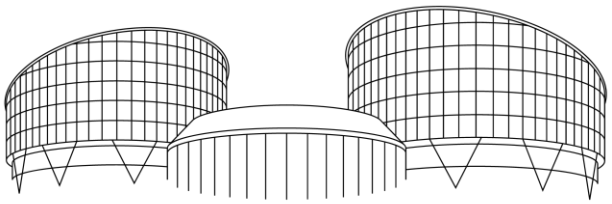

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

RESEARCH REPORT

Selected case-law of the European Court of Human Rights on young people

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Compilation of Relevant Case-law of the European Court of Human Rights on Young People between 18 and 35 Years

This compilation summarises the relevant case-law of the European Court of Human Rights on specific areas of importance for young people between 18 and 35 years:

A. Access to a professional career

***Bigaeva v. Greece*, no. 26713/05, 28 May 2009**

FACTS - The applicant, a Russian national, was born in 1970 and lives in Athens. In 1993 she settled in Greece, obtained a work permit and was admitted to the Athens Law Faculty. She obtained a residence permit on the basis of her student status. In 2000 she obtained a Master's degree, then in 2002 a postgraduate qualification, and decided to continue with her doctorate. In the meantime, the applicant had been admitted to pupillage by the Athens Bar Council (the "Council"). Under the Legal Practice Code, an eighteen-month pupillage is a prerequisite for admission to the Bar. According to a certificate issued by the Council, the applicant had been admitted to pupillage by mistake; it had been assumed that she was a Greek citizen as she had a Master's degree from a Greek university. After she had completed her pupillage, the Council refused to allow her to sit for the Bar examinations on the grounds that she was not a Greek national, as required by the Legal Practice Code. The applicant then lodged an application to have that refusal set aside together with a request for the stay of execution of the decision in question with the Supreme Administrative Court.

In September 2002 the Supreme Administrative Court granted the applicants request for a stay of execution so that she could sit for the examinations. After passing them, she applied to the Ministry of Justice to be admitted to the Athens Bar Council's roll. As the Ministry failed to reply, the applicant again appealed to the Supreme Administrative Court, this time against the Ministry's tacit refusal to admit her to the Council's roll. The Supreme Administrative Court dismissed the applicant's two appeals in 2005, taking the view, among others, that in view of the important role of lawyers in the administration of justice, the State enjoyed wide discretion in regulating the conditions of access to the profession. Accordingly, the Supreme Administrative Court found that the rejection of the applicant's request to sit for the Bar examinations had been legal and had not infringed her right to the free development of her personality and, accordingly, that the Ministry of Justice had justifiably denied her request for admission to the Bar Council's roll.

LAW - The Court observed that restrictions imposed on professional life might fall within the ambit of Article 8 when they affected the way an individual built his social identity by developing relationships with other human beings. In the present case, the prospect of sitting for the examinations after her pupillage was the climax of a long personal and academic endeavour for the applicant, reflecting her desire to become integrated into Greek society. The authorities, who did not raise the issue of nationality until the end of the process, allowed her to carry out her pupillage and left her with hope, even though she was clearly not going to be entitled to sit for the subsequent examinations. The Court held that there had been a violation of Article 8, as the authorities had shown a lack of coherence and respect towards the applicant and her professional life.

In addition, the applicant accused Greece of excluding non-EU foreign nationals from access to the legal profession, in an arbitrary and discriminatory manner. The Court reiterated that the Convention did not guarantee the right to freedom of profession and that the legal profession was somewhat special because of its public-service aspects. It was therefore for the Greek authorities to decide on the conditions of nationality for admission to legal practice. The Court could not call into question the decision they had taken not to allow the applicant to sit for the examinations organised by the Council on an objective and reasonable basis, namely the Legal Practice Code. The Court accordingly held that there had been no violation of Article 8 taken together with Article 14 of the Convention.

CONCLUSION – Violation of Article 8 of the Convention; no violation of Article 8 taken together with Article 14 of the Convention.

B. Conscientious objection

***Savda v. Turkey*, no. 42730/05, 12 June 2012**

FACTS - Following his conscription into the army in 2004, the applicant declared to be a conscientious objector and refused to serve in the armed forces. He became a leading member of the anti-militarist movement in Turkey, running a website set up by "*War Resisters International"* (an association founded in 1921 to promote non-violent action against the causes of war). In 1994 he was sentenced to a prison term for aiding and abetting the PKK (Workers' Party of Kurdistan). Having served his sentence, the applicant was conscripted in May 1996 and deserted in August of the same year. Arrested some months later in possession of a weapon, he was accused of carrying out acts in favour of the PKK; he was detained on remand. The Adana State Security Court sentenced him to 14 years and 7 months' imprisonment for membership of the PKK. In November 2004, after serving his sentence, he was taken to the gendarmerie station for the purpose of his military service, then, to his regiment, where he refused to don a military uniform. A range of criminal proceedings were brought against him; in the meantime he continued to refuse to integrate into his regiment for the purpose of military service. He was tried on four occasions for desertion. In April 2008 the applicant was transferred to a military hospital, where psychological tests were conducted. A panel of military doctors diagnosed an "anti-social personality" disorder and concluded that he was unfit for military service. Having been exempted from military service, he was discharged from his regiment. He was released in November 2008 once his last prison sentence had been served.

LAW – In Turkey all male citizens who are found fit for national service are obliged to perform military service. Given that no substitute civilian service exists, conscientious objectors have no other choice, if they are to remain true to their convictions, but to refuse to be drafted into the army. In so doing, they open themselves to a form of "civil death", on account of the numerous criminal proceedings that the authorities invariably bring against them, the cumulative effects of the resulting criminal convictions and the possibility of being prosecuted throughout their lives.

The applicant was sentenced to prison terms on three occasions for refusing to wear a military uniform. On several occasions he was placed in solitary confinement, for periods ranging from 2 to 8 days, always on the same ground. Finally, the applicant was subjected to various criminal prosecutions and convictions, which were likely to continue indefinitely had the decision to demobilise him not been taken. The Court considered that the treatment to which the applicant had been subjected had caused serious pain and suffering that went beyond the usual element of humiliation inherent in a criminal conviction or detention. The Court therefore concluded that there had been a violation of Article 3.

With regard to Article 9, the Court noted that the applicant complained not only about specific actions on the part of the State, but also about the latter's failure to have enacted a law implementing the right to conscientious objection. It noted that the Government had put forward no convincing or compelling reason that would justify this failure. The Government was unable to explain in what way recognition of the right to conscientious objection was incompatible, in the contemporary world, with the State's duties in relation to territorial integrity, public safety, the prevention of disorder and protection of the rights of others.

The Court noted that the applicant's case was characterised by the absence of a procedure to examine his request for recognition of conscientious objector status. In the absence of a procedure to examine requests for the purpose of establishing conscientious objector status, the obligation to carry out military service was such as to entail a serious and insurmountable conflict with an individual's conscience. There was therefore an obligation on the authorities to provide the applicant with an effective and accessible procedure that would have enabled him to have established whether he was entitled to conscientious objector status, as he requested. A system which provided for no alternative service or any effective and accessible procedure by which the person concerned was able to have examined the question of whether he could benefit from the right to conscientious objection failed to strike the proper balance between the general interest of society and that of conscientious objectors. It

followed that the relevant authorities had failed to comply with their obligation under Article 9 of the Convention.

The Court further noted that under Turkish criminal law an individual was considered to be a serviceman from the moment of incorporation into his regiment. Following his conscription, the applicant refused to wear military uniform and stated that he did not wish to carry out military service for reasons of conscience. In the Court's opinion, such a situation could hardly be regarded as similar to that of a regular soldier who willingly agreed to submit to a system of military discipline. The Court considered it understandable that the applicant, having had to face purely military charges before a court made up entirely of servicemen, had been apprehensive about being tried by judges who could be equated with a party to the proceedings. As the applicant could legitimately have feared that the court could be influenced by biased considerations and given that his doubts as to that court's independence and impartiality were objectively justified, the Court held that there had been a violation of Article 6 § 1.

CONCLUSION – Violations of Articles 3, 9 and 6 § 1 of the Convention.

Bayatyan v. Armenia **[GC], no. 23459/03, ECHR 2011**

FACTS – The applicant, a Jehovah's Witness who had been declared fit for military service, informed the authorities that he refused to serve in the military on conscientious grounds but was ready to carry out alternative civil service. When summoned to commence his military service in May 2001 he failed to report for duty and temporarily left his home for fear of being forcibly taken to the military. He was charged with draft evasion and in 2002 was sentenced to two and a half years' imprisonment. He was released on parole after serving about ten and a half months of his sentence. At the material time in Armenia there was no law offering alternative civil service for conscientious objectors.

