January 2016
This factsheet does not bind the Court and is not exhaustive

Terrorism and the European Convention on Human Rights

Article 15 (derogation in time of an emergency) of the European Convention on Human Rights: "In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under the Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with other obligations under international law."

This provision enables a State to unilaterally derogate from some of its obligations to the European Convention on Human Rights in certain exceptional circumstances and has been used by certain member States in the context of terrorism[1].

Example of cases in which the European Court of Human Rights addressed derogations:

Lawless v. Ireland (no. 3)
1 July 1961
Derogation entered by Ireland in 1957 following terrorist violence connected to Northern Ireland. The applicant, suspected of being a member of the IRA ("Irish Republican Army"), alleged that he had been detained without trial between July and December 1957 in a military detention camp situated in the territory of the Republic of Ireland.

Ireland v. the United Kingdom (see below, page 2)
18 January 1978
Derogation entered by the United Kingdom in respect of its rule in Northern Ireland in the early 1970s and renewed on a number of occasions.

Brannigan and McBride v. the United Kingdom (see below, page 12)
26 May 1993
Further derogation submitted by the United Kingdom in 1989 in respect of Northern Ireland.

Aksoy v. Turkey (see below, page 2)
18 December 1996
Derogations made by the Turkish Government in respect of south-east Turkey due to disturbances between the security forces and members of the PKK (Workers' Party of Kurdistan), a terrorist organisation.

A. and Others v. the United Kingdom (application no. 3455/05) (see below, page 11)
19 February 2009 (Grand Chamber)
Derogation submitted by the United Kingdom in 2001 after the September 11 terrorist attacks in the United States.

[1]. See the factsheet on "Derogation in time of emergency".

(Suspected) terrorists

Issues under Article 3 (prohibition of torture and inhuman or degrading treatment or punishment) of the Convention

Conditions of detention

Article 15 (derogation in time of emergency) of the European Convention on Human Rights makes it clear that some measures are not permissible whatever the emergency. For example, Article 3 (prohibition of inhuman and degrading treatment or torture) of the Convention is an absolute non-derogable right.

Ireland v. the United Kingdom

18 January 1978

From August 1971 until December 1975 the United Kingdom authorities exercised a series of "extrajudicial" powers of arrest, detention and internment in Northern Ireland. The case concerned the Irish Government's complaint about the scope and implementation of those measures and in particular the practice of psychological interrogation techniques (wall standing, hooding, subjection to noise and deprivation of sleep, food and drink) during the preventive detention of those detained in connection with acts of terrorism.

The Court, finding the methods to have caused intense physical and mental suffering, held that there had been a **violation of Article 3** (prohibition of inhuman and degrading treatment) of the Convention in the present case. It further held that there had been **no violation of Articles 5** (right to liberty and security) **or 14** (prohibition of discrimination) of the Convention.

Aksoy v. Turkey

18 December 1996

The applicant complained in particular that his detention in 1992 on suspicion of aiding and abetting PKK terrorists was unlawful and that he had been tortured ("Palestinian hanging" i.e. stripped naked, with arms tied together behind back, and suspended by arms).

The Court, considering that the treatment inflicted to the applicant had been of such a serious and cruel nature that it could only be described as torture, held that there had been a **violation of Article 3** (prohibition of torture) of the Convention. It also found a **violation of Article 5** (right to liberty and security) and a **violation of Article 13** (right to an effective remedy) of the Convention in the present case.

Martinez Sala v. Spain

2 November 2004

Shortly before the Olympic Games in Barcelona, the applicants, who were suspected of being sympathisers of a Catalan independence movement, were arrested by *Guardia Civil* officers in connection with an investigation into terrorist offences. They complained in particular that they had been subjected to physical and mental torture and to inhuman and degrading treatment on their arrest and while in custody in Catalonia and at the Guardia Civil headquarters in Madrid. They further alleged that the investigations by the domestic authorities had not been effective or thorough.

The Court held that there had been **no violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention concerning the allegations of ill-treatment in custody, and found a **violation of Article 3** on account of the failure to hold an effective official investigation into the allegations.

Öcalan v. Turkey

12 May 2005 (Grand Chamber)

This case concerned, among others, the conditions of the transfer from Kenya to Turkey and the subsequent detention on the island of İmralı of Abdullah Öcalan, former leader

of the PKK (Kurdistan Workers' Party), an illegal organisation, who had been sentenced to death for activities aimed at bringing about the secession of part of Turkish territory. The applicant complained in particular that the conditions in which he was detained at İmralı Prison amounted to inhuman treatment.
The Court held that there had been **no violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention concerning the conditions of the applicant's detention at İmralı Prison. While concurring with the European Committee for the Prevention of Torture's recommendations that the long-term effects of the applicant's relative social isolation should be attenuated by giving him access to the same facilities as other high security prisoners in Turkey, the Court found that the general conditions in which the applicant was being detained had not reached the minimum level of severity required to constitute inhuman or degrading treatment within the meaning of Article 3 of the Convention.
See also the ***Öcalan v. Turkey (no. 2)*** judgment of 18 March 2014, summarised below.

Ramirez Sanchez v. France

4 July 2006 (Grand Chamber)
Better known as "Carlos the Jackal" and viewed during the 1970s as the most dangerous terrorist in the world, the applicant complained about his solitary confinement for eight years following his conviction for terrorist-related offences.
The Court held that there had been **no violation of Article 3** (prohibition of inhuman and degrading treatment) of the Convention on account of the length of time the applicant had spent in solitary confinement. While sharing the European Committee for the Prevention of Torture's concerns about the possible long-term effects of the applicant's isolation, the Court nevertheless considered that, having regard in particular to his character and the danger he posed, the conditions in which the applicant was held during the period under consideration had not reached the minimum level of severity necessary to constitute inhuman or degrading treatment within the meaning of Article 3 of the Convention.
The Court further found in this case a **violation of Article 13** (right to an effective remedy) of the Convention, on account of the lack of a remedy in French law that would have allowed the applicant to contest the decision to prolong his detention in solitary confinement.

Frérot v. France

12 June 2007
A former member of the extreme left armed movement "Action directe", the applicant, convicted in 1995 to 30 years' imprisonment for – among other offences – terrorism, complained about strip searches in prison.
The Court held that there had been a **violation of Article 3** (prohibition of degrading treatment) of the Convention, noting in particular that the feeling of arbitrariness, the feelings of inferiority and anxiety often associated with it, and the feeling of a serious encroachment on one's dignity undoubtedly prompted by the obligation to undress in front of another person and submit to a visual inspection of the anus, added to the other excessively intimate measures associated with strip-searches, led to a degree of humiliation which exceeded that which was inevitably a concomitant of the imposition of body searches on prisoners. Moreover, the humiliation felt by the applicant had been aggravated by the fact that on a number of occasions his refusal to comply with these measures had resulted in his being taken to a disciplinary cell.
The Court further held that there had been a **violation of Article 8** (right to respect for correspondence) of the Convention in this case, in respect of the refusal, on the basis of a ministerial circular, to forward a prisoner's letter to a fellow prisoner, and a **violation of Article 13** (right to an effective remedy), in respect of the lack of domestic remedy enabling a prisoner to challenge a refusal to forward correspondence.

Öcalan v. Turkey (no. 2)

18 March 2014

The applicant, the founder of the PKK (Kurdistan Workers' Party), an illegal organisation, complained mainly about the irreducible nature of his sentence to life imprisonment, and about the conditions of his detention (in particular his social isolation and the restrictions on his communication with members of his family and his lawyers) in the prison on the island of İmralı. He also complained of restrictions on his telephone communications, on his correspondence and on visits from his relatives and lawyers.

The Court held that there had been **a violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention as to the conditions of the applicant's detention up to 17 November 2009 and that there had been **no violation of Article 3** as regards the conditions of his detention during the period subsequent to that date. On the one hand, in view of a certain number of aspects, such as the lack of communication facilities that would have overcome the applicant's social isolation, together with the persisting major difficulties for his visitors to gain access to the prison, the Court found that the conditions of detention imposed on the applicant up to 17 November 2009 had constituted inhuman treatment. On the other hand, having regard in particular to the arrival of other detainees at the İmralı prison and to the increased frequency of visits, it came to the opposite conclusion as regards his detention subsequent to that date.

The Court also held that there had been **a violation of Article 3** as regards the applicant's sentence to life imprisonment without any possibility of conditional release, finding that, in the absence of any review mechanism, the life prison sentence imposed on the applicant constituted an "irreducible" sentence that amounted to inhuman treatment.

