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COUR EUROPÉENNE DES DROITS DE L'HOMME

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Failure to provide plausible explanation for a gunshot wound sustained by prisoner during security operation in prison: *violation*

Peker v. Turkey (no. 2) - 42136/06
Judgment 12.4.2011 [Section II]

Facts – In December 2000 a series of security operations were conducted in prisons in Turkey during which many detainees were either killed or injured. The applicant alleges that he was shot in the leg and beaten up by gendarmes during and after one such operation in the prison where he was detained at the time. The gendarmes had gone into the prison and started firing without any warning. The Government claimed that he had in fact been shot by one of his fellow inmates putting up resistance. The official records stated that the applicant and five other injured inmates were taken to hospital and that no weapons had been found in the prison during or after the operation. In April 2001 the applicant lodged a complaint calling for the gendarmes responsible for his shooting and ill-treatment to be prosecuted. The investigation into the case lasted almost five years and, due to lack of evidence, ended with a decision not to prosecute.

Law – Article 2: Based on a global assessment of the security operation conducted in the prison, where the use of the firearm had been potentially fatal and had put the applicant's life at risk, the Court considered it appropriate, despite the applicant's fortuitous survival, to examine his complaints solely under Article 2.

The burden of proof was on the State to provide a plausible explanation for injuries and deaths occurring in custody. The Court therefore had to examine whether the investigation carried out by the domestic authorities had been capable of establishing the true facts surrounding the applicant's injuries and whether the Government had satisfactorily discharged that burden. In that connection, the Court observed that the Government had failed to take even the most rudimentary investigative steps such as searching for the bullet, weapon or spent cartridge and locating eyewitnesses. The investigation had not been carried out with due diligence or expedition, having lasted almost five years, during which time only a limited number of measures had been taken; parts of the investigation had been conducted by the superiors of the personnel implicated in the events, in breach of the requirements of independence and impartiality; the prosecutor had closed the investigation without interviewing the two officers implicated in the shooting and only two of the large number of inmates in the prison at the time had been questioned. In sum, the measures taken had failed to meet the requirements of an effective investigation and had not been capable of establishing the true circumstances surrounding the applicant's shooting or the identity of the person who had shot him. Accordingly, the Government had failed to provide a plausible explanation as to how the applicant had suffered his injury while in prison.

Conclusion: violation (four votes to three).

Article 41: EUR 18,000 in respect of non-pecuniary damage.

ARTICLE 3

Inhuman or degrading treatment
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Alleged failure to adequately protect pupils from sexual abuse at school: *communicated*

O'Keefe v. Ireland - 35810/09
[Section V]

In 1998 the applicant instituted a civil action against one of her former primary-school teachers, the Minister for Education and Science, Ireland and the Attorney General, claiming damages in respect of assault and battery, including sexual abuse, she had suffered in 1973 whilst attending a Catholic National School. She was awarded damages against the teacher, but her action against the three State defendants was dismissed by the High Court. That decision was upheld by the Supreme Court on appeal on the grounds that the State bore no vicarious liability for the assaults as, although National Schools were State funded, they were, under the system in place in Ireland, administered entirely by the clergy.

In her application to the European Court, the applicant complains, *inter alia*, that the State failed to put in place a structure to protect children in National Schools which would have avoided her abuse. In her submission, the provision of primary education is a State power/public function for

which the State retains responsibility despite any delegation of that function to a private actor; alternatively, the Catholic manager of the school was an agent/emanation of the State or a collaborator in the joint national enterprise of providing primary education, who failed to take adequate steps when abuse by the teacher in question was first reported at the school in 1971, two years before the applicant became a victim. She also invokes the procedural obligations in Article 3 to investigate and provide an appropriate judicial response to a stateable case of ill-treatment.

Communicated under Articles 3 (substantive and procedural aspects), 6, 8, 13 and 14 of the Convention and under Article 2 of Protocol No. 1.

Degrading treatment
Positive obligations
Expulsion

Conditions in detention centre unadapted to minor Afghan asylum-seeker: *violation*

Rahimi v. Greece - 8687/08
Judgment 5.4.2011 [Section I]

Facts – The applicant, who was born in 1992, left Afghanistan to escape the armed conflicts there and arrived in Greece, where he was arrested on 19 July 2007. He was placed in a detention centre pending an order for his deportation and was held there until 21 July 2007. A deportation order was issued on 20 July 2007 which mentioned that the applicant's cousin, N.M., was accompanying him. On his release the applicant was not offered any assistance by the authorities. He was homeless for several days and subsequently, with the aid of local NGOs, found accommodation in a hostel, where he remains to date. In September 2007 an application he made for political asylum was rejected; his appeal is still pending.

Before the European Court the applicant complained, among other things, of a complete lack of support or accompaniment appropriate to his status as an unaccompanied minor, and of the conditions in the detention centre, in particular the fact that he had been placed together with adults.

Law – Articles 3 and 13

(a) *Whether the applicant had been accompanied by a relative* – The applicant had not been accompanied by a relative when his asylum application was registered on 27 July 2007. Between 19 and 27 July 2007 the authorities, on the basis of an uncertain procedure, had assigned the applicant to an adult, N.M., who was supposed to act as a guardian and represent the applicant in his dealings with the authorities. However, the established fact that the applicant had been without a guardian for a lengthy period – from 27 July 2007 to date – lent credence to the applicant's claims concerning the preceding period, to the effect that he had not known N.M. In the light of these considerations and the reports by international organisations and NGOs on the subject, it was clear that the applicant had been an unaccompanied minor.