LAW – This was the first case in which the Court had examined the issue of the applicability of Article 9 to conscientious objectors. Previously, the Commission had in a series of decisions refused to apply that provision to such persons, on the grounds that, since Article 4 § 3 (b) of the Convention excluded from the notion of forced labour "any service of a military character or, in cases of conscientious objectors, in countries where they are recognised, service exacted instead of compulsory military service", the choice whether or not to recognise conscientious objectors had been left to the Contracting Parties. The question was therefore excluded from the scope of Article 9, which could not be read as guaranteeing freedom from prosecution for refusing to serve in the army. However, that interpretation of Article 9 was a reflection of ideas that prevailed at that time. Since then, important developments had taken place both on the international level and in the domestic legal systems of Council of Europe member States. By the time of the alleged interference with the applicant's Article 9 rights in 2002-03, there was virtually a consensus among the member States, the overwhelming majority of which had already recognised the right to conscientious objection. After the applicant's release from prison, Armenia had recognised that right also. The United Nations Human Rights Committee considered that the right to conscientious objection could be derived from Article 18 of the International Covenant on Civil and Political Rights and Article 9 of the Charter of Fundamental Rights of the European Union explicitly stated that the right to conscientious objection was recognised in accordance with the national law governing its exercise. Moreover, the Parliamentary Assembly of the Council of Europe and the Committee of Ministers had on several occasions called on the member States which had not yet done so to recognise the right to conscientious objection and this had eventually become a pre-condition for admission of new member States into the Organisation. In the light of the foregoing and of its "living instrument" doctrine, the Court concluded that a shift in the interpretation of Article 9 was necessary and foreseeable and that that provision could no longer be interpreted in conjunction with Article 4 § 3 (b). In any event, it transpired from the travaux préparatoires on Article 4 that the sole purpose of subparagraph 3 (b) was to provide further elucidation of the notion "forced or compulsory labour", which neither recognised nor excluded a right to conscientious objection. It should therefore not have a delimiting effect on the rights guaranteed by Article 9.

Accordingly, although Article 9 did not explicitly refer to a right to conscientious objection, the Court considered that opposition to military service motivated by a serious and insurmountable conflict between the obligation to serve in the army and an individual's conscience or deeply and genuinely held religious or other beliefs constituted a conviction or belief of sufficient cogency, seriousness, cohesion and importance to attract the guarantees of Article 9. This being the situation of the applicant, Article 9 was applicable to his case.

The applicant's failure to report for military service had been a manifestation of his religious beliefs and his conviction therefore amounted to an interference with his freedom to manifest his religion. Given that almost all Council of Europe member States had introduced alternatives to military service, any State which had not done so enjoyed only a limited margin of appreciation and had to demonstrate that any interference corresponded to a "pressing social need". At the material time, however, the existing system in Armenia imposed on citizens an obligation which had potentially serious implications for conscientious objectors while failing to allow any conscience-based exceptions and penalising those who, like the applicant, refused to perform military service. Such a system therefore failed to strike a fair balance between the interests of society as a whole and those of the individual. In the Court's view, the imposition of a criminal sanction on the applicant, where no allowances were made for the exigencies of his religious beliefs, could not be considered a measure necessary in a democratic society. The Court further observed that the applicant's prosecution and conviction had occurred after the Armenian authorities had officially pledged, upon acceding to the Council of Europe, to introduce alternative service within a specific period and they had done so less than a year after the applicant's conviction. In these circumstances, the applicant's conviction, which had been in direct conflict with the official policy of reform and legislative changes in pursuance of Armenia's international commitment, could not be said to have been prompted by a pressing social need.

CONCLUSION – Violation of Article 9 of the Convention.

Thlimmenos v. Greece **[GC], no. 34369/97, ECHR 2000-IV**

FACTS - The applicant, a Jehovah's Witness, was convicted of a felony offence for having refused to enlist in the army at a time when Greece did not offer alternative service to conscientious objectors to military service. A few years later he was refused appointment as a chartered accountant on the grounds of his conviction despite his having scored very well in a public competition for the position in question.

LAW - The Court held that the applicant's exclusion from the profession of chartered accountant was disproportionate to the aim of ensuring appropriate punishment of persons who refuse to serve their country, as he had already served a prison sentence for this offence. It found a violation of Article 14 in conjunction with Article 9 of the Convention,

Koppi v. Austria**, no. 33001/03, 10 December 2009**

FACTS - The applicant had been working as a municipal preacher for a registered religious community "*Bund Evangelischer Gemeinden in Österreich*". Recognised by the Ministry of Internal Affairs as a conscientious objector, and, as such exempt from military service, the applicant was still liable to perform civilian service. His request to be exempted from civilian service claiming that he held a comparable clerical position to members of recognised religious societies who, because they performed specific services relating to worship or religious instruction were exempt, was dismissed.
LAW - The Court found that a difference in treatment between religious groups resulting from their being granted a specific status in law – to which substantial privileges were attached – was compatible with the requirements of Article 14 as long as the State had set up a framework for conferring legal personality on those groups and as long as each group had had a fair opportunity to apply for the specific status, using established criteria in a non-discriminatory manner. There was no indication that the applicant's religious community had applied for recognition as a religious society or that such a request had been refused, let alone refused on grounds incompatible with the requirements of Article

9. There had therefore been no violation of Article 14 taken in conjunction with Article 9 of the Convention.

***Gütl v. Austria*, no. 49686/99, 12 March 2009**
***Löffelmann v. Austria*, no. 42967/98, 12 March 2009**

FACTS - The applicants were members of the Jehovah's Witnesses. They complained of having been forced to perform civil service in lieu of their military service while members of other recognised religious societies holding religious functions comparable to theirs were exempted from that requirement.

LAW - The Court held unanimously that there had been a violation of Article 14 taken in conjunction with Article 9 of the Convention on account of discrimination against the applicants on the ground of their religion.

***Ülke v. Turkey*, no. 39437/98, 24 January 2006**

FACTS - The applicant refused to do his military service, on the ground that he had firm pacifist beliefs, and publicly burned his call-up papers at a press conference. He was initially convicted of inciting conscripts to evade military service and, having been transferred to a military regiment, repeatedly convicted for his refusals to wear a military uniform. He served almost two years in prison and later hid from the authorities.

LAW – The Court maintained that the applicable legal framework in Turkey did not provide an appropriate means of dealing with situations arising from the refusal to perform military service on account of one's beliefs. Because of the nature of the legislation the applicant ran the risk of an interminable series of prosecutions and criminal convictions. The constant alternation between prosecutions and terms of imprisonment, together with the possibility, that he would be liable to prosecution for the rest of his life, had been disproportionate to the aim of ensuring that he did his military service. The Court found a violation of Article 3 of the Convention

***Autio v. Finland*, no. 17086/90, Commission decision of 6.12.1991**

FACTS - The applicant complained that the length of his substitute service was discriminatory in comparison with the length of ordinary military service.

LAW - Although the duration of substitute service in Finland was considerably longer than that of military service the Commission was satisfied that the differential treatment in question pursued a legitimate aim and fulfilled the requirement of proportionality taking into account the State's margin of appreciation. The legislation in question had relieved all those opting for substitute service from the duty to prove the genuineness of their conviction. An adequate prolongation of the term of such service was deemed an appropriate indicator of a conscript's convictions. The Commission declared the application inadmissible as manifestly ill-founded.

Johansen v. Norway, **no. 10600/83, Commission decision of 14 October 1985**

FACTS – Being a pacifist, the applicant was opposed to military service. In addition, he objected to civilian service. He was recognised by the Ministry of Justice as a conscientious objector and exempted from military service but subsequently convened to appear before the Administration for Civilian Conscripts in order to perform sixteen months of civilian service. The applicant complied with this order but only to declare that he did not wish to carry out any kind of civilian service. Through this refusal the applicant risked an enforcement of the civilian service in prison.

LAW – The Commission considered the obligation under Norwegian law to perform civilian service an obligation which was sufficiently "specific and concrete" to conform with the terms of Article 5 § 1 (b). The Convention did not oblige the Contracting States to make available for conscientious objectors to military service any substitute civilian service. In States which recognise conscientious objectors and provide for alternative service it was fully compatible with the Convention to require the objectors to perform alternative service. This was to be derived from the text of Article 4 § 3 (b) which specifically sets out that service exacted from conscientious objectors instead of compulsory military service is not to be regarded as "forced or compulsory labour". From this provision it came clear that an obligation to perform civilian service was in principle compatible with the Convention. Since the Convention thus expressly recognised that conscientious objectors may be required to perform civilian service it was clear that the Convention did not guarantee a right to be exempted from civilian service under Article 9 either. The convention did not prevent a state from taking measures to enforce performance of civilian service or from imposing sanctions on those who refuse such service as in the case before it. The case was declared inadmissible.

N. v. Sweden, **no. 10410/83, Commission decision of 11.10.1984**

FACTS - The applicant, a pacifist, was convicted for refusing to perform compulsory military service. He did not ask for a possibility to perform substitute civilian service. Before the Commission, he alleged to be a victim of discrimination, since members of various religious groups were exempted from service while philosophical reasons such as being a pacifist did not constitute valid grounds for discharging him from his obligation to serve in the army.

