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

Information Note on the Court's case-law

No. 173 April 2014

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

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ISSN 1996-1545

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ARTICLE 2

Positive obligations (substantive aspect)

Death of prisoner as a result of drugs overdose: *inadmissible*

Marro and Others v. Italy - 29100/07
Decision 8.4.2014 [Section II]

Facts – The applicants are the relatives of a detained drug addict who died in prison as a result of an overdose. They alleged that they themselves had lodged a complaint against him, in order to distance him from the drug addicts with whom he was spending his time. When he entered prison in August 1995 the applicants' relative stated that he had taken drugs two days before his arrest. About three weeks later, he informed that prison doctor that he had not taken drugs for approximately two years. He died eight days later. According to the forensic medical report, the cause of death was an overdose.

Relying on Article 2 of the Convention, the applicants blamed the authorities for failing to prevent their relative from obtaining the substances which led to his death.

Law – Article 2: The applicants had not alleged that the authorities were aware of information which could have led them to believe that their relative was in a particularly dangerous position compared to any other prisoner suffering from drug addiction and that, by using drugs, he ran a potentially higher risk of suffering fatal consequences. What was at stake was not therefore the requirement of personal protection of one or several individuals identifiable in advance as the potential target of a threat to life, but rather the obligation to afford general protection to a vulnerable group of people, namely imprisoned drug addicts. This was particularly true in the present case, since the applicants' relative had himself stated, one week before his death, that he had not taken drugs for a long time, and since he had given no indication that he was suffering from psychological problems or was in a situation of particular vulnerability. In those circumstances, the single objective fact that a deceased detainee was able to obtain access to illegal drugs could not in itself be considered to amount to a failure to comply with the State's positive obligations under Article 2 of the Convention. Admittedly, in order to protect the health and lives of citizens, the authorities were required to take measures in order to combat drug trafficking, the more so when this scourge occurred or could occur in a secure setting such as a prison. Nevertheless, they could not guarantee with absolute certainty that drugs would not be circulated, and they had a wide discretion in the choice of the means to be used. In this respect, they were therefore bound by an obligation of means, not of result.

In the present case, the applicants had not challenged the Government's assertions that, at the material time, the prison in which their relative was held had forbidden not only drugs, but also various products – specifically, powdered or granulated products, soap and syringes –, from being brought in; in addition, everyone entering the prison was searched and all parcels were inspected, and visitors, prison staff and prisons had been required to go through an electromagnetic detector. By implementing those measures, the State had complied with its obligation to take action against drug trafficking in prisons. In contrast, having regard to the margin of appreciation afforded to the authorities, Article 2 could not be construed as requiring a State to use sniffer dogs in any area – such as a prison – where drugs were likely to be in circulation. The applicants' relative, whose drug addiction was known to the authorities, had been placed in a cell with another prisoner who was accused of drug trafficking, and who had tested positive for drugs. The applicants rightly emphasised this point; nonetheless, this factor could not be considered as having caused the death of the their relative. Indeed, the manner in which he had obtained the drugs remained unknown; thus, it was impossible to identify with any precision the loophole which had enabled drugs to be introduced and circulated in the prison, and whether the cellmate in question had been involved in any way in the events. Moreover, having regard to the number of prisoners in Italy who suffered from drug addiction, it could prove difficult in practice for the authorities systematically to separate drug addicts from occasional drug users and drug traffickers. In addition, criminal and disciplinary investigations had been opened immediately after the discovery of the body, and an autopsy had been carried out in good time. The applicants had not alleged any shortcomings in those investigations. In the light of the foregoing, the Court considered that the fact that the applicants' relative, although detained in prison, had been able to obtain and make use of drugs could not, in itself, render the State liable for the death in question. In those circumstances, no appearance of a violation of Article 2 could be found.

Conclusion: inadmissible (manifestly ill-founded).

Effective investigation

Alleged ineffectiveness, following recent discovery of bodies, of investigation into deaths during intercommunal conflicts in Cyprus in 1960s: *inadmissible*

Gürtekin and Others v. Cyprus - 60441/13, 68206/13 and 68667/13
Decision 11.3.2014 [Section IV]

Facts – The applicants were relatives of Turkish-Cypriot missing persons whose remains had been discovered during the exhumation programme carried out by the UN Committee for Missing Persons in Cyprus. The disappearance of the applicants' relatives dated back to the inter-communal conflict in Cyprus in 1963-64. In their applications to the European Court, the applicants essentially complained about the ineffectiveness of the investigation into their relatives' deaths following the discovery of their bodies.

Law – Article 2: The Court reiterated that the scope of any fresh obligation to investigate events that had taken place far in the past (for example, when newly-discovered evidence had come to light) would vary according to the nature of the purported new evidence or information. It could be restricted to verifying the reliability of the new evidence. The authorities could legitimately take into account the prospects of launching a new prosecution at such a late stage. Indeed, in general, in such cases the prospects of any effective investigation leading to the prosecution of suspects would increasingly diminish as memories faded, witnesses died or became untraceable, and evidence deteriorated or ceased to exist.

In the instant cases the police had followed numerous leads, made enquiries with official bodies and organisations, updated the statements from the deceased's relatives, looked for relevant witnesses and tracked down to the extent possible the names of potential suspects. However, given the lapse of time, many witnesses were no longer alive or traceable, and a number of potential suspects had also died. It was not apparent that there was any evidence, beyond rumour, which could be relied upon as identifying persons still alive who had been involved in the events and the applicants had not pointed to any other concrete avenues of enquiry that the police could in fact have pursued.

As to their principal complaint that the investigations had ended without any prosecutions, Article 2 could not be interpreted so as to impose a requirement on the authorities to launch a prosecution irrespective of the available evidence. A prosecution, particularly on such a serious charge as involvement in mass unlawful killings, should never be embarked upon lightly as the impact on a defendant who came under the weight of the criminal justice system was considerable, being held up to public obloquy, with all the attendant repercussions on reputation, private, family and professional life. Rumour and gossip were a dangerous basis on which to base any steps that could potentially devastate a person's life.

Nor did the procedural obligation in Article 2 necessarily require that there should be judicial review of investigative decisions not to prosecute as such. While the existence of such review procedures was doubtless a re-assuring safeguard of accountability and transparency, it was not for the Court to micro-manage the functioning of, and procedures applied in, criminal investigative and justice systems in Contracting States which might well vary in their approach and policies. No one model could be imposed.

The Court also considered unfounded the applicants' submissions that they had been given insufficient access to the investigation, that there had been undue delays since the finding of the bodies or that the investigation was not independent. In conclusion, there was nothing to support their allegations that the authorities had not properly investigated the fate of the deceased or that they were somehow shielding or protecting those responsible.

Conclusion: inadmissible (manifestly ill-founded).

The Court also dismissed as manifestly ill-founded the applicants' complaint under Article 3 of the Convention.

(See also *McKerr v. the United Kingdom*, 28883/95, 4 May 2001; *Brecknell v. the United Kingdom*, 32457/04, 27 November 2007, Information Note 102; *Al-Skeini and Others v. the United Kingdom* [GC], 55721/07, 7 July 2011, Information Note 143)

Allegedly ineffective investigation into deaths of football supporters in the Hillsborough disaster in 1989: *inadmissible*

Harrison and Others v. the United Kingdom - 44301/13
Decision 25.3.2014 [Section IV]

Facts – In 1989 96 football supporters were killed in a crush at a football stadium. Inquests into the deaths ended in 1991 after the coroner's jury reached a majority verdict of accidental deaths in all cases. An independent inquiry by Lord Justice Taylor concluded in 1990 that the main cause of the tragedy had been the failure of police control. No criminal proceedings were brought against any of the police officers responsible for the policing of the stadium at the time and disciplinary proceedings against the two most senior officers were discontinued. In February 1998 Lord Justice Stuart-Smith, who had been appointed by the Secretary of State for the Home Department to ascertain whether any new evidence existed, published a report finding there was no occasion for further investigation. In September 2012, following the disclosure by the Government of new information at the insistence of the victims' families, an independent panel (the Hillsborough Independent Panel) reported that the risks of overcrowding and crushing at the stadium had been known and were foreseeable at the material time. It also expressed concerns about the emergency response to the events which unfolded at the stadium. Subsequent to the publication of that report the original inquest verdicts were quashed and new inquests were ordered. At the date of the European Court's decision, the new inquest proceedings were under way and a new criminal inquiry and investigation was being conducted into allegations of police misconduct in the aftermath of the tragedy.

In their application to the European Court, the applicants, who are relatives of supporters who died in the disaster, complained under Article 2 of the Convention that the original inquests had been inadequate and that, although new inquests had been ordered, they had been required to wait for over 24 years for an Article 2 compliant investigation into the deaths.

Law – Article 2: The flawed character of the original inquests had now been recognised, two decades on, by the Hillsborough Independent Panel, the Government and the High Court in the light of newly disclosed information. The findings of the Panel constituted new evidence and information which cast doubt on the effectiveness of the original inquest and criminal investigations. In these circumstances, the authorities were under an obligation, pursuant to Article 2, to take further investigative measures. Indeed, even where no Article 2 procedural obligation existed, it was in the interests of governmental transparency and of justice in the wide sense for a government to arrange for a further review in connection with a national tragedy in response to concerns of victims or their families who were not satisfied with the results of the terminated investigations carried out in accordance with national law, notwithstanding that the tragedy had occurred many years earlier.

It was clear in the instant case, however, that extensive investigative measures were underway. Less than three months after the Panel published its report, the Attorney General had applied to the High Court to have new inquests ordered and that application had been granted a week later. A senior judge had swiftly been appointed as coroner and a number of preliminary hearings had taken place, the first only four months after the original inquest verdicts were quashed. The full inquests were scheduled to begin on 31 March 2014. Simultaneously, a new criminal inquiry had begun and the Independent Police Complaints Commission was investigating allegations of police misconduct in the aftermath of the disaster. The steps taken were notable for both their haste and their comprehensive nature and there was nothing to indicate that the respondent State has failed to satisfy the investigative obligations which had arisen as a consequence of the Panel report. There was also no reason currently to doubt that the inquests and other investigations would be able to establish the facts and determine the lawfulness or otherwise of the deaths in question.

As to the specific complaint about the alleged twenty-four year delay, it was important to recognise that this was not a case where criminal investigations or inquest proceedings had dragged on for a number of years and never reached any conclusion. The Director of Public Prosecutions had decided in 1990 not to pursue criminal charges. The original inquests, which had opened within days of the tragedy, were completed in 1991, following the publication of the Taylor Inquiry report and after hearing from a large number of witnesses. Disciplinary proceedings against two police officers had terminated in 1991 and 1992 respectively. Any complaint concerning the compliance of those investigations and proceedings with Article 2 should have been made at the time. Likewise, to the extent that a fresh investigative obligation had arisen at the time of the Stuart-Smith scrutiny review in 1997, the Court had already found in its *Williams v. the United Kingdom* decision that it had been discharged by the review and the report subsequently published, and that any complaints about alleged procedural failings of that review ought to have been brought within six months of the report's publication.

In terms of the Convention, the Panel's findings in 2012 could be taken to constitute a new element that revived the positive obligation of the respondent State to carry out adequate investigations into the cause and circumstances of the Hillsborough tragedy. However, it would be wrong to see the revival of the procedural obligation incumbent on the United Kingdom under Article 2 following the emergence of new relevant information as the continuation of the original obligation to investigate, bringing with it the consequence that the State could be taxed with culpable delays going back many years. Attaching retroactive effect in this way was likely to discourage governments from taking any voluntary steps that might give rise to the revival of the procedural obligation under Article 2 in the first place.

Having regard both to the understandable absence of criticism by the applicants of the prompt and effective measures taken so far by various authorities of the respondent State to further investigate the deaths of the Hillsborough victims following the setting up of the Panel and to the pending inquests and investigations, the applications had to be regarded as premature and inadmissible pursuant to Article 35 §§ 1 and 4. If the applicants become dissatisfied with the progress being made or, upon the conclusion of the investigations and inquests, were not content with the outcome, it remained open to them to lodge further applications with the Court.

Conclusion: inadmissible (premature).

(See also *Hackett v. the United Kingdom* (dec.), 34698/04, 10 May 2005; *Brecknell v. the United Kingdom*, 32457/04, 27 November 2007, Information Note 102; and *Williams v. the United Kingdom* (dec.), 32567/06, 17 February 2009)

ARTICLE 3

Inhuman or degrading punishment

Refusal to grant life prisoner who had served more than 30 years in prison and was suffering from limited mental development release on parole: *case referred to the Grand Chamber*

Murray v. the Netherlands - 10511/10
Judgment 10.12.2013 [Section III]

The applicant, who suffers from limited mental development, was convicted of murder and sentenced to life imprisonment by the Joint Court of Justice of the Netherlands Antilles in March 1980. His repeated requests for a pardon were refused. In 2011 new legislation was introduced requiring periodic reviews of life imprisonment sentences on Curaçao, where the applicant was being held. His sentence was accordingly submitted to review but in September 2012 the Joint Court of Justice, after taking into account expert psychiatric evidence that the applicant was suffering from an antisocial personality disorder, the applicant's attitude during the hearing and the position of the victim's relatives, decided that it still served a reasonable purpose. In his application to the European Court the applicant complained under Article 3 of the Convention of the imposition on him of a life sentence with no possibility of a review and of the conditions of his detention.