(b) *Exhaustion of domestic remedies* – The information brochure provided by the authorities to the applicant, outlining some of the available remedies, mentioned the possibility of making a complaint to the chief of police but did not indicate the procedure to be followed or whether the chief of police was required to respond to complaints and, if so, within what period. The Court further questioned whether the chief of police represented an authority satisfying the requirements of impartiality and objectivity necessary to make the remedy effective. As to the legislation, it did not empower the courts to examine living conditions in detention centres for illegal aliens and to order the release of a detainee on those grounds. The Court attached particular importance to the specific circumstances of the present case. Firstly, the applicant was a minor who had had no legal representation while in detention. Secondly, his complaints about his personal situation in detention related solely to the fact that he had been detained together with adults. Lastly, the information brochure in Arabic would have been incomprehensible to the applicant, whose native language was Farsi. Accordingly, the Court rejected the respondent Government's objection of non-exhaustion of domestic remedies in respect of the applicant's conditions of detention.

(c) *The conditions of detention in the detention centre* – The Court could not say with certainty whether the applicant had been placed together with adults. However, the conditions of detention in the centre, particularly with regard to the accommodation, hygiene and infrastructure, had been so bad that they undermined the very meaning of human dignity. Moreover, the applicant, on account of his age and personal circumstances, had been in an extremely vulnerable position and the authorities had given no consideration to his individual circumstances when placing him in detention. Accordingly, even allowing for the fact that the detention had lasted for only two days, the applicant's conditions of detention had in themselves amounted to degrading treatment in breach of Article 3.

(d) *The period following the applicant's release* – Owing to his youth, the fact that he was an illegal alien in a country he did not know and the fact that he was unaccompanied and therefore left to fend for himself, the applicant undoubtedly came within the category of highly vulnerable members of society, and it had been incumbent on the Greek State to protect and care for him by taking appropriate measures in the light of its positive obligations under Article 3. With regard to the period after 27 July 2007, the date on which the applicant had lodged his asylum application, the record of that application had made no mention of any member of his family accompanying him. There was no indication in the case file that the authorities had taken action subsequently to assign a guardian to him. On this point, the Commissioner for Human Rights of the Council of Europe, the Office of the United Nations High Commissioner for Refugees and Amnesty International had all noted persistent and serious shortcomings in Greece regarding the supervision of unaccompanied migrant children. After the applicant's release and until the lodging of his asylum application, he had been left to fend for himself and had been taken care of by local NGOs. Hence, the authorities' indifference towards him must have caused the applicant profound anxiety and concern. In its judgment in *M.S.S. v. Belgium and Greece*[1] the Court had noted "the particular state of insecurity and vulnerability in which asylum seekers are known to live in Greece" and had found that the Greek authorities were to be held responsible "because of their inaction". Accordingly, the threshold of severity required by Article 3 had also been attained in the present case.

In sum, the applicant's conditions of detention in the detention centre and the authorities' failure to take care of him, as an unaccompanied minor, following his release had amounted to degrading treatment. There had therefore been a violation of Article 3. Furthermore, in view of the Court's findings with regard to the exhaustion of domestic remedies, the State had also failed to comply with its obligations under Article 13.

Conclusion: violations (unanimously).

Article 5 § 1 (f): The applicant's detention had been based on the law and had been aimed at ensuring his deportation. In principle, the length of his detention – two days – could not be said to have been unreasonable with a view to achieving that aim. Nevertheless, the detention order in the present case appeared to have resulted from automatic application of the legislation in question. The national authorities had given no consideration to the best interests of the applicant as a minor or his individual situation as an unaccompanied minor. Furthermore, they had not examined whether it had been necessary as a measure of last resort to place the applicant in the detention centre or whether less drastic action might not have sufficed to secure his deportation. These factors gave cause to doubt the authorities' good faith in executing the detention measure. This was all the more true since the conditions of detention in the centre, particularly with regard to the accommodation, hygiene and infrastructure, had been so severe as to undermine the very meaning of human dignity.

Conclusion: violation (unanimously).

Article 5 § 4: The applicant had been unable in practice to contact a lawyer. Furthermore, the information brochure outlining some of the remedies available had been written in a language which he would not have understood, although the interview with him had been conducted in his native language. The applicant had also been registered as an accompanied minor although he had had no guardian who could act as his legal representative. Accordingly, even assuming that the remedies had been effective, the Court failed to see how the applicant could have exercised them.

Conclusion: violation (unanimously).

Article 41: EUR 15,000 in respect of non-pecuniary damage.

Degrading treatment

Conditions of detention unadapted to detainee's disability: *violation*

Flamînzeanu v. Romania - 56664/08
Judgment 12.4.2011 [Section III]

Facts – In 2003 the applicant fractured his spine. He was remanded in custody in January 2006, charged with committing robbery with violence. In February 2006 he was obliged to begin using a catheter owing to urinary problems. He was detained in Rahova Prison in September 2006, and in 2008 was sentenced to seven years' imprisonment. In February 2009 the applicant was transferred to Giurgiu Prison and in November of that year to

1. *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, 21 January 2011, Information Note no. 137.

