the United Kingdom judgment had a continuing life of its own, being relied on by other Governments, including Israel and the United States of America in 1999 and 2002, to classify conduct as not amounting to torture. The evolution of the Court's case-law had not prevented the use of its findings in the original judgment for what did or did not constitute torture. The applicant Government stressed that both in 1977, when it had sought a ruling from the Court, and today, its chief concern was to establish clear guidance regarding what constituted torture under Article 3 of the Convention. Neither then nor now did it seek to embarrass the respondent Government.
2018	3/20/2018	RADOMILJA AND OTHERS v. CROATIA	http://hudoc.echr.coe.int/eng/?i=001-181591	nos. 37685/10 and 2276	GC	DE GAETANO, LAFFRANQUE AN	dissenting (join		0 Singapore	C	lower-level co	AKN v. ALC	28. In the present case, no injustice to the applicants had been caused by the Chamber judgments; on the contrary, those judgments were to their benefit. Moreover, the due process rights of the Government had not been undermined in any way. Both parties were treated with full respect for their equality and for their right to be heard and to present their own arguments and their views on the arguments of their opponent[20]. The Government did not even complain in that connection (compare Scoppola (no. 2) v. Italy [GC], no. 10249/03, § 56, 17 September 2009)[21]. We could not see any good reason to strike down the Chamber's judgments for violating the extra/ultra petita rule in such circumstances[22], especially as the scope of the case was never precisely determined, there is no incontrovertibly clear evidence that the Chamber exceeded its powers, the applicants actually denied that they intended to narrow the complaint (see paragraphs 17-18 above) and they have adopted the Chamber's arguments as their own by asking the Grand Chamber to confirm the Chamber's judgments (see paragraph 97 of the judgment). For all these reasons, we consider the approach by the majority to the application of the extra/ultra petita rule in the circumstances of the present case to be unduly formalistic and therefore unjustified (compare Delcourt v. Belgium, no. 2689/65, §§ 39-40, 17 January 1970). [22] In this connection the practice of English courts in setting aside an arbitral award when an arbitral tribunal has rendered a decision extra/ultra petita may be instructive. Under section 68 of the 1996 English Arbitral Act, an arbitral award is open to challenge where the tribunal has exceeded its powers in situations involving a procedural irregularity that has caused substantial injustice to the applicant. In international commercial arbitration, there is a trend towards such restrictive interpretation of the application of the extra/ultra petita rule. In AKN v. ALC, the Singapore Court of Appeal relatively recently clarified its approach to infra and ultra petita challenges to awards. In such a scenario, according to that court, the real issue will be whether the parties have had a reasonable opportunity to address or respond to a new point on the basis of jurisdiction and whether that point is so material that the denial of such opportunity caused prejudice.
2018	3/15/2018	NAIT-LIMAN v. SWITZERLAND	http://hudoc.echr.coe.int/eng/?i=001-181789	no. 51357/07)	GC	SERGHIDES	dissenting		0 Canada	R	general		0 106. The Grand Chamber then examines whether the Swiss authorities were obliged under international law to open their courts to the applicant by virtue of the forum of necessity (see paragraphs 199 et seq. of the present judgment). It concludes in the negative. Based on a study conducted by it, which examined the laws of 40 States, including Switzerland, and from which it transpires that the concept of forum of necessity exists in only 11 European States and has recently been recognised in Canada (see paragraph 200), the Court finds that there exists no international custom rule enshrining the concept of a forum of necessity (see paragraph 201). It further adds that "there is no international treaty obligation obliging the States to provide for a forum of necessity" (see paragraph 202).
2018	3/15/2018	NAIT-LIMAN v. SWITZERLAND	http://hudoc.echr.coe.int/eng/?i=001-181789	no. 51357/07)	GC	DEDOV	dissenting		0 US	C	SC	Dred Scott v. Sandford (60 U.S. (19 How.) 393, (1857)	In the case of Dred Scott v. Sandford (60 U.S. (19 How.) 393, (1857)) the US Supreme Court lost the opportunity to abolish slavery and serfdom. In contrast, it recognised slavery and found unconstitutional the Missouri State law abolishing slavery and granting civil rights to Afro-Americans, concluding that they could not enjoy the same rights as the other members of society. Had the US Supreme Court delivered a different judgment and supported the applicant's rights, which it knows, such a decision might have prevented the Civil War in the United States. It seems to me that the present case is also very similar to that one and, therefore, it poses a real challenge for the European Court of Human Rights. Had the Court supported the applicant's right of access to a court, then the practice of torture would be minimised.
2018	3/15/2018	NAIT-LIMAN v. SWITZERLAND	http://hudoc.echr.coe.int/eng/?i=001-181789	no. 51357/07)	GC		0 majority	ECTHR	Canada	R	statute	2012 Justice for Victims of Terrorism Act	2. Non-member States of the Council of Europe 73. Turning to non-member States of the Council of Europe, the Court notes that the Canadian courts enjoy universal jurisdiction in examining civil claims – but solely in cases concerning terrorism, under the 2012 Justice for Victims of Terrorism Act. However, this jurisdiction is subject to the condition that the victim is a Canadian citizen or is a permanent resident of Canada, or that the civil action has a "real and substantial connection to Canada". In contrast, universal jurisdiction does not apply to actions in respect of damage sustained as a result of other violations of international law, including torture, except where it is shown that it took place in the context of acts of terrorism. In the case of Bouzari v. Islamic Republic of Iran ([2004] 243 DLR (4th) 406), the Ontario Court of Appeal held that Article 14 of the UN Convention against Torture did not impose an obligation on Canada to ensure civil-law remedies for acts of torture committed outside its territory. In the case of Kazemi (Succession) v. the Islamic Republic of Iran (2014 SCC 62, [2014] 3 S.C.R. 176), the Supreme Court of Canada, noting the absence of State practice and of <i>opinio juris</i> , held that Canada was not obliged to open its courts so that its citizens could seek civil redress for acts of torture committed abroad. — 84. The Court's comparative-law analysis has shown that the rules governing universal civil jurisdiction in eleven of the European States considered (Austria, Belgium, Estonia, France, Germany, Luxembourg, the Netherlands, Norway, Poland, Portugal and Romania) explicitly recognise either the forum of necessity or a principle bearing another name but entailing very similar if not identical consequences (as in the case of France). Including Switzerland, there are therefore twelve States in this category. Among the non-member States of the Council of Europe, the forum of necessity is recognised by the Civil Code of Quebec (in Canada), but the domestic case-law has recently introduced it into the domestic law of some other Canadian provinces. 85. In eight of these States, the forum of necessity is provided for by law (Austria, Belgium, Estonia, the Netherlands, Poland, Portugal, Romania and Switzerland), even if it was in some instances initially defined by the case-law and subsequently enacted in law by the legislature. Quebec also comes within this category. In the four other States (France, Germany, Luxembourg and Norway), the forum of necessity is a creation of case-law, and has not been enacted into law by the legislature. The same is true in respect of Canada (except for Quebec). — 184. Outside Europe, universal civil jurisdiction is recognised only in the United States, under two federal laws, and also in Canada, provided in the latter case that the claimant can demonstrate that the torture took place in the context of a terrorist act (see paragraph 73 above). — 200. Firstly, it transpires from the study conducted by the Grand Chamber that, of the 40 States examined, including Switzerland, 28 European States do not recognise the forum of necessity. It exists in only 12 of the States studied, including Switzerland (see paragraph 84 above). In addition, it has only recently been recognised and is subject to strict conditions in Canada. In contrast, the countries with an Anglo-American tradition do not recognise the concept. On the contrary, they apply the principle of forum non conveniens, which enables a court to refuse to examine a case if a court of another State has a more appropriate connection (see paragraph 90 above).
2018	3/15/2018	NAIT-LIMAN v. SWITZERLAND	http://hudoc.echr.coe.int/eng/?i=001-181789	no. 51357/07)	GC		0 majority	ECTHR	Canada	C	lower-level co	Bouzari v. Islamic Republic of Iran ([2004] 243 DLR (4th) 406)	73. Turning to non-member States of the Council of Europe, the Court notes that the Canadian courts enjoy universal jurisdiction in examining civil claims – but solely in cases concerning terrorism, under the 2012 Justice for Victims of Terrorism Act. However, this jurisdiction is subject to the condition that the victim is a Canadian citizen or is a permanent resident of Canada, or that the civil action has a "real and substantial connection to Canada". In contrast, universal jurisdiction does not apply to actions in respect of damage sustained as a result of other violations of international law, including torture, except where it is shown that it took place in the context of acts of terrorism. In the case of Bouzari v. Islamic Republic of Iran ([2004] 243 DLR (4th) 406), the Ontario Court of Appeal held that Article 14 of the UN Convention against Torture did not impose an obligation on Canada to ensure civil-law remedies for acts of torture committed outside its territory. In the case of Kazemi (Succession) v. the Islamic Republic of Iran (2014 SCC 62, [2014] 3 S.C.R. 176), the Supreme Court of Canada, noting the absence of State practice and of <i>opinio juris</i> , held that Canada was not obliged to open its courts so that its citizens could seek civil redress for acts of torture committed abroad. 84. The Court's comparative-law analysis has shown that the rules governing universal civil jurisdiction in eleven of the European States considered (Austria, Belgium, Estonia, France, Germany, Luxembourg, the Netherlands, Norway, Poland, Portugal and Romania) explicitly recognise either the forum of necessity or a principle bearing another name but entailing very similar if not identical consequences (as in the case of France). Including Switzerland, there are therefore twelve States in this category. Among the non-member States of the Council of Europe, the forum of necessity is recognised by the Civil Code of Quebec (in Canada), but the domestic case-law has recently introduced it into the domestic law of some other Canadian provinces. 85. In eight of these States, the forum of necessity is provided for by law (Austria, Belgium, Estonia, the Netherlands, Poland, Portugal, Romania and Switzerland), even if it was in some instances initially defined by the case-law and subsequently enacted in law by the legislature. Quebec also comes within this category. In the four other States (France, Germany, Luxembourg and Norway), the forum of necessity is a creation of case-law, and has not been enacted into law by the legislature. The same is true in respect of Canada (except for Quebec). 184. Outside Europe, universal civil jurisdiction is recognised only in the United States, under two federal laws, and also in Canada, provided in the latter case that the claimant can demonstrate that the torture took place in the context of a terrorist act (see paragraph 73 above). 200. Firstly, it transpires from the study conducted by the Grand Chamber that, of the 40 States examined, including Switzerland, 28 European States do not recognise the forum of necessity. It exists in only 12 of the States studied, including Switzerland (see paragraph 84 above). In addition, it has only recently been recognised and is subject to strict conditions in Canada. In contrast, the countries with an Anglo-American tradition do not recognise the concept. On the contrary, they apply the principle of forum non conveniens, which enables a court to refuse to examine a case if a court of another State has a more appropriate connection (see paragraph 90 above). 106. The Grand Chamber then examines whether the Swiss authorities were obliged under international law to open their courts to the applicant by virtue of the forum of necessity (see paragraphs 199 et seq. of the present judgment). It concludes in the negative. Based on a study conducted by it, which examined the laws of 40 States, including Switzerland, and from which it transpires that the concept of forum of necessity exists in only 11 European States and has recently been recognised in Canada (see paragraph 200), the Court finds that there exists no international custom rule enshrining the concept of a forum of necessity (see paragraph 201). It further adds that "there is no international treaty obligation obliging the States to provide for a forum of necessity" (see paragraph 202).

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2018	3/15/2018	NAIT-LIMAN v. SWITZERLAND	http://hudoc.echr.coe.int/eng/?i=001-181789	no. 51357/07	GC		0 majority	ECTHR	Canada	C	SC	Kazemi (Succession) v. the Islamic Republic of Iran (2014 SCC 62, [2014] 3 S.C.R. 176)	73. Turning to non-member States of the Council of Europe, the Court notes that the Canadian courts enjoy universal jurisdiction in examining civil claims – but solely in cases concerning terrorism, under the 2012 Justice for Victims of Terrorism Act. However, this jurisdiction is subject to the condition that the victim is a Canadian citizen or is a permanent resident of Canada, or that the civil action has a “real and substantial connection to Canada”. In contrast, universal jurisdiction does not apply to actions in respect of damage sustained as a result of other violations of international law, including torture, except where it is shown that it took place in the context of acts of terrorism. In the case of Bouzari v. Islamic Republic of Iran (2004) 243 DLR (4th) 406, the Ontario Court of Appeal held that Article 14 of the UN Convention against Torture did not impose an obligation on Canada to ensure civil-law remedies for acts of torture committed outside its territory. In the case of Kazemi (Succession) v. the Islamic Republic of Iran (2014 SCC 62, [2014] 3 S.C.R. 176), the Supreme Court of Canada, noting the absence of State practice and of <i>opinio juris</i>, held that Canada was not obliged to open its courts so that its citizens could seek civil redress for acts of torture committed abroad. 84. The Court’s comparative-law analysis has shown that the rules governing universal civil jurisdiction in eleven of the European States considered (Austria, Belgium, Estonia, France, Germany, Luxembourg, the Netherlands, Norway, Poland, Portugal and Romania) explicitly recognise either the forum of necessity or a principle bearing another name but entailing very similar if not identical consequences (as in the case of France). Including Switzerland, there are therefore twelve States in this category. Among the non-member States of the Council of Europe, the forum of necessity is recognised by the Civil Code of Quebec (in Canada), but the domestic case-law has recently introduced it into the domestic law of some other Canadian provinces. 85. In eight of these States, the forum of necessity is provided for by law (Austria, Belgium, Estonia, the Netherlands, Poland, Portugal, Romania and Switzerland), even if it was in some instances initially defined by the case-law and subsequently enacted in law by the legislature. Quebec also comes within this category. In the four other States (France, Germany, Luxembourg and Norway), the forum of necessity is a creation of case-law, and has not been enacted into law by the legislature. The same is true in respect of Canada (except for Quebec). 184. Outside Europe, universal civil jurisdiction is recognised only in the United States, under two federal laws, and also in Canada, provided in the latter case that the claimant can demonstrate that the torture took place in the context of a terrorist act (see paragraph 73 above). 200. Firstly, it transpires from the study conducted by the Grand Chamber that, of the 40 States examined, including Switzerland, 28 European States do not recognise the forum of necessity. It exists in only 12 of the States studied, including Switzerland (see paragraph 84 above). In addition, it has only recently been recognised and is subject to strict conditions in Canada. In contrast, the countries with an Anglo-American tradition do not recognise the concept. On the contrary, they apply the principle of <i>forum non conveniens</i>, which enables a court to refuse to examine a case if a court of another State has a more appropriate connection (see paragraph 90 above). 106. The Grand Chamber then examines whether the Swiss authorities were obliged under international law to open their courts to the applicant by virtue of the forum of necessity (see paragraphs 199 et seq. of the present judgment). It concludes in the negative. Based on a study conducted by it, which examined the laws of 40 States, including Switzerland, and from which it transpires that the concept of forum of necessity exists in only 12 European States and has recently been recognised in Canada (see paragraph 200), the Court finds that there exists no international custom rule enshrining the concept of a forum of necessity (see paragraph 201). It further adds that “there is no international treaty obligation obliging the States to provide for a forum of necessity” (see paragraph 202).
2018	3/15/2018	NAIT-LIMAN v. SWITZERLAND	http://hudoc.echr.coe.int/eng/?i=001-181789	no. 51357/07	GC		0 majority	ECTHR	Canada	R	statute	Civil Code of Quebec	73. Turning to non-member States of the Council of Europe, the Court notes that the Canadian courts enjoy universal jurisdiction in examining civil claims – but solely in cases concerning terrorism, under the 2012 Justice for Victims of Terrorism Act. However, this jurisdiction is subject to the condition that the victim is a Canadian citizen or is a permanent resident of Canada, or that the civil action has a “real and substantial connection to Canada”. In contrast, universal jurisdiction does not apply to actions in respect of damage sustained as a result of other violations of international law, including torture, except where it is shown that it took place in the context of acts of terrorism. In the case of Bouzari v. Islamic Republic of Iran (2004) 243 DLR (4th) 406, the Ontario Court of Appeal held that Article 14 of the UN Convention against Torture did not impose an obligation on Canada to ensure civil-law remedies for acts of torture committed outside its territory. In the case of Kazemi (Succession) v. the Islamic Republic of Iran (2014 SCC 62, [2014] 3 S.C.R. 176), the Supreme Court of Canada, noting the absence of State practice and of <i>opinio juris</i>, held that Canada was not obliged to open its courts so that its citizens could seek civil redress for acts of torture committed abroad. 84. The Court’s comparative-law analysis has shown that the rules governing universal civil jurisdiction in eleven of the European States considered (Austria, Belgium, Estonia, France, Germany, Luxembourg, the Netherlands, Norway, Poland, Portugal and Romania) explicitly recognise either the forum of necessity or a principle bearing another name but entailing very similar if not identical consequences (as in the case of France). Including Switzerland, there are therefore twelve States in this category. Among the non-member States of the Council of Europe, the forum of necessity is recognised by the Civil Code of Quebec (in Canada), but the domestic case-law has recently introduced it into the domestic law of some other Canadian provinces. 85. In eight of these States, the forum of necessity is provided for by law (Austria, Belgium, Estonia, the Netherlands, Poland, Portugal, Romania and Switzerland), even if it was in some instances initially defined by the case-law and subsequently enacted in law by the legislature. Quebec also comes within this category. In the four other States (France, Germany, Luxembourg and Norway), the forum of necessity is a creation of case-law, and has not been enacted into law by the legislature. The same is true in respect of Canada (except for Quebec). 184. Outside Europe, universal civil jurisdiction is recognised only in the United States, under two federal laws, and also in Canada, provided in the latter case that the claimant can demonstrate that the torture took place in the context of a terrorist act (see paragraph 73 above). 200. Firstly, it transpires from the study conducted by the Grand Chamber that, of the 40 States examined, including Switzerland, 28 European States do not recognise the forum of necessity. It exists in only 12 of the States studied, including Switzerland (see paragraph 84 above). In addition, it has only recently been recognised and is subject to strict conditions in Canada. In contrast, the countries with an Anglo-American tradition do not recognise the concept. On the contrary, they apply the principle of <i>forum non conveniens</i>, which enables a court to refuse to examine a case if a court of another State has a more appropriate connection (see paragraph 90 above). 106. The Grand Chamber then examines whether the Swiss authorities were obliged under international law to open their courts to the applicant by virtue of the forum of necessity (see paragraphs 199 et seq. of the present judgment). It concludes in the negative. Based on a study conducted by it, which examined the laws of 40 States, including Switzerland, and from which it transpires that the concept of forum of necessity exists in only 12 European States and has recently been recognised in Canada (see paragraph 200), the Court finds that there exists no international custom rule enshrining the concept of a forum of necessity (see paragraph 201). It further adds that “there is no international treaty obligation obliging the States to provide for a forum of necessity” (see paragraph 202).
2018	3/15/2018	NAIT-LIMAN v. SWITZERLAND	http://hudoc.echr.coe.int/eng/?i=001-181789	no. 51357/07	GC		0 majority	ECTHR	US	R	statute	1789 Alien Tort Statute	73. Turning to non-member States of the Council of Europe, the Court notes that the Canadian courts enjoy universal jurisdiction in examining civil claims – but solely in cases concerning terrorism, under the 2012 Justice for Victims of Terrorism Act. However, this jurisdiction is subject to the condition that the victim is a Canadian citizen or is a permanent resident of Canada, or that the civil action has a “real and substantial connection to Canada”. In contrast, universal jurisdiction does not apply to actions in respect of damage sustained as a result of other violations of international law, including torture, except where it is shown that it took place in the context of acts of terrorism. In the case of Bouzari v. Islamic Republic of Iran (2004) 243 DLR (4th) 406, the Ontario Court of Appeal held that Article 14 of the UN Convention against Torture did not impose an obligation on Canada to ensure civil-law remedies for acts of torture committed outside its territory. In the case of Kazemi (Succession) v. the Islamic Republic of Iran (2014 SCC 62, [2014] 3 S.C.R. 176), the Supreme Court of Canada, noting the absence of State practice and of <i>opinio juris</i>, held that Canada was not obliged to open its courts so that its citizens could seek civil redress for acts of torture committed abroad. 74. Of all the States included in the present survey, only the United States provides, at federal level, for universal jurisdiction in respect of civil claims for compensation with regard to damage sustained as a result of torture, on the basis of two federal laws: the 1789 Alien Tort Statute and the 1991 Torture Victim Protection Act. 75. The first ascribes jurisdiction to the federal courts for “any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States”. In other words, it is not necessary that the impugned act was committed in the territory of the United States or by a national of that State. The first significant application of the Alien Tort Statute was in the landmark case of <i>Filiarta v. Peña-Irala</i>, examined before the Second Circuit Court of Appeals in 1980 (630 F.2d 876 (2d Cir. 1980)). In that case, the court accepted the complaint by the parents of a victim who had been tortured to death in Paraguay; the complaint was brought against the perpetrator of the impugned acts, who was then resident in the United States. The court found that federal jurisdiction could be exercised whenever an alleged torturer was found and served with process by an alien within the borders of the United States (<i>ibid.</i>, at p. 878). 76. The Torture Victim Protection Act provides as follows: “An individual who, under actual or apparent authority, or color of law, of any foreign nation subjects an individual to torture shall, in a civil action, be liable for damages to that individual...” (section 2 (a) § 1). 77. It is clear from these two laws that cases can, a priori, be submitted to the courts of the United States without there being a jurisdictional link with that country. For a court to be entitled to take action on a case, the person against whom the claim is brought must nonetheless fall within the jurisdiction of the United States at the time that the action is lodged. Furthermore, even where the court’s jurisdiction is accepted, there exist other legal obstacles. In reality, it seems that about 80% of the cases brought under those two Acts have been dismissed on various grounds, such as the “act of State” doctrine, sovereign immunity or the <i>forum non conveniens</i> doctrine (see Nowak/McArthur, <i>op.cit.</i>, p. 494). 78. Moreover, limitations have been placed on the scope of the Alien Tort Statute in recent years. In the case of <i>Kiebel v. Royal Dutch Petroleum Co.</i>, Nigerian nationals who had obtained refugee status in the United States applied to the American courts under the Alien Tort Statute, alleging that Dutch, British and Nigerian companies had aided and abetted violations of international law committed by the Nigerian Government (<i>Kiebel v. Royal Dutch Petroleum Co.</i>, 133 S. Ct. 1659 [2013]). On 17 April 2013 the US Supreme Court ruled as follows: “We therefore conclude that the presumption against extraterritoriality applies to claims under the ATS, and that nothing in the statute rebuts that presumption. “[T]here is no clear indication of extraterritoriality here.” <i>Morrison</i>, 561 U. S., at ____ (slip op., at 16), and petitioners’ case seeking relief for violations of the law of nations occurring outside the United States is barred.

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2018	3/15/2018	NAIT-LIMAN v. SWITZERLAND	http://hudoc.echr.coe.int/eng/?i=001-181789	no. 51357/07	GC		0 majority	ECtHR	US	C	lower-level courts	Filártiga v. Peña-Irala, examined before the Second Circuit Court of Appeals in 1980 (630 F.2d 876 (2d Cir. 1980))	73. Turning to non-member States of the Council of Europe, the Court notes that the Canadian courts enjoy universal jurisdiction in examining civil claims – but solely in cases concerning terrorism, under the 2012 Justice for Victims of Terrorism Act. However, this jurisdiction is subject to the condition that the victim is a Canadian citizen or is a permanent resident of Canada, or that the civil action has a “real and substantial connection to Canada”. In contrast, universal jurisdiction does not apply to actions in respect of damage sustained as a result of other violations of international law, including torture, except where it is shown that it took place in the context of acts of terrorism. In the case of Bouzari v. Islamic Republic of Iran ([2004] 243 DLR (4th) 406), the Ontario Court of Appeal held that Article 14 of the UN Convention against Torture did not impose an obligation on Canada to ensure civil-law remedies for acts of torture committed outside its territory. In the case of Kazemi (Succession) v. the Islamic Republic of Iran (2014 SCC 62, [2014] 3 S.C.R. 176), the Supreme Court of Canada, noting the absence of State practice and of <i>opinio juris</i>, held that Canada was not obliged to open its courts so that its citizens could seek civil redress for acts of torture committed abroad. 74. Of all the States included in the present survey, only the United States provides, at federal level, for universal jurisdiction in respect of civil claims for compensation with regard to damage sustained as a result of torture, on the basis of two federal laws: the 1789 Alien Tort Statute and the 1991 Torture Victim Protection Act. 75. The first ascribes jurisdiction to the federal courts for “any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States”. In other words, it is not necessary that the impugned act was committed in the territory of the United States or by a national of that State. The first significant application of the Alien Tort Statute was in the landmark case of <i>Filártiga v. Peña-Irala</i>, examined before the Second Circuit Court of Appeals in 1980 (630 F.2d 876 (2d Cir. 1980)). In that case, the court accepted the complaint by the parents of a victim who had been tortured to death in Paraguay; the complaint was brought against the perpetrator of the impugned acts, who was then resident in the United States. The court found that federal jurisdiction could be exercised whenever an alleged torturer was found and served with process by an alien within the borders of the United States (<i>ibid.</i>, at p. 878). 76. The Torture Victim Protection Act provides as follows: “An individual who, under actual or apparent authority, or color of law, of any foreign nation subjects an individual to torture shall, in a civil action, be liable for damages to that individual...” (section 2 (a) § 1). 77. It is clear from these two laws that cases can, a priori, be submitted to the courts of the United States without there being a jurisdictional link with that country. For a court to be entitled to take action on a case, the person against whom the claim is brought must nonetheless fall within the jurisdiction of the United States at the time that the action is lodged. Furthermore, even where the court’s jurisdiction is accepted, there exist other legal obstacles. In reality, it seems that about 80% of the cases brought under those two Acts have been dismissed on various grounds, such as the “act of State” doctrine, sovereign immunity or the <i>forum non conveniens</i> doctrine (see Nowak/McArthur, <i>op.cit.</i>, p. 494). 78. Moreover, limitations have been placed on the scope of the Alien Tort Statute in recent years. In the case of <i>Kiobel v. Royal Dutch Petroleum Co.</i>, Nigerian nationals who had obtained refugee status in the United States applied to the American courts under the Alien Tort Statute, alleging that Dutch, British and Nigerian companies had aided and abetted violations of international law committed by the Nigerian Government (<i>Kiobel v. Royal Dutch Petroleum Co.</i>, 133 S. Ct. 1659 (2013)). On 17 April 2013 the US Supreme Court ruled as follows: “We therefore conclude that the presumption against extraterritoriality applies to claims under the ATS, and that nothing in the statute rebuts that presumption. “[T]here is no clear indication of extraterritoriality here.” <i>Morrison</i>, 561 U. S., at ____ (slip op., at 16), and petitioners’ case seeking relief for violations of the law of nations occurring outside the United States is barred.
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2018	2/27/2018	SINKOVA v. UKRAINE	http://hudoc.echr.coe.int/eng/?i=001-18121-139496/11		S4	YUDKIVSKA, MOTOC AND PACZ	dissenting (join)	0	US	C	SC	Texas v. Johnson 491 U.S. 397, 405 (1989)	The applicant's satire had done exactly what this art frequently does: it transferred the viewer's attention from an object to its social context. An artistic gesture might demonstrate the conditionality of established value boundaries, but it does not reject them. In the context of freedom of speech, the US Supreme Court noted in the famous case of Texas v. Johnson, when holding that the desecration of the American Flag was protected speech under the First Amendment, that "symbolism is a primitive but effective way of communicating ideas"[1]. In a fast-moving world, it is not surprising that those who wish to highlight a particular cause or voice an opinion would have recourse to those symbolic acts and demonstrations which are likely to gather a greater degree of attention and trigger a wider debate than might have been achievable with more conventional and established forms of protest. The relationship between art and the conveyance of opinions is a complicated one; and whilst art should not be reduced to an opinion, art quite often relates to the expression of an opinion.]] [1]. 491 U.S. 397, 405 (1989), citing West Virginia State Board of Education v. Barnette 319 U.S. 624, 632 (1943). In Johnson, the petitioner had been convicted for desecration of a venerated object under Texas state law (Tex. Penal Code Ann. § 42.09(a)(3) (1989)). Under the law, "desecrate" means to deface, damage, or otherwise physically mistreat in a way that the actor knows will seriously offend one or more persons likely to observe or discover his action".
2018	2/27/2018	SINKOVA v. UKRAINE	http://hudoc.echr.coe.int/eng/?i=001-18121-139496/11		S4	YUDKIVSKA, MOTOC AND PACZ	dissenting (join)	0	US	C	SC	West Virginia State Board of Education v. Barnette 319 U.S. 624, 632 (1943)	The applicant's satire had done exactly what this art frequently does: it transferred the viewer's attention from an object to its social context. An artistic gesture might demonstrate the conditionality of established value boundaries, but it does not reject them. In the context of freedom of speech, the US Supreme Court noted in the famous case of Texas v. Johnson, when holding that the desecration of the American Flag was protected speech under the First Amendment, that "symbolism is a primitive but effective way of communicating ideas"[1]. In a fast-moving world, it is not surprising that those who wish to highlight a particular cause or voice an opinion would have recourse to those symbolic acts and demonstrations which are likely to gather a greater degree of attention and trigger a wider debate than might have been achievable with more conventional and established forms of protest. The relationship between art and the conveyance of opinions is a complicated one; and whilst art should not be reduced to an opinion, art quite often relates to the expression of an opinion.]] [1]. 491 U.S. 397, 405 (1989), citing West Virginia State Board of Education v. Barnette 319 U.S. 624, 632 (1943). In Johnson, the petitioner had been convicted for desecration of a venerated object under Texas state law (Tex. Penal Code Ann. § 42.09(a)(3) (1989)). Under the law, "desecrate" means to deface, damage, or otherwise physically mistreat in a way that the actor knows will seriously offend one or more persons likely to observe or discover his action".
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2018	2/27/2018	SINKOVA v. UKRAINE	http://hudoc.echr.coe.int/eng/?i=001-18121-139496/11		S4		0 majority	ECtHR	US	C	SC	Virginia v. Black	III. RELEVANT INTERNATIONAL TEXTS 51. The summary of the position of the Supreme Court of the United States of America in respect of the controversial conduct of cross burning, as formulated in its decision on the case of Virginia v. Black, can be found in the Court's judgment in the case of Fábry v. Hungary, no. 40721/08, § 18, 24 July 2012.
2017	12/19/2017	LOPES DE SOUSA FERNANDES v. PORTUGAL	http://hudoc.echr.coe.int/eng/?i=001-179556	no. 56080/13	GC	PINTO DE ALBUQUERQUE	concurring (para 1)	0	South Africa	C	CC	Minister of Health and Others v. Treatment Action Campaign and Others, Case CCT 8/02, 5 July 2002	66. The rights to life and physical integrity impose core obligations to safeguard the life and health of any person under the jurisdiction of States Parties to the Convention. Reading the Convention in the light of the above-mentioned customary international norm, these core obligations include access to emergency services and primary medical treatment[230], as well as access to essential drugs[231]. This result-oriented core is a "floor", the foundational level of Convention health protection, but not a "ceiling". Beyond the protection of its core, the right to health care is subjected, at its "outer edge", to a proportionality test so far as there may be cases where the obligation to protect the core is met, but States are still failing to provide "reasonable" (proportionate) health-care measures[232]. Such a proportionality test avoids, on the one hand, the danger of under-protection of the "outer edge" of the right and, on the other hand, the opposite risk of an overly expansive, colonising effect of the "outer edge" of the right to health care, whereby it would subsume the content of other independent rights related to the underlying determinants of health, such as basic shelter, sanitation and water. More importantly, even if judicial enforcement of the right to health care may impact on budgets and social policy, this certainly does not breach the principle of the democratic separation of powers, since judicial scrutiny of health-care measures is limited by the available scientific information and the proportionality (or reasonableness) test[233]. [232]. See the South Africa constitutional law case of Minister of Health and Others v. Treatment Action Campaign and Others, Case CCT 8/02, 5 July 2002, which rejected the direct enforceability of a minimum core, but in any event found that the restrictions on nevirapine excluded those who could reasonably be included in the programme, and ordered the Government to extend availability of the medicine. As Justice Goldstone argued extra curia, this case-law should be considered as a challenge to provide more information on the concept of the minimum core and not as a definitive decision to abandon it (Foreword to <i>Courting Social Justice, Judicial Enforcement of Social and Economic Rights in Developing World</i> , ed. Gaut and Brinks, Cambridge: CUP, 2008, p. xii).
2017	12/14/2017	ORLANDI AND OTHERS v. ITALY	http://hudoc.echr.coe.int/eng/?i=001-179547	26431/12, 26742/12; 44179547	S1		0 majority	ECtHR	US	C	SC	Obergefell et al. v. Hodges, Director, Ohio Department of Health et al	8. The United States 115. On 26 June 2015, in the case of Obergefell et al. v. Hodges, Director, Ohio Department of Health et al, the Supreme Court of the United States held that same-sex couples may exercise the fundamental right to marry in all States, and that there was no lawful basis for a State to refuse to recognise a lawful same-sex marriage performed in another State on the ground of its same-sex character (see for details, Oliari and Others, cited above, § 65).
2017	11/6/2017	GARIB v. THE NETHERLANDS	http://hudoc.echr.coe.int/eng/?i=001-177406	no. 43494/09	GC	PINTO DE ALBUQUERQUE	dissenting	0	Bolivia	R	constitution	0	This is also the case of much domestic legislation, particularly under French law, which adds "the particular vulnerability stemming from [the] apparent or known economic situation" to the criteria of discrimination penalised by law since 2016[53]. Article 3 of the Italian Constitution proclaims the equality of all citizens before the law without any distinction "in personal or social conditions". Belgian law prohibits discrimination based inter alia on "wealth" or "social origin". This phenomenon is not limited to Europe because illustrations can be found in the Constitutions of South Africa[54], Bolivia[55] or Ecuador[56], for example. The Inter-American Court of Human Rights has already implemented such rules. In the case of Gonzales Lluy v. Ecuador, it included poverty among the grounds for the discrimination sustained by the applicant in finding a violation of Article 1(1) of the American Convention on Human Rights. That court explained clearly that "Talia Gonzales Lluy suffered discrimination derived from her situation as a person living with HIV, a child, a female, and living in conditions of poverty"[57]. It is clear, therefore, that poverty is seen by the Inter-American judges as a potential factor of discrimination, prohibited by the American Convention. In view of this uniform conception of poverty as a prohibited ground of discrimination, it is appropriate once again to point out the need to interpret the European Convention not in a vacuum[58], but in the light of the relevant international law, or of any consensus that may emerge among the States parties. It has always been clear in Europe that "the Court has never considered the provisions of the Convention as the sole framework of reference for the interpretation of the rights and freedoms enshrined therein"[59]. It is thus essential to bear in mind that social precariousness figures among the grounds of discrimination prohibited under Article 14 of the Convention[60]. Ij [53]. Law no. 2016-832 of 24 June 2016 on the prevention of discrimination on grounds of social precariousness, JOIF no. 0147, 25 June 2016. [54]. Article 9 § 3. [55]. Article 14. [56]. Article 11. [57]. Inter-American Court of Human Rights (IACtHR), Gonzales Lluy et al. v. Ecuador, judgment of 1 September 2015 (Preliminary Objections, Merits, Reparations, and Costs), Series C no. 298, § 291. [58]. Loizidou v. Turkey (merits), 18 December 1996, § 43, Reports of Judgments and Decisions 1996-VI. [59]. Demir and Baykara v. Turkey [GC], no. 34503/97, § 67, ECHR 2008. [60]. On the vulnerability of the poor in the light of the Convention, see Lavrysen (2015), "Strengthening the protection of Human Rights of Persons Living in Poverty under the ECHR", in Netherlands Quarterly of Human Rights, 33 (3), pp. 293-325.
2017	11/6/2017	GARIB v. THE NETHERLANDS	http://hudoc.echr.coe.int/eng/?i=001-177406	no. 43494/09	GC	PINTO DE ALBUQUERQUE	dissenting	0	Ecuador	R	constitution	0	This is also the case of much domestic legislation, particularly under French law, which adds "the particular vulnerability stemming from [the] apparent or known economic situation" to the criteria of discrimination penalised by law since 2016[53]. Article 3 of the Italian Constitution proclaims the equality of all citizens before the law without any distinction "in personal or social conditions". Belgian law prohibits discrimination based inter alia on "wealth" or "social origin". This phenomenon is not limited to Europe because illustrations can be found in the Constitutions of South Africa[54], Bolivia[55] or Ecuador[56], for example. The Inter-American Court of Human Rights has already implemented such rules. In the case of Gonzales Lluy v. Ecuador, it included poverty among the grounds for the discrimination sustained by the applicant in finding a violation of Article 1(1) of the American Convention on Human Rights. That court explained clearly that "Talia Gonzales Lluy suffered discrimination derived from her situation as a person living with HIV, a child, a female, and living in conditions of poverty"[57]. It is clear, therefore, that poverty is seen by the Inter-American judges as a potential factor of discrimination, prohibited by the American Convention. In view of this uniform conception of poverty as a prohibited ground of discrimination, it is appropriate once again to point out the need to interpret the European Convention not in a vacuum[58], but in the light of the relevant international law, or of any consensus that may emerge among the States parties. It has always been clear in Europe that "the Court has never considered the provisions of the Convention as the sole framework of reference for the interpretation of the rights and freedoms enshrined therein"[59]. It is thus essential to bear in mind that social precariousness figures among the grounds of discrimination prohibited under Article 14 of the Convention[60]. Ij [53]. Law no. 2016-832 of 24 June 2016 on the prevention of discrimination on grounds of social precariousness, JOIF no. 0147, 25 June 2016. [54]. Article 9 § 3. [55]. Article 14. [56]. Article 11. [57]. Inter-American Court of Human Rights (IACtHR), Gonzales Lluy et al. v. Ecuador, judgment of 1 September 2015 (Preliminary Objections, Merits, Reparations, and Costs), Series C no. 298, § 291. [58]. Loizidou v. Turkey (merits), 18 December 1996, § 43, Reports of Judgments and Decisions 1996-VI. [59]. Demir and Baykara v. Turkey [GC], no. 34503/97, § 67, ECHR 2008. [60]. On the vulnerability of the poor in the light of the Convention, see Lavrysen (2015), "Strengthening the protection of Human Rights of Persons Living in Poverty under the ECHR", in Netherlands Quarterly of Human Rights, 33 (3), pp. 293-325.

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2017	10/31/2017	DRAGOȘ IOAN RUSU v. ROMANIA	http://hudoc.echr.coe.int/eng/?i=001-178175	22767/08	S4	PINTO DE ALBUQUERQUE AND	concurring (join)		0 US	C	lower-level co	People v. Cahan (282 P.2d905 (Cal.1955))	4. We strongly believe that these separate opinions have a point. Some of the separate opinions cited above pleaded for the inadmissibility of evidence obtained in breach of the rights and freedoms guaranteed by the Convention, based on the argument of the effectiveness of the Convention rights. According to Judge Loucaides in his separate opinion in Khan[6], and Judge Tulkens in her separate opinion in P.G. and J.H. v. the United Kingdom[7], "...if violating Article 8 can be accepted as fair then I cannot see how the police can be effectively deterred from repeating their impermissible conduct." Indeed, other alternatives, such as the possibility of disciplinary proceedings against State agents violating a Convention provision, or a civil action in damages against the State, cannot offer a remedy comparable to the exclusionary rule of inadmissibility of evidence obtained in breach of the Convention[8], for three reasons. Firstly, the exclusionary rule of evidence obtained in breach of a Convention right not only serves the purpose of deterrence but is also "an imperative of judicial integrity"[9]. The exclusionary rule prevents the judiciary from condoning police misconduct in situations where the latter obtain evidence by violating human rights and fundamental freedoms. Secondly, a procedural sanction, such as the exclusionary rule, renders rules on evidence collection a <i>lex perfecta</i>. Otherwise procedural rules are merely ancillary to the substantive ones protecting physical integrity, freedom of movement, privacy and other substantive rights and freedoms. Such a situation would be in fundamental collision with the principle of procedural fairness, this being at the heart of the concept of a fair trial as enshrined in Article 6 of the Convention. Thirdly, a breach of the rules on evidence collection in criminal proceedings does not necessarily constitute a disciplinary offence or a civil tort in several legal systems of the High Contracting Parties. 5. Evidence for the purpose of criminal proceedings against a suspect is often obtained by interference with rights and freedoms guaranteed by the Convention. Typically in cases of serious crime, the State authorities perform bodily and home searches and seizures, and intercept phone calls and correspondence, not to mention other equally or more intrusive forms of interference with private life and physical integrity. These actions do not constitute a violation as long as they are compatible with the requirements of the Convention, like those set out in paragraph 2 of Article 8. The purpose of these requirements is to ensure a fair balance between the rights of individuals and the interests of society. If in a particular case the former prevail over the latter and a violation of Article 8 is found, it is hard to conceive that this violation could be validated for the purpose of prosecution and conviction of the individual under Article 6. To put it simply, as Judge Spielmann, joined by several other judges, did in his separate opinion in Bykov[10], something that "... is prohibited by one provision (Article 8) cannot be accepted under another (Article 6)." 6. The Court's position has been that the question to be answered is whether the proceedings as a whole were fair. We argue that this position does not take into account the difference between evidence obtained by a "simple" breach of national law and evidence obtained in violation of the rights and freedoms guaranteed by the Convention, which is an issue undoubtedly falling within the competence of the Court. More importantly, this Court's position ignores the existence of absolute, bright, red lines in criminal procedure, which cannot be crossed under pain of undermining fundamental rights and freedoms in a State governed by the rule of law[11]. These are absolute rules which lead to the necessary exclusion of evidence collected in breach of them. 7. In its assessment of the overall fairness of the proceedings in the light of the admissibility of the evidence, the Court outlined in the Grand Chamber judgment in Bykov[12] some criteria that seem to be decisive[13]. These include (a) whether the applicant was given the opportunity of challenging the authenticity of the evidence and its use, (b) whether there exists any doubt regarding the reliability and accuracy of the evidence, taking into account also the circumstances in which it was obtained; and (c) whether there exists supporting evidence. Regarding the last criterion, the Court emphasised in the same judgment that where the disputed item of evidence is very strong and there is no risk of its being unreliable, the need for supporting evidence is correspondingly weaker.[8] From a relevant comparative-law perspective, the alternatives to the exclusionary rule have been considered to be totally ineffective. In the case of <i>People v. Cahan</i> (282 P.2d905 (Cal.1955)), the Supreme Court of California held that in cases of searches and seizures, "...other remedies have completely failed to secure compliance with the constitutional provisions on the part of police officers...". Building on this jurisprudence, the Supreme Court of the United States held in the landmark case of <i>Mapp v. Ohio</i> (367 U.S. 643 [1961]) that the alternatives to the exclusionary rule should be dismissed, noting that "...the experience of
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Building on this jurisprudence, the Supreme Court of the United States held in the landmark case of <i>Mapp v. Ohio</i> (367 U.S. 643 (1961)) that the alternatives to the exclusionary rule should be dismissed, noting that "... the experience of
2017	9/19/2017	REGNER v. THE CZECH REPUBLIC	http://hudoc.echr.coe.int/eng/?i=001-177299	35289/11	GC	SAJO	dissenting	0	Canada	R	general		16. It is of no small importance that Fitt itself relies on an improbable reading of two other cases decided by this Court to circumscribe the Court's duties of review. As recently as 1997, this Court held that only such measures restricting the rights of one party as were strictly necessary were permissible under Article 6 § 1 (see Van Mechelen and Others v. the Netherlands, 23 April 1997, § 58, Reports 1997-I). Fitt, citing Van Mechelen, substituted it with a much less demanding test, holding that interferences with the equality of arms were acceptable provided that these were "sufficiently counterbalanced" (§ 45). It should be clear then that Fitt wrongly permitted this Court to cast off the burden of assessing whether there were other less restrictive means of preserving the secrecy of classified information (for instance, via use of the institution of the "special advocate", as is found in several countries[8]). Fitt also stated that when analysing limitations imposed on the principle of equality of arms, the Court should refrain from deciding whether or not such non-disclosure was strictly necessary since, as a general rule, it is for the national courts to perform such an assessment (ibid., § 45). Yet, in fact, the case from which this rule supposedly derives says only that the Court should not "substitute its own assessment of the facts for that of the domestic courts", not that the Court should not perform a strict necessity test (see <i>Edwards v. the United Kingdom</i>, 16 December 1992, § 34, Series A no. 247-B).[8] Other jurisdictions around the world are progressively implementing this institution as an independent party able to challenge evidence that is withheld from the accused for reasons of national security; see, for example, Tinnelly, cited above, in the UK, and Canada, to name but two.
2017	9/19/2017	REGNER v. THE CZECH REPUBLIC	http://hudoc.echr.coe.int/eng/?i=001-177299	35289/11	GC	SERGHIDES	dissenting	0	Israel	C	SC	H.C. 5364/94, Veiner v. Chairman of the Israeli Labor Party, 49(1), P.D. 758, 808	80. The rule of law is one of the pillars and fundamental principles of a democratic society and a rampart against tyranny. Its most important aim is to afford adequate protection of human rights, and without it there will be chaos. As Neil MacCormick said in <i>Rhetoric and the Rule of Law – A Theory of Legal Reasoning</i>, Oxford, 2005, at p. 238: "[t]he of the most strongly advertised merits of the Rule of Law is that, where is flourishes, legal certainty flourishes also, as part of it." I maintain that the opposite is also true, and that where the rule of law is undermined or is not properly respected, there is no legal certainty and consistency, but only legal blindness. Fairness is a stranger to such circumstances. In one of his opinions Professor Aharon Barak, the former President of the Supreme Court of Israel, rightly said that "[t]he struggle for the law is increasing" and that "[t]he need to watch over the rule of law exists at all times". He then added: "Trees that we have nurtured for many years may be uprooted with one stroke of the axe. We must never relax the protection of the rule of law..." (see H.C. 5364/94, Veiner v. Chairman of the Israeli Labor Party, 49(1), P.D. 758, 808; see also A. Barak, "A Judge on Judging: The Rule of a Supreme Court in a Democracy", [2002] <i>Harvard Law Review</i> vol. 116: 16, 19, at pp. 37-38).
2017	9/19/2017	REGNER v. THE CZECH REPUBLIC	http://hudoc.echr.coe.int/eng/?i=001-177299	35289/11	GC	SERGHIDES	dissenting (par)	0	US	C	SC	Hamilton v. Regents of the University of California	115. If security considerations were able to provide a blanket or an absolute restriction on the right to a fair trial, as has been decided in the present case, I am afraid to say that such a finding would be catastrophic for human rights. This could be the opening of Pandora's box and the protection of every human right – not only the right to fair trial – would be bankrupt. To carry an expression used by then Justice Benjamin N. Cardozo (though in another context), such an approach "would carry us to lengths that have never yet been dreamed of" (concurring in <i>Hamilton v. Regents of the University of California</i>, 293 United States Reports 245 (1934) – see also A. L. Sainer (ed.), <i>Law is Justice – Notable Opinions of Mr. Justice Cardozo</i> New York 1999, 1999, 360, at p. 362).
2017	7/25/2017	CARVALHO PINTO DE SOUSA MORAIS v. PORTUGAL	http://hudoc.echr.coe.int/eng/?i=001-175659	no. 17484/15	S4	MOTOC	concurring	0	South Africa	C	CC	National Coalition for Gay and Lesbian Equality and Others v. Minister of Home Affairs and Others, [1999] ZACC 17	18. The second phase involves contesting the stereotypes once it has been established that they are harmful. The Court has developed different approaches to this issue. What is methodologically important in the contesting phase is that we are not using a comparator as in other discrimination cases. The test of comparability is not suited to cases of stereotyping.[19] Stereotypes affect the autonomy of groups and individuals. For the disadvantage test it is enough to prove that the stereotypes are harmful to the group to which the applicant belongs and that the rule or practice applied by the State is based on such stereotypes. "Discrimination must be understood in the context of the experience of those on whom it impacts" (South African Constitutional Court, <i>National Coalition for Gay and Lesbian Equality and Others v. Minister of Home Affairs and Others</i>, [1999] ZACC 17).

Year	Date	Name	Link	App.no.	Body	Judge citing	Opinion	who submitted	Countries	C/R/F	type	Document	Quotes
2017	6/1/2017	SHABELNIK v. UKRAINE (No. 2)	http://hudoc.echr.coe.int/eng/?i=001-173775	15685/11	SS		0 majority	applicant	US	C	SC	Estelle v. Smith (451 U.S. 454 (1981))	1. The parties' submissions (a) The applicant (i) Alleged violation of Article 6 §§ 1 and 3 (c) and (d) on account of the Supreme Court's reliance on the psychiatrists' report and other remaining evidence in the file 38. The Supreme Court, even though it had ostensibly struck the applicant's confessions from the body of evidence, had in fact implicitly relied on the information contained in those confessions to support its findings. In particular, the Supreme Court had upheld as correct the trial court's factual findings about K.'s murder, which could only have been based on the applicant's statements with respect to which the Court had found a violation of Article 6 §§ 1 and 3 in its first Shabelnik judgment (cited above, § 58). Relying on the Court's judgment in Allan v. the United Kingdom (no. 48539/99, ECHR 2002-IX) and the United States Supreme Court's decision in Estelle v. Smith (451 U.S. 454 (1981)), the applicant argued that the Supreme Court's reliance on the psychiatrists' report had undermined the very essence of his right to remain silent and to legal representation. In particular, he had only been advised by a lawyer in respect of the charge of murdering K. for the first time on 3 April 2002, after the psychiatric examination had been completed. Therefore, he had had no practical opportunity to obtain legal advice prior to that examination. Moreover, he had not been advised of his right to remain silent in the course of that psychiatric examination. Accordingly, the applicant maintained that the Supreme Court had breached Article 6 §§ 1 and 3 (c).
2017	2/7/2017	LASHMANKIN AND OTHERS v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-170857	nos. 57818/09 and 14 others	53		0 majority	ECtHR	Senegal	R	general		0 313. The Report of the Special Rapporteur on the right to freedom of peaceful assembly and freedom of association of 21 May 2014 (A/HRC/20/27) describes best practices that promote and protect, in particular, the right to freedom of peaceful assembly. It reads as follows: "28. The Special Rapporteur believes that the exercise of fundamental freedoms should not be subject to previous authorization by the authorities ... but at the most to a prior notification procedure, whose rationale is to allow State authorities to facilitate the exercise of the right to freedom of peaceful assembly and to take measures to protect public safety and order and the rights and freedoms of others. Such a notification should be subject to a proportionality assessment, not unduly bureaucratic and be required a maximum of, for example, 48 hours prior to the day the assembly is planned to take place ... Prior notification should ideally be required only for large meetings or meetings which may disrupt road traffic ... 29. Should the organizers fail to notify the authorities, the assembly should not be dissolved automatically ... and the organizers should not be subject to criminal sanctions, or administrative sanctions resulting in fines or imprisonment. This is all the more relevant in the case of spontaneous assemblies where the organizers are unable to comply with the requisite notification requirements, or where there is no existing or identifiable organizer. In this context, the Special Rapporteur holds as best practice legislation allowing the holding of spontaneous assemblies, which should be exempted from prior notification ... 30. In the case of simultaneous assemblies at the same place and time, the Special Rapporteur considers it good practice to allow, protect and facilitate all events, whenever possible. In the case of counter-demonstrations, which aim at expressing discontent with the message of other assemblies, such demonstrations should take place, but should not dissuade participants of the other assemblies from exercising their right to freedom of peaceful assembly. In this respect, the role of law enforcement authorities in protecting and facilitating the events is crucial ... 37. The Special Rapporteur is opposed to the practice of 'kettling' (or containment) whereby demonstrators are surrounded by law enforcement officials and not allowed to leave ... 39. States also have a negative obligation not to unduly interfere with the right to peaceful assembly. The Special Rapporteur holds as best practice 'laws governing freedom of assembly [that] both avoid blanket time and location prohibitions, and provide for the possibility of other less intrusive restrictions ... Prohibition should be a measure of last resort and the authorities may prohibit a peaceful assembly only when a less restrictive response would not achieve the legitimate aim(s) pursued by the authorities'. 40. As mentioned earlier, any restrictions imposed must be necessary and proportionate to the aim pursued ... In addition, [assemblies] must be facilitated within "right and sound" of its object and target audience, and "organizers of peaceful assemblies should not be coerced to follow the authorities' suggestions if these would undermine the essence of their right to freedom of peaceful assembly". In this connection, he warns against the practice whereby authorities allow a demonstration to take place, but only on the outskirts of the city or in a specific square, where its impact will be muted. 41. The Special Rapporteur further concurs with the assessment of the ODHR Panel of Experts that 'the free flow of traffic should not automatically take precedence over freedom of peaceful assembly'. In this regard, the Inter-American Commission on Human Rights has indicated that 'the competent institutions of the State have a duty to design operating plans and procedures that will facilitate the exercise of the right of assembly ... [including] rerouting pedestrian and vehicular traffic in a certain area'. Furthermore, the Special Rapporteur points to a decision of the Spanish Constitutional Court which stated that 'in a democratic society, the urban space is not only an area for circulation, but also for participation'. 42. The Special Rapporteur stresses the importance of the regulatory authorities providing assembly organizers with 'timely and fulsome reasons for the imposition of any restrictions, and the possibility of an expedited appeal procedure'. The organizers should be able to appeal before an independent and impartial court, which should take a decision
2017	1/24/2017	KHAMTOKHU AND AKSENCHIK v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-170663	60367/08 and 961/11	GC	PINTO DE ALBUQUERQUE	dissenting	0	Angola	R	constitution	Article 66 of the Constitution	8. Requirement of an evolutive and pro persona interpretation of the rights guaranteed by the Convention (§§ 32-38) 32. Besides the fact that life imprisonment is not one of the purposes of criminal punishment, it is tending to be removed from national criminal systems, which illustrates the emergence of an international trend in favour of abolition of this type of punishment. In Europe, in addition to Portugal, Andorra (Articles 35 and 58 of the Criminal Code), Bosnia-Herzegovina (Article 42 of the Criminal Code), Croatia (Articles 44 and 51 of the Criminal Code), Montenegro (Article 33 of the Criminal Code), San-Marino (Article 81 of the Criminal Code), and Serbia (Article 45 of the Criminal Code) do not impose life imprisonment^[64]. Beyond European borders, other States proceed in the same way, such as Angola (Article 66 of the Constitution), Brazil (Article 5, XXVII, of the Constitution), Bolivia (Article 27 of the Criminal Code), Cape Verde (Article 32 of the Constitution), China (Article 41 of the Criminal Code of the autonomous region of Macao), Colombia (Article 34 of the Constitution), Costa Rica (Article 51 of the Criminal Code), the Dominican Republic (Article 7 of the Criminal Code), East Timor (Article 32 of the Constitution), Ecuador (Articles 51 and 53 of the Criminal Code), El Salvador (Article 45 of the Criminal Code), Guatemala (Article 44 of the Criminal Code), Honduras (Article 39 of the Criminal Code), Mexico (Article 25 of the Federal Criminal Code), Mozambique (Article 61 of the Constitution), Nicaragua (Article 52 of the Criminal Code), Panama (Article 52 of the Criminal Code), Paraguay (Article 38 of the Criminal Code), São Tomé and Príncipe (Article 37 of the Constitution), Uruguay (Article 68 of the Criminal Code) and Venezuela (Article 44 (3) of the Constitution). None of those systems has collapsed or experienced a marked increase in crime, showing de facto the existence of a move towards abolition and that this type of punishment is unnecessary in a democratic society. The Court is itself aware of this trend, moreover, as it indicated, <i>inter alia</i>, in the case of Vinter: 'there is also now clear support in European and international law for the principle that all prisoners, including those serving life sentences, be offered the possibility of rehabilitation and the prospect of release if that rehabilitation is achieved'^[65]. The judges were also at pains to point out that "[i]n this commitment to both the rehabilitation of life sentence prisoners and to the prospect of their eventual release is further reflected in the practice of the Contracting States"^[66].
2017	1/24/2017	KHAMTOKHU AND AKSENCHIK v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-170663	60367/08 and 961/11	GC	PINTO DE ALBUQUERQUE	dissenting	0	Bolivia	R	statute	Article 27 of the Criminal Code	8. Requirement of an evolutive and pro persona interpretation of the rights guaranteed by the Convention (§§ 32-38) 32. Besides the fact that life imprisonment is not one of the purposes of criminal punishment, it is tending to be removed from national criminal systems, which illustrates the emergence of an international trend in favour of abolition of this type of punishment. In Europe, in addition to Portugal, Andorra (Articles 35 and 58 of the Criminal Code), Bosnia-Herzegovina (Article 42 of the Criminal Code), Croatia (Articles 44 and 51 of the Criminal Code), Montenegro (Article 33 of the Criminal Code), San-Marino (Article 81 of the Criminal Code), and Serbia (Article 45 of the Criminal Code) do not impose life imprisonment^[64]. Beyond European borders, other States proceed in the same way, such as Angola (Article 66 of the Constitution), Brazil (Article 5, XXVII, of the Constitution), Bolivia (Article 27 of the Criminal Code), Cape Verde (Article 32 of the Constitution), China (Article 41 of the Criminal Code of the autonomous region of Macao), Colombia (Article 34 of the Constitution), Costa Rica (Article 51 of the Criminal Code), the Dominican Republic (Article 7 of the Criminal Code), East Timor (Article 32 of the Constitution), Ecuador (Articles 51 and 53 of the Criminal Code), El Salvador (Article 45 of the Criminal Code), Guatemala (Article 44 of the Criminal Code), Honduras (Article 39 of the Criminal Code), Mexico (Article 25 of the Federal Criminal Code), Mozambique (Article 61 of the Constitution), Nicaragua (Article 52 of the Criminal Code), Panama (Article 52 of the Criminal Code), Paraguay (Article 38 of the Criminal Code), São Tomé and Príncipe (Article 37 of the Constitution), Uruguay (Article 68 of the Criminal Code) and Venezuela (Article 44 (3) of the Constitution). None of those systems has collapsed or experienced a marked increase in crime, showing de facto the existence of a move towards abolition and that this type of punishment is unnecessary in a democratic society. The Court is itself aware of this trend, moreover, as it indicated, <i>inter alia</i>, in the case of Vinter: 'there is also now clear support in European and international law for the principle that all prisoners, including those serving life sentences, be offered the possibility of rehabilitation and the prospect of release if that rehabilitation is achieved'^[65]. The judges were also at pains to point out that "[i]n this commitment to both the rehabilitation of life sentence prisoners and to the prospect of their eventual release is further reflected in the practice of the Contracting States"^[66].
2017	1/24/2017	KHAMTOKHU AND AKSENCHIK v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-170663	nos. 60367/08 and 961/11	GC	PINTO DE ALBUQUERQUE	dissenting	0	Brazil	R	constitution	Article 5, XXVII, of the Constitution	32. Besides the fact that life imprisonment is not one of the purposes of criminal punishment, it is tending to be removed from national criminal systems, which illustrates the emergence of an international trend in favour of abolition of this type of punishment. In Europe, in addition to Portugal, Andorra (Articles 35 and 58 of the Criminal Code), Bosnia-Herzegovina (Article 42 of the Criminal Code), Croatia (Articles 44 and 51 of the Criminal Code), Montenegro (Article 33 of the Criminal Code), San-Marino (Article 81 of the Criminal Code), and Serbia (Article 45 of the Criminal Code) do not impose life imprisonment^[64]. Beyond European borders, other States proceed in the same way, such as Angola (Article 66 of the Constitution), Brazil (Article 5, XXVII, of the Constitution), Bolivia (Article 27 of the Criminal Code), Cape Verde (Article 32 of the Constitution), China (Article 41 of the Criminal Code of the autonomous region of Macao), Colombia (Article 34 of the Constitution), Costa Rica (Article 51 of the Criminal Code), the Dominican Republic (Article 7 of the Criminal Code), East Timor (Article 32 of the Constitution), Ecuador (Articles 51 and 53 of the Criminal Code), El Salvador (Article 45 of the Criminal Code), Guatemala (Article 44 of the Criminal Code), Honduras (Article 39 of the Criminal Code), Mexico (Article 25 of the Federal Criminal Code), Mozambique (Article 61 of the Constitution), Nicaragua (Article 52 of the Criminal Code), Panama (Article 52 of the Criminal Code), Paraguay (Article 38 of the Criminal Code), São Tomé and Príncipe (Article 37 of the Constitution), Uruguay (Article 68 of the Criminal Code) and Venezuela (Article 44 (3) of the Constitution). None of those systems has collapsed or experienced a marked increase in crime, showing de facto the existence of a move towards abolition and that this type of punishment is unnecessary in a democratic society. The Court is itself aware of this trend, moreover, as it indicated, <i>inter alia</i>, in the case of Vinter: 'there is also now clear support in European and international law for the principle that all prisoners, including those serving life sentences, be offered the possibility of rehabilitation and the prospect of release if that rehabilitation is achieved'^[65]. The judges were also at pains to point out that "[i]n this commitment to both the rehabilitation of life sentence prisoners and to the prospect of their eventual release is further reflected in the practice of the Contracting States"^[66].

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2017	1/24/2017	KHAMTOKHU AND AKSENCHIK v. RUSSIA	http://hudoc.echr.coe.int/eng?i=001-170663	nos. 60367/08 and 961/17	GC	PINTO DE ALBUQUERQUE	dissenting		0 Cape Verde	R	constitution	Article 32 of the Constitution	32. Besides the fact that life imprisonment is not one of the purposes of criminal punishment, it is tending to be removed from national criminal systems, which illustrates the emergence of an international trend in favour of abolition of this type of punishment. In Europe, in addition to Portugal, Andorra (Articles 35 and 58 of the Criminal Code), Bosnia-Herzegovina (Article 42 of the Criminal Code), Croatia (Articles 44 and 51 of the Criminal Code), Montenegro (Article 33 of the Criminal Code), San-Marino (Article 81 of the Criminal Code), and Serbia (Article 45 of the Criminal Code) do not impose life imprisonment[64]. Beyond European borders, other States proceed in the same way, such as Angola (Article 66 of the Constitution), Brazil (Article 5, XXVII, of the Constitution), Bolivia (Article 27 of the Criminal Code), Cape Verde (Article 32 of the Constitution), China (Article 41 of the Criminal Code of the autonomous region of Macao), Colombia (Article 34 of the Constitution), Costa Rica (Article 51 of the Criminal Code), the Dominican Republic (Article 7 of the Criminal Code), East Timor (Article 32 of the Constitution), Ecuador (Articles 51 and 53 of the Criminal Code), El Salvador (Article 45 of the Criminal Code), Guatemala (Article 44 of the Criminal Code), Honduras (Article 39 of the Criminal Code), Mexico (Article 25 of the Federal Criminal Code), Mozambique (Article 61 of the Constitution), Nicaragua (Article 52 of the Criminal Code), Panama (Article 52 of the Criminal Code), Paraguay (Article 38 of the Criminal Code), São Tomé and Príncipe (Article 37 of the Constitution), Uruguay (Article 68 of the Criminal Code) and Venezuela (Article 44 (3) of the Constitution). None of those systems has collapsed or experienced a marked increase in crime, showing de facto the existence of a move towards abolition and that this type of punishment is unnecessary in a democratic society. The Court is itself aware of this trend, moreover, as it indicated, <i>inter alia</i> , in the case of Vinter: "there is also now clear support in European and international law for the principle that all prisoners, including those serving life sentences, be offered the possibility of rehabilitation and the prospect of release if that rehabilitation is achieved"[65]. The judges were also at pains to point out that "[t]his commitment to both the rehabilitation of life sentence prisoners and to the prospect of their eventual release is further reflected in the practice of the Contracting States"[66].
2017	1/24/2017	KHAMTOKHU AND AKSENCHIK v. RUSSIA	http://hudoc.echr.coe.int/eng?i=001-170663	nos. 60367/08 and 961/17	GC	PINTO DE ALBUQUERQUE	dissenting		0 China	R	statute	Article 41 of the Criminal Code of the autonomous region of Macao	32. Besides the fact that life imprisonment is not one of the purposes of criminal punishment, it is tending to be removed from national criminal systems, which illustrates the emergence of an international trend in favour of abolition of this type of punishment. In Europe, in addition to Portugal, Andorra (Articles 35 and 58 of the Criminal Code), Bosnia-Herzegovina (Article 42 of the Criminal Code), Croatia (Articles 44 and 51 of the Criminal Code), Montenegro (Article 33 of the Criminal Code), San-Marino (Article 81 of the Criminal Code), and Serbia (Article 45 of the Criminal Code) do not impose life imprisonment[64]. Beyond European borders, other States proceed in the same way, such as Angola (Article 66 of the Constitution), Brazil (Article 5, XXVII, of the Constitution), Bolivia (Article 27 of the Criminal Code), Cape Verde (Article 32 of the Constitution), China (Article 41 of the Criminal Code of the autonomous region of Macao), Colombia (Article 34 of the Constitution), Costa Rica (Article 51 of the Criminal Code), the Dominican Republic (Article 7 of the Criminal Code), East Timor (Article 32 of the Constitution), Ecuador (Articles 51 and 53 of the Criminal Code), El Salvador (Article 45 of the Criminal Code), Guatemala (Article 44 of the Criminal Code), Honduras (Article 39 of the Criminal Code), Mexico (Article 25 of the Federal Criminal Code), Mozambique (Article 61 of the Constitution), Nicaragua (Article 52 of the Criminal Code), Panama (Article 52 of the Criminal Code), Paraguay (Article 38 of the Criminal Code), São Tomé and Príncipe (Article 37 of the Constitution), Uruguay (Article 68 of the Criminal Code) and Venezuela (Article 44 (3) of the Constitution). None of those systems has collapsed or experienced a marked increase in crime, showing de facto the existence of a move towards abolition and that this type of punishment is unnecessary in a democratic society. The Court is itself aware of this trend, moreover, as it indicated, <i>inter alia</i> , in the case of Vinter: "there is also now clear support in European and international law for the principle that all prisoners, including those serving life sentences, be offered the possibility of rehabilitation and the prospect of release if that rehabilitation is achieved"[65]. The judges were also at pains to point out that "[t]his commitment to both the rehabilitation of life sentence prisoners and to the prospect of their eventual release is further reflected in the practice of the Contracting States"[66].
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2017	1/24/2017	KHAMTOKHU AND AKSENCHIK v. RUSSIA	http://hudoc.echr.coe.int/eng?i=001-170663	nos. 60367/08 and 961/17	GC	PINTO DE ALBUQUERQUE	dissenting		0 Costa Rica	R	statute	Article 51 of the Criminal Code	32. Besides the fact that life imprisonment is not one of the purposes of criminal punishment, it is tending to be removed from national criminal systems, which illustrates the emergence of an international trend in favour of abolition of this type of punishment. In Europe, in addition to Portugal, Andorra (Articles 35 and 58 of the Criminal Code), Bosnia-Herzegovina (Article 42 of the Criminal Code), Croatia (Articles 44 and 51 of the Criminal Code), Montenegro (Article 33 of the Criminal Code), San-Marino (Article 81 of the Criminal Code), and Serbia (Article 45 of the Criminal Code) do not impose life imprisonment[64]. Beyond European borders, other States proceed in the same way, such as Angola (Article 66 of the Constitution), Brazil (Article 5, XXVII, of the Constitution), Bolivia (Article 27 of the Criminal Code), Cape Verde (Article 32 of the Constitution), China (Article 41 of the Criminal Code of the autonomous region of Macao), Colombia (Article 34 of the Constitution), Costa Rica (Article 51 of the Criminal Code), the Dominican Republic (Article 7 of the Criminal Code), East Timor (Article 32 of the Constitution), Ecuador (Articles 51 and 53 of the Criminal Code), El Salvador (Article 45 of the Criminal Code), Guatemala (Article 44 of the Criminal Code), Honduras (Article 39 of the Criminal Code), Mexico (Article 25 of the Federal Criminal Code), Mozambique (Article 61 of the Constitution), Nicaragua (Article 52 of the Criminal Code), Panama (Article 52 of the Criminal Code), Paraguay (Article 38 of the Criminal Code), São Tomé and Príncipe (Article 37 of the Constitution), Uruguay (Article 68 of the Criminal Code) and Venezuela (Article 44 (3) of the Constitution). None of those systems has collapsed or experienced a marked increase in crime, showing de facto the existence of a move towards abolition and that this type of punishment is unnecessary in a democratic society. The Court is itself aware of this trend, moreover, as it indicated, <i>inter alia</i> , in the case of Vinter: "there is also now clear support in European and international law for the principle that all prisoners, including those serving life sentences, be offered the possibility of rehabilitation and the prospect of release if that rehabilitation is achieved"[65]. The judges were also at pains to point out that "[t]his commitment to both the rehabilitation of life sentence prisoners and to the prospect of their eventual release is further reflected in the practice of the Contracting States"[66].
2017	1/24/2017	KHAMTOKHU AND AKSENCHIK v. RUSSIA	http://hudoc.echr.coe.int/eng?i=001-170663	nos. 60367/08 and 961/17	GC	PINTO DE ALBUQUERQUE	dissenting		0 Dominican Rep	R	statute	Article 7 of the Criminal Code	32. Besides the fact that life imprisonment is not one of the purposes of criminal punishment, it is tending to be removed from national criminal systems, which illustrates the emergence of an international trend in favour of abolition of this type of punishment. In Europe, in addition to Portugal, Andorra (Articles 35 and 58 of the Criminal Code), Bosnia-Herzegovina (Article 42 of the Criminal Code), Croatia (Articles 44 and 51 of the Criminal Code), Montenegro (Article 33 of the Criminal Code), San-Marino (Article 81 of the Criminal Code), and Serbia (Article 45 of the Criminal Code) do not impose life imprisonment[64]. Beyond European borders, other States proceed in the same way, such as Angola (Article 66 of the Constitution), Brazil (Article 5, XXVII, of the Constitution), Bolivia (Article 27 of the Criminal Code), Cape Verde (Article 32 of the Constitution), China (Article 41 of the Criminal Code of the autonomous region of Macao), Colombia (Article 34 of the Constitution), Costa Rica (Article 51 of the Criminal Code), the Dominican Republic (Article 7 of the Criminal Code), East Timor (Article 32 of the Constitution), Ecuador (Articles 51 and 53 of the Criminal Code), El Salvador (Article 45 of the Criminal Code), Guatemala (Article 44 of the Criminal Code), Honduras (Article 39 of the Criminal Code), Mexico (Article 25 of the Federal Criminal Code), Mozambique (Article 61 of the Constitution), Nicaragua (Article 52 of the Criminal Code), Panama (Article 52 of the Criminal Code), Paraguay (Article 38 of the Criminal Code), São Tomé and Príncipe (Article 37 of the Constitution), Uruguay (Article 68 of the Criminal Code) and Venezuela (Article 44 (3) of the Constitution). None of those systems has collapsed or experienced a marked increase in crime, showing de facto the existence of a move towards abolition and that this type of punishment is unnecessary in a democratic society. The Court is itself aware of this trend, moreover, as it indicated, <i>inter alia</i> , in the case of Vinter: "there is also now clear support in European and international law for the principle that all prisoners, including those serving life sentences, be offered the possibility of rehabilitation and the prospect of release if that rehabilitation is achieved"[65]. The judges were also at pains to point out that "[t]his commitment to both the rehabilitation of life sentence prisoners and to the prospect of their eventual release is further reflected in the practice of the Contracting States"[66].
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None of those systems has collapsed or experienced a marked increase in crime, showing de facto the existence of a move towards abolition and that this type of punishment is unnecessary in a democratic society. The Court is itself aware of this trend, moreover, as it indicated, <i>inter alia</i> , in the case of Vinter: "there is also now clear support in European and international law for the principle that all prisoners, including those serving life sentences, be offered the possibility of rehabilitation and the prospect of release if that rehabilitation is achieved"[65]. The judges were also at pains to point out that "[t]his commitment to both the rehabilitation of life sentence prisoners and to the prospect of their eventual release is further reflected in the practice of the Contracting States"[66]. 34. Such a consensual and evolutive interpretation conforms to the rules of interpretation of international law. In the Russian indemnity case the Permanent Court of Arbitration observed that "the fulfilment of obligations [was], between States as between individuals, the surest common ground on the meaning of these obligations"[69]. The subsequent practice of the parties in executing a treaty is therefore a fundamental tool of interpretation, capable of enlightening the interpreter as to the manner in which the agreement must be understood. It is therefore logical that it should appear among the rules of interpretation listed in Article 31 of the Vienna Convention. This is a classic interpretation technique of international law, practised by nearly all international jurisdictions[70]. The International Court of Justice has for a long time examined such subsequent practice when interpreting the provisions of a treaty[71] and clearly indicated in a case brought by Costa Rica against Nicaragua concerning a dispute regarding navigational and related rights that "the subsequent practice of the parties, within the meaning of Article 31 (1) (b) of the Vienna Convention, can result in a departure from the original intent on the basis of a tacit agreement between the parties"[72]. In its classic sense subsequent practice is thus understood from a State-centred perspective, as had already been observed by Sir Gerald Fitzmaurice who said that such a practice was not, in his view, made out unless "it [was] possible and reasonable in the circumstances to infer from the behavior of the parties that they ha[d] regarded the interpretation of the instrument in question as the legally correct one, and ha[d] tacitly recognized that, in consequence, certain behaviour was legally incumbent upon them"[73]. The fact remains that the argument based on the existence of a European consensus is in line with this traditional rule, whose central position in the European system is confirmed by the wording of the Preamble referred to above. In the Loizidou v. Turkey judgment the Court reiterated its attachment to respect for the rules of interpretation formulated in the Vienna Convention of 1969, and more particularly the "subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation"[74]. It thus formally expressed the link between subsequent practice and the consensus observable between the Contracting States in considering that "with regard to subsequent treaty practice, while there have been statements opposing the Turkish interpretation of Articles 25 and 46, it has not been established that there is a practice reflecting an agreement among all Contracting Parties concerning the attachment of conditions to these instruments of acceptance"[75]. This approach contains, in essence, an important evolutive dimension in that the practice of States and non-State actors evolves throughout execution of the treaty, adapting to changing customs and new social realities. It is therefore an indication par excellence for the European Court of present-day conditions.

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2017	1/24/2017	KHAMTOKHU AND AKSENCHIK v. RUSSIA	http://hudoc.echr.coe.int/eng?i=001-170663	nos. 60367/08 and 961/11	GC	PINTO DE ALBUQUERQUE	dissenting		0 Panama	R	statute	Article 52 of the Criminal Code	32. Besides the fact that life imprisonment is not one of the purposes of criminal punishment, it is tending to be removed from national criminal systems, which illustrates the emergence of an international trend in favour of abolition of this type of punishment. In Europe, in addition to Portugal, Andorra (Articles 35 and 58 of the Criminal Code), Bosnia-Herzegovina (Article 42 of the Criminal Code), Croatia (Articles 44 and 51 of the Criminal Code), Montenegro (Article 33 of the Criminal Code), San-Marino (Article 81 of the Criminal Code), and Serbia (Article 45 of the Criminal Code) do not impose life imprisonment[64]. Beyond European borders, other States proceed in the same way, such as Angola (Article 66 of the Constitution), Brazil (Article 5, XXVII, of the Constitution), Bolivia (Article 27 of the Criminal Code), Cape Verde (Article 32 of the Constitution), China (Article 41 of the Criminal Code of the autonomous region of Macao), Colombia (Article 34 of the Constitution), Costa Rica (Article 51 of the Criminal Code), the Dominican Republic (Article 7 of the Criminal Code), East Timor (Article 32 of the Constitution), Ecuador (Articles 51 and 53 of the Criminal Code), El Salvador (Article 45 of the Criminal Code), Guatemala (Article 44 of the Criminal Code), Honduras (Article 39 of the Criminal Code), Mexico (Article 25 of the Federal Criminal Code), Mozambique (Article 61 of the Constitution), Nicaragua (Article 52 of the Criminal Code), Panama (Article 52 of the Criminal Code), Paraguay (Article 38 of the Criminal Code), São Tomé and Príncipe (Article 37 of the Constitution), Uruguay (Article 68 of the Criminal Code) and Venezuela (Article 44 (3) of the Constitution). None of those systems has collapsed or experienced a marked increase in crime, showing de facto the existence of a move towards abolition and that this type of punishment is unnecessary in a democratic society. The Court is itself aware of this trend, moreover, as it indicated, <i>inter alia</i> , in the case of Vinter: "there is also now clear support in European and international law for the principle that all prisoners, including those serving life sentences, be offered the possibility of rehabilitation and the prospect of release if that rehabilitation is achieved"[65]. The judges were also at pains to point out that "[t]his commitment to both the rehabilitation of life sentence prisoners and to the prospect of their eventual release is further reflected in the practice of the Contracting States"[66].
2017	1/24/2017	KHAMTOKHU AND AKSENCHIK v. RUSSIA	http://hudoc.echr.coe.int/eng?i=001-170663	nos. 60367/08 and 961/11	GC	PINTO DE ALBUQUERQUE	dissenting		0 Paraguay	R	statute	Article 38 of the Criminal Code	32. Besides the fact that life imprisonment is not one of the purposes of criminal punishment, it is tending to be removed from national criminal systems, which illustrates the emergence of an international trend in favour of abolition of this type of punishment. In Europe, in addition to Portugal, Andorra (Articles 35 and 58 of the Criminal Code), Bosnia-Herzegovina (Article 42 of the Criminal Code), Croatia (Articles 44 and 51 of the Criminal Code), Montenegro (Article 33 of the Criminal Code), San-Marino (Article 81 of the Criminal Code), and Serbia (Article 45 of the Criminal Code) do not impose life imprisonment[64]. Beyond European borders, other States proceed in the same way, such as Angola (Article 66 of the Constitution), Brazil (Article 5, XXVII, of the Constitution), Bolivia (Article 27 of the Criminal Code), Cape Verde (Article 32 of the Constitution), China (Article 41 of the Criminal Code of the autonomous region of Macao), Colombia (Article 34 of the Constitution), Costa Rica (Article 51 of the Criminal Code), the Dominican Republic (Article 7 of the Criminal Code), East Timor (Article 32 of the Constitution), Ecuador (Articles 51 and 53 of the Criminal Code), El Salvador (Article 45 of the Criminal Code), Guatemala (Article 44 of the Criminal Code), Honduras (Article 39 of the Criminal Code), Mexico (Article 25 of the Federal Criminal Code), Mozambique (Article 61 of the Constitution), Nicaragua (Article 52 of the Criminal Code), Panama (Article 52 of the Criminal Code), Paraguay (Article 38 of the Criminal Code), São Tomé and Príncipe (Article 37 of the Constitution), Uruguay (Article 68 of the Criminal Code) and Venezuela (Article 44 (3) of the Constitution). None of those systems has collapsed or experienced a marked increase in crime, showing de facto the existence of a move towards abolition and that this type of punishment is unnecessary in a democratic society. The Court is itself aware of this trend, moreover, as it indicated, <i>inter alia</i> , in the case of Vinter: "there is also now clear support in European and international law for the principle that all prisoners, including those serving life sentences, be offered the possibility of rehabilitation and the prospect of release if that rehabilitation is achieved"[65]. The judges were also at pains to point out that "[t]his commitment to both the rehabilitation of life sentence prisoners and to the prospect of their eventual release is further reflected in the practice of the Contracting States"[66].
2017	1/24/2017	KHAMTOKHU AND AKSENCHIK v. RUSSIA	http://hudoc.echr.coe.int/eng?i=001-170663	nos. 60367/08 and 961/11	GC	PINTO DE ALBUQUERQUE	dissenting		0 São Tomé and Príncipe	R	constitution	Article 37 of the Constitution	32. Besides the fact that life imprisonment is not one of the purposes of criminal punishment, it is tending to be removed from national criminal systems, which illustrates the emergence of an international trend in favour of abolition of this type of punishment. In Europe, in addition to Portugal, Andorra (Articles 35 and 58 of the Criminal Code), Bosnia-Herzegovina (Article 42 of the Criminal Code), Croatia (Articles 44 and 51 of the Criminal Code), Montenegro (Article 33 of the Criminal Code), San-Marino (Article 81 of the Criminal Code), and Serbia (Article 45 of the Criminal Code) do not impose life imprisonment[64]. Beyond European borders, other States proceed in the same way, such as Angola (Article 66 of the Constitution), Brazil (Article 5, XXVII, of the Constitution), Bolivia (Article 27 of the Criminal Code), Cape Verde (Article 32 of the Constitution), China (Article 41 of the Criminal Code of the autonomous region of Macao), Colombia (Article 34 of the Constitution), Costa Rica (Article 51 of the Criminal Code), the Dominican Republic (Article 7 of the Criminal Code), East Timor (Article 32 of the Constitution), Ecuador (Articles 51 and 53 of the Criminal Code), El Salvador (Article 45 of the Criminal Code), Guatemala (Article 44 of the Criminal Code), Honduras (Article 39 of the Criminal Code), Mexico (Article 25 of the Federal Criminal Code), Mozambique (Article 61 of the Constitution), Nicaragua (Article 52 of the Criminal Code), Panama (Article 52 of the Criminal Code), Paraguay (Article 38 of the Criminal Code), São Tomé and Príncipe (Article 37 of the Constitution), Uruguay (Article 68 of the Criminal Code) and Venezuela (Article 44 (3) of the Constitution). None of those systems has collapsed or experienced a marked increase in crime, showing de facto the existence of a move towards abolition and that this type of punishment is unnecessary in a democratic society. The Court is itself aware of this trend, moreover, as it indicated, <i>inter alia</i> , in the case of Vinter: "there is also now clear support in European and international law for the principle that all prisoners, including those serving life sentences, be offered the possibility of rehabilitation and the prospect of release if that rehabilitation is achieved"[65]. The judges were also at pains to point out that "[t]his commitment to both the rehabilitation of life sentence prisoners and to the prospect of their eventual release is further reflected in the practice of the Contracting States"[66].
2017	1/24/2017	KHAMTOKHU AND AKSENCHIK v. RUSSIA	http://hudoc.echr.coe.int/eng?i=001-170663	nos. 60367/08 and 961/11	GC	PINTO DE ALBUQUERQUE	dissenting		0 Uruguay	R	statute	Article 68 of the Criminal Code	32. Besides the fact that life imprisonment is not one of the purposes of criminal punishment, it is tending to be removed from national criminal systems, which illustrates the emergence of an international trend in favour of abolition of this type of punishment. In Europe, in addition to Portugal, Andorra (Articles 35 and 58 of the Criminal Code), Bosnia-Herzegovina (Article 42 of the Criminal Code), Croatia (Articles 44 and 51 of the Criminal Code), Montenegro (Article 33 of the Criminal Code), San-Marino (Article 81 of the Criminal Code), and Serbia (Article 45 of the Criminal Code) do not impose life imprisonment[64]. Beyond European borders, other States proceed in the same way, such as Angola (Article 66 of the Constitution), Brazil (Article 5, XXVII, of the Constitution), Bolivia (Article 27 of the Criminal Code), Cape Verde (Article 32 of the Constitution), China (Article 41 of the Criminal Code of the autonomous region of Macao), Colombia (Article 34 of the Constitution), Costa Rica (Article 51 of the Criminal Code), the Dominican Republic (Article 7 of the Criminal Code), East Timor (Article 32 of the Constitution), Ecuador (Articles 51 and 53 of the Criminal Code), El Salvador (Article 45 of the Criminal Code), Guatemala (Article 44 of the Criminal Code), Honduras (Article 39 of the Criminal Code), Mexico (Article 25 of the Federal Criminal Code), Mozambique (Article 61 of the Constitution), Nicaragua (Article 52 of the Criminal Code), Panama (Article 52 of the Criminal Code), Paraguay (Article 38 of the Criminal Code), São Tomé and Príncipe (Article 37 of the Constitution), Uruguay (Article 68 of the Criminal Code) and Venezuela (Article 44 (3) of the Constitution). None of those systems has collapsed or experienced a marked increase in crime, showing de facto the existence of a move towards abolition and that this type of punishment is unnecessary in a democratic society. The Court is itself aware of this trend, moreover, as it indicated, <i>inter alia</i> , in the case of Vinter: "there is also now clear support in European and international law for the principle that all prisoners, including those serving life sentences, be offered the possibility of rehabilitation and the prospect of release if that rehabilitation is achieved"[65]. The judges were also at pains to point out that "[t]his commitment to both the rehabilitation of life sentence prisoners and to the prospect of their eventual release is further reflected in the practice of the Contracting States"[66].
2017	1/24/2017	KHAMTOKHU AND AKSENCHIK v. RUSSIA	http://hudoc.echr.coe.int/eng?i=001-170663	nos. 60367/08 and 961/11	GC	PINTO DE ALBUQUERQUE	dissenting		0 Venezuela	R	constitution	Article 44 (3) of the Constitution	32. Besides the fact that life imprisonment is not one of the purposes of criminal punishment, it is tending to be removed from national criminal systems, which illustrates the emergence of an international trend in favour of abolition of this type of punishment. In Europe, in addition to Portugal, Andorra (Articles 35 and 58 of the Criminal Code), Bosnia-Herzegovina (Article 42 of the Criminal Code), Croatia (Articles 44 and 51 of the Criminal Code), Montenegro (Article 33 of the Criminal Code), San-Marino (Article 81 of the Criminal Code), and Serbia (Article 45 of the Criminal Code) do not impose life imprisonment[64]. Beyond European borders, other States proceed in the same way, such as Angola (Article 66 of the Constitution), Brazil (Article 5, XXVII, of the Constitution), Bolivia (Article 27 of the Criminal Code), Cape Verde (Article 32 of the Constitution), China (Article 41 of the Criminal Code of the autonomous region of Macao), Colombia (Article 34 of the Constitution), Costa Rica (Article 51 of the Criminal Code), the Dominican Republic (Article 7 of the Criminal Code), East Timor (Article 32 of the Constitution), Ecuador (Articles 51 and 53 of the Criminal Code), El Salvador (Article 45 of the Criminal Code), Guatemala (Article 44 of the Criminal Code), Honduras (Article 39 of the Criminal Code), Mexico (Article 25 of the Federal Criminal Code), Mozambique (Article 61 of the Constitution), Nicaragua (Article 52 of the Criminal Code), Panama (Article 52 of the Criminal Code), Paraguay (Article 38 of the Criminal Code), São Tomé and Príncipe (Article 37 of the Constitution), Uruguay (Article 68 of the Criminal Code) and Venezuela (Article 44 (3) of the Constitution). None of those systems has collapsed or experienced a marked increase in crime, showing de facto the existence of a move towards abolition and that this type of punishment is unnecessary in a democratic society. The Court is itself aware of this trend, moreover, as it indicated, <i>inter alia</i> , in the case of Vinter: "there is also now clear support in European and international law for the principle that all prisoners, including those serving life sentences, be offered the possibility of rehabilitation and the prospect of release if that rehabilitation is achieved"[65]. The judges were also at pains to point out that "[t]his commitment to both the rehabilitation of life sentence prisoners and to the prospect of their eventual release is further reflected in the practice of the Contracting States"[66].
2017	1/24/2017	KHAMTOKHU AND AKSENCHIK v. RUSSIA	http://hudoc.echr.coe.int/eng?i=001-170663	nos. 60367/08 and 961/11	GC		0 majority	government	Belarus	R	general		0 45. The Government further pointed out that international law provided for a more humane approach towards women, while the UN Convention on the Elimination of All Forms of Discrimination against Women stated that special measures aimed at protecting maternity were not to be considered discriminatory (CEDAW) (Article 4 § 2). They referred to certain scientific studies according to which women constituted a minority of detainees worldwide. Women were often the primary carers of children before incarceration and up to 90 percent of them had a history of domestic abuse which contributed to their criminal conduct and emphasised their vulnerability. According to the Government, Russia was not the only State that did not sentence women to life imprisonment; other States included Albania, Armenia, Azerbaijan, Belarus and Uzbekistan. The Ukrainian Parliament had adopted, at first reading, a draft law exempting women from life sentences.
2017	1/24/2017	KHAMTOKHU AND AKSENCHIK v. RUSSIA	http://hudoc.echr.coe.int/eng?i=001-170663	60367/08 961/11	GC		0 majority	ECtHR	Bolivia	R	general		0 19. According to the information available to the Court, there are currently nine member States of the Council of Europe where life imprisonment does not exist: Andorra, Bosnia-Herzegovina, Croatia, Montenegro, Norway, Portugal, San Marino, Serbia and Spain. In the rest of the world, many Central and South American countries (Bolivia, Colombia, Costa Rica, Dominican Republic, Ecuador, Honduras, Mexico, Nicaragua, Panama, Paraguay, El Salvador, Uruguay and Venezuela) have abolished life imprisonment, with some exceptions during wartime.
2017	1/24/2017	KHAMTOKHU AND AKSENCHIK v. RUSSIA	http://hudoc.echr.coe.int/eng?i=001-170663	60367/08 961/11	GC		0 majority	ECtHR	Colombia	R	general		0 19. According to the information available to the Court, there are currently nine member States of the Council of Europe where life imprisonment does not exist: Andorra, Bosnia-Herzegovina, Croatia, Montenegro, Norway, Portugal, San Marino, Serbia and Spain. In the rest of the world, many Central and South American countries (Bolivia, Colombia, Costa Rica, Dominican Republic, Ecuador, Honduras, Mexico, Nicaragua, Panama, Paraguay, El Salvador, Uruguay and Venezuela) have abolished life imprisonment, with some exceptions during wartime.
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2017	1/24/2017	KHAMTOKHU AND AKSENCHIK v. RUSSIA	http://hudoc.echr.coe.int/eng?i=001-170663	60367/08 961/11	GC		0 majority	ECtHR	Dominican Rep	R	general		0 19. According to the information available to the Court, there are currently nine member States of the Council of Europe where life imprisonment does not exist: Andorra, Bosnia-Herzegovina, Croatia, Montenegro, Norway, Portugal, San Marino, Serbia and Spain. In the rest of the world, many Central and South American countries (Bolivia, Colombia, Costa Rica, Dominican Republic, Ecuador, Honduras, Mexico, Nicaragua, Panama, Paraguay, El Salvador, Uruguay and Venezuela) have abolished life imprisonment, with some exceptions during wartime.
2017	1/24/2017	KHAMTOKHU AND AKSENCHIK v. RUSSIA	http://hudoc.echr.coe.int/eng?i=001-170663	60367/08 961/11	GC		0 majority	ECtHR	Ecuador	R	general		0 19. According to the information available to the Court, there are currently nine member States of the Council of Europe where life imprisonment does not exist: Andorra, Bosnia-Herzegovina, Croatia, Montenegro, Norway, Portugal, San Marino, Serbia and Spain. In the rest of the world, many Central and South American countries (Bolivia, Colombia, Costa Rica, Dominican Republic, Ecuador, Honduras, Mexico, Nicaragua, Panama, Paraguay, El Salvador, Uruguay and Venezuela) have abolished life imprisonment, with some exceptions during wartime.
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2017	1/24/2017	KHAMTOKHU AND AKSENCHIK v. RUSSIA	http://hudoc.echr.coe.int/eng?i=001-170663	60367/08 961/11	GC		0 majority	ECtHR	Honduras	R	general		0 19. According to the information available to the Court, there are currently nine member States of the Council of Europe where life imprisonment does not exist: Andorra, Bosnia-Herzegovina, Croatia, Montenegro, Norway, Portugal, San Marino, Serbia and Spain. In the rest of the world, many Central and South American countries (Bolivia, Colombia, Costa Rica, Dominican Republic, Ecuador, Honduras, Mexico, Nicaragua, Panama, Paraguay, El Salvador, Uruguay and Venezuela) have abolished life imprisonment, with some exceptions during wartime.
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2017	1/24/2017	KHAMTOKHU AND AKSENCHIK v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-170663	60367/08 961/11	GC		0 majority	ECTHR	Nicaragua	R	general		19. According to the information available to the Court, there are currently nine member States of the Council of Europe where life imprisonment does not exist: Andorra, Bosnia-Herzegovina, Croatia, Montenegro, Norway, Portugal, San Marino, Serbia and Spain. In the rest of the world, many Central and South American countries (Bolivia, Colombia, Costa Rica, Dominican Republic, Ecuador, Honduras, Mexico, Nicaragua, Panama, Paraguay, El Salvador, Uruguay and Venezuela) have abolished life imprisonment, with some exceptions during wartime.
2017	1/24/2017	KHAMTOKHU AND AKSENCHIK v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-170663	60367/08 961/11	GC		0 majority	ECTHR	Panama	R	general		19. According to the information available to the Court, there are currently nine member States of the Council of Europe where life imprisonment does not exist: Andorra, Bosnia-Herzegovina, Croatia, Montenegro, Norway, Portugal, San Marino, Serbia and Spain. In the rest of the world, many Central and South American countries (Bolivia, Colombia, Costa Rica, Dominican Republic, Ecuador, Honduras, Mexico, Nicaragua, Panama, Paraguay, El Salvador, Uruguay and Venezuela) have abolished life imprisonment, with some exceptions during wartime.
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2017	1/24/2017	KHAMTOKHU AND AKSENCHIK v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-170663	60367/08 961/11	GC		0 majority	ECTHR	Uruguay	R	general		19. According to the information available to the Court, there are currently nine member States of the Council of Europe where life imprisonment does not exist: Andorra, Bosnia-Herzegovina, Croatia, Montenegro, Norway, Portugal, San Marino, Serbia and Spain. In the rest of the world, many Central and South American countries (Bolivia, Colombia, Costa Rica, Dominican Republic, Ecuador, Honduras, Mexico, Nicaragua, Panama, Paraguay, El Salvador, Uruguay and Venezuela) have abolished life imprisonment, with some exceptions during wartime.
2017	1/24/2017	KHAMTOKHU AND AKSENCHIK v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-170663	nos. 60367/08 and 961/11	GC		0 majority	government	Uzbekistan	R	general		45. The Government further pointed out that international law provided for a more humane approach towards women, while the UN Convention on the Elimination of All Forms of Discrimination against Women stated that special measures aimed at protecting maternity were not to be considered discriminatory (CEDAW) (Article 4 § 2). They referred to certain scientific studies according to which women constituted a minority of detainees worldwide. Women were often the primary carers of children before incarceration and up to 90 percent of them had a history of domestic abuse which contributed to their criminal conduct and emphasised their vulnerability. According to the Government, Russia was not the only State that did not sentence women to life imprisonment; other States included Albania, Armenia, Azerbaijan, Belarus and Uzbekistan. The Ukrainian Parliament had adopted, at first reading, a draft law exempting women from life sentences.
2017	1/24/2017	KHAMTOKHU AND AKSENCHIK v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-170663	60367/08 961/11	GC		0 majority	ECTHR	Venezuela	R	general		19. According to the information available to the Court, there are currently nine member States of the Council of Europe where life imprisonment does not exist: Andorra, Bosnia-Herzegovina, Croatia, Montenegro, Norway, Portugal, San Marino, Serbia and Spain. In the rest of the world, many Central and South American countries (Bolivia, Colombia, Costa Rica, Dominican Republic, Ecuador, Honduras, Mexico, Nicaragua, Panama, Paraguay, El Salvador, Uruguay and Venezuela) have abolished life imprisonment, with some exceptions during wartime.
2017	1/17/2017	A.H. AND OTHERS v. RUSSIA	https://hudoc.echr.coe.int/eng/?i=001-170990	nos. 6033/13, 8927/13, 10949/13, 12275/13, 23890/13, 26309/13, 27161/13, 29197/13, 32224/13, 32331/13, 32351/13, 32368/13, 37173/13, 38490/13, 42340/13 and 42403/13	S3		0 majority	government	Guatemala	R	general		393. The Government also argued that States had wide discretion in matters of international adoption. They pointed out that some States joined the 1993 Hague Convention on the Protection of Children and Co-operation in Respect of Adoption as receiving States only, meaning that they had no intention of transferring children to other States who were nationals of that State for adoption to other States. Furthermore, there were numerous instances when a particular State had suspended intercountry adoption either as a whole or with respect to particular States. The Government referred, in particular, to the ban on adoption from Cambodia introduced by the United Kingdom in 2005; the ban on intercountry adoption of Romanian children introduced by Romania in 2001, which remained in force until Romania's accession to the European Union; the ban on intercountry adoption introduced by Guatemala in 2007; and the ban on adoption of Vietnamese children by the US nationals introduced by Vietnam in 2008. The Government also referred to the legislative provisions of a number of countries which either permitted intercountry adoption in exceptional cases only or made it subject to a number of strict requirements, which usually included the impossibility of finding an adoptive family for the child within the State.
2017	1/10/2017	BABIARZ v. POLAND	http://hudoc.echr.coe.int/eng/?i=001-170344	1955/10	S4	SAJÓ	dissenting		0 US	C	SC	Obergefell v. Hodges, 576 U.S. ____ (2015)	20. Divorce, at least in the present case, becomes a necessary precondition of the right to marry. As a recent landmark ruling of the Supreme Court of the United States has said, "the right to personal choice regarding marriage is inherent in the concept of individual autonomy", it being "a fundamental right inherent in the liberty of the person", and "decisions concerning marriage are among the most intimate that an individual can make" (see Obergefell v. Hodges, 576 U.S. ____ (2015), at §§ 12, 22 and 32 respectively).
2016	11/15/2016	A AND B v. NORWAY	http://hudoc.echr.coe.int/eng/?i=001-168972	24130/11 and 29758/11	GC	PINTO DE ALBUQUERQUE	dissenting		0 US	R	constitution	Fifth Amendment to the United States Constitution	5. The Enlightenment brought a revival of the individual dimension of <i>ne bis in eadem</i> , which was incorporated into Article 8 of Chapter V of Title II of the 1791 French Constitution ("tout homme acquitté par un jury légal ne peut plus être repris ni accusé à raison du même fait") and Articles 246 and 360 of the 1808 Code d'Instruction Criminelle. The practical consequence of these provisions was the abolition of the infamous <i>plus amplement informé</i> rule. On the other side of the Atlantic Ocean, in that same year of 1791, the Fifth Amendment to the United States Constitution introduced a prohibition of double jeopardy in criminal procedure ("nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb"), which encompasses the prohibition of subsequent prosecution after acquittal, subsequent prosecution after conviction and multiple punishments for the same offence[8]. The Amendment was designed as much to prevent the offender from being punished twice as from being tried twice for the same offence. When the conviction has been set aside for an error, the punishment already exacted for the offence must be fully "credited" in imposing sentence upon a new conviction for the same offence[9]. [8]. North Carolina v. Pearce, 395 U.S. 711, 717 (1969).
2016	11/15/2016	A AND B v. NORWAY	http://hudoc.echr.coe.int/eng/?i=001-168972	24130/11 and 29758/11	GC	PINTO DE ALBUQUERQUE	dissenting		0 US	C	SC	North Carolina v. Pearce, 395 U.S. 711, 717 (1969)	5. The Enlightenment brought a revival of the individual dimension of <i>ne bis in eadem</i> , which was incorporated into Article 8 of Chapter V of Title II of the 1791 French Constitution ("tout homme acquitté par un jury légal ne peut plus être repris ni accusé à raison du même fait") and Articles 246 and 360 of the 1808 Code d'Instruction Criminelle. The practical consequence of these provisions was the abolition of the infamous <i>plus amplement informé</i> rule. On the other side of the Atlantic Ocean, in that same year of 1791, the Fifth Amendment to the United States Constitution introduced a prohibition of double jeopardy in criminal procedure ("nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb"), which encompasses the prohibition of subsequent prosecution after acquittal, subsequent prosecution after conviction and multiple punishments for the same offence[8]. The Amendment was designed as much to prevent the offender from being punished twice as from being tried twice for the same offence. When the conviction has been set aside for an error, the punishment already exacted for the offence must be fully "credited" in imposing sentence upon a new conviction for the same offence[9]. [8]. North Carolina v. Pearce, 395 U.S. 711, 717 (1969).
2016	11/15/2016	A AND B v. NORWAY	http://hudoc.echr.coe.int/eng/?i=001-168972	24130/11 and 29758/11	GC	PINTO DE ALBUQUERQUE	dissenting		0 US	R	constitution	Seventh Amendment to the United States Constitution	[9]. <i>Ibid.</i> , 718. 35. To sum up, Sergey Zolotukhin affirms the <i>ne bis in idem</i> principle as an individual right in European human rights law, with the same scope as the standard exhaustion-of-procedure principle (Erfolgungsprinzip)[100]. This guarantee extends to the right not to be prosecuted or tried twice[101]. The European meaning of the principle goes far beyond the maxim of <i>res judicata pro veritate habetur</i> , which is aimed fundamentally at protecting the final, authoritative, public statement on the crimes, and therefore at ensuring legal certainty and avoiding contradictory judgments. In addition to this, the European understanding of the <i>ne bis in idem</i> principle seeks to protect the person subjected to the alleged offence from double jeopardy where a prior acquittal or conviction has already acquired the force of <i>res judicata</i> [102]. [102]. As has been shown above, this is the underlying ideology of the Seventh Amendment to the United States Constitution and of Article 8 of Chapter V of Title II of the 1791 French Constitution, which shows that Sergey Zolotukhin is in line with the historical, <i>pro persona</i> understanding of this principle in modern times.
2016	11/15/2016	A AND B v. NORWAY	http://hudoc.echr.coe.int/eng/?i=001-168972	24130/11 and 29758/11	GC		0 majority	intervener	US	C	SC	Green v. United States, 355 US 194 (1957)	89. The Bulgarian Government, referring to the wording of the provision and its purpose, maintained that only traditional criminal offences fell within the ambit of Article 4 of Protocol No. 7. Whilst extending the scope of Article 6 was paramount for the protection of the right to a fair trial, the purpose of the provision in the Protocol was different. Referring to the ruling of the Supreme Court of the United States of America in <i>Green v. United States</i> , 355 US 194 (1957), they stressed that the double-jeopardy clause protected an individual from being subjected to the hazards of trial and possible conviction more than once for an alleged offence. The underlying idea was that the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offence, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that, even though innocent, he may be found guilty. A second vitally important interest was to preserve the finality of judgments.
2016	10/20/2016	MURŠIĆ v. CROATIA	http://hudoc.echr.coe.int/eng/?i=001-167483	7334/13	GC	LAZAROVA TRAIKOVSKA, DE GA	dissenting (join)		0 US	C	lower-level	not specified (referred to legal scholarship)	6. This apparent need for a multifaceted policy response to inhuman conditions in prisons has forced courts in other jurisdictions to develop a more "hands on" approach, through a general review of conditions in a specific prison and the granting of injunctive relief[1]. In the experience of the United States, this approach has been noted to have significant advantages in terms of providing a check on prison administration that is both independent and sufficiently powerful to force change[2]. Such injunctive relief could cover numerous areas of the daily management of a prison establishment, going well beyond the question of occupancy levels, into areas such as personnel recruitment, training and complaints mechanisms. It is also noteworthy that, unlike the outcome of classical litigation, such injunctive orders usually take years to be implemented and are monitored on a continuous basis by the courts. This approach of direct involvement of the courts in the daily management of prisons, while posing certain challenges, has clearly established itself as a successful model[3]. § [1] The experience of federal courts in the United States in ordering injunctive relief, which started in the sixties and gradually developed to become an integral part of legal guarantees against inhuman treatment, is well described in the legal literature, see Michele Detich, "The Need for Independent Prison Oversight in a Post-PLRA World", Federal Sentencing Reporter, Vol. 24, No. 4, pp. 236-44.
2016	10/20/2016	MURŠIĆ v. CROATIA	http://hudoc.echr.coe.int/eng/?i=001-167483	7334/13	GC	PINTO DE ALBUQUERQUE	dissenting (par		0 Canada	C	SC	Henrietta Muir Edwards and others v. The Attorney General of Canada [1939] UKPC 86, [1930] A.C. 124 (18 October 1929)	11. This methodology is warranted by the Court's cardinal principle of interpretation to the effect that the Convention must be interpreted in the light of present-day conditions[19]. It was in the seminal case of <i>Tyler v. the United Kingdom</i> that the Court for the very first time used the leitmotif of "the Convention as a living instrument", whose interpretation has to take account of evolving norms of national and international law[20]. Deeply entrenched in American[21] and Canadian[22] constitutional law since the early twentieth century, this interpretation technique was introduced in European human rights law in 1978. [21] Henrietta Muir Edwards and others v. The Attorney General of Canada [1939] UKPC 86, [1930] A.C. 124 (18 October 1929). The case is not only memorable because it established that Canadian women were eligible to be appointed senators, but also because it introduced the "living tree doctrine" in Canadian constitutional law, according to which the constitution is organic and must be read in a broad and liberal manner so as to adapt it to changing times.
2016	10/20/2016	MURŠIĆ v. CROATIA	http://hudoc.echr.coe.int/eng/?i=001-167483	7334/13	GC	PINTO DE ALBUQUERQUE	dissenting (par		0 US	C	SC	Missouri v. Holland 252 U.S. 416 (1920)	11. This methodology is warranted by the Court's cardinal principle of interpretation to the effect that the Convention must be interpreted in the light of present-day conditions[19]. It was in the seminal case of <i>Tyler v. the United Kingdom</i> that the Court for the very first time used the leitmotif of "the Convention as a living instrument", whose interpretation has to take account of evolving norms of national and international law[20]. Deeply entrenched in American[21] and Canadian[22] constitutional law since the early twentieth century, this interpretation technique was introduced in European human rights law in 1978. [21] Missouri v. Holland 252 U.S. 416 (1920). Writing the majority's opinion, Justice Holmes made this remark on the nature of the constitution: "With regard to that we may add that when we are dealing with words that also are a constituent act, like the Constitution of the United States, we must realize that they have called into life a being the development of which could not have been foreseen completely by the most gifted of its begetters. It was enough for them to realize or to hope that they had created an organism; it has taken a century and has cost their successors much sweat and blood to prove that they created a nation. The case before us must be considered in the light of our whole experience and not merely in the light of what was said a hundred years ago." The Supreme Court's reference to "evolving standards of decency" is also understood as a clear mention of the "living constitutionalism" (see Trop v. Dulles, 356 U.S. 86 (1958)). "The words of the [Eighth] Amendment are not precise, and ... their scope is not static. The Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society".

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2016	10/4/2016	TRAVAŠ v. CROATIA	http://hudoc.echr.coe.int/eng/?i=001-166942	75581/13	S2		0 majority	intervener	US	C	SC	general	71. Accordingly, given that the guarantees under Article 8 were not absolute, where private conduct undermined the integrity of a licensing scheme for ecclesiastical teaching and contradicted the substance of the subject matter of the licence, Church autonomy should predominate, as clearly shown in the Court's case-law. Moreover, the ADF stressed that the Court had held, in view of the wide variety of constitutional models in existence, that the States enjoyed a wide margin of appreciation in this context. The Court had therefore been reluctant to override the decision of the national authorities when the case involved the relationship between the Church and those who work for it. This also corresponded to the comparative solutions, such as those found in the case-law of the United States Supreme Court and in European Union legislation.
2016	9/13/2016	IBRAHIM AND OTHERS v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-166680	50541/08, 50571/08, 50571/08	GC	HAIJIEV, YUDKOVSKA, LEMMENS, MAHONEY, SILVIS AND O'LEARY	dissenting (join	0	US	C	SC	New York v. Quarles[467 US 436 (1966)	13. To start with, the events unfolding in London and the circumstances in which the police operation was taking place were as exceptional when the questioning of the first three applicants took place as they were when the fourth applicant was being interviewed on the evening of 27th July. The urgent need to avert serious adverse consequences for life, liberty or physical integrity, recognised by the majority in paragraph 276 of the judgment, was thus as real for the first set of applicants as it was for the fourth. There was a real fear that the failed bombers might return to complete their initial, failed attack. The fourth applicant was thought by the police to know where one of the suspected bombers – Mr Husain Osman – might have gone and quite possibly what Mr Osman's plans were (see paragraphs 15, 61 and 137-139 of the judgment). The police had a difficult choice to make: whether, in the absence of other direct information from or connected with the suspected bombers – only one was in custody, but was not talking to the police; and the others were still at large –, to continue obtaining from the applicant information capable of saving lives and protecting the public or to comply with the applicable police code by cautioning the applicant, with the attendant risk of stopping the flow of valuable security information. The Supreme Court of the United States of America made a similar observation in the case of <i>New York v. Quarles</i> [19] when holding that there was a public-safety exception to the requirement that, prior to police questioning, suspects had to be informed of their constitutional rights to silence and to legal advice before their answers could be admitted into evidence at trial. [19]. 467 US 436 (1966) – quoted at paragraph 230 of the judgment.
2016	9/13/2016	IBRAHIM AND OTHERS v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-166680	nos. 50541/08, 50571/08	GC		0 majority	ECtHR	Canada	R	constitution	0	232. The right to legal advice and the right to remain silent are protected by the Canadian Charter of rights and freedoms. A person is entitled to legal advice immediately upon arrest, although this right can be delayed where there are concerns for public safety provided that any limitations are prescribed by law and justified in a free and democratic society. The police have the obligation to inform a person of his right to counsel from the moment he is detained (see <i>R. v. Suberu</i> [2009] 2 SCR 460). As soon as the situation is under control, the suspect must have access to legal advice (see <i>R. v. Strachan</i> [1988] 2 SCR 980). 233. The Charter provides that where evidence is obtained in a manner that infringes an accused's rights under the Charter, it must be excluded at trial if, having regard to all the circumstances, the admission of the evidence would bring the administration of justice into disrepute. Relevant factors in this assessment were set out by the Supreme Court in <i>R. v. Collins</i> [1987] 1 SCR 265, namely the effect of the admission of the evidence on the fairness of the trial, the seriousness of the breach of the Charter and the effect of the exclusion of the evidence on the reputation of the administration of justice. The burden is on the person seeking exclusion of the evidence to show, on the balance of probabilities, that the Charter test for exclusion is satisfied. 259. The Court accepts that where a respondent Government have convincingly demonstrated the existence of an urgent need to avert serious adverse consequences for life, liberty or physical integrity in a given case, this can amount to compelling reasons to restrict access to legal advice for the purposes of Article 6 of the Convention. In such circumstances, there is a pressing duty on the authorities to protect the rights of potential or actual victims under Articles 2, 3 and 5 § 1 of the Convention in particular. The Court notes, in this regard, that Directive 2013/48/EU, which enshrines the right to legal assistance, provides for an exception to this right in exceptional circumstances where, inter alia, there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person (see paragraph 210 above). Similarly, in the United States, following its ruling in <i>Miranda v. Arizona</i> , the Supreme Court made clear in its judgment in <i>New York v. Quarles</i> that there is a "public safety exception" to the <i>Miranda</i> rule, permitting questioning to take place in the absence of a lawyer and before a suspect has been read his rights where there is a threat to public safety (see paragraphs 229-230 above; see also the position in Canada and in a number of those member States of the Council of Europe whose laws permit temporary delays in access to legal advice, at §§ 232 and 228 respectively, above). However, in so far as the Chamber judgment can be taken to have accepted that a general risk of leaks might qualify as compelling reasons, this finding must be rejected: the Court considers that a non-specific claim of a risk of leaks cannot constitute compelling reasons so as to justify a restriction on access to a lawyer. 261. The first three applicants also referred, inter alia, to Directive 2013/48/EU and the judgment of the United States Supreme Court in <i>Miranda v. Arizona</i> in support of their argument that a bright-line rule was appropriate and necessary (see paragraphs 206-212 and 229 above). While it is true that the approach in the United States is a strict one, it is noteworthy that Directive 2013/48/EU is silent on whether evidence obtained in violation of the guarantees it contains can be fairly admitted at trial, but merely requires that suspects have "an effective remedy under national law" in the event of a breach of the rights under the Directive (see paragraph 211 above). The laws of the Contracting Parties of the Council of Europe show a diversity of practice in this respect with some favouring automatic exclusion and others preferring to allow judicial discretion (see paragraph 228 above). In Canada, evidence obtained in breach of its Charter of Rights and Freedoms may be admissible at trial (see paragraph 233 above). A similar approach is taken by the international criminal tribunals examined above (see paragraphs 220-222 and 226-227 above).
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2016	9/13/2016	BRAHIM AND OTHERS v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-166680	nos. 50541/08, 50571/08	GC		0 majority	ECtHR	US	R	constitution	0 B. The United States 229. The Fifth Amendment to the Constitution of the United States protects the right against self-incrimination. The right to legal advice is guaranteed by the Sixth Amendment. In Miranda v. Arizona 384 US 436 (1966), the Supreme Court held that statements made by a person during police questioning in custody were admissible at trial only if the suspect had been informed of his rights to silence and to legal advice. Following the judgment, failure to give a "Miranda warning" prior to questioning meant that any evidence obtained had to be excluded at trial. 230. In New York v. Quarles 467 US 649 (1984) the Supreme Court held that there was a "public safety" exception to the requirement that Miranda warnings be given before a suspect's answers could be admitted into evidence and that the availability of that exception did not depend upon the motivation of the individual officers involved. It said that the police were entitled to interrogate suspects without informing them of their Miranda rights when "reasonably prompted by a concern for public safety". Justice Rehnquist explained: "Procedural safeguards which deter a suspect from responding were deemed acceptable in Miranda in order to protect the Fifth Amendment privilege; when the primary social cost of those added protections is the possibility of fewer convictions, the Miranda majority was willing to bear that cost. Here, had Miranda warnings deterred Quarles from responding to Officer Kraft's question about the whereabouts of the gun, the cost would have been something more than merely the failure to obtain evidence useful in convicting Quarles. Officer Kraft needed an answer to his question not simply to make his case against Quarles but to insure that further danger to the public did not result from the concealment of the gun in a public area. We conclude that the need for answers to questions in a situation posing a threat to the public safety outweighs the need for the prophylactic rule protecting the Fifth Amendment's privilege against self-incrimination. We decline to place officers such as Officer Kraft in the untenable position of having to consider, often in a matter of seconds, whether it best serves society for them to ask the necessary questions without the Miranda warnings and render whatever probative evidence they uncover inadmissible, or for them to give the warnings in order to preserve the admissibility of evidence they might uncover but possibly damage or destroy their ability to obtain that evidence and neutralize the volatile situation confronting them." 231. Where evidence has been obtained in the absence of a Miranda warning and in the absence of legal advice but the court is satisfied that the public safety exception applies, the evidence is admissible at trial. 259. The Court accepts that where a respondent Government have convincingly demonstrated the existence of an urgent need to avert serious adverse consequences for life, liberty or physical integrity in a given case, this can amount to compelling reasons to restrict access to legal advice for the purposes of Article 6 of the Convention. In such circumstances, there is a pressing duty on the authorities to protect the rights of potential or actual victims under Articles 2, 3 and 5 § 1 of the Convention in particular. The Court notes, in this regard, that Directive 2013/48/EU, which enshrines the right to legal assistance, provides for an exception to this right in exceptional circumstances where, inter alia, there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person (see paragraph 210 above). Similarly, in the United States, following its ruling in Miranda v. Arizona, the Supreme Court made clear in its judgment in New York v. Quarles that there is a "public safety exception" to the Miranda rule, permitting questioning to take place in the absence of a lawyer and before a suspect has been read his rights where there is a threat to public safety (see paragraphs 229-230 above; see also the position in Canada and in a number of those member States of the Council of Europe whose laws permit temporary delays in access to legal advice, at §§ 232 and 228 respectively, above). However, in so far as the Chamber judgment can be taken to have accepted that a general risk of leaks might qualify as compelling reasons, this finding must be rejected: the Court considers that a non-specific claim of a risk of leaks cannot constitute compelling reasons so as to justify a restriction on access to a lawyer. 261. The first three applicants also referred, inter alia, to Directive 2013/48/EU and the judgment of the United States Supreme Court in Miranda v. Arizona in support of their argument that a bright-line rule was appropriate and necessary (see paragraphs 206-212 and 229 above). While it is true that the approach in the United States is a strict one, it is noteworthy that Directive 2013/48/EU is silent on whether evidence obtained in violation of the guarantees it contains can be fairly admitted at trial, but merely requires that suspects have "an effective remedy under national law" in the event of a breach of the rights under the Directive (see paragraph 211 above). The laws of the	
2016	9/13/2016	BRAHIM AND OTHERS v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-166680	nos. 50541/08, 50571/08	GC		0 majority	ECtHR	US	C	SC	Miranda v. Arizona 384 US 436 (1966)	B. The United States 229. The Fifth Amendment to the Constitution of the United States protects the right against self-incrimination. The right to legal advice is guaranteed by the Sixth Amendment. In Miranda v. Arizona 384 US 436 (1966), the Supreme Court held that statements made by a person during police questioning in custody were admissible at trial only if the suspect had been informed of his rights to silence and to legal advice. Following the judgment, failure to give a "Miranda warning" prior to questioning meant that any evidence obtained had to be excluded at trial. 230. In New York v. Quarles 467 US 649 (1984) the Supreme Court held that there was a "public safety" exception to the requirement that Miranda warnings be given before a suspect's answers could be admitted into evidence and that the availability of that exception did not depend upon the motivation of the individual officers involved. It said that the police were entitled to interrogate suspects without informing them of their Miranda rights when "reasonably prompted by a concern for public safety". Justice Rehnquist explained: "Procedural safeguards which deter a suspect from responding were deemed acceptable in Miranda in order to protect the Fifth Amendment privilege; when the primary social cost of those added protections is the possibility of fewer convictions, the Miranda majority was willing to bear that cost. Here, had Miranda warnings deterred Quarles from responding to Officer Kraft's question about the whereabouts of the gun, the cost would have been something more than merely the failure to obtain evidence useful in convicting Quarles. Officer Kraft needed an answer to his question not simply to make his case against Quarles but to insure that further danger to the public did not result from the concealment of the gun in a public area. We conclude that the need for answers to questions in a situation posing a threat to the public safety outweighs the need for the prophylactic rule protecting the Fifth Amendment's privilege against self-incrimination. 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Quarles that there is a "public safety exception" to the Miranda rule, permitting questioning to take place in the absence of a lawyer and before a suspect has been read his rights where there is a threat to public safety (see paragraphs 229-230 above; see also the position in Canada and in a number of those member States of the Council of Europe whose laws permit temporary delays in access to legal advice, at §§ 232 and 228 respectively, above). However, in so far as the Chamber judgment can be taken to have accepted that a general risk of leaks might qualify as compelling reasons, this finding must be rejected: the Court considers that a non-specific claim of a risk of leaks cannot constitute compelling reasons so as to justify a restriction on access to a lawyer. 261. The first three applicants also referred, inter alia, to Directive 2013/48/EU and the judgment of the United States Supreme Court in Miranda v. 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2016	9/13/2016	IBRAHIM AND OTHERS v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-166460	nos. 50541/08, 50571/08	GC		0 majority	ECtHR	US	C	SC	New York v. Quarles 467 US 649 (1984)	8. The United States 229. The Fifth Amendment to the Constitution of the United States protects the right against self-incrimination. The right to legal advice is guaranteed by the Sixth Amendment. In <i>Miranda v. Arizona</i> 384 US 436 (1966), the Supreme Court held that statements made by a person during police questioning in custody were admissible at trial only if the suspect had been informed of his rights to silence and to legal advice. Following the judgment, failure to give a "Miranda warning" prior to questioning meant that any evidence obtained had to be excluded at trial. 230. In <i>New York v. 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Arizona</i>, the Supreme Court made clear in its judgment in <i>New York v. Quarles</i> that there is a "public safety exception" to the <i>Miranda</i> rule, permitting questioning to take place in the absence of a lawyer and before a suspect has been read his rights where there is a threat to public safety (see paragraphs 229-230 above; see also the position in Canada and in a number of those member States of the Council of Europe whose laws permit temporary delays in access to legal advice, at §§ 232 and 228 respectively, above). However, in so far as the Chamber judgment can be taken to have accepted that a general risk of leaks might qualify as a compelling reason, this finding must be rejected: the Court considers that a non-specific claim of a risk of leaks cannot constitute compelling reasons so as to justify a restriction on access to a lawyer. 261. 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2016	7/5/2016	A.M. v. THE NETHERLANDS	http://hudoc.echr.coe.int/eng/?i=001-164460	29094/09	s3		0 majority	ECtHR	Australia	F		O	0 IV. RELEVANT INTERNATIONAL MATERIALS A. Migration Review Tribunal and Refugee Review Tribunal (Australia) 38. On 7 March 2013 Australia's Migration Review Tribunal and Refugee Review Tribunal issued a background paper, <i>Afghanistan; Political Parties and Insurgent Groups 2001-2013</i>. As regards Jamiat-e Islami Afghanistan (leader: Salahuddin Rabbani), it reads: "The Jamiat-e-Islami is one of the longest standing political organizations in Afghanistan and draws most of its support from Tajiks in the north. It was long the most effective mujahideen force, based in northern Afghanistan, and it engaged in heavy combat with Soviet forces throughout the 1980s, including sporadic invasions of Soviet Tajikistan. The Jamiat was the main political party in the Northern Alliance which eventually defeated the Taliban, and occupied Kabul in November 2001." 39. It states in respect of Hezb-e Wahdat: "The formation of Hezb-e Wahdat in 1989 represented an important step in the political development of Afghanistan's Hazaras. It unified all the political groups of a community that has historically been notoriously fragmented and divided. During the period of the civil war in the early 1990s, it emerged as one of the major actors in Kabul and some other parts of the country. Political Islamism was the ideology of most of its key leaders but it gradually tilted towards its Hazara ethnic support base and became the key vehicle of the community's political demands and aspirations. Its ideological background and ethnic support base has continuously shaped its character and political agenda. Through the Anti-Soviet jihad and the civil war, Wahdat accumulated significant political capital among Afghanistan's Hazaras, which could have been spent in the establishment of long-lasting political institutions in Afghanistan. By 2009, however, Wahdat was so fragmented and divided that the political weight it carried in the country bore little resemblance to what it had once been. It had fragmented into at least four competing organisations, each claiming ownership of the name and legacy of Wahdat." 40. The background paper also contains information on, inter alia, those four organisations, namely: - Hezb-e Wahdat-e Islami (leader: Abdol Karim Khalili), the main successor party to the pre-2001 Hezb-e Wahdat; - Hezb-e Wahdat-e Islami-ye Mardom (leader: Mohammad Mohaqeq), a primarily Shiite offshoot of Hezb-e Wahdat ("Khalili"); - Hezb-e Wahdat Milli Islami (leader: Ustad Mohammad Akbari), formed after a split from Hezb-e Wahdat in 1994; and - Hezb-e Wahdat-e Islami-ye Millat (leader: Qurban Ali Erfani), the fourth split emerging from Hezb-e Wahdat.
2016	6/30/2016	TADDEUCCI AND McCALL v. ITALY	http://hudoc.echr.coe.int/eng/?i=001-164715	51362/09	S1		0 majority	intervener	Australia	R		general	0 75. The third-party interveners stated that they had first examined the legislation and practice of a number of non-European States (South Africa, Australia, Brazil, Canada, Colombia, Israel and New Zealand) which allowed same-sex partners to emigrate to and reside in each other's countries of origin, before addressing the concept of "functional families". That concept, instead of focusing on the identity and attributes of the individuals within a relationship, sought to establish whether or not that relationship displayed certain essential characteristics (economic cooperation, participation in domestic responsibilities, affection between the parties). iii. The third-party interveners a) International Commission of Jurists (ICJ), International Lesbian, Gay, Bisexual Trans and Intersex Association (ILGA) Europe, and Network of European LGBT Families (NELFA) In their submission, on the basis of that concept the jurisdictions of a number of countries (South Africa, Australia, Canada, Colombia, United States, Israel and the United Kingdom) had recognised unmarried same-sex couples as "families" or "de facto spouses" for the purposes of certain (economic or other) benefits.
2016	6/30/2016	TADDEUCCI AND McCALL v. ITALY	http://hudoc.echr.coe.int/eng/?i=001-164715	51362/09	S1		0 majority	intervener	Brazil	R		general	0 75. The third-party interveners stated that they had first examined the legislation and practice of a number of non-European States (South Africa, Australia, Brazil, Canada, Colombia, Israel and New Zealand) which allowed same-sex partners to emigrate to and reside in each other's countries of origin, before addressing the concept of "functional families". That concept, instead of focusing on the identity and attributes of the individuals within a relationship, sought to establish whether or not that relationship displayed certain essential characteristics (economic cooperation, participation in domestic responsibilities, affection between the parties). In their submission, on the basis of that concept the jurisdictions of a number of countries (South Africa, Australia, Canada, Colombia, United States, Israel and the United Kingdom) had recognised unmarried same-sex couples as "families" or "de facto spouses" for the purposes of certain (economic or other) benefits.
2016	6/30/2016	TADDEUCCI AND McCALL v. ITALY	http://hudoc.echr.coe.int/eng/?i=001-164715	51362/09	S1		0 majority	intervener	Canada	R		general	0 75. The third-party interveners stated that they had first examined the legislation and practice of a number of non-European States (South Africa, Australia, Brazil, Canada, Colombia, Israel and New Zealand) which allowed same-sex partners to emigrate to and reside in each other's countries of origin, before addressing the concept of "functional families". That concept, instead of focusing on the identity and attributes of the individuals within a relationship, sought to establish whether or not that relationship displayed certain essential characteristics (economic cooperation, participation in domestic responsibilities, affection between the parties). In their submission, on the basis of that concept the jurisdictions of a number of countries (South Africa, Australia, Canada, Colombia, United States, Israel and the United Kingdom) had recognised unmarried same-sex couples as "families" or "de facto spouses" for the purposes of certain (economic or other) benefits. 76. Lastly, the ICJ, ILGA-Europe and NELFA indicated that the difference in treatment between same-sex couples not having access to marriage and married couples had been considered by the South-African, Canadian and US courts as a form of indirect discrimination (that is, discrimination as a result of the negative effects of apparently neutral laws on a particular protected group). They pointed out that, in particular where same-sex couples could not marry, their situation should not be compared with that of unmarried opposite-sex couples but with that of married opposite-sex couples. That could also be seen in the practice of the United Nations Human Rights Committee, which had emphasized the point that heterosexual couples could freely decide to marry.
2016	6/30/2016	TADDEUCCI AND McCALL v. ITALY	http://hudoc.echr.coe.int/eng/?i=001-164715	51362/09	S1		0 majority	intervener	Canada	C		general	0 75. The third-party interveners stated that they had first examined the legislation and practice of a number of non-European States (South Africa, Australia, Brazil, Canada, Colombia, Israel and New Zealand) which allowed same-sex partners to emigrate to and reside in each other's countries of origin, before addressing the concept of "functional families". That concept, instead of focusing on the identity and attributes of the individuals within a relationship, sought to establish whether or not that relationship displayed certain essential characteristics (economic cooperation, participation in domestic responsibilities, affection between the parties). In their submission, on the basis of that concept the jurisdictions of a number of countries (South Africa, Australia, Canada, Colombia, United States, Israel and the United Kingdom) had recognised unmarried same-sex couples as "families" or "de facto spouses" for the purposes of certain (economic or other) benefits. 76. Lastly, the ICJ, ILGA-Europe and NELFA indicated that the difference in treatment between same-sex couples not having access to marriage and married couples had been considered by the South-African, Canadian and US courts as a form of indirect discrimination (that is, discrimination as a result of the negative effects of apparently neutral laws on a particular protected group). They pointed out that, in particular where same-sex couples could not marry, their situation should not be compared with that of unmarried opposite-sex couples but with that of married opposite-sex couples. That could also be seen in the practice of the United Nations Human Rights Committee, which had emphasized the point that heterosexual couples could freely decide to marry.
2016	6/30/2016	TADDEUCCI AND McCALL v. ITALY	http://hudoc.echr.coe.int/eng/?i=001-164715	51362/09	S1		0 majority	intervener	Colombia	R		general	0 75. The third-party interveners stated that they had first examined the legislation and practice of a number of non-European States (South Africa, Australia, Brazil, Canada, Colombia, Israel and New Zealand) which allowed same-sex partners to emigrate to and reside in each other's countries of origin, before addressing the concept of "functional families". That concept, instead of focusing on the identity and attributes of the individuals within a relationship, sought to establish whether or not that relationship displayed certain essential characteristics (economic cooperation, participation in domestic responsibilities, affection between the parties). In their submission, on the basis of that concept the jurisdictions of a number of countries (South Africa, Australia, Canada, Colombia, United States, Israel and the United Kingdom) had recognised unmarried same-sex couples as "families" or "de facto spouses" for the purposes of certain (economic or other) benefits.