In a judgment of 10 December 2013, a Chamber of the Court held unanimously that there had been no violation of Article 3 in respect of the applicant's life sentence. It noted that the possibility of review of a life sentence had been introduced in November 2011 in the Curaçao Criminal Code, which stipulated that any person sentenced to life imprisonment would be released on parole after serving at least 20 years of his/her sentence, if in the opinion of the Joint Court of Justice a custodial sentence no longer served any reasonable purpose. That review mechanism met the criteria set out in *Vinter and Others v. the United Kingdom* [GC] (66069/09, 130/10 and 3896/10, 9 July 2013, Information Note 165). A review had been carried out in the applicant's case and had culminated in a decision of the Joint Court of Justice that he should not be released on parole, in view of the expert medical reports on his psychiatric condition, personality and behaviour, and the risk of his further offending. Further, although it was true that the possibility of a legal review of a life sentence did not exist on Curaçao at the time the applicant lodged his application to the European Court in February 2010, it was unnecessary to assess whether his life sentence could be considered to have been *de jure* and *de facto* reducible before then as the applicant had not lodged his application until almost thirty years after his conviction.

The Chamber also held unanimously that there had been no violation of Article 3 in respect of the applicant's conditions of detention.

On 17 April 2014 the case was referred to the Grand Chamber at the applicant's request.

ARTICLE 6

Article 6 § 1 (civil)

Access to court

Lack of right of appeal against sanctions imposed on applicants on basis of UN Security Council resolutions: *case referred to the Grand Chamber*

Al-Dulimi and Montana Management Inc. v. Switzerland - 5809/08
Judgment 26.11.2013[Section II]

The first applicant is an Iraqi national who lives in Jordan and is the managing director of a company incorporated under the laws of Panama with its registered office in Panama (the second applicant). After the invasion of Kuwait by Iraq in August 1990, the United Nations Security Council adopted a number of resolutions calling upon member and non-member States to freeze the funds or other financial assets and economic resources that had been removed from Iraq. In November 2003 a Sanctions Committee was set up and was given the task of listing the senior officials of the previous Iraqi regime and their immediate family members, including entities owned or controlled, directly or indirectly, by them or by persons acting on their behalf or at their direction. The applicants were placed on the relevant list. The Security Council later adopted a resolution creating a delisting procedure. In August 1990 the Swiss Federal Council adopted an Ordinance, which, after amendment in 2003, provided for the freezing of the assets and economic resources belonging to the former Iraqi Government, to senior officials of that Government and to companies or bodies under their control or management. The Federal Department of Economic Affairs was responsible for drawing up a list of the assets concerned using data supplied by the United Nations. The applicants' names were added to that list in May 2004. The Federal Council further adopted an Ordinance, valid until 30 June 2010, providing for the confiscation of the frozen Iraqi assets and economic resources and their transfer to the Development Fund for Iraq. According to the applicants, their assets in Switzerland had been frozen since August 1990 and a confiscation procedure had been initiated in respect thereof on the entry into force of the Confiscation Ordinance in May 2004. The applicants asked the competent authority, in a letter of August 2004, to suspend the confiscation procedure. As their application to the UN Sanctions Committee for delisting remained without effect, the applicants then requested in a letter of September 2005 that the confiscation procedure be continued in Switzerland. In spite of their objections, the Federal Department of Economic Affairs ordered the confiscation of their assets and stated that the sums would be transferred to the bank account of the Development Fund for Iraq within ninety days from the entry into force of the decision. In support of its decision, it noted that the applicants' names appeared on the lists of individuals and entities established by the Sanctions Committee, that Switzerland was obliged to implement Security Council resolutions, and that names could be removed from the annex to the Iraq Ordinance only if the relevant decision had been taken by the UN Sanctions Committee. The applicants appealed to the Federal Court to have the decision set aside. In three almost identical judgments, their appeals were dismissed on the merits. The applicants lodged a fresh delisting application, but it was rejected on 6 January 2009.

In a judgment of 26 November 2013 (see Information Note 168), a Chamber of the Court found, by four votes to three, that there had been a violation of Article 6 § 1. It held that, for as long as there was no effective and independent judicial review at UN level of the legitimacy of adding individuals and entities to the relevant lists, it was essential that such individuals and entities should be authorised to request the review by the national courts of any measure adopted pursuant to the sanctions regime. Such review had not been available to the applicants. It followed that the very essence of their right of access to a court had been impaired.

On 14 April 2014 the case was referred to the Grand Chamber at the Government's request.

Refusal to grant welfare benefits to foreign nationals: *violation*

Dhahbi v. Italy - 17120/09
Judgment 8.4.2014 [Section II]

Facts – At the material time the applicant was a Tunisian national who had entered Italy on a lawful residence and work permit. In 2001 he applied for a family allowance, explaining that even though he did not hold Italian nationality, as required by the relevant legislation, he was entitled to the allowance under the association agreement between the European Union (EU) and Tunisia. Following

the rejection of his application, the applicant lodged an appeal. He sought a preliminary ruling from the Court of Justice of the European Union (CJEU) on whether, under the Euro-Mediterranean Agreement, a Tunisian worker could be refused the family allowance in question. His appeals to the court of appeal and Court of Cassation were dismissed.

Law – Article 6 § 1: National courts whose decisions were not amenable to appeal under domestic law were required to provide reasons based on the exceptions laid down in the case-law of the CJEU for their refusal to refer a preliminary question to that court on the interpretation of EU law. They should therefore set out their reasons for considering that the question was not relevant, or that the provision of EU law in question had already been interpreted by the CJEU, or that the correct application of EU law was so obvious as to leave no room for reasonable doubt.

Since no appeal lay against its decisions under domestic law, the Court of Cassation was required to give reasons for its refusal to refer the preliminary question. However, it had not referred to the applicant's request for a preliminary ruling or to its reasons for considering that the question raised should not be referred to the CJEU. Therefore, the reasons given in the judgment at issue shed no light on whether this question was considered as irrelevant or as relating to a clear provision or to one which had already been interpreted by the CJEU, or had simply been ignored. Moreover, the reasoning of the Court of Cassation did not refer to the CJEU's case-law. This finding was sufficient to conclude that there had been a violation of Article 6 § 1 of the Convention.

Conclusion: violation (unanimity).

Article 14 taken in conjunction with Article 8: There was no doubt that the applicant had been treated differently from EU workers who, like him, had large families. Unlike such workers, he had not been entitled to the family allowance in question. Moreover, the refusal to grant him this allowance had been exclusively based on his nationality, because it had not been alleged that the applicant did not fulfil the other legal conditions for entitlement to the social welfare benefit in question. Manifestly, therefore, owing to a personal characteristic, he had received worse treatment than other individuals in a similar situation. As to whether, at the material time, there had been an objective and reasonable justification for such treatment, the applicant had held a lawful residence and work permit for Italy and was insured with the National Institute of Social Security, to which he had been paying contributions in the same way and on the same basis as EU workers. His residence in Italian territory had not therefore been only for a short-term stay or in breach of immigration legislation, and he consequently did not belong to the category of individuals who generally failed to contribute to the funding of public services and about whom a State could have legitimate reasons for restricting recourse to expensive public services – such as the national insurance, public allowance and healthcare programmes. As to the "budgetary reasons" advanced by the Government, even though protecting the State's budgetary interests was a legitimate aim of the impugned difference in treatment this aim could not in itself justify the said difference. Regarding the reasonable balance of proportionality that had to be struck between the above-mentioned legitimate aim and the means employed, nationality was the only distinguishing criterion used. The Court reiterated that only very weighty considerations could induce it to regard a difference in treatment exclusively based on nationality as compatible with the Convention. Under these circumstances, notwithstanding the national authorities' wide margin of appreciation in the social security field, the argument advanced by the Government was insufficient to establish a reasonable balance of proportionality making the impugned difference of treatment compatible with the requirements of Article 14 of the Convention.

Conclusion: violation (unanimously).

Article 41: EUR 10,000 in respect of non-pecuniary damage; EUR 9,416.05 in respect of pecuniary damage.

(See also *Vergauwen v. Belgium* (dec.), 4832/04, 10 April 2012; and *Fawsie v. Greece*, 40080/07, and *Saidoun v. Greece*, 40083/07, judgments of 28 October 2010 summarised in Information Note 134)

Fair hearing

Introduction of legislation effectively deciding outcome of pending litigation against the State: *violation*

Stefanetti and Others v. Italy - 21838/10 et al.
Judgment 15.4.2014 [Section II]

(See Article 1 of Protocol No. 1 below, page 33)

Article 6 § 1 (criminal)

Fair hearing

Lack of assistance from a lawyer during police questioning under *flagrante delicto* procedure: *no violation*

Blaj v. Romania - 36259/04
Judgment 8.4.2014 [Section III]

Facts – The applicant, who was suspected of accepting a bribe, had been placed under police surveillance. A third party who had been cooperating with the police came to meet him and left an envelope containing money on his desk. The police officers intervened immediately and caught the applicant red handed. In accordance with domestic law, they drew up a report of the offence. Later that day the applicant was informed of the charges against him and of the fact that he had a right to remain silent and to see a lawyer. Subsequently he had the assistance of a lawyer during questioning.

Law – Article 6 §§ 1 and 3 (c): The applicant had not had a right to be assisted by a lawyer during questioning by the investigators in the proceedings because he had not yet been charged with a criminal offence. *In flagrante delicto* proceedings were aimed at catching a person suspected of an offence in the act of committing the offence in question and a record had to be drawn up recording the statement of the suspect at the time. The investigators had to confine themselves to asking questions about the physical evidence of the offence observed at the time and avoid transforming the statement into questioning about the offence.

In the present case the investigators had recorded the physical evidence observed during the *in flagrante delicto* proceedings and noted the applicant's replies to their questions without his having been questioned about the circumstances or the motives inducing the third party to leave the envelope on his desk or about any agreement entered into with that third party. Subsequently, as soon as he had been charged, on the same day, the applicant had had the assistance of a lawyer of his choosing who had later assisted him during all his statements before the prosecution and before the High Court in which he had denied the offence. However, he had never retracted the statements that had been noted in the offence report. Lastly, that report had been one of the items of evidence on which the High Court had based their finding that the applicant was criminally liable, without considering his answers recorded in it as a separate statement about the offence. Furthermore, the High Court had noted that the applicant had always denied committing the offence. Accordingly, the applicant's statements recorded in the offence report had not harmed him. Moreover, he had been informed of the content of the charges against him when he had first been questioned and placed in detention pending trial and had been represented by lawyers at every stage of the proceedings. Lastly, the applicant had not alleged either before the domestic courts or before the Court that he had made his initial statements under duress.

Conclusion: no violation (unanimously).

The Court also held, unanimously, that there had been no violation of Article 6 § 1 concerning the allegations of police entrapment as the applicant had had the benefit of adequate procedural guarantees before the domestic courts; no violation of Article 8 regarding the tapping and recording of the applicant's telephone conversations; no violation of Article 13 taken in conjunction with Article 8 regarding a remedy allowing the applicant to dispute the interference with his right to respect for his private life on account of the recordings of his conversations; and no violation of Article 34 regarding an interference with the applicant's right of application.

Failure by domestic courts adequately to examine allegations of police entrapment: *violation*

Lagutin and Others v. Russia - 6228/09 et al.
Judgment 24.4.2014 [Section I]

Facts – The five applicants were convicted, in four unrelated sets of proceedings, of drug dealing after their pleas of police entrapment were rejected by the domestic courts. In each case, the police had testified that they had ordered the test purchases because they had received preliminary "operational information" that the applicants had previously been involved in drug dealing. This allegation was denied by the applicants, who said that they would not have become involved in dealing, as opposed to mere possession of drugs for their personal use, had they not being lured into it by the police and their informants. They were, however, unable to challenge the alleged operational information at trial because it was classified as confidential.

In their applications to the European Court, the applicants complained that they had been unfairly

convicted of the offences following police incitement and that their plea of entrapment had not been properly examined by the domestic courts.

Law – Article 6 § 1: The Court reiterated that while the use of undercover agents could be a legitimate investigative technique for combating serious crime, adequate safeguards against abuse had to be in place. In cases where the main evidence originated from a covert operation, such as a test purchase of drugs, the authorities had to be able to demonstrate good reasons for mounting the operation. In particular, they had to have concrete and objective evidence to show that initial steps had already been taken to commit the offence. Any investigation of this type had to be conducted in an essentially passive manner. Further, any allegation by an accused of police incitement had to be examined by the courts in an adversarial procedure that was thorough, comprehensive and conclusive and it was for the prosecution to demonstrate the absence of incitement. If, owing to a failure to disclose the case file or the conflicting nature of the parties' interpretation of the events, the Court was unable to establish whether an accused had in fact been subjected to police incitement, the question of the procedural review by the domestic courts assumed decisive importance.

In each of the applicants' cases the police had referred to preliminary "operational information" that the applicants had previously been involved in drug dealing. However, the trial courts had not sought to clarify the content of the allegedly incriminating operational files and the Government had not provided any further details. The Court was therefore unable to determine whether the authorities had had good reasons for mounting the covert operations or whether pressure had been exerted on the applicants to commit the offences.