Jilava Prison, where he remains to date. Before the European Court, the applicant complained of the poor conditions of detention in Rahova, Giurgiu and Jilava Prisons, and in particular of inadequate medical treatment and overcrowded cells.

Law – Article 3: None of the numerous medical reports had found a causal link between the deterioration in the applicant's kidney function and his conditions of detention or medical treatment. Therefore, the applicant's disability had not been caused by his detention and the authorities could not be held responsible for it. However, while the authorities had, by and large, responded adequately to the applicant's health problems by providing him with the prescribed treatment, his particular circumstances could not be disregarded, given that he was obliged to use a catheter on a daily basis and had partial paralysis of the lower limbs. With regard to the conditions of detention in Rahova Prison, even assuming that the occupancy level of the applicant's cell had satisfied the requirements of Article 3, the sanitary conditions and lack of hygiene, including the limited access to showers, had been incompatible with his state of health and with his doctors' recommendations. In Giurgiu Prison the applicant had lived in cramped conditions (between 3.62 sq. m and 3.97 sq. m of space depending on the type of cell, without counting furniture). This was below the standard recommended to the Romanian authorities by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). Moreover, the applicant had shared his cell with five or six other inmates although the prison had two-person cells which might have been compatible with the doctors' recommendations. As to the applicant's detention in Jilava Prison, the reports of the CPT and the Commissioner for Human Rights of the Council of Europe had described the conditions of detention variously as "deplorable", "alarming" and "appalling". The lack of hygiene was exacerbated by the restricted access to showers and by severe overcrowding. Furthermore, the applicant had been taken out of prison for medical tests in a vehicle which was not adapted to his state of health, and had been forced to wait for several hours in a cell which did not have the necessary disabled facilities. It was true that there was no evidence of any real intention to humiliate or debase the applicant. However, in view of his individual circumstances, the cumulative effect over a significant period of his physical conditions of detention combined with his disability had subjected the applicant to hardship exceeding the unavoidable level of suffering inherent in detention and therefore amounted to degrading treatment in breach of Article 3.

Conclusion: violation (unanimously).

Article 41: EUR 10,000 in respect of non-pecuniary damage.

ARTICLE 5

Article 5 § 1

Deprivation of liberty

Containment of peaceful demonstrators within a police cordon for over seven hours: *relinquishment in favour of the Grand Chamber*

Austin and Others v. the United Kingdom - 39692/09, 40713/09 and 41008/09 [Section IV]

On 1 May 2001 a large demonstration against capitalism and globalisation took place in London. The organisers gave no notice to the police of their intentions and publicity material they distributed beforehand included incitement to looting, violence and multiple protests all over London. The intelligence available to the police indicated that, in addition to peaceful demonstrators, between 500 and 1,000 violent and confrontational individuals were likely to attend. In the early afternoon a large crowd made its way to Oxford Circus, so that by the time of the events in question some 3,000 people were within the Circus and several thousands more were gathered in the streets outside. In order to prevent injury to people and property, the police decided that it was necessary to contain the crowd by forming a cordon blocking all exit routes from the area. Because of violence and the risk of violence from individuals inside and outside the cordon, and because of a policy of searching and establishing the identity of those within the cordon suspected of causing trouble, many peaceful demonstrators and passers-by, including the applicants, were not released for several hours.

Following these events, the first applicant brought a test case in the High Court for damages for false imprisonment and a breach of her Convention rights. Her claim was dismissed and that decision was upheld on appeal. In a unanimous ruling, the House of Lords found that there had been no deprivation of liberty within the meaning of Article 5 since the intention of the police had been to protect both demonstrators and property from

violence, and the containment had continued only as long as had been necessary to meet that aim. In its view, the purpose of the confinement or restriction of movement and the intentions of those responsible for imposing it were relevant to the question of whether there had been deprivation of liberty and measures of crowd control that were proportionate and undertaken in good faith in the interests of the community did not infringe the Article 5 rights of individual members of the crowd whose freedom of movement was restricted.

Deprivation of liberty
Lawful arrest or detention

Continued placement in preventive detention beyond maximum period authorised at time of placement: *violation*

Jendrowiak v. Germany - 30060/04
Judgment 14.4.2011 [Section V]

Facts – The applicant, who had a history of sexual offences, was convicted of a further offence in 1990 and given a three-year prison term. The court which convicted him also made an order for him to be placed in preventive detention at the end of his sentence on the grounds that he was likely to reoffend. Although at that time the maximum permitted period for preventive detention was ten years, the applicant, whose detention was reviewed at regular intervals, was held beyond that period on the basis of a statutory amendment in 1998 which allowed preventive detention to continue indefinitely. He was ultimately released in 2009 on health grounds.

Law – Article 5 § 1: This was a follow up case to *M. v. Germany*.[1] As in that case, the Court found that the applicant's continued detention beyond the ten-year maximum period that had applied before the statutory amendment in 1998 was not justified under any of the sub-paragraphs of Article 5 § 1.