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2016	6/30/2016	TADDEUCCI AND McCALL v. ITALY	http://hudoc.echr.coe.int/eng/?i=001-164715	51362/09	S1		0 majority	intervener	Israel	R	general		0 75. The third-party interveners stated that they had first examined the legislation and practice of a number of non-European States (South Africa, Australia, Brazil, Canada, Colombia, Israel and New Zealand) which allowed same-sex partners to emigrate to and reside in each other's countries of origin, before addressing the concept of "functional families". That concept, instead of focusing on the identity and attributes of the individuals within a relationship, sought to establish whether or not that relationship displayed certain essential characteristics (economic cooperation, participation in domestic responsibilities, affection between the parties). In their submission, on the basis of that concept the jurisdictions of a number of countries (South Africa, Australia, Canada, Colombia, United States, Israel and the United Kingdom) had recognised unmarried same-sex couples as "families" or "de facto spouses" for the purposes of certain (economic or other) benefits.
2016	6/30/2016	TADDEUCCI AND McCALL v. ITALY	http://hudoc.echr.coe.int/eng/?i=001-164715	51362/09	S1		0 majority	intervener	New Zealand	R	general		0 75. The third-party interveners stated that they had first examined the legislation and practice of a number of non-European States (South Africa, Australia, Brazil, Canada, Colombia, Israel and New Zealand) which allowed same-sex partners to emigrate to and reside in each other's countries of origin, before addressing the concept of "functional families". That concept, instead of focusing on the identity and attributes of the individuals within a relationship, sought to establish whether or not that relationship displayed certain essential characteristics (economic cooperation, participation in domestic responsibilities, affection between the parties). In their submission, on the basis of that concept the jurisdictions of a number of countries (South Africa, Australia, Canada, Colombia, United States, Israel and the United Kingdom) had recognised unmarried same-sex couples as "families" or "de facto spouses" for the purposes of certain (economic or other) benefits.
2016	6/30/2016	TADDEUCCI AND McCALL v. ITALY	http://hudoc.echr.coe.int/eng/?i=001-164715	51362/09	S1		0 majority	intervener	South Africa	R	general		0 75. The third-party interveners stated that they had first examined the legislation and practice of a number of non-European States (South Africa, Australia, Brazil, Canada, Colombia, Israel and New Zealand) which allowed same-sex partners to emigrate to and reside in each other's countries of origin, before addressing the concept of "functional families". That concept, instead of focusing on the identity and attributes of the individuals within a relationship, sought to establish whether or not that relationship displayed certain essential characteristics (economic cooperation, participation in domestic responsibilities, affection between the parties). In their submission, on the basis of that concept the jurisdictions of a number of countries (South Africa, Australia, Canada, Colombia, United States, Israel and the United Kingdom) had recognised unmarried same-sex couples as "families" or "de facto spouses" for the purposes of certain (economic or other) benefits.
2016	6/30/2016	TADDEUCCI AND McCALL v. ITALY	http://hudoc.echr.coe.int/eng/?i=001-164715	51362/09	S1		0 majority	intervener	South Africa	C	general		0 74. The ICJ, ILGA-Europe and NELFA produced material showing that a number of jurisdictions around the world recognised that a same-sex couple in a long-term, committed and established relationship was in fact a "family member" regardless of whether the couple had been able to marry or otherwise obtain formal legal recognition for their relationship. 75. The third-party interveners stated that they had first examined the legislation and practice of a number of non-European States (South Africa, Australia, Brazil, Canada, Colombia, Israel and New Zealand) which allowed same-sex partners to emigrate to and reside in each other's countries of origin, before addressing the concept of "functional families". That concept, instead of focusing on the identity and attributes of the individuals within a relationship, sought to establish whether or not that relationship displayed certain essential characteristics (economic cooperation, participation in domestic responsibilities, affection between the parties). In their submission, on the basis of that concept the jurisdictions of a number of countries (South Africa, Australia, Canada, Colombia, United States, Israel and the United Kingdom) had recognised unmarried same-sex couples as "families" or "de facto spouses" for the purposes of certain (economic or other) benefits. 76. Lastly, the ICJ, ILGA-Europe and NELFA indicated that the difference in treatment between same-sex couples not having access to marriage and married couples had been considered by the South African, Canadian and US courts as a form of indirect discrimination (that is, discrimination as a result of the negative effects of apparently neutral laws on a particular protected group). They pointed out that, in particular where same-sex couples could not marry, their situation should not be compared with that of unmarried opposite-sex couples but with that of married opposite-sex couples. That could also be seen in the practice of the United Nations Human Rights Committee, which had emphasized the point that heterosexual couples could freely decide to marry.
2016	6/30/2016	TADDEUCCI AND McCALL v. ITALY	http://hudoc.echr.coe.int/eng/?i=001-164715	51362/09	S1		0 majority	intervener	US	R	general		0 75. The third-party interveners stated that they had first examined the legislation and practice of a number of non-European States (South Africa, Australia, Brazil, Canada, Colombia, Israel and New Zealand) which allowed same-sex partners to emigrate to and reside in each other's countries of origin, before addressing the concept of "functional families". That concept, instead of focusing on the identity and attributes of the individuals within a relationship, sought to establish whether or not that relationship displayed certain essential characteristics (economic cooperation, participation in domestic responsibilities, affection between the parties). In their submission, on the basis of that concept the jurisdictions of a number of countries (South Africa, Australia, Canada, Colombia, United States, Israel and the United Kingdom) had recognised unmarried same-sex couples as "families" or "de facto spouses" for the purposes of certain (economic or other) benefits.
2016	6/30/2016	TADDEUCCI AND McCALL v. ITALY	http://hudoc.echr.coe.int/eng/?i=001-164715	51362/09	S1		0 majority	intervener	US	C	general		0 74. The ICJ, ILGA-Europe and NELFA produced material showing that a number of jurisdictions around the world recognised that a same-sex couple in a long-term, committed and established relationship was in fact a "family member" regardless of whether the couple had been able to marry or otherwise obtain formal legal recognition for their relationship. 75. The third-party interveners stated that they had first examined the legislation and practice of a number of non-European States (South Africa, Australia, Brazil, Canada, Colombia, Israel and New Zealand) which allowed same-sex partners to emigrate to and reside in each other's countries of origin, before addressing the concept of "functional families". That concept, instead of focusing on the identity and attributes of the individuals within a relationship, sought to establish whether or not that relationship displayed certain essential characteristics (economic cooperation, participation in domestic responsibilities, affection between the parties). In their submission, on the basis of that concept the jurisdictions of a number of countries (South Africa, Australia, Canada, Colombia, United States, Israel and the United Kingdom) had recognised unmarried same-sex couples as "families" or "de facto spouses" for the purposes of certain (economic or other) benefits.
2016	6/23/2016	BAKA v. HUNGARY	http://hudoc.echr.coe.int/eng/?i=001-163111	20261/12	GC	WOJTYCZEK	dissenting		0 India	C	SC	Supreme Court of India of 24 April 1973, in the case of His Holiness Kesavananda Bharati Sripadagalvaru and Ors. v. State of Kerala and Anr., (1973) 4 SCC 225	Furthermore, the majority requires judicial review not only for ordinary legislation but also for constitutional provisions. However, in many democratic countries judicial review of constitutional laws does not exist. In others, it may be limited to the enactment procedure, whereas the content of constitutional laws is immune from judicial review. Exceptionally, the courts may review the substance of constitutional laws (see, for instance, the judgment of the Supreme Court of India of 24 April 1973, in the case of His Holiness Kesavananda Bharati Sripadagalvaru and Ors. v. State of Kerala and Anr., (1973) 4 SCC 225). If the new approach developed by the European Court of Human Rights in the instant case is confirmed in future, this will entail a major transformation of European constitutionalism. 13. In sum, the debate on the unconstitutionality of constitutional provisions is not closed in Hungary[21]. In any event, regardless of the Constitutional Court's remit to control the substantive unconstitutionality of constitutional provisions, Article 11 (2) of the Transitional Provisions is, in essence, an unconstitutional constitutional provision, in the light of the Hungarian "historical constitution" and the "constitutional continuity" of the principles of the independence of the judiciary and the irremovability of judges in both the new Fundamental Law and the old Constitution. On 1 January 2012 the applicant still had an individual civil right not to be removed from his position as President of the Supreme Court during his term of office, unless he was lawfully dismissed, and even in that eventuality he would be entitled to seek legal remedy before the Service Tribunal, both rights being protected by domestic law as interpreted and complemented by relevant international-law standards, which were mostly soft law.
2016	6/21/2016	AL-DULIMI AND MONTANA MANAGEMENT INC. v. S	http://hudoc.echr.coe.int/eng/?i=001-164515	no. 5809/08	GC	PINTO DE ALBUQUERQUE	concurring		0 Canada	C	lower-level cou	Abdelrazik v. Canada (Minister of Foreign Affairs), 2009 FC 580, § 51.	30. It has been argued that certain human rights obligations bear the nature of peremptory norms of international law. According to the Human Rights Committee, States Parties to the ICCPR may in no circumstances invoke its Article 4 as justification for acting in violation of humanitarian law or peremptory norms of international law, for instance by deviating from fundamental principles of fair trial, including the presumption of innocence.[62] Among the fundamental principles of fair trial recognised as peremptory norms of international law there is nemo debet esse iudex in propria sua causa[63]. Equally, if not even more important, the principle that <i>ideo homo non potest simul esse accusator, iudex et testis</i> is certainly among the non-renounceable "principles of natural justice" referred to by the Canadian Supreme Court.[64] The requirement of competence, independence and impartiality of a tribunal in the sense of Article 14 § 1 of the ICCPR is an absolute right that is not subject to any exception, being essentially incompatible with any supervisory power of a political or executive body over the court's judgments and decisions.[65] This is even more so when the political body acts <i>sic volo, sic jubeo</i> , concentrating the legislative power to create the legal framework of the sanctions, the executive power to impose them on (to "list") specific persons and entities, and the "judicial power" to exempt from or even lift the sanctions (to "delist"). 56. It is already regrettable that the majority criticise "the UN sanctions system", offering nothing but a cursory dismissal on the basis of "serious, reiterated and consistent criticisms" from the Special Rapporteurs of the United Nations and "sources outside that organisation", indicating one such source (PACE) and a "number of courts, such as the CJEU, the United Kingdom Supreme Court and the Federal Court of Canada". But it is even more censurable that the majority do not assume transparently the exercise of the "equivalent-protection test", which they effectively use in paragraph 153. [64]. Abdelrazik v. Canada (Minister of Foreign Affairs), 2009 FC 580, § 51.
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2016	6/21/2016	NAIT-LIMAN v. SWITZERLAND	http://hudoc.echr.coe.int/eng/?i=001-164470	no. 51357/07	S2	LEMMENS	concurring		0 Canada	C	general		0 Nor is the above finding contradicted by the concluding observations adopted by the Committee when examining the 4th and 5th periodic reports submitted by Canada (2005) and those in respect of the 6th period report for that State (2012), which are quoted in paragraphs 36-37 and 38 of the judgment. While the Committee criticised the fact that Canada did not guarantee civil redress to all victims of torture, this was because the victims did not have access to the existing remedies, "wherever acts of torture occurred and regardless of the nationality of the perpetrator or victim" (concluding observations on the 6th periodic report, § 15). In my opinion, these concluding observations concern the fact that the Canadian courts do not have jurisdiction for claims in respect of acts of torture committed abroad, even if these acts are committed by Canadian perpetrators or against victims who are Canadian. Nothing is said about the Canadian courts' jurisdiction (or lack of jurisdiction) in respect of acts of torture committed abroad by foreign perpetrators who are not resident in Canada against non-Canadian victims who were not resident in Canada at the material time.
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Turning to the States which are not members of the Council of Europe, it is appropriate to note that the Canadian courts have universal jurisdiction to examine civil claims, but solely in connection with terrorist acts, in accordance with the 2012 Justice for Victims of Terrorism Act. However, this jurisdiction is subject to the condition that the victim is a Canadian citizen or is a permanent resident of Canada, or that the civil action has a "real and substantial connection to Canada". In contrast, universal jurisdiction does not apply to actions in respect of damage sustained as a result of other violations of international law, including torture (except where it is shown that it took place in the context of acts of terrorism). In the case of Bouzari v. Islamic Republic of Iran (2004) OJ No. 2800 Docket No. 38295), the Ontario Court of Appeal held that Article 14 of the Convention against Torture did not create an obligation on Canada to ensure civil-law remedies for acts of torture committed outside its territory. In that case, the plaintiff, a Canadian of Iranian origin, brought a claim for compensation before the Canadian courts on the grounds that he had been tortured by representatives of the Iranian State. The Appeal Court endorsed the lower court's finding that there was no real and substantial connection between the Province of Ontario and the contested proceedings. It concluded that a sufficiently widespread international practice did not exist among the States to justify recognising the civil jurisdiction of the Canadian courts in the situation before it. 60. Among the non-member States of the Council of Europe, the "forum of necessity" has been recognised by the Civil Code of Quebec (in Canada), but the domestic case-law has recently introduced it into the domestic law of certain other Canadian provinces. In Quebec, the forum of necessity is provided for by Article 3136 of the Civil Code of Quebec, which provides: "Even though a Quebec authority has no jurisdiction to hear a dispute, it may nevertheless hear it provided the dispute has a sufficient connection with Quebec, if proceedings abroad prove impossible or the institution of proceedings abroad cannot reasonably be required" (wording in force since 1991). 75. In Canada application of the proximity requirement varies depending on the province. Article 3136 of the Civil Code of Quebec requires that "the dispute has a sufficient connection with Quebec". Other provinces do not require any connection. Indeed, the territory of Yukon and the provinces of Nova Scotia and British Columbia have adopted, with a few minor amendments, the 1994 Court Jurisdiction and Proceedings Transfer Uniform Act, section 6 of which provides for a "forum of necessity" subject to the sole condition that it is impossible to bring proceedings before courts outside the province in question. The Canadian courts have to date applied the principle of a "forum of necessity" in only two civil cases. Only one of them, Bouzari v. Bahremeni ([2013], ONSC 6337), concerned allegations of torture committed abroad. The claimant in that case was the same as in the Bouzari v. Islamic Republic of Iran case (see paragraph 52 above). The respondent was a private individual and, accordingly, State immunity did not apply. The Ontario first-instance court established that Ontario was indeed the "forum of necessity" in accordance with Ontario's case-law, since there was no reasonable basis on which the claimant could have brought proceedings in the State in which the torture had allegedly taken place (that is, in Iran). The judge stated that the burden of proof had shifted to the defender, and it was for him to show that there existed a more appropriate forum to examine the claim. In 2015, however, the Ontario Court of Appeal set aside that decision, holding that England would be better placed to examine the case, in line with the Anglo-Saxon principle of the forum non conveniens (see below). 114. Moreover, the survey carried out by the Court confirmed the Federal Court's rejection of the concept of the "forum of necessity". It showed, firstly, that only a minority of the States Parties to the Convention, or nine of the 36 Contracting States studied, provide for this type of jurisdiction (see paragraph 59 above). It has also been applied in Canada in recent years, but subject to strict conditions (see paragraph 60 above). In the States which apply this concept, it is, as in Switzerland, subject to strict conditions, which have to be met cumulatively, namely the inability to bring the dispute before the courts of another State and the existence of a certain connection between the facts of the dispute and the requested forum State (see paragraph 65 above). The sufficient connection was normally based on nationality and domicile or habitual residence. It follows that section 3 of the LDP is in no way exceptional and falls within a very broad consensus among the member States of the Council of Europe which have introduced this form of jurisdiction into their own legal systems. 118. Furthermore, although the Committee against Torture has indicated, particularly in its General Comment no. 3 (2012), that the application of Article 14 is not limited to victims of torture committed on the territory of the State Party or by or against a national of the State Party, that approach has not been

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Turning to the States which are not members of the Council of Europe, it is appropriate to note that the Canadian courts have universal jurisdiction to examine civil claims, but solely in connection with terrorist acts, in accordance with the 2012 Justice for Victims of Terrorism Act. However, this jurisdiction is subject to the condition that the victim is a Canadian citizen or is a permanent resident of Canada, or that the civil action has a "real and substantial connection to Canada". In contrast, universal jurisdiction does not apply to actions in respect of damage sustained as a result of other violations of international law, including torture (except where it is shown that it took place in the context of acts of terrorism). In the case of Bouzari v. 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It showed, firstly, that only a minority of the States Parties to the Convention, or nine of the 26 Contracting States studied, provide for this type of jurisdiction (see paragraph 59 above). It has also been applied in Canada in recent years, but subject to strict conditions (see paragraph 60 above). In the States which apply this concept, it is, as in Switzerland, subject to strict conditions, which have to be met cumulatively, namely the inability to bring the dispute before the courts of another State and the existence of a certain connection between the facts of the dispute and the requested forum State (see paragraph 65 above). The sufficient connection was normally based on nationality and domicile or habitual residence. It follows that section 3 of the LDP is in no way exceptional and falls within a very broad consensus among the member States of the Council of Europe which have introduced this form of jurisdiction into their own legal systems. 118. Furthermore, although the Committee against Torture has indicated, particularly in its General Comment no. 3 (2012), that the application of Article 14 is not limited to victims of torture committed on the territory of the State Party or by or against a national of the State Party, that approach has not been followed by the States Parties to that instrument. On the contrary, the survey showed that none of the 26 European States covered by the present survey currently recognise universal civil jurisdiction in respect of acts of torture; such a jurisdiction existed only in the United States and, to a more limited extent, in Canada (see paragraphs 48 and 52-53).
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Islamic Republic of Iran ([2004] OJ No. 2800 Docket No. 38295), the Ontario Court of Appeal held that Article 14 of the Convention against Torture did not create an obligation on Canada to ensure civil-law remedies for acts of torture committed outside its territory. In that case, the plaintiff, a Canadian of Iranian origin, brought a claim for compensation before the Canadian courts on the grounds that he had been tortured by representatives of the Iranian State. The Appeal Court endorsed the lower court's finding that there was no real and substantial connection between the Province of Ontario and the contested proceedings. It concluded that a sufficiently widespread international practice did not exist among the States to justify recognising the civil jurisdiction of the Canadian courts in the situation before it. 60. Among the non-member States of the Council of Europe, the "forum of necessity" has been recognised by the Civil Code of Quebec (in Canada), but the domestic case-law has recently introduced it into the domestic law of certain other Canadian provinces. In Quebec, the forum of necessity is provided for by Article 3136 of the Civil Code of Quebec, which provides: "Even though a Quebec authority has no jurisdiction to hear a dispute, it may nevertheless hear it provided the dispute has a sufficient connection with Quebec, if proceedings abroad prove impossible or the institution of proceedings abroad cannot reasonably be required" (wording in force since 1991). 75. In Canada application of the proximity requirement varies depending on the province. Article 3136 of the Civil Code of Quebec requires that "the dispute has a sufficient connection with Quebec". Other provinces do not require any connection. Indeed, the territory of Yukon and the provinces of Nova Scotia and British Columbia have adopted, with a few minor amendments, the 1994 Court Jurisdiction and Proceedings Transfer Uniform Act, section 6 of which provides for a "forum of necessity" subject to the sole condition that it is impossible to bring proceedings before courts outside the province in question. The Canadian courts have to date applied the principle of a "forum of necessity" in only two civil cases. Only one of them, Bouzari v. Bahremani ([2013], ONSC 6337), concerned allegations of torture committed abroad. The claimant in that case was the same as in the Bouzari v. Islamic Republic of Iran case (see paragraph 52 above). The respondent was a private individual and, accordingly, State immunity did not apply. The Ontario first-instance court established that Ontario was indeed the "forum of necessity" in accordance with Ontario's case-law, since there was no reasonable basis on which the claimant could have brought proceedings in the State in which the torture had allegedly taken place (that is, in Iran). The judge stated that the burden of proof had shifted to the defender, and it was for him to show that there existed a more appropriate forum to examine the claim. In 2015, however, the Ontario Court of Appeal set aside that decision, holding that England would be better placed to examine the case, in line with the Anglo-Saxon principle of the forum non conveniens (see below). 114. Moreover, the survey carried out by the Court confirmed the Federal Court's rejection of the concept of the "forum of necessity". It showed, firstly, that only a minority of the States Parties to the Convention, or nine of the 26 Contracting States studied, provide for this type of jurisdiction (see paragraph 59 above). It has also been applied in Canada in recent years, but subject to strict conditions (see paragraph 60 above). In the States which apply this concept, it is, as in Switzerland, subject to strict conditions, which have to be met cumulatively, namely the inability to bring the dispute before the courts of another State and the existence of a certain connection between the facts of the dispute and the requested forum State (see paragraph 65 above). The sufficient connection was normally based on nationality and domicile or habitual residence. It follows that section 3 of the LDP is in no way exceptional and falls within a very broad consensus among the member States of the Council of Europe which have introduced this form of jurisdiction into their own legal systems. 118. Furthermore, although the Committee against Torture has indicated, particularly in its General Comment no. 3 (2012), that the application of Article 14 is not limited to victims of torture committed on the territory of the State Party or by or against a national of the State Party, that approach has not been followed by the States Parties to that instrument. On the contrary, the survey showed that none of the 26 European States covered by the present survey currently recognise universal civil jurisdiction in respect of acts of torture; such a jurisdiction existed only in the United States and, to a more limited extent, in Canada (see paragraphs 48 and 52-53).

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2016	5/17/2016	FURST-PFEIFER v. AUSTRIA	http://hudoc.echr.coe.int/eng/?i=001-162864	33677/10 and 52340/10	54	MOTOC	dissenting	0	US	C	lower-level cos.	United States v. Squillacote [2001]	In the present case the Court has also decided in contrast with <i>United States v. Squillacote</i> [2001], where the U.S. Court of Appeals for the Fourth Circuit upheld Squillacote's convictions. The appeal court agreed that the intercepted telephone conversations with Squillacote's psychotherapist were privileged under the U.S. Supreme Court's 1996 decision in <i>Jaffee v. Redmond</i> (518 U.S. 1). In <i>Jaffee</i>, the Supreme Court held that "confidential communications between a licensed psychotherapist and her patients in the course of diagnosis or treatment are protected from compelled disclosure".

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2016	3/30/2016	ARMANI DA SILVA v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-161975	no. 5878/08	GC		0 majority	ECTHR	Australia	R	general		0 B. Common-law countries 182. In Australia, prosecutorial decisions are taken by the Office of the Director of Public Prosecutions which applies the Australian Prosecution Policy. The first criterion of this policy is that of evidential sufficiency, which is met if there is evidence sufficient to justify the institution or continuation of a prosecution. A prosecution should not be instituted or continued unless there is admissible, substantial and reliable evidence that a criminal offence known to the law has been committed by the alleged offender. The existence of a bare prima facie case is not sufficient to justify prosecution. Once it is established that there is a bare prima facie case, it is then necessary to give consideration to the prospects of conviction. A prosecution should not proceed if there is no reasonable prospect of a conviction being secured. 183. In New Zealand, the Solicitor-General has published prosecution guidelines that draw extensively on the Australian Prosecution Policy, the CPS Code for Crown Prosecutors, and guidelines developed by the Public Prosecution Service for Northern Ireland and the Director of Public Prosecutions in the Republic of Ireland. The test is in two parts: the evidential test and the public-interest test. The evidential test is met if "the evidence which can be adduced in Court is sufficient to provide a reasonable prospect of conviction".
2016	3/30/2016	ARMANI DA SILVA v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-161975	no. 5878/08	GC		0 majority	ECTHR	Canada	R	general		0 184. In Canada, the Public Prosecution Service Deskbook sets the standard in relation to decisions to prosecute. The first criteria is the evidential test, which requires Crown counsel objectively to assess the whole of the evidence likely to be available at trial, including any credible evidence that would favour the accused, to determine whether there is a reasonable prospect of conviction. A reasonable prospect of conviction requires that there be more than a bare prima facie case; however, it does not require a probability of conviction (that is, that a conviction is more likely than not).
2016	3/30/2016	ARMANI DA SILVA v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-161975	no. 5878/08	GC		0 majority	ECTHR	New Zealand	R	general		0 183. In New Zealand, the Solicitor-General has published prosecution guidelines that draw extensively on the Australian Prosecution Policy, the CPS Code for Crown Prosecutors, and guidelines developed by the Public Prosecution Service for Northern Ireland and the Director of Public Prosecutions in the Republic of Ireland. The test is in two parts: the evidential test and the public-interest test. The evidential test is met if "the evidence which can be adduced in Court is sufficient to provide a reasonable prospect of conviction".
2016	3/30/2016	ARMANI DA SILVA v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-161975	no. 5878/08	GC		0 majority	ECTHR	US	R	general		0 185. Finally, in the United States of America, the standard is whether there is "probable cause" to bring a prosecution, which means reasonable and objective grounds for belief in guilt.
2016	3/29/2016	BÉDAT v. SWITZERLAND	http://hudoc.echr.coe.int/eng/?i=001-161898	56925/08	GC	YUDKIVSKA	dissenting		0 US	C	SC	Sheppard v. Maxwell 384 US 333 (1966)	As the United States Supreme Court said in Sheppard v. Maxwell[3], "the press does not simply publish information about trials but guards against the miscarriage of justice by subjecting the police, prosecutors, and judicial processes to extensive public scrutiny and criticism". According to Justice Brennan "free and robust reporting, criticism, and debate can contribute to public understanding of the rule of law and to comprehension of the functioning of the entire criminal justice system, as well as improve the quality of that system by subjecting it to the cleansing effects of exposure and public accountability"[4]. However "banal" the aspects of the accused's life in detention might appear, information about them prevents proceedings "behind closed doors" from drifting into carelessness or ignorance. [3]. 384 US 333 (1966). [4]. Nebraska Press Association v. Stuart, 427 US 593, (1976).
2016	3/29/2016	BÉDAT v. SWITZERLAND	http://hudoc.echr.coe.int/eng/?i=001-161898	56925/08	GC	YUDKIVSKA	dissenting		0 US	C	SC	Nebraska Press Association v. Stuart, 427 US 593, (1976)	As the United States Supreme Court said in Sheppard v. Maxwell[3], "the press does not simply publish information about trials but guards against the miscarriage of justice by subjecting the police, prosecutors, and judicial processes to extensive public scrutiny and criticism". According to Justice Brennan "free and robust reporting, criticism, and debate can contribute to public understanding of the rule of law and to comprehension of the functioning of the entire criminal justice system, as well as improve the quality of that system by subjecting it to the cleansing effects of exposure and public accountability"[4]. However "banal" the aspects of the accused's life in detention might appear, information about them prevents proceedings "behind closed doors" from drifting into carelessness or ignorance. [3]. 384 US 333 (1966). [4]. Nebraska Press Association v. Stuart, 427 US 593, (1976).
2016	3/29/2016	BÉDAT v. SWITZERLAND	http://hudoc.echr.coe.int/eng/?i=001-161898	56925/08	GC	YUDKIVSKA	dissenting		0 US	C	SC	Bridges v. California 314 US 252, 260 (1941)	"[f]ree speech and fair trials are two of the most cherished policies of our civilisation, and it would be a trying task to choose between them."
2016	3/23/2016	BLOKHIN v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-161822	47152/06	GC	ZUPANČIČ	concurring		0 US	C	SC	Kent v. the United States (383 US 541 (1966))	Justice Black in Bridges v. California[1][1]. 314 US 252, 260 (1941) v Firstly, in Kent v. the United States (383 US 541 (1966)), the Supreme Court stated that constitutional due-process protections were applicable in juvenile proceedings. In reaching this conclusion, the Supreme Court found as follows (pp. 554-56). "1. The theory of the District's Juvenile Court Act, like that of other jurisdictions, is rooted in social welfare philosophy, rather than in the corpus juris. Its proceedings are designated as civil, rather than criminal. The Juvenile Court is theoretically engaged in determining the needs of the child and of society, rather than adjudicating criminal conduct. The objectives are to provide measures of guidance and rehabilitation for the child and protection for society, not to fix criminal responsibility, guilt and punishment. The State is parens patriae, rather than prosecuting attorney and judge. But the admonition to function in a 'parental' relationship is not an invitation to procedural arbitrariness. 2. Because the State is supposed to proceed in respect of the child as parens patriae, and not as adversary, courts have relied on the premise that the proceedings are 'civil' in nature, and not criminal, and have asserted that the child cannot complain of the deprivation of important rights available in criminal cases. It has been asserted that he can claim only the fundamental due process right to fair treatment. ... While there can be no doubt of the original laudable purpose of juvenile courts, studies and critiques in recent years raise serious questions as to whether actual performance measures well enough against theoretical purpose to make tolerable the immunity of the process from the reach of constitutional guarantees applicable to adults. There is much evidence that some juvenile courts, including that of the District of Columbia, lack the personnel, facilities and techniques to perform adequately as representatives of the State in a parens patriae capacity, at least with respect to children charged with law violation. There is evidence, in fact, that there may be grounds for concern that the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children."
2016	3/23/2016	BLOKHIN v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-161822	47152/06	GC	ZUPANČIČ	concurring		0 US	C	SC	In re Gault (387 US 1 (1967))	Kent was followed by the case in re Gault (387 US 1 (1967)), which held that the Due Process Clause of the Fourteenth Amendment required that children subject to the jurisdiction of the juvenile court be afforded many, but not all, of the same procedural protections as adults in criminal courts. The Supreme Court held as follows (p. 36). "A proceeding where the issue is whether the child will be found to be 'delinquent' and subjected to the loss of his liberty for years is comparable in seriousness to a felony prosecution. The juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it. The child 'requires the guiding hand of counsel at every step in the proceedings against him'."
2016	3/23/2016	BLOKHIN v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-161822	47152/06	GC	ZUPANČIČ	concurring		0 US	C	SC	In re Winship (397 US 358 (1970))	Lastly, in re Winship (397 US 358 (1970)), the US Supreme Court held that in juvenile-delinquency proceedings the prosecution had the burden of proving each element of the offense charged beyond reasonable doubt (p. 364).
2016	3/23/2016	BLOKHIN v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-161822	47152/06	GC	ZUPANČIČ	concurring		0 US	C	SC	Robinson v. California (370 US 660 (1962))	In the case of Robinson v. California (370 US 660 (1962)), the US Supreme Court held that a Californian statute which had been used to convict a person for being a drug addict, not for an act of taking narcotics, was unconstitutional, in breach of the Eighth and Fourteenth Amendments. In reaching its conclusion, the Supreme Court made the following observations (pp. 666-67). "This statute, therefore, is not one which punishes a person for the use of narcotics, for their purchase, sale or possession, or for antisocial or disorderly behavior resulting from their administration. It is not a law which even purports to provide or require medical treatment. Rather, we deal with a statute which makes the 'status' of narcotic addiction a criminal offense, for which the offender may be prosecuted 'at any time before he reforms.' California has said that a person can be continuously guilty of this offense, whether or not he has ever used or possessed any narcotics within the State, and whether or not he has been guilty of any antisocial behavior there. It is unlikely that any State at this moment in history would attempt to make it a criminal offense for a person to be mentally ill, or a leper, or to be afflicted with a venereal disease. A State might determine that the general health and welfare require that the victims of these and other human afflictions be dealt with by compulsory treatment, involving quarantine, confinement, or sequestration. But, in the light of contemporary human knowledge, a law which made a criminal offense of such a disease would doubtless be universally thought to be an infliction of cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments. See Francis v. Resweber, 329 U.S. 459. We cannot but consider the statute before us as of the same category. ..."
													As the US Supreme Court noted in Kent, the State takes on a parens patriae role with the objective of providing guidance and rehabilitation for the child and protection for society, not to establish criminal responsibility, guilt and punishment. However, in doing so, the child is deprived of important due-process rights and may in fact receive the "worst of both worlds", obtaining neither the protection accorded to adults nor the solicitous care and treatment postulated for children (see Kent, cited above, p. 556). In these cases the child is deprived of his liberty on the basis of his status, namely, the fact of being a juvenile delinquent, not on account of the act allegedly committed by him, the question of his guilt having been determined at the close of proceedings which are Article 6 compliant. In my view, these are two completely different approaches. The criminal procedure is triggered by an act of the criminal defendant, and the guilt or innocence of the defendant can be tested in accordance with the rules of evidence in a setting which satisfies the requirements of due process and the principle of legality. In other words, the act of any defendant is litigable and triable on the facts. It is defined both in abstracto and in concreto in terms of time, place and modus (operandi). However, the being of the perpetrator, in this case the fact of being a juvenile delinquent, is vague and for that reason cannot be legally predetermined (the principle of legality) or proved (the requirement of a fair trial).

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2016	3/23/2016	BLOKHIN v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-161822	47152/06	GC	ZUPANČIČ	concurring		0 US	C	SC	Francis v. Resweber, 329 U.S. 459	In the case of Robinson v. California (370 US 660 (1962)), the US Supreme Court held that a Californian statute which had been used to convict a person for being a drug addict, not for an act of taking narcotics, was unconstitutional, in breach of the Eighth and Fourteenth Amendments. In reaching its conclusion, the Supreme Court made the following observations (pp. 666-67). "This statute, therefore, is not one which punishes a person for the use of narcotics, for their purchase, sale or possession, or for antisocial or disorderly behavior resulting from their administration. It is not a law which even purports to provide or require medical treatment. Rather, we deal with a statute which makes the "status" of narcotic addiction a criminal offense, for which the offender may be prosecuted "at any time before he reforms." California has said that a person can be continuously guilty of this offense, whether or not he has ever used or possessed any narcotics within the State, and whether or not he has been guilty of any antisocial behavior there. It is unlikely that any State at this moment in history would attempt to make it a criminal offense for a person to be mentally ill, or a leper, or to be afflicted with a venereal disease. A State might determine that the general health and welfare require that the victims of these and other human afflictions be dealt with by compulsory treatment, involving quarantine, confinement, or sequestration. But, in the light of contemporary human knowledge, a law which made a criminal offense of such a disease would doubtless be universally thought to be an infliction of cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments. See <i>Francis v. Resweber</i>, 329 U.S. 459. We cannot but consider the statute before us as of the same category. ..." As the US Supreme Court noted in <i>Kent</i>, the State takes on a <i>parens patriae</i> role with the objective of providing guidance and rehabilitation for the child and protection for society, not to establish criminal responsibility, guilt and punishment. However, in doing so, the child is deprived of important due-process rights and may in fact receive the "worst of both worlds", obtaining neither the protection accorded to adults nor the solicitous care and treatment postulated for children (see <i>Kent</i>, cited above, p. 556). In these cases the child is deprived of his liberty on the basis of his status, namely, the fact of being a juvenile delinquent, not on account of the act allegedly committed by him, the question of his guilt having been determined at the close of proceedings which are <i>Article 6</i> compliant. In my view, these are two completely different approaches. The criminal procedure is triggered by an act of the criminal defendant, and the guilt or innocence of the defendant can be tested in accordance with the rules of evidence in a setting which satisfies the requirements of due process and the principle of legality. In other words, the act of any defendant is litigable and triable on the facts. It is defined both in abstracto and in concreto in terms of time, place and modus (operandi). However, the being of the perpetrator, in this case the fact of being a juvenile delinquent, is vague and for that reason cannot be legally predetermined (the principle of legality) or proved (the requirement of a fair trial).
2016	3/23/2016	BLOKHIN v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-161822	47152/06	GC	MOTOC	dissenting (par		0 US	C	SC	Kent v. the United States	Paragraph 196 does not reflect the general principles established by our Court or the mere distinctions between <i>in rem</i> and <i>ad personam</i> formulated in the context of recidivism in <i>Achour v. France</i> ([GC], no. 67335/01, §§ 47-49, ECHR 2006-IV)[1]. And I do see the reasons why these should be included under the heading "General principles". In fact paragraph 196 borrows, without citations, ideas from the US Supreme Court expressed in several cases, such as <i>Kent v. the United States</i>, <i>In re Gault</i> and especially <i>Robinson v. California</i>. In this sense the paragraph operates a legal transplant or a "cross-fertilisation of the case-law". As the creator of the notion of legal transplant, A. Watson has warned us that legal transplants should be operated in a careful way[2]. Even if cross-fertilisation has become common practice nowadays, at the Court some criteria are still to be used; otherwise, as Vico has stated, "La mente umana è naturalmente portata a dilettarsi dell'uniforme" (The human mind naturally tends to delight in the uniform)[3]. It is essential that the cross-fertilisation take into account the differences between legal cultures and rebut any attempt at the axiomatisation of similarity[4]. Furthermore, including the paragraph under the general principles gives the impression that the majority would like to develop a critique of the doctrine of <i>parens patriae</i> in the context of juvenile justice. Whilst the evolution of criminal justice in the United States of America, especially in California in the 1960s, had determined a need for the US Supreme Court to intervene and to ensure against "processing a child offender through the justice system on the sole basis of his status of being a juvenile offender", there is no counterpart to this in the member States of the Council of Europe nowadays. [1]. "47. Consequently, the issue before the Court is indeed whether the principle that only the law can define a crime and prescribe a penalty was observed. The Court must, in particular, ascertain whether in the present case the text of the statutory rule, read in the light of the accompanying interpretative case-law, satisfied the requirements of accessibility and foreseeability at the material time. 48. The Court notes that the applicant was initially convicted of drug trafficking on 16 October 1984 and that he finished serving his sentence on 12 July 1986. He was subsequently convicted of further drug offences committed in the course of 1995 and up to 7 December of that year. In their respective decisions of 14 April and 25 November 1997, the Lyons Criminal Court and Court of Appeal found the applicant guilty of offences under Article 222-37 of the Criminal Code and sentenced him in accordance with that provision and with Article 132-9 of the same Code, on recidivism. 49. The Court notes that Article 132-9 provides that the maximum sentence and fine that may be imposed are to be doubled in the event of recidivism and that the applicable period is no longer five years, as prescribed by the former legislation, but ten years from the expiry of the previous sentence or of the time allowed for its enforcement. As the new statutory rules came into force on 1 March 1994, they were applicable when the applicant committed fresh offences in 1995, so that he was a recidivist in legal terms as a result of those offences ..." [2]. A. Watson, <i>Legal Transplants. An Approach to Comparative Law</i>, Edinburgh, Scottish Academic Press, 1974. [3]. G. Vico, <i>Principi di scienza nuova: d'intorno alla comune natura delle nazioni</i>. [4]. D. Nelken, J. Feest (eds), <i>Adapting Legal Cultures</i>, Oxford and Portland, Oregon: Hart Publishing, 2001.
2016	3/23/2016	BLOKHIN v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-161822	47152/06	GC	MOTOC	dissenting (par		0 US	C	SC	In re Gault	Paragraph 196 does not reflect the general principles established by our Court or the mere distinctions between <i>in rem</i> and <i>ad personam</i> formulated in the context of recidivism in <i>Achour v. France</i> ([GC], no. 67335/01, §§ 47-49, ECHR 2006-IV)[1]. And I do see the reasons why these should be included under the heading "General principles". In fact paragraph 196 borrows, without citations, ideas from the US Supreme Court expressed in several cases, such as <i>Kent v. the United States</i>, <i>In re Gault</i> and especially <i>Robinson v. California</i>. In this sense the paragraph operates a legal transplant or a "cross-fertilisation of the case-law". As the creator of the notion of legal transplant, A. Watson has warned us that legal transplants should be operated in a careful way[2]. Even if cross-fertilisation has become common practice nowadays, at the Court some criteria are still to be used; otherwise, as Vico has stated, "La mente umana è naturalmente portata a dilettarsi dell'uniforme" (The human mind naturally tends to delight in the uniform)[3]. It is essential that the cross-fertilisation take into account the differences between legal cultures and rebut any attempt at the axiomatisation of similarity[4]. Furthermore, including the paragraph under the general principles gives the impression that the majority would like to develop a critique of the doctrine of <i>parens patriae</i> in the context of juvenile justice. Whilst the evolution of criminal justice in the United States of America, especially in California in the 1960s, had determined a need for the US Supreme Court to intervene and to ensure against "processing a child offender through the justice system on the sole basis of his status of being a juvenile offender", there is no counterpart to this in the member States of the Council of Europe nowadays. [1]. "47. Consequently, the issue before the Court is indeed whether the principle that only the law can define a crime and prescribe a penalty was observed. The Court must, in particular, ascertain whether in the present case the text of the statutory rule, read in the light of the accompanying interpretative case-law, satisfied the requirements of accessibility and foreseeability at the material time. 48. The Court notes that the applicant was initially convicted of drug trafficking on 16 October 1984 and that he finished serving his sentence on 12 July 1986. He was subsequently convicted of further drug offences committed in the course of 1995 and up to 7 December of that year. In their respective decisions of 14 April and 25 November 1997, the Lyons Criminal Court and Court of Appeal found the applicant guilty of offences under Article 222-37 of the Criminal Code and sentenced him in accordance with that provision and with Article 132-9 of the same Code, on recidivism. 49. The Court notes that Article 132-9 provides that the maximum sentence and fine that may be imposed are to be doubled in the event of recidivism and that the applicable period is no longer five years, as prescribed by the former legislation, but ten years from the expiry of the previous sentence or of the time allowed for its enforcement. As the new statutory rules came into force on 1 March 1994, they were applicable when the applicant committed fresh offences in 1995, so that he was a recidivist in legal terms as a result of those offences ..." [2]. A. Watson, <i>Legal Transplants. An Approach to Comparative Law</i>, Edinburgh, Scottish Academic Press, 1974. [3]. G. Vico, <i>Principi di scienza nuova: d'intorno alla comune natura delle nazioni</i>. [4]. D. Nelken, J. Feest (eds), <i>Adapting Legal Cultures</i>, Oxford and Portland, Oregon: Hart Publishing, 2001.

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2016	3/23/2016	BLOKHIN v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-161822	47152/06	GC		0 majority	intervener	US	F	general	0 (ii) League of Human Rights	192. The League of Human Rights ("the UGA") also referred to Article 40 of the CRC. It further referred to the Beijing Rules (see paragraph 86 above), the Guidelines for Action on Children in the Criminal Justice System (Annex to UN Resolution 1997/30, adopted on 21 July 1997) and the Havana Rules (see paragraph 87 above) which all provided for a right to legal counsel and assistance for children in conflict with the law. Moreover, the UGA pointed out that Council of Europe Recommendation CM/Rec(2008)11 on the European Rules for juvenile offenders subject to sanctions or measures (see paragraph 79 above) provided that juveniles should not have fewer legal rights and safeguards than those provided to adult offenders by the general rules of criminal procedure. The UGA also stressed that the right to legal assistance, referred to in various international instruments, applied from the very outset of a procedure, including the police questioning stage, involving children and those under the age of criminal responsibility. Since children below the age of criminal responsibility were often subject to very paternalistic proceedings on the grounds that the proceedings were not penal but protective, the traditional procedural safeguards were often not applied. That approach was based on the theory of welfare juvenile justice systems which had emerged in the United States of America and Europe in the late nineteenth and early twentieth centuries and had been systematically criticised by a number of scholars for its overall paternalistic approach to children, typically suppressing their procedural rights and treating them as objects of care and discipline.
2016	3/23/2016	F.G. v. SWEDEN	http://hudoc.echr.coe.int/eng/?i=001-161829	43611/11	GC	ZIEMELE, DE GAETANO, PINTO	separate (joint		0 Australia	C	lower-level co	Australian Refugee Review Tribunal (RRT Case no. 1002841, (2010) RRTA 681	9. The applicant's conversion to Christianity is a criminal offence punishable by death in Iran[23]. In addition to the risk of social persecution as a Christian[24], the applicant risks criminal prosecution for the crime of apostasy[25]. Although the Iranian State has never codified the crime of apostasy, it authorises the enforcement of certain Islamic laws even when the crime is not specifically mentioned in the Criminal Code. Since apostasy is not explicitly proscribed by the Iranian Criminal Code and there are many different interpretations of Islamic law on apostasy, judges have the discretion to adjudicate apostasy cases based on their own understanding of Islamic law[26], which they can impose invoking Article 167 of the Iranian Constitution[27] [25]. See the 2014 Iran Human Rights Documentation Center's report, "Apostasy in the Islamic Republic of Iran", which details the jurisprudential as well as the legal context in which apostasy cases are prosecuted in Iran. The report takes an in-depth look at a number of apostasy cases involving a diverse range of defendants, and provides an account of the legal and religious issues raised in each case. It is also relevant to note that some prominent national courts have already granted refugee status to Iranian Christian converts on the basis of the fear of persecution, like the New Zealand Immigration and Protection Tribunal (AP(Iran), (2011) NZIPT 800012, 29 September 2011), the Australian Refugee Review Tribunal (RRT Case no. 1002841, (2010) RRTA 681), the Court of Appeal of England and Wales (MM (Iran) v. Secretary of State for the Home Department, [2010] EWCA Civ 1457, 17 November 2010), and the Canadian Federal Court (Mostafa Ejlshadian v. Canada (Minister of Citizenship and Immigration), 2007 FC 158, 12 February 2007).
2016	3/23/2016	F.G. v. SWEDEN	http://hudoc.echr.coe.int/eng/?i=001-161829	43611/11	GC	ZIEMELE, DE GAETANO, PINTO	separate (joint		0 Canada	C	lower-level co	Mostafa Ejlshadian v. Canada (Minister of Citizenship and Immigration), 2007 FC 158, 12 February 2007	9. The applicant's conversion to Christianity is a criminal offence punishable by death in Iran[23]. In addition to the risk of social persecution as a Christian[24], the applicant risks criminal prosecution for the crime of apostasy[25]. Although the Iranian State has never codified the crime of apostasy, it authorises the enforcement of certain Islamic laws even when the crime is not specifically mentioned in the Criminal Code. Since apostasy is not explicitly proscribed by the Iranian Criminal Code and there are many different interpretations of Islamic law on apostasy, judges have the discretion to adjudicate apostasy cases based on their own understanding of Islamic law[26], which they can impose invoking Article 167 of the Iranian Constitution[27] [25]. See the 2014 Iran Human Rights Documentation Center's report, "Apostasy in the Islamic Republic of Iran", which details the jurisprudential as well as the legal context in which apostasy cases are prosecuted in Iran. The report takes an in-depth look at a number of apostasy cases involving a diverse range of defendants, and provides an account of the legal and religious issues raised in each case. It is also relevant to note that some prominent national courts have already granted refugee status to Iranian Christian converts on the basis of the fear of persecution, like the New Zealand Immigration and Protection Tribunal (AP(Iran), (2011) NZIPT 800012, 29 September 2011), the Australian Refugee Review Tribunal (RRT Case no. 1002841, (2010) RRTA 681), the Court of Appeal of England and Wales (MM (Iran) v. Secretary of State for the Home Department, [2010] EWCA Civ 1457, 17 November 2010), and the Canadian Federal Court (Mostafa Ejlshadian v. Canada (Minister of Citizenship and Immigration), 2007 FC 158, 12 February 2007).
2016	3/23/2016	F.G. v. SWEDEN	http://hudoc.echr.coe.int/eng/?i=001-161829	43611/11	GC	ZIEMELE, DE GAETANO, PINTO	separate (joint		0 New Zealand	C	lower-level co	New Zealand Immigration and Protection Tribunal (AP(Iran), (2011) NZIPT 800012, 29 September 2011	9. The applicant's conversion to Christianity is a criminal offence punishable by death in Iran[23]. In addition to the risk of social persecution as a Christian[24], the applicant risks criminal prosecution for the crime of apostasy[25]. Although the Iranian State has never codified the crime of apostasy, it authorises the enforcement of certain Islamic laws even when the crime is not specifically mentioned in the Criminal Code. Since apostasy is not explicitly proscribed by the Iranian Criminal Code and there are many different interpretations of Islamic law on apostasy, judges have the discretion to adjudicate apostasy cases based on their own understanding of Islamic law[26], which they can impose invoking Article 167 of the Iranian Constitution[27] [25]. See the 2014 Iran Human Rights Documentation Center's report, "Apostasy in the Islamic Republic of Iran", which details the jurisprudential as well as the legal context in which apostasy cases are prosecuted in Iran. The report takes an in-depth look at a number of apostasy cases involving a diverse range of defendants, and provides an account of the legal and religious issues raised in each case. It is also relevant to note that some prominent national courts have already granted refugee status to Iranian Christian converts on the basis of the fear of persecution, like the New Zealand Immigration and Protection Tribunal (AP(Iran), (2011) NZIPT 800012, 29 September 2011), the Australian Refugee Review Tribunal (RRT Case no. 1002841, (2010) RRTA 681), the Court of Appeal of England and Wales (MM (Iran) v. Secretary of State for the Home Department, [2010] EWCA Civ 1457, 17 November 2010), and the Canadian Federal Court (Mostafa Ejlshadian v. Canada (Minister of Citizenship and Immigration), 2007 FC 158, 12 February 2007).
2016	3/23/2016	F.G. v. SWEDEN	http://hudoc.echr.coe.int/eng/?i=001-161829	43611/11	GC	ZIEMELE, DE GAETANO, PINTO	separate (joint		0 US	C	SC	United States v. Steeger (380 US 163 (1965))	54. The US Supreme Court judgments, United States v. Steeger (380 US 163 (1965)) and Welsh v. United States (398 US 333 (1970)), concerned conscientious objectors and the "test of religious belief" provided by the US Supreme Court under § 6(j) of the Universal Military Training and Service Act. In the former judgment, the Supreme Court ruled that the test of religious belief under § 6(j) is whether it is a sincere and meaningful belief occupying in the life of its possessor a place parallel to that filled by the God of those admittedly qualified for the exemption. Thus conscientious-objector status was not reserved to individuals of a traditional religious background. In the latter judgment, the Supreme Court found that although Mr Welsh denied any religious foundation for his beliefs, whereas Mr Steeger had characterised his pacifist beliefs as "religious", Mr Welsh's conviction was nevertheless valid. More specifically it stated, among other things, "The Court made it clear [in Steeger] that these sincere and meaningful beliefs that prompt the registrant's objection to all wars need not be confined in either source or content to traditional or parochial concepts of religion. It held that § 6(j) 'does not distinguish between externally and internally derived beliefs'; id. at 186, and also held that 'intensely personal' convictions which some might find 'incomprehensible' or 'incorrect' come within the meaning of 'religious belief' in the Act. Id. at 184-185. What is necessary under Steeger for a registrant's conscientious objection to all war to be 'religious' within the meaning of § 6(j) is that this opposition to war stem from the registrant's moral, ethical, or religious beliefs about what is right and wrong and that these beliefs be held with the strength of traditional religious convictions. Most of the great religions of today and of the past have embodied the idea of a Supreme Being or a Supreme Reality – a God – who communicates to man in some way a consciousness of what is right and should be done, of what is wrong and therefore should be shunned. If an individual deeply and sincerely holds beliefs that are purely ethical or moral in source and content, but that nevertheless impose upon him a duty of conscience to refrain from participating in any war at any time, those beliefs certainly occupy in the life of that individual 'a place parallel to that filled by... God' in traditionally religious persons. Because his beliefs function as a religion in his life, such an individual is as much entitled to a 'religious' conscientious objector exemption under § 6(j) as is someone who derives his conscientious opposition to war from traditional religious convictions."
2016	3/23/2016	F.G. v. SWEDEN	http://hudoc.echr.coe.int/eng/?i=001-161829	43611/11	GC	ZIEMELE, DE GAETANO, PINTO	separate (joint		0 US	C	SC	Welsh v. United States (398 US 333 (1970))	54. The US Supreme Court judgments, United States v. Steeger (380 US 163 (1965)) and Welsh v. United States (398 US 333 (1970)), concerned conscientious objectors and the "test of religious belief" provided by the US Supreme Court under § 6(j) of the Universal Military Training and Service Act. In the former judgment, the Supreme Court ruled that the test of religious belief under § 6(j) is whether it is a sincere and meaningful belief occupying in the life of its possessor a place parallel to that filled by the God of those admittedly qualified for the exemption. Thus conscientious-objector status was not reserved to individuals of a traditional religious background. In the latter judgment, the Supreme Court found that although Mr Welsh denied any religious foundation for his beliefs, whereas Mr Steeger had characterised his pacifist beliefs as "religious", Mr Welsh's conviction was nevertheless valid. More specifically it stated, among other things, "The Court made it clear [in Steeger] that these sincere and meaningful beliefs that prompt the registrant's objection to all wars need not be confined in either source or content to traditional or parochial concepts of religion. It held that § 6(j) 'does not distinguish between externally and internally derived beliefs'; id. at 186, and also held that 'intensely personal' convictions which some might find 'incomprehensible' or 'incorrect' come within the meaning of 'religious belief' in the Act. Id. at 184-185. What is necessary under Steeger for a registrant's conscientious objection to all war to be 'religious' within the meaning of § 6(j) is that this opposition to war stem from the registrant's moral, ethical, or religious beliefs about what is right and wrong and that these beliefs be held with the strength of traditional religious convictions. Most of the great religions of today and of the past have embodied the idea of a Supreme Being or a Supreme Reality – a God – who communicates to man in some way a consciousness of what is right and should be done, of what is wrong and therefore should be shunned. If an individual deeply and sincerely holds beliefs that are purely ethical or moral in source and content, but that nevertheless impose upon him a duty of conscience to refrain from participating in any war at any time, those beliefs certainly occupy in the life of that individual 'a place parallel to that filled by... God' in traditionally religious persons. Because his beliefs function as a religion in his life, such an individual is as much entitled to a 'religious' conscientious objector exemption under § 6(j) as is someone who derives his conscientious opposition to war from traditional religious convictions."

Year	Date	Name	Link	App.no.	Body	Judge citing	Opinion	who submitted	Countries	C/R/F	type	Document	Quotes
2016	3/15/2016	NOVRUK AND OTHERS v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-161379	31039/11, 48511/11, 7653			0 majority	ECtHR	Bahrain	R	general		064. According to the survey, as of September 2015, 142 countries, territories and areas worldwide impose no HIV-specific restrictions or conditions on entry, stay or residence. Thirty-five countries and territories imposed some form of restriction based on HIV status. Seventeen countries (Bahrain, Brunei, North Korea, Egypt, Iraq, Jordan, Kuwait, Malaysia, Oman, Qatar, Russia, Saudi Arabia, Singapore, Sudan, Syria, United Arab Emirates, and Yemen) deport individuals once their HIV-positive status is discovered.
2016	3/15/2016	NOVRUK AND OTHERS v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-161379	31039/11, 48511/11, 7653			0 majority	ECtHR	Brunei	R	general		063. In May 2009 the Joint United Nations Programme on HIV and AIDS (UNAIDS) published the survey "Mapping of restrictions on the entry, stay and residence of people living with HIV". The latest version of the survey, updated in September 2015, is available on its website[1].64. According to the survey, as of September 2015, 142 countries, territories and areas worldwide impose no HIV-specific restrictions or conditions on entry, stay or residence. Thirty-five countries and territories imposed some form of restriction based on HIV status. Seventeen countries (Bahrain, Brunei, North Korea, Egypt, Iraq, Jordan, Kuwait, Malaysia, Oman, Qatar, Russia, Saudi Arabia, Singapore, Sudan, Syria, United Arab Emirates, and Yemen) deport individuals once their HIV-positive status is discovered.
2016	3/15/2016	NOVRUK AND OTHERS v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-161379	31039/11, 48511/11, 7653			0 majority	ECtHR	Egypt	R	general		064. According to the survey, as of September 2015, 142 countries, territories and areas worldwide impose no HIV-specific restrictions or conditions on entry, stay or residence. Thirty-five countries and territories imposed some form of restriction based on HIV status. Seventeen countries (Bahrain, Brunei, North Korea, Egypt, Iraq, Jordan, Kuwait, Malaysia, Oman, Qatar, Russia, Saudi Arabia, Singapore, Sudan, Syria, United Arab Emirates, and Yemen) deport individuals once their HIV-positive status is discovered.
2016	3/15/2016	NOVRUK AND OTHERS v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-161379	31039/11, 48511/11, 7653			0 majority	ECtHR	Iraq	R	general		064. According to the survey, as of September 2015, 142 countries, territories and areas worldwide impose no HIV-specific restrictions or conditions on entry, stay or residence. Thirty-five countries and territories imposed some form of restriction based on HIV status. Seventeen countries (Bahrain, Brunei, North Korea, Egypt, Iraq, Jordan, Kuwait, Malaysia, Oman, Qatar, Russia, Saudi Arabia, Singapore, Sudan, Syria, United Arab Emirates, and Yemen) deport individuals once their HIV-positive status is discovered.
2016	3/15/2016	NOVRUK AND OTHERS v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-161379	31039/11, 48511/11, 7653			0 majority	ECtHR	Jordan	R	general		064. According to the survey, as of September 2015, 142 countries, territories and areas worldwide impose no HIV-specific restrictions or conditions on entry, stay or residence. Thirty-five countries and territories imposed some form of restriction based on HIV status. Seventeen countries (Bahrain, Brunei, North Korea, Egypt, Iraq, Jordan, Kuwait, Malaysia, Oman, Qatar, Russia, Saudi Arabia, Singapore, Sudan, Syria, United Arab Emirates, and Yemen) deport individuals once their HIV-positive status is discovered.
2016	3/15/2016	NOVRUK AND OTHERS v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-161379	31039/11, 48511/11, 7653			0 majority	ECtHR	Kuwait	R	general		064. According to the survey, as of September 2015, 142 countries, territories and areas worldwide impose no HIV-specific restrictions or conditions on entry, stay or residence. Thirty-five countries and territories imposed some form of restriction based on HIV status. Seventeen countries (Bahrain, Brunei, North Korea, Egypt, Iraq, Jordan, Kuwait, Malaysia, Oman, Qatar, Russia, Saudi Arabia, Singapore, Sudan, Syria, United Arab Emirates, and Yemen) deport individuals once their HIV-positive status is discovered.
2016	3/15/2016	NOVRUK AND OTHERS v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-161379	31039/11, 48511/11, 7653			0 majority	ECtHR	Malaysia	R	general		064. According to the survey, as of September 2015, 142 countries, territories and areas worldwide impose no HIV-specific restrictions or conditions on entry, stay or residence. Thirty-five countries and territories imposed some form of restriction based on HIV status. Seventeen countries (Bahrain, Brunei, North Korea, Egypt, Iraq, Jordan, Kuwait, Malaysia, Oman, Qatar, Russia, Saudi Arabia, Singapore, Sudan, Syria, United Arab Emirates, and Yemen) deport individuals once their HIV-positive status is discovered.
2016	3/15/2016	NOVRUK AND OTHERS v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-161379	31039/11, 48511/11, 7653			0 majority	ECtHR	North Korea	R	general		064. According to the survey, as of September 2015, 142 countries, territories and areas worldwide impose no HIV-specific restrictions or conditions on entry, stay or residence. Thirty-five countries and territories imposed some form of restriction based on HIV status. Seventeen countries (Bahrain, Brunei, North Korea, Egypt, Iraq, Jordan, Kuwait, Malaysia, Oman, Qatar, Russia, Saudi Arabia, Singapore, Sudan, Syria, United Arab Emirates, and Yemen) deport individuals once their HIV-positive status is discovered.
2016	3/15/2016	NOVRUK AND OTHERS v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-161379	31039/11, 48511/11, 7653			0 majority	ECtHR	Oman	R	general		064. According to the survey, as of September 2015, 142 countries, territories and areas worldwide impose no HIV-specific restrictions or conditions on entry, stay or residence. Thirty-five countries and territories imposed some form of restriction based on HIV status. Seventeen countries (Bahrain, Brunei, North Korea, Egypt, Iraq, Jordan, Kuwait, Malaysia, Oman, Qatar, Russia, Saudi Arabia, Singapore, Sudan, Syria, United Arab Emirates, and Yemen) deport individuals once their HIV-positive status is discovered.
2016	3/15/2016	NOVRUK AND OTHERS v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-161379	31039/11, 48511/11, 7653			0 majority	ECtHR	Qatar	R	general		064. According to the survey, as of September 2015, 142 countries, territories and areas worldwide impose no HIV-specific restrictions or conditions on entry, stay or residence. Thirty-five countries and territories imposed some form of restriction based on HIV status. Seventeen countries (Bahrain, Brunei, North Korea, Egypt, Iraq, Jordan, Kuwait, Malaysia, Oman, Qatar, Russia, Saudi Arabia, Singapore, Sudan, Syria, United Arab Emirates, and Yemen) deport individuals once their HIV-positive status is discovered.
2016	3/15/2016	NOVRUK AND OTHERS v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-161379	31039/11, 48511/11, 7653			0 majority	ECtHR	Saudi Arabia	R	general		064. According to the survey, as of September 2015, 142 countries, territories and areas worldwide impose no HIV-specific restrictions or conditions on entry, stay or residence. Thirty-five countries and territories imposed some form of restriction based on HIV status. Seventeen countries (Bahrain, Brunei, North Korea, Egypt, Iraq, Jordan, Kuwait, Malaysia, Oman, Qatar, Russia, Saudi Arabia, Singapore, Sudan, Syria, United Arab Emirates, and Yemen) deport individuals once their HIV-positive status is discovered.
2016	3/15/2016	NOVRUK AND OTHERS v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-161379	31039/11, 48511/11, 7653			0 majority	ECtHR	Singapore	R	general		064. According to the survey, as of September 2015, 142 countries, territories and areas worldwide impose no HIV-specific restrictions or conditions on entry, stay or residence. Thirty-five countries and territories imposed some form of restriction based on HIV status. Seventeen countries (Bahrain, Brunei, North Korea, Egypt, Iraq, Jordan, Kuwait, Malaysia, Oman, Qatar, Russia, Saudi Arabia, Singapore, Sudan, Syria, United Arab Emirates, and Yemen) deport individuals once their HIV-positive status is discovered.
2016	3/15/2016	NOVRUK AND OTHERS v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-161379	31039/11, 48511/11, 7653			0 majority	ECtHR	Sudan	R	general		064. According to the survey, as of September 2015, 142 countries, territories and areas worldwide impose no HIV-specific restrictions or conditions on entry, stay or residence. Thirty-five countries and territories imposed some form of restriction based on HIV status. Seventeen countries (Bahrain, Brunei, North Korea, Egypt, Iraq, Jordan, Kuwait, Malaysia, Oman, Qatar, Russia, Saudi Arabia, Singapore, Sudan, Syria, United Arab Emirates, and Yemen) deport individuals once their HIV-positive status is discovered.
2016	3/15/2016	NOVRUK AND OTHERS v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-161379	31039/11, 48511/11, 7653			0 majority	ECtHR	Syria	R	general		064. According to the survey, as of September 2015, 142 countries, territories and areas worldwide impose no HIV-specific restrictions or conditions on entry, stay or residence. Thirty-five countries and territories imposed some form of restriction based on HIV status. Seventeen countries (Bahrain, Brunei, North Korea, Egypt, Iraq, Jordan, Kuwait, Malaysia, Oman, Qatar, Russia, Saudi Arabia, Singapore, Sudan, Syria, United Arab Emirates, and Yemen) deport individuals once their HIV-positive status is discovered.
2016	3/15/2016	NOVRUK AND OTHERS v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-161379	31039/11, 48511/11, 7653			0 majority	ECtHR	United Arab Emirates	R	general		064. According to the survey, as of September 2015, 142 countries, territories and areas worldwide impose no HIV-specific restrictions or conditions on entry, stay or residence. Thirty-five countries and territories imposed some form of restriction based on HIV status. Seventeen countries (Bahrain, Brunei, North Korea, Egypt, Iraq, Jordan, Kuwait, Malaysia, Oman, Qatar, Russia, Saudi Arabia, Singapore, Sudan, Syria, United Arab Emirates, and Yemen) deport individuals once their HIV-positive status is discovered.
2016	3/15/2016	NOVRUK AND OTHERS v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-161379	31039/11, 48511/11, 7653			0 majority	ECtHR	Yemen	R	general		064. According to the survey, as of September 2015, 142 countries, territories and areas worldwide impose no HIV-specific restrictions or conditions on entry, stay or residence. Thirty-five countries and territories imposed some form of restriction based on HIV status. Seventeen countries (Bahrain, Brunei, North Korea, Egypt, Iraq, Jordan, Kuwait, Malaysia, Oman, Qatar, Russia, Saudi Arabia, Singapore, Sudan, Syria, United Arab Emirates, and Yemen) deport individuals once their HIV-positive status is discovered.
2016	1/12/2016	BĂRBULESCU v. ROMANIA	http://hudoc.echr.coe.int/eng/?i=001-159906	61496/08	54	PINTO DE ALBUQUERQUE	dissenting (par		0 Canada	C	SC	R. v. Cole, [2012] SCC 53	The personal and sensitive nature of the employee's communications 19. The delicate character of the present case is significantly heightened by the nature of certain of the applicant's messages. They referred to the sexual health problems affecting the applicant and his fiancée[52]. This subject pertains to the core of the applicant's private life and requires the most intense protection under Article 8. Other than this sensitive data, the messages also dealt with other personal information, such as his uneasiness with the hostile working environment. The employer accessed not only the professional Yahoo Messenger account created by the applicant, but also his own personal account[53]. The employer had no proprietary rights over the employee's Yahoo messenger account, notwithstanding the fact that the computer used by the employee belonged to the employer[54]. Furthermore, the employer was aware that some of the communications exchanged by the applicant were directed to an account entitled "Andra loves you", which could evidently have no relationship with the performance of the applicant's professional tasks[55]. Yet the employer accessed the content of this communication and made transcripts of it against the applicant's explicit will and without a court order[56]. [54] The ownership argument is not lacking in logical appeal, but it should be approached with caution. It can be questioned whether it is appropriate to approach the matter in black-or-white reasoning, arguing that the employee no longer has any expectation of privacy whenever he or she uses IT facilities belonging to the employer, and, conversely, the employer has such an expectation whenever he or she uses his or her own IT facilities. A more nuanced approach is necessary, as emerges from the Article 29 Working Party Working document on surveillance and monitoring of electronic communications in the workplace, page 20: "In any case, the location and ownership of the electronic means used do not rule out secrecy of communications and correspondence as laid down in fundamental legal principles and constitutions." Recently, the Canadian Supreme Court underscored the same idea, asserting the employee's reasonable expectation of privacy over his personal information stored in company-owned equipment (R. v. Cole, [2012] SCC 53). By the same token, the working time argument, which claims that an individual at work is not on "private time" and that therefore no right to privacy applies in the workplace, is also misleading. To borrow the words of Justice Blackman writing for the minority in O'Connor v. Ortega, cited above, "the reality of work in modern time, whether done by public or private employees, reveals why a public employee's expectation of privacy in the workplace should be carefully safeguarded and not lightly set aside. It is, unfortunately, all too true that the workplace has become another home for most working Americans. Many employees spend the better part of their days and much of their evenings at work ... As a result, the tidy distinctions (to which the plurality alludes) between the workplace and professional affairs, on the one hand, and personal possessions and private activities, on the other, do not exist in reality."
2016	1/12/2016	BĂRBULESCU v. ROMANIA	http://hudoc.echr.coe.int/eng/?i=001-159906	61496/08	54	PINTO DE ALBUQUERQUE	dissenting (par		0 US	C	SC	O'Connor v. Ortega, 480 US 709 (1983)	5. The Convention principle is that internet communications are not less protected on the sole ground that they occur during working hours, in the workplace or in the context of an employment relationship, or that they have an impact on the employer's business activities or the employee's performance of contractual obligations[9]. This protection includes not only the content of the communications, but also the metadata resulting from the collection and retention of communications data, which may provide an insight into an individual's way of life, religious beliefs, political convictions, private preferences and social relations[10]. In the absence of a warning from the employer that communications are being monitored, the employee has a "reasonable expectation of privacy"[11]. Any interference by the employer with the employee's right to respect for private life and freedom of expression, including the mere storing of personal data related to the employee's private life, must be justified in a democratic society by the protection of certain specific interests covered by the Convention[12], namely the protection of the rights and freedoms of the employer or other employees (Article 8 § 2 [13]) or the protection of the reputation or rights of the employer or other employees and the prevention of the disclosure of information received by the employee in confidence (Article 10 § 2 [14]). Hence, the pursuit of maximum profitability and productivity from the workforce is not per se an interest covered by Article 8 § 2 and Article 10 § 2, but the purpose of ensuring the fair fulfilment of contractual obligations in an employment relationship may justify certain restrictions on the above-mentioned rights and freedoms in a democratic society[15]. [11] Halford, cited above, §§ 44 and 45; Copland, cited above, §§ 41 and 42; and Peiv, cited above, § 39. It is not clear what the Court meant by this, since the Court refers to various factors such as lack of warning, provision of private space and assurance of private use of the employer's communication devices, but does not clarify their relative importance and whether these factors are essential or case-sensitive. Thus, the Court neglects the normative value of the "reasonableness" criterion, leaving the impression that the employee's privacy at work is always deferential to pure management interests, as if the employer had the ultimate word on what kind of activity is not regarded as private in the workplace. Worse still, the Court does not provide any guidance on the interests that the employer may invoke under Article 8 § 2 to justify interferences with the employee's privacy. The problem with this concept lies in the way it was fashioned at birth. The employee's expectation of privacy in the context of the "operational realities of the workplace" was affirmed by the United States Supreme Court in O'Connor v. Ortega, 480 US 709 (1983), which addressed the issue on a weak case-by-case basis, leading to the absence of generally applicable principles, as the critical concurring opinion of Justice Scalia also noted. In my view, the "reasonable expectation" test is a mixed objective-subjective test, since the person must actually have held the belief (subjectively), but it must have also been reasonable for him or her to have done so (objectively). This objective, normative limb of the test cannot be forgotten.
2016	1/12/2016	SZABÓ AND VISSY v. HUNGARY	http://hudoc.echr.coe.int/eng/?i=001-160020	37138/14	54		0 majority	intervener	Canada	C	general		051. Privacy international reviewed the relevant jurisprudence, both of the Court and national courts in Europe, Canada and the United States, highlighting recent decisions affirming that surveillance measures, including mere access to data retained by communications service providers, must be subject to judicial control or dependent upon the issuance of a judicial warrant. Moreover, Privacy International overviewed the international human rights standards relevant to the question of judicial control of surveillance, referring – among other things – to United Nations announcements and to the International Principles on the Application of Human Rights to Communications Surveillance which all include the need for judicial control of surveillance and for the right to an effective remedy.

Year	Date	Name	Link	App.no.	Body	Judge citing	Opinion	who submitted	Countries	C/R/F	type	Document	Quotes
2016	1/12/2016	SZABÓ AND VISSY v. HUNGARY	http://hudoc.echr.coe.int/eng/?i=001-160020	37138/14	54		0 majority	intervener	Canada	C	general	0	51. Privacy International reviewed the relevant jurisprudence, both of the Court and national courts in Europe, Canada and the United States, highlighting recent decisions affirming that surveillance measures, including mere access to data retained by communications service providers, must be subject to judicial control or dependent upon the issuance of a judicial warrant. Moreover, Privacy International overruled the international human rights standards relevant to the question of judicial control of surveillance, referring – among other things – to United Nations announcements and to the International Principles on the Application of Human Rights to Communications Surveillance which all include the need for judicial control of surveillance and for the right to an effective remedy.
2015	12/8/2015	MIRONOVAS AND OTHERS v. LITHUANIA	http://hudoc.echr.coe.int/eng/?i=001-159049	40828/12, 29292/12, 69	54	PINTO DE ALBUQUERQUE	dissenting (par		0 US	C	SC	Brown, Governor of California, et al. v. Plata et al., 23 May 2011	2. Prison overcrowding, as a systemic problem of European criminal justice systems, has been on the agenda of the Court since 2009[1]. The structural nature of the problem and the consequent need to address it in general terms were first acknowledged in <i>Orchowski</i> [2] and <i>Norbert Šikora</i> [3], in which the Court concluded that from 2000 until at least mid-2008, the overcrowding in Polish remand centres had revealed a structural problem consisting of a “practice that [was] incompatible with the Convention”. The Polish cases were followed by similar judgments with regard to Russian remand prisons[4], Italian prisons[5], Belgian prisons[6], Bulgarian prisons[7], and, more recently, Hungarian prisons[8]. In the present case, the European Court of Human Rights (the Court) is once again confronted with the task of determining the mandatory level of human rights protection when Contracting Parties to the Convention are faced with the problem of prison overcrowding, in terms of both the binding standards for material prison conditions and the remedies for lack of compliance with these standards[9]. It is relevant to note that the same diagnosis of the structural nature of the problem and the similar general approach to resolving it were adopted by the United States Supreme Court with regard to the situation of California prisoners in <i>Brown, Governor of California, et al. v. Plata et al.</i> , 23 May 2011, which confirmed a federal court order by three judges to release 46,000 prisoners within two years, in view of the fact that the state of California had 150,000 prisoners in prisons designed for 80,000 people.
2015	11/26/2015	ANNEN v. GERMANY	http://hudoc.echr.coe.int/eng/?i=001-158880	no. 3690/10	55	YUDKIVSKA AND JÄDERBLOM	dissenting (join		0 US	C	SC	McCullen v. Coakley, 573 U.S. ____ (2014).	As we have already mentioned, there is no doubt that the applicant participated in a debate involving moral and ethical issues, which normally calls for a high degree of protection in terms of free-speech requirements. The United States Supreme Court has recently invalidated a Massachusetts statute that prevented pro-life activists from campaigning within a 35-foot buffer zone around abortion clinics, whilst the petitioners in that case were merely offering women information about alternatives to abortion[2]. It could be perfectly legitimate to distribute leaflets and run a website criticising abortion as a phenomenon, which the applicant continues to do, but in the present case the actions prohibited by the domestic judicial authorities were limited to the continued destruction of the professional reputation of two doctors.
2015	11/26/2015	ANNEN v. GERMANY	http://hudoc.echr.coe.int/eng/?i=001-158880	no. 3690/10	55		0 majority	intervener	US	F	general		In sum, we find that the German authorities have struck a fair balance between the competing interests at stake. [2]2. McCullen v. Coakley, 573 U.S. ____ (2014).
2015	10/20/2015	DVORSKI v. CROATIA	http://hudoc.echr.coe.int/eng/?i=001-158266	no. 25703/11	GC	KALAYDIEVA, PINTO DE ALBUQUERQUE AND TURKOVIC	concurring (join		0 US	C	SC	Chapman v. California, 386 US 18 (1967)	49. In addition to the arguments also brought forward by the ADF and ALA, the European Centre for Law and Justice (ECLJ) stressed that the applicant, when referring to Auschwitz and the Nazi regime, had neither intended to trivialise nor to exploit the Holocaust nor to interfere with the doctors’ reputation but had pursued, especially with regard to his German audience, the legitimate aim of pointing out the difference between legality and justice. Moreover, the ECLJ argued that the abortion-Holocaust comparison had long been drawn in the debate, for example in pro-life campaigns in Poland and the United States of America.
2015	10/20/2015	DVORSKI v. CROATIA	http://hudoc.echr.coe.int/eng/?i=001-158266	no. 25703/11	GC	KALAYDIEVA, PINTO DE ALBUQUERQUE AND TURKOVIC	concurring (join		0 US	C	SC	United States v. Gonzalez-Lopez, 548 US 140 (2006)	18. In some proceedings, there is no basis for a fair trial that their infringement cannot be viewed as a fair [22]. The infringement of these rights results in a structural error, which affects the framework within which the trial proceeds[23]. [22]. In the words of United States Supreme Court, “their infraction can never be treated as harmless error”. See Chapman v. California, 386 US 18 (1967), citing the cases of a biased trial judge, a coerced confession and the denial of the right to counsel at trial as examples of structural errors.
2015	10/20/2015	DVORSKI v. CROATIA	http://hudoc.echr.coe.int/eng/?i=001-158266	no. 25703/11	GC	KALAYDIEVA, PINTO DE ALBUQUERQUE AND TURKOVIC	concurring (join		0 US	C	SC	United States v. Gonzalez-Lopez, 548 US 140 (2006)	18. We submit that the erroneous denial of choice of a lawyer constitutes another example of a structural error in criminal proceedings which should result automatically in the exclusion of all self-incriminatory statements tainted by that error[28]. If a tainted self-incriminatory statement is not excluded prior to trial, such an error in itself should be seen as a violation of the Convention without there being any need to assess the overall fairness of the proceedings. If that tainted evidence comes to the knowledge of the judges sitting in the case, the conviction should automatically be quashed. No other legal remedy could rectify such errors and ultimately ensure the fundamental right to a fair trial. In our opinion, the use of any balancing test in such situations threatens to subordinate the fundamental guarantee to legal assistance of one’s own choosing to other interests that have less, if any, significance in terms of the Convention. [28]. As Judge Scalia put it: “Different attorneys will pursue different strategies with regard to investigation and discovery, development of the theory of defense, selection of the jury, presentation of the witnesses, and style of witness examination and jury argument. And the choice of attorney will affect whether and on what terms the defendant cooperates with the prosecution, plea bargains, or decides instead to go to trial. In light of these myriad aspects of representation, the erroneous denial of counsel bears directly on the ‘framework within which the trial proceeds’, Fulminante, supra, at 310 – or indeed on whether it proceeds at all. It is impossible to know what different choices the rejected counsel would have made, and then to quantify the impact of those different choices on the outcome of the proceedings – Harmless-error analysis in such a context would be a speculative inquiry into what might have occurred in an alternate universe” (United States v. Gonzalez-Lopez, 548 US 140 (2006)). Such structural errors include the denial of counsel (see Gideon v. Wainwright, 372 US 335 (1963)), the denial of the right of self-representation (see McKaskle v. Wiggins, 465 US 168, 177-78, n. 8 (1984)), the denial of the right to public trial (see Waller v. Georgia, 467 US 39, 49, n. 9 (1984)) and the denial of the right to trial by jury by the giving of a defective reasonable-doubt instruction (see Sullivan v. Louisiana, 508 US 275 (1993)).
2015	10/20/2015	DVORSKI v. CROATIA	http://hudoc.echr.coe.int/eng/?i=001-158266	no. 25703/11	GC	KALAYDIEVA, PINTO DE ALBUQUERQUE AND TURKOVIC	concurring (join		0 US	C	SC	Gideon v. Wainwright, 372 US 335 (1963)	18. We submit that the erroneous denial of choice of a lawyer constitutes another example of a structural error in criminal proceedings which should result automatically in the exclusion of all self-incriminatory statements tainted by that error[28]. If a tainted self-incriminatory statement is not excluded prior to trial, such an error in itself should be seen as a violation of the Convention without there being any need to assess the overall fairness of the proceedings. If that tainted evidence comes to the knowledge of the judges sitting in the case, the conviction should automatically be quashed. No other legal remedy could rectify such errors and ultimately ensure the fundamental right to a fair trial. In our opinion, the use of any balancing test in such situations threatens to subordinate the fundamental guarantee to legal assistance of one’s own choosing to other interests that have less, if any, significance in terms of the Convention. [28]. As Judge Scalia put it: “Different attorneys will pursue different strategies with regard to investigation and discovery, development of the theory of defense, selection of the jury, presentation of the witnesses, and style of witness examination and jury argument. And the choice of attorney will affect whether and on what terms the defendant cooperates with the prosecution, plea bargains, or decides instead to go to trial. In light of these myriad aspects of representation, the erroneous denial of counsel bears directly on the ‘framework within which the trial proceeds’, Fulminante, supra, at 310 – or indeed on whether it proceeds at all. It is impossible to know what different choices the rejected counsel would have made, and then to quantify the impact of those different choices on the outcome of the proceedings – Harmless-error analysis in such a context would be a speculative inquiry into what might have occurred in an alternate universe” (United States v. Gonzalez-Lopez, 548 US 140 (2006)). Such structural errors include the denial of counsel (see Gideon v. Wainwright, 372 US 335 (1963)), the denial of the right of self-representation (see McKaskle v. Wiggins, 465 US 168, 177-78, n. 8 (1984)), the denial of the right to public trial (see Waller v. Georgia, 467 US 39, 49, n. 9 (1984)) and the denial of the right to trial by jury by the giving of a defective reasonable-doubt instruction (see Sullivan v. Louisiana, 508 US 275 (1993)).
2015	10/20/2015	DVORSKI v. CROATIA	http://hudoc.echr.coe.int/eng/?i=001-158266	no. 25703/11	GC	KALAYDIEVA, PINTO DE ALBUQUERQUE AND TURKOVIC	concurring (join		0 US	C	SC	see McKaskle v. Wiggins, 465 US 168, 177-78, n. 8 (1984)	18. We submit that the erroneous denial of choice of a lawyer constitutes another example of a structural error in criminal proceedings which should result automatically in the exclusion of all self-incriminatory statements tainted by that error[28]. If a tainted self-incriminatory statement is not excluded prior to trial, such an error in itself should be seen as a violation of the Convention without there being any need to assess the overall fairness of the proceedings. If that tainted evidence comes to the knowledge of the judges sitting in the case, the conviction should automatically be quashed. No other legal remedy could rectify such errors and ultimately ensure the fundamental right to a fair trial. In our opinion, the use of any balancing test in such situations threatens to subordinate the fundamental guarantee to legal assistance of one’s own choosing to other interests that have less, if any, significance in terms of the Convention. [28]. As Judge Scalia put it: “Different attorneys will pursue different strategies with regard to investigation and discovery, development of the theory of defense, selection of the jury, presentation of the witnesses, and style of witness examination and jury argument. And the choice of attorney will affect whether and on what terms the defendant cooperates with the prosecution, plea bargains, or decides instead to go to trial. In light of these myriad aspects of representation, the erroneous denial of counsel bears directly on the ‘framework within which the trial proceeds’, Fulminante, supra, at 310 – or indeed on whether it proceeds at all. It is impossible to know what different choices the rejected counsel would have made, and then to quantify the impact of those different choices on the outcome of the proceedings – Harmless-error analysis in such a context would be a speculative inquiry into what might have occurred in an alternate universe” (United States v. Gonzalez-Lopez, 548 US 140 (2006)). Such structural errors include the denial of counsel (see Gideon v. Wainwright, 372 US 335 (1963)), the denial of the right of self-representation (see McKaskle v. Wiggins, 465 US 168, 177-78, n. 8 (1984)), the denial of the right to public trial (see Waller v. Georgia, 467 US 39, 49, n. 9 (1984)) and the denial of the right to trial by jury by the giving of a defective reasonable-doubt instruction (see Sullivan v. Louisiana, 508 US 275 (1993)).
2015	10/20/2015	DVORSKI v. CROATIA	http://hudoc.echr.coe.int/eng/?i=001-158266	no. 25703/11	GC	KALAYDIEVA, PINTO DE ALBUQUERQUE AND TURKOVIC	concurring (join		0 US	C	SC	Waller v. Georgia, 467 US 39, 49, n. 9 (1984)	18. We submit that the erroneous denial of choice of a lawyer constitutes another example of a structural error in criminal proceedings which should result automatically in the exclusion of all self-incriminatory statements tainted by that error[28]. If a tainted self-incriminatory statement is not excluded prior to trial, such an error in itself should be seen as a violation of the Convention without there being any need to assess the overall fairness of the proceedings. If that tainted evidence comes to the knowledge of the judges sitting in the case, the conviction should automatically be quashed. No other legal remedy could rectify such errors and ultimately ensure the fundamental right to a fair trial. In our opinion, the use of any balancing test in such situations threatens to subordinate the fundamental guarantee to legal assistance of one’s own choosing to other interests that have less, if any, significance in terms of the Convention. [28]. As Judge Scalia put it: “Different attorneys will pursue different strategies with regard to investigation and discovery, development of the theory of defense, selection of the jury, presentation of the witnesses, and style of witness examination and jury argument. And the choice of attorney will affect whether and on what terms the defendant cooperates with the prosecution, plea bargains, or decides instead to go to trial. In light of these myriad aspects of representation, the erroneous denial of counsel bears directly on the ‘framework within which the trial proceeds’, Fulminante, supra, at 310 – or indeed on whether it proceeds at all. It is impossible to know what different choices the rejected counsel would have made, and then to quantify the impact of those different choices on the outcome of the proceedings – Harmless-error analysis in such a context would be a speculative inquiry into what might have occurred in an alternate universe” (United States v. Gonzalez-Lopez, 548 US 140 (2006)). Such structural errors include the denial of counsel (see Gideon v. Wainwright, 372 US 335 (1963)), the denial of the right of self-representation (see McKaskle v. Wiggins, 465 US 168, 177-78, n. 8 (1984)), the denial of the right to public trial (see Waller v. Georgia, 467 US 39, 49, n. 9 (1984)) and the denial of the right to trial by jury by the giving of a defective reasonable-doubt instruction (see Sullivan v. Louisiana, 508 US 275 (1993)).
2015	10/20/2015	DVORSKI v. CROATIA	http://hudoc.echr.coe.int/eng/?i=001-158266	no. 25703/11	GC	KALAYDIEVA, PINTO DE ALBUQUERQUE AND TURKOVIC	concurring (join		0 US	C	SC	Sullivan v. Louisiana, 508 US 275 (1993)	18. We submit that the erroneous denial of choice of a lawyer constitutes another example of a structural error in criminal proceedings which should result automatically in the exclusion of all self-incriminatory statements tainted by that error[28]. If a tainted self-incriminatory statement is not excluded prior to trial, such an error in itself should be seen as a violation of the Convention without there being any need to assess the overall fairness of the proceedings. If that tainted evidence comes to the knowledge of the judges sitting in the case, the conviction should automatically be quashed. No other legal remedy could rectify such errors and ultimately ensure the fundamental right to a fair trial. In our opinion, the use of any balancing test in such situations threatens to subordinate the fundamental guarantee to legal assistance of one’s own choosing to other interests that have less, if any, significance in terms of the Convention. [28]. As Judge Scalia put it: “Different attorneys will pursue different strategies with regard to investigation and discovery, development of the theory of defense, selection of the jury, presentation of the witnesses, and style of witness examination and jury argument. And the choice of attorney will affect whether and on what terms the defendant cooperates with the prosecution, plea bargains, or decides instead to go to trial. In light of these myriad aspects of representation, the erroneous denial of counsel bears directly on the ‘framework within which the trial proceeds’, Fulminante, supra, at 310 – or indeed on whether it proceeds at all. It is impossible to know what different choices the rejected counsel would have made, and then to quantify the impact of those different choices on the outcome of the proceedings – Harmless-error analysis in such a context would be a speculative inquiry into what might have occurred in an alternate universe” (United States v. Gonzalez-Lopez, 548 US 140 (2006)). Such structural errors include the denial of counsel (see Gideon v. Wainwright, 372 US 335 (1963)), the denial of the right of self-representation (see McKaskle v. Wiggins, 465 US 168, 177-78, n. 8 (1984)), the denial of the right to public trial (see Waller v. Georgia, 467 US 39, 49, n. 9 (1984)) and the denial of the right to trial by jury by the giving of a defective reasonable-doubt instruction (see Sullivan v. Louisiana, 508 US 275 (1993)).

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2015	10/20/2015	PENTIKÄINEN v. FINLAND	http://hudoc.echr.coe.int/eng/?i=001-1582729	11882/10	GC	MOTOC	concurring		Canada	C	SC	Grant v. Torstar Corp., [2009] 3 SCR 640	In Grant v. Torstar Corp., [2009] 3 SCR 640, the Canadian Supreme Court found that two conditions had to be fulfilled for the defence of responsible communication to be established: (1) the case had to involve a matter of public interest; (2) the defendant had to demonstrate that he had acted responsibly and been diligent in trying to verify the allegation(s), having regard to all the relevant circumstances. The Supreme Court stated that in order to assess whether the defendant had acted responsibly, the court had to consider (1) the seriousness of the allegation; (2) the public importance of the matter; (3) the urgency of the matter; (4) the status and reliability of the source; (5) whether the plaintiff's side of the story was sought and accurately reported; (6) whether the inclusion of the defamatory statement was justifiable; (7) whether the defamatory statement's public interest lay in the fact that it was made rather than in its truth. The Supreme Court noted that the list was not exhaustive and that it should only serve as guidance. The courts were free to consider other factors. Moreover, the factors listed should not all carry the same weight.
2015	10/20/2015	VASILIAUSKAS v. LITHUANIA	http://hudoc.echr.coe.int/eng/?i=001-158290	35343/05	GC		0 majority	government	Costa Rica	R	general	0	140. The Government also submitted that the Lithuanian domestic legislative changes in 1998 reflected trends in the practice of a number of States as well as in the opinions of legal writers on the subject of genocide. A significant number of States, including Estonia, Poland, France, Switzerland, Finland, Slovenia, Romania, Ecuador and Costa Rica had extended the definition of genocide in national law. While most extended it to social or political groups, some chose an open-ended inclusive approach, such as "groups determined by any other arbitrary criterion" (France, Romania).
2015	10/20/2015	VASILIAUSKAS v. LITHUANIA	http://hudoc.echr.coe.int/eng/?i=001-158290	35343/05	GC		0 majority	government	Ecuador	R	general	0	140. The Government also submitted that the Lithuanian domestic legislative changes in 1998 reflected trends in the practice of a number of States as well as in the opinions of legal writers on the subject of genocide. A significant number of States, including Estonia, Poland, France, Switzerland, Finland, Slovenia, Romania, Ecuador and Costa Rica had extended the definition of genocide in national law. While most extended it to social or political groups, some chose an open-ended inclusive approach, such as "groups determined by any other arbitrary criterion" (France, Romania).
2015	10/15/2015	PERINČEK v. SWITZERLAND	http://hudoc.echr.coe.int/eng/?i=001-158215	27510/08	GC		0 majority	government	Canada	C	lower-level co	Canadian Human Rights Tribunal	91. In the Chamber proceedings, the Swiss Government submitted a comparative law study (opinion 06-184) issued on 19 December 2006 by the Swiss Institute of Comparative Law. This study analysed the legislation of fourteen European countries (Austria, Belgium, Denmark, Finland, France, Germany, Ireland, Italy, Luxembourg, the Netherlands, Norway, Spain, Sweden and the United Kingdom), the United States and Canada regarding the offence of denial of crimes against humanity, in particular genocide. The summary of the study reads: "A study of denial of crimes against humanity and genocide in the different countries under examination reveals considerable variation. Spain, France and Luxembourg have all adopted an extensive approach to the prohibition of denial of these crimes. Spanish legislation refers generically to the denial of acts with the proven purpose of fully or partially eliminating an ethnic, racial or religious group. The perpetrator faces a sentence of one to two years' imprisonment. In France and Luxembourg, the legislation refers to denial of crimes against humanity, as defined in Article 6 of the Charter of the International Military Tribunal, annexed to the London Agreement of 8 August 1945 ... This limitation of the substantive scope of the offence of denial of crimes against humanity is offset in Luxembourg by the fact that there is a special provision concerning denial of crimes of genocide. Denial of such crimes is punishable by the same sentences [imprisonment from eight days to six months and/or a fine ranging from 251 to 25,000 euros] as denial of crimes against humanity but the definition of genocide used for these purposes is that of the Luxembourg Law of 8 August 1985, which is general and abstract, not being limited to acts committed during the Second World War. The limited scope of the relevant provisions in France has been criticised and it should be noted in this connection that a Bill aimed at criminalising denial of the existence of the Armenian genocide was approved at its first reading by the National Assembly on 12 October 2006. Accordingly, it appears that only Luxembourg and Spain criminalise denial of crimes of genocide in their legislation, generically and without restricting themselves to particular episodes in history. In addition, denial of crimes against humanity in general is not currently a criminal offence in any country. In this connection, in a group of countries – among which France can be included, from an analysis of its laws – only the denial of acts committed during the Second World War is a criminal offence. In Germany, for example, anyone who, publicly or at a meeting, denies or trivialises acts committed with the aim of totally or partially eliminating a national, religious or ethnic group during the National Socialist regime is punishable by up to five years' imprisonment or a fine. In Austria, anyone who, acting in such a way that his or her position may be known by a large number of people, denies or severely trivialises genocide or other crimes against humanity committed by the National Socialist regime is punishable by up to ten years' imprisonment. Following the same approach, Belgian law punishes by imprisonment for between eight days and one year anyone who denies or grossly trivialises, seeks to justify or approves of the genocide committed by the German National Socialist regime. In other countries, in the absence of special statutory provision for criminal offences, the courts have intervened to ensure that negationism is punished. In particular, the Netherlands Supreme Court has held that the provisions of the Criminal Code prohibiting discriminatory acts were to be applied to punish denial of crimes against humanity. In addition, a Bill aimed at criminalising negationism is currently being examined in that country. The Canadian Human Rights Tribunal has referred to the criminal offence of exposing others to hatred or contempt, as provided for in the Canadian Human Rights Act, as a basis for condemning the content of a negationist website. The position of the judges in the United States is less settled, since that country affords extremely strict protection of freedom of expression, for historical and cultural reasons. However, it may be noted that in general, victims of offensive speech have to date succeeded in obtaining damages where they may legitimately have felt that their physical integrity was under threat. In addition, there are a range of countries in which denial of crimes against humanity is not directly contemplated by the law. For some of those countries, it is conceivable that this might be covered by the definition of more general criminal offences. For example, under Italian law it is an offence to condone crimes of genocide; however, the boundary between condoning, trivialising and denying crimes is extremely thin. Norwegian law punishes anyone who makes an official statement that is discriminatory or hateful. This definition could conceivably apply to negationism. The Supreme Court has not yet had occasion to rule on this issue. In other countries, for example Denmark and Sweden, the trial courts have taken a position, having agreed to review whether the provisions of criminal law concerning discriminatory or hateful statements may be applied to cases of negationism, although they have not found them to be applicable in the cases before them. In Finland, the political authorities have expressed the view that such provisions are not applicable to
2015	10/15/2015	PERINČEK v. SWITZERLAND	http://hudoc.echr.coe.int/eng/?i=001-158215	27510/08	GC		0 majority	government	US	C	general	0	91. In the Chamber proceedings, the Swiss Government submitted a comparative law study (opinion 06-184) issued on 19 December 2006 by the Swiss Institute of Comparative Law. This study analysed the legislation of fourteen European countries (Austria, Belgium, Denmark, Finland, France, Germany, Ireland, Italy, Luxembourg, the Netherlands, Norway, Spain, Sweden and the United Kingdom), the United States and Canada regarding the offence of denial of crimes against humanity, in particular genocide. The summary of the study reads: "A study of denial of crimes against humanity and genocide in the different countries under examination reveals considerable variation. Spain, France and Luxembourg have all adopted an extensive approach to the prohibition of denial of these crimes. 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2015	9/28/2015	BOUYD v. BELGIUM	http://hudoc.echr.coe.int/eng/?i=001-157670	23380/09	GC		0 majority	intervener	Australia	R	general		080. Lastly, the third-party intervenor pointed out that national legal systems reflected international and regional standards. The prohibition of the use of force except where it was strictly necessary was also enshrined in the United Kingdom, Sweden, Australia, Canada and the United States.
2015	9/28/2015	BOUYD v. BELGIUM	http://hudoc.echr.coe.int/eng/?i=001-157670	23380/09	GC		0 majority	intervener	Canada	R	general		080. Lastly, the third-party intervenor pointed out that national legal systems reflected international and regional standards. The prohibition of the use of force except where it was strictly necessary was also enshrined in the United Kingdom, Sweden, Australia, Canada and the United States.

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2015	9/28/2015	BOUYD v. BELGIUM	http://hudoc.echr.coe.int/eng/?i=001-157870	23380/09	GC		0 majority	intervener	US	R	general		0 80. Lastly, the third-party intervener pointed out that national legal systems reflected international and regional standards. The prohibition of the use of force except where it was strictly necessary was also enshrined in the United Kingdom, Sweden, Australia, Canada and the United States.
2015	9/3/2015	BERLIAND v. FRANCE	http://hudoc.echr.coe.int/eng/?i=001-157285	no. 42875/10	SS	ZUPANČIČ	dissenting		0 US	C	SC	Robinson v. California	17.In the famous case of Robinson v. California, that I have dealt with in Achour v. France, the Los Angeles City ordinance incriminated the status (ad hominem) of being a drug addict. The Supreme Court of the United States then directed that the so-called "status crimes" were inadmissible: there must always be an act of the criminal defendant, to which we attach criminal liability. Thus the issue of whether a criminal defendant is being punished for what he is (being) or for what he has committed (an act) has been settled, albeit superficially. Neither the US Supreme Court nor other courts, nor criminal doctrine, however, have ever succeeded in explaining why the principle of legality in criminal law, as enshrined in Article 7 of the Convention, is always dependent on the act of the defendant and seems to ignore the obvious fact that the personality of the actor is at the very centre of any criminal procedure.
2015	7/21/2015	OLIARI AND OTHERS v. ITALY	http://hudoc.echr.coe.int/eng/?i=001-156265	18766/11 and 36030/11	S4		0 majority	intervener	Argentina	R	general		0 (d) Third-party interveners (i) Prof Robert Wintemute, on behalf of the non-governmental organisations FIDH (Fédération Internationale des ligues de Droit de l'Homme), AIRE Centre (Advice on Individual Rights in Europe), ILGA Europe (European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association), ECSOL (European Commission on Sexual Orientation Law), UFTDU (Unione forense per la tutela dei diritti umani) and LIDU (Lega Italiana dei Diritti dell'Uomo). (a) positive obligation to provide some means of recognition 134. Those intervening submitted that there existed an emerging consensus, in European and other democratic societies, that a government may not limit a particular right, benefit or obligation to married couples, to the exclusion of same-sex couples who were legally prevented from getting married. They referred to the situation in March 2014, where at the time 44.7% of CoE member States had legislated in favour of same-sex relationships (see above for the current situation) and where Greece was yet to amend its legislation following the judgment in Vallianatos, as well as the Italian Constitutional Court's invitation to the legislature to legislate accordingly. They noted that up until March 2014, outside Europe legislation had been adopted in Argentina, Australia[4], Canada[5], Mexico[6], New Zealand, South Africa and Uruguay. In the United States, 21 of 50 states (42%) and the District of Columbia had granted legal recognition to same-sex couples, through access to marriage, civil union or domestic partnership, as the result of legislation or a judicial decision. The interveners opined that there was a growing consensus in European and other democratic societies that same-sex couples must be provided with some means of qualifying for particular rights, benefits and obligations attached to legal marriage, and as noted in Smith and Grady v. the United Kingdom (nos. 33985/96 and 33986/96, § 104, ECHR 1999-VI), even if relatively recent, the Court cannot overlook the widespread and consistently developing views and associated legal changes to the domestic laws of Contracting States on this issue. The Court had therefore to take account of this evolution and any further development until the date of its judgment. They considered that the Court's approach in Goodwin (§ 85; see also §§ 91, 93, 103) to give more weight to "a continuing international trend" applied, mutatis mutandis, in the present case.
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2015	7/21/2015	OLIARI AND OTHERS v. ITALY	http://hudoc.echr.coe.int/eng/?i=001-156265	18766/11 and 36030/11	54		0 majority	intervener	Mexico	C	general	Amparos en Revisión 457/2012, 567/2012, 581/2012, Primera Sala de la Suprema Corte de Justicia.	On 5 December 2012 Mexico's Supreme Court decided that three same-sex couples in the state of Oaxaca had the right under the federal constitution to marry [14] [14]. Amparos en Revisión 457/2012, 567/2012, 581/2012, Primera Sala de la Suprema Corte de Justicia.
2015	7/21/2015	OLIARI AND OTHERS v. ITALY	http://hudoc.echr.coe.int/eng/?i=001-156265	18766/11 and 36030/11	54		0 majority	intervener	New Zealand	R	general		134. Those intervening submitted that there existed an emerging consensus, in European and other democratic societies, that a government may not limit a particular right, benefit or obligation to married couples, to the exclusion of same-sex couples who were legally prevented from getting married. They referred to the situation in March 2014, where at the time 44.7% of CoE member States had legislated in favour of same-sex relationships (see above for the current situation) and where Greece was yet to amend its legislation following the judgment in Vallianatos, as well as the Italian Constitutional Court's invitation to the legislature to legislate accordingly. They noted that up until March 2014, outside Europe legislation had been adopted in Argentina, Australia[4], Canada[5], Mexico[6], New Zealand, South Africa and Uruguay. In the United States, 21 of 50 states (42%) and the District of Columbia had granted legal recognition to same-sex couples, through access to marriage, civil union or domestic partnership, as the result of legislation or a judicial decision. The interveners opined that there was a growing consensus in European and other democratic societies that same-sex couples must be provided with some means of qualifying for particular rights, benefits and obligations attached to legal marriage, and as noted in Smith and Grady v. the United Kingdom (nos. 33985/96 and 33986/96, § 104, ECHR 1999-VI), even if relatively recent, the Court cannot overlook the widespread and consistently developing views and associated legal changes to the domestic laws of Contracting States on this issue. The Court had therefore to take account of this evolution and any further development until the date of its judgment. They considered that the Court's approach in Goodwin (§ 85; see also §§ 91, 93, 103) to give more weight to "a continuing international trend" applied, mutatis mutandis, in the present case.
2015	7/21/2015	OLIARI AND OTHERS v. ITALY	http://hudoc.echr.coe.int/eng/?i=001-156265	18766/11 and 36030/11	54		0 majority	intervener	South Africa	R	general		134. Those intervening submitted that there existed an emerging consensus, in European and other democratic societies, that a government may not limit a particular right, benefit or obligation to married couples, to the exclusion of same-sex couples who were legally prevented from getting married. They referred to the situation in March 2014, where at the time 44.7% of CoE member States had legislated in favour of same-sex relationships (see above for the current situation) and where Greece was yet to amend its legislation following the judgment in Vallianatos, as well as the Italian Constitutional Court's invitation to the legislature to legislate accordingly. They noted that up until March 2014, outside Europe legislation had been adopted in Argentina, Australia[4], Canada[5], Mexico[6], New Zealand, South Africa and Uruguay. In the United States, 21 of 50 states (42%) and the District of Columbia had granted legal recognition to same-sex couples, through access to marriage, civil union or domestic partnership, as the result of legislation or a judicial decision. The interveners opined that there was a growing consensus in European and other democratic societies that same-sex couples must be provided with some means of qualifying for particular rights, benefits and obligations attached to legal marriage, and as noted in Smith and Grady v. the United Kingdom (nos. 33985/96 and 33986/96, § 104, ECHR 1999-VI), even if relatively recent, the Court cannot overlook the widespread and consistently developing views and associated legal changes to the domestic laws of Contracting States on this issue. The Court had therefore to take account of this evolution and any further development until the date of its judgment. They considered that the Court's approach in Goodwin (§ 85; see also §§ 91, 93, 103) to give more weight to "a continuing international trend" applied, mutatis mutandis, in the present case. On 30 November 2004, South Africa's Supreme Court of Appeal agreed with the Canadian and Massachusetts courts, and restated the common-law definition of marriage as: "the union between two persons to the exclusion of all others for life." [9] On 1 December 2005, South Africa's Constitutional Court concluded that the remaining statutory obstacle to marriage for same-sex couples was discriminatory (§ 71): "... The exclusion of same-sex couples from ... marriage ... represents a harsh if oblique statement by the law that same-sex couples are outsiders ... that their need for affirmation and protection of their intimate relations as human beings is somehow less than that of heterosexual couples ... that their capacity for love, commitment and accepting responsibility is by definition less worthy of regard than that of heterosexual couples ..." [10] South Africa's Parliament responded by enacting the Civil Union Act (No. 17 of 2006, in force on 30 November 2006), allowing any couple, different-sex or same-sex, to contract a "civil union" and choose whether it should be known as a 'marriage' or a 'civil partnership'.

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It considered that the marriage laws enforced by the respondents were unequal as same-sex couples were denied all the benefits afforded to opposite-sex couples and were barred from exercising a fundamental right. This denial to same-sex couples of the right to marry worked a grave and continuing harm and the imposition of this disability on gays and lesbians served to disrespect and subordinate them. Indeed, the Equal Protection Clause, like the Due Process Clause, prohibited this unjustified infringement of the fundamental right to marry. These considerations led to the conclusion that the right to marry was a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same-sex may not be deprived of that right and that liberty. The Supreme Court thus held that same-sex couples may exercise the fundamental right to marry. Having noted that substantial attention had been devoted to the question by various actors in society, and that according to their constitutional system individuals need not await legislative action before asserting a fundamental right, it considered that were the Supreme Court to stay its hand and allow slower, case-by-case determination of the required availability of specific public benefits to same sex couples, it still would deny gays and lesbians many rights and responsibilities intertwined with marriage. Lastly, noting that many States already allowed same-sex marriage – and hundreds of thousands of these marriages had already occurred – it opined that the disruption caused by the recognition bans was significant and ever-growing. Thus, the Supreme Court also found that there was no lawful basis for a State to refuse to recognise a lawful same-sex marriage performed in another State. 124. In the Government's view the Court had no power to impose such an obligation. Nor could such an obligation be dictated by other States which, in the meantime – most of them only recently (see for example, Malta, 2014) – had adopted a rule as a result of an internal process of social maturation. The Government noted that, at the time of the submission of their observations, less than half the European Contracting States had provided legal forms of protection for unmarried couples, including homosexuals, and many had done so only recently (for example, Austria in 2010, Ireland in 2011, and Finland in 2012), and in the other half it was not provided for at all. They further considered that the fact that at the end of a gradual evolution a State was in an isolated position with regard to an aspect of its legislation did not necessarily mean that that aspect was in conflict with the Convention (they referred to Vallianatos, § 92). The Government thus considered that no positive obligation to legislate in the matter of homosexual couples descended from any article of the Convention. It was solely for the State to decide whether to prohibit or allow same-sex unions, and currently there was no trend to this effect (this process and result could also be seen in the United States of America, where each state was allowed to regulate the matter). 134. Those intervening submitted that there existed an emerging consensus, in European and other democratic societies, that a government may not limit a particular right, benefit or obligation to married couples, to the exclusion of same-sex couples who were legally prevented from getting married. They referred to the situation in March 2014, where at the time 44.7% of CoE member States had legislated in favour of same-sex relationships (see above for the current situation) and where Greece was yet to amend its legislation following the judgment in Vallianatos, as well as the Italian Constitutional Court's invitation to the legislature to legislate accordingly. They noted that up until March 2014, outside Europe legislation had been adopted in Argentina, Australia[4], Canada[5], Mexico[6], New Zealand, South Africa and Uruguay. In the United States, 21 of 50 states (42%) and the District of Columbia had granted legal recognition to same-sex couples, through access to marriage, civil union or domestic partnership, as the result of legislation or a judicial decision. The interveners opined that there was a growing consensus in European and other democratic societies that same-sex couples must be provided with some means of qualifying for particular rights,

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2015	7/21/2015	OLIARI AND OTHERS v. ITALY	http://hudoc.echr.coe.int/eng/?i=001-156265	18766/11 and 36030/11	54		0 majority	intervener	US	C	lower-level co	Griego v. Oliver, 316 P.3d 865 (2013), the New Mexico Supreme Court	On 19 December 2013 in Griego v. Oliver, 316 P.3d 865 (2013), the New Mexico Supreme Court became the fifth state supreme court to require equal access to marriage for same-sex couples: "We conclude that the purpose of New Mexico marriage laws is to bring stability and order to the legal relationship of committed couples by defining their rights and responsibilities as to one another, their children if they choose to raise children together, and their property. Prohibiting same-gender marriages is not substantially related to the governmental interests advanced ... or to the purposes we have identified. Therefore, barring individuals from marrying and depriving them of the rights, protections, and responsibilities of civil marriage solely because of their sexual orientation violates the Equal Protection Clause ... of the New Mexico Constitution. ... [T]he State of New Mexico is constitutionally required to allow same-gender couples to marry and must extend to them the rights, protections, and responsibilities that derive from civil marriage under New Mexico law."
2015	7/21/2015	OLIARI AND OTHERS v. ITALY	http://hudoc.echr.coe.int/eng/?i=001-156265	18766/11 and 36030/11	54		0 majority	intervener	US	C	lower-level co	Vermont Supreme Court in Baker v. State, 744 A.2d 864 (1999):	135. They submitted that judicial reasoning in a growing number of decisions required at least an alternative to legal marriage, if not access to legal marriage for same-sex couples. They noted that although many of the courts (mentioned below) found direct discrimination based on sexual orientation, and required equal access to legal marriage for same-sex couples, their reasoning supported a fortiori (at least) a finding of indirect discrimination based on sexual orientation, and (at least) a requirement that governments provide alternative means of legal recognition to same-sex couples. They noted the following: The first court to require equal access for same-sex couples to the rights, benefits and obligations of legal marriage, while leaving it to the legislature to decide whether this access would be through legal marriage or an alternative registration system, was the Vermont Supreme Court in Baker v. State, 744 A.2d 864 (1999): "We hold only that plaintiffs are entitled under ... the Vermont Constitution to obtain the same benefits and protections afforded ... to married opposite-sex couples. We do not purport to infringe upon the prerogatives of the Legislature ... other than to note ... [the existence of] 'registered partnership' acts, which ... establish an alternative legal status to marriage for same-sex couples, ... create a parallel ... registration scheme, and extend all or most of the same rights and obligations ... [T]he current statutory scheme shall remain in effect for a reasonable period of time to enable the Legislature to ... enact implementing legislation in an orderly and expeditious fashion."
2015	7/21/2015	OLIARI AND OTHERS v. ITALY	http://hudoc.echr.coe.int/eng/?i=001-156265	18766/11 and 36030/11	54		0 majority	intervener	US	C	lower-level co	2003 the Massachusetts Supreme Judicial Court reached the same conclusion as the Canadian courts in Goodridge, 798 N.E.2d 941:	135. They submitted that judicial reasoning in a growing number of decisions required at least an alternative to legal marriage, if not access to legal marriage for same-sex couples. They noted that although many of the courts (mentioned below) found direct discrimination based on sexual orientation, and required equal access to legal marriage for same-sex couples, their reasoning supported a fortiori (at least) a finding of indirect discrimination based on sexual orientation, and (at least) a requirement that governments provide alternative means of legal recognition to same-sex couples. They noted the following: The first court to require equal access for same-sex couples to the rights, benefits and obligations of legal marriage, while leaving it to the legislature to decide whether this access would be through legal marriage or an alternative registration system, was the Vermont Supreme Court in Baker v. State, 744 A.2d 864 (1999): "We hold only that plaintiffs are entitled under ... the Vermont Constitution to obtain the same benefits and protections afforded ... to married opposite-sex couples. We do not purport to infringe upon the prerogatives of the Legislature ... other than to note ... [the existence of] 'registered partnership' acts, which ... establish an alternative legal status to marriage for same-sex couples, ... create a parallel ... registration scheme, and extend all or most of the same rights and obligations ... [T]he current statutory scheme shall remain in effect for a reasonable period of time to enable the Legislature to ... enact implementing legislation in an orderly and expeditious fashion."