The Court further held that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention, considering that in view of the Turkish Government's legitimate fear that the applicant might use communications with the outside world to contact members of the PKK, the restrictions on his right to respect for private and family life had not exceeded what was necessary for the prevention of disorder or crime.

Pending applications

Amin and Ahmed v. the United Kingdom (n° 6610/09 and no. 326/12)

Applications communicated to the UK Government on 10 July 2012

The applicants were arrested and detained in Pakistan in 2004 before being deported to the United Kingdom, where they were tried and convicted of involvement in terrorism. The applicants complain that the Pakistani authorities tortured them in detention and that British agents were complicit in these acts, knowing that the applicants were being tortured. They also complain about the unfairness of the subsequent criminal proceedings in the United Kingdom as at the trial certain materials were withheld from the defence on ground of public interest immunity.

The Court gave notice of the applications to the UK Government and put questions to the parties under Articles 3 (prohibition of torture, of inhuman or degrading treatment) and 6 § 1 (right to a fair trial) of the Convention.

Ill-treatment allegedly sustained while held incommunicado in police custody

Etxebarria Caballero v. Spain and Ataun Rojo v. Spain

7 October 2014

Arrested by the police and placed in secret police custody in the context of judicial investigations concerning, in particular, their alleged membership of the terrorist organisation ETA, the applicants notably complained that there had been no effective investigation by the Spanish authorities into their complaint about the ill-treatment that they had allegedly sustained while being held in secret police custody.

In both cases, the Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention on account the lack of an effective investigation into the applicants' allegations of ill-treatment. The Court emphasised in particular that the effective investigations that had been required in the light of the applicants' position of vulnerability had not been conducted. It again stressed the importance of adopting measures to improve the quality of forensic medical examinations of persons being held incommunicado. It also endorsed the recommendations made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) concerning both the safeguards to be put in place in such cases and the very principle of detaining a person incommunicado in Spain. In the absence of sufficient evidence, the Court further held that there had been **no violation of Article 3** concerning the ill-treatment alleged by the first applicant. It wished however to point out that this inability to conclude "beyond reasonable doubt" that ill-treatment had indeed occurred resulted, to a large extent, from the Spanish authorities' failure to carry out an in-depth and effective investigation.

Risk of ill-treatment in case of deportation / extradition

Where there is a real risk of ill-treatment in another state, the obligation not to send an individual to that state is an absolute one; it cannot be claimed that public interest reasons for deporting or extraditing an individual outweigh the risk of ill-treatment on the individual's return, regardless of the offence or conduct.

Chahal v. the United Kingdom

15 November 1996

The applicant, an advocate of the Sikh separatist cause who was served with a deportation order on grounds of national security, alleged that he faced a real risk of ill-treatment if he were to be deported to India.

The Court held that there **would be a violation of Article 3** (prohibition of inhuman and degrading treatment) **if the deportation order** to India **were to be enforced**. The Court was not satisfied by the assurances given by the Indian Government.

Shamayev and Others v. Georgia and Russia

12 April 2005

This case concerned in particular the alleged risk of ill-treatment if a decision adopted two years before to extradite a Russian national of Chechen origin to Russia – on the ground that he was a terrorist rebel who had taken part in the conflict in Chechnya – were to be enforced. The extradition order made against him had been suspended but could be enforced when the proceedings concerning his refugee status ended.

The Court held that there **would be a violation** by Georgia **of Article 3** (prohibition of inhuman or degrading treatment) of the Convention **if the decision to extradite** the application in question to Russia **were to be enforced**. Having regard to the material placed before it, the Court considered in particular that the assessments on which the decision to extradite the applicant had been founded two years before no longer sufficed to exclude all risk of ill-treatment prohibited by the Convention being inflicted on him. The Court noted in particular the new extremely alarming phenomenon of persecution and killings of persons of Chechen origin who had lodged applications with it.

Saadi v. Italy

28 February 2008 (Grand Chamber)

This case concerned the risk of ill-treatment if the applicant were to be deported to Tunisia, where he claimed to have been sentenced in absentia in 2005 to 20 years' imprisonment for membership of a terrorist organisation.

The Court observed that it could not underestimate the danger of terrorism and noted that States were facing considerable difficulties in protecting their communities from terrorist violence. However, that should not call into question the absolute nature of Article 3 (prohibition of torture and inhuman or degrading treatment) of the Convention. In the present case, there were substantial grounds for believing that there was a real

risk that the applicant would be subjected to treatment contrary to Article 3 if he were to be deported to Tunisia. The Court further noted that the Tunisian authorities had not provided the diplomatic assurances requested by the Italian Government. Lastly, even if the Tunisian authorities had given the diplomatic assurances, that would not have absolved the Court from the obligation to examine whether such assurances provided a sufficient guarantee that the applicant would be protected against the risk of treatment. Consequently, the Court found that the **decision to deport** the applicant to Tunisia **would breach Article 3 if it were enforced**.

Daoudi v. France

3 December 2009

The applicant, an Algerian national, was arrested and convicted in France in the context of an operation to dismantle a radical Islamist group affiliated to al-Qaeda and suspected of having prepared a suicide attack on the United States Embassy in Paris.

In the circumstances of the case, and having regard in particular to the applicant's background, who was not only suspected of having links with terrorism, but had been convicted of serious crimes in France of which the Algerian authorities were aware, the Court was of the opinion that it was likely that were he to be deported to Algeria the applicant would become a target for the Department for Information and Security (DRS). It consequently held that the **decision to deport** the applicant to Algeria **would amount to a violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention if it were implemented.

See also: ***H.R. v. France (no. 64780/09)***, judgment of 22 September 2011.

Beghal v. France

6 September 2011 (decision on the admissibility)

The applicant, convicted in France for terrorist activities, alleged that he would be at risk of ill-treatment if returned to Algeria.

The Court declared the application **inadmissible** (manifestly ill-founded). It found that, given the ongoing criminal proceedings against the applicant in France and his temporary detention, he no longer ran any proximate or imminent risk of being removed from the country.

Omar Othman v. the United Kingdom

17 January 2012

The applicant, Omar Othman (also known as Abu Qatada), challenged his removal to Jordan where he had been convicted in his absence on various terrorism charges.

The Court found that **there would be** no risk of ill-treatment, and **no violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, **if the applicant were deported** to Jordan. It noted in particular that the United Kingdom and Jordanian Governments had made genuine efforts to obtain and provide transparent and detailed assurances to ensure that the applicant would not be ill-treated upon his return to Jordan. In addition, the assurances would be monitored by an independent human rights organisation in Jordan, which would have full access to the applicant in prison.

The Court found, however, that, **if the applicant were deported** to Jordan, there **would be a violation of Article 6** (right to a fair trial) of the Convention, given the real risk of the admission of evidence obtained by torture at his retrial[2]. This conclusion reflects the international consensus that the use of evidence obtained through torture makes a fair trial impossible.

The Court also found in this case that there had been **no violation of Article 3 taken in conjunction with Article 13** (right to an effective remedy) of the Convention and that **there would be no violation of 5** (right to liberty and security) of the Convention **if the applicant were deported** to Jordan.

[2]. It was the first time that the Court found that an expulsion would be in violation of Article 6 (right to a fair trial) of the Convention.

Babar Ahmad and Others v. the United Kingdom

10 April 2012

This case concerned six alleged international terrorists – Babar Ahmad, Syed Tahla Ahsan, Mustafa Kamal Mustafa (known more commonly as Abu Hamza), Adel Abdul Bary, Khaled Al-Fawwaz, and Haroon Rashid Aswat – who have been detained in the United Kingdom pending extradition to the United States of America.

The Court held that **there would be no violation of Article 3** (prohibition of inhuman and degrading treatment) of the Convention as a result of conditions of detention at ADX Florence (a "supermax" prison in the United States) **if the** five first **applicants were extradited** to the United States. The Court also found that there would be **no violation of Article 3** as a result of the length of their possible sentences if these five applicants were extradited to the United States. The Court further decided to **adjourn** the examination of complaints made by Haroon Rashid Aswat, who suffers from schizophrenia, and to examine them at a later date under a new application number (see below).

Aswat v. the United Kingdom

16 April 2013 *(see also, below, the decision on the admissibility of 6 January 2015)*

The applicant, who is detained in the United Kingdom, complained that his extradition to the United States of America would amount to ill-treatment, in particular because the detention conditions (a potentially long period of pre-trial detention and his possible placement in a "supermax" prison) were likely to exacerbate his condition of paranoid schizophrenia.