LAW - The Commission declared the case inadmissible. It did not find an appearance of a violation of Article 14 in conjunction with Article 9 of the Convention, stating that it was not discriminatory to limit full exemption from military service and substitute civil service to conscientious objectors belonging to a religious community which required of its members general and strict discipline, both spiritual and moral.

Grandrath v. FRG, **no. 2299/64, Commission report of 12.12.1966**

FACTS - The applicant, a minister of Jehovah's Witnesses, was a "total objector", seeking to be exempted both from military and from civilian service. He complained about his criminal conviction for refusing to perform substitute civilian service and alleged that he was discriminated against in comparison with Roman Catholic and Protestant ministers who were exempt from this service.

LAW - The Commission examined the case under Article 9 and under Article 14 in conjunction with Article 4. It concluded that there had been no violation of the Convention, as conscientious objectors did not have the right to exemption from military service, and that each Contracting State could decide whether or not to grant such a right. If such a right was granted, objectors could be required to perform substitute civilian service, and did not have a right to be exempted from it.

C. Expulsion of second-generation migrants

Maslov v. Austria **[GC], no. 1638/03, ECHR 2008**

FACTS - The applicant, a Bulgarian national, had arrived in Austria in 1990 at the age of six and was lawfully resident there with his parents and siblings. He obtained an unlimited settlement permit in 1999. In 2001, at the age of 16, he was issued with a ten-year exclusion order by the Federal Police Authority with effect from his eighteenth birthday. The order was made following his convictions by a juvenile court for offences of aggravated burglary, extortion and assault committed at the ages of 14 and 15 and for which he had received prison sentences. After serving his sentences and attaining his majority, the applicant was deported to Bulgaria in December 2003.

LAW - The decisive feature of the case was the young age at which the applicant had committed the offences and, with one exception, their non-violent nature. His convictions had essentially been for acts of juvenile delinquency. Where expulsion measures against a juvenile offender were concerned, the obligation to take the best interests of the child into account included an obligation to facilitate his or her reintegration. Reintegration would not be achieved by severing family or social ties through expulsion, which had to remain a means of last resort in the case of a juvenile offender. Following his release from prison, the applicant had stayed a further 18 months in Austria without reoffending. Little was known about his conduct in prison or the extent to which his living circumstances had stabilised after his release, so the question of his conduct since the commission of the offences carried less weight than the other applicable criteria, in particular the fact that the offences were mostly non-violent and had been committed when the applicant was a minor. The applicant had his main social, cultural, linguistic and family ties in Austria, where all his relatives lived, and no proven ties with his country of origin. The fact that the exclusion order was of limited duration was not decisive. In view of the applicant's young age, a ten-year exclusion order banned him from living in Austria for almost as much time as he had spent there and for a decisive period of his life. In the circumstances, it was disproportionate to the legitimate aim pursued and thus not necessary in a democratic society.

CONCLUSION – Violation of Article 8 of the Convention.

Kaya v. Germany**, no. 31753/02, 28 June 2007**

FACTS - The applicant, a Turkish national, was born in 1978 in Germany where he lived with his parents and sister until his arrest in January 1999. In September 1999 he was sentenced to three years and four months' imprisonment for, in particular, attempted trafficking in human beings, aggravated battery and drugs offences and was ordered to be deported to Turkey on his release from prison.

LAW - The Court noted the particular seriousness of the applicant's offences and found that a fair balance had been struck in that his expulsion had been proportionate to the aims pursued, namely the maintenance of public safety and prevention of crime, and was therefore necessary in a democratic society. The Court held that there had been no violation of Article 8 of the Convention.

Üner v. the Netherlands **[GC], no. 46410/99, ECHR 2006-XII**

FACTS - The applicant, a Turkish national, came to the Netherlands at the age of 12 with his mother and two brothers to join his father. In 1988 he obtained a permanent residence permit. In 1991 he started living with a Netherlands national and they had a son. The applicant moved out in 1992, but remained in close contact with both his partner and son. In 1994 the applicant was convicted of manslaughter and assault and sentenced to seven years' imprisonment. He had already been convicted for violent offences and for a breach of the peace. A further son was born to him in 1996. His partner and sons visited him in prison at least once a week. Both his sons have Netherlands nationality and have been recognised by him. Neither his partner nor his children speak Turkish. In 1997 the Deputy

Minister of Justice withdrew the applicant's permanent residence permit and imposed a ten-year exclusion order on him in view of his conviction in 1994. He was deported to Turkey in 1998.

LAW - The Court did not doubt that the applicant had strong ties with the Netherlands. However, it could not overlook the fact that the applicant had lived with his partner and first-born son for a relatively short period only and that he had never lived together with his second son. Moreover, the Court was not prepared to accept that he had spent so little time in Turkey that, at the time when he was returned to that country, he no longer had any social or cultural (including linguistic) ties with Turkish society. The offences of manslaughter and assault were of a very serious nature and given his previous convictions, he might be said to have displayed criminal propensities. When the exclusion order became final, the applicant's children had been very young still – six and one-and-a-half years old respectively – and therefore of an adaptable age. Given that they had Dutch nationality, they would – if they followed their father to Turkey – be able to return to the Netherlands regularly to visit other family members living there. In the particular circumstances of the case, the family's interests were outweighed by other considerations. Given the nature and the seriousness of the applicant's offences and bearing in mind that the exclusion order was limited to ten years, the Court could not find that the authorities had assigned too much weight to the State's own interests when deciding to impose that measure. Hence a fair balance had been struck in that the applicant's expulsion and exclusion from the Netherlands had been proportionate to the aims pursued and therefore necessary in a democratic society.

CONCLUSION - No violation of Article 8 of the Convention.

***Radovanovic v. Austria*, no. 42703/98, 22 April 2004**

FACTS - The applicant, a Serbia and Montenegro national, was born in Austria where he lived for the first seven months of his life with his parents, who are both Serbia and Montenegro nationals and legally resident in Vienna. He then moved to live with his grandparents in the former Federal Republic of Yugoslavia, now Serbia and Montenegro, where he completed primary school. He spent his annual school holidays with his parents in Austria and, when he was 10, came back to live with them and his sister in Austria, where he finished secondary school and completed a three-year vocational training as a butcher. He received an unlimited residence permit in 1993.

In July 1997 a Juvenile Court convicted the applicant of aggravated robbery and burglary and sentenced him to 30 months' imprisonment, with 24 months suspended with a probationary period of three years. When fixing the sentence, the court considered as mitigating circumstances that the applicant had had no criminal record, that he had admitted the offences and had partly made amends, and that in two cases the offences remained attempts.

In September 1997 a residence prohibition of unlimited duration was issued against the applicant, in accordance with regulations of the Aliens Act, under which a residence prohibition is to be issued against an alien, if he has been sentenced to more than three months' imprisonment by final judgment of a domestic court.

The applicant served his prison sentence until October 1997. Subsequently he was transferred to a detention centre with a view to his expulsion. His various appeals were unsuccessful and, in February 1998, he was expelled to the former Federal Republic of Yugoslavia.

LAW - Without disregarding the serious nature of the applicant's offences, the Court noted that he had committed them as a juvenile, that he had had no previous criminal record and that the major part of his relatively high sentence was suspended. The Court was not therefore convinced that the applicant constituted a serious danger to public order which necessitated the imposition of the measure concerned.
Given the applicant's birth in Austria, where he later also completed his secondary education and vocational training, while living with his family, and also taking into account that his family had been legally resident in Austria for a long time and that the applicant himself had had an unlimited

residence permit when he committed the offence, and considering that, after the death of his grandparents in Serbia and Montenegro, he no longer had any relatives there, the Court found that his family and social ties with Austria were much stronger than with Serbia and Montenegro.

The Court therefore considered that the imposition of a residence prohibition of unlimited duration was an overly rigorous measure. A less intrusive measure, such as a residence prohibition of a limited duration, would have sufficed. The Court concluded that the Austrian authorities, by imposing a residence prohibition of unlimited duration against the applicant, had not struck a fair balance between the interests involved and that the means employed were disproportionate to the aim pursued.

CONCLUSION – Violation of Article 8 of the Convention.

***Yilmaz v. Germany*, no. 52853/99, 17 April 2003**

LAW – The applicant, a Turkish national, was born in 1976 in Germany. In 1992 he obtained unlimited permission to reside in Germany. His parents and sisters live in Germany and have authorisation to reside there. In January 1999 the applicant began cohabiting with a German national with whom he had a son, born in February 1999.

In August 1996 the applicant was sentenced by a Juvenile Court to one year and ten months' imprisonment, suspended on probation, for offences which included four counts of aggravated robbery as a member of a gang and preparing and inciting to commit aggravated robbery with violence. In November 1996 the Neu-Ulm Juvenile Court sentenced him to three years' imprisonment, unsuspended, which was to include the term of imprisonment imposed earlier, for aggravated assault occasioning bodily harm and joint coercion to engage in sexual acts on account of acts committed between prisoners while he was detained pending trial. He was released in December 1997, after serving two-thirds of his sentence.