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2015	7/21/2015	OLIARI AND OTHERS v. ITALY	http://hudoc.echr.coe.int/eng/?i=001-155265	18766/11 and 36030/11	54		0 majority	ECtHR	US	C	SC	Obergefell et al. v. Hodges, Director, Ohio Department of Health	4. The United States 65. On 26 June 2015, in the case of Obergefell et al. v. Hodges, Director, Ohio Department of Health et al, the Supreme Court of the United States held that same-sex couples may exercise the fundamental right to marry in all States, and that there was no lawful basis for a State to refuse to recognise a lawful same-sex marriage performed in another State on the ground of its same-sex character. The petitioners had claimed that the respondent state officials violated the Fourteenth Amendment by denying them the right to marry or to have marriages lawfully performed in another State given full recognition. The Supreme Court held that that the challenged laws burdened the liberty of same-sex couples, and abridged central precepts of equality. It considered that the marriage laws enforced by the respondents were unequal as same-sex couples were denied all the benefits afforded to opposite-sex couples and were barred from exercising a fundamental right. This denial to same-sex couples of the right to marry worked a grave and continuing harm and the imposition of this disability on gays and lesbians served to disrespect and subordinate them. Indeed, the Equal Protection Clause, like the Due Process Clause, prohibited this unjustified infringement of the fundamental right to marry. These considerations led to the conclusion that the right to marry was a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same-sex may not be deprived of that right and that liberty. The Supreme Court thus held that same-sex couples may exercise the fundamental right to marry. Having noted that substantial attention had been devoted to the question by various actors in society, and that according to their constitutional system individuals need not await legislative action before asserting a fundamental right, it considered that were the Supreme Court to stay its hand and allow slower, case-by-case determination of the required availability of specific public benefits to same sex couples, it still would deny gays and lesbians many rights and responsibilities intertwined with marriage. Lastly, noting that many States already allowed same-sex marriage – and hundreds of thousands of these marriages had already occurred – it opined that the disruption caused by the recognition bans was significant and ever-growing. Thus, the Supreme Court also found that there was no lawful basis for a State to refuse to recognise a lawful same-sex marriage performed in another State. 124. In the Government's view the Court had no power to impose such an obligation. Nor could such an obligation be dictated by other States which, in the meantime – most of them only recently (see for example, Malta, 2014) – had adopted a rule as a result of an internal process of social maturation. The Government noted that, at the time of the submission of their observations, less than half the European Contracting States had provided legal forms of protection for unmarried couples, including homosexuals, and many had done so only recently (for example, Austria in 2010, Ireland in 2011, and Finland in 2012), and in the other half it was not provided for at all. They further considered that the fact that at the end of a gradual evolution a State was in an isolated position with regard to an aspect of its legislation did not necessarily mean that that aspect was in conflict with the Convention (they referred to Vallianatos, § 92). The Government thus considered that no positive obligation to legislate in the matter of homosexual couples descended from any article of the Convention. It was solely for the State to decide whether to prohibit or allow same-sex unions, and currently there was no trend to this effect (this process and result could also be seen in the United States of America, where each state was allowed to regulate the matter). 134. Those intervening submitted that there existed an emerging consensus, in European and other democratic societies, that a government may not limit a particular right, benefit or obligation to married couples, to the exclusion of same-sex couples who were legally prevented from getting married. They referred to the situation in March 2014, where at the time 44.7% of CoE member States had legislated in favour of same-sex relationships (see above for the current situation) and where Greece was yet to amend its legislation following the judgment in Vallianatos, as well as the Italian Constitutional Court's invitation to the legislature to legislate accordingly. They noted that up until March 2014, outside Europe legislation had been adopted in Argentina, Australia[4], Canada[5], Mexico[6], New Zealand, South Africa and Uruguay. In the United States, 21 of 50 states (42%) and the District of Columbia had granted legal recognition to same-sex couples, through access to marriage, civil union or domestic partnership, as the result of legislation or a judicial decision. The interveners opined that there was a growing consensus in European and other democratic societies that same-sex couples must be provided with some means of qualifying for particular rights.
2015	6/16/2015	CHIRAGOV AND OTHERS v. ARMENIA	http://hudoc.echr.coe.int/eng/?i=001-155353	13216/05	GC	PINTO DE ALBUQUERQUE	dissenting		0 Canada	C	SC	1998 case of the Canadian Supreme Court on the right to unilateral secession of the Quebec province from the Canadian Confederation[1998] 2 SCR 217.	39. No word is pronounced on the problem of "self-defence" of the Armenian population in the Nagorno-Karabakh region and the closely related problem of remedial secession in international law, which has been extensively discussed not only in the literature[65], but also by national and international courts, especially after the 2010 Advisory Opinion of the ICJ on the unilateral declaration of independence of Kosovo[66] and the 1998 case of the Canadian Supreme Court on the right to unilateral secession of the Quebec province from the Canadian Confederation[67]. The Court's silence is even less understandable in the face of recent international practice acknowledging remedial secession as a right, most notably in the 1999 Agreement between Indonesia and Portugal for the acknowledgment of the rights to self-determination and remedial secession of East Timor through a popular consultation of the East Timorese people in the form of a referendum[68]. 41. Like colonised populations[71], non-colonised populations have a right to self-determination, as has been acknowledged by the two 1966 international covenants (International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights)[72], UN General Assembly Resolution 2625 (XXV) of 24 October 1970 containing the Declaration on the Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations[73], and UN General Assembly Resolution 48/212 of 16 February 1994[74] endorsing the Declaration and Programme of Action of the Vienna Conference adopted by the UN World Conference on Human Rights[75]; in the African context, by Article 20 of the African Charter on Human and Peoples' Rights[76]; in the American context, by the Canadian Supreme Court Reference re Secession of Quebec (1998)[77]; and, finally, in the European context, by the Final Act of the 1975 Conference on Security and Co-operation in Europe (the Helsinki Accords)[78] and the 1991 European Community Guidelines on the recognition of new States in Eastern Europe and the Soviet Union[79]. [86]. See the above-cited case of the Canadian Supreme Court as well as the African Commission cases Katangese Peoples' Congress v. Zaïre and Kevin Mwanga Gumile et al. v. Cameroon (cited above), where the populations of Quebec, Katanga and Southern Cameroon were denied the right to external self-determination in view of their internal self-determination. This stance was confirmed by Article 4 of the United Nations Declaration on the Rights of Indigenous Peoples, adopted by General Assembly Resolution 61/295 (13 September 2007, A/RES/61/295) by a majority of 143 States in favour, 4 votes against and 11 abstentions. 44. A right to create a new, independent State (namely the right to external self-determination) arises whenever the seceding population do not have the legal and factual means to express their own political will within the constitutional structure of the parent State, namely when their right to internal self-determination has been disregarded [86]. The military actions in the district of Lachin at the heart of the case took place on 18 May 1992, eight months after the date of declaration of secession of 2 September 1991 and two years before the signing of the Bishkek Protocol ceasefire agreement on 5 May 1994 and its implementation on 12 May 1994. In order to clarify the alleged lack of internal self-determination of the Armenian population, the essential questions to be put are the following: prior to 2 September 1991 did the Azerbaijani Government represent the Armenian population of Nagorno-Karabakh? Did the Armenian population enjoy a constitutional status which allowed them to express their political will within the framework of the Azerbaijani State freely? Did the Armenian population exercise their right to internal self-determination within that framework?
2015	6/16/2015	CHIRAGOV AND OTHERS v. ARMENIA	http://hudoc.echr.coe.int/eng/?i=001-155353	13216/05	GC	GYULUMYAN	dissenting		0 Canada	C	SC	Reference re Secession of Quebec of the Supreme Court of Canada [1998] 2 SCR 217, § 134	24. The same approach was also reflected in the concurring opinion of Judges Wildhaber and Ryssdal in Loizidou v. Turkey (merits), 18 December 1996, Reports of Judgments and Decisions 1996-VI and in Reference re Secession of Quebec of the Supreme Court of Canada, which proposed that "when a people is blocked from the meaningful exercise of its right to self-determination internally, it is entitled, as a last resort, to exercise it by secession" ([1998] 2 SCR 217, § 134).
2015	6/16/2015	DELFI AS v. ESTONIA	http://hudoc.echr.coe.int/eng/?i=001-155105	no. 64569/09	GC		0 majority	intervener	China	F	0		0 100. As regards real-name policy, evidence from China showed that such a measure had caused a dramatic drop in the number of comments posted. Experience in South Korea had demonstrated that real-name policy failed to improve meaningfully comments, whereas it was discriminatory against domestic internet companies, as the users had sought alternative, international platforms that still allowed anonymous and pseudonymous comments.
2015	6/16/2015	DELFI AS v. ESTONIA	http://hudoc.echr.coe.int/eng/?i=001-155105	no. 64569/09	GC		0 majority	intervener	South Korea	F	0		0 100. As regards real-name policy, evidence from China showed that such a measure had caused a dramatic drop in the number of comments posted. Experience in South Korea had demonstrated that real-name policy failed to improve meaningfully comments, whereas it was discriminatory against domestic internet companies, as the users had sought alternative, international platforms that still allowed anonymous and pseudonymous comments.
2015	6/16/2015	SARGSYAN v. AZERBAIJAN	http://hudoc.echr.coe.int/eng/?i=001-155662	40167/06	GC	PINTO DE ALBUQUERQUE	dissenting		0 Cuba	F	general		0 25. Less recent international practice of military intervention in favour of non-colonised populations by third States includes such examples as the military intervention of Great Britain, France and Russia to protect the Greek nationalists in 1827, the French military intervention in Syria in favour of the Maronite Christians in 1860-61, the intervention of the United States of America in Cuba in 1898, and the joint military intervention of Austria, France, Great Britain, Italy and Russia in the Balkans in favour of Macedonian Christians in 1905. More recent practice includes the examples of the military intervention of Vietnam in Kampuchea in 1978-79, that of Tanzania in Uganda in 1979, or that of the United States of America, the United Kingdom, France and others in favour of the Kurdish population in Iraq in 1991.
2015	6/16/2015	SARGSYAN v. AZERBAIJAN	http://hudoc.echr.coe.int/eng/?i=001-155662	40167/06	GC	PINTO DE ALBUQUERQUE	dissenting		0 Pakistan	F	general		0 25. Less recent international practice of military intervention in favour of non-colonised populations by third States includes such examples as the military intervention of Great Britain, France and Russia to protect the Greek nationalists in 1827, the French military intervention in Syria in favour of the Maronite Christians in 1860-61, the intervention of the United States of America in Cuba in 1898, and the joint military intervention of Austria, France, Great Britain, Italy and Russia in the Balkans in favour of Macedonian Christians in 1905. More recent practice includes the examples of the military intervention of Vietnam in Kampuchea in 1978-79, that of Tanzania in Uganda in 1979, or that of the United States of America, the United Kingdom, France and others in favour of the Kurdish population in Iraq in 1991. In the context of secession, the military intervention of India in the conflict with Pakistan is the most cited example, since Pakistan had not only denied the right of internal self-determination of the East Bengali population, but had also abused their human rights[62]. Neither Security Council Resolution 307 (1971) (21 December 1971, S/RES/307 (1971)), nor General Assembly Resolution 2793 (XXVI) (7 December 1971, A/RES/2793 (XXVI)), considered India as an "aggressor" or "occupant", nor did they ask for the immediate withdrawal of troops[63].
2015	6/16/2015	SARGSYAN v. AZERBAIJAN	http://hudoc.echr.coe.int/eng/?i=001-155662	40167/06	GC	PINTO DE ALBUQUERQUE	dissenting		0 Rwanda	F	general		0 26. The paradigm shift at the end of the twentieth century is remarkable, most notably in Africa. With the vivid memory of the Rwanda genocide and of the uncoordinated response of the international community to tragedy, African leaders decided to take action, by creating mechanisms for humanitarian intervention and military enforcement operations in intra-State conflicts, including genocide, crimes against humanity, ethnic cleansing, gross violations of human rights and military coups, as follows.
2015	6/16/2015	SARGSYAN v. AZERBAIJAN	http://hudoc.echr.coe.int/eng/?i=001-155662	40167/06	GC	PINTO DE ALBUQUERQUE	dissenting		0 Syria	F	general		0 25. Less recent international practice of military intervention in favour of non-colonised populations by third States includes such examples as the military intervention of Great Britain, France and Russia to protect the Greek nationalists in 1827, the French military intervention in Syria in favour of the Maronite Christians in 1860-61, the intervention of the United States of America in Cuba in 1898, and the joint military intervention of Austria, France, Great Britain, Italy and Russia in the Balkans in favour of Macedonian Christians in 1905. More recent practice includes the examples of the military intervention of Vietnam in Kampuchea in 1978-79, that of Tanzania in Uganda in 1979, or that of the United States of America, the United Kingdom, France and others in favour of the Kurdish population in Iraq in 1991. In the context of secession, the military intervention of India in the conflict with Pakistan is the most cited example, since Pakistan had not only denied the right of internal self-determination of the East Bengali population, but had also abused their human rights[62]. Neither Security Council Resolution 307 (1971) (21 December 1971, S/RES/307 (1971)), nor General Assembly Resolution 2793 (XXVI) (7 December 1971, A/RES/2793 (XXVI)), considered India as an "aggressor" or "occupant", nor did they ask for the immediate withdrawal of troops[63].
2015	6/16/2015	SARGSYAN v. AZERBAIJAN	http://hudoc.echr.coe.int/eng/?i=001-155662	40167/06	GC	PINTO DE ALBUQUERQUE	dissenting		0 Uganda	F	general		0 25. Less recent international practice of military intervention in favour of non-colonised populations by third States includes such examples as the military intervention of Great Britain, France and Russia to protect the Greek nationalists in 1827, the French military intervention in Syria in favour of the Maronite Christians in 1860-61, the intervention of the United States of America in Cuba in 1898, and the joint military intervention of Austria, France, Great Britain, Italy and Russia in the Balkans in favour of Macedonian Christians in 1905. More recent practice includes the examples of the military intervention of Vietnam in Kampuchea in 1978-79, that of Tanzania in Uganda in 1979, or that of the United States of America, the United Kingdom, France and others in favour of the Kurdish population in Iraq in 1991.

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2015	5/28/2015	Y. v. SLOVENIA	http://hudoc.echr.coe.int/eng/?i=001-154728	no. 41107/10	SS	YUDKIVSKA	dissenting (par		0 US	C	SC	Mattox v. United States, 156 U.S. 237, 242-43 (1895)	Some 120 years ago the US Supreme Court defined the "primary object" of the confrontation clause as being "to prevent depositions or ex parte affidavits ... being used against the prisoner in lieu of a personal examination and cross-examination of the witness in which the accused has an opportunity, not only of testing the recollection and sifting the conscience of the witness, but of compelling him to stand face to face with the jury in order that they may look at him, and judge by his demeanour upon the stand and the manner in which he gives his testimony whether he is worthy of belief[3]. The right to confrontation has a long and rich history dating back to Roman law and has become widely developed in common-law systems, where its crux lies in a belief that "[i]t is always more difficult to tell a lie about a person 'to his face' than 'behind his back', and 'even if the lie is told it will often be told less convincingly'. This was explained by Justice Antonin Scalia in the US Supreme Court's landmark judgment in this respect, Coy v. Iowa[4]. In that judgment Justice Scalia traced the history of the right to confront as a "face-to-face encounter", illustrated in Shakespeare's Richard II: "Shakespeare was thus describing the root meaning of confrontation when he had Richard the Second say: "Then call them to our presence—face to face, and frowning brow to brow, ourselves will hear the accuser and the accused freely speak."[5]" He concluded that "there is something deep in human nature that regards face-to-face confrontation between accused and accuser as 'essential to a fair trial in a criminal prosecution'". In California v. Green the right to confrontation was described as the "greatest legal engine ever invented for the discovery of the truth"[6]. [3]. Mattox v. United States, 156 U.S. 237, 242-43 (1895). [4]. 487 US 1012, 1016 (1988). [5]. Richard II, Act I, scene I. [6]. 399 US 149 (1970).
2015	5/28/2015	Y. v. SLOVENIA	http://hudoc.echr.coe.int/eng/?i=001-154728	no. 41107/10	SS	YUDKIVSKA	dissenting (par		0 US	C	SC	487 US 1012, 1016 (1988)	Some 120 years ago the US Supreme Court defined the "primary object" of the confrontation clause as being "to prevent depositions or ex parte affidavits ... being used against the prisoner in lieu of a personal examination and cross-examination of the witness in which the accused has an opportunity, not only of testing the recollection and sifting the conscience of the witness, but of compelling him to stand face to face with the jury in order that they may look at him, and judge by his demeanour upon the stand and the manner in which he gives his testimony whether he is worthy of belief[3]. The right to confrontation has a long and rich history dating back to Roman law and has become widely developed in common-law systems, where its crux lies in a belief that "[i]t is always more difficult to tell a lie about a person 'to his face' than 'behind his back', and 'even if the lie is told it will often be told less convincingly'. This was explained by Justice Antonin Scalia in the US Supreme Court's landmark judgment in this respect, Coy v. Iowa[4]. In that judgment Justice Scalia traced the history of the right to confront as a "face-to-face encounter", illustrated in Shakespeare's Richard II: "Shakespeare was thus describing the root meaning of confrontation when he had Richard the Second say: "Then call them to our presence—face to face, and frowning brow to brow, ourselves will hear the accuser and the accused freely speak."[5]" He concluded that "there is something deep in human nature that regards face-to-face confrontation between accused and accuser as 'essential to a fair trial in a criminal prosecution'". In California v. Green the right to confrontation was described as the "greatest legal engine ever invented for the discovery of the truth"[6]. [3]. Mattox v. United States, 156 U.S. 237, 242-43 (1895). [4]. 487 US 1012, 1016 (1988). [5]. Richard II, Act I, scene I. [6]. 399 US 149 (1970).
2015	5/28/2015	Y. v. SLOVENIA	http://hudoc.echr.coe.int/eng/?i=001-154728	no. 41107/10	SS	YUDKIVSKA	dissenting (par		0 US	C	SC	399 US 149 (1970)	Some 120 years ago the US Supreme Court defined the "primary object" of the confrontation clause as being "to prevent depositions or ex parte affidavits ... being used against the prisoner in lieu of a personal examination and cross-examination of the witness in which the accused has an opportunity, not only of testing the recollection and sifting the conscience of the witness, but of compelling him to stand face to face with the jury in order that they may look at him, and judge by his demeanour upon the stand and the manner in which he gives his testimony whether he is worthy of belief[3]. The right to confrontation has a long and rich history dating back to Roman law and has become widely developed in common-law systems, where its crux lies in a belief that "[i]t is always more difficult to tell a lie about a person 'to his face' than 'behind his back', and 'even if the lie is told it will often be told less convincingly'. This was explained by Justice Antonin Scalia in the US Supreme Court's landmark judgment in this respect, Coy v. Iowa[4]. In that judgment Justice Scalia traced the history of the right to confront as a "face-to-face encounter", illustrated in Shakespeare's Richard II: "Shakespeare was thus describing the root meaning of confrontation when he had Richard the Second say: "Then call them to our presence—face to face, and frowning brow to brow, ourselves will hear the accuser and the accused freely speak."[5]" He concluded that "there is something deep in human nature that regards face-to-face confrontation between accused and accuser as 'essential to a fair trial in a criminal prosecution'". In California v. Green the right to confrontation was described as the "greatest legal engine ever invented for the discovery of the truth"[6]. [3]. Mattox v. United States, 156 U.S. 237, 242-43 (1895). [4]. 487 US 1012, 1016 (1988). [5]. Richard II, Act I, scene I. [6]. 399 US 149 (1970).
2015	5/12/2015	GOGITIDZE AND OTHERS v. GEORGIA	http://hudoc.echr.coe.int/eng/?i=001-154398	36862/05	S4		0 majority	domestic court	US	R	general		41. The Constitutional Court further stated that the administrative confiscation proceedings provided for in Article 37 § 1 (1) of the CCP and Article 21 §4 5 and 6 of the CAP, could in no way be equated with criminal proceedings, as no determination of a criminal charge was at stake; on the contrary, such proceedings were a classic example of a civil dispute between the State, represented by the public prosecutor, and private individuals. Given the "civil" nature of the proceedings in question, it was acceptable that the burden of proof in the proceedings should be shifted onto the respondent, the second applicant. Referring to its own comparative legal research and the Court's judgments in the cases of Raimondo v. Italy (22 February 1984, §§ 16–20, Series A no. 281-A) and AGOSI v. the United Kingdom (24 October 1986, §§ 33–42, Series A no. 108), the Constitutional Court added that such civil mechanisms, involving the forfeiture of the proceeds of crime or otherwise unlawfully obtained or unexplained property, were not unknown in a number of Western democracies, including Italy, the United Kingdom and the United States of America.
2015	3/10/2015	Y.Y. v. TURKEY	http://hudoc.echr.coe.int/eng/?i=001-153134	no. 14793/08	S2 (former)	KELLER AND SPANO	concurring (jo		0 US	R	general		25. Lastly, it is worth noting that in the United States, federal and state governments no longer explicitly require sterilisation in order to have a change of gender recorded on a birth certificate or driving licence[15]. [15] See the references cited by L. Nixon, "The Right to (Trans) Parent", 20 Wm. & Mary Journal of Women and Law 73 (2013), p. 89.
2015	1/27/2015	ROHLENA v. THE CZECH REPUBLIC	http://hudoc.echr.coe.int/eng/?i=001-151051	59552/08	GC	PINTO DE ALBUQUERQUE	concurring		0 Canada	R	statute	sections 718.2 and 718.4 of the Canadian Criminal Code	2. Roman law did not recognise the concept of a continuous offence. It was only during the Middle Ages that scholars like Bartolus de Saxoferrato[2], Baldus de Ubaldis[3] and Prosperus Farinacius[4] introduced the concept with the purpose of softening the hard sentencing rule of strict accumulation of penalties or consecutive sentences (quod criminae tot poenae) under Roman law[5]. According to these scholars, there were two major criteria for the punishment of a succession of individual criminal acts as a continuous offence: a short period of time between the different individual criminal acts committed by the offender (cum temporis intervallo, as Baldus said) and the existence of a single intention or purpose underlying those individual acts (ad eundem finem, as Bartolus put it). In fact, the close temporal connection between the individual acts was considered as evidence of that same intention. A continuous offence was a group of individual acts united by the same intention and the same criminal purpose, and committed within a short period of time, which was punishable by a single prison term[6]. [5]. For the sake of clarity, the Anglo-American expressions "consecutive" and "concurrent" sentences are used in this opinion with the meaning attributed to them in paragraph 29 of the judgment, which equates to the classical meaning (see, for example, 18 USC § 3584 (a), and sections 718.2 and 718.4 of the Canadian Criminal Code).
2015	1/27/2015	ROHLENA v. THE CZECH REPUBLIC	http://hudoc.echr.coe.int/eng/?i=001-151051	59552/08	GC	PINTO DE ALBUQUERQUE	concurring		0 US	R	statute	18 USC § 3584 (a)	2. Roman law did not recognise the concept of a continuous offence. It was only during the Middle Ages that scholars like Bartolus de Saxoferrato[2], Baldus de Ubaldis[3] and Prosperus Farinacius[4] introduced the concept with the purpose of softening the hard sentencing rule of strict accumulation of penalties or consecutive sentences (quod criminae tot poenae) under Roman law[5]. According to these scholars, there were two major criteria for the punishment of a succession of individual criminal acts as a continuous offence: a short period of time between the different individual criminal acts committed by the offender (cum temporis intervallo, as Baldus said) and the existence of a single intention or purpose underlying those individual acts (ad eundem finem, as Bartolus put it). In fact, the close temporal connection between the individual acts was considered as evidence of that same intention. A continuous offence was a group of individual acts united by the same intention and the same criminal purpose, and committed within a short period of time, which was punishable by a single prison term[6]. [5]. For the sake of clarity, the Anglo-American expressions "consecutive" and "concurrent" sentences are used in this opinion with the meaning attributed to them in paragraph 29 of the judgment, which equates to the classical meaning (see, for example, 18 USC § 3584 (a), and sections 718.2 and 718.4 of the Canadian Criminal Code).
2014	12/11/2014	DOUBSKÁ AND KREJZOVÁ v. THE CZECH REPUBLIC	http://hudoc.echr.coe.int/eng/?i=001-148632	28859/11 and 28473/12	S6 (former)		0 majority	parties	Canada	F	0	research publications	63. Research conducted in Canada and published in 2009 found that a planned home birth attended by a registered midwife was associated with very low and comparable rates of perinatal death and reduced rates of obstetric interventions and other adverse perinatal outcomes compared with planned hospital birth attended by a midwife or a doctor. [4] [4] P.A. Janssen, L. Saxell, L.A. Page, M.C. Klein, R.M. Liston, S.K. Lee, "Outcomes of planned home birth with registered midwife versus planned hospital birth with midwife or physician", Canadian Medical Association Journal, 2009 Sep 15;181(6-7):377-83.

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2014	12/11/2014	DUBSKÁ AND KREJZOVÁ v. THE CZECH REPUBLIC	http://hudoc.echr.coe.int/eng/?i=001-148632	28859/11 and 28473/12	56 (former)		0 majority	parties	US	F	0	research publications	62. Research conducted in the United States and published in 2010 concluded that planned home births were associated with fewer maternal interventions including epidural analgesia, electronic foetal heart rate monitoring, episiotomy, and operative delivery. The women giving birth in this manner were less likely to experience lacerations, haemorrhage and infections. Neonatal outcomes of planned home births revealed less frequent prematurity and low birth weight, and less need for assisted newborn ventilation. Although planned home and hospital births exhibited similar perinatal mortality rates, planned home births were associated with significantly elevated neonatal mortality rates.[1] However, several scientific articles criticised this study for serious deficiencies in methodology.[2] Another study conducted on United States data from 2008 concluded that the risk of lower 5-minute Apgar score and neonatal seizure was higher for planned home births than for hospital births.[3] [1] J.R. Wax, F.L. Lucas, M. Lamont et al., "Maternal and newborn outcomes in planned home birth vs planned hospital births: a meta-analysis", <i>American Journal of Obstetrics & Gynecology</i>, 2010;203:243.e1-8. [2] Carl A. Michal, Patricia A. Janssen, Saraswathi Vedam, Eileen K. Hutton and Ank de Jonge, "Planned Home vs Hospital Birth: A Meta-Analysis Gone Wrong", http://www.medscape.com/viewarticle/739987; Gill Gyle, Mary Newburn and Alison Macfarlane, "Critique of a meta-analysis by Wax and colleagues which has claimed that there is a three-times greater risk of neonatal death among babies without congenital anomalies planned to be born at home", <i>National Childbirth Trust</i>. http://fr.scribd.com/doc/34065092/Critique-of-a-meta-analysis-by-Wax [3] Yvonne W. Cheng, Jonathan Snowden and Aaron Caughey, "Neonatal Outcomes Associated with Intended Place of Birth: Birth Centers and Home Birth Compared to Hospitals", <i>American Journal of Obstetrics & Gynecology</i>, Supplement at 42, January 2012.	
2014	11/27/2014	HRVATSKI LJEČNIČKI SINDIKAT v. CROATIA	http://hudoc.echr.coe.int/eng/?i=001-148181	36701/09	S1	PINTO DE ALBUQUERQUE	concurring		0 Algeria	R		constitution	general	The right to strike in comparative constitutional law 7. The right to strike as a means of action of workers' organisations is almost universally accepted. In a very large number of countries, the legislature has viewed this right as sufficiently important to immunise it from potential interference, by explicitly recognising it at the constitutional level, such as in Albania, Algeria, Angola, Argentina, Armenia, Azerbaijan, Belarus, Benin, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Cape Verde, Central African Republic, Chad, Chile, Colombia, Congo, Czech Republic, Democratic Republic of the Congo, Costa Rica, Ivory Coast, Croatia, Cyprus, Djibouti, Dominican Republic, Ecuador, El Salvador, Estonia, Ethiopia, France, Georgia, Greece, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hungary, Italy, Kazakhstan, Kenya, Republic of Korea, Kyrgyzstan, Latvia, Lithuania, Luxembourg, the former Yugoslav Republic of Macedonia, Madagascar, Maldives, Mali, Mauritania, Mexico, Republic of Moldova, Montenegro, Morocco, Mozambique, Nicaragua, Niger, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Russian Federation, Rwanda, San Marino, Sao Tome and Principe, Senegal, Serbia, Seychelles, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Suriname, Timor-Leste, Togo, Turkey, Ukraine, Uruguay and Venezuela[24]. In addition, in some countries, such as Ireland and the United States, the highest courts have held that the right to strike is implicit in their constitutional laws[25]. This is clear, abundant and uncontested evidence of a continuing international trend[26].
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2014	11/27/2014	HRVATSKI LJEČNIČKI SINDIKAT v. CROATIA	http://hudoc.echr.coe.int/eng?i=001-148181	36701/09	S1	PINTO DE ALBUQUERQUE	concurring		0 Ethiopia R		constitution	general	7. The right to strike as a means of action of workers' organisations is almost universally accepted. In a very large number of countries, the legislature has viewed this right as sufficiently important to immunise it from potential interference, by explicitly recognising it at the constitutional level, such as in Albania, Algeria, Angola, Argentina, Armenia, Azerbaijan, Belarus, Benin, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Cape Verde, Central African Republic, Chad, Chile, Colombia, Congo, Czech Republic, Democratic Republic of the Congo, Costa Rica, Ivory Coast, Croatia, Cyprus, Djibouti, Dominican Republic, Ecuador, El Salvador, Estonia, Ethiopia, France, Georgia, Greece, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hungary, Italy, Kazakhstan, Kenya, Republic of Korea, Kyrgyzstan, Latvia, Lithuania, Luxembourg, the former Yugoslav Republic of Macedonia, Madagascar, Maldives, Mali, Mauritania, Mexico, Republic of Moldova, Montenegro, Morocco, Mozambique, Nicaragua, Niger, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Russian Federation, Rwanda, San Marino, Sao Tome and Principe, Senegal, Serbia, Seychelles, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Suriname, Timor-Leste, Togo, Turkey, Ukraine, Uruguay and Venezuela[24]. In addition, in some countries, such as Ireland and the United States, the highest courts have held that the right to strike is implicit in their constitutional laws[25]. This is clear, abundant and uncontested evidence of a continuing international trend[26].
2014	11/27/2014	HRVATSKI LJEČNIČKI SINDIKAT v. CROATIA	http://hudoc.echr.coe.int/eng?i=001-148181	36701/09	S1	PINTO DE ALBUQUERQUE	concurring		0 Guatemala R		constitution	general	7. The right to strike as a means of action of workers' organisations is almost universally accepted. In a very large number of countries, the legislature has viewed this right as sufficiently important to immunise it from potential interference, by explicitly recognising it at the constitutional level, such as in Albania, Algeria, Angola, Argentina, Armenia, Azerbaijan, Belarus, Benin, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Cape Verde, Central African Republic, Chad, Chile, Colombia, Congo, Czech Republic, Democratic Republic of the Congo, Costa Rica, Ivory Coast, Croatia, Cyprus, Djibouti, Dominican Republic, Ecuador, El Salvador, Estonia, Ethiopia, France, Georgia, Greece, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hungary, Italy, Kazakhstan, Kenya, Republic of Korea, Kyrgyzstan, Latvia, Lithuania, Luxembourg, the former Yugoslav Republic of Macedonia, Madagascar, Maldives, Mali, Mauritania, Mexico, Republic of Moldova, Montenegro, Morocco, Mozambique, Nicaragua, Niger, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Russian Federation, Rwanda, San Marino, Sao Tome and Principe, Senegal, Serbia, Seychelles, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Suriname, Timor-Leste, Togo, Turkey, Ukraine, Uruguay and Venezuela[24]. In addition, in some countries, such as Ireland and the United States, the highest courts have held that the right to strike is implicit in their constitutional laws[25]. This is clear, abundant and uncontested evidence of a continuing international trend[26].
2014	11/27/2014	HRVATSKI LJEČNIČKI SINDIKAT v. CROATIA	http://hudoc.echr.coe.int/eng?i=001-148181	36701/09	S1	PINTO DE ALBUQUERQUE	concurring		0 Guinea R		constitution	general	7. The right to strike as a means of action of

[illegible]

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Year	Date	Name	Link	App.no.	Body	Judge citing	Opinion	who submitted	Countries	C/R/P	type	Document	Quotes
2014	11/27/2014	HRVATSKI LJEČNIČKI SINDIKAT v. CROATIA	http://hudoc.echr.coe.int/eng/?i=001-148181	36701/09	SI	PINTO DE ALBUQUERQUE	concurring		0 South Korea	R	constitution	general	7. The right to strike as a means of action of workers' organisations is almost universally accepted. In a very large number of countries, the legislature has viewed this right as sufficiently important to immunise it from potential interference, by explicitly recognising it at the constitutional level, such as in Albania, Algeria, Angola, Argentina, Armenia, Azerbaijan, Belarus, Benin, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Cape Verde, Central African Republic, Chad, Chile, Colombia, Congo, Czech Republic, Democratic Republic of the Congo, Costa Rica, Ivory Coast, Croatia, Cyprus, Djibouti, Dominican Republic, Ecuador, El Salvador, Estonia, Ethiopia, France, Georgia, Greece, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hungary, Italy, Kazakhstan, Kenya, Republic of Korea, Kyrgyzstan, Latvia, Lithuania, Luxembourg, the former Yugoslav Republic of Macedonia, Madagascar, Maldives, Mali, Mauritania, Mexico, Republic of Moldova, Montenegro, Morocco, Mozambique, Nicaragua, Niger, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Russian Federation, Rwanda, San Marino, Sao Tome and Principe, Senegal, Serbia, Seychelles, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Suriname, Timor-Leste, Togo, Turkey, Ukraine, Uruguay and Venezuela[24]. In addition, in some countries, such as Ireland and the United States, the highest courts have held that the right to strike is implicit in their constitutional laws[25]. This is clear, abundant and uncontested evidence of a continuing international trend[26].
2014	11/27/2014	HRVATSKI LJEČNIČKI SINDIKAT v. CROATIA	http://hudoc.echr.coe.int/eng/?i=001-148181	36701/09	SI	PINTO DE ALBUQUERQUE	concurring		0 Suriname	R	constitution	general	7. The right to strike as a means of action of workers' organisations is almost universally accepted. In a very large number of countries, the legislature has viewed this right as sufficiently important to immunise it from potential interference, by explicitly recognising it at the constitutional level, such as in Albania, Algeria, Angola, Argentina, Armenia, Azerbaijan, Belarus, Benin, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Cape Verde, Central African Republic, Chad, Chile, Colombia, Congo, Czech Republic, Democratic Republic of the Congo, Costa Rica, Ivory Coast, Croatia, Cyprus, Djibouti, Dominican Republic, Ecuador, El Salvador, Estonia, Ethiopia, France, Georgia, Greece, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hungary, Italy, Kazakhstan, Kenya, Republic of Korea, Kyrgyzstan, Latvia, Lithuania, Luxembourg, the former Yugoslav Republic of Macedonia, Madagascar, Maldives, Mali, Mauritania, Mexico, Republic of Moldova, Montenegro, Morocco, Mozambique, Nicaragua, Niger, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Russian Federation, Rwanda, San Marino, Sao Tome and Principe, Senegal, Serbia, Seychelles, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Suriname, Timor-Leste, Togo, Turkey, Ukraine, Uruguay and Venezuela[24]. In addition, in some countries, such as Ireland and the United States, the highest courts have held that the right to strike is implicit in their constitutional laws[25]. This is clear, abundant and uncontested evidence of a continuing international trend[26].
2014	11/27/2014	HRVATSKI LJEČNIČKI SINDIKAT v. CROATIA	http://hudoc.echr.coe.int/eng/?i=001-148181	36701/09	SI	PINTO DE ALBUQUERQUE	concurring		0 Timor-Leste	R	constitution	general	7. The right to strike as a means of action of workers' organisations is almost universally accepted. In a very large number of countries, the legislature has viewed this right as sufficiently important to immunise it from potential interference, by explicitly recognising it at the constitutional level, such as in Albania, Algeria, Angola, Argentina, Armenia, Azerbaijan, Belarus, Benin, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Cape Verde, Central African Republic, Chad, Chile, Colombia, Congo, Czech Republic, Democratic Republic of the Congo, Costa Rica, Ivory Coast, Croatia, Cyprus, Djibouti, Dominican Republic, Ecuador, El Salvador, Estonia, Ethiopia, France, Georgia, Greece, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hungary, Italy, Kazakhstan, Kenya, Republic of Korea, Kyrgyzstan, Latvia, Lithuania, Luxembourg, the former Yugoslav Republic of Macedonia, Madagascar, Maldives, Mali, Mauritania, Mexico, Republic of Moldova, Montenegro, Morocco, Mozambique, Nicaragua, Niger, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Russian Federation, Rwanda, San Marino, Sao Tome and Principe, Senegal, Serbia, Seychelles, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Suriname, Timor-Leste, Togo, Turkey, Ukraine, Uruguay and Venezuela[24]. In addition, in some countries, such as Ireland and the United States, the highest courts have held that the right to strike is implicit in their constitutional laws[25]. This is clear, abundant and uncontested evidence of a continuing international trend[26].
2014	11/27/2014	HRVATSKI LJEČNIČKI SINDIKAT v. CROATIA	http://hudoc.echr.coe.int/eng/?i=001-148181	36701/09	SI	PINTO DE ALBUQUERQUE	concurring		0 Togo	R	constitution	general	7. The right to strike as a means of action of workers' organisations is almost universally accepted. In a very large number of countries, the legislature has viewed this right as sufficiently important to immunise it from potential interference, by explicitly recognising it at the constitutional level, such as in Albania, Algeria, Angola, Argentina, Armenia, Azerbaijan, Belarus, Benin, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Cape Verde, Central African Republic, Chad, Chile, Colombia, Congo, Czech Republic, Democratic Republic of the Congo, Costa Rica, Ivory Coast, Croatia, Cyprus, Djibouti, Dominican Republic, Ecuador, El Salvador, Estonia, Ethiopia, France, Georgia, Greece, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hungary, Italy, Kazakhstan, Kenya, Republic of Korea, Kyrgyzstan, Latvia, Lithuania, Luxembourg, the former Yugoslav Republic of Macedonia, Madagascar, Maldives, Mali, Mauritania, Mexico, Republic of Moldova, Montenegro, Morocco, Mozambique, Nicaragua, Niger, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Russian Federation, Rwanda, San Marino, Sao Tome and Principe, Senegal, Serbia, Seychelles, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Suriname, Timor-Leste, Togo, Turkey, Ukraine, Uruguay and Venezuela[24]. In addition, in some countries, such as Ireland and the United States, the highest courts have held that the right to strike is implicit in their constitutional laws[25]. This is clear, abundant and uncontested evidence of a continuing international trend[26].
2014	11/27/2014	HRVATSKI LJEČNIČKI SINDIKAT v. CROATIA	http://hudoc.echr.coe.int/eng/?i=001-148181	36701/09	SI	PINTO DE ALBUQUERQUE	concurring		0 Uruguay	R	constitution	general	7. The right to strike as a means of action of workers' organisations is almost universally accepted. In a very large number of countries, the legislature has viewed this right as sufficiently important to immunise it from potential interference, by explicitly recognising it at the constitutional level, such as in Albania, Algeria, Angola, Argentina, Armenia, Azerbaijan, Belarus, Benin, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Cape Verde, Central African Republic, Chad, Chile, Colombia, Congo, Czech Republic, Democratic Republic of the Congo, Costa Rica, Ivory Coast, Croatia, Cyprus, Djibouti, Dominican Republic, Ecuador, El Salvador, Estonia, Ethiopia, France, Georgia, Greece, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hungary, Italy, Kazakhstan, Kenya, Republic of Korea, Kyrgyzstan, Latvia, Lithuania, Luxembourg, the former Yugoslav Republic of Macedonia, Madagascar, Maldives, Mali, Mauritania, Mexico, Republic of Moldova, Montenegro, Morocco, Mozambique, Nicaragua, Niger, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Russian Federation, Rwanda, San Marino, Sao Tome and Principe, Senegal, Serbia, Seychelles, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Suriname, Timor-Leste, Togo, Turkey, Ukraine, Uruguay and Venezuela[24]. In addition, in some countries, such as Ireland and the United States, the highest courts have held that the right to strike is implicit in their constitutional laws[25]. This is clear, abundant and uncontested evidence of a continuing international trend[26].
2014	11/27/2014	HRVATSKI LJEČNIČKI SINDIKAT v. CROATIA	http://hudoc.echr.coe.int/eng/?i=001-148181	36701/09	SI	PINTO DE ALBUQUERQUE	concurring		0 US	C	SC	Charles Wolff Packing Company v. Court of Industrial Relations, 262 U.S. 522	7. The right to strike as a means of action of workers' organisations is almost universally accepted. In a very large number of countries, the legislature has viewed this right as sufficiently important to immunise it from potential interference, by explicitly recognising it at the constitutional level, such as in Albania, Algeria, Angola, Argentina, Armenia, Azerbaijan, Belarus, Benin, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Cape Verde, Central African Republic, Chad, Chile, Colombia, Congo, Czech Republic, Democratic Republic of the Congo, Costa Rica, Ivory Coast, Croatia, Cyprus, Djibouti, Dominican Republic, Ecuador, El Salvador, Estonia, Ethiopia, France, Georgia, Greece, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hungary, Italy, Kazakhstan, Kenya, Republic of Korea, Kyrgyzstan, Latvia, Lithuania, Luxembourg, the former Yugoslav Republic of Macedonia, Madagascar, Maldives, Mali, Mauritania, Mexico, Republic of Moldova, Montenegro, Morocco, Mozambique, Nicaragua, Niger, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Russian Federation, Rwanda, San Marino, Sao Tome and Principe, Senegal, Serbia, Seychelles, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Suriname, Timor-Leste, Togo, Turkey, Ukraine, Uruguay and Venezuela[24]. In addition, in some countries, such as Ireland and the United States, the highest courts have held that the right to strike is implicit in their constitutional laws[25]. This is clear, abundant and uncontested evidence of a continuing international trend[26]. [25] For the US, Charles Wolff Packing Company v. Court of Industrial Relations, 262 U.S. 522, and Lyng v. Auto Workers, 485 U.S. 360, and for Ireland, Education Co v. Fitzpatrick (1961) IR 345, Kingsmill Moore J at 397. In Canada, after the historic case of Health Services and Support-Facilities Subsector Bargaining Association v. British Columbia, 2007 SCC 27, where collective action has been acknowledged as a right protected by the Charter of Rights and Freedoms, the Supreme Court heard a case on May 16 of this year on whether the right to strike in essential services is constitutionally protected.
2014	11/27/2014	HRVATSKI LJEČNIČKI SINDIKAT v. CROATIA	http://hudoc.echr.coe.int/eng/?i=001-148181	36701/09	SI	PINTO DE ALBUQUERQUE	concurring		0 US	C	SC	Lyng v. Auto Workers, 485 U.S. 36	7. The right to strike as a means of action of workers' organisations is almost universally accepted. In a very large number of countries, the legislature has viewed this right as sufficiently important to immunise it from potential interference, by explicitly recognising it at the constitutional level, such as in Albania, Algeria, Angola, Argentina, Armenia, Azerbaijan, Belarus, Benin, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Cape Verde, Central African Republic, Chad, Chile, Colombia, Congo, Czech Republic, Democratic Republic of the Congo, Costa Rica, Ivory Coast, Croatia, Cyprus, Djibouti, Dominican Republic, Ecuador, El Salvador, Estonia, Ethiopia, France, Georgia, Greece, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hungary, Italy, Kazakhstan, Kenya, Republic of Korea, Kyrgyzstan, Latvia, Lithuania, Luxembourg, the former Yugoslav Republic of Macedonia, Madagascar, Maldives, Mali, Mauritania, Mexico, Republic of Moldova, Montenegro, Morocco, Mozambique, Nicaragua, Niger, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Russian Federation, Rwanda, San Marino, Sao Tome and Principe, Senegal, Serbia, Seychelles, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Suriname, Timor-Leste, Togo, Turkey, Ukraine, Uruguay and Venezuela[24]. In addition, in some countries, such as Ireland and the United States, the highest courts have held that the right to strike is implicit in their constitutional laws[25]. This is clear, abundant and uncontested evidence of a continuing international trend[26]. [25] For the US, Charles Wolff Packing Company v. Court of Industrial Relations, 262 U.S. 522, and Lyng v. Auto Workers, 485 U.S. 360, and for Ireland, Education Co v. Fitzpatrick (1961) IR 345, Kingsmill Moore J at 397. In Canada, after the historic case of Health Services and Support-Facilities Subsector Bargaining Association v. British Columbia, 2007 SCC 27, where collective action has been acknowledged as a right protected by the Charter of Rights and Freedoms, the Supreme Court heard a case on May 16 of this year on whether the right to strike in essential services is constitutionally protected.
2014	11/27/2014	HRVATSKI LJEČNIČKI SINDIKAT v. CROATIA	http://hudoc.echr.coe.int/eng/?i=001-148181	36701/09	SI	PINTO DE ALBUQUERQUE	concurring		0 Venezuela	R	constitution	general	7. The right to strike as a means of action of workers' organisations is almost universally accepted. In a very large number of countries, the legislature has viewed this right as sufficiently important to immunise it from potential interference, by explicitly recognising it at the constitutional level, such as in Albania, Algeria, Angola, Argentina, Armenia, Azerbaijan, Belarus, Benin, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Cape Verde, Central African Republic, Chad, Chile, Colombia, Congo, Czech Republic, Democratic Republic of the Congo, Costa Rica, Ivory Coast, Croatia, Cyprus, Djibouti, Dominican Republic, Ecuador, El Salvador, Estonia, Ethiopia, France, Georgia, Greece, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hungary, Italy, Kazakhstan, Kenya, Republic of Korea, Kyrgyzstan, Latvia, Lithuania, Luxembourg, the former Yugoslav Republic of Macedonia, Madagascar, Maldives, Mali, Mauritania, Mexico, Republic of Moldova, Montenegro, Morocco, Mozambique, Nicaragua, Niger, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Russian Federation, Rwanda, San Marino, Sao Tome and Principe, Senegal, Serbia, Seychelles, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Suriname, Timor-Leste, Togo, Turkey, Ukraine, Uruguay and Venezuela[24]. In addition, in some countries, such as Ireland and the United States, the highest courts have held that the right to strike is implicit in their constitutional laws[25]. This is clear, abundant and uncontested evidence of a continuing international trend[26].
2014	10/21/2014	MURAT VURAL v. TURKEY	http://hudoc.echr.coe.int/eng/?i=001-147284	no. 9540/07	S2	SAJO	concurring (pa		0 US	C	SC	Texas v. Johnson, 491 U.S. 397 (1989)	The legislature's predominant concern in Law no. 5816 are with the content of the speech as opposed to its secondary effects; it expresses the legislature's disagreement with the message the act conveys. In the category-based approach of the United States First Amendment law, known as the "categorical approach"[5], this is plainly unconstitutional. So what is wrong with content discrimination? It is wrong because the Government disregard content-neutrality without compelling reasons. The requirement of content neutrality follows from the assumption that content-based restrictions ("content-discrimination") target specific messages, thus resulting in thought control, and "[such a restriction] raises the specter that the government may effectively drive certain ideas or viewpoints from the marketplace [6]" Going beyond the above-mentioned, more demanding forms of scrutiny within the proportionality methodology, freedom of expression cases are sometimes (even regularly in the United States) resolved using a categorical approach[7]. In principle, such an approach guarantees freedom of expression unequivocally and with more certainty than a case-by-case analysis, where the metrics of proportionality and balancing are not spelled out. The uncertainty that is inherent in the case-based proportionality analysis invites authorities to attempt to impose further restrictions. More importantly, it discourages speakers. [5]. See Texas v. Johnson, 491 U.S. 397 (1989). For the advantages of the categorical approach see below [6]. Simon and Schuster, inc. v. Members of the N.Y. State Crime Victims Bd., 502 U.S. 105, 116 (1991).
2014	10/21/2014	MURAT VURAL v. TURKEY	http://hudoc.echr.coe.int/eng/?i=001-147284	no. 9540/07	S2	SAJO	concurring (pa		0 US	C	SC	Simon and Schuster, Inc. v. Members of the N.Y. State Crime Victims Bd., 502 U.S. 105, 116 (1991)	The legislature's predominant concern in Law no. 5816 are with the content of the speech as opposed to its secondary effects; it expresses the legislature's disagreement with the message the act conveys. In the category-based approach of the United States First Amendment law, known as the "categorical approach"[5], this is plainly unconstitutional. So what is wrong with content discrimination? It is wrong because the Government disregard content-neutrality without compelling reasons. The requirement of content neutrality follows from the assumption that content-based restrictions ("content-discrimination") target specific messages, thus resulting in thought control, and "[such a restriction] raises the specter that the government may effectively drive certain ideas or viewpoints from the marketplace [6]" Going beyond the above-mentioned, more demanding forms of scrutiny within the proportionality methodology, freedom of expression cases are sometimes (even regularly in the United States) resolved using a categorical approach[7]. In principle, such an approach guarantees freedom of expression unequivocally and with more certainty than a case-by-case analysis, where the metrics of proportionality and balancing are not spelled out. The uncertainty that is inherent in the case-based proportionality analysis invites authorities to attempt to impose further restrictions. More importantly, it discourages speakers. [5]. See Texas v. Johnson, 491 U.S. 397 (1989). For the advantages of the categorical approach see below [6]. Simon and Schuster, inc. v. Members of the N.Y. State Crime Victims Bd., 502 U.S. 105, 116 (1991).
2014	10/21/2014	MURAT VURAL v. TURKEY	http://hudoc.echr.coe.int/eng/?i=001-147284	no. 9540/07	S2	SAJO	concurring (pa		0 Canada	C	SC	general	I would argue that the problem can be better decided using a category-based analysis of the legislation, and even by an enhanced proportionality analysis of the means/end relationship of the legislation and the objective value of the intended aim, as is carried out, for example, in Canada and Germany. These approaches are superior to the Court's "standard", often narrowly case-related analysis because they are more convincing and, above all, offer a better, broader, and more equivalent protection to free speech against governmental abuse.

Year	Date	Name	Link	App.no.	Body	Judge citing	Opinion	who submitted	Countries	C/R/F	type	Document	Quotes
2014	9/18/2014	BLIAKAI AND OTHERS v. CROATIA	http://hudoc.echr.coe.int/eng/?i=001-146392	74448/12	SA	LAZAROVA TRAIKOVSKA AND PR	concurring (pa		0 US	F		0 scientific article	7. Scientific research suggests that many law professionals face a higher-than-average risk of work-related violence and threats. The risk is particularly acute for lawyers practising in the areas of criminal, family and divorce law and threats and violence are primarily perpetrated by opposing parties and their associates and relatives, or by the lawyer's own client[15]. In some countries, the risk is concentrated on lawyers defending human rights causes, who have to face persecution and even violence on the part of State officials or private persons under their direction[16]. The instant case is an unfortunate example of this kind of targeted violence against a lawyer who was attacked in her office and for professional reasons. Unfortunately the majority were not willing to take into consideration this aspect of the case. We find that an opportunity was thus missed. [15] See, among others, Mark Hansen, "Lawyers in Harm's Way", in American Bar Association Journal, 1998, Frederick Calhoun, "Hunters and Howlers: Threats and Violence Against Federal Judicial Officials in the United States", U.S. Marshals Service, 1998, Stephen Kelson, "An increasingly Violent Profession", in Utah Bar Journal, 2001, "Violence Against the Utah Legal Profession: A Statewide Survey", in Utah Bar Journal, 2006, "Violence Against the Idaho Legal Profession: Results of a 2008 Survey", in The Advocate, Idaho State Bar, 2008, "Violence Against the Nevada Legal Profession", in Nevada Lawyer Magazine, 2012, and David Hyde, "Violence and threats against lawyers is a growing concern in Canada", "First Reference Talks, 2013.
2014	9/18/2014	BLIAKAI AND OTHERS v. CROATIA	http://hudoc.echr.coe.int/eng/?i=001-146392	74448/12	SI	LAZAROVA TRAIKOVSKA AND PR	concurring (pa		0 Canada	F		0 scientific article	7. Scientific research suggests that many law professionals face a higher-than-average risk of work-related violence and threats. The risk is particularly acute for lawyers practising in the areas of criminal, family and divorce law and threats and violence are primarily perpetrated by opposing parties and their associates and relatives, or by the lawyer's own client[15]. In some countries, the risk is concentrated on lawyers defending human rights causes, who have to face persecution and even violence on the part of State officials or private persons under their direction[16]. The instant case is an unfortunate example of this kind of targeted violence against a lawyer who was attacked in her office and for professional reasons. Unfortunately the majority were not willing to take into consideration this aspect of the case. We find that an opportunity was thus missed. [15] See, among others, Mark Hansen, "Lawyers in Harm's Way", in American Bar Association Journal, 1998, Frederick Calhoun, "Hunters and Howlers: Threats and Violence Against Federal Judicial Officials in the United States", U.S. Marshals Service, 1998, Stephen Kelson, "An increasingly Violent Profession", in Utah Bar Journal, 2001, "Violence Against the Utah Legal Profession: A Statewide Survey", in Utah Bar Journal, 2006, "Violence Against the Idaho Legal Profession: Results of a 2008 Survey", in The Advocate, Idaho State Bar, 2008, "Violence Against the Nevada Legal Profession", in Nevada Lawyer Magazine, 2012, and David Hyde, "Violence and threats against lawyers is a growing concern in Canada", "First Reference Talks, 2013.
2014	7/17/2014	CENTRE FOR LEGAL RESOURCES ON BEHALF OF VAL	http://hudoc.echr.coe.int/eng/?i=001-145577	47848/08	GC		0 majority	intervener	Canada	C	SC	general	(ii) The Mental Disability Advocacy Center 95. The Mental Disability Advocacy Center submitted that the factual or legal inability of individuals with intellectual disabilities to have access to justice, an issue already examined by the Court in several of its cases (for instance, Stanev, cited above), could ultimately lead to impunity for violations of their rights. In situations where vulnerable victims were deprived of their legal capacity and/or detained in State institutions, States could "avoid" any responsibility for protecting their lives by not providing them with any assistance in legal matters, including in relation to the protection of their human rights. The case-law of the Canadian Supreme Court, the Irish Supreme Court and the High Court of England and Wales granting legal standing to NGOs in situations where no one else was able to bring an issue of public interest before the courts was cited. The above-mentioned courts' decisions on the issue of the locus standi of NGOs had mainly been based on an assessment of whether the case concerned a serious matter, whether the claimant had a genuine interest in bringing the case, the claimant's expertise in the area involved in the matter and whether there was any other reasonable and effective means of bringing the issue before the courts.
2014	7/16/2014	HÄMÄLÄINEN v. FINLAND	http://hudoc.echr.coe.int/eng/?i=001-145768	37359/09	GC	SAJÓ, KELLER AND LEMMENS	dissenting		0 Australia	C	SC	NSW Registrar of Births, Deaths and Marriages v. Norrie [2014] HCA 11, judgment of 2 April 2014	5. Secondly, a decisive argument for the majority's finding is the fact that there is no consensus among the member States of the Council of Europe on issues concerning transgender persons (see paragraph 74 of the present judgment). In our view, this is not the correct approach, not least because it is contrary to the Court's previous case-law. The Court should have recourse to general consensus as one of a set of tools or criteria for determining the width of the State margin of appreciation in a given area (see X and Others v. Austria [GC], no. 19010/07, § 148, ECHR 2013). In other words, the existence of a consensus is not the only factor that influences the width of the State's margin of appreciation: that same margin is restricted where "a particularly important facet of an individual's existence or identity is at stake" (see S.H. and Others v. Austria [GC], no. 57813/00, § 94, ECHR 2011). [1] As a general rule, where a particularly important aspect of a Convention right is concerned, the Court should therefore examine individual cases with strict scrutiny and, if there has been an interference incompatible with Convention standards, rule accordingly – even if many Contracting States are potentially concerned. This rule applies to the present case: a particularly important facet of the applicant's identity is at stake here, hence the narrower margin of appreciation afforded to the State. Mindful of past criticism of the consensus approach, which has been considered a potential instrument of retrogression and of allowing the "lowest common denominator" among the member States to prevail, we consider that the Court's deference to this approach must have its limits, and find that the absence of a consensus cannot serve to widen the State's narrowed margin of appreciation in the present case.[2] In this context, we note that proof of the existence of a consensus, when adduced, must not depend on the existence of a common approach in a super-majority of States: the Court has some discretion regarding its acknowledgment of trends (compare Vallanatos and Others v. Greece [GC], nos. 29381/09 and 32684/09, § 91, ECHR 2013). [3] We also note that, in the landmark Christine Goodwin judgment (cited above), regarding the absence of a consensus on the legal acknowledgment of acquired gender among the member States, the Court held that "the lack of such a common approach among forty-three Contracting States with widely diverse legal systems and traditions is hardly surprising. ... The Court accordingly attaches less importance to the lack of evidence of a common European approach to the resolution of the legal and practical problems posed, than to the clear and uncontested evidence of a continuing international trend in favour not only of increased social acceptance of transsexuals but of legal recognition of the new sexual identity of post-operative transsexuals." (see Christine Goodwin, cited above, § 85) The Court went on to hold that the question of allowing legal recognition of acquired gender no longer fell within the State's margin of appreciation (see Christine Goodwin, cited above, § 93). As concerns this "trend", we note that legal recognition of the rights of transsexual and intersex persons is being steadily strengthened worldwide.[4] Regarding the significance of the lack of consensus among the member States, we therefore disagree with the majority from a methodological point of view. [4] We note that, within the Council of Europe, the existence of a "third gender" has been acknowledged by the German federal legislature (section 22(3) of the Personenstandsgesetz (PSG)), in force since 19 February 2007 (BGBl. I p. 122), amended by section 3 of the Law of 28 August 2013 (BGBl. I p. 34581). Outside the Council of Europe, the Supreme Courts of some countries have come to the same conclusion (Supreme Court of Nepal, Sunil Babu Pant and Others v. Nepal, writ no. 917, judgment of 21 December 2007; High Court of Australia, NSW Registrar of Births, Deaths and Marriages v. Norrie [2014] HCA 11, judgment of 2 April 2014; and Supreme Court of India, National Legal Services Authority v. Union of India and Others, writ petition (civil) no. 400 of 2012, judgment of 15 April 2014).
2014	7/16/2014	HÄMÄLÄINEN v. FINLAND	http://hudoc.echr.coe.int/eng/?i=001-145768	37359/09	GC	SAJÓ, KELLER AND LEMMENS	dissenting		0 India	C	SC	National Legal Services Authority v. Union of India and Others, writ petition (civil) no. 400 of 2012, judgment of 15 April 2014	13. With respect, more specifically, to the proportionality of the interference, we note that the State has a certain margin of appreciation regarding whether a fair balance was struck between the competing interests in question. Taking this into consideration, we nevertheless find that the Government have not shown that the danger to morals is substantial enough to warrant the interference in issue. In this vein, we note that, since the applicant and her wife continue to be married at the time of this judgment, they currently present themselves to the outside world as two individuals with female gender expression who are united in a legally valid marriage. In other words, they continue to live together as a married couple, perfectly in accordance with Finnish law, notwithstanding the fact that in the eyes of many people they are a same-sex couple. The applicant's change in gender identity being a fait accompli, it is difficult to comprehend why the legal recognition of her acquired gender will have any significant (additional) impact on public morals. Furthermore, we refer to the recent judgment of the Supreme Court of India, which noted that society ill-treats transgender individuals while "forgetting the fact that the moral failure lies in the society's unwillingness to contain or embrace different gender identities and expressions, a mind-set which we have to change." [5] As one author has put it, society's problematic "yuk factor" concerning transgender individuals is not a normative idea that should be supported by the law.[6] [4]. We note that, within the Council of Europe, the existence of a "third gender" has been acknowledged by the German federal legislature (section 22(3) of the Personenstandsgesetz (PSG)), in force since 19 February 2007 (BGBl. I p. 122), amended by section 3 of the Law of 28 August 2013 (BGBl. I p. 34581). Outside the Council of Europe, the Supreme Courts of some countries have come to the same conclusion (Supreme Court of Nepal, Sunil Babu Pant and Others v. Nepal, writ no. 917, judgment of 21 December 2007; High Court of Australia, NSW Registrar of Births, Deaths and Marriages v. Norrie [2014] HCA 11, judgment of 2 April 2014; and Supreme Court of India, National Legal Services Authority v. Union of India and Others, writ petition (civil) no. 400 of 2012, judgment of 15 April 2014). The Court went on to hold that the question of allowing legal recognition of acquired gender no longer fell within the State's margin of appreciation (see Christine Goodwin, cited above, § 93). As concerns this "trend", we note that legal recognition of the rights of transsexual and intersex persons is being steadily strengthened worldwide.[4] Regarding the significance of the lack of consensus among the member States, we therefore disagree with the majority from a methodological point of view.
2014	7/16/2014	HÄMÄLÄINEN v. FINLAND	http://hudoc.echr.coe.int/eng/?i=001-145768	37359/09	GC	SAJÓ, KELLER AND LEMMENS	dissenting		0 Nepal	C	SC	Sunil Babu Pant and Others v. Nepal, writ no. 917, judgment of 21 December 2007	13. With respect, more specifically, to the proportionality of the interference, we note that the State has a certain margin of appreciation regarding whether a fair balance was struck between the competing interests in question. Taking this into consideration, we nevertheless find that the Government have not shown that the danger to morals is substantial enough to warrant the interference in issue. In this vein, we note that, since the applicant and her wife continue to be married at the time of this judgment, they currently present themselves to the outside world as two individuals with female gender expression who are united in a legally valid marriage. In other words, they continue to live together as a married couple, perfectly in accordance with Finnish law, notwithstanding the fact that in the eyes of many people they are a same-sex couple. The applicant's change in gender identity being a fait accompli, it is difficult to comprehend why the legal recognition of her acquired gender will have any significant (additional) impact on public morals. Furthermore, we refer to the recent judgment of the Supreme Court of India, which noted that society ill-treats transgender individuals while "forgetting the fact that the moral failure lies in the society's unwillingness to contain or embrace different gender identities and expressions, a mind-set which we have to change." [5] As one author has put it, society's problematic "yuk factor" concerning transgender individuals is not a normative idea that should be supported by the law.[6] [4]. We note that, within the Council of Europe, the existence of a "third gender" has been acknowledged by the German federal legislature (section 22(3) of the Personenstandsgesetz (PSG)), in force since 19 February 2007 (BGBl. I p. 122), amended by section 3 of the Law of 28 August 2013 (BGBl. I p. 34581). Outside the Council of Europe, the Supreme Courts of some countries have come to the same conclusion (Supreme Court of Nepal, Sunil Babu Pant and Others v. Nepal, writ no. 917, judgment of 21 December 2007; High Court of Australia, NSW Registrar of Births, Deaths and Marriages v. Norrie [2014] HCA 11, judgment of 2 April 2014; and Supreme Court of India, National Legal Services Authority v. Union of India and Others, writ petition (civil) no. 400 of 2012, judgment of 15 April 2014). The Court went on to hold that the question of allowing legal recognition of acquired gender no longer fell within the State's margin of appreciation (see Christine Goodwin, cited above, § 93). As concerns this "trend", we note that legal recognition of the rights of transsexual and intersex persons is being steadily strengthened worldwide.[4] Regarding the significance of the lack of consensus among the member States, we therefore disagree with the majority from a methodological point of view.
2014	6/12/2014	FERNÁNDEZ MARTÍNEZ v. SPAIN	http://hudoc.echr.coe.int/eng/?i=001-145068	no. 56030/07	GC		0 majority	intervener	US	C	SC	11 January 2012 in Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission et al., which expressly recognised for the first time the so-called "ministerial exception", a doctrine according to which otherwise applicable laws prohibiting employment discrimination could not be applied to "ministerial employees" (a category that included religious-education teachers).	
2014	5/27/2014	MARGUŠ v. CROATIA	http://hudoc.echr.coe.int/eng/?i=001-144276	no. 4455/10	GC		0 majority	intervener	Brazil	C	SC	Brazilian Supreme Court's ruling of April 2010 refusing to revoke the 1979 Amnesty Law	112. Furthermore, a number of national Supreme Courts had upheld their countries' amnesty laws because such laws contributed to the achievement of peace, democracy and reconciliation. The interveners cited the following examples: the finding of the Spanish Supreme Court in the trial of Judge Garçon in February 2012; the ruling of the Ugandan Constitutional Court upholding the constitutionality of the 2000 Amnesty Act; the Brazilian Supreme Court's ruling of April 2010 refusing to revoke the 1979 Amnesty Law; and the ruling of the South African Constitutional Court in the AZAPO case upholding the constitutionality of the Promotion of National Unity and Reconciliation Act of 1995 which provided for a broad application of amnesty.
2014	5/27/2014	MARGUŠ v. CROATIA	http://hudoc.echr.coe.int/eng/?i=001-144276	no. 4455/10	GC		0 majority	intervener	South Africa	C	CC	AZAPO case upholding the constitutionality of the Promotion of National Unity and Reconciliation Act of 1995	112. Furthermore, a number of national Supreme Courts had upheld their countries' amnesty laws because such laws contributed to the achievement of peace, democracy and reconciliation. The interveners cited the following examples: the finding of the Spanish Supreme Court in the trial of Judge Garçon in February 2012; the ruling of the Ugandan Constitutional Court upholding the constitutionality of the 2000 Amnesty Act; the Brazilian Supreme Court's ruling of April 2010 refusing to revoke the 1979 Amnesty Law; and the ruling of the South African Constitutional Court in the AZAPO case upholding the constitutionality of the Promotion of National Unity and Reconciliation Act of 1995 which provided for a broad application of amnesty.
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2014	5/15/2014	TARANENKO v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-147969	no. 19554/05	SI	PINTO DE ALBUQUERQUE, TURKOVIC AND DEDOV	concurring (jok)	0	US	C	SC	Brandenburg v. Ohio, 395 US 444 (1969)	7. Shouting and chanting political slogans, waving placards with political messages and distributing leaflets with messages of a similar nature are forms of expression and expressive conduct which clearly fall under the protection of Article 10 and which all deserve the exact same degree of protection. In the present case, the content of the message conveyed by the demonstrators and the underlying intention of the demonstration were political. The objectivity and subjectively political nature of the expression and expressive conduct further narrows the margin of appreciation of the respondent State. But both expression and expressive conduct may nonetheless lose the protection of the Convention when they give rise to a clear and imminent danger of public disorder, crime or other infringement of the rights of others[6]. Expression in the marketplace of ideas is only possible where no violence is incited, threatened or exerted[7]. Where there is violence, there is no communication. [7]. United States Supreme Court, Brandenburg v. Ohio, 395 US 444 (1969) and Samuels v. Mackell, 401 US 66 (1971).
2014	5/15/2014	TARANENKO v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-147969	no. 19554/05	SI	PINTO DE ALBUQUERQUE, TURKOVIC AND DEDOV	concurring (jok)	0	US	C	SC	Samuels v. Mackell, 401 US 66 (1971)	7. Shouting and chanting political slogans, waving placards with political messages and distributing leaflets with messages of a similar nature are forms of expression and expressive conduct which clearly fall under the protection of Article 10 and which all deserve the exact same degree of protection. In the present case, the content of the message conveyed by the demonstrators and the underlying intention of the demonstration were political. The objectivity and subjectively political nature of the expression and expressive conduct further narrows the margin of appreciation of the respondent State. But both expression and expressive conduct may nonetheless lose the protection of the Convention when they give rise to a clear and imminent danger of public disorder, crime or other infringement of the rights of others[6]. Expression in the marketplace of ideas is only possible where no violence is incited, threatened or exerted[7]. Where there is violence, there is no communication. [7]. United States Supreme Court, Brandenburg v. Ohio, 395 US 444 (1969) and Samuels v. Mackell, 401 US 66 (1971).
2014	5/12/2014	CYPRUS v. TURKEY	http://hudoc.echr.coe.int/eng/?i=001-144151	25781/94	GC	PINTO DE ALBUQUERQUE	concurring	0	Canada	F	0	legal jargon	1. The Cyprus v. Turkey (just satisfaction) case is the most important contribution to peace in Europe in the history of the European Court of Human Rights ("the Court"). The Court has not only acknowledged the applicability of Article 41 of the European Convention on Human Rights ("the Convention") to inter-State applications and established criteria for the assessment of the time-limit for these just-satisfaction claims, but has awarded punitive damages to the claimant State[1]. The message to member States of the Council of Europe is clear: those member States that wage war, invade or support foreign armed intervention in other member States must pay for their unlawful actions and the consequences of their actions, and the victims, their families and the States of which they are nationals have a vested and enforceable right to be duly and fully compensated by the responsible warring State. War and its tragic consequences are no longer tolerable in Europe and those member States that do not comply with this principle must be made judicially accountable for their actions, without prejudice to additional political consequences. In view of the historical importance of this judgment and the parsimonious and sometimes equivocal reasoning of the judgment, I feel that I have a duty to state the reasons why I concur with the findings of the Court. Hence, this opinion will deal with the following issues: the Court's power to award compensation in inter-State cases, the time-limit for inter-State just-satisfaction claims, the punitive nature of the damages awarded under the Convention in general and in the circumstances of this case, and the Court's power to deliver a declaratory judgment on the cessation of ongoing violations[2][1]. "Punitive damages" is the preferred expression in the United States, Canada and continental Europe, while the term "exemplary damages" is used in other Commonwealth countries; however, they both refer to the same concept. Punitive or exemplary damages are understood as being established with the purpose of atoning for the deeds of the wrongdoer and preventing repetition of the wrongful act by the offender or emulation by third parties, without being limited to mere compensation for the pecuniary and non-pecuniary losses caused to the claimant, including loss of profit.
2014	5/12/2014	CYPRUS v. TURKEY	http://hudoc.echr.coe.int/eng/?i=001-144151	25781/94	GC	PINTO DE ALBUQUERQUE	concurring	0	USA	F	0	legal jargon	1. The Cyprus v. Turkey (just satisfaction) case is the most important contribution to peace in Europe in the history of the European Court of Human Rights ("the Court"). The Court has not only acknowledged the applicability of Article 41 of the European Convention on Human Rights ("the Convention") to inter-State applications and established criteria for the assessment of the time-limit for these just-satisfaction claims, but has awarded punitive damages to the claimant State[1]. The message to member States of the Council of Europe is clear: those member States that wage war, invade or support foreign armed intervention in other member States must pay for their unlawful actions and the consequences of their actions, and the victims, their families and the States of which they are nationals have a vested and enforceable right to be duly and fully compensated by the responsible warring State. War and its tragic consequences are no longer tolerable in Europe and those member States that do not comply with this principle must be made judicially accountable for their actions, without prejudice to additional political consequences. In view of the historical importance of this judgment and the parsimonious and sometimes equivocal reasoning of the judgment, I feel that I have a duty to state the reasons why I concur with the findings of the Court. Hence, this opinion will deal with the following issues: the Court's power to award compensation in inter-State cases, the time-limit for inter-State just-satisfaction claims, the punitive nature of the damages awarded under the Convention in general and in the circumstances of this case, and the Court's power to deliver a declaratory judgment on the cessation of ongoing violations[2][1]. "Punitive damages" is the preferred expression in the United States, Canada and continental Europe, while the term "exemplary damages" is used in other Commonwealth countries; however, they both refer to the same concept. Punitive or exemplary damages are understood as being established with the purpose of atoning for the deeds of the wrongdoer and preventing repetition of the wrongful act by the offender or emulation by third parties, without being limited to mere compensation for the pecuniary and non-pecuniary losses caused to the claimant, including loss of profit.
2014	3/18/2014	ÖCALAN v. TURKEY (No. 2)	http://hudoc.echr.coe.int/eng/?i=001-142087	24069/03, 197/04, 6201/12	52	PINTO DE ALBUQUERQUE	dissenting (par)	0	Angola	R	constitution	Article 66 of the Constitution	5. General prevention of crime does not justify life imprisonment. Even if there were a proven correlation between life imprisonment and lower crime rates, or at least lower rates of murder and other violent crime, punishing the offender for the purposes of deterring other people's behaviour and strengthening the social authority of the legal norm would reduce the offender to an instrument of a state strategy. But there is no such correlation. On the contrary, not only do countries with a longstanding practice of life imprisonment, such as the U.S. and Russia, have high crime rates, and in particular, high murder and violent crime rates, but countries which do not have life imprisonment actually have low crime rates. The best example is Portugal. Life imprisonment was first abolished in Portugal under the prison reform of 1884[10]. This longstanding tradition was enshrined in Article 30 of the Portuguese Constitution itself, which prohibits life or indeterminate imprisonment. Yet Portuguese murder and violent crime rates have long been among the lowest in the world[11]. The fact that other European countries, such as Andorra (Articles 35 and 58 of the Criminal Code), Bosnia and Herzegovina (Article 42 of the Criminal Code), Croatia (Articles 44 and 51 of the new Criminal Code), Montenegro (Article 33 of the Criminal Code), San Marino (Article 81 of the Criminal Code), Serbia (see Article 45 of the Criminal Code) and Spain (Articles 36 and 76 of the Criminal Code)[12], and non-European countries, such as Angola (Article 66 of the Constitution), Brazil (Article 5 (XVIII) of the Constitution), Bolivia (Article 27 of the Criminal Code), Cape Verde (Article 32 of the Constitution), China (Article 41 of the Criminal Code of the Autonomous Region of Macau), Colombia (Article 34 of Constitution), Costa Rica (Article 51 of the Criminal Code), Dominican Republic (Article 7 of the Criminal Code), East Timor (Article 32 of the Constitution), Ecuador (Articles 51 and 53 of the Criminal Code), El Salvador (Article 45 of the Criminal Code), Guatemala (Article 44 of the Criminal Code), Honduras (Article 39 of the Criminal Code), Mexico (Article 25 of the Federal Criminal Code), Mozambique (Article 61 of the Constitution), Nicaragua (Article 52 of the Criminal Code), Panama (Article 52 of the Criminal Code), Paraguay (Article 38 of the Criminal Code), São Tomé and Príncipe (Article 37 of the Constitution) and Uruguay (Article 68 of the Criminal Code), have taken the same step, shows that societies in different continents with different cultures can survive without life imprisonment. This is clear, abundant and incontrovertible evidence of a continuing international trend, proving that no society has ever collapsed for lack of life imprisonment[13].
2014	3/18/2014	ÖCALAN v. TURKEY (No. 2)	http://hudoc.echr.coe.int/eng/?i=001-142087	24069/03, 197/04, 6201/12	52	PINTO DE ALBUQUERQUE	dissenting (par)	0	Bolivia	R	statute	Article 27 of the Criminal Code	5. General prevention of crime does not justify life imprisonment. Even if there were a proven correlation between life imprisonment and lower crime rates, or at least lower rates of murder and other violent crime, punishing the offender for the purposes of deterring other people's behaviour and strengthening the social authority of the legal norm would reduce the offender to an instrument of a state strategy. But there is no such correlation. On the contrary, not only do countries with a longstanding practice of life imprisonment, such as the U.S. and Russia, have high crime rates, and in particular, high murder and violent crime rates, but countries which do not have life imprisonment actually have low crime rates. The best example is Portugal. Life imprisonment was first abolished in Portugal under the prison reform of 1884[10]. This longstanding tradition was enshrined in Article 30 of the Portuguese Constitution itself, which prohibits life or indeterminate imprisonment. Yet Portuguese murder and violent crime rates have long been among the lowest in the world[11]. The fact that other European countries, such as Andorra (Articles 35 and 58 of the Criminal Code), Bosnia and Herzegovina (Article 42 of the Criminal Code), Croatia (Articles 44 and 51 of the new Criminal Code), Montenegro (Article 33 of the Criminal Code), San Marino (Article 81 of the Criminal Code), Serbia (see Article 45 of the Criminal Code) and Spain (Articles 36 and 76 of the Criminal Code)[12], and non-European countries, such as Angola (Article 66 of the Constitution), Brazil (Article 5 (XVIII) of the Constitution), Bolivia (Article 27 of the Criminal Code), Cape Verde (Article 32 of the Constitution), China (Article 41 of the Criminal Code of the Autonomous Region of Macau), Colombia (Article 34 of Constitution), Costa Rica (Article 51 of the Criminal Code), Dominican Republic (Article 7 of the Criminal Code), East Timor (Article 32 of the Constitution), Ecuador (Articles 51 and 53 of the Criminal Code), El Salvador (Article 45 of the Criminal Code), Guatemala (Article 44 of the Criminal Code), Honduras (Article 39 of the Criminal Code), Mexico (Article 25 of the Federal Criminal Code), Mozambique (Article 61 of the Constitution), Nicaragua (Article 52 of the Criminal Code), Panama (Article 52 of the Criminal Code), Paraguay (Article 38 of the Criminal Code), São Tomé and Príncipe (Article 37 of the Constitution) and Uruguay (Article 68 of the Criminal Code), have taken the same step, shows that societies in different continents with different cultures can survive without life imprisonment. This is clear, abundant and incontrovertible evidence of a continuing international trend, proving that no society has ever collapsed for lack of life imprisonment[13].
2014	3/18/2014	ÖCALAN v. TURKEY (No. 2)	http://hudoc.echr.coe.int/eng/?i=001-142087	24069/03, 197/04, 6201/12	52	PINTO DE ALBUQUERQUE	dissenting (par)	0	Brazil	R	constitution	Article 5 (XVIII) of the Constitution	5. General prevention of crime does not justify life imprisonment. Even if there were a proven correlation between life imprisonment and lower crime rates, or at least lower rates of murder and other violent crime, punishing the offender for the purposes of deterring other people's behaviour and strengthening the social authority of the legal norm would reduce the offender to an instrument of a state strategy. But there is no such correlation. On the contrary, not only do countries with a longstanding practice of life imprisonment, such as the U.S. and Russia, have high crime rates, and in particular, high murder and violent crime rates, but countries which do not have life imprisonment actually have low crime rates. The best example is Portugal. Life imprisonment was first abolished in Portugal under the prison reform of 1884[10]. This longstanding tradition was enshrined in Article 30 of the Portuguese Constitution itself, which prohibits life or indeterminate imprisonment. Yet Portuguese murder and violent crime rates have long been among the lowest in the world[11]. The fact that other European countries, such as Andorra (Articles 35 and 58 of the Criminal Code), Bosnia and Herzegovina (Article 42 of the Criminal Code), Croatia (Articles 44 and 51 of the new Criminal Code), Montenegro (Article 33 of the Criminal Code), San Marino (Article 81 of the Criminal Code), Serbia (see Article 45 of the Criminal Code) and Spain (Articles 36 and 76 of the Criminal Code)[12], and non-European countries, such as Angola (Article 66 of the Constitution), Brazil (Article 5 (XVIII) of the Constitution), Bolivia (Article 27 of the Criminal Code), Cape Verde (Article 32 of the Constitution), China (Article 41 of the Criminal Code of the Autonomous Region of Macau), Colombia (Article 34 of Constitution), Costa Rica (Article 51 of the Criminal Code), Dominican Republic (Article 7 of the Criminal Code), East Timor (Article 32 of the Constitution), Ecuador (Articles 51 and 53 of the Criminal Code), El Salvador (Article 45 of the Criminal Code), Guatemala (Article 44 of the Criminal Code), Honduras (Article 39 of the Criminal Code), Mexico (Article 25 of the Federal Criminal Code), Mozambique (Article 61 of the Constitution), Nicaragua (Article 52 of the Criminal Code), Panama (Article 52 of the Criminal Code), Paraguay (Article 38 of the Criminal Code), São Tomé and Príncipe (Article 37 of the Constitution) and Uruguay (Article 68 of the Criminal Code), have taken the same step, shows that societies in different continents with different cultures can survive without life imprisonment. This is clear, abundant and incontrovertible evidence of a continuing international trend, proving that no society has ever collapsed for lack of life imprisonment[13].
2014	3/18/2014	ÖCALAN v. TURKEY (No. 2)	http://hudoc.echr.coe.int/eng/?i=001-142087	24069/03, 197/04, 6201/12	52	PINTO DE ALBUQUERQUE	dissenting (par)	0	China	R	statute	Article 41 of the Criminal Code of the Autonomous Region of Macau	5. General prevention of crime does not justify life imprisonment. Even if there were a proven correlation between life imprisonment and lower crime rates, or at least lower rates of murder and other violent crime, punishing the offender for the purposes of deterring other people's behaviour and strengthening the social authority of the legal norm would reduce the offender to an instrument of a state strategy. But there is no such correlation. On the contrary, not only do countries with a longstanding practice of life imprisonment, such as the U.S. and Russia, have high crime rates, and in particular, high murder and violent crime rates, but countries which do not have life imprisonment actually have low crime rates. The best example is Portugal. Life imprisonment was first abolished in Portugal under the prison reform of 1884[10]. This longstanding tradition was enshrined in Article 30 of the Portuguese Constitution itself, which prohibits life or indeterminate imprisonment. Yet Portuguese murder and violent crime rates have long been among the lowest in the world[11]. The fact that other European countries, such as Andorra (Articles 35 and 58 of the Criminal Code), Bosnia and Herzegovina (Article 42 of the Criminal Code), Croatia (Articles 44 and 51 of the new Criminal Code), Montenegro (Article 33 of the Criminal Code), San Marino (Article 81 of the Criminal Code), Serbia (see Article 45 of the Criminal Code) and Spain (Articles 36 and 76 of the Criminal Code)[12], and non-European countries, such as Angola (Article 66 of the Constitution), Brazil (Article 5 (XVIII) of the Constitution), Bolivia (Article 27 of the Criminal Code), Cape Verde (Article 32 of the Constitution), China (Article 41 of the Criminal Code of the Autonomous Region of Macau), Colombia (Article 34 of Constitution), Costa Rica (Article 51 of the Criminal Code), Dominican Republic (Article 7 of the Criminal Code), East Timor (Article 32 of the Constitution), Ecuador (Articles 51 and 53 of the Criminal Code), El Salvador (Article 45 of the Criminal Code), Guatemala (Article 44 of the Criminal Code), Honduras (Article 39 of the Criminal Code), Mexico (Article 25 of the Federal Criminal Code), Mozambique (Article 61 of the Constitution), Nicaragua (Article 52 of the Criminal Code), Panama (Article 52 of the Criminal Code), Paraguay (Article 38 of the Criminal Code), São Tomé and Príncipe (Article 37 of the Constitution) and Uruguay (Article 68 of the Criminal Code), have taken the same step, shows that societies in different continents with different cultures can survive without life imprisonment. This is clear, abundant and incontrovertible evidence of a continuing international trend, proving that no society has ever collapsed for lack of life imprisonment[13].

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2014	3/18/2014	ÖCALAN v. TURKEY (No. 2)	http://hudoc.echr.coe.int/eng?i=001-142087	24069/03, 19/7/04, 620152		PINTO DE ALBUQUERQUE	dissenting (par		O Colombia	R	constitution	Article 34 of Constitution	5. General prevention of crime does not justify life imprisonment. Even if there were a proven correlation between life imprisonment and lower crime rates, or at least lower rates of murder and other violent crime, punishing the offender for the purposes of deterring other people's behaviour and strengthening the social authority of the legal norm would reduce the offender to an instrument of a state strategy. But there is no such correlation. On the contrary, not only do countries with a longstanding practice of life imprisonment, such as the U.S. and Russia, have high crime rates, and in particular, high murder and violent crime rates, but countries which do not have life imprisonment actually have low crime rates. The best example is Portugal. Life imprisonment was first abolished in Portugal under the prison reform of 1884[10]. This longstanding tradition was enshrined in Article 30 of the Portuguese Constitution itself, which prohibits life or indeterminate imprisonment. Yet Portuguese murder and violent crime rates have long been among the lowest in the world[11]. The fact that other European countries, such as Andorra (Articles 35 and 58 of the Criminal Code), Bosnia and Herzegovina (Article 42 of the Criminal Code), Croatia (Articles 44 and 51 of the new Criminal Code), Montenegro (Article 33 of the Criminal Code), San Marino (Article 81 of the Criminal Code), Serbia (see Article 45 of the Criminal Code) and Spain (Articles 36 and 76 of the Criminal Code)[12], and non-European countries, such as Angola (Article 66 of the Constitution), Brazil (Article 5 (XVIII) of the Constitution), Bolivia (Article 32 of the Criminal Code), Cape Verde (Article 32 of the Constitution), China (Article 41 of the Criminal Code of the Autonomous Region of Macau), Colombia (Article 34 of Constitution), Costa Rica (Article 51 of the Criminal Code), Dominican Republic (Article 7 of the Criminal Code), East Timor (Article 32 of the Constitution), Ecuador (Articles 51 and 53 of the Criminal Code), El Salvador (Article 45 of the Criminal Code), Guatemala (Article 44 of the Criminal Code), Honduras (Article 39 of the Criminal Code), Mexico (Article 25 of the Federal Criminal Code), Mozambique (Article 61 of the Constitution), Nicaragua (Article 52 of the Criminal Code), Panama (Article 52 of the Criminal Code), Paraguay (Article 38 of the Criminal Code), São Tomé and Príncipe (Article 37 of the Constitution) and Uruguay (Article 68 of the Criminal Code), have taken the same step, shows that societies in different continents with different cultures can survive without life imprisonment. This is clear, abundant and incontrovertible evidence of a continuing international trend, proving that no society has ever collapsed for lack of life imprisonment[13].
2014	3/18/2014	ÖCALAN v. TURKEY (No. 2)	http://hudoc.echr.coe.int/eng?i=001-142087	24069/03, 19/7/04, 620152		PINTO DE ALBUQUERQUE	dissenting (par		O Costa Rica	R	statute	Article 51 of the Criminal Code	5. General prevention of crime does not justify life imprisonment. Even if there were a proven correlation between life imprisonment and lower crime rates, or at least lower rates of murder and other violent crime, punishing the offender for the purposes of deterring other people's behaviour and strengthening the social authority of the legal norm would reduce the offender to an instrument of a state strategy. But there is no such correlation. On the contrary, not only do countries with a longstanding practice of life imprisonment, such as the U.S. and Russia, have high crime rates, and in particular, high murder and violent crime rates, but countries which do not have life imprisonment actually have low crime rates. The best example is Portugal. Life imprisonment was first abolished in Portugal under the prison reform of 1884[10]. This longstanding tradition was enshrined in Article 30 of the Portuguese Constitution itself, which prohibits life or indeterminate imprisonment. Yet Portuguese murder and violent crime rates have long been among the lowest in the world[11]. The fact that other European countries, such as Andorra (Articles 35 and 58 of the Criminal Code), Bosnia and Herzegovina (Article 42 of the Criminal Code), Croatia (Articles 44 and 51 of the new Criminal Code), Montenegro (Article 33 of the Criminal Code), San Marino (Article 81 of the Criminal Code), Serbia (see Article 45 of the Criminal Code) and Spain (Articles 36 and 76 of the Criminal Code)[12], and non-European countries, such as Angola (Article 66 of the Constitution), Brazil (Article 5 (XVIII) of the Constitution), Bolivia (Article 32 of the Criminal Code), Cape Verde (Article 32 of the Constitution), China (Article 41 of the Criminal Code of the Autonomous Region of Macau), Colombia (Article 34 of Constitution), Costa Rica (Article 51 of the Criminal Code), Dominican Republic (Article 7 of the Criminal Code), East Timor (Article 32 of the Constitution), Ecuador (Articles 51 and 53 of the Criminal Code), El Salvador (Article 45 of the Criminal Code), Guatemala (Article 44 of the Criminal Code), Honduras (Article 39 of the Criminal Code), Mexico (Article 25 of the Federal Criminal Code), Mozambique (Article 61 of the Constitution), Nicaragua (Article 52 of the Criminal Code), Panama (Article 52 of the Criminal Code), Paraguay (Article 38 of the Criminal Code), São Tomé and Príncipe (Article 37 of the Constitution) and Uruguay (Article 68 of the Criminal Code), have taken the same step, shows that societies in different continents with different cultures can survive without life imprisonment. This is clear, abundant and incontrovertible evidence of a continuing international trend, proving that no society has ever collapsed for lack of life imprisonment[13].
2014	3/18/2014	ÖCALAN v. TURKEY (No. 2)	http://hudoc.echr.coe.int/eng?i=001-142087	24069/03, 19/7/04, 620152		PINTO DE ALBUQUERQUE	dissenting (par		O Dominican Rep	R	statute	Article 7 of the Criminal code	5. General prevention of crime does not justify life imprisonment. Even if there were a proven correlation between life imprisonment and lower crime rates, or at least lower rates of murder and other violent crime, punishing the offender for the purposes of deterring other people's behaviour and strengthening the social authority of the legal norm would reduce the offender to an instrument of a state strategy. But there is no such correlation. On the contrary, not only do countries with a longstanding practice of life imprisonment, such as the U.S. and Russia, have high crime rates, and in particular, high murder and violent crime rates, but countries which do not have life imprisonment actually have low crime rates. The best example is Portugal. Life imprisonment was first abolished in Portugal under the prison reform of 1884[10]. This longstanding tradition was enshrined in Article 30 of the Portuguese Constitution itself, which prohibits life or indeterminate imprisonment. Yet Portuguese murder and violent crime rates have long been among the lowest in the world[11]. The fact that other European countries, such as Andorra (Articles 35 and 58 of the Criminal Code), Bosnia and Herzegovina (Article 42 of the Criminal Code), Croatia (Articles 44 and 51 of the new Criminal Code), Montenegro (Article 33 of the Criminal Code), San Marino (Article 81 of the Criminal Code), Serbia (see Article 45 of the Criminal Code) and Spain (Articles 36 and 76 of the Criminal Code)[12], and non-European countries, such as Angola (Article 66 of the Constitution), Brazil (Article 5 (XVIII) of the Constitution), Bolivia (Article 32 of the Criminal Code), Cape Verde (Article 32 of the Constitution), China (Article 41 of the Criminal Code of the Autonomous Region of Macau), Colombia (Article 34 of Constitution), Costa Rica (Article 51 of the Criminal Code), Dominican Republic (Article 7 of the Criminal Code), East Timor (Article 32 of the Constitution), Ecuador (Articles 51 and 53 of the Criminal Code), El Salvador (Article 45 of the Criminal Code), Guatemala (Article 44 of the Criminal Code), Honduras (Article 39 of the Criminal Code), Mexico (Article 25 of the Federal Criminal Code), Mozambique (Article 61 of the Constitution), Nicaragua (Article 52 of the Criminal Code), Panama (Article 52 of the Criminal Code), Paraguay (Article 38 of the Criminal Code), São Tomé and Príncipe (Article 37 of the Constitution) and Uruguay (Article 68 of the Criminal Code), have taken the same step, shows that societies in different continents with different cultures can survive without life imprisonment. This is clear, abundant and incontrovertible evidence of a continuing international trend, proving that no society has ever collapsed for lack of life imprisonment[13].
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2014	3/18/2014	ÖCALAN v. TURKEY (No. 2)	http://hudoc.echr.coe.int/eng?i=001-142087	24069/03, 197/04, 6201	S2	PINTO DE ALBUQUERQUE	dissenting (par		0 Honduras	R	statute	Article 39 of the Criminal Code	5. General prevention of crime does not justify life imprisonment. Even if there were a proven correlation between life imprisonment and lower crime rates, or at least lower rates of murder and other violent crime, punishing the offender for the purposes of deterring other people's behaviour and strengthening the social authority of the legal norm would reduce the offender to an instrument of a state strategy. But there is no such correlation. On the contrary, not only do countries with a longstanding practice of life imprisonment, such as the U.S. and Russia, have high crime rates, and in particular, high murder and violent crime rates, but countries which do not have life imprisonment actually have low crime rates. The best example is Portugal. Life imprisonment was first abolished in Portugal under the prison reform of 1884[10]. This longstanding tradition was enshrined in Article 30 of the Portuguese Constitution itself, which prohibits life or indeterminate imprisonment. Yet Portuguese murder and violent crime rates have long been among the lowest in the world[11]. The fact that other European countries, such as Andorra (Articles 35 and 58 of the Criminal Code), Bosnia and Herzegovina (Article 42 of the Criminal Code), Croatia (Articles 44 and 51 of the new Criminal Code), Montenegro (Article 33 of the Criminal Code), San Marino (Article 81 of the Criminal Code), Serbia (see Article 45 of the Criminal Code) and Spain (Articles 36 and 76 of the Criminal Code)[12], and non-European countries, such as Angola (Article 66 of the Constitution), Brazil (Article 5 (XVIII) of the Constitution), Bolivia (Article 27 of the Criminal Code), Cape Verde (Article 32 of the Constitution), China (Article 41 of the Criminal Code of the Autonomous Region of Macau), Colombia (Article 34 of Constitution), Costa Rica (Article 51 of the Criminal Code), Dominican Republic (Article 7 of the Criminal code), East Timor (Article 32 of the Constitution), Ecuador (Articles 51 and 53 of the Criminal Code), El Salvador (Article 45 of the Criminal Code), Guatemala (Article 44 of the Criminal Code), Honduras (Article 39 of the Criminal Code), Mexico (Article 25 of the Federal Criminal Code), Mozambique (Article 61 of the Constitution), Nicaragua (Article 52 of the Criminal Code), Panama (Article 52 of the Criminal Code), Paraguay (Article 38 of the Criminal Code), São Tomé and Príncipe (Article 37 of the Constitution) and Uruguay (Article 68 of the Criminal Code), have taken the same step, shows that societies in different continents with different cultures can survive without life imprisonment. This is clear, abundant and incontrovertible evidence of a continuing international trend, proving that no society has ever collapsed for lack of life imprisonment[13].
2014	3/18/2014	ÖCALAN v. TURKEY (No. 2)	http://hudoc.echr.coe.int/eng?i=001-142087	24069/03, 197/04, 6201	S2	PINTO DE ALBUQUERQUE	dissenting (par		0 Mexico	R	statute	Article 25 of the Federal Criminal Code	5. General prevention of crime does not justify life imprisonment. Even if there were a proven correlation between life imprisonment and lower crime rates, or at least lower rates of murder and other violent crime, punishing the offender for the purposes of deterring other people's behaviour and strengthening the social authority of the legal norm would reduce the offender to an instrument of a state strategy. But there is no such correlation. On the contrary, not only do countries with a longstanding practice of life imprisonment, such as the U.S. and Russia, have high crime rates, and in particular, high murder and violent crime rates, but countries which do not have life imprisonment actually have low crime rates. The best example is Portugal. Life imprisonment was first abolished in Portugal under the prison reform of 1884[10]. This longstanding tradition was enshrined in Article 30 of the Portuguese Constitution itself, which prohibits life or indeterminate imprisonment. Yet Portuguese murder and violent crime rates have long been among the lowest in the world[11]. The fact that other European countries, such as Andorra (Articles 35 and 58 of the Criminal Code), Bosnia and Herzegovina (Article 42 of the Criminal Code), Croatia (Articles 44 and 51 of the new Criminal Code), Montenegro (Article 33 of the Criminal Code), San Marino (Article 81 of the Criminal Code), Serbia (see Article 45 of the Criminal Code) and Spain (Articles 36 and 76 of the Criminal Code)[12], and non-European countries, such as Angola (Article 66 of the Constitution), Brazil (Article 5 (XVIII) of the Constitution), Bolivia (Article 27 of the Criminal Code), Cape Verde (Article 32 of the Constitution), China (Article 41 of the Criminal Code of the Autonomous Region of Macau), Colombia (Article 34 of Constitution), Costa Rica (Article 51 of the Criminal Code), Dominican Republic (Article 7 of the Criminal code), East Timor (Article 32 of the Constitution), Ecuador (Articles 51 and 53 of the Criminal Code), El Salvador (Article 45 of the Criminal Code), Guatemala (Article 44 of the Criminal Code), Honduras (Article 39 of the Criminal Code), Mexico (Article 25 of the Federal Criminal Code), Mozambique (Article 61 of the Constitution), Nicaragua (Article 52 of the Criminal Code), Panama (Article 52 of the Criminal Code), Paraguay (Article 38 of the Criminal Code), São Tomé and Príncipe (Article 37 of the Constitution) and Uruguay (Article 68 of the Criminal Code), have taken the same step, shows that societies in different continents with different cultures can survive without life imprisonment. This is clear, abundant and incontrovertible evidence of a continuing international trend, proving that no society has ever collapsed for lack of life imprisonment[13].
2014	3/18/2014	ÖCALAN v. TURKEY (No. 2)	http://hudoc.echr.coe.int/eng?i=001-142087	24069/03, 197/04, 6201	S2	PINTO DE ALBUQUERQUE	dissenting (par		0 Mozambique	R	constitution	Article 61 of the Constitution	5. General prevention of crime does not justify life imprisonment. Even if there were a proven correlation between life imprisonment and lower crime rates, or at least lower rates of murder and other violent crime, punishing the offender for the purposes of deterring other people's behaviour and strengthening the social authority of the legal norm would reduce the offender to an instrument of a state strategy. But there is no such correlation. On the contrary, not only do countries with a longstanding practice of life imprisonment, such as the U.S. and Russia, have high crime rates, and in particular, high murder and violent crime rates, but countries which do not have life imprisonment actually have low crime rates. The best example is Portugal. Life imprisonment was first abolished in Portugal under the prison reform of 1884[10]. This longstanding tradition was enshrined in Article 30 of the Portuguese Constitution itself, which prohibits life or indeterminate imprisonment. Yet Portuguese murder and violent crime rates have long been among the lowest in the world[11]. The fact that other European countries, such as Andorra (Articles 35 and 58 of the Criminal Code), Bosnia and Herzegovina (Article 42 of the Criminal Code), Croatia (Articles 44 and 51 of the new Criminal Code), Montenegro (Article 33 of the Criminal Code), San Marino (Article 81 of the Criminal Code), Serbia (see Article 45 of the Criminal Code) and Spain (Articles 36 and 76 of the Criminal Code)[12], and non-European countries, such as Angola (Article 66 of the Constitution), Brazil (Article 5 (XVIII) of the Constitution), Bolivia (Article 27 of the Criminal Code), Cape Verde (Article 32 of the Constitution), China (Article 41 of the Criminal Code of the Autonomous Region of Macau), Colombia (Article 34 of Constitution), Costa Rica (Article 51 of the Criminal Code), Dominican Republic (Article 7 of the Criminal code), East Timor (Article 32 of the Constitution), Ecuador (Articles 51 and 53 of the Criminal Code), El Salvador (Article 45 of the Criminal Code), Guatemala (Article 44 of the Criminal Code), Honduras (Article 39 of the Criminal Code), Mexico (Article 25 of the Federal Criminal Code), Mozambique (Article 61 of the Constitution), Nicaragua (Article 52 of the Criminal Code), Panama (Article 52 of the Criminal Code), Paraguay (Article 38 of the Criminal Code), São Tomé and Príncipe (Article 37 of the Constitution) and Uruguay (Article 68 of the Criminal Code), have taken the same step, shows that societies in different continents with different cultures can survive without life imprisonment. This is clear, abundant and incontrovertible evidence of a continuing international trend, proving that no society has ever collapsed for lack of life imprisonment[13].
2014	3/18/2014	ÖCALAN v. TURKEY (No. 2)	http://hudoc.echr.coe.int/eng?i=001-142087	24069/03, 197/04, 6201	S2	PINTO DE ALBUQUERQUE	dissenting (par		0 Nicaragua	R	statute	Article 52 of the Criminal Code	5. General prevention of crime does not justify life imprisonment. Even if there were a proven correlation between life imprisonment and lower crime rates, or at least lower rates of murder and other violent crime, punishing the offender for the purposes of deterring other people's behaviour and strengthening the social authority of the legal norm would reduce the offender to an instrument of a state strategy. But there is no such correlation. On the contrary, not only do countries with a longstanding practice of life imprisonment, such as the U.S. and Russia, have high crime rates, and in particular, high murder and violent crime rates, but countries which do not have life imprisonment actually have low crime rates. The best example is Portugal. Life imprisonment was first abolished in Portugal under the prison reform of 1884[10]. This longstanding tradition was enshrined in Article 30 of the Portuguese Constitution itself, which prohibits life or indeterminate imprisonment. Yet Portuguese murder and violent crime rates have long been among the lowest in the world[11]. The fact that other European countries, such as Andorra (Articles 35 and 58 of the Criminal Code), Bosnia and Herzegovina (Article 42 of the Criminal Code), Croatia (Articles 44 and 51 of the new Criminal Code), Montenegro (Article 33 of the Criminal Code), San Marino (Article 81 of the Criminal Code), Serbia (see Article 45 of the Criminal Code) and Spain (Articles 36 and 76 of the Criminal Code)[12], and non-European countries, such as Angola (Article 66 of the Constitution), Brazil (Article 5 (XVIII) of the Constitution), Bolivia (Article 27 of the Criminal Code), Cape Verde (Article 32 of the Constitution), China (Article 41 of the Criminal Code of the Autonomous Region of Macau), Colombia (Article 34 of Constitution), Costa Rica (Article 51 of the Criminal Code), Dominican Republic (Article 7 of the Criminal code), East Timor (Article 32 of the Constitution), Ecuador (Articles 51 and 53 of the Criminal Code), El Salvador (Article 45 of the Criminal Code), Guatemala (Article 44 of the Criminal Code), Honduras (Article 39 of the Criminal Code), Mexico (Article 25 of the Federal Criminal Code), Mozambique (Article 61 of the Constitution), Nicaragua (Article 52 of the Criminal Code),

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2014	3/18/2014	ÖCALAN v. TURKEY (No. 2)	http://hudoc.echr.coe.int/eng/?i=001-142087	24069/03, 197/04, 620152		PINTO DE ALBUQUERQUE	dissenting (par		0 Paraguay	R	statute	Article 38 of the Criminal Code	5. General prevention of crime does not justify life imprisonment. Even if there were a proven correlation between life imprisonment and lower crime rates, or at least lower rates of murder and other violent crime, punishing the offender for the purposes of deterring other people's behaviour and strengthening the social authority of the legal norm would reduce the offender to an instrument of a state strategy. But there is no such correlation. On the contrary, not only do countries with a longstanding practice of life imprisonment, such as the U.S. and Russia, have high crime rates, and in particular, high murder and violent crime rates, but countries which do not have life imprisonment actually have low crime rates. The best example is Portugal. Life imprisonment was first abolished in Portugal under the prison reform of 1884[10]. This longstanding tradition was enshrined in Article 30 of the Portuguese Constitution itself, which prohibits life or indeterminate imprisonment. Yet Portuguese murder and violent crime rates have long been among the lowest in the world[11]. The fact that other European countries, such as Andorra (Articles 35 and 58 of the Criminal Code), Bosnia and Herzegovina (Article 42 of the Criminal Code), Croatia (Articles 44 and 51 of the new Criminal Code), Montenegro (Article 33 of the Criminal Code), San Marino (Article 81 of the Criminal Code), Serbia (see Article 45 of the Criminal Code) and Spain (Articles 36 and 76 of the Criminal Code)[12], and non-European countries, such as Angola (Article 66 of the Constitution), Brazil (Article 5 (XVIII) of the Constitution), Bolivia (Article 27 of the Criminal Code), Cape Verde (Article 32 of the Constitution), China (Article 41 of the Criminal Code of the Autonomous Region of Macau), Colombia (Article 34 of Constitution), Costa Rica (Article 51 of the Criminal Code), Dominican Republic (Article 7 of the Criminal Code), East Timor (Article 32 of the Constitution), Ecuador (Articles 51 and 53 of the Criminal Code), El Salvador (Article 45 of the Criminal Code), Guatemala (Article 44 of the Criminal Code), Honduras (Article 39 of the Criminal Code), Mexico (Article 25 of the Federal Criminal Code), Mozambique (Article 61 of the Constitution), Nicaragua (Article 52 of the Criminal Code), Panama (Article 52 of the Criminal Code), Paraguay (Article 38 of the Criminal Code), São Tomé and Príncipe (Article 37 of the Constitution) and Uruguay (Article 68 of the Criminal Code), have taken the same step, shows that societies in different continents with different cultures can survive without life imprisonment. This is clear, abundant and incontrovertible evidence of a continuing international trend, proving that no society has ever collapsed for lack of life imprisonment[13].
2014	3/18/2014	ÖCALAN v. TURKEY (No. 2)	http://hudoc.echr.coe.int/eng/?i=001-142087	24069/03, 197/04, 620152		PINTO DE ALBUQUERQUE	dissenting (par		0 São Tomé and	R	constitution	Article 37 of the Constitution	5. General prevention of crime does not justify life imprisonment. Even if there were a proven correlation between life imprisonment and lower crime rates, or at least lower rates of murder and other violent crime, punishing the offender for the purposes of deterring other people's behaviour and strengthening the social authority of the legal norm would reduce the offender to an instrument of a state strategy. But there is no such correlation. On the contrary, not only do countries with a longstanding practice of life imprisonment, such as the U.S. and Russia, have high crime rates, and in particular, high murder and violent crime rates, but countries which do not have life imprisonment actually have low crime rates. The best example is Portugal. Life imprisonment was first abolished in Portugal under the prison reform of 1884[10]. This longstanding tradition was enshrined in Article 30 of the Portuguese Constitution itself, which prohibits life or indeterminate imprisonment. Yet Portuguese murder and violent crime rates have long been among the lowest in the world[11]. The fact that other European countries, such as Andorra (Articles 35 and 58 of the Criminal Code), Bosnia and Herzegovina (Article 42 of the Criminal Code), Croatia (Articles 44 and 51 of the new Criminal Code), Montenegro (Article 33 of the Criminal Code), San Marino (Article 81 of the Criminal Code), Serbia (see Article 45 of the Criminal Code) and Spain (Articles 36 and 76 of the Criminal Code)[12], and non-European countries, such as Angola (Article 66 of the Constitution), Brazil (Article 5 (XVIII) of the Constitution), Bolivia (Article 27 of the Criminal Code), Cape Verde (Article 32 of the Constitution), China (Article 41 of the Criminal Code of the Autonomous Region of Macau), Colombia (Article 34 of Constitution), Costa Rica (Article 51 of the Criminal Code), Dominican Republic (Article 7 of the Criminal Code), East Timor (Article 32 of the Constitution), Ecuador (Articles 51 and 53 of the Criminal Code), El Salvador (Article 45 of the Criminal Code), Guatemala (Article 44 of the Criminal Code), Honduras (Article 39 of the Criminal Code), Mexico (Article 25 of the Federal Criminal Code), Mozambique (Article 61 of the Constitution), Nicaragua (Article 52 of the Criminal Code), Panama (Article 52 of the Criminal Code), Paraguay (Article 38 of the Criminal Code), São Tomé and Príncipe (Article 37 of the Constitution) and Uruguay (Article 68 of the Criminal Code), have taken the same step, shows that societies in different continents with different cultures can survive without life imprisonment. This is clear, abundant and incontrovertible evidence of a continuing international trend, proving that no society has ever collapsed for lack of life imprisonment[13].
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2014	3/18/2014	ÖCALAN v. TURKEY (No. 2)	http://hudoc.echr.coe.int/eng/?i=001-142087	24069/03, 197/04, 620152		PINTO DE ALBUQUERQUE	dissenting (par		0 Uruguay	R	statute	Article 68 of the Criminal Code	5. General prevention of crime does not justify life imprisonment. Even if there were a proven correlation between life imprisonment and lower crime rates, or at least lower rates of murder and other violent crime, punishing the offender for the purposes of deterring other people's behaviour and strengthening the social authority of the legal norm would reduce the offender to an instrument of a state strategy. But there is no such correlation. On the contrary, not only do countries with a longstanding practice of life imprisonment, such as the U.S. and Russia, have high crime rates, and in particular, high murder and violent crime rates, but countries which do not have life imprisonment actually have low crime rates. The best example is Portugal. Life imprisonment was first abolished in Portugal under the prison reform of 1884[10]. This longstanding tradition was enshrined in Article 30 of the Portuguese Constitution itself, which prohibits life or indeterminate imprisonment. Yet Portuguese murder and violent crime rates have long been among the lowest in the world[11]. The fact that other European countries, such as Andorra (Articles 35 and 58 of the Criminal Code), Bosnia and Herzegovina (Article 42 of the Criminal Code), Croatia (Articles 44 and 51 of the new Criminal Code), Montenegro (Article 33 of the Criminal Code), San Marino (Article 81 of the Criminal Code), Serbia (see Article 45 of the Criminal Code) and Spain (Articles 36 and 76 of the Criminal Code)[12], and non-European countries, such as Angola (Article 66 of the Constitution), Brazil (Article 5 (XVIII) of the Constitution), Bolivia (Article 27 of the Criminal Code), Cape Verde (Article 32 of the Constitution), China (Article 41 of the Criminal Code of the Autonomous Region of Macau), Colombia (Article 34 of Constitution), Costa Rica (Article 51 of the Criminal Code), Dominican Republic (Article 7 of the Criminal Code), East Timor (Article 32 of the Constitution), Ecuador (Articles 51 and 53 of the Criminal Code), El Salvador (Article 45 of the Criminal Code), Guatemala (Article 44 of the Criminal Code), Honduras (Article 39 of the Criminal Code), Mexico (Article 25 of the Federal Criminal Code), Mozambique (Article 61 of the Constitution), Nicaragua (Article 52 of the Criminal Code), Panama (Article 52 of the Criminal Code), Paraguay (Article 38 of the Criminal Code), São Tomé and Príncipe (Article 37 of the Constitution) and Uruguay (Article 68 of the Criminal Code), have taken the same step, shows that societies in different continents with different cultures can survive without life imprisonment. This is clear, abundant and incontrovertible evidence of a continuing international trend, proving that no society has ever collapsed for lack of life imprisonment[13].
2014	3/18/2014	ÖCALAN v. TURKEY (No. 2)	http://hudoc.echr.coe.int/eng/?i=001-142087	24069/03, 197/04, 620152		PINTO DE ALBUQUERQUE	dissenting (par		0 US	C	SC	Weems v. United States, 217 U.S. 371, 349 (1909)	9. This reasoning is not tolerable in a democratic society. Neither the "exceptionally high dangerousness" of the offender nor the "heinousness of the crime" provides a legitimate ground for life imprisonment. Any State interference with liberty must be limited by the principles of proportionality and necessity, of which the principle of the least intrusive interference is one of the corollaries[20]. Prison is, precisely, the ultima ratio state instrument of interference with the liberty of citizens. It must be used when no other state measure is adequate, to the least extension possible both in its length and severity, and in proportion to the gravity of the actus reus and the mens rea[21]. The gravity of the offender's objective conduct and the degree of his personal culpability are the absolute limits of proportionate sentencing, and the calibration of any penalty must match these limits. If this moderate form of retributivism is still commensurate with a democratic society, life imprisonment is not, since it is an unrestrained, unnecessary and disproportionate State reaction to crime. The conclusion is not different in the case of a reducible life sentence, in so far as the sentence service only terminates on his or her death, and he or she may be recalled to prison many decades after release. [21] "All punishments which, by their excessive length or severity, are greatly disproportioned to the offences charged", in Weems v. United States, 217 U.S. 371, 349 (1909). Or as the South African Constitutional Court elaborated in S. v. Dodo, 2001 (3) SA 382 (CC) 303 (S. Afr.), "Where the length of the sentence, which has been imposed because of its general deterrent effect on others, bears no relation to the gravity of the offense, the offender is being used essentially as a means to another end and the offender's dignity is assailed. So too where the reformative effect of the punishment is predominant and the offender sentenced to lengthy imprisonment, principally because he cannot be reformed in a shorter period, but the length of imprisonment bears no relationship to what the committed offences merit."
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2014	3/18/2014	ÖCALAN v. TURKEY (No. 2)	http://hudoc.echr.coe.int/eng/?i=001-142087	24069/03, 197/04, 620152		PINTO DE ALBUQUERQUE	dissenting (par		0 US	C	SC	Estelle v. Gamble, 429 U.S. 97, 102 (1976)	10. A categorical rule against life imprisonment is demanded by the universal acknowledgment of the principle of resocialisation of offenders sentenced to prison and the emerging consensus on the prohibition of life imprisonment. This rule would not only avoid the proven pernicious consequences of life imprisonment, but would also constrain states to take seriously their international obligation to enable prisoners to serve their prison sentence in a constructive, rehabilitative manner, and accordingly to guarantee the necessary financial and human resources for doing so[22]. Such categorical rule, while reflecting the inherent human dignity of every human being and the "evolving standards of decency that mark the progress of a maturing society"[23], would affirm the moral superiority of a democratic society over those offenders who do not respect its basic tenets, precisely when such moral superiority is most needed, i.e. when faced with the most vicious acts that humans are capable of. As Justice Stevens put it in his concurring opinion in Graham, "punishments that did not seem cruel and unusual at one time may, in the light of reason and experience, be found cruel and unusual at a later time"[24]. That time has come for life imprisonment. [23] This felicitous expression is from Chief Justice Warren writing for the majority in Trop v. Dulles, 356 U.S. 86 (1958) and has been repeated, among others, by Justice Thurgood Marshall, also writing the opinion of Court in Estelle v. Gamble, 429 U.S. 97, 102 (1976).
2014	3/18/2014	ÖCALAN v. TURKEY (No. 2)	http://hudoc.echr.coe.int/eng/?i=001-142087	24069/03, 197/04, 620152		PINTO DE ALBUQUERQUE	dissenting (par		0 US	C	SC	Graham v. Florida, 560 U.S. 48 (2010)	10. A categorical rule against life imprisonment is demanded by the universal acknowledgment of the principle of resocialisation of offenders sentenced to prison and the emerging consensus on the prohibition of life imprisonment. This rule would not only avoid the proven pernicious consequences of life imprisonment, but would also constrain states to take seriously their international obligation to enable prisoners to serve their prison sentence in a constructive, rehabilitative manner, and accordingly to guarantee the necessary financial and human resources for doing so[22]. Such categorical rule, while reflecting the inherent human dignity of every human being and the "evolving standards of decency that mark the progress of a maturing society"[23], would affirm the moral superiority of a democratic society over those offenders who do not respect its basic tenets, precisely when such moral superiority is most needed, i.e. when faced with the most vicious acts that humans are capable of. As Justice Stevens put it in his concurring opinion in Graham, "punishments that did not seem cruel and unusual at one time may, in the light of reason and experience, be found cruel and unusual at a later time"[24]. That time has come for life imprisonment. [24] Graham v. Florida, 560 U.S. 48 (2010). See along the same progressive line of reasoning President Costa's opinion in Léger v. France, no. 19324/02, 11 April 2006, President Brattza's opinion in Kafkaris v. Cyprus (GC), no. 21906/04, 12 February 2008, and President Spielmann's opinion in Léger v. France (GC), no. 19324/02, 30 March 2009.

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2014	1/14/2014	JONES AND OTHERS v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-140005	34356/06 and 40528/06	54		0 majority	ECtHR	Australia	R	statute	Foreign States Immunities Act 1985 ("the Immunities Act")	4. Australia 137. The Foreign States Immunities Act 1985 ("the Immunities Act") establishes the extent to which foreign States can be sued in Australian courts. Section 9 of the Immunities Act provides for immunity from jurisdiction; sections 10 to 20 identify exceptions to section 9. In order to benefit from immunity, a defendant must establish that it is a "foreign State" within the meaning of the Act. Section 3(3) clarifies that the term "foreign State" includes the Head of a foreign State or of a political subdivision of a foreign State in his public capacity, and the executive government or part of the executive government of a foreign State or a political subdivision of a foreign State. 138. On 5 October 2010 the Court of Appeal of New South Wales handed down its judgment in <i>Zhang v. Zemin</i> ([2010] NSWCA 255), a civil claim for torture lodged against the former President of China, a department of the Chinese government and a member of the politburo of the Communist Party of China. It held that individual officers were covered by the Immunities Act, observing that they were entitled to immunity at common law and that the Immunities Act did not change the common law in this respect. As the purposes of the Immunities Act would not be served if civil claims could be lodged against former officials in respect of their conduct while in office, the Act applied to former officials also. 139. In respect of the claimants' argument that there was a <i>jus cogens</i> exception under international law, including the argument that acts in violation of <i>jus cogens</i> could not be done in a public or official capacity for the purposes of immunity, the court explained that Australian courts were obliged to apply local statutes even where they conflicted with international law. The Immunities Act clearly established a definitive statement of the immunity afforded and a comprehensive statement of exceptions. It was not possible to infer additional exceptions from international law. — 203. There is also extensive case-law at national and international level which concludes that acts performed by State officials in the course of their service are to be attributed, for the purposes of State immunity, to the State on whose behalf they act. Thus in <i>Propend Finance Pty Ltd v. Sing</i> and another (1997, 111 ILR 611), the English Court of Appeal held that immunities conferred on the State pursuant to the 1978 Act must be read as affording to individual State officials "protection under the same cloak as protects the State itself" (see paragraphs 42-43 above). In Canada, the Court of Appeal in <i>Jaffe</i> concluded that the notion of "State" in the SIA covered employees of the State acting in the course of their duties (see paragraph 127 above). In <i>Fang</i>, the High Court in New Zealand held that State immunity incidentally conferred immunity <i>ratione materiae</i> in claims against individuals whose conduct in the exercise of the authority of the State was called into question (see paragraph 135 above). In <i>Zhang</i>, an Australian Court of Appeal held that individual officers were covered by Australia's Immunities Act since they were entitled to immunity at common law and this had not been changed by the Act (see paragraph 138 above). Although the US Supreme Court in <i>Samantar</i> held that officials did not fall under the notion of "State" within the meaning of the PSIA, it clarified that their immunities were governed by common law, as the statute was deemed to be only a partial codification of immunity rules in the United States (see paragraph 122 above). The Court of Appeals (Fourth Circuit) subsequently accepted that, in principle, State officials could enjoy immunity for acts performed in the course of their employment by the State (see paragraphs 122-24 above). In <i>Blaskić</i>, the ICTY described State officials acting in their official capacity as "mere instruments of a State" and explained that they enjoyed "functional immunity" (see paragraph 81 above). In <i>Djibouti v. France</i>, the ICJ referred to the possibility open to the Djibouti government to claim that the acts of two State officials were its own acts, and that the officials were its organs, agencies or instrumentalities in carrying them out (see paragraphs 86-87 above). — 210. There appears to be little national case-law concerning civil claims lodged against named State officials for <i>jus cogens</i> violations. Few States have been confronted with this question in practice. The responses received by the respondent State from other Council of Europe States (see paragraph 110 above) were largely hypothetical and do not permit the drawing of any conclusions as to the extent to which national laws recognise the official nature of acts of torture for the purposes of State immunity. There are, however, some other examples from other common-law jurisdictions. In Canada, in the case of <i>Hashemi</i>, the Quebec Court of Appeal found that the SIA applied to individual agents of a foreign State even in a case concerning allegations of torture. It relied on the definition of torture in the Convention against Torture. Its previous ruling in <i>Jaffe</i> and Lord Hoffmann's opinion in the House of Lords in the applicants' case (see paragraphs 129-33 above). However, the case is currently pending before the Supreme Court (see paragraph 134 above). In New Zealand, the High Court in <i>Fang</i> also relied on the House of Lords judgment in the applicants' case to reject the arguments in favour of an exception to State immunity in cases against State officials for torture, considering it inappropriate for the courts of New Zealand to "take the lead" in recognising new trends in international law (see paragraph 135-36 above). In Australia, the Court of Appeal of New South Wales in <i>Zhang</i> refused to accept the argument that <i>jus cogens</i> violations could not be official acts for the purpose of State immunity, relying on the unambiguous nature of the national legislation and the Australian courts' obligation to give effect to that law (see paragraphs 138-39 above).
2014	1/14/2014	JONES AND OTHERS v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-140005	34356/06 and 40528/06	54		0 majority	ECtHR	Australia	C	lower-level courts	Zhang v. Zemin ([2010] NSWCA 255)	4. Australia 137. The Foreign States Immunities Act 1985 ("the Immunities Act") establishes the extent to which foreign States can be sued in Australian courts. Section 9 of the Immunities Act provides for immunity from jurisdiction; sections 10 to 20 identify exceptions to section 9. In order to benefit from immunity, a defendant must establish that it is a "foreign State" within the meaning of the Act. Section 3(3) clarifies that the term "foreign State" includes the Head of a foreign State or of a political subdivision of a foreign State in his public capacity, and the executive government or part of the executive government of a foreign State or a political subdivision of a foreign State. 138. On 5 October 2010 the Court of Appeal of New South Wales handed down its judgment in <i>Zhang v. Zemin</i> ([2010] NSWCA 255), a civil claim for torture lodged against the former President of China, a department of the Chinese government and a member of the politburo of the Communist Party of China. It held that individual officers were covered by the Immunities Act, observing that they were entitled to immunity at common law and that the Immunities Act did not change the common law in this respect. As the purposes of the Immunities Act would not be served if civil claims could be lodged against former officials in respect of their conduct while in office, the Act applied to former officials also. 139. In respect of the claimants' argument that there was a <i>jus cogens</i> exception under international law, including the argument that acts in violation of <i>jus cogens</i> could not be done in a public or official capacity for the purposes of immunity, the court explained that Australian courts were obliged to apply local statutes even where they conflicted with international law. The Immunities Act clearly established a definitive statement of the immunity afforded and a comprehensive statement of exceptions. It was not possible to infer additional exceptions from international law. — 203. There is also extensive case-law at national and international level which concludes that acts performed by State officials in the course of their service are to be attributed, for the purposes of State immunity, to the State on whose behalf they act. Thus in <i>Propend Finance Pty Ltd v. Sing</i> and another (1997, 111 ILR 611), the English Court of Appeal held that immunities conferred on the State pursuant to the 1978 Act must be read as affording to individual State officials "protection under the same cloak as protects the State itself" (see paragraphs 42-43 above). In Canada, the Court of Appeal in <i>Jaffe</i> concluded that the notion of "State" in the SIA covered employees of the State acting in the course of their duties (see paragraph 127 above). In <i>Fang</i>, the High Court in New Zealand held that State immunity incidentally conferred immunity <i>ratione materiae</i> in claims against individuals whose conduct in the exercise of the authority of the State was called into question (see paragraph 135 above). In <i>Zhang</i>, an Australian Court of Appeal held that individual officers were covered by Australia's Immunities Act since they were entitled to immunity at common law and this had not been changed by the Act (see paragraph 138 above). Although the US Supreme Court in <i>Samantar</i> held that officials did not fall under the notion of "State" within the meaning of the PSIA, it clarified that their immunities were governed by common law, as the statute was deemed to be only a partial codification of immunity rules in the United States (see paragraph 122 above). The Court of Appeals (Fourth Circuit) subsequently accepted that, in principle, State officials could enjoy immunity for acts performed in the course of their employment by the State (see paragraphs 122-24 above). In <i>Blaskić</i>, the ICTY described State officials acting in their official capacity as "mere instruments of a State" and explained that they enjoyed "functional immunity" (see paragraph 81 above). In <i>Djibouti v. France</i>, the ICJ referred to the possibility open to the Djibouti government to claim that the acts of two State officials were its own acts, and that the officials were its organs, agencies or instrumentalities in carrying them out (see paragraphs 86-87 above). — 210. There appears to be little national case-law concerning civil claims lodged against named State officials for <i>jus cogens</i> violations. Few States have been confronted with this question in practice. The responses received by the respondent State from other Council of Europe States (see paragraph 110 above) were largely hypothetical and do not permit the drawing of any conclusions as to the extent to which national laws recognise the official nature of acts of torture for the purposes of State immunity. There are, however, some other examples from other common-law jurisdictions. In Canada, in the case of <i>Hashemi</i>, the Quebec Court of Appeal found that the SIA applied to individual agents of a foreign State even in a case concerning allegations of torture. It relied on the definition of torture in the Convention against Torture. Its previous ruling in <i>Jaffe</i> and Lord Hoffmann's opinion in the House of Lords in the applicants' case (see paragraphs 129-33 above). However, the case is currently pending before the Supreme Court (see paragraph 134 above). In New Zealand, the High Court in <i>Fang</i> also relied on the House of Lords judgment in the applicants' case to reject the arguments in favour of an exception to State immunity in cases against State officials for torture, considering it inappropriate for the courts of New Zealand to "take the lead" in recognising new trends in international law (see paragraph 135-36 above). In Australia, the Court of Appeal of New South Wales in <i>Zhang</i> refused to accept the argument that <i>jus cogens</i> violations could not be official acts for the purpose of State immunity, relying on the unambiguous nature of the national legislation and the Australian courts' obligation to give effect to that law (see paragraphs 138-39 above).
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2014	1/14/2014	JONES AND OTHERS v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-140005	34356/06 and 40528/06	54		0 majority	ECtHR	Canada	C	general		0 91. On the other hand, the ICJ observed that there was a substantial body of State practice which demonstrated that customary international law did not treat a State's entitlement to immunity as dependent upon the gravity of the act of which it was accused or the peremptory nature of the rule which it was alleged to have violated, citing judgments of national courts in Canada, France, Slovenia, New Zealand, Poland and the United Kingdom. It distinguished the <i>Pincheira</i> (No. 3) judgment on the ground that the case concerned the immunity of a former Head of State from criminal jurisdiction, and not the immunity of the State itself in proceedings designed to establish its liability for civil damages. The court further pointed to the judgment of this Court in <i>Al-Adsani</i> , cited above, and the subsequent decision in <i>Kalogiropoulos and Others v. Greece and Germany</i> (dec.), no. 59021/00, ECHR 2002-X, which had found no firm basis for concluding that, as a matter of international law, a State no longer enjoyed immunity from civil suit in cases where allegations of torture were made.