Turning to the procedural test, the Court noted that the applicants' convictions had in each case been based entirely or predominantly on evidence obtained through police controlled test purchases with the direct participation of undercover police officers or informers. In previous cases against Russia, the Court had found that test purchases and operative experiments fell entirely within the competence of the operational search bodies and that the system revealed a structural failure to provide safeguards against police provocation. In these circumstances, the trial courts – confronted with an arguable allegation that undercover police officers and informants had not acted in a passive manner – had been under an obligation to establish in adversarial proceedings the reasons why the operation had been mounted, the extent of the police's involvement in the offence and the nature of any incitement or pressure to which the applicants had been subjected. Given the lack of a sufficient legal framework or adequate safeguards against police provocation, the judicial examination of an entrapment plea had been the only means of verifying whether there were valid reasons for an undercover operation and whether the police or the informants had remained essentially passive.

However, the trial courts had made no attempt to check police assertions that they had pre-existing "operational information" and had accepted the police officers' unconfirmed statements that they had good reasons to suspect the applicants. This failure to address the allegations of entrapment, which in the applicants' cases were inseparable from the determination of their guilt, had compromised the outcome of the trials beyond repair, and was at odds with the fundamental guarantees of a fair trial, in particular the principles of adversarial proceedings and the equality of arms between the prosecution and the defence.

Conclusion: violation (unanimously).

Article 41: EUR 3,000 each in respect of non-pecuniary damage with the exception of the fourth applicant, who made no claim for just satisfaction.

(For a case where the judicial examination of the plea of incitement was found by the Court to have been sufficient, see *Bannikova v. Russia*, 18757/06, 4 November 2010, Information Note 135; and for a case concerning the absence of a regulatory framework in Russia for authorising test purchases, see: *Veselov and Others v. Russia*, 23200/10, 24009/07 and 556/10, 2 October 2012, Information Note 156)

Conviction without the examination of the merits of the case following a plea bargain: *no violation*

Natsvlishvili and Togonidze v. Georgia - 9043/05
Judgment 29.4.2014 [Section III]

Facts – The first applicant, the managing director of a public company in which he and his wife (the second applicant) also held shares, was charged with various company-law offences. An agreement was reached between the defence and the prosecution according to which the prosecutor undertook to request the trial court to convict the first applicant without an examination of the merits of the case and to seek a reduced sentence in the form of

a fine. The trial court approved the agreement, found the applicant guilty and sentenced him to the payment of a fine. The decision could not be appealed.

In his application to the European Court, the first applicant complained that the plea-bargaining procedure was unfair and had amounted to an abuse of process (Article 6 § 1 of the Convention), that he had not been able to appeal against the decision approving the plea bargain (Article 2 of Protocol No. 7) and that his right to be presumed innocent had been breached by the extensive media coverage of his arrest and comments made by the regional governor in a television interview (Article 6 § 2 of the Convention). Both applicants also lodged complaints under Article 34 of the Convention and under Article 1 of Protocol No. 1.

Law – Article 6 § 1 of the Convention and Article 2 Protocol No. 7: The Court noted from the comparative law materials before it that it was a common feature of European criminal-justice systems for an accused to obtain the lessening of charges or a reduction of sentence in exchange for a guilty or *nolo contendere* plea before trial or substantial cooperation with the investigative authority. There was nothing improper in the process of plea bargaining in itself. However, where the process led to an abridged form of judicial examination and thus a waiver by the accused of a number of procedural rights, the waiver had to be established in unequivocal manner and be attended by minimum safeguards commensurate with its importance.

By striking a bargain with the prosecution over sentence and pleading no contest as regards the charges, the first applicant had waived his right to an examination of the case against him on the merits. Accordingly, the Court had to examine whether he had accepted the plea bargain in a genuinely voluntary manner in full awareness of the facts and legal consequences and whether there had been sufficient judicial review of the content of the plea bargain and of the fairness of the manner in which it had been reached.

The Court noted that the initiative for plea bargaining had emanated from the first applicant and had not been imposed by the prosecution. He had been granted access to the case materials and had been duly represented by qualified lawyers of his choice throughout the negotiations and during the judicial examination of the agreement. The judge examining the lawfulness of the plea bargain had enquired whether he had been subjected to any kind of undue pressure and the first applicant had explicitly confirmed on several occasions, both before the prosecution authority and the judge, that he fully understood the content of the agreement, that his procedural rights and the legal consequences of the agreement had been explained to him, and that he had not accepted it as a result of duress or false promises.

Importantly, a written record of the agreement had been drawn up, signed by the prosecutor, the first applicant and his lawyer, and submitted to the trial court for consideration, making it possible to have the exact terms of the agreement, as well as of the preceding negotiations, set out for judicial review.

The trial court had power to review the appropriateness of the sentence recommended by the prosecutor and to reduce it or indeed to reject the agreement altogether, depending upon its own assessment of the fairness of the terms and the process by which it had been entered into. The trial court had also enquired whether the accusations against the first applicant were well-founded and supported by prima facie evidence. In addition, it had examined and approved the plea bargain at a public hearing.

As regards the complaint under Article 2 of Protocol No. 7, the Court considered it normal for the scope of the exercise of the right to appellate review to be more limited with respect to a conviction based on a plea bargain. By accepting the plea bargain, the first applicant had waived his right to ordinary appellate review, a legal consequence that would or should have been explained to him by his lawyers. By analogy with its finding under Article 6 § 1, the Court considered that the waiver of the right to ordinary appellate review had not represented an arbitrary restriction on the requirement of reasonableness contained in Article 2 of Protocol No. 7.

Conclusion: no violation (six votes to one).

Article 6 § 2: The Court was mindful of the importance of the choice of words by public officials in their statements before a person had been tried and found guilty of an offence. However, the regional governor had not made any specific reference to the first applicant or to the criminal proceedings against him. Instead, he had made a general declaration about the State's policy on the fight against corrupt public officials in the country, without in any way seeking to render the first applicant identifiable, either directly or indirectly, as the subject of his comments.

As to the filming of the first applicant's arrest by journalists from a private television station, it could not be considered to have amounted to a virulent

media campaign aimed at hampering the fairness of his trial. Nor was there any specific indication that the interest of the media in the matter had been sparked by the prosecutor, the governor or any other State authority. In sum, the media coverage of the first applicant's case had not extended beyond what could be considered as merely informing the public of the arrest of the managing director of one of the largest factories in the country.

Conclusion: no violation (unanimously).

Article 1 Protocol No. 1: The forfeiture of the applicants' assets and other payments which had occurred pursuant to the plea bargain had intrinsically been related to and resulted from the determination of the first applicant's criminal liability. The lawfulness and appropriateness of those criminal sanctions of a pecuniary nature could not, therefore, be dissociated from the issue of the fairness of the plea bargain itself. Having regard to its findings under Article 6 § 1 of the Convention and Article 2 of Protocol No. 7 the Court concluded, for the same reasons, that there had been no violation of Article 1 of Protocol No. 1.

Conclusion: no violation (unanimously).

Article 34: The applicants alleged that the Georgian authorities had pressured them to withdraw their application. However, having regard to the content of the e-mail exchange initiated by the applicants' daughter with the representative of the General Prosecutor's Office and while noting that an informal channel of communication between the prosecution authority and a private third party was in no way an appropriate means by which to settle a case, the Court found that that interaction could not be said to have been incompatible in itself with the State's obligations under Article 34. The representative's contact with the applicants' daughter had not been calculated to induce the applicants to withdraw or modify their application or otherwise interfere with the effective exercise of their right of individual petition, or indeed had had that effect.

Conclusion: no violation (unanimously).

Article 6 § 3 (c)

Defence through legal assistance

Alleged denial of access to lawyer of applicant's own choosing: *case referred to the Grand Chamber*

Dvorski v. Croatia - 25703/11
Judgment 28.11.2013 [Section I]

The case concerns the alleged unfairness of criminal proceedings in which the applicant was convicted of aggravated murder, armed robbery and arson and sentenced to forty years' imprisonment. Relying in particular on Article 6 §§ 1 and 3 (c) of the Convention, the applicant essentially complained that, following his arrest, the police had denied him access to the lawyer hired by his parents to represent him, that he had therefore had to accept the services of a lawyer called in by the police and that, questioned in a coercive environment, he had been forced to incriminate himself without the benefit of a lawyer of his own choice.

In a judgment of 28 November 2013 a Chamber of the Court held, by five votes to two, that there had been no violation of Article 6 §§ 1 and 3 (c) of the Convention.

On 14 April 2014 the case was referred to the Grand Chamber at the applicant's request.

Lack of assistance from a lawyer during police questioning under *flagrante delicto* procedure: *no violation*

Blaj v. Romania - 36259/04
Judgment 8.4.2014 [Section III]

(See Article 6 § 1 (criminal) above, page 15)

ARTICLE 8

Respect for private life

Lack of precision of domestic law allowing public authority collection of applicant's medical data: *violation*

L.H. v. Latvia - 52019/07
Judgment 29.4.2014 [Section IV]

Facts – During the applicant's delivery in a public hospital in 1997, the surgeon performed tubal litigation on the applicant without her consent. After failing to reach an out-of-court settlement, the applicant filed a civil action in damages against the hospital which was ultimately successful. Meanwhile, the director of the hospital wrote to the Inspectorate of Quality Control for Medical Care and Fitness for Work ("MADEKKI") requesting an evaluation of the medical treatment the applicant had received in his institution. During the

subsequent administrative inquiry, MADEKKI requested and received the applicant's medical files from three different medical institutions and ultimately issued a report concluding that no laws had been violated during the applicant's childbirth. The applicant subsequently challenged the lawfulness of the administrative inquiry undertaken by MADEKKI, but her claim was dismissed, the Senate of the Supreme Court having found that domestic law authorised MADEKKI to examine the quality of medical care provided in medical institutions at their request.

Law – Article 8: Recalling the importance of the protection of medical data to a person's enjoyment of the right to respect for private life, the Court had to examine whether the applicable domestic law had been formulated with sufficient precision and whether it afforded adequate safeguards against arbitrariness. In this connection it firstly observed that the applicable legal norms described the competence of MADEKKI in a very general manner and that there did not seem to be a legal basis for a hospital to seek independent expert advice from it in ongoing civil litigation. Furthermore, the domestic law in no way limited the scope of private data that could be collected by MADEKKI during such inquiries, which resulted in it collecting medical data on the applicant relating to a seven-year period indiscriminately and without any prior assessment of whether such data could be potentially decisive, relevant or of importance for achieving whatever aim might have been pursued by the inquiry. Finally, the fact that the inquiry had commenced seven years after the applicant's sterilisation raised doubts as to whether the data collection was "necessary for purposes of medical treatment [or] provision or administration of health care services" as required under domestic law. In view of the foregoing, the Court found that the applicable law had failed to indicate with sufficient clarity the scope of discretion conferred on competent authorities and the manner of its exercise.

Conclusion: violation (unanimously).

Article 41: EUR 11,000 in respect of non-pecuniary damage.

Respect for private and family life

Alleged breach of personality rights through depiction of applicants' mother as a character in a novel: *inadmissible*

Jelševar and Others v. Slovenia - 47318/07
Decision 11.3.2014 [Section V]

Facts – A writer published a novel based on the life of a woman in whom the applicants recognised their late mother. They sued the writer for breach of personality rights, referring to certain passages in the book which they considered offensive to her memory. Before the domestic courts, several neighbours, friends and acquaintances testified that they had easily made the connection between the story and the applicants' family. The Constitutional Court ultimately dismissed the applicants' claims, stating that the average reader would not consider the events narrated in the book as facts about real people. Furthermore, the descriptions of the applicants' mother were not in any way derogatory, and it had not been the intention of the author to cause offence.

Law – Article 8: At the outset the Court underlined that a novel was a form of artistic expression protected by Article 10 of the Convention which may involve a certain degree of exaggeration or make use of colourful and expressive imagery. Furthermore, freedom enjoyed by authors of such literary works attracted a high level of protection under the Convention. In cases where a person's reputation was affected by the publication of a book, the right to respect for private life had to be balanced against the right to freedom of expression. If such balancing was done at the domestic level, the Court would require strong reasons to substitute its own view for that of the domestic courts. In the applicants' case the Slovenian Constitutional Court concluded that the novel had been written as a work of fiction and that the events described therein would not be regarded as facts about actual people by an average contemporary reader. Moreover, the controversial passages of the novel would not be regarded as offensive nor were the tone and expressions used insulting or derogatory. Given that the reasons put forward by the Constitutional Court were relevant and consistent with the principles arising from the Court's case-law, in balancing the conflicting interests in the applicants' case the domestic authorities had not overstepped their margin of appreciation afforded in this area.

Conclusion: inadmissible (manifestly ill-founded).