It went on to consider whether it could be justified by the State's positive obligation under Article 3 to take measures designed to ensure that individuals within their jurisdiction were not subjected to torture or inhuman or degrading treatment, including by private individuals. In that connection, while accepting that the applicant's continued preventive detention beyond the ten-year period had been ordered to protect potential victims from physical and psychological harm, the Court pointed out that, although the Convention obliged State authorities to take reasonable steps within the scope of their powers to prevent ill-treatment of which they had or ought to have had knowledge, it did not permit them to protect individuals from the criminal acts of another by measures which were themselves in breach of that other's Convention rights, in particular, the right to liberty as guaranteed by Article 5 § 1. Consequently, since, in the present case, the applicant's deprivation of liberty did not fall within any of the permissible grounds exhaustively listed in Article 5 § 1, the State could not rely on their positive obligations under the Convention to justify his continued detention. That provision contained all the grounds on which a person could be deprived of his liberty in the public interest, including the interest in protecting the public from crime.

Conclusion: violation (unanimously).

Article 7 § 1: Following its findings in *M. v. Germany*, the Court found that preventive detention was to be qualified as a penalty for the purpose of Article 7 § 1. The increase in the maximum period of preventive detention as a result of the statutory amendment in 1998 (from ten years to an indefinite term), constituted a heavier penalty which had been imposed on the applicant retrospectively. As regards the State's positive obligation to protect potential victims from inhuman or degrading treatment by the applicant, the Court's findings under Article 5 applied *a fortiori* to the prohibition of retrospective penalties under Article 7 § 1, from which no derogation was allowed even in time of public emergency threatening the life of the nation.

Conclusion: violation (unanimously).

Article 41: EUR 27,467 in respect of non-pecuniary damage.

(See also, for preventive detention not imposed by the trial court, *Haidn v. Germany*, no. 6587/04, 13 January 2011, Information Note no. 137)

Article 5 § 1 (f)

Expulsion

Detention of unaccompanied foreign minor in adult detention centre: *violation*

Rahimi v. Greece - 8687/08
Judgment 5.4.2011 [Section I]

(See Article 3 above, page 8)

1. *M. v. Germany*, no. 19359/04, 17 December 2009, Information Note no. 125.

ARTICLE 6

Article 6 § 1 (civil)

Civil rights and obligations
Access to court

Prison board's repeated refusal, with no right of appeal to the administrative courts, to grant prisoner temporary leave: *case referred to the Grand Chamber*

Boulois v. Luxembourg - 37575/04
Judgment 14.12.2010 [Section II]

The applicant is currently serving a term of fifteen years' imprisonment. Between 2003 and 2006 he submitted six requests for temporary leave of absence ("prison leave"), stating, among other reasons, that he wished to complete certain administrative formalities and attend classes with a view to obtaining qualifications. His requests were all refused by the Prison Board. The applicant applied to the Administrative Court for judicial review of the first two refusals, but the court found that it lacked jurisdiction. The Higher Administrative Court upheld that judgment.

In a judgment of 14 December 2010 (see Information Note no. 136) a Chamber of the Court held by four votes to three that there had been a violation of Article 6 § 1 on the ground that, since the administrative courts had not ruled on the application for judicial review, the lack of any decision on the merits had nullified the effect of the administrative courts' review of the Prison Board's decisions. Furthermore, the legislation in force did not afford prisoners any other remedy.

On 11 April 2011 the case was referred to the Grand Chamber at the Government's request.

ARTICLE 8

Private life

Conviction of university professor for refusing to comply with court order requiring him to grant access to research materials: *case referred to the Grand Chamber*

Gillberg v. Sweden - 41723/06
Judgment 2.11.2010 [Section III]

The applicant, a university professor, was prosecuted and convicted of misusing his office after refusing to follow instructions from the university administration to comply with a court order requiring him to hand over to third parties material he had compiled during a research project into hyperactivity and attention-deficit disorders in children.

In a judgment of 2 November 2010 (see Information Note no. 135) a Chamber of the Court held by five votes to two that there had been no violation of Article 8 of the Convention. There was no evidence that the university ethics committee had required an absolute promise of confidentiality, while the assurances the applicant had given to the research participants had, according to the domestic courts, gone beyond what was permitted by the domestic law. As regards the protection of the integrity of the informants and participants in the research project, the question of whether the documents were to be released had been settled in the civil proceedings, during which the university had been given the opportunity to present its case. Whether or not it considered that the orders for release were based on erroneous or insufficient grounds, what mattered was that the university administration had understood that it was required to release the documents without delay and that for a considerable period the applicant had intentionally failed to comply with his obligations as a public official arising from the court orders. The Chamber also found, unanimously, that there had been no violation of Article 10 as, for the reasons stated with respect to Article 8, there was nothing to suggest that the domestic courts' findings were arbitrary or disproportionate.

On 11 April 2011 the case was referred to the Grand Chamber at the applicant's request.