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This argument was not advanced below, and is therefore not before us on this appeal. We note in passing, however, that we doubt whether action by a state official in violation of the Constitution and laws of the Republic of Paraguay, and wholly unratified by that nation's government, could properly be characterized as an act of state ... Paraguay's renunciation of torture as a legitimate instrument of state policy, however, does not strip the tort of its character as an international law violation, if it in fact occurred under color of government authority ..." 114. Following that judgment, the Torture Victim Protection Act of 1991 was enacted to codify the cause of action recognised in Filártiga v. Peña-Irala and to extend it to US citizens. It provides in section 2(a)(1) that "[a]n individual who, under actual or apparent authority, or color of law, of any foreign nation ... subjects an individual to torture shall, in a civil action, be liable for damages to that individual". 115. 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Since the facts were clearly established by the domestic courts and the lawfulness, proportionality and necessity of the provisions criminalising genocide denial are compatible with the principles set out by the Council of Europe, the European Union, the Committee on the Elimination of Racial Discrimination, the German Federal Constitutional Court and the United States and Canadian Supreme Courts, the remaining question to be discussed is that of the proportionality of the applicant's punishment in relation to his freedom of expression, in view of the alleged public interest in the speeches he gave in the context of public, political meetings, the aim being to determine whether the penalty imposed on him was excessive as he maintained. [43] To this effect, see the German Federal Constitutional Court's judgments of 13 April 1994 (1 BvR 2/94, § 34), 25 March 2008 (1 BvR 1753/01, § 43), and 9 November 2011 (1 BvR 461/08, § 22), on the lack of protection of the "Auschwitz lie" (Auschwitzlüge) under the freedom of expression; the German Supreme Court in R. v. Keegstra (1996), 3 SCR 667, on the applicability of the offence of promoting racist hate propaganda, set out in section 319 (2) of the Canadian Criminal Code, to the defendant's anti-Semitic statements, including his Holocaust denial; and the Committee on the Elimination of Racial Discrimination (CERD), General Recommendation no. 35, 26 September 2013, § 14. It should be stressed that the CERD does not require that genocide or crimes against humanity be established by a final decision of an international or national court. [47] Since Chaplinsky v. New Hampshire, 315 U.S. 568 (1942), the US Supreme Court has dealt with the issue of "fighting words" and "expressive conduct" with the same insulting or threatening meaning, such as flag desecration and cross-burning. In Cohen v. California, 403 U.S. 15 (1971), the Supreme Court admitted the expression "Fuck the Draft" as constitutionally protected, because no individual actually or likely to be present could reasonably have regarded the words on the appellant's jacket as a direct personal insult, and there was no evidence that its use was inherently likely to cause or incite to violence. These were not unconstitutional "fighting words". In Street v. New York, 394 U.S. 576 (1969), the Supreme Court considered that the mere offensiveness of utterances against the flag did not qualify as "fighting words" either. The same was valid for the expressive conduct of flag-burning itself, since it did not always pose an imminent threat of lawless action, according to the Brandenburg test (Texas v. Johnson, 491 U.S. 397 (1989)). In R.A.V. v. City of St. Paul, 505 U.S. 377 (1992), the Supreme Court considered unconstitutional the criminalisation of burning a cross or placing a Nazi swastika or any other symbol in a public or private property, which one knew or had reasonable grounds to know aroused anger, alarm or resentment in others on the basis of race, colour, creed, religion or gender, because the definition of this offence was overly broad, proscribing both "fighting words" and protected speech, and because the regulation was "content-based", proscribing only activities which conveyed messages concerning particular topics. But in Virginia v. Black, 538 U.S. 343 (2003), the Supreme Court practically overturned the R.A.V. v. 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That being said, the criminalisation of genocide denial corresponds to a State policy which is necessary to fully implement the spirit and the letter of Article I of the Genocide Convention, which places an obligation on States to prevent genocide, and the United Nations General Assembly Resolution of 26 January 2007, which calls on all UN Member States "unreservedly to reject any denial of the Holocaust as a historical event, either in full or in part, or any activities to this end". At least in Europe, the soil upon which so much blood was shed during the twentieth century in order to execute terrible plans involving the extermination of entire peoples, genocide denial is to be viewed as a seriously threatening and offensive form of speech, and thus the type of "fighting words" deserving of protection[47]. Furthermore, in the particular case of the denial of the Armenian genocide, there is an additional
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City of St. Paul precedent, by holding that cross-burning could be punished as a criminal offence if and when the defendant's conduct was a signal of impending intimidation and the intent to intimidate was proven by the State. In any case, the burden of proof should not be placed on the defendant to demonstrate that he or she did not intend the cross-burning as intimidation. In his dissent, Justice Thomas went even further and explained that cross-burning was always a threat of some kind, and therefore an exception to the First Amendment. It can thus be argued that, from a substantive perspective, the opinion of the Swiss Federal Court on denial of genocide is in line with both the US Supreme Court's majority in Virginia v. Black and the Canadian Supreme Court's majority in R. v. Keegstra. 21. That being said, the criminalisation of genocide denial corresponds to a State policy which is necessary to fully implement the spirit and the letter of Article I of the Genocide Convention, which places an obligation on States to prevent genocide, and the United Nations General Assembly Resolution of 26 January 2007, which calls on all UN Member States "unreservedly to reject any denial of the Holocaust as a historical event, either in full or in part, or any activities to this end". At least in Europe, the soil upon which so much blood was shed during the twentieth century in order to execute terrible plans involving the extermination of entire peoples, genocide denial is to be viewed as a seriously threatening and offensive form of speech, and thus the type of "fighting words" deserving of protection[47]. Furthermore, in the particular case of the denial of the Armenian genocide, there is an additional

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Finally, States and regional governments that have recognised the Armenian genocide include Argentina (Laws of 18 March of 2004 and 15 January 2007); Belgium (Senate Resolution of 26 March 1998); Canada (Senate Resolution of 13 June 2002 and House of Commons Resolutions of 23 April 1996 and 21 April 2004); Chile (Senate Resolution of 5 June 2007); Cyprus (House of Representatives Resolutions of 24 April 1975, 29 April 1982 and 19 April 1990); France (Law of 29 January 2001)[30]; Germany (Parliament Resolution of 15 June 2005); Greece (Parliament Resolution of 25 April 1996); Italy (Chamber of Deputies Resolution of 16 November 2000); Lebanon (Parliament Resolution of 11 May 2000 and Chamber of Deputies Resolution of 3 April 1997); Lithuania (Assembly Resolution of 15 December 2005); Netherlands (Parliament Resolution of 21 December 2004); Poland (Parliament Resolution of 19 April 2005); Russia (Duma Resolution of 14 April 1995); Slovakia (Resolution of 30 November 2004); Sweden (Parliament Resolution of 11 March 2010); United States of America (House of Representatives Resolutions of 9 April 1975, 12 September 1984 and 11 June 1996)[31]; Uruguay (Senate and House of Representatives Resolution of 20 April 1965 and Law of 26 March 2004); Vatican City (Joint Declaration of His Holiness Pope John Paul II and His Holiness Catholicos Karekin II of 10 January 2000); Venezuela (National Assembly Resolution of 14 July 2005); as well as 43 States of the United States, the Basque Country, Catalonia and the Balearic Islands (Spain), Wales, Scotland and Northern Ireland (United Kingdom), and New South Wales (Australia). 26. Since the facts were clearly established by the domestic courts and the lawfulness, proportionality and necessity of the provisions criminalising genocide denial are compatible with the principles set out by the Council of Europe, the European Union, the Committee on the Elimination of Racial Discrimination, the German Federal Constitutional Court and the United States and Canadian Supreme Courts, the remaining question to be discussed is that of the proportionality of the applicant's punishment in relation to his freedom of expression, in view of the alleged public interest in the speeches he gave in the context of public, political meetings, the aim being to determine whether the penalty imposed on him was excessive as he maintained. 19. The Spanish Constitutional Court distinguishes between the denial of genocide, this being constitutionally acceptable, and the justification, trivialisation or relativisation of genocide, this being constitutionally unacceptable. This distinction is inadmissible both under the Additional Protocol to the Convention on Cybercrime and under Framework Decision 2008/913/JHA[42]. As a matter of fact, the distinction between mere denial and trivialising or justifying is artificial in linguistic terms and can be easily circumvented by a sophisticated speaker, through euphemistic and elaborate speech, as in the present case, where the denial of genocide was associated with justification of the Turkish "reaction" to alleged Armenian "attacks". Furthermore, and this is the essential point, the distinction is ethically unsustainable, because the denial as much as the justification of genocide humiliates the victims and their families, offends the memory of the massacred people, exculpates those responsible for the massacres, and thus constitutes a serious incitement to hatred and discrimination and, to that extent, paves the way to discriminatory and violent acts against those who belong to the victimised people[43]. The freedom of scientific research and information may not be invoked to legitimise the disputed distinction, contrary to the assumption of the majority of the justices of the Spanish Constitutional Court. Otherwise, racist, xenophobic and intolerant views could easily be promoted by a male fide speaker alleging that they had a historical or scientific connotation[44]. To put it in plain words, tolerating negationism is "akin to killing (the victims) a second time", to use Elie Wiesel's expression. Or as the Turkish Human Rights Association Declaration of 24 April 2006 stated: "Denial is a constituent part of genocide itself and results in the continuation of the genocide. Denial of genocide is a human rights violation in itself." [43] To this effect, see the German Federal Constitutional Court's judgments of 13 April 1994 (1 BvR 23/94, § 34), 25 March 2008 (1 BvR 1753/03, § 43), and 9 November 2011 (1 BvR 461/08, § 22), on the lack of protection of the "Auschwitz lie" (Auschwitzlüge) under the freedom of expression; the Canadian Supreme Court in R. v. Keegstra (1996), 3 SCR 667, on the applicability of the offence of promoting racist hate propaganda, set out in section 319 (2) of the Canadian Criminal Code; to the defendant's anti-Semitic statements, including his Holocaust denial; and the Committee on the Elimination of Racial Discrimination (CERD), General Recommendation no. 35, 26 September 2013, § 14. It should be stressed that the CERD does not require that genocide or crimes against humanity be established by a final decision of an international or national court. [47] Since Chaplinsky v. New Hampshire, 315 U.S. 568 (1942), the US Supreme Court has dealt with the issue of "fighting words" and "expressive conduct" with the same insulting or threatening meaning, such as flag desecration and cross-burning. In Cohen v. California, 403 U.S. 15 (1971), the Supreme Court admitted the expression "Fuck the Draft" as constitutionally protected, because no individual actually or likely to be present could reasonably have regarded the words on the appellant's jacket as a direct personal insult, and there was no evidence that its use was inherently likely to cause or incite to violence. These were not unconstitutional "fighting words". In Street v. New York, 394 U.S. 576 (1969), the Supreme Court considered that the mere offensiveness of utterances against the flag did not qualify as "fighting words" either. 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Spanish legislation refers generically to the denial of acts with the proven purpose of fully or partially eliminating an ethnic, racial or religious group. The perpetrator faces a sentence of one to two years' imprisonment. In France and Luxembourg, the legislation refers to denial of crimes against humanity, as defined in Article 6 of the Charter of the International Military Tribunal, annexed to the London Agreement of 8 August 1945 ... This limitation of the substantive scope of the offence of denial of crimes against humanity is offset in Luxembourg by the fact that there is a special provision concerning denial of crimes of genocide. Denial of such crimes is punishable by the same sentences [imprisonment from eight days to six months and/or a fine ranging from 251 to 25,000 euros] as denial of crimes against humanity but the definition of genocide used for these purposes is that of the Luxembourg Law of 8 August 1985, which is general and abstract, not being limited to acts committed during the Second World War. The limited scope of the relevant provisions in France has been criticised and it should be noted in this connection that a Bill aimed at criminalising denial of the existence of the Armenian genocide was approved at its first reading by the National Assembly on 12 October 2006. Accordingly, it appears that only Luxembourg and Spain criminalise denial of crimes of genocide in their legislation, generically and without restricting themselves to particular episodes in history. In addition, denial of crimes against humanity in general is not currently a criminal offence in any country. In this connection, in a group of countries – among which France can be included, from an analysis of its laws – only the denial of acts committed during the Second World War is a criminal offence. In Germany, for example, anyone who, publicly or at a meeting, denies or trivialises acts committed with the aim of totally or partially eliminating a national, religious or ethnic group during the National Socialist regime is punishable by up to five years' imprisonment or a fine. In Austria, anyone who, acting in such a way that his or her position may be known by a large number of people, denies or severely trivialises genocide or other crimes against humanity committed by the National Socialist regime is punishable by up to ten years' imprisonment. Following the same approach, Belgian law punishes by imprisonment for between eight days and one year anyone who denies or grossly trivialises, seeks to justify or approves of the genocide committed by the German National Socialist regime. In other countries, in the absence of special statutory provision for criminal offences, the courts have intervened to ensure that negationism is punished. In particular, the Netherlands Supreme Court has held that the provisions of the Criminal Code prohibiting discriminatory acts were to be applied to punish denial of crimes against humanity. In addition, a Bill aimed at criminalising negationism is currently being examined in that country. The Canadian Human Rights Tribunal has referred to the criminal offence of exposing others to hatred or contempt, as provided for in the Canadian Human Rights Act, as a basis for condemning the content of a negationist website. The position of the judges in the United States is less settled, since that country affords extremely strict protection of freedom of expression, for historical and cultural reasons. However, it may be noted that in general, victims of offensive speech have to date succeeded in obtaining damages where they may legitimately have felt that their physical integrity was under threat. In addition, there are a range of countries in which denial of crimes against humanity is not directly contemplated by the law. For some of those countries, it is conceivable that this might be covered by the definition of more general criminal offences. For example, under Italian law it is an offence to condone crimes of genocide; however, the boundary between condoning, trivialising and denying crimes is extremely thin. Norwegian law punishes anyone who makes an official statement that is discriminatory or hateful. This definition could conceivably apply to negationism. The Supreme Court has not yet had occasion to rule on this issue. In other countries, for example Denmark and Sweden, the trial courts have taken a position, having agreed to review whether the provisions of criminal law concerning discriminatory or hateful statements may be applied to cases of negationism, although they have not found them to be applicable in the cases before them. In Finland, the political authorities have expressed the view that such provisions are not applicable to
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2013	12/17/2013	PERINÇEK v. SWITZERLAND	http://hudoc.echr.coe.int/eng/?i=001-139724	27510/08	S2		0 majority	ECtHR	Lebanon	F	general		29. Within the Council of Europe, the question of the atrocities committed against the Armenian people has been discussed on many occasions. In a declaration of 24 April 2013 (no. 542, Doc. 13192), for example, some twenty members of the Parliamentary Assembly of the Council of Europe stated the following: Recognition of the Armenian Genocide "[This written declaration commits only those who have signed it] Recognition of genocides is an act which contributes to the respect for human dignity and the prevention of crimes against humanity; The fact of the Armenian Genocide by the Ottoman Empire has been documented, recognised, and affirmed in the form of media and eyewitness reports, laws, resolutions, and statements by the United Nations, the European Parliament and Parliaments of the Council of Europe member States, including Sweden, Lithuania, Germany, Poland, the Netherlands, Slovakia, Switzerland, France, Italy, Belgium, Greece, Cyprus, the Russian Federation, as well as the US House of Representatives and 43 US States, Chile, Argentina, Venezuela, Canada, Uruguay and Lebanon. The undersigned, members of the Parliamentary Assembly, call upon all members of the Parliamentary Assembly of the Council of Europe to take the necessary steps for the recognition of the genocide perpetrated against Armenians and other Christians in the Ottoman Empire at the beginning of the 20th century, which will strongly contribute to an eventual similar act of recognition by the Turkish authorities of this odious crime against humanity and, as a result, will lead to the normalisation of relations between Armenia and Turkey and thus contribute to regional peace, security and stability."
2013	12/17/2013	PERINÇEK v. SWITZERLAND	http://hudoc.echr.coe.int/eng/?i=001-139724	27510/08	S2		0 majority	ECtHR	Uruguay	F	general		29. Within the Council of Europe, the question of the atrocities committed against the Armenian people has been discussed on many occasions. In a declaration of 24 April 2013 (no. 542, Doc. 13192), for example, some twenty members of the Parliamentary Assembly of the Council of Europe stated the following: Recognition of the Armenian Genocide "[This written declaration commits only those who have signed it] Recognition of genocides is an act which contributes to the respect for human dignity and the prevention of crimes against humanity; The fact of the Armenian Genocide by the Ottoman Empire has been documented, recognised, and affirmed in the form of media and eyewitness reports, laws, resolutions, and statements by the United Nations, the European Parliament and Parliaments of the Council of Europe member States, including Sweden, Lithuania, Germany, Poland, the Netherlands, Slovakia, Switzerland, France, Italy, Belgium, Greece, Cyprus, the Russian Federation, as well as the US House of Representatives and 43 US States, Chile, Argentina, Venezuela, Canada, Uruguay and Lebanon. The undersigned, members of the Parliamentary Assembly, call upon all members of the Parliamentary Assembly of the Council of Europe to take the necessary steps for the recognition of the genocide perpetrated against Armenians and other Christians in the Ottoman Empire at the beginning of the 20th century, which will strongly contribute to an eventual similar act of recognition by the Turkish authorities of this odious crime against humanity and, as a result, will lead to the normalisation of relations between Armenia and Turkey and thus contribute to regional peace, security and stability."
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2013	12/17/2013	PERINČEK v. SWITZERLAND	http://hudoc.echr.coe.int/eng/?i=001-139724	27510/08	S2		0 majority	ECtHR	US	C	general		30. In a comparative study (opinion 06-184) dated 19 December 2006, produced to the Court by the respondent Government, the Swiss Institute of Comparative Law (Institut suisse de droit comparé – ISDC) analysed the legislation of fourteen European countries (Austria, Belgium, Denmark, Finland, France, Germany, Ireland, Italy, Luxembourg, the Netherlands, Norway, Spain, Sweden and the United Kingdom), the United States and Canada regarding the offence of denial of crimes against humanity, in particular genocide. The summary of the study reads as follows: “A study of denial of crimes against humanity and genocide in the different countries under examination reveals considerable variation. Spain, France and Luxembourg have all adopted an extensive approach to the prohibition of denial of these crimes. Spanish legislation refers generically to the denial of acts with the proven purpose of fully or partially eliminating an ethnic, racial or religious group. The perpetrator faces a sentence of one to two years’ imprisonment. In France and Luxembourg, the legislation refers to denial of crimes against humanity, as defined in Article 6 of the Charter of the International Military Tribunal, annexed to the London Agreement of 8 August 1945 – This limitation of the substantive scope of the offence of denial of crimes against humanity is offset in Luxembourg by the fact that there is a special provision concerning denial of crimes of genocide. Denial of such crimes is punishable by the same sentences [imprisonment from eight days to six months and/or a fine ranging from 251 to 25,200 euros] as denial of crimes against humanity but the definition of genocide used for these purposes is that of the Luxembourg Law of 8 August 1985, which is general and abstract, not being limited to acts committed during the Second World War. The limited scope of the relevant provisions in France has been criticised and it should be noted in this connection that a Bill aimed at criminalising denial of the existence of the Armenian genocide was approved at its first reading by the National Assembly on 12 October 2006. Accordingly, it appears that only Luxembourg and Spain criminalise denial of crimes of genocide in their legislation, generically and without restricting themselves to particular episodes in history. In addition, denial of crimes against humanity in general is not currently a criminal offence in any country. In this connection, in a group of countries – among which France can be included, from an analysis of its laws – only the denial of acts committed during the Second World War is a criminal offence. In Germany, for example, anyone who, publicly or at a meeting, denies or trivialises acts committed with the aim of totally or partially eliminating a national, religious or ethnic group during the National Socialist regime is punishable by up to five years’ imprisonment or a fine. In Austria, anyone who, acting in such a way that his or her position may be known by a large number of people, denies or severely trivialises genocide or other crimes against humanity committed by the National Socialist regime is punishable by up to ten years’ imprisonment. Following the same approach, Belgian law punishes by imprisonment for between eight days and one year anyone who denies or grossly trivialises, seeks to justify or approves of the genocide committed by the German National Socialist regime. In other countries, in the absence of special statutory provision for criminal offences, the courts have intervened to ensure that negationism is punished. In particular, the Netherlands Supreme Court has held that the provisions of the Criminal Code prohibiting discriminatory acts were to be applied to punish denial of crimes against humanity. In addition, a Bill aimed at criminalising negationism is currently being examined in that country. The Canadian Human Rights Tribunal has referred to the criminal offence of exposing others to hatred or contempt, as provided for in the Canadian Human Rights Act, as a basis for condemning the content of a negationist website. The position of the judges in the United States is less settled, since that country affords extremely strict protection of freedom of expression, for historical and cultural reasons. However, it may be noted that in general, victims of offensive speech have to date succeeded in obtaining damages where they may legitimately have felt that their physical integrity was under threat. In addition, there are a range of countries in which denial of crimes against humanity is not directly contemplated by the law. For some of those countries, it is conceivable that this might be covered by the definition of more general criminal offences. For example, under Italian law it is an offence to condone crimes of genocide; however, the boundary between condoning, trivialising and denying crimes is extremely thin. Norwegian law punishes anyone who makes an official statement that is discriminatory or hateful. This definition could conceivably apply to negationism. The Supreme Court has not yet had occasion to rule on this issue. In other countries, for example Denmark and Sweden, the trial courts have taken a position, having agreed to review whether the provisions of criminal law concerning discriminatory or hateful statements may be applied to cases of negationism, although they have not found them to be applicable in the cases before them. In Finland, the political authorities have expressed the view that such provisions are not applicable to
2013	12/17/2013	PERINČEK v. SWITZERLAND	http://hudoc.echr.coe.int/eng/?i=001-139724	27510/08	S2		0 majority	ECtHR	Venezuela	F	general		29. Within the Council of Europe, the question of the atrocities committed against the Armenian people has been discussed on many occasions. In a declaration of 24 April 2013 (no. 542, Doc. 13192), for example, some twenty members of the Parliamentary Assembly of the Council of Europe stated the following: Recognition of the Armenian Genocide [“This written declaration commits only those who have signed it”] Recognition of genocides is an act which contributes to the respect for human dignity and the prevention of crimes against humanity; The fact of the Armenian Genocide by the Ottoman Empire has been documented, recognised, and affirmed in the form of media and eyewitness reports, laws, resolutions, and statements by the United Nations, the European Parliament and Parliaments of the Council of Europe member States, including Sweden, Lithuania, Germany, Poland, the Netherlands, Slovakia, Switzerland, France, Italy, Belgium, Greece, Cyprus, the Russian Federation, as well as the US House of Representatives and 43 US States, Chile, Argentina, Venezuela, Canada, Uruguay and Lebanon. The undersigned, members of the Parliamentary Assembly, call upon all members of the Parliamentary Assembly of the Council of Europe to take the necessary steps for the recognition of the genocide perpetrated against Armenians and other Christians in the Ottoman Empire at the beginning of the 20th century, which will strongly contribute to an eventual similar act of recognition by the Turkish authorities of this odious crime against humanity and, as a result, will lead to the normalisation of relations between Armenia and Turkey and thus contribute to regional peace, security and stability.”
2013	12/12/2013	KHMEI v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-138916	no. 20383/04	SS	DEDOV	dissenting	0 USA	C	C	lower-level co	Ayeni v. Mottola, 35F. 3d 680	As to the latter criterion, it should be noted that the cameramen were invited by the police only after the applicant had refused to leave the police station, and that the only reason for inviting the journalists was the applicant’s own abusive behaviour (see paragraphs 6-8 of the judgment). Therefore, this case is completely different from cases in the United States where the footage in issue was found to have violated the right to privacy when a State agent invited a TV crew to videotape the search of an applicant’s house (see Ayeni v. Mottola, 35F. 3d 680, and Wilson v. Layne, 526 US 603) or when an arrested suspect was visibly displayed to the public while handcuffed (see Lauro v. City of New York, 39F. 2d 351).
2013	12/12/2013	KHMEI v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-138916	no. 20383/04	SS	DEDOV	dissenting	0 USA	C	C	SC	Wilson v. Layne, 526 US 603	As to the latter criterion, it should be noted that the cameramen were invited by the police only after the applicant had refused to leave the police station, and that the only reason for inviting the journalists was the applicant’s own abusive behaviour (see paragraphs 6-8 of the judgment). Therefore, this case is completely different from cases in the United States where the footage in issue was found to have violated the right to privacy when a State agent invited a TV crew to videotape the search of an applicant’s house (see Ayeni v. Mottola, 35F. 3d 680, and Wilson v. Layne, 526 US 603) or when an arrested suspect was visibly displayed to the public while handcuffed (see Lauro v. City of New York, 39F. 2d 351).
2013	11/26/2013	AL-DULIMI AND MONTANA MANAGEMENT INC. v. SWITZERLAND	http://hudoc.echr.coe.int/eng/?i=001-138948	5809/08	S2		0 majority	ECtHR	Canada	C	lower-level co	Abdelrazik v. Canada (Minister of Foreign Affairs) (Canadian Federal Court)	70. In its judgment of 4 June 2009 in the case of Abdelrazik v. Canada (Minister of Foreign Affairs), the Federal Court of Canada took the view that the listing procedure of the al-Qaeda and Taliban Sanctions Committee was incompatible with the right to an effective remedy. The case concerned a ban on the return to Canada of the applicant, who had Canadian and Sudanese nationality, as a result of the application by Canada of the Security Council resolutions establishing the sanctions regime. The applicant was thus forced to live in the Canadian embassy in Khartoum, Sudan, fearing possible detention and torture should he leave this sanctuary. 71. Zinn J., who pronounced the lead judgment in the case, stated in particular: “[51] I add my name to those who view the 1267 Committee regime as a denial of basic legal remedies and as untenable under the principles of international human rights. There is nothing in the listing or de-listing procedure that recognizes the principles of natural justice or that provides for basic procedural fairness.” 72. He further observed: “[54] ... it is frightening to learn that a citizen of this or any other country might find himself on the 1267 Committee list, based only on suspicion.” 73. After reviewing the measures implementing the travel ban on the basis of the al-Qaeda and Taliban resolutions, the judge concluded that the applicant’s right to enter Canada had been breached, contrary to the provisions of the Canadian Charter of Rights and Freedoms (see paragraphs 62 et seq. of the judgment). 131. The Court further finds that the applicants sustained major restrictions. They alleged that their assets had already been frozen back in 1990, that allegation not being contested by the Government. The confiscation of their assets was decided on 16 November 2006. The applicants have therefore been deprived of access to their assets already for a considerable period of time, even though the confiscation decision has not yet been implemented. Without having to address the merits of these measures, the Court is of the view that the applicants are entitled, in accordance with Article 6 § 1, to have those merits examined by a court. Their inability to challenge the confiscation measure for several years is difficult to accept in a democratic society (see, as to the fundamental nature of the right of access to a court, the Kadi judgment of the European Court of Justice, §§ 335 et seq. (paragraphs 51 et seq. above), Lord Hope’s opinion in Ahmed and others v. HM Treasury, judgment of the United Kingdom Supreme Court of 27 January 2010 (paragraphs 67 et seq. above), and the lead judgment of Mr Justice Zinn in Abdelrazik v. Canada (Minister of Foreign Affairs), Federal Court of Canada, 4 June 2009, § 51 (paragraph 71 above).
2013	11/26/2013	X v. LATVIA	http://hudoc.echr.coe.int/eng/?i=001-138992	no. 27853/09	GC	PINTO DE ALBUQUERQUE	concurring	0 Australia	C	C	SC	D.P. v. Commonwealth Central Authority [2001] HCA 39	While it is axiomatic that “restrictions” to human rights must be interpreted narrowly[30], defences to return are not, technically speaking, “restrictions” to any specific human right. Such defences are, in the light of the Convention, mere grounds for rebuttal of a presumption, and they are not necessarily subject to a restrictive interpretation[31]. Thus, in the event of contradictory evaluations of the child’s situation, resulting from the confrontation between a restrictive interpretation of the Hague Convention and a purposive and evolutive interpretation of the same text in the light of the Convention, the latter should prevail over the former. Although in virtually all cases the Convention and the Hague Convention march hand in hand, when they do not, it is up to the Convention to guide the way[32]. [31]. As the High Court of Australia in D.P. v. Commonwealth Central Authority [2001] HCA 39, the South African Supreme Court in Sordery v. Tordelli 2001 (1) SA 1173 CC, and the United Kingdom Supreme Court in Re E. (Children) (Abduction: Custody Appeal) [2011] UKSC 27 rightly concluded, there is no need for the defence provisions to be narrowly construed. Nor is there any need for an additional test of exceptionality to be added to the defence provisions (Re M. (Children) (Abduction: Rights of Custody), [2007] UKHL 55).
2013	11/26/2013	X v. LATVIA	http://hudoc.echr.coe.int/eng/?i=001-138992	no. 27853/09	GC	PINTO DE ALBUQUERQUE	concurring	0 New Zealand	C	C	SC	Anderson v. Paterson [2002] NZFLR 641	Since the Hague Convention terminology is to be interpreted with regard to its autonomous nature and in the light of its objectives, custodial rights may include rights referred to by the national legislation of the country of habitual residence under a different terminology, and do not necessarily equate to rights referred to as “custody rights” by the law of any particular country[17]. For instance, an unmarried parent who in fact takes care of the child may nonetheless be denied custodial rights[18]. The evaluation of legal and factual issues, such as rights of custody and habitual residence or allegations of grave risk of harm, is a matter for the court or other competent authority deciding upon the return application[19]. Other than as provided for by Article 30 of the Hague Convention, each Contracting Party to the Hague Convention determines its own rules of evidence in return proceedings. The burden of proof in the case in chief for return is on the left-behind parent and in respect of the defences to return it is on the abducting parent: in some countries, however, different burdens of proof are required depending upon the defence proffered[20]. Although the evidence admitted in return proceedings is not bound by strict criteria, the taking and admission of evidence should be governed by the necessity for speed and the importance of limiting the enquiry to the matters in dispute which are directly relevant to the issue of return[21]. [18]. Report of the Third Special Commission meeting, 1997, § 13. So-called “inchoate custody rights” have been accepted by some jurisdictions, such as England (Re B. (A Minor) (Abduction), [1994] 2 FLR 249, Re O. (Child Abduction: Custody Rights), [1997] 2 FLR 702, and Re G. (Abduction: Rights of Custody) [2002] 2 FLR 703) and New Zealand (Anderson v. Paterson [2002] NZFLR 641), but rejected by others, such as Ireland (H.L. v. M.G. (1999) 2 ILRM 1) and Northern Ireland (VK and AK v. CC [2013] NIFam 6). As shall be demonstrated below, the concept of “inchoate custody rights” cannot be reconciled with the Court’s, the European Court of Justice’s and the House of Lords’ case-law.

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2013	11/12/2013	SÖDERMAN v. SWEDEN	http://hudoc.echr.coe.int/eng/?i=001-138943	no. 5786/08	GC	PINTO DE ALBUQUERQUE	concurring	0	US	R	statute	section 18 USC §§ 2251, 2252 and 2252a	The obligation to criminalise child pornography derives from Articles 16, 19 and 34 [c] of the United Nations Convention on the Rights of the Child[5] and Article 3 of the Optional Protocol to the United Nations Convention on the Rights of the Child, on the sale of children, child prostitution and child pornography[6]. Articles 6 and 7 § 1 of the International Labour Organisation Worst Forms of Child Labour Convention (no. 182) oblige States Parties to take steps to eliminate, with the necessary penal sanctions, the sale of children, child prostitution and child pornography, including the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances[7]. The criminalisation of child pornography is also obligatory under Article 20 of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse[8] and Article 9 of the Council of Europe Convention on Cybercrime[9]. The Council of the European Union adopted, in 2003, the Framework Decision on combating the sexual exploitation of children and child pornography [2004/68/JHA] according to which member States are obliged to criminalise the production, distribution, dissemination, transmission, supplying or making available, acquisition and possession of child pornography and provide for a minimum level of maximum penalties incurred for these offences[10]. The European Parliament and the Council approved Directive 2011/93/EU of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, which replaced the Council Framework Decision of 2004, but maintained the criminalisation obligation[11]. In Europe, forty-one countries have criminalised child pornography, and in the United States both the federal law and the law of all fifty States make provision for the same offence[12]. In view of this broad consensus and constant practice, the criminalisation of child pornography, namely, any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes, is now part of international customary law, binding on all States. [12]. In addition to Sweden, these are Albania (Article 117 of the Criminal Code), Austria (Article 207a § 1, no. 1, of the Austrian Criminal Code), Azerbaijan (Article 242 of the Criminal Code), Belgium (Article 383 bis of the Criminal Code), Bosnia and Herzegovina (Article 199 of the Criminal Code of Republika Srpska and Article 211 of the Criminal Code of the Federation of Bosnia and Herzegovina), Bulgaria (Article 159 of the Criminal Code), Croatia (Article 163 of the Criminal Code), Czech Republic (Article 192 of the Criminal Code), Denmark (Article 230 of the Criminal Code), Estonia (Article 178 of the Criminal Code), Finland (Articles 18, 18a and 19 of Chapter 17 of the Criminal Code), France (Article 227-23 of the Criminal Code), Georgia (Article 255 of the Criminal Code), Germany (Article 184b § 4 of the Criminal Code), Greece (Article 348 of the Criminal Code), Hungary (Article 204 of the Criminal Code), Iceland (Article 209 and 210a of the Criminal Code and section 99(3) of the Child Protection Act), Ireland (section 3(2) of the Child Trafficking and Pornography Act), Italy (Article 610 quarter of the Criminal Code), Latvia (section 1(1) of the Limitation of Pornography Act 2007), Liechtenstein (Article 219 § 1, no. 1, of the Criminal Code), Lithuania (Article 162 of the Criminal Code), Luxembourg (Article 384 of the Criminal Code), Macedonia (Article 193a § 1 of the Criminal Code), Moldova (Article 208 of the Criminal Code), Monaco (Article 294-3 of the Criminal Code), Montenegro (Article 211 of the Criminal Code), the Netherlands (Article 240 b of the Criminal Code), Norway (Article 201 of the Criminal Code, according to the case law), Poland (Article 202 § 4 of the Criminal Code), Portugal (Article 176 of the Criminal Code), Romania (section 51 of Law no. 161/2003), Russia (Article 242.1 and 2 of the Criminal Code), Slovakia (Articles 358 and 370 of the Criminal Code), Slovenia (Article 126 § 2 of the Criminal Code), Spain (Articles 189 and 197 § 6 of the Criminal Code), Switzerland (Article 197 § 3 of the Criminal Code), Turkey (Article 226 § 3 of the Criminal Code), the United Kingdom (section 1 of the Protection of Children Act 1978), United States of America (section 18 USC §§ 2251, 2252 and 2252a) and Ukraine (Article 301 § 4 of the Criminal Code).
2013	11/7/2013	VALLIANATOS AND OTHERS v. GREECE	http://hudoc.echr.coe.int/eng/?i=001-138944	29381/09 and 32684/09	GC		0 majority	intervener	Brazil	C	CC	general	69. The third-party interveners (the Centre for Advice on Individual Rights in Europe, the International Commission of Jurists, the Fédération internationale des Ligues des Droits de l'Homme and the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association – see paragraph 6 above) referred to the Court's case-law, and in particular its judgment in Karner v. Austria (no. 40016/98, ECHR 2003-IX) and to the case-law of national constitutional courts including the Hungarian Constitutional Court, the Supreme Court of Canada, the United Kingdom's House of Lords and the Brazilian Constitutional Court. According to those courts, a strong justification was required when the ground for a distinction was sex or sexual orientation. The third-party interveners observed that a growing number of national courts, both in Europe and elsewhere, required that unmarried different-sex and same-sex couples be treated in the same way. A large number of Council of Europe member States had now enacted legislation recognising same-sex relationships. To their knowledge, the case of Greece was unique, as it was the only European country to have introduced civil unions while excluding same-sex couples from their scope of application. The relevant legislation of the Contracting States on registered civil partnerships for same-sex couples was founded on two models: (a) the "Danish model", based on the Danish legislation introduced in 1989, which confined the registration scheme to same-sex couples, since different-sex couples already had the option of marrying, and (b) the "French model", whereby the right to enter into a civil partnership was open to all unmarried couples irrespective of their sexual orientation.
2013	11/7/2013	VALLIANATOS AND OTHERS v. GREECE	http://hudoc.echr.coe.int/eng/?i=001-138944	29381/09 and 32684/09	GC		0 majority	intervener	Canada	C	SC	general	(c) The third-party interveners 69. The third-party interveners (the Centre for Advice on Individual Rights in Europe, the International Commission of Jurists, the Fédération internationale des Ligues des Droits de l'Homme and the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association – see paragraph 6 above) referred to the Court's case-law, and in particular its judgment in Karner v. Austria (no. 40016/98, ECHR 2003-IX) and to the case-law of national constitutional courts including the Hungarian Constitutional Court, the Supreme Court of Canada, the United Kingdom's House of Lords and the Brazilian Constitutional Court. According to those courts, a strong justification was required when the ground for a distinction was sex or sexual orientation. The third-party interveners observed that a growing number of national courts, both in Europe and elsewhere, required that unmarried different-sex and same-sex couples be treated in the same way. A large number of Council of Europe member States had now enacted legislation recognising same-sex relationships. To their knowledge, the case of Greece was unique, as it was the only European country to have introduced civil unions while excluding same-sex couples from their scope of application. The relevant legislation of the Contracting States on registered civil partnerships for same-sex couples was founded on two models: (a) the "Danish model", based on the Danish legislation introduced in 1989, which confined the registration scheme to same-sex couples, since different-sex couples already had the option of marrying, and (b) the "French model", whereby the right to enter into a civil partnership was open to all unmarried couples irrespective of their sexual orientation.
2013	10/3/2013	I.B. v. GREECE	http://hudoc.echr.coe.int/eng/?i=001-127055		SI		0 majority	ECtHR	South Africa	C	CC	Hoffmann v. South African Airways (CCT 17/00) of 28 September 2000	D. Judgment of the South African Constitutional Court in the case of Hoffmann v. South African Airways 36. In the case of Hoffmann v. South African Airways (CCT 17/00) of 28 September 2000, an application had been made to the Constitutional Court against a decision of the Witwatersrand High Court regarding discrimination in the employment of Mr Hoffmann as a cabin attendant for the airline company South African Airways on the ground that he was HIV-positive. The company relied on three arguments: the negative reaction of HIV-positive persons to the yellow fever vaccine, the risk of transmitting diseases to passengers and other members of the company; and the low return on investment in such staff as they had a lower life expectancy than the others. 37. The Constitutional Court unanimously held that such discrimination had breached Mr Hoffmann's constitutional rights. 38. Firstly, it held that a distinction had to be made between HIV-positive persons and persons suffering from immune deficiency. It observed that Mr Hoffmann had been only HIV-positive at the time of his dismissal and the court's decision. It added that the practice of other foreign airlines had no bearing on an examination of the constitutionality of the decision. Secondly, it recognised that a company's commercial concerns were legitimate but considered that these should not serve as a pretext for denying elementary fundamental rights such as compassion and tolerance of others. Having regard to those overriding considerations, persons infected with HIV were in a particularly fragile situation which required full protection under the legal system. Accordingly, the court held that the violation of Mr Hoffmann's rights required the airline to offer him a job forthwith and to bear the costs of the proceedings. 65. In support of his submissions, the applicant also relied on a number of judgments of the Supreme Courts of many countries which had ruled in favour of HIV-positive employees in the workplace, and particularly Hoffmann v. South African Airways of the South African Constitutional Court (see paragraphs 36-38 above) which held that prejudice against that category of persons did not constitute a legitimate professional interest.
2013	9/24/2013	DE LUCA v. ITALY	http://hudoc.echr.coe.int/eng/?i=001-126807	43870/04	S2		0 majority	ECtHR	Chile	R	general		0 28. As regards non-European States, in South Africa a municipal authority encountering financial problems may be placed under a recovery plan and, if it is unable to repay its debts, it may apply to the High Court for an order to stay, for a period not exceeding 90 days, all legal proceedings brought by creditors and the suspension of all or part of its financial obligations. If the High Court accepts the request, a distribution scheme for the partial settlement of claims is prepared. In Chile, where a creditor brings civil proceedings against a municipal authority, the attachment of municipal property not required for it to function may be ordered.
2013	9/24/2013	DE LUCA v. ITALY	http://hudoc.echr.coe.int/eng/?i=001-126807	43870/04	S2		0 majority	ECtHR	South Africa	R	general		0 28. As regards non-European States, in South Africa a municipal authority encountering financial problems may be placed under a recovery plan and, if it is unable to repay its debts, it may apply to the High Court for an order to stay, for a period not exceeding 90 days, all legal proceedings brought by creditors and the suspension of all or part of its financial obligations. If the High Court accepts the request, a distribution scheme for the partial settlement of claims is prepared. In Chile, where a creditor brings civil proceedings against a municipal authority, the attachment of municipal property not required for it to function may be ordered.
2013	9/24/2013	DE LUCA v. ITALY	http://hudoc.echr.coe.int/eng/?i=001-126807	43870/04	S2		0 majority	ECtHR	US	R	general		0 29. Lastly, in the United States of America, should a municipality become insolvent and should the relevant state so authorise, the municipality may file for bankruptcy protection, which generally allows it to restructure its payment schedule, to reduce the capital and interest to be paid and to obtain loans. A supervisory commission examines the adjustment plan, which must not discriminate unfairly, and must be fair and equitable. Some creditors may be paid in full, others may receive nothing, depending on the rules of priority. A creditor with a security interest over some or all of the debtor's assets may retain that interest and avoid competing with unsecured creditors to collect the debt. Each level of priority must be paid in full before the next level of creditors is paid.

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State practice confirms this principle, both at the constitutional level (for example, Article 29 § 3 of the Albanian Constitution, Article 65 § 4 of the revised Angolan Constitution, Article 22 of the Armenian Constitution, Article 71 (VIII) of the Azerbaijani Constitution, Article 5 § 4 of the Brazilian Constitution, Article 11 (i) of the Canadian Constitution, Article 30 § 2 of the Cape Verde Constitution, Article 19 § 3 of the Chilean Constitution, Article 29 of the Colombian Constitution, Article 31 of the Croatian Constitution, Article 31 § 5 of the East Timor Constitution, Article 42 § 5 of the Georgian Constitution, Article 33 § 2 of the Guinea Bissau Constitution, Article 89 of the Latvian Constitution, Article 52 of the Macedonian Constitution, Article 34 of the Montenegrin Constitution, Article 99 § 2 of the Mozambique Constitution, Article 29 § 4 of the Portuguese Constitution, Article 15 § 2 of the Romanian Constitution, Article 54 of the Russian Constitution, Article 36 § 2 of the São Tomé and Príncipe Constitution, Article 197 of the Serbian Constitution, Article 50 § 6 of the Slovakian Constitution, Article 28 of the Slovenian Constitution, Article 35 § 3 of the South African Constitution, and Article 9 § 3 of the Spanish Constitution) and at the statutory level (Article 1 of the Austrian Penal Code, Article 2 of the Belgian Criminal Code, Article 4 of the Bosnian Criminal Code, Article 2 of the Bulgarian Criminal Code, Article 12 of the Chinese Criminal Code, Article 4 of the Danish Criminal Code, Article 2 of the German Criminal Code, Article 2 of the Hungarian Criminal Code, Article 2 of the Icelandic Penal Code, Articles 4 to 6 of the Israeli Penal Code, Article 6 of the Japanese Criminal Code, Article 3 of the Lithuanian Penal Code, Article 2 of the Luxembourg Penal Code, Article 1 § 2 of the Dutch Penal Code, Article 25 (g) of the New Zealand Bill of Rights and Article 2 § 2 of the Swiss Penal Code). It can be said that the vast majority of the world's population benefits from this principle. ——— It was not until 2008 that the authorities developed a written national strategy aimed at developing a more systematic approach to cases and allocating resources in war-crimes cases[69]. In order for cases to be selected and their complexity to be assessed in a uniform and objective manner, thus informing the decision-making process with regard to the takeover or transfer of a case, the State Court and the Prosecutor's Office of BiH, with the participation of other judicial and prosecutorial authorities, drafted the Case Complexity Criteria. Subsequently, Article 449 of the BiH Code of Criminal Procedure – Deciding on Cases Pending before Other Courts and Prosecutor's Offices – was amended by Law no. 93/09, which introduced the following criteria for the transfer and allocation of cases: "the gravity of the criminal offence, the capacity of the perpetrator and other circumstances of importance in assessing the complexity of the case." [70] [70]. As the OSCE concludes, "the case complexity criteria are a laundry list of factors to be taken into consideration in determining if the proceedings will be conducted before the BiH Court". In short, the criteria are extremely broad and do not provide clear guidance as to what thresholds must be met to justify a marking as "most complex" or "less complex" (see OSCE, "Delivering Justice in Bosnia and Herzegovina", cited above). The broad nature of these criteria and especially of the criterion "other circumstances of importance in assessing the complexity of the case" is particularly problematic. One cannot but remember the principle of the natural or lawful judge and the solemn prohibition of extraordinary criminal courts contained in Article 8 of the ACHR and in the constitutional provisions of a considerable number of countries, such as Article 135 § 2 of the Albanian Constitution, Article 85 § 2 of the Andorran Constitution, Article 176 § 5 of the revised Angolan Constitution, Article 18 of the Argentinian Constitution, Article 92 of the Armenian Constitution, Article 125 (VI) of the Azerbaijani Constitution, Articles 14 and 116 (II) of the Bolivian Constitution, Article 5 (XXXVIII) of the Brazilian Constitution, Article 19 § 3 of the Chilean Constitution, Article 61 of the Danish Constitutional Act, Article 123 § 2 of the East Timor Constitution, Article 15 of the El Salvador Constitution, Article 78 § 4 of the Ethiopian Constitution, Article 101 of the German Basic Law (Grundgesetz), Articles 25 and 102 of the Italian Constitution, Article 76 of the Japanese Constitution, Article 33 § 1 of the Liechtenstein Constitution, Article 111 of the Lithuanian Constitution, Article 86 of the Luxembourg Constitution, Article XXV (1) of the Macedonian Constitution, Article 118 of the Montenegrin Constitution, Article 13 of the Mexican Constitution, Article 167 § 2 of the Mozambican Constitution, Article 4 § 8 of the Nigerian Constitution, Article 17 § 3 of the Paraguayan Constitution, Article 139 § 3 of the Peruvian Constitution, Article 172 § 2 of the Polish Constitution, Article 209 § 3 of the Portuguese Constitution, Article 126 § 5 of the Romanian Constitution, Article 118 § 3 of the Russian Constitution, Article 143 of the Rwandan Constitution, Article 39 § 7 of the São Tomé and Príncipe Constitution, Article 48 § 1 of the Slovakian Constitution, Article 117 of the Spanish Constitution, Article 11 of the Swedish Instrument of Government, Article 30 § 1 of the Swiss Constitution, Article 125 of the Ukrainian Constitution and Article 19 of the Uruguayan Constitution. Wide-ranging clauses concerning the transfer and removal of criminal cases have in the past been instrumental to the operation of such courts and are unacceptable under the principle of the natural or lawful judge.
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The principle of non-retroactivity does not prejudice the punishment of a person for an act or omission that, at the time when it was committed, was criminal according to the general principles of law as recognised by the community of civilised nations. Article 7 § 2 of the ECHR and Article 15 § 2 of the ICCPR provide for such a case[58]. Although historically created to justify the Nuremberg and Tokyo judgments, this protective provision also applies to other adjudication proceedings[59]. It has its own field of application, since it refers to crimes which have not yet been crystallised into customary international law at the material time, nor been enshrined into treaty law applicable to the facts, but already represent an intolerable affront to the principles of justice, as reflected in the practice of a relevant number of nations[60]. In order to avoid legal uncertainty and comply with the other facet of the principle of legality, that is to say the principle of specificity (nullum crimen sine lege certa et stricta), close scrutiny of the relevant State practice is required: only when the general principles of law reflect the treaty and domestic practices of a relevant number of States can they be recognised as expressing the will of the community of civilised nations to criminalise a particular form of conduct[61]. It follows that the criminalisation of conduct based on the general principles of law is not an exception to the principle of the prohibition on retroactive penal law, in so far as the conduct already corresponded, from a substantive perspective, to criminal conduct when it occurred. Thus, the "Nuremberg/Tokyo clause" does not apply when at the material time the conduct was punishable as a crime by national law, but with a lesser penalty than that enshrined in a subsequent law or treaty[62]. 11 [50]. State practice confirms this principle, both at the constitutional level (for example, Article 29 § 3 of the Albanian Constitution, Article 65 § 4 of the revised Angolan Constitution, Article 22 of the Armenian Constitution, Article 71 (VIII) of the Azerbaijani Constitution, Article 5 § 4 of the Brazilian Constitution, Article 11 (i) of the Canadian Constitution, Article 30 § 2 of the Cape Verde Constitution, Article 19 § 3 of the Chilean Constitution, Article 29 of the Colombian Constitution, Article 31 of the Croatian Constitution, Article 31 § 5 of the East Timor Constitution, Article 42 § 5 of the Georgian Constitution, Article 33 § 2 of the Guinea Bissau Constitution, Article 89 of the Latvian Constitution, Article 52 of the Macedonian Constitution, Article 34 of the Montenegrin Constitution, Article 99 § 2 of the Mozambique Constitution, Article 29 § 4 of the Portuguese Constitution, Article 15 § 2 of the Romanian Constitution, Article 54 of the Russian Constitution, Article 36 § 2 of the São Tomé and Príncipe Constitution, Article 197 of the Serbian Constitution, Article 50 § 6 of the Slovakian Constitution, Article 28 of the Slovenian Constitution, Article 35 § 3 of the South African Constitution, and Article 9 § 3 of the Spanish Constitution) and at the statutory level (Article 1 of the Austrian Penal Code, Article 2 of the Belgian Criminal Code, Article 4 of the Bosnian Criminal Code, Article 2 of the Bulgarian Criminal Code, Article 12 of the Chinese Criminal Code, Article 4 of the Danish Criminal Code, Article 2 of the German Criminal Code, Article 2 of the Hungarian Criminal Code, Article 2 of the Icelandic Penal Code, Articles 4 to 6 of the Israeli Penal Code, Article 6 of the Japanese Criminal Code, Article 3 of the Lithuanian Penal Code, Article 2 of the Luxembourg Penal Code, Article 1 § 2 of the Dutch Penal Code, Article 25 (g) of the New Zealand Bill of Rights and Article 2 § 2 of the Swiss Penal Code). It can be said that the vast majority of the world's population benefits from this principle. [59]. In fact, there are four countries which have included the "Nuremberg/Tokyo clause" in their Constitutions: Canada (Article 11 (g)), Cape Verde (Article 30), Poland (Article 42 § 1) and Sri Lanka (Article 13 § 6).
2013	7/18/2013	MAKTOUF AND DAMJANOVIĆ v. BOSNIA AND HERZ	http://hudoc.echr.coe.int/eng/?i=001-122716	2312/08 and 34179/08	GC	PINTO DE ALBUQUERQUE	concurring		Cape Verde	R	constitution	Article 30 § 2 of the Cape Verde Constitution	7. The principle of retroactive application of lex mitior in criminal law is enshrined in Article 15 § 1 of the ICCPR[46], Article 9 of the ACHR, Article 24 § 2 of the Rome Statute[47], Article 49 of the CFREU[48] and Article 15 of the ARCHR[49] and, in international humanitarian law, in Article 75 § 4 (c) of Protocol I to the Geneva Conventions and Article 6 § 2 (c) of Protocol II to the Geneva Conventions. State practice has endorsed the principle, both at constitutional and statutory level[50]. 10. General principles of law can be a source of international criminal law if and when they are sufficiently accessible and foreseeable at the material time. The principle of non-retroactivity does not prejudice the punishment of a person for an act or omission that, at the time when it was committed, was criminal according to the general principles of law as recognised by the community of civilised nations. Article 7 § 2 of the ECHR and Article 15 § 2 of the ICCPR provide for such a case[58]. Although historically created to justify the Nuremberg and Tokyo judgments, this protective provision also applies to other adjudication proceedings[59]. It has its own field of application, since it refers to crimes which have not yet been crystallised into customary international law at the material time, nor been enshrined into treaty law applicable to the facts, but already represent an intolerable affront to the principles of justice, as reflected in the practice of a relevant number of nations[60]. In order to avoid legal uncertainty and comply with the other facet of the principle of legality, that is to say the principle of specificity (nullum crimen sine lege certa et stricta), close scrutiny of the relevant State practice is required: only when the general principles of law reflect the treaty and domestic practices of a relevant number of States can they be recognised as expressing the will of the community of civilised nations to criminalise a particular form of conduct[61]. It follows that the criminalisation of conduct based on the general principles of law is not an exception to the principle of the prohibition on retroactive penal law, in so far as the conduct already corresponded, from a substantive perspective, to criminal conduct when it occurred. Thus, the "Nuremberg/Tokyo clause" does not apply when at the material time the conduct was punishable as a crime by national law, but with a lesser penalty than that enshrined in a subsequent law or treaty[62]. 11 [50]. State practice confirms this principle, both at the constitutional level (for example, Article 29 § 3 of the Albanian Constitution, Article 65 § 4 of the revised Angolan Constitution, Article 22 of the Armenian Constitution, Article 71 (VIII) of the Azerbaijani Constitution, Article 5 § 4 of the Brazilian Constitution, Article 11 (i) of the Canadian Constitution, Article 30 § 2 of the Cape Verde Constitution, Article 19 § 3 of the Chilean Constitution, Article 29 of the Colombian Constitution, Article 31 of the Croatian Constitution, Article 31 § 5 of the East Timor Constitution, Article 42 § 5 of the Georgian Constitution, Article 33 § 2 of the Guinea Bissau Constitution, Article 89 of the Latvian Constitution, Article 52 of the Macedonian Constitution, Article 34 of the Montenegrin Constitution, Article 99 § 2 of the Mozambique Constitution, Article 29 § 4 of the Portuguese Constitution, Article 15 § 2 of the Romanian Constitution, Article 54 of the Russian Constitution, Article 36 § 2 of the São Tomé and Príncipe Constitution, Article 197 of the Serbian Constitution, Article 50 § 6 of the Slovakian Constitution, Article 28 of the Slovenian Constitution, Article 35 § 3 of the South African Constitution, and Article 9 § 3 of the Spanish Constitution) and at the statutory level (Article 1 of the Austrian Penal Code, Article 2 of the Belgian Criminal Code, Article 4 of the Bosnian Criminal Code, Article 2 of the Bulgarian Criminal Code, Article 12 of the Chinese Criminal Code, Article 4 of the Danish Criminal Code, Article 2 of the German Criminal Code, Article 2 of the Hungarian Criminal Code, Article 2 of the Icelandic Penal Code, Articles 4 to 6 of the Israeli Penal Code, Article 6 of the Japanese Criminal Code, Article 3 of the Lithuanian Penal Code, Article 2 of the Luxembourg Penal Code, Article 1 § 2 of the Dutch Penal Code, Article 25 (g) of the New Zealand Bill of Rights and Article 2 § 2 of the Swiss Penal Code). It can be said that the vast majority of the world's population benefits from this principle. [59]. In fact, there are four countries which have included the "Nuremberg/Tokyo clause" in their Constitutions: Canada (Article 11 (g)), Cape Verde (Article 30), Poland (Article 42 § 1) and Sri Lanka (Article 13 § 6).
2013	7/18/2013	MAKTOUF AND DAMJANOVIĆ v. BOSNIA AND HERZ	http://hudoc.echr.coe.int/eng/?i=001-122716	2312/08 and 34179/08	GC	PINTO DE ALBUQUERQUE	concurring		Chile	R	constitution	Article 19 § 3 of the Chilean Constitution	7. The principle of retroactive application of lex mitior in criminal law is enshrined in Article 15 § 1 of the ICCPR[46], Article 9 of the ACHR, Article 24 § 2 of the Rome Statute[47], Article 49 of the CFREU[48] and Article 15 of the ARCHR[49] and, in international humanitarian law, in Article 75 § 4 (c) of Protocol I to the Geneva Conventions and Article 6 § 2 (c) of Protocol II to the Geneva Conventions. State practice has endorsed the principle, both at constitutional and statutory level[50]. [50]. State practice confirms this principle, both at the constitutional level (for example, Article 29 § 3 of the Albanian Constitution, Article 65 § 4 of the revised Angolan Constitution, Article 22 of the Armenian Constitution, Article 71 (VIII) of the Azerbaijani Constitution, Article 5 § 4 of the Brazilian Constitution, Article 11 (i) of the Canadian Constitution, Article 30 § 2 of the Cape Verde Constitution, Article 19 § 3 of the Chilean Constitution, Article 29 of the Colombian Constitution, Article 31 of the Croatian Constitution, Article 31 § 5 of the East Timor Constitution, Article 42 § 5 of the Georgian Constitution, Article 33 § 2 of the Guinea Bissau Constitution, Article 89 of the Latvian Constitution, Article 52 of the Macedonian Constitution, Article 34 of the Montenegrin Constitution, Article 99 § 2 of the Mozambique Constitution, Article 29 § 4 of the Portuguese Constitution, Article 15 § 2 of the Romanian Constitution, Article 54 of the Russian Constitution, Article 36 § 2 of the São Tomé and Príncipe Constitution, Article 197 of the Serbian Constitution, Article 50 § 6 of the Slovakian Constitution, Article 28 of the Slovenian Constitution, Article 35 § 3 of the South African Constitution, and Article 9 § 3 of the Spanish Constitution) and at the statutory level (Article 1 of the Austrian Penal Code, Article 2 of the Belgian Criminal Code, Article 4 of the Bosnian Criminal Code, Article 2 of the Bulgarian Criminal Code, Article 12 of the Chinese Criminal Code, Article 4 of the Danish Criminal Code, Article 2 of the German Criminal Code, Article 2 of the Hungarian Criminal Code, Article 2 of the Icelandic Penal Code, Articles 4 to 6 of the Israeli Penal Code, Article 6 of the Japanese Criminal Code, Article 3 of the Lithuanian Penal Code, Article 2 of the Luxembourg Penal Code, Article 1 § 2 of the Dutch Penal Code, Article 25 (g) of the New Zealand Bill of Rights and Article 2 § 2 of the Swiss Penal Code). It can be said that the vast majority of the world's population benefits from this principle. It was not until 2008 that the authorities developed a written national strategy aimed at developing a more systematic approach to cases and allocating resources in war-crimes cases[68]. In order for cases to be selected and their complexity to be assessed in a uniform and objective manner, thus informing the decision-making process with regard to the takerover or transfer of a case, the State Court and the Prosecutor's Office of BiH, with the participation of other judicial and prosecutorial authorities, drafted the Case Complexity Criteria. Subsequently, Article 449 of the BiH Code of Criminal Procedure – Deciding on Cases Pending before Other Courts and Prosecutor's Offices – was amended by Law no. 93/09, which introduced the following criteria for the transfer and allocation of cases: "the gravity of the criminal offence, the capacity of the perpetrator and other circumstances of importance in assessing the complexity of the case." [70] [70]. As the OSCE concludes, "the case complexity criteria are a laundry list of factors to be taken into consideration in determining if the proceedings will be conducted before the BiH Court". In short, the criteria are extremely broad and do not provide clear guidance as to what thresholds must be met to justify a marking as "most complex" or "less complex" (see OSCE, "Delivering Justice in Bosnia and Herzegovina", cited above). The broad nature of these criteria and especially of the criterion "other circumstances of importance in assessing the complexity of the case" is particularly problematic. One cannot but remember the principle of the natural or lawful judge and the solemn prohibition of extraordinary criminal courts contained in Article 8 of the ACHR and in the constitutional provisions of a considerable number of countries, such as Article 135 § 2 of the Albanian Constitution, Article 85 § 2 of the Andorran Constitution, Article 176 § 5 of the revised Angolan Constitution, Article 18 of the Argentinian Constitution, Article 92 of the Armenian Constitution, Article 125 (VI) of the Azerbaijani Constitution, Articles 14 and 116 (ii) of the Bolivian Constitution, Article 5 (XXXVII) of the Brazilian Constitution, Article 19 § 3 of the Chilean Constitution, Article 61 of the Danish Constitutional Act, Article 123 § 2 of the East Timor Constitution, Article 15 of the El Salvador Constitution, Article 78 § 4 of the Ethiopian Constitution, Article 101 of the German Basic Law (Grundgesetz), Articles 25 and 102 of the Italian Constitution, Article 76 of the Japanese Constitution, Article 33 § 1 of the Liechtenstein Constitution, Article 111 of the Lithuanian Constitution, Article 86 of the Luxembourg Constitution, Article XXV (1) of the Macedonian Constitution, Article 128 of the Montenegrin Constitution, Article 13 of the Mexican Constitution, Article 167 § 2 of the Mozambican Constitution, Article 4 § 8 of the Nigerian Constitution, Article 17 § 3 of the Paraguayan Constitution, Article 139 § 3 of the Peruvian Constitution, Article 172 § 2 of the Polish Constitution, Article 209 § 3 of the Portuguese Constitution, Article 126 § 5 of the Romanian Constitution, Article 118 § 3 of the Russian Constitution, Article 143 of the Rwandan Constitution, Article 39 § 7 of the São Tomé and Príncipe Constitution, Article 48 § 1 of the Slovakian Constitution, Article 117 of the Spanish Constitution, Article 11 of the Swedish Instrument of Government, Article 30 § 1 of the Swiss Constitution, Article 125 of the Ukrainian Constitution and Article 19 of the Uruguayan Constitution. Wide-ranging clauses concerning the transfer and removal of criminal cases have in the past been instrumental to the operation of such courts and are unacceptable under the principle of the natural or lawful judge.
2013	7/18/2013	MAKTOUF AND DAMJANOVIĆ v. BOSNIA AND HERZ	http://hudoc.echr.coe.int/eng/?i=001-122716	2312/08 and 34179/08	GC	PINTO DE ALBUQUERQUE	concurring		China	R	statute	Article 12 of the Chinese Criminal Code	7. The principle of retroactive application of lex mitior in criminal law is enshrined in Article 15 § 1 of the ICCPR[46], Article 9 of the ACHR, Article 24 § 2 of the Rome Statute[47], Article 49 of the CFREU[48] and Article 15 of the ARCHR[49] and, in international humanitarian law, in Article 75 § 4 (c) of Protocol I to the Geneva Conventions and Article 6 § 2 (c) of Protocol II to the Geneva Conventions. State practice has endorsed the principle, both at constitutional and statutory level[50]. [50]. State practice confirms this principle, both at the constitutional level (for example, Article 29 § 3 of the Albanian Constitution, Article 65 § 4 of the revised Angolan Constitution, Article 22 of the Armenian Constitution, Article 71 (VIII) of the Azerbaijani Constitution, Article 5 § 4 of the Brazilian Constitution, Article 11 (i) of the Canadian Constitution, Article 30 § 2 of the Cape Verde Constitution, Article 19 § 3 of the Chilean Constitution, Article 29 of the Colombian Constitution, Article 31 of the Croatian Constitution, Article 31 § 5 of the East Timor Constitution, Article 42 § 5 of the Georgian Constitution, Article 33 § 2 of the Guinea Bissau Constitution, Article 89 of the Latvian Constitution, Article 52 of the Macedonian Constitution, Article 34 of the Montenegrin Constitution, Article 99 § 2 of the Mozambique Constitution, Article 29 § 4 of the Portuguese Constitution, Article 15 § 2 of the Romanian Constitution, Article 54 of the Russian Constitution, Article 36 § 2 of the São Tomé and Príncipe Constitution, Article 197 of the Serbian Constitution, Article 50 § 6 of the Slovakian Constitution, Article 28 of the Slovenian Constitution, Article 35 § 3 of the South African Constitution, and Article 9 § 3 of the Spanish Constitution) and at the statutory level (Article 1 of the Austrian Penal Code, Article 2 of the Belgian Criminal Code, Article 4 of the Bosnian Criminal Code, Article 2 of the Bulgarian Criminal Code, Article 12 of the Chinese Criminal Code, Article 4 of the Danish Criminal Code, Article 2 of the German Criminal Code, Article 2 of the Hungarian Criminal Code, Article 2 of the Icelandic Penal Code, Articles 4 to 6 of the Israeli Penal Code, Article 6 of the Japanese Criminal Code, Article 3 of the Lithuanian Penal Code, Article 2 of the Luxembourg Penal Code, Article 1 § 2 of the Dutch Penal Code, Article 25 (g) of the New Zealand Bill of Rights and Article 2 § 2 of the Swiss Penal Code). It can be said that the vast majority of the world's population benefits from this principle.

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2013	7/18/2013	MAKTOUF AND DAMJANOVIĆ v. BOSNIA AND HERZ	http://hudoc.echr.coe.int/eng/?i=001-122716	2312/08 and 34179/08	GC	PINTO DE ALBUQUERQUE	concurring		O Colombia	R	constitution	Article 29 of the Colombian Constitution	7. The principle of retroactive application of lex mitior in criminal law is enshrined in Article 15 § 1 of the ICCPR[46], Article 9 of the ACHR, Article 24 § 2 of the Rome Statute[47], Article 49 of the CFREU[48] and Article 15 of the ARCHR[49] and, in international humanitarian law, in Article 75 § 4 (c) of Protocol I to the Geneva Conventions and Article 6 § 2 (c) of Protocol II to the Geneva Conventions. State practice has endorsed the principle, both at constitutional and statutory level[50]. [50]. State practice confirms this principle, both at the constitutional level [for example, Article 29 § 3 of the Albanian Constitution, Article 65 § 4 of the revised Angolan Constitution, Article 22 of the Armenian Constitution, Article 71 (VIII) of the Azerbaijani Constitution, Article 5 § 4 of the Brazilian Constitution, Article 11 (i) of the Canadian Constitution, Article 30 § 2 of the Cape Verde Constitution, Article 19 § 3 of the Chilean Constitution, Article 29 of the Colombian Constitution, Article 31 of the Croatian Constitution, Article 31 § 5 of the East Timor Constitution, Article 42 § 5 of the Georgian Constitution, Article 33 § 2 of the Guinea Bissau Constitution, Article 89 of the Latvian Constitution, Article 52 of the Macedonian Constitution, Article 34 of the Montenegrin Constitution, Article 99 § 2 of the Mozambique Constitution, Article 29 § 4 of the Portuguese Constitution, Article 15 § 2 of the Romanian Constitution, Article 54 of the Russian Constitution, Article 36 § 2 of the São Tomé and Príncipe Constitution, Article 197 of the Serbian Constitution, Article 50 § 6 of the Slovakian Constitution, Article 28 of the Slovenian Constitution, Article 35 § 3 of the South African Constitution, and Article 9 § 3 of the Spanish Constitution] and at the statutory level [Article 1 of the Austrian Penal Code, Article 2 of the Belgian Criminal Code, Article 4 of the Bosnian Criminal Code, Article 2 of the Bulgarian Criminal Code, Article 12 of the Chinese Criminal Code, Article 4 of the Danish Criminal Code, Article 2 of the German Criminal Code, Article 2 of the Hungarian Criminal Code, Article 2 of the Icelandic Penal Code, Articles 4 to 6 of the Israeli Penal Code, Article 6 of the Japanese Criminal Code, Article 3 of the Lithuanian Penal Code, Article 2 of the Luxembourg Penal Code, Article 1 § 2 of the Dutch Penal Code, Article 25 (g) of the New Zealand Bill of Rights and Article 2 § 2 of the Swiss Penal Code]. It can be said that the vast majority of the world's population benefits from this principle.
2013	7/18/2013	MAKTOUF AND DAMJANOVIĆ v. BOSNIA AND HERZ	http://hudoc.echr.coe.int/eng/?i=001-122716	2312/08 and 34179/08	GC	PINTO DE ALBUQUERQUE	concurring		O East Timor	R	constitution	Article 123 § 2 of the East Timor Constitution	It was not until 2008 that the authorities developed a written national strategy aimed at developing a more systematic approach to cases and allocating resources in war-crimes cases[69]. In order for cases to be selected and their complexity to be assessed in a uniform and objective manner, thus informing the decision-making process with regard to the takeover or transfer of a case, the State Court and the Prosecutor's Office of BIH, with the participation of other judicial and prosecutorial authorities, drafted the Case Complexity Criteria. Subsequently, Article 449 of the BIH Code of Criminal Procedure – Deciding on Cases Pending before Other Courts and Prosecutor's Offices – was amended by Law no. 93/09, which introduced the following criteria for the transfer and allocation of cases: "The gravity of the criminal offence, the capacity of the perpetrator and other circumstances of importance in assessing the complexity of the case." [70] [i] [70]. As the OSCE concludes, "the case complexity criteria are a laundry list of factors to be taken into consideration in determining if the proceedings will be conducted before the BIH Court". In short, the criteria are extremely broad and do not provide clear guidance as to what thresholds must be met to justify a marking as "most complex" or "less complex" (see OSCE, "Delivering Justice in Bosnia and Herzegovina", cited above). The broad nature of these criteria and especially of the criterion "other circumstances of importance in assessing the complexity of the case" is particularly problematic. One cannot but remember the principle of the natural or lawful judge and the solemn prohibition of extraordinary criminal courts contained in Article 6 of the ACHR and in the constitutional provisions of a considerable number of countries, such as Article 135 § 2 of the Albanian Constitution, Article 85 § 2 of the Andorran Constitution, Article 176 § 5 of the revised Angolan Constitution, Article 18 of the Argentinian Constitution, Article 92 of the Armenian Constitution, Article 125 (VI) of the Azerbaijani Constitution, Articles 14 and 116 (ii) of the Bolivian Constitution, Article 5 (XXXVII) of the Brazilian Constitution, Article 19 § 3 of the Chilean Constitution, Article 61 of the Danish Constitutional Act, Article 123 § 2 of the East Timor Constitution, Article 15 of the El Salvador Constitution, Article 78 § 4 of the Ethiopian Constitution, Article 101 of the German Basic Law (Grundgesetz), Articles 25 and 102 of the Italian Constitution, Article 76 of the Japanese Constitution, Article 33 § 1 of the Liechtenstein Constitution, Article 111 of the Lithuanian Constitution, Article 86 of the Luxembourg Constitution, Article XXX (1) of the Macedonian Constitution, Article 118 of the Montenegrin Constitution, Article 13 of the Mexican Constitution, Article 167 § 2 of the Mozambican Constitution, Article 4 § 8 of the Nigerian Constitution, Article 17 § 3 of the Paraguayan Constitution, Article 139 § 3 of the Peruvian Constitution, Article 172 § 2 of the Polish Constitution, Article 209 § 3 of the Portuguese Constitution, Article 126 § 5 of the Romanian Constitution, Article 118 § 3 of the Russian Constitution, Article 143 of the Rwandan Constitution, Article 39 § 7 of the São Tomé and Príncipe Constitution, Article 48 § 1 of the Slovakian Constitution, Article 117 of the Spanish Constitution, Article 11 of the Swedish Instrument of Government, Article 30 § 1 of the Swiss Constitution, Article 125 of the Ukrainian Constitution and Article 19 of the Uruguayan Constitution. Wide-ranging clauses concerning the transfer and removal of criminal cases have in the past been instrumental to the operation of such courts and are unacceptable under the principle of the natural or lawful judge.
2013	7/18/2013	MAKTOUF AND DAMJANOVIĆ v. BOSNIA AND HERZ	http://hudoc.echr.coe.int/eng/?i=001-122716	2312/08 and 34179/08	GC	PINTO DE ALBUQUERQUE	concurring		O El Salvador	R	constitution	Article 15 of the El Salvador Constitution	It was not until 2008 that the authorities developed a written national strategy aimed at developing a more systematic approach to cases and allocating resources in war-crimes cases[69]. In order for cases to be selected and their complexity to be assessed in a uniform and objective manner, thus informing the decision-making process with regard to the takeover or transfer of a case, the State Court and the Prosecutor's Office of BIH, with the participation of other judicial and prosecutorial authorities, drafted the Case Complexity Criteria. Subsequently, Article 449 of the BIH Code of Criminal Procedure – Deciding on Cases Pending before Other Courts and Prosecutor's Offices – was amended by Law no. 93/09, which introduced the following criteria for the transfer and allocation of cases: "The gravity of the criminal offence, the capacity of the perpetrator and other circumstances of importance in assessing the complexity of the case." [70] [i] [70]. As the OSCE concludes, "the case complexity criteria are a laundry list of factors to be taken into consideration in determining if the proceedings will be conducted before the BIH Court". In short, the criteria are extremely broad and do not provide clear guidance as to what thresholds must be met to justify a marking as "most complex" or "less complex" (see OSCE, "Delivering Justice in Bosnia and Herzegovina", cited above). The broad nature of these criteria and especially of the criterion "other circumstances of importance in assessing the complexity of the case" is particularly problematic. One cannot but remember the principle of the natural or lawful judge and the solemn prohibition of extraordinary criminal courts contained in Article 6 of the ACHR and in the constitutional provisions of a considerable number of countries, such as Article 135 § 2 of the Albanian Constitution, Article 85 § 2 of the Andorran Constitution, Article 176 § 5 of the revised Angolan Constitution, Article 18 of the Argentinian Constitution, Article 92 of the Armenian Constitution, Article 125 (VI) of the Azerbaijani Constitution, Articles 14 and 116 (ii) of the Bolivian Constitution, Article 5 (XXXVII) of the Brazilian Constitution, Article 19 § 3 of the Chilean Constitution, Article 61 of the Danish Constitutional Act, Article 123 § 2 of the East Timor Constitution, Article 15 of the El Salvador Constitution, Article 78 § 4 of the Ethiopian Constitution, Article 101 of the German Basic Law (Grundgesetz), Articles 25 and 102 of the Italian Constitution, Article 76 of the Japanese Constitution, Article 33 § 1 of the Liechtenstein Constitution, Article 111 of the Lithuanian Constitution, Article 86 of the Luxembourg Constitution, Article XXX (1) of the Macedonian Constitution, Article 118 of the Montenegrin Constitution, Article 13 of the Mexican Constitution, Article 167 § 2 of the Mozambican Constitution, Article 4 § 8 of the Nigerian Constitution, Article 17 § 3 of the Paraguayan Constitution, Article 139 § 3 of the Peruvian Constitution, Article 172 § 2 of the Polish Constitution, Article 209 § 3 of the Portuguese Constitution, Article 126 § 5 of the Romanian Constitution, Article 118 § 3 of the Russian Constitution, Article 143 of the Rwandan Constitution, Article 39 § 7 of the São Tomé and Príncipe Constitution, Article 48 § 1 of the Slovakian Constitution, Article 117 of the Spanish Constitution, Article 11 of the Swedish Instrument of Government, Article 30 § 1 of the Swiss Constitution, Article 125 of the Ukrainian Constitution and Article 19 of the Uruguayan Constitution. Wide-ranging clauses concerning the transfer and removal of criminal cases have in the past been instrumental to the operation of such courts and are unacceptable under the principle of the natural or lawful judge.
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It can be said that the vast majority of the world's population benefits from this principle. [70]. As the OSCE concludes, "the case complexity criteria are a laundry list of factors to be taken into consideration in determining if the proceedings will be conducted before the BiH Court". In short, the criteria are extremely broad and do not provide clear guidance as to what thresholds must be met to justify a marking as "most complex" or "less complex" (see OSCE, "Delivering Justice in Bosnia and Herzegovina", cited above). The broad nature of these criteria and especially of the criterion "other circumstances of importance in assessing the complexity of the case" is particularly problematic. 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In fact, after the adoption of the Orientation Criteria of the Prosecutor's Office in 2004, so-called "very sensitive" crimes were to be kept by the Special Department for War Crimes of the Prosecutor's Office of BiH, and "sensitive" crimes were to be sent to the cantonal and district prosecutor's offices in the locations in which the events occurred as stated in the case files. These guidelines were very unclear and, worse still, were not applied consistently. In simple terms, this "case-by-case prosecution" method did not work well, since it "only deepened the ongoing mess about what, who and how things should be done"[67]. The lack of a prosecutorial strategy for the prioritisation and selection of cases, and the absence of substantive reasoning for the prosecutor's choice of the trial court and of effective judicial review of that choice, led to significant uncertainty regarding the prosecutor's priorities and choices; some politicians even questioning the department's objectivity in its case-selection process, in view of the fact that 90% of cases before the war-crimes chamber involved Serb defendants[68]. It was not until 2008 that the authorities developed a written national strategy aimed at developing a more systematic approach to cases and allocating resources in war-crimes cases[69]. In order for cases to be selected and their complexity to be assessed in a uniform and objective manner, thus informing the decision-making process with regard to the takeover or transfer of a case, the State Court and the Prosecutor's Office of BiH, with the participation of other judicial and prosecutorial authorities, drafted the Case Complexity Criteria. Subsequently, Article 449 of the BiH Code of Criminal Procedure – Deciding on Cases Pending before Other Courts and Prosecutor's Office – was amended by Law no. 93/09, which introduced the following criteria for the transfer and allocation of cases: "the gravity of the criminal offence, the capacity of the perpetrator and other circumstances of importance in assessing the complexity of the case."[70] [70]. As the OSCE concludes, "the case complexity criteria are a laundry list of factors to be taken into consideration in determining if the proceedings will be conducted before the BiH Court". In short, the criteria are extremely broad and do not provide clear guidance as to what thresholds must be met to justify a marking as "most complex" or "less complex" (see OSCE, "Delivering Justice in Bosnia and Herzegovina", cited above). The broad nature of these criteria and especially the criterion "other circumstances of importance in assessing the complexity of the case" is particularly problematic. 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2013	7/18/2013	MAKTOUF AND DAMJANOVIĆ v. BOSNIA AND HERZ	http://hudoc.echr.coe.int/eng?i=001-122716	2312/08 and 34179/08	GC	PINTO DE ALBUQUERQUE	concurring		0 Rwanda	R	constitution	Article 143 of the Rwandan Constitution	5. The emergence of international criminal law does not change the essence of the above-mentioned principles. While, on the one hand, the possible entry into play of international law in criminal adjudication represents a complex challenge in a realm that is traditionally reserved for the sovereign power of the national legislature and the domestic courts, international law, on the other hand, is a crucial instrument in filling the lacunae of national law and remedying the most serious shortcomings of domestic prosecutorial and judicial systems. This has been acknowledged in the provision of criminalisation based on "international law" in Article 11 § 2 of the UDHR, which has also been inserted in Article 7 § 1 of the ECHR, Article 15 § 1 of the ICCPR and Article 40 § 2 (a) of the CRC, and in some national constitutions[42]. In accordance with those provisions, international criminal law may supplement national law in the following three scenarios: (1) the conduct was criminal under international customary law at the time of its commission[43], but national law did not provide for such a crime at that time; (2) the conduct was criminal under treaty law applicable to the facts, but national law did not provide for such a crime; or (3) both international and national law did indeed provide for such a crime at the material time, but the national law was systematically not applied, for political or other similar reasons[44]. In such cases, the adjudicatory body does not exceed its subject-matter jurisdiction when it applies international criminal law to past conduct and the principle of nullum crimen, nulla poena sine lege praevia is not breached. On the contrary, impunity would amount to moral endorsement of the offences committed. [42]. See, for instance, Article 29 § 1 of the Albanian Constitution, Article 31 of the Croatian Constitution, Article 42 § 1 of the Polish Constitution, Article 20 of the Rwandan Constitution and Article 35 § 3 (1) of the South African Constitution. The principle of criminalisation based on international law was also set out in the first and the second Nuremberg Principles. Principle 1 states: "Any person who commits an act which constitutes a crime under international law is responsible therefore and liable to punishment"; Principle II states: "The fact that internal law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law" (Principles of International Law recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal, with commentaries, 1950).
2013	7/18/2013	MAKTOUF AND DAMJANOVIĆ v. BOSNIA AND HERZ	http://hudoc.echr.coe.int/eng?i=001-122716	2312/08 and 34179/08	GC	PINTO DE ALBUQUERQUE	concurring		0 São Tomé and Príncipe	R	constitution	Article 36 § 2 of the São Tomé and Príncipe Constitution	7. The principle of retroactive application of lex mitior in criminal law is enshrined in Article 15 § 1 of the ICCPR[46], Article 9 of the ACHR, Article 24 § 2 of the Rome Statute[47], Article 49 of the CFREU[48] and Article 15 of the ACHR[49] and, in international humanitarian law, in Article 75 § 4 (c) of Protocol I to the Geneva Conventions and Article 6 § 2 (c) of Protocol II to the Geneva Conventions. State practice has endorsed the principle, both at constitutional and statutory level[50]. [50]. State practice confirms this principle, both at the constitutional level (for example, Article 29 § 3 of the Albanian Constitution, Article 65 § 4 of the revised Angolan Constitution, Article 22 of the Armenian Constitution, Article 71 (VIII) of the Azerbaijani Constitution, Article 5 § 4 of the Brazilian Constitution, Article 11 (I) of the Canadian Constitution, Article 30 § 2 of the Cape Verde Constitution, Article 19 § 3 of the Chilean Constitution, Article 29 of the Colombian Constitution, Article 31 of the Croatian Constitution, Article 31 § 5 of the East Timor Constitution, Article 42 § 5 of the Georgian Constitution, Article 33 § 2 of the Guinea Bissau Constitution, Article 89 of the Latvian Constitution, Article 52 of the Macedonian Constitution, Article 34 of the Montenegrin Constitution, Article 99 § 2 of the Mozambique Constitution, Article 29 § 4 of the Portuguese Constitution, Article 15 § 2 of the Romanian Constitution, Article 54 of the Russian Constitution, Article 36 § 2 of the São Tomé and Príncipe Constitution, Article 137 of the Serbian Constitution, Article 50 § 6 of the Slovakian Constitution, Article 28 of the Slovenian Constitution, Article 35 § 3 of the South African Constitution, and Article 9 § 3 of the Spanish Constitution) and at the statutory level (Article 1 of the Austrian Penal Code, Article 2 of the Belgian Criminal Code, Article 4 of the Bosnian Criminal Code, Article 2 of the Bulgarian Criminal Code, Article 12 of the Chinese Criminal Code, Article 4 of the Danish Criminal Code, Article 2 of the German Criminal Code, Article 2 of the Hungarian Criminal Code, Article 2 of the Icelandic Penal Code, Articles 4 to 6 of the Israeli Penal Code, Article 6 of the Japanese Criminal Code, Article 3 of the Lithuanian Penal Code, Article 2 of the Luxembourg Penal Code, Article 1 § 2 of the Dutch Penal Code, Article 25 (g) of the New Zealand Bill of Rights and Article 5 § 2 of the Swiss Penal Code). It can be said that the vast majority of the world's population benefits from this principle.
2013	7/18/2013	MAKTOUF AND DAMJANOVIĆ v. BOSNIA AND HERZ	http://hudoc.echr.coe.int/eng?i=001-122716	2312/08 and 34179/08	GC	PINTO DE ALBUQUERQUE	concurring		0 South Africa	R	constitution	Article 35 § 3 (1) of the South African Constitution	5. The emergence of international criminal law does not change the essence of the above-mentioned principles. While, on the one hand, the possible entry into play of international law in criminal adjudication represents a complex challenge in a realm that is traditionally reserved for the sovereign power of the national legislature and the domestic courts, international law, on the other hand, is a crucial instrument in filling the lacunae of national law and remedying the most serious shortcomings of domestic prosecutorial and judicial systems. This has been acknowledged in the provision of criminalisation based on "international law" in Article 11 § 2 of the UDHR, which has also been inserted in Article 7 § 1 of the ECHR, Article 15 § 1 of the ICCPR and Article 40 § 2 (a) of the CRC, and in some national constitutions[42]. In accordance with those provisions, international criminal law may supplement national law in the following three scenarios: (1) the conduct was criminal under international customary law at the time of its commission[43], but national law did not provide for such a crime at that time; (2) the conduct was criminal under treaty law applicable to the facts, but national law did not provide for such a crime; or (3) both international and national law did indeed provide for such a crime at the material time, but the national law was systematically not applied, for political or other similar reasons[44]. In such cases, the adjudicatory body does not exceed its subject-matter jurisdiction when it applies international criminal law to past conduct and the principle of nullum crimen, nulla poena sine lege praevia is not breached. On the contrary, impunity would amount to moral endorsement of the offences committed. [42]. See, for instance, Article 29 § 1 of the Albanian Constitution, Article 31 of the Croatian Constitution, Article 42 § 1 of the Polish Constitution, Article 20 of the Rwandan Constitution and Article 35 § 3 (1) of the South African Constitution. The principle of criminalisation based on international law was also set out in the first and the second Nuremberg Principles. Principle 1 states: "Any person who commits an act which constitutes a crime under international law is responsible therefore and liable to punishment"; Principle II states: "The fact that internal law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law" (Principles of International Law recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal, with commentaries, 1950).
2013	7/18/2013	MAKTOUF AND DAMJANOVIĆ v. BOSNIA AND HERZ	http://hudoc.echr.coe.int/eng?i=001-122716	2312/08 and 34179/08	GC	PINTO DE ALBUQUERQUE	concurring		0 Sri Lanka	R	constitution	Article 13 § 6 constitution	10. General principles of law can be a source of international criminal law and when they are sufficiently accessible and foreseeable at the material time. The principle of non-retroactivity does not prejudice the punishment of a person for an act or omission that, at the time when it was committed, was criminal according to the general principles of law as recognised by the community of civilised nations. Article 7 § 2 of the ECHR and Article 15 § 2 of the ICCPR provide for such a case[58]. Although historically created to justify the Nuremberg and Tokyo judgments, this protective provision also applies to other adjudication proceedings[59]. It has its own field of application, since it refers to crimes which have not yet been crystallised into customary international law at the material time, nor been enshrined into treaty law applicable to the facts, but already represent an intolerable affront to the principles of justice, as reflected in the practice of a relevant number of nations[60]. In order to avoid legal uncertainty and comply with the other face of the principle of legality, that is to say the principle of specificity (nullum crimen sine lege certa et stricta), close scrutiny of the relevant State practice is required: only when the general principles of law reflect the treaty and domestic practices of a relevant number of States can they be recognised as expressing the will of the community of civilised nations to criminalise a particular form of conduct[61]. It follows that the criminalisation of conduct based on the general principles of law is not an exception to the principle of the prohibition on retroactive penal law, in so far as the conduct already corresponded, from a substantive perspective, to criminal conduct when it occurred. Thus, the "Nuremberg/Tokyo clause" does not apply when at the material time the conduct was punishable as a crime by national law, but with a lesser penalty than that enshrined in a subsequent law or treaty[62]. [59]. In fact, there are four countries which have included the "Nuremberg/Tokyo clause" in their Constitutions: Canada (Article 11 (g)), Cape Verde (Article 30), Poland (Article 42 § 1) and Sri Lanka (Article 13 § 6).

Year	Date	Name	Link	App.no.	Body	Judge citing	Opinion	who submitted	Countries	C/R/F	type	Document	Quotes
2013	7/18/2013	MAKTOUF AND DAMJANOVIĆ v. BOSNIA AND HERZEGOVINA	http://hudoc.echr.coe.int/eng/?i=001-122716	2312/08 and 34179/08	GC	PINTO DE ALBUQUERQUE	concurring		Uruguay	R	constitution	Article 19 of the Uruguayan Constitution	It was not until 2008 that the authorities developed a written national strategy aimed at developing a more systematic approach to cases and allocating resources in war-crimes cases[69]. In order for cases to be selected and their complexity to be assessed in a uniform and objective manner, thus informing the decision-making process with regard to the takeover or transfer of a case, the State Court and the Prosecutor's Office of BiH, with the participation of other judicial and prosecutorial authorities, drafted the Case Complexity Criteria. Subsequently, Article 449 of the BiH Code of Criminal Procedure – Deciding on Cases Pending before Other Courts and Prosecutor's Offices – was amended by Law no. 93/09, which introduced the following criteria for the transfer and allocation of cases: "the gravity of the criminal offence, the capacity of the perpetrator and other circumstances of importance in assessing the complexity of the case." [70][70]. As the OSCE concludes, "the case complexity criteria are a laundry list of factors to be taken into consideration in determining if the proceedings will be conducted before the BiH Court". In short, the criteria are extremely broad and do not provide clear guidance as to what thresholds must be met to justify a marking as "most complex" or "less complex" (see OSCE, "Delivering Justice in Bosnia and Herzegovina", cited above). The broad nature of these criteria and especially of the criterion "other circumstances of importance in assessing the complexity of the case" is particularly problematic. One cannot but remember the principle of the natural or lawful judge and the solemn prohibition of extraordinary criminal courts contained in Article 8 of the ACHR and in the constitutional provisions of a considerable number of countries, such as Article 135 § 2 of the Albanian Constitution, Article 85 § 5 of the Andorran Constitution, Article 176 § 5 of the revised Angolan Constitution, Article 18 of the Argentinian Constitution, Article 92 of the Armenian Constitution, Article 125 (VI) of the Azerbaijani Constitution, Articles 14 and 116 (II) of the Bolivian Constitution, Article 5 (XXXVII) of the Brazilian Constitution, Article 19 § 3 of the Chilean Constitution, Article 61 of the Danish Constitutional Act, Article 123 § 2 of the East Timor Constitution, Article 15 of the El Salvador Constitution, Article 78 § 4 of the Ethiopian Constitution, Article 101 of the German Basic Law (Grundgesetz), Articles 25 and 102 of the Italian Constitution, Article 76 of the Japanese Constitution, Article 33 § 1 of the Liechtenstein Constitution, Article 111 of the Lithuanian Constitution, Article 86 of the Luxembourg Constitution, Article XXV (1) of the Macedonian Constitution, Article 118 of the Montenegrin Constitution, Article 13 of the Mexican Constitution, Article 167 § 2 of the Mozambican Constitution, Article 4 § 8 of the Nigerian Constitution, Article 17 § 3 of the Paraguayan Constitution, Article 139 § 3 of the Peruvian Constitution, Article 172 § 2 of the Polish Constitution, Article 209 § 3 of the Portuguese Constitution, Article 126 § 5 of the Romanian Constitution, Article 118 § 3 of the Russian Constitution, Article 143 of the Rwandan Constitution, Article 39 § 7 of the São Tomé and Príncipe Constitution, Article 48 § 1 of the Slovakian Constitution, Article 117 of the Spanish Constitution, Article 11 of the Swedish Instrument of Government, Article 30 § 1 of the Swiss Constitution, Article 125 of the Ukrainian Constitution and Article 19 of the Uruguayan Constitution. Wide-ranging clauses concerning the transfer and removal of criminal cases have in the past been instrumental to the operation of such courts and are unacceptable under the principle of the natural or lawful judge.
2013	7/9/2013	SINDICATUL "PĂSTORUL CEL BUN" v. ROMANIA	http://hudoc.echr.coe.int/eng/?i=001-122716	no. 2330/09	GC		0 majority	intervener	US	C	SC	National Labor Relations Board v. Catholic Bishop of Chicago [440 US 490 (1979)]	8. The NGOs Becket Fund and International Center for Law and Religion Studies 127. These organisations referred to the case-law of the United States Supreme Court concerning the autonomy of religious institutions. In the case of National Labor Relations Board v. Catholic Bishop of Chicago (440 US 490 (1979)) the Supreme Court had held that the domestic authorities could not disregard the bishop's will by recognising a trade union for teachers from Catholic schools, observing that such recognition would interfere with the autonomous operation of religious institutions. In Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission et al. (no. 10-553 (2012)), the Supreme Court had applied the "ministerial exception" doctrine, holding that the provisions of labour law were not applicable to employees of religious institutions, whether members of the clergy or the laity. 128. The two organisations contended that the position of the United States Supreme Court was consistent with that of the European Court as regards protection of the autonomy of religious communities in their relations with the clergy. The Chamber had thus erred in departing from that position, and this error would have a negative impact on religious autonomy in that the State might be required, should the Chamber judgment be upheld, to adjudicate in disputes between religious communities and their members.
2013	7/9/2013	VINTER AND OTHERS v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-109810	66069/09, 130/10 and 3	GC		0 majority	ECtHR	Belize	C	SC	Reyes v. the Queen [2002] UKPC 11	68. In <i>Reyes v. the Queen</i> [2002] UKPC 11 the Judicial Committee of the Privy Council considered that a mandatory death penalty for murder by shooting was incompatible with section 7 of the Constitution of Belize, which prohibits torture and ill-treatment in identical terms to Article 3 of the Convention. Lord Bingham observed that to deny the offender the opportunity, before sentence is passed, to seek to persuade the court that in all the circumstances to condemn him to death would be disproportionate and inappropriate was to treat him as no human being should be treated. The relevant law was not saved by the powers of pardon and commutation vested by the Constitution in the Governor-General, assisted by an Advisory Council, in <i>Lord Bingham would not have decided what the appropriate measures of punishment to be applied to the offender should be</i> .
2013	7/9/2013	VINTER AND OTHERS v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-122864	66069/09, 130/10 and 3	GC		0 majority	ECtHR	Canada	R	constitution	section 12 of Charter of Rights	G. Case-law of other jurisdictions on grossly disproportionate sentences and on life sentences 1. "Gross disproportionality" 73. Prohibitions on grossly disproportionate sentences can be found in the laws or case-law of the following countries: - Canada (section 12 of Charter of Rights as interpreted in <i>R v. Smith</i> (Edward Dewey) [1987] 1 SCR 1045; <i>R v. Luxton</i> [1990] 2 SCR 711; and <i>R v. Latimer</i> [2001] 1 SCR 3); - Hong Kong (<i>Lau Cheong v. Hong Kong Special Administrative Region</i> [2002] HKCFA 18); - Mauritius (section 7 of the Constitution; <i>State v. Philibert</i> [2007] SCJ 274); - Namibia (<i>State v. Tcoelb</i> [1997] 1 LRC 90 (see paragraph 74 below); <i>State v. Vries</i> 1997 4 LRC 1; and <i>State v. Likuwa</i> [2000] 1 LRC 600) - New Zealand (section 9 of the New Zealand Bill of Rights Act 1990); - South Africa (<i>Dodo v. the State</i> (CCT 1/01) [2001] ZACC 16; <i>Niemand v. the State</i> (CCT 28/00) [2001] ZACC 11; and - the United States of America (the Eighth Amendment to the Constitution, as interpreted in, <i>inter alia</i> , <i>Graham v. Florida</i> 130 S. Ct. 2011, 2021 (2010)).
2013	7/9/2013	VINTER AND OTHERS v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-122864	66069/09, 130/10 and 3	GC		0 majority	ECtHR	Canada	C	SC	<i>R v. Smith</i> (Edward Dewey) [1987] 1 SCR 1045	73. Prohibitions on grossly disproportionate sentences can be found in the laws or case-law of the following countries: - Canada (section 12 of Charter of Rights as interpreted in <i>R v. Smith</i> (Edward Dewey) [1987] 1 SCR 1045; <i>R v. Luxton</i> [1990] 2 SCR 711; and <i>R v. Latimer</i> [2001] 1 SCR 3);
2013	7/9/2013	VINTER AND OTHERS v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-122864	66069/09, 130/10 and 3	GC		0 majority	ECtHR	Canada	C	SC	<i>R v. Luxton</i> [1990] 2 SCR 711	73. Prohibitions on grossly disproportionate sentences can be found in the laws or case-law of the following countries: - Canada (section 12 of Charter of Rights as interpreted in <i>R v. Smith</i> (Edward Dewey) [1987] 1 SCR 1045; <i>R v. Luxton</i> [1990] 2 SCR 711; and <i>R v. Latimer</i> [2001] 1 SCR 3);
2013	7/9/2013	VINTER AND OTHERS v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-122864	66069/09, 130/10 and 3	GC		0 majority	ECtHR	Canada	C	SC	<i>R v. Latimer</i> [2001] 1 SCR 3	73. Prohibitions on grossly disproportionate sentences can be found in the laws or case-law of the following countries: - Canada (section 12 of Charter of Rights as interpreted in <i>R v. Smith</i> (Edward Dewey) [1987] 1 SCR 1045; <i>R v. Luxton</i> [1990] 2 SCR 711; and <i>R v. Latimer</i> [2001] 1 SCR 3);
2013	7/9/2013	VINTER AND OTHERS v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-122864	66069/09, 130/10 and 3	GC		0 majority	ECtHR	Hong Kong	C	SC	<i>Lau Cheong v. Hong Kong Special Administrative Region</i> [2002] HKCFA 18	G. Case-law of other jurisdictions on grossly disproportionate sentences and on life sentences 1. "Gross disproportionality" 73. Prohibitions on grossly disproportionate sentences can be found in the laws or case-law of the following countries: - Canada (section 12 of Charter of Rights as interpreted in <i>R v. Smith</i> (Edward Dewey) [1987] 1 SCR 1045; <i>R v. Luxton</i> [1990] 2 SCR 711; and <i>R v. Latimer</i> [2001] 1 SCR 3); - Hong Kong (<i>Lau Cheong v. Hong Kong Special Administrative Region</i> [2002] HKCFA 18); - Mauritius (section 7 of the Constitution; <i>State v. Philibert</i> [2007] SCJ 274); - Namibia (<i>State v. Tcoelb</i> [1997] 1 LRC 90 (see paragraph 74 below); <i>State v. Vries</i> 1997 4 LRC 1; and <i>State v. Likuwa</i> [2000] 1 LRC 600) - New Zealand (section 9 of the New Zealand Bill of Rights Act 1990); - South Africa (<i>Dodo v. the State</i> (CCT 1/01) [2001] ZACC 16; <i>Niemand v. the State</i> (CCT 28/00) [2001] ZACC 11; and - the United States of America (the Eighth Amendment to the Constitution, as interpreted in, <i>inter alia</i> , <i>Graham v. Florida</i> 130 S. Ct. 2011, 2021 (2010)).
2013	7/9/2013	VINTER AND OTHERS v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-122864	66069/09, 130/10 and 3	GC		0 majority	ECtHR	Mauritius	R	constitution	section 7 of the Constitution	G. Case-law of other jurisdictions on grossly disproportionate sentences and on life sentences 1. "Gross disproportionality" 73. Prohibitions on grossly disproportionate sentences can be found in the laws or case-law of the following countries: - Canada (section 12 of Charter of Rights as interpreted in <i>R v. Smith</i> (Edward Dewey) [1987] 1 SCR 1045; <i>R v. Luxton</i> [1990] 2 SCR 711; and <i>R v. Latimer</i> [2001] 1 SCR 3); - Hong Kong (<i>Lau Cheong v. Hong Kong Special Administrative Region</i> [2002] HKCFA 18); - Mauritius (section 7 of the Constitution; <i>State v. Philibert</i> [2007] SCJ 274); - Namibia (<i>State v. Tcoelb</i> [1997] 1 LRC 90 (see paragraph 74 below); <i>State v. Vries</i> 1997 4 LRC 1; and <i>State v. Likuwa</i> [2000] 1 LRC 600) - New Zealand (section 9 of the New Zealand Bill of Rights Act 1990); - South Africa (<i>Dodo v. the State</i> (CCT 1/01) [2001] ZACC 16; <i>Niemand v. the State</i> (CCT 28/00) [2001] ZACC 11; and - the United States of America (the Eighth Amendment to the Constitution, as interpreted in, <i>inter alia</i> , <i>Graham v. Florida</i> 130 S. Ct. 2011, 2021 (2010)).

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2013	7/9/2013	VINTER AND OTHERS v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-122664	66069/09, 130/10 and 3	GC		0 majority	ECtHR	Namibia	C	SC	State v. Vries 1997 4 LRC 1	1. "Gross disproportionality" 73. Prohibitions on grossly disproportionate sentences can be found in the laws or case-law of the following countries: -Canada (section 12 of Charter of Rights as interpreted in R v. Smith (Edward Dewey) [1987] 1 SCR 1045; R v. Luxton [1990] 2 SCR 711; and R v. Latimer [2001] 1 SCR 3); -Hong Kong (Lau Cheong v. Hong Kong Special Administrative Region [2002] HKCFA 18); -Mauritius (section 7 of the Constitution; State v. Philibert [2007] SCJ 274); -Namibia (State v. Tcoelb [1997] 1 LRC 90 (see paragraph 74 below); State v. Vries 1997 4 LRC 1; and State v Likuwa [2000] 1 LRC 600) -New Zealand (section 9 of the New Zealand Bill of Rights Act 1990);
2013	7/9/2013	VINTER AND OTHERS v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-122664	66069/09, 130/10 and 3	GC		0 majority	ECtHR	Namibia	C	SC	State v Likuwa [2000] 1 LRC 600	1. "Gross disproportionality" 73. Prohibitions on grossly disproportionate sentences can be found in the laws or case-law of the following countries: -Canada (section 12 of Charter of Rights as interpreted in R v. Smith (Edward Dewey) [1987] 1 SCR 1045; R v. Luxton [1990] 2 SCR 711; and R v. Latimer [2001] 1 SCR 3); -Hong Kong (Lau Cheong v. Hong Kong Special Administrative Region [2002] HKCFA 18); -Mauritius (section 7 of the Constitution; State v. Philibert [2007] SCJ 274); -Namibia (State v. Tcoelb [1997] 1 LRC 90 (see paragraph 74 below); State v. Vries 1997 4 LRC 1; and State v Likuwa [2000] 1 LRC 600) -New Zealand (section 9 of the New Zealand Bill of Rights Act 1990);
2013	7/9/2013	VINTER AND OTHERS v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-122664	66069/09, 130/10 and 3	GC		0 majority	ECtHR	New Zealand	R	constitution	section 9 of the New Zealand Bill of Rights Act 1990	1. "Gross disproportionality" 73. Prohibitions on grossly disproportionate sentences can be found in the laws or case-law of the following countries: -Canada (section 12 of Charter of Rights as interpreted in R v. Smith (Edward Dewey) [1987] 1 SCR 1045; R v. Luxton [1990] 2 SCR 711; and R v. Latimer [2001] 1 SCR 3); -Hong Kong (Lau Cheong v. Hong Kong Special Administrative Region [2002] HKCFA 18); -Mauritius (section 7 of the Constitution; State v. Philibert [2007] SCJ 274); -Namibia (State v. Tcoelb [1997] 1 LRC 90 (see paragraph 74 below); State v. Vries 1997 4 LRC 1; and State v Likuwa [2000] 1 LRC 600) -New Zealand (section 9 of the New Zealand Bill of Rights Act 1990);
2013	7/9/2013	VINTER AND OTHERS v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-122664	66069/09, 130/10 and 3	GC		0 majority	ECtHR	South Africa	C	CC	Dodo v. the State [CCT 1/01] [2001] ZACC 16	1. "Gross disproportionality" 73. Prohibitions on grossly disproportionate sentences can be found in the laws or case-law of the following countries: -Canada (section 12 of Charter of Rights as interpreted in R v. Smith (Edward Dewey) [1987] 1 SCR 1045; R v. Luxton [1990] 2 SCR 711; and R v. Latimer [2001] 1 SCR 3); -Hong Kong (Lau Cheong v. Hong Kong Special Administrative Region [2002] HKCFA 18); -Mauritius (section 7 of the Constitution; State v. Philibert [2007] SCJ 274); -Namibia (State v. Tcoelb [1997] 1 LRC 90 (see paragraph 74 below); State v. Vries 1997 4 LRC 1; and State v Likuwa [2000] 1 LRC 600) -New Zealand (section 9 of the New Zealand Bill of Rights Act 1990); -South Africa (Dodo v. the State [CCT 1/01] [2001] ZACC 16; Niemand v. the State [CCT 28/00] [2001] ZACC 11); and -the United States of America (the Eighth Amendment to the Constitution, as interpreted in, inter alia, Graham v. Florida 130 S. Ct. 2011, 2021 (2010)).
2013	7/9/2013	VINTER AND OTHERS v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-122664	66069/09, 130/10 and 3	GC		0 majority	ECtHR	South Africa	C	CC	Niemand v. the State [CCT 28/00] [2001] ZACC 11	1. "Gross disproportionality" 73. Prohibitions on grossly disproportionate sentences can be found in the laws or case-law of the following countries: -Canada (section 12 of Charter of Rights as interpreted in R v. Smith (Edward Dewey) [1987] 1 SCR 1045; R v. Luxton [1990] 2 SCR 711; and R v. Latimer [2001] 1 SCR 3); -Hong Kong (Lau Cheong v. Hong Kong Special Administrative Region [2002] HKCFA 18); -Mauritius (section 7 of the Constitution; State v. Philibert [2007] SCJ 274); -Namibia (State v. Tcoelb [1997] 1 LRC 90 (see paragraph 74 below); State v. Vries 1997 4 LRC 1; and State v Likuwa [2000] 1 LRC 600) -New Zealand (section 9 of the New Zealand Bill of Rights Act 1990); -South Africa (Dodo v. the State [CCT 1/01] [2001] ZACC 16; Niemand v. the State [CCT 28/00] [2001] ZACC 11); and -the United States of America (the Eighth Amendment to the Constitution, as interpreted in, inter alia, Graham v. Florida 130 S. Ct. 2011, 2021 (2010)).

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2013	7/9/2013	VINTER AND OTHERS v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-122664	66069/09, 130/10 and 8 GC			0 majority	ECtHR	US	C	SC	Graham v. Florida 130 S. Ct. 2011, 2021 (2010)	G. Case-law of other jurisdictions on grossly disproportionate sentences and on life sentences 1. "Gross disproportionality" 73. Prohibitions on grossly disproportionate sentences can be found in the laws or case-law of the following countries: - Canada (section 12 of Charter of Rights as interpreted in R v. Smith (Edward Dewey)) [1987] 1 SCR 1045; R v. Luxton [1990] 2 SCR 711; and R v. Latimer [2001] 1 SCR 3); - Hong Kong (Lau Cheong v. Hong Kong Special Administrative Region [2002] HKCFA 18); - Mauritius (section 7 of the Constitution; State v. Philibert [2007] SCJ 274); - Namibia (State v. Tcoelb [1997] 1 LRC 90 (see paragraph 74 below); State v. Vries 1997 4 LRC 1; and State v Likuwa [2000] 1 LRC 600) - New Zealand (section 9 of the New Zealand Bill of Rights Act 1990); - South Africa (Dodo v. the State (CCT 1/01) [2001] ZACC 16; Niemand v. the State (CCT 28/00) [2001] ZACC 11); and - the United States of America (the Eighth Amendment to the Constitution, as interpreted in, inter alia, Graham v. Florida 130 S. Ct. 2011, 2021 [2010]).
2013	7/9/2013	VONA v. HUNGARY	http://hudoc.echr.coe.int/eng/?i=001-122183	35943/10	S2		0 majority	ECtHR	Canada	R	statute	criminal code (general)	22. Decision no. 30/1992 (V.26) AB of the Constitutional Court contains the following passages: "11. 3. The criminal codes of all democratic European countries with continental legal systems, as well as those of England and Wales, Canada and New Zealand, which have the Anglo-Saxon legal system, prohibit incitement on a 'racial' basis. The demarcation of the boundary between incitement, arousal of hatred and expression of opinion remains hotly contested even internationally. ... IV. 1. The potential harms resulting from incitement to hate, and from humiliating expressions of contempt for certain groups in a population are amply documented in the annals of human experience. ... The tragic historical experiences of our century prove that views preaching racial, ethnic, national or religious inferiority or superiority and the dissemination of ideas of hatred, contempt and exclusion endanger the values of human civilization. It is proved both by history and by the events of our times that any utterance expressing an intention to arouse hatred against a specific group of people can push social tension to extremes, disturb social harmony and peace and in an extreme case can result in violent clashes between certain groups of society. In addition to the historical and contemporary experiences proving the extremely damaging effects of arousing hatred, it is necessary to consider the everyday threats that result from the unlimited expression of ideas and concepts liable to arouse hatred. Such expression prevents human communities from living in harmony with other groups. By intensifying emotional and social tensions within a smaller or bigger community, this can destroy ties within the society, reinforce extreme positions and increase prejudice and intolerance. All this results in a diminution of the chances of creating a tolerant and multicultural society which acknowledges pluralism, the right to be different and the equal dignity of all people, and in which discrimination is not regarded as a value. 2. To afford constitutional protection to the incitement of hatred against certain groups under the guise of freedom of expression and of the press would present an irresolvable contradiction with the value system and political orientation expressed in the Constitution, that is, with the democratic rule of law, the equality of human beings, equal dignity, the prohibition of discrimination, freedom of religion and conscience and the protection of national and ethnic minorities, as recognised by the various Articles of the Constitution. ... Incitement to hatred is a negation of the above-mentioned notions, an emotional preparation for the use of violence. It is an abuse of freedom of expression, being an intolerant classification of a group characteristic of dictatorships rather than democracies. To tolerate the exercise of freedom of expression and of the press in a manner prohibited by Article 269 § 1 of the Criminal Code would contradict the requirements flowing from the democratic rule of law. ... As a summary of its position, the Constitutional Court points out that the restriction of freedom of expression and of the press is necessitated and justified by the negative historical
2013	7/9/2013	VONA v. HUNGARY	http://hudoc.echr.coe.int/eng/?i=001-122183	35943/10	S2		0 majority	ECtHR	New Zealand	R	statute	criminal code (general)	22. Decision no. 30/1992 (V.26) AB of the Constitutional Court contains the following passages: "11. 3. The criminal codes of all democratic European countries with continental legal systems, as well as those of England and Wales, Canada and New Zealand, which have the Anglo-Saxon legal system, prohibit incitement on a 'racial' basis. The demarcation of the boundary between incitement, arousal of hatred and expression of opinion remains hotly contested even internationally. ... IV. 1. The potential harms resulting from incitement to hate, and from humiliating expressions of contempt for certain groups in a population are amply documented in the annals of human experience. ... The tragic historical experiences of our century prove that views preaching racial, ethnic, national or religious inferiority or superiority and the dissemination of ideas of hatred, contempt and exclusion endanger the values of human civilization. It is proved both by history and by the events of our times that any utterance expressing an intention to arouse hatred against a specific group of people can push social tension to extremes, disturb social harmony and peace and in an extreme case can result in violent clashes between certain groups of society. In addition to the historical and contemporary experiences proving the extremely damaging effects of arousing hatred, it is necessary to consider the everyday threats that result from the unlimited expression of ideas and concepts liable to arouse hatred. Such expression prevents human communities from living in harmony with other groups. By intensifying emotional and social tensions within a smaller or bigger community, this can destroy ties within the society, reinforce extreme positions and increase prejudice and intolerance. All this results in a diminution of the chances of creating a tolerant and multicultural society which acknowledges pluralism, the right to be different and the equal dignity of all people, and in which discrimination is not regarded as a value. 2. To afford constitutional protection to the incitement of hatred against certain groups under the guise of freedom of expression and of the press would present an irresolvable contradiction with the value system and political orientation expressed in the Constitution, that is, with the democratic rule of law, the equality of human beings, equal dignity, the prohibition of discrimination, freedom of religion and conscience and the protection of national and ethnic minorities, as recognised by the various Articles of the Constitution. ... Incitement to hatred is a negation of the above-mentioned notions, an emotional preparation for the use of violence. It is an abuse of freedom of expression, being an intolerant classification of a group characteristic of dictatorships rather than democracies. To tolerate the exercise of freedom of expression and of the press in a manner prohibited by Article 269 § 1 of the Criminal Code would contradict the requirements flowing from the democratic rule of law. ... As a summary of its position, the Constitutional Court points out that the restriction of freedom of expression and of the press is necessitated and justified by the negative historical

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2013	7/9/2013	VONA v. HUNGARY	http://hudoc.echr.coe.int/eng/?i=001-122183	no. 35943/10	S2		0 majority	ECtHR	US	C	SC	Virginia v. Black, 538 US 343 (2003)	31. The Supreme Court of the United States considered the problem of intimidation in <i>Virginia v. Black</i>, 538 US 343 (2003). A Virginia statute makes it a felony "for any person ... with the intent of intimidating any person or group ... to burn a cross on the property of another, a highway or other public place," and specifies that "[a]ny such burning ... shall be prima facie evidence of an intent to intimidate a person or group." The Supreme Court held that burning a cross in the United States was inextricably intertwined with the history of the Ku Klux Klan. The Klan had often used cross burnings as a tool of intimidation and a threat of impending violence. To this day, regardless of whether the message was a political one or was also meant to intimidate, the burning of a cross was a "symbol of hate." While cross burning did not inevitably convey a message of intimidation, often the cross burner intended that the recipients of the message should fear for their lives. The First Amendment of the Constitution of the United States permitted a State to ban "true threats", which encompassed those statements where the speaker meant to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals. The speaker need not actually intend to carry out the threat. Rather, a prohibition on true threats protected individuals from the fear of violence and the disruption that fear engendered, as well as from the possibility that the threatened violence would occur. Intimidation in the constitutionally proscribable sense of the word was a type of true threat, where a speaker directed a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death. The First Amendment permitted Virginia to outlaw cross burnings done with the intent to intimidate, because burning a cross was a particularly virulent form of intimidation. 66. The Court considers that the demonstration by political protagonists of their ability and willingness to organise a paramilitary force goes beyond the use of peaceful and lawful means of articulating political views. In the light of historical experience – such as that of Hungary in the wake of the era of Arrow Cross power – the reliance of an association on paramilitary demonstrations which express racial division and implicitly call for race-based action must have an intimidating effect on members of a racial minority, especially when they are in their homes and as such constitute a captive audience. In the Court's view, this exceeds the limits of the scope of protection secured by the Convention in relation to expression (see <i>Vajnai</i>, cited above) or assemblies and amounts to intimidation, which is – in the words of the United States Supreme Court's judgment in <i>Virginia v. Black</i> (see paragraph 31 above) – a "true threat". The State is therefore entitled to protect the right of the members of the target groups to live without intimidation. This is particularly true because they were singled out on a racial basis and were intimidated on account of their belonging to an ethnic group. In the Court's view, a paramilitary march goes beyond the mere expression of a disturbing or offensive idea, since the message is accompanied by the physical presence of a threatening group of organised activists. Where the expression of ideas is accompanied by a form of conduct, the Court considers that the level of protection generally granted to freedom of expression may be reduced in the light of important public-order interests related to that conduct. If the conduct associated with the expression of ideas is intimidating or threatening or interferes with the free exercise or enjoyment by another of any Convention right or privilege on account of that person's race, these considerations cannot be disregarded even in the context of Articles 10 and 11.
2013	7/2/2013	R.Sz. v. HUNGARY	http://hudoc.echr.coe.int/eng/?i=001-121958	no. 41838/11	S2		0 majority	ECtHR	US	C	SC	United States v. Lovett, 328 U.S. 303, 315 (1946)	United States – Supreme Court 22. In <i>United States v. Lovett</i>, 328 U.S. 303, 315 (1946) the Supreme Court dealt with the following problem: According to the provisions of the Urgent Deficiency Appropriation Act, after 15 November 1943 no salary or compensation was to be paid to certain individuals, who were then government employees, out of any money then or thereafter appropriated, except for services as jurors or members of armed forces unless they were prior to that date again appointed to jobs by the President with advice and consent of the Senate. In the background of the statute challenged lay the House of Representatives' feeling that in the late 1930s many 'subversives' were occupying influential positions in the Government and elsewhere and that their influence must not remain unchallenged. In 1943 the respondents, Lovett, Watson and Dodd, were and had been for several years working for the Government. The Government agencies which had lawfully employed them were fully satisfied with the quality of their work and wished to keep them employed in their jobs. The Supreme Court held that the purpose of the provision challenged was not merely to cut off the plaintiffs' compensation through regular disbursing channels, but permanently to bar them from government service and it was designed to force the employing agencies to discharge respondents and to bar their being hired by any other governmental agency. The Supreme Court reiterated that the Constitution barred such legislative acts by providing that "no Bill of Attainder or ex post facto Law shall be passed". It found that the relevant provision was designed to apply to particular individuals and operated as a legislative decree of perpetual exclusion from a chosen vocation. It ruled that this permanent proscription from any opportunity to serve the Government was punishment of those individuals without a judicial trial and thus carried the usual characteristics of bills of attainder. The Supreme Court found that "legislative acts, no matter what their form, that apply either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial, are 'bills of attainder' prohibited by the Constitution". The subject matter of the case <i>Armstrong v. United States</i>, 364 U.S. 40, 49 (1960) was as follows: The plaintiffs (<i>Armstrong and al.</i>) furnished various materials to Rice for use in construction of boats. Upon Rice's default, the Government exercised its option as to ten of the boat hulls still under construction and removed these properties to out-of-state naval shipyards for use in the completion of the boats. When the transfer occurred, the plaintiffs had not been paid for their materials and they were not paid afterwards, either. Petitioners therefore contended that they had liens. The Supreme Court held "that there was a taking of these liens for which just compensation is due under the Fifth Amendment. It is true that not every destruction or injury to property by governmental action has been held to be a 'taking' in the constitutional sense. This case and many others reveal the difficulty of trying to draw the line between what destructions of property by lawful governmental actions are compensable 'takings' and what destructions are 'consequential' and therefore not compensable... The Fifth Amendment's guarantee that private property shall not be taken for a public use without just compensation was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole. A fair interpretation of this constitutional protection entitles these lienholders to just compensation here." In <i>Eastern Enterprises v. Apfel</i>, 524 U.S. 498 (1998) the Supreme Court held that the Coal Industry Retiree Health Benefit Act 1992 amounted to an unconstitutional regulatory taking of property. It held that the economic impact of the Act was substantial as to Petitioner, in that it required Eastern Enterprises to contribute large sums of money to a pension fund for employees employed in the 1950s and 1960s solely because those payments could not be allocated to other coal companies that were currently operating in the coal industry. The retroactive effect of the Act imposed a substantial economic injury on Eastern Enterprises that could not have been anticipated. Moreover, the challenged statute interfered with Eastern Enterprises' expectations in that in 1987 the company sold off its remaining holdings in coal operations and completely quit this industry. The statute's requirement for Eastern Enterprises to undertake the obligation at issue clearly interfered with the expectations of Eastern when it sold off its interest in coal operations. Lastly, the nature of the government action was unusual because it retroactively applied a substantial economic burden on Eastern Enterprises. For the Supreme Court, the character of the government action was substantial and invasive. The balance of the factors resulted in the finding of an unconstitutional taking requiring just compensation.
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It ruled that this permanent proscription from any opportunity to serve the Government was punishment of those individuals without a judicial trial and thus carried the usual characteristics of bills of attainder. The Supreme Court found that "legislative acts, no matter what their form, that apply either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial, are 'bills of attainder' prohibited by the Constitution". The subject matter of the case <i>Armstrong v. United States</i>, 364 U.S. 40, 49 (1960) was as follows: The petitioners (<i>Armstrong and al.</i>) furnished various materials to Rice for use in construction of boats. Upon Rice's default, the Government exercised its option as to ten of the boat hulls still under construction and removed these properties to out-of-state naval shipyards for use in the completion of the boats. When the transfer occurred, the petitioners had not been paid for their materials and they were not paid afterwards, either. The petitioners therefore contended that they had liens. The Supreme Court held "that there was a taking of these liens for which just compensation is due under the Fifth Amendment. It is true that not every destruction or injury to property by governmental action has been held to be a 'taking' in the constitutional sense. This case and many others reveal the difficulty of trying to draw the line between what destructions of property by lawful governmental actions are compensable 'takings' and what destructions are 'consequential' and therefore not compensable... The Fifth Amendment's guarantee that private property shall not be taken for a public use without just compensation was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole. A fair interpretation of this constitutional protection entitles these lienholders to just compensation here." In <i>Eastern Enterprises v. Apfel</i>, 524 U.S. 498 (1998) the Supreme Court held that the Coal Industry Retiree Health Benefit Act 1992 amounted to an unconstitutional regulatory taking of property. It held that the economic impact of the Act was substantial as to the petitioner, in that it required Eastern Enterprises to contribute large sums of money to a pension fund for employees employed in the 1950s and 1960s solely because those payments could not be allocated to other coal companies that were currently operating in the coal industry. The retroactive effect of the Act imposed a substantial economic injury on Eastern Enterprises that could not have been anticipated. Moreover, the challenged statute interfered with Eastern Enterprises' expectations in that in 1987 the company sold off its remaining holdings in coal operations and completely quit this industry. The statute's requirement for Eastern Enterprises to undertake the obligation at issue clearly interfered with the expectations of Eastern when it sold off its interest in coal operations. Lastly, the nature of the government action was unusual because it retroactively applied a substantial economic burden on Eastern Enterprises. For the Supreme Court, the character of the government action was substantial and invasive. The balance of the factors resulted in the finding of an unconstitutional taking requiring just compensation.
2013	6/25/2013	GÁLL v. HUNGARY	http://hudoc.echr.coe.int/eng/?i=001-121177	no. 49570/11	52		0 majority	ECtHR	US	C	SC	<i>Armstrong v. United States</i> , 364 U.S. 40, 49 (1960)	United States – Supreme Court 23. In <i>United States v. Lovett</i>, 328 U.S. 303, 315 (1946) the Supreme Court dealt with the following problem: According to the provisions of the Urgent Deficiency Appropriation Act, after 15 November 1943 no salary or compensation was to be paid to certain individuals, who were then government employees, out of any moneys then or thereafter appropriated, except for services as jurors or members of armed forces unless they were prior to that date again appointed to jobs by the President with advice and consent of the Senate. In the background of the statute challenged lay the House of Representatives' feeling that in the late 1930s many 'subversives' were occupying influential positions in the Government and elsewhere and that their influence must not remain unchallenged. In 1943 the respondents, Lovett, Watson and Dodd, were and had been for several years working for the Government. The Government agencies which had lawfully employed them were fully satisfied with the quality of their work and wished to keep them employed in their jobs. The Supreme Court held that the purpose of the provision challenged was not merely to cut off the petitioners' compensation through regular disbursing channels, but permanently to bar them from government service and it was designed to force the employing agencies to discharge respondents and to bar their being hired by any other governmental agency. The Supreme Court reiterated that the Constitution barred such legislative acts by providing that "no Bill of Attainder or ex post facto Law shall be passed". It found that the relevant provision was designed to apply to particular individuals and operated as a legislative decree of perpetual exclusion from a chosen vocation. It ruled that this permanent proscription from any opportunity to serve the Government was punishment of those individuals without a judicial trial and thus carried the usual characteristics of bills of attainder. The Supreme Court found that "legislative acts, no matter what their form, that apply either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial, are 'bills of attainder' prohibited by the Constitution". The subject matter of the case <i>Armstrong v. United States</i>, 364 U.S. 40, 49 (1960) was as follows: The petitioners (<i>Armstrong and al.</i>) furnished various materials to Rice for use in construction of boats. Upon Rice's default, the Government exercised its option as to ten of the boat hulls still under construction and removed these properties to out-of-state naval shipyards for use in the completion of the boats. 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The statute's requirement for Eastern Enterprises to undertake the obligation at issue clearly interfered with the expectations of Eastern when it sold off its interest in coal operations. Lastly, the nature of the government action was unusual because it retroactively applied a substantial economic burden on Eastern Enterprises. For the Supreme Court, the character of the government action was substantial and invasive. The balance of the factors resulted in the finding of an unconstitutional taking requiring just compensation.