(See also *Lindon, Otchakovsky-Laurens and July v. France* [GC], 21279/02 and 36448/02, 22 October 2007, Information Note 101; *Karataş v. Turkey* [GC], 23168/94, 8 July 1999; *Von Hannover v. Germany (no. 2)* [GC], 40660/08 and 60641/08, 7 February 2012, Information Note 149; *Putistin v. Ukraine*, 16882/03, 21 November 2013, Information Note 168)

Respect for family life
Respect for correspondence

Restriction on Turkish prisoners using Kurdish when telephoning: *violation*

Nusret Kaya and Others v. Turkey
- 43750/06 et al.
Judgment 22.4.2014 [Section II]

Facts – During their imprisonment, the applicants were prevented by the prison authorities from conducting telephone conversations in Kurdish with their relatives. Their appeals against those restrictions were dismissed.

Law – Article 8: The restriction imposed on the applicants' telephone communications with their families, on the ground that they wished to conduct their conversations in Kurdish, could be regarded as an interference with their right to respect for their family life and correspondence for the purposes of Article 8 § 1 of the Convention. The question at issue concerned not the applicants' freedom to use a language as such, but their right to maintain meaningful contact with their families. As recommended in the European Prison Rules[1] of 2006, it was essential for the prison authorities to help inmates maintain contact with their close relatives. In the present case, domestic law allowed prisoners to maintain contact with the outside world by means of telephone conversations. Those conversations could, however, for security reasons, be monitored by the prison authorities, and to ensure effective supervision the inmates were required, in principle, to speak only in Turkish during such conversations. Admittedly, Turkish law did provide for exceptions to this principle and did not contain any provision prohibiting the use of a language other than Turkish. This possibility was, however, subject to certain formal requirements, such as a procedure whereby the prison authorities could verify that the person to whom the inmate wished to speak really could not understand Turkish. In addition, it transpired from the rules then in force and from the decisions of the national authorities that the cost of this verification was charged to the inmates concerned.

The Court had, admittedly, found previously that particular security concerns – such as preventing the risk of escape – could justify the application of a specific detention regime entailing a ban on correspondence between an inmate and his family in the language of his choosing, where it had not been established that the inmate could not use one of the authorised languages. That being said, in the circumstances of the present case, the regulations in question applied generally and without distinction to all inmates, regardless of any individual assessment of security requirements that could be justified by the personality of each inmate or the offences justifying his or her detention. In addition, the national authorities had not been unaware, when examining the requests by the applicants to conduct their telephone conversations in Kurdish, that this language was among those commonly spoken in Turkey and was used by some inmates to communicate with their families. Despite this, they did not appear to have envisaged a translation system. It was essential, in terms of respect for family life, for the prison authorities to help inmates maintain real contact with their close relatives. In this connection, the inmates' assertion that Kurdish was the language used in their family relations, and was the only language understood by their relatives, could not be called into question. The Court found this fact to be of significance in the present case.

Thus, the practice whereby applicants who had expressed the wish to use Kurdish on the telephone to members of their family were subjected to a preliminary procedure to verify whether they were really unable to speak Turkish, was not based on relevant or sufficient reasons, in the light of the restriction thus imposed on the applicants in their contacts with their families. The interference with the applicants' right to conduct telephone conversations in Kurdish with their family members could not therefore be regarded as necessary. This was confirmed by the fact that there had subsequently been a change to Article 88/2 p) of the Rules amending the conditions in which requests were made for permission to conduct telephone conversations in a language other than Turkish. Henceforth, just a signed statement to the effect that the inmate or the relevant family members did not speak Turkish would be sufficient.

Conclusion: violation (five votes to two).

Article 41: EUR 300 to each applicant in respect of non-pecuniary damage.

ARTICLE 10

Freedom of expression

Injunction restraining distribution of leaflet alleging that candidate in local elections was "covering" for neo-Nazi organisation: *violation*

1. Recommendation Rec(2006)2 of the Committee of Ministers of the Council of Europe on the European Prison Rules, adopted on 11 January 2006.

Brosa v. Germany - 5709/09
Judgment 17.4.2014 [Section V]

Facts – In the run-up to local elections in 2005 the applicant sought to circulate a leaflet alleging that neo-Nazi organisations were active in the town and calling on voters not to vote for one of the candidates for mayor, F.G., as he was providing "cover" for an association that was "particularly dangerous". In support of the latter allegation, reference was made to a letter to the editor of a local newspaper in which F.G. had contended that the association in question had no extreme right-wing tendencies. F.G. obtained an injunction restraining the applicant from distributing the leaflet and making other assertions of fact which might depict him as a supporter of neo-Nazi organisations after a district court found that the statement in the leaflet had infringed F.G.'s personality rights and that the applicant had failed to provide sufficient evidence to support his allegations.

Law – Article 10: The sole issue before the Court was whether the interference had been necessary in a democratic society. The leaflet had been distributed in the run-up to mayoral elections and set out the applicant's view of a candidate's suitability for office. Since it was of a political nature and concerned a question of public interest, there had been little scope for restrictions on the applicant's freedom of expression.

As regards the applicant's statement that the association in question was a particularly dangerous neo-Nazi organisation, the Court was unable to accept the domestic courts' view that this was a mere allegation of fact. The domestic courts had emphasised that the domestic intelligence service was continuing to monitor the association on suspicion of extremist tendencies, which indicated that there was an ongoing debate on the association's political orientation. The term "neo-Nazi" was capable of evoking in those who read it different notions as to its content and significance and so carried a clear element of value judgment which was not fully susceptible to proof. While the domestic courts had found, in substance, that the opinion expressed by the applicant was not devoid of a factual basis, they had nevertheless required "compelling proof" and thus applied a degree of precision that came close to that usually required for establishing the well-foundedness of a criminal charge. That constituted a disproportionally high degree of factual proof.

As to the applicant's statement that F.G. had "covered" for the association, the Court could not endorse the domestic courts' restrictive interpretation of that term as indicating that F.G. had knowledge of the association's neo-Nazism and endorsed it. The domestic courts had seen the statement as an allegation of fact for which no sufficient factual basis existed when in fact the term "covered" referred to the letter F.G. had written to the editor in response to the applicant's article. The letter also formed part of an ongoing debate and, in the Court's view, had constituted a sufficient factual basis for the applicant's statement.

Accordingly, by considering the impugned statement to be mere allegations of fact requiring a disproportionately high degree of proof, the domestic courts had failed to strike a fair balance between the relevant interests and to establish a pressing social need to put the protection of F.G.'s personality rights above the applicant's right to freedom of expression.

Conclusion: violation (unanimously).

Article 41: EUR 3,000 in respect of non-pecuniary damage.

Publisher ordered to pay damages for an article harshly critical of MP's remarks and conduct during parliamentary debate on legal regulation of same-sex relationships: *violation*

Mladina d.d. Ljubljana v. Slovenia - 20981/10
Judgment 17.4.2014 [Section V]

Facts – The applicant company published an article harshly criticising S.P., at the time a Member of Parliament, for his remarks and conduct during a parliamentary debate on the legal regulation of same-sex relationships. The article described S.P.'s conduct as that of a "cerebral bankrupt" who, in a country with less limited human resources, would not even be able to find work as a primary school janitor. In the parliamentary debate in question, S.P. had portrayed homosexuals as a generally undesirable sector of the population. In order to reinforce his point, he made effeminate gestures intended to portray a homosexual man. Following a civil action filed by S.P., the applicant company was ordered to pay damages and to publish the introductory and operative parts of the district court's judgment in its weekly magazine. The domestic courts considered that the impugned comments were objectively offensive, lacked sufficient factual basis, and that the use of such

offensive language did not serve the purpose of imparting information to the public.

Law – Article 10: The statement at issue had been made in the press in the context of a political debate on a question of public interest, where few restrictions were acceptable. Moreover, a politician had to display greater tolerance than a private individual, especially when he himself had previously made public statements susceptible of criticism. In this connection, the Court reiterated that journalistic freedom also covered possible recourse to a degree of exaggeration or even provocation.

It was true that the terms used in the article to describe S.P.'s conduct were extreme and could have legitimately been considered offensive. However, the remark describing him as a "cerebral bankrupt" had been a value judgment. The facts on which that statement was based were outlined in considerable detail and their description was followed by the author's commentary which, in the Court's opinion, had the character of a metaphor. In the context of what appeared to be an intense debate in which opinions had been expressed with little restraint, the Court interpreted the impugned statement as an expression of strong disagreement, rather than a factual assessment of S.P.'s intellectual abilities. Viewed in this light, the description of his speech and conduct was to be regarded as sufficient foundation for the impugned statement. Moreover, the statement was a counterpoint to S.P.'s own remarks which could be regarded as ridicule promoting negative stereotypes. Lastly, the article matched not only S.P.'s provocative comments, but also the style in which he had expressed them. Even offensive language, which might fall outside the protection of freedom of expression if its sole intent was to insult, might be protected when serving merely stylistic purposes. Viewed in the light of the context in which the impugned statement was made, and the style used in the article, the Court considered that it had not amounted to a gratuitous personal attack.Therefore, the domestic courts had not convincingly established any pressing social need for placing the protection of S.P.'s reputation above the applicant company's right to freedom of expression. The interference had not been necessary in a democratic society.

Conclusion: violation (unanimously).

Article 41: Finding of a violation constituted sufficient just satisfaction in respect of any non-pecuniary damage; EUR 2,921.05 in respect of pecuniary damage.

Freedom to receive information

Application by frequent user concerning measures blocking access to Internet music providers: *inadmissible*

Akdeniz v. Turkey - 20877/10
Decision 11.3.2014 [Section II]

Facts – In June 2009 the media division of the public prosecutor's office ordered the blocking of access to the websites "myspace.com" and "last.fm" on the ground that these sites were disseminating musical works in breach of copyright. There was no evidence in the file that the websites in question or the Internet service providers based in Turkey had contested that decision. The appeals lodged by the applicant against the measure in question were dismissed in September and October 2009 by the lower and higher criminal courts, respectively. The courts, finding that the applicant did not have victim status, took the view that the blocking measure had been based on additional section 4 of Law no. 5846 on artistic and intellectual works, that it had been adopted on account of the failure by the websites in question to comply with copyright rules and that it had, in particular, followed steps taken by the Professional Union of Phonogram Producers, which had unsuccessfully served notice on the websites concerned.

Law – Article 10: The applicant had lodged his application with the Court as a user of the websites which had been blocked. As a regular user, he had mainly complained about the collateral effect of the measure taken under the law on artistic and intellectual works.

The rights of Internet users nowadays constituted a matter of primary importance for individuals, since Internet had become an essential tool for the exercise of freedom of expression. However, the mere fact that the applicant – like the other Turkish users of the websites in question – had been indirectly affected by a blocking measure against two music-sharing websites could not suffice for him to be regarded as a "victim" for the purposes of Article 34 of the Convention.

The sites affected by the impugned blocking measure were music sharing websites and they had been blocked because they did not comply with copyright legislation. As a user of these sites, the applicant had made use of their services and he had been deprived of only one means of listening to music among many others. He could thus without difficulty have had access to a range of musical

works by numerous means without this entailing a breach of copyright rules. In addition, the applicant had not alleged that the websites in question disseminated information which could present a specific interest for him or that the blocking of access had had the effect of depriving him of a major source of communication.[1] Accordingly, the fact that the applicant had been deprived of access to those websites had not prevented him from taking part in a debate on a matter of general interest.

The present case could be distinguished from that of *Ahmet Yıldırım v. Turkey* (3111/10, 18 December 2012, Information Note 158), where the applicant, as owner and user of a website, had complained that he was unable to access his own site on account of a blocking measure affecting a Google module. The Court had found that any measure blocking access to a website had to be part of a particularly strict legal framework ensuring both tight control over the scope of the ban and effective judicial review to prevent possible abuse, because it could have significant effects of "collateral censorship". Moreover, while Article 10 § 2 of the Convention did not allow much leeway for restrictions of freedom of expression in political matters, for example, States had a broad margin of appreciation in the regulation of speech in commercial matters,[2] bearing in mind that the breadth of that margin had to be qualified where it was not strictly speaking the "commercial" expression of an individual that was at stake but his participation in a debate on a matter of general interest. In this connection, as regards the balancing of possibly competing interests, such as the "right to freedom to receive information" and the "protection of copyright", the domestic authorities were afforded a particularly wide margin of appreciation.[3] In the light of that case-law, the Court was not convinced that the present case raised an important question of general interest.

Having regard to the foregoing, the applicant could not claim to be a "victim" of a violation of Article 10 of the Convention on account of the impugned measure.

Conclusion: inadmissible (incompatible *ratione personae*).

1. *Khurshid Mustafa and Tarzibachi v. Sweden*, 23883/06, 16 December 2008, Information Note 114.
2. *Mouvement raëlien v. Switzerland* [GC], 16354/06, 13 July 2012, Information Note 154.
3. *Ashny Donal and Others v. France*, 36769/08, 10 January 2013, Information Note 159.

The Court also found the application inadmissible for being incompatible *ratione personae* in respect of the complaint under Article 6 of the Convention, given that the applicant's lack of victim status for the purposes of Article 10 of the Convention likewise applied in respect of the Article 6 complaint.