In September 1998 the administrative authorities informed the applicant that if he did not leave Germany he would be removed to Turkey and excluded from German territory for an indefinite period. He made a number of unsuccessful administrative appeals up until to the Federal Constitutional Court (*Bundesverfassungsgericht*) and finally left Germany for Turkey in March 2000. In June 2000 the German authorities refused to grant him a temporary residence permit so that he could visit his child.

LAW - The Court considered that the applicant's deportation was not disproportionate to the legitimate aim, preventing disorder or crime, pursued by the authorities. However, the fact that the applicant's exclusion from German territory had been ordered for an indefinite period amounted to a disproportionate interference in view of his family situation – particularly the birth of his son and the latter's young age – and the fact that he had previously held unlimited permission to reside there. The Court accordingly held unanimously that there had been a violation of Article 8 of the Convention.

***Yildiz v. Austria*, no. 37295/97, 31 October 2002**

FACTS - The applicants, Mehmet, Güler and Yesim Yildiz, all Turkish nationals, were born in 1975, 1976 and 1995 respectively.

The first applicant went to Austria in 1989 to live with his parents and siblings. As from 1994 he cohabited with the second applicant, who was born in Austria and had lived there all her life. They married under Muslim law in April 1994 and under Austrian civil law in March 1997. Their daughter, the third applicant, was born in August 1995.

In 1993 the first applicant, while still a minor, was convicted twice by the criminal courts, once for shop-lifting with a sentence of three days' imprisonment suspended on probation, and once for theft without a sentence being pronounced. Between 1992 and April 1994 he was convicted seven times of

traffic offences, in particular driving without a licence and once ignoring a red light and high speeding. The fines imposed on him totalled some 2000 EUR.

In September 1994 the competent District Authority imposed a five-year residence ban on the first applicant. His subsequent appeal was dismissed on the ground that a residence ban has to be issued against an alien, among other things, if he has been convicted more than once for similar offences by a domestic or foreign court, or if a fine has been imposed on him more than once for a grave administrative offence by an administrative authority. Despite the first applicant's high degree of integration in Austria, it was also found that the public interest in issuing a residence ban outweighed his interest in staying.

In May 1995 the first applicant was taken into detention with a view to his expulsion. His complaints with the Administrative Court were dismissed. In June 1997 an order to leave Austrian territory was served on the first applicant, with which he complied and left to Turkey. The validity of his residence ban expired in September 1999. However, he claims that the possibilities of legally returning to Austria are very limited and involve long waiting periods. In March 2001 the first and the second applicant divorced.

LAW – The Court observed that the first applicant was not a second-generation immigrant; he came to Austria in 1989 at the age of 14 and had therefore to have links with his country of origin and to be able to speak Turkish. On the other hand, he was still an adolescent when he came to Austria, where his close family was still living. In December 1996, when the Administrative Court confirmed the residence ban against him, he had been living in Austria for seven years, he had been working there and had been co-habiting for a little less than three years with the second applicant, a Turkish national, who was born in Austria and had lived there all her life. Their daughter, the third applicant, was one year and four months old at the time. In fact, the Austrian authorities issuing the residence ban acknowledged that the first applicant had reached a high degree of integration in Austria. Nevertheless, the Court considered that, regarding the possible effects of the residence ban on his family life, the authorities failed to establish whether the second applicant could be expected to follow her husband to Turkey, in particular whether she spoke Turkish and maintained any links, other than her nationality, with that country. While it was true that the applicants' family situation had changed in the meantime, the Court had to make its assessment in the light of the position when the residence ban became final.

Concerning the offences committed by the first applicant, the Court found that, though they were not negligible, the domestic authorities considered them to be of a minor nature, as was shown by the modest penalties imposed. Moreover, the first applicant did not commit any further offences between April 1994 and December 1996, when the residence ban proceedings were terminated. The Court concluded that the authorities failed to strike a fair balance between the different interests involved and that the interference with the applicants' right to respect for their family life was not proportionate to the legitimate aim pursued.

CONCLUSION - Violation of Article 8 of the Convention.

***Boultif v. Switzerland*, no. 54273/00, ECHR 2001-IX**

FACTS - The applicant, an Algerian national, entered Switzerland with a tourist visa in December 1992. In March 1993 he married M.B., a Swiss national. In May 1998 he started a two-year prison sentence for robbery and other offences and the Swiss authorities refused to renew his residence permit. In December 1999 the Federal Aliens' Office ordered the applicant to leave Switzerland by 15 January 2000. At an unspecified date in 2000 he left the country for Italy. He complained that the order resulted in him being separated from his wife, who did not speak Algerian and could not be expected to follow him to Algeria.

LAW - The Court considered that the applicant had been subjected to a serious impediment to establish family life, since it was practically impossible for him to live with his family outside

Switzerland. In addition, when the Swiss authorities had decided to refuse to renew his residence permit, he only presented a comparatively limited danger to public order. The interference was, therefore, not proportionate to the aim pursued. The Court held, unanimously, that there had been a violation of Article 8 of the Convention.

***Ezzouhdi v. France*, no. 47160/99, 13 February 2001**

FACTS – The applicant, a Moroccan national born in 1970, complained about the decision to impose a definitive prohibition order on him, for repeated drug-related offences, excluding him from French territory. He had lived in France from the age of five with his family. He was educated in France and had worked in France.

LAW - The Court noted that, at the time the order was imposed, the applicant's conviction was for offences primarily concerning the personal use of drugs and that neither this nor his previous convictions indicated that he posed a serious threat to public order meriting an exclusion order. Noting the applicant's strong ties with France the Court found the imposition of a definitive exclusion order a particularly severe punishment. It held that there had been a violation of Article 8 of the Convention.

***Baghli v. France*, no. 34374/97, ECHR 1999-VIII**

FACTS - The applicant, an Algerian national, entered France in 1967 at the age of two. He lived there ever since, as did all the members of his family. All of his seven brothers and sisters are French nationals. The applicant did the whole of his schooling in France where he obtained a professional diploma (certificat d'aptitude professionnelle) as a fitter in 1982. Between 1982 and 1992 he did various jobs and attended a number of professional training courses. Between January 1984 and December 1985 he performed his military service in Algeria but apart from this time the applicant lived continuously in France until his exclusion from French territory.

In January 1992 the applicant was convicted of drug trafficking and sentenced on appeal to three years' imprisonment, two of which were suspended. In addition, the courts made an order excluding him from French territory for a period of ten years. After serving his sentence, the applicant was deported to Algeria in May 1994.

LAW – The Court noted that the applicant had spent almost his entire life in France, was educated in France and had worked there for several years. However, the Court considered the applicant, a single without children, to have not shown that he had close ties with either his parents or his brothers and sisters living in France. His relationship with Miss I., a French national, had begun only in December 1992 when the exclusion order had already been imposed; accordingly he must have been aware of the precariousness of his position.

Furthermore, the applicant retained his Algerian nationality and had never suggested that he could not speak Arabic. He performed his military service in his country of origin and went there on holiday several times. It appeared that he never evinced a desire to become French when he was entitled to do so. Thus, even though his main family and social ties were in France, there existed evidence, that the applicant had preserved ties, going beyond mere nationality, with his native country.

In addition, the Court considered the offence due to which the applicant's exclusion order was issued to constitute a serious breach of public order undermining the protection of the health of others. In view of the devastating effects of drugs on people's lives, the Court understood why the authorities showed great firmness with regard to those who actively contribute to the spread of this scourge. In the light of the foregoing, the Court considered that the ten-year exclusion order was not disproportionate to the legitimate aims pursued.

CONCLUSION - No violation of Article 8 of the Convention.

***Boujlifa v. France*, 21 October 1997, *Reports of Judgments and Decisions* 1997-VI**

FACTS – The applicant was born in Morocco in 1962. He entered France at the age of 5 when he joined his father under the family reunion procedure. Three of his eight brothers and sisters have French nationality.

When he was 20 the applicant committed a number of criminal offences. In May 1985 he was first sentenced to six years' imprisonment for armed robbery and in November of the same year to eighteen months' imprisonment for robbery. After having served these sentences the applicant was extradited to Switzerland to serve a prison sentence for theft from May 1987 to August 1988. At the end of that period he returned to France and went to live with his parents. He asserted that he was gainfully employed from June 1989 to January 1991.

Not having had a valid residence permit since February 1983, the applicant went to the responsible Prefecture in January 1990 in order to regularise his situation. In November 1990 he was informed that deportation proceedings had been commenced against him on account of the convictions pronounced in 1985. His appeals against the deportation order remained ineffective.

LAW – The Court noted that the question whether the applicant had a private and family life within the meaning of Article 8 was to be considered in light of his position on date of the deportation order. The applicant was living in France, although he was not entitled to claim at that time to be involved in a relationship with his French cohabitant, and seemed to have remained in touch with his family. The Court considered the applicant to have overall strong ties with France. He had arrived there at the age of 5 and had lived there since 1967, apart from one period of fifteen months. He had received his education there, had worked there for a brief period and his parents and eight brothers and sisters lived there. On other hand, he had never shown any desire to acquire the French nationality.