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2013	6/6/2013	SABANCHIYEVA AND OTHERS v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-120070	38450/05	s1		0 majority	applicant	Israel	C	lower-level co	Barake and Others v. Minister of Defence & Others, 14 April 2002, no. HCI 3114/02	91. The applicants submitted that no other European country had a law on its statute book similar to section 14(1) of the Interment and Burial Act. 92. They also submitted that a similar practice had existed de facto in Israel and been used at an administrative level without ever being codified in law. They referred to the judgment in the case of <i>Barake and Others v. Minister of Defence & Others</i>, 14 April 2002, no. HCI 3114/02, in which the Israeli High Court of Justice condemned the practice. According to the applicants, in 2004 the Israeli authorities announced that they were putting an end to the practice of refusing to return the bodies of Palestinians, "except in exceptional circumstances".
2013	5/7/2013	SHINDLER v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-119229	19840/09	S4		0 majority	ECtHR	Canada	R	general		0 67. A report on Electoral Law and Electoral Administration in Europe, adopted by the Venice Commission in June 2006 (CDL-AD (2006) 018), noted, on the question of overseas voters: "57. External voting rights, e.g. granting nationals living abroad the right to vote, are a relatively new phenomenon. Even in long-established democracies, citizens living in foreign countries were not given voting rights until the 1980s (e.g. Federal Republic of Germany, United Kingdom) or the 1990s (e.g., Canada, Japan). In the meantime, however, many emerging or new democracies in Europe have introduced legal provisions for external voting (out-of-country voting, overseas voting). Although it is yet not common in Europe, the introduction of external voting rights might be considered, if not yet present. However, safeguards must be implemented to ensure the integrity of the vote"
2013	5/7/2013	SHINDLER v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-119229	19840/09	S4		0 majority	ECtHR	Japan	R	general		0 67. A report on Electoral Law and Electoral Administration in Europe, adopted by the Venice Commission in June 2006 (CDL-AD (2006) 018), noted, on the question of overseas voters: "57. External voting rights, e.g. granting nationals living abroad the right to vote, are a relatively new phenomenon. Even in long-established democracies, citizens living in foreign countries were not given voting rights until the 1980s (e.g. Federal Republic of Germany, United Kingdom) or the 1990s (e.g., Canada, Japan). In the meantime, however, many emerging or new democracies in Europe have introduced legal provisions for external voting (out-of-country voting, overseas voting). Although it is yet not common in Europe, the introduction of external voting rights might be considered, if not yet present. However, safeguards must be implemented to ensure the integrity of the vote"
2013	4/22/2013	ANIMAL DEFENDERS INTERNATIONAL v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-119244	48876/08	GC		0 majority	ECtHR	Israel	R	general		0 1. EPRA Survey, May 2006 65. This survey was completed by the Secretariat of EPRA on the basis of information received from 31 States/territories: Austria, Belgium (2), Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, the Isle of Man, Israel (2), Italy, Latvia, Lithuania, Luxembourg, the former Yugoslav Republic of Macedonia, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Spain, Sweden and Switzerland (2). It recommended caution in relying on a comparative review in this context. Given the lack of precise definitions in domestic laws and the great diversity of national traditions, there was likely to be confusion as to the meaning to be attributed to "political", a notion that could include matters as diverse as party political broadcasting during electoral periods as well as public interest expression by a non-governmental organisation. 66. In response to the question "Is paid political advertising in broadcasting prohibited in your country?", the Survey noted: "Countries with a ban on paid political advertising Paid political advertising is statutorily forbidden in the vast majority of Western European countries such as Belgium, Denmark, France, Germany, Ireland, Malta, Norway, Portugal, Sweden, Switzerland, and the UK. Several countries from central and Eastern Europe, such as the Czech Republic and Romania, also have a prohibition of paid political advertising. The most traditional justification for this prohibition is that rich or well-established parties would be able to afford significantly more advertising time than new or minority parties – thus amounting to a discriminatory practice. Another rationale invoked for the restriction or the ban is that it may lead to divisiveness in society and give rise to public concern. It has also been suggested, albeit less frequently, that a prohibition would preserve the quality of political debate. Countries allowing paid political advertising Paid political advertising is allowed in many central and Eastern countries such as Bosnia and Herzegovina, Bulgaria, Croatia, Hungary, [the former Yugoslav Republic of Macedonia], Poland, and the Baltic States: Estonia, Latvia and Lithuania. In a few countries such as in Bosnia-Herzegovina (60 days prior to Election Day), and Croatia, political advertising is only permitted during the election period. It is often overlooked that several countries in Western Europe, such as in Austria, Finland, Luxembourg (for the moment, this will change shortly) and the Netherlands also allow paid political advertising. In Italy, until 2003 paid political advertising, i.e. self-managed spaces, was allowed also for national broadcasters, provided that they also transmitted "political communications spaces" ... i.e. discussion programmes with the participation of political representatives; now it is allowed only for local broadcasters and has to cost no more than 70% of the price applied to commercial advertisements, whereas national broadcasters may only broadcast them for free. In Greece, while there is a permanent and wide-ranging ban on the political advertisement of persons, paid political advertising of political parties is not prohibited. In Spain, while the ban of political advertising applies permanently for television broadcasters, the Spanish Electoral Code permits paid electoral advertising on commercial radio stations, only during the election period.
2013	4/22/2013	ANIMAL DEFENDERS INTERNATIONAL v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-119244	48876/08	GC	TULKENS	dissenting	0 USA	R		general		0 17. The references to other systems in the context of that examination were brief and selective. The system most frequently referred to, as an example to be avoided, was that of the United States (paragraphs 37-54 of the judgment), but the latter country's regulatory system is so different to that in issue here that the comparison strikes me as barely relevant. The less restrictive options envisaged were dismissed in general terms on the ground that they would be potentially "difficult" to apply without arbitrariness (paragraphs 43-54 of the judgment). In spite of the adoption in 2001 of the VgT judgment, which the relevant Minister and the majority of the parliamentary bodies recognised as indicating that the prohibition was likely at a subsequent date to be considered incompatible with the Convention, and in spite of the increasing exceptional nature of the contested prohibition in comparison to the rules applied in other Contracting States, the Government were not able to refer to any expert report which examined whether there existed other practical solutions enabling both the scope of the prohibition to be reduced and its objectives to be conserved (see Hutton and Others, cited above, § 128), which consisted, in particular, of guaranteeing genuine pluralism (Centro Europa 7 s.r.l. and Di Stefano v. Italy [GC], no. 38433/09, § 129-134, ECHR 2012).

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2013	4/22/2013	ANIMAL DEFENDERS INTERNATIONAL v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-119244	48876/08	GC		0 majority	domestic court	Canada	C	SC	general	(b) Committee on Standards in Public Life ("the Neill Committee") 37. The Neill Committee was set up by the Government to consider the broader issue of political party funding. Having visited Canada, Germany, Ireland, Sweden and the United States, in October 1998 it presented its Fifth Report to the Government. In Chapter 13 of the Report, the Neill Committee recommended that the prohibition on political advertising on television and radio should be maintained, describing its benefits as follows: "13.7 Preventing the political parties and other politically motivated organisations from buying time on television and radio has the effect of restricting the total amount of money they can spend and also, thereby, of limiting the amounts of money they have to raise. These effects are almost universally agreed to be beneficial. Election campaigns in the United Kingdom are cheaper than in many other countries. During election campaigns, television viewers and radio listeners are not subjected to a continuous barrage of party political propaganda (much of which, if it were permitted here, would undoubtedly be negative). The parties' dependence on wealthy donors is reduced. Political leaders are not forced to spend enormous amounts of time and energy raising money to fund television and radio campaigns. Not least of the benefits is the fact that the broadcasters provide the parties with free air-time. This means that all the major political parties, and not just the richest ones, are given an opportunity to state their views. Almost all those who have observed election campaigns in the United States regard these aspects of the UK system as superior. We believe that the present arrangements have served this country well and should remain in place." 38. The Neill Committee considered that the restriction on freedom of expression resulting from the prohibition was potentially justifiable. It concluded that: "13.11 ... it is perfectly proper for the Government to continue to proceed on the basis that the ban on political advertising on television and radio is legally defensible. We refer in particular to the Ministry's argument [in the X and the Association of Z v. the United Kingdom, no. 4515/70, Commission decision of 12 July 1971, Yearbook 14, p. 538] ... justifying the outright ban on the basis of protecting the democratic right of UK citizens not to be subjected to a barrage of political propaganda at prime advertising time from the party with the richest backers. If a court were in the future to rule to the contrary, this would potentially have a dramatic effect on the funding of the political parties. If free to do so, the parties would almost certainly feel obliged to make use of the opportunity to advertise themselves (or attack their opponents) on television and radio. In the United States a high percentage of the expenditure by the political parties at election times is devoted to television advertising. It is the pressure to advertise, as much as any other factor, which generates the demand for money and hence the arms race between Democrats and Republicans..." 44. On 19 July 2002 the JCHR published a report on the 2002 Bill, including on the prohibition of political advertising. The JCHR acknowledged that the prohibition could well be found incompatible with Article 10 having regard to VgT. However, it urged caution in reversing the prohibition given the important rationale of the prohibition and the difficulty of devising a more circumscribed solution. Having noted the approach of the Canadian Supreme Court and the differing freedom of expression traditions in the United States and Australia, the JCHR preferred the European approach in that it gave "appropriate weight to the legitimate objective of securing equality of opportunity for political expression, at any rate in the broadcast media" which tradition justified the prohibition. The JCHR continued: "63. ... there are wider considerations which we believe urge the utmost caution in moving from the current statutory position in the UK (where television and radio access to those seeking to advance political causes is restricted almost entirely to the highly regulated system of party political broadcasts). These wider considerations include the fear of the annexation of the democratic process by the rich and powerful, to which the Court alluded in its judgment in VgT... The risks of this will be intensified where it proves impossible to prevent concentration of cross-media ownership in one country. We are also conscious that the compromise hinted at by the Court - a more circumscribed ban applied more discriminatingly - presents a formidable challenge to put in statutory form. In particular, it is difficult to conceive of how to devise ways of allocating air time or capping expenditure in relation to a "political viewpoint" (as opposed to a political party, however that might be defined in statute)." 54. On 13 January 2003 the Electoral Commission (an independent body established by Parliament to keep under review a range of electoral and political matters) published a report entitled "Party Political Broadcasting: Report and Recommendations". It considered the case for the prohibition to be persuasive. A principal concern was to avoid those with higher financial resources from hijacking the political process.
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2013	4/22/2013	ANIMAL DEFENDERS INTERNATIONAL v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-119244	48876/08	GC		0 majority	domestic court	US	R		general	28. Baroness Hale began her judgment by pointing out that there had been "an elephant in the room" when the case was heard and it was the dominance of advertising, not only in elections but also in the formation of political opinion, in the United States. She underlined the enormous amounts spent, and which have to be raised, for elections in the United States. There was no limit in the United States to the amount that pressure groups could spend on getting their message across in the most powerful and pervasive media available.

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The Neill Committee considered that the restriction on freedom of expression resulting from the prohibition was potentially justifiable. It concluded that: "13.11 ... it is perfectly proper for the Government to continue to proceed on the basis that the ban on political advertising on television and radio is legally defensible. We refer in particular to the Ministry's argument [in the X and the Association of Z v. the United Kingdom, no. 4515/70, Commission decision of 12 July 1971, Yearbook 14, p. 538] ... justifying the outright ban on the basis of protecting the democratic right of UK citizens not to be subjected to a barrage of political propaganda at prime advertising time from the party with the richest backers. If a court were in the future to rule to the contrary, this would potentially have a dramatic effect on the funding of the political parties. If free to do so, the parties would almost certainly feel obliged to make use of the opportunity to advertise themselves (or attack their opponents) on television and radio. In the United States a high percentage of the expenditure by the political parties at election times is devoted to television advertising. It is the pressure to advertise, as much as any other factor, which generates the demand for money and hence the arms race between Democrats and Republicans..." 44. On 19 July 2002 the JCHR published a report on the 2002 Bill, including on the prohibition of political advertising. The JCHR acknowledged that the prohibition could well be found incompatible with Article 10 having regard to VgT. However, it urged caution in reversing the prohibition given the important rationale of the prohibition and the difficulty of devising a more circumscribed solution. Having noted the approach of the Canadian Supreme Court and the differing freedom of expression traditions in the United States and Australia, the JCHR preferred the European approach in that it gave "appropriate weight to the legitimate objective of securing equality of opportunity for political expression, at any rate in the broadcast media" which tradition justified the prohibition. The JCHR continued: "63. ... there are wider considerations which we believe urge the utmost caution in moving from the current statutory position in the UK (where television and radio access to those seeking to advance political causes is restricted almost entirely to the highly regulated system of party political broadcasts). These wider considerations include the fear of the annexation of the democratic process by the rich and powerful, to which the Court alluded in its judgment in VgT... The risks of this will be intensified where it proves impossible to prevent concentration of cross-media ownership in one country. We are also conscious that the compromise hinted at by the Court - a more circumscribed ban applied more discriminately - presents a formidable challenge to put in statutory form. In particular, it is difficult to conceive of how to devise ways of allocating air time or capping expenditure in relation to a "political viewpoint" (as opposed to a political party, however that might be defined in statute)." 54. On 13 January 2003 the Electoral Commission (an independent body established by Parliament to keep under review a range of electoral and political matters) published a report entitled "Party Political Broadcasting: Report and Recommendations". It considered the case for the prohibition to be persuasive. A principal concern was to avoid those with higher financial resources from hijacking the political
2013	4/9/2013	MEHMET ŞENTÜRK AND BEKİR ŞENTÜRK v. TURKEY	http://hudoc.echr.coe.int/eng/?i=001-118722	no. 13423/09	S2		0 majority	applicant	US	R	general		07. The applicants pointed out that the child carried by the deceased woman died on 11 March 2000. They referred to the statements made by the various doctors and midwives, finding that he or she had died prior to birth as a result of a failure by the health system to identify possible problems. They alleged that the Government were responsible for the death of this child, given that the mother had not been provided, in a timely fashion, with the treatment required by her condition. Although a child who died before birth was not considered a person under the domestic criminal law, other countries, notably the United States of America, considered a child who died before birth as a person under criminal law.
2013	4/2/2013	TARANTINO AND OTHERS v. ITALY	http://hudoc.echr.coe.int/eng/?i=001-118477	nos. 25851/09, 29284/09	S2	PINTO DE ALBUQUERQUE	dissenting par		US	C	SC	Sweezy v. New Hampshire, 354 US 234 (1957)	Quoting from a statement of South African scholars against a governmental restrictive admission policy, Justice Frankfurter stated: "It is the business of a university to provide that atmosphere which is most conducive to speculation, experiment and creation. It is an atmosphere in which there prevail 'the four essential freedoms' of a university – to determine for itself on academic grounds who may teach, how it shall be taught, how it may be admitted to study." [38] In other words, institutional autonomy is a necessary condition for the professional freedom to provide for higher education and the individual right to higher education. [38]. In his famous concurring opinion in Sweezy v. New Hampshire, 354 US 234 (1957).
2013	3/12/2013	ŻARZYCKI v. POLAND	http://hudoc.echr.coe.int/eng/?i=001-117210	no. 15351/03	S4		0 majority	intervener	US	R	general		0 (c) The Helsinki Foundation for Human Rights 98. The written comments submitted on 31 January 2008 by the Helsinki Foundation for Human Rights (Helsinki Foundation) contain an extensive overview of the domestic law and practice concerning the detention of persons with disabilities and a comparative study of relevant regulations and practices in the United Kingdom and the United States.
2013	2/19/2013	X AND OTHERS v. AUSTRIA	http://hudoc.echr.coe.int/eng/?i=001-116735	19010/07	GC		0 majority	intervener	US	F	other	studied	(v) Alliance Defending Freedom 90. Alliance Defending Freedom noted that the Convention did not guarantee a right to adopt nor did the Court's case-law recognise such a right under Article 8. By contrast, the Court had found Article 14 taken in conjunction with Article 8 to be applicable in cases of alleged discrimination in the adoption procedure and had examined a small number of such cases (Fretté v. France, no. 36515/97, ECHR 2002-I; and E.B. v. France and Gas and Dubois, both cited above). It was important to note that in E.B. v. France one of the decisive considerations for the Court was the fact that French law allowed single persons to adopt, thereby opening up the possibility of adoption by a single homosexual. The present case was different as the finding of a violation would amount to reverting domestic law, which allowed second-parent adoption for heterosexual couples only. In that context the third-party intervener noted that there was no European consensus on the issue. 91. As a second line of argument, Alliance Defending Freedom asserted that the widely circulated "no differences" thesis – that is to say, the claim made by various studies that children raised by same-sex couples were not disadvantaged in any significant respect compared with children raised by heterosexual parents – had been called into question by recent social research, in particular by studies carried out in the United States of America. Given the inconclusive findings of the scientific research and the wide margin of appreciation States enjoyed in the area of family law, it was justified in the interests of the child to reserve adoption, including second-parent adoption, to heterosexual couples.
2013	1/15/2013	EWEIDA AND OTHERS v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-115881	48420/10, 59842/10, 5115881	S4		0 majority	ECtHR	Canada	R	constitution	Canadian Charter of Rights and Freedoms 1982	2. Canada 49. Religious freedom is constitutionally protected under the Canadian Charter of Rights and Freedoms 1982 (the Charter). Section 1 of the Charter provides the state with authority to infringe on freedom of religion in the least restrictive way possible for a "compelling government interest" (see B(R) v. Children's Aid Society of Metropolitan Toronto (1995) 1 SCR 315). Canadian employers, in general, are expected to adjust workplace regulations that have a disproportionate impact on certain religious minorities. The standard applied by the courts in this connection is that of "reasonable accommodation" (see R v Big M Drug Mart Limited (1985) 1 SCR 295). Recent litigation on this point has centred on the rights of Sikh persons to wear a turban or kirpan at work. In Bhinder v. Canadian National Railway Co. (1985) 2 SCR 561, the Supreme Court determined that the claimant could not wear a turban at work because it interfered with his capacity to wear a hard helmet. This was found to represent a "bona fide occupational requirement". The Canadian courts, rather than purporting to define a religion or religious practice, are more interested in the sincerity of the belief in a practice that has a nexus with a religion (see Syndicat Northcrest v. Amselem (2004) 2 SCR 551). In Multani v. Commission scolaire Marguerite-Bourgeoys (2006) 1 SCR 256, in which the Supreme Court of Canada upheld a Sikh student's right to wear a kirpan to school, the court did not undertake a theological analysis of the centrality of kirpans to the Sikh faith. Instead, the court considered that the claimant "need[ed] only show that his personal and subjective belief in the religious significance of the kirpan [was] sincere".
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2013	1/15/2013	EWEIDA AND OTHERS v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-115881	48420/10, 59842/10, 5154	54		0 majority	ECtHR	US	C	lower-level co	Tenafly Eruv Association v. Borough of Tenafly, 309 F.3d 144, 157 (3rd Cir. 2002)	8. Third countries 1. The United States of America 48. For civil servants and Government employees, the wearing of religious symbols is protected under both the United States Constitution (the Establishment Clause and the Free Exercise Clause) and the Civil Rights Act 1964. When a constitutional claim is made by a public employee, the courts apply the standard of intermediate scrutiny, under which the Government can impose restrictions on the wearing of religious symbols if the action is "substantially related" to promoting an "important" Government interest (see <i>Tenafly Eruv Association v. Borough of Tenafly</i>, 309 F.3d 144, 157 (3rd Cir. 2002)). When a statutory claim is made, the employer must have either offered "reasonable accommodation" for the religious practice or prove that allowing those religious practices would have imposed "undue hardship" on the employer (see <i>Ansonia Board of Education v. Philbrook</i>, 479 US 60 (1986); <i>United States v. Board of Education for School District of Philadelphia</i>, 911 F.2d 882, 886 (3rd Cir. 1990); <i>Webb v. City of Philadelphia</i>, 562 F.3d 256 (3rd Cir. 2009)). For private employees there are no constitutional limitations on the ability of employers to restrict the wearing of religious clothing and/or symbols. However, the restrictions from Title VII of the Civil Rights Act continue to apply so long as the employer has over 15 employees. 78. In connection with the question of proportionality and justification of an interference with Article 9, a number of interveners (the European Centre for Law and Justice; Dr Jan Carnogurky and the Alliance Defence Fund; the Equality and Human Rights Commission; the Associazione "Giuseppe Dossetti i Valori"; Bishop Michael Nazir-Ali; Lord Carey; and the Clapham Institute and KLM) referred to the concept of "reasonable accommodation" or, as Lord Carey put it, a "mutuality of respect". They argued, in general terms, that a proportionality analysis by the Court should take into account the possibility of an accommodation of an individual's beliefs and practices. They stressed that some compromise between competing rights was necessary in a democratic and pluralistic society. On this understanding, so long as an individual's religious practices did not detrimentally affect service provision or unduly affect an employer, those religious practices should be permitted and protected at work. In this respect, the Court's attention was drawn by the Alliance Defence Fund to case-law from the United States of America, which required reasonable accommodation of religious beliefs and practices, insofar as that accommodation did not cause "undue hardship" to the employer. Liberty submitted that, in considering the justification for a restriction of Article 9 rights, a Contracting State should be permitted a "significant" margin of appreciation. This was affirmed in the contribution of the National Secular Society which sought to draw the Court's attention to the passage of the Equality Bill 2010 through the Houses of Parliament. Through this process, it was submitted, the United Kingdom had given detailed consideration to possibility of a "conscientious objection" exception. That this exception was finally withdrawn following full debate, they say, demonstrated that the relevant margin of appreciation should be broad. The International Commission of Jurists, Professor Robert Wintemute, the Fédération Internationale des Ligues des Droits de l'Homme and ILGA-Europe referred the Court to comparative materials, indicating that, where they are granted, statutory exceptions to discrimination laws are generally for religious institutions and organisations rather than individuals. By contrast to the views of other interveners, Liberty invited the Court to find that, when looking at the linked issues of proportionality and accommodation, the impact of any accommodation on others, particularly where those others are themselves of minority and/or disadvantaged status should be taken into account. They went further and invited the Court to rely on Article 17 of the Convention, if necessary and appropriate.
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2012	12/18/2012	AHMET YILDIRIM v. TURKEY	http://hudoc.echr.coe.int/eng/?i=001-115705	Oct-11	S2	PINTO DE ALBUQUERQUE	concurring		0 US	C	SC	New York Times Co. v. United States, 403 US 713 (1971)	When exceptional circumstances justify the blocking of illegal content, it is necessary to tailor the measure to the content which is illegal and avoid targeting persons or institutions that are not de jure or de facto responsible for the illegal publication and have not endorsed its content. In the case of internet or preventive measures which are based on reasonable grounds to suspect the commission of a crime, freedom of expression warrants not only a particularly tight legal framework ("cadre légal particulièrement strict") but also the most careful scrutiny by the courts, and consequently the exercise of special restraint[22]. None of these guarantees was provided by the impugned decisions of the national courts, as will be shown. [22]. On the legal framework, see RTBF v. Belgium, no. 50084/06, § 115, ECHR 2011: "if prior restraints are required in the media sphere, they must form part of a legal framework ensuring both tight control over the scope of any bans and effective judicial review to prevent potential abuses." And on the judicial exercise of restraint, see <i>Observer and Guardian v. the United Kingdom</i>, 26 November 1991, § 50, Series A no. 216-1. The dangers inherent in prior restraints are such that they call for the most careful scrutiny on the part of the Court. This is especially so as far as the press is concerned, for news is a perishable commodity and to delay its publication, even for a short period, may well deprive it of all its value and interest." This was confirmed by <i>Editions Plon v. France</i>, no. 58148/00, § 42, ECHR 2004-IV; <i>Association Ekin v. France</i>, no. 39288/98, § 56, ECHR 2001-VIII; and <i>Obukhova v. Russia</i>, no. 34736/03, § 22, 8 January 2009. And in the American case-law, see <i>New York Times Co. v. United States</i>, 403 US 713 (1971), and particularly the concurring opinion of Justice Brennan (the US Constitution "tolerates absolutely no prior judicial restraints of the press predicated upon surmise or conjecture that untoward consequences may result").
2012	12/6/2012	MICHAUD v. FRANCE	http://hudoc.echr.coe.int/eng/?i=001-115377	12323/11	S5		0 majority	applicant	Canada	R	general		0 68. Lastly, the applicant pointed out that the positive law of certain European Union countries (Belgium, Estonia, Ireland, Italy and the Netherlands) and Switzerland protected professional confidentiality better than French law, and in Canada and the United States of America lawyers were bound by no such obligation to report suspicions. 68. EBHR emphasised that in order to assess the "need" for interference with the enjoyment of the rights guaranteed by Article 8, one had first to take into account "the extent of the interference and its effects". In this connection it highlighted four points. Firstly, the client's right to remain silent was also at stake. The obligation to report suspicions required lawyers to make their clients incriminate themselves. Secondly, as the legal provisions in issue were based on the notion of "suspicions", but did not define that term, the "law" had neither the quality nor the foreseeability required. Thirdly, confidentiality was particularly important in the Court's case-law – which protected the confidentiality of journalists' sources and of medical data –, the protection of legal professional privilege in the face of this type of obligation had been affirmed in Canada and the United States of America, and the positive law of certain European Union member States (Belgium, Estonia, Ireland, Italy and the Netherlands), as well as Switzerland, was more protective. Fourthly, as the Court had pointed out in the <i>Casado Coca v. Spain</i> judgment (24 February 1994, Series A no. 285-A), the lawyer played a key role in preserving public confidence in the action of the courts; it was essential, therefore, that people should be able to trust in their lawyers, which meant preserving their independence from the authorities – which was undermined by the link with the FIU established by the legal provisions in issue – and the confidentiality of the information they handled.
2012	12/6/2012	MICHAUD v. FRANCE	http://hudoc.echr.coe.int/eng/?i=001-115377	12323/11	S5		0 majority	intervener	Canada	R	general		0 68. Lastly, the applicant pointed out that the positive law of certain European Union countries (Belgium, Estonia, Ireland, Italy and the Netherlands) and Switzerland protected professional confidentiality better than French law, and in Canada and the United States of America lawyers were bound by no such obligation to report suspicions. 75. The ECtHR considered that the essential values of the legal profession were seriously threatened by the anti-money-laundering Directives and the laws passed by the member States to transpose them, which, it deemed, undermined the independence of lawyers, professional secrecy and people's right to respect for their private life. It submitted that lawyers' activities were indivisible and that the distinction between those activities relating to expert advice – which were excluded from the obligation to report suspicions – and the others was a source of legal uncertainty, as people believing that lawyers were bound by a duty of confidentiality might inadvertently incriminate themselves. That uncertainty, combined with the fact that lawyers were required to report "suspicions" rather than actual offences, was incompatible with the confidentiality of exchanges between client and lawyer and the clients' right to respect for their private life, as protected by Article 8 of the Convention. The lawyer became a de facto "agent of the State", entering into a conflict of interest with his clients. Yet this approach was not essential to the anti-money-laundering effort, as demonstrated by the fact that in Canada and the United States of America lawyers were not obliged to report suspicious transactions. 68. EBHR emphasised that in order to assess the "need" for interference with the enjoyment of the rights guaranteed by Article 8, one had first to take into account "the extent of the interference and its effects". In this connection it highlighted four points. Firstly, the client's right to remain silent was also at stake. The obligation to report suspicions required lawyers to make their clients incriminate themselves. Secondly, as the legal provisions in issue were based on the notion of "suspicions", but did not define that term, the "law" had neither the quality nor the foreseeability required. Thirdly, confidentiality was particularly important in the Court's case-law – which protected the confidentiality of journalists' sources and of medical data –, the protection of legal professional privilege in the face of this type of obligation had been affirmed in Canada and the United States of America, and the positive law of certain European Union member States (Belgium, Estonia, Ireland, Italy and the Netherlands), as well as Switzerland, was more protective. Fourthly, as the Court had pointed out in the <i>Casado Coca v. Spain</i> judgment (24 February 1994, Series A no. 285-A), the lawyer played a key role in preserving public confidence in the action of the courts; it was essential, therefore, that people should be able to trust in their lawyers, which meant preserving their independence from the authorities – which was undermined by the link with the FIU established by the legal provisions in issue – and the confidentiality of the information they handled. The interference also had to be proportionate to the aim pursued: the fight against money-laundering and terrorism. However, whereas the Court had found in the <i>Xavier De Sileira v. France</i> case (no. 43757/05, 21 January 2010) that special procedural guarantees were needed in that particular case, where concerned searches or visits to a lawyer's offices, the provisions in issue in the present case provided no such guarantees (the part played by the Chairman of the Bar was limited to an advisory role where he was certain that there was nothing suspicious to report). In addition, French lawyers were all subject to the criminal law on money-laundering, which was particularly strict, as well as to major ethical obligations, with sanctions for failure to comply, and to financial supervision. They were not allowed to handle cash transactions, except for very small sums, and bank transfers had to be made through a special payment fund for lawyers.

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2012	11/30/2012	HRISTOZOV AND OTHERS v. BULGARIA	http://hudoc.echr.coe.int/eng/?i=001-114492	47039/11 and 358/12	54		0 majority	ECtHR	Australia	R	statute	section 18 of the Therapeutic Goods Act 1989	58. In Australia, the Therapeutic Goods Administration of the Department of Health and Ageing runs a "special access scheme", which allows, under certain conditions, the importation or supply of an unlicensed medicine for a single patient, on a case by case basis (section 18 of the Therapeutic Goods Act 1989 and Regulation 12A of the Therapeutic Goods Regulations 1990).
2012	11/30/2012	HRISTOZOV AND OTHERS v. BULGARIA	http://hudoc.echr.coe.int/eng/?i=001-114492	47039/11 and 358/12	54		0 majority	ECtHR	Australia	R	regulation	Regulation 12A of the Therapeutic Goods Regulations 1990	58. In Australia, the Therapeutic Goods Administration of the Department of Health and Ageing runs a "special access scheme", which allows, under certain conditions, the importation or supply of an unlicensed medicine for a single patient, on a case by case basis (section 18 of the Therapeutic Goods Act 1989 and Regulation 12A of the Therapeutic Goods Regulations 1990).
2012	11/23/2012	HRISTOZOV AND OTHERS v. BULGARIA	http://hudoc.echr.coe.int/eng/?i=001-114492	47039/11 and 358/12	54		0 majority	ECtHR	Canada	R	regulation	sections C.08.010 and C.08.011 of the Food and Drug Regulations	57. In Canada, sections C.08.010 and C.08.011 of the Food and Drug Regulations make provision for a "special access programme" allowing medical practitioners to request access to drugs that are unavailable for sale in Canada for the treatment of patients with serious or life-threatening conditions on a compassionate or emergency basis when conventional treatments have failed, are unsuitable, or are unavailable. 2. In Canada
2012	11/13/2012	HRISTOZOV AND OTHERS v. BULGARIA	http://hudoc.echr.coe.int/eng/?i=001-114492	47039/11 and 358/12	54		0 majority	ECtHR	Canada	C	lower-level court	Delisle v. Canada (Attorney General), 2006 FC 933	65. In the case of <i>Delisle v. Canada</i> (Attorney General), 2006 FC 933, the Federal Court of Canada had to deal with applications for judicial review of decisions taken by the Canadian federal health authorities under the above-mentioned special access programme (see paragraph 57 above). The court held that in deciding to restrict access to a drug previously available under the programme the authorities had failed to strike a proper balance, because they had not taken due account of humanitarian or compassionate concerns. It referred the matter back to the authorities with instructions to weigh the "valid objectives of public policy against the humanitarian factor". The judgment was not appealed against, and in 2008 the case was settled, with the authorities agreeing to follow the court's recommendations. 57. In Canada, sections C.08.010 and C.08.011 of the Food and Drug Regulations make provision for a "special access programme" allowing medical practitioners to request access to drugs that are unavailable for sale in Canada for the treatment of patients with serious or life-threatening conditions on a compassionate or emergency basis when conventional treatments have failed, are unsuitable, or are unavailable. 2. In Canada 65. In the case of <i>Delisle v. Canada</i> (Attorney General), 2006 FC 933, the Federal Court of Canada had to deal with applications for judicial review of decisions taken by the Canadian federal health authorities under the above-mentioned special access programme (see paragraph 57 above). The court held that in deciding to restrict access to a drug previously available under the programme the authorities had failed to strike a proper balance, because they had not taken due account of humanitarian or compassionate concerns. It referred the matter back to the authorities with instructions to weigh the "valid objectives of public policy against the humanitarian factor". The judgment was not appealed against, and in 2008 the case was settled, with the authorities agreeing to follow the court's recommendations.
2012	11/13/2012	M.M. v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-114517	24029/07	54		0 majority	lower-level court	Australia	R	general		6. R (L) V Commissioner of Police of the Metropolis [2009] UKSC 3 120. He concluded: "56. No evidence has been placed before this court or the courts below that demonstrates that it is not possible to identify from among those convicted of serious offences, at any stage in their lives, some at least who pose no significant risk of re-offending. It is equally true that no evidence has been adduced that demonstrates that this is possible. This may well be because the necessary research has not been carried out to enable firm conclusions to be drawn on this topic. If uncertainty exists can this render proportionate the imposition of notification requirements for life without review under the precautionary principle? I do not believe that it can. 57. ... I think that it is obvious that there must be some circumstances in which an appropriate tribunal could reliably conclude that the risk of an individual carrying out a further sexual offence can be discounted to the extent that continuance of notification requirements is unjustified. As the courts below have observed, it is open to the legislature to impose an appropriately high threshold for review. Registration systems for sexual offenders are not uncommon in other jurisdictions. Those acting for the first respondent have drawn attention to registration requirements for sexual offenders in France, Ireland, the seven Australian States, Canada, South Africa and the United States. Almost all of these have provisions for review. This does not suggest that the review exercise is not practicable. 58. For these reasons I have concluded that ... the notification requirements constitute a disproportionate interference with article 8 rights because they make no provision for individual review of the requirements."
2012	11/13/2012	M.M. v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-114517	24029/07	54		0 majority	lower-level court	Canada	R	general		6. R (L) V Commissioner of Police of the Metropolis [2009] UKSC 3 120. He concluded: "56. No evidence has been placed before this court or the courts below that demonstrates that it is not possible to identify from among those convicted of serious offences, at any stage in their lives, some at least who pose no significant risk of re-offending. It is equally true that no evidence has been adduced that demonstrates that this is possible. This may well be because the necessary research has not been carried out to enable firm conclusions to be drawn on this topic. If uncertainty exists can this render proportionate the imposition of notification requirements for life without review under the precautionary principle? I do not believe that it can. 57. ... I think that it is obvious that there must be some circumstances in which an appropriate tribunal could reliably conclude that the risk of an individual carrying out a further sexual offence can be discounted to the extent that continuance of notification requirements is unjustified. As the courts below have observed, it is open to the legislature to impose an appropriately high threshold for review. Registration systems for sexual offenders are not uncommon in other jurisdictions. Those acting for the first respondent have drawn attention to registration requirements for sexual offenders in France, Ireland, the seven Australian States, Canada, South Africa and the United States. Almost all of these have provisions for review. This does not suggest that the review exercise is not practicable. 58. For these reasons I have concluded that ... the notification requirements constitute a disproportionate interference with article 8 rights because they make no provision for individual review of the requirements."
2012	11/13/2012	M.M. v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-114517	24029/07	54		0 majority	lower-level court	South Africa	R	general		6. R (L) V Commissioner of Police of the Metropolis [2009] UKSC 3 120. He concluded: "56. No evidence has been placed before this court or the courts below that demonstrates that it is not possible to identify from among those convicted of serious offences, at any stage in their lives, some at least who pose no significant risk of re-offending. It is equally true that no evidence has been adduced that demonstrates that this is possible. This may well be because the necessary research has not been carried out to enable firm conclusions to be drawn on this topic. If uncertainty exists can this render proportionate the imposition of notification requirements for life without review under the precautionary principle? I do not believe that it can. 57. ... I think that it is obvious that there must be some circumstances in which an appropriate tribunal could reliably conclude that the risk of an individual carrying out a further sexual offence can be discounted to the extent that continuance of notification requirements is unjustified. As the courts below have observed, it is open to the legislature to impose an appropriately high threshold for review. Registration systems for sexual offenders are not uncommon in other jurisdictions. Those acting for the first respondent have drawn attention to registration requirements for sexual offenders in France, Ireland, the seven Australian States, Canada, South Africa and the United States. Almost all of these have provisions for review. This does not suggest that the review exercise is not practicable. 58. For these reasons I have concluded that ... the notification requirements constitute a disproportionate interference with article 8 rights because they make no provision for individual review of the requirements."
2012	11/13/2012	M.M. v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-114517	24029/07	54		0 majority	lower-level court	US	R	general		6. R (L) V Commissioner of Police of the Metropolis [2009] UKSC 3 120. He concluded: "56. No evidence has been placed before this court or the courts below that demonstrates that it is not possible to identify from among those convicted of serious offences, at any stage in their lives, some at least who pose no significant risk of re-offending. It is equally true that no evidence has been adduced that demonstrates that this is possible. This may well be because the necessary research has not been carried out to enable firm conclusions to be drawn on this topic. If uncertainty exists can this render proportionate the imposition of notification requirements for life without review under the precautionary principle? I do not believe that it can. 57. ... I think that it is obvious that there must be some circumstances in which an appropriate tribunal could reliably conclude that the risk of an individual carrying out a further sexual offence can be discounted to the extent that continuance of notification requirements is unjustified. As the courts below have observed, it is open to the legislature to impose an appropriately high threshold for review. Registration systems for sexual offenders are not uncommon in other jurisdictions. Those acting for the first respondent have drawn attention to registration requirements for sexual offenders in France, Ireland, the seven Australian States, Canada, South Africa and the United States. Almost all of these have provisions for review. This does not suggest that the review exercise is not practicable. 58. For these reasons I have concluded that ... the notification requirements constitute a disproportionate interference with article 8 rights because they make no provision for individual review of the requirements."
2012	10/4/2012	HARROUDI v. FRANCE	http://hudoc.echr.coe.int/eng/?i=001-113819	no. 43631/09	55		0 majority	ECtHR	Iran	R	general		16. Under Islamic law adoption is prohibited (haram). However, the right is accorded a special institution: kafala or "legal care". In Muslim States, with the exception of Turkey, Indonesia and Tunisia, kafala is defined as a voluntary undertaking to provide for a child and take care of his or her welfare, education and protection.

Year	Date	Name	Link	App.no.	Body	Judge citing	Opinion	who submitted	Countries	C/R/F	type	Document	Quotes
2012	10/4/2012	HARROUDI v. FRANCE	http://hudoc.echr.coe.int/eng/?i=001-113819	no. 43631/09)	S5		0 majority	ECtHR	Tunisia	R	general		016. Under Islamic law adoption is prohibited (haram). However, the right is accorded a special institution: kafala or "legal care". In Muslim States, with the exception of Turkey, Indonesia and Tunisia, kafala is defined as a voluntary undertaking to provide for a child and take care of his or her welfare, education and protection.
2012	9/25/2012	EL HASKI v. BELGIUM	http://hudoc.echr.coe.int/eng/?i=001-113445	649/08	S2		0 majority	intervener	Canada	C	lower-level co	India v. Singh, 8 May 1996	78. The third-party interveners observed that the Committee against Torture had considered that the forum State was under an obligation to ensure that statements admitted in evidence in any proceedings had not been obtained by torture (they referred in this connection to the Committee's decision in G.K. v. Switzerland). They indicated that, whilst there was little international jurisprudence on the burden and standard of proof, it was quite well established that, where a party to proceedings alleged that evidence had been obtained by torture, the forum State had a duty to investigate the circumstances in which it had been obtained; if that proved to be the case, the evidence had to be excluded. The jurisprudence was inconsistent, however, as to the extent to which an individual had to sustain his or her allegations. Referring to the decisions in Halimi-Nedžibi v. Austria, Encarnación Blanco Abad v. Spain, P.E. v. France and G.K. v. Switzerland, they observed that the Committee against Torture seemed to require the author to demonstrate that his or her allegations were "well founded" – adding, however, that some legal writers took the view, in the light of that jurisprudence, that it was sufficient for the alleged victim to submit "some evidence" of ill-treatment – and that this view was supported by domestic case-law. In the United States of America, the US District Court for Columbia had merely verified that the petitioning detainees had made "sufficient allegations" (Re Guantánamo Detainee Cases, 31 January 2005); in Canada, the Supreme Court of British Columbia had looked at the "persuasive nature of the allegations" (Indira v. Singh, 8 May 1996); and the Supreme Court of the Netherlands had examined whether the allegations were "plausible" (Hoge Raad, judgment no. 103.094, 1 October 1996). 86. The Court examined the issue of evidence in the above-cited Othman case, where it examined, in particular, the question whether the deportation of a Jordanian national to his country of origin, where he claimed he would face conviction on the basis of statements by third parties that had been extracted under torture and would thus be the victim of a flagrant denial of justice, would entail a violation of Article 6 of the Convention. In response to the United Kingdom Government's argument that the applicant had to establish "beyond reasonable doubt" that the evidence in issue had been obtained by torture, it took the view that it would be unfair to impose on the applicant a burden of proof that went beyond the demonstration of a "real risk" that the evidence in question had been thus obtained (ibid., § 273). The Court set out three reasons why it would be unfair to impose any higher burden of proof on the applicant.
2012	9/25/2012	EL HASKI v. BELGIUM	http://hudoc.echr.coe.int/eng/?i=001-113445	649/08	S2		0 majority	intervener	US	C	SC	Re Guantánamo Detainee Cases, 31 January 2005	78. The third-party interveners observed that the Committee against Torture had considered that the forum State was under an obligation to ensure that statements admitted in evidence in any proceedings had not been obtained by torture (they referred in this connection to the Committee's decision in G.K. v. Switzerland). They indicated that, whilst there was little international jurisprudence on the burden and standard of proof, it was quite well established that, where a party to proceedings alleged that evidence had been obtained by torture, the forum State had a duty to investigate the circumstances in which it had been obtained; if that proved to be the case, the evidence had to be excluded. The jurisprudence was inconsistent, however, as to the extent to which an individual had to sustain his or her allegations. Referring to the decisions in Halimi-Nedžibi v. Austria, Encarnación Blanco Abad v. Spain, P.E. v. France and G.K. v. Switzerland, they observed that the Committee against Torture seemed to require the author to demonstrate that his or her allegations were "well founded" – adding, however, that some legal writers took the view, in the light of that jurisprudence, that it was sufficient for the alleged victim to submit "some evidence" of ill-treatment – and that this view was supported by domestic case-law. In the United States of America, the US District Court for Columbia had merely verified that the petitioning detainees had made "sufficient allegations" (Re Guantánamo Detainee Cases, 31 January 2005); in Canada, the Supreme Court of British Columbia had looked at the "persuasive nature of the allegations" (Indira v. Singh, 8 May 1996); and the Supreme Court of the Netherlands had examined whether the allegations were "plausible" (Hoge Raad, judgment no. 103.094, 1 October 1996). 86. The Court examined the issue of evidence in the above-cited Othman case, where it examined, in particular, the question whether the deportation of a Jordanian national to his country of origin, where he claimed he would face conviction on the basis of statements by third parties that had been extracted under torture and would thus be the victim of a flagrant denial of justice, would entail a violation of Article 6 of the Convention. In response to the United Kingdom Government's argument that the applicant had to establish "beyond reasonable doubt" that the evidence in issue had been obtained by torture, it took the view that it would be unfair to impose on the applicant a burden of proof that went beyond the demonstration of a "real risk" that the evidence in question had been thus obtained (ibid., § 273). The Court set out three reasons why it would be unfair to impose any higher burden of proof on the applicant.
													First, the Court did not consider that the balance of probabilities test, as applied by the majority of the House of Lords in the above-mentioned A. and others (no. 2) judgment, was appropriate, as that case had concerned not criminal proceedings but proceedings before the Special Immigration Appeals Commission (SIAC) to determine whether the Secretary of State's suspicions that an individual was involved in terrorism were correct. It further noted that, in any event, the majority of the House of Lords in that judgment had found that the balance of probabilities test was for SIAC itself to apply and that an appellant before SIAC had only to raise a plausible reason that evidence might have been obtained by torture (ibid., § 274). Second, the Court did not consider that the Canadian and German case-law, which had been submitted by the United Kingdom Government (in particular the Singh and El Motassadeq judgments, cited also by the parties in the present case), provided any support for their position (ibid., § 275).
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2012	9/12/2012	NADA v. SWITZERLAND	http://hudoc.echr.coe.int/eng/?i=001-113118	10593/08	GC		0 majority	ECtHR	Canada	C	lower-level co	Abdelrazik v. Canada (Minister of Foreign Affairs)	6. Relevant case-law of other States 93. The measures in question have also been examined at national level, by the United Kingdom Supreme Court and the Canadian Federal Court. (b) The case of Abdelrazik v. Canada (Minister of Foreign Affairs) (Federal Court, Canada) 98. In its judgment of 4 June 2009 in the case of Abdelrazik v. Canada (Minister of Foreign Affairs), Canada's Federal Court took the view that the listing procedure of the al-Qaeda and Taliban Sanctions Committee was incompatible with the right to an effective remedy. The case concerned a ban on the return to Canada of the applicant, who had Canadian and Sudanese nationality, as a result of the application by Canada of the Security Council Resolutions establishing the sanctions regime. The applicant was thus forced to live in the Canadian embassy in Khartoum, Sudan, fearing possible detention and torture should he leave this sanctuary. 99. Zinn J, who pronounced the lead judgment in the case, stated in particular: "51. I add my name to those who view the 1267 Committee regime as a denial of basic legal remedies and as untenable under the principles of international human rights. There is nothing in the listing or delisting procedure that recognizes the principles of natural justice or that provides for basic procedural fairness." 100. He further observed: "54. ... It is frightening to learn that a citizen of this or any other country might find himself on the 1267 Committee list, based only on suspicion." 101. After reviewing the measures implementing the travel ban on the basis of the al-Qaeda and Taliban Resolutions, the judge concluded that the applicant's right to enter Canada had been breached, contrary to the provisions of the Canadian Charter of Rights and Freedoms (see paragraphs 62 et seq. of the judgment). 114. Those conclusions, it observed, were reflected in the findings of the Eminent Jurists Panel on Terrorism, Counter-Terrorism and Human Rights, the United Nations Special Rapporteur on Terrorism and Human Rights and in the decisions of the Canadian Federal Court (Abdelrazik), the United Kingdom Supreme Court (Ahmed) and the CJEC (Kadi) (see "Relevant international case-law" and "Relevant case-law of other States", paragraphs 82-92 and 93-101 above).
2012	7/24/2012	B.S. v. SPAIN	http://hudoc.echr.coe.int/eng/?i=001-112459	47159/08	S3		0 majority	intervener	USA	R	general		0 c) The third-party interveners 56. The European Social Research Unit (ESRH) at the Research Group on Exclusion and Social Control (GRECS) at the University of Barcelona referred to studies that had been carried out into intersectional discrimination, that is, discrimination based on several different grounds such as race, gender or social origin. Those studies showed that an analysis of the facts taking account of only one of the grounds was approximate and failed to reflect the reality of the situation. The ESRH gave examples of a number of initiatives taken at European level to obtain recognition of multiple discrimination; however, a binding legal text – though strongly recommended – did not yet exist. 57. The AIRE Centre, for their part, invited the Court to recognise the phenomenon of intersectional discrimination, which required a multiple-grounds approach that did not examine each factor separately. It gave an overview of the innovations in this area in the European Union and in various States such as the United Kingdom, the United States and Canada.
2012	7/24/2012	B.S. v. SPAIN	http://hudoc.echr.coe.int/eng/?i=001-112459	47159/08	S3		0 majority	intervener	Canada	R	general		0 57. The AIRE Centre, for their part, invited the Court to recognise the phenomenon of intersectional discrimination, which required a multiple-grounds approach that did not examine each factor separately. It gave an overview of the innovations in this area in the European Union and in various States such as the United Kingdom, the United States and Canada.
2012	7/24/2012	FÁBER v. HUNGARY	http://hudoc.echr.coe.int/eng/?i=001-112446	40721/08	S2	PINTO DE ALBUQUERQUE	concurring		0 US	C	SC	Texas v. Johnson, 491 U.S. 397 (1989)	The second argument concerns the protection of the national flag of Hungary. Implicitly, the Pest court considered that the applicant's conduct, in placing the Árpád-striped flag higher than the national flag, had offended the national flag. The denigration of a flag may be a form of expression punishable by criminal law[13] and therefore the prevention of crime may be a legitimate ground for restricting such expression. Even in those countries whose criminal laws do not contain such a provision, denigration of the national flag may justify a restriction of the freedom of expression in order to prevent public disorder. [13] The applicable provision was section 269/A of the Hungarian Criminal Code, which is similar to §§ 90a and 104 of the German Criminal Code, Articles 270 and 298 of the Swiss Criminal Code, §§ 248 and 317 of the Austrian Criminal Code, section 110 (e) of the Danish Penal Code, Article 236 of the Romanian Criminal Code, Articles 173 and 175 of the Serbian Criminal Code, Article 433-5-1 of the French Criminal Code in the form of Law no. 2003-239 of 18 March 2003, and Articles 323 and 332 of the Portuguese Criminal Code. The broadness of some of these provisions is certainly problematic in view of the strictness of Article 10, paragraph 2, of the Convention. The problem is resolved in the United States, since the Supreme Court ruled, in Texas v. Johnson, 491 U.S. 397 (1989), and reaffirmed in U.S. v. Eichman, 496 U.S. 310 (1990), that it was unconstitutional for federal, State or municipal government to prohibit the desecration of a flag, although content-neutral restrictions may be imposed to regulate the time, place and manner of such expression.
2012	7/24/2012	FÁBER v. HUNGARY	http://hudoc.echr.coe.int/eng/?i=001-112446	40721/08	S2	PINTO DE ALBUQUERQUE	concurring		0 US	C	SC	U.S. v. Eichman, 496 U.S. 310 (1990)	The second argument concerns the protection of the national flag of Hungary. Implicitly, the Pest court considered that the applicant's conduct, in placing the Árpád-striped flag higher than the national flag, had offended the national flag. The denigration of a flag may be a form of expression punishable by criminal law[13] and therefore the prevention of crime may be a legitimate ground for restricting such expression. Even in those countries whose criminal laws do not contain such a provision, denigration of the national flag may justify a restriction of the freedom of expression in order to prevent public disorder. [13] The applicable provision was section 269/A of the Hungarian Criminal Code, which is similar to §§ 90a and 104 of the German Criminal Code, Articles 270 and 298 of the Swiss Criminal Code, §§ 248 and 317 of the Austrian Criminal Code, section 110 (e) of the Danish Penal Code, Article 236 of the Romanian Criminal Code, Articles 173 and 175 of the Serbian Criminal Code, Article 433-5-1 of the French Criminal Code in the form of Law no. 2003-239 of 18 March 2003, and Articles 323 and 332 of the Portuguese Criminal Code. The broadness of some of these provisions is certainly problematic in view of the strictness of Article 10, paragraph 2, of the Convention. The problem is resolved in the United States, since the Supreme Court ruled, in Texas v. Johnson, 491 U.S. 397 (1989), and reaffirmed in U.S. v. Eichman, 496 U.S. 310 (1990), that it was unconstitutional for federal, State or municipal government to prohibit the desecration of a flag, although content-neutral restrictions may be imposed to regulate the time, place and manner of such expression.

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2012	7/24/2012	FÁBER v. HUNGARY	http://hudoc.echr.coe.int/eng/?i=001-112446	40721/08	S2		0 majority	ECtHR	US	C	SC	Virginia v. Black, 538 U.S. 343 (2003)	18. The current position of the Supreme Court of the United States is summarised in Virginia v. Black, 538 U.S. 343 (2003), in the context of cross burning (a traditional threatening activity of the Ku Klux Klan). According to this judgment, the burning of a cross is a "symbol of hate", regardless of whether the message is a political one or also meant to intimidate. And while cross-burning sometimes carries no intimidating message, at other times the intimidating message is the only message conveyed. The protections afforded by the First Amendment are not absolute, and the government may regulate certain categories of expression, including the ban of a "true threat". Intimidation, in the constitutionally proscribable sense of the word, is a type of true threat, where a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death. The fact that cross-burning is a symbolic expression does not resolve the constitutional question. Sometimes the cross-burning is a statement of ideology, a symbol of group solidarity. The Supreme Court required effort to distinguish among these different types of cross-burnings and considered the contextual factors that were necessary to decide whether a particular cross-burning was intended to intimidate. The Supreme Court went on to state: "It may be true that a cross burning, even at a political rally, arouses a sense of anger or hatred among the vast majority of citizens who see a burning cross. But this sense of anger or hatred is not sufficient to ban all cross burnings. As Gerald Gunther has stated, «The lesson I have drawn from my childhood in Nazi Germany and my happier adult life in this country is the need to walk the sometimes difficult path of denouncing the bigot's hateful ideas with all my power, yet at the same time challenging any community's attempt to suppress hateful ideas by force of law» (Virginia v. Black, 538 U.S. 343, 366-7 (2003)). The impact of (undeniably outrageous) speech on a funeral procession was considered in Snyder v. Phelps (131 S.Ct. 1207 (2011)). Members of a church picketed within 200 to 300 feet from a soldier's funeral service. The picket signs reflected the church's view that the United States is overly tolerant of sin and that God kills American soldiers as punishment. The Supreme Court held: "In public debate [we] must tolerate insulting, and even outrageous, speech in order to provide adequate 'breathing space' to the freedoms protected by the First Amendment ... funeral picketing is certainly hurtful and its contribution to public discourse may be negligible. But [it] addressed matters of public import on public property, in a peaceful manner ... The speech ... did not itself disrupt that funeral ... Speech is powerful. It can stir people to action, move them to tears of both joy and sorrow, and – as it did here – inflict great pain. On the facts before us, we cannot react to that pain by punishing the speaker. As a Nation we have chosen a different course – to protect even hurtful speech on public issues to ensure that we do not stifle public debate" (Snyder v. Phelps, 131 S.Ct. 1207, 1219 (2011)). In Frisby v. Schultz, 487 U.S. 474 (1988), the Supreme Court upheld a municipal ban on residential picketing that had been adopted in response to the picketing by anti-abortion protestors of the home of a physician who performed abortions. Here the offensive and disturbing picketing focused on a "captivity" home audience.
2012	7/24/2012	FÁBER v. HUNGARY	http://hudoc.echr.coe.int/eng/?i=001-112446	40721/08	S2		0 majority	ECtHR	US	C	SC	Snyder v. Phelps (131 S.Ct. 1207 (2011))	18. The current position of the Supreme Court of the United States is summarised in Virginia v. Black, 538 U.S. 343 (2003), in the context of cross burning (a traditional threatening activity of the Ku Klux Klan). According to this judgment, the burning of a cross is a "symbol of hate", regardless of whether the message is a political one or also meant to intimidate. And while cross-burning sometimes carries no intimidating message, at other times the intimidating message is the only message conveyed. The protections afforded by the First Amendment are not absolute, and the government may regulate certain categories of expression, including the ban of a "true threat". Intimidation, in the constitutionally proscribable sense of the word, is a type of true threat, where a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death. The fact that cross-burning is a symbolic expression does not resolve the constitutional question. Sometimes the cross-burning is a statement of ideology, a symbol of group solidarity. The Supreme Court required effort to distinguish among these different types of cross-burnings and considered the contextual factors that were necessary to decide whether a particular cross-burning was intended to intimidate. The Supreme Court went on to state: "It may be true that a cross burning, even at a political rally, arouses a sense of anger or hatred among the vast majority of citizens who see a burning cross. But this sense of anger or hatred is not sufficient to ban all cross burnings. As Gerald Gunther has stated, «The lesson I have drawn from my childhood in Nazi Germany and my happier adult life in this country is the need to walk the sometimes difficult path of denouncing the bigot's hateful ideas with all my power, yet at the same time challenging any community's attempt to suppress hateful ideas by force of law» (Virginia v. Black, 538 U.S. 343, 366-7 (2003)). The impact of (undeniably outrageous) speech on a funeral procession was considered in Snyder v. Phelps (131 S.Ct. 1207 (2011)). Members of a church picketed within 200 to 300 feet from a soldier's funeral service. The picket signs reflected the church's view that the United States is overly tolerant of sin and that God kills American soldiers as punishment. The Supreme Court held: "In public debate [we] must tolerate insulting, and even outrageous, speech in order to provide adequate 'breathing space' to the freedoms protected by the First Amendment ... funeral picketing is certainly hurtful and its contribution to public discourse may be negligible. But [it] addressed matters of public import on public property, in a peaceful manner ... The speech ... did not itself disrupt that funeral ... Speech is powerful. It can stir people to action, move them to tears of both joy and sorrow, and – as it did here – inflict great pain. On the facts before us, we cannot react to that pain by punishing the speaker. As a Nation we have chosen a different course – to protect even hurtful speech on public issues to ensure that we do not stifle public debate" (Snyder v. Phelps, 131 S.Ct. 1207, 1219 (2011)). In Frisby v. Schultz, 487 U.S. 474 (1988), the Supreme Court upheld a municipal ban on residential picketing that had been adopted in response to the picketing by anti-abortion protestors of the home of a physician who performed abortions. Here the offensive and disturbing picketing focused on a "captivity" home audience.
2012	7/24/2012	FÁBER v. HUNGARY	http://hudoc.echr.coe.int/eng/?i=001-112446	40721/08	S2		0 majority	ECtHR	US	C	SC	Frisby v. Schultz, 487 U.S. 474 (1988)	18. The current position of the Supreme Court of the United States is summarised in Virginia v. Black, 538 U.S. 343 (2003), in the context of cross burning (a traditional threatening activity of the Ku Klux Klan). According to this judgment, the burning of a cross is a "symbol of hate", regardless of whether the message is a political one or also meant to intimidate. And while cross-burning sometimes carries no intimidating message, at other times the intimidating message is the only message conveyed. The protections afforded by the First Amendment are not absolute, and the government may regulate certain categories of expression, including the ban of a "true threat". Intimidation, in the constitutionally proscribable sense of the word, is a type of true threat, where a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death. The fact that cross-burning is a symbolic expression does not resolve the constitutional question. Sometimes the cross-burning is a statement of ideology, a symbol of group solidarity. The Supreme Court required effort to distinguish among these different types of cross-burnings and considered the contextual factors that were necessary to decide whether a particular cross-burning was intended to intimidate. The Supreme Court went on to state: "It may be true that a cross burning, even at a political rally, arouses a sense of anger or hatred among the vast majority of citizens who see a burning cross. But this sense of anger or hatred is not sufficient to ban all cross burnings. As Gerald Gunther has stated, «The lesson I have drawn from my childhood in Nazi Germany and my happier adult life in this country is the need to walk the sometimes difficult path of denouncing the bigot's hateful ideas with all my power, yet at the same time challenging any community's attempt to suppress hateful ideas by force of law» (Virginia v. Black, 538 U.S. 343, 366-7 (2003)). The impact of (undeniably outrageous) speech on a funeral procession was considered in Snyder v. Phelps (131 S.Ct. 1207 (2011)). Members of a church picketed within 200 to 300 feet from a soldier's funeral service. The picket signs reflected the church's view that the United States is overly tolerant of sin and that God kills American soldiers as punishment. The Supreme Court held: "In public debate [we] must tolerate insulting, and even outrageous, speech in order to provide adequate 'breathing space' to the freedoms protected by the First Amendment ... funeral picketing is certainly hurtful and its contribution to public discourse may be negligible. But [it] addressed matters of public import on public property, in a peaceful manner ... The speech ... did not itself disrupt that funeral ... Speech is powerful. It can stir people to action, move them to tears of both joy and sorrow, and – as it did here – inflict great pain. On the facts before us, we cannot react to that pain by punishing the speaker. As a Nation we have chosen a different course – to protect even hurtful speech on public issues to ensure that we do not stifle public debate" (Snyder v. Phelps, 131 S.Ct. 1207, 1219 (2011)). In Frisby v. Schultz, 487 U.S. 474 (1988), the Supreme Court upheld a municipal ban on residential picketing that had been adopted in response to the picketing by anti-abortion protestors of the home of a physician who performed abortions. Here the offensive and disturbing picketing focused on a "captivity" home audience.
2012	7/17/2012	MUNIAZ v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-1121198	no. 2913/06	S4		0 majority	lower-level court	Canada	C	SC	Miller v The Queen (1985) 24 DLR (4th)	15. On Article 5, Lord Bingham endorsed the Court of Appeal's finding that it did not apply and added: "The approach to residual liberty which appears to have prevailed in Canada (see Miller v The Queen (1985) 24 DLR (4th) 9) does not, as I understand, reflect the jurisprudence of the European Court. I do not for my part regret this conclusion since, as the Court of Appeal pointed out (in para 70 of its judgment), improper use of seclusion may found complaints under article 3 or article 8, and article 5(4) provides that a successful challenge should result in an order that the detainee be released, not in an order that the conditions of his detention be varied. I would not, for example, understand article 5(4) as enabling a prisoner, lawfully detained, to challenge his prison category. In any event, the Ashworth policy, properly applied as one must assume, does not permit a patient to be deprived of any residual liberty to which he is properly entitled: seclusion must be for as short a period and in conditions as benign as will afford reasonable protection to others who have a right to be protected." 20. Lord Steyn dissented on all three points. On Articles 3 and 8 he approved the reasoning of the Court of Appeal. On the status of the Code of Practice, by section 118(1) of the Mental Health Act 1983 (which directs the Secretary of State to prepare such a code) he found: "...in section 118(1) Parliament had authorised a Code with some minimum safeguards and a modicum of centralised protection for vulnerable patients. This is inconsistent with a free-for-all in which hospitals are at liberty to depart from the published Code as they consider right. Indeed, it seems unlikely that Parliament would have authorised a regime in which hospitals may as a matter of policy depart from the Code. After all that would result in mentally disordered patients being treated about seclusion in a discriminatory manner, depending on the policy adopted by the managers and clinicians in particular hospitals." He also found Article 5 to be applicable, stating as follows: "Under English law a convicted prisoner, sentenced to imprisonment, retains all his civil rights which are not taken away expressly or by necessary implication: Raymond v Honey (1983) AC 1, at 106, per Lord Wilberforce. To that extent the prisoner has a residual liberty. The concept of residual liberty is a logical and useful one as demonstrated by the decision of the Canadian Supreme Court in Miller v The Queen (1985) 24 DLR (4th) 9. The reasoning in Miller shows that in a case of a prisoner where solitary confinement is unlawful and unjustly superimposed upon his prison sentence the added solitary confinement can amount to 'prison within a prison': it is capable of constituting a material deprivation of residual liberty 40. In Miller v The Queen (1985) 24 DLR (4th) 9, 12 October 1984, the Supreme Court of Canada considered whether a prisoner who had been placed within a "Special Handling Unit" at his normal place of detention could bring habeas corpus proceedings to challenge that placement. In finding that he could, the court stated that a prisoner was not without some rights or residual liberty and that there may be significant degrees of deprivation of liberty within a penal institution. In effect, a prisoner had the right not to be deprived unlawfully of the relative or residual liberty permitted to the general inmate population of an institution (Le Dain J for the Court at paragraph 32).

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2012	7/17/2012	MUNIAZ v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-112198	no. 2913/06	54		0 majority	ECtHR	Canada	C	SC	Miller v The Queen (1985) 24 DLR (4th) 9, 12 October 1984	15. On Article 5, Lord Bingham endorsed the Court of Appeal's finding that it did not apply and added: "The approach to residual liberty which appears to have prevailed in Canada (see <i>Miller v The Queen</i> (1985) 24 DLR (4th) 9) does not, as I understand, reflect the jurisprudence of the European Court. I do not for my part regret this conclusion since, as the Court of Appeal pointed out (in para 70 of its judgment), improper use of seclusion may found complaints under article 3 or article 8, and article 5(4) provides that a successful challenge should result in an order that the detainee be released, not in an order that the conditions of his detention be varied. I would not, for example, understand article 5(4) as enabling a prisoner, lawfully detained, to challenge his prison categorisation. In any event, the Ashworth policy, properly applied as one must assume, does not permit a patient to be deprived of any residual liberty to which he is properly entitled: seclusion must be for as short a period and in conditions as benign as will afford reasonable protection to others who have a right to be protected." 20. Lord Steyn dissented on all three points. On Articles 3 and 8 he approved the reasoning of the Court of Appeal. On the status of the Code of Practice, by section 118(1) of the Mental Health Act 1983 (which directs the Secretary of State to prepare such a code) he found: "...in section 118(1) Parliament had authorised a Code with some minimum safeguards and a modicum of centralised protection for vulnerable patients. This is inconsistent with a free-for-all in which hospitals are at liberty to depart from the published Code as they consider right. Indeed, it seems unlikely that Parliament would have authorised a regime in which hospitals may as a matter of policy depart from the Code. After all that would result in mentally disordered patients being treated outside seclusion in a discriminatory manner, depending on the policy adopted by the managers and clinicians in particular hospitals." He also found Article 5 to be applicable, stating as follows: "Under English law a convicted prisoner, sentenced to imprisonment, retains all his civil rights which are not taken away expressly or by necessary implication: <i>Raymond v Honey</i> [1983] AC 1, at 106, per Lord Wilberforce. To that extent the prisoner has a residual liberty. The concept of residual liberty is a logical and useful one as demonstrated by the decision of the Canadian Supreme Court in <i>Miller v The Queen</i> (1985) 24 DLR (4th) 9. The reasoning in <i>Miller</i> shows that in a case of a prisoner whose solitary confinement is unlawful and unjustly superimposed upon his prison sentence the added solitary confinement can amount to 'prison within a prison': it is capable of constituting a material deprivation of residual liberty ... It would also be wrong to assume that under the jurisprudence of the ECtHR residual liberty is not protected. There is relevant European authority not placed before the Court of Appeal. In <i>Bolan v United Kingdom</i>, App No. 42117/98, the European Court of Human Rights, albeit in an admissibility decision, considered the point. The complaint was of a comparatively weak one: the prisoner had been confined to her cell, unlawfully it was said, for some two hours. The evidence was that she was a heroin addict who objected to that restriction on her residual liberty. In European terms the case simply did not reach the necessary threshold of severity. The European Court of Human Rights dealt with the legal principles arising under the ECtHR as follows: "It is undisputed in the present case that Angela Bolan was lawfully detained in Corton Vale prison pursuant to a court order remanding her in custody pending sentence for a criminal offence. Nor is it disputed that the prison was an appropriate establishment for that type of detention or that there was anything inappropriate concerning her place of detention within the prison. The principal issue is whether the decision of the prison officers to leave Angela Bolan in her cell until lunchtime - a period of less than two hours - in itself disclosed an unjustified and unlawful deprivation of her liberty within that prison. The court does not exclude that measures adopted within a prison may disclose interferences with the right to liberty in exceptional circumstances. Generally however, disciplinary
2012	7/13/2012	MOUVEMENT RAËLIEN SUISSE v. SWITZERLAND	http://hudoc.echr.coe.int/eng/?i=001-112165	16354/06	GC	PINTO DE ALBUQUERQUE	dissenting		0 Canada	C	SC	Ramsden v. Peterborough (City), (1993) 2 SCR 1084.	The Canadian Supreme Court also takes the view that restrictions on freedom of expression in public places must be interpreted strictly. In the case Committee for the Commonwealth of Canada v. Canada, the Supreme Court found that the provisions of airport concession regulations prohibiting the conducting of any business or undertaking, commercial or otherwise, and any advertising or soliciting in an airport, except as authorised in writing by the Minister, were inconsistent with the freedom of expression guaranteed in section 2(b) of the Canadian Charter of Rights and Freedoms[24]. In the specific case of billboards and posters, the Supreme Court censured as unconstitutional the absolute prohibition of posting on public property[25] and affirmed the right to post political advertisements on the sides of buses belonging to the public transportation system[26]. [8] This issue was addressed in regard to access to private space in <i>Appleby and Others v. the United Kingdom</i> (no. 44306/98, ECHR 2003-VI), with reference to the positions of the US Supreme Court and the Supreme Court of Canada. Given that the present judgment does not reflect such comparative-law aspects, though the prevailing trend is of relevance, an overview is given in the Appendix. [24]. Committee for the Commonwealth of Canada v. Canada, (1991) 1 SCR [Canada Supreme Court Reports] 139. In her opinion, Justice L'Heureux-Dubé stated as follows: "If the government had complete discretion to treat its property as would a private citizen, it could differentiate on the basis of content, or choose between particular viewpoints, and grant access to sidewalks, streets, parks, the courthouse lawn, and even Parliament Hill only to those whose message accorded with the government's preferences. Such a standard would be antithetical to the spirit of the Charter, and would stultify the true import of freedom of expression." [25]. Ramsden v. Peterborough (City), (1993) 2 SCR 1084. [26]. Greater Vancouver Transportation Authority v. Canadian Federation of Students – British Columbia Component, (2009) 2 SCR 295.
2012	7/13/2012	MOUVEMENT RAËLIEN SUISSE v. SWITZERLAND	http://hudoc.echr.coe.int/eng/?i=001-112165	16354/06	GC	PINTO DE ALBUQUERQUE	dissenting		0 Canada	C	SC	Greater Vancouver Transportation Authority v. Canadian Federation of Students – British Columbia Component, (2009) 2 SCR 295. [43]	The Canadian Supreme Court also takes the view that restrictions on freedom of expression in public places must be interpreted strictly. In the case Committee for the Commonwealth of Canada v. Canada, the Supreme Court found that the provisions of airport concession regulations prohibiting the conducting of any business or undertaking, commercial or otherwise, and any advertising or soliciting in an airport, except as authorised in writing by the Minister, were inconsistent with the freedom of expression guaranteed in section 2(b) of the Canadian Charter of Rights and Freedoms[24]. In the specific case of billboards and posters, the Supreme Court censured as unconstitutional the absolute prohibition of posting on public property[25] and affirmed the right to post political advertisements on the sides of buses belonging to the public transportation system[26]. [24]. Committee for the Commonwealth of Canada v. Canada, (1991) 1 SCR [Canada Supreme Court Reports] 139. In her opinion, Justice L'Heureux-Dubé stated as follows: "If the government had complete discretion to treat its property as would a private citizen, it could differentiate on the basis of content, or choose between particular viewpoints, and grant access to sidewalks, streets, parks, the courthouse lawn, and even Parliament Hill only to those whose message accorded with the government's preferences. Such a standard would be antithetical to the spirit of the Charter, and would stultify the true import of freedom of expression." [25]. Ramsden v. Peterborough (City), (1993) 2 SCR 1084. [26]. Greater Vancouver Transportation Authority v. Canadian Federation of Students – British Columbia Component, (2009) 2 SCR 295. [43]. An eloquent justification of this was given by Justice Abella of the Supreme Court of Canada in <i>Wayne Crookes, et al. v. Jon Newton</i>, (2011) 3 SCR 269, 2011 SCC 47: "The Internet cannot, in short, provide access to information without hyperlinks. Limiting their usefulness by subjecting them to the traditional publication rule would have the effect of seriously restricting the flow of information and, as a result, freedom of expression. The potential 'chill' in how the Internet functions could be devastating, since primary article authors would unlikely want to risk liability for linking to another article over whose changeable content they have no control."
2012	7/13/2012	MOUVEMENT RAËLIEN SUISSE v. SWITZERLAND	http://hudoc.echr.coe.int/eng/?i=001-112165	16354/06	GC	PINTO DE ALBUQUERQUE	dissenting		0 Canada	C	SC	Committee for the Commonwealth of Canada v. Canada, (1991) 1 SCR [Canada Supreme Court Reports] 139	The Canadian Supreme Court also takes the view that restrictions on freedom of expression in public places must be interpreted strictly. In the case Committee for the Commonwealth of Canada v. Canada, the Supreme Court found that the provisions of airport concession regulations prohibiting the conducting of any business or undertaking, commercial or otherwise, and any advertising or soliciting in an airport, except as authorised in writing by the Minister, were inconsistent with the freedom of expression guaranteed in section 2(b) of the Canadian Charter of Rights and Freedoms[24]. In the specific case of billboards and posters, the Supreme Court censured as unconstitutional the absolute prohibition of posting on public property[25] and affirmed the right to post political advertisements on the sides of buses belonging to the public transportation system[26]. [24]. Committee for the Commonwealth of Canada v. Canada, (1991) 1 SCR [Canada Supreme Court Reports] 139. In her opinion, Justice L'Heureux-Dubé stated as follows: "If the government had complete discretion to treat its property as would a private citizen, it could differentiate on the basis of content, or choose between particular viewpoints, and grant access to sidewalks, streets, parks, the courthouse lawn, and even Parliament Hill only to those whose message accorded with the government's preferences. Such a standard would be antithetical to the spirit of the Charter, and would stultify the true import of freedom of expression." [24]. Committee for the Commonwealth of Canada v. Canada, (1991) 1 SCR [Canada Supreme Court Reports] 139. In her opinion, Justice L'Heureux-Dubé stated as follows: "If the government had complete discretion to treat its property as would a private citizen, it could differentiate on the basis of content, or choose between particular viewpoints, and grant access to sidewalks, streets, parks, the courthouse lawn, and even Parliament Hill only to those whose message accorded with the government's preferences. Such a standard would be antithetical to the spirit of the Charter, and would stultify the true import of freedom of expression." [25]. Ramsden v. Peterborough (City), (1993) 2 SCR 1084. [26]. Greater Vancouver Transportation Authority v. Canadian Federation of Students – British Columbia Component, (2009) 2 SCR 295. [43]. An eloquent justification of this was given by Justice Abella of the Supreme Court of Canada in <i>Wayne Crookes, et al. v. Jon Newton</i>, (2011) 3 SCR 269, 2011 SCC 47: "The Internet cannot, in short, provide access to information without hyperlinks. Limiting their usefulness by subjecting them to the traditional publication rule would have the effect of seriously restricting the flow of information and, as a result, freedom of expression. The potential 'chill' in how the Internet functions could be devastating, since primary article authors would unlikely want to risk liability for linking to another article over whose changeable content they have no control."
2012	7/13/2012	MOUVEMENT RAËLIEN SUISSE v. SWITZERLAND	http://hudoc.echr.coe.int/eng/?i=001-112165	16354/06	GC	PINTO DE ALBUQUERQUE	dissenting		0 Canada	C	SC	Wayne Crookes, et al. v. Jon Newton, (2011) 3 SCR 269, 2011 SCC 47	The Canadian Supreme Court also takes the view that restrictions on freedom of expression in public places must be interpreted strictly. In the case Committee for the Commonwealth of Canada v. Canada, the Supreme Court found that the provisions of airport concession regulations prohibiting the conducting of any business or undertaking, commercial or otherwise, and any advertising or soliciting in an airport, except as authorised in writing by the Minister, were inconsistent with the freedom of expression guaranteed in section 2(b) of the Canadian Charter of Rights and Freedoms[24]. In the specific case of billboards and posters, the Supreme Court censured as unconstitutional the absolute prohibition of posting on public property[25] and affirmed the right to post political advertisements on the sides of buses belonging to the public transportation system[26]. [24]. Committee for the Commonwealth of Canada v. Canada, (1991) 1 SCR [Canada Supreme Court Reports] 139. In her opinion, Justice L'Heureux-Dubé stated as follows: "If the government had complete discretion to treat its property as would a private citizen, it could differentiate on the basis of content, or choose between particular viewpoints, and grant access to sidewalks, streets, parks, the courthouse lawn, and even Parliament Hill only to those whose message accorded with the government's preferences. Such a standard would be antithetical to the spirit of the Charter, and would stultify the true import of freedom of expression." [24]. Committee for the Commonwealth of Canada v. Canada, (1991) 1 SCR [Canada Supreme Court Reports] 139. In her opinion, Justice L'Heureux-Dubé stated as follows: "If the government had complete discretion to treat its property as would a private citizen, it could differentiate on the basis of content, or choose between particular viewpoints, and grant access to sidewalks, streets, parks, the courthouse lawn, and even Parliament Hill only to those whose message accorded with the government's preferences. Such a standard would be antithetical to the spirit of the Charter, and would stultify the true import of freedom of expression." [25]. Ramsden v. Peterborough (City), (1993) 2 SCR 1084. [26]. Greater Vancouver Transportation Authority v. Canadian Federation of Students – British Columbia Component, (2009) 2 SCR 295. [43]. An eloquent justification of this was given by Justice Abella of the Supreme Court of Canada in <i>Wayne Crookes, et al. v. Jon Newton</i>, (2011) 3 SCR 269, 2011 SCC 47: "The Internet cannot, in short, provide access to information without hyperlinks. Limiting their usefulness by subjecting them to the traditional publication rule would have the effect of seriously restricting the flow of information and, as a result, freedom of expression. The potential 'chill' in how the Internet functions could be devastating, since primary article authors would unlikely want to risk liability for linking to another article over whose changeable content they have no control."

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2012	7/13/2012	MOUVEMENT RAËLIEN SUISSE v. SWITZERLAND	http://hudoc.echr.coe.int/eng?i=001-112165	16354/06	GC	PINTO DE ALBUQUERQUE	dissenting	0	US	C	SC	Perry Education Association v. Perry Local Educators' Association, 460 US 37 (1983)	This question has, however, been examined for some time by the United States Supreme Court, which has construed the public-forum doctrine under the First Amendment to the US Federal Constitution[18]. The public-forum doctrine has been refined over the years, culminating in Perry Education Association v. Perry Local Educators' Association, where the Supreme Court established a three-tier categorisation of public fora. The first category is the traditional public forum, which includes places which by long tradition or by government fiat have been devoted to assembly and debate[19]. In a traditional public forum, the State may not restrict speech based on content, unless it can show that its regulation is necessary to serve a compelling State interest and is narrowly tailored to achieve that interest. The second category is the limited public forum, defined as public property which the State has opened for use by the public as a place for expressive activity. Although the State need not indefinitely keep a limited public forum open to the public, while the forum is open any State restriction of speech in that forum will be under the same rules as those applicable to a traditional public forum[20]. The third category is the non-public forum, which, by tradition or design, is not an appropriate platform for unrestrained communication. Here the State is granted much greater latitude in regulating freedom of expression. In addition to applying time, place and manner regulations, the State may reserve the forum for its intended purposes, as long as the regulation of speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view[21]. Thus, "the existence of a right of access to public property and the standard by which limitations upon such a right must be evaluated differ depending on the character of the property at issue"[22]. In the particular case of billboards, the Supreme Court decided that an ordinance which permitted on-site commercial advertising (a sign advertising goods or services available on the property where the sign was located), but forbade other commercial advertising and non-commercial advertising using fixed-structure signs, unless permitted by specified exceptions, such as temporary political-campaign signs, breached the freedom of expression of companies that were engaged in the outdoor advertising business[23]. [15]. Appleby and Others v. the United Kingdom, no. 44306/98, §§ 47-49, ECHR 2003-VI, referring to Marsh v. Alabama, 326 US [United States Supreme Court Reports] 501. [16]. Murphy v. Ireland, no. 44179/98, §§ 76-77, ECHR 2003-IX. [17]. Women On Waves and Others v. Portugal, no. 31276/05, §§ 39-40, 3 February 2009. [18]. See the reference in Appleby and Others, cited above, § 26. [19]. In the foundational case Hague v. CIO, 307 US 496 (1939), the US Supreme Court decided that a municipal ordinance requiring a permit for a public assembly in or upon the public streets, highways, public parks or public buildings of the city was void. The principle established by the Supreme Court was that "[w]herever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions". Other cases of public fora concern the area outside the Supreme Court building (United States v. Grace, 461 US 171 (1983)), or sidewalks (Frisby v. Schultz, 487 US 474 (1988)). [20]. Among designated or limited public fora are a municipally owned theatre open for private productions (Southeastern Promotions Ltd. v. Conrad, 420 US 546 (1975)), open school-board meetings (City of Madison v. Wisconsin Employment Relations Comm'n, 429 US 167 (1976)), state fairgrounds opened to different community groups (Heffron v. International society for Krishna Consciousness, 452 US 640 (1981)) and university meeting facilities (Widmar v. Vincent, 454 US 263 (1981)). [21]. In Perry Education Association v. Perry Local Educators' Association, 460 US 37 (1983), a very thin majority considered that an interschool mail system and teacher mail folders were non-public fora. The court established a distinction between, on the one hand, content discrimination, i.e., discrimination against speech because of its subject matter—which may be permissible if it preserves the limited forum's purposes, and, on the other, viewpoint discrimination, i.e., discrimination because of the speaker's specific motivating ideology, opinion, or perspective, which is presumed impermissible when directed against speech otherwise within the forum's limitations. Other non-public fora are, according to the Supreme Court, jails (Adderley v. Florida, 385 US 39 (1966)), schools (Grayned v. City of Rockford, 408 US 104 (1972)), city buses (Lehman v. City of Shaker Heights, 418 US 298 (1974)), military bases (Greer v. Spock, 424 US 828 (1976)), residential mailboxes (US Postal Service v. Council of Greenburgh Civil Associations, 453 US 114 (1981)), an annual
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In addition to applying time, place and manner regulations, the State may reserve the forum for its intended purposes, as long as the regulation of speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view[21]. Thus, "the existence of a right of access to public property and the standard by which limitations upon such a right must be evaluated differ depending on the character of the property at issue"[22]. In the particular case of billboards, the Supreme Court decided that an ordinance which permitted on-site commercial advertising (a sign advertising goods or services available on the property where the sign was located), but forbade other commercial advertising and non-commercial advertising using fixed-structure signs, unless permitted by specified exceptions, such as temporary political-campaign signs, breached the freedom of expression of companies that were engaged in the outdoor advertising business[23]. [15]. <i>Appleby and Others v. The United Kingdom</i>, no. 44306/98, §§ 47-49, ECHR 2003-VI, referring to <i>Marsh v. Alabama</i>, 326 US [United States Supreme Court Reports] 501. [16]. <i>Murphy v. Ireland</i>, no. 44179/98, §§ 76-77, ECHR 2003-IX. [17]. <i>Women On Waves and Others v. Portugal</i>, no. 31276/05, §§ 39-40, 3 February 2009. [18]. See the reference in <i>Appleby and Others</i>, cited above, § 26. [19]. In the foundational case <i>Hague v. CIO</i>, 307 US 496 (1939), the US Supreme Court decided that a municipal ordinance requiring a permit for a public assembly in or upon the public streets, highways, public parks or public buildings of the city was void. The principle established by the Supreme Court was that "[w]herever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions". 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All speakers have an equal right of use; the government must not exercise censorship and should apply otherwise permissible restrictions in a way that respects neutrality[8]. In democratic Europe, in the context of using publicly owned frequencies for the communication of ideas, it is expected (especially where the State controls broadcasting as a monopoly) that the management of the public service will be fair and impartial, allowing pluralism (i.e. respecting neutrality), precisely because general public access is not possible (see Informationsverein Lentia and Others v. Austria, 24 November 1993, Series A no. 276, and Manole and Others v. Moldova, no. 13936/02, § 101, ECHR 2009). These considerations are relevant in the present case, as they were in Appleby and Others v. the United Kingdom (no. 44306/98, ECHR 2003-VI). As is the case in the United States of America, outdoor signs play an important role in the communication of ideas in Europe too, and, as has been found in Canada, they are an effective and inexpensive means of communication for individuals and groups that do not have sufficient economic resources to use other media. These considerations are relevant even if there might be differences in the level of protection granted to speech between the various democracies. These principles do not, however, find application in the Swiss Federal Court's judgment (see § 5.2, quoted in paragraph 21 of the present judgment), which did not consider billboard access rights unconditional and found such access to be "subject to substantive content analysis". — A reference is not an endorsement or an identification, and even an endorsement would not create a clear danger of committing a crime. Otherwise the "referring" person would be obliged to distance himself all the time and that would impose a considerable burden on freedom of speech in the world of the Internet. A hyperlink certainly facilitates the dissemination of an idea (by making it more accessible) but not all dissemination gives rise to responsibility. As the Supreme Court of Canada held in a defamation case, hyperlinks are essentially different from publication and are by themselves content-neutral. Like references, they communicate the existence of something, but do not, by themselves, communicate its content (Crookes v. Newton, 2011 SCC 47). Where a specific website can most easily be found with the help of a search engine, it would be unrealistic to assume, without additional consideration, that the "referring" person shares responsibility for unlawful content referred to by means of a hyperlink. Moreover, the Clonaid website is accessible in Switzerland without the intermediary of the applicant's website or poster. According to Canadian and US law, billboards constitute "public fora". In Metromedia, Inc. v. City of San Diego (453 U.S. 490, 494 (1981)) the Supreme Court of the United States quoted Justice Clark in agreement: "The outdoor sign or symbol is a venerable medium for expressing political, social and commercial ideas. From the poster or "broadside" to the billboard, outdoor signs have played a prominent role throughout American history, rallying support for political and social causes." (26 Cal. 3d, at 888...) (ibid. at 501). Metromedia also stated (ibid. at 514-15) that "the city [i.e. government] does not have the same range of choice in the area of noncommercial speech to evaluate the strength of, or distinguish between, various communicative interests. See Carey v. Brown, 447 U.S., at 462...; Police Dept. of Chicago v. Mosley, 408 U.S. 92, 96... (1972). With respect to noncommercial speech, the city may not choose the appropriate subjects for public discourse: 'To allow a government the choice of permissible subjects for public debate would be to allow that government control over the search for political truth.' Consolidated Edison Co., 447 U.S., at 538..." The same judgment referred (at 516) to Virginia Pharmacy Board v. Virginia Citizens Consumer Council (425 U.S., at 77), concluding that outside the sphere of commercial speech "it cannot be assumed that 'alternative channels' [for communication of information] are available, for the parties stipulated to just the opposite: 'Many businesses and politicians and other persons rely upon outdoor advertising because other forms of advertising are insufficient, inappropriate and prohibitively expensive.'"
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These considerations are relevant even if there might be differences in the level of protection granted to speech between the various democracies. These principles do not, however, find application in the Swiss Federal Court's judgment (see § 5.2, quoted in paragraph 21 of the present judgment), which did not consider billboard access rights unconditional and found such access to be "subject to substantive content analysis". APPENDIX Following the methodology adopted in the comparable Appleby case (cited above), it is useful to provide a summary of the approach taken in comparable situations in some jurisdictions. In Appleby it was stated that "The United States Supreme Court has accepted a general right of access to certain types of public places, such as streets and parks, known as "public fora" for the exercise of free speech (Hague v. Committee for Industrial Organisation, 307 U.S. (United States: Supreme Court Reports) 496 (1939))." 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With respect to noncommercial speech, the city may not choose the appropriate subjects for public discourse: 'To allow a government the choice of permissible subjects for public debate would be to allow that government control over the search for political truth.' Consolidated Edison Co., 447 U.S., at 538..." The same judgment referred (at 516) to Virginia Pharmacy Board v. Virginia Citizens Consumer Council (425 U.S., at 77), concluding that outside the sphere of commercial speech "it cannot be assumed that 'alternative channels' [for communication of information] are available, for the parties stipulated to just the opposite: 'Many businesses and politicians and other persons rely upon outdoor advertising because other forms of advertising are insufficient, inappropriate and prohibitively expensive.'" Once a public forum has been created the government cannot discriminate between different speakers or messages (see Police Dept. of Chicago v. Mosley, 408 U.S. 92 (1972); Carey v. Brown, 447 U.S. 455 (1980); Widmar v. Vincent, 454 U.S. 263 (1981); and Niemotko v. Maryland, 340 U.S. 268 (1951). In Shuttlesworth v. City of Birmingham, 394 U.S. 449 (1969), the Supreme Court of the United States held that a city ordinance requiring permits for parades and demonstrations was unconstitutional because it gave the city too much discretion to restrict speech based on its content.

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2012	7/13/2012	MOUVEMENT RAËLIEN SUISSE v. SWITZERLAND	http://hudoc.echr.coe.int/eng/?i=001-112165	16354/06	GC		0 majority	intervener	US	C	general		0 (c) The third party 47. The Organisation Article 19 requested the Court to make a careful examination of the margin of appreciation that was to be afforded to States for restrictions on freedom of expression in cases involving the dissemination of information on the Internet. In its view, the importance of freedom of expression on the Internet under international law meant that the State's margin of appreciation in this area should be a narrow one. As regards, more specifically, the question of hyperlinks to other sites, the Organisation Article 19 referred to comparative-law material concerning judicial decisions in the United Kingdom, Germany and the United States, in particular, showing that a measure requiring the removal of a link without first addressing the source of the allegedly illegal content would always be a disproportionate step.
2012	6/26/2012	HERRMANN v. GERMANY	http://hudoc.echr.coe.int/eng/?i=001-111690	no. 9300/07	GC	PINTO DE ALBUQUERQUE	concurring (partial dissent)	0	Angola	R	constitution	Article 39 § 2 of the Angolan Constitution	Some Constitutions provide for the protection of animals in general. Examples include Articles 84 § 1, 104 § 3 (b) and 120 § 2 of the Swiss Constitution, Article 20a of the German Basic Law, Article 11bis § 2 of the Luxembourg Constitution, Article 51-A (g) of the Constitution of India, Article 225 § 1 VII of the Brazilian Constitution and Article 39 § 2 of the Angolan Constitution. Other Constitutions have gone a step further, protecting a particular species or group of species of animals, as in the case of Article 178-A of the Constitution of the Canton of Geneva (prohibiting the hunting of mammals and birds), Article 48 of the Indian Constitution (preserving and improving breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle), section 16 of Article X (limiting marine net fishing) and section 21 of Article X (limiting cruel and inhumane confinement of pigs during pregnancy) of the Constitution of the State of Florida, as well as Article 9 of the Chinese Constitution (protecting "rare" animals).
2012	6/26/2012	HERRMANN v. GERMANY	http://hudoc.echr.coe.int/eng/?i=001-111690	no. 9300/07	GC	PINTO DE ALBUQUERQUE	concurring (partial dissent)	0	Brazil	R	constitution	Article 225 § 1 VII of the Brazilian Constitution	Some Constitutions provide for the protection of animals in general. Examples include Articles 84 § 1, 104 § 3 (b) and 120 § 2 of the Swiss Constitution, Article 20a of the German Basic Law, Article 11bis § 2 of the Luxembourg Constitution, Article 51-A (g) of the Constitution of India, Article 225 § 1 VII of the Brazilian Constitution and Article 39 § 2 of the Angolan Constitution. Other Constitutions have gone a step further, protecting a particular species or group of species of animals, as in the case of Article 178-A of the Constitution of the Canton of Geneva (prohibiting the hunting of mammals and birds), Article 48 of the Indian Constitution (preserving and improving breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle), section 16 of Article X (limiting marine net fishing) and section 21 of Article X (limiting cruel and inhumane confinement of pigs during pregnancy) of the Constitution of the State of Florida, as well as Article 9 of the Chinese Constitution (protecting "rare" animals).
2012	6/26/2012	HERRMANN v. GERMANY	http://hudoc.echr.coe.int/eng/?i=001-111690	no. 9300/07	GC	PINTO DE ALBUQUERQUE	concurring (partial dissent)	0	China	R	constitution	Article 9 of the Chinese Constitution (protecting "rare" animals)	Some Constitutions provide for the protection of animals in general. Examples include Articles 84 § 1, 104 § 3 (b) and 120 § 2 of the Swiss Constitution, Article 20a of the German Basic Law, Article 11bis § 2 of the Luxembourg Constitution, Article 51-A (g) of the Constitution of India, Article 225 § 1 VII of the Brazilian Constitution and Article 39 § 2 of the Angolan Constitution. Other Constitutions have gone a step further, protecting a particular species or group of species of animals, as in the case of Article 178-A of the Constitution of the Canton of Geneva (prohibiting the hunting of mammals and birds), Article 48 of the Indian Constitution (preserving and improving breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle), section 16 of Article X (limiting marine net fishing) and section 21 of Article X (limiting cruel and inhumane confinement of pigs during pregnancy) of the Constitution of the State of Florida, as well as Article 9 of the Chinese Constitution (protecting "rare" animals).

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2012	6/16/2012	HERRMANN v. GERMANY	http://hudoc.echr.coe.int/eng/?i=001-111690	no. 9300/07	GC	PINTO DE ALBUQUERQUE	concurring (pa		0 US	C	SC	United States v. Stevens, 559 U.S. (2010)	Under the Convention, "animal rights" are not legal claims attributed to animals and exercisable through a representative[22], but instead correspond to obligations imposed on the Contracting Parties as part of their commitment to full, effective and practical enjoyment of human rights, and specifically of a human right to a healthy and sustainable environment. Hence, human rights are not trivialised by the surreptitious intrusion of animals into the realm of rational beings, instead they are enriched with the sense of mankind's full responsibility for the destiny of other species, natural ecosystems and, more broadly, the environment[23]. This responsibility can be formulated legally in positive as well as negative terms. In negative terms, the safeguarding of the environment and animal life constitutes an implicit restriction on the exercise of human rights[24]. In positive terms, it constitutes an inherent obligation on the Contracting Parties bound by the Convention. From this perspective, environmental rights and "animal rights" do not fit neatly into any single category or generation of human rights, but straddle all three classical categories, showing that international human rights law has considerable potential for environmental and animal protection[25]. [25] For instance, freedom of expression does not cover any form of art which tortures animals, or the commercial creation, sale or possession of certain depictions of animal cruelty such as "cruel videos", which feature the torture and killing of helpless animals and are said to appeal to persons with a specific sexual fetish (see the opinion of Justice Alito in <i>United States v. Stevens</i> , 559 U.S. (2010)).
2012	6/16/2012	HERRMANN v. GERMANY	http://hudoc.echr.coe.int/eng/?i=001-111690	no. 9300/07	GC	PINTO DE ALBUQUERQUE	concurring (pa		0 USA	R	lower-level co	section 21 of Article X (limiting cruel and inhumane confinement of pigs during pregnancy) of the Constitution of the State of Florida	Some Constitutions provide for the protection of animals in general. Examples include Articles 84 § 1, 104 § 3 (b) and 120 § 2 of the Swiss Constitution, Article 20a of the German Basic Law, Article 11bis § 2 of the Luxembourg Constitution, Article 51-A (g) of the Constitution of India, Article 225 § 1 VII of the Brazilian Constitution and Article 39 § 2 of the Angolan Constitution. Other Constitutions have gone a step further, protecting a particular species or group of species of animals, as in the case of Article 178-A of the Constitution of the Canton of Geneva (prohibiting the hunting of mammals and birds), Article 48 of the Indian Constitution (preserving and improving breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle), section 16 of Article X (limiting marine net fishing) and section 21 of Article X (limiting cruel and inhumane confinement of pigs during pregnancy) of the Constitution of the State of Florida, as well as Article 9 of the Chinese Constitution (protecting "rare" animals). Furthermore, a broad concept of environment balance which includes animal life and welfare, encompassing animals not only as members of a single species or a group of species but also as individual living beings capable of experiencing fear, suffering and pain, has been repeatedly enshrined in international environmental law as established within the United Nations[10], the Organization of African Unity[11], the Organization of American States[12], the Association of Southeast Asian Nations[13], the World Trade Organization,[14] the World Organization for Animal Health[15], and especially the Council of Europe and the European Union. § [14] Within the WTO the most significant case was the shrimp-turtle case, <i>India et al. v. U.S.</i> The WTO Panel ruling of 6 November 1998, modified by the WTO Appellate Body ruling of 21 November 2001, concerning the US ban on the import of certain shrimp and shrimp products from India and other countries, recognised under WTO rules the right to protect animal or plant life and health and to take measures to conserve exhaustible resources.
2012	6/16/2012	HERRMANN v. GERMANY	HERRMANN v. GERMANY	no. 9300/07	GC	PINTO DE ALBUQUERQUE	concurring (pa		0 India	R	constitution	Article 51-A (g) of the Constitution of India	Some Constitutions provide for the protection of animals in general. Examples include Articles 84 § 1, 104 § 3 (b) and 120 § 2 of the Swiss Constitution, Article 20a of the German Basic Law, Article 11bis § 2 of the Luxembourg Constitution, Article 51-A (g) of the Constitution of India, Article 225 § 1 VII of the Brazilian Constitution and Article 39 § 2 of the Angolan Constitution. Other Constitutions have gone a step further, protecting a particular species or group of species of animals, as in the case of Article 178-A of the Constitution of the Canton of Geneva (prohibiting the hunting of mammals and birds), Article 48 of the Indian Constitution (preserving and improving breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle), section 16 of Article X (limiting marine net fishing) and section 21 of Article X (limiting cruel and inhumane confinement of pigs during pregnancy) of the Constitution of the State of Florida, as well as Article 9 of the Chinese Constitution (protecting "rare" animals). Furthermore, a broad concept of environment balance which includes animal life and welfare, encompassing animals not only as members of a single species or a group of species but also as individual living beings capable of experiencing fear, suffering and pain, has been repeatedly enshrined in international environmental law as established within the United Nations[10], the Organization of African Unity[11], the Organization of American States[12], the Association of Southeast Asian Nations[13], the World Trade Organization,[14] the World Organization for Animal Health[15], and especially the Council of Europe and the European Union. § [14] Within the WTO the most significant case was the shrimp-turtle case, <i>India et al. v. U.S.</i> The WTO Panel ruling of 6 November 1998, modified by the WTO Appellate Body ruling of 21 November 2001, concerning the US ban on the import of certain shrimp and shrimp products from India and other countries, recognised under WTO rules the right to protect animal or plant life and health and to take measures to conserve exhaustible resources.
2012	6/16/2012	HERRMANN v. GERMANY	HERRMANN v. GERMANY	no. 9300/07	GC	PINTO DE ALBUQUERQUE	concurring (pa		0 India	R	constitution	Article 48 of the Indian Constitution	Some Constitutions provide for the protection of animals in general. Examples include Articles 84 § 1, 104 § 3 (b) and 120 § 2 of the Swiss Constitution, Article 20a of the German Basic Law, Article 11bis § 2 of the Luxembourg Constitution, Article 51-A (g) of the Constitution of India, Article 225 § 1 VII of the Brazilian Constitution and Article 39 § 2 of the Angolan Constitution. Other Constitutions have gone a step further, protecting a particular species or group of species of animals, as in the case of Article 178-A of the Constitution of the Canton of Geneva (prohibiting the hunting of mammals and birds), Article 48 of the Indian Constitution (preserving and improving breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle), section 16 of Article X (limiting marine net fishing) and section 21 of Article X (limiting cruel and inhumane confinement of pigs during pregnancy) of the Constitution of the State of Florida, as well as Article 9 of the Chinese Constitution (protecting "rare" animals). Furthermore, a broad concept of environment balance which includes animal life and welfare, encompassing animals not only as members of a single species or a group of species but also as individual living beings capable of experiencing fear, suffering and pain, has been repeatedly enshrined in international environmental law as established within the United Nations[10], the Organization of African Unity[11], the Organization of American States[12], the Association of Southeast Asian Nations[13], the World Trade Organization,[14] the World Organization for Animal Health[15], and especially the Council of Europe and the European Union. § [14] Within the WTO the most significant case was the shrimp-turtle case, <i>India et al. v. U.S.</i> The WTO Panel ruling of 6 November 1998, modified by the WTO Appellate Body ruling of 21 November 2001, concerning the US ban on the import of certain shrimp and shrimp products from India and other countries, recognised under WTO rules the right to protect animal or plant life and health and to take measures to conserve exhaustible resources.
2012	5/22/2012	SCOPPOLA v. ITALY (No. 3)	http://hudoc.echr.coe.int/eng/?i=001-111044	126/05	GC		0 majority	ECtHR	Australia	C	SC	Roach v. s:Electoral Commissioner [2007] HCA 43 (26 September 2007)	3. Australia 59. The High Court of Australia found by four votes to two against the general voting ban that had been introduced in the place of the previous legislation, which had provided for the loss of the right to vote only in connection with prison sentences of three years or more (see Roach v. s:Electoral Commissioner [2007] HCA 43 [26 September 2007]). 60. The High Court noted, <i>inter alia</i> , that the earlier legislation took into account the seriousness of the offence committed as an indicium of culpability and temporary unfitness to participate in the electoral process, beyond the bare fact of imprisonment (see paragraph 98 of the judgment).
2012	5/22/2012	SCOPPOLA v. ITALY (No. 3)	http://hudoc.echr.coe.int/eng/?i=001-111044	126/05	GC		0 majority	ECtHR	Canada	C	SC	Sauvé v. Canada (no. 1), Supreme Court Report, 1992, vol. 2, p. 438	1. Canada 49. In 1992 the Supreme Court of Canada unanimously struck down a legislative provision barring all prisoners from voting (<i>Sauvé v. Canada</i> (no. 1), Supreme Court Report, 1992, vol. 2, p. 438). Amendments were introduced limiting the ban to prisoners serving sentences of two years or more. The Federal Court of Appeal upheld that provision. However, on 31 October 2002 the Supreme Court held by five votes to four, in the case of <i>Sauvé v. Attorney General of Canada</i> (no. 2), that section 51 (e) of the 1985 Canada Elections Act, denying the right to vote to all persons serving sentences of two years or more in a correctional institution, was unconstitutional as it infringed Articles 1 and 3 of the Canadian Charter of Rights and Freedoms, which provide: "1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." "3. Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein." 50. The majority opinion given by Beverly McLachlin CJ considered that the right to vote was fundamental to democracy in Canada and the rule of law and could not be lightly set aside. Limits on this right required not deference, but careful examination. The majority found that the Government had failed to identify the particular problems that required denying the right to vote and that the measure did not satisfy the proportionality test, in particular as the Government had failed to establish a rational connection between the denial of the right to vote and its stated objectives of enhancing civic responsibility and respect for the rule of law and imposing appropriate punishment. 51. The minority opinion given by Gonthier J found that the objectives of the measure were pressing and substantial and based upon a reasonable and rational social or political philosophy (for further details of these opinions, particularly concerning the objectives of the impugned measure, see <i>Hirst</i> (no. 2) [GC], cited above, §§ 36-37).
2012	5/22/2012	SCOPPOLA v. ITALY (No. 3)	http://hudoc.echr.coe.int/eng/?i=001-111044	126/05	GC		0 majority	ECtHR	Canada	C	SC	Sauvé v. Attorney General of Canada (no. 2)	1. Canada 49. In 1992 the Supreme Court of Canada unanimously struck down a legislative provision barring all prisoners from voting (<i>Sauvé v. Canada</i> (no. 1), Supreme Court Report, 1992, vol. 2, p. 438). Amendments were introduced limiting the ban to prisoners serving sentences of two years or more. The Federal Court of Appeal upheld that provision. However, on 31 October 2002 the Supreme Court held by five votes to four, in the case of <i>Sauvé v. Attorney General of Canada</i> (no. 2), that section 51 (e) of the 1985 Canada Elections Act, denying the right to vote to all persons serving sentences of two years or more in a correctional institution, was unconstitutional as it infringed Articles 1 and 3 of the Canadian Charter of Rights and Freedoms, which provide: "1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." "3. Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein." 50. The majority opinion given by Beverly McLachlin CJ considered that the right to vote was fundamental to democracy in Canada and the rule of law and could not be lightly set aside. Limits on this right required not deference, but careful examination. The majority found that the Government had failed to identify the particular problems that required denying the right to vote and that the measure did not satisfy the proportionality test, in particular as the Government had failed to establish a rational connection between the denial of the right to vote and its stated objectives of enhancing civic responsibility and respect for the rule of law and imposing appropriate punishment. 51. The minority opinion given by Gonthier J found that the objectives of the measure were pressing and substantial and based upon a reasonable and rational social or political philosophy (for further details of these opinions, particularly concerning the objectives of the impugned measure, see <i>Hirst</i> (no. 2) [GC], cited above, §§ 36-37).

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2012	5/22/2012	SCOPPOLA v. ITALY (No. 3)	http://hudoc.echr.coe.int/eng/?i=001-111044	126/05	GC		0 majority	ECtHR	South Africa	C	CC	August and Another v. Electoral Commission and Others (CCT8/99:1999 (3) SA 1)	2. South Africa (a) August and Another v. Electoral Commission and Others (CCT8/99:1999 (3) SA 1) 52. On 1 April 1999 the Constitutional Court of South Africa considered the application of prisoners for a declaration and orders that the Electoral Commission take measures enabling them and other prisoners to register and vote while in prison. It noted that, under the South African Constitution, the right of every adult citizen to vote in elections for legislative bodies was set out in unqualified terms, and it underlined the importance of that right: "The universality of the franchise is important not only for nationhood and democracy. The vote of each and every citizen is a badge of dignity and personhood. Quite literally, it says that everybody counts." 53. The Constitutional Court found that the right to vote by its very nature imposed positive obligations upon the legislature and the executive and that the Electoral Act must be interpreted in a way that gave effect to constitutional declarations, guarantees and responsibilities. It noted that many democratic societies imposed voting disabilities on some categories of prisoners. Although there were no comparable provisions in the Constitution, it recognised that limitations might be imposed upon the exercise of fundamental rights, provided they were, <i>inter alia</i>, reasonable and justifiable. 54. The question whether legislation barring prisoners would be justified under the Constitution was not raised in the proceedings and the court emphasised that the judgment was not to be read as preventing Parliament from disenfranchising certain categories of prisoners. In the absence of such legislation, prisoners had the constitutional right to vote and neither the Electoral Commission nor the Constitutional Court had the power to disenfranchise them. It concluded that the Commission was under the obligation to make reasonable arrangements for prisoners to vote. (b) Minister of Home Affairs v. National Institute for Crime Prevention and the Reintegration of Offenders (NICRO) (no. 3/04 of 3 March 2004) 55. The Constitutional Court of South Africa examined whether the 2003 amendment to the Electoral Act, depriving of the right to vote those prisoners serving sentences of imprisonment without the option of a fine, was compatible with the Constitution. 56. The Constitutional Court found the measure unconstitutional, by nine votes to two, and ordered the Electoral Commission to take the necessary steps to allow prisoners to vote in elections. 57. Chaskalson CJ, for the majority, concluded that in a case such as this where the government sought to disenfranchise a group of its citizens and the purpose was not self-evident, there was a need for it to place sufficient information before the court to enable it to know exactly what purpose the disenfranchisement was intended to serve. Moreover, in so far as the Government relied upon policy considerations, there should be sufficient information to enable the court to assess and evaluate the policy that was being pursued (see paragraphs 65 and 67 of the judgment). Chaskalson CJ further noted that this was a blanket exclusion aimed at every prisoner sentenced to imprisonment without the option of a fine, and that there was no information about the sort of offences concerned, the sort of persons likely to be affected and the number of persons who might lose their vote for a minor offence. 58. Madala J, for the minority, considered that the temporary removal of the vote and its restoration upon the prisoner's release was in line with the Government's objective of balancing individual rights and the values of society, particularly in a country like South Africa with its very high crime rate (see paragraphs 116 and 117 of the judgment).
2012	5/22/2012	SCOPPOLA v. ITALY (No. 3)	http://hudoc.echr.coe.int/eng/?i=001-111044	126/05	GC		0 majority	ECtHR	South Africa	C	CC	Minister of Home Affairs v. National Institute for Crime Prevention and the Reintegration of Offenders (NICRO) (no. 3/04 of 3 March 2004)	2. South Africa (a) August and Another v. Electoral Commission and Others (CCT8/99:1999 (3) SA 1) 52. On 1 April 1999 the Constitutional Court of South Africa considered the application of prisoners for a declaration and orders that the Electoral Commission take measures enabling them and other prisoners to register and vote while in prison. It noted that, under the South African Constitution, the right of every adult citizen to vote in elections for legislative bodies was set out in unqualified terms, and it underlined the importance of that right: "The universality of the franchise is important not only for nationhood and democracy. The vote of each and every citizen is a badge of dignity and personhood. Quite literally, it says that everybody counts." 53. The Constitutional Court found that the right to vote by its very nature imposed positive obligations upon the legislature and the executive and that the Electoral Act must be interpreted in a way that gave effect to constitutional declarations, guarantees and responsibilities; it noted that many democratic societies imposed voting disabilities on some categories of prisoners. Although there were no comparable provisions in the Constitution, it recognised that limitations might be imposed upon the exercise of fundamental rights, provided they were, <i>inter alia</i>, reasonable and justifiable. 54. The question whether legislation barring prisoners would be justified under the Constitution was not raised in the proceedings and the court emphasised that the judgment was not to be read as preventing Parliament from disenfranchising certain categories of prisoners. In the absence of such legislation, prisoners had the constitutional right to vote and neither the Electoral Commission nor the Constitutional Court had the power to disenfranchise them. It concluded that the Commission was under the obligation to make reasonable arrangements for prisoners to vote. (b) Minister of Home Affairs v. National Institute for Crime Prevention and the Reintegration of Offenders (NICRO) (no. 3/04 of 3 March 2004) 55. The Constitutional Court of South Africa examined whether the 2003 amendment to the Electoral Act, depriving of the right to vote those prisoners serving sentences of imprisonment without the option of a fine, was compatible with the Constitution. 56. The Constitutional Court found the measure unconstitutional, by nine votes to two, and ordered the Electoral Commission to take the necessary steps to allow prisoners to vote in elections. 57. Chaskalson CJ, for the majority, concluded that in a case such as this where the government sought to disenfranchise a group of its citizens and the purpose was not self-evident, there was a need for it to place sufficient information before the court to enable it to know exactly what purpose the disenfranchisement was intended to serve. Moreover, in so far as the Government relied upon policy considerations, there should be sufficient information to enable the court to assess and evaluate the policy that was being pursued (see paragraphs 65 and 67 of the judgment). Chaskalson CJ further noted that this was a blanket exclusion aimed at every prisoner sentenced to imprisonment without the option of a fine, and that there was no information about the sort of offences concerned, the sort of persons likely to be affected and the number of persons who might lose their vote for a minor offence. 58. Madala J, for the minority, considered that the temporary removal of the vote and its restoration upon the prisoner's release was in line with the Government's objective of balancing individual rights and the values of society, particularly in a country like South Africa with its very high crime rate (see paragraphs 116 and 117 of the judgment).
2012	4/10/2012	BABAR AHMAD AND OTHERS v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-1110467	24027/07, 11949/08, 36/54			0 majority	ECtHR	Mauritius	C	SC	State v. Philibert [2007] SCJ 274	153. In State v. Philibert [2007] SCJ 274, the Supreme Court of Mauritius held that a mandatory sentence of 45 years' imprisonment for murder amounted to inhuman or degrading treatment in violation of section 7 on the grounds that it was disproportionate.