Private and family life

Refusal to renew expatriate's passport for over six years with a view to forcing his return home to stand trial: *no violation*

M. v. Switzerland - 41199/06
Judgment 26.4.2011 [Section II]

Facts – The applicant had been living in Thailand for a number of years. The Swiss Embassy issued him with a new passport in 1997 and renewed it in 2003. In October 2004, before his passport expired, he applied for a new one, which he needed because he intended to marry a Thai national. The application was forwarded to the Federal Police Office (Fedpol) in Switzerland, which found that the applicant had been listed in a police database

since June 2003 as being wanted for fraud. Fedpol contacted the public prosecutor's office, which opposed the renewal of the passport. Only a "*laissez-passer*" permitting his direct return to Switzerland could be issued. In November 2004 the Swiss Embassy in Bangkok informed the applicant. None of his appeals against that decision was successful.

Law – Article 8: The applicant was living abroad and the fact that he had no valid identity document placed him in a delicate situation *vis-à-vis* the Thai authorities and was likely to be a source of problems in his everyday life, particularly administrative problems – for example, if he wanted to marry a Thai national or register a child born out of wedlock in Thailand with the Swiss authorities. The authorities' refusal to renew the applicant's passport thus constituted an interference with his private and family life. The impugned measure was provided for by law, with the aim of guaranteeing the proper conduct of criminal proceedings against the applicant. He had been living without a valid passport since October 2004, that is, more than six years, which was a long time. He must have been aware, however, that he was under investigation for fraud, a criminal offence under Swiss law. By refusing to return to Switzerland he was intentionally avoiding prosecution. The competent authorities had therefore preferred not to renew his passport, in order to make him return to Switzerland, considering that his presence there was necessary for the proper conduct of the criminal proceedings against him. In view of the medical certificates he had submitted, they also considered that the applicant was in good enough health to travel to Switzerland. Furthermore, the refusal to issue the applicant with a new passport was less severe than other measures the authorities could have taken. In the light of the detailed and reasoned decisions of the Swiss authorities and regard being had to the importance, in the public interest, of combating crime, the refusal to issue the applicant with a new passport was, in the circumstances of the case, proportionate to the aim pursued.

Conclusion: no violation (unanimously).

Family life
Positive obligations

Failure of State to take applicant's personal circumstances into account when arranging contact with his daughter: *violation*

Gluhaković v. Croatia - 21188/09
Judgment 12.4.2011 [Section I]

Facts – In his application to the European Court, the applicant, a divorced father, complained that he was unable to exercise his right to contact with his daughter as the domestic authorities had failed to take into account his work schedule or to arrange for a suitable meeting place. Despite the fact that he worked in Vicenza (Italy) for periods of three full days with the fourth day off, he was granted contact at counselling centres in Rijeka (Croatia), without suitable facilities, at a fixed time each week, making it impossible for him to attend. This had resulted in his losing contact with his daughter since July 2007.

Law – Article 8: The applicant's right to see his daughter at regular intervals had been acknowledged by the domestic courts and fell within the scope of "family life". Accordingly, the national courts were obliged to ensure effective exercise of the applicant's right to contact.

The Court accepted that travelling from Vicenza to Rijeka on a fixed day had made it difficult for the applicant to exercise his right of contact. It noted that the national courts at all levels had constantly ignored both the reality of the applicant's situation and the counselling centre's objections concerning the suitability of the place designated for meetings. They had ordered that the meetings be held in counselling and welfare centres, without assessing the suitability of the premises. This had resulted in the applicant having to go to significant lengths to organise his replacement at work, to meetings being held in unsuitable places such as the kitchen or offices at the centre and finally to the complete cessation of contact between the applicant and his daughter in July 2007, as the only place available for the meetings had been a corridor at the welfare centre. Even though the domestic courts had finally ordered in 2008 that the meetings be held once a week when the applicant's work schedule allowed, they had failed to state where the meetings should be held, leaving that issue for the parents to decide. Bearing in mind that the applicant had had no contact with his daughter since July 2007, the Court held that the national authorities had failed to adequately secure the applicant's right to effective contact with his daughter.

Conclusion: violation (unanimously).

Article 46: Exceptionally and given the particular circumstances of the case and the urgent need to put an end to the violation of the applicant's right to respect for his family life, the Court for the first time issued the direction that the respondent State had to ensure effective contact between the appli-

cant and his daughter at a time compatible with his work schedule and on suitable premises.

Article 41: EUR 15,000 in respect of non-pecuniary damage.

ARTICLE 11

Freedom of association

Dissolution of political party for failure to comply with statutory requirements for a minimum number of members and regional branches: *violations*

Republican Party of Russia v. Russia - 12976/07
Judgment 12.4.2011 [Section I]

Facts – The applicant party was created in 1990 by the consolidation of the Democratic Wing of the USSR Communist Party and its subsequent secession from that party. It was registered as a political party in 2002. In 2006 the Ministry of Justice refused to register changes to the party's address and management decided at an extraordinary general conference on the grounds that the party had failed to show that the conference had been held in accordance with the law and with its articles of association. The applicant unsuccessfully challenged that decision in the courts. In separate proceedings, the Supreme Court ordered the applicant party's dissolution on the grounds that an inspection by the Ministry had shown that it did not have sufficient regional branches with over 500 members and that its overall membership did not reach the statutory minimum of 50,000.