While the Court held that the applicant's **extradition** to the United States **would be in violation of Article 3** (prohibition of inhuman and degrading treatment) of the Convention, it was solely on account of the current severity of his mental illness and not as a result of the length of his possible detention there.

Aswat v. the United Kingdom

6 January 2015 (decision on the admissibility)

In a judgment of April 2013 (see above), the European Court of Human Rights had held that the applicant's extradition from the United Kingdom to the United States of America would be in violation of Article 3 of the Convention. Following a set of specific assurances given by the US Government to the Government of the UK regarding the conditions in which he would be detained in the US before trial and after a possible conviction, the applicant was eventually extradited to the United States in October 2014. The applicant complained that the assurances provided by the US Government did not respond to the risks identified by the Court in its judgment of April 2013 and that his extradition would therefore be in breach of Article 3 of the Convention.

The Court found that the concerns raised in its judgment of April 2013 had been directly addressed by the comprehensive assurances and additional information received by the Government of the UK from the US Government. It therefore considered the applicant's complaint to be manifestly ill-founded pursuant to Article 35 (admissibility criteria) of the Convention and declared the application **inadmissible**.

Cases in which the State concerned extradited/deported suspected terrorists despite the Court's indication under Rule 39 (interim measures) of the Rules of Court not to do so until further notice:

Mamatkulov and Askarov v. Turkey

4 February 2005 (Grand Chamber)

This case concerned the extradition to Uzbekistan in 1999 of two members of an opposition party in Uzbekistan suspected of the explosion of a bomb in that country as well as an attempted terrorist attack on the President of the Republic.

Although the Court had on 18 March 1999 indicated to the Turkish Government, under Rule 39 (interim measures) of the Rules of Court, that "it was desirable in the interests of the parties and the proper conduct of the proceedings before the Court not to

extradite the applicants to Uzbekistan until the Court had had an opportunity to examine the application further at its forthcoming session on 23 March", on 19 March 1999, the Turkish Cabinet had issued a decree for the applicants' extradition and they were handed over to the Uzbek authorities on 27 March 1999. In a judgment of 28 June 1999 the High Court of the Republic of Uzbekistan later found the applicants guilty of the offences as charged and sentenced them to 20 and 11 years' imprisonment respectively.
In the light of the material before it, the Court was not able to conclude that substantial grounds had existed on the date the applicants were extradited for believing that they faced a real risk of treatment proscribed by Article 3 (prohibition of inhuman or degrading treatment) of the Convention. Consequently, **no violation of Article 3** of the Convention could be found. Having regard to the material before it, the Court further concluded that, by failing to comply with the interim measures indicated under Rule 39 of the Rules of Court, Turkey had been **in breach of** its obligations under **Article 34** (effective exercise of right of individual application) of the Convention.

Ben Khemais v. Italy

24 February 2009
Sentenced in Tunisia in his absence to ten years' imprisonment for membership of a terrorist organisation, the applicant had been extradited to Tunisia on account of his role in the activities of Islamic extremists. Although in March 2007, pursuant to Rule 39 (interim measures) of the Rules of Court, the Court had indicated to the Italian Government that it was desirable, in the interests of the parties and of the smooth progress of the proceedings before the Court, to stay the order for the applicant's deportation pending a decision on the merits, the applicant was deported to Tunisia in June 2008.
The Court held that there had been a **violation of Article 3** (prohibition of torture and inhuman or degrading treatment) of the Convention, on account of the applicant's deportation to Tunisia. It further found a **violation of Article 34** (right of individual petition) of the Convention regarding Italy's failure to comply with the measure indicated under Rule 39 of the Rules of Court.
See also: ***Trabelsi v. Italy***, judgment of 13 April 2010; ***Toumi v. Italy***, judgment of 5 April 2011; and ***Mannai v. Italy***, judgment of 27 March 2012.

Labsi v. Slovakia

15 May 2012
This case concerned the expulsion of an Algerian man, convicted in France of preparing a terrorist act, from Slovakia following his unsuccessful asylum request. The applicant was expelled to Algeria in April 2010, despite the fact that the Court had issued an interim measure in 2008, under Rule 39 of its Rules of Court, to the effect that he should not be extradited to Algeria before the final outcome of his asylum case before the Slovakian Constitutional Court.
The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment), **Article 13** (right to an effective remedy) and **Article 34** (right of individual petition) of the Convention. It found in particular that terrorist suspects faced a serious risk of ill-treatment in Algeria at the relevant time and that the applicant's expulsion, in disregard of an interim measure issued by the Court, had prevented it from properly examining his complaints.

Trabelsi v. Belgium

4 September 2014
This case concerned the extradition, which had been effected despite the indication of an interim measure by the Court, under Rule 39 of the Rules of Court, of a Tunisian national from Belgium to the United States, where he is being prosecuted on charges of terrorist offences and is liable to life imprisonment.
The Court held that the applicant's extradition to the United States entailed a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. It considered that the life sentence to which the applicant was liable in the United States

was irreducible inasmuch as US law provided for no adequate mechanism for reviewing this type of sentence, and that it was therefore contrary to the provisions of Article 3. The Court also held that there had been a **violation of Article 34** (right of individual application) of the Convention: the failure of the Belgian State to observe the suspension of extradition indicated by the Court had irreversibly lowered the level of protection of the rights secured under Article 3 of the Convention, which the applicant had attempted to uphold by lodging his application with the Court, and had interfered with his right of individual application.

Secret "rendition" operations

El-Masri v. "The former Yugoslav Republic of Macedonia"

13 December 2012 (Grand Chamber)

This case concerned the complaints of a German national of Lebanese origin that he had been a victim of a secret "rendition" operation during which he was arrested, held in isolation, questioned and ill-treated in a Skopje hotel for 23 days, then transferred to CIA (Central Intelligence Agency) agents who brought him to a secret detention facility in Afghanistan, where he was further ill-treated for over four months.

The Court found the applicant's account to be established beyond reasonable doubt and held that "The former Yugoslav Republic of Macedonia" had been responsible for his torture and ill-treatment both in the country itself and after his transfer to the United States authorities in the context of an extra-judicial "rendition".

The Court held that there had been a **violation of Article 3** (prohibition of torture and inhuman or degrading treatment) of the Convention, on account of the inhuman and degrading treatment to which the applicant had been subjected while being held in a hotel in Skopje, on account of his treatment at Skopje Airport, which amounted to torture, and on account of his transfer into the custody of the United States authorities, thus exposing him to the risk of further treatment contrary to Article 3. The Court also found a **violation of Article 3** on account of the failure of "The former Yugoslav Republic of Macedonia" to carry out an effective investigation into the applicant's allegations of ill-treatment.

The Court further held that there had been a **violation of Article 5** (right to liberty and security) of the Convention, on account of the applicant's detention in the hotel in Skopje for 23 days and of his subsequent captivity in Afghanistan, as well as on account of the failure to carry out an effective investigation into his allegations of arbitrary detention.

Lastly, the Court found a **violation of Article 8** (right to respect for private and family life) and a **violation of Article 13** (right to an effective remedy) of the Convention.

Al Nashiri v. Poland and Husayn (Abu Zubaydah) v. Poland

24 July 2014

These two cases concerned allegations of torture, ill-treatment and secret detention of two men suspected of terrorist acts. Both applicants submitted that they had been held at a CIA "black site" in Poland. They maintained in particular that Poland had knowingly and intentionally enabled the CIA to hold them in secret detention in the Stare Kiejkuty facility, for six and nine months, respectively, without any legal basis or review and without any contact with their families. They complained that Poland had knowingly and intentionally enabled their transfer from Polish territory despite the real risk of further ill-treatment and incommunicado detention, allowing them to be transferred to a jurisdiction where they would be denied a fair trial. Finally, they complained that Poland had failed to conduct an effective investigation into the circumstances surrounding their ill-treatment, detention and transfer from the Polish territory.