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2012	4/10/2012	BABAR AHMAD AND OTHERS v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-110267	24027/07, 11949/08, 36/54			0 majority	ECtHR	Canada	R	constitution	Canadian Charter of Rights	C. Relevant Canadian case-law 73. Section 1 of the Canadian Charter of Rights provides that the Charter guarantees the rights and freedoms set out in it “subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.” Section 7 provides: “Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.” Section 12 provides: “Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.” 74. In <i>United States v. Burns</i> [2001] 3 C.R. 283, Burns and another (the respondents) were to be extradited from Canada to the State of Washington to stand trial for murders allegedly committed when they were both eighteen. Before making the extradition order the Canadian Minister of Justice had not sought assurances that the death penalty would not be imposed. The Supreme Court of Canada found that the remoteness between the extradition and the potential imposition of capital punishment meant the case was not appropriately considered under section 12 but under section 7. However, the values underlying section 12 could form part of the balancing process engaged under section 7. The extradition of the respondents would, if implemented, deprive them of their rights of liberty and security of person as guaranteed by section 7. The issue was whether such a deprivation was in accordance with the principles of fundamental justice. While extradition could only be refused if it “shocked the conscience” an extradition that violated the principles of fundamental justice would always do so. The court balanced the factors that favoured extradition against those that favoured seeking assurances that the death penalty would not be sought. The latter included the fact that a degree of leniency for youth was an accepted value in the administration of justice, even for young offenders over the age of eighteen. The court concluded that the objectives sought to be advanced by extradition without assurances would be as well served by extradition with assurances. The court held therefore that assurances were constitutionally required by section 7 in all but exceptional cases. 75. In <i>United States of America v. Ferras</i>; <i>United States of America v. Latty</i>, [2006] 2 SCR 77, the appellants were to be extradited to the United States to face charges of fraud (the Ferras case) or trafficking of cocaine (the Latty case). The appellants in the Latty case had argued that, if extradited and convicted they could receive sentences of ten years to life without parole and this would “shock the conscience”. In dismissing the appeals, the Supreme Court affirmed the balancing approach laid down in <i>Burns</i> to determining whether potential sentences in a requesting state would “shock the conscience”. The harsher sentences the appellants might receive if convicted in the United States were among the factors militating against their surrender but they had offered no evidence or case-law to back up their assertions that the possible sentences would shock the conscience of Canadians. The factors favouring extradition far outweighed those that did not. 7. Canada 148. The Supreme Court of Canada has found that a grossly disproportionate sentence will amount to cruel and unusual treatment or punishment (see, <i>inter alia</i>, <i>R v. Smith</i> (Edward Dewey) [1987] 1 SCR 1045). In <i>R v. Luxton</i> [1990] 2 S.C.R. 711, the court considered that, for first degree murder, a mandatory minimum sentence of life imprisonment without eligibility for parole for twenty-five years was not grossly disproportionate. Similarly, in <i>R v. Latimer</i> 2001 1 SCR 3, for second degree murder, a mandatory minimum sentence of life imprisonment without eligibility for parole for ten years was not grossly disproportionate. The court observed that gross disproportionality would only be found on “rare and unique occasions” and that the test for determining this issue was “very properly stringent and demanding”. 162. The Government relied on the reasoning of the House of Lords in <i>Wellington</i> and the Canadian Supreme Court in <i>Burns</i> and <i>Ferras</i> (see paragraphs 66–72, 74 and 75 above). On the basis of those cases, the Government submitted that, in the extradition context, a distinction had to be drawn between torture and other forms of ill-treatment. A real risk of torture in the receiving State should be an absolute bar on extradition. However, for all other forms of ill-treatment, it was legitimate to consider the policy objectives pursued by extradition in determining whether the ill-treatment reached the minimum level of severity required by Article 3. This was the appropriate means of resolving the tension that existed between the Court’s judgments in <i>Soering</i>, on the one
2012	4/10/2012	BABAR AHMAD AND OTHERS v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-110267	24027/07, 11949/08, 36/54			0 majority	ECtHR	Canada	C	SC	United States v. Burns [2001] 3 C.R. 283	C. Relevant Canadian case-law 73. Section 1 of the Canadian Charter of Rights provides that the Charter guarantees the rights and freedoms set out in it “subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.” Section 7 provides: “Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.” Section 12 provides: “Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.” 74. In <i>United States v. 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While extradition could only be refused if it “shocked the conscience” an extradition that violated the principles of fundamental justice would always do so. The court balanced the factors that favoured extradition against those that favoured seeking assurances that the death penalty would not be sought. The latter included the fact that a degree of leniency for youth was an accepted value in the administration of justice, even for young offenders over the age of eighteen. The court concluded that the objectives sought to be advanced by extradition without assurances would be as well served by extradition with assurances. The court held therefore that assurances were constitutionally required by section 7 in all but exceptional cases. 75. In <i>United States of America v. Ferras</i>; <i>United States of America v. Latty</i>, [2006] 2 SCR 77, the appellants were to be extradited to the United States to face charges of fraud (the Ferras case) or trafficking of cocaine (the Latty case). 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Luxton</i> [1990] 2 S.C.R. 711, the court considered that, for first degree murder, a mandatory minimum sentence of life imprisonment without eligibility for parole for twenty-five years was not grossly disproportionate. Similarly, in <i>R v. Latimer</i> 2001 1 SCR 3, for second degree murder, a mandatory minimum sentence of life imprisonment without eligibility for parole for ten years was not grossly disproportionate. The court observed that gross disproportionality would only be found on “rare and unique occasions” and that the test for determining this issue was “very properly stringent and demanding”. 162. The Government relied on the reasoning of the House of Lords in <i>Wellington</i> and the Canadian Supreme Court in <i>Burns</i> and <i>Ferras</i> (see paragraphs 66–72, 74 and 75 above). On the basis of those cases, the Government submitted that, in the extradition context, a distinction had to be drawn between torture and other forms of ill-treatment. 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2012	4/10/2012	BABAR AHMAD AND OTHERS v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-110267	24027/07, 11949/08, 36/54			0 majority	ECtHR	Canada	C	SC	United States of America v. Ferras; United States of America v. Latty, [2006] 2 SCR 77	C. Relevant Canadian case-law 73. Section 1 of the Canadian Charter of Rights provides that the Charter guarantees the rights and freedoms set out in it “subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.” Section 7 provides: “Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.” Section 12 provides: “Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.” 74. In <i>United States v. Burns</i> [2001] 3 C.R. 283, Burns and another (the respondents) were to be extradited from Canada to the State of Washington to stand trial for murders allegedly committed when they were both eighteen. Before making the extradition order the Canadian Minister of Justice had not sought assurances that the death penalty would not be imposed. The Supreme Court of Canada found that the remoteness between the extradition and the potential imposition of capital punishment meant the case was not appropriately considered under section 12 but under section 7. However, the values underlying section 12 could form part of the balancing process engaged under section 7. The extradition of the respondents would, if implemented, deprive them of their rights of liberty and security of person as guaranteed by section 7. The issue was whether such a deprivation was in accordance with the principles of fundamental justice. While extradition could only be refused if it “shocked the conscience” an extradition that violated the principles of fundamental justice would always do so. The court balanced the factors that favoured extradition against those that favoured seeking assurances that the death penalty would not be sought. The latter included the fact that a degree of leniency for youth was an accepted value in the administration of justice, even for young offenders over the age of eighteen. The court concluded that the objectives sought to be advanced by extradition without assurances would be as well served by extradition with assurances. The court held therefore that assurances were constitutionally required by section 7 in all but exceptional cases. 75. In <i>United States of America v. Ferras</i>; <i>United States of America v. Latty</i>, [2006] 2 SCR 77, the appellants were to be extradited to the United States to face charges of fraud (the Ferras case) or trafficking of cocaine (the Latty case). The appellants in the Latty case had argued that, if extradited and convicted they could receive sentences of ten years to life without parole and this would “shock the conscience”. In dismissing the appeals, the Supreme Court affirmed the balancing approach laid down in <i>Burns</i> to determining whether potential sentences in a requesting state would “shock the conscience”. The harsher sentences the appellants might receive if convicted in the United States were among the factors militating against their surrender but they had offered no evidence or case-law to back up their assertions that the possible sentences would shock the conscience of Canadians. The factors favouring extradition far outweighed those that did not. 7. Canada 148. The Supreme Court of Canada has found that a grossly disproportionate sentence will amount to cruel and unusual treatment or punishment (see, <i>inter alia</i>, <i>R v. Smith</i> (Edward Dewey) [1987] 1 SCR 1045). In <i>R v. Luxton</i> [1990] 2 S.C.R. 711, the court considered that, for first degree murder, a mandatory minimum sentence of life imprisonment without eligibility for parole for twenty-five years was not grossly disproportionate. Similarly, in <i>R v. Latimer</i> 2001 1 SCR 3, for second degree murder, a mandatory minimum sentence of life imprisonment without eligibility for parole for ten years was not grossly disproportionate. The court observed that gross disproportionality would only be found on “rare and unique occasions” and that the test for determining this issue was “very properly stringent and demanding”. 162. The Government relied on the reasoning of the House of Lords in <i>Wellington</i> and the Canadian Supreme Court in <i>Burns</i> and <i>Ferras</i> (see paragraphs 66–72, 74 and 75 above). On the basis of those cases, the Government submitted that, in the extradition context, a distinction had to be drawn between torture and other forms of ill-treatment. A real risk of torture in the receiving State should be an absolute bar on extradition. However, for all other forms of ill-treatment, it was legitimate to consider the policy objectives pursued by extradition in determining whether the ill-treatment reached the minimum level of severity required by Article 3. This was the appropriate means of resolving the tension that existed between the Court’s judgments in <i>Soering</i>, on the one

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2012	3/22/2012	KONSTANTIN MARKIN v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-109868	no. 30078/06	GC	PINTO DE ALBUQUERQUE	concurring (pa		0 South Africa	C	CC	Republic of South Africa and Others v. Grootboom and Others, Case CCT 11/00, 4 October 2000, §§ 33, 36, 44	It is also argued that the inherently vague and technical nature of social rights makes them judicially unenforceable. Social rights are said to be mere aspirational policy goals or action programmes directed at the political and administrative branches of the State and do not lend themselves to any judicial review. This argument overlooks the notion of a minimum core of fundamental rights[14]. Social rights, as any other fundamental rights, have a minimum core which can and should be determined and enforced by courts, according to this task the greatest relevance especially in times of financial hardship, when social rights are the first to be neglected[15]. If wide latitude is given to the State to take the appropriate social-policy measures, the Court's role is to determine whether they fall within the bounds of "reasonableness"[16]. The reasonableness of State social policy is assessed in terms of its proportionality in the sense that it must not only cater even-handedly for all social groups, but must also counterbalance factual inequalities and pay special attention to the most vulnerable social groups[17]. For instance, a social-policy measure will be "unreasonable", that is disproportionate, if it makes no provision for those most in need. A point of confluence is then found between the implementation of a "reasonable" social policy and the obligatory guarantee of the minimum core of the social right[18]. As Justice William Brennan so eloquently put it, "public assistance, then, is not mere charity, but a means to 'promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity'"[19]. [18]. This confluence of criteria has been admitted by the CESCR, in its "Statement by the Committee", cited above, § 8 (f), and the Constitutional Court of South Africa in Government of the Republic of South Africa and Others v. Grootboom and Others, Case CCT 11/00, 4 October 2000, §§ 33, 36, 44, Minister of Health and Others v. Treatment Action Campaign and Others, Case CCT 8/02, 5 July 2002, §§ 34, 79, and in Mazibuko and Others v. City of Johannesburg and Others, CCT 39/09, 8 October 2009, § 67, and the Joint Committee on Human Rights of the House of Lords, Twenty-Ninth Report: Economic and social rights, 10 August 2008, §§ 172, 181. It should be noted that this confluence does not produce perfectly overlapping criteria, since the "reasonableness" (or proportionality) test does not cover exclusively minimum obligations. There may be cases where minimum obligations are met, but States are still failing to provide "reasonable" (proportionate) social policy measures.
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2012	3/15/2012	GAS AND DUBOIS v. FRANCE	http://hudoc.echr.coe.int/eng/?i=001-109572	25951/07	SS		0 majority	intervener	Australia	R	general		056. Other countries displayed similar trends in the legislation and case-law. Second-parent adoption was possible for same-sex couples in thirteen Canadian provinces, in at least sixteen of the fifty States of the United States of America and in other countries such as Brazil, Uruguay, New Zealand and some parts of Australia.
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2012	3/15/2012	GAS AND DUBOIS v. FRANCE	http://hudoc.echr.coe.int/eng/?i=001-109572	25951/07	SS		0 majority	intervener	South Africa	R	general		057. Referring to the United Nations Convention on the Rights of the Child and the relevant case-law of the Court and of certain national courts (such as the United Kingdom's House of Lords and the South African Constitutional Court), the third-party interveners requested the Court to adopt the same approach, which in their view gave priority to the protection of the child's interests.
2012	3/15/2012	GAS AND DUBOIS v. FRANCE	http://hudoc.echr.coe.int/eng/?i=001-109572	25951/07	SS		0 majority	intervener	Uruguay	R	general		056. Other countries displayed similar trends in the legislation and case-law. Second-parent adoption was possible for same-sex couples in thirteen Canadian provinces, in at least sixteen of the fifty States of the United States of America and in other countries such as Brazil, Uruguay, New Zealand and some parts of Australia.
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2012	3/15/2012	SITAROPOULOS AND GIAKOUMOPOULOS v. GREECE	http://hudoc.echr.coe.int/eng/?i=001-109529	42202/07	GC		0 majority	ECTHR	Canada	R	general		0 (b) 2006 report on electoral law and electoral administration in Europe (Study no. 352/2005) 24. The report notes, among other things, the following: "Voting rights for citizens abroad 57. External voting rights, e.g. granting nationals living abroad the right to vote, are a relatively new phenomenon. Even in long-established democracies, citizens living in foreign countries were not given voting rights until the 1980s (e.g. Federal Republic of Germany, United Kingdom) or the 1990s (e.g., Canada, Japan). In the meantime, however, many emerging or new democracies in Europe have introduced legal provisions for external voting (out-of-country voting, overseas voting). Although it is yet not common in Europe, the introduction of external voting rights might be considered, if not yet present. However, safeguards must be implemented to ensure the integrity of the vote 152. Postal voting is permitted in several established democracies in western Europe, e.g. Germany, Ireland, Spain, Switzerland ... It was also used, for example, in Bosnia and Herzegovina and the Kosovo in order to ensure maximum inclusiveness of the election process (CG/BUR (11) 74). However, it should be allowed only if the postal service is secure and reliable. Each individual case must be assessed as to whether fraud and manipulation are likely to occur with postal voting. ..." (c) 2011 report on out-of-country voting (Study no. 580/2010)
2012	3/15/2012	Sitaropoulos and Giakoumopoulos v. Greece,	http://hudoc.echr.coe.int/eng/?i=001-109529	42202/07	GC		0 majority	ECTHR	Japan	R	general		0 (b) 2006 report on electoral law and electoral administration in Europe (Study no. 352/2005) 24. The report notes, among other things, the following: "Voting rights for citizens abroad 57. External voting rights, e.g. granting nationals living abroad the right to vote, are a relatively new phenomenon. Even in long-established democracies, citizens living in foreign countries were not given voting rights until the 1980s (e.g. Federal Republic of Germany, United Kingdom) or the 1990s (e.g., Canada, Japan). In the meantime, however, many emerging or new democracies in Europe have introduced legal provisions for external voting (out-of-country voting, overseas voting). Although it is yet not common in Europe, the introduction of external voting rights might be considered, if not yet present. However, safeguards must be implemented to ensure the integrity of the vote 152. Postal voting is permitted in several established democracies in western Europe, e.g. Germany, Ireland, Spain, Switzerland ... It was also used, for example, in Bosnia and Herzegovina and the Kosovo in order to ensure maximum inclusiveness of the election process (CG/BUR (11) 74). However, it should be allowed only if the postal service is secure and reliable. Each individual case must be assessed as to whether fraud and manipulation are likely to occur with postal voting. ..."
2012	3/15/2012	SOLOMAKHIN v. UKRAINE	http://hudoc.echr.coe.int/eng/?i=001-109565	no. 24429/03)	SS	ZUPANČIČ	concurring		0 US	R	statute	Model Penal Code of the United States of America	4. The scientists are well aware of the epistemological axiom to the effect that no consequence in the real world is "caused" by a single preliminarily necessary condition. Every consequence in the real world, in which it occurs as an event, is a product of innumerable necessary conditions which, by definition, are all indispensable if the consequence in question is to occur. For example, the authors of the Model Penal Code of the United States of America have, many decades ago, in fact done away with the theory of causation. They have adopted the sine qua non causation theory, which in reality is the denial of causation itself. It admits as a legally relevant "cause" any necessary (sine qua non) condition without which the result in the crime in question, for example death, would not have occurred.
2012	2/23/2012	HIRSI JAMAA AND OTHERS v. ITALY	http://hudoc.echr.coe.int/eng/?i=001-109231	27765/09	GC	PINTO DE ALBUQUERQUE	concurring		0 Australia	C	SC	Minister for Immigration and Multicultural Affairs v. Haji Ibrahim, [2000] HCA 55, 26 October 2000, 5157/1999, paragraph 136	The fact that some Supreme Courts, such as the United States Supreme Court[27] and the High Court of Australia[28], have reached different conclusions is not decisive. [27]. Sale v. Haitian Centers Council, 509 US 155 (1993), with a powerful dissenting opinion of Justice Blackmun.[28]. Minister for Immigration and Multicultural Affairs v. Haji Ibrahim, [2000] HCA 55, 26 October 2000, 5157/1999, paragraph 136, and Minister for Immigration and Multicultural Affairs v. Khawar, [2002] HCA 14, 11 April 2002, 5128/2001, paragraph 42. It is true that the statement of the Swiss delegate to the conference of plenipotentiaries that the prohibition of refoulement did not apply to refugees arriving at the border was supported by other delegates, including the Dutch delegate, who noted that the conference was in agreement with this interpretation[29]. It is also true that Article 33 § 2 of the United Nations Convention relating to the Status of Refugees exempts from the prohibition of refoulement a refugee who constitutes a danger to the security of a country "in which he is", and that refugees on the high seas are in no country. One might be tempted to construe Article 33 § 1 as containing a similar territorial restriction. If the prohibition of refoulement were to apply on the high seas, it would create a special regime for dangerous aliens on the high seas, who would benefit from the prohibition, while dangerous aliens residing in the country would not. With all due respect, the United States Supreme Court's interpretation contradicts the literal and ordinary meaning of the language of Article 33 of the United Nations Convention relating to the Status of Refugees and departs from the common rules of treaty interpretation. According to Article 1 § 1 of the Vienna Convention on the Law of Treaties, a treaty provision should be interpreted in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. When the meaning of a treaty is clear from its text when read in the light of its letter, object and purpose, supplementary sources, such as the preparatory works, are unnecessary[30]. The historical supplementary source is even less necessary when it is itself not clear, as in this case, since the Ad Hoc Committee responsible for the drafting of the Convention defended the view that the obligation of non-refoulement includes refugees who have not yet entered the territory[31]; the United States representative affirmed during the drafting of Article 33 that it should not matter if the refugee had crossed the border or not[32]; the Dutch representative formulated his reservation only in respect of "large groups of refugees seeking access to its territory"; and the president of the conference of plenipotentiaries merely "ruled that the interpretation given by the Netherlands representative should be placed on record", that is, that the possibility of mass migrations across frontiers was considered by the Netherlands not to be covered by Article 33[33].
2012	2/23/2012	HIRSI JAMAA AND OTHERS v. ITALY	http://hudoc.echr.coe.int/eng/?i=001-109231	27765/09	GC	PINTO DE ALBUQUERQUE	concurring		0 Australia	C	SC	Minister for Immigration and Multicultural Affairs v. Khawar, [2002] HCA 14, 11 April 2002, 5128/2001, paragraph 42	The fact that some Supreme Courts, such as the United States Supreme Court[27] and the High Court of Australia[28], have reached different conclusions is not decisive. [27]. Sale v. Haitian Centers Council, 509 US 155 (1993), with a powerful dissenting opinion of Justice Blackmun.[28]. Minister for Immigration and Multicultural Affairs v. Haji Ibrahim, [2000] HCA 55, 26 October 2000, 5157/1999, paragraph 136, and Minister for Immigration and Multicultural Affairs v. Khawar, [2002] HCA 14, 11 April 2002, 5128/2001, paragraph 42. It is true that the statement of the Swiss delegate to the conference of plenipotentiaries that the prohibition of refoulement did not apply to refugees arriving at the border was supported by other delegates, including the Dutch delegate, who noted that the conference was in agreement with this interpretation[29]. It is also true that Article 33 § 2 of the United Nations Convention relating to the Status of Refugees exempts from the prohibition of refoulement a refugee who constitutes a danger to the security of a country "in which he is", and that refugees on the high seas are in no country. One might be tempted to construe Article 33 § 1 as containing a similar territorial restriction. If the prohibition of refoulement were to apply on the high seas, it would create a special regime for dangerous aliens on the high seas, who would benefit from the prohibition, while dangerous aliens residing in the country would not. With all due respect, the United States Supreme Court's interpretation contradicts the literal and ordinary meaning of the language of Article 33 of the United Nations Convention relating to the Status of Refugees and departs from the common rules of treaty interpretation. According to Article 1 § 1 of the Vienna Convention on the Law of Treaties, a treaty provision should be interpreted in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. When the meaning of a treaty is clear from its text when read in the light of its letter, object and purpose, supplementary sources, such as the preparatory works, are unnecessary[30]. The historical supplementary source is even less necessary when it is itself not clear, as in this case, since the Ad Hoc Committee responsible for the drafting of the Convention defended the view that the obligation of non-refoulement includes refugees who have not yet entered the territory[31]; the United States representative affirmed during the drafting of Article 33 that it should not matter if the refugee had crossed the border or not[32]; the Dutch representative formulated his reservation only in respect of "large groups of refugees seeking access to its territory"; and the president of the conference of plenipotentiaries merely "ruled that the interpretation given by the Netherlands representative should be placed on record", that is, that the possibility of mass migrations across frontiers was considered by the Netherlands not to be covered by Article 33[33].
2012	2/23/2012	HIRSI JAMAA AND OTHERS v. ITALY	http://hudoc.echr.coe.int/eng/?i=001-109231	27765/09	GC	PINTO DE ALBUQUERQUE	concurring		0 US	C	SC	Sale v. Haitian Centers Council, 509 US 155 (1993)	The fact that some Supreme Courts, such as the United States Supreme Court[27] and the High Court of Australia[28], have reached different conclusions is not decisive. [27]. Sale v. Haitian Centers Council, 509 US 155 (1993), with a powerful dissenting opinion of Justice Blackmun. [28]. Minister for Immigration and Multicultural Affairs v. Haji Ibrahim, [2000] HCA 55, 26 October 2000, 5157/1999, paragraph 136, and Minister for Immigration and Multicultural Affairs v. Khawar, [2002] HCA 14, 11 April 2002, 5128/2001, paragraph 42. It is true that the statement of the Swiss delegate to the conference of plenipotentiaries that the prohibition of refoulement did not apply to refugees arriving at the border was supported by other delegates, including the Dutch delegate, who noted that the conference was in agreement with this interpretation[29]. It is also true that Article 33 § 2 of the United Nations Convention relating to the Status of Refugees exempts from the prohibition of refoulement a refugee who constitutes a danger to the security of a country "in which he is", and that refugees on the high seas are in no country. One might be tempted to construe Article 33 § 1 as containing a similar territorial restriction. If the prohibition of refoulement were to apply on the high seas, it would create a special regime for dangerous aliens on the high seas, who would benefit from the prohibition, while dangerous aliens residing in the country would not. With all due respect, the United States Supreme Court's interpretation contradicts the literal and ordinary meaning of the language of Article 33 of the United Nations Convention relating to the Status of Refugees and departs from the common rules of treaty interpretation. According to Article 1 § 1 of the Vienna Convention on the Law of Treaties, a treaty provision should be interpreted in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. When the meaning of a treaty is clear from its text when read in the light of its letter, object and purpose, supplementary sources, such as the preparatory works, are unnecessary[30]. The historical supplementary source is even less necessary when it is itself not clear, as in this case, since the Ad Hoc Committee responsible for the drafting of the Convention defended the view that the obligation of non-refoulement includes refugees who have not yet entered the territory[31]; the United States representative affirmed during the drafting of Article 33 that it should not matter if the refugee had crossed the border or not[32]; the Dutch representative formulated his reservation only in respect of "large groups of refugees seeking access to its territory"; and the president of the conference of plenipotentiaries merely "ruled that the interpretation given by the Netherlands representative should be placed on record", that is, that the possibility of mass migrations across frontiers was considered by the Netherlands not to be covered by Article 33[33].
2012	2/9/2012	VIJDELAND AND OTHERS v. SWEDEN	http://hudoc.echr.coe.int/eng/?i=001-109046	no. 1813/07	SS	YUDKIVSKA	concurring		0 Canada	C	SC	R. v. Keegstra, [1990] 3 S.C.R. 697	9. The majority found that the applicants' conviction in the present case served a legitimate aim, namely "the protection of the reputation and the rights of others". As a matter of fact, cases like the present one should not be viewed merely as a balancing exercise between the applicants' freedom of speech and the targeted group's right to protect their reputation. Hate speech is destructive for democratic society as a whole, since "prejudicial messages will gain some credence, with the attendant result of discrimination, and perhaps even violence, against minority groups".[19] and therefore it should not be protected.[19]. Judgment of the Supreme Court of Canada in the case of R. v. Keegstra, [1990] 3 S.C.R. 697

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2012	2/9/2012	VEJDELAND AND OTHERS v. SWEDEN	http://hudoc.echr.coe.int/eng/?i=001-109046	no. 1813/07	55	ZUPANČIČ	dissenting		0 US	C	SC	Snyder v. Phelps et al, 562 U.S.____(2011).	2. In this respect, the case before us may relevantly be compared to Snyder v. Phelps et al, 562 U.S.____(2011), decided last year by the Supreme Court of the United States. In Snyder an anti-homosexual demonstration far more insensitive than the events in the case at hand took place about 300 metres from the church where the funeral of Mr. Snyder's son, Corporal Matthew Snyder, who was killed in Iraq in the line of duty, was taking place. There is no need to repeat here the contents of the offensive picketing signs displayed by the members of the congregation of the Westboro Baptist Church, who were in the habit of picketing military funerals in order to communicate their belief that God hates the United States for its tolerance of homosexuality, particularly in America's military. 9. A captive audience is one that finds itself in an inescapable situation and is bombarded with information that is offensive to some of the members of that audience. If a church audience is in that sense captive because an individual cannot escape being subjected to a verbal assault, then in the case of a school audience, where leaflets were distributed – as we do emphasise in § 56 – in the young people's lockers, that is certainly a decisive consideration. A church is in essence a public place accessible to everybody. School grounds, on the other hand, are more protected and are in this sense a non-public place, requiring an intrusion in order to distribute any information of whatever kind that has not been previously approved by the school's authorities. Coming back to the Supreme Court of the United States, it has held that "the undoubted freedom to advocate unpopular and controversial views in schools and classrooms must be balanced against the society's countervailing interest in teaching students the boundaries of socially appropriate behaviour" [16]
2012	1/17/2012	HARKINS AND EDWARDS v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-108599	9146/07 and 32650/07	54		0 majority	ECtHR	Canada	R	constitution	Canadian Charter of Rights	C. Relevant Canadian case-law on extradition and the Canadian Charter of Rights 43. Section 1 of the Canadian Charter of Rights provides that the Charter guarantees the rights and freedoms set out in it "subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." Section 7 provides: "Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice." Section 12 provides: "Everyone has the right not to be subjected to any cruel and unusual treatment or punishment." 44. In United States v. Burns [2001] 3 S.C.R. 283, Burns and another (the respondents) were to be extradited from Canada to the State of Washington to stand trial for murders allegedly committed when they were both eighteen. Before making the extradition order the Canadian Minister of Justice had not sought assurances that the death penalty would not be imposed. The Supreme Court of Canada found that the remoteness between the extradition and the potential imposition of capital punishment meant the case was not appropriately considered under section 12 but under section 7. However, the values underlying section 12 could form part of the balancing process engaged under section 7. The extradition of the respondents would, if implemented, deprive them of their rights of liberty and security of person as guaranteed by section 7. The issue was whether such a deprivation was in accordance with the principles of fundamental justice. While extradition could only be refused if it "shocked the conscience" an extradition that violated the principles of fundamental justice would always do so. The court balanced the factors that favoured extradition against those that favoured seeking assurances that the death penalty would not be sought. The latter included the fact that a degree of leniency for youth was an accepted value in the administration of justice, even for young offenders over the age of eighteen. The court concluded that the objectives sought to be advanced by extradition without assurances would be as well served by extradition with assurances. The court held therefore that assurances were constitutionally required by section 7 in all but exceptional cases. 45. In United States of America v. Ferras; United States of America v. Latty, [2006] 2 SCR 77, the appellants were to be extradited to the United States to face charges of fraud (the Ferras case) or trafficking of cocaine (the Latty case). The appellants in the Latty case had argued that, if extradited and convicted they could receive sentences of ten years to life without parole and this would "shock the conscience". In dismissing the appeals, the Supreme Court affirmed the balancing approach laid down in Burns to determining whether potential sentences in a requesting state would "shock the conscience". The harsher sentences the appellants might receive if convicted in the United States were among the factors militating against their surrender but they had offered no evidence or case-law to back up their assertions that the possible sentences would shock the conscience of Canadians. The factors favouring extradition far outweighed those that did not. 7. Canada 73. As stated at paragraph 43 above, section 12 of the Canadian Charter protects against cruel or unusual treatment or punishment. The Supreme Court of Canada has found that a grossly disproportionate sentence will amount to cruel and unusual treatment or punishment (see, inter alia, R v. Smith (Edward Dewey) [1987] 1 SCR 1045). In R v. Lutton [1990] 2 S.C.R. 711, the court considered that, for first degree murder, a mandatory minimum sentence of life imprisonment without eligibility for parole for twenty-five years was not grossly disproportionate. Similarly, in R v. Latimer 2001 1 SCR 3, for second degree murder, a mandatory minimum sentence of life imprisonment without eligibility for parole for ten years was not grossly disproportionate. The court observed that gross disproportionality would only be found on "rare and unique occasions" and that the test for determining this issue was "very properly stringent and demanding". 93. The first applicant submitted that the House of Lords had erred in Wellington. The Court's rulings in Chahal v. the United Kingdom, 15 November 1996, Reports of Judgments and Decisions 1996-V and Saadi v. Italy [GC], no. 37201/06, ECHR 2008-... meant there was no possibility of balancing Article 3 rights with other considerations which arose in extradition cases. It was inappropriate for the Court to consider the Canadian case of Burns and Ferras, as the Government had urged (see paragraph 105 below); those cases had been about the qualified right in the Canadian Charter on fundamental justice, not the Charter's prohibition on cruel and
2012	1/17/2012	HARKINS AND EDWARDS v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-108599	9146/07 and 32650/07	54		0 majority	ECtHR	Canada	C	SC	United States v. Burns [2001] 3 S.C.R. 283	C. Relevant Canadian case-law on extradition and the Canadian Charter of Rights 43. Section 1 of the Canadian Charter of Rights provides that the Charter guarantees the rights and freedoms set out in it "subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." Section 7 provides: "Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice." Section 12 provides: "Everyone has the right not to be subjected to any cruel and unusual treatment or punishment." 44. In United States v. 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2012	1/17/2012	HARKINS AND EDWARDS v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-108599	9146/07 and 32650/07	54		0 majority	ECtHR	South Africa	C	CC	Dodo v. the State [CCT 1/01] [2001] ZACC 16	8. South Africa 74. In Dodo v. the State [CCT 1/01] [2001] ZACC 16, the South African Constitutional Court considered whether a statutory provision which required a life sentence for certain offences including murder, was compatible with the constitutional principle of the separation of powers, the accused's constitutional right to a public trial and the constitutional prohibition on cruel, inhuman or degrading treatment or punishment. The court found none of these constitutional provisions was infringed, since the statute allowed a court to pass a lesser sentence if there were substantial and compelling circumstances. The court did, however, observe that the concept of proportionality went to the heart of the inquiry as to whether punishment was cruel, inhuman or degrading. 75. In Niemand v. the State [CCT 28/00] [2001] ZACC 11, the court found an indeterminate sentence imposed pursuant to a declaration that the defendant was a "habitual criminal" to be grossly disproportionate because it could amount to life imprisonment for a non-violent offender. The court "read in" a maximum sentence of fifteen years to the relevant statute.

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2012	1/17/2012	OTHMAN (ABU QATADA) v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-108629	no. 8139/09	54		0 majority	ECTHR	Canada	C	lower-level coo	India v. Singh 108 CCC (3d) 274	D. Canada 139. In India v. Singh 108 CCC (3d) 274, the British Columbia Supreme Court considered an extradition request where it was alleged that the prima facie case against the fugitive, Singh, was based on five confessions of co-conspirators, which had been obtained by torture. The court held that, for the purpose of determining whether the extradition could proceed because there was a prima facie case, a statement obtained by torture was inadmissible. However, the burden of proving that the statement was so obtained rested upon the fugitive who made that allegation. It was agreed that this allegation had to be proved on a balance of probabilities. The court found the allegation had not been proved to that standard for four of the statements but that it had for a fifth. 140. The approach taken in A and others (no 2) was followed by the Canadian Federal Court in Mahjoub v. Canada (Minister of Citizenship and Immigration). Mahjoub also concerned the issue of deportation with assurances and is summarised at paragraph 153 below. D. Canadian case law 1. Suresh 152. In Suresh v. Canada (Minister of Citizenship and Immigration) [2002] 1 SCR 3, the Supreme Court of Canada unanimously found that Canadian and international law did not permit deportation where on the evidence there was a substantial risk of torture. It did not find that in all cases deportation would be unconstitutional (and a refugee's rights could be balanced against the threat he or she posed) but the balance would usually come down against expelling the refugee. The court also made the following comment on reliance on assurances against torture (paragraphs 124 and 125): "A distinction may be drawn between assurances given by a state that it will not apply the death penalty (through a legal process) and assurances by a state that it will not resort to torture (an illegal process). We would signal the difficulty in relying too heavily on assurances by a state that it will refrain from torture in the future when it has engaged in illegal torture or allowed others to do so on its territory in the past. This difficulty becomes acute in cases where torture is inflicted not only with the collusion but through the impotence of the state in controlling the behaviour of its officials. Hence the need to distinguish between assurances regarding the death penalty and assurances regarding torture. The former are easier to monitor and generally more reliable than the latter. In evaluating assurances by a foreign government, the Minister may also wish to take into account the human rights record of the government giving the assurances, the government's record in complying with its assurances, and the capacity of the government to fulfill the assurances, particularly where there is doubt about the government's ability to control its security forces." 2. Mahjoub 153. In Mahjoub v. Canada (Minister of Citizenship and Immigration) 2006 FC 1503, which concerned removal to Egypt, the Federal Court of Canada addressed two issues: whether the Minister should rely on evidence obtained by torture in assessing an individual's risk to national security and whether it was appropriate to rely on assurances from a country where torture was systematically practiced. For the first issue, the court, having reviewed the relevant Canadian authorities and A and others (no. 2) (see paragraph 136 and 137 above), found that it was wrong in law to rely on evidence likely to have been obtained by torture; however, there had to be a credible evidentiary basis linking torture to the specific evidence at issue in order to justify its exclusion. The balance of probabilities test used in Singh (see paragraphs 139-140 above) was not appropriate in a national security case where the applicant did not see the evidence against him. Instead, where an issue was raised by an applicant offering a plausible explanation why evidence was likely to have been obtained by torture, the decision-
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2012	1/17/2012	VINTER AND OTHERS v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-108610	nos. 66069/09 and 130/10	S4	GARLUICK, DAVID THÖR BJÖRGV	dissenting (joint)		0 Canada	C	SC	R v. Latimer [2001] 1 SCR 3	Like the majority we see no problem in so far as the substantive aspect of Article 3 is concerned. A wholly unjustified or grossly disproportionate sentence could, at the time it is imposed, fall foul of Article 3. But the test is a strict one. It was described in the Canadian case of R v. Latimer [2001] 1 SCR 3 as "stringent and demanding"; and in United States v. Burns [2001] SCR 283 it was added, in an extradition context, that it must lead to the conclusion that the sentence would "shock the conscience" or violate principles of fundamental justice. As the Court pointed out in Kafkaris v. Cyprus [GC], no. 21906/04, § 97, ECHR 2008-..., a sentence of life imprisonment "is not in itself prohibited by or incompatible with Article 3". It made no difference that it was a mandatory rather than a discretionary sentence. Both may, at the time they are imposed, reflect the need for punishment and deterrence for the crimes committed and there would be no Article 3 issue on that score. The Court would, quite obviously, accord a large measure of deference to a judicial determination of sentence but both mandatory and discretionary life sentences are subject to the same overriding principle that they should not be wholly unjustified or grossly disproportionate. It should be noted, however, that in the present case nothing turns on this, for the applicants have not shown that the whole life orders imposed on them did not accord with principle.
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2012	1/17/2012	VINTER AND OTHERS v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-108610	66069/09 and 130/10	S4		0 majority	ECTHR	Canada	R	constitution	Canadian Charter of Rights	F. Canada 59. Section 1 of the Canadian Charter of Rights provides that the Charter guarantees the rights and freedoms set out in it "subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." Section 7 provides: "Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice." Section 12 provides: "Everyone has the right not to be subjected to any cruel and unusual treatment or punishment." 60. In United States v. Burns [2001] S.C.R. 283, Burns and another (the respondents) were to be extradited from Canada to the State of Washington to stand trial for murders allegedly committed when they were both eighteen. Before making the extradition order the Canadian Minister of Justice had not sought assurances that the death penalty would not be imposed. The Supreme Court of Canada found that the enormity between the extradition and the potential imposition of capital punishment meant the case was not appropriately considered under section 12 but under section 7. However, the values underlying section 12 could form part of the balancing process engaged under section 7. The extradition of the respondents would, if implemented, deprive them of their rights of liberty and security of person as guaranteed by section 7. The issue was whether such a deprivation was in accordance with the principles of fundamental justice. While extradition could only be refused if it "shocked the conscience" an extradition that violated the principles of fundamental justice would always do so. The court balanced the factors that favoured extradition against those that favoured seeking assurances that the death penalty would not be sought. The latter included the fact that a degree of leniency for youth was an accepted value in the administration of justice, even for young offenders over the age of eighteen. The court concluded that the objectives sought to be advanced by extradition without assurances would be as well served by extradition with assurances. The court held therefore that assurances were constitutionally required by section 7 in all but exceptional cases. 61. In United States of America v. Ferras; United States of America v. Latty, [2006] 2 SCR 77, the appellants were to be extradited to the United States to face charges of fraud (the Ferras case) or trafficking of cocaine (the Latty case). The appellants in the Latty case had argued that, if extradited and convicted they could receive sentences of ten years to life without parole and this would "shock the conscience". In dismissing the appeal, the Supreme Court affirmed the balancing approach laid down in Burns to determine whether potential sentences in a requesting state would "shock the conscience". The harsher sentences the appellants might receive if convicted in the United States were among the factors militating against their surrender but they had offered no evidence or case-law to back up their assertions that the possible sentences would shock the conscience of Canadians. The factors favouring extradition far outweighed those that did not. 62. The Supreme Court has also found that a grossly disproportionate sentence will amount to cruel and unusual treatment or punishment within the meaning of section 12 of the Charter (see, inter alia, [1997] 1 SCR 1045). In R v. Lutton [1990] 2 S.C.R. 711 the court considered that, for first degree murder, a mandatory minimum sentence of life imprisonment without eligibility for parole for twenty-five years was not grossly disproportionate. Similarly, in R v. Latimer 2001 1 SCR 3, for second degree murder, a mandatory minimum sentence of life imprisonment without eligibility for parole for ten years was not grossly disproportionate. The court observed that gross disproportionality would only be found on "rare and unique occasions" and that test for determining this issue was "very properly stringent and demanding". 88. For the first, the Court notes that all five Law Lords in Wellington found that, in a sufficiently exceptional case, an extradition would be in violation of Article 3 if the applicant faced a grossly disproportionate sentence in the receiving State. The Court further notes that, in their observations in the present cases, the Government, relying on the Soering judgment, accept that a particular sentence could violate Article 3 if

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2012	1/17/2012	VINTER AND OTHERS v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-108610	66069/09 and 130/10	54		0 majority	ECtHR	US	R	constitution	Eighth Amendment to the United States Constitution	H. The United States of America 65. The Eighth Amendment to the United States Constitution provides, inter alia, that cruel and unusual punishments shall not be inflicted. It has been interpreted by the Supreme Court of the United States as prohibiting extreme sentences that are grossly disproportionate to the crime (Graham v. Florida 130 S. Ct. 2011, 2021 [2010]). There are two categories of cases addressing proportionality of sentences. The first category is a case-by-case approach, where the court considers all the circumstances of the case to determine whether the sentence is excessive. This begins with a "threshold comparison" of the gravity of the offence and the harshness of the penalty. If this leads to an inference of gross disproportionality, the court compares the sentence in question with sentences for the same crime in the same jurisdiction and other jurisdictions. If that analysis confirms the initial inference of gross disproportionality, a violation of the Eighth Amendment is established. In the second category of cases, the Supreme Court has invoked proportionality to adopt "categorical rules" prohibiting a particular punishment from being applied to certain crimes or certain classes of offenders. 66. Under the first category, the Supreme Court has struck down as grossly disproportionate a sentence of life imprisonment without parole imposed on a defendant with previous convictions for passing a worthless cheque (Solem v. Helm 463 US 277 [1983]). It has upheld the following sentences: life with the possibility of parole for obtaining money by false pretences (Rummel v. Estelle 445 US 263 [1980]); life imprisonment without parole for possessing a large quantity of cocaine (Harmelin v. Michigan 501 US 957 [1991]); twenty-five years to life for theft under a "three strikes" recidivist sentencing law (Ewing v. California 538 US 11 [2003]); forty years' imprisonment for distributing marijuana (Hutto v. Davis 454 US 370 [1982]). 67. Examples of cases considered under the second category include Coker v. Georgia 433 US 584 (1977) (prohibiting capital punishment for rape) and Roper v. Simmons 543 US 551 (2005) (prohibiting capital punishment for juveniles under eighteen). In Graham, cited above, the court held that the Eighth Amendment also prohibited the imposition of life imprisonment without parole on a juvenile offender who did not commit homicide. The court found that life imprisonment without parole was an especially harsh punishment for a juvenile and that the remote possibility of pardon or other executive clemency did not mitigate the harshness of the sentence. Although a State was not required to guarantee eventual freedom to a juvenile offender convicted of a non-homicide crime, it had to provide some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation. The court also held that a sentence lacking in legitimate penological justification (such as retribution, deterrence, incapacitation and rehabilitation) was, by its nature, disproportionate. Such purposes could justify life without parole in other contexts, but not life without parole for juvenile non-homicide offenders.
2011	12/20/2011	ERGAŠEV v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-108162	no. 12106/09	51		0 majority	ECtHR	Canada	C	SC	general	102. The UN High Commissioner for Refugees' Note on Diplomatic Assurances and International Refugee Protection published on 10 August 2006 reads as follows: "22. In general, assessing the suitability of diplomatic assurances is relatively straightforward where they are intended to ensure that the individual concerned will not be subjected to capital punishment or certain violations of fair trial rights as a consequence of extradition. In such cases, the wanted person is transferred to a formal process, and the requesting State's compliance with the assurances can be monitored. While there is no effective remedy for the requested State or the surrendered person if the assurances are not observed, non-compliance can be readily identified and would need to be taken into account when evaluating the reliability of such assurances in any future cases. 23. The situation is different where the individual concerned risks being subjected to torture or other cruel, inhuman or degrading treatment in the receiving State upon removal. It has been noted that 'unlike assurances on the use of the death penalty or trial by a military court, which are readily verifiable, assurances against torture and other abuse require constant vigilance by competent and independent personnel'. The Supreme Court of Canada addressed the issue in its decision in <i>Suresh v. Canada</i> (Minister of Citizenship and Immigration), contrasting assurances in cases of a risk of torture with those given where the person extradited may face the death penalty, and signalling '... the difficulty in relying too heavily on assurances by a state that it will refrain from torture in the future when it has engaged in illegal torture or allowed others to do so on its territory in the past. This difficulty becomes acute in cases where torture is inflicted not only with the collusion but through the impotence of the state in controlling the behaviour of its officials. Hence the need to distinguish between assurances regarding the death penalty and assurances regarding torture. The former are easier to monitor and generally more reliable than the latter.'
2011	12/20/2011	HANIF AND KHAN v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-108168	52999/08 and 61779/08	54		0 majority	ECtHR	Australia	F	law reform commission report	New South Wales Law Reform Commission	J. Australia 109. In each of the six Australian states as well as in its two major mainland territories police officers are ineligible for jury service. 110. In a report of September 2007, the New South Wales Law Reform Commission considered the developments in England and Wales and in New York. As to the New York Jury Project in particular, it noted the conclusion there that the exemption of police officers was not justified because of the large number of cases that did not implicate the special training or presumed biases of police officers, on which they could sit without any problem at all. The Commission continued: "This is not the case in NSW, where the vast majority of jury trials are of criminal matters." 111. It concluded: "4.71 It is our view that serving members of the core law enforcement agencies mentioned at the commencement of this section who are actually engaged in criminal investigation and law enforcement should continue to be ineligible. This follows from the fact that the vast majority of jury trials are criminal, and from the further fact that the primary job of these officers is the detection and charging of crime, so that it is likely that they would be aware of, or have access to, information concerning suspects that would not be available to private citizens and could not be adduced in evidence. In our view, it is important to maintain the community confidence in the impartiality and fairness of the jury system, which might be threatened if police or those centrally involved in criminal law enforcement were permitted to serve as jurors." 112. The Law Reform Commission of Western Australia reached a similar conclusion. In a discussion paper published in September 2009, the Commission discussed the changes in England and Wales following the Auld Review. It considered that there were good reasons for the exclusion of justice-related occupations, noting that the integrity of the jury system depended upon its independence from government and impartiality to inspire public confidence in the criminal justice system. It further observed that, while some US states had abolished occupation-based exclusions, these jurisdictions had also established rigorous jury vetting practices to ensure that juries were as impartial and independent as possible. Such practices existed neither in Australia nor in England. It continued: "The failure of the Auld review (and the subsequent Criminal Justice White Paper) to properly appreciate the importance of the rationales underlying justice-related occupational exclusions has left the jury system in England vulnerable to criticism that it is not properly independent or impartial It is the Commission's strongly held view that, even without the attendant practical difficulties, the underlying rationale of juror independence from the justice system and the status of the jury as an impartial lay tribunal preclude adoption of the English approach in this jurisdiction. The Commission notes that various English judges and commentators have expressed the view that the fair trial of the accused is potentially at risk where judicial officers, police officers and lawyers can sit on juries. More importantly, the English House of Lords has found that the potential of bias in some cases where police officers and prosecutors have served on juries is such that the jury's verdict must be considered unsafe and the conviction quashed." (footnotes omitted) 113. Taking into account the experience in England, the Commission expressed the view that the current exclusion of police officers from jury service during the term of their employment and for five years thereafter should remain in place. It found the following points to be persuasive: • the integral role that police officers play in the detection and investigation of crime and prosecution of criminal charges;

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2011	12/20/2011	HANIF AND KHAN v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-108168	52999/08 and 61779/08	54		0 majority	ECtHR	New Zealand	R	statute	Juries Act 1981	I. New Zealand 107. In New Zealand, the criteria for eligibility for jury service are set out in the Juries Act 1981. Section 8 of the Act contains a list of "certain persons not to serve", which includes police officers. 108. In February 2001, the New Zealand Law Commission published a report on Juries in Criminal Trials. It made a series of recommendations regarding jury services, but did not address whether police officers should continue to be excluded. A prior discussion paper published in July 1998, which highlighted aspects for consideration, did not suggest a possible reform of the police officer exclusion, although it did invite submissions on whether lawyers and barristers should continue to be excluded from jury service.
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In respect of the statements to the mother, the Supreme Court found that it was appropriate to take a more flexible but "principled" approach to hearsay. Despite the need for caution, hearsay could be admitted where the two general requirements of necessity and reliability were met. In determining admissibility the trial judge was required to have regard to the need to safeguard the interests of the accused. Concerns as to the credibility of the evidence remained to be addressed by submissions as to the weight to be accorded to it and submissions as to the quality of any corroborating evidence. 77. Secondly, in R. v. Smith [1992] 2 SCR 915 the Court approved the "principled approach" taken in Khan and found that two telephone calls made by the deceased to her mother shortly before her death were admissible. However, the mother's evidence as to the contents of a third telephone call should have not been admitted as the conditions under which that call was made did not provide the "circumstantial guarantee of trustworthiness" which would justify its admission without the possibility of cross-examination. 78. Khan and Smith were followed in R. v. Rockey [1996] 3 SCR 829. The Supreme Court was satisfied that any reasonable trial judge would have found it necessary to admit pre-trial statements made by a child, who was five years old at trial, in which he complained that he had been sexually assaulted. It was observed by McLachlin J (concurring in judgment) that the case against the appellant was strong: the child's statements were entirely consistent and supported, inter alia, by medical evidence and evidence of behavioural changes in him after the assault and the absence of any plausible explanation of someone other than the appellant perpetrating the assault. 79. The third and most significant development in the Supreme Court's case-law was its judgment in R. v. Khewalton [2006] 2 SCR 787, which took a stricter approach to reliability. The case concerned a complaint of assault made by an elderly resident at a retirement home against one of the home's employees. The patient, S., gave the police a videotaped statement; the statement was unsworn. After S.'s statement other residents came forward to give statements that they too had been assaulted by the accused. By the time of trial, all those who had made statements, including S., had either died or were no longer competent to testify. Some of the statements were admitted by the trial judge because of the striking similarity between them. The Court of Appeal for Ontario excluded all the statements and acquitted the accused. The Supreme Court dismissed the Crown's appeal from that decision and affirmed the acquittal. The Supreme Court clarified its previous case-law on reliability and stated that the reliability requirement would generally be met by showing: (i) that there was no real concern about whether the statement was true or not because of the circumstances in which it came about; or (ii) that no real concern arose because the truth and accuracy of the statement could nonetheless be sufficiently tested by means other than cross-examination. It was for the trial judge to make a preliminary assessment of the "threshold" reliability of the statement and to leave the ultimate determination of its worth to the fact-finder/jury. All relevant factors had to be considered by the trial judge including, in appropriate cases, the presence of supporting or contradictory evidence. Charron J, giving the unanimous judgment of the court, stated (at paragraph 49 of the judgment): "In some cases, because of the circumstances in which it came about, the contents of the hearsay statement may be so reliable that contemporaneous cross-examination of the declarant would add little if anything to the process. In other cases, the evidence may not be so cogent but the circumstances will allow for sufficient testing of evidence by means other than contemporaneous cross-examination. In these circumstances, the admission of the evidence will rarely undermine trial fairness. However, because trial fairness may encompass factors beyond the strict inquiry into necessity and reliability, even if the two criteria are met, the trial judge has the discretion to exclude hearsay evidence where its
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Charron J, giving the unanimous judgment of the court, stated (at paragraph 49 of the judgment): "In some cases, because of the circumstances in which it came about, the contents of the hearsay statement may be so reliable that contemporaneous cross-examination of the declarant would add little if anything to the process. In other cases, the evidence may not be so cogent but the circumstances will allow for sufficient testing of evidence by means other than contemporaneous cross-examination. In these circumstances, the admission of the evidence will rarely undermine trial fairness. However, because trial fairness may encompass factors beyond the strict inquiry into necessity and reliability, even if the two criteria are met, the trial judge has the discretion to exclude hearsay evidence where its admission would be likely to result in an unfair trial."
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2011	10/18/2011	UNITED MACEDONIAN ORGANISATION IUNDEN – P	http://hudoc.echr.coe.int/eng/?i=001-107110	nos. 41561/07 and 209754			0 majority	ECtHR	Canada	R	general		0 55. A report adopted by the Venice Commission on 16 February 2004 on the establishment, organisation and activities of political parties on the basis of the replies to a questionnaire (CDL-AD(2004)004) reads, in so far as relevant: "23. Some countries impose on political parties an obligation to go through a registration process. Almost all countries mentioned in the first group in paragraph 2.1 have to go through a registration process or at least through deposition of their articles of association with the competent authorities of their country. This process is justified by the need of formal recognition of an association as a political party. Some of these additional requirements can differ from one country to another: a) convocation of the assembly on the establishment of the party (Albania, Armenia, Azerbaijan, Bosnia and Herzegovina and Romania); b) establishing articles of association/charter (Albania, Armenia, Austria, Azerbaijan, Bosnia and Herzegovina, Croatia, Cyprus, Czech Republic, Estonia, Lithuania and Romania); c) drafting of a programme (Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Canada, Croatia, Czech Republic, Estonia, Germany, Latvia, Lithuania, Romania and Slovakia); d) minimum membership (Azerbaijan, Bosnia and Herzegovina, Canada, Croatia, Czech Republic, Estonia, Georgia, Germany, Greece, Kyrgyzstan, Latvia, Lithuania, Russian Federation, Slovakia and Turkey); e) election of the board/presidency/permanent committee (Albania, Armenia, Croatia, Cyprus, Romania and United Kingdom); f) permanent address of its offices/leaders (Armenia, Azerbaijan, Canada, Croatia, Cyprus, Romania, Russian Federation and United Kingdom); g) principles of internal organisation (Czech Republic, Germany, Lithuania, Poland, Romania, Russian Federation, Spain and Turkey); h) payment of the registration fee (Armenia and Azerbaijan); i) signatures attesting certain territorial representation (Moldova, Russian Federation, Turkey and Ukraine); and j) publication of information on the establishment of the party in mass media (Austria).
2011	10/18/2011	UNITED MACEDONIAN ORGANISATION IUNDEN – P	http://hudoc.echr.coe.int/eng/?i=001-107110	nos. 41561/07 and 209754			0 majority	ECtHR	Kyrgyzstan	R	general		0 55. A report adopted by the Venice Commission on 16 February 2004 on the establishment, organisation and activities of political parties on the basis of the replies to a questionnaire (CDL-AD(2004)004) reads, in so far as relevant: "23. Some countries impose on political parties an obligation to go through a registration process. Almost all countries mentioned in the first group in paragraph 2.1 have to go through a registration process or at least through deposition of their articles of association with the competent authorities of their country. This process is justified by the need of formal recognition of an association as a political party. Some of these additional requirements can differ from one country to another: a) convocation of the assembly on the establishment of the party (Albania, Armenia, Azerbaijan, Bosnia and Herzegovina and Romania); b) establishing articles of association/charter (Albania, Armenia, Austria, Azerbaijan, Bosnia and Herzegovina, Croatia, Cyprus, Czech Republic, Estonia, Lithuania and Romania); c) drafting of a programme (Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Canada, Croatia, Czech Republic, Estonia, Germany, Latvia, Lithuania, Romania and Slovakia); d) minimum membership (Azerbaijan, Bosnia and Herzegovina, Canada, Croatia, Czech Republic, Estonia, Georgia, Germany, Greece, Kyrgyzstan, Latvia, Lithuania, Russian Federation, Slovakia and Turkey); e) election of the board/presidency/permanent committee (Albania, Armenia, Croatia, Cyprus, Romania and United Kingdom); f) permanent address of its offices/leaders (Armenia, Azerbaijan, Canada, Croatia, Cyprus, Romania, Russian Federation and United Kingdom); g) principles of internal organisation (Czech Republic, Germany, Lithuania, Poland, Romania, Russian Federation, Spain and Turkey); h) payment of the registration fee (Armenia and Azerbaijan); i) signatures attesting certain territorial representation (Moldova, Russian Federation, Turkey and Ukraine); and j) publication of information on the establishment of the party in mass media (Austria).
2011	6/21/2011	PONOMARYOVI v. BULGARIA	http://hudoc.echr.coe.int/eng/?i=001-105295	no. 5335/05	54		0 majority	ECtHR	USA	US	SC	Plyler v. Doe (457 U.S. 202)	39. In 1982, in the case of Plyler v. Doe (457 U.S. 202), in which immigrant children in the State of Texas complained that they had been deprived of the right to free education on account of their undocumented status, the Supreme Court of the United States held, by five votes to four, that the requirement for illegal aliens – as opposed to nationals and lawfully resident aliens – to pay school fees deprived them of the equal protection of the laws, contrary to the Fourteenth Amendment to the Constitution of the United States.

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2011	4/12/2011	REPUBLICAN PARTY OF RUSSIA v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-104495	no. 12976/07	S1		0 majority	ECtHR	Canada	R	general		0 64. The Court also studied a report adopted by the Venice Commission, on the establishment, organisation and activities of political parties on the basis of the replies to the questionnaire on the establishment, organisation and activities of political parties (Doc. CDL-AD (2004)004, of 16 February 2004), which, in so far as relevant, reads as follows: "1. This report has been prepared from the replies to the Questionnaire on Establishment, Organisation and Activities of Political Parties, which was adopted by the Sub-Commission on Democratic Institutions (Venice, 13 March 2003, CDL-DEM(2003)1rev). The questionnaire is a follow-up to a similar document, which was sent out earlier, as part of preparations for the adoption of Guidelines and Report on the Financing of Political Parties (Venice, 9-10 March 2001, CDL-INF(2001)8). 2. This time 42 countries responded. They are listed here in alphabetical order: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Ireland, Italy, Japan, Republic of Korea, Kyrgyz Republic, Latvia, Liechtenstein, Lithuania, Luxembourg, "The Former Yugoslav Republic of Macedonia", Malta, The Netherlands, Poland, Romania, The Russian Federation, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine and The United Kingdom. ... 1.4 Does the law distinguish between political parties on the local, the regional and the national level? 14. The majority of responding countries do not distinguish between political parties on different levels of government, no matter whether the governmental system of the country is unitary, federal or other; Austria, Greece, Finland, France, Italy, Japan, Luxembourg, Malta and Spain may be mentioned as examples. There are exceptions, however. Canada distinguishes between political parties on the federal and on the provincial level. Georgia prohibits explicitly establishment of political parties on the grounds of regional or territorial basis. Germany does not include political activities on the local level as aiming at taking part in the forming of the will in the representation of the people, i.e. the whole of the people; associations which are politically active on the local level only, therefore, do not fall within the concept of political party in the sense of the Constitution and the German legislation on political parties. 23. Some countries impose on political parties an obligation to go through a registration process. Almost all countries mentioned in the first group in paragraph 2.1 have to go through a registration process or at least through deposition of their articles of association with the competent authorities of their country. This process is justified by the need of formal recognition of an association as a political party. Some of these additional requirements can differ from one country to another: ... d) minimum membership (Azerbaijan, Bosnia and Herzegovina, Canada, Croatia, Czech Republic, Estonia, Georgia, Germany, Greece, Kyrgyzstan, Latvia, Lithuania, Russian Federation, Slovakia and Turkey); ... i) signatures attesting certain territorial representation (Moldova, Russian Federation, Turkey and Ukraine); ... 24. After these requirements are met, a competent body (Ministry of Justice, for example) proceeds with official registration. In the case of such countries as, for example, Austria
2011	4/12/2011	REPUBLICAN PARTY OF RUSSIA v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-104495	no. 12976/07	S1		0 majority	ECtHR	Japan	R	general		0 64. The Court also studied a report adopted by the Venice Commission, on the establishment, organisation and activities of political parties on the basis of the replies to the questionnaire on the establishment, organisation and activities of political parties (Doc. CDL-AD (2004)004, of 16 February 2004), which, in so far as relevant, reads as follows: "1. This report has been prepared from the replies to the Questionnaire on Establishment, Organisation and Activities of Political Parties, which was adopted by the Sub-Commission on Democratic Institutions (Venice, 13 March 2003, CDL-DEM(2003)1rev). The questionnaire is a follow-up to a similar document, which was sent out earlier, as part of preparations for the adoption of Guidelines and Report on the Financing of Political Parties (Venice, 9-10 March 2001, CDL-INF(2001)8). 2. This time 42 countries responded. They are listed here in alphabetical order: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Ireland, Italy, Japan, Republic of Korea, Kyrgyz Republic, Latvia, Liechtenstein, Lithuania, Luxembourg, "The Former Yugoslav Republic of Macedonia", Malta, The Netherlands, Poland, Romania, The Russian Federation, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine and The United Kingdom. ... 1.4 Does the law distinguish between political parties on the local, the regional and the national level? 14. The majority of responding countries do not distinguish between political parties on different levels of government, no matter whether the governmental system of the country is unitary, federal or other; Austria, Greece, Finland, France, Italy, Japan, Luxembourg, Malta and Spain may be mentioned as examples. There are exceptions, however. Canada distinguishes between political parties on the federal and on the provincial level. Georgia prohibits explicitly establishment of political parties on the grounds of regional or territorial basis. Germany does not include political activities on the local level as aiming at taking part in the forming of the will in the representation of the people, i.e. the whole of the people; associations which are politically active on the local level only, therefore, do not fall within the concept of political party in the sense of the Constitution and the German legislation on political parties.
2011	4/12/2011	REPUBLICAN PARTY OF RUSSIA v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-104495	no. 12976/07	S1		0 majority	ECtHR	Kyrgyzstan	R	general		0 64. The Court also studied a report adopted by the Venice Commission, on the establishment, organisation and activities of political parties on the basis of the replies to the questionnaire on the establishment, organisation and activities of political parties (Doc. CDL-AD (2004)004, of 16 February 2004), which, in so far as relevant, reads as follows: "1. This report has been prepared from the replies to the Questionnaire on Establishment, Organisation and Activities of Political Parties, which was adopted by the Sub-Commission on Democratic Institutions (Venice, 13 March 2003, CDL-DEM(2003)1rev). The questionnaire is a follow-up to a similar document, which was sent out earlier, as part of preparations for the adoption of Guidelines and Report on the Financing of Political Parties (Venice, 9-10 March 2001, CDL-INF(2001)8). 2. This time 42 countries responded. They are listed here in alphabetical order: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Ireland, Italy, Japan, Republic of Korea, Kyrgyz Republic, Latvia, Liechtenstein, Lithuania, Luxembourg, "The Former Yugoslav Republic of Macedonia", Malta, The Netherlands, Poland, Romania, The Russian Federation, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine and The United Kingdom. ... 1.4 Does the law distinguish between political parties on the local, the regional and the national level? 14. The majority of responding countries do not distinguish between political parties on different levels of government, no matter whether the governmental system of the country is unitary, federal or other; Austria, Greece, Finland, France, Italy, Japan, Luxembourg, Malta and Spain may be mentioned as examples. There are exceptions, however. Canada distinguishes between political parties on the federal and on the provincial level. Georgia prohibits explicitly establishment of political parties on the grounds of regional or territorial basis. Germany does not include political activities on the local level as aiming at taking part in the forming of the will in the representation of the people, i.e. the whole of the people; associations which are politically active on the local level only, therefore, do not fall within the concept of political party in the sense of the Constitution and the German legislation on political parties. ... 2.2 What are the substantive and procedural requirements to establish a political party? 22. A number of countries have a specific legal framework for the activities of political parties and their establishment. – in general – concerning its political programme – concerning founding members or concerning other individuals, who in some way have to support the establishment (and their number, citizenship, geographical distribution etc.) 23. Some countries impose on political parties an obligation to go through a registration process. Almost all countries mentioned in the first group in paragraph 2.1 have to go through a registration process or at least through deposition of their articles of association with the competent authorities of their country. This process is justified by the need of

Year	Date	Name	Link	App.no.	Body	Judge citing	Opinion	who submitted	Countries	C/R/F	type	Document	Quotes
2011	3/18/2011	LAUTSI AND OTHERS v. ITALY	http://hudoc.echr.coe.int/eng/?i=001-104040	no. 30814/06	GC	MALINVERNI	dissenting		Canada	C	SC	Ross v. New Brunswick School District no. 15, para. 100	3. These principles are valid not only for the devising and planning of the school curriculum, which are not in issue in the present case, but also for the school environment. Article 2 of Protocol No. 1 specifies that in the exercise of any functions which it assumes in relation to education and to teaching the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions. In other words, the principle of State denominational neutrality applies not only to the content of the curriculum, but the whole educational system. In the case of Folger the Court rightly pointed out that the duty conferred on the States under that provision "is broad in its extent as it applies not only to the content of education and the manner of its provision but also to the performance of all the functions" assumed by the State" [10] This view is shared by other both domestic and international bodies. Thus, in its General Comment No. 1, the United Nations Committee on the Rights of the Child has affirmed that the right to education refers "not only to the content of the curriculum, but also the educational processes, the pedagogical methods and the environment within which education takes place, whether it be the home, school, or elsewhere" [11], and also that "the school environment itself must thus reflect the freedom and the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups" [12] The Supreme Court of Canada has also observed that the school environment is an integral part of discrimination-free education: "In order to ensure a discrimination-free educational environment, the school environment must be one where all are treated equally and all are encouraged to fully participate." [13] [13] Supreme Court of Canada, Ross v. New Brunswick School District no. 15, para. 100.
2011	3/10/2011	KIYUTIN v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-103904	no. 2700/10	S1		0 majority	intervener	Canada	C	SC	Hilewitz v. Canada (Minister of Citizenship and Immigration), and De Jong v. Canada (Minister of Citizenship and Immigration)	47. Secondly, Interights argued that, in addition to the general anti-discrimination standards existing under international law, people living with HIV/Aids should benefit from the prohibition of discrimination on account of disability existing in the Court's case-law and in other legal systems. The applicability of the disability anti-discrimination framework established under the United Nations Convention on the Rights of Persons with Disabilities to people living with HIV/Aids was endorsed by the United Nations Office of the High Commissioner for Human Rights, the World Health Organization and UNAIDS in their joint report "Disability and HIV policy brief" (2009). The disability-based approach to HIV was further supported by the legislation and practice of many countries that had expressly or implicitly extended their disability laws to include HIV status (Canada, Germany, Norway, the United Kingdom and the United States of America). In Glor v. Switzerland (no. 13444/04, § 80, ECHR 2009), the Court also recognised that Article 14 of the Convention protected against discrimination based on disability. 51. On the issue of preventing excessive spending in publicly funded health-care systems, Interights pointed to the Court's finding in G.N. and Others v. Italy (no. 43134/05, § 129, 1 December 2009), in which it held that in the context of health policies insufficient resources cannot be used as a justification for adopting measures based on arbitrary criteria. Immigration restrictions that single out HIV while omitting other equally costly conditions such as cardiovascular or kidney disease appear to be arbitrary and discriminatory. Furthermore, public cost-related restrictions should be based on the individualised assessment of a person's health and financial circumstances rather than on the mere presence of a certain medical condition. The third party referred in this connection to the recommendations contained in the UNAIDS/IOM statement (see paragraph 33 above) and the case-law of the Supreme Court of Canada, which held that if the need for potential services were considered only on the basis of the classification of the impairment rather than on its particular manifestation, the assessment would become general rather than individual and would result "in an automatic exclusion for all individuals with a particular disability, even those whose admission would not cause, or would not reasonably be expected to cause, excessive demands on public funds" (Hilewitz v. Canada (Minister of Citizenship and Immigration), and De Jong v. Canada (Minister of Citizenship and Immigration), 2005 SCC 57, § 56).
2011	3/10/2011	KIYUTIN v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-103904	no. 2700/10	S1		0 majority	intervener	Canada	R	general		47. Secondly, Interights argued that, in addition to the general anti-discrimination standards existing under international law, people living with HIV/Aids should benefit from the prohibition of discrimination on account of disability existing in the Court's case-law and in other legal systems. The applicability of the disability anti-discrimination framework established under the United Nations Convention on the Rights of Persons with Disabilities to people living with HIV/Aids was endorsed by the United Nations Office of the High Commissioner for Human Rights, the World Health Organization and UNAIDS in their joint report "Disability and HIV policy brief" (2009). The disability-based approach to HIV was further supported by the legislation and practice of many countries that had expressly or implicitly extended their disability laws to include HIV status (Canada, Germany, Norway, the United Kingdom and the United States of America). In Glor v. Switzerland (no. 13444/04, § 80, ECHR 2009), the Court also recognised that Article 14 of the Convention protected against discrimination based on disability. 51. On the issue of preventing excessive spending in publicly funded health-care systems, Interights pointed to the Court's finding in G.N. and Others v. Italy (no. 43134/05, § 129, 1 December 2009), in which it held that in the context of health policies insufficient resources cannot be used as a justification for adopting measures based on arbitrary criteria. Immigration restrictions that single out HIV while omitting other equally costly conditions such as cardiovascular or kidney disease appear to be arbitrary and discriminatory. Furthermore, public cost-related restrictions should be based on the individualised assessment of a person's health and financial circumstances rather than on the mere presence of a certain medical condition. The third party referred in this connection to the recommendations contained in the UNAIDS/IOM statement (see paragraph 33 above) and the case-law of the Supreme Court of Canada, which held that if the need for potential services were considered only on the basis of the classification of the impairment rather than on its particular manifestation, the assessment would become general rather than individual and would result "in an automatic exclusion for all individuals with a particular disability, even those whose admission would not cause, or would not reasonably be expected to cause, excessive demands on public funds" (Hilewitz v. Canada (Minister of Citizenship and Immigration), and De Jong v. Canada (Minister of Citizenship and Immigration), 2005 SCC 57, § 56).
2011	3/10/2011	KIYUTIN v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-103904	no. 2700/10	S1		0 majority	intervener	China	R	general		50. In the third party's view, national immigration policies demonstrated that most countries in the world shared the understanding that HIV-related travel restrictions were not an efficient measure to protect public health. This was implicitly borne out by the fact that a majority of States did not enforce any such restrictions and that a number of countries had recently lifted such restrictions after recognising that HIV did not pose a threat to public health (China, Namibia and the United States of America). Other countries had considered the possibility of implementing HIV-related travel restrictions but had ultimately rejected it, thereby reflecting the absence of a rational connection between such measures and effective prevention (Germany and the United Kingdom). Moreover, it was acknowledged that less restrictive but more effective alternatives for the protection of public health were available, including voluntary testing and counselling, and information campaigns.
2011	3/10/2011	KIYUTIN v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-103904	no. 2700/10	S1		0 majority	intervener	US	R	general		47. Secondly, Interights argued that, in addition to the general anti-discrimination standards existing under international law, people living with HIV/Aids should benefit from the prohibition of discrimination on account of disability existing in the Court's case-law and in other legal systems. The applicability of the disability anti-discrimination framework established under the United Nations Convention on the Rights of Persons with Disabilities to people living with HIV/Aids was endorsed by the United Nations Office of the High Commissioner for Human Rights, the World Health Organization and UNAIDS in their joint report "Disability and HIV policy brief" (2009). The disability-based approach to HIV was further supported by the legislation and practice of many countries that had expressly or implicitly extended their disability laws to include HIV status (Canada, Germany, Norway, the United Kingdom and the United States of America). In Glor v. Switzerland (no. 13444/04, § 80, ECHR 2009), the Court also recognised that Article 14 of the Convention protected against discrimination based on disability. 50. In the third party's view, national immigration policies demonstrated that most countries in the world shared the understanding that HIV-related travel restrictions were not an efficient measure to protect public health. This was implicitly borne out by the fact that a majority of States did not enforce any such restrictions and that a number of countries had recently lifted such restrictions after recognising that HIV did not pose a threat to public health (China, Namibia and the United States of America). Other countries had considered the possibility of implementing HIV-related travel restrictions but had ultimately rejected it, thereby reflecting the absence of a rational connection between such measures and effective prevention (Germany and the United Kingdom). Moreover, it was acknowledged that less restrictive but more effective alternatives for the protection of public health were available, including voluntary testing and counselling, and information campaigns.
2011	1/20/2011	HAAS v. SWITZERLAND	http://hudoc.echr.coe.int/eng/?i=001-102940	31322/07	S1		0 majority	lower-level court	Canada	C	SC	Rodriguez v. British Columbia [Attorney General], [1993] 3 S.C.R. 513	8. The judgment of the Federal Court 6.2.2. The foregoing is confirmed by the case-law of the Strasbourg institutions: Article 2 [of the Convention] guarantees no right to die, whether with the assistance of a third party or of the State; the right to life has no corresponding negative freedom (Judgment in Pretty v. the United Kingdom, no. 2346/02, § 40, ECHR 2002-III) ... Article 3 does not in principle oblige the State to guarantee criminal impunity for assisting a person to commit suicide or to create a legal basis for another form of assistance with that act; the State must not sanction actions intended to terminate life (Pretty, cited above, §§ 55 et seq.). With regard to Article 8, the Court found that – without in any way negating the principle of sanctity of life – the quality of life and, in consequence, the question of the individual's autonomy play a role under this provision (Judgment in Pretty, cited above, § 65). The Court stated that it "[was not prepared] to exclude" that the fact that the applicant was precluded from exercising her choice to avoid what she consider(ed) would be an undignified and distressing end to her life constituted an interference with her right to respect for private life within the meaning of Article 8 § 1 of the Convention (Pretty, cited above, § 67; see also the judgment of the Supreme Court of Canada in the case of Rodriguez v. British Columbia [Attorney General], [1993] 3 S.C.R. 513), and Judge Sopinka's opinion as the basis of the majority's findings; this had already been presaged in the 1983 Reed case, where the Commission had emphasised that the activity of a person aiding and abetting suicide did not, as such, fall within the sphere of Article 8, but that, on the contrary, the protection of the private life of the person seeking to die could be at stake (inadmissibility decision in Reed v. the United Kingdom, no. 7630/76, Commission decision of 4 July 1983, Decisions and Reports 33, p. 275, § 13).
2011	1/6/2011	PAKSAS v. LITHUANIA	http://hudoc.echr.coe.int/eng/?i=001-102617	no. 34932/04	GC	COSTA	dissenting (par		South Korea	F	general		02. The case is a political one. The applicant, Mr Rolandas Paksas, was elected President of the Republic of Lithuania by direct universal suffrage and held office as head of State from 26 February 2003 to 6 April 2004. On the latter date, the Lithuanian Parliament (the Seimas) removed him from office as President for gross violations of the Constitution as established by the Constitutional Court. The case is not only political but is also unusual because impeachment proceedings are rarely instituted in Europe and elsewhere in the world and are hardly ever carried through to completion; for example, Richard Nixon, the thirty-seventh President of the United States, resigned in August 1974 to avoid impeachment, which had become likely as a result of the Watergate scandal. More recently, in 2004 the South Korean Parliament impeached the country's President but the impeachment proceedings were declared void by the Constitutional Court two months later.
2011	1/6/2011	PAKSAS v. LITHUANIA	http://hudoc.echr.coe.int/eng/?i=001-102617	no. 34932/04	GC	COSTA	dissenting (par		USA	F	general		02. The case is a political one. The applicant, Mr Rolandas Paksas, was elected President of the Republic of Lithuania by direct universal suffrage and held office as head of State from 26 February 2003 to 6 April 2004. On the latter date, the Lithuanian Parliament (the Seimas) removed him from office as President for gross violations of the Constitution as established by the Constitutional Court. The case is not only political but is also unusual because impeachment proceedings are rarely instituted in Europe and elsewhere in the world and are hardly ever carried through to completion; for example, Richard Nixon, the thirty-seventh President of the United States, resigned in August 1974 to avoid impeachment, which had become likely as a result of the Watergate scandal. More recently, in 2004 the South Korean Parliament impeached the country's President but the impeachment proceedings were declared void by the Constitutional Court two months later. This conception of impeachment as both exceptional in nature and normally deterrent in effect has a very long history. In their work <i>Droit constitutionnel</i> (PUF, Thémis, Paris, 2004, p. 47), Professors Vlad Constantinescu and Stéphane Pierre-Caps point out that in 1742 the British Prime Minister Robert Walpole and his ministers resigned under threat of impeachment, as did Lord North and his ministers in 1782; of course, this British institution, dating back to the fourteenth century, inspired the United States, which nevertheless had (and still has) a presidential rather than parliamentary system.
2010	12/16/2010	A. B AND C v. IRELAND	http://hudoc.echr.coe.int/eng/?i=001-102332	no. 25579/05	GC		0 majority	ECtHR	USA	C	SC	Roe v. Wade (410 US 113 (1973))	2. The Eighth Amendment to the Constitution (1983) 35. In the early 1980s there was some concern about the adequacy of existing provisions concerning abortion and the possibility of abortion being deemed lawful by judicial interpretation. There was some debate as to whether the Supreme Court would follow the course adopted in England and Wales in <i>Bourne</i> (cited above) or in the United States of America in <i>Roe v. Wade</i> (410 US 113 (1973)). 36. A referendum was held in 1983, resulting in the adoption of a provision which became Article 40.3.3 of the Irish Constitution, the Eighth Amendment (53.67% of the electorate voted with 841,233 votes in favour and 416,136 against). Article 40.3.3 reads as follows: "The State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate that right ..."

Year	Date	Name	Link	App.no.	Body	Judge citing	Opinion	who submitted	Countries	C/R/F	type	Document	Quotes
2010	11/4/2010	SULTANOV v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-101586	no. 15303/09	S1		0 majority	ECtHR	Canada	C	SC	Suresh v. Canada (Minister of Citizenship and Immigration)	61. The UN High Commissioner for Refugees' Note on Diplomatic Assurances and International Refugee Protection published on 10 August 2006 reads as follows: 22. In general, assessing the suitability of diplomatic assurances is relatively straightforward where they are intended to ensure that the individual concerned will not be subjected to capital punishment or certain violations of fair trial rights as a consequence of extradition. In such cases, the wanted person is transferred to a formal process, and the requesting State's compliance with the assurances can be monitored. While there is no effective remedy for the requested State or the surrendered person if the assurances are not observed, non-compliance can be readily identified and would need to be taken into account when evaluating the reliability of such assurances in any future cases. 23. The situation is different where the individual concerned risks being subjected to torture or other cruel, inhuman or degrading treatment in the receiving State upon removal. It has been noted that "unlike assurances on the use of the death penalty or trial by a military court, which are readily verifiable, assurances against torture and other abuse require constant vigilance by competent and independent personnel". The Supreme Court of Canada addressed the issue in its decision in <i>Suresh v. Canada</i> (Minister of Citizenship and Immigration), contrasting assurances in cases of a risk of torture with those given where the person extradited may face the death penalty, and signalling
2010	11/2/2010	GILLBERG v. SWEDEN	http://hudoc.echr.coe.int/eng/?i=001-101562	no. 41723/06	S3	POWER	concurring		0 Canada	C	SC	R. v. Stinchcombe [1991] 3 SCR 326	If what appears to be the applicant's perception of the binding nature of his promise of confidentiality were correct, then courts could rarely, if ever, order disclosure of "confidential" records even where the protection of other important interests were in issue. Yet case law from various jurisdictions indicates that applications for disclosure of "confidential" records are frequently brought before the courts[6] and it is not unusual for courts to engage in a balancing exercise of the competing interests involved. [6] For the approach of the Canadian Supreme Court see R. v. Stinchcombe [1991] 3 SCR 326; R. v. O'Connor [1995] 4 SCR 411; and R. v. Beharrell [1995] 4 SCR 536. See also, the Decision of the U.S. Supreme Court in Jaffee, Special Administrator for Allen, Deceased -v- Redmond et al (Decision of 13 June 1996) where that Court considered whether it was appropriate for federal courts to recognise the existence of "psychotherapist privilege" and whether statements made to a therapist were protected from compelled disclosure in a federal civil action. See also the Judgment of the British House of Lords in D. v. N.S.P.C.C. [1978] AC 171.
2010	11/2/2010	GILLBERG v. SWEDEN	http://hudoc.echr.coe.int/eng/?i=001-101562	41723/06	S3	POWER	concurring		0 Canada	C	SC	R. v O'Connor [1995] 4 SCR 411	If what appears to be the applicant's perception of the binding nature of his promise of confidentiality were correct, then courts could rarely, if ever, order disclosure of "confidential" records even where the protection of other important interests were in issue. Yet case law from various jurisdictions indicates that applications for disclosure of "confidential" records are frequently brought before the courts[6] and it is not unusual for courts to engage in a balancing exercise of the competing interests involved. [6] For the approach of the Canadian Supreme Court see R. v. Stinchcombe [1991] 3 SCR 326; R. v. O'Connor [1995] 4 SCR 411; and R. v. Beharrell [1995] 4 SCR 536. See also, the Decision of the U.S. Supreme Court in Jaffee, Special Administrator for Allen, Deceased -v- Redmond et al (Decision of 13 June 1996) where that Court considered whether it was appropriate for federal courts to recognise the existence of "psychotherapist privilege" and whether statements made to a therapist were protected from compelled disclosure in a federal civil action. See also the Judgment of the British House of Lords in D. v. N.S.P.C.C. [1978] AC 171.
2010	11/2/2010	GILLBERG v. SWEDEN	http://hudoc.echr.coe.int/eng/?i=001-101562	41723/06	S3	POWER	concurring		0 Canada	C	SC	R. v. Beharrell [1995] 4 SCR 536	If what appears to be the applicant's perception of the binding nature of his promise of confidentiality were correct, then courts could rarely, if ever, order disclosure of "confidential" records even where the protection of other important interests were in issue. Yet case law from various jurisdictions indicates that applications for disclosure of "confidential" records are frequently brought before the courts[6] and it is not unusual for courts to engage in a balancing exercise of the competing interests involved. [6] For the approach of the Canadian Supreme Court see R. v. Stinchcombe [1991] 3 SCR 326; R. v. O'Connor [1995] 4 SCR 411; and R. v. Beharrell [1995] 4 SCR 536. See also, the Decision of the U.S. Supreme Court in Jaffee, Special Administrator for Allen, Deceased -v- Redmond et al (Decision of 13 June 1996) where that Court considered whether it was appropriate for federal courts to recognise the existence of "psychotherapist privilege" and whether statements made to a therapist were protected from compelled disclosure in a federal civil action. See also the Judgment of the British House of Lords in D. v. N.S.P.C.C. [1978] AC 171.
2010	10/7/2010	KONSTANTIN MARKIN v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-100926	no. 30078/06	S1		0 majority	ECtHR	Australia	R	general		0 B. Comparative law materials 28. A report entitled "International Review of Leave Policies and Related Research" published in July 2007 by the United Kingdom Department for Business, Enterprise and Regulatory Reform describes leave entitlements for workers with dependent children in twenty-four countries (twenty-one European countries, Australia, Canada and the United States of America). According to that report the United States of America is the only country where there is no statutory right to parental leave. In contrast to maternity and paternity leave, which are by definition gender-related, parental leave can be taken by either parent in all countries under examination except one (in Hungary only the mother is entitled to take parental leave during the child's first year; during the child's second and third years, however, parental leave may be taken by either parent). 29. Parental leave is a family entitlement in ten countries, to be divided between parents as they choose (Australia, Austria, Canada, Denmark, Estonia, France, Germany, Hungary, Poland and Spain); an individual entitlement in another ten countries, with each parent entitled to a certain portion of parental leave (Belgium, the Czech Republic, Greece, Iceland, Ireland, Italy, Portugal, Slovenia, the Netherlands and the United Kingdom); and mixed (part family, part individual entitlement) in three countries (Iceland, Norway and Sweden). Various measures have been introduced to encourage fathers to take parental leave. Mostly these take the form of wholly or partly individualised entitlements, whereby fathers not using their 'quota' will lose it, since unused leave cannot be transferred to a partner. Another approach is to offer bonus leave days to fathers who take some parental leave (as, for example, in Italy, Finland and Germany).
2010	10/7/2010	KONSTANTIN MARKIN v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-100926	no. 30078/06	S1		0 majority	ECtHR	Canada	R	general		0 28. A report entitled "International Review of Leave Policies and Related Research" published in July 2007 by the United Kingdom Department for Business, Enterprise and Regulatory Reform describes leave entitlements for workers with dependent children in twenty-four countries (twenty-one European countries, Australia, Canada and the United States of America). According to that report the United States of America is the only country where there is no statutory right to parental leave. In contrast to maternity and paternity leave, which are by definition gender-related, parental leave can be taken by either parent in all countries under examination except one (in Hungary only the mother is entitled to take parental leave during the child's first year; during the child's second and third years, however, parental leave may be taken by either parent). 29. Parental leave is a family entitlement in ten countries, to be divided between parents as they choose (Australia, Austria, Canada, Denmark, Estonia, France, Germany, Hungary, Poland and Spain); an individual entitlement in another ten countries, with each parent entitled to a certain portion of parental leave (Belgium, the Czech Republic, Greece, Iceland, Ireland, Italy, Portugal, Slovenia, the Netherlands and the United Kingdom); and mixed (part family, part individual entitlement) in three countries (Iceland, Norway and Sweden). Various measures have been introduced to encourage fathers to take parental leave. Mostly these take the form of wholly or partly individualised entitlements, whereby fathers not using their 'quota' will lose it, since unused leave cannot be transferred to a partner. Another approach is to offer bonus leave days to fathers who take some parental leave (as, for example, in Italy, Finland and Germany).
2010	10/7/2010	KONSTANTIN MARKIN v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-100926	no. 30078/06	S1		0 majority	ECtHR	USA	R	general		0 28. A report entitled "International Review of Leave Policies and Related Research" published in July 2007 by the United Kingdom Department for Business, Enterprise and Regulatory Reform describes leave entitlements for workers with dependent children in twenty-four countries (twenty-one European countries, Australia, Canada and the United States of America). According to that report the United States of America is the only country where there is no statutory right to parental leave. In contrast to maternity and paternity leave, which are by definition gender-related, parental leave can be taken by either parent in all countries under examination except one (in Hungary only the mother is entitled to take parental leave during the child's first year; during the child's second and third years, however, parental leave may be taken by either parent).
2010	9/28/2010	MANGOURAS v. SPAIN	http://hudoc.echr.coe.int/eng/?i=001-100686	12050/04	GC		0 majority	ECtHR	Canada	R	general		0 50. Secondly, the report examines a range of instruments in connection with the treatment of seafarers, including international conventions, the Universal Declaration of Human Rights and a number of regional and national instruments. In the last category, particular attention is given to the European Union legal framework and to the law in France, the United States of America, Canada and the United Kingdom. In its conclusions, BIMCO observes that the test generally applied in those instruments is gross negligence, with punishment ranging from fines to imprisonment.
2010	9/28/2010	MANGOURAS v. SPAIN	http://hudoc.echr.coe.int/eng/?i=001-100686	no. 12050/04	GC		0 majority	ECtHR	US	R	general		0 50. Secondly, the report examines a range of instruments in connection with the treatment of seafarers, including international conventions, the Universal Declaration of Human Rights and a number of regional and national instruments. In the last category, particular attention is given to the European Union legal framework and to the law in France, the United States of America, Canada and the United Kingdom. In its conclusions, BIMCO observes that the test generally applied in those instruments is gross negligence, with punishment ranging from fines to imprisonment.
2010	9/14/2010	SANOMA UITGEVERIS B.V. v. THE NETHERLANDS	http://hudoc.echr.coe.int/eng/?i=001-100448	no. 38224/03	GC		0 majority	intervener	US	R	general		0 If information submitted by the intervening third parties 45. Media Legal Defence Initiative, Committee to Protect Journalists, Article 19, Guardian News & Media Ltd. and Open Society Justice Initiative, who were given leave by the President to intervene in the written procedure, submitted inter alia the following comparative-law information (footnote references omitted): in the United States, prior judicial review of efforts to compel information from journalists is a baseline requirement. In nearly all circumstances, law enforcement authorities must issue a subpoena to try to compel journalists to turn over information, which the journalists may then challenge in court before providing the information. In the very limited circumstances where police may proceed by search warrant (as stated above, these include probable cause to believe the possessor of the information 'has committed or is committing the criminal offense to which the materials relate', or that the search or seizure is 'necessary to prevent death or serious injury') a judge must issue the warrant." 36. However, Fennelly J. noted that the courts had also recognised the possibility of making a prohibition order for the quite distinct reason that there had been a breach of an accused's right to trial with "reasonable expedition". Noting that the judgment of Powell J. in <i>Barker v. Wingo</i> [1972] 407 U.S. 514) of the Supreme Court of the United States had been influential in the development of the case-law of the Irish courts on the right to reasonable expedition and the consequences of its breach, Fennelly J. stated that "we have now established a consistent approach, particularly in some recent cases".
2010	9/10/2010	MC FARLANE v. IRELAND	http://hudoc.echr.coe.int/eng/?i=001-100413	no. 31333/06	GC		0 majority	lower-level court	US	C	SC	Barker v. Wingo (1972) 407 U.S. 514	83. The UN High Commissioner for Refugees' Note on Diplomatic Assurances and International Refugee Protection published on 10 August 2006 reads as follows: 22. In general, assessing the suitability of diplomatic assurances is relatively straightforward where they are intended to ensure that the individual concerned will not be subjected to capital punishment or certain violations of fair trial rights as a consequence of extradition. In such cases, the wanted person is transferred to a formal process, and the requesting State's compliance with the assurances can be monitored. While there is no effective remedy for the requested State or the surrendered person if the assurances are not observed, non-compliance can be readily identified and would need to be taken into account when evaluating the reliability of such assurances in any future cases. 23. The situation is different where the individual concerned risks being subjected to torture or other cruel, inhuman or degrading treatment in the receiving State upon removal. It has been noted that "unlike assurances on the use of the death penalty or trial by a military court, which are readily verifiable, assurances against torture and other abuse require constant vigilance by competent and independent personnel". The Supreme Court of Canada addressed the issue in its decision in <i>Suresh v. Canada</i> (Minister of Citizenship and Immigration), contrasting assurances in cases of a risk of torture with those given where the person extradited may face the death penalty, and signalling
2010	7/29/2010	KARIMOV v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-100198	no. 54219/08	S1		0 majority	ECtHR	Canada	C	SC	Suresh v. Canada (Minister of Citizenship and Immigration)	83. The UN High Commissioner for Refugees' Note on Diplomatic Assurances and International Refugee Protection published on 10 August 2006 reads as follows: 22. In general, assessing the suitability of diplomatic assurances is relatively straightforward where they are intended to ensure that the individual concerned will not be subjected to capital punishment or certain violations of fair trial rights as a consequence of extradition. In such cases, the wanted person is transferred to a formal process, and the requesting State's compliance with the assurances can be monitored. While there is no effective remedy for the requested State or the surrendered person if the assurances are not observed, non-compliance can be readily identified and would need to be taken into account when evaluating the reliability of such assurances in any future cases. 23. The situation is different where the individual concerned risks being subjected to torture or other cruel, inhuman or degrading treatment in the receiving State upon removal. It has been noted that "unlike assurances on the use of the death penalty or trial by a military court, which are readily verifiable, assurances against torture and other abuse require constant vigilance by competent and independent personnel". The Supreme Court of Canada addressed the issue in its decision in <i>Suresh v. Canada</i> (Minister of Citizenship and Immigration), contrasting assurances in cases of a risk of torture with those given where the person extradited may face the death penalty, and signalling
2010	7/20/2010	A. v. THE NETHERLANDS	http://hudoc.echr.coe.int/eng/?i=001-100048	no. 4900/06	S3		0 majority	intervener	New Zealand	C	SC		138. These interveners stressed the unconditional nature of Article 3 of the Convention, meaning that the prohibition of refoulement to ill-treatment applied regardless of the behaviour displayed, or activities engaged in, by the individual concerned. The Strasbourg Court had consistently subscribed to this view; it had been replicated in other international and regional human rights instruments, and had been confirmed by national as well as international tribunals such as, for instance, the Supreme Court of New Zealand, the Committee against Torture, the UN Human Rights Committee and the Inter-American Commission on Human Rights.

Year	Date	Name	Link	App.no.	Body	Judge citing	Opinion	who submitted	Countries	C/R/F	type	Document	Quotes
2010	7/8/2010	ABDULAZHON ISAKOV v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-99798	no. 14049/08	S1		0 majority	ECtHR	Canada	C	SC	Suresh v. Canada (Minister of Citizenship and Immigration)	93. The UN High Commissioner for Refugees' Note on Diplomatic Assurances and International Refugee Protection published on 10 August 2006 reads as follows: 22. In general, assessing the suitability of diplomatic assurances is relatively straightforward where they are intended to ensure that the individual concerned will not be subjected to capital punishment or certain violations of fair trial rights as a consequence of extradition. In such cases, the wanted person is transferred to a formal process, and the requesting State's compliance with the assurances can be monitored. While there is no effective remedy for the requested State or the surrendered person if the assurances are not observed, non-compliance can be readily identified and would need to be taken into account when evaluating the reliability of such assurances in any future cases. 23. The situation is different where the individual concerned risks being subjected to torture or other cruel, inhuman or degrading treatment in the receiving State upon removal. It has been noted that 'unlike assurances on the use of the death penalty or trial by a military court, which are readily verifiable, assurances against torture and other abuse require constant vigilance by competent and independent personnel'. The Supreme Court of Canada addressed the issue in its decision in <i>Suresh v. Canada</i> (Minister of Citizenship and Immigration), contrasting assurances in cases of a risk of torture with those given where the person extradited may face the death penalty, and signalling
2010	7/8/2010	SITARPOULOS AND OTHERS v. GREECE	http://hudoc.echr.coe.int/eng/?i=001-99807	no. 42202/07	S1		0 majority	ECtHR	Canada	R	general		0 (c) Draft report of 16 May 2006 (Study no. 352/2005) on electoral law and electoral administration in Europe "Voting rights for citizens abroad 56. External voting rights, e.g. granting nationals living abroad the right to vote, are a relatively new phenomenon. Even in long-established democracies, citizens living in foreign countries were not given voting rights until the 1980s (e.g. Federal Republic of Germany, United Kingdom) or the 1990s (e.g., Canada, Japan). In the meantime, however, many emerging or new democracies in Europe have introduced legal provisions for external voting Although it is yet not common in Europe, the introduction of external voting rights might be considered, if not yet present. However, safeguards must be implemented to ensure the integrity of the vote
2010	7/8/2010	SITARPOULOS AND OTHERS v. GREECE	http://hudoc.echr.coe.int/eng/?i=001-99807	no. 42202/07	S1		0 majority	ECtHR	Japan	R	general		0 (c) Draft report of 16 May 2006 (Study no. 352/2005) on electoral law and electoral administration in Europe "Voting rights for citizens abroad 56. External voting rights, e.g. granting nationals living abroad the right to vote, are a relatively new phenomenon. Even in long-established democracies, citizens living in foreign countries were not given voting rights until the 1980s (e.g. Federal Republic of Germany, United Kingdom) or the 1990s (e.g., Canada, Japan). In the meantime, however, many emerging or new democracies in Europe have introduced legal provisions for external voting Although it is yet not common in Europe, the introduction of external voting rights might be considered, if not yet present. However, safeguards must be implemented to ensure the integrity of the vote -- 151. Postal voting is permitted in several established democracies in Western Europe, e.g. Germany, Ireland, Spain, Switzerland and, for voters abroad, the Netherlands, Norway, and Sweden ... It was also used, for example, in Bosnia and Herzegovina and the Kosovo in order to ensure maximum inclusiveness of the election process (CG/BUR (11) 74). However, it should be allowed only if the postal service is secure and reliable. Each individual case must be assessed as to whether fraud and manipulation are likely to occur with postal voting.
2010	7/8/2010	YULDASHEV v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-99796	no. 1248/09	S1		0 majority	ECtHR	Canada	C	SC	Suresh v. Canada (Minister of Citizenship and Immigration)	73. The UN High Commissioner for Refugees' Note on Diplomatic Assurances and International Refugee Protection published on 10 August 2006 reads as follows: 22. In general, assessing the suitability of diplomatic assurances is relatively straightforward where they are intended to ensure that the individual concerned will not be subjected to capital punishment or certain violations of fair trial rights as a consequence of extradition. In such cases, the wanted person is transferred to a formal process, and the requesting State's compliance with the assurances can be monitored. While there is no effective remedy for the requested State or the surrendered person if the assurances are not observed, non-compliance can be readily identified and would need to be taken into account when evaluating the reliability of such assurances in any future cases. 23. The situation is different where the individual concerned risks being subjected to torture or other cruel, inhuman or degrading treatment in the receiving State upon removal. It has been noted that 'unlike assurances on the use of the death penalty or trial by a military court, which are readily verifiable, assurances against torture and other abuse require constant vigilance by competent and independent personnel'. The Supreme Court of Canada addressed the issue in its decision in <i>Suresh v. Canada</i> (Minister of Citizenship and Immigration), contrasting assurances in cases of a risk of torture with those given where the person extradited may face the death penalty, and signalling
2010	7/6/2010	NEULINGER AND SHURUK v. SWITZERLAND	http://hudoc.echr.coe.int/eng/?i=001-99817	no. 41615/07	GC		0 majority	ECtHR	Australia	C	lower-level cou	José García Resina and Muriel Ghislaine Henriette Resina, [1991] FamCA 33	72. The Family Court of Australia took the same approach in the case of José García Resina, where a father lodged an application under the Convention for the return of his children after they had been taken to France by their maternal grandparents (José García Resina and Muriel Ghislaine Henriette Resina, [1991] FamCA 33). The Australian court considered both a custody order, which gave the father "reasonable access" to the youngest child, and an injunction restraining both the mother and the father from removing the children from Australia. It ultimately ordered the return of the children pursuant to the Convention because their removal had violated the father's custody rights that had been created by the restraining order. Similarly, the Israeli Supreme Court found that a custody agreement between parents contained a mutual consultation clause for major changes and unusual events, which implicitly included decisions on the residence of the child (Foxman v. Foxman, Israeli Supreme Court, 1992). The court thus considered that the father had rights of custody within the meaning of the Convention.
2010	7/6/2010	NEULINGER AND SHURUK v. SWITZERLAND	http://hudoc.echr.coe.int/eng/?i=001-99817	no. 41615/07	GC		0 majority	ECtHR	Israel	C	SC	Foxman v. Foxman, Israeli Supreme Court, 1992	72. The Family Court of Australia took the same approach in the case of José García Resina, where a father lodged an application under the Convention for the return of his children after they had been taken to France by their maternal grandparents (José García Resina and Muriel Ghislaine Henriette Resina, [1991] FamCA 33). The Australian court considered both a custody order, which gave the father "reasonable access" to the youngest child, and an injunction restraining both the mother and the father from removing the children from Australia. It ultimately ordered the return of the children pursuant to the Convention because their removal had violated the father's custody rights that had been created by the restraining order. Similarly, the Israeli Supreme Court found that a custody agreement between parents contained a mutual consultation clause for major changes and unusual events, which implicitly included decisions on the residence of the child (Foxman v. Foxman, Israeli Supreme Court, 1992). The court thus considered that the father had rights of custody within the meaning of the Convention.
2010	7/6/2010	NEULINGER AND SHURUK v. SWITZERLAND	http://hudoc.echr.coe.int/eng/?i=001-99817	no. 41615/07	GC		0 majority	ECtHR	US	C	lower-level cou	Croil v. Croil, 229 F.3d 133, 143, Second Circuit, 2000	74. However, the practice of domestic courts is not homogeneous. Thus, for example, the United States Court of Appeals found that access rights coupled with a <i>ne exeat</i> clause did not constitute "rights of custody" within the meaning of the Hague Convention (Croil v. Croil, 229 F.3d 133, 143, Second Circuit, 2000).
2010	6/24/2010	SCHALK AND KOPF v. AUSTRIA	http://hudoc.echr.coe.int/eng/?i=001-99605	no. 30141/04	S1		0 majority	intervener	Canada	C	lower-level cou	lower-level court	48. Finally, the four non-governmental organisations referred to judgments from the Constitutional Court of South Africa, the Courts of Appeal of Ontario and British Columbia in Canada, and the Supreme Courts of California, Connecticut, Iowa and Massachusetts in the United States of America, which had found that denying same-sex couples access to civil marriage was discriminatory.
2010	6/24/2010	SCHALK AND KOPF v. AUSTRIA	http://hudoc.echr.coe.int/eng/?i=001-99605	no. 30141/04	S1		0 majority	intervener	Canada	C	lower-level cou	lower-level court	48. Finally, the four non-governmental organisations referred to judgments from the Constitutional Court of South Africa, the Courts of Appeal of Ontario and British Columbia in Canada, and the Supreme Courts of California, Connecticut, Iowa and Massachusetts in the United States of America, which had found that denying same-sex couples access to civil marriage was discriminatory.
2010	6/24/2010	SCHALK AND KOPF v. AUSTRIA	http://hudoc.echr.coe.int/eng/?i=001-99605	no. 30141/04	S1		0 majority	intervener	South Africa	C	CC	general	48. Finally, the four non-governmental organisations referred to judgments from the Constitutional Court of South Africa, the Courts of Appeal of Ontario and British Columbia in Canada, and the Supreme Courts of California, Connecticut, Iowa and Massachusetts in the United States of America, which had found that denying same-sex couples access to civil marriage was discriminatory.
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2010	6/24/2010	SCHALK AND KOPF v. AUSTRIA	http://hudoc.echr.coe.int/eng/?i=001-99605	no. 30141/04	S1		0 majority	intervener	Us	C	lower-level cou	general	48. Finally, the four non-governmental organisations referred to judgments from the Constitutional Court of South Africa, the Courts of Appeal of Ontario and British Columbia in Canada, and the Supreme Courts of California, Connecticut, Iowa and Massachusetts in the United States of America, which had found that denying same-sex couples access to civil marriage was discriminatory.
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2010	6/10/2010	JEHOVAH'S WITNESSES OF MOSCOW AND OTHERS v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-99221	no. 302/02	S1		0 majority	ECtHR	Canada	C	lower-level cou	Malette v. Shulman 72 O.R. 417	2. Other jurisdictions 85. In 1990 the Ontario Supreme Court in Canada upheld a decision of the lower court to hold a medical doctor liable for administering blood transfusions to an unconscious patient carrying a card stating that she was a Jehovah's Witness and, as a matter of religious belief, rejected blood transfusions under any circumstances (Malette v. Shulman 72 O.R. 417). It held, in particular, as follows: "25... The principles of self-determination and individual autonomy compel the conclusion that the patient may reject blood transfusions even if harmful consequences may result and even if the decision is generally regarded as foolhardy... To transfuse a Jehovah's Witness, in the face of her explicit instructions to the contrary, would, in my opinion, violate her right to control her own body and show disrespect for the religious values by which she has chosen to live her life... 34. The state undoubtedly has a strong interest in protecting and preserving the lives and health of its citizens. There clearly are circumstances where this interest may override the individual's right to self-determination. For example, the state may, in certain cases, require that citizens submit to medical procedures in order to eliminate a health threat to the community... 35. The state's interest in preserving the life or health of a competent patient must generally give way to the patient's stronger interest in directing the course of her own life. As indicated earlier, there is no law prohibiting a patient from declining necessary treatment... Recognition of the right to reject medical treatment cannot, in my opinion, be said to deprecate the interest of the state in life or in the sanctity of life. Individual free choice and self-determination are themselves fundamental constituents of life. To deny individuals freedom of choice, with respect to their health care, can only lessen and not enhance the value of life..."
2010	6/10/2010	JEHOVAH'S WITNESSES OF MOSCOW AND OTHERS v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-99221	no. 302/02	S1		0 majority	ECtHR	Argentina	C	SC	Bahamondez, Marcelo v. Medida Cautelar, Corte Suprema de Justicia de la Nación (Argentina, 6 April 1993)	88. The right of an individual to refuse blood transfusions on religious grounds and to be compensated in damages if such transfusion has been carried out against the patient's wishes has also been upheld by courts in other jurisdictions (see, for example, Phillips v. Klerk, Case No. 19676/82; Supreme Court of South Africa [1983]; Bahamondez, Marcelo v. Medida Cautelar, Corte Suprema de Justicia de la Nación (Argentina, 6 April 1993); Sentence No. 166/1996 in case of Mr Miguel Angel, Constitutional Court of Spain, 28 October 1996; Ms A. and her heirs v. Dr B. and Institute of Medical Science, Case No. 1998 (O) Nos. 1081, 1082, 29 February 2000, Supreme Court of Japan).
2010	6/10/2010	JEHOVAH'S WITNESSES OF MOSCOW AND OTHERS v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-99221	no. 302/02	S1		0 majority	ECtHR	Japan	C	SC	Ms A. and her heirs v. Dr B. and Institute of Medical Science, Case No. 1998 (O) Nos. 1081, 1082, 29 February 2000, Supreme Court of Japan	88. The right of an individual to refuse blood transfusions on religious grounds and to be compensated in damages if such transfusion has been carried out against the patient's wishes has also been upheld by courts in other jurisdictions (see, for example, Phillips v. Klerk, Case No. 19676/82; Supreme Court of South Africa [1983]; Bahamondez, Marcelo v. Medida Cautelar, Corte Suprema de Justicia de la Nación (Argentina, 6 April 1993); Sentence No. 166/1996 in case of Mr Miguel Angel, Constitutional Court of Spain, 28 October 1996; Ms A. and her heirs v. Dr B. and Institute of Medical Science, Case No. 1998 (O) Nos. 1081, 1082, 29 February 2000, Supreme Court of Japan).

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2010	6/10/2010	JEHOVAH'S WITNESSES OF MOSCOW AND OTHERS v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-99221	no. 302/02)	S1		0 majority	ECtHR	South Africa	C	SC	Phillips v. Klerk, Case No. 19676/82; Supreme Court of South Africa [1983]	88. The right of an individual to refuse blood transfusions on religious grounds and to be compensated in damages if such transfusion has been carried out against the patient's wishes has also been upheld by courts in other jurisdictions (see, for example, Phillips v. Klerk, Case No. 19676/82; Supreme Court of South Africa [1983]; Bahamondez, Marcelo v. Medida Castelar, Corte Suprema de Justicia de la Nación (Argentina, 6 April 1993); Sentencia No. 166/1996 in case of Mr Miguel Angel, Constitutional Court of Spain, 28 October 1996; Ms A. and her heirs v. Dr B. and Institute of Medical Science, Case No. 1998 (O) Nos. 1081, 1082, 29 February 2000, Supreme Court of Japan).
2010	6/10/2010	JEHOVAH'S WITNESSES OF MOSCOW AND OTHERS v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-99221	no. 302/02)	S1		0 majority	ECtHR	US	C	lower-level	Schloendorff v. Society of New York Hospital, 211 N.Y. 125, 105 N.E. 92	87. In United States law, the doctrine of informed consent required for any kind of medical treatment has been firmly entrenched since 1914 when Justice Cardozo, on the Court of Appeals of New York, described this doctrine as follows: "Every human being of adult years and sound mind has a right to determine what shall be done with his own body, and a surgeon who performs an operation without his patient's consent commits an assault" (Schloendorff v. Society of New York Hospital, 211 N.Y. 125, 105 N.E. 92). The logical corollary of the doctrine of informed consent is that the patient generally possesses the right not to consent, that is, to refuse treatment (Cruzan v. Director, MDH, 497 U.S. 261 [1990]). The following summary of the relevant case-law can be found in the case of Fomire v. Nicoleau (75 N.Y.2d 218, 551 N.E.2d 77, 551 N.Y.S.2d 876 [1990]): "The State has a well-recognized interest in protecting and preserving the lives of its citizens. ... [A] distinction should be drawn between the State's interest in protecting the lives of its citizens from injuries by third parties, and injuries resulting from the individual's own actions (see, e.g., Public Health Trust v. Wons, 541 So.2d 96, 98 [Fla.1989, Ehrlich, Ch. J., concurring]). When the individual's conduct threatens injury to others, the State's interest is manifest and the State can generally be expected to intervene. But the State rarely acts to protect individuals from themselves, indicating that the State's interest is less substantial when there is little or no risk of direct injury to the public. This is consistent with the primary function of the State to preserve and promote liberty and the personal autonomy of the individual (Rivers v. Katz, supra). ... The State will intervene to prevent suicide ... but merely declining medical care, even essential treatment, is not considered a suicidal act or indication of incompetence (Matter of Storar, supra, 52 N.Y.2d at 377-378, n. 6, 438 N.Y.S.2d 266, 420 N.E.2d 64)."
2010	6/10/2010	JEHOVAH'S WITNESSES OF MOSCOW AND OTHERS v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-99221	no. 302/02)	S1		0 majority	ECtHR	US	C	SC	Cruzan v. Director, MDH, 497 U.S. 261 [1990]	87. In United States law, the doctrine of informed consent required for any kind of medical treatment has been firmly entrenched since 1914 when Justice Cardozo, on the Court of Appeals of New York, described this doctrine as follows: "Every human being of adult years and sound mind has a right to determine what shall be done with his own body, and a surgeon who performs an operation without his patient's consent commits an assault" (Schloendorff v. Society of New York Hospital, 211 N.Y. 125, 105 N.E. 92). The logical corollary of the doctrine of informed consent is that the patient generally possesses the right not to consent, that is, to refuse treatment (Cruzan v. Director, MDH, 497 U.S. 261 [1990]). The following summary of the relevant case-law can be found in the case of Fomire v. Nicoleau (75 N.Y.2d 218, 551 N.E.2d 77, 551 N.Y.S.2d 876 [1990]): "The State has a well-recognized interest in protecting and preserving the lives of its citizens. ... [A] distinction should be drawn between the State's interest in protecting the lives of its citizens from injuries by third parties, and injuries resulting from the individual's own actions (see, e.g., Public Health Trust v. Wons, 541 So.2d 96, 98 [Fla.1989, Ehrlich, Ch. J., concurring]). When the individual's conduct threatens injury to others, the State's interest is manifest and the State can generally be expected to intervene. But the State rarely acts to protect individuals from themselves, indicating that the State's interest is less substantial when there is little or no risk of direct injury to the public. This is consistent with the primary function of the State to preserve and promote liberty and the personal autonomy of the individual (Rivers v. Katz, supra). ... The State will intervene to prevent suicide ... but merely declining medical care, even essential treatment, is not considered a suicidal act or indication of incompetence (Matter of Storar, supra, 52 N.Y.2d at 377-378, n. 6, 438 N.Y.S.2d 266, 420 N.E.2d 64)."
2010	6/10/2010	JEHOVAH'S WITNESSES OF MOSCOW AND OTHERS v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-99221	no. 302/02)	S1		0 majority	ECtHR	US	C	lower-level	Fomire v. Nicoleau (75 N.Y.2d 218, 551 N.E.2d 77, 551 N.Y.S.2d 876 [1990])	87. In United States law, the doctrine of informed consent required for any kind of medical treatment has been firmly entrenched since 1914 when Justice Cardozo, on the Court of Appeals of New York, described this doctrine as follows: "Every human being of adult years and sound mind has a right to determine what shall be done with his own body, and a surgeon who performs an operation without his patient's consent commits an assault" (Schloendorff v. Society of New York Hospital, 211 N.Y. 125, 105 N.E. 92). The logical corollary of the doctrine of informed consent is that the patient generally possesses the right not to consent, that is, to refuse treatment (Cruzan v. Director, MDH, 497 U.S. 261 [1990]). The following summary of the relevant case-law can be found in the case of Fomire v. Nicoleau (75 N.Y.2d 218, 551 N.E.2d 77, 551 N.Y.S.2d 876 [1990]): "The State has a well-recognized interest in protecting and preserving the lives of its citizens. ... [A] distinction should be drawn between the State's interest in protecting the lives of its citizens from injuries by third parties, and injuries resulting from the individual's own actions (see, e.g., Public Health Trust v. Wons, 541 So.2d 96, 98 [Fla.1989, Ehrlich, Ch. J., concurring]). When the individual's conduct threatens injury to others, the State's interest is manifest and the State can generally be expected to intervene. But the State rarely acts to protect individuals from themselves, indicating that the State's interest is less substantial when there is little or no risk of direct injury to the public. This is consistent with the primary function of the State to preserve and promote liberty and the personal autonomy of the individual (Rivers v. Katz, supra). ... The State will intervene to prevent suicide ... but merely declining medical care, even essential treatment, is not considered a suicidal act or indication of incompetence (Matter of Storar, supra, 52 N.Y.2d at 377-378, n. 6, 438 N.Y.S.2d 266, 420 N.E.2d 64)."
2010	6/1/2010	GÄFGEN v. GERMANY	http://hudoc.echr.coe.int/eng/?i=001-99015	o. 22978/05)	GC		0 majority	ECtHR	South Africa	C	lower-level	Mthembu v. The State, case no. 379/2007, [2008] ZASCA 51	74. The exclusionary rule is also applied in other jurisdictions. The Supreme Court of Appeal of South Africa found in its recent judgment of 10 April 2008 in the case of Mthembu v. The State, case no. 379/2007, [2008] ZASCA 51 as follows: "Summary: The evidence of an accomplice extracted through torture (including real evidence derived from R) is inadmissible 33. ... The Hilux and the metal box were real evidence critical to the State's case against the appellant on the robbery counts. Ordinarily, as I have mentioned, such evidence would not be excluded because it exists independently of any constitutional violation. But these discoveries were made as [a] result of the police having tortured Ramseroop. There is no suggestion that the discoveries would have been made in any event. If they had the outcome of this case might have been different. 34. Ramseroop made his statement to the police immediately after the metal box was discovered at his home following his torture. That his subsequent testimony was given apparently voluntarily does not detract from the fact that the information contained in that statement pertaining to the Hilux and metal box was extracted through torture. ... therefore, there is an inextricable link between his torture and the nature of the evidence that was tendered in court. The torture has stained the evidence irredeemably. ... 36. To admit Ramseroop's testimony regarding the Hilux and metal box would require us to shut our eyes to the manner in which the police obtained this information from him. More seriously, it is tantamount to involving the judicial process in 'moral delinquency'. This 'would compromise the integrity of the judicial process [and] dishonour the administration of justice'. In the long term, the admission of torture-induced evidence can only have a corrosive effect on the criminal justice system. The public interest, in my view, demands its exclusion, irrespective of whether such evidence has an impact on the fairness of the trial. 37. For all these reasons I consider Ramseroop's evidence relating to the Hilux and metal box to be inadmissible. ..." 161. Numerous international declarations, rules, resolutions and conventions prohibited the admission of statements obtained by torture or inhuman treatment as evidence in judicial proceedings. In the Redress Trust's view, it was arguable that the exclusionary rule covered not only confessions but also derivative evidence found as a result of a statement made under torture, notwithstanding that Article 15 of the United Nations Convention against Torture (see paragraph 64 above), in particular, was cast in narrower terms. The United Nations Human Rights Committee, for instance, in its General Comment No. 7 of 30 May 1982 (see paragraph 70 above) had found that, in order to secure effective control of the prohibition of torture, it was essential to make both confessions and other evidence obtained through torture or inhuman or degrading treatment inadmissible in court. Likewise, the Supreme Court of Appeal of South Africa, in its judgment of 10 April 2008 in the case of Mthembu v. The State (see paragraph 74 above), had held that any use of evidence obtained by torture, including real evidence derived from it, rendered proceedings unfair. This had to apply in equal measure to other forms of ill-treatment. The findings of the Court in its judgments in Jalloh (cited above, §§ 99 and 104-07) and Harutyunyan v. Armenia (no. 36549/03, § 63, ECHR 2007-III) pointed in the same direction.
2010	6/1/2010	GÄFGEN v. GERMANY	http://hudoc.echr.coe.int/eng/?i=001-99015	o. 22978/05)	GC		0 majority	ECtHR	USA	C	SC	US Supreme Court, no. 82-1651, Nixon v. Williams, decision of 11 June 1984, 467 US 431 [1984], pp. 441 et seq	(c) Case-law of the courts of other States 73. The prohibition on using, in any manner prejudicial to the accused, information derived from facts learned as a result of the unlawful acts of State agents (the so-called doctrine of the "fruit of the poisonous tree") is firmly rooted in the legal tradition of the United States of America (see, for instance, US Supreme Court, no. 82-1651, Nixon v. Williams, decision of 11 June 1984, 467 US 431 [1984], pp. 441 et seq; US Supreme Court, no. 82-5298, Segura v. United States, decision of 5 July 1984, 468 US 796 [1984], pp. 796-97 and 815; and US Supreme Court, no. 07-513, Herring v. United States, decision of 14 January 2009, 555 US ... [2009], part II. A., with further references). The prohibition applies to information obtained from coerced confessions (see, on the issue of coercion, US Supreme Court, no. 50, Blackburn v. Alabama, decision of 11 January 1960, 361 US 199 [1960], pp. 205-07, and US Supreme Court, no. 8, Townsend v. Sain, decision of 18 March 1963, 372 US 293 [1963], pp. 293 and 307-09), meaning that if the confession leads to additional evidence, such evidence is also inadmissible in court in addition to the confession itself (compare Nix, cited above, p. 441, and Segura, cited above, p. 804). The evidence is to be excluded, however, only if the illegality is the proximate cause of the discovery of the evidence. In other words, evidence will be excluded if it can be shown that "but for" the illegal conduct it would not have been found. The exclusionary rule does not apply where the connection between the illegal police conduct and the discovery of the evidence is so remote as to dissipate the taint. This is the case, for example, where the police relied on an independent source to find the evidence (see Nix, cited above, pp. 441-44, and Segura, cited above, pp. 796-97, 804-05 and 815, with further references) or where the evidence would ultimately or inevitably have been discovered even had no violation of any constitutional provision taken place (see Nix, cited above, pp. 441-44), 157. The Government noted that Article 6 of the Convention did not lay down any rules on the admissibility of evidence, as such, which was primarily a matter for regulation under national law. They underlined their obligation under the Convention to apply the criminal law against a murderer. The public interest in having the murderer of an abducted child convicted was of very serious weight. The Government further argued that the case-law of the United States Supreme Court, which went furthest in prohibiting the use of the "fruit of the poisonous tree", needed careful analysis. In the leading case of Nix v. Williams (decision of 11 June 1984, 467 US 431; see paragraph 73 above), for instance, that court had held that a body found after an improper investigation could be admitted into evidence in circumstances where it would have been found in any event. It was likely in the present case that J.'s corpse, hidden at a place which the applicant had previously visited, would have been found sooner or later.

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2010	5/17/2010	KONONOV v. LATVIA	http://hudoc.echr.coe.int/eng/?i=001-98669	no. 36376/04	GC		0 majority	ECtHR	Australia	C	lower-level co	Trial of Etaro Shinohara and Others, Australian Military Court, 1946, LRTWC, vol. V	2. Other national trials 129. After the Second World War, various national tribunals pursued war crimes prosecutions for acts committed during the Second World War. These included prosecutions before Australian, British, Canadian, Chinese, French and Norwegian military and civilian courts[14]. All concerned breaches of the laws and customs of war and many concerned the necessity of fair trials prior to the punishment of those suspected of war crimes. Certain judgments stressed the legitimate referral of a domestic tribunal to the international laws and customs of war and referred to rules concerning the unnecessary destruction of civilian property, the unlawful wearing of an enemy uniform and individual command responsibility. ... [14]. Trial of Shigeru Ohashi and Others, Australian Military Court, 1946, LRTWC, vol. V; Trial of Yamamoto Chusaburo, British Military Court, 1946, LRTWC, vol. III; Trial of Eikichi Kato, Australian Military Court, 1946, LRTWC, vol. I; Trial of Etaro Shinohara and Others, Australian Military Court, 1946, LRTWC, vol. V; Re Yamashita 327 US 1 (1946); Trial of Karl-Hans Hermann Klinge, Supreme Court of Norway, 1946, LRTWC, vol. III; Trial of Franz Holstein and Others, French Military Tribunal, 1947, LRTWC, vol. VIII; Trial of Otto Skorzeny and Others, American Military Tribunal, 1947, LRTWC, vol. IX; The Dostler case, US Military Commission, 1945, LRTWC, vol. I; The Almelo Trial, British Military Court, 1945, LRTWC, vol. I; The Driewalwalde case, British Military Court, 1946, LRTWC, vol. I; The Abbaye Ardenne case, Canadian Military Court, 1945, LRTWC, vol. IV; Trial of Bauer, Schrameck and Falten, French Military Tribunal, 1945, LRTWC, vol. VIII; Trial of Takashi Sakai, Chinese Military Tribunal, 1946, LRTWC, vol. III; Trial of Hans Szabados, French Permanent Military Tribunal, 1946, LRTWC, vol. IX; Trial of Franz Schonfeld et al., British Military Court, 1946, LRTWC, vol. XI (the dates are the dates of the trial or judgment).
2010	5/17/2010	KONONOV v. LATVIA	http://hudoc.echr.coe.int/eng/?i=001-98669	no. 36376/04	GC		0 majority	ECtHR	Canada	C	lower-level co	The Abbaye Ardenne case, Canadian Military Court, 1945, LRTWC, vol. IV	2. Other national trials 129. After the Second World War, various national tribunals pursued war crimes prosecutions for acts committed during the Second World War. These included prosecutions before Australian, British, Canadian, Chinese, French and Norwegian military and civilian courts[14]. All concerned breaches of the laws and customs of war and many concerned the necessity of fair trials prior to the punishment of those suspected of war crimes. Certain judgments stressed the legitimate referral of a domestic tribunal to the international laws and customs of war and referred to rules concerning the unnecessary destruction of civilian property, the unlawful wearing of an enemy uniform and individual command responsibility. ... [14]. Trial of Shigeru Ohashi and Others, Australian Military Court, 1946, LRTWC, vol. V; Trial of Yamamoto Chusaburo, British Military Court, 1946, LRTWC, vol. III; Trial of Eikichi Kato, Australian Military Court, 1946, LRTWC, vol. I; Trial of Etaro Shinohara and Others, Australian Military Court, 1946, LRTWC, vol. V; Re Yamashita 327 US 1 (1946); Trial of Karl-Hans Hermann Klinge, Supreme Court of Norway, 1946, LRTWC, vol. III; Trial of Franz Holstein and Others, French Military Tribunal, 1947, LRTWC, vol. VIII; Trial of Otto Skorzeny and Others, American Military Tribunal, 1947, LRTWC, vol. IX; The Dostler case, US Military Commission, 1945, LRTWC, vol. I; The Almelo Trial, British Military Court, 1945, LRTWC, vol. I; The Driewalwalde case, British Military Court, 1946, LRTWC, vol. I; The Abbaye Ardenne case, Canadian Military Court, 1945, LRTWC, vol. IV; Trial of Bauer, Schrameck and Falten, French Military Tribunal, 1945, LRTWC, vol. VIII; Trial of Takashi Sakai, Chinese Military Tribunal, 1946, LRTWC, vol. III; Trial of Hans Szabados, French Permanent Military Tribunal, 1946, LRTWC, vol. IX; Trial of Franz Schonfeld et al., British Military Court, 1946, LRTWC, vol. XI (the dates are the dates of the trial or judgment).
2010	5/17/2010	KONONOV v. LATVIA	http://hudoc.echr.coe.int/eng/?i=001-98669	no. 36376/04	GC		0 majority	ECtHR	US	C	SC	Re Yamashita 327 US 1 (1946)	2. Other national trials 129. After the Second World War, various national tribunals pursued war crimes prosecutions for acts committed during the Second World War. These included prosecutions before Australian, British, Canadian, Chinese, French and Norwegian military and civilian courts[14]. All concerned breaches of the laws and customs of war and many concerned the necessity of fair trials prior to the punishment of those suspected of war crimes. Certain judgments stressed the legitimate referral of a domestic tribunal to the international laws and customs of war and referred to rules concerning the unnecessary destruction of civilian property, the unlawful wearing of an enemy uniform and individual command responsibility. ... [14]. Trial of Shigeru Ohashi and Others, Australian Military Court, 1946, LRTWC, vol. V; Trial of Yamamoto Chusaburo, British Military Court, 1946, LRTWC, vol. III; Trial of Eikichi Kato, Australian Military Court, 1946, LRTWC, vol. I; Trial of Etaro Shinohara and Others, Australian Military Court, 1946, LRTWC, vol. V; Re Yamashita 327 US 1 (1946); Trial of Karl-Hans Hermann Klinge, Supreme Court of Norway, 1946, LRTWC, vol. III; Trial of Franz Holstein and Others, French Military Tribunal, 1947, LRTWC, vol. VIII; Trial of Otto Skorzeny and Others, American Military Tribunal, 1947, LRTWC, vol. IX; The Dostler case, US Military Commission, 1945, LRTWC, vol. I; The Almelo Trial, British Military Court, 1945, LRTWC, vol. I; The Driewalwalde case, British Military Court, 1946, LRTWC, vol. I; The Abbaye Ardenne case, Canadian Military Court, 1945, LRTWC, vol. IV; Trial of Bauer, Schrameck and Falten, French Military Tribunal, 1945, LRTWC, vol. VIII; Trial of Takashi Sakai, Chinese Military Tribunal, 1946, LRTWC, vol. III; Trial of Hans Szabados, French Permanent Military Tribunal, 1946, LRTWC, vol. IX; Trial of Franz Schonfeld et al., British Military Court, 1946, LRTWC, vol. XI (the dates are the dates of the trial or judgment).
2010	5/17/2010	KONONOV v. LATVIA	http://hudoc.echr.coe.int/eng/?i=001-98669	no. 36376/04	GC		0 majority	ECtHR	US	C	lower-level co	Trial of Otto Skorzeny and Others, American Military Tribunal, 1947, LRTWC, vol. IX	2. Other national trials 129. After the Second World War, various national tribunals pursued war crimes prosecutions for acts committed during the Second World War. These included prosecutions before Australian, British, Canadian, Chinese, French and Norwegian military and civilian courts[14]. All concerned breaches of the laws and customs of war and many concerned the necessity of fair trials prior to the punishment of those suspected of war crimes. Certain judgments stressed the legitimate referral of a domestic tribunal to the international laws and customs of war and referred to rules concerning the unnecessary destruction of civilian property, the unlawful wearing of an enemy uniform and individual command responsibility. ... [14]. Trial of Shigeru Ohashi and Others, Australian Military Court, 1946, LRTWC, vol. V; Trial of Yamamoto Chusaburo, British Military Court, 1946, LRTWC, vol. III; Trial of Eikichi Kato, Australian Military Court, 1946, LRTWC, vol. I; Trial of Etaro Shinohara and Others, Australian Military Court, 1946, LRTWC, vol. V; Re Yamashita 327 US 1 (1946); Trial of Karl-Hans Hermann Klinge, Supreme Court of Norway, 1946, LRTWC, vol. III; Trial of Franz Holstein and Others, French Military Tribunal, 1947, LRTWC, vol. VIII; Trial of Otto Skorzeny and Others, American Military Tribunal, 1947, LRTWC, vol. IX; The Dostler case, US Military Commission, 1945, LRTWC, vol. I; The Almelo Trial, British Military Court, 1945, LRTWC, vol. I; The Driewalwalde case, British Military Court, 1946, LRTWC, vol. I; The Abbaye Ardenne case, Canadian Military Court, 1945, LRTWC, vol. IV; Trial of Bauer, Schrameck and Falten, French Military Tribunal, 1945, LRTWC, vol. VIII; Trial of Takashi Sakai, Chinese Military Tribunal, 1946, LRTWC, vol. III; Trial of Hans Szabados, French Permanent Military Tribunal, 1946, LRTWC, vol. IX; Trial of Franz Schonfeld et al., British Military Court, 1946, LRTWC, vol. XI (the dates are the dates of the trial or judgment).
2010	5/17/2010	KONONOV v. LATVIA	http://hudoc.echr.coe.int/eng/?i=001-98669	no. 36376/04	GC		0 majority	ECtHR	US	C	lower-level co	The Dostler case, US Military Commission, 1945, LRTWC, vol. I	2. Other national trials 129. After the Second World War, various national tribunals pursued war crimes prosecutions for acts committed during the Second World War. These included prosecutions before Australian, British, Canadian, Chinese, French and Norwegian military and civilian courts[14]. All concerned breaches of the laws and customs of war and many concerned the necessity of fair trials prior to the punishment of those suspected of war crimes. Certain judgments stressed the legitimate referral of a domestic tribunal to the international laws and customs of war and referred to rules concerning the unnecessary destruction of civilian property, the unlawful wearing of an enemy uniform and individual command responsibility. ... [14]. Trial of Shigeru Ohashi and Others, Australian Military Court, 1946, LRTWC, vol. V; Trial of Yamamoto Chusaburo, British Military Court, 1946, LRTWC, vol. III; Trial of Eikichi Kato, Australian Military Court, 1946, LRTWC, vol. I; Trial of Etaro Shinohara and Others, Australian Military Court, 1946, LRTWC, vol. V; Re Yamashita 327 US 1 (1946); Trial of Karl-Hans Hermann Klinge, Supreme Court of Norway, 1946, LRTWC, vol. III; Trial of Franz Holstein and Others, French Military Tribunal, 1947, LRTWC, vol. VIII; Trial of Otto Skorzeny and Others, American Military Tribunal, 1947, LRTWC, vol. IX; The Dostler case, US Military Commission, 1945, LRTWC, vol. I; The Almelo Trial, British Military Court, 1945, LRTWC, vol. I; The Driewalwalde case, British Military Court, 1946, LRTWC, vol. I; The Abbaye Ardenne case, Canadian Military Court, 1945, LRTWC, vol. IV; Trial of Bauer, Schrameck and Falten, French Military Tribunal, 1945, LRTWC, vol. VIII; Trial of Takashi Sakai, Chinese Military Tribunal, 1946, LRTWC, vol. III; Trial of Hans Szabados, French Permanent Military Tribunal, 1946, LRTWC, vol. IX; Trial of Franz Schonfeld et al., British Military Court, 1946, LRTWC, vol. XI (the dates are the dates of the trial or judgment).
2010	3/16/2010	CARSON AND OTHERS v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-97704	no. 42184/05	GC		0 majority	applicant	Canada	C	SC	Godbout v. Longueuil (City) [1997] SCR 844	67. The applicants submitted that the Chamber's conclusion on this point was manifestly correct, for the reasons it gave. Its treatment of residence as an aspect of personal status was also consistent with the approach of "other pre-eminent constitutional courts", such as the Supreme Court of Canada, which, in Godbout v. Longueuil (City) [1997] SCR 844, characterised an individual's choice of place of residence as a "quintessentially private decision going to the very heart of personal or individual autonomy". The applicants further submitted that it was artificial and inaccurate to treat an individual's country of residence as a matter of free choice, since it might be driven by the need or desire to be close to family members. 72. The Chamber held that, given that the United Kingdom's social security and pension system was primarily designed to provide a minimum standard of living for those resident within its territory, the applicants were not in a relevantly similar position to British pensioners who decided to remain in the country. It was "hesitant" to find an analogy between the positions of pensioners, such as the applicants, who did not receive uprating and pensioners resident in countries which had concluded bilateral agreements with the United Kingdom providing for uprating. In this connection, it noted that NICs were only one part of the United Kingdom's complex system of taxation and that the National Insurance Fund was one of a number of sources of revenue used to pay for the social security and National Health systems. It did not therefore consider the applicants' payment of NICs during their working lives in the United Kingdom to be of any more significance than the fact that they might have paid income tax or other taxes while domiciled there. Moreover, even between States in close geographical proximity, such as the United States of America and Canada, South Africa and Mauritius, or Jamaica and Trinidad and Tobago, differences in social security provision, taxation, rates of inflation, interest and currency exchange made it difficult to compare the respective positions of residents.
2009	10/8/2009	ROMANENKO AND OTHERS v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-94843	no. 11751/03	S1		0 majority	intervener	India	C	SC	Rajagopal v. State of Tamil Nadu (1994) 6 SCC 632	32. The third parties submitted, firstly, that government agencies were fully equipped, and should be expected, to defend their reputation before the court of public opinion rather than a court of law. The PACE Report urged Russia to introduce a clear ban on the ability of public authorities to institute civil proceedings in order to protect their "reputation" (cited above, § 393). If public authorities were to be included within the meaning of "others" whose reputation or rights Article 10 § 2 was designed to protect, it would subject journalists to a constant risk of harassment through lawsuits and frustrate the media's ability to act as a watchdog of public administration. Mindful of that danger, courts of many jurisdictions barred public authorities from suing in defamation because of the public interest that such authorities must be open to uninhibited public criticism (United Kingdom: Derbyshire County Council v. Times Newspapers Ltd [1993] AC 534; India: Rajagopal v. State of Tamil Nadu (1994) 6 SCC 632; United States: City of Chicago v. Tribune Co., 307 Ill. 595 (1923); South Africa: Die Spoorbond v. South African Railways [1946] AD 999). Some new European democracies have also taken steps to bar government bodies from claiming damages for defamation.
2009	10/8/2009	ROMANENKO AND OTHERS v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-94843	no. 11751/03	S1		0 majority	intervener	South Africa	C	SC	Die Spoorbond v. South African Railways [1946] AD 999	32. The third parties submitted, firstly, that government agencies were fully equipped, and should be expected, to defend their reputation before the court of public opinion rather than a court of law. The PACE Report urged Russia to introduce a clear ban on the ability of public authorities to institute civil proceedings in order to protect their "reputation" (cited above, § 393). If public authorities were to be included within the meaning of "others" whose reputation or rights Article 10 § 2 was designed to protect, it would subject journalists to a constant risk of harassment through lawsuits and frustrate the media's ability to act as a watchdog of public administration. Mindful of that danger, courts of many jurisdictions barred public authorities from suing in defamation because of the public interest that such authorities must be open to uninhibited public criticism (United Kingdom: Derbyshire County Council v. Times Newspapers Ltd [1993] AC 534; India: Rajagopal v. State of Tamil Nadu (1994) 6 SCC 632; United States: City of Chicago v. Tribune Co., 307 Ill. 595 (1923); South Africa: Die Spoorbond v. South African Railways [1946] AD 999). Some new European democracies have also taken steps to bar government bodies from claiming damages for defamation.