Law – Article 11

(a) *Refusal to register amendments* – By refusing to register the applicant party's newly elected representatives, the public authorities had created serious difficulties in its everyday functioning thereby interfering with its right to freedom of association. The domestic law provided no details as to the procedure for registering amendments. It did not specify which documents, apart from a simple notification, were to be submitted by a political party wishing to register amendments. Nor did it expressly mention the registration authority's power to verify them. In order to justify the requirement for the applicant to submit certain documents requested by the Ministry, the domestic courts had relied on a provision which had only entered into force after the Ministry's refusal to amend the register. The measures taken by the registration authorities had therefore lacked a sufficiently clear legal basis.

While that finding would in itself be sufficient to find a violation of Article 11, the Court went on to consider the Government's argument that the interference had been "necessary in a democratic society" in order to protect the right of the applicant party's members. It accepted that, in certain cases, the States' margin of appreciation might include a right to interfere with an association's internal organisation and functioning in the event of non-compliance with reasonable legal formalities or of a serious and prolonged internal conflict. However, the authorities should not intervene to such a far-reaching extent as to ensure observance by an association of every single formality provided by its own charter. It should be for the association itself, not the authorities, to determine the manner in which its conferences were to be organised and to ensure compliance with those procedures. In the absence of any complaint from the applicant's members concerning the organisation of the general conference held in December 2005, the Court was not convinced that the public authorities' interference with the applicant's internal affairs had been necessary to protect the rights of its members.

Conclusion: violation (six votes to one).

(b) *Dissolution* – The Court rejected the Government's submission that the applicant party could have reorganised itself into a public association observing that this would have deprived it of an opportunity to stand for election, which was one of its main aims. While ready to accept that the contested statutory requirements were intended to protect national security, prevent disorder and guarantee the rights of others, the Court noted that the applicant was one of the oldest Russian political parties and there was nothing to suggest that it was not a democratic one. The sole reasons for its dissolution were its failure to comply with the requirements of minimum membership and regional representation.

(i) *Minimum membership requirement*: Even though the requirement for political parties to have a minimum number of members was not an unknown concept in Council of Europe member States, the threshold set under Russian law, which in 2001 had jumped from 10,000 to 50,000 members, was the highest in Europe. The domestic authorities had argued that such a high threshold had been necessary both to avoid disproportionate expenditure from the State budget during electoral campaigns and to promote the stability of the political system by avoiding excessive parliamentary fragmentation. As regards the question of expenditure, the Court noted that the existence of a certain

number of smaller political parties would not have represented a considerable financial burden on the State treasury since under domestic law only those parties that had taken part in the elections and obtained more than 3% of the votes cast were entitled to public financing. As to the aim of avoiding excessive parliamentary fragmentation, this was achieved by the 7% electoral threshold required in Russia and the rule that only parties that had seats in the State Duma or had submitted a certain number of signatures could nominate candidates for elections. Accordingly, the Court was not persuaded that additional restrictions such as an unreasonably high minimum membership requirement were necessary. Such a requirement would be justified only if it allowed the unhindered establishment and functioning of a plurality of political parties representing the interests of various, even minor, population groups and ensuring them access to the political arena. The applicant party, which had existed and participated in elections since 1990, was dissolved in 2007 following a drastic five-fold increase in the minimum membership requirement. Such a radical measure applied to a long-established and law-abiding political party could not be accepted as being "necessary in a democratic society".

(ii) *Regional representation*: The Government had argued that the rationale of the requirement for a political party to have a sufficient number of regional branches with more than 500 members was to prevent the establishment and participation in elections of regional parties, which were a threat to the territorial integrity of the country. The Court reiterated, however, that there could be no justification for hindering political parties only because they sought to debate in public the situation of a part of the State's population or even to advocate separatist ideas. While, given Russia's special historic and political context, a ban on establishing regional political parties might have been justified in the aftermath of the dissolution of the Soviet Union, the ban was not put in place until 2001, some ten years after Russia had started its democratic transition. Such a measure could therefore only have been justified by particularly compelling reasons, which the Government had failed to put forward. The applicant, an all-Russian political party which had never advocated regional interests or separatist views or in any other way sought to undermine Russia's territorial integrity, had been dissolved purely on the formal ground that it did not have sufficient regional branches. In these circumstances, the Court could not see how this measure sought to achieve the legitimate aims cited by the Government, namely the prevention of disorder or the protection of national security or the rights of others.

In sum, the domestic courts had not adduced "relevant and sufficient" reasons to justify the interference with the applicant's right to freedom of association and the applicant party's dissolution for failure to comply with the requirements of minimum membership and regional representation was disproportionate to the legitimate aims cited by the Government.

Conclusion: violation (unanimously).

(See also *Tebieti Mühafize Cemiyyeti and Israfilov v. Azerbaijan*, no. 37083/03, 8 October 2009, Information Note no. 123)

ARTICLE 13

Effective remedy

Leaflet giving information on procedures for complaining about conditions in detention centres incomplete and in a language the detainee, a minor, could not understand: *violation*

Rahimi v. Greece - 8687/08
Judgment 5.4.2011 [Section I]

(See Article 3 above, page 8)

ARTICLE 35

Article 35 § 3 (b)

No significant disadvantage

Disadvantage characterised by low level of claim made to domestic courts in respect of non-pecuniary damage: *inadmissible*

Ştefănescu v. Romania - 11774/04
Decision 12.4.2011 [Section III]

Facts – Following the Energy Board's refusal to supply information about its budget, its sources of funding, how many people it employed, etc., the applicant took legal action to oblige it to communicate the information – which was of public interest – in writing, as required by law. She also sought about EUR 125 in respect of the non-pecuniary damage she considered she had sustained as a result of the Energy Board's reaction to her request. In February 2003 the first-instance court allowed her application in part and ordered the

Board to communicate the information concerned. It rejected her claim for damages, however, on the grounds that she had not provided any proof of the damage allegedly sustained. In a final judgment of October 2003 a court of appeal rejected the applicant's claim and upheld the first-instance court's judgment.