Having regard to the evidence before it, the Court came to the conclusion that the applicants' allegations that they had been detained in Poland were sufficiently convincing. The Court found that Poland had cooperated in the preparation and execution of the CIA rendition, secret detention and interrogation operations on its territory and it ought to have known that by enabling the CIA to detain the applicants on

its territory, it was exposing them to a serious risk of treatment contrary to the Convention.
In both cases, the Court held that Poland had **failed to comply with** its obligation under **Article 38** (obligation to furnish all necessary facilities for the effective conduct of an investigation) of the Convention. It further held, in both cases, that there had been a **violation of Article 3** (prohibition of torture and inhuman or degrading treatment) of the Convention, in both its substantive and procedural aspects, a **violation of Article 5** (right to liberty and security), a **violation of Article 8** (right to respect for private and family life), a **violation of Article 13** (right to an effective remedy) and a **violation of Article 6 § 1** (right to a fair trial) of the Convention. As regards the first applicant, the Court lastly held that there had been **a violation of Articles 2** (right to life) **and 3 taken together with Article 1** (abolition of the death penalty) **of Protocol No. 6** to the Convention.

Pending applications

Nasr and Ghali v. Italy (no. 44883/09)

Application communicated to the Italian Government on 22 November 2011
This case concerns the "extraordinary rendition" – the abduction by CIA agents, with the cooperation of Italian nationals – of Egyptian imam Abu Omar, and his transfer to Egypt, followed by his secret detention there for several months. The applicant complains in particular of his abduction with the participation of the Italian authorities, the ill-treatment endured during his transfer and detention, the impunity enjoyed by the persons responsible on grounds of State secrecy, and the failure to enforce the sentences passed on the convicted US nationals owing to the refusal of the Italian authorities to request their extradition. Lastly, he and his wife – the second applicant – complain of a violation of their right to respect for private and family life, given that the first applicant's abduction and detention resulted in their forcible separation for more than five years.
The Court communicated the application to the Italian Government and put questions to the parties under Articles 3 (prohibition of inhuman and degrading treatment), 5 (right to liberty and security), 6 (right to a fair trial), 8 (right to respect for private and family life) and 13 (right to an effective remedy) of the Convention.
On 23 June 2015 the Court held a Chamber hearing in the case.

Al Nashiri v. Romania (no. 33234/12)

Application communicated to the Romanian Government on 18 September 2012
The applicant in this case is the same as in the case *Al Nashiri v. Poland* (see above). In his application to the Court he complains that Romania, who he alleges knew and should have known about the rendition programme, the secret detention site within its territory in which he was held, and the torture and inhuman and degrading treatment to which he and others were subjected to as part of the process, knowingly and intentionally enabled the CIA to detain him, and has refused to date to properly acknowledge or investigate any wrongdoing. He also alleges that Romania enabled the CIA to transfer him from its territory despite substantial grounds for believing that there was a real risk that he would be subjected to the death penalty and further ill-treatment and incommunicado detention, and that he would receive a flagrantly unfair trial.
The Court gave notice of the application to the Romanian Government and put questions to the parties under Articles 2 (right to life), 3 (prohibition of torture and inhuman or degrading treatment), 5 (right to liberty and security), 6 (right to a fair trial), 8 (right to respect for private and family life), 10 (freedom of expression) and 13 (right to an effective remedy) of the Convention, and under Protocol No. 6 (abolition of the death penalty) to the Convention.

Abu Zubaydah v. Lithuania (no. 46454/11)

Application communicated to the Lithuanian Government on 14 December 2012
The applicant in this case is the same as in the case *Husayn (Abu Zubaydah) v. Poland* (see above). Before the Court, he claims in particular that he has been held and

ill-treated in a secret detention facility alleged to have been located in Lithuania and run under the CIA rendition programme.
The Court gave notice of the application to the Lithuanian Government and put questions to the parties under Articles 3 (prohibition of torture and inhuman or degrading treatment), 5 (right to liberty and security), 8 (right to respect for private life) and 13 (right to an effective remedy) of the Convention.

Issues under Article 5 (right to liberty and security) of the Convention

Existence of reasonable suspicion (Art. 5 § 1 (c))

Article 5 (right to liberty and security) of the Convention does not permit the detention of an individual for questioning merely as part of an intelligence gathering exercise (there must be an intention, in principle at least, to bring charges).

Fox, Campbell and Hartley v. the United Kingdom

30 August1990
The applicants were arrested in Northern Ireland by a constable exercising a statutory power (since abolished) allowing him to arrest for up to 72 hours anyone he suspected of being a terrorist.
The Court held that there had been a **violation of Article 5 § 1** (right to liberty and security) of the Convention, finding that the evidence provided was insufficient to establish that there had been an objectively determined "reasonable suspicion" for the arrests.

Murray v. the United Kingdom

28 October 1994
The first applicant had been arrested on suspicion of collecting money for the Provisional Irish Republican Army (IRA).

O'Hara v. the United Kingdom

16 October 2001
The applicant, a prominent member of Sinn Fein, had been arrested on account of suspected involvement in a murder committed by the IRA.

In both cases, the Court held that there had been **no violation of Article 5 § 1** (right to liberty and security) of the Convention, finding that the applicants' arrests on suspicion of terrorism had been part of pre-planned operations based on evidence or intelligence information of terrorist activity and had met the standard of "honest suspicion on reasonable grounds".

Indefinite detention

A. and Others v. the United Kingdom (n° 3455/05)

19 February 2009 (Grand Chamber)
The 11 applicants complained about their detention in high security conditions under a statutory scheme which permitted the indefinite detention of non-nationals certified by the Secretary of State as suspected of involvement in terrorism.
The Court found that the applicants' detention had **not** reached the high threshold of inhuman and degrading treatment for which a **violation of Article 3** of the Convention could be found.
It further held that there had been a **violation of Article 5 § 1** (right to liberty and security) of the Convention – in respect of all the applicants, except two who had elected to leave the United Kingdom – since the applicants had not been detained with a view to deportation and since, as the House of Lords had found, the derogating measures which permitted their indefinite detention on suspicion of terrorism had discriminated unjustifiably between nationals and non-nationals.
The Court also found in this case a **violation of Article 5 § 4** (right to have lawfulness of detention decided by a court) of the Convention in respect of four of the applicants, because they had not been able effectively to challenge the allegations against them, and, and a **violation of Article 5 § 5**, in respect of all the applicants, except the two

who had elected to leave the United Kingdom, on account of the lack of an enforceable right to compensation for the above violations.

Right to be brought promptly before a judge or other officer authorised by law to exercise judicial power

An arrested person is to be brought "promptly" before a judge or other office, the "clock" beginning to tick at the point of arrest.

Brogan and Others v. the United Kingdom

29 November 1988

The four applicants, who were suspected of terrorism, were arrested by the police in Northern Ireland and, after being questioned for periods ranging from four days and six hours to six days, sixteen hours and a half, were released without being charged or brought before a magistrate.

The Court held that there had been a **violation of Article 5 § 3** (right to liberty and security) of the Convention, finding that the requirement of "promptness" could not be stretched to a delay of four days and six hours or more.

Brannigan and McBride v. the United Kingdom

25 May 1993

In this case, the two applicants, who were IRA suspects, were arrested by the police in Northern Ireland and kept in police custody for six days, fourteen hours and thirty minutes, and four days, six hours and twenty-five minutes, respectively. They both complained in particular that they had not been brought promptly before a judge.

The Court held that there had been **no violation of Article 5 § 3** (right to liberty and security) of the Convention. The detention of the applicants for periods longer than in the *Brogan and Others* case (see above) did not breach the Convention as the United Kingdom had made a valid emergency derogation under Article 15 of the Convention (see above, page 1).

Right to be tried within reasonable time (Art. 5 § 3)

Berasategi v. France, Esparza Luri v. France, Guimon Ep. Esparza v. France, Sagarzazu v. France and Soria Valderrama v. France

26 January 2012

The five cases concerned the length of the pre-trial detention, which had been extended several times, of prisoners accused of belonging to the terrorist organisation ETA.

In these five cases the Court held that there had been a **violation of Article 5 § 3** (right to be tried within reasonable time) of the Convention. Noting in particular that on the face of it, pre-trial detention of between four years and eight months and five years and ten months appeared to be unreasonable and there had to be particularly compelling reasons for it, it considered, on the basis of the elements in its possession, that the judicial authorities had not acted with all the requisite promptness.