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2009	10/8/2009	ROMANENKO AND OTHERS v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-94843	no. 11751/03	S1		0 majority	intervener	US	C	lower-level co	City of Chicago v. Tribune Co., 307 Ill. 595 (1923)	3. The third parties 32. The third parties submitted, firstly, that government agencies were fully equipped, and should be expected, to defend their reputation before the court of public opinion rather than a court of law. The PACE Report urged Russia to introduce a clear ban on the ability of public authorities to institute civil proceedings in order to protect their "reputation" (cited above, § 393). If public authorities were to be included within the meaning of "others" whose reputation or rights Article 10 § 2 was designed to protect, it would subject journalists to a constant risk of harassment through lawsuits and frustrate the media's ability to act as a watchdog of public administration. Mindful of that danger, courts of many jurisdictions barred public authorities from suing in defamation because of the public interest that such authorities must be open to uninhibited public criticism (United Kingdom: Derbyshire County Council v. Times Newspapers Ltd [1993] AC 534; India: Jagjagpal v. State of Tamil Nadu (1994) 5 SCC 632; United States: City of Chicago v. Tribune Co., 307 Ill. 595 (1923); South Africa: Die Spoorbond v. South African Railways [1946] AD 999). Some non-European democracies have also taken steps to bar government bodies from claiming damages for defamation. 33. Secondly, the third parties indicated that Article 10 would be hollowed out if public officials could substitute themselves for their respective bodies in taking legal action. Here, the relevant test for entertaining a defamation action against the media would be whether the statement at issue was unequivocally "of and concerning" that official. The "group defamation" doctrine has deep roots in the common-law legal tradition (see King v. Alme & Nott, 91 Eng. Rep. 790 (1700) [per curiam]; Eastwood v. Holmes, 1 F. & F. 347, 175 Eng. Rep. 758 (1858); New York Times Co. v. Sullivan, 376 U.S. 254 (1964)). Defamation laws in the continental legal system have similar identification requirements; a plaintiff must be identifiable by name or image or otherwise, in order to have standing to sue for defamation. 34. Finally, the third party pointed out that journalists should not be held liable for defamation for accurately publishing statements contained in non-confidential government documents. The Court has constantly held the view that the press "should normally be entitled, when contributing to public debate on matters of legitimate concern, to rely on the content of official reports without having to undertake independent research" (see Colombani and Others v. France, no. 51279/99, § 47, ECHR 2002-V; also Selicic v. Finland, no. 56767/00, § 60, 16 November 2004). A similar well-developed legal doctrine known as the "fair report privilege" has long been entrenched in the United States jurisprudence (Restatement (Second) Torts, § 611 (1977)). It followed that journalists had a right under Article 10 to publish statements from a non-confidential document accurately without being liable for the content of such statements.
2009	4/30/2009	GLOR v. SWITZERLAND	http://hudoc.echr.coe.int/eng/?i=001-92525	no. 13444/04	S1	majority	majority	ECTHR	Iran	R	general		0 39. The non-governmental organisation Conscience and Peace Tax International, which has special consultative status with the United Nations, submitted observations to the former Commission on Human Rights of the United Nations Economic and Social Council (ECOSOC, Commission on Human Rights, Written Statement submitted by Conscience and Peace Tax International, Doc. E/CN.4/2006/NGO/108, 18 February 2006), in which it stated (p. 2): "... a surprising number of States continue to accept financial contributions in lieu of military service. In Colombia, Ecuador, Bolivia and Switzerland all or most of those excused military service for whatever reason – including those who are willing but physically incapable – are required to pay a special military tax. In other countries there is legal provision that exemption (Albania, Georgia, Mongolia) or (Iran, Uzbekistan) the commutation of military service to a brief period of training may be purchased for cash ..."
2009	4/30/2009	GLOR v. SWITZERLAND	http://hudoc.echr.coe.int/eng/?i=001-92525	no. 13444/04	S1	majority	majority	ECTHR	Mongolia	R	general		0 39. The non-governmental organisation Conscience and Peace Tax International, which has special consultative status with the United Nations, submitted observations to the former Commission on Human Rights of the United Nations Economic and Social Council (ECOSOC, Commission on Human Rights, Written Statement submitted by Conscience and Peace Tax International, Doc. E/CN.4/2006/NGO/108, 18 February 2006), in which it stated (p. 2): "... a surprising number of States continue to accept financial contributions in lieu of military service. In Colombia, Ecuador, Bolivia and Switzerland all or most of those excused military service for whatever reason – including those who are willing but physically incapable – are required to pay a special military tax. In other countries there is legal provision that exemption (Albania, Georgia, Mongolia) or (Iran, Uzbekistan) the commutation of military service to a brief period of training may be purchased for cash ..."
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2009	3/10/2009	BYKOV v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-91704	4378/02	GC	CABRAL BARRETO	concurring		0 Canada	C	SC	R. v. Rothman, [1981] 1 SCR 640	The Supreme Court of Canada makes a distinction between "dirty tricks" (which the community finds shocking) and mere "ruses", concluding that "What should be repressed vigorously is conduct on [the authorities'] part that shocks the community. That a police officer pretend to be a lock-up chaplain and hear a suspect's confession is conduct that shocks the community; so is pretending to be the duty legal-aid lawyer eliciting in that way incriminating statements from suspects or accused; injecting Pentothal into a diabetic suspect pretending it is his daily shot of insulin and using his statement in evidence would also shock the community; but generally speaking, pretending to be a hard drug addict to break a drug ring would not shock the community; nor would ... pretending to be a truck driver to secure the conviction of a trafficker" (Judge Lamer, individual opinion, in R. v. Rothman, [1981] 1 SCR 640; approved by the majority of the Supreme Court in R. v. Collins, [1987] 1 SCR 265, § 52, and R. v. Oickle, [2000] 2 SCR 3, § 66).
2009	3/10/2009	BYKOV v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-91704	4378/02	GC	CABRAL BARRETO	concurring		0 Canada	C	SC	R. v. Collins, [1987] 1 SCR 265, § 52	The Supreme Court of Canada makes a distinction between "dirty tricks" (which the community finds shocking) and mere "ruses", concluding that "What should be repressed vigorously is conduct on [the authorities'] part that shocks the community. That a police officer pretend to be a lock-up chaplain and hear a suspect's confession is conduct that shocks the community; so is pretending to be the duty legal-aid lawyer eliciting in that way incriminating statements from suspects or accused; injecting Pentothal into a diabetic suspect pretending it is his daily shot of insulin and using his statement in evidence would also shock the community; but generally speaking, pretending to be a hard drug addict to break a drug ring would not shock the community; nor would ... pretending to be a truck driver to secure the conviction of a trafficker" (Judge Lamer, individual opinion, in R. v. Rothman, [1981] 1 SCR 640; approved by the majority of the Supreme Court in R. v. Collins, [1987] 1 SCR 265, § 52, and R. v. Oickle, [2000] 2 SCR 3, § 66).
2009	3/10/2009	BYKOV v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-91704	4378/02	GC	CABRAL BARRETO	concurring		0 Canada	C	SC	R. v. Oickle, [2000] 2 SCR 3, § 66	The Supreme Court of Canada makes a distinction between "dirty tricks" (which the community finds shocking) and mere "ruses", concluding that "What should be repressed vigorously is conduct on [the authorities'] part that shocks the community. That a police officer pretend to be a lock-up chaplain and hear a suspect's confession is conduct that shocks the community; so is pretending to be the duty legal-aid lawyer eliciting in that way incriminating statements from suspects or accused; injecting Pentothal into a diabetic suspect pretending it is his daily shot of insulin and using his statement in evidence would also shock the community; but generally speaking, pretending to be a hard drug addict to break a drug ring would not shock the community; nor would ... pretending to be a truck driver to secure the conviction of a trafficker" (Judge Lamer, individual opinion, in R. v. Rothman, [1981] 1 SCR 640; approved by the majority of the Supreme Court in R. v. Collins, [1987] 1 SCR 265, § 52, and R. v. Oickle, [2000] 2 SCR 3, § 66).
2009	3/10/2009	BYKOV v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-91704	no. 4378/02	GC	SPIELMANN	dissenting (par		0 Canada	C	SC	R. v. Hebert ((1990) 2 Supreme Court Reports 151	29. In paragraph 51 of the Allan judgment the Court stated the following, referring to the case-law of the Supreme Court of Canada:[21] "Whether the right to silence is undermined to such an extent as to give rise to a violation of Article 6 of the Convention depends on all the circumstances of the individual case. In this regard, however, some guidance may be found in the decisions of the Supreme Court of Canada, ... in which the right to silence, in circumstances which bore some similarity to those in the present case, was examined in the context of section 7 of the Canadian Charter of Rights and Freedoms. There, the Canadian Supreme Court expressed the view that, where the informer who allegedly acted to subvert the right to silence of the accused was not obviously a State agent, the analysis should focus on both the relationship between the informer and the State and the relationship between the informer and the accused: the right to silence would only be infringed where the informer was acting as an agent of the State at the time the accused made the statement and where it was the informer who caused the accused to make the statement. Whether an informer was to be regarded as a State agent depended on whether the exchange between the accused and the informer would have taken place, and in the form and manner in which it did, but for the intervention of the authorities. Whether the evidence in question was to be regarded as having been elicited by the informer depended on whether the conversation between him and the accused was the functional equivalent of an interrogation, as well as on the nature of the relationship between the informer and the accused." 30. In the present case the informer who acted on State instructions, subverting the applicant's right to remain silent, was obviously a State agent. The question arises whether the conversation between him and the accused would have taken place, and in the form and manner in which it did, but for the intervention of the authorities. The answer is no, and the recorded conversation was thus was the functional equivalent of an interrogation. The purpose of this ruse was, in particular, to reveal the existence of a particular offence, namely "conspiracy to murder". Among the constituent elements of this offence, the mens rea or element of intent plays a crucial, if not predominant, role. The grossly unlawful ruse staged by the authorities was aimed precisely at "uncovering" this essential element of the offence. 31. The fact that the applicant had not been charged is not decisive in my opinion either. In the R. v. Hebert decision (cited above) the Supreme Court of Canada stated the following: "The protection conferred by a legal system which grants the accused immunity from incriminating himself at trial but offers no protection with respect to pre-trial statements would be illusory. As Ratushny writes (Self-Incrimination in the Canadian Criminal Process (1979), at p. 253): "Furthermore, our system meticulously provides for a public trial only after a specific accusation and where the accused is protected by detailed procedures and strict evidentiary rules. Ordinarily he is represented by a lawyer to ensure that he in fact received all of the protections to which he is entitled. The accused is under no legal or practical obligation to respond to the accusation until there is an evidentiary case to meet. There is a hypocrisy to a system which provides such protections but allows them all to be ignored at the pre-trial stage where interrogation frequently occurs in secret, after counsel has been denied, with no rules at all and often where the suspect or accused is deliberately misled about the evidence against him." ... The guarantee of the right to consult counsel confirms that the essence of the right is the accused's freedom to choose whether to make a statement or not. The state is not obliged to protect the suspect against making a statement; indeed it is open to the state to use legitimate means of persuasion to encourage the suspect to do so. The state is, however, obliged to allow the suspect to make an informed choice about whether or not he will speak to the authorities." [22] 34. It is true that in the R. v. Hebert decision the Supreme Court of Canada also based its ruling on the fact that the person concerned was in detention. [The rule] applies only after detention. Undercover operations prior to detention do not raise the same considerations. The jurisprudence relating to the right to silence has never

Year	Date	Name	Link	App.no.	Body	Judge citing	Opinion	who submitted	Countries	C/R/F	type	Document	Quotes
2009	3/10/2009	TIMES NEWSPAPERS LTD (Nos. 1 and 2) v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-91706	nos. 3002/03 and 23676/03	54		0 majority	ECtHR	US	C	lower-level co	Gregoire v. GP Putnam's Sons (1948) 81 N.E.2d 45	E. The United States single-publication rule 24. Unlike the United Kingdom, the courts of the United States of America have chosen to apply the "single-publication rule". In the case of Gregoire v. GP Putnam's Sons (1948) 81 N.E.2d 45, a book originally put on sale in 1941 was still being sold in 1946 following several reprints. The New York Court of Appeals considered the rule in Duke of Brunswick v. Harmer, but concluded that it was formulated "in an era which long antedated the modern process of mass publication" and was therefore not suited to modern conditions. Instead, the court held that the limitation period started to run in 1941, when the book was first put on sale. The court pointed out that: "Under [the rule in Duke of Brunswick v. Harmer] the Statute of Limitation would never expire so long as a copy of such book remained in stock and is made by the publisher the subject of a sale or inspection by the public. Such a rule would thwart the purpose of the legislature." 25. The single-publication rule was subsequently applied to a website publication in Firth v. State of New York (2002) NY int 88. In that case, a report published at a press conference on 16 December 1996 was placed on the Internet the same day. An action was brought over a year later. The New York Court of Appeals held that the limitation period started when the report was first uploaded onto the website and did not begin anew each time the website version of the report was accessed by a user. The court observed that: "The policies impelling the original adoption of the single-publication rule support its application to the posting of ... the report ... on the website ... These policies are even more cogent when considered in connection with the exponential growth of the instantaneous, worldwide ability to communicate through the Internet ... Thus a multiple publication rule would implicate an even greater potential for endless retriggering of the statute of limitations, multiplicity of suits and harassment of defendants. Inevitably, there would be a serious inhibitory effect on the open, pervasive dissemination of information and ideas over the Internet which is, of course, its greatest beneficial promise."
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2009	2/19/2009	A. AND OTHERS v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-91403	no. 3455/05	GC		0 majority	ECtHR	Canada	C	SC	Charkaoui v. Minister of Citizenship and Immigration [2007] 1 SCR 350	111. In Charkaoui v. Minister of Citizenship and Immigration [2007] 1 SCR 350, McLachlin CJ, for the Supreme Court of Canada, observed in paragraph 53: "Last but not least, a fair hearing requires that the affected person be informed of the case against him or her, and be permitted to respond to it." That right was not absolute and might be limited in the interests of national security (paragraphs 57-58); however, paragraph 64 provides: "... The judge is therefore not in a position to compensate for the lack of informed scrutiny, challenge and counter-evidence that a person familiar with the case could bring. Such scrutiny is the whole point of the principle that a person whose liberty is in jeopardy must know the case to meet. Here that principle has not merely been limited; it has been effectively gutted. How can one meet a case one does not know?" 198. Justice (see paragraph 6 above) informed the Court that at the time SIAC was created by the Special Immigration Appeals Commission Act 1997, the use of closed material and special advocates in the procedure before it was believed to be based on a similar procedure in Canada, applied in cases before the Security Intelligence Review Committee (SIRC), which considered whether a minister's decision to remove a permanently resident foreign national on national security grounds was well-founded. However, although the SIRC procedure involved in-house counsel with access to the classified material taking part in ex parte and in camera hearings to represent the appellant's interests, it differed substantially from the SIAC model, particularly in that it allowed the special advocate to maintain contact with the appellant and his lawyers throughout the process and even after the special advocate was fully apprised of the secret information against the appellant. 199. In contrast, the SIAC procedures involving closed material and special advocates had attracted considerable criticism, including from the Appellate Committee of the House of Lords, the House of Commons Constitutional Affairs Committee, the Parliamentary Joint Committee on Human Rights, the Canadian Senate Committee on the Anti-Terrorism Act, and the Council of Europe Commissioner for Human Rights. Following the judgment of the House of Lords in December 2004, declaring Part 4 of the 2001 Act incompatible with Articles 5 and 14 of the Convention, the House of Commons Constitutional Affairs Committee commenced an inquiry into the operation of SIAC and its use of special advocates. Among the evidence received by the Committee was a submission from nine of the thirteen serving special advocates. In the submission, the special advocates highlighted the serious difficulties they faced in representing appellants in closed proceedings due to the prohibition on communication concerning the closed material. In particular, the special advocates pointed to the very limited role they were able to play in closed hearings given the absence of effective instructions from those they represented. 210. In Chahal (cited above), the applicant was detained under Article 5 § 1 (f) pending deportation on national security grounds and the Secretary of State opposed his applications for bail and habeas corpus, also for reasons of national security. The Court recognised (ibid., §§ 130-31) that the use of confidential material might be unavoidable where national security was at stake but held that this did not mean that the executive could be free from effective control by the domestic courts whenever they chose to assert that national security and terrorism were involved. The Court found a violation of Article 5 § 4 in the light of the fact that the High Court, which determined the habeas corpus application, did not have access to the full material on which the Secretary of State had based his decision. Although there was the safeguard of an advisory panel, chaired by a Court of Appeal judge, which had full sight of the national security evidence, the Court held that the panel could not be considered as a "court" within the meaning of Article 5 § 4 because the applicant was not entitled to legal representation before it and was given only an outline of the national security case against him and because the panel had no power of decision and its advice to the Home Secretary was not binding and was not disclosed. The Court made reference (ibid., §§ 131 and 144) to the submissions of the third parties Amnesty International, Liberty, the Centre for Advice on Individual Rights in Europe and the Joint Council for the Welfare of Immigrants, and see the submissions of Justice in the present case, paragraph 198 (above) in connection with a procedure applied in national security deportation cases in Canada, whereby the judge held an in camera hearing of all the evidence, at which the proposed deportee was provided with a statement summarising, as far as possible, the case against him and had the right to be represented and to call evidence. The confidentiality of the security material was maintained by requiring such evidence to be examined in the absence of both the deportee and his representative. However, in these circumstances, their place was taken by security-cleared counsel instructed by the court, who cross-examined the witnesses and generally assisted the court to test the strength of the State's case. A summary of the evidence obtained by this procedure, with necessary deletions, was given to the deportee. The Court commented that it: "... attaches significance to the fact that, as the interveners pointed out in connection with Article 13 ... in Canada a more effective form of judicial control has been developed in
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2009	1/8/2009	BULLEN AND SONEJI v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-90398	no. 3383/06	s4		0 majority	domestic court	Australia	C	general		0 30. The House of Lords observed that the core problem before it was whether, as a matter of statutory construction, failure to comply with a statutory time-limit would have the effect of invalidating an act. The fact that Parliament cast statutory requirements in imperative form without expressly specifying the consequences of a failure to comply had caused difficulty and had been the source of a great deal of litigation over the preceding 130 years. A distinction had first evolved between mandatory and directory requirements; where a requirement was mandatory, a failure to comply had the effect of invalidating the act in question but where a requirement was merely directory, a failure to comply did not invalidate the act. Over the years, a further distinction had been made between two types of directory requirements: requirements of a purely regulatory character, where a failure to comply would never invalidate an act, and requirements where a failure to comply would not invalidate an act provided that there was substantial compliance. In London & Clydeside Estates Ltd v. Aberdeen District Council [1980] 1 WLR 182, 189E-190C, however, Lord Hailsham had emphasised that it was within the courts' inherently discretionary jurisdiction to determine the nature of a particular statutory requirement and to examine the consequences of non-compliance before determining whether Parliament had intended total invalidity. In the later case of Wang v. Commissioner of Inland Revenue [1994] 1 WLR 1286, the Privy Council followed and applied the dictum of Lord Hailsham in London and Clydeside Estates (cited above). The House of Lords also took into consideration a number of cases in which the Court of Appeal had adopted the same approach, and parallel developments in the courts of New Zealand, Australia and Canada.
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2008	12/11/2008	TV VEST AS & ROGALAND PENSIONISTPARTI v. NOR	http://hudoc.echr.coe.int/eng/?i=001-90213	21132/05	s1		0 majority	Government	Israel	R	general		0 24. The respondent Government produced a copy of a survey performed by the Secretariat of the European Platform of Regulatory Authorities ("23rd EPRA Meeting, Elsinore, Denmark, 17-19 May 2006, Background paper - Plenary, Political advertising: case studies and monitoring") on the basis of answers to a questionnaire, received from the authorities of 31 countries, i.e., Austria, Belgium (x2), Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, the Isle of Man, Israel (x2), Italy, Latvia, Lithuania, Luxembourg, FYROM, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Spain, Sweden and Switzerland (x2). The report included the following observations: D. Case-law in other jurisdictions 54. In the case of R. v. R.C. ([2005] 3 SCR 99, 2005 SCC 61) the Supreme Court of Canada considered the issue of retaining a juvenile first-time offender's DNA sample on the national database. The court upheld the decision by a trial judge who had found, in the light of the principles and objects of youth criminal justice legislation, that the impact of the DNA retention would be grossly disproportionate. In his opinion, Fish J observed: "Of more concern, however, is the impact of an order on an individual's informational privacy interests. In R. v. Plant, [1993] 3 S.C.R. 281, at p. 293, the Court found that section 8 of the Charter protected the 'biographical core of personal information which individuals in a free and democratic society would wish to maintain and control from dissemination to the state'. An individual's DNA contains the 'highest level of personal and private information': S.A.B., at paragraph 48. Unlike a fingerprint, it is capable of revealing the most intimate details of a person's biological make-up.... The taking and retention of a DNA sample is not a trivial matter and, absent a compelling public interest, would inherently constitute a grave intrusion on the subject's right to personal and informational privacy."
2008	12/4/2008	S. AND MARPER v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-90051	nos. 30562/04 and 30568/04	GC		0 majority	ECtHR	Canada	C	SC	R. v. R.C. ([2005] 3 SCR 99, 2005 SCC 61)	D. Case-law in other jurisdictions 54. In the case of R. v. R.C. ([2005] 3 SCR 99, 2005 SCC 61) the Supreme Court of Canada considered the issue of retaining a juvenile first-time offender's DNA sample on the national database. The court upheld the decision by a trial judge who had found, in the light of the principles and objects of youth criminal justice legislation, that the impact of the DNA retention would be grossly disproportionate. In his opinion, Fish J observed: "Of more concern, however, is the impact of an order on an individual's informational privacy interests. In R. v. Plant, [1993] 3 S.C.R. 281, at p. 293, the Court found that section 8 of the Charter protected the 'biographical core of personal information which individuals in a free and democratic society would wish to maintain and control from dissemination to the state'. An individual's DNA contains the 'highest level of personal and private information': S.A.B., at paragraph 48. Unlike a fingerprint, it is capable of revealing the most intimate details of a person's biological make-up.... The taking and retention of a DNA sample is not a trivial matter and, absent a compelling public interest, would inherently constitute a grave intrusion on the subject's right to personal and informational privacy."
2008	10/23/2008	SOLDATENKO v. UKRAINE	http://hudoc.echr.coe.int/eng/?i=001-89161	no. 2440/07	S5		0 majority	intervener	Canada	C	general		0 80. The third party reiterated the Court's case-law concerning the necessity of reconciliation and of finding a fair balance between international cooperation in criminal matters and the Convention obligations of the Contracting States. It emphasised that a State should always take due account of the threat of a violation of human rights in the requesting country. Therefore, the courts and other relevant authorities of many countries made inquiries as to the human-rights situation abroad in the context of extradition requests. Such inquiries, for instance, were conducted by the courts in the United States, Canada, the Netherlands, Germany, Switzerland, Ireland and Japan. The third party noted that in many countries the conduct of such inquiries was prescribed by legislation. It therefore underlined the importance of the Court's assessment of whether in the present case there were procedures to evaluate the risk of a violation of the applicant's rights in the event of his extradition.
2008	10/23/2008	SOLDATENKO v. UKRAINE	http://hudoc.echr.coe.int/eng/?i=001-89161	no. 2440/07	S5		0 majority	intervener	Japan	C	general		0 80. The third party reiterated the Court's case-law concerning the necessity of reconciliation and of finding a fair balance between international cooperation in criminal matters and the Convention obligations of the Contracting States. It emphasised that a State should always take due account of the threat of a violation of human rights in the requesting country. Therefore, the courts and other relevant authorities of many countries made inquiries as to the human-rights situation abroad in the context of extradition requests. Such inquiries, for instance, were conducted by the courts in the United States, Canada, the Netherlands, Germany, Switzerland, Ireland and Japan. The third party noted that in many countries the conduct of such inquiries was prescribed by legislation. It therefore underlined the importance of the Court's assessment of whether in the present case there were procedures to evaluate the risk of a violation of the applicant's rights in the event of his extradition.
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2008	7/1/2008	LIBERTY AND OTHERS v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-87207	no. 58243/00	S4		0 majority	applicant	Canada	F	general		045. It was plain that the alleged interception of communications constituted an interference with the applicants' rights under Article 8 § 1. Any such interception, to comply with Article 8 § 2, had to be "in accordance with the law", and thus have a basis in domestic law that was adequately accessible and formulated with sufficient precision so as to be foreseeable. They contended that the United Kingdom legislation breached the requirements of foreseeability. They submitted that it would not compromise national security to describe the arrangements in place for filtering and disseminating intercepted material, and that detailed information about similar systems had been published by a number of other democratic countries, such as the United States of America, Australia, New Zealand, Canada and Germany. The deficiencies in the English system were highlighted by the Court's decision in <i>Weber and Saravia v. Germany</i> (dec.), no. 54934/00, 29 June 2006, which noted that the German legislation set out on its face detailed provisions regulating, <i>inter alia</i> , the way in which individual communications were to be selected from the pool of material derived from "strategic interception"; disclosure of selected material amongst the various agencies of the German State and the use that each could properly make of the material; and the retention or destruction of the material. The authorities' discretion was further regulated and constrained by the public rulings of the Federal Constitutional Court on the compatibility of the provisions with the Constitution. In contrast, in the United Kingdom at the relevant time no provision was made on the face of the statute for any part of the processes following the initial interception, other than the duty on the Secretary of State to make unspecified "arrangements". The arrangements themselves were unpublished. There was no legal material in the public domain indicating how the authorities' powers to select, disclose, use or retain particular communications were regulated. The authorities' conduct was not "in accordance with the law" because it was unsupported by any predictable legal basis satisfying the accessibility principle.
2008	7/1/2008	LIBERTY AND OTHERS v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-87207	no. 58243/00	S4		0 majority	applicant	Australia	F	general		045. It was plain that the alleged interception of communications constituted an interference with the applicants' rights under Article 8 § 1. Any such interception, to comply with Article 8 § 2, had to be "in accordance with the law", and thus have a basis in domestic law that was adequately accessible and formulated with sufficient precision so as to be foreseeable. They contended that the United Kingdom legislation breached the requirements of foreseeability. They submitted that it would not compromise national security to describe the arrangements in place for filtering and disseminating intercepted material, and that detailed information about similar systems had been published by a number of other democratic countries, such as the United States of America, Australia, New Zealand, Canada and Germany. The deficiencies in the English system were highlighted by the Court's decision in <i>Weber and Saravia v. Germany</i> (dec.), no. 54934/00, 29 June 2006, which noted that the German legislation set out on its face detailed provisions regulating, <i>inter alia</i> , the way in which individual communications were to be selected from the pool of material derived from "strategic interception"; disclosure of selected material amongst the various agencies of the German State and the use that each could properly make of the material; and the retention or destruction of the material. The authorities' discretion was further regulated and constrained by the public rulings of the Federal Constitutional Court on the compatibility of the provisions with the Constitution. In contrast, in the United Kingdom at the relevant time no provision was made on the face of the statute for any part of the processes following the initial interception, other than the duty on the Secretary of State to make unspecified "arrangements". The arrangements themselves were unpublished. There was no legal material in the public domain indicating how the authorities' powers to select, disclose, use or retain particular communications were regulated. The authorities' conduct was not "in accordance with the law" because it was unsupported by any predictable legal basis satisfying the accessibility principle.
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2008	6/17/2008	KEHOE v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-86580	no. 2010/06	S4		0 majority	applicant	Australia	R	general		037. She argued that the Government's approach was formalistic and unreal and that there was no good reason for denying individuals such as the applicant the option of enforcing their claims directly against the absent parent, as was the case in other jurisdictions such as Australia and New Zealand. The effect of the domestic system of enforcement was that the applicant had no ability to control the steps that were taken to enforce, despite the fact that she was the person with the greatest knowledge of Mr K.'s affairs and despite the fact that she and her children were the only persons with a financial interest. The comparative material showed that it was perfectly possible and administratively simple to set up a system with the characteristics of the CSA but leaving the parent with care with the option of enforcing it.
2008	6/17/2008	KEHOE v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-86580	no. 2010/06	S4		0 majority	applicant	New Zealand	R	general		037. She argued that the Government's approach was formalistic and unreal and that there was no good reason for denying individuals such as the applicant the option of enforcing their claims directly against the absent parent, as was the case in other jurisdictions such as Australia and New Zealand. The effect of the domestic system of enforcement was that the applicant had no ability to control the steps that were taken to enforce, despite the fact that she was the person with the greatest knowledge of Mr K.'s affairs and despite the fact that she and her children were the only persons with a financial interest. The comparative material showed that it was perfectly possible and administratively simple to set up a system with the characteristics of the CSA but leaving the parent with care with the option of enforcing it.
2008	4/22/2008	DEMADES v. TURKEY	http://hudoc.echr.coe.int/eng/?i=001-86501	no. 16219/90	S4	METIN A. HAKKI	dissenting (par	0	US	C	lower-level co	Jeremy Blouin (deceased) v. Vince Michell; Glenn Mearls, City of Farmington, U.S. Court of Appeals, 10th Circuit, 17 May 2006, no. 05-2163[9]	Non-pecuniary damage: As I understand it, the EUR 45,000 which the majority intends to award to the applicant covers the period from 22 January 1987 until the end of 2007, and is intended to be granted in respect of the anguish and feelings of helplessness and frustration experienced over this period by the applicant. It is on record that Mr Demades, the applicant, died on 12 September 2006 (see paragraph 8 of the judgment). It is also on record that the Court (see paragraph 9) decided that the deceased applicant's heirs had the requisite interest and standing to continue the application. I agree with this observation, but in the absence of additional facts on this point, I am inclined to consider that that decision dealt with a procedural matter. In the matter of an award for non-pecuniary damage, I disagree with the majority as a matter of substantive rather than procedural law. Why has an award been made in respect of non-pecuniary damage? As mentioned above, such damages are awarded to the applicant, in line with the Court's established case-law, in respect of the anguish and feelings of helplessness and frustration experienced over the years in not being able to use his property as he saw fit and to enjoy his home. I consider that, after Mr Demades' death, this head of damages should be considered to have died with him. It is a well-known principle that, under English common law, the death of the plaintiff or applicant extinguishes the cause of action in tort cases. Two cases from the United States of America, a great common-law country, may be cited to illustrate this point: [1]Lauren Oliveros, as personal representative of the estate of Jeremy Blouin (deceased) v. Vince Michell; Glenn Mearls, City of Farmington, U.S. Court of Appeals, 10th Circuit, 17 May 2006, no. 05-2163[9], and [2]John Doe v. Cutter Biological Inc., a division of Miles Laboratories, U.S. Court of Appeals, 9th Circuit, no. 95/35238, 24 June 1996 [89F.3d 844]. In certain types of cases this common-law principle is reversed by statute. I am not aware of any treaty at international level reversing the common-law position as regards the applicability of this principle to the facts of the present case. As the cause of action in this case is based on tort,
2008	4/22/2008	DEMADES v. TURKEY	http://hudoc.echr.coe.int/eng/?i=001-86501	no. 16219/90	S4	METIN A. HAKKI	dissenting (par	0	US	C	lower-level co	John Doe v. Cutter Biological Inc., a division of Miles Laboratories, U.S. Court of Appeals, 9th Circuit, no. 95/35238, 24 June 1996 [89F.3d 844]	Non-pecuniary damage: As I understand it, the EUR 45,000 which the majority intends to award to the applicant covers the period from 22 January 1987 until the end of 2007, and is intended to be granted in respect of the anguish and feelings of helplessness and frustration experienced over this period by the applicant. It is on record that Mr Demades, the applicant, died on 12 September 2006 (see paragraph 8 of the judgment). It is also on record that the Court (see paragraph 9) decided that the deceased applicant's heirs had the requisite interest and standing to continue the application. I agree with this observation, but in the absence of additional facts on this point, I am inclined to consider that that decision dealt with a procedural matter. In the matter of an award for non-pecuniary damage, I disagree with the majority as a matter of substantive rather than procedural law. Why has an award been made in respect of non-pecuniary damage? As mentioned above, such damages are awarded to the applicant, in line with the Court's established case-law, in respect of the anguish and feelings of helplessness and frustration experienced over the years in not being able to use his property as he saw fit and to enjoy his home. I consider that, after Mr Demades' death, this head of damages should be considered to have died with him. It is a well-known principle that, under English common law, the death of the plaintiff or applicant extinguishes the cause of action in tort cases. Two cases from the United States of America, a great common-law country, may be cited to illustrate this point: [1]Lauren Oliveros, as personal representative of the estate of Jeremy Blouin (deceased) v. Vince Michell; Glenn Mearls, City of Farmington, U.S. Court of Appeals, 10th Circuit, 17 May 2006, no. 05-2163[9], and [2]John Doe v. Cutter Biological Inc., a division of Miles Laboratories, U.S. Court of Appeals, 9th Circuit, no. 95/35238, 24 June 1996 [89F.3d 844]. In certain types of cases this common-law principle is reversed by statute. I am not aware of any treaty at international level reversing the common-law position as regards the applicability of this principle to the facts of the present case. As the cause of action in this case is based on tort,

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2008	4/19/2008	OTTAN v. FRANCE	http://hudoc.echr.coe.int/eng/?i=001-187627	41841/12	SS		0 majority	ECTHR	Canada	C	SC	R v. Kokopenance, 2015 SCC 28	33. The Court notes that the issue of the diversity and representativeness of the judiciary is the subject of debate in several Council of Europe member States, some of which have chosen to address the issue in a very different way to that chosen by France. In the United Kingdom, for instance, the under-representation of women and persons from visible minority groups among judges, especially in the higher courts, prompted the authorities to implement a proactive policy to promote diversity, with the creation in 2013 of a Judicial Diversity Committee under the authority of the Lord Chief Justice. In April 2017 the Committee published its first official statistics on the composition of the judiciary, together with an action plan to encourage greater diversity (Judicial Diversity Committee of the Judges' Council – Report on Progress and Action Plan 2016-17, 13 April 2017). In the Netherlands the Council for the Judiciary, as far back as 2007, commissioned a study into the representation of ethnic minorities in the judiciaries of several traditional and more recent immigration countries (the Netherlands, Germany, France, Canada and the United States). A handbook published by the Council for the Judiciary in 2015 on reforming the process for the selection, recruitment and training of judges set out the clear objective of ensuring that the diversity within society was reflected in the judiciary ("Judicial reform in the Netherlands: A new process for the recruitment, selection and training of judges", Scientific Magazine for the Judiciary Organisation of the Netherlands, 2015). 34. By way of comparison, in North America the diversity of juries and its impact on decision-making is the subject of numerous studies and court decisions. For example, in the United States the Supreme Court held in its decision in <i>Batson v. Kentucky</i> (476 US 79 (1986)) that the right of defence and prosecution lawyers to challenge jurors could not be exercised on the basis of "racial" criteria (see also, for a recent example, <i>Timothy Throne Foster v. Bruce Chatman</i> (578 U.S. – (2016)). In the Supreme Court's decision in <i>Peters v. Kiff</i> (407 US 493 (1972)) regarding the systematic exclusion of African Americans from juries, Justice Thurgood Marshall issued a dissenting opinion in which he argued that removing a large part of the community from the jury reduced the diversity of human experiences and qualities that could be expressed during the deliberations. In Canada, in several recent cases, individuals accused of murdering "Aboriginal" people have been acquitted by juries with no Aboriginal members. These judgments triggered a debate on the representativeness of Canadian juries and the need to reform jury selection in order to promote the participation of members of Aboriginal communities; in particular, a former Supreme Court judge delivered a report in 2013 concerning the province of Ontario. In 2015 the Supreme Court ruled (<i>R v. Kokopenance</i>, 2015 SCC 28) that provinces had an obligation to make "reasonable efforts" to provide "a fair opportunity for a broad cross-section of society to participate in the jury process". However, they are not required to ensure that the final composition of the jury accurately and proportionately reflects the different groups making up the Canadian population.
2008	4/19/2008	OTTAN v. FRANCE	http://hudoc.echr.coe.int/eng/?i=001-187627	41841/12	SS		0 majority	ECTHR	US	C	SC	<i>Batson v. Kentucky</i> (476 US 79 (1986))	33. The Court notes that the issue of the diversity and representativeness of the judiciary is the subject of debate in several Council of Europe member States, some of which have chosen to address the issue in a very different way to that chosen by France. In the United Kingdom, for instance, the under-representation of women and persons from visible minority groups among judges, especially in the higher courts, prompted the authorities to implement a proactive policy to promote diversity, with the creation in 2013 of a Judicial Diversity Committee under the authority of the Lord Chief Justice. In April 2017 the Committee published its first official statistics on the composition of the judiciary, together with an action plan to encourage greater diversity (Judicial Diversity Committee of the Judges' Council – Report on Progress and Action Plan 2016-17, 13 April 2017). In the Netherlands the Council for the Judiciary, as far back as 2007, commissioned a study into the representation of ethnic minorities in the judiciaries of several traditional and more recent immigration countries (the Netherlands, Germany, France, Canada and the United States). A handbook published by the Council for the Judiciary in 2015 on reforming the process for the selection, recruitment and training of judges set out the clear objective of ensuring that the diversity within society was reflected in the judiciary ("Judicial reform in the Netherlands: A new process for the recruitment, selection and training of judges", Scientific Magazine for the Judiciary Organisation of the Netherlands, 2015). 34. By way of comparison, in North America the diversity of juries and its impact on decision-making is the subject of numerous studies and court decisions. For example, in the United States the Supreme Court held in its decision in <i>Batson v. Kentucky</i> (476 US 79 (1986)) that the right of defence and prosecution lawyers to challenge jurors could not be exercised on the basis of "racial" criteria (see also, for a recent example, <i>Timothy Throne Foster v. Bruce Chatman</i> (578 U.S. – (2016)). In the Supreme Court's decision in <i>Peters v. Kiff</i> (407 US 493 (1972)) regarding the systematic exclusion of African Americans from juries, Justice Thurgood Marshall issued a dissenting opinion in which he argued that removing a large part of the community from the jury reduced the diversity of human experiences and qualities that could be expressed during the deliberations. In Canada, in several recent cases, individuals accused of murdering "Aboriginal" people have been acquitted by juries with no Aboriginal members. These judgments triggered a debate on the representativeness of Canadian juries and the need to reform jury selection in order to promote the participation of members of Aboriginal communities; in particular, a former Supreme Court judge delivered a report in 2013 concerning the province of Ontario. In 2015 the Supreme Court ruled (<i>R v. Kokopenance</i>, 2015 SCC 28) that provinces had an obligation to make "reasonable efforts" to provide "a fair opportunity for a broad cross-section of society to participate in the jury process". However, they are not required to ensure that the final composition of the jury accurately and proportionately reflects the different groups making up the Canadian population.
2008	4/19/2008	OTTAN v. FRANCE	http://hudoc.echr.coe.int/eng/?i=001-187627	41841/12	SS		0 majority	ECTHR	US	C	SC	<i>Timothy Throne Foster v. Bruce Chatman</i> (578 U.S. – (2016))	33. The Court notes that the issue of the diversity and representativeness of the judiciary is the subject of debate in several Council of Europe member States, some of which have chosen to address the issue in a very different way to that chosen by France. In the United Kingdom, for instance, the under-representation of women and persons from visible minority groups among judges, especially in the higher courts, prompted the authorities to implement a proactive policy to promote diversity, with the creation in 2013 of a Judicial Diversity Committee under the authority of the Lord Chief Justice. In April 2017 the Committee published its first official statistics on the composition of the judiciary, together with an action plan to encourage greater diversity (Judicial Diversity Committee of the Judges' Council – Report on Progress and Action Plan 2016-17, 13 April 2017). In the Netherlands the Council for the Judiciary, as far back as 2007, commissioned a study into the representation of ethnic minorities in the judiciaries of several traditional and more recent immigration countries (the Netherlands, Germany, France, Canada and the United States). A handbook published by the Council for the Judiciary in 2015 on reforming the process for the selection, recruitment and training of judges set out the clear objective of ensuring that the diversity within society was reflected in the judiciary ("Judicial reform in the Netherlands: A new process for the recruitment, selection and training of judges", Scientific Magazine for the Judiciary Organisation of the Netherlands, 2015). 34. By way of comparison, in North America the diversity of juries and its impact on decision-making is the subject of numerous studies and court decisions. For example, in the United States the Supreme Court held in its decision in <i>Batson v. Kentucky</i> (476 US 79 (1986)) that the right of defence and prosecution lawyers to challenge jurors could not be exercised on the basis of "racial" criteria (see also, for a recent example, <i>Timothy Throne Foster v. Bruce Chatman</i> (578 U.S. – (2016)). In the Supreme Court's decision in <i>Peters v. Kiff</i> (407 US 493 (1972)) regarding the systematic exclusion of African Americans from juries, Justice Thurgood Marshall issued a dissenting opinion in which he argued that removing a large part of the community from the jury reduced the diversity of human experiences and qualities that could be expressed during the deliberations. In Canada, in several recent cases, individuals accused of murdering "Aboriginal" people have been acquitted by juries with no Aboriginal members. These judgments triggered a debate on the representativeness of Canadian juries and the need to reform jury selection in order to promote the participation of members of Aboriginal communities; in particular, a former Supreme Court judge delivered a report in 2013 concerning the province of Ontario. In 2015 the Supreme Court ruled (<i>R v. Kokopenance</i>, 2015 SCC 28) that provinces had an obligation to make "reasonable efforts" to provide "a fair opportunity for a broad cross-section of society to participate in the jury process". However, they are not required to ensure that the final composition of the jury accurately and proportionately reflects the different groups making up the Canadian population.
2008	4/19/2008	OTTAN v. FRANCE	http://hudoc.echr.coe.int/eng/?i=001-187627	41841/12	SS		0 majority	ECTHR	US	C	SC	<i>Peters v. Kiff</i> (407 US 493 (1972))	33. The Court notes that the issue of the diversity and representativeness of the judiciary is the subject of debate in several Council of Europe member States, some of which have chosen to address the issue in a very different way to that chosen by France. In the United Kingdom, for instance, the under-representation of women and persons from visible minority groups among judges, especially in the higher courts, prompted the authorities to implement a proactive policy to promote diversity, with the creation in 2013 of a Judicial Diversity Committee under the authority of the Lord Chief Justice. In April 2017 the Committee published its first official statistics on the composition of the judiciary, together with an action plan to encourage greater diversity (Judicial Diversity Committee of the Judges' Council – Report on Progress and Action Plan 2016-17, 13 April 2017). In the Netherlands the Council for the Judiciary, as far back as 2007, commissioned a study into the representation of ethnic minorities in the judiciaries of several traditional and more recent immigration countries (the Netherlands, Germany, France, Canada and the United States). A handbook published by the Council for the Judiciary in 2015 on reforming the process for the selection, recruitment and training of judges set out the clear objective of ensuring that the diversity within society was reflected in the judiciary ("Judicial reform in the Netherlands: A new process for the recruitment, selection and training of judges", Scientific Magazine for the Judiciary Organisation of the Netherlands, 2015). 34. By way of comparison, in North America the diversity of juries and its impact on decision-making is the subject of numerous studies and court decisions. For example, in the United States the Supreme Court held in its decision in <i>Batson v. Kentucky</i> (476 US 79 (1986)) that the right of defence and prosecution lawyers to challenge jurors could not be exercised on the basis of "racial" criteria (see also, for a recent example, <i>Timothy Throne Foster v. Bruce Chatman</i> (578 U.S. – (2016)). In the Supreme Court's decision in <i>Peters v. Kiff</i> (407 US 493 (1972)) regarding the systematic exclusion of African Americans from juries, Justice Thurgood Marshall issued a dissenting opinion in which he argued that removing a large part of the community from the jury reduced the diversity of human experiences and qualities that could be expressed during the deliberations. In Canada, in several recent cases, individuals accused of murdering "Aboriginal" people have been acquitted by juries with no Aboriginal members. These judgments triggered a debate on the representativeness of Canadian juries and the need to reform jury selection in order to promote the participation of members of Aboriginal communities; in particular, a former Supreme Court judge delivered a report in 2013 concerning the province of Ontario. In 2015 the Supreme Court ruled (<i>R v. Kokopenance</i>, 2015 SCC 28) that provinces had an obligation to make "reasonable efforts" to provide "a fair opportunity for a broad cross-section of society to participate in the jury process". However, they are not required to ensure that the final composition of the jury accurately and proportionately reflects the different groups making up the Canadian population.
2008	2/12/2008	GIJIA v. MOLDOVA	http://hudoc.echr.coe.int/eng/?i=001-95016	no. 14277/04	GC		0 majority	Government	US	R	lower-level sta	general	67. Moreover, the applicant had not disclosed the information to a competent authority and had acted hastily. There had been no information of an urgent or irreversible nature concerning life, health or the environment. The applicant was entitled to make a disclosure externally only if it was not possible to do so internally. Any such disclosure should in the first instance have been to the top echelons of the Prosecutor General's Office and thereafter to the Parliament (including the parliamentary commissions, factions and opposition), rather than going directly to the press. In support of their submission, the Government sent the Court copies of several complaints that had been lodged by citizens with the Parliament concerning alleged illegalities in employment and other matters. All the complaints appeared to have been forwarded by the Parliament to the competent organs, such as the Prosecutor General's Office and the Superior Council of Magistrates, without any other parliamentary involvement. The Government argued that twenty-one states in the United States of America did not afford protection to disclosures made to the media, while in the United Kingdom protection for external whistle-blowing was possible only in extremely rare and strictly defined circumstances.
2007	11/13/2007	D.H. AND OTHERS v. THE CZECH REPUBLIC	http://hudoc.echr.coe.int/eng/?i=001-83256	57325/00	GC	BORREGO BORREGO	dissenting	0 US	US	C	SC	general	5. Yet the Grand Chamber does the exact opposite. In contradiction with the role which all judicial bodies assume, the entire judgment is devoted to assessing the overall social context – from the first page ("historical background") to the last paragraph, including a review of the "Council of Europe sources" (fourteen pages), "Community law and practice" (five pages), United Nations materials (seven pages) and "other sources" (three pages, which, curiously, with the exception of the reference to the European Monitoring Centre, are taken exclusively from the Anglo-American system, that is, the House of Lords and the United States Supreme Court). Thus, to cite but one example, the Court states at the start of paragraph 182: "The Court notes that as a result of their turbulent history and constant uprooting the Roma have become a specific type of disadvantaged and vulnerable minority." Is it the Court's role to be doing this?
2007	11/13/2007	D.H. AND OTHERS v. THE CZECH REPUBLIC	http://hudoc.echr.coe.int/eng/?i=001-83256	57325/00	GC		0 majority	intervener	Canada	C	SC	<i>R. v. Borden</i> (1994) 3 RCS 145, p. 162)	172. The FIDH considered that the Chamber had unjustifiably placed significant weight in its judgment on the consent the applicants' parents had allegedly given to the situation forming the subject of their complaint to the Court. It noted that under the Court's case-law there were situations in which the waiver of a right was not considered capable of exempting the State from its obligation to guarantee to every person within its jurisdiction the rights and freedoms laid down in the Convention. That applied, in particular, where the waiver conflicted with an important public interest, or was not explicit or unequivocal. Furthermore, in order to be capable of justifying a restriction of the right or freedom of the individual, the waiver of that guarantee by the person concerned had to take place in circumstances from which it could be concluded that he was fully aware of the consequences, in particular the legal consequences, of his choice. In the case of <i>R. v. Borden</i> (1994) 3 RCS 145, p. 162), the Supreme Court of Canada had developed the following principle on that precise point: "[i]n order for a waiver of the right ... to be effective, the person purporting to consent must be possessed of the requisite informational foundation for a true relinquishment of the right. A right to choose requires not only the volition to prefer one option over another, but also sufficient available information to make the preference meaningful."

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2007	11/13/2007	D.H. AND OTHERS v. THE CZECH REPUBLIC	http://hudoc.echr.coe.int/eng/?i=001-83256	57325/00	GC		0 majority	ECTHR	US	C	SC	Griggs v. Duke Power Co., 401 US 424 (1971)	C. The United States Supreme Court 107. The Supreme Court issued its decision in the case of Griggs v. Duke Power Co., 401 US 424 (1971), in which it established the disparate impact test, after black employees at an electricity generating plant had brought proceedings on the grounds that their employers' practice of requiring them to hold a high school diploma or to pass an aptitude test, even for the least well-paid jobs, was discriminatory. Fewer blacks had managed to obtain the diploma or pass the standardised tests. The Supreme Court stated: "The [Civil Rights] Act [of 1964] requires the elimination of artificial, arbitrary, and unnecessary barriers to employment that operate invidiously to discriminate on the basis of race, and, if, as here, an employment practice that operates to exclude Negroes cannot be shown to be related to job performance, it is prohibited, notwithstanding the employer's lack of discriminatory intent. ... The Act does not preclude the use of testing or measuring procedures, but it does proscribe giving them controlling force unless ... they are demonstrably a reasonable measure of job performance ... The Act proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation. The touchstone is business necessity. If an employment practice which operates to exclude Negroes cannot be shown to be related to job performance, the practice is prohibited. ... Congress has placed on the employer the burden of showing that any given requirement must have a manifest relationship to the employment in question."
2007	7/31/2007	DYULDIN AND KISLOV v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-82038	no. 25968/02	SI		0 majority	Intervener	US	C	lower-level co	Abramson v. Pataki, 278 F.3d 93	3. The third party 32. The third party submitted that the restrictions listed in paragraph 2 of Article 10 should not be interpreted as conferring standing to sue in defamation on individual public officials who had not been specifically identified, who would then act as surrogates or alter egos for the State. The common law in the United States has long protected journalists against claims for defamation brought by unnamed members of a group based upon criticism voiced about the group under the "group libel" doctrine (Abramson v. Pataki, 278 F.3d 93 – no libel claim for unnamed union members based on statement accusing certain employees of criminal behaviour; Anyanwu v. Columbia Broad. Sys., Inc., 887 F. Supp 690 – no libel claim for a Nigerian doing business in the USA based on defamatory reference to all Nigerians doing business in the USA). The doctrine holds that an allegedly false statement about a group is not "of and concerning" any individual member of the group (Restatement [Second] of Torts, § 564A). Not only individual members but even elected leaders of an organisation are barred by the "group libel" doctrine from asserting individual defamation claims based on statements critical of the group (McMillen v. Arthritis Foundation, 432 F. Supp. 430; Provisional Government of the Republic of New Afrika v. American Broad. Cos., 609 F. Supp. 104).
2007	7/31/2007	DYULDIN AND KISLOV v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-82038	no. 25968/02	SI		0 majority	Intervener	US	C	lower-level co	Anyanwu v. Columbia Broad. Sys., Inc., 887 F. Supp 690	3. The third party 32. The third party submitted that the restrictions listed in paragraph 2 of Article 10 should not be interpreted as conferring standing to sue in defamation on individual public officials who had not been specifically identified, who would then act as surrogates or alter egos for the State. The common law in the United States has long protected journalists against claims for defamation brought by unnamed members of a group based upon criticism voiced about the group under the "group libel" doctrine (Abramson v. Pataki, 278 F.3d 93 – no libel claim for unnamed union members based on statement accusing certain employees of criminal behaviour; Anyanwu v. Columbia Broad. Sys., Inc., 887 F. Supp 690 – no libel claim for a Nigerian doing business in the USA based on defamatory reference to all Nigerians doing business in the USA). The doctrine holds that an allegedly false statement about a group is not "of and concerning" any individual member of the group (Restatement [Second] of Torts, § 564A). Not only individual members but even elected leaders of an organisation are barred by the "group libel" doctrine from asserting individual defamation claims based on statements critical of the group (McMillen v. Arthritis Foundation, 432 F. Supp. 430; Provisional Government of the Republic of New Afrika v. American Broad. Cos., 609 F. Supp. 104).
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2007	7/31/2007	DYULDIN AND KISLOV v. RUSSIA	http://hudoc.echr.coe.int/eng/?i=001-82038	no. 25968/02	SI		0 majority	Intervener	US	C	lower-level co	McMillen v. Arthritis Foundation, 432 F. Supp. 430	3. The third party 32. The third party submitted that the restrictions listed in paragraph 2 of Article 10 should not be interpreted as conferring standing to sue in defamation on individual public officials who had not been specifically identified, who would then act as surrogates or alter egos for the State. The common law in the United States has long protected journalists against claims for defamation brought by unnamed members of a group based upon criticism voiced about the group under the "group libel" doctrine (Abramson v. Pataki, 278 F.3d 93 – no libel claim for unnamed union members based on statement accusing certain employees of criminal behaviour; Anyanwu v. Columbia Broad. Sys., Inc., 887 F. Supp 690 – no libel claim for a Nigerian doing business in the USA based on defamatory reference to all Nigerians doing business in the USA). The doctrine holds that an allegedly false statement about a group is not "of and concerning" any individual member of the group (Restatement [Second] of Torts, § 564A). Not only individual members but even elected leaders of an organisation are barred by the "group libel" doctrine from asserting individual defamation claims based on statements critical of the group (McMillen v. Arthritis Foundation, 432 F. Supp. 430; Provisional Government of the Republic of New Afrika v. American Broad. Cos., 609 F. Supp. 104).
2007	6/29/2007	O'HALLORAN AND FRANCIS v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-81359	15809/02 25624/02	GC	PAVLOVSKI	dissenting		Canada	C	SC	R. v. S. (R.J.) [1995] 1 S.C.R. 451	Canadian criminal procedure, for instance, provides as follows: "Where with respect to any question a witness objects to answer on the ground that his answer may tend to criminate him ... [and is] ... compelled to answer, the answer so given shall not be used or admissible in evidence against him in any criminal trial or other criminal proceeding against him thereafter taking place, other than a prosecution for perjury in the giving of that evidence or for the giving of contradictory evidence." (Canada Evidence Act, C-5) In the case of R. v. S. (R.J.), the Supreme Court of Canada ruled as follows: "... The right of an accused not to be forced into assisting in his own prosecution is perhaps the most important principle in criminal law and the principles of fundamental justice require that courts retain the discretion to exempt witnesses from being compelled to testify, in appropriate circumstances. The person claiming the exemption has the burden of satisfying the judge that in all the circumstances the prejudice to his interests outweighs the necessity of obtaining the evidence. ... Defining 'self-incrimination' over-inclusively as arising whenever the State obtains evidence which it could not have obtained 'but for' the individual's participation would take the notion of self-incrimination far beyond the communicative character that grounds it at common law. ... Both the common law and the Charter draw a fundamental distinction between incriminating evidence and self-incriminating evidence: the former is evidence which tends to establish the accused's guilt, while the latter is evidence which tends to establish the accused's guilt by his own admission, or based upon his own communication. The s. 7 principle against self-incrimination that is fundamental to justice requires protection against the use of compelled evidence which tends to establish the accused's guilt on the basis of the latter grounds, but not the former." [3] [3]. See R. v. S. (R.J.) [1995] 1 S.C.R. 451.

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2007	6/29/2007	O'HALLORAN AND FRANCIS v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-81359	15809/02 25624/02	GC	PAVLOVSKI	dissenting		0 US	C	SC	Miranda v. Arizona	Particular attention was paid to the development of this issue by common-law legal systems and, first of all, by the authorities in the United States. In the second part of the eighteenth century the Fifth Amendment to the Constitution of the United States was enacted. In so far as it relates to the issue at stake here, the amendment reads as follows: "No person shall be ... compelled in any criminal case to be a witness against himself." The United States Supreme Court Opinion in the case of <i>Miranda v. Arizona</i>, delivered in 1966, was a landmark ruling concerning confessions. In that case the Supreme Court stated as follows: "... Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently. If, however, he indicates in any manner and at any stage of the process that he wishes to consult with an attorney before speaking, there can be no questioning. Likewise, if the individual is alone and indicates in any manner that he does not wish to be interrogated, the police may not question him. ..."[1] Since that time, in the overwhelming majority of jurisdictions, if not quite all, this <i>Miranda</i> rule has become a fundamental legal provision enshrined in national legislation. Now, a typical <i>Miranda</i> warning goes as follows: "You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to speak to an attorney, and to have an attorney present during any questioning. If you cannot afford a lawyer, one will be provided for you at government expense." The general understanding of this procedural rule is that nobody can be forced to answer questions or to give evidence that may help to prove his own guilt. Before being questioned a person should be told the nature of the offence of which he is accused and that he has the right not to make any statement, and that if he does it can be used against him in court. No statement obtained by threats or trickery can be used as evidence in court. In this respect the United States Uniform Code of Military Justice is very illustrative. Article 31 of the Code provides that no person may compel any person to incriminate himself or to answer any question the answer to which may tend to incriminate him. No person may interrogate, or request any statement from, an accused or a person suspected of an offence without first informing him of the nature of the accusation and advising him that he does not have to make any statement regarding the offence of which he is accused or suspected and that any statement made by him may be used as evidence against him in a trial by court martial. No statement obtained from any person in violation of this Article, or through the use of coercion, unlawful influence, or unlawful inducement may be received in evidence against him in a trial by court martial[2]. Nowadays the prohibition of compulsory self-incrimination has become a generally recognised standard in the field of criminal procedure. In the United States legal system the issue of obtaining confessions can be settled by means of a non-prosecution agreement, which provides partial immunity against prosecution in relation to self-incriminating evidence submitted by an accused under compulsion. In general, as far as the United States legal system is concerned, it is worth noting that the American judiciary treats the privilege against self-incrimination as a Constitutional principle. In this respect the case of <i>Malloy v. Hogan</i> is of particular interest. In this case the US Supreme Court ruled as follows: "<i>Brown v. Mississippi</i> ... was the first case in which the Court held that the Due Process Clause prohibited the States from using the accused's coerced confessions against him. ... [I]n
2007	6/29/2007	O'HALLORAN AND FRANCIS v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-81359	15809/02 25624/02	GC	PAVLOVSKI	dissenting		0 Canada	R	statute	Canada Evidence Act, C-5	There are indeed some jurisdictions which allow self-incriminating evidence to be obtained from the accused under compulsion. However – and I would like to emphasise this fact – this evidence cannot be used for the purposes of prosecuting that defendant. Canadian criminal procedure, for instance, provides as follows: "Where with respect to any question a witness objects to answer on the ground that his answer may tend to criminate him ... [and is] ... compelled to answer, the answer so given shall not be used or admissible in evidence against him in any criminal trial or other criminal proceeding against him thereafter taking place, other than a prosecution for perjury in the giving of that evidence or for the giving of contradictory evidence." (Canada Evidence Act, C-5) In the case of <i>R. v. S. (R.J.)</i>, the Supreme Court of Canada ruled as follows: "... The right of an accused not to be forced into assisting in his own prosecution is perhaps the most important principle in criminal law and the principles of fundamental justice require that courts retain the discretion to exempt witnesses from being compelled to testify, in appropriate circumstances. The person claiming the exemption has the burden of satisfying the judge that in all the circumstances the prejudice to his interests outweighs the necessity of obtaining the evidence. ... Defining 'self-incrimination' over-inclusively as arising whenever the State obtains evidence which it could not have obtained 'but for' the individual's participation would take the notion of self-incrimination far beyond the communicative character that grounds it at common law. ... Both the common law and the Charter draw a fundamental distinction between incriminating evidence and self-incriminating evidence: the former is evidence which tends to establish the accused's guilt, while the latter is evidence which tends to establish the accused's guilt by his own admission, or based upon his own communication. The s. 7 principle against self-incrimination that is fundamental to justice requires protection against the use of compelled evidence which tends to establish the accused's guilt on the basis of the latter grounds, but not the former."[3]
2007	4/10/2007	EVANS v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-80046	no. 6339/05	GC		0 majority	ECtHR	Israel	C	lower-level courts	Nachmani v. Nachmani (50(4) P.D. 661 (Isr))	43. In addition, the parties referred the Court to case-law from the United States and Israel. The field of medically assisted reproduction is not regulated at federal level in the United States and few States have introduced laws concerning the subsequent withdrawal of consent by one party. It has, therefore, been left to the courts to determine how the conflict between the parties should be resolved and there are a number of judgments by State Supreme Courts regarding the disposal of embryos created through IVF. 3. Israel 49. In <i>Nachmani v. Nachmani</i> (50(4) P.D. 661 (Isr)), a childless Israeli couple decided to undergo IVF and then to contract with a surrogate in California to bear their child because the wife would not be able to carry the foetus to term. The couple signed an agreement with the surrogate, but not with the IVF clinic regarding the disposal of the embryos in the event of their separation. The wife had her last eleven eggs extracted and fertilised with her husband's sperm. The couple then separated, before the embryos could be implanted in the surrogate, and the husband, who had gone on to have children with another woman, opposed the use of the embryos. 50. While the applicant contends that her greater physical and emotional expenditure during the IVF process, and her subsequent infertility, entail that her Article 8 rights should take precedence over J.'s, it does not appear to the Court that there is any clear consensus on this point either. The Court of Appeal commented on the difficulty of comparing the effect on J. of being forced to become the father of the applicant's child and that on the applicant of being denied the chance to have genetically related offspring (see paragraphs 25-26 above), and this difficulty is also reflected in the range of views expressed by the two panels of the Israeli Supreme Court in <i>Nachmani</i> and in the United States case-law (see paragraphs 43-49 above). The District Court found in favour of the wife, holding that the husband could no more withdraw his agreement to have a child than a man who fertilises his wife's egg through sexual intercourse. A five-judge panel of the Supreme Court reversed this decision, upholding the man's fundamental right not to be forced to be a parent. The Supreme Court reheard the case as a panel of eleven judges and decided, seven to four, in favour of the wife. Each judge wrote a separate opinion. The judges in the majority found that the woman's interests and in particular her lack of alternatives to achieve genetic parenthood outweighed those of the man. Three of the minority judges, including the Chief Justice, reached the opposite conclusion, emphasising that the wife had known that her husband's consent would be required at every stage and that the agreement could not be enforced after the couple had become separated. The fourth of the dissenters held that the man's consent was required before the obligation of parenthood could be imposed on him.

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2006	7/11/2006	JALLOH v. GERMANY	http://hudoc.echr.coe.int/eng/?i=001-76307	no. 54810/00	GC	BRATZA	concurring		0 US	C	SC	Rochin v. California	I can, in general, agree with the Court's principal ground, and its reasoning, for finding a violation of Article 6 and would echo the words of Mr Justice Frankfurter, in delivering the opinion of the Supreme Court of the United States in Rochin v. California, that "The proceedings by which this conviction was obtained do more than offend some fastidious squeamishness or private sentimentalism about combating a crime too energetically". While, as the Court has frequently observed, the Convention does not lay down any rules on evidence as such, the admissibility of evidence being primarily a matter for regulation by national law, the use of evidence obtained by treatment violating the fundamental values enshrined in Article 3 appears to me to offend against the whole concept of a fair trial, even if the admission of such evidence is not – as it was in the present case – decisive in securing a conviction. As in the case of the use of coerced confessions, it is the offensiveness to civilised values of fairness and the detrimental effect on the integrity of the judicial process, as much as the unreliability of any evidence which may be obtained, which lies at the heart of the objection to its use.

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2006	7/11/2006	JALLOH v. GERMANY	http://hudoc.echr.coe.int/eng/?i=001-76307	no. 54810/00	GC		0 majority	ECtHR	US	C	SC	Rochin v. California (342 US 165 (1952))	(b) Case-law of United States courts 49. In Rochin v. California (342 US 165 (1952)), the United States Supreme Court reversed the petitioner's conviction for unlawful possession of drugs. On the basis of information that the petitioner was selling narcotics, three state officers entered his home and forced their way into his bedroom. They unsuccessfully attempted to extract by force drug capsules which the petitioner had been observed to put into his mouth. The officers then took him to a hospital, where an emetic was forced through a tube into his stomach against his will. He regurgitated two capsules which were found to contain morphine. These were admitted in evidence in the face of his objection. The Supreme Court held on 2 January 1952 that the conviction had been obtained by methods in violation of the Due Process Clause in the Fourteenth Amendment. 50. Mr Justice Frankfurter, delivering the opinion of the Court, found: "Applying these general considerations to the circumstances of the present case, we are compelled to conclude that the proceedings by which this conviction was obtained do more than offend some fastidious squeamishness or private sentimentalism about combating crime too energetically. This is conduct that shocks the conscience. Illegally breaking into the privacy of the petitioner, the struggle to open his mouth and remove what was there, the forcible extraction of his stomach's contents – this course of proceeding by agents of government to obtain evidence is bound to offend even hardened sensibilities. They are methods too close to the rack and the screw to permit of constitutional differentiation. It has long since ceased to be true that due process of law is heedless of the means by which otherwise relevant and credible evidence is obtained. This was not true even before the series of recent cases enforced the constitutional principle that the States may not base convictions upon confessions, however much verified, obtained by coercion. ... It would be a stultification of the responsibility which the course of constitutional history has cast upon this Court to hold that in order to convict a man the police cannot extract by force what is in his mind but can extract what is in his stomach. To attempt in this case to distinguish what lawyers call 'real evidence' from verbal evidence is to ignore the reasons for excluding coerced confessions. Use of involuntary verbal confessions in State criminal trials is constitutionally obnoxious not only because of their unreliability. They are inadmissible under the Due Process Clause even though statements contained in them may be independently established as true. Coerced confessions offend the community's sense of fair play and decency. So here, to sanction the brutal conduct which naturally enough was condemned by the court whose judgment is before us, would be to afford brutality the cloak of law. Nothing would be more calculated to discredit law and thereby to brutalize the temper of a society." 51. In State of Ohio v. Dario Williams (2004 WL 1902368 (Ohio App. 8 Dist.)), the Ohio Court of Appeals held on 26 August 2004 that the pumping of the defendant's stomach in the face of his objections was not an unreasonable search and seizure. The defendant was observed engaging in a hand-to-hand transaction typical of drug dealing. When police officers ordered the defendant to their vehicle, he put something in his mouth and ran off. In the opinion of the court, flushing out the defendant's stomach by gastric lavage by a physician in a hospital setting was not an unreasonable measure, even though the defendant violently objected to the procedure and had to be sedated. Swallowing the cocaine, which had been seen in the defendant's mouth, put his life in jeopardy and he was destroying evidence. 52. Mr Justice T.E. McMonagle, delivering the Court of Appeals' opinion, found: "19. Williams directs us to Rochin v. California, 342 US 165 (1952), ... one of the prominent cases on intrusive searches. ...
2006	7/11/2006	JALLOH v. GERMANY	http://hudoc.echr.coe.int/eng/?i=001-76307	no. 54810/00	GC		0 majority	ECtHR	US	C	lower-level courts	State of Ohio v. Dario Williams (2004 WL 1902368 (Ohio App. 8 Dist.))	(b) Case-law of United States courts 49. In Rochin v. California (342 US 165 (1952)), the United States Supreme Court reversed the petitioner's conviction for unlawful possession of drugs. On the basis of information that the petitioner was selling narcotics, three state officers entered his home and forced their way into his bedroom. They unsuccessfully attempted to extract by force drug capsules which the petitioner had been observed to put into his mouth. The officers then took him to a hospital, where an emetic was forced through a tube into his stomach against his will. He regurgitated two capsules which were found to contain morphine. These were admitted in evidence in the face of his objection. The Supreme Court held on 2 January 1952 that the conviction had been obtained by methods in violation of the Due Process Clause in the Fourteenth Amendment. 50. Mr Justice Frankfurter, delivering the opinion of the Court, found: "Applying these general considerations to the circumstances of the present case, we are compelled to conclude that the proceedings by which this conviction was obtained do more than offend some fastidious squeamishness or private sentimentalism about combating crime too energetically. This is conduct that shocks the conscience. Illegally breaking into the privacy of the petitioner, the struggle to open his mouth and remove what was there, the forcible extraction of his stomach's contents – this course of proceeding by agents of government to obtain evidence is bound to offend even hardened sensibilities. They are methods too close to the rack and the screw to permit of constitutional differentiation. It has long since ceased to be true that due process of law is heedless of the means by which otherwise relevant and credible evidence is obtained. This was not true even before the series of recent cases enforced the constitutional principle that the States may not base convictions upon confessions, however much verified, obtained by coercion. ... It would be a stultification of the responsibility which the course of constitutional history has cast upon this Court to hold that in order to convict a man the police cannot extract by force what is in his mind but can extract what is in his stomach. To attempt in this case to distinguish what lawyers call 'real evidence' from verbal evidence is to ignore the reasons for excluding coerced confessions. Use of involuntary verbal confessions in State criminal trials is constitutionally obnoxious not only because of their unreliability. They are inadmissible under the Due Process Clause even though statements contained in them may be independently established as true. Coerced confessions offend the community's sense of fair play and decency. So here, to sanction the brutal conduct which naturally enough was condemned by the court whose judgment is before us, would be to afford brutality the cloak of law. Nothing would be more calculated to discredit law and thereby to brutalize the temper of a society." 51. In State of Ohio v. Dario Williams (2004 WL 1902368 (Ohio App. 8 Dist.)), the Ohio Court of Appeals held on 26 August 2004 that the pumping of the defendant's stomach in the face of his objections was not an unreasonable search and seizure. The defendant was observed engaging in a hand-to-hand transaction typical of drug dealing. When police officers ordered the defendant to their vehicle, he put something in his mouth and ran off. In the opinion of the court, flushing out the defendant's stomach by gastric lavage by a physician in a hospital setting was not an unreasonable measure, even though the defendant violently objected to the procedure and had to be sedated. Swallowing the cocaine, which had been seen in the defendant's mouth, put his life in jeopardy and he was destroying evidence. 52. Mr Justice T.E. McMonagle, delivering the Court of Appeals' opinion, found: "19. Williams directs us to Rochin v. California, 342 US 165 (1952), ... one of the prominent cases on intrusive searches. ...
2006	6/20/2006	ZARB ADAMI v. MALTA	http://hudoc.echr.coe.int/eng/?i=001-75914	no. 17209/02	S4		0 majority	applicant	US	C	lower-level courts	Smith v. State of Texas, 25 November 1940, 311 US 128 (1941)	40. The applicant pointed out that the Constitutional Court had categorically accepted that jury service was a "normal civic obligation". This opinion was confirmed by the principles laid down by the Court in <i>Karlheinz Schmidt v. Germany</i> (18 July 1994, Series A no. 291-B) and <i>Van der Mussele v. Belgium</i> (23 November 1983, Series A no. 70). In the latter judgment, the Court held that the concept of "normal civic obligation" referred "to all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily". The applicant emphasised that he had not offered himself voluntarily for jury service. On the contrary, this service had been exacted from him on pain of a fine, which could be converted into a term of imprisonment. The applicant made reference to judgments in which the United States Supreme Court dealt with issues related to jury service and discrimination in the selection of jurors (<i>Smith v. State of Texas</i>, 25 November 1940, 311 US 128 (1941); <i>Thiel v. Southern Pac. Co.</i>, 20 May 1946, 328 US 217 (1946); and <i>Brown v. Allen</i>, 9 February 1953, 344 US 443 (1953)). It held that jury service was a civic obligation and that the jury system played a political function in the administration of the law and was fundamental in a democratic system of justice. 70. In the applicant's view, a civic obligation is normal if it is enforced and administered in a just and equitable manner and it is shared by the qualified members of the society. A fair cross section of society is imperative for a just and fair jury system. On the contrary, when, as in his case, such an obligation imposes an excessive and disproportionate burden on a single individual, discrimination contrary to the Convention occurs. The applicant referred to the above-mentioned judgments in which the United States Supreme Court criticised the practices of placing the burden of jury service upon only a section of the population and of excluding an ethnic or racial group from jury service. Moreover, the case of <i>Taylor v. Louisiana</i> (419 US 522 (1975)) concerned a situation whereby women could not be selected for jury service unless they had previously declared in writing that they wished to serve as jurors. The Supreme Court had held that "if it was ever the case that women were unqualified to sit on juries or were so situated that none of them should be required to perform jury service, that time has long since passed". The applicant submitted that the situation in Malta was similar to that in the State of Louisiana at the time of the <i>Taylor</i> case.
2006	6/20/2006	ZARB ADAMI v. MALTA	http://hudoc.echr.coe.int/eng/?i=001-75914	no. 17209/02	S4		0 majority	applicant	US	C	lower-level courts	Thiel v. Southern Pac. Co., 20 May 1946, 328 US 217 (1946)	40. The applicant pointed out that the Constitutional Court had categorically accepted that jury service was a "normal civic obligation". This opinion was confirmed by the principles laid down by the Court in <i>Karlheinz Schmidt v. Germany</i> (18 July 1994, Series A no. 291-B) and <i>Van der Mussele v. Belgium</i> (23 November 1983, Series A no. 70). In the latter judgment, the Court held that the concept of "normal civic obligation" referred "to all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily". The applicant emphasised that he had not offered himself voluntarily for jury service. On the contrary, this service had been exacted from him on pain of a fine, which could be converted into a term of imprisonment. The applicant made reference to judgments in which the United States Supreme Court dealt with issues related to jury service and discrimination in the selection of jurors (<i>Smith v. State of Texas</i>, 25 November 1940, 311 US 128 (1941); <i>Thiel v. Southern Pac. Co.</i>, 20 May 1946, 328 US 217 (1946); and <i>Brown v. Allen</i>, 9 February 1953, 344 US 443 (1953)). It held that jury service was a civic obligation and that the jury system played a political function in the administration of the law and was fundamental in a democratic system of justice. 70. In the applicant's view, a civic obligation is normal if it is enforced and administered in a just and equitable manner and it is shared by the qualified members of the society. A fair cross section of society is imperative for a just and fair jury system. On the contrary, when, as in his case, such an obligation imposes an excessive and disproportionate burden on a single individual, discrimination contrary to the Convention occurs. The applicant referred to the above-mentioned judgments in which the United States Supreme Court criticised the practices of placing the burden of jury service upon only a section of the population and of excluding an ethnic or racial group from jury service. Moreover, the case of <i>Taylor v. Louisiana</i> (419 US 522 (1975)) concerned a situation whereby women could not be selected for jury service unless they had previously declared in writing that they wished to serve as jurors. The Supreme Court had held that "if it was ever the case that women were unqualified to sit on juries or were so situated that none of them should be required to perform jury service, that time has long since passed". The applicant submitted that the situation in Malta was similar to that in the State of Louisiana at the time of the <i>Taylor</i> case.

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2006	6/20/2006	ZARB ADAMI v. MALTA	http://hudoc.echr.coe.int/eng/?i=001-75934	no. 17209/02	S4		0 majority	applicant	US	C	lower-level co	Brown v. Allen, 9 February 1953, 344 US 443 (1953)	40. The applicant pointed out that the Constitutional Court had categorically accepted that jury service was a "normal civic obligation". This opinion was confirmed by the principles laid down by the Court in <i>Karlheinz Schmidt v. Germany</i> (18 July 1994, Series A no. 291-8) and <i>Van der Musselle v. Belgium</i> (23 November 1983, Series A no. 70). In the latter judgment, the Court held that the concept of "normal civic obligation" referred "to all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily". The applicant emphasised that he had not offered himself voluntarily for jury service. On the contrary, this service had been exacted from him on pain of a fine, which could be converted into a term of imprisonment. The applicant made reference to judgments in which the United States Supreme Court dealt with issues related to jury service and discrimination in the selection of jurors (<i>Smith v. State of Texas</i> , 25 November 1940, 311 US 128 (1941); <i>Thiel v. Southern Pac. Co.</i> , 20 May 1946, 328 US 217 (1946); and <i>Brown v. Allen</i> , 9 February 1953, 344 US 443 (1953)). It held that jury service was a civic obligation and that the jury system played a political function in the administration of the law and was fundamental in a democratic system of justice. 70. In the applicant's view, a civic obligation is normal if it is enforced and administered in a just and equitable manner and it is shared by the qualified members of the society. A fair cross section of society is imperative for a just and fair jury system. On the contrary, when, as in his case, such an obligation imposes an excessive and disproportionate burden on a single individual, discrimination contrary to the Convention occurs. The applicant referred to the above-mentioned judgments in which the United States Supreme Court criticised the practices of placing the burden of jury service upon only a section of the population and of excluding an ethnic or racial group from jury service. Moreover, the case of <i>Taylor v. Louisiana</i> (419 US 522 (1975)) concerned a situation whereby women could not be selected for jury service unless they had previously declared in writing that they wished to serve as jurors. The Supreme Court had held that "if it was ever the case that women were unqualified to sit on juries or were so situated that none of them should be required to perform jury service, that time has long since passed". The applicant submitted that the situation in Malta was similar to that in the State of Louisiana at the time of the <i>Taylor</i> case.
2006	6/20/2006	ZARB ADAMI v. MALTA	http://hudoc.echr.coe.int/eng/?i=001-75934	no. 17209/02	S4		0 majority	applicant	US	C	lower-level co	<i>Taylor v. Louisiana</i> (419 US 522 (1975))	40. The applicant pointed out that the Constitutional Court had categorically accepted that jury service was a "normal civic obligation". This opinion was confirmed by the principles laid down by the Court in <i>Karlheinz Schmidt v. Germany</i> (18 July 1994, Series A no. 291-8) and <i>Van der Musselle v. Belgium</i> (23 November 1983, Series A no. 70). In the latter judgment, the Court held that the concept of "normal civic obligation" referred "to all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily". The applicant emphasised that he had not offered himself voluntarily for jury service. On the contrary, this service had been exacted from him on pain of a fine, which could be converted into a term of imprisonment. The applicant made reference to judgments in which the United States Supreme Court dealt with issues related to jury service and discrimination in the selection of jurors (<i>Smith v. State of Texas</i> , 25 November 1940, 311 US 128 (1941); <i>Thiel v. Southern Pac. Co.</i> , 20 May 1946, 328 US 217 (1946); and <i>Brown v. Allen</i> , 9 February 1953, 344 US 443 (1953)). It held that jury service was a civic obligation and that the jury system played a political function in the administration of the law and was fundamental in a democratic system of justice. 70. In the applicant's view, a civic obligation is normal if it is enforced and administered in a just and equitable manner and it is shared by the qualified members of the society. A fair cross section of society is imperative for a just and fair jury system. On the contrary, when, as in his case, such an obligation imposes an excessive and disproportionate burden on a single individual, discrimination contrary to the Convention occurs. The applicant referred to the above-mentioned judgments in which the United States Supreme Court criticised the practices of placing the burden of jury service upon only a section of the population and of excluding an ethnic or racial group from jury service. Moreover, the case of <i>Taylor v. Louisiana</i> (419 US 522 (1975)) concerned a situation whereby women could not be selected for jury service unless they had previously declared in writing that they wished to serve as jurors. The Supreme Court had held that "if it was ever the case that women were unqualified to sit on juries or were so situated that none of them should be required to perform jury service, that time has long since passed". The applicant submitted that the situation in Malta was similar to that in the State of Louisiana at the time of the <i>Taylor</i> case.
2006	5/23/2006	RIENER v. BULGARIA	http://hudoc.echr.coe.int/eng/?i=001-75463	no. 46343/99	S5		0 majority	ECtHR	US	R	general		08. In relation to the law explicitly separates renunciation of citizenship from any liability, specifying that renunciation does not free the person from any obligation or duty imposed or incurred before the severance of the link to the nation. In the United States of America, similarly, the act of renouncing citizenship may have no effect on the person's tax obligations.
2006	3/29/2006	ACHOUR v. FRANCE	http://hudoc.echr.coe.int/eng/?i=001-72927	no. 67335/01	GC	ZUPANČIČ	concurring		0 US	C	SC	general	Characteristically, while reaching the correct conclusion the Supreme Court of the United States, even at the time, was not capable of explaining why it was unacceptable to make a status an offence. Likewise, the American legal scholars never got to the bottom of the question, which at any rate has been much better defined by the French Court of Cassation. The reason lies in the simple need, as pointed out above, to turn the question around.
2006	3/28/2006	SUKHOVETSKYY v. UKRAINE	http://hudoc.echr.coe.int/eng/?i=001-72893	13716/02	S2		0 majority	ECtHR	Mauritius	C	SC	altalános (ld. notes)	3. Mauritius 33. In the third periodic report of Mauritius[5], the Mauritian delegation stated: "With reference to the recent case in which a political organisation had contested the amount by which electoral deposits had been raised, the Supreme Court had decided that the size of the increase would prevent people from standing for election and was therefore unconstitutional. The Government had originally amended the law to stop people from standing for frivolous reasons and obtaining large amounts of air time in exchange for a very modest deposit. In the wake of the Supreme Court ruling, electoral deposits had reverted to the previous amount of 250 rupees."
2006	3/28/2006	SUKHOVETSKYY v. UKRAINE	http://hudoc.echr.coe.int/eng/?i=001-72893	13716/02	S2		0 majority	ECtHR	Canada	C	lower-level co	<i>Figueroa v. Canada</i> (Attorney-General)	2. Canada 30. In <i>Figueroa v. Canada</i> (Attorney-General), the plaintiff, leader of the Communist Party of Canada, challenged various aspects of Canadian electoral law on the ground that they allegedly discriminated against small, unrepresented parties such as his. 31. In the Ontario Court of Justice, Justice Molloy invalidated the existing deposit rule, according to which the 1,000 Canadian dollars (CAD) required from election candidates was only refunded in full to those who obtained more than 10% of the votes cast. Those who obtained less received only CAD 500 of the original deposit. The judge found this to be in violation of section 3 of the Charter of Rights and Freedoms (active and passive voting rights), and recommended the full reimbursement of the deposit irrespective of the candidate's score. 32. Before the Ontario Court of Appeal, Justice Doherty did not accept the lower court's equation of fairness with strict equality of treatment in the matter of electoral law. He held that the essential purpose of section 3 of the Charter was to guarantee the right to effective representation, rather than ensuring absolute parity. Equal treatment was an important consideration, but not the only one. In this respect, the judgment of this Court in the case of <i>Refah Partisi</i> (the Welfare Party) and Others v. Turkey (GC), nos. 41340/98, 41343/98, 41347/98 and 41344/98, ECHR 2003-II is extremely illustrative of the way in which the Strasbourg institution has dealt with the very difficult and delicate matter of the prohibition of a political party from participating in national elections. Indeed, in <i>Refah Partisi</i> we were confronted with a situation in which a political party propagating undemocratic ideas directly threatening the fragile political infrastructure of Turkey had had a strong possibility of seizing power by using the democratic electoral procedures provided by the system. The danger was "real and present", to use the famous dictum of the United States Supreme Court. And our Court correctly considered that, in such exceptional circumstances, a "State cannot be required to wait, before intervening, until a political party has seized power and begun to take concrete steps to implement a policy incompatible with the standards of the Convention and democracy, even though the danger of that policy for democracy is sufficiently established and imminent" (<i>ibid.</i> , § 102).
2006	3/16/2006	ŽDANKA v. LATVIA	http://hudoc.echr.coe.int/eng/?i=001-72794	no. 58278/00	GC	ROŽAKIS	dissenting		0 US	C	SC	general	Under the domestic law a specially protected tenancy could only be terminated by a civil action by the provider of the flat resulting in a judgment upholding the claim. A judgment becomes <i>res judicata</i> , that is, a final, unappealable judgment, when it is legally irreversible under the domestic law[1]. This result in the present case was brought about by the above decision of the Constitutional Court. Until then each judgment in the relevant civil action was subject to an appeal that could have led to the judgment being quashed. In other words the completion of the civil action which was necessary to terminate the relevant tenancy in the form of a judicial judgment amounting to a final adjudication of the relevant claim (<i>res judicata</i>) consisted of a chain of judicial proceedings up to and including the proceedings before the Constitutional Court. [1]. See, <i>inter alia</i> , <i>Nikitin v. Russia</i> , no. 50178/99, § 37, ECHR 2004-VIII: "... a decision is final 'if, according to the traditional expression, it has acquired the force of <i>res judicata</i> . This is the case when it is irrevocable, that is to say when no further ordinary remedies are available or when the parties have exhausted such remedies or have permitted the time-limit to expire without availing themselves of them"; and the United States judgment in <i>Faison v. Hudson</i> , 243 Va. 413, 419, 417 S.E.2d 302, 305 (1992): "[A] judgment is not final for the purposes of <i>res judicata</i> ... when it is being appealed or when the time-limits fixed for perfecting the appeal have not expired."
2006	3/8/2006	BLEČIČ v. CROATIA	http://hudoc.echr.coe.int/eng/?i=001-72688	no. 59532/00	GC	LOUCAIDES	dissenting		0 US	C	lower-level co	<i>Faison v. Hudson</i> , 243 Va. 413, 419, 417 S.E.2d 302, 305 (1992)	Under the domestic law a specially protected tenancy could only be terminated by a civil action by the provider of the flat resulting in a judgment upholding the claim. A judgment becomes <i>res judicata</i> , that is, a final, unappealable judgment, when it is legally irreversible under the domestic law[1]. This result in the present case was brought about by the above decision of the Constitutional Court. Until then each judgment in the relevant civil action was subject to an appeal that could have led to the judgment being quashed. In other words the completion of the civil action which was necessary to terminate the relevant tenancy in the form of a judicial judgment amounting to a final adjudication of the relevant claim (<i>res judicata</i>) consisted of a chain of judicial proceedings up to and including the proceedings before the Constitutional Court. [1]. See, <i>inter alia</i> , <i>Nikitin v. Russia</i> , no. 50178/99, § 37, ECHR 2004-VIII: "... a decision is final 'if, according to the traditional expression, it has acquired the force of <i>res judicata</i> . This is the case when it is irrevocable, that is to say when no further ordinary remedies are available or when the parties have exhausted such remedies or have permitted the time-limit to expire without availing themselves of them"; and the United States judgment in <i>Faison v. Hudson</i> , 243 Va. 413, 419, 417 S.E.2d 302, 305 (1992): "[A] judgment is not final for the purposes of <i>res judicata</i> ... when it is being appealed or when the time-limits fixed for perfecting the appeal have not expired."
2006	3/8/2006	BLEČIČ v. CROATIA	http://hudoc.echr.coe.int/eng/?i=001-72688	no. 59532/00	GC	ZUPANČIČ	dissenting		0 US	C	SC	general	In our case, it is clear that the violation in question would not have occurred had it been corrected by the Constitutional Court[3]. That the Constitutional Court permitted the violation "to subsist" is thus clearly one of the necessary conditions of the violation[4]. However, the majority, without telling us why, seem to imply that this necessary condition is not determinative, critical, and relevant for the ultimate violation. In other words, the majority relied to grant this particular necessary condition the status of a "cause" [4]3. Other higher courts, when affirming their own lower courts' decisions, also sometimes permit their "alleged violations to subsist". The jurisdictional difference between Constitutional and ordinary higher courts is that the former will let the decision stand unless it conflicts with the Constitution. In double-track jurisdictions the frame of legal references is different for the Constitutional Courts, that is, it will sometimes let the lower decision stand even if patently illegal or illogical, because constitutional tests only refer to the Constitution (and constitutional rights enshrined there) and are different from the usual tests of legality and logic. In our case this could mean that "allowing the lower decision to subsist" did not confer on it either legality or logic. It would simply mean that the Supreme Court's decision did not infringe the constitutional rights of Mrs Blečić. The majority, however, do not submit such an argument. If they did, it would be open to the obvious counter-argument that the rights deriving from a Constitution and the rights deriving from the Convention mostly overlap. For this reason, for example, the admissible constitutional complaint represents the last and the best test of violation before the case comes to the European Court of Human Rights in Strasbourg. The only national instance – the court of last resort – specifically authorised to perform legal assessments that are substantially similar to our own tests, are precisely the Constitutional Courts. In other words, the Constitutional Court's decision is not an inconsequential "omission" because it is precisely before the Constitutional Court that the alleged violation ought to have been put right. In my opinion this would even be the case in a one-track jurisdiction, for example, <i>entorian</i> in the pick-and-choose system before the United States Supreme Court although the latter is not specifically in charge – as are in fact most of the European Constitutional Courts – of the protection of constitutional rights.
2006	3/7/2006	EVANS v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-72684	no. 6339/05	S4	TRAJA AND MUJOVIĆ	dissenting		0 Israel	C	general	general	4. As noted in the majority judgment, the Court had the opportunity to look at the US and Israeli courts' relevant case-law. We consider that the contract approach, aimed at enforcing the initial terms of consent, is not fully in conformity with the spirit of the Convention, because civil law considerations are not always the best means to secure Convention rights. The contract approach is a "bright-line" rule, also, and it does not take into account the specific social and psychological aspects of such cases. The lack of any alternative way for the woman to reproduce, once the man had withdrawn his consent, was one of the crucial arguments relied on by the Israeli Supreme Court in <i>Nachmani v. Nachmani</i> , a case similar to the present. In the <i>Nachmani</i> case the majority of the Supreme Court decided in favour of the woman, who was in the same position as Ms Evans, by applying the test of "least harm", which is an approach we find useful, though insufficient.
2006	3/7/2006	EVANS v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-72684	no. 6339/05	S4	TRAJA AND MUJOVIĆ	dissenting		0 US	C	general	general	4. As noted in the majority judgment, the Court had the opportunity to look at the US and Israeli courts' relevant case-law. We consider that the contract approach, aimed at enforcing the initial terms of consent, is not fully in conformity with the spirit of the Convention, because civil law considerations are not always the best means to secure Convention rights. The contract approach is a "bright-line" rule, also, and it does not take into account the specific social and psychological aspects of such cases. The lack of any alternative way for the woman to reproduce, once the man had withdrawn his consent, was one of the crucial arguments relied on by the Israeli Supreme Court in <i>Nachmani v. Nachmani</i> , a case similar to the present. In the <i>Nachmani</i> case the majority of the Supreme Court decided in favour of the woman, who was in the same position as Ms Evans, by applying the test of "least harm", which is an approach we find useful, though insufficient.

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2006	3/7/2006	EVANS v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-72684	no. 6339/05	54		0 majority	ECtHR	US	C	lower-level coo	Davis v. Davis, (842 S.W.2d 588, 597; Tenn. 1992)	2. The United States of America 33. The field of medically assisted reproduction is not regulated at federal level in the United States, and since few States have introduced laws concerning the subsequent withdrawal of consent by one party, it has been left to the courts to determine how the conflict between the parties should be resolved. There is, therefore, a series of judgments by State Supreme Courts regarding the disposal of embryos created through IVF. 34. In Davis v. Davis, (842 S.W.2d 588, 597; Tenn. 1992), the Supreme Court of Tennessee held in 1992: "...disputes involving the disposition of pre-embryos produced by in vitro fertilization should be resolved, first, by looking to the preferences of the progenitors. If their wishes cannot be ascertained, or if there is dispute, then their prior agreement concerning disposition should be carried out. If no prior agreement exists, then the relative interests of the parties in using or not using the pre-embryos must be weighed. Ordinarily, the party wishing to avoid procreation should prevail, assuming that the other party has a reasonable possibility of achieving parenthood by means other than use of the pre-embryos in question. If no other reasonable alternatives exist, then the argument in favor of using the pre-embryos to achieve pregnancy should be considered. However, if the party seeking control of the pre-embryos intends merely to donate them to another couple, the objecting party obviously has the greater interest and should prevail." 35. In Kass v. Kass (98 N.Y. Int. 0049), the couple had signed an agreement with the clinic which stipulated that, "in the event that we ... are unable to make a decision regarding the disposition of our frozen pre-zygotes", the embryos could be used for research. When the couple separated, Mrs Kass sought to overturn the agreement and proceed to implantation. Although she prevailed at first instance (the court reasoning that just as a woman has exclusive control over her reproduction so should she have the final say in the area of IVF), the New York Court of Appeal decided that the existing agreement was sufficiently clear and should be honoured. 36. In A.Z. v. B.Z., (2000, 431 Mass. 150 ; 725 N.E. 2d 1051) there was again a previous written agreement, according to which, in the event of separation, the embryos were to be given to the wife, who now wished to continue with the treatment, contrary to the wishes of the husband. However, the Supreme Court of Massachusetts considered that the arrangement should not be enforced because, inter alia, as a matter of public policy "forced procreation is not an area amenable to judicial enforcement". Rather, "freedom of personal choice in matters of marriage and family life" should prevail. 37. This judgment was cited with approval by the Supreme Court of New Jersey, in J.B. v. M.B. (2001 WL 909294). Here, it was the wife who sought the destruction of the embryos while the husband wanted them preserved for use with a future partner. Although constitutional arguments were advanced on behalf of the wife, the court declined to approach the matter in this way, reasoning that it was in any event not sure that enforcing the alleged private contract would violate her rights. Instead, the court subscribed to the view taken in the Z. case regarding public policy and ordered that the wife's wishes be observed. 38. In the final case in this series, Litowitz v. Litowitz, (48 P. 3d 261, 271), the Supreme Court of Washington decided in 2002 to adopt a contractual analysis and to honour the couple's agreement with the clinic not to store the embryos for more than five years.
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2005	10/6/2005	HIRST v. THE UNITED KINGDOM (No. 2)	http://hudoc.echr.coe.int/eng/?i=001-70442	74025/01	GC	WILDHABER, COSTA, LORENZEN	dissenting (join)		0 Canada	C	SC	general	6. It has been part of the Court's reasoning in some cases in recent years to emphasise its role in developing human rights and the necessity to maintain a dynamic and evolutive approach in its interpretation of the Convention and its Protocols in order to make reforms or improvements possible (see, for example, <i>Stafford v. the United Kingdom</i> [GC], no. 46295/99, § 68, ECHR 2002-IV, and <i>Christine Goodwin v. the United Kingdom</i> [GC], no. 28957/95, § 74, ECHR 2002-VI). The majority have not made reference to this case-law, but that does not in our opinion change the reality of the situation that their conclusion is in fact based on a "dynamic and evolutive" interpretation of Article 3 of Protocol No 1. We do not dispute that it is an important task for the Court to ensure that the rights guaranteed by the Convention system comply with "present-day conditions", and that accordingly a "dynamic and evolutive" approach may in certain situations be justified. However, it is essential to bear in mind that the Court is not a legislator and should be careful not to assume legislative functions. An "evolutive" or "dynamic" interpretation should have a sufficient basis in changing conditions in the societies of the Contracting States, including an emerging consensus as to the standards to be achieved. We fail to see that this is so in the present case. The majority submit that "It is a minority of Contracting States in which a blanket restriction on the right of serving prisoners to vote is imposed or in which there is no provision allowing prisoners to vote" (see paragraph of the judgment). The judgment of the Grand Chamber – which refers in detail to two recent judgments of the Canadian Supreme Court and the Constitutional Court of South Africa – unfortunately contains only summary information concerning the legislation on prisoners' right to vote in the Contracting States.
2005	10/6/2005	HIRST v. THE UNITED KINGDOM (No. 2)	http://hudoc.echr.coe.int/eng/?i=001-70442	no. 74025/01	GC	WILDHABER, COSTA, LORENZEN	dissenting (join)		0 South Africa	C	CC	general	6. It has been part of the Court's reasoning in some cases in recent years to emphasise its role in developing human rights and the necessity to maintain a dynamic and evolutive approach in its interpretation of the Convention and its Protocols in order to make reforms or improvements possible (see, for example, <i>Stafford v. the United Kingdom</i> [GC], no. 46295/99, § 68, ECHR 2002-IV, and <i>Christine Goodwin v. the United Kingdom</i> [GC], no. 28957/95, § 74, ECHR 2002-VI). The majority have not made reference to this case-law, but that does not in our opinion change the reality of the situation that their conclusion is in fact based on a "dynamic and evolutive" interpretation of Article 3 of Protocol No 1. We do not dispute that it is an important task for the Court to ensure that the rights guaranteed by the Convention system comply with "present-day conditions", and that accordingly a "dynamic and evolutive" approach may in certain situations be justified. However, it is essential to bear in mind that the Court is not a legislator and should be careful not to assume legislative functions. An "evolutive" or "dynamic" interpretation should have a sufficient basis in changing conditions in the societies of the Contracting States, including an emerging consensus as to the standards to be achieved. We fail to see that this is so in the present case. The majority submit that "It is a minority of Contracting States in which a blanket restriction on the right of serving prisoners to vote is imposed or in which there is no provision allowing prisoners to vote" (see paragraph 81 of the judgment). The judgment of the Grand Chamber – which refers in detail to two recent judgments of the Canadian Supreme Court and the Constitutional Court of South Africa – unfortunately contains only summary information concerning the legislation on prisoners' right to vote in the Contracting States.
2005	10/6/2005	HIRST v. THE UNITED KINGDOM (No. 2)	http://hudoc.echr.coe.int/eng/?i=001-70442	74025/01	GC		0 majority	lower-level court	Canada	C	SC	Sauvé v. Canada (no. 1) ([1992] 2 Supreme Court Reports 438	16. In the Divisional Court judgment dated 4 April 2001, Lord Justice Kennedy noted that section 3 had a long history and cited the Secretary of State's reasons, given in the proceedings, for maintaining the current policy: "By committing offences which by themselves or taken with any aggravating circumstances including the offender's character and previous criminal record require a custodial sentence, such prisoners have forfeited the right to have a say in the way the country is governed for that period. There is more than one element to punishment than forcible detention. Removal from society means removal from the privileges of society, amongst which is the right to vote for one's representative." Examining the state of practice in other jurisdictions, he observed that in Europe only eight countries, including the United Kingdom, did not give convicted prisoners a vote, while twenty did not disenfranchise prisoners and eight imposed a more restricted disenfranchisement. Reference was made to the United States Supreme Court which had rejected a challenge to the California Constitution's disenfranchisement of convicted prisoners (see <i>Richardson v. Ramirez</i> [1974] 418 United States Supreme Court Reports 24). Some considerable attention was given to Canadian precedents, which were relied on by both parties. In particular that of the Canadian Supreme Court which, in <i>Sauvé v. Canada</i> (no. 1) ([1992] 2 Supreme Court Reports 438), struck down the disenfranchisement of all prisoners as too widely drawn and infringing the minimum impairment rule, and that of the Federal Court of Appeal which, in <i>Sauvé</i> (no. 2) ([2000] 2 Federal Court Reports 117), upheld the subsequent legislative provision restricting the ban to prisoners serving a sentence of two years or more in a correctional institution. While it was noted that the Canadian courts were applying a differently phrased provision in their Charter of Rights and Freedoms, the Divisional Court commented that the judgment of Linden JA in the second case in the Federal Court of Appeal contained helpful observations, in particular as regards the danger of the courts usurping the role of Parliament. The cases before the European Commission of Human Rights and this Court were also reviewed. The Divisional Court noting that the Commission had been consistent in its approach in accepting restrictions on persons convicted and detained. Lord Justice Kennedy concluded: "- ... I return to what was said by the European Court in paragraph 52 of its judgment in <i>Mathieu-Mohin</i> . Of course as far as an individual prisoner is concerned disenfranchisement does impair the very essence of his right to vote, but that is too simplistic an approach, because what Article 3 of the First Protocol is really concerned with is the wider question of universal franchise, and 'the free expression of the opinion of the people in the choice of the legislature'. If an individual is to be disenfranchised that must be in the pursuit of a legitimate aim. In the case of a convicted prisoner serving his sentence the aim may not be easy to articulate. Clearly there is an element of punishment, and also an element of electoral law. As the Home Secretary said, Parliament has taken the view that for the period during which they are in custody convicted prisoners have forfeited their right to have a say in the way the country is governed. The Working Group said that such prisoners had lost the moral authority to vote. Perhaps the best course is that suggested by Linden JA, namely to leave to philosophers the true nature of this disenfranchisement whilst recognising that the legislation does different things. The European Court also requires that the means employed to restrict the implied Convention rights to vote are not disproportionate, and that is the point at which, as it seems to me, it is appropriate for this Court to defer to the legislature. It is easy to be critical of a law which operates against a wide spectrum (e.g. in relation to its effect on post-tariff discretionary life prisoners, and those detained under some provision of the Mental Health Act 1983), but, as is clear from the authorities, those States which disenfranchise following conviction do not all limit the period of disenfranchisement to the period in custody. Parliament in this country could have provided differently in order to meet the objectives which it discerned, and like <i>McGuchlin</i> in Canada, I would accept that the tailoring process seldom admits of perfection, so the courts must afford some leeway to the legislator. As [counsel for the Secretary of State] submits, there is a broad spectrum of approaches among democratic societies, and the United Kingdom falls into the middle of the spectrum. In course of time this position may move, either by way of further fine tuning, as was recently done in relation to remand prisoners and others, or more radically, but its position in the spectrum is plainly a matter for Parliament not for the courts. That applies even to the 'hard cases' of post-tariff discretionary life sentence prisoners ... They have all been convicted and if, for example, Parliament were to have said that all those sentenced to life imprisonment lose the franchise for life the apparent anomaly of their position would disappear ...

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2005	10/6/2005	HRST v. THE UNITED KINGDOM (No. 2)	http://hudoc.echr.coe.int/eng/?i=001-70442	74025/01	GC		0 majority	ECtHR	South Africa	C	CC	Another v. Electoral Commission and Others (CCT8/99: 1999 (3) SA 1)	2. South Africa 38. On 1 April 1999, in <i>August and Another v. Electoral Commission and Others</i> (CCT8/99: 1999 (3) SA 1), the Constitutional Court of South Africa considered the application of prisoners for a declaration and orders that the Electoral Commission take measures enabling them and other prisoners to register and vote while in prison. It noted that, under the South African Constitution, the right of every adult citizen to vote in elections for legislative bodies was set out in unqualified terms and it underlined the importance of the right: "The universality of the franchise is important not only for nationhood and democracy. The vote of each and every citizen is a badge of dignity and personhood. Quite literally, it says that everybody counts." 39. The Constitutional Court found that the right to vote by its very nature imposed positive obligations upon the legislature and the executive and that the Electoral Act must be interpreted in a way that gave effect to constitutional declarations, guarantees and responsibilities. It noted that many democratic societies imposed voting disabilities on some categories of prisoners. Although there were no comparable provisions in the Constitution, it recognised that limitations might be imposed upon the exercise of fundamental rights, provided they were, inter alia, reasonable and justifiable. The question whether legislation barring prisoners would be justified under the Constitution was not raised in the proceedings and it emphasised that the judgment was not to be read as preventing Parliament from disenfranchising certain categories of prisoners. In the absence of such legislation, prisoners had the constitutional right to vote and neither the Electoral Commission nor the Constitutional Court had the power to disenfranchise them. It concluded that the Commission was under the obligation to make reasonable arrangements for prisoners to vote. 46. He further referred to a trend in Canada, South Africa and various European States to enfranchise prisoners, claiming that nineteen countries operated no ban while eight had only a partial or specific ban. He concluded that there was no convincing reason, beyond punishment, to remove the vote from convicted prisoners and that this additional sanction was not in keeping with the idea that the punishment of imprisonment was the deprivation of liberty and that the prisoner did not thereby forfeit any other of his fundamental rights save in so far as this was necessitated by, for example, considerations of security. In his view, the ban was simply concerned with moral judgment and it was unacceptable, as tantamount to the elected choosing the electorate, for the right to vote to be made subject to moral judgments imposed by the persons who had been elected. 48. Furthermore, the matter had been considered fully by the national courts applying the principles of the Convention under the Human Rights Act 1998, yet the Chamber paid little attention to this fact while concentrating on the views of a court in another country (see <i>Sauvé</i> (no. 2), cited in paragraphs 35-37 above). As regards the Canadian precedent, they pointed out that <i>Sauvé</i> (no. 2) was decided by a narrow majority of five votes to four, concerned a law which was different in text and structure and was interpreted by domestic courts to which the doctrine of the margin of appreciation did not apply and that there was a strong dissent which was more in accord with the Convention organs' case-law. The South African case (<i>August and Another</i>, cited in paragraphs 38-39 above) was not relevant as it concerned practical obstacles to voting, not a statutory prohibition.
2005	10/6/2005	HRST v. THE UNITED KINGDOM (No. 2)	http://hudoc.echr.coe.int/eng/?i=001-70442	74025/01	GC		0 majority	lower-level court	US	C	SC	<i>Richardson v. Ramirez</i> [1974] 418 United States: Supreme Court Reports 24	16. In the Divisional Court judgment dated 4 April 2001, Lord Justice Kennedy noted that section 3 had a long history and cited the Secretary of State's reasons, given in the proceedings, for maintaining the current policy: "By committing offences which by themselves or taken with any aggravating circumstances including the offender's character and previous criminal record require a custodial sentence, such prisoners have forfeited the right to have a say in the way the country is governed for that period. There is more than one element to punishment than forcible detention. Removal from society means removal from the privileges of society, amongst which is the right to vote for one's representative." Examining the state of practice in other jurisdictions, he observed that in Europe only eight countries, including the United Kingdom, did not give convicted prisoners a vote, while twenty did not disenfranchise prisoners and eight imposed a more restricted disenfranchisement. Reference was made to the United States Supreme Court which had rejected a challenge to the Californian Constitution's disenfranchisement of convicted prisoners (see <i>Richardson v. Ramirez</i> [1974] 418 United States: Supreme Court Reports 24). Some considerable attention was given to Canadian precedents, which were relied on by both parties, in particular that of the Canadian Supreme Court which, in <i>Sauvé v. 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2005	7/6/2005	NACHOVA AND OTHERS v. BULGARIA	http://hudoc.echr.coe.int/eng/?i=001-69630		GC		0 majority	intervener	Canada	R	general	0	141. Interights further stated that international practice supported the view that in discrimination cases the burden of proof should shift to the respondent upon the claimant establishing a prima facie case. That was the approach adopted by several European Union directives, by the Court of Justice of the European Communities, the United Nations Human Rights Committee and the national courts in a number of European countries and also in the United States, Canada and other countries. 142. Interights also cited examples of the types of evidence that national jurisdictions had accepted as capable of establishing a prima facie case of discrimination: evidence of a "general picture" of disadvantage, "common knowledge" of discrimination, facts from "general life", facts that were generally known, background facts and circumstantial evidence. Relying on inferences was also a common approach.
2005	7/6/2005	NACHOVA AND OTHERS v. BULGARIA	http://hudoc.echr.coe.int/eng/?i=001-69630		GC		0 majority	intervener	US	R	general	0	141. Interights further stated that international practice supported the view that in discrimination cases the burden of proof should shift to the respondent upon the claimant establishing a prima facie case. That was the approach adopted by several European Union directives, by the Court of Justice of the European Communities, the United Nations Human Rights Committee and the national courts in a number of European countries and also in the United States, Canada and other countries.

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2005		6/16/2005	INDEPENDENT NEWS AND MEDIA AND INDEPENDENT	http://hudoc.echr.coe.int/eng/?i=001-69398	55120/00	S3		0 majority	ECTHR	Canada	C	SC	general	69. The case of Murphy v. the Independent Radio and Television Commission [1999] 1 I.R. 12] concerned the ban on the broadcasting of religious advertising pursuant to Section 10(3) of the Radio and Television Act 1988 ("the 1988 Act"). The Supreme Court considered that the impugned provision of the 1988 Act was a restriction of the appellant's right freely to communicate and of his right to freedom of expression (Articles 40(3) and 40(6)(1) of the Constitution, respectively) which rights could be limited in the interests of the common good. The real question was whether the limitation imposed upon those constitutional rights was proportionate to the purpose parliament wished to achieve. Quoting with approval previous case-law, it described the principle of proportionality: "In considering whether a restriction on the exercise of rights is permitted by the Constitution the courts in this country and elsewhere have found it helpful to apply the test of proportionality, a test which contains the notions of minimal restraints on the exercise of protected rights and the exigencies of the common good in a democratic society. This is a test frequently adopted by the European Court of Human Rights and by the Supreme Court of Canada in the following terms. The objective of the impugned provision must be of sufficient importance to warrant over-riding a constitutionally protected right. It must relate to concerns pressing and substantial in a free and democratic society. The means chosen must pass a proportionality test. They must (a) be rationally connected to the objective and not be arbitrary, unfair or based on irrational considerations; (b) impair the right as little as possible; and (c) be such that the effects on the rights are proportional to the objective."	
2005		5/12/2005	ÖCALAN v. TURKEY	http://hudoc.echr.coe.int/eng/?i=001-69022	46221/99	GC	GARLICKI	concurring (pa		0 South Africa	C	CC	general	7. In the last fifteen years, several Constitutional Courts in Europe have been invited to take a position on capital punishment. The courts of Hungary, Lithuania, Albania and Ukraine had no hesitation in decreeing that capital punishment was no longer permitted under the Constitutions of their respective countries, even if this was not clearly stated in the written text of those documents. The Constitutional Courts have, nevertheless, adopted the position that the inability of the political branches of government to take a clear decision on the matter should not impede the judicial branch from doing so. A similar approach was taken by the Constitutional Court of South Africa. I am firmly convinced that the European Court of Human Rights should have followed the same path in the present judgment.	
2005		5/12/2005	ÖCALAN v. TURKEY	http://hudoc.echr.coe.int/eng/?i=001-69022	46221/99	GC		0 majority	ECTHR	Canada	C	SC	United States v. Burns [2001] Supreme Court Reports 283	159. Developments in international and comparative law showed that the death penalty could also be seen to be contrary to international law. In that respect, reference was made, inter alia, to a judgment of the South African Constitutional Court in which it was held that the death penalty was contrary to the South African Constitution's prohibition of cruel, inhuman or degrading treatment (see S. v. Makwanyane (1995) (6) Buttenworths Constitutional Law Reports 665), and to the judgment of the Canadian Supreme Court in United States v. Burns [2001] Supreme Court Reports 283, where that court, in a case concerning the extradition of a fugitive to the United States of America, considered capital punishment to amount to cruel and unusual punishment. The United Nations Human Rights Committee had also held that execution of a death sentence constituted cruel and inhuman treatment contrary to Article 6 of the International Covenant on Civil and Political Rights (see paragraph 60 above). Reference was also made to similar statements by the Hungarian Constitutional Court and the Constitutional Courts of Ukraine, Albania, Lithuania and Republika Srpska (within Bosnia and Herzegovina).	
2005		5/12/2005	ÖCALAN v. TURKEY	http://hudoc.echr.coe.int/eng/?i=001-69022	46221/99	GC		0 majority	applicant	New Zealand	C		lower-level co	Reg. v. Hartley [1978] 2 New Zealand Law Reports 199	79. Relying on the case-law of various national courts (the House of Lord's decision in R. v. Horseferry Road Magistrates' Court, ex parte Bennett [1994] 1 Appeal Cases 42; the decision of the Court of Appeal of New Zealand in Reg. v. Hartley [1978] 2 New Zealand Law Reports 199; the decision of the United States Court of Appeals (2nd Circuit, 1974) in United States v. Toscanino 555 Federal Reporter (Second Series) 267-68; the decision of 28 May 2001 of the Constitutional Court of South Africa in Mohamed and Dalvie v. President of the Republic of South Africa and Others 2001 (3) South African Law Reports 893 (CC)), the applicant maintained that the arrest procedures that had been followed did not comply with Kenyan law or the rules established by international law, that his arrest amounted to an abduction, and that his detention and trial, which were based on that unlawful arrest, had to be regarded as null and void.
2005		5/12/2005	ÖCALAN v. TURKEY	http://hudoc.echr.coe.int/eng/?i=001-69022	46221/99	GC		0 majority	ECTHR	South Africa	C	CC	S. v. Makwanyane (1995) (6) Buttenworths Constitutional Law Reports 665	79. Relying on the case-law of various national courts (the House of Lord's decision in R. v. Horseferry Road Magistrates' Court, ex parte Bennett [1994] 1 Appeal Cases 42; the decision of the Court of Appeal of New Zealand in Reg. v. Hartley [1978] 2 New Zealand Law Reports 199; the decision of the United States Court of Appeals (2nd Circuit, 1974) in United States v. Toscanino 555 Federal Reporter (Second Series) 267-68; the decision of 28 May 2001 of the Constitutional Court of South Africa in Mohamed and Dalvie v. President of the Republic of South Africa and Others 2001 (3) South African Law Reports 893 (CC)), the applicant maintained that the arrest procedures that had been followed did not comply with Kenyan law or the rules established by international law, that his arrest amounted to an abduction, and that his detention and trial, which were based on that unlawful arrest, had to be regarded as null and void. 159. Developments in international and comparative law showed that the death penalty could also be seen to be contrary to international law. In that respect, reference was made, inter alia, to a judgment of the South African Constitutional Court in which it was held that the death penalty was contrary to the South African Constitution's prohibition of cruel, inhuman or degrading treatment (see S. v. Makwanyane (1995) (6) Buttenworths Constitutional Law Reports 665), and to the judgment of the Canadian Supreme Court in United States v. Burns [2001] Supreme Court Reports 283, where that court, in a case concerning the extradition of a fugitive to the United States of America, considered capital punishment to amount to cruel and unusual punishment. The United Nations Human Rights Committee had also held that execution of a death sentence constituted cruel and inhuman treatment contrary to Article 6 of the International Covenant on Civil and Political Rights (see paragraph 60 above). Reference was also made to similar statements by the Hungarian Constitutional Court and the Constitutional Courts of Ukraine, Albania, Lithuania and Republika Srpska (within Bosnia and Herzegovina).	
2005		5/12/2005	ÖCALAN v. TURKEY	http://hudoc.echr.coe.int/eng/?i=001-69022	46221/99	GC		0 majority	applicant	South Africa	C	CC	Mohamed and Dalvie v. President of the Republic of South Africa and Others 2001 (3) South African Law Reports 893 (CC)	79. Relying on the case-law of various national courts (the House of Lord's decision in R. v. Horseferry Road Magistrates' Court, ex parte Bennett [1994] 1 Appeal Cases 42; the decision of the Court of Appeal of New Zealand in Reg. v. Hartley [1978] 2 New Zealand Law Reports 199; the decision of the United States Court of Appeals (2nd Circuit, 1974) in United States v. Toscanino 555 Federal Reporter (Second Series) 267-68; the decision of 28 May 2001 of the Constitutional Court of South Africa in Mohamed and Dalvie v. President of the Republic of South Africa and Others 2001 (3) South African Law Reports 893 (CC)), the applicant maintained that the arrest procedures that had been followed did not comply with Kenyan law or the rules established by international law, that his arrest amounted to an abduction, and that his detention and trial, which were based on that unlawful arrest, had to be regarded as null and void. 159. Developments in international and comparative law showed that the death penalty could also be seen to be contrary to international law. In that respect, reference was made, inter alia, to a judgment of the South African Constitutional Court in which it was held that the death penalty was contrary to the South African Constitution's prohibition of cruel, inhuman or degrading treatment (see S. v. Makwanyane (1995) (6) Buttenworths Constitutional Law Reports 665), and to the judgment of the Canadian Supreme Court in United States v. Burns [2001] Supreme Court Reports 283, where that court, in a case concerning the extradition of a fugitive to the United States of America, considered capital punishment to amount to cruel and unusual punishment. The United Nations Human Rights Committee had also held that execution of a death sentence constituted cruel and inhuman treatment contrary to Article 6 of the International Covenant on Civil and Political Rights (see paragraph 60 above). Reference was also made to similar statements by the Hungarian Constitutional Court and the Constitutional Courts of Ukraine, Albania, Lithuania and Republika Srpska (within Bosnia and Herzegovina).	
2005		5/12/2005	ÖCALAN v. TURKEY	http://hudoc.echr.coe.int/eng/?i=001-69022	46221/99	GC		0 majority	applicant	US	C		lower-level co	United States v. Toscanino 555 Federal Reporter (Second Series) 267-68	79. Relying on the case-law of various national courts (the House of Lord's decision in R. v. Horseferry Road Magistrates' Court, ex parte Bennett [1994] 1 Appeal Cases 42; the decision of the Court of Appeal of New Zealand in Reg. v. Hartley [1978] 2 New Zealand Law Reports 199; the decision of the United States Court of Appeals (2nd Circuit, 1974) in United States v. Toscanino 555 Federal Reporter (Second Series) 267-68; the decision of 28 May 2001 of the Constitutional Court of South Africa in Mohamed and Dalvie v. President of the Republic of South Africa and Others 2001 (3) South African Law Reports 893 (CC)), the applicant maintained that the arrest procedures that had been followed did not comply with Kenyan law or the rules established by international law, that his arrest amounted to an abduction, and that his detention and trial, which were based on that unlawful arrest, had to be regarded as null and void. 159. Developments in international and comparative law showed that the death penalty could also be seen to be contrary to international law. In that respect, reference was made, inter alia, to a judgment of the South African Constitutional Court in which it was held that the death penalty was contrary to the South African Constitution's prohibition of cruel, inhuman or degrading treatment (see S. v. Makwanyane (1995) (6) Buttenworths Constitutional Law Reports 665), and to the judgment of the Canadian Supreme Court in United States v. Burns [2001] Supreme Court Reports 283, where that court, in a case concerning the extradition of a fugitive to the United States of America, considered capital punishment to amount to cruel and unusual punishment. The United Nations Human Rights Committee had also held that execution of a death sentence constituted cruel and inhuman treatment contrary to Article 6 of the International Covenant on Civil and Political Rights (see paragraph 60 above). Reference was also made to similar statements by the Hungarian Constitutional Court and the Constitutional Courts of Ukraine, Albania, Lithuania and Republika Srpska (within Bosnia and Herzegovina).
2004		7/20/2004	BÄCK v. FINLAND	http://hudoc.echr.coe.int/eng/?i=001-61919	37598/97	S4		0 majority	ECTHR	US	R		general	0 23. In its parliamentary bill (no. 183/1992), the government noted that an insolvent private individual seldom had enough possessions to repay a creditor, as the bankruptcy costs had priority. Neither could a declaration of bankruptcy eliminate a natural person's future responsibility for his or her debts. Allowing an adjustment of the overall debts and fixing a payment schedule could help the debtor meet his or her future financial obligations, provided he or she complied with that schedule. Such assistance would also reduce the overall cost to society. The courts should seek to adjust a debt in the manner least detrimental to the creditor and only to the extent that such an adjustment was necessary to remedy the debtor's financial situation. Since underlying contractual terms should be interfered with as little as possible, the partial or total extinction of a claim should be considered as a very last resort. The possibility of ordering a payment schedule to remain in force for five years would enable the creditors to receive at least partial satisfaction. It was noted that somewhat similar legislation for debt adjustment had been, or was being, enacted in countries such as Denmark, France, Germany, Norway, Sweden and the United States of America.	
2004		7/8/2004	VO v. FRANCE	http://hudoc.echr.coe.int/eng/?i=001-61887	53924/00	GC		0 majority	intervener	Canada	C	SC	Winnipeg Child Family Services v. G. (1997)	64. Lastly, with regard to non-European States, the CRR noted that the Supreme Courts of Canada and the United States had declined to treat unborn fetuses as persons under the law (in Winnipeg Child Family Services v. G. (1997) and Roe v. Wade (1973)). The United States Supreme Court had reaffirmed that position in a recent case in 2000 (Stenberg v. Carhart), in which it had declared unconstitutional a State law prohibiting certain methods of abortion and providing no protection for women's health. Similarly, in South Africa, ruling on a constitutional challenge to the recently enacted Choice on Termination of Pregnancy Act, which permitted abortion without restriction during the first trimester and on broad grounds at later stages of pregnancy, the High Court had considered that the foetus was not a legal person (Christian Lawyers Association of South Africa and Others v. Minister of Health and Others, 1998).	
2004		7/8/2004	VO v. FRANCE	http://hudoc.echr.coe.int/eng/?i=001-61887	53924/00	GC		0 majority	intervener	South Africa	C	SC	Christian Lawyers Association of South Africa and Others v. Minister of Health and Others, 1998	64. Lastly, with regard to non-European States, the CRR noted that the Supreme Courts of Canada and the United States had declined to treat unborn fetuses as persons under the law (in Winnipeg Child Family Services v. G. (1997) and Roe v. Wade (1973)). The United States Supreme Court had reaffirmed that position in a recent case in 2000 (Stenberg v. Carhart), in which it had declared unconstitutional a State law prohibiting certain methods of abortion and providing no protection for women's health. Similarly, in South Africa, ruling on a constitutional challenge to the recently enacted Choice on Termination of Pregnancy Act, which permitted abortion without restriction during the first trimester and on broad grounds at later stages of pregnancy, the High Court had considered that the foetus was not a legal person (Christian Lawyers Association of South Africa and Others v. Minister of Health and Others, 1998).	
2004		7/8/2004	VO v. FRANCE	http://hudoc.echr.coe.int/eng/?i=001-61887	53924/00	GC		0 majority	intervener	US	C	SC	Stenberg v. Carhart	64. Lastly, with regard to non-European States, the CRR noted that the Supreme Courts of Canada and the United States had declined to treat unborn fetuses as persons under the law (in Winnipeg Child Family Services v. G. (1997) and Roe v. Wade (1973)). The United States Supreme Court had reaffirmed that position in a recent case in 2000 (Stenberg v. Carhart), in which it had declared unconstitutional a State law prohibiting certain methods of abortion and providing no protection for women's health. Similarly, in South Africa, ruling on a constitutional challenge to the recently enacted Choice on Termination of Pregnancy Act, which permitted abortion without restriction during the first trimester and on broad grounds at later stages of pregnancy, the High Court had considered that the foetus was not a legal person (Christian Lawyers Association of South Africa and Others v. Minister of Health and Others, 1998).	
2004		7/8/2004	VO v. FRANCE	http://hudoc.echr.coe.int/eng/?i=001-61887	53924/00	GC		0 majority	intervener	US	C	SC	Roe v. Wade (1973)	64. Lastly, with regard to non-European States, the CRR noted that the Supreme Courts of Canada and the United States had declined to treat unborn fetuses as persons under the law (in Winnipeg Child Family Services v. G. (1997) and Roe v. Wade (1973)). The United States Supreme Court had reaffirmed that position in a recent case in 2000 (Stenberg v. Carhart), in which it had declared unconstitutional a State law prohibiting certain methods of abortion and providing no protection for women's health. Similarly, in South Africa, ruling on a constitutional challenge to the recently enacted Choice on Termination of Pregnancy Act, which permitted abortion without restriction during the first trimester and on broad grounds at later stages of pregnancy, the High Court had considered that the foetus was not a legal person (Christian Lawyers Association of South Africa and Others v. Minister of Health and Others, 1998).	