ARTICLE 11

Freedom of peaceful assembly

Criminal convictions for participating in non-violent demonstration: *case referred to the Grand Chamber*

Kudrevičius and Others v. Lithuania - 37553/05
Judgment 26.11.2013 [Section II]

In May 2003 the Lithuanian authorities issued farmers with permits to hold peaceful assemblies in selected areas. The farmers held a peaceful demonstration, but after it dispersed it caused major traffic disruptions on three main roads. The five applicants, who had participated in the demonstration, were prosecuted and in September 2004 found guilty of having incited or participated in riots. They were each given a 60-day custodial sentence, suspended for one year, and ordered not to leave their places of residence for more than 7 days during that period without the authorities' prior agreement. One of the applicants was also ordered to pay compensation in respect of pecuniary damage that had been sustained by a transportation company. Another farmer was punished under administrative law for an identical violation.

By a judgment of 26 November 2013 (see Information Note 168), a Chamber of the Court held by four votes to three that there had been a violation of Article 11 as the applicants' conviction of the criminal offence had not been a necessary and proportionate measure in order to achieve the legitimate aims of preventing disorder and protecting the rights and freedoms of others.

On 14 April 2014 the case was referred to the Grand Chamber at the Government's request.

Freedom of association

Applicant churches required to re-register for incorporate status in order to regain material benefits from the State: *violation*

Magyar Keresztény Mennonita Egyház and Others v. Hungary - 70945/11 et al.
Judgment 8.4.2014 [Section II]

Facts – Under the 2011 Church Act, which was enacted with a view to addressing problems related to the exploitation of State funds by certain churches, a two-tier system of church recognition was put in place. A number of churches were by virtue of the law considered to be incorporated and thus entitled to continue enjoying certain monetary and fiscal advantages from the State for the performance of faith-related activities.

The applicants are all religious communities or ministers or members of such communities. The applicant churches, which prior to the adoption of the 2011 Act had been registered as churches and were in receipt of State funding, were not included among the churches automatically treated as incorporated. Following a ruling of the Constitutional Court, religious associations or communities such as the applicants could continue to function as churches and to refer to themselves as churches. However, the 2011 Act continued to apply in so far as it required churches such as the applicants to apply to Parliament to be registered as incorporated churches if they wished to regain access to the monetary advantages and benefits. Whether or not a particular church could be incorporated depended on the number of its members and the length of its existence as well as proof that it did not represent a danger to democracy.

Law – Article 11 (read in the light of Article 9): The deregistration of the applicants as churches constituted an interference with their rights under Articles 9 and 11. The measure had a basis in the 2011 Act and pursued the legitimate aim of preventing bodies claiming to be involved in religious activities from fraudulently obtaining financial benefits from the State. The Court went on to consider whether the interference had been necessary in a democratic society.

There was no right under Article 11 read in conjunction with Article 9 for religious organisations to have a specific legal status. The State was only required to ensure that they had the possibility of acquiring legal capacity as entities under civil law. The Court could not, however, overlook the fact that adherents of a religion might feel no more than tolerated – but not welcome – if the State refused to recognise and support their religious organisation, whilst extending such recognition to other denominations. Such a situation of perceived inferiority went to the freedom of manifesting one's religion. Moreover, it had not been demonstrated that less drastic solutions to the problem perceived by the authorities – such as the judicial control or dissolution of churches proven to be of an abusive character – had not been available. The outcome of the impugned legislation had been the stripping of existing and operational churches from their legal framework, sometimes with far-reaching material and reputational consequences.

A two-tier system of church recognition might as such fall within the States' margin of appreciation and such a scheme normally belonged to the historical-constitutional traditions of countries sustaining it. However, the Government had not adduced any convincing evidence to demonstrate that the list of the incorporated churches under the 2011 Act fully reflected Hungarian historical tradition. The refusal of registration for failure to present information on the contents of the teachings might be justified by the necessity to determine whether the denomination seeking recognition presented any danger for a democratic society. However, the applicants had lawfully operated in Hungary as religious communities for several years and there was no evidence that any procedure had ever been put in place to challenge their existence on grounds of their operating unlawfully or abusively. The reasons for requiring their re-registration should have therefore been particularly weighty and compelling.

It is true that the freedom to manifest one's religion or beliefs did not confer on the applicant churches or their members an entitlement to secure additional funding from the State budget. However, privileges obtained by religious societies facilitated their pursuance of religious aims and therefore imposed an obligation on State authorities to remain neutral when granting them. Where the State had voluntarily decided to provide such rights to religious organisations, it could not take discriminatory measures in granting, reducing or withdrawing such benefits. Furthermore, States had considerable liberty in choosing the forms of cooperation with religious communities, including the possibility of reshaping such privileges by legislative measures. However, State neutrality required that the choice of partners be based on ascertainable criteria to prevent situations in which the adherents of a religious community felt like second-class citizens, for religious reasons, on account of the less favourable State stance on their community. In the present case, the withdrawal of benefits had concerned only certain denominations, including the applicants.

The Court found no indication that the applicant churches were prevented from practising their religion as legal entities. Nevertheless, under the legislation, certain religious activities performed by churches were not available to the religious associations, which had a bearing on the latter's right to collective freedom of religion. For this reason, such differentiation did not satisfy the requirements of State neutrality and was devoid of objective grounds for the differential treatment.

The Court concluded that, by removing the applicants' church status altogether rather than applying less stringent measures, establishing a politically tainted re-registration procedure whose justification was open to doubt, and treating the applicants differently from the incorporated churches not only as regards the possibilities of cooperation but also when it came to securing benefits for the purposes of faith-related activities, the authorities had neglected their duty of neutrality *vis-à-vis* the applicant churches. These elements, jointly and severally, meant that the impugned measure could not be said to have corresponded to a "pressing social need".

Conclusion: violation (five votes to two).

Article 41: Finding of a violation constituted sufficient just satisfaction in respect of non-pecuniary damage for five individual applicants. Question concerning the applicant communities reserved.

Ban on taking secondary industrial action against an employer not party to a labour dispute: *no violation*

National Union of Rail, Maritime and Transport Workers v. the United Kingdom - 31045/10
Judgment 8.4.2014 [Section IV]

Facts – The right to take secondary (as opposed to primary) industrial action was restricted in the United Kingdom in 1980 and such action has been unlawful since 1990.[1] In 2007 a group of 20 employees of Company J, all members of the applicant trade union, were transferred to Company H. Two years later they went on strike when Company H indicated it was going to reduce their terms and conditions to the level of its other employees. The strike led Company H to make a revised offer, which the workers concerned initially rejected but ultimately had no alternative but to accept. In its application to the European Court, the applicant union argued that the strike by its members at Company H had been rendered ineffective by the statutory ban on secondary action, which had prevented it from organising a sympathy strike at the larger Company J.

The applicant union also complained that the rules of national law governing the organisation of a strike ballot were too strict and detailed. As a result, an employer had succeeded in obtaining an injunction restraining it from calling a strike over pay and conditions on the grounds that the applicant had failed to specify clearly enough the exact job descriptions of the workers concerned.

Relying on Article 11 of the Convention, the applicant union alleged that the restrictions on strike-ballot notice and the total ban on secondary strike action had hampered its ability to protect its members' interests.

Law – Article 11

(a) *Strike-ballot notice* – There was no basis on which the Court could find that the applicant union's exercise of its rights under Article 11 had been interfered with over and above being required to comply with the procedural requirements set down in law, which it had ultimately succeeded in doing. Although the applicant union had experienced some delay in taking action to protect the interests of its members, it had succeeded in leading a strike two months later, which had in turn induced the employer to improve its offer to union members. The offer had been accepted and it had taken effect as a collective agreement shortly afterwards. The Court could only examine complaints in the light of their concrete facts and what this situation disclosed in reality was ultimately successful collective action by the applicant union on behalf of its members.

Conclusion: inadmissible (manifestly ill-founded).

(b) *Secondary strike action* – This was the first time the Court had had to determine whether the right to secondary action falls within the scope of Article 11. The Grand Chamber had confirmed in *Demir and Baykara v. Turkey* that the Court must take into account elements of international law other than the Convention, the interpretation of such elements by competent organs, and the practice of European States reflecting their common values. Secondary action was recognised and protected under International Labour Organization (ILO) Convention no. 87 and the European Social Charter and it would be inconsistent for the Court

1. Secondary or sympathetic industrial action is strike action against an employer other than the employer party to the industrial dispute which is taken in order to exert indirect pressure on the employer who is involved in the dispute.

to adopt in relation to Article 11 an interpretation of the scope of freedom of association of trade unions that was much narrower than that which prevailed in international law. In addition, many European States had long accepted secondary strikes as a lawful form of trade-union action. The statutory ban on secondary action had thus interfered with the applicant union's right to freedom of association.

It was undisputed that the interference had been prescribed by law, namely section 224 of the Trade Union and Labour Relations (Consolidation) Act 1992. The Court was also satisfied that the ban had pursued the legitimate aim of protecting the rights and freedoms of others, which included not only the employer directly involved in the industrial dispute but also the wider interests of the domestic economy and the public potentially affected by the disruption caused by secondary industrial action, which could be on a scale greater than primary strike action.[1]

As to whether the interference had been necessary in a democratic society, the Court did not need to decide whether the right to strike itself should be viewed as an essential element of freedom of association, such that any restriction on the exercise of that right would impinge on the very essence of that freedom. The applicant union had exercised two of the elements of freedom of association that had been identified as essential: the right for a trade union to seek to persuade the employer to hear what it has to say on behalf of its members, and the right to engage in collective bargaining.

The Court rejected the applicant's contention that Contracting States should only be accorded a very narrow margin of appreciation in this area. This was not a case in which the restriction imposed went to the very core of trade union freedom, such as the dissolution of a union. The breadth of the margin in cases such as the applicant's had to be assessed in the light of relevant factors such as the nature and extent of the impugned restriction, the object pursued and the competing rights and interests of other individuals who were liable to suffer as a result of the unrestricted exercise of that right. The degree of common ground among the Council of Europe member States could also be pertinent, as could the existence of an international consensus as reflected in the relevant international instruments.

The nature and extent of the interference suffered by the applicant union – which had been able to lead a strike, albeit on a limited scale and with limited results – had not struck at the very substance of its freedom of association. As to the object of the interference, the subject matter in the case related to the social and economic strategy of the respondent State, a sphere in which the Court usually allowed a wide margin of appreciation. That conclusion was not affected by the fact that the United Kingdom was one of only a small group of European States to have adopted an outright ban on secondary action or by the negative assessments of the impugned ban on secondary action that had been made by the relevant monitoring bodies of the ILO and European Social Charter, since they had been looking at the issue from a different, more general, standpoint.

The ban on secondary action had remained intact for over twenty years, notwithstanding two changes of government. This denoted a democratic consensus in support of it, and an acceptance of the reasons for it, spanning a broad spectrum of political opinion in the United Kingdom. This indicated that in their assessment of how the broader public interest was best served in their country in the often charged political, social and economic context of industrial relations, the domestic legislative authorities had relied on reasons that were both relevant and sufficient for the purposes of Article 11 of the Convention.

In sum, the facts of the specific situation challenged in the present case did not disclose an unjustified interference with the applicant union's right to freedom of association, the essential elements of which it had been able to exercise: in representing its members, in negotiating with the employer on behalf of its members who were in dispute with the employer and in organising a strike of those members at their place of work. In this legislative policy area of recognised sensitivity, the respondent State enjoyed a margin of appreciation broad enough to encompass the existing statutory ban on secondary action, there being no basis in the circumstances of this case to consider the operation of that ban in relation to the impugned facts as entailing a disproportionate restriction on the applicant union's right under Article 11.

Conclusion: no violation (unanimously).

(See also *Demir and Baykara v. Turkey* [GC], 34503/97, 12 November 2008, Information Note 113)

1. For the position in a case concerning primary strike action, see *UNISON v. the United Kingdom* (dec.), 53574/99, 10 January 2002, Information Note 38.

ARTICLE 13

Effective remedy

Lack of suspensive effect of judicial-review proceedings of applications for international protection: *violation*

A.C. and Others v. Spain - 6528/11
Judgment 22.4.2014 [Section III]

Facts – The 30 applicants, all of Sahrawi origin, arrived in Spain in 2011 and 2012 and lodged applications for international protection. The 30 applications were rejected, as were the applicants' subsequent requests to have them reconsidered. The applicants then applied for judicial review of the decisions to reject their applications, at the same time seeking a stay of execution of the orders for their deportation. After ordering the administrative authorities to provisionally suspend the applicants' removal, the *Audiencia Nacional* rejected the 30 applications for a stay of execution. Following requests by the applicants for interim measures, the European Court indicated to the Spanish Government under Rule 39 of the Rules of Court that the applicants should not be removed for the duration of the proceedings before it. The *Audiencia Nacional* rejected the applications for judicial review lodged by some of the applicants, who then appealed on points of law to the Supreme Court. By the date of its judgment, the Court had had no information as to the outcome of those appeals.

Law

Article 13 of the Convention: The Court was not required to determine whether there might be a violation of Articles 2 and 3 of the Convention in the event of the applicants' deportation. It was first and foremost for the Spanish authorities themselves, which were responsible for asylum matters, to examine the applicants' applications and the documents produced by them and to assess the risks they would face in Morocco. The Court's fundamental concern was whether effective safeguards were in place to protect the applicants from arbitrary removal, whether direct or indirect, to their country of origin, given that their appeals on the merits were still pending before the domestic courts.