Right to take proceedings to challenge lawfulness of detention (Art. 5 § 4)

Sher and Others v. the United Kingdom

20 October 2015[3]

This case concerned the arrest and detention of the applicants, three Pakistani nationals, in the context of a counterterrorism operation. The applicants were detained for 13 days, before ultimately being released without charge. During that period they were brought twice before a court with warrants for their further detention being granted. They were then taken into immigration detention and have since voluntarily returned to Pakistan. They complained in particular about the hearings on requests for prolongation of their detention because certain evidence in favour of their continued detention had been

[3]. This judgment will become final in the circumstances set out in Article 44 § 2 (final judgments) of the European Convention on Human Rights.

withheld from them and that one such hearing had been held for a short period in closed session.
The Court held that there had been **no violation of Article 5 § 4** of the Convention. It observed in particular that the UK authorities had suspected an imminent terrorist attack and had launched an extremely complex investigation aimed at thwarting it. Reiterating that terrorism fell into a special category, it found that Article 5 § 4 could not be used to prevent the use of a closed hearing or to place disproportionate difficulties in the way of police authorities in taking effective measures to counter terrorism. In the applicants' case, the threat of an imminent terrorist attack and national security considerations had justified restrictions on the applicants' right to adversarial proceedings concerning the warrants for their further detention. Moreover, there had been sufficient safeguards against the risk of arbitrariness in respect of the proceedings for warrants of further detention, in the form of a legal framework setting out clear and detailed procedural rules.

Right to have lawfulness of detention decided speedily by a court (Art. 5 § 4)

M.S. v. Belgium (no. 50012/08)

31 January 2012
This case concerned the extension of periods of detention while awaiting removal from Belgian territory in respect of an Iraqi national – who was suspected in particular of having links with the terrorist association Al-Qaeda – having served his sentence. Relying on Article 3 (prohibition of torture and inhuman or degrading treatment), the applicant complained that he had been returned to Iraq. He further alleged that his first period of detention in a closed transit centre from October 2007 to March 2009, and his second period of detention in a closed transit centre from April 2010 until his return to Iraq in October 2010, had been arbitrary and the decision as to the lawfulness of his detention had not been made speedily.
As regards the first period of detention, the Court considered that the applicant had not benefited from the right to a speedy decision on the lawfulness of his detention and concluded that there had been a **violation of Article 5 § 4** of the Convention. The Court further held that there had been a **violation of Article 5 § 1** (right to liberty and security) of the Convention in respect of the first period of detention in a closed transit centre from 29 May 2008 to 4 March 2009, placement of the applicant in a closed transit centre on 2 April 2010 and measures to extend his detention after 24 August 2010.
As far as the applicant's complaint under Article 3 was concerned, the Court reiterated that Article 3 prohibited in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the victim's conduct, and even in the most difficult circumstances such as the fight against terrorism. In the circumstances of the case, it held that there had been a **violation of Article 3** of the Convention in respect of the return of the applicant to Iraq.

Issues under Article 6 (right to a fair trial) of the Convention

Heaney and McGuinness v. Ireland

21 December 2000
The two applicants were arrested on suspicion of serious terrorist offences. After having been cautioned by police officers that they had the right to remain silent, they were requested under section 52 of the Offences Against the State Act 1939 to give details about their movements at the time of the relevant offences. The applicants complained that section 52 of the 1939 Act violated their rights to silence and against self-incrimination and inverted the presumption of innocence.
The Court held that there had been a **violation of Article 6 § 1** (right to a fair trial) **and 6 § 2** (presumption of innocence) of the Convention. It found that the security and public order concerns invoked by the Irish Government could not justify a provision which extinguishes the very essence of the applicants' rights to silence and

against self-incrimination guaranteed by Article 6 § 1 of the Convention. Moreover, given the close link with the presumption of innocence guaranteed by Article 6 § 2, there had also been a violation of that provision.

Salduz v. Turkey

27 November 2008 (Grand Chamber)

The applicant, a minor at the time, was arrested on suspicion of participating in an illegal demonstration in support of the imprisoned leader of the PKK and accused of hanging an illegal banner from a bridge. He was subsequently convicted of aiding and abetting the PKK. The case concerned restriction on the applicant's right of access to a lawyer while in police custody for an offence falling under the jurisdiction of the state security courts, regardless of age.

The Court held in particular that there had been a **violation of Article 6 § 3 (c)** (right to legal assistance of one's own choosing) **in conjunction with Article 6 § 1** (right to a fair hearing) of the Convention, on account of the applicant's lack of legal assistance while he was in police custody.

El Haski v. Belgium

25 September 2012

This case concerned the arrest and conviction of a Moroccan national for participating in the activities of a terrorist group. The applicant complained in particular that his right to a fair trial had been violated because some of the statements used in evidence against him had allegedly been obtained in Morocco by means of treatment contrary to Article 3 (prohibition of torture or inhuman or degrading treatment) of the Convention.

The Court held that there had been a **violation of Article 6** (right to a fair trial) of the Convention. Unlike the Belgian courts, the Court found that because of the context in which the statements had been taken, in order to make the criminal court exclude them as evidence it sufficed for the applicant to demonstrate the existence of a "real risk" that the statements concerned had been obtained using treatment contrary to Article 3. Article 6 of the Convention therefore required the domestic courts not to admit them as evidence without first making sure they had not been obtained by such methods. However, in rejecting the applicant's request to exclude the statements the Court of Appeal simply noted that he had provided no "concrete proof" capable of shedding "reasonable doubt" on the evidence.

Abdulla Ali v. the United Kingdom

30 June 2015

This case concerned the applicant's complaint that, because of extensive adverse media coverage, the criminal proceedings against him for conspiring in a terrorist plot to cause explosions on aircraft using liquid bombs had been unfair. Following a first trial in his case which had resulted in his conviction on a charge of conspiracy to murder, there had been extensive media coverage, including reporting on material which had never been put before the jury. A retrial was subsequently ordered in respect of the more specific charge of conspiracy to murder by way of detonation of explosive devices on aircraft mid-flight (on which the jury at the first trial had been unable to reach a verdict) and the applicant argued that it was impossible for the retrial to be fair, given the impact of the adverse publicity. His argument was rejected by the retrial judge and he was convicted at the retrial. He was sentenced to life imprisonment with a minimum term of 40 years.

The Court held that there had been **no violation of Article 6 § 1** (right to a fair trial) of the Convention, finding that it had not been shown that the adverse publicity had influenced the jury to the point of prejudicing the outcome of the proceedings and rendering the applicant's trial unfair. It observed in particular that the applicable legal framework in the United Kingdom for ensuring a fair trial in the event of adverse publicity had provided appropriate guidance for the retrial judge. It further found that the steps taken by the judge were sufficient. Thus, he considered whether enough time had elapsed to allow the prejudicial reporting to fade into the past before the retrial commenced and recognised the need to give careful jury directions on the importance of

impartiality and of deciding the case on the basis of evidence led in court only. He subsequently gave regular and clear directions, to which the applicant did not object. The fact that the jury subsequently handed down differentiated verdicts in respect of the multiple defendants in the retrial proceedings supported the judge's conclusion that the jury could be trusted to be discerning and follow his instructions to decide the case fairly on the basis of the evidence led in court alone.

Pending applications

Ibrahim and Others v. the United Kingdom (nos. 50541/08, 50571/08, 50573/08 and 40351/09)

16 December 2014 – case referred to the Grand Chamber in June 2015

On 21 July 2005 four bombs were detonated on the London transport system but failed to explode. The perpetrators fled the scene and a police investigation immediately commenced. The first three applicants were arrested on suspicion of having detonated three of the bombs. The fourth applicant was initially interviewed as a witness in respect of the attacks but it subsequently became apparent that he had assisted one of the bombers after the failed attack and, after he had made a written statement, he was also arrested. All four applicants were later convicted of criminal offences. The case concerned the temporary delay in providing the applicants with access to a lawyer, in respect of the first three applicants, after their arrests, and, as regards the fourth applicant, after the police had begun to suspect him of involvement in a criminal offence but prior to his arrest; and the admission at their subsequent trials of statements made in the absence of lawyers.

In its Chamber judgment of 16 December 2014, the Court held, by six votes to one, that there had been no violation of Article 6 § 1 and 3 (c) (right to a fair trial and right to legal assistance) of the Convention. The Court was satisfied that, at the time of the four applicants' initial police interviews, there had been an exceptionally serious and imminent threat to public safety, namely the risk of further attacks, and that this threat provided compelling reasons justifying the temporary delay in allowing the applicants' access to lawyers. The Chamber also found that no undue prejudice had been caused to the applicants' right to a fair trial by the admission at their trials of the statements they had made during police interviews and before they had been given access to legal assistance. It took into account the counterbalancing safeguards contained in the national legislative framework, as applied in each of the applicants' cases; the circumstances in which the statements had been obtained and their reliability; the procedural safeguards at trial, and in particular the possibility to challenge the statements; and the strength of the other prosecution evidence. In addition, as concerned the fourth applicant, who had made self-incriminating statements during his police interview, the Chamber emphasised the fact that he had not retracted his statement even once he had consulted a lawyer but had continued to rely on his statement in his defence up until his request that it be excluded at trial.