Yet the Court attached greater importance to the offences committed by the applicant. Due to their seriousness and severity of penalties they attracted, they constituted particularly serious violation of security of persons and property and of public order. In the instant case requirements of public order outweighed personal considerations which had prompted the application. The Court therefore found no violation of Article 8 of the Convention.

***Mehemi v. France*, 26 September 1997, *Reports of Judgments and Decisions* 1997-VI**

FACTS – Enforcement of an order for permanent exclusion from French territory of an Algerian national born in France convicted for drug offences. The applicant had lived in France for more than thirty years prior to his exclusion. His parents and four brothers and sisters lived there. He was the father of three minor children of French nationality whose mother he had married.

LAW – The Court held that it had not been established that the applicant had links with Algeria other than his nationality. The fact that in 1989 the applicant had participated in conspiracy to import a large quantity of hashish counted heavily against him. Yet, in view of the fact that the permanent exclusion order had separated him from his minor children and his wife, the measure in question was disproportionate to the aims pursued. The Court found that there had been a violation of Article 8 of the Convention.

***El Boujaïdi v. France*, 26 September 1997, *Reports of Judgments and Decisions* 1997-VI**

FACTS – The applicant, a Moroccan national, was born in 1967. Together with his mother, his three sisters and his brother he moved to France to join his father there in 1974. He went to school in France, where he also worked for several years. The applicant's parents and siblings were lawfully resident in France. In addition, the applicant had recognised paternity of the child of a French woman with whom he had been cohabiting.

In October 1986 the applicant was charged with consumption of and trafficking in prohibited drugs. On appeal in January 1989 the applicant was sentenced to six years' imprisonment, with ineligibility for parole during the first two-thirds thereof. In addition, a permanent exclusion order from the French territory was imposed on him.

In December 1992, following an attempted robbery, the applicant – who had been released in June 1991 – was arrested and detained under a committal warrant. For this offence and the fact that he had stayed in France in spite of the permanent exclusion order imposed on him, he was sentenced to one year's imprisonment. The exclusion order was enforced against the applicant in August 1993.

LAW – The Court acknowledged that there had been an interference with the applicant's private and family life as he had arrived in France at the age of 7, received most of his schooling there and worked there, and his parents and sibling lived there. The applicant could not rely on his relationship with the French woman or the fact that he was the father of her child since these circumstances had come into being long after the exclusion order had become final.

The Court concluded, however, that the expulsion of the applicant had been necessary in a democratic society. Despite of his strong social and family ties in France he did not claim not to know Arabic or that he had never returned to Morocco, nor did it appear that he had ever shown any desire to acquire French nationality. It could therefore not be established that he had lost all links with his country of origin. In addition, the seriousness of the offences he had committed and his subsequent conduct counted heavily against him. The Court found no violation of Article 8 of the Convention.

***Boughanemi v. France*, 24 April 1996, *Reports of Judgments and Decisions* 1996-II**

FACTS – The applicant, a Tunisian national born in 1960, immigrated to France from Tunisia in 1968 and lived there continuously until his deportation. His parents and his ten brothers and sisters resided in France. Eight of his brothers and sisters were born there. He claimed that he lived with a woman of French nationality (Miss S.), whose child, born in June 1993, he formally recognised in April 1994.

The applicant was convicted on a number of occasions. In December 1981 he was sentenced to ten months' imprisonment, four of which were suspended, for burglary. In September 1983 he was sentenced to two months' imprisonment for an assault resulting in the victim's not being fit for work for a period exceeding eight days. In September 1986 he was fined 1,500 francs for driving without a licence and without insurance and in March 1987 he was sentenced to three years' imprisonment for living on the earnings of prostitution with aggravating circumstances.

A deportation order issued against the applicant was executed in November 1988 but the applicant returned to France and lived there illegally. All his subsequent appeals against the deportation order up to the Conseil d'Etat remained unsuccessful. In July 1994 the applicant was arrested for breach of the deportation order, sentenced to three months' imprisonment and deported again to Tunisia in October 1994.

LAW – The Court considered that doubts as to the reality of family ties between the applicant and Miss S. were not wholly unfounded. It appeared that their life together did not begin until after the applicant's return as an illegal immigrant and only lasted one year. When he was deported for the second time the couple had already separated; this separation occurred several months before the child's birth.

However, in the Court's opinion these observations did not justify finding that the applicant had no private and family life in France. In the first place, the applicant recognised, admittedly somewhat belatedly, the child born to Miss S. The concept of family life on which Article 8 is based embraced, even where there is no cohabitation, the tie between a parent and his or her child, regardless of whether or not the latter is legitimate. Although that tie may be broken by subsequent events, this can only happen in exceptional circumstances. In the present case neither the belated character of the

formal recognition nor the applicant's alleged conduct in regard to the child constituted such a circumstance. Secondly, the applicants' parents and his ten brothers and sisters were legally resident in France and there was no evidence that he had no ties with them. The applicant's deportation had the effect of separating him from them and from the child. It was therefore to be regarded as an interference with the exercise of the right guaranteed under Article 8.

However, in the Court's view, the circumstances of the present case were different from those in the cases of Moustaquim v. Belgium, Beldjoudi v. France and Nasri v. France, which all concerned the deportation of aliens convicted of criminal offences and in which the Court found a violation of Article 8. Above all the Court attached particular importance to the fact that the applicant's deportation was decided after he had been sentenced to a total of almost four years' imprisonment, non-suspended, three of which were for living on the earnings of prostitution with aggravating circumstances. The seriousness of that last offence and the applicant's previous convictions counted heavily against him. In sum, the Court did not find that the applicant's deportation was disproportionate to the legitimate aims pursued.

CONCLUSION – No violation of Article 8 of the Convention.

***Nasri v. France*, 13 July 1995, Series A no. 320-B**

FACTS – The applicant, an Algerian national, was born deaf and dumb in 1960 in Algeria as the fourth of ten children, one of whom is deceased and six of whom are French nationals. He came to France with his family in February 1965.

As early as 1977 the applicant came to the notice of the police as a result of a number of thefts. He appeared in court on several occasions. At March 1992 his police file recorded the following convictions:

- from 1981 to1983 he was on three occasions sentenced to terms of imprisonment ranging from six months to one year for theft and attempted theft;
- in 1986 he was sentenced to five years' imprisonment, two of which were suspended, and five years' probation for gang rape;
- in 1987 he was sentenced to one year and three months' imprisonment for theft with violence;
- in 1988 he was sentenced to ten months' imprisonment for theft with violence;
- in 1989 he was fined two thousand francs for assaulting a public official;
- in 1990 he was sentenced to six months' for theft with violence and receiving stolen goods.

The Minister of the Interior ordered the applicant's deportation on the ground that his presence on French territory represented a threat to public order. In January 1992 the applicant complied with a summons requiring him to report to the responsible Prefecture, where he was first taken into police custody and then placed in administrative detention by order of the Prefect, for a period of twenty-four hours, with a view to his deportation to Algeria. As it proved impossible to deport him within that period, a compulsory residence order requiring the applicant to live with his parents was issued. That measure was renewed ever since.

LAW – The Court noted that the decision to deport the applicant had been principally based on his conviction for rape. Because of this crime, the applicant's case was much more serious than in the cases of Moustaquim v. Belgium or Beldjoudi v. France. In view of an accumulation of special circumstances, however, notably his situation as a deaf and dumb person, capable of achieving a minimum psychological and social equilibrium only within his family, the majority of whose members are French nationals with no close ties with Algeria, the Court considered that the decision to deport the applicant, if executed, would not have been proportionate to the legitimate aim pursued. It would have infringed the right to respect for family life and therefore constituted a breach of Article 8 of the Convention.

***Moustaquim v. Belgium*, 18 February 1991, Series A no. 193**

FACTS – The applicant, a Moroccan national, was born in Casablanca in 1963. He arrived in Belgium with his mother in July 1965 at the latest, in order to join his father, who had emigrated some time before and ran a butcher's shop. Until he was deported in June 1984, the applicant lived in Belgium and had a residence permit. Three of his seven brothers and sisters were born in Belgium. One of his elder brothers already had Belgian nationality at the material time.

While the applicant was still a minor in criminal law, the competent Juvenile Court dealt with 147 charges against him, including 82 of aggravated theft, 39 of attempted aggravated theft and 5 of robbery. It made various custodial, protective and educative orders.

In November 1982, when the applicant was no longer a minor, he was found guilty on 22 of the 26 charges pleaded. The appeal court passed prison sentences of two years (for 4 offences of aggravated theft, 12 offences of attempted aggravated theft, 1 offence of theft and 1 of handling stolen goods), one month (destroying a vehicle), two periods of eight days (on two counts of assault) and fifteen days (on a count of threatening behaviour). As none of these sentences was suspended, his immediate arrest was ordered.

A royal order, which was served on the applicant in March 1984 and was to take effect from the moment of his release, required him to "leave the Kingdom and not return for ten years, ... except by special leave of the Minister of Justice". As all his appeals lodged against the deportation order remained unsuccessful the applicant left Belgium in June 1984. He first went to Spain and later to Sweden. In December 1989 the deportation order was temporarily suspended. Subsequently, the Aliens Office sent the applicant a safe-conduct authorising him to enter Belgian territory and remain there for thirty days. The applicant returned to Belgium and received a renewable residence permit in April 1990 initially valid for one year.