Year	Date	Name	Link	App.no.	Body	Judge citing	Opinion	who submitted	Countries	C/R/F	type	Document	Quotes
2004	6/17/2004	ZDANOKA v. LATVIA	http://hudoc.echr.coe.int/eng/?i=001-61827	58278/00	S1	LEVITS	dissent		Argentina	F	general	have established "truth commissions" as an instrument of the policy of the "coping with the past"	28. The scale of possible attitudes to these problems in the new democracies is very wide and differs from state to state. It depends on many factors like the relative strength of the democratic forces and the protagonists of the regime of injustice; the particularities of the democratic revolution; the degree to which of the new elite is intermixed with the protagonists or former representatives of the old regime; the historical experiences, and similar circumstances. In some states there has been a formal criminal prosecution of the representatives of the former regime who committed crimes. Nevertheless, the principle of nulla poena sine lege prohibits the prosecution in most cases; therefore the criminal activities of former state officials may remain without a just criminal punishment.[29] South Africa, Argentina and some other states in Latin America have established "truth commissions" as an instrument of the policy of the "coping with the past". [30] [30] See Truth Commissions: A comparative assessment, 1996. ----- 30. It should also be noted that in some new democracies there is no specific policy of "coping with the past", and the discussion on these questions has not yet begun. In other countries, such discussion only starts after a certain period of time, when the democratic culture and the legal consciousness attain a certain level and when there is no more fear that the old forces may come back. For example, the discussion about such problems in Argentina and Chile started and measures against the representatives of the former authoritarian regimes were taken only recently, nearly two decades after the establishing of the democratic order. Therefore the implicit expectation of the majority in the instant case that these problems would continuously diminish without any discussions and any specific policy (§§ 92 and 97 of the judgment), is unrealistic, at least as long as the whole generation of victims of the former Soviet system of injustice is still alive.
2004	6/17/2004	ZDANOKA v. LATVIA	http://hudoc.echr.coe.int/eng/?i=001-61827	58278/00	S1	LEVITS	dissenting		South Africa	F	general	South Africa, Argentina and some other states in Latin America have established "truth commissions"	28. The scale of possible attitudes to these problems in the new democracies is very wide and differs from state to state. It depends on many factors like the relative strength of the democratic forces and the protagonists of the regime of injustice; the particularities of the democratic revolution; the degree to which of the new elite is intermixed with the protagonists or former representatives of the old regime; the historical experiences, and similar circumstances. In some states there has been a formal criminal prosecution of the representatives of the former regime who committed crimes. Nevertheless, the principle of nulla poena sine lege prohibits the prosecution in most cases; therefore the criminal activities of former state officials may remain without a just criminal punishment.[29] South Africa, Argentina and some other states in Latin America have established "truth commissions" as an instrument of the policy of the "coping with the past". [30]
2004	6/17/2004	ZDANOKA v. LATVIA	http://hudoc.echr.coe.int/eng/?i=001-61827	58278/00	S1	LEVITS	dissenting		Chile	F	general	ch problems in Argentina and Chile started and measures against the representatives of the former authoritarian regimes were taken only recent	30. It should also be noted that in some new democracies there is no specific policy of "coping with the past", and the discussion on these questions has not yet begun. In other countries, such discussion only starts after a certain period of time, when the democratic culture and the legal consciousness attain a certain level and when there is no more fear that the old forces may come back. For example, the discussion about such problems in Argentina and Chile started and measures against the representatives of the former authoritarian regimes were taken only recently, nearly two decades after the establishing of the democratic order. Therefore the implicit expectation of the majority in the instant case that these problems would continuously diminish without any discussions and any specific policy (§§ 92 and 97 of the judgment), is unrealistic, at least as long as the whole generation of victims of the former Soviet system of injustice is still alive.
2004	5/18/2004	PRODAN v. MOLDOVA	http://hudoc.echr.coe.int/eng/?i=001-61757	49806/99	S4	PAVLOVSKI	dissenting (par		US	R	general		0. In his book "Law of the United States" (Verlag C.H. Beck, Munich, 2002, page 134) Professor Peter Hay writes: "If a party does not perform its contractual obligation, the other may claim damages for breach of contract. This claim will lie for non-performance, or in cases of anticipatory repudiation. ... The goal is to put the injured party in the position he or she would have been in if the contract had been performed according to its terms [emphasis added]. 'Damages' encompass the actual damage suffered as a consequence of the breach of contract (general damages) as well as further damages resulting from that breach (special or consequential damages) to the extent that these were foreseeable at the time the contract was concluded".
2004	3/30/2004	HIRST v. THE UNITED KINGDOM (No. 2)	http://hudoc.echr.coe.int/eng/?i=001-61680	74025/01	S4		0 majority	domestic court	Canada	C	SC	Sauvé v. Canada (No. 1) ([1992] 2 SCR 438	13. In its judgment dated 4 April 2001, the Divisional Court noted that in Europe only eight countries, including the United Kingdom, did not give convicted prisoners a vote, while 20 did not disenfranchise prisoners and eight imposed a more restricted disenfranchisement. Reference was made to the United States Supreme Court which had rejected a challenge to the Californian Constitution's disenfranchisement of convicted prisoners (Richardson v. Ramirez [1974] 418 US 24); and to Canadian precedents, in particular the Canadian Supreme Court which in the case of Sauvé v. Canada (No. 1) ([1992] 2 SCR 438) struck down the disenfranchisement of prisoners as too widely drawn and infringing against the minimum impairment rule and the Federal Court of Appeal which upheld in Sauvé (No. 2) ([2000] 2 CF) the subsequent legislative provision which restricted the ban to prisoners serving a sentence of two years or more in a correctional institution. The cases before the European Commission of Human Rights and this Court were also reviewed. Lord Justice Kennedy concluded: "... I return to what was said by the European Court in paragraph 52 of its judgment in Mathieu-Mohin. Of course as far as an individual prisoner is concerned disenfranchisement does impair the very essence of his right to vote, but that is too simplistic an approach, because what Article 3 of the First Protocol is really concerned with is the wider question of universal franchise, and 'the free expression of the opinion of the people in the choice of the legislature'. If an individual is to be disenfranchised that must be in the pursuit of a legitimate aim. In the case of a convicted prisoner serving his sentence the aim may not be easy to articulate. Clearly there is an element of punishment, and also an element of electoral law. As the Home Secretary said, Parliament has taken the view that for the period during which they are in custody convicted prisoners have forfeited their right to have a say in the way the country is governed. The Working Group said that such prisoners had lost the moral authority to vote. Perhaps the best course is that suggested by Linden JA, namely to leave to philosophers the true nature of this disenfranchisement whilst recognising that the legislation does different things. The European Court also requires that the means employed to restrict the implied Convention rights to vote are not disproportionate, and that is the point at which, as it seems to me, it is appropriate for this court to defer to the legislature. It is easy to be critical of a law which operates against a wide spectrum (e.g. in relation to its effect on post-tariff discretionary life prisoners, and those detained under some provision of the Mental Health Act 1983), but, as is clear from the authorities, those states which disenfranchise following conviction do not all limit the period of disenfranchisement to the period in custody. Parliament in this country could have provided differently in order to meet the objectives which it discerned, and like McLachlin J in Canada, I would accept that the tailoring process seldom admits of perfection, so the courts must afford some leeway to the legislator. As [counsel for the Secretary of State] submits, there is a broad spectrum of approaches among democratic societies, and the United Kingdom falls into the middle of the spectrum. In course of time this position may move, either by way of further fine tuning, as was recently done in relation to remand prisoners and others, or more radically, but its position in the spectrum is plainly a matter for Parliament not for the courts. That applies even to the 'hard cases' of post-tariff discretionary life sentence prisoners... They have all been convicted and if, for example, Parliament were to have said that all those sentenced to life imprisonment lose the franchise for life the apparent anomaly of their position would disappear ... If section 3 (1) of the 1983 Act can meet the challenge of Article 3 [of the First Protocol] then Article 14 had nothing to offer, any more than Article 10."
2004	3/30/2004	HIRST v. THE UNITED KINGDOM (No. 2)	http://hudoc.echr.coe.int/eng/?i=001-61680	74025/01	S4		0 majority	ECtHR	Canada	C	SC	Sauvé (No. 2) ([2000] 2 CF	13. In its judgment dated 4 April 2001, the Divisional Court noted that in Europe only eight countries, including the United Kingdom, did not give convicted prisoners a vote, while 20 did not disenfranchise prisoners and eight imposed a more restricted disenfranchisement. Reference was made to the United States Supreme Court which had rejected a challenge to the Californian Constitution's disenfranchisement of convicted prisoners (Richardson v. Ramirez [1974] 418 US 24); and to Canadian precedents, in particular the Canadian Supreme Court which in the case of Sauvé v. Canada (No. 1) ([1992] 2 SCR 438) struck down the disenfranchisement of prisoners as too widely drawn and infringing against the minimum impairment rule and the Federal Court of Appeal which upheld in Sauvé (No. 2) ([2000] 2 CF) the subsequent legislative provision which restricted the ban to prisoners serving a sentence of two years or more in a correctional institution. The cases before the European Commission of Human Rights and this Court were also reviewed. Lord Justice Kennedy concluded: "... I return to what was said by the European Court in paragraph 52 of its judgment in Mathieu-Mohin. Of course as far as an individual prisoner is concerned disenfranchisement does impair the very essence of his right to vote, but that is too simplistic an approach, because what Article 3 of the First Protocol is really concerned with is the wider question of universal franchise, and 'the free expression of the opinion of the people in the choice of the legislature'. If an individual is to be disenfranchised that must be in the pursuit of a legitimate aim. In the case of a convicted prisoner serving his sentence the aim may not be easy to articulate. Clearly there is an element of punishment, and also an element of electoral law. As the Home Secretary said, Parliament has taken the view that for the period during which they are in custody convicted prisoners have forfeited their right to have a say in the way the country is governed. The Working Group said that such prisoners had lost the moral authority to vote. Perhaps the best course is that suggested by Linden JA, namely to leave to philosophers the true nature of this disenfranchisement whilst recognising that the legislation does different things. The European Court also requires that the means employed to restrict the implied Convention rights to vote are not disproportionate, and that is the point at which, as it seems to me, it is appropriate for this court to defer to the legislature. It is easy to be critical of a law which operates against a wide spectrum (e.g. in relation to its effect on post-tariff discretionary life prisoners, and those detained under some provision of the Mental Health Act 1983), but, as is clear from the authorities, those states which disenfranchise following conviction do not all limit the period of disenfranchisement to the period in custody. Parliament in this country could have provided differently in order to meet the objectives which it discerned, and like McLachlin J in Canada, I would accept that the tailoring process seldom admits of perfection, so the courts must afford some leeway to the legislator. As [counsel for the Secretary of State] submits, there is a broad spectrum of approaches among democratic societies, and the United Kingdom falls into the middle of the spectrum. In course of time this position may move, either by way of further fine tuning, as was recently done in relation to remand prisoners and others, or more radically, but its position in the spectrum is plainly a matter for Parliament not for the courts. That applies even to the 'hard cases' of post-tariff discretionary life sentence prisoners... They have all been convicted and if, for example, Parliament were to have said that all those sentenced to life imprisonment lose the franchise for life the apparent anomaly of their position would disappear ... If section 3 (1) of the 1983 Act can meet the challenge of Article 3 [of the First Protocol] then Article 14 had nothing to offer, any more than Article 10."
2004	3/30/2004	HIRST v. THE UNITED KINGDOM (No. 2)	http://hudoc.echr.coe.int/eng/?i=001-61680	74025/01	S4		0 majority	ECtHR	Canada	C	SC	Sauvé (No. 2) ([2000] 2 CF	13. In its judgment dated 4 April 2001, the Divisional Court noted that in Europe only eight countries, including the United Kingdom, did not give convicted prisoners a vote, while 20 did not disenfranchise prisoners and eight imposed a more restricted disenfranchisement. Reference was made to the United States Supreme Court which had rejected a challenge to the Californian Constitution's disenfranchisement of convicted prisoners (Richardson v. Ramirez [1974] 418 US 24); and to Canadian precedents, in particular the Canadian Supreme Court which in the case of Sauvé v. Canada (No. 1) ([1992] 2 SCR 438) struck down the disenfranchisement of prisoners as too widely drawn and infringing against the minimum impairment rule and the Federal Court of Appeal which upheld in Sauvé (No. 2) ([2000] 2 CF) the subsequent legislative provision which restricted the ban to prisoners serving a sentence of two years or more in a correctional institution. The cases before the European Commission of Human Rights and this Court were also reviewed. Lord Justice Kennedy concluded: "... I return to what was said by the European Court in paragraph 52 of its judgment in Mathieu-Mohin. Of course as far as an individual prisoner is concerned disenfranchisement does impair the very essence of his right to vote, but that is too simplistic an approach, because what Article 3 of the First Protocol is really concerned with is the wider question of universal franchise, and 'the free expression of the opinion of the people in the choice of the legislature'. If an individual is to be disenfranchised that must be in the pursuit of a legitimate aim. In the case of a convicted prisoner serving his sentence the aim may not be easy to articulate. Clearly there is an element of punishment, and also an element of electoral law. As the Home Secretary said, Parliament has taken the view that for the period during which they are in custody convicted prisoners have forfeited their right to have a say in the way the country is governed. The Working Group said that such prisoners had lost the moral authority to vote. Perhaps the best course is that suggested by Linden JA, namely to leave to philosophers the true nature of this disenfranchisement whilst recognising that the legislation does different things. The European Court also requires that the means employed to restrict the implied Convention rights to vote are not disproportionate, and that is the point at which, as it seems to me, it is appropriate for this court to defer to the legislature. It is easy to be critical of a law which operates against a wide spectrum (e.g. in relation to its effect on post-tariff discretionary life prisoners, and those detained under some provision of the Mental Health Act 1983), but, as is clear from the authorities, those states which disenfranchise following conviction do not all limit the period of disenfranchisement to the period in custody. Parliament in this country could have provided differently in order to meet the objectives which it discerned, and like McLachlin J in Canada, I would accept that the tailoring process seldom admits of perfection, so the courts must afford some leeway to the legislator. As [counsel for the Secretary of State] submits, there is a broad spectrum of approaches among democratic societies, and the United Kingdom falls into the middle of the spectrum. In course of time this position may move, either by way of further fine tuning, as was recently done in relation to remand prisoners and others, or more radically, but its position in the spectrum is plainly a matter for Parliament not for the courts. That applies even to the 'hard cases' of post-tariff discretionary life sentence prisoners... They have all been convicted and if, for example, Parliament were to have said that all those sentenced to life imprisonment lose the franchise for life the apparent anomaly of their position would disappear ... If section 3 (1) of the 1983 Act can meet the challenge of Article 3 [of the First Protocol] then Article 14 had nothing to offer, any more than Article 10."

Year	Date	Name	Link	App.no.	Body	Judge citing	Opinion	who submitted	Countries	C/R/F	type	Document	Quotes
2004	3/30/2004	HIRST v. THE UNITED KINGDOM (No. 2)	http://hudoc.echr.coe.int/eng?i=001-61680	74025/01	S4		0 majority	applicant	South Africa	R	general		01. The blanket ban was also disproportionate, arbitrary and impaired the essence of the right. It was unrelated to the nature or seriousness of the offence and varied in its effects on prisoners depending on whether their imprisonment coincided with an election. It potentially deprived a significant proportion of the population (some 74,000) of a voice or the possibility of challenging, electorally, the penal policy which affected them. In addition, the applicant submitted that, as a post-tariff prisoner, the punishment element of his sentence had expired and he was held on grounds of risk in which case no alleged justification of punishment could remain either. He referred to a trend in Canada (with particular emphasis on the decision of the Supreme Court in Sauvé No. 2) holding to be unconstitutional a bar imposed on prisoners sentenced to two years' imprisonment or more), South Africa and other European states to enfranchise prisoners, claiming that 19 countries operated no ban while eight had a partial or specific ban. He concluded that there was no convincing reason, beyond punishment, to remove the vote from convicted prisoners and that this additional sanction was not in keeping with the idea that the punishment of imprisonment was the deprivation of liberty and that the prisoner did not thereby forfeit any other of his fundamental rights save in so far as this was necessitated by considerations of security etc.
2004	3/30/2004	HIRST v. THE UNITED KINGDOM (No. 2)	http://hudoc.echr.coe.int/eng?i=001-61680	74025/01	S4		0 majority	domestic court	US	C	SC	Richardson v. Ramirez [1974] 418 US 24	13. In its judgment dated 4 April 2001, the Divisional Court noted that in Europe only eight countries, including the United Kingdom, did not give convicted prisoners a vote, while 20 did not disenfranchise prisoners and eight imposed a more restricted disenfranchisement. Reference was made to the United States Supreme Court which had rejected a challenge to the Californian Constitution's disenfranchisement of convicted prisoners (Richardson v. Ramirez [1974] 418 US 24), and to Canadian precedents, in particular the Canadian Supreme Court which in the case of Sauvé v. Canada (No. 1) [1992] 2 S.C.R. 438 struck down the disenfranchisement of prisoners as too widely drawn and infringing against the minimum impairment rule and the Federal Court of Appeal which upheld in Sauvé (No. 2) [2000] 2 F.T.R. 313 the subsequent legislative provision which restricted the ban to prisoners serving a sentence of two years or more in a correctional institution. The cases before the European Commission of Human Rights and this Court were also reviewed. Lord Justice Kennedy concluded: "... I return to what was said by the European Court in paragraph 52 of its judgment in Mathieu-Mohin. Of course as far as an individual prisoner is concerned disenfranchisement does impair the very essence of his right to vote, but that is too simplistic an approach, because what Article 3 of the First Protocol is really concerned with is the wider question of universal franchise, and 'the free expression of the opinion of the people in the choice of the legislature'. If an individual is to be disenfranchised that must be in the pursuit of a legitimate aim. In the case of a convicted prisoner serving his sentence the aim may not be easy to articulate. Clearly there is an element of punishment, and also an element of electoral law. As the Home Secretary said, Parliament has taken the view that for the period during which they are in custody convicted prisoners have forfeited their right to have a say in the way the country is governed. The Working Group said that such prisoners had lost the moral authority to vote. Perhaps the best course is that suggested by Linden JA, namely to leave to philosophers the true nature of this disenfranchisement whilst recognising that the legislation does different things. The European Court also requires that the means employed to restrict the implied Convention rights to vote are not disproportionate, and that is the point at which, as it seems to me, it is appropriate for this court to defer to the legislature. It is easy to be critical of a law which operates against a wide spectrum (e.g. in relation to its effect on post-tariff discretionary life prisoners, and those detained under some provision of the Mental Health Act 1983), but it is clear from the authorities, those states which disenfranchise following conviction do not all limit the period of disenfranchisement to the period in custody. Parliament in this country could have provided differently in order to meet the objectives which it discerned, and like McLachlin J in Canada, I would accept that the tailoring process seldom admits of perfection, so the courts must afford some leeway to the legislator. As [counsel for the Secretary of State] submits, there is a broad spectrum of approaches among democratic societies, and the United Kingdom falls into the middle of the spectrum. In course of time this position may move, either by way of further fine tuning, as was recently done in relation to remand prisoners and others, or more radically, but its position in the spectrum is plainly a matter for Parliament not for the courts. That applies even to the 'hard cases' of post-tariff discretionary life sentence prisoners. They have all been convicted and if, for example, Parliament were to have said that all those sentenced to life imprisonment lose the franchise for life the apparent anomaly of their position would disappear.... If section 3 (1) of the 1983 Act can meet the challenge of Article 3 [of the First Protocol] then Article 14 had nothing to offer, any more than Article 10."
2004	3/11/2004	G.B. v. BULGARIA	http://hudoc.echr.coe.int/eng?i=001-61674	42346/98	S1		0 majority	ECtHR	Canada	C	SC	Kindler v. Canada (Minister of Justice), [1991] 2 S.C.R. 779	62. The Supreme Court of Canada has held that Canadian constitutional standards did not bar extradition to the United States of America of a defendant facing the death penalty (Kindler v. Canada (Minister of Justice), [1991] 2 S.C.R. 779). However, in 2001 it changed its approach and held that if the person being extradited could face the death penalty, constitutional standards required that in all but exceptional cases assurances must be sought from the United States of America that the death penalty would not be imposed or, if imposed, would not be carried out (United States v. Burns, [2001] 1 S.C.R. 283).
2004	3/11/2004	G.B. v. BULGARIA	http://hudoc.echr.coe.int/eng?i=001-61674	42346/98	S1		0 majority	ECtHR	India	C	SC	Vatheeswaran v. State of Tamil Nadu [1983] 2 S.C.R. 348	60. The Supreme Court of India found that execution following inordinate delay after sentence of death violated Article 21 of the Indian Constitution which provides that "no one shall be deprived of his life or personal liberty except according to procedure established by law" and that the reasons for the delay were immaterial (Vatheeswaran v. State of Tamil Nadu [1983] 2 S.C.R. 348, Sher Singh and Others v. the State of Punjab [1983] 2 S.C.R. 582 and Smt. Treveniben v. State of Gujarat [1989] 1 S.C.J. 383).
2004	3/11/2004	G.B. v. BULGARIA	http://hudoc.echr.coe.int/eng?i=001-61674	42346/98	S1		0 majority	ECtHR	India	C	SC	Sher Singh and Others v. the State of Punjab [1983] 2 S.C.R. 582	60. The Supreme Court of India found that execution following inordinate delay after sentence of death violated Article 21 of the Indian Constitution which provides that "no one shall be deprived of his life or personal liberty except according to procedure established by law" and that the reasons for the delay were immaterial (Vatheeswaran v. State of Tamil Nadu [1983] 2 S.C.R. 348, Sher Singh and Others v. the State of Punjab [1983] 2 S.C.R. 582 and Smt. Treveniben v. State of Gujarat [1989] 1 S.C.J. 383).
2004	3/11/2004	G.B. v. BULGARIA	http://hudoc.echr.coe.int/eng?i=001-61674	42346/98	S1		0 majority	ECtHR	India	C	SC	Smt. Treveniben v. State of Gujarat [1989] 1 S.C.J. 383	60. The Supreme Court of India found that execution following inordinate delay after sentence of death violated Article 21 of the Indian Constitution which provides that "no one shall be deprived of his life or personal liberty except according to procedure established by law" and that the reasons for the delay were immaterial (Vatheeswaran v. State of Tamil Nadu [1983] 2 S.C.R. 348, Sher Singh and Others v. the State of Punjab [1983] 2 S.C.R. 582 and Smt. Treveniben v. State of Gujarat [1989] 1 S.C.J. 383).
2004	3/11/2004	G.B. v. BULGARIA	http://hudoc.echr.coe.int/eng?i=001-61674	42346/98	S1		0 majority	ECtHR	US	C	SC	(United States v. Burns, [2001] 1 S.C.R. 283	62. The Supreme Court of Canada has held that Canadian constitutional standards did not bar extradition to the United States of America of a defendant facing the death penalty (Kindler v. Canada (Minister of Justice), [1991] 2 S.C.R. 779). However, in 2001 it changed its approach and held that if the person being extradited could face the death penalty, constitutional standards required that in all but exceptional cases assurances must be sought from the United States of America that the death penalty would not be imposed or, if imposed, would not be carried out (United States v. Burns, [2001] 1 S.C.R. 283).
2004	3/11/2004	IORGOV v. BULGARIA	http://hudoc.echr.coe.int/eng?i=001-61679	40653/98	S1		0 majority	ECtHR	Canada	C	SC	Kindler v. Canada (Minister of Justice), [1991] 2 S.C.R. 779	62. The Supreme Court of Canada has held that Canadian constitutional standards did not bar extradition to the United States of America of a defendant facing the death penalty (Kindler v. Canada (Minister of Justice), [1991] 2 S.C.R. 779). However, in 2001 it changed its approach and held that if the person being extradited could face the death penalty, constitutional standards required that in all but exceptional cases assurances must be sought from the United States of America that the death penalty would not be imposed or, if imposed, would not be carried out (United States v. Burns, [2001] 1 S.C.R. 283).
2004	3/11/2004	IORGOV v. BULGARIA	http://hudoc.echr.coe.int/eng?i=001-61679	40653/98	S1		0 majority	ECtHR	India	C	SC	Vatheeswaran v. State of Tamil Nadu [1983] 2 S.C.R. 348	60. The Supreme Court of India found that execution following inordinate delay after sentence of death violated Article 21 of the Indian Constitution which provides that "no one shall be deprived of his life or personal liberty except according to procedure established by law" and that the reasons for the delay were immaterial (Vatheeswaran v. State of Tamil Nadu [1983] 2 S.C.R. 348, Sher Singh and Others v. the State of Punjab [1983] 2 S.C.R. 582 and Smt. Treveniben v. State of Gujarat [1989] 1 S.C.J. 383).
2004	3/11/2004	IORGOV v. BULGARIA	http://hudoc.echr.coe.int/eng?i=001-61679	40653/98	S1		0 majority	ECtHR	India	C	SC	Sher Singh and Others v. the State of Punjab [1983] 2 S.C.R. 582	60. The Supreme Court of India found that execution following inordinate delay after sentence of death violated Article 21 of the Indian Constitution which provides that "no one shall be deprived of his life or personal liberty except according to procedure established by law" and that the reasons for the delay were immaterial (Vatheeswaran v. State of Tamil Nadu [1983] 2 S.C.R. 348, Sher Singh and Others v. the State of Punjab [1983] 2 S.C.R. 582 and Smt. Treveniben v. State of Gujarat [1989] 1 S.C.J. 383).
2004	3/11/2004	IORGOV v. BULGARIA	http://hudoc.echr.coe.int/eng?i=001-61679	40653/98	S1		0 majority	ECtHR	India	C	SC	Smt. Treveniben v. State of Gujarat [1989] 1 S.C.J. 383	60. The Supreme Court of India found that execution following inordinate delay after sentence of death violated Article 21 of the Indian Constitution which provides that "no one shall be deprived of his life or personal liberty except according to procedure established by law" and that the reasons for the delay were immaterial (Vatheeswaran v. State of Tamil Nadu [1983] 2 S.C.R. 348, Sher Singh and Others v. the State of Punjab [1983] 2 S.C.R. 582 and Smt. Treveniben v. State of Gujarat [1989] 1 S.C.J. 383).
2004	3/11/2004	IORGOV v. BULGARIA	http://hudoc.echr.coe.int/eng?i=001-61679	40653/98	S1		0 majority	ECtHR	US	C	SC	Knight v. Florida, 528 US 990	60. The Supreme Court of India found that execution following inordinate delay after sentence of death violated Article 21 of the Indian Constitution which provides that "no one shall be deprived of his life or personal liberty except according to procedure established by law" and that the reasons for the delay were immaterial (Vatheeswaran v. State of Tamil Nadu [1983] 2 S.C.R. 348, Sher Singh and Others v. the State of Punjab [1983] 2 S.C.R. 582 and Smt. Treveniben v. State of Gujarat [1989] 1 S.C.J. 383). 61. The United States' Supreme Court has refused to accept claims that lengthy detention on death row violated the prohibition, contained in the Eight Amendment to the Constitution of the United States of America, of cruel and unusual punishment, emphasising that the delay is due to the convicted person's own decision to make use of all possibilities to appeal (Knight v. Florida, 528 US 990). 62. The Supreme Court of Canada has held that Canadian constitutional standards did not bar extradition to the United States of America of a defendant facing the death penalty (Kindler v. Canada (Minister of Justice), [1991] 2 S.C.R. 779). However, in 2001 it changed its approach and held that if the person being extradited could face the death penalty, constitutional standards required that in all but exceptional cases assurances must be sought from the United States of America that the death penalty would not be imposed or, if imposed, would not be carried out (United States v. Burns, [2001] 1 S.C.R. 283).
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2004	2/26/2004	NACHOVA AND OTHERS v. BULGARIA	http://hudoc.echr.coe.int/eng/?i=001-61648	43577/98 and 43579/98	S1		0 majority	intervener	US	R	general	International and comparative legislation and case-law with respect to discrimination claims, notably in the European Union and its member states, as well as in the United States	153. The intervener relied on the following arguments: (i) Nothing in the Convention or Rules of Court mandates a particular standard of proof – international courts set the most appropriate standards based on their experience; (ii) The currently employed beyond-a-reasonable-doubt standard of proof, characterised by some as a 95% or more probability of fact, is more appropriate in criminal proceedings; (iii) Applied in the context of discrimination complaints in cases of deprivation of life, torture, inhuman or degrading treatment, this standard of proof was impossible to meet for the applicant: short of documented instructions or specific admissions from a state official that someone's ethnicity was a factor in treatment violating Articles 2 or 3, it was difficult to imagine what kind of evidence would meet the beyond-a-reasonable-doubt standard; (iv) Differential treatment on the basis of race and ethnicity was a singular evil and the protection against it was of special importance; (v) There was a close relationship between the effective protection of substantive rights and the required allocation and standard of proof, hence, the pressing need for a change of practice; (vi) International and comparative legislation and case-law with respect to discrimination claims, notably in the European Union and its member states, as well as in the United States, reflected a clear and growing trend of shifting the burden of proof to the perpetrator; although most of that legislation and case-law related to discrimination in the employment context, its rationale – stemming from the fact that the employer was in a stronger position than the employee – should be applied a fortiori in the more serious context of a discrimination claim on the part of an individual against the State;
2004	2/17/2004	GORZELIK AND OTHERS v. POLAND	http://hudoc.echr.coe.int/eng/?i=001-61637	no. 44158/98	GC	COSTA AND ZUPANČIČ	concurring (joint)		0 US	C	SC	In re Primus, 436 United States Reports 412 (1978)	2. Freedom of association is one of the most fundamental political freedoms and, in States that profess democratic values, the courts protect it, usually by according it constitutional status (examples include, in France: the Conseil d'Etat's judgment of 11 July 1956, Amicale des Annamites de Paris, and the decision of the Constitutional Council no. 71-44 of 16 July 1971; and, in the United States: Supreme Court judgments such as in re Primus, 436 United States Reports 412 (1978), and Roberts v. United States Jaycees, 468 United States Reports 609 (1984).
2004	2/17/2004	GORZELIK AND OTHERS v. POLAND	http://hudoc.echr.coe.int/eng/?i=001-61637	no. 44158/98	GC	COSTA AND ZUPANČIČ	concurring (joint)		0 US	C	SC	Roberts v. United States Jaycees, 468 United States Reports 609 (1984)	2. Freedom of association is one of the most fundamental political freedoms and, in States that profess democratic values, the courts protect it, usually by according it constitutional status (examples include, in France: the Conseil d'Etat's judgment of 11 July 1956, Amicale des Annamites de Paris, and the decision of the Constitutional Council no. 71-44 of 16 July 1971; and, in the United States: Supreme Court judgments such as in re Primus, 436 United States Reports 412 (1978), and Roberts v. United States Jaycees, 468 United States Reports 609 (1984).
2004	1/27/2004	KYPRIANOU v. CYPRUS	http://hudoc.echr.coe.int/eng/?i=001-61600	73797/01	S2		0 majority	ECTHR	US	C	SC	Mayberry v. Pennsylvania (400 U.S. 455, 91 S. Ct. 499, 27 L. Ed. 2nd 532 (1971))	22. In the United States the Supreme Court has established through its case-law that, for contempt based on intemperate remarks made during trial, a public hearing before another judge is required - Mayberry v. Pennsylvania (400 U.S. 455, 91 S. Ct. 499, 27 L. Ed. 2nd 532 (1971)). In Bloom v. State of Illinois (391 U.S. 194, 88 S. Ct. 1477) the same court found that persons accused of contempt are entitled to a jury trial for instances of serious contempt. The court stated inter alia: "Even when the contempt is not a direct insult to the court or the judge, it frequently represents a rejection of judicial authority, or an interference with the judicial process or with the duties of officers of the court ... If the right to jury trial is a fundamental matter in other criminal cases, which we think it is, it must also be extended to criminal contempt cases ... We cannot say that the need to further respect for judges and courts is entitled to more consideration than the interest of the individual not to be subjected to serious criminal punishment without the benefit of all the procedural protections worked out carefully over the years and deemed fundamental to our system of justice. Genuine respect, which alone can lend true dignity to our judicial establishment, will be engendered, not by the fear of unlimited authority, but by the firm administration of the law through those institutionalised procedures which have been worked out over the centuries." 35. The Government's assertion that the judges who convicted the applicant cannot be considered complainants in the proceedings and had no personal interest in the relevant offence but were simply defending the authority and standing of the court is, in the opinion of the Court, theoretical. The reality is that courts are not impersonal institutions but function through the judges who compose them. It is the judges who interpret a certain act or type of conduct as contempt of court. Whether a contempt has been committed must be assessed on the basis of the particular judges' own personal understanding, feelings, sense of dignity and standards of behaviour. Justice is offended if the judges feel that it has been. Their personal feelings are brought to bear in the process of judging whether there has been a contempt of court. Their own perception and evaluation of the facts and their own judgment are engaged in this process. For that reason, they cannot be considered to be sufficiently detached, in order to satisfy the conditions of impartiality, to determine the issues pertaining to the question of contempt in the face of their own court. The Court endorses in this respect the statement of the Supreme Court of the United States in the case of Offutt v. USA (348 U.S. 11. 75 S.Ct.11): "But judges also are human, and may, in a human way, quite unwittingly identify offence to self with obstruction to law. Accordingly, this Court has deemed it important that district judges guard against this easy confusion by not sitting themselves in judgment upon misconduct of counsel where the contempt charged is entangled with the judge's personal feeling against the lawyer".
2004	1/27/2004	KYPRIANOU v. CYPRUS	http://hudoc.echr.coe.int/eng/?i=001-61600	73797/01	S2		0 majority	ECTHR	US	C	SC	Bloom v. State of Illinois (391 U.S. 194, 88 S. Ct. 1477)	22. In the United States the Supreme Court has established through its case-law that, for contempt based on intemperate remarks made during trial, a public hearing before another judge is required - Mayberry v. Pennsylvania (400 U.S. 455, 91 S. Ct. 499, 27 L. Ed. 2nd 532 (1971)). In Bloom v. State of Illinois (391 U.S. 194, 88 S. Ct. 1477) the same court found that persons accused of contempt are entitled to a jury trial for instances of serious contempt. The court stated inter alia: "Even when the contempt is not a direct insult to the court or the judge, it frequently represents a rejection of judicial authority, or an interference with the judicial process or with the duties of officers of the court ... If the right to jury trial is a fundamental matter in other criminal cases, which we think it is, it must also be extended to criminal contempt cases ... We cannot say that the need to further respect for judges and courts is entitled to more consideration than the interest of the individual not to be subjected to serious criminal punishment without the benefit of all the procedural protections worked out carefully over the years and deemed fundamental to our system of justice. Genuine respect, which alone can lend true dignity to our judicial establishment, will be engendered, not by the fear of unlimited authority, but by the firm administration of the law through those institutionalised procedures which have been worked out over the centuries." 35. The Government's assertion that the judges who convicted the applicant cannot be considered complainants in the proceedings and had no personal interest in the relevant offence but were simply defending the authority and standing of the court is, in the opinion of the Court, theoretical. The reality is that courts are not impersonal institutions but function through the judges who compose them. It is the judges who interpret a certain act or type of conduct as contempt of court. Whether a contempt has been committed must be assessed on the basis of the particular judges' own personal understanding, feelings, sense of dignity and standards of behaviour. Justice is offended if the judges feel that it has been. Their personal feelings are brought to bear in the process of judging whether there has been a contempt of court. Their own perception and evaluation of the facts and their own judgment are engaged in this process. For that reason, they cannot be considered to be sufficiently detached, in order to satisfy the conditions of impartiality, to determine the issues pertaining to the question of contempt in the face of their own court. The Court endorses in this respect the statement of the Supreme Court of the United States in the case of Offutt v. USA (348 U.S. 11. 75 S.Ct.11): "But judges also are human, and may, in a human way, quite unwittingly identify offence to self with obstruction to law. Accordingly, this Court has deemed it important that district judges guard against this easy confusion by not sitting themselves in judgment upon misconduct of counsel where the contempt charged is entangled with the judge's personal feeling against the lawyer".
2004	1/27/2004	KYPRIANOU v. CYPRUS	http://hudoc.echr.coe.int/eng/?i=001-61600	73797/01	S2		0 majority	ECTHR	US	C	SC	Offutt v. USA (348 U.S. 11. 75 S.Ct.11)	22. In the United States the Supreme Court has established through its case-law that, for contempt based on intemperate remarks made during trial, a public hearing before another judge is required - Mayberry v. Pennsylvania (400 U.S. 455, 91 S. Ct. 499, 27 L. Ed. 2nd 532 (1971)). In Bloom v. State of Illinois (391 U.S. 194, 88 S. Ct. 1477) the same court found that persons accused of contempt are entitled to a jury trial for instances of serious contempt. The court stated inter alia: "Even when the contempt is not a direct insult to the court or the judge, it frequently represents a rejection of judicial authority, or an interference with the judicial process or with the duties of officers of the court ... If the right to jury trial is a fundamental matter in other criminal cases, which we think it is, it must also be extended to criminal contempt cases ... We cannot say that the need to further respect for judges and courts is entitled to more consideration than the interest of the individual not to be subjected to serious criminal punishment without the benefit of all the procedural protections worked out carefully over the years and deemed fundamental to our system of justice. Genuine respect, which alone can lend true dignity to our judicial establishment, will be engendered, not by the fear of unlimited authority, but by the firm administration of the law through those institutionalised procedures which have been worked out over the centuries." 35. The Government's assertion that the judges who convicted the applicant cannot be considered complainants in the proceedings and had no personal interest in the relevant offence but were simply defending the authority and standing of the court is, in the opinion of the Court, theoretical. The reality is that courts are not impersonal institutions but function through the judges who compose them. It is the judges who interpret a certain act or type of conduct as contempt of court. Whether a contempt has been committed must be assessed on the basis of the particular judges' own personal understanding, feelings, sense of dignity and standards of behaviour. Justice is offended if the judges feel that it has been. Their personal feelings are brought to bear in the process of judging whether there has been a contempt of court. Their own perception and evaluation of the facts and their own judgment are engaged in this process. For that reason, they cannot be considered to be sufficiently detached, in order to satisfy the conditions of impartiality, to determine the issues pertaining to the question of contempt in the face of their own court. The Court endorses in this respect the statement of the Supreme Court of the United States in the case of Offutt v. USA (348 U.S. 11. 75 S.Ct.11): "But judges also are human, and may, in a human way, quite unwittingly identify offence to self with obstruction to law. Accordingly, this Court has deemed it important that district judges guard against this easy confusion by not sitting themselves in judgment upon misconduct of counsel where the contempt charged is entangled with the judge's personal feeling against the lawyer".
2003	12/16/2003	COOPER v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-61549	48843/99	GC		0 majority	applicant	US	C	SC	Reid v. Covert 354 U.S. 269, at p. 1240	83. More generally, he maintained that service tribunals should have no role to play in the trial of criminal charges against service personnel in times of peace given the nature and ethos of the armed forces. Referring to a judgment of the Supreme Court of the United States (Reid v. Covert 354 U.S. 269, at p. 1240), he pointed to the armed forces' emphasis on harsh discipline and efficiency as opposed to the protection of individual rights and underlined the pressures flowing from chain-of-command connections (past or present), from rank superiority and, at the very least, from general service influences on all service personnel involved in the courts-martial process who were clearly concerned about their pay, promotion and service career prospects. These factors alone gave rise, in the applicant's opinion, to legitimate doubts about the ability of an armed forces' tribunal to try its personnel on criminal charges independently and impartially.
2003	12/4/2003	M.C. v. BULGARIA	http://hudoc.echr.coe.int/eng/?i=001-61521	39272/98	S1		0 majority	intervener	Australia	R	statute	general	147. Interights also submitted analyses of the relevant law in Australia, Canada and South Africa, concluding that lack of consent was the defining element of rape and sexual abuse in those countries and that proof of use of physical force by the perpetrator or of physical resistance by the victim was not required.
2003	12/4/2003	M.C. v. BULGARIA	http://hudoc.echr.coe.int/eng/?i=001-61521	39272/98	S1		0 majority	intervener	Canada	R	statute	general	147. Interights also submitted analyses of the relevant law in Australia, Canada and South Africa, concluding that lack of consent was the defining element of rape and sexual abuse in those countries and that proof of use of physical force by the perpetrator or of physical resistance by the victim was not required.
2003	12/4/2003	M.C. v. BULGARIA	http://hudoc.echr.coe.int/eng/?i=001-61521	39272/98	S1		0 majority	intervener	South Africa	R	statute	general	(vi) Other legal systems 147. Interights also submitted analyses of the relevant law in Australia, Canada and South Africa, concluding that lack of consent was the defining element of rape and sexual abuse in those countries and that proof of use of physical force by the perpetrator or of physical resistance by the victim was not required.

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2003	7/10/2003	MURPHY v. IRELAND	http://hudoc.echr.coe.int/eng?i=001-61202	no. 44179/98	S3		0 majority	domestic court	Canada	C	SC	general	15. The court went on to point out that the real question was whether the limitation imposed upon the various constitutional rights was proportionate to the purpose which parliament wished to achieve. Again quoting with approval previous case-law, it described the principle of proportionality as follows: "In considering whether a restriction on the exercise of rights is permitted by the Constitution the courts in this country and elsewhere have found it helpful to apply the test of proportionality, a test which contains the notions of minimal restraints on the exercise of protected rights and the exigencies of the common good in a democratic society. This is a test frequently adopted by the European Court of Human Rights and by the Supreme Court of Canada in the following terms: 'The objective of the impugned provision must be of sufficient importance to warrant overriding a constitutionally protected right. It must relate to concerns pressing and substantial in a free and democratic society. The means chosen must pass a proportionality test. They must (a) be rationally connected to the objective and not be arbitrary, unfair or based on irrational considerations; (b) impair the right as little as possible; and (c) be such that the effects on the rights are proportional to the objective.'" 23. In CIN Properties Ltd v. Rawlins [1995] 2 EGLR (Estates Gazette Law Reports) 130), where the applicants (young men) were barred from a shopping centre in Wellingborough as the private company owner CIN considered that their behaviour was a nuisance, the Court of Appeal held that CIN had the right to determine any licence which the applicants might have had to enter the centre. In giving judgment, Lord Phillips found that the local authority had not entered into any wayways agreement with the company within the meaning of section 18(1) of the Highways Act 1971 (later replaced by section 35 of the Highways Act 1980) which would have dedicated the walkways or footpaths as public rights of way and which would have given the local council the power to issue by-laws regulating the use of those rights of way. Nor was there any basis for finding an equitable licence. He also considered case-law from North America concerning the applicants' arguments for the finding of some kind of public right: "Of more obvious relevance are two North American cases. In Uston v. Resorts International Inc. (1982) N.J. 445A-2d 370, the Supreme Court of New Jersey laid down as a general proposition that when property owners open their premises – in that case a gaming casino – to the general public in pursuit of their own property interests, they have no right to exclude people unreasonably but, on the contrary, have a duty not to act in an arbitrary or discriminatory manner towards persons who come on their premises. However, that decision was based upon a previous decision of the same court in State v. Schmid (1980) N.J. 423A-2d 615, which clearly turned upon the constitutional freedoms of the First Amendment. The general proposition cited above has no application in English law. The case of Harrison v. Carswell (1975) 62 D.L.R. 3d 68 in the Supreme Court of Canada concerned the right of an employee of a tenant in a shopping centre to picket her employer in the centre, against the wishes of the owner of the centre. The majority of the Supreme Court held that she had no such right and that the owner of the centre had sufficient control or possession of the common areas to enable it to invoke the remedy of trespass. However, Laskin C.J.C., in a strong dissenting judgment held that since a shopping centre was freely accessible to the public, the public did not enter under a revocable licence subject only to the owner's whim. He said that the case involved a search for an appropriate legal framework for new social facts and – "If it was necessary to categorise the legal situation which, in my view, arises upon the opening of a shopping centre, with public areas of the kind I have mentioned (at least where the opening is not accompanied by an announced limitation on the classes of public entrants), I would say that the members of the public are privileged visitors whose privilege is revocable only upon misbehaviour (and I need not spell out here what this embraces) or by reason of unlawful activity. Such a view reconciles both the interests of the shopping centre owner and of members of the public, doing violence to neither and recognising the mutual or reciprocal commercial interests of shopping centre owner, business tenants and members of the public upon which the shopping centre is based." I have already said that this was a dissenting judgment. Nevertheless counsel [for the applicants] submitted that we should apply it in the present case. I accept that courts may have to be ready to adapt the law to new social facts where necessary. However there is no such necessity where Parliament has already made adequate provision for the new social facts in question as it has here by section 18 of the Highways Act 1971 and section 35 of the Highways Act 1980. (Harrison v. Carswell makes no mention of any similar legislation in Canada.) Where Parliament has legislated and the Council, as representing the public, chooses not to invoke the machinery which the statute provides, it is not for the courts to intervene. I would allow this appeal ... on the basis that CIN had the right, subject only to the issue under section 20 of the Race Relations Act 1976, to determine any licence the [applicants] may have had to enter the Centre."
2003	5/6/2003	APPLEBY AND OTHERS v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng?i=001-61089	44306/98	S4		0 majority	ECtHR	Canada	C	lower-level co	Harrison v. Carswell (1975) 62 D.L.R. 3d 68 R. v. Layton, 38 C.C.C. (Canadian Criminal Cases) 3d 550 (1986) (Provincial Court, Judicial District of York, Ontario)	23. In CIN Properties Ltd v. Rawlins [1995] 2 EGLR (Estates Gazette Law Reports) 130), where the applicants (young men) were barred from a shopping centre in Wellingborough as the private company owner CIN considered that their behaviour was a nuisance, the Court of Appeal held that CIN had the right to determine any licence which the applicants might have had to enter the centre. In giving judgment, Lord Phillips found that the local authority had not entered into any

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2003	5/6/2003	APPLEBY AND OTHERS v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-61080	44306/98	S4		0 majority	ECtHR	US	C	lower-level co	Uston v. Resorts International Inc. (1982) N.J. 445A.2d 370	23. In CIN Properties Ltd v. Rawlins ([1995] 2 EGLR (Estates Gazette Law Reports) 130), where the applicants (young men) were barred from a shopping centre in Wellingborough as the private company owner CIN considered that their behaviour was a nuisance, the Court of Appeal held that CIN had the right to determine any licence which the applicants might have had to enter the centre. In giving judgment, Lord Phillips found that the local authority had not entered into any walkways agreement with the company within the meaning of section 18(1) of the Highways Act 1971 (later replaced by section 35 of the Highways Act 1980) which would have dedicated the walkways or footpaths as public rights of way and which would have given the local council the power to issue by-laws regulating the use of those rights of way. Nor was there any basis for finding an equitable licence. He also considered case-law from North America concerning the applicants' arguments for the finding of some kind of public right: "Of more obvious relevance are two North American cases. In Uston v. Resorts International Inc. (1982) N.J. 445A.2d 370, the Supreme Court of New Jersey laid down as a general proposition that when property owners open their premises – in that case a gaming casino – to the general public in pursuit of their own property interests, they have no right to exclude people unreasonably but, on the contrary, have a duty not to act in an arbitrary or discriminatory manner towards persons who come on their premises. However, that decision was based upon a previous decision of the same court in State v. Schmid (1980) N.J. 423A.2d 615, which clearly turned upon the constitutional freedoms of the First Amendment. The general proposition cited above has no application in English law. The case of Harrison v. Carswell (1975) 62 D.L.R. 3d 68 in the Supreme Court of Canada concerned the right of an employee of a tenant in a shopping centre to picket her employer in the centre, against the wishes of the owner of the centre. The majority of the Supreme Court held that she had no such right and that the owner of the centre had sufficient control or possession of the common areas to enable it to invoke the remedy of trespass. However, Laskin C.J.C., in a strong dissenting judgment held that since a shopping centre was freely accessible to the public, the public did not enter under a revocable licence subject only to the owner's whim. He said that the case involved a search for an appropriate legal framework for new social facts and – "If it was necessary to categorise the legal situation which, in my view, arises upon the opening of a shopping centre, with public areas of the kind I have mentioned (at least where the opening is not accompanied by an announced limitation on the classes of public entrants), I would say that the members of the public are privileged visitors whose privilege is revocable only upon misbehaviour (and I need not spell out here what this embraces) or by reason of unlawful activity. Such a view reconciles both the interests of the shopping centre owner and of members of the public, doing violence to neither and recognising the mutual or reciprocal commercial interests of shopping centre owner, business tenants and members of the public upon which the shopping centre is based." I have already said that this was a dissenting judgment. Nevertheless counsel [for the applicants] submitted that we should apply it in the present case. I accept that courts may have to be ready to adapt the law to new social facts where necessary. However there is no such necessity where Parliament has already made adequate provision for the new social facts in question as it has here by section 18 of the Highways Act 1971 and section 35 of the Highways Act 1980. (Harrison v. Carswell makes no mention of any similar legislation in Canada.) Where Parliament has legislated and the Council, as representing the public, chooses not to invoke the machinery which the statute provides, it is not for the courts to intervene. I would allow this appeal ... on the basis that CIN had the right, subject only to the issue under section 20 of the Race Relations Act 1976, to determine any licence the [applicants] may have had to enter the Centre." III. CASES FROM OTHER JURISDICTIONS 24. The parties have referred to case-law from the United States and Canada. B. Canada
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2003	5/6/2003	APPLEBY AND OTHERS v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-61080	44306/98	54		0 majority	ECtHR	US	C	lower-level co	Citizens for Ethical Gov't v. Gwinnet Place Assoc., 392 S.E. (West's South Eastern Reporter) 2d 8 (1990)	24. The parties have referred to case-law from the United States and Canada. A. The United States 25. The First Amendment to the Federal Constitution protects freedom of speech and peaceful assembly. 26. The United States Supreme Court has accepted a general right of access to certain types of public places, such as streets and parks, known as "public fora" for the exercise of free speech (Hague v. Committee for Industrial Organisation, 307 U.S. (United States: Supreme Court Reports) 496 (1939)). In Marsh v. Alabama (326 U.S. 501, 66 S.Ct. (Supreme Court Reporter) 276, 90 L.Ed. (United States Supreme Court Reports, Lawyers' Edition) 265 (1946)), the Supreme Court also held that a privately owned corporate town (a company town) having all the characteristics of other municipalities was subject to the First Amendment rights of free speech and peaceable assembly. It has found that the First Amendment does not require access to privately owned properties, such as shopping centres, on the basis that there has to be "State action" (a degree of State involvement) for the amendment to apply (see, for example, Hudgens v. NLRB, 424 U.S. 507 (1976)). 27. The United States Supreme Court has taken the position that the First Amendment does not prevent a private shopping-centre owner from prohibiting distribution on its premises of leaflets unrelated to its own operations (Lloyd Corp. v. Tanner, 47 U.S. 551, 92 S.Ct. 2219, 33 L.Ed. 2d 131 (1972)). This did not however prevent State constitutional provisions from adopting more expansive liberties than the Federal Constitution to permit individuals reasonably to exercise free speech and petition rights on the property of a privately owned shopping centre to which the public was invited and this did not violate the property rights of the shopping-centre owner so long as any restriction did not amount to taking without compensation or contravene any other federal constitutional provisions (Pruneyard Shopping Center v. Robbins, 447 U.S. 74, 64 L.Ed. 2d 741, 100 S.Ct. 2035 (1980)). 28. Some State courts have found that a right of access to shopping centres could be derived from provisions in their State constitutions according to which individuals could initiate legislation by gathering a certain number of signatures in a petition or individuals could stand for office by gathering a certain number of signatures (see, for example, Batchelder v. Allied Stores Int'l, N.E. (West's North Eastern Reporter) 2d 590 (Massachusetts, 1983); Lloyd Corp. v. Whiffen, 849 P. (West's Pacific Reporter) 2d 446, 453-54 (Oregon, 1993); Southcenter Joint Venture v. National Democratic Policy Comm., 780 P. 2d 1282 (Washington, 1989)). Some cases found State obligations arising due to State involvement, for example, Bock v. Westminster Mall Co., 819 P. 2d 55 (Colorado, 1991) (the shopping centre was a State actor because of financial participation of public authorities in its development and the active presence of government agencies in the common areas), and Jamestown v. Beneda, 477 N.W. (West's North Western Reporter) 2d 830 (North Dakota, 1991) (where the shopping centre was owned by a public body, although leased to a private developer). 29. Other cases cited as indicating a right to reasonable access to property under State private law were State v. Shack, 277 A. (West's Atlantic Reporter) 2d 369 (New Jersey, 1971), where the court ruled that under New Jersey property law ownership of real property did not include the right to bar access to governmental services available to migrant workers, in this case a publicly funded non-profit lawyer attempting to advise migrant workers; Uston v. Resorts International, 445 A. 2d 370 (New Jersey, 1982), a New Jersey case concerning casinos where the court held that when property owners open their premises to the general public in pursuit of their own property interests they have no right to exclude people unreasonably (although it was acknowledged that the private law of most States did not require a right of reasonable access to privately owned property, p. 374); and Streetwatch v. National Railroad Passenger Corp., 875 F. Supp. (West's Federal Supplement) 1055 (Southern District of New York, 1995) concerning the ejection of homeless people from a railway station. 30. States in which courts ruled that free speech provisions in their constitutions did not apply to privately owned shopping centres included Arizona (Fiesta Mall Venture v. Mecham Recall Comm., 767 P. 2d 719 (Court of Appeals, 1989)); Connecticut (Cologne v. Westfarms Assocs, 469 A. 2d 1201 (1984)); Georgia (Citizens for Ethical Gov't v. Gwinnet Place

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2003	5/6/2003	APPLEBY AND OTHERS v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-61080	44306/98	54		0 majority	ECtHR	US	C	lower-level co	State of Minnesota v. Wicklund et al., 7 April 1998 (Court of Appeals)	24. The parties have referred to case-law from the United States and Canada. A. The United States 25. The First Amendment to the Federal Constitution protects freedom of speech and peaceful assembly. 26. The United States Supreme Court has accepted a general right of access to certain types of public places, such as streets and parks, known as "public fora" for the exercise of free speech (Hague v. Committee for Industrial Organisation, 307 U.S. (United States: Supreme Court Reports) 496 (1939)). In Marsh v. Alabama (326 U.S. 501, 66 S.Ct. (Supreme Court Reporter) 276, 90 L.Ed. (United States Supreme Court Reports, Lawyers' Edition) 265 (1946)), the Supreme Court also held that a privately owned corporate town (a company town) having all the characteristics of other municipalities was subject to the First Amendment rights of free speech and peaceable assembly. It has found that the First Amendment does not require access to privately owned properties, such as shopping centres, on the basis that there has to be "State action" (a degree of State involvement) for the amendment to apply (see, for example, Hudgens v. NLRB, 424 U.S. 507 (1976)). 27. The United States Supreme Court has taken the position that the First Amendment does not prevent a private shopping-centre owner from prohibiting distribution on its premises of leaflets unrelated to its own operations (Lloyd Corp. v. Tanner, 47 U.S. 551, 92 S.Ct. 2219, 33 L.Ed. 2d 131 (1972)). This did not however prevent State constitutional provisions from adopting more expansive liberties than the Federal Constitution to permit individuals reasonably to exercise free speech and petition rights on the property of a privately owned shopping centre to which the public was invited and this did not violate the property rights of the shopping-centre owner so long as any restriction did not amount to taking without compensation or contravene any other federal constitutional provisions (Pruneyard Shopping Center v. Robbins, 447 U.S. 74, 64 L.Ed. 2d 741, 100 S.Ct. 2035 (1980)). 28. Some State courts have found that a right of access to shopping centres could be derived from provisions in their State constitutions according to which individuals could initiate legislation by gathering a certain number of signatures in a petition or individuals could stand for office by gathering a certain number of signatures (see, for example, Batchelder v. Allied Stores Int'l, N.E. (West's North Eastern Reporter) 2d 590 (Massachusetts, 1983); Lloyd Corp. v. Whiffen, 849 P. (West's Pacific Reporter) 2d 446, 453-54 (Oregon, 1993); Southcenter Joint Venture v. National Democratic Policy Comm., 780 P. 2d 1282 (Washington, 1989)). Some cases found State obligations arising due to State involvement, for example, Bock v. Westminster Mall Co., 819 P. 2d 55 (Colorado, 1991) (the shopping centre was a State actor because of financial participation of public authorities in its development and the active presence of government agencies in the common areas), and Jamestown v. Beneda, 477 N.W. (West's North Western Reporter) 2d 830 (North Dakota, 1991) (where the shopping centre was owned by a public body, although leased to a private developer). 29. Other cases cited as indicating a right to reasonable access to property under State private law were State v. Shack, 277 A. (West's Atlantic Reporter) 2d 369 (New Jersey, 1971), where the court ruled that under New Jersey property law ownership of real property did not include the right to bar access to governmental services available to migrant workers, in this case a publicly funded non-profit lawyer attempting to advise migrant workers; Uston v. Resorts International, 445 A. 2d 370 (New Jersey, 1982), a New Jersey case concerning casinos where the court held that when property owners open their premises to the general public in pursuit of their own property interests they have no right to exclude people unreasonably (although it was acknowledged that the private law of most States did not require a right of reasonable access to privately owned property, p. 374); and Streetwatch v. National Railroad Passenger Corp., 875 F. Supp. (West's Federal Supplement) 1055 (Southern District of New York, 1995) concerning the ejection of homeless people from a railway station. 30. States in which courts ruled that free speech provisions in their constitutions did not apply to privately owned shopping centres included Arizona (Fiesta Mall Venture v. Mecham Recall Comm., 767 P. 2d 719 (Court of Appeals, 1989)); Connecticut (Cologne v. Westfarms Assocs, 469 A. 2d 1201 (1984)); Georgia (Citizens for Ethical Gov't v. Gwinnet Place
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2003	5/6/2003	APPLEBY AND OTHERS v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-61080	44306/98	S4		0 majority	ECtHR	US	C	lower-level co	Charleston Joint Venture v. McPherson, 417 S.E. 2d 544 (1992)	24. The parties have referred to case-law from the United States and Canada. A. The United States 25. The First Amendment to the Federal Constitution protects freedom of speech and peaceful assembly. 26. The United States Supreme Court has accepted a general right of access to certain types of public places, such as streets and parks, known as "public fora" for the exercise of free speech (Hague v. Committee for Industrial Organisation, 307 U.S. (United States: Supreme Court Reports) 496 (1939)). In Marsh v. Alabama (326 U.S. 501, 66 S.Ct. (Supreme Court Reporter) 276, 90 L.Ed. (United States Supreme Court Reports, Lawyers' Edition) 265 (1946)), the Supreme Court also held that a privately owned corporate town (a company town) having all the characteristics of other municipalities was subject to the First Amendment rights of free speech and peaceable assembly. It has found that the First Amendment does not require access to privately owned properties, such as shopping centres, on the basis that there has to be "State action" (a degree of State involvement) for the amendment to apply (see, for example, Hudgens v. NLRB, 424 U.S. 507 (1976)). 27. The United States Supreme Court has taken the position that the First Amendment does not prevent a private shopping-centre owner from prohibiting distribution on its premises of leaflets unrelated to its own operations (Lloyd Corp. v. Tanner, 47 U.S. 551, 92 S.Ct. 2219, 33 L.Ed. 2d 131 (1972)). This did not however prevent State constitutional provisions from adopting more expansive liberties than the Federal Constitution to permit individuals reasonably to exercise free speech and petition rights on the property of a privately owned shopping centre to which the public was invited and this did not violate the property rights of the shopping-centre owner so long as any restriction did not amount to taking without compensation or contravene any other federal constitutional provisions (Pruneyard Shopping Center v. Robbins, 447 U.S. 74, 64 L.Ed. 2d 741, 100 S.Ct. 2035 (1980)). 28. Some State courts have found that a right of access to shopping centres could be derived from provisions in their State constitutions according to which individuals could initiate legislation by gathering a certain number of signatures in a petition or individuals could stand for office by gathering a certain number of signatures (see, for example, Batchelder v. Allied Stores Int'l, N.E. (West's North Eastern Reporter) 2d 590 (Massachusetts, 1983); Lloyd Corp. v. Whiffen, 849 P. (West's Pacific Reporter) 2d 446, 453-54 (Oregon, 1993); Southcenter Joint Venture v. National Democratic Policy Comm., 780 P. 2d 1282 (Washington, 1989)). Some cases found State obligations arising due to State involvement, for example, Bock v. Westminster Mall Co., 819 P. 2d 55 (Colorado, 1991) (the shopping centre was a State actor because of financial participation of public authorities in its development and the active presence of government agencies in the common areas), and Jamestown v. Beneda, 477 N.W. (West's North Western Reporter) 2d 830 (North Dakota, 1991) (where the shopping centre was owned by a public body, although leased to a private developer). 29. Other cases cited as indicating a right to reasonable access to property under State private law were State v. Shack, 277 A. (West's Atlantic Reporter) 2d 369 (New Jersey, 1971), where the court ruled that under New Jersey property law ownership of real property did not include the right to bar access to governmental services available to migrant workers, in this case a publicly funded non-profit lawyer attempting to advise migrant workers; Uston v. Resorts International, 445 A. 2d 370 (New Jersey, 1982), a New Jersey case concerning casinos where the court held that when property owners open their premises to the general public in pursuit of their own property interests they have no right to exclude people unreasonably (although it was acknowledged that the private law of most States did not require a right of reasonable access to privately owned property, p. 374); and Streetwatch v. National Railroad Passenger Corp., 875 F. Supp. (West's Federal Supplement) 1055 (Southern District of New York, 1995) concerning the ejection of homeless people from a railway station. 30. States in which courts ruled that free speech provisions in their constitutions did not apply to privately owned shopping centres included Arizona (Fiesta Mall Venture v. Mecham Recall Comm., 767 P. 2d 719 (Court of Appeals, 1989)); Connecticut (Cologne v. Westfarms Assocs, 469 A. 2d 1201 (1984)); Georgia (Citizens for Ethical Gov't v. Gwinnet Place

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2003	5/6/2003	APPLEBY AND OTHERS v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng?i=001-61080	44306/98	S4		0 majority	ECtHR	US	C	SC	general	46. The Court would observe that, although the cases from the United States in particular illustrate an interesting trend in accommodating freedom of expression to privately owned property open to the public, the Supreme Court has refrained from holding that there is a federal constitutional right of free speech in privately owned shopping malls. Authorities from the individual States show a variety of approaches to the public- and private-law issues that have arisen in widely differing factual situations. It cannot be said that there is as yet any emerging consensus that could assist the Court in its examination in this case concerning Article 10 of the Convention.
2003	4/24/2003	AKTAŞ v. TURKEY	http://hudoc.echr.coe.int/eng?i=001-61055	no. 24351/94	S3		0 majority	Government	US	F	general	even in those countries, such as the United States, where medical science was most advanced, about 5% of all autopsies failed to establish the cause of death	267. The Government relied on the evidence given by Professor Kulusayn to the Delegates of the Commission. Professor Kulusayn had stated that in the event of death through asphyxiation by external violence, one would expect to see, in addition to tears in the alveolar septa, erythrocytes in the alveolar cavities (see paragraph 216 above). There had, however, not been any reference to the presence of erythrocytes in the report of the histopathological examination. On the other hand, if there had been such trauma that death had resulted other than from heart failure then one would have expected the autopsy to reveal the cause. However, even in those countries, such as the United States, where medical science was most advanced, about 5% of all autopsies failed to establish the cause of death (see paragraph 218 above).
2003	3/12/2003	ÖCALAN v. TURKEY	http://hudoc.echr.coe.int/eng?i=001-60979	46221/99	S1		0 majority	applicant	Canada	C	SC	US v Burns (2001) SCC 7	177. Developments in international and comparative law showed that the death penalty could also be seen to be contrary to international law. In this respect reference was made, <i>inter alia</i>, to a judgment of the South African Constitutional Court in which it was held that the death penalty was contrary to the South African Constitution's prohibition on cruel, inhuman or degrading treatment (S v Makwanyane, (1995) (6) Butterworths Constitutional Law Reports 665) and to the judgment of the Canadian Supreme Court in US v Burns (2001) SCC 7, where that Court, in a case concerning the extradition of a fugitive to the United States of America, considered capital punishment to amount to cruel and unusual punishment. The United Nations Human Rights Committee had also held that execution of a death sentence constituted cruel and inhuman treatment contrary to Article 6 of the International Covenant on Civil and Political Rights (see paragraph 60 above). Reference was also made to similar statements by the Hungarian Constitutional Court and the Constitutional Courts of Ukraine, Albania, Lithuania and the Republic of Srpska.
2003	3/12/2003	ÖCALAN v. TURKEY	http://hudoc.echr.coe.int/eng?i=001-60979	46221/99	S1		0 majority	applicant	New Zealand	C	lower-level co	Reg. v. Hartley, New Zealand Law Reports 1978, vol. 2, p. 199	83. Relying on the case-law of various domestic courts (the House of Lord's decision in the case of R. v. Horseferry Road Magistrates' Court, ex parte Bennett, Appeals Court 1994, vol. 1, p. 42; the decision of the Court of Appeal of New Zealand in the case of Reg. v. Hartley, New Zealand Law Reports 1978, vol. 2, p. 199; the decision of the United States Court of Appeals for the Second Circuit in the case of United States v. Toscanino (1974) 555 F. 2d. 267, 268; the decision of 28 May 2001 of the Constitutional Court of South Africa in the case of Mohammed and Dalvie v. The President of the Republic of South Africa and others, CCT 17/01, 2001 (3) SA 893 CC) the applicant maintained that the arrest procedures that had been followed did not comply with Kenyan law or the rules established by international law, that his arrest amounted to an abduction and that his detention and trial, which were based on that unlawful arrest, had to be regarded as null and void.
2003	3/12/2003	ÖCALAN v. TURKEY	http://hudoc.echr.coe.int/eng?i=001-60979	46221/99	S1		0 majority	applicant	South Africa	C	CC	S v Makwanyane, (1995) (6) Butterworths Constitutional Law Reports 665	177. Developments in international and comparative law showed that the death penalty could also be seen to be contrary to international law. In this respect reference was made, <i>inter alia</i>, to a judgment of the South African Constitutional Court in which it was held that the death penalty was contrary to the South African Constitution's prohibition on cruel, inhuman or degrading treatment (S v Makwanyane, (1995) (6) Butterworths Constitutional Law Reports 665) and to the judgment of the Canadian Supreme Court in US v Burns (2001) SCC 7, where that Court, in a case concerning the extradition of a fugitive to the United States of America, considered capital punishment to amount to cruel and unusual punishment. The United Nations Human Rights Committee had also held that execution of a death sentence constituted cruel and inhuman treatment contrary to Article 6 of the International Covenant on Civil and Political Rights (see paragraph 60 above). Reference was also made to similar statements by the Hungarian Constitutional Court and the Constitutional Courts of Ukraine, Albania, Lithuania and the Republic of Srpska.
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2003	3/12/2003	ÖCALAN v. TURKEY	http://hudoc.echr.coe.int/eng?i=001-60979	no. 46221/99	S1		0 majority	applicant	US	C	lower-level co	United States v. Toscanino (1974) 555 F. 2d. 267, 268	83. Relying on the case-law of various domestic courts (the House of Lord's decision in the case of R. v. Horseferry Road Magistrates' Court, ex parte Bennett, Appeals Court 1994, vol. 1, p. 42; the decision of the Court of Appeal of New Zealand in the case of Reg. v. Hartley, New Zealand Law Reports 1978, vol. 2, p. 199; the decision of the United States Court of Appeals for the Second Circuit in the case of United States v. Toscanino (1974) 555 F. 2d. 267, 268; the decision of 28 May 2001 of the Constitutional Court of South Africa in the case of Mohammed and Dalvie v. The President of the Republic of South Africa and others, CCT 17/01, 2001 (3) SA 893 CC) the applicant maintained that the arrest procedures that had been followed did not comply with Kenyan law or the rules established by international law, that his arrest amounted to an abduction and that his detention and trial, which were based on that unlawful arrest, had to be regarded as null and void. 177. Developments in international and comparative law showed that the death penalty could also be seen to be contrary to international law. In this respect reference was made, <i>inter alia</i>, to a judgment of the South African Constitutional Court in which it was held that the death penalty was contrary to the South African Constitution's prohibition on cruel, inhuman or degrading treatment (S v Makwanyane, (1995) (6) Butterworths Constitutional Law Reports 665) and to the judgment of the Canadian Supreme Court in US v Burns (2001) SCC 7, where that Court, in a case concerning the extradition of a fugitive to the United States of America, considered capital punishment to amount to cruel and unusual punishment. The United Nations Human Rights Committee had also held that execution of a death sentence constituted cruel and inhuman treatment contrary to Article 6 of the International Covenant on Civil and Political Rights (see paragraph 60 above). Reference was also made to similar statements by the Hungarian Constitutional Court and the Constitutional Courts of Ukraine, Albania, Lithuania and the Republic of Srpska.
2003	2/13/2003	REFAH PARTISI (THE WELFARE PARTY) AND OTHERS v. TURKEY	http://hudoc.echr.coe.int/eng?i=001-60936	nos. 41340/98, 41342/98	GC		0 majority	applicant	US	C	SC	general	14. On 4 August 1997 Refah's representatives filed their defence submissions, in which they relied on international human-rights protection instruments, including the Convention, pointing out that these instruments formed part of Turkish written law. They further referred to the case-law of the Commission, which had expressed the opinion that Article 11 of the Convention had been breached in the cases concerning the United Communist Party of Turkey and the Socialist Party, and to the case-law of the Court and the Commission on the restrictions on freedom of expression and freedom of association authorised by the second paragraphs of Articles 10 and 11 of the Convention. They contended that the dissolution of Refah was not prompted by a pressing social need and was not necessary in a democratic society. Nor, according to Refah's representatives, was their party's dissolution justified by application of the "clear and present danger" test laid down by the Supreme Court of the United States of America.

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2002	11/5/2002	ALLAN v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-60713	48539/99	S4		0 majority	ECtHR	Australia	C	SC	R. v. Swaffield and Pavic ([1998] High Court of Australia	8. Australian cases 33. In <i>R. v. Swaffield and Pavic</i> ([1998] High Court of Australia 1), the accused Swaffield was one of the targets of an undercover operation aimed at identifying drug suppliers and also suspected of arson. An undercover officer held a conversation with the accused pretending that his own brother-in-law was suspected of arson and the accused made admissions of his own involvement in a fire. The High Court of Australia found that the admissions should not have been admitted at trial as they had been elicited by a police officer in clear breach of the accused's right to choose whether or not to speak. The accused Pavic had been questioned by the police about a disappeared person and remained silent. After his release from custody, Pavic made incriminatory statements to a friend called C., who had been fitted with a listening device by the police. The High Court found that there was no impropriety involved and the admissions were reliable and should be admitted. C. had not been a police officer or a person in authority over Pavic. The fact that C. was regarded as trustworthy by Pavic was an indicator of the reliability of the admissions; a serious crime had been committed and there was no public interest to be served by rejecting the admissions. Kirby J stated: "Subterfuge, ruses and tricks may be lawfully employed by the police, acting in the public interest. ... The critical question is not whether the accused has been tricked and secretly recorded. It is not even whether the trick has resulted in self-incrimination, electronically preserved to do great damage to the accused at trial. It is whether the trick may be thought to involve such unfairness to the accused or otherwise to be so contrary to public policy that a court should exercise its discretion to exclude the evidence notwithstanding its high probative value. In the case of covertly obtained confessions, the line of forbidden conduct will be crossed if the confession may be said to have been elicited by police [or by a person acting as an agent of the police] in unfair derogation of the suspect's right to exercise a free choice to speak or to be silent."
2002	11/5/2002	ALLAN v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-60713	48539/99	S4		0 majority	ECtHR	Canada	C	SC	R. v. Hebert ([1990] 2 Supreme Court Reports 151	A. Canadian cases 30. In <i>R. v. Hebert</i> ([1990] 2 Supreme Court Reports 151), the accused had relied on his right to silence when questioned by the police. He had then been placed in a cell with an undercover police officer to whom he made statements implicating himself in a robbery. The Supreme Court held that the statements of the undercover officer should have been excluded at trial. McLachlin J said, inter alia: "The common-law rules related to the right to silence suggest that the scope of the right in the pre-trial period must be based on the fundamental concept of the suspect's right to choose whether to speak to the authorities or remain silent ... When the police use subterfuge to interrogate an accused after he had advised them that he does not wish to speak to them, they are improperly eliciting information that they were unable to obtain by respecting the suspect's constitutional right to silence: the suspect's rights are breached because he has been deprived of his choice. However, in the absence of eliciting behaviour on the part of the police, there is no violation of the accused's right to choose whether or not to speak to the police. If the suspect speaks, it is by his or her own choice, and he or she must be taken to have accepted the risk that the recipient may inform the police." 31. In <i>R. v. Broyles</i> ([1991] 3 Supreme Court Reports 595), B. was arrested and held for questioning in respect of a suspicious death. He had spoken to a lawyer who had advised him to remain silent. The police arranged for a friend to visit B. in custody while carrying a body-pack recording device. The friend questioned B. about his involvement in the murder and in the words of the Supreme Court "sought to exploit the [accused's] trust in him as a friend to undermine the [accused's] confidence in his lawyer's advice to remain silent and to create a mental state in which the [accused] was more likely to talk". The Supreme Court held that it was wrong to admit the evidence obtained by the friend that the accused knew the time of the deceased's death. According to the headnote of the reported case: "The right to silence is triggered when the accused is subjected to the coercive powers of the State through his or her detention. The right protects against the use of State power to subvert the right of an accused to choose whether or not to speak to the authorities. Where the informer who allegedly acted to subvert the right to silence of the accused is not obviously a State agent, the analysis must focus on both the relationship between the informer and the State and the relationship between the informer and the accused. The right to silence will only be infringed where the informer was acting as an agent of the State at the time the accused made the statement and where it was the informer who caused the accused to make the statement. Accordingly two distinct inquiries are required. First ... was the evidence obtained by an agent of the State? Second, was the evidence elicited? The right to silence ... will be violated only if both questions are answered in the affirmative. Applying the above principles to the facts of this case, it is clear that the informer was an agent of the State for the purposes of the right to silence in section 7 [of the Canadian Charter of Rights and Freedoms]. The conversation here would not have occurred or would have been materially different but for the authorities' intervention. Furthermore, the impugned statement was elicited. Parts of the conversation were functionally the equivalent of an interrogation and the appellant's trust in the informer as a friend was used to undermine the appellant's confidence in his lawyer's advice to remain silent and to create a mental state in which the appellant was more likely to talk." 32. In <i>R. v. Liew</i> ([1999] 3 Supreme Court Reports 227), the accused was arrested in connection with a cocaine deal and the police also pretended to arrest the undercover officer who negotiated the transaction. They were placed together in an interview room where the accused initiated a conversation referring to the arrest. The undercover officer asked the accused: "What happened?" and stated: "Heard they got my fingerprints on the dope." The accused replied: "See and me too." The Supreme Court found nothing to suggest that the exchange was the functional equivalent of an interrogation. It was of no consequence that the police officer was engaged in a subterfuge, permitted himself to be misidentified or lied, so long as the responses were not actively elicited or the result of interrogation. In this case the conversation had been initiated by the accused and the police officer picked up the flow and content of the conversation without directing or redirecting it in a sensitive area. Nor was there any relationship of trust between the accused and the officer or any
2002	11/5/2002	ALLAN v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-60713	48539/99	S4		0 majority	ECtHR	Canada	C	SC	R. v. Broyles ([1991] 3 Supreme Court Reports 595	A. Canadian cases 30. In <i>R. v. Hebert</i> ([1990] 2 Supreme Court Reports 151), the accused had relied on his right to silence when questioned by the police. He had then been placed in a cell with an undercover police officer to whom he made statements implicating himself in a robbery. The Supreme Court held that the statements of the undercover officer should have been excluded at trial. McLachlin J said, inter alia: "The common-law rules related to the right to silence suggest that the scope of the right in the pre-trial period must be based on the fundamental concept of the suspect's right to choose whether to speak to the authorities or remain silent ... 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The conversation here would not have occurred or would have been materially different but for the authorities' intervention. Furthermore, the impugned statement was elicited. Parts of the conversation were functionally the equivalent of an interrogation and the appellant's trust in the informer as a friend was used to undermine the appellant's confidence in his lawyer's advice to remain silent and to create a mental state in which the appellant was more likely to talk." 39. The police used H. not as an inanimate listening post but as a means of conducting surreptitious interrogation, circumventing the protections for a suspect who has availed himself of legal advice and exercised the right to silence [referred to by the Canadian authorities] finding that this constituted a violation of the right to silence. Hebert and Broyles, both cited above]. In particular, on 28 June 1995 the applicant was removed from prison to a police station and interrogated for a day as a "softening-up" process prior to his being questioned by H. The applicant's conviction was based substantially, if not decisively, on the evidence put forward by H. who was a persistent criminal under threat of sentencing which would depend on his role in the applicant's trial. The one and only alleged admission by the applicant of presence at the scene of the murder was not recorded but rested solely on the H.'s word. This was in all circumstances unfair and oppressive. The applicant further disputed that he suspected H.'s role in this connection or could in any way be regarded as waiving his right to complain about it. 41. Concerning H.'s testimony, the Government pointed out that questions of admissibility of evidence are for domestic courts. Issues of H.'s credibility and reliability were fully argued and explained to the jury which was in a good position to determine whether any findings of fact could be drawn from his statements. The applicant's
2002	11/5/2002	DEMUTH v. SWITZERLAND	http://hudoc.echr.coe.int/eng/?i=001-60724	38743/97	S2		0 majority	applicant	US	F	general	The applicant considered the measure unnecessary, pointing out that specialised programmes were common in Germany and the United States,	21. The applicant accepted that there was no right in principle to broadcast. However, he considered that the authorities' refusal to grant him a licence was arbitrary and discriminatory. In this respect, he noted that the Government no longer relied before the Court on certain arguments, for instance that Car TV AG would bring about the "segmentation and atomisation" of society. Indeed, the Government's conclusion that a democratic debate was primarily made possible by providing a comprehensive programme was neither proved by the facts nor by research, nor even by anyone's experience. In any event, cable networks were already broadcasting a large number of specialised programmes. Such programmes were very common in Germany and in the United States, yet no research had proved that democratic debate had been disrupted in these countries. In Switzerland in 1997 there were an average of forty-five television and fifty FM radio programmes of various types, thus bringing about integration and a communication culture resulting from the existing media taken as a whole. Nor could it be said that Car TV AG was aiming primarily at entertaining the viewer. The application for a licence made it clear that the programme would have been based on a strictly journalistic and pluralistic approach, and would also have provided information on such matters as environmental issues. 38. The applicant considered the measure unnecessary, pointing out that specialised programmes were common in Germany and the United States, without democratic debate having been disrupted in these countries. Even in Switzerland the government had approved a licence for a television channel reporting exclusively on the weather. The applicant's programme went beyond mere entertainment and would have provided information on such matters as environmental issues.

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For the purpose of ascertaining the validity of a marriage under Australian law the question whether a person is a man or a woman is to be determined as of the date of marriage..." — 82. While it also remains the case that a transsexual cannot acquire all the biological characteristics of the assigned sex (Sheffield and Horsham, cited above, p. 2028, § 56), the Court notes that with increasingly sophisticated surgery and types of hormonal treatments, the principal unchanging biological aspect of gender identity is the chromosomal element. It is known however that chromosomal anomalies may arise naturally (for example, in cases of intersex conditions where the biological criteria at birth are not congruent) and in those cases, some persons have to be assigned to one sex or the other as seems most appropriate in the circumstances of the individual case. It is not apparent to the Court that the chromosomal element, amongst all the others, must inevitably take on decisive significance for the purposes of legal attribution of gender identity for transsexuals (see the dissenting opinion of Thorpe LJ in <i>Bellinger v. Bellinger</i> cited in paragraph 52 above; and the judgment of Chisholm J in the Australian case, <i>Re Kevin</i>, cited in paragraph 55 above). 83. The Court is not persuaded therefore that the state of medical science or scientific knowledge provides any determining argument as regards the legal recognition of transsexuals. 4. The state of any European and international consensus 84. Already at the time of the Sheffield and Horsham case, there was an emerging consensus within Contracting States in the Council of Europe on providing legal recognition following gender re-assignment (see § 35 of that judgment). The latest survey submitted by Liberty in the present case shows a continuing international trend towards legal
2002	7/11/2002	CHRISTINE GOODWIN v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-60596	28957/95	GC		0 majority	Intervener	Canada	R	statute	general	56. In its follow up study submitted on 17 January 2002, Liberty noted that while there had not been a statistical increase in States giving full legal recognition of gender re-assignment within Europe, information from outside Europe showed developments in this direction. For example, there had been statutory recognition of gender re-assignment in Singapore, and a similar pattern of recognition in Canada, South Africa, Israel, Australia, New Zealand and all except two of the States of the United States of America. It cited in particular the cases of Attorney-General v. Otahuhu Family Court [1995] 1 NZLR 60 and Re Kevin [2001] FamCA 1074 where in New Zealand and Australia transsexual persons' assigned sex was recognised for the purposes of validating their marriages: In the latter case, Mr Justice Chisholm held: "I see no basis in legal principle or policy why Australian law should follow the decision in Corbett. To do so would, I think, create indefensible inconsistencies between Australian marriage law and other Australian laws. It would take the law in a direction that is generally contrary to development in other countries. It would perpetuate a view that flies in the face of current medical understanding and practice. Most of all, it would impose indefensible suffering on people who have already had more than their share of difficulty, with no benefit to society... ...Because the words 'man' and 'woman' have their ordinary contemporary meaning, there is no formulaic solution to determining the sex of an individual for the purpose of the law of marriage. That is, it cannot be said as a matter of law that the question in a particular case will be determined by applying a single criterion, or limited list of criteria. Thus it is wrong to say that a person's sex depends on any single factor, such as chromosomes or genital sex; or some limited range of factors, such as the state of the person's gonads, chromosomes or genitals (whether at birth or at some other time). Similarly, it would be wrong in law to say that the question can be resolved by reference solely to the person's psychological state, or by identifying the person's 'brain sex'. To determine a person's sex for the law of marriage, all relevant matters need to be considered. I do not seek to state a complete list or suggest that any factors necessarily have more importance than others. However the relevant matters include, in my opinion, the person's biological and physical characteristics at birth (including gonads, genitals and chromosomes); the person's life experiences, including the sex in which he or she was brought up and the person's attitude to it; the person's self-perception as a man or a woman; the extent to which the person has functioned in society as a man or a woman; any hormonal, surgical or other medical sex re-assignment treatments the person has undergone, and the consequences of such treatment; and the person's biological, psychological and physical characteristics at the time of the marriage... For the purpose of ascertaining the validity of a marriage under Australian law the question whether a person is a man or a woman is to be determined as of the date of marriage..."
2002	7/11/2002	CHRISTINE GOODWIN v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-60596	28957/95	GC		0 majority	Intervener	Israel	R	statute	general	56. In its follow up study submitted on 17 January 2002, Liberty noted that while there had not been a statistical increase in States giving full legal recognition of gender re-assignment within Europe, information from outside Europe showed developments in this direction. For example, there had been statutory recognition of gender re-assignment in Singapore, and a similar pattern of recognition in Canada, South Africa, Israel, Australia, New Zealand and all except two of the States of the United States of America. It cited in particular the cases of Attorney-General v. Otahuhu Family Court [1995] 1 NZLR 60 and Re Kevin [2001] FamCA 1074 where in New Zealand and Australia transsexual persons' assigned sex was recognised for the purposes of validating their marriages: In the latter case, Mr Justice Chisholm held: "I see no basis in legal principle or policy why Australian law should follow the decision in Corbett. To do so would, I think, create indefensible inconsistencies between Australian marriage law and other Australian laws. It would take the law in a direction that is generally contrary to development in other countries. It would perpetuate a view that flies in the face of current medical understanding and practice. Most of all, it would impose indefensible suffering on people who have already had more than their share of difficulty, with no benefit to society... ...Because the words 'man' and 'woman' have their ordinary contemporary meaning, there is no formulaic solution to determining the sex of an individual for the purpose of the law of marriage. That is, it cannot be said as a matter of law that the question in a particular case will be determined by applying a single criterion, or limited list of criteria. Thus it is wrong to say that a person's sex depends on any single factor, such as chromosomes or genital sex; or some limited range of factors, such as the state of the person's gonads, chromosomes or genitals (whether at birth or at some other time). Similarly, it would be wrong in law to say that the question can be resolved by reference solely to the person's psychological state, or by identifying the person's 'brain sex'. To determine a person's sex for the law of marriage, all relevant matters need to be considered. I do not seek to state a complete list or suggest that any factors necessarily have more importance than others. However the relevant matters include, in my opinion, the person's biological and physical characteristics at birth (including gonads, genitals and chromosomes); the person's life experiences, including the sex in which he or she was brought up and the person's attitude to it; the person's self-perception as a man or a woman; the extent to which the person has functioned in society as a man or a woman; any hormonal, surgical or other medical sex re-assignment treatments the person has undergone, and the consequences of such treatment; and the person's biological, psychological and physical characteristics at the time of the marriage... For the purpose of ascertaining the validity of a marriage under Australian law the question whether a person is a man or a woman is to be determined as of the date of marriage..."

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2002	7/11/2002	CHRISTINE GOODWIN v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-60596	28957/95	GC		0 majority	intervener	New Zealand	C	lower-level co	Attorney-General v. Otahuhu Family Court [1995] 1 NZLR 60	56. In its follow up study submitted on 17 January 2002, Liberty noted that while there had not been a statistical increase in States giving full legal recognition of gender re-assignment within Europe, information from outside Europe showed developments in this direction. For example, there had been statutory recognition of gender re-assignment in Singapore, and a similar pattern of recognition in Canada, South Africa, Israel, Australia, New Zealand and all except two of the States of the United States of America. It cited in particular the cases of Attorney-General v. Otahuhu Family Court [1995] 1 NZLR 60 and Re Kevin [2001] FamCA 1074 where in New Zealand and Australia transsexual persons' assigned sex was recognised for the purposes of validating their marriages. In the latter case, Mr Justice Chisholm held: "I see no basis in legal principle or policy why Australian law should follow the decision in Corbett. To do so would, I think, create indefensible inconsistencies between Australian marriage law and other Australian laws. It would take the law in a direction that is generally contrary to development in other countries. It would perpetuate a view that flies in the face of current medical understanding and practice. Most of all, it would impose indefensible suffering on people who have already had more than their share of difficulty, with no benefit to society... ...Because the words 'man' and 'woman' have their ordinary contemporary meaning, there is no formulaic solution to determining the sex of an individual for the purpose of the law of marriage. That is, it cannot be said as a matter of law that the question in a particular case will be determined by applying a single criterion, or limited list of criteria. Thus it is wrong to say that a person's sex depends on any single factor, such as chromosomes or genital sex; or some limited range of factors, such as the state of the person's gonads, chromosomes or genitals (whether at birth or at some other time). Similarly, it would be wrong in law to say that the question can be resolved by reference solely to the person's psychological state, or by identifying the person's 'brain sex'. To determine a person's sex for the law of marriage, all relevant matters need to be considered. I do not seek to state a complete list or suggest that any factors necessarily have more importance than others. However the relevant matters include, in my opinion, the person's biological and physical characteristics at birth (including gonads, genitals and chromosomes), the person's life experiences, including the sex in which he or she was brought up and the person's attitude to it; the person's self-perception as a man or a woman; the extent to which the person has functioned in society as a man or a woman; any hormonal, surgical or other medical sex re-assignment treatments the person has undergone, and the consequences of such treatment; and the person's biological, psychological and physical characteristics at the time of the marriage... For the purpose of ascertaining the validity of a marriage under Australian law the question whether a person is a man or a woman is to be determined as of the date of marriage..."
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2002	5/7/2002	MCVICAR v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-60450	46311/99	S1		0 majority	ECtHR	US	C	US	New York Times v. Sullivan ([1964] 376 US 254	8. The United States of America 27. In New York Times v. Sullivan ([1964] 376 US 254), the Supreme Court of the United States ruled that a State could not, under the First and Fourteenth Amendments to the United States Constitution, award damages to a public official for defamatory falsehood relating to his official conduct unless he proved "actual malice". This was shown where the statement concerned had been made with knowledge of its falsity or with reckless disregard as to whether it was true or false. In delivering the judgment of the court, Mr Justice Brennan commented: "Allowance of the defence of truth, with the burden of proving it on the defendant, does not mean that only false speech will be deterred. Even courts accepting this defence as an adequate safeguard have recognised the difficulties of adducing legal proof that the alleged libel was true in all its factual particulars. ... Under such a rule, would-be critics of official conduct may be deterred from voicing their criticism, even though it is believed to be true and even though it is in fact true, because of doubt whether it can be proved in court or fear of the expense of having to do so. They tend to make only statements which 'steer far wider of the unlawful zone.'" 65. He argued that unrepresented defendants in defamation actions would often be at a material disadvantage as against their opponents, bearing in mind the complexity of law and procedure in the area and the fact that they carried the burden of proving the truth of the allegations at issue. This prospect might deter writers and publishers from publishing material of public interest which was in fact true. In support of this argument, the applicant cited a passage from the judgment of the Supreme Court of the United States in New York Times v. Sullivan (see paragraph 27 above). Alternatively, such a prospect might lead a writer or publisher to lose a defamation action which he or she would otherwise have won, which could in turn lead to an injunction and even closure or bankruptcy.
2002	4/29/2002	PRETTY v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-60448	no. 2346/02	s4		0 majority	intervener	Australia	F		0	The situation in the Netherlands indicated that in the absence of regulation slightly less than 1% of deaths were due to doctors having ended the life of a patient without the latter explicitly requesting this (non-voluntary euthanasia). Similar studies indicated a figure of 3.1% in Belgium and 3.5% in Australia. 27. As regarded public-policy issues, they submitted that whatever the legal position, voluntary euthanasia and assisted dying took place. It was well known in England and Wales that patients asked for assistance to die and that members of the medical profession and relatives provided that assistance, notwithstanding that it might be against the criminal law and in the absence of any regulation. As recognised by the Netherlands government, therefore, the criminal law did not prevent voluntary euthanasia or assisted dying. The situation in the Netherlands indicated that in the absence of regulation slightly less than 1% of deaths were due to doctors having ended the life of a patient without the latter explicitly requesting this (non-voluntary euthanasia). Similar studies indicated a figure of 3.1% in Belgium and 3.5% in Australia.
2002	4/29/2002	PRETTY v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-60448	no. 2346/02	s4		0 majority	domestic court	Canada	C		Rodriguez v. Attorney General of Canada [1994] 2 LRC 136.	14. The applicant appealed to the House of Lords. They dismissed her appeal on 29 November 2001 and upheld the judgment of the Divisional Court. In giving the leading judgment in The Queen on the Application of Mrs Dianne Pretty (Appellant) v. Director of Public Prosecutions (Respondent) and Secretary of State for the Home Department (Interested Party), Lord Bingham of Cornhill held: 17. Counsel for Mrs Pretty submitted that this Article conferred a right to self-determination: see X and Y v. Netherlands (1985) 8 EHRR 235; Rodriguez v. Attorney General of Canada [1994] 2 LRC 136; In re A (Children) [Conjoined Twins: Surgical Separation] [2001] Fam 147. This right embraces a right to choose when and how to die so that suffering and indignity can be avoided. Section 2(1) of the 1961 Act interferes with this right of self-determination: it is therefore for the United Kingdom to show that the interference meets the Convention tests of legality, necessity, responsiveness to pressing social need and proportionality: see R. v. A. (No. 2) [2001] 2 WLR 1546; Johansen v. Norway (1996) 23 EHRR 33; R. (P) v. Secretary of State for the Home Department [2001] 1 WLR 2002. Where the interference is with an intimate part of an individual's private life, there must be particularly serious reasons to justify the interference: Smith and Grady v. United Kingdom (1999) 29 EHRR 493 at p. 530, para. 89. The court must in this case rule whether it could be other than disproportionate for the Director to refuse to give the undertaking sought and, in the case of the Secretary of State, whether the interference with Mrs Pretty's right to self-determination is proportionate to whatever legitimate aim the prohibition on assisted suicide pursues. Counsel placed particular reliance on certain features of Mrs Pretty's case: her mental competence, the frightening prospect which faces her, her willingness to commit suicide if she were able, the imminence of death, the absence of harm to anyone else, the absence of far-reaching implications if her application were granted. Counsel suggested that the blanket prohibition in section 2(1), applied without taking account of particular cases, is wholly disproportionate, and the materials relied on do not justify it. Reference was made to R. v. United Kingdom (1983) 33 DR 270 and Sanles v. Spain [2001] EHLR 348. 18. The Secretary of State questioned whether Mrs Pretty's rights under Article 8 were engaged at all, and gave a negative answer. He submitted that the right to private life under Article 8 relates to the manner in which a person conducts his life, not the manner in which he departs from it. Any attempt to base a right to die on Article 8 founders on exactly the same objection as the attempt based on Article 2, namely, that the alleged right would extinguish the very benefit on which it is supposedly based. Article 8 protects the physical, moral and psychological integrity of the individual, including rights over the individual's own body, but there is nothing to suggest that it confers a right to decide when or how to die. The Secretary of State also submitted that, if it were necessary to do so, section 2(1) of the 1961 Act and the current application of it could be fully justified on the merits. He referred to the margin of judgment accorded to member States, the consideration which has been given to these questions in the United Kingdom and the broad consensus among Convention countries. Attention was drawn to Laskey, Jaggard and Brown v. United Kingdom (1997) 24 EHRR 39 in which the criminalisation of consensual acts of injury was held to be justified; it was suggested that the justification for criminalising acts of consensual killing or assisted suicide must be even stronger. 19. The most detailed and erudite discussion known to me of the issues in the present appeal is to be found in the judgments of the Supreme Court of Canada in Rodriguez v. Attorney General of Canada [1994] 2 LRC 136. The appellant in that case suffered from a disease legally indistinguishable from that which afflicts Mrs Pretty; she was similarly disabled; she sought an order which would allow a qualified medical practitioner to set up technological means by which she might, by her own hand but with that assistance from the practitioner, end her life at a time of her choosing. While suicide in Canada was not a crime, section 241(b) of the Criminal Code was in terms effectively identical to section 2(1) of the 1961 Act. The appellant based her claims on the Canadian Charter of Rights and Freedoms which, so far as relevant, included the following sections: (1) The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society. (7) Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice. (12) Everyone has the right not to be subjected to any cruel and unusual treatment or punishment. (15) (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without
2002	3/21/2002	NIKULA v. FINLAND	http://hudoc.echr.coe.int/eng/?i=001-60333	31611/96	S4 (former)		0 majority	intervener	Australia	R	general	survey	22. The intervenor concluded from its survey of a number of member States of the Council of Europe (i.e. Belgium, Denmark, France, Italy, the Netherlands, Spain, Sweden and the United Kingdom) as well as of certain other States (Australia, Canada and South Africa) that a great majority of them accord a privilege to lawyers for statements they make while representing clients in court. Although the extent and application of such privilege may differ from jurisdiction to jurisdiction, every surveyed State recognises that a lawyer's ability to express himself or herself is closely linked to counsel's obligation to defend the client. The privilege for allegedly defamatory statements allows counsel to argue as effectively as possible, relying even on facts which they cannot be sure are true. For example, in the Netherlands allegations that the prosecutor has abused his or her discretion are regularly made by defence lawyers. Potentially relevant allegations which are entirely unsubstantiated are simply disregarded.
2002	3/21/2002	NIKULA v. FINLAND	http://hudoc.echr.coe.int/eng/?i=001-60333	31611/96	S4 (former)		0 majority	intervener	Canada	R	general	survey	22. The intervenor concluded from its survey of a number of member States of the Council of Europe (i.e. Belgium, Denmark, France, Italy, the Netherlands, Spain, Sweden and the United Kingdom) as well as of certain other States (Australia, Canada and South Africa) that a great majority of them accord a privilege to lawyers for statements they make while representing clients in court. Although the extent and application of such privilege may differ from jurisdiction to jurisdiction, every surveyed State recognises that a lawyer's ability to express himself or herself is closely linked to counsel's obligation to defend the client. The privilege for allegedly defamatory statements allows counsel to argue as effectively as possible, relying even on facts which they cannot be sure are true. For example, in the Netherlands allegations that the prosecutor has abused his or her discretion are regularly made by defence lawyers. Potentially relevant allegations which are entirely unsubstantiated are simply disregarded.
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2002	2/26/2002	FRETTE v. FRANCE	http://hudoc.echr.coe.int/eng/?i=001-60168	36515/97	s3 (former)		0 majority	applicant	Canada	R	general	all the federal entities allowed single people to adopt	The applicant further noted that there was no consensus in democratic societies on the need for single homosexuals to be barred totally from adopting. In Canada all the federal entities allowed single people to adopt and none of them prohibited homosexuals from doing so. Only one State in the United States had legislation that expressly prohibited persons who would otherwise be eligible to adopt from adopting a child if they were homosexuals, namely the State of Florida, which also prohibited certain forms of sexual behaviour in private between consenting adults, whether different sexes or the same sex. A large majority of the forty-three Council of Europe member States allowed adoption by unmarried individuals, if only under exceptional circumstances, and did not totally rule out in either their legislation or their case-law the possibility for homosexuals to adopt. The applicant had found as a result of his research that there were only two countries, France and Sweden, in which case-law had established such a prohibition in respect of adoption by single persons. He had also found that in January 2001 a Swedish government committee had recommended that legislation should be introduced to overturn the prohibition on adoption by homosexuals which had been instituted by a judgment of the Supreme Administrative Court of 1993.

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2002	2/26/2002	FRETTÉ v. FRANCE	http://hudoc.echr.coe.int/eng?i=001-60168	36515/97	s3 (former)		0 majority	applicant	US	R		lower-level sta	The applicant argued that although a child in that situation might be stigmatised in the short term, that did not create a higher risk of problems in the long term and children learnt to cope with the problem, if necessary with the help of a relative, a close friend or a teacher. To accept that the prejudices of third parties could justify exclusion from adoption procedures would be effectively giving a right of veto to parties who were motivated by such prejudices. That argument could not therefore be considered a sufficient justification, as the Court had already held in Smith and Grady, cited above, and the United States Supreme Court had decided in 1984 in <i>Palmore v. Sidioti</i>. The interests of children likely to be adopted demanded on the contrary that no category of adoptive parents should be excluded for reasons unconnected with their personal qualities or aptitude for bringing up children. The applicant also questioned the notion that there were more potential adoptive parents than children. That was true of children for whom the French social services were trying to find an adoptive home, but in France thousands of children were excluded from adoption because of their age, ethnic background, disability or past, not to mention the possibility of international adoption. Around the world there were thousands of orphaned or abandoned children waiting in wretched orphanages for an adult to come and look after them. The applicant further noted that there was no consensus in democratic societies on the need for single homosexuals to be barred totally from adopting. In Canada all the federal entities allowed single people to adopt and none of them prohibited homosexuals from doing so. Only one State in the United States had legislation that expressly prohibited persons who would otherwise be eligible to adopt from adopting a child if they were homosexuals, namely the State of Florida, which also prohibited certain forms of sexual behaviour in private between consenting adults, whether different sexes or the same sex. A large majority of the forty-three Council of Europe member States allowed adoption by unmarried individuals, if only under exceptional circumstances, and did not totally rule out in either their legislation or their case-law the possibility for homosexuals to adopt. The applicant had found as a result of his research that there were only two countries, France and Sweden, in which case-law had established such a prohibition in respect of adoption by single persons. He had also found that in January 2001 a Swedish government committee had recommended that legislation should be introduced to overturn the prohibition on adoption by homosexuals which had been instituted by a judgment of the Supreme Administrative Court of 1993.
2002	2/26/2002	FRETTÉ v. FRANCE	http://hudoc.echr.coe.int/eng?i=001-60168	36515/97	s3 (former)		0 majority	applicant	US	C		SC	<i>Palmore v. Sidioti</i> The applicant argued that although a child in that situation might be stigmatised in the short term, that did not create a higher risk of problems in the long term and children learnt to cope with the problem, if necessary with the help of a relative, a close friend or a teacher. To accept that the prejudices of third parties could justify exclusion from adoption procedures would be effectively giving a right of veto to parties who were motivated by such prejudices. That argument could not therefore be considered a sufficient justification, as the Court had already held in Smith and Grady, cited above, and the United States Supreme Court had decided in 1984 in <i>Palmore v. Sidioti</i>. The interests of children likely to be adopted demanded on the contrary that no category of adoptive parents should be excluded for reasons unconnected with their personal qualities or aptitude for bringing up children. The applicant also questioned the notion that there were more potential adoptive parents than children. That was true of children for whom the French social services were trying to find an adoptive home, but in France thousands of children were excluded from adoption because of their age, ethnic background, disability or past, not to mention the possibility of international adoption. Around the world there were thousands of orphaned or abandoned children waiting in wretched orphanages for an adult to come and look after them. The applicant further noted that there was no consensus in democratic societies on the need for single homosexuals to be barred totally from adopting. In Canada all the federal entities allowed single people to adopt and none of them prohibited homosexuals from doing so. Only one State in the United States had legislation that expressly prohibited persons who would otherwise be eligible to adopt from adopting a child if they were homosexuals, namely the State of Florida, which also prohibited certain forms of sexual behaviour in private between consenting adults, whether different sexes or the same sex. A large majority of the forty-three Council of Europe member States allowed adoption by unmarried individuals, if only under exceptional circumstances, and did not totally rule out in either their legislation or their case-law the possibility for homosexuals to adopt. The applicant had found as a result of his research that there were only two countries, France and Sweden, in which case-law had established such a prohibition in respect of adoption by single persons. He had also found that in January 2001 a Swedish government committee had recommended that legislation should be introduced to overturn the prohibition on adoption by homosexuals which had been instituted by a judgment of the Supreme Administrative Court of 1993.
2002	2/26/2002	MORRIS v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng?i=001-60170	no. 38784/97	s3 (former)		0 majority	ECtHR	Canada	C		SC	R. v. G^{éné}reux [1992] 33. In R. v. G^{éné}reux [1992] 1 Supreme Court Reports 259, the Supreme Court of Canada examined, inter alia, the compatibility of a Canadian general court martial with section 11(d) of the Canadian Charter of Rights and Freedoms, which provides: "11. Any person charged with an offence has the right ... (d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal." 34. A general court martial consisted of between five and nine voting members, who were joined by a judge advocate who was called upon to determine questions of law or mixed law and fact during the trial. The judge advocate was appointed to the general court martial by the Judge Advocate General on an ad hoc basis. 35. The Supreme Court concluded that the judge advocate did not possess sufficient security of tenure to satisfy the requirement of "independence" under section 11(d) of the Charter. Lamer CJ, delivering the leading judgment of the court, commented as follows: "... the judge advocate was appointed solely on a case by case basis. As a result, there was no objective guarantee that his or her career as a military judge would not be affected by decisions tending in favour of the accused rather than the prosecution. A reasonable person might well have entertained an apprehension that a legal officer's occupation as a military judge would be affected by his or her performance in earlier cases ... [or] that the person chosen as judge advocate had been selected because he or she had satisfied the interests of the executive, or at least has not seriously disappointed the executive's expectations, in previous proceedings. ... Military judges who act periodically as judge advocates must therefore have a tenure that is beyond the interference of the executive for a fixed period of time." He went on to note that amendments to Canadian court-martial procedures, which had come into force subsequent to the proceedings at issue in the case, had corrected deficiencies in the judge advocate's security of tenure, providing for appointment for a period of between two and four years.
2001	11/21/2001	AL-ADSANI v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng?i=001-59885	35763/97	GC		0 majority	ECtHR	New Zealand	C		lower-level co	Controllor and Auditor General v. Sir Ronald Davidson [1996] 2 New Zealand Law Reports 278, particularly at 290 (per Cooke P.) 23. In its Report on Jurisdictional Immunities of States and their Property (1999), the working group of the International Law Commission (ILC) found that over the preceding decade a number of civil claims had been brought in municipal courts, particularly in the United States and United Kingdom, against foreign governments, arising out of acts of torture committed not in the territory of the forum State but in the territory of the defendant and other States. The working group of the ILC found that national courts had in some cases shown sympathy for the argument that States are not entitled to plead immunity where there has been a violation of human rights norms with the character of jus cogens, although in most cases the plea of sovereign immunity had succeeded. The working group cited the following cases in this connection: (United Kingdom) Al-Adsaní v. State of Kuwait 100 International Law Reports 465 at 471; (New Zealand) Controllor and Auditor General v. Sir Ronald Davidson [1996] 2 New Zealand Law Reports 278, particularly at 290 (per Cooke P.); Dissenting Opinion of Justice Wald in (United States) Princz v. Federal Republic of Germany 26 F 3d 1166 (DC Cir. 1994) at 1176-1185; Siderman de Blake v. Republic of Argentina 965 F 2d 699 (9th Cir. 1992); Argentine Republic v. Amerasia Hess Shipping Corporation 488 US 428 (1989); Saudi Arabia v. Nelson 100 International Law Reports 544.
2001	11/21/2001	AL-ADSANI v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng?i=001-59885	35763/97	GC		0 majority	ECtHR	US	C		lower-level co	Dissenting Opinion of Justice Wald in (United States) Princz v. Federal Republic of Germany 26 F 3d 1166 (DC Cir. 1994) at 1176-1185 23. In its Report on Jurisdictional Immunities of States and their Property (1999), the working group of the International Law Commission (ILC) found that over the preceding decade a number of civil claims had been brought in municipal courts, particularly in the United States and United Kingdom, against foreign governments, arising out of acts of torture committed not in the territory of the forum State but in the territory of the defendant and other States. The working group of the ILC found that national courts had in some cases shown sympathy for the argument that States are not entitled to plead immunity where there has been a violation of human rights norms with the character of jus cogens, although in most cases the plea of sovereign immunity had succeeded. The working group cited the following cases in this connection: (United Kingdom) Al-Adsaní v. State of Kuwait 100 International Law Reports 465 at 471; (New Zealand) Controllor and Auditor General v. Sir Ronald Davidson [1996] 2 New Zealand Law Reports 278, particularly at 290 (per Cooke P.); Dissenting Opinion of Justice Wald in (United States) Princz v. Federal Republic of Germany 26 F 3d 1166 (DC Cir. 1994) at 1176-1185; Siderman de Blake v. Republic of Argentina 965 F 2d 699 (9th Cir. 1992); Argentine Republic v. Amerasia Hess Shipping Corporation 488 US 428 (1989); Saudi Arabia v. Nelson 100 International Law Reports 544.
2001	11/21/2001	AL-ADSANI v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng?i=001-59885	35763/97	GC		0 majority	ECtHR	US	C		lower-level co	Siderman de Blake v. Republic of Argentina 965 F 2d 699 (9th Cir. 1992) 23. In its Report on Jurisdictional Immunities of States and their Property (1999), the working group of the International Law Commission (ILC) found that over the preceding decade a number of civil claims had been brought in municipal courts, particularly in the United States and United Kingdom, against foreign governments, arising out of acts of torture committed not in the territory of the forum State but in the territory of the defendant and other States. The working group of the ILC found that national courts had in some cases shown sympathy for the argument that States are not entitled to plead immunity where there has been a violation of human rights norms with the character of jus cogens, although in most cases the plea of sovereign immunity had succeeded. The working group cited the following cases in this connection: (United Kingdom) Al-Adsaní v. State of Kuwait 100 International Law Reports 465 at 471; (New Zealand) Controllor and Auditor General v. Sir Ronald Davidson [1996] 2 New Zealand Law Reports 278, particularly at 290 (per Cooke P.); Dissenting Opinion of Justice Wald in (United States) Princz v. Federal Republic of Germany 26 F 3d 1166 (DC Cir. 1994) at 1176-1185; Siderman de Blake v. Republic of Argentina 965 F 2d 699 (9th Cir. 1992); Argentine Republic v. Amerasia Hess Shipping Corporation 488 US 428 (1989); Saudi Arabia v. Nelson 100 International Law Reports 544.
2001	11/21/2001	AL-ADSANI v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng?i=001-59885	35763/97	GC		0 majority	ECtHR	US	C		SC	Argentine Republic v. Amerasia Hess Shipping Corporation 488 US 428 (1989) 23. In its Report on Jurisdictional Immunities of States and their Property (1999), the working group of the International Law Commission (ILC) found that over the preceding decade a number of civil claims had been brought in municipal courts, particularly in the United States and United Kingdom, against foreign governments, arising out of acts of torture committed not in the territory of the forum State but in the territory of the defendant and other States. The working group of the ILC found that national courts had in some cases shown sympathy for the argument that States are not entitled to plead immunity where there has been a violation of human rights norms with the character of jus cogens, although in most cases the plea of sovereign immunity had succeeded. The working group cited the following cases in this connection: (United Kingdom) Al-Adsaní v. State of Kuwait 100 International Law Reports 465 at 471; (New Zealand) Controllor and Auditor General v. Sir Ronald Davidson [1996] 2 New Zealand Law Reports 278, particularly at 290 (per Cooke P.); Dissenting Opinion of Justice Wald in (United States) Princz v. Federal Republic of Germany 26 F 3d 1166 (DC Cir. 1994) at 1176-1185; Siderman de Blake v. Republic of Argentina 965 F 2d 699 (9th Cir. 1992); Argentine Republic v. Amerasia Hess Shipping Corporation 488 US 428 (1989); Saudi Arabia v. Nelson 100 International Law Reports 544.
2001	11/21/2001	AL-ADSANI v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng?i=001-59885	35763/97	GC		0 majority	ECtHR	US	C		SC	Saudi Arabia v. Nelson 100 International Law Reports 544 23. In its Report on Jurisdictional Immunities of States and their Property (1999), the working group of the International Law Commission (ILC) found that over the preceding decade a number of civil claims had been brought in municipal courts, particularly in the United States and United Kingdom, against foreign governments, arising out of acts of torture committed not in the territory of the forum State but in the territory of the defendant and other States. The working group of the ILC found that national courts had in some cases shown sympathy for the argument that States are not entitled to plead immunity where there has been a violation of human rights norms with the character of jus cogens, although in most cases the plea of sovereign immunity had succeeded. The working group cited the following cases in this connection: (United Kingdom) Al-Adsaní v. State of Kuwait 100 International Law Reports 465 at 471; (New Zealand) Controllor and Auditor General v. Sir Ronald Davidson [1996] 2 New Zealand Law Reports 278, particularly at 290 (per Cooke P.); Dissenting Opinion of Justice Wald in (United States) Princz v. Federal Republic of Germany 26 F 3d 1166 (DC Cir. 1994) at 1176-1185; Siderman de Blake v. Republic of Argentina 965 F 2d 699 (9th Cir. 1992); Argentine Republic v. Amerasia Hess Shipping Corporation 488 US 428 (1989); Saudi Arabia v. Nelson 100 International Law Reports 544.

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2001	11/21/2001	McELHINNEY v. IRELAND	http://hudoc.echr.coe.int/eng/?i=001-59887	31253/96	GC	CAFLISCH, CABRAL BARRETO AND	dissenting		Australia	R	statute	Section 13 of Australia's Foreign States Immunities Act (1976)	This provision is echoed in Section 1605(a) (5) of the United States Foreign Sovereign Immunities Act (1976) and in Section 13 of Australia's Foreign States Immunities Act (International Legal Materials, Vol. 25, 1986, p. 715). The many countries where State immunity is an issue left to be determined by the courts – these are, paradoxically, the courts of civil law countries – follow the same rule, witness the numerous decisions listed in the International Law Commission's (ILC) commentary relating to Article 12 of its Draft Articles on Jurisdictional Immunities of States and Their Property (Report of the ILC on the Work of Its 43rd Session, 29 April-19 July 1991, United Nations General Assembly, 46th Session, Supplement N° 10, p. 11, at pp. 103 n. 163 and 105 n. 165), as well as in the Fifth Report of the Commission's Special Rapporteur (Yearbook of the ILC 1983, Vol. II, Part One, paragraphs 76-99).
2001	11/21/2001	McELHINNEY v. IRELAND	http://hudoc.echr.coe.int/eng/?i=001-59887	no. 31253/96	GC	CAFLISCH, CABRAL BARRETO AND	dissenting		US	R	statute	Section 1605(a) (5) of the United States Foreign Sovereign Immunities Act (1976)	This provision is echoed in Section 1605(a) (5) of the United States Foreign Sovereign Immunities Act (1976) and in Section 13 of Australia's Foreign States Immunities Act (International Legal Materials, Vol. 25, 1986, p. 715). The many countries where State immunity is an issue left to be determined by the courts – these are, paradoxically, the courts of civil law countries – follow the same rule, witness the numerous decisions listed in the International Law Commission's (ILC) commentary relating to Article 12 of its Draft Articles on Jurisdictional Immunities of States and Their Property (Report of the ILC on the Work of Its 43rd Session, 29 April-19 July 1991, United Nations General Assembly, 46th Session, Supplement N° 10, p. 11, at pp. 103 n. 163 and 105 n. 165), as well as in the Fifth Report of the Commission's Special Rapporteur (Yearbook of the ILC 1983, Vol. II, Part One, paragraphs 76-99).
2001	11/21/2001	McELHINNEY v. IRELAND	http://hudoc.echr.coe.int/eng/?i=001-59887	31253/96	GC		0 majority	applicant	Australia	R	statute	Australian Foreign Sovereign Immunities Act 1985	15. The Supreme Court gave judgment on 15 December 1995, rejecting the applicant's appeal. The applicant had relied on the Supreme Court's judgment in Government of Canada v. the Employment Appeals Tribunal (1992) 2 IR 484, but the court held that that judgment was authority only for the proposition that the doctrine of immunity did not apply in respect of commercial or trading activities carried out by a foreign government. The facts alleged by the applicant did not relate to any commercial activity, and it was not established that, as a principle of public international law, immunity no longer applied in respect of personal injuries caused by the tortious act of a foreign State's servant or agent acting within the sphere of sovereign activity ("de jure imperii"). In his judgment, Chief Justice Hamilton, with whom Justices O'Flaherty and Blayney agreed, observed: "There can be no doubt but that the first defendant [the soldier] in carrying out his duties at the said checkpoint was acting within the sphere of governmental or sovereign activity and the acts complained of must be regarded as 'jure imperii' even though alleged to have been committed within this jurisdiction. It is submitted on behalf of the plaintiff that, as the acts complained of were tortious and caused personal injuries to him, the principle of foreign sovereign immunity should not apply to such acts and that it was a near-universally recognised principle of international law that claims for personal injuries allegedly inflicted in the forum state by or on behalf of a foreign government constitute an exception to the sovereign immunity principle. In support of such submission, counsel for the plaintiff referred in particular to the United Kingdom State Immunity Act 1978; the Canadian State Immunity Act 1982; the Australian Foreign Sovereign Immunities Act 1985 and the European Convention on State Immunity 1972. ... The plaintiff relies on these statutes as indicative of a recognised principle of public international law. ... Distinction must be drawn between the provisions of legislation in a number of states and the provisions of public international law, and the principles set forth in individual state legislation cannot be regarded as establishing principles of public international law. The provisions of statutes cannot be used as evidence of what international law is: statutes are evidence of the domestic law in the individual states and not evidence of international law generally. Article 11 of the European Convention on State Immunity provides that:- 'A Contracting Party cannot claim immunity from the jurisdiction of a court of another contracting party in proceedings which relate to redress for injury to the person or damage to tangible property, if the facts which occasioned the injury or damage occurred in the territory of the State of which the court is the territorial authority at the time when those facts occurred.' I do not have to decide, in the circumstances of this case, whether the terms of the Convention are part of the domestic law of this State because even if it were, the plaintiff's claim herein would fail by virtue of the terms of Article 31 of the said Convention, which provides that:- 'Nothing in this Convention shall affect any immunities or privileges enjoyed by a Contracting Party in respect of anything done or omitted to be done by, or in relation to its armed forces when on the territory of another Contracting State.' The terms of Article 31 recognise that, as a matter of international law, immunities and privileges in respect of anything done or omitted to be done by or in relation to armed forces, when on the territory of another Contracting State, exist. ... Despite the Herculean efforts of the plaintiff's legal advisers in making available to the court copies of all relevant decisions, articles and draft Conventions, and the cogent arguments of counsel, I am not satisfied that it is a principle of public international law that the immunity granted to sovereign states should be restricted by making them liable in respect of tortious acts, committed on their behalf by their servant or agent, causing personal injuries to the person affected by such act or omission, when such act or omission is committed jure imperii and I would dismiss the appeal on this point. ... 16. The applicant did not pursue his action against the individual soldier who had allegedly assaulted him.
2001	11/21/2001	McELHINNEY v. IRELAND	http://hudoc.echr.coe.int/eng/?i=001-59887	31253/96	GC		0 majority	applicant	Canada	C	statute	Canadian State Immunity Act 1982	15. The Supreme Court gave judgment on 15 December 1995, rejecting the applicant's appeal. The applicant had relied on the Supreme Court's judgment in Government of Canada v. the Employment Appeals Tribunal (1992) 2 IR 484, but the court held that that judgment was authority only for the proposition that the doctrine of immunity did not apply in respect of commercial or trading activities carried out by a foreign government. The facts alleged by the applicant did not relate to any commercial activity, and it was not established that, as a principle of public international law, immunity no longer applied in respect of personal injuries caused by the tortious act of a foreign State's servant or agent acting within the sphere of sovereign activity ("de jure imperii"). In his judgment, Chief Justice Hamilton, with whom Justices O'Flaherty and Blayney agreed, observed: "There can be no doubt but that the first defendant [the soldier] in carrying out his duties at the said checkpoint was acting within the sphere of governmental or sovereign activity and the acts complained of must be regarded as 'jure imperii' even though alleged to have been committed within this jurisdiction. It is submitted on behalf of the plaintiff that, as the acts complained of were tortious and caused personal injuries to him, the principle of foreign sovereign immunity should not apply to such acts and that it was a near-universally recognised principle of international law that claims for personal injuries allegedly inflicted in the forum state by or on behalf of a foreign government constitute an exception to the sovereign immunity principle. In support of such submission, counsel for the plaintiff referred in particular to the United Kingdom State Immunity Act 1978; the Canadian State Immunity Act 1982; the Australian Foreign Sovereign Immunities Act 1985 and the European Convention on State Immunity 1972. ... The plaintiff relies on these statutes as indicative of a recognised principle of public international law. ... Distinction must be drawn between the provisions of legislation in a number of states and the provisions of public international law, and the principles set forth in individual state legislation cannot be regarded as establishing principles of public international law. The provisions of statutes cannot be used as evidence of what international law is: statutes are evidence of the domestic law in the individual states and not evidence of international law generally. Article 11 of the European Convention on State Immunity provides that:- 'A Contracting Party cannot claim immunity from the jurisdiction of a court of another contracting party in proceedings which relate to redress for injury to the person or damage to tangible property, if the facts which occasioned the injury or damage occurred in the territory of the State of which the court is the territorial authority at the time when those facts occurred.' I do not have to decide, in the circumstances of this case, whether the terms of the Convention are part of the domestic law of this State because even if it were, the plaintiff's claim herein would fail by virtue of the terms of Article 31 of the said Convention, which provides that:- 'Nothing in this Convention shall affect any immunities or privileges enjoyed by a Contracting Party in respect of anything done or omitted to be done by, or in relation to its armed forces when on the territory of another Contracting State.' The terms of Article 31 recognise that, as a matter of international law, immunities and privileges in respect of anything done or omitted to be done by or in relation to armed forces, when on the territory of another Contracting State, exist. ... Despite the Herculean efforts of the plaintiff's legal advisers in making available to the court copies of all relevant decisions, articles and draft Conventions, and the cogent arguments of counsel, I am not satisfied that it is a principle of public international law that the immunity granted to sovereign states should be restricted by making them liable in respect of tortious acts, committed on their behalf by their servant or agent, causing personal injuries to the person affected by such act or omission, when such act or omission is committed jure imperii and I would dismiss the appeal on this point. ... 16. The applicant did not pursue his action against the individual soldier who had allegedly assaulted him.
2001	10/2/2001	HATTON AND OTHERS v. THE UNITED KINGDOM	http://hudoc.echr.coe.int/eng/?i=001-59888	36022/97	53		0 majority	Government	US	F	research	research undertaken in the US	65. The Government submitted, alternatively, that in deciding to introduce the 1993 scheme they struck an appropriate and justified balance between the various interests involved and that, accordingly, any interference with the applicants' rights under Article 8 was justified. They referred to the 1992 sleep study which was in 1993, and remains, the most comprehensive study of its type. They stated that the 1992 sleep study was commissioned in July 1990 in order to inform the 1993 review of restrictions on night flights, but emphasised that it had been preceded by a number of earlier detailed reports into aircraft noise and sleep disturbance, also published by or on behalf of the Civil Aviation Authority. Further, the Government stated that research undertaken in the United States since the results of the 1992 sleep study were published had not cast any doubt on its validity.
2001	7/31/2001	REFAH PARTISI (THE WELFARE PARTY) AND OTHERS v. TURKEY	http://hudoc.echr.coe.int/eng/?i=001-59617	41340/98, 41342/98, 41343/98	53		0 majority	applicant	US	C	SC	general. "clear and present danger" test laid down by the Supreme Court of the United States of America.	13. On 4 August 1997 Refah's representatives filed their defence submissions, in which they relied on international human-rights-protection instruments, including the Convention, pointing out that these instruments formed part of Turkish written law. They further referred to the case-law of the Commission, which had expressed the opinion that Article 11 of the Convention had been breached in the cases concerning the Turkish United Communist Party and the Socialist Party, and to the case-law of the Court and the Commission on the restrictions on freedom of expression and freedom of association authorised by the second paragraphs of Articles 10 and 11 of the Convention. They contended that the dissolution of Refah had not been prompted by a pressing social need and was not necessary in a democratic society. Nor, according to Refah's representatives, was their party's dissolution justified by application of the "clear and present danger" test laid down by the Supreme Court of the United States of America.

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2001	3/22/2001	STRELETZ, KESSLER AND KRENZ v. GERMANY	http://hudoc.echr.coe.int/eng/?i=001-59353	34044/96, 35532/97 and	GC	ZUPANČIČ	concurring		0 US	R	statute	section 2.04(3)(b)(iv) of the United States Model Penal Code	Article 7 § 2 is an exception to the principle <i>nullum crimen, nulla poena sine lege praevia</i> formulated by the famous German criminal-law theorist Anselm von Feuerbach. Franz von List later maintained that the substantive guarantees enshrined in the principle of legality are the Magna Carta Libertatum of criminal defendants. This tradition of substantive criminal-law protection goes back to at least 1764 and Cesare Beccaria's classic work <i>Dei delitti e delle pene</i>, which decisively influenced the whole continental tradition of legality in criminal law. This is all the more important because, in counter-distinction to the Anglo-Saxon legal model, although Magna Carta had a similar provision in its clause 39 (<i>lex terrae</i>), the guarantees are preponderantly to be found in substantive rather than in procedural law. Thus, the principle of legality (<i>Legalitätsprinzip</i>, <i>principe de légalité</i>) is typically interpreted to entail only the restrictive interpretation of the State's power to punish. In this case, as we shall see, the principle of legality has the opposite effect. It precludes the applicants from relying on their own interpretation of the law. I find it difficult to agree with the sentence in paragraph 105 referring to "offences defined with sufficient accessibility and foreseeability by the international law rules on human rights protection" [emphasis added]. The powerful objective guarantees of substantive criminal law entrenched in the principle of legality cannot be reduced to the subjective right to advance notice of what is punishable under positive law. The import of the principle of legality has to do with objective, rigorous semantic and logical legal restrictions (<i>lex certa</i>) on the State's power to punish. Where the law gives an offender the formal possibility of foreseeing the criminal and punishable nature of his acts or omissions, irrespective of his everyday reliance on the prevalent and established "State practice" of impunity, the rule of law will sanction subsequent criminal liability. To maintain otherwise would make the criminal actor a legislator in <i>casu proprio</i>. This is the real significance of this case. Conversely, excessive reliance upon the subjective criteria of accessibility and foreseeability would facilitate the applicants' defence based on the principle of legality. They could maintain that they had in fact relied upon the official, accessible and foreseeable interpretation of the law at the time, and upon "the GDR's State practice, which was superimposed on the rules of written law at the material time" (see paragraph 67 of the judgment). The applicants could then also maintain that their reliance on State practice, only later proved to be mistaken in the light of a strict interpretation of positive criminal law, was at the time nevertheless consistent with the official, constant and foreseeable State practice. Such an argument would then introduce the defence of an excusable mistake of law (<i>error juris</i>). For example, section 2.04(3)(b)(iv) of the United States Model Penal Code, provides: "A belief that conduct does not legally constitute an offence is a defence to a prosecution for that offence based upon such conduct when [the actor] acts in reasonable reliance upon ... an official interpretation of the public officer or body charged by law with responsibility for the interpretation, administration or enforcement of the law defining the offence." [emphasis added] Depending on the mistake-of-law provisions in either the GDR's or the FRG's substantive criminal law, the applicants' acts could then possibly be excused (not justified!).
2000	7/13/2000	ELSHOLZ v. GERMANY	http://hudoc.echr.coe.int/eng/?i=001-58763	25735/94	GC		0 majority	applicant	Canada	C	general	Canadian courts in case law	35. The results of American research concerning the PAS had been available since 1984 and 1992. They very soon led to a large number of specialised publications and were taken into account by American and Canadian courts in their case-law. If Germany had been prepared to adopt the results of the research carried out in the United States, where far larger research budgets were available, and to act upon them, the court could, at the time, have reached a different decision, because the judge who questioned the child could have interpreted differently the child's remarks rejecting his father. At the very least, however, the court should have appointed a competent expert familiar with the specific psycho-dynamics of family relations.
2000	7/13/2000	ELSHOLZ v. GERMANY	http://hudoc.echr.coe.int/eng/?i=001-58763	25735/94	GC		0 majority	applicant	US	C	general	American courts in their case law	35. The results of American research concerning the PAS had been available since 1984 and 1992. They very soon led to a large number of specialised publications and were taken into account by American and Canadian courts in their case-law. If Germany had been prepared to adopt the results of the research carried out in the United States, where far larger research budgets were available, and to act upon them, the court could, at the time, have reached a different decision, because the judge who questioned the child could have interpreted differently the child's remarks rejecting his father. At the very least, however, the court should have appointed a competent expert familiar with the specific psycho-dynamics of family relations.