On 1 June 2015 the case was referred to the Grand Chamber at the request of two of the applicants (Mr Omar (no. 50573/08) and Mr Abdurahman (no. 40351/09)).

On 25 November 2015 the Court held a Grand Chamber hearing in the case.

Gulamhussein and Tariq v. the United Kingdom (nos. 46538/11 and 3960/12)

Applications communicated to the UK Government on 7 March 2012

The applicants were dismissed from their jobs at the Home Office for suspected involvement in terrorism. During their challenges to their dismissals, only limited disclosure took place and a special advocate procedure was applied before the Employment Tribunal in the case of the second applicant. The applicants complain in particular of a violation of the principle of equality of arms; the right to an adversarial hearing; and, the right to a reasoned judgment.

The Court gave notice of the applications to the British Government and put questions to the parties under Article 6 § 1 (right to a fair trial) of the Convention.

Issues under Article 7 (no punishment without law) of the Convention

Del Río Prada v. Spain

21 October 2013 (Grand Chamber)

This case concerned the postponement of the final release of a person convicted of terrorist offences, on the basis of a new approach – known as the "Parot doctrine" – adopted by the Spanish Supreme Court after she had been sentenced. The applicant complained that the Supreme Court's departure from the case-law concerning remissions of sentence had been retroactively applied to her after she had been sentenced, thus extending her detention by almost nine years. She further alleged that she had been kept in detention in breach of the requirements of "lawfulness" and "a procedure prescribed by law".

The Court held that there had been a **violation of Article 7** (no punishment without law) of the Convention. It further held that since 3 July 2008 the applicant's detention had not been lawful, in **violation of Article 5 § 1** (right to liberty and security) of the Convention. It lastly held, **under Article 46** (binding force and execution of judgments) of the Convention, that Spain was to ensure that the applicant was released at the earliest possible date.

The Court considered that the applicant could not have foreseen either that the Spanish Supreme Court would depart from its previous case-law in February 2006, or that this change in approach would be applied to her and would result in the date of her release being postponed by almost nine years – from 2 July 2008 until 27 June 2017. The applicant had therefore served a longer term of imprisonment than she should have served under the Spanish legal system in operation at the time of her conviction. Accordingly, it was incumbent on the Spanish authorities to ensure that she was released at the earliest possible date.

Issues under Article 8 (right to respect for private and family life) of the Convention

Sabanchiyeva and Others v. Russia

6 June 2013

This case concerned the Russian authorities' refusal to return the bodies of Chechen insurgents to their families. The applicants complained in particular about the authorities' refusal to return to them their relatives' bodies under terrorism legislation.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) and a **violation of Article 13** (right to an effective remedy) **taken in conjunction with Article 8** of the Convention. It found that the automatic refusal to return the bodies to their families had not struck a fair balance between, on the one hand, the legitimate aim of preventing any disturbance which could have arisen during the burials as well as protecting the feelings of the relatives of the victims of terrorism and, on the other hand, the applicants' right to pay their last respects at a funeral or at a grave. The Court fully acknowledged the challenges faced by a State from terrorism but found that the automatic refusal to return the bodies had contravened the authorities' duty to take into account the individual circumstances of each of the deceased and those of their family members. In the absence of such an individualised approach, the measure had appeared to switch the blame from the deceased for their terrorist activities on to the applicants.

The Court further held that there had been **no violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention as concerned the conditions in which the bodies of the applicants' relatives had been stored for identification, and **no violation of Article 38 § 1 (a)** (obligation to provide necessary facilities for the examination of the case) of the Convention.

See also: ***Abdulayeva v. Russia***, ***Kushtova and Others v. Russia***, ***Arkhestov and Others v. Russia***, and ***Zalov and Khakulova v. Russia***, judgments of 16 January 2014.

Victims of terrorism

States are under the obligation to take the measures needed to protect the fundamental rights of everyone within their jurisdiction against terrorist acts[4].

Issues under Article 2 (right to life) of the Convention

Finogenov and Others v. Russia

20 December 2011

This case concerned the siege in October 2002 of the "Dubrovka" theatre in Moscow by Chechen separatists and the decision to overcome the terrorists and liberate the hostages using gas.

The Court found that there had been **no violation of Article 2** (right to life) of the Convention concerning the decision to resolve the hostage crisis by force and use gas. It further held that there had been a **violation of Article 2** concerning the inadequate planning and implementation of the rescue operation, and a violation of the same provision concerning the ineffectiveness of the investigation into the allegations of the authorities' negligence in planning and carrying out the rescue operation as well as the lack of medical assistance to hostages.

Pending applications

Tagayeva and Others v. Russia (no. 26562/07 and six other applications)

Case declared partly admissible, partly inadmissible and partly struck out of the list on 9 June 2015

This case concerns the terrorist attack on a school in Beslan, North Ossetia (Russia), in September 2004, and the ensuing hostage-taking, siege and storming of the school, which resulted in the deaths of over 330 civilians, including over 180 children. The applicants maintain, in particular: that the State has failed in its obligation to protect the victims from the known risk to their lives; that there was no effective investigation into the events; and that many aspects of the planning and control of the negotiations and rescue operation were deficient. Some applicants also maintain that the deaths were the result of a disproportionate use of force by the authorities.

On 12 April 2012 the Court gave notice of the applications to the Russian Government and put questions to the parties under Articles 2 (right to life), 3 (prohibition of inhuman or degrading treatment), 6 (right to a fair trial), 8 (right to respect for private and family life), 10 (freedom of expression) and 13 (right to an effective remedy) of the Convention.

On 14 October 2014 the Court held a Chamber hearing in the case.

In a decision of 9 June 2015, the Court: struck four persons out of its list of applicants; declared inadmissible the applications lodged by 51 applicants under Articles 2 and 13 of the Convention; declared admissible, without prejudging the merits, the remaining applicants' complaints under Article 2 (substantive and procedural obligations) and Article 13 of the Convention[5]; and declared inadmissible certain applicants' complaints under Articles 3, 6, 8, and 10 of the Convention.

[4] See the Guidelines on human rights and the fight against terrorism, adopted by the Committee of Ministers of the Council of Europe on 11 July 2002, I.

[5]. A judgment on these admissible complaints will be delivered at a later stage.

Issues under Article 6 (right to a fair trial) of the Convention

Association SOS Attentats and de Boëry v. France

4 October 2006 (Grand Chamber – decision on the admissibility)

The first applicant is an association whose members are victims of terrorist acts. The sister of the second applicant was one of the 170 victims, who included many French nationals, killed in the terrorist attack in 1989 against an aircraft, operated by the French company UTA, which exploded in flight above the Tenere desert. Relying in particular on Article 6 § 1 (right to a fair trial) of the Convention, the applicants submitted, among other things, that the French Court of Cassation's ruling that Colonel Gaddafi was entitled to sovereign immunity had infringed their right of access to a court. After the application had been lodged, a new fact was brought to the European Court of Human Rights' attention: on 9 January 2004 an agreement was signed between the Gaddafi International Foundation for Charity Associations, the families of the victims and the Bank for Official Deposits, under which the families of the 170 victims would each receive one million US dollars in exchange for "waiving the right to bring any kind of civil or criminal proceedings before any French or international court based on the explosion on board the aircraft".

The Court had to determine whether, as the French Government alleged, the signing of the 2004 agreement was such as to lead it to decide to strike the application out of its list of cases in application of Article 37 § 1 (striking out) of the Convention.

The conclusion of the 2004 agreement, the latter's terms and the fact that the second applicant had obtained a judgment on the question of the responsibility of six Libyan officials were circumstances which, taken together, led the Court to consider that **it was no longer justified to continue the examination of the application within the meaning of Article 37** § 1 (c) of the Convention. As no other element regarding respect for human rights as guaranteed by the Convention required that the application be examined further, the Court decided to **strike** it **out of the list**.

Prevention of terrorism

All measures taken by States to fight terrorism must respect human rights and the principle of the rule of law, while excluding any form of arbitrariness, as well as any discriminatory or racist treatment, and must be subject to appropriate supervision[6].

Right to life and use of force by the State in self-defence or defence of another

Article 2 § 2 (right to life) of the Convention justifies the use of force in self-defence only if it is "absolutely necessary".