The application of Rule 39 of the Rules of Court had been the only means of suspending the procedure for the applicants' removal. After their applications for a stay of execution had been rejected by the *Audiencia Nacional*, there had been no further obstacle to their removal. Admittedly, the effectiveness of a remedy within the meaning of Article 13 of the Convention did not depend on the certainty of a favourable outcome for the applicant. However, without the Court's intervention, the applicants would have been returned to Morocco without the merits of their case having been examined as thoroughly and rapidly as possible, since their applications for judicial review did not as such have automatic suspensive effect capable of staying the execution of the orders for their deportation. Furthermore, the applicants had arrived in Spain between January 2011 and August 2012, and since then they had been in a provisional situation of legal uncertainty and material insecurity pending final decisions on their applications. Where a remedy did not have suspensive effect or an application for a stay of execution was rejected, it was essential that in expulsion cases involving Articles 2 and 3 of the Convention in which the Court had applied Rule 39, the courts should act with special diligence and determine the merits rapidly. Otherwise, the remedies would cease to be effective. In conclusion, the applicants had not had a remedy satisfying the requirements of Article 13 in respect of their complaints under Articles 2 and 3 of the Convention.

Conclusion: violation (unanimously).

Rule 39 of the Rules of Court: The respondent State was to refrain from deporting the applicants until such time as the present judgment became final or the Court gave a further decision in the case.

Article 46 of the Convention: Regard being had to the special circumstances of the case, to the fact that the violation of Article 13 of the Convention resulted from the non-suspensive effect of judicial proceedings concerning the applicants' applications for international protection, and to the fact that those applications were still pending even though the first group of applicants had applied for asylum on arriving in Spain in January 2011, the respondent State was to ensure that, from a legal and material perspective, the applicants remained within Spanish territory while their cases were being examined, pending a final decision by the domestic authorities on their applications for international protection.

ARTICLE 14

Discrimination (Article 8)

Refusal to grant welfare benefits to foreign nationals: *violation*

Dhahbi v. Italy - 17120/09
Judgment 8.4.2014 [Section II]

(See Article 6 § 1 (civil) above, page 13)

Discrimination (Article 3 of Protocol No. 1)

Inability of non-resident electors to vote for independent candidates in polling stations installed in customs offices: *no violation*

Lack of airtime on national radio and television for independent – as opposed to party political – candidates: *no violation*

Oran v. Turkey - 28881/07 and 37920/07
Judgment 15.4.2014 [Section II]

(See Article 3 of Protocol No. 1 below, page 35)

ARTICLE 34

Locus standi

Legitimate interest of heirs to pursue application in name of applicant who died after his application was lodged: *admissible*

Ergezen v. Turkey - 73359/10
Judgment 8.4.2014 [Section II]

Facts – By an application lodged with the European Court in September 2010, the applicants, Mr Mehmet and Mr Ziya Ergezen, complained of the length of their pre-trial detention, of flaws in the appeal procedure, the lack of a compensatory remedy and of the length of the criminal proceedings brought against them. Mr Ziya Ergezen died in October 2010. His wife and children then informed the Court that they intended to pursue the application before the Court in their capacity as heirs. For their part, the Government submitted that the heirs did not have standing to pursue the application as the criminal proceedings against Mr Ziya Ergezen were closely linked to his person.

Law – Article 34: Cases in which the applicant had died during the proceedings had to be distinguished from those in which the application had been lodged by his or her heirs following the victim's death. Where a person who claimed to be a victim of a violation of his or her rights under the Convention applied to the Court him or herself, they made a personal and informed choice to exercise their personal right of individual application under Article 34 of the Convention and thus to trigger the Court's jurisdiction. This was not the case where the heirs of a person who could claim to be a victim under the Convention lodged an application with the Court following that person's death. It could be deduced from the Court's case-law that even where an applicant died after lodging his or her application, the Court could be called upon to determine whether, as alleged in the application, the Contracting State had violated his or her rights, where the heirs of the deceased had expressed the wish to pursue the application or where the Court ruled that it was justified to continue the examination of the application under Article 37 § 1 *in fine* of the Convention. In such a case the decisive point was not whether the rights in question were or were not transferable to the heirs wishing to pursue the procedure, but whether the heirs could in principle claim a legitimate interest in requesting the Court to deal with the case on the basis of the applicant's wish to exercise his or her individual and personal right to lodge an application with the Court. Accordingly, in accordance with its case-law, the Court held that Ziya Ergezen's widow and children had a legitimate interest in pursuing the application on his behalf. It therefore recognised their standing to continue the proceedings in the applicant's stead.

Conclusion: preliminary objection dismissed (unanimously).

The Court also held, by six votes to one, that there had been a violation of Article 5 § 3 and, unanimously, a violation of Article 5 §§ 4 and 5 and Article 6 § 1.

Article 41: EUR 4,000 to the applicant Mehmet Ergezen and EUR 4,300 jointly to Ziya Ergezen's heirs in respect of non-pecuniary damage.

Victim

Application by frequent user concerning measures blocking access to Internet music providers: *absence of victim status*

Akdeniz v. Turkey - 20877/10
Decision 11.3.2014 [Section II]

(See Article 10 above, page 22)

Absence of victim status of disabled pensioner pending outcome of allegedly unlawful reassessment of his degree of disability:
inadmissible

Kátai v. Hungary - 939/12
Decision 18.3.2014 [Section II]

Facts – In 2007 a district court ruled in a final judgment that the applicant was suffering from grade III permanent disability, which entitled him to a disability pension equivalent to 37.5% of his average monthly salary. It ruled that that his condition was final and not susceptible to any further review. However, a new system of disability allowances was introduced by statute in 2011. Under the new scheme, beneficiaries had to apply for a reassessment of their health by expert committees. Once they had applied, they became entitled to a transitional allowance in an amount equal to their previous pension until the reassessment took place. Depending on the outcome of the reassessment, they could be granted a "disability allowance" or a "rehabilitation allowance". However, if they were found not to qualify for either allowance, their entitlement could be removed altogether. In any event, they would lose some of the benefits formerly attached to their previous status as pensioners, such as reductions for public transport and tourist attractions. The applicant sought a reassessment of his health in accordance with the new scheme. This was still pending at the date of the European Court's decision.

In his application to the European Court, the applicant complained that the new legislation removing his entitlement to a disability pension and the requirement for him to undergo a fresh assessment to qualify for an allowance had frustrated his rights to legal certainty, non-discrimination and property, contrary to Articles 6, 13 and 17 of the Convention and to Article 1 of Protocol No. 1.

Law – Article 34: As a former beneficiary of a disability pension, the applicant was in principle concerned by the impugned legislation. However, the reassessment of his condition with a view to establishing any new entitlement had yet to take place and in the meantime he continued to be in receipt of his former entitlements. He had not, therefore, suffered any relevant material prejudice on account of the new legislation. Rather than embarking on a closer scrutiny of the legislative changes potentially affecting the applicant's entitlement, the Court would rule on the admissibility of the application in the light of the situation as it stood. It was satisfied that the applicant could not claim to be a victim of a violation of his rights under the Convention, for the purposes of Article 34.

Conclusion: inadmissible (incompatible *ratione personae*).

ARTICLE 35

Article 35 § 1

Exhaustion of domestic remedies
Effective domestic remedy – Romania

Remedy under Law no. 165/2013 in respect of property that wrongly passed into State ownership during the communist regime:
partially effective remedy; admissible

Preda and Others v. Romania - 9584/02 et al.
Judgment 29.4.2014 [Section III]

Facts – The complaints submitted in the applications concerned administrative and/or judicial proceedings for compensation or restitution instituted by the applicants as persons entitled, in accordance with laws passed in Romania after the fall of the communist regime in December 1989, to restitution of property confiscated or nationalised by that regime.

Law – Article 35 § 1: In its judgment in the case of *Maria Atanasiu and Others v. Romania* (30767/05 and 33800/06, 12 October 2010, Information Note 134), the Court had found that the ineffectiveness of the compensation or restitution procedure for property confiscated or nationalised by the State under the communist regime was a recurrent and widespread problem which had persisted despite the adoption of the *Viaşu*, *Faimblat* and *Katz* judgments, in which the Court had indicated to the Romanian Government that general measures were required in order to secure the prompt and effective enforcement of the right to restitution. Thus, applying the pilot-judgment procedure, the Court had called on the respondent State to take legal and administrative measures to ensure respect for ownership rights in cases concerning nationalised immovable property. It had also decided to adjourn consideration of all applications stemming from the same general problem pending the adoption by the Romanian authorities of measures capable of providing adequate redress to everyone covered by the reparation legislation.

On 16 May 2013 Parliament passed Law no. 165/2013 on finalisation of the process of physical restitution or alternative compensation in respect of immovable property that wrongly passed into State ownership under the communist regime in Romania.

As a preliminary observation, the Court noted that the eight applications before it were the first applications it had examined at the pre-admissibility stage since the pilot-judgment procedure conducted in the case of *Maria Atanasiu and Others*. In the light of the factual complexity of the cases and the observations submitted by the parties, the Court set out to determine whether the various remedies provided by Law no. 165/2013 and its implementing regulations were effective in dealing with the applicants' situation.

Regard being had to the margin of appreciation enjoyed by the Romanian State and the guarantees afforded by Law no. 165/2013 – namely clear and foreseeable procedural rules, binding time-limits and effective judicial review – the Law in question provided, in principle, an accessible and effective framework of redress for alleged violations of the right to peaceful enjoyment of possessions within the meaning of Article 1 of Protocol No. 1 stemming from the application of restitution legislation, particularly in the following circumstances: competing documents of title for the same plot of land, invalidation of a document of title on account of the failure to challenge an entitlement to restitution or compensation, issuing of a final decision confirming entitlement to compensation of an unspecified amount, non-payment of compensation awarded in a final decision, and protracted failure to give a decision on a claim for restitution.

However, the Law in question did not contain any provisions of a procedural or substantive nature that were capable of affording redress in cases where there were multiple documents of title for the same building. Moreover, on account of the time-limits laid down in Law no. 165/2013 for administrative procedures, which could be compounded by those applicable to judicial proceedings where appropriate, the completion of the process and the final settlement of claims could take many years.

This exceptional state of affairs was inherent in the factual and legal complexity surrounding the status of property which had been nationalised or confiscated more than 60 years previously and which had subsequently undergone many successive changes of owner and/or use. In view of the singular nature of this state of affairs, the applicable time-limits could not in themselves call into question the effectiveness of the revised procedure or, on the face of it, be deemed contrary to any of the rights secured by the Convention, in particular the right under Article 6 to have proceedings conducted within a reasonable time. Since Law no. 165/2013 had been enacted only recently, no judicial or administrative practice had yet emerged as regards its application. However, the Court could see no reason to conclude at this stage that the new remedy was ineffective in the situations described above. Nevertheless, it reserved the right to examine any future allegations that the new legislative mechanism was ineffective on the basis of its practical application. Accordingly, except in situations where there were multiple documents of title for the same building, Law no. 165/2013 in principle offered Romanian litigants an opportunity to obtain redress for their grievances at national level; it was for them to avail themselves of that opportunity.

The present applications had been lodged before Law no. 165/2013 had come into force. However, the circumstances of the case justified a departure from the general rule that the Court's examination of compliance with the requirement of exhaustion of domestic remedies should relate to the time when the application was lodged. The purpose of the Law was to enable the competent Romanian authorities to redress the breaches observed in the *Maria Atanasiu and Others* judgment and, consequently, to reduce the number of applications for the Court to consider. This applied both to applications lodged after the Law's entry into force and to applications that had already been pending before the Court on that date. In that connection, particular importance should be attached to the fact that Article 4 of Law no. 165/2013 referred explicitly to applications already registered by the Court and was designed to include all applications currently pending before the Court within the scope of the procedures outlined therein.

(a) *Concerning applications nos. 9584/02, 33514/02, 38052/02, 25821/03, 29652/03, 17750/03 and 28688/04* – All the situations concerned were covered by Law no. 165/2013, which entitled the applicants or their heirs to compensation or restitution, as appropriate, in respect of immovable property that had been confiscated or nationalised. Accordingly, the complaint under Article 1 of Protocol No. 1 in respect of these applications had to be rejected for failure to exhaust domestic remedies.

Conclusion: inadmissible (non-exhaustion of domestic remedies).

(b) *Concerning application no. 3736/03* – The applicants did not have any remedy available by which to assert their right of ownership in accordance with a final judicial decision. Moreover, the Government had not cited any other remedy in domestic law that would enable the applicants to secure either the enjoyment of their property or compensation for loss of such enjoyment. Accordingly, they had not failed to comply with the exhaustion rule. The Court thus dismissed the Government's objection of non-exhaustion of domestic remedies.

Conclusion: admissible (unanimously).

The Court also held, unanimously, that there had been a violation of Article 1 of Protocol No. 1 in respect of application no. 3736/03 in that the applicants had been deprived of their property and had not been paid any compensation at all over a period of many years.

Article 41: EUR 5,000 in respect of non-pecuniary damage; EUR 200,000 in respect of pecuniary damage.