LAW – Since the initial order to deport the applicant was merely suspended but no reparation was made for its consequences, which the applicant suffered for more then five years, the Court considered that the case had not become devoid of purpose.

The Court noted that the alleged offences by the applicant in Belgium had a number of special features. They all went back to when the applicant was an adolescent. Furthermore, proceedings were brought in the criminal courts in respect of only 26 of them. The latest offence of which he was convicted dated from 21 December 1980. There was thus a relatively long interval between then and the deportation order of February 1984. During that period the applicant was in detention for some sixteen months but at liberty for nearly twenty-three months.

At the time the deportation order was made, all the applicant's close relatives - his parents and his siblings - had been living in Belgium for a long while; one of the older children had acquired Belgian nationality and the three youngest had been born in Belgium. The applicant himself was less than two years old when he arrived in Belgium. From that time on he had lived there for about twenty years with his family or not far away from them. He had returned to Morocco only twice, for holidays. He had received all his schooling in French. His family life was thus seriously disrupted by the measure taken against him.

Having regard to these various circumstances, the Court noted that, as far as respect for the applicant's family life was concerned, a proper balance had not been achieved between the interests involved, and that the means employed were therefore disproportionate to the legitimate aim pursued.

CONCLUSION – Violation of Article 8 of the Convention.

D. Forced labour

***Elisabeth Kawogo v. the United Kingdom*, no. 56921/09**

FACTS - The applicant, a Tanzanian national having arrived in the United Kingdom on a domestic working visa valid until November 2006, was made to work daily for the parents of her previous employer, from 7 a.m till 10.30 p.m., without payment, for several months after her visa expired. She escaped in June 2007. She complains she was subjected to forced labour, in breach of Article 4.

Communicated to the Government in June 2010.

***C.N. v. the United Kingdom*, no. 4239/08**

FACTS - The applicant, a Ugandan national, claims that - escaping sexual abuse in Uganda – she arrived in the United Kingdom with a false passport. Upon arrival, she had her documents confiscated and was made to work for free, being on call day and night, for an elderly person suffering from Parkinson. She was kept in isolation and was threatened repeatedly with violence and expulsion. She complains in particular that the UK breached Article 4 as she could not claim protection in the British courts given that the law applicable at the time did not include the offences of servitude and forced labour.

Communicated to the Government in March 2010.

***C.N. and V. v. France*, no. 67724/09, 11 October 2012**

FACTS - The applicants, two sisters (C.N. and V.), both French nationals, who were born in 1978 and 1984 respectively in Burundi. They left that country following the 1993 civil war, during which their parents were killed. They arrived in France in 1994 and 1995 respectively, through the intermediary of their aunt and uncle (Mr and Mrs M.), Burundi nationals living in France. The latter had been entrusted with guardianship and custody of the applicants and their younger sisters at a family meeting in Burundi. Mr and Mrs M. lived in a detached house in Ville d'Avray with their seven children, one of whom was disabled.

The applicants were accommodated in the basement of the house and alleged that they were obliged to carry out all household and domestic chores, without remuneration or any days off. C.N. claimed that she had also been required to take care of Mr and Mrs M.'s disabled son, including occasionally at night. The applicants allege that they lived in unhygienic conditions (no bathroom, makeshift toilets), were not allowed to share family meals and were subjected to daily physical and verbal harassment.

In December 1995 the competent social action department submitted a report on children in danger to the local public prosecutor but, following an investigation by the police child protection team, it was decided not to take any further action.

V. was a pupil in a primary school from 1995, then in the general and vocational adapted learning department (Segpa) of a secondary school from 1997. In spite of difficulties in integrating and learning French, she obtained good school results. When she returned from school she did her homework, then helped her sister with the domestic chores. The applicants claimed that they were physically and verbally harassed on a daily basis by their aunt, who regularly threatened to send them back to Burundi.

In January 1999 the association "Enfance et Partage" drew the attention of the public prosecutor's office to the applicants' situation; on the following day the applicants ran away from Mr and Mrs M.'s home and were taken into the association's care.

In the context of the judicial investigation that was subsequently opened, C.N. and V. confirmed that their situation had gradually deteriorated since 1995, a point when "things were not (yet) going too badly" with their aunt. A medico-psychological report on the applicants found, among other things, that the psychological impact of the acts to which they had been subjected was characterised by mental suffering and, in the case of C.N., by an experience of fear and sense of abandonment, as the threat of being sent back to Burundi was synonymous in her opinion with a threat of death and abandonment of her younger sisters.

By a judgment of 17 September 2007 the Nanterre Criminal Court found Mr and Mrs M. guilty of all of the charges brought against them (for both spouses, having subjected individuals to working and living conditions that were incompatible with human dignity by taking advantage of their vulnerability or state of dependence; and for Mrs M., aggravated assault). However, following the judgment of the Versailles Court of Appeal on 29 June 2009, only the finding that Mrs M. was guilty of aggravated intentional assault against V. was upheld. Mrs M. was ordered to pay a criminal fine of 1,500 EUR and to pay V. the sum of one euro as compensation for non-pecuniary damage, in line with her claim. The public prosecutor did not appeal on points of law against that judgment. The appeals on points of law lodged by the applicants and by Mrs M. were dismissed by the Court of Cassation.

LAW - As Mrs M. had been convicted with final effect by the domestic courts on charges of aggravated assault and V. had obtained compensation corresponding to the amount claimed by her, V. could no longer claim to be a "victim" within the meaning of Article 34. In consequence, the Court dismissed the complaint under Article 3 as manifestly ill-founded.

The Court reiterated that Article 4 enshrined one of the basic values of democratic societies. The first paragraph of this Article made no provision for exceptions and no derogation from it was permissible, even in the event of war or other public emergency threatening the life of the nation within the meaning of Article 15 § 2. The Court further reiterated that "forced or compulsory labour" within the meaning of Article 4 § 2 meant work required "under the menace of any penalty" and performed against the will of the person concerned. It was necessary to distinguish "forced work" from work which could reasonably be required in respect of mutual family assistance or cohabitation, taking into account, among other things, the nature and amount of work in issue. In this case, C.N. had indeed been forced to work without having offered herself for it voluntarily. In addition, she had been obliged to perform so much work that, without her help, Mr and Mrs M. would have been required to have recourse to a professional – and thus paid – employee. The Court did not reach such a conclusion with regard to V., who did not provide evidence that she had contributed in a disproportionate manner to the upkeep and cleaning of Mr and Mrs M.'s house. As to the "menace of any penalty", the Court noted that Mrs M. regularly threatened to send the applicants back to Burundi, a country that was synonymous for C.N. with death and abandonment of her younger sisters. The Court therefore concluded that she had been subjected to "forced or compulsory work" within the meaning of Article 4 § 2, unlike V., in respect of whom the Court considered that the work performed did not fall within the scope of Article 4 § 2. Moreover, it was not established that the ill-treatment experienced by V. was directly related to the alleged exploitation; nor did they come within the scope of Article 4.

The Court then considered the existence of "servitude" within the meaning of Article 4 § 1. Servitude was "aggravated" forced or compulsory labour, based on the fact that it was impossible for the individual concerned to change his or her situation. In the present case, the essential feature distinguishing servitude from forced or compulsory labour was the victims' feeling that their condition could not be altered and that there was no potential for change, in particular C.N.'s belief that she could not escape from Mr and Mrs M.'s guardianship without finding herself in an illegal situation, and her understanding that, without vocational training, she would be unable to find external employment. Since this situation had moreover lasted for four years, the Court considered that C.N. had been kept in a state of servitude by Mr and Mrs M. This was not the case for V., who, given that she was attending school, developed in another atmosphere and was less isolated. She had also had time to do her homework after school.

Finally, the Court examined the issue of France's obligations under Article 4. It noted, firstly, as in the *Siliadin* case, that, on the one hand, the relevant criminal-law provisions and their interpretation had

not provided the victim with practical and effective protection and, on the other, the appeal to the Court of Cassation had concerned only the civil aspect of the case, since the public prosecutor had not appealed on points of law against the Court of Appeal's judgment of 29 June 2009. There had therefore been a violation of Article 4 in respect of C.N. with regard to the State's positive obligation to put in place an adequate legislative and administrative framework to combat servitude and forced labour effectively. As to the State's obligation to investigate situations of potential exploitation, the Court found that there were no grounds for calling into question the conclusions of the investigation conducted by the child protection team in 1995. It also emphasised that the applicants had admitted that the situation had not yet deteriorated at that time. In consequence, the Court concluded that there had been no violation of Article 4 with regard to the State's obligation to conduct an effective investigation into instances of servitude and forced labour. Having regard to this conclusion, it did not consider it necessary to examine separately the applicants' complaint under Article 13.