Law – Article 35 § 3 (b)

(a) *Significant disadvantage* – What mattered when examining whether or not the applicant had suffered a significant disadvantage was the damage allegedly suffered because the domestic courts had – wrongly, in her opinion – rejected her claim in respect of non-pecuniary damage. However, the applicant had not indicated, either before the domestic courts or before the Court, in what manner the Board's refusal to communicate the requested information had affected her personally. The only indication of the significance of the disadvantage she had allegedly sustained was the amount she had claimed before the domestic courts in respect of non-pecuniary damage, namely EUR 125, which was undeniably a relatively modest sum. That being so, the Court considered that the applicant had not suffered a significant disadvantage.

(b) *Examination of the application on the merits* – As the Court had already, on several occasions, addressed the legal question raised in the instant case, in judgments which could give the domestic courts guidance on the matter, respect for human rights did not require further examination of this complaint.

(c) *Case duly considered by a domestic tribunal* – The applicant's case had been examined on the merits at first instance and on appeal. The courts had even allowed the applicant's request and ordered the Energy Board, in adversarial proceedings, to divulge the requested information. That being so, it could not be said that the applicant's case had not been duly considered.

The three conditions set out in Article 35 § 3 (b) of the Convention as amended by Protocol No. 14 having thus been met, the complaint was declared inadmissible under that provision.

Conclusion: inadmissible (no significant disadvantage).

ARTICLE 38

Furnish all necessary facilities

Article 38 applicable even in absence of separate decision on admissibility

Enukidze and Girgvliani v. Georgia - 25091/07
Judgment 26.4.2011 [Section II]

Facts – The case concerned the abduction, beating and killing in 2006 of the applicants' son by a group of senior law-enforcement officers and the lack of an effective investigation and appropriate punishment. The applicants complained that the Government had submitted only part of the evidence necessary for the examination of the application, and even that had been done with a significant delay.

Law – Article 38 § 1: Noting that Article 29 § 3 of the Convention, as that provision stood at the material time, had been applied at the time of communication of the present application, the Court considered that, in the consequent absence of a separate decision on admissibility, it retained jurisdiction under Article 38, as it read at the material time, to examine the relevant events which had taken place during the subsequent proceedings. The Court found the Government's explanations for their delay and the partial failure to submit the requested items of evidence unconvincing. The Government had failed to justify that omission in their written observations and had remained silent even after the applicants had explicitly reproached them on that account at the public hearing on 27 April 2010. Referring to the importance of a respondent Government's cooperation in Convention proceedings and being mindful of the difficulties associated with the establishment of facts in complex cases of such a nature, the Court found that, in the present case, the Government had fallen short of their obligations under Article 38.

Conclusion: violation (six votes to one).

The Court also found a violation of the procedural aspect of Article 2 but no violation of the substantive aspect.

ARTICLE 46

Execution of a judgment – Individual measures

Respondent State required to secure effective contact between the applicant and his daughter

Gluhaković v. Croatia - 21188/09
Judgment 12.4.2011 [Section I]

(See Article 8 above, page 13)

ARTICLE 1 OF PROTOCOL No. 1

Peaceful enjoyment of possessions

Obligation to bear legal costs following reasonably foreseeable change in House of Lords' interpretation of law on limitation periods: *inadmissible*

Hoare v. the United Kingdom - 16261/08
Decision 12.4.2011 [Section IV]

Facts – In 1989 the applicant was convicted of an attempted rape and sentenced to life imprisonment. His victim (Mrs A) did not sue him for damages at the time because he was impecunious. However, in 2004 the applicant won approximately 7 million pounds sterling (GBP) on the National Lottery and, on learning this news, Mrs A brought an action for trespass to the person against him. Her claim was dismissed at first instance and on appeal on the grounds that it was time-barred. In reaching that conclusion, the courts considered themselves bound by a decision in an earlier case, *Stubbings v. Webb*,[1] in which the House of Lords had ruled that claims for injuries arising from complaints of deliberate assault or trespass to the person, such as Mrs A's, were subject to the general non extendable six-year limitation period imposed by section 2 of the Limitation Act 1980, rather than the special, extendable, three-year period applicable to actions in respect of personal injuries under section 11.

Mrs A was, however, given leave to appeal to the House of Lords, which, in a judgment of 30 January 2008, unanimously decided to depart from its decision in *Stubbings v. Webb* owing to the anomalous situation to which it had given rise in subsequent cases, as had been highlighted in a 2001 report by the Law Commission. It therefore ruled that the extendable limitation period laid down by section 11 of the Act applied and remitted the case to the High Court, which exercised its discretion to extend the time-limit and allowed Mrs A to bring her action in damages. She was awarded GBP 50,000 in compensation. In addition, the applicant had to bear all the costs of the proceedings, amounting to some GBP 770,000.