(See *Viaşu v. Romania*, 75951/01, 9 December 2008, Information Note 114; *Faimblat v. Romania*, 23066/02, 13 January 2009, Information Note 115; and *Katz v. Romania*, 29739/03, 20 January 2009, Information Note 115)

Exhaustion of domestic remedies

Alleged ineffectiveness of investigation into action taken to break up demonstrations following events in Taksim square: *inadmissible*

Sarisülük v. Turkey - 64126/13
Decision 25.3.2014 [Section II]

Facts – In May 2013 a peaceful demonstration was held in Gezi Park to protest against the felling of trees there and the construction of a shopping centre in Taksim Square in Istanbul. Intervention by the police led to confrontation. Several week-long anti-Government demonstrations ensued in the main Turkish cities. In June 2013 one of the applicants' relatives was hit in the head by a bullet during a demonstration in Ankara. An investigation was immediately instigated and the applicants lodged a complaint. Their relative died a few days later. A number of investigative measures were carried out. In July 2013 the prosecutor lodged his indictment with the Ankara Assize Court. The division dealing with the case held that the defendant's acts had occurred in the course of his duties and ordered the suspension of proceedings pending the requisite authorisation from the Ministry of the Interior bodies, in accordance with the Trial of Civil Servants Act. Apparently, this authorisation was subsequently granted. The defendant appeared in disguise at the hearings, which took place via videoconference. Altercations took place outside the first hearing because of the intensive media coverage of the case. At the December 2013 hearing the judges stood down. Furthermore, some judges had reportedly fallen asleep during the hearing. The judges' decision to stand down was declared invalid. The President of the division lodged an extraordinary appeal against this invalidation.

Law – Article 35 § 1: It was crucial for the protection mechanism established by the Convention to remain subsidiary to the national systems for safeguarding human rights. In the present case the events leading up to the death of the applicants' relative had taken place in June 2013 and criminal proceedings were under way against the police officer charged. The authorities had only had about nine months to act at the date of the present decision. Even if administrative authorisation was required to prosecute the police officer – which might have affected the effectiveness of the procedure – the actual investigation had not stagnated at any time since the onset of the events. Neither the proceedings as they had unfolded nor the length of time elapsed so far suggested that the investigation was showing any early signs of ineffectiveness.

It was true that police operations had to be adequately regulated under domestic law, by means of a system of appropriate and effective safeguards against arbitrary action and excessive use of force. Accordingly, the Court must take into consideration not only any acts performed by State officials who did actually resort to force but also all the circumstances surrounding such acts, including their preparation and supervision. In particular, law-enforcement officials should be trained in assessing whether the use of lethal weapons was absolutely necessary or not, not only by following the letter of the relevant regulations but also by taking due account of the overriding importance of respect for human life as a fundamental value. It was important to consider the preparation and supervision of a police operation which led to a person's death in order to ascertain whether, in the specific circumstances of the case, the authorities had taken appropriate care to ensure that any risk to life was minimised by means of planning, issuing of appropriate orders and conducting supervision, and whether or not the authorities had shown negligence in their choice of measures, resources and methods.

Nevertheless, under the circumstances of the present case, the Court ceased its consideration of the case there because the application was clearly premature. Moreover, no evidence had emerged to date such as to exonerate the applicants from exhausting domestic remedies in connection with an individual application to the Constitutional Court. If, however, the domestic procedures failed to produce proper results because of their protracted nature and/or their organisation, thus rendering them ineffective within the meaning of the Court's case-law, the applicants would be able, in due course, to lodge a fresh application with the Court.

Conclusion: inadmissible (failure to exhaust domestic remedies).

Article 35 § 2 (b)

Same as matter submitted to other procedure

Complaints previously examined by United Nations Working Party on Arbitrary Detention: *inadmissible*

Gürdeniz v. Turkey - 59715/10
Decision 18.3.2014 [Section II]

Facts – In 2010 the public prosecutor's office launched a criminal investigation against several members of a criminal organisation called *Balyoz* who were suspected of having planned a military coup in 2002 and 2003 designed to overthrow the elected government by force. On 6 July 2010 the public prosecutor's office brought criminal proceedings against a number of persons, including the applicant. On 11 February 2011 the Assize Court ordered the applicant to be placed in detention. None of his applications for release was successful. On 21 September 2012 he was sentenced to 18 years' imprisonment. His appeal to the Court of Cassation was dismissed.

On 1 May 2013 the United Nations Human Rights Council's Working Group on Arbitrary Detention ("the Working Group") issued its opinion regarding 250 persons – including the applicant – placed in pre-trial detention in the context of the *Balyoz* case.

Law – Article 35 § 2: The Court had already examined the procedure before the Working Group on Arbitrary Detention and concluded that it was indeed a "procedure of international investigation or settlement" within the meaning of Article 35 § 2 b) of the Convention.[1]

In the present case the Working Group had given an opinion on the question whether the applicant's detention was arbitrary and on the length of his pre-trial detention, having regard to many factors, including mainly the evidence contained in the criminal proceedings brought against the applicant. It had concluded that the deprivation of liberty of the 250 accused detained in the *Balyoz* case, including the applicant, had been arbitrary as contrary to Articles 9 and 14 of the International Covenant on Civil and Political Rights and Articles 9, 10 and 11 of the Universal Declaration of Human Rights. In reaching that conclusion, it had examined the applicant's case as part of its overall analysis of the right to a fair trial. The matter brought to the Working Group's attention had thus encompassed the complaints based on Article 5 of the Convention which the applicant had submitted to the Court. Accordingly, having regard to the circumstances of the present case, the Court held that the facts, parties and complaints were identical.

Accordingly, the complaints based on Article 5 §§ 1 and 3 of the Convention submitted to the Court were essentially the same as those that had resulted in the above-mentioned opinion of the Working Group.

Conclusion: inadmissible (complaints essentially the same).

The Court also declared inadmissible, by a majority, the applicant's complaint under Article 6 for failure to exhaust domestic remedies.

ARTICLE 46

Execution of a judgment – General measures

Respondent State required to introduce effective remedy in respect of excessive length of civil proceedings

Luli and Others v. Albania - 64480/09 et al.
Judgment 1.4.2014 [Section IV]

Facts – In their applications to the European Court, the applicants complained under Article 6 § 1 of the Convention of the length of civil proceedings they had brought to determine their property rights.

1. See *Peraldi v. France*, 2096/05, 7 April 2009, Information Note 118.

Law – Article 46: The Court found violations of Article 6 § 1 of the Convention in respect of the length of the domestic proceedings. It also found, as in two previous cases against Albania,[1] that there existed no domestic remedy in respect of length-of-proceedings complaints. This demonstrated a serious deficiency in domestic legal proceedings and, indeed, dozens of similar applications were pending before the Court. General measures at the national level were undoubtedly called for including, in particular, a domestic remedy as regards undue length of proceedings. In that connection, the principles set out in *Scordino v. Italy (no. 1)* [GC] (36813/97, 29 March 2006, Information Note 85) set out the required elements of an effective remedy for excessive length of proceedings, the optimal solution being a combination of a remedy designed to expedite the proceedings and another to afford compensation, although a suitable compensatory remedy alone might suffice.

Execution of a judgment – Individual measures

Respondent State required to ensure that applicants could remain on its territory pending final decision on their applications for international protection

A.C. and Others v. Spain - 6528/11
Judgment 22.4.2014 [Section III]

(See Article 13 above, page 27)

ARTICLE 1 OF PROTOCOL No. 1

Peaceful enjoyment of possessions

Loss of two-thirds of old-age pension as a result of introduction of legislation effectively deciding outcome of pending litigation against the State: *violation*

Stefanetti and Others v. Italy - 21838/10 et al.
Judgment 15.4.2014 [Section II]

Facts – The applicants, who were Italian nationals, lived and worked for many years in Switzerland before retiring to Italy. On their return to Italy the Istituto Nazionale della Previdenza Sociale (INPS), an Italian welfare body, decided to re-adjust their pension claims to take into account the low contributions they had paid while working in Switzerland (where contributions came to 8% of salary, as opposed to 32.7% in Italy). The applicants brought proceedings to contest this method of calculating their pension rights. However, while the proceedings were still pending before the domestic courts, Law no. 296/2006 was introduced, which effectively endorsed the INPS's interpretation of the relevant legislation. The applicants' claims were thus dismissed and as a result they lost around two-thirds (67%) of their pensions.

Law – Article 6 § 1: The need for legislative intervention had only arisen as a result of the State's decision, in 1982, to reform the pension system so that the amount received in pension was no longer dependent on the contributions paid, but on the remuneration received. The State had thus itself created a disparity which it had not tried to amend until some 24 years later. Given that in the decades preceding the introduction of the new law, various individuals in the applicants' position had successfully challenged the calculation used by the INPS and that there had therefore been a majority interpretation in favour of the claimants, legislative interference shifting the balance in favour of one of the parties had not been foreseeable. Even assuming that the law did aim at reintroducing the legislature's original wishes following the changes in 1982, the aim of re-establishing an equilibrium in the pension system, while in the general interest, was not compelling enough to overcome the dangers inherent in the use of retrospective legislation affecting a pending dispute. Indeed, even accepting that the State was attempting to adjust a situation it had not originally intended to create, it could have done so perfectly well without resorting to a retrospective application of the law. Furthermore, the fact that the State had waited 24 years before making such an adjustment, despite the fact that numerous pensioners who had worked in Switzerland had been repeatedly winning their claims before the domestic courts, also created doubts as to whether Law no. 296/2006 was really supposed to embody the legislature's intention in 1982. The Court therefore reaffirmed its findings in the case of *Maggio and Others v. Italy* (46286/09 et al., 31 May 2011, Information Note 141).

Conclusion: violation (unanimously).

Article 1 of Protocol No. 1: In *Maggio and Others* the fact that the applicant had lost considerably less than half of his pension, which had therefore amounted to a reasonable and commensurate

1. *Gjonbocari and Others v. Albania*, 10508/02, 23 October 2007, and *Marini v. Albania*, 3738/02, 18 December 2007, Information Note 103.

reduction, had undeniably carried some weight in the finding that the provision had not been breached. Given the more substantial reduction in the instant case and in view of the contributions paid by the applicants, the Court had to reassess the matter and scrutinise the reduction more closely. A two-thirds reduction in pension (and not solely of a benefit linked to pensions) was indisputably, in itself, a sizeable decrease which must seriously affect a person's standard of living. Of particular importance were the two factors already considered in *Maggio and Others*. Primarily, that the applicants had, on the one hand, paid lower contributions in percentage terms in Switzerland than they would have paid in Italy, but on the other had had to pay, in absolute terms, contributions of a considerable amount during long contributory periods of their entire active life in Switzerland. The second factor was that the reduction had been aimed at, but had not had the effect of, equalising a state of affairs and avoiding unjustified advantages (resulting from the decision to retire in Italy) for people in the applicants' position.

According to statistical data for the year 2010, in Italy, the average old-age pension for that year was EUR 1,251 monthly and the minimum pension amounted to EUR 461 per month. The European Committee of Social Rights had observed that that level of minimum pension fell below 40% of the median equalised income (Eurostat) and was thus inadequate.

The applicants had received old-age monthly pensions varying between EUR 714 and EUR 1,820. Indeed, save for one applicant, all the applicants had received less than the average monthly pension in Italy, and six out of eight applicants had received less than EUR 1,000 a month. The difference in sums received between the applicants reflected their job category as well as the different periods of time they had spent in Switzerland and in consequence the actual contributions they had paid. When assessing a reduction of social-security payments, it was indeed of significance that such pensions had been based on actual contributions paid by the applicants (transferred to the relevant disbursing authority), albeit lower than those paid by others, and that therefore they had not been a gratuitous welfare aid solely funded by the taxpayer in general.

Relying on the conclusions of the European Committee of Social Rights, the Court found that the majority of the sums at issue, which did not exceed EUR 1,000 a month, had to be considered as providing for only basic commodities. Thus, the reductions had undoubtedly affected the applicants' way of life and hindered its enjoyment substantially. The same could also be said of the higher pensions, despite them allowing for more comfortable living.

Furthermore, the Court could not lose sight of the fact that the applicants had made a conscious decision to move back to Italy at a time when they had a legitimate expectation of receiving higher pensions, and therefore a more comfortable standard of living. However, as a result of the calculation applied by the INPS and eventually the impugned legislative action, they had not only found themselves in a more difficult financial situation but had further had to institute proceedings to recover what they had deemed was due, which proceedings were frustrated by the Government's actions in breach of the Convention. Through those actions, the Italian legislature had arbitrarily deprived the applicants of their claims to the amount of pension which they could legitimately expect to be determined in accordance with the settled case-law of the domestic courts, an element which could not be ignored for the purpose of determining the proportionality of the impugned measure. No compelling general interest reasons had justified a retrospective application of the Law no. 296/2006, which was unforeseeable.

In conclusion, by losing 67% of their pensions based on contributions paid, the applicants had not suffered commensurate reductions but had been made to bear an excessive burden. Thus, despite the reasons behind the impugned measures, the Court could not find that a fair balance had been struck.

Conclusion: violation (five votes to two).

Article 41: EUR 12,000 to each applicant in respect of non-pecuniary damage; question of compensation for pecuniary damage reserved.