CONCLUSION – A violation of Article 4 of the Convention in respect of the first applicant (C.N.), as the State had not put in place a legislative and administrative framework making it possible to fight effectively against servitude and forced labour.

No violation of Article 4 in respect of the first applicant (C.N.) with regard to the State's obligation to conduct an effective investigation into instances of servitude and forced labour; and, no violation of Article 4 in respect of the second applicant (V.).

***Siliadin v. France*, no. 73316/01, ECHR 2005-VII**

FACTS - The applicant, a Togolese national, was made to work as an unpaid servant after being brought to France by a relative of her father before she had reached the age of sixteen. As an impecunious illegal immigrant in France, whose passport had been confiscated, she was forced against her will and without respite to work for Mr and Mrs B., doing housework and looking after their three, and later four, young children. The applicant worked from 7 a.m. until 10 p.m. every day and had to share the children's bedroom. The exploitation continued for several years, during which time Mr and Mrs B. led the applicant to believe that her immigration status would soon be regularised. Finally, after being alerted by a neighbour, the Committee against Modern Slavery reported the matter to the prosecuting authorities. Criminal proceedings were brought against the couple, who were acquitted of the criminal charges. Proceedings continued in respect of the civil aspect of the case and resulted in the couple's being convicted and ordered to pay compensation in respect of non-pecuniary damage to the applicant for having taken advantage of her vulnerability and dependent situation by making her work without pay.

LAW - The Court noted that Article 4 imposed positive obligations on States, consisting in the adoption and effective implementation of criminal law provisions making the practices set out in Article 4 a punishable offence. In accordance with modern standards and trends in relation to the protection of human beings from slavery, servitude and forced or compulsory labour, States were under an obligation to penalise and punish any act aimed at maintaining a person in a situation incompatible with Article 4.

In the instant case the applicant had worked for years for Mr and Mrs B., without respite, against her will and without being paid. She had been a minor at the relevant time, unlawfully present in a foreign country and afraid of being arrested by the police. Indeed, Mr and Mrs B. had maintained that fear and led her to believe that her status would be regularised. Hence the applicant had, at the least, been subjected to forced labour within the meaning of Article 4.

With regard to slavery, although the applicant had been deprived of her personal autonomy, the evidence did not suggest that she had been held in slavery in the proper sense, in other words that Mr and Mrs B. had exercised a genuine right of ownership over her, thus reducing her to the status of an object. Accordingly, it could not be considered that the applicant had been held in slavery in the traditional sense of that concept.

As to servitude, that was to be regarded as an obligation to provide one's services under coercion, and was to be linked to the concept of slavery. The forced labour imposed on the applicant lasted almost 15 hours a day, seven days a week. Brought to France by a relative of her father, she had not chosen to work for Mr and Mrs B. As a minor, she had no resources and was vulnerable and isolated, and had no means of subsistence other than in the home of Mr and Mrs B., where she shared the children's bedroom. The applicant was entirely at Mr and Mrs B.'s mercy, since her papers had been confiscated and she had been promised that her immigration status would be regularised, which never happened. Nor did the applicant, who was afraid of being arrested by the police, have any freedom of movement or free time. In addition, as she had not been sent to school, despite the promises made to her father, the applicant had no prospect of seeing any improvement in her situation and was completely dependent on Mr and Mrs B. In those circumstances, the Court considered that the applicant, a minor at the relevant time, had been held in servitude within the meaning of Article 4.

Slavery and servitude were not as such classified as criminal offences under French criminal law. Mr and Mrs B. had been prosecuted under articles of the Criminal Code which did not make specific reference to the rights secured by Article 4. Having been acquitted, they had not been convicted under criminal law. Hence, despite having been subjected to treatment contrary to Article 4 and having been held in servitude, the applicant had not seen the perpetrators of those acts convicted under criminal law. In the circumstances, the Court considered that the criminal-law legislation in force at the material time had not afforded the applicant specific and effective protection against the actions of which she had been a victim. Consequently, the French State had not fulfilled its positive obligations under Article 4.

CONCLUSION – Violation of Article 4 of the Convention.

***Rantsev v. Cyprus and Russia*, no. 25965/04, ECHR 2010 (extracts)**

FACTS - The applicant, a Russian national, is the father of Ms Oxana Rantseva, also a Russian national, born in 1980, who died in strange and unestablished circumstances having fallen from a window of a private home in Cyprus in March 2001.

Ms Rantseva arrived in Cyprus on 5 March 2001 on an "artiste" visa. She started work on 16 March 2001 as an artiste in a cabaret in Cyprus only to abandon her place of work and lodging three days later leaving a note that she was going back to Russia. After finding her in a discotheque in Limassol some ten days later, at around 4 a.m. on 28 March 2001, the manager of the cabaret where she had worked took her to the police asking them to declare her illegal in the country and to detain her, apparently with a view to expelling her so that he could have her replaced in his cabaret. The police, after checking their database, concluded that Ms Rantseva did not appear to be illegal and refused to detain her. They asked the cabaret manager to collect her from the police station and to return with her later that morning to make further inquiries into her immigration status. The cabaret manager collected Ms Rantseva at around 5.20 a.m.

Ms Rantseva was taken by the cabaret manager to the house of another employee of the cabaret, where she was taken to a room on the sixth floor of the apartment block. The cabaret manager remained in the apartment. At about 6.30 a.m. on 28 March 2001 Ms Rantseva was found dead in the street below the apartment. A bedspread was found looped through the railing of the apartment's balcony.

Following Ms Rantseva's death, those present in the apartment were interviewed. A neighbour who had seen Ms Rantseva's body fall to the ground was also interviewed, as were the police officers on duty at Limassol police station earlier that morning when the cabaret manager had brought Ms Rantseva from the discotheque. An autopsy was carried out which concluded that Ms Rantseva's injuries were the result of her fall and that the fall was the cause of her death. The applicant subsequently visited the police station in Limassol and requested to participate in the inquest proceedings. An inquest hearing was finally held on 27 December 2001 in the applicant's absence.

The court decided that Ms Rantseva died in strange circumstances resembling an accident, in an attempt to escape from the apartment in which she was a guest, but that there was no evidence to suggest criminal liability for her death.

Upon a request by Ms Rantseva's father, after the body was repatriated from Cyprus to Russia. Forensic medical experts in Russia carried out a separate autopsy and the findings of the Russian authorities, which concluded that Ms Rantseva had died in strange and unestablished circumstances requiring additional investigation, were forwarded to the Cypriot authorities in the form of a request for mutual legal assistance under treaties in which Cyprus and Russia were parties. The request asked, inter alia, that further investigation be carried out, that the institution of criminal proceedings in respect of Ms Rantseva's death be considered and that the applicant be allowed to participate effectively in the proceedings.

In October 2006, Cyprus confirmed to the Russian Prosecution Service that the inquest into Ms Rantseva's death was completed on 27 December 2001 and that the verdict delivered by the court was final. The applicant has continued to press for an effective investigation into his daughter's death.

The Cypriot Ombudsman, the Council of Europe's Human Rights Commissioner and the United States State Department have published reports which refer to the prevalence of trafficking in human beings for commercial sexual exploitation in Cyprus and the role of the cabaret industry and "artiste" visas in facilitating trafficking in Cyprus.

LAW - As regards Cyprus, the Court considered that the chain of events leading to Ms Rantseva's death could not have been foreseen by the Cypriot authorities and, in the circumstances, they had therefore no obligation to take practical measures to prevent a risk to her life.
However, a number of flaws had occurred in the investigation carried out by the Cypriot authorities: there had been conflicting testimonies which had not been resolved; no steps to clarify the strange circumstances of Ms Rantseva's death had been made after the verdict of the court in the inquest proceedings; the applicant had not been advised of the date of the inquest and as a result had been absent from the hearing when the verdict had been handed down; and although the facts had occurred in 2001 there had not yet been a clear explanation as to what had happened. There had therefore been a violation of Article 2 as a result of the failure of the Cypriot authorities to investigate effectively Ms Rantseva's death.

As regards Russia, the Court concluded that there it had not violated Article 2 as the Russian authorities were not obliged themselves to investigate Ms Rantseva's death, which had occurred outside their jurisdiction. The Court emphasised that the Russian authorities had requested several times that Cyprus carry out additional investigation and had cooperated with the Cypriot authorities.

The Court held that any ill-treatment which Ms Rantseva may have suffered before her death had been inherently linked to her alleged trafficking and exploitation and that it would consider this complaint under Article 4.

The Court noted that, like slavery, trafficking in human beings, by its very nature and aim of exploitation, was based on the exercise of powers attaching to the right of ownership; it treated human beings as commodities to be bought and sold and put to forced labour; it implied close surveillance of the activities of victims, whose movements were often circumscribed; and it involved the use of violence and threats against victims. Accordingly the Court held that trafficking itself was prohibited by Article 4. It concluded that there had been a violation by Cyprus of its positive obligations arising under that Article on two counts: first, its failure to put in place an appropriate legal and administrative framework to combat trafficking as a result of the existing regime of artiste visas, and, second, the failure of the police to take operational measures to protect Ms Rantseva from trafficking, despite circumstances which had given rise to a credible suspicion that she might have been a victim of trafficking. In light of its findings as to the inadequacy of the Cypriot police investigation under Article 2, the Court did not consider it necessary to examine the effectiveness of the police investigation separately under Article 4.