McCann and Others v. the United Kingdom

27 September 1995

Three members of the Provisional IRA, suspected of having on them a remote control device to be used to explode a bomb, were shot dead on the street by SAS (Special Air Service) soldiers in Gibraltar. The applicants, who are representatives of their estates, alleged that the killing of the deceased by members of the security forces constituted a violation of Article 2 (right to life) of the Convention.

The Court held that there had been a **violation of Article 2** (right to life) of the Convention because the operation could have been planned and controlled without the need to kill the suspects.

[6]. See the Guidelines on human rights and the fight against terrorism, adopted by the Committee of Ministers of the Council of Europe on 11 July 2002, II.

Application pending before the Grand Chamber

Armani Da Silva v. the United Kingdom (no. 5878/08)

Application communicated to the UK Government on 28 September 2010 – Relinquishment of jurisdiction in favour of the Grand Chamber in December 2014

This case concerns the fatal shooting of a Brazilian national by the police in the London Underground. The deceased was mistakenly identified as a terrorist suspect. The applicant, his cousin, complains before the Court about the authorities' decision not to prosecute any individuals in relation to her cousin's death.

The Court gave notice of the application to the British Government and put questions to the parties under article 2 (right to life) of the Convention.

On 9 December 2014 the Chamber to which the case had been allocated relinquished jurisdiction in favour of the Grand Chamber.

On 10 June 2015 the Court held a Grand Chamber hearing in the case.

Interferences with the exercise of the right to respect for private and family life, home and correspondence

Klass and Others v. Germany

6 September 1978

In this case the applicants, five German lawyers, complained about legislation in Germany empowering the authorities to monitor their correspondence and telephone communications without obliging the authorities to inform them subsequently of the measures taken against them.

The Court held that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention. It found that, due to the threat of sophisticated forms of espionage and terrorism, some legislation granting powers of secret surveillance was, under exceptional conditions, "necessary in a democratic society" in the interests of national security and/or the prevention of disorder or crime.

İçyer v. Turkey

12 January 2006 (decision on the admissibility)

This case concerned the question of the effectiveness of the remedy before the commission set up under the Law on Compensation for Losses resulting from Terrorism. The applicant complained in particular under Article 8 (right to respect for private and family life, and home) of the Convention, and Article 1 (protection of property) of Protocol No. 1 to the Convention, that the Turkish authorities had refused to allow him to return to his home and land after he was evicted from his village in late 1994 on account of terrorist activities in the region.

The Court declared the application **inadmissible**, finding in particular that there was no longer any obstacle preventing the applicant from returning to his village. Furthermore, it also appeared that the applicant was entitled to claim compensation under the new Compensation Law of 27 July 2004, before the relevant compensation commission, for the damage he allegedly sustained as a result of the authorities' refusal to allow him to gain access to his possessions.

See also the decisions on the admissibility of 28 June 2011 in the cases ***Akbayır and Others v. Turkey***, ***Fidanten and Others v. Turkey***, ***Bingölbalı and 54 other applications v. Turkey*** and ***Boğuş and 91 other applications v. Turkey***.

Gillan and Quinton v. the United Kingdom

12 January 2010

This case concerned the police power in the United Kingdom, under sections 44-47 of the Terrorism Act 2000, to stop and search individuals without reasonable suspicion of wrongdoing.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention. It considered that the powers of authorisation and confirmation as well as those of stop and search under sections 44 and 45 of the 2000 Act were

neither sufficiently circumscribed nor subject to adequate legal safeguards against abuse. They were not, therefore, "in accordance with the law".

Nada v. Switzerland

12 September 2012 (Grand Chamber)

The Swiss Federal Taliban Ordinance was enacted pursuant to several UN Security Council Resolutions. It had the effect of preventing the applicant, an Egyptian national, from entering or transiting through Switzerland due to the fact that his name had been added to the list annexed to the UN Security Council's Sanctions Committee of persons suspected of being associated with the Taliban and al-Qaeda. The applicant had been living in an Italian enclave of about 1.6 square kilometres surrounded by the Swiss Canton of Ticino and separated from the rest of Italy by a lake. He claimed that the restriction made it difficult for him to leave the enclave and therefore to see his friends and family, and that it caused him suffering due to his inability to receive appropriate medical treatment for his health problems. He further found it difficult to remove his name from the Ordinance, even after the Swiss investigators had found the accusations against him to be unsubstantiated.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention, and a **violation of Article 13** (right to an effective remedy) **taken in conjunction with Article 8**. It observed in particular that Switzerland could not simply rely on the binding nature of the Security Council resolutions, but should have taken all possible measures, within the latitude available to it, to adapt the sanctions regime to the applicant's individual situation. Furthermore, the applicant did not have any effective means of obtaining the removal of his name and therefore no remedy in respect of the violations of his rights. Lastly, the Court declared **inadmissible** the applicant's complaints **under Article 5** (right to liberty and security) of the Convention, finding, like the Swiss Federal Court, that the applicant had not been "deprived of his liberty" within the meaning of Article 5 § 1 by the measure prohibiting him from entering and transiting through Switzerland.

Sher and Others v. the United Kingdom

20 October 2015[7]

This case concerned the arrest and detention of the applicants, three Pakistani nationals, in the context of a counterterrorism operation. The applicants complained in particular about the search of their homes during their detention.

The Court held that there had been **no violation of Article 8** (right to respect for private and family life and home) of the Convention. It found in particular that the fight against terrorism and the urgency of the situation had justified a search of the applicants' homes pursuant to a search warrant framed in relatively broad terms. Moreover, there had been sufficient safeguards against the risk of arbitrariness in respect of the search warrants, which had been issued by a judge, without the applicants suggesting that there had been no reasonable grounds for doing so.

Szabó and Vissy v. Hungary

12 January 2016[8]

This case concerned Hungarian legislation on secret anti-terrorist surveillance introduced in 2011. The applicants complained in particular that they could potentially be subjected to unjustified and disproportionately intrusive measures within the Hungarian legal framework on secret surveillance for national security purposes (namely, "section 7/E (3) surveillance"). They notably alleged that this legal framework was prone to abuse, notably for want of judicial control.

In this case the Court held that there had been a **violation of Article 8** of the Convention. It accepted that it was a natural consequence of the forms taken by present-day terrorism that governments resort to cutting-edge technologies, including

[7]. This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention.
[8]. This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention.

massive monitoring of communications, in pre-empting impending incidents. However, the Court was not convinced that the legislation in question provided sufficient safeguards to avoid abuse. Notably, the scope of the measures could include virtually anyone in Hungary, with new technologies enabling the Government to intercept masses of data easily concerning even persons outside the original range of operation. Furthermore, the ordering of such measures was taking place entirely within the realm of the executive and without an assessment of whether interception of communications was strictly necessary and without any effective remedial measures, let alone judicial ones, being in place. The Court further held that there had been **no violation of Article 13** (right to an effective remedy) of the Convention **taken together with Article 8**, reiterating that Article 13 could not be interpreted as requiring a remedy against the state of domestic law.

Interferences with freedom of religion

Güler and Uğur v. Turkey

2 December 2014

This case concerned the applicants' conviction for propaganda promoting a terrorist organisation on account of their participation in a religious service organised on the premises of a political party in memory of three members of an illegal organisation (the PKK) who had been killed by security forces. The applicants alleged that their conviction had been based on their participation in a religious service which had consisted in a simple public manifestation of their religious practice. They also submitted that their conviction had not been sufficiently foreseeable, having regard to the wording of the Anti-Terrorism Act.

The Court considered that the prison sentence imposed on the applicants amounted to an interference with their right to freedom to manifest their religion, irrespective of the fact that the persons in memory of whom the service had been held had been members of an illegal organisation or that the service had been held on the premises of a political party where symbols of the illegal organisation had been displayed. It held that in the present case there had been a **violation of Article 9** (right to freedom of thought, conscience and religion) of the Convention, finding that the interference in question had not been "prescribed by law" in so far as the domestic-law provision on which it had been based had not met the requirements of clarity and foreseeability.

Freedom of expression issues

Purcell and Others v. Ireland

16 April 1991 (decision of the European Commission of Human Rights[9])

Brind v. the United Kingdom

9 May 1994 (decision of the Commission)

In these cases the applicants complained under Article 10 (freedom of expression) of the Convention about orders/notices restraining the broadcasting of interviews/reports of interviews and any words spoken by a person representing or supporting terrorist organisations such as the IRA.

The Commission declared the two cases **inadmissible**. In the first case, it found that the order was consistent with the objective of protecting national security and preventing disorder and crime; in the second case, it found that the requirement that an actor's voice be used to broadcast interviews was a limited interference, and that it could not be said that the interference with the applicants' freedom of expression had been disproportionate to the aim sought to be pursued.