ARTICLE 3 OF PROTOCOL No. 1

Free expression of the opinion of the people
Stand for election

Inability of non-resident electors to vote for independent candidates in polling stations installed in customs offices: *no violation*

Lack of airtime on national radio and television for independent – as opposed to party political – candidates: *no violation*

Oran v. Turkey - 28881/07 and 37920/07
Judgment 15.4.2014 [Section II]

Facts – The applicant stood for election in the parliamentary elections of 22 July 2007 as an independent candidate, but was not elected. He lodged two applications with the Court which were joined and examined together.

The first application concerned the fact that, by law, voters could vote only for political parties, and not for independent candidates like the applicant, in the polling stations set up at customs posts. In a decree issued on 27 May 2007 the National Electoral Commission stated that citizens who had lived abroad for more than six months could vote only for political parties in those polling stations. On 3 July 2007 the applicant applied to the National Electoral Commission seeking to have the decree annulled. On 4 July 2007 the Electoral Commission refused his request.

The second application concerned the fact that, under the electoral legislation, political parties participating in the elections could campaign on national radio and television, whereas, according to the applicant, independent candidates who, like him, were not affiliated to any political party as a matter of principle were barred from doing so.

Law – Article 3 of Protocol No. 1

(a) *Inability of non-resident voters to vote for independent candidates without a party ticket in the polling stations set up at customs posts* – Domestic practice was far from uniform in the Contracting Parties with regard to voting rights for expatriate nationals and the exercise of those rights. Generally speaking, Article 3 of Protocol No. 1 did not require the Contracting Parties to enable their citizens living abroad to exercise the right to vote.[1] Furthermore, it was clear from the work of the Venice Commission that a refusal to grant the right to vote to citizens living abroad or the placing of limits on that right did not constitute a restriction of the principle of universal suffrage. It was necessary to balance the various interests at stake, such as the choice made by a State to allow expatriate citizens to exercise the right to vote, the practical and security-related considerations linked to the exercise of that right and the technical means of achieving it.

The reason given by the national legislature for limiting the right to vote in the case of voters living abroad had been the fact that it was not possible to create a separate constituency for expatriate voters or to assign them to an existing constituency, whereas voters living in the country voted in a particular constituency, namely the one where they were resident. The legislature had considered it legitimate to calculate the votes cast by expatriates as part of the total vote for political parties within the country.

The Constitutional Court, in its judgment of 22 May 1987, had found those reasons to be compatible with the Constitution. It had ruled that, faced with the difficulty of establishing voting rights for citizens who had lived abroad for more than six months in a particular constituency alongside voters living in the country, the option chosen by the legislature, consisting in allowing expatriate voters to vote only for political parties and not for independent candidates, had struck a fair balance between the interests of expatriate voters and those of voters living in the country.

The limitation in question had to be construed in the light of the residence criterion for voters living abroad and the reasons given by the Constitutional Court. It also had to be assessed with due regard for the general restrictions that were accepted in relation to expatriate voting rights, and in particular the legitimate concern the legislature might have to limit the influence of citizens living abroad in elections on issues which, while admittedly fundamental, primarily affected persons living in the country. A further factor was the role played by political parties, which were the only groupings that could accede to power, and which had the capacity to influence the entire system in their countries. Moreover, the limitation had pursued two other legitimate aims: enhancing democratic pluralism while preventing the excessive fragmentation of the vote, and strengthening the expression of the opinion of the people in the choice of the legislature.

In view of the foregoing considerations, the limitation reflected the legitimate concern of the legislature to ensure the political stability of the country and of the government that would be in charge following the elections. Consequently, taking into consideration the wide margin of appreciation left to the respondent State in the matter, the treatment complained of by the applicant as an independent candidate without a party ticket had been based on objective and reasonable grounds.

Accordingly, there had been no infringement in the instant case of the very essence of the right to the free expression of the opinion of the people or of the applicant's right to stand for election, for the

1. *Sitaropoulos and Giakoumopoulos v. Greece* [GC], 42202/07, 15 March 2012, Information Note 150.

purposes of Article 3 of Protocol No. 1 taken alone and in conjunction with Article 14 of the Convention.

Conclusion: no violation (four votes to three).

(b) *Inability of independent candidates without a party ticket to campaign on national radio and television (TRT), unlike the political parties* – The National Electoral Commission had issued a decision on 4 May 2007 stating that the political parties could campaign on TRT ahead of the parliamentary elections of 22 July 2007, but that independent candidates without a party ticket, like the applicant, could not.

It was in the nature of their role that political parties, the only groupings that could accede to power, had the capacity to influence the entire system in their countries. Hence, their election campaigning was not confined to the particular constituency in which they were fielding a candidate but extended over all the constituencies taken as a whole. By contrast, independent candidates running without a party ticket, like the applicant, addressed their message only to the constituency in which they were standing.

The applicant had not been a member of a political grouping and had not stood for election as an independent candidate on the ticket of a political party with a view to circumventing the national electoral threshold of 10%[1] and securing his grouping's election to the National Assembly by indirect means. Accordingly, the Court was not convinced that the applicant on the one hand, as an independent candidate without a party ticket, and the political parties on the other hand could be said to be in "comparable situations" for the purposes of Article 14 of the Convention.

At the parliamentary elections of 22 July 2007 several hundred independent candidates had stood for election in various constituencies throughout the country. Weighing the electoral process as a component of the democratic system against regulation of the public funding of that process during an election period, the Court found that the applicant had not been prevented from campaigning in the constituency where he had stood as an independent candidate. Although he had been unable to campaign for election on TRT, which broadcast nationwide, he had not been barred from using any of the other means of campaigning available to all independent candidates without a party ticket at the relevant time. Accordingly, the measure complained of had been based on objective and reasonable grounds.

Hence, after the various interests at stake had been weighed up, the fact that the applicant, in his capacity as an independent candidate without a party ticket, had been unable, unlike the political parties, to campaign on TRT during the 2007 parliamentary elections was found to be compatible with the requirements of Article 3 of Protocol No. 1. The measure in question, as applied to the applicant, did not amount to disproportionate interference with the very essence of the right to the free expression of the opinion of the people or with the applicant's right to stand for election, for the purposes of Article 3 of Protocol No. 1 taken alone and in conjunction with Article 14 of the Convention.

Conclusion: no violation (four votes to three).

The Court also held unanimously that there had been no violation of Article 13, as that provision did not go so far as to guarantee a remedy allowing a Contracting State's laws as such to be challenged before a national authority on the ground of being contrary to the Convention.

1. As regards the requirements for political parties to reach the threshold of 10% of the national vote in order to be represented in Parliament, see *Yumak and Sadak v. Turkey* [GC], 10226/03, 8 July 2008, Information Note 110.

ARTICLE 2 OF PROTOCOL No. 7

Right of appeal in criminal matters

Lack of right of appeal against conviction following plea bargain: *no violation*

Natsvlishvili and Togonidze v. Georgia - 9043/05
Judgment 29.4.2014 [Section III]

(See Article 6 § 1 (criminal) above, page 16)

REFERRAL TO THE GRAND CHAMBER

Article 43 § 2

Murray v. the Netherlands - 10511/10
Judgment 10.12.2013 [Section III]

(See Article 3 above, page 12)

Al-Dulimi and Montana Management Inc. v. Switzerland - 5809/08
Judgment 26.11.2013 [Section II]

(See Article 6 § 1 (civil) above, page 13)

Dvorski v. Croatia - 25703/11
Judgment 28.11.2013 [Section I]

(See Article 6 § 3 (c) above, page 18)

Kudrevičius and Others v. Lithuania - 37553/05
Judgment 26.11.2013 [Section II]

(See Article 11 above, page 23)

COURT NEWS

Russian version of the HUDOC database

The Court has now launched a Russian version of the Court's case-law database HUDOC. It can be found at the following Internet address: <http://hudoc.echr.coe.int/sites/rus/>.

The HUDOC database was revamped in 2012 and is increasingly serving as a one-stop-shop for translations of the Court's case-law in languages other than its official ones (English and French). HUDOC now contains around 11,000 translations in nearly 30 languages, of which around 1,000 are in Russian. A language-specific filter allows for rapid searching in HUDOC, including in free text. More information on case-law in non-official languages is available on the Court's Internet site (<www.echr.coe.int> – Case-Law/Judgments and decisions).

Пресс-релиз (rus)

Information to the applicants

• *Court's Internet site*

In order to inform potential applicants and/or their representatives of the conditions for lodging an application, the Court has decided to gradually expand its range of information materials designed to assist applicants with the procedure in all the languages of the States Parties to the Convention.

To this end, the main page for applicants on the Court's website has been fully translated into 18 languages (Albanian, Azerbaijani, Bulgarian, Catalan, Czech, Estonian, Finnish, German, Greek, Lithuanian, Montenegrin, Portuguese, Romanian, Russian, Serbian, Slovak, Spanish and Ukrainian). It will soon also be translated into other languages.

These pages are available on the Court's Internet site (<www.echr.coe.int> – Applicants/Other languages).

Azərbaycan – Български – Català – Česky – Crnogorski – Deutsch – Español – Eesti keel – Ελληνικά – Lietuvių – Português – Română – Русский – Српски – Shqip – Slovensky – Suomi – Українська

• *Your application to the ECHR*

Intended to answer the main questions that applicants might ask, especially once their application has been sent to the Court, this new pamphlet has now been translated into German, Romanian, Serbian and Ukrainian. All linguistic versions can be downloaded from the Court's Internet site (<www.echr.coe.int> – The Court – General presentation).

Ihre Beschwerde vor dem EGMR: Wie Sie eine Beschwerde einlegen können und wie die Beschwerde dann bearbeitet wird (deu)

Cererea dumneavoastră la CEDO: Modul de prezentare și etapele examinării acesteia (ron)

Ваша представка пред ЕСЉП: Како поднети представку и како се ваша представка даље разматра (srp)

Ваша заява до ЄСПЛ: Як подати заяву і якою буде процедура її розгляду (ukr)

2014 René Cassin advocacy competition

The 29th edition of the René Cassin competition, which takes the form of a mock-trial, in French, concerning rights protected by the European Convention on Human Rights took place at the European Court of Human Rights in Strasbourg in April 2014.

Sixteen university teams from 6 countries (Belgium, France, Luxembourg, Slovenia, Switzerland and Turkey), selected following the written stage of the competition, have competed in a case concerning sport and human rights. Students from the University of Luxembourg were declared the winners of the 2014 edition of the René Cassin competition after beating a rival team from the College of Europe in the final round.

Further information about this year's competition and previous contests can be found on the René Cassin competition Internet site (<www.concours-cassin.eu>).

RECENT PUBLICATIONS

Case-law guides

The Court has just published a guide on Article 6 of the Convention (Right to a fair trial – criminal limb) as part the new series on the case-law relating to particular Convention Articles.

Guides on Articles 4 (Prohibition of slavery and forced labour) and 5 (Right to liberty and security) are already available in English and French, but also in Chinese (Articles 4 and 5) Russian, Turkish and Ukrainian (Article 5). The case-law guides can be downloaded from the Court's Internet site (<www.echr.coe.int> – Case-law).

Annual Report 2013: execution of judgments of the Court

The Committee of Ministers' seventh annual report on the supervision of the execution of judgments of the European Court of Human Rights was issued at the beginning of April 2014. It includes detailed statistics highlighting the main tendencies of the evolution of the execution process in 2013 and a thematic overview of the most important developments in the execution of the cases pending before the Committee of Ministers.

The statistics 2013 confirm the positive trends of 2011 and 2012, and reveal a first decrease ever in the total number of pending cases. One can also note an all-time high in the number of cases closed through final resolutions. As in 2012, the statistics 2013 also reveal improvements as to the respect of deadlines in the payment of just satisfaction.

At the same time, the report shows that the execution of cases revealing important structural problems remains a major challenge. However, several positive developments need to be mentioned, in particular, the improvement of domestic remedies and the importance attached, both by the Committee of Ministers and by the States, to the execution of pilot judgments.

The report can be downloaded from the Internet site of the Council of Europe's Directorate General of Human Rights and Rule of Law (<www.coe.int> – Protection of human rights – Execution of judgments of the Court).

Annual Activity Report 2013 of the Commissioner for Human Rights

On 8 April 2014 Mr Nils Muižnieks, Commissioner for Human Rights, presented his Activity Report 2013 to the Parliamentary Assembly of the Council of Europe. This report can be downloaded from the Internet site of the Council of Europe (<www.coe.int> – Commissioner for Human Rights).

The Commissioner for Human Rights is an independent and impartial non-judicial institution established in 1999 by the Council of Europe to promote awareness of and respect for human rights in the member states. The activities of this institution focus on three major, closely related areas: country visits and dialogue with national authorities and civil society; thematic studies and advice on systematic human rights work; and awareness-raising activities.

Report by the Secretary General of the Council of Europe on the state of human rights, democracy and the rule of law in Europe

Drawn up at the request of the Committee of Ministers and based on the findings of the Council of Europe's monitoring bodies, the Secretary General's report provides an in-depth analysis of the state of human rights, democracy and the rule of law in Europe. It also critically examines the Council of Europe's capacity to assist member States in complying with the European Convention on Human Rights and the standards derived from it.

This report can be downloaded from the Council of Europe's Internet site (<www.coe.int>).