Law – Article 1 of Protocol No. 1: The applicant's complaint was effectively that he had lost his case, and had therefore had to pay Mrs A's costs, as a result of an unforeseeable change in the law of limitation. The Court reiterated, however, that domestic courts could depart from their well-established case-law provided they gave good and cogent reasons for doing so. However clearly drafted a legal provision may be, in any system of law there was always an inevitable element of judicial interpretation. Equally, there would always be a need for elucidation of doubtful points and for adaptation to changing circumstances. The principle of legality was not offended where the development of the law in a particular area had reached a stage where judicial recognition of that development was reasonably foreseeable.

These principles, which the Court had established in its judgment in the Article 7 case of *C.R. v. the United Kingdom*[2], could equally be applied to the applicant's case as, by the time it reached the House of Lords, the unsatisfactory character of the law of limitation as it applied in sexual abuse cases had already been raised by the Law Commission in its 2001 report, which had recommended a complete overhaul of the law in this area. This had culminated in the Court of Appeal suggesting that the House of Lords itself might be able to remedy some of the very serious deficiencies and incoherencies in the law as it then stood. The House of Lords had given full and reasoned arguments in support of its revised interpretation of the relevant legislation, including a detailed account of the legislative history and of the legal developments which were considered to have brought the anomalies of *Stubbings v. Webb* into sharp relief. Its decision had thus constituted no more than a reasonably foreseeable development of the law without any impropriety, let alone arbitrariness. Further, in keeping with the margin of appreciation of States in this area, it had been open to the domestic courts to interpret the rules of limitation in a way that was more favourable to victims of sexual abuse. Any interference with the applicant's possessions had thus been lawful.

The orders for costs had pursued the legitimate aim of acting as a disincentive to unnecessary litigation. Having regard to the fact that the applicant had refused an offer of settlement made by Mrs A and that the level of costs the latter had incurred did not appear unreasonable for three levels of jurisdiction, there was nothing arbitrary in the way in which the applicable rules on costs were applied such as to upset the fair balance between the conflicting interests at stake.

Conclusion: inadmissible (manifestly ill-founded).

Article 6 § 1: The applicant's complaint of a lack of fairness which, in his view, had resulted in his

1. *Stubbings v. Webb* [1993] AC 498.

2. *C.R. v. the United Kingdom*, no. 20190/92, 22 November 1995.

having to pay for a change in the law was essentially of a "fourth instance" nature. He was, in essence, unhappy with the outcome of the domestic proceedings. However, despite having been warned by his legal representatives that there was a risk that the House of Lords might find against him, notably by overturning its *Stubbings v. Webb* judgment, and despite an offer to settle from Mrs A, he had decided to go ahead with the proceedings in the belief that the courts would find in his favour. Most importantly, he had clearly pursued the legal action because he was in a financial position to do so. This distinguished his situation from that of indigent litigants who were required to pay substantial sums by way of security for costs or court fees in the initial stages of the proceedings, thereby raising issues of access to court under Article 6 § 1. In the present case, the applicant had been able to afford legal representation throughout the proceedings owing to his lottery win. His right of access to court could not, therefore, be said to have been impaired. On the contrary, he had been given ample opportunity to put his case throughout the proceedings and the House of Lords had given detailed reasons for departing from its earlier case-law. His application accordingly did not disclose any appearance of unfairness.

Conclusion: inadmissible (manifestly ill-founded).

REFERRAL TO THE GRAND CHAMBER

Article 43 § 2

The following cases have been referred to the Grand Chamber in accordance with Article 43 § 2 of the Convention:

Boulois v. Luxembourg - 37575/04
Judgment 14.12.2010 [Section II]

(See Article 6 § 1 above, page 12)

Gillberg v. Sweden - 41723/06
Judgment 2.11.2010 [Section III]

(See Article 8 above, page 12)

RELINQUISHMENT IN FAVOUR OF THE GRAND CHAMBER

Article 30

Austin and Others v. the United Kingdom - 39692/09, 40713/09 and 41008/09 [Section IV]

(See Article 5 § 1 above, page 10)

OTHER MATTERS

Izmir Declaration

The high-level conference organised on 26 and 27 April 2011 in Izmir by the Turkish Chairmanship of the Committee of Ministers concluded its work with the adoption of the Izmir Declaration on the future of the European Court of Human Rights. The Conference aimed at following up and maintaining the momentum of the process of reform of the supervisory machinery set up by the European Convention on Human Rights, process launched by the Interlaken Conference in February 2010. The texts of the Izmir Declaration, the Concluding Remarks of the Turkish Chairmanship and additional information are available on the Conference website.

RECENT PUBLICATIONS

Annual Report 2010: Execution of Judgments of the European Court of Human Rights

The Committee of Ministers' fourth annual report on the supervision of the execution of judgments of the European Court of Human Rights was issued on 19 April 2011. The report includes detailed statistics highlighting the main tendencies of the evolution of the execution process in 2010 and a thematic overview of the most important developments in the execution of the cases pending before the Committee of Ministers.

[Link to the Annual Report 2010]