There had also been a violation of this Article by Russia on account of its failure to investigate how and where Ms Rantseva had been recruited and, in particular, to take steps to identify those involved in Ms Rantseva's recruitment or the methods of recruitment used.

The Court found that the detention of Ms Rantseva for about an hour at the police station and her subsequent confinement to the private apartment, also for about an hour, did engage the responsibility of Cyprus. It held that the detention by the police following the confirmation that Ms Rantseva was not illegal had no basis in domestic law. It further held that her subsequent detention in the apartment had been both arbitrary and unlawful. There was therefore a violation of Article 5 § 1 by Cyprus.

CONCLUSION – No violation of positive obligations under Article 2 but a procedural violation of Article 2, a violation of positive obligations under Article 4 and a violation of Article 5 of the Convention by Cyprus. No violation of Article 2 or of positive obligations under Article 4 but a procedural violation under Article 4 of the Convention by Russia.

***Van der Mussele v. Belgium*, 23 November 1983, Series A no. 70**

FACTS - The applicant, a pupil advocate, was called upon to provide free lawyer's services to assist indigent defendants. He complained that that represented forced labour.

LAW - The free legal aid service the applicant was asked to provide was connected with his profession, he received certain advantages for it, like the exclusive right to audience in the courts, and it contributed to his professional training; it was related to another Convention right (Article 6 §1 - the right to legal aid) and could be considered part of "normal civic obligations" allowed under Article 4 § 3. Finally, being required to defend people without being paid for it did not leave the applicant without sufficient time for paid work. The Court found no violation of Article 4 of the Convention.

E. University studies

***İrfan Temel and Others v. Turkey*, no. 36458/02, 3 March 2009**

FACTS - The applicants were eighteen Turkish nationals who, at the time of the events, were students at various faculties attached to Afyon Kocatepe University in Afyon (Turkey). On various dates in December 2001 and January 2002 the applicants petitioned the University requesting that optional Kurdish language classes be introduced. As a reaction to their petition, in January 2002 they were suspended from the University for a period of two terms starting from the spring, except for one of them, who, having shown remorse, was suspended for one term. The applicants requested the domestic courts to first stop the execution of the suspension decisions and then to annul them altogether. Their suspension requests were dismissed. Their requests for annulment were also initially rejected by the courts, the main arguments being that the petitions were likely to give rise to polarisation on the basis of language, race, religion or denomination, and that they represented part of the PKK2's new strategy of action of civil disobedience.

In December 2003, however, the Supreme Administrative Court quashed the lower courts' decisions and sent the cases for re-examination to the first instance court. In May 2004, the competent court annulled the disciplinary sanctions against the applicants, finding that their petitions to the authorities for optional Kurdish language classes were fully in line with the general aim of the Turkish higher education, which was to train students in becoming objective, broad-minded and respectful of human rights. In the meantime, the applicants were acquitted on charges of aiding and abetting an illegal armed organisation.

LAW - The Court first observed that the applicants had been sanctioned disciplinarily for merely submitting petitions which expressed their views on the need for Kurdish language education, and requesting that Kurdish language classes be introduced as an optional module. The Court further noted

that they had not committed any reprehensible act, nor had they resorted to violence or breach, or attempt to breach the peace or order in the university.

For the Court, neither the views expressed in the applicants' petitions, nor the form in which they had been conveyed, could be construed as an activity which would lead to polarisation of the University population on the basis of language, race, religion or denomination. The Court consequently found that the imposition of such a disciplinary sanction could not be considered as reasonable or proportionate. Although these sanctions had been subsequently annulled by the administrative courts on grounds of unlawfulness, the Court found it regrettable that by that time the applicants had already missed one or two terms of their studies. The Court therefore held that there had been a violation of Article 2 of Protocol No. 1 to the Convention.

Leyla Sahin v. Turkey **[GC], no. 44774/98, ECHR 2005-XI**

FACTS - In February 1998 the Vice-Chancellor of Istanbul University issued a circular directing that students wearing the Islamic headscarf would be refused admission to lectures, courses and tutorials. At the material time the applicant was a student at the faculty of medicine of the university. In March 1998 she was refused access to a written examination on one of the subjects she was studying because she was wearing the Islamic headscarf. Subsequently, on the same grounds, the university authorities refused to enrol her on a course, and to admit her to various lectures and a written examination. The faculty also issued her with a warning for contravening the university's rules on dress and suspended her from the university for a semester for taking part in an unauthorised assembly that had gathered to protest against the rules. All the disciplinary penalties imposed on the applicant were revoked under an amnesty law. The applicant lodged an application for an order setting aside the circular, but it was dismissed by the administrative courts, who found that that a university vice-chancellor had power to regulate students' dress for the purposes of maintaining order by virtue of the legislation and decisions of the Constitutional Court and the Supreme Administrative Court, and that the regulations and measures criticised by the applicant were not, under the settled case-law of those courts, illegal.

LAW - The circular placing restrictions of place and manner on the students' right to wear the Islamic headscarf, constituted an interference with the applicant's right to manifest her religion. As to whether the interference had been "prescribed by law", the Court noted that the circular had a statutory basis which was supplemented by a decision by the Constitutional Court. In addition, the Supreme Administrative Court had by then consistently held for a number of years that wearing the Islamic headscarf at university was not compatible with the fundamental principles of the Republic. Furthermore, regulations on wearing the Islamic headscarf had existed at Istanbul University since 1994 at the latest, well before the applicant had enrolled there. Accordingly, there was a legal basis for the interference in Turkish law, the law was accessible and its effects foreseeable so that the applicant would have been aware, from the moment she entered the university, that there were restrictions on wearing the Islamic headscarf and, from 23 February 1998, that she was liable to be refused access to lectures and examinations if she continued to wear the headscarf. The interference pursued the legitimate aims of protecting the rights and freedoms of others and of protecting public order.

As to whether the interference was necessary, the Court noted that it was based in particular on the principle of secularism, which prevented the State from manifesting a preference for a particular religion or belief and whose defence could entail restrictions on freedom of religion. That notion of secularism was consistent with the values underpinning the Convention and upholding that principle could be considered necessary to protect the democratic system in Turkey. In the Turkish context, where the values of pluralism, respect for the rights of others and, in particular, equality before the law of men and women were being taught and applied in practice, it was understandable that the relevant authorities should consider it contrary to such values to allow religious attire to be worn on university premises. As regards the conduct of the university authorities, the Court noted that it was common ground that practising Muslim students in Turkish universities were free, within the limits imposed by educational organisational constraints, to manifest their religion in accordance with habitual forms of Muslim observance. In addition, various forms of religious attire were forbidden at Istanbul University. Further, throughout the decision-making process, the university authorities had sought to

avoid barring access to the university to students wearing the Islamic headscarf, through continued dialogue with those concerned, while at the same time ensuring that order was maintained on the premises. In those circumstances, and having regard to the Contracting States' margin of appreciation, the Court found that the interference in issue was justified in principle and proportionate to the aims pursued, and could therefore be considered to have been "necessary in a democratic society".

On the question of the applicability of Article 2 of Protocol No. 1:, the Court reiterated that while the first sentence essentially established access to primary and secondary education, it would be hard to imagine that institutions of higher education existing at a given time did not come within its scope. Nevertheless, in a democratic society, the right to education, which was indispensable to the furtherance of human rights, played such a fundamental role that a restrictive interpretation of the first sentence of Article 2 would not be consistent with the aim or purpose of that provision. Consequently, any institutions of higher education existing at a given time came within the scope of the first sentence of Article 2 of Protocol No. 1, since the right of access to such institutions was an inherent part of the right set out in that provision. In the case before it, by analogy with its reasoning under Article 9, the Court accepted that the regulations on the basis of which the applicant had been refused access to various lectures and examinations for wearing the Islamic headscarf constituted a restriction on her right to education. As with Article 9, the restriction was foreseeable to those concerned and pursued legitimate aims and the means used were proportionate. The decision-making process had clearly entailed the weighing up of the various interests at stake and was accompanied by safeguards (the rule requiring conformity with statute and judicial review) that were apt to protect the students' interests. Further, the applicant could reasonably have foreseen that she ran the risk of being refused access to lectures and examinations if she continued to wear the Islamic headscarf. Accordingly, the ban on wearing the Islamic headscarf had not impaired the very essence of the applicant's right to education.

The regulations on the Islamic headscarf were not directed against the applicant's religious affiliation, but pursued the legitimate aim of protecting order and the rights and freedoms of others and were manifestly intended to preserve the secular nature of educational institutions. The Court held that there had been no violation of Articles 8, 10 and 14 of the Convention.

CONCLUSION – No violation of Articles 8, 9, 10 and 14 of the Convention and Article 2 of Protocol 1 to the Convention.