[9]. Together with the European Court of Human Rights and the Committee of Ministers of the Council of Europe, the European Commission of Human Rights, which sat in Strasbourg from July 1954 to October 1999, supervised Contracting States' compliance with their obligations under the European Convention on Human Rights. The Commission ceased to exist when the Court became permanent on 1st November 1998.

Association Ekin v. France

17 July 2001

This case concerned the ban on the circulation of a book on the Basque culture.

The Court held that there had been a **violation of Article 10** (right to freedom of expression) of the Convention. Finding in particular that there was nothing in the book's content suggesting incitement to violence or separatism, it held that the interference with the applicant's freedom of expression had not been "necessary in a democratic society".

Falakaoğlu and Saygılı v. Turkey

19 December 2006

In this case, the applicants' complained about their criminal conviction, under the Prevention of Terrorism Act, for having published press articles designating State agents as targets for terrorist organisations.

The Court held that there had been a **violation of Article 10** (right to freedom of expression) of the Convention. Considering that the reasons given by the Turkish courts could not be regarded in themselves as sufficient to justify the interference with the applicants' right to freedom of expression, it found that the applicants' convictions had been disproportionate to the aims pursued and were therefore not "necessary in a democratic society".

See also: ***Bayar and Gürbüz v. Turkey***, judgment of 27 November 2012; ***Belek and Özkurt v. Turkey***, judgment of 13 July 2013; ***Belek and Özkurt v. Turkey (no. 2)***, ***Belek and Özkurt v. Turkey (no. 3)***, ***Belek and Özkurt v. Turkey (no. 4)***, ***Belek and Özkurt v. Turkey (no. 5)***, ***Belek and Özkurt v. Turkey (no. 6)*** and ***Belek and Özkurt v. Turkey (no. 7)***, judgments of 17 June 2014.

Leroy v. France

2 October 2008

The applicant, a cartoonist, complained about his conviction for complicity in condoning terrorism, following the publication of a drawing which concerned the attacks of 11 September 2001.

The Court held that there had been **no violation of Article 10** (right to freedom of expression) of the Convention. Having regard to the modest nature of the fine imposed on the applicant and the context in which the impugned drawing had been published, it found that the measure imposed on the applicant had not been disproportionate to the legitimate aim pursued.

Ürper and Others v. Turkey

20 October 2009

In this case, the applicants complained about the suspension of the publication and dissemination of their newspapers, considered propaganda in favour of a terrorist organisation.

The Court held that there had been a **violation of Article 10** (right to freedom of expression) of the Convention. It found in particular that less draconian measures could have been envisaged by the Turkish authorities, such as confiscation of particular issues of the newspapers or restrictions on the publication of specific articles. By having suspended entire publications, however briefly, the authorities had restricted unjustifiably the essential role of the press as a public watch-dog in a democratic society.

See also: ***Turgay and Others v. Turkey***, judgment of 15 June 2010; ***Gözel and Özer v. Turkey***, judgment of 6 July 2010; ***Aslan and Sezen v. Turkey*** and ***Aslan and Sezen v. Turkey (no. 2)***, judgments of 17 June 2014.

Belek and Velioğlu v. Turkey

6 October 2015

This case concerned the applicants' conviction by a State Security Court for publishing an article in a daily newspaper containing a statement by an illegal armed organisation.

The applicants maintained in particular that their criminal conviction and the ban on publication of the newspaper amounted to a violation of their right to freedom of expression.
The Court held that there had been a **violation of Article 10** (right to freedom of expression) of the Convention. Paying particular attention to the language used in the article in question and to the context of its publication, and taking into account the difficulties linked to the fight against terrorism, it noted in particular that the text, taken as a whole, had not contained any call for violence, armed resistance or insurrection and had not amounted to hate speech, which was the main factor to be taken into consideration. The Court examined the grounds for the applicants' conviction and found that they could not be regarded as sufficient to justify the interference with their right to freedom of expression.

Müdür Duman v. Turkey

6 October 2015
This case concerned the complaint by a local leader of a political party that his conviction on account of illegal pictures and publications found in the office of his party had amounted to an unjustified interference with his right to freedom of expression.
The Court held that there had been a **violation of Article 10** (right to freedom of expression) of the Convention, finding that the applicant's conviction had been disproportionate to the aims pursued, namely the need to protect public order and to prevent crime as part of the fight against terrorism. It noted, in particular, that although the applicant had denied any knowledge of the material found in his office, his conviction constituted an interference with his rights under Article 10. Moreover, the reasons given by the Turkish courts for convicting and sentencing the applicant could not be considered relevant and sufficient to justify the interference with his right to freedom of expression. In particular, the applicant's conduct could not be construed as support for unlawful acts and there was no indication that the material in question advocated violence, armed resistance or an uprising.

Bidart v. France

12 November 2015[10]
This case concerned the obligation imposed on the applicant, the former leader of the Basque separatist organisation *Iparretarrak*, in the context of his release on licence, to refrain from disseminating any work or audiovisual production authored or co-authored by him concerning the offences of which he had been convicted, and from speaking publicly about those offences.
The Court held that there had been **no violation of Article 10** (right to freedom of expression) of the Convention. It noted in particular that the impugned measure was limited in time and concerned only the offences committed by the applicant. He had also been able to have the measure reviewed by the courts. The Court therefore found that, in imposing on the applicant, in the context of his release on licence, an obligation to refrain from disseminating any work or audiovisual production authored or co-authored by him concerning, in whole or in part, the offences of which he had been convicted, and from speaking publicly about those offences, the French courts had not overstepped their margin of appreciation.

Dissolution of political parties

United Communist Party of Turkey and Others v. Turkey

30 January 1998
This case concerned the dissolution of the United Communist Party of Turkey ("the TBKP") and the banning of its leaders from holding similar office in any other political party.

[10]. This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention.

The Court held that there had been a **violation of Article 11** (freedom of assembly and association) of the Convention. It found that the dissolution had not been "necessary in a democratic society", noting in particular that there was no evidence that the TBKP had been responsible for terrorism problems in Turkey.

See also: ***Socialist Party and Others v. Turkey***, judgment of 25 May 1998; ***Case of Freedom and Democracy Party (ÖZDEP) v. Turkey***, judgment (Grand Chamber) of 8 December 1999; ***Yazar and Others v. Turkey***, judgment of 9 April 2002.

Herri Batasuna and Batasuna v. Spain, Etxeberría and Others v. Spain, and Herritarren Zerrenda v. Spain

30 June 2009

The first case concerned the dissolution of the political parties "Herri Batasuna" and "Batasuna". The applicants complained that an organic law on political parties enacted by the Spanish Parliament in 2002 was not accessible or foreseeable, was applied retrospectively and had no legitimate aim; they also considered that the measure imposed on them could not be considered necessary in a democratic society and compatible with the principle of proportionality.

The Court held that the applicants' projects had been in contradiction with the concept of "a democratic society" and had entailed a considerable threat to Spanish democracy.

The Court held that there had been **no violation** of Article 11 (freedom of assembly and association) of the Convention. With regard in particular to the proportionality of the dissolution measure, the fact that the applicants' projects were in contradiction with the concept of "a democratic society" and entailed a considerable threat to Spanish democracy led the Court to hold that the sanction imposed on the applicants had been proportional to the legitimate aim pursued, within the meaning of Article 11 § 2 of the Convention.

The second and third cases concerned the disqualification from standing for election imposed on the applicants on account of their activities within the political parties that had been declared illegal and dissolved. In the second case, the applicants alleged in particular that they had been deprived of the possibility of standing as candidates in the elections to the Parliament of Navarre and to represent the electorate, which had hindered the free expression of the opinion of the people in the choice of the legislature; in the third case, the applicant complained in particular that he had been barred from standing as a candidate in the elections to the European Parliament and that he had been deprived of the possibility of standing in elections to the European Parliament and representing the electors.

In both cases, considering that the impugned restrictions had been proportionate to the legitimate aim pursued, and, in the absence of any element of arbitrariness, that they had not infringed the free expression of the opinion of the people, the Court held that there had been **no violation of Article 3** (right to free elections) **of Protocol No. 1** to the Convention. It further held, in both cases, that there had been **no violation of Article 10** (right to freedom of expression), and **no violation of Article 13** (right to an effective remedy) of the Convention.

Media Contact:
Tel.: +33 (0)3 90 21 42 08