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COUR EUROPÉENNE DES DROITS DE L'HOMME

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ARTICLE 3

Degrading treatment

Ill-treatment of lawyer representing client at police station: *violation*

Cazan v. Romania - 30050/12
Judgment 5.4.2016 [Section IV]

Facts – The applicant, a lawyer, accompanied one of his clients to a police station in order to seek information on the content of a criminal file against the client. According to the applicant, an argument broke out with a police officer, who locked him in an office for about ten minutes in order to force him to sign a record of their interview, and then twisted his finger while attempting to prevent him from using his mobile telephone. The state of his finger was noted by a doctor, but his criminal complaint was dismissed on account of the lack of definite evidence of the police officer's criminal liability.

Law

Article 3: The Court has already emphasised the importance of the role played by lawyers in the functioning of justice. Accordingly, the police must respect that role and avoid interfering unduly with their work or subjecting them to any form of intimidation or harassment (see paragraph 10 of the European Code of Police Ethics and the explanatory memorandum thereto). That obligation applies particularly to the protection of lawyers acting in an official capacity against ill-treatment. In its judgment in the case of *Bouyid v. Belgium* [GC] (23380/09, 28 September 2015, Information Note 188), the Court reiterated that the authorities bore the burden of proof in respect of events occurring while an individual was under the control of the police or of a similar authority. That principle is applicable even where, as in the present case, the applicant attended the police station of his own volition, in his capacity as a lawyer. Consequently, it was incumbent on the authorities to provide the relevant proof.

The applicant provided a forensic report certifying that he had suffered a sprain to his left ring finger that had necessitated between five and seven days of medical treatment. Apart from the bare statements by the police officer in question, the Government provided no evidence capable of casting doubt on the version of events consistently presented by the applicant, to the effect that the police officer had twisted his finger while attempting to remove his mobile telephone. Given the major deficiencies in the investigation, it was impossible to conclude that the police officer's statement was reliable merely because the investigation failed to provide any evidence to the contrary. Therefore, the Court deemed that it had been sufficiently established that the applicant had suffered a sprain to his left ring finger during his attendance at the police station.

The minimal severity threshold for the applicability of Article 3 had indeed been attained: inasmuch as the doctors had recommended continuing the applicant's medical treatment for between five and seven days, the applicant's injury had not been superficial.

Even supposing that the applicant had shown disrespect to the police officer, he had not behaved in any violent manner necessitating the use of physical force.

These factors are sufficient to conclude that there was degrading treatment.

Conclusion: violation (unanimously).

The Court also unanimously found a violation of the procedural aspect of Article 3.

Article 5 § 1: The applicant affirmed that he had been locked up in a police officer's office in order to force him to sign a record of the interview against his will.

Even supposing that the police officer in question had acted as the applicant claimed, the parties agreed that the impugned situation had not lasted more than ten minutes. Even though the Court

had previously held that the concept of deprivation of liberty can apply even where the measure in question was of short duration, it considered that in the particular circumstances of the case the applicant had not been "deprived of his liberty" given that he had attended the police station voluntarily and had been able to leave very shortly after the incident of which he complained.

Conclusion: no violation (unanimously).

Article 41: EUR 11,700 in respect of non-pecuniary damage.

Bodies of applicants' relatives displayed at military base for the purpose of examination by prosecutor and doctors: *no violation*

Cangöz and Others v. Turkey - 7469/06
Judgment 26.4.2016 [Section II]

Facts – In 2005 the applicants' seventeen relatives were killed by members of the security services in south-east Turkey. The national investigating authorities concluded that the deceased were members of an outlawed organisation who had been killed when the security forces returned their fire after coming under attack. No prosecution was brought in respect of the killings.

Law

Article 2

(a) *Substantive aspect* – It was undisputed that the applicants' relatives had been killed by members of the armed forces of the respondent State. Long before the killing the security forces had been aware of their presence in the area and their reason for being there, which was to hold a meeting, not to carry out acts of violence. However, there was no information in the case file to suggest that alternative and non-fatal methods for apprehending them had been considered. The Court therefore had strong doubts about whether lethal force had been necessary.

The ensuing investigation was so manifestly inadequate and left so many obvious questions unanswered that it was incapable of establishing the true facts surrounding the killings. The Government had thus failed to discharge their burden of proving that the killing of the applicants' relatives constituted the use of force which was absolutely necessary or a proportionate means of achieving the purposes they advanced.

Conclusion: violation (unanimously).

(b) *Procedural aspect* – From the beginning, the investigation file was categorised as "confidential" by a judge at the prosecutor's request, thus leaving the applicants unable to take any part in the investigation. This decision had also prevented them from seeing the investigation file until it was submitted to the Court by the Government in the context of the Convention proceedings. A very large number of pertinent requests made by the applicants – such as for the prosecutor to visit the area, to question the security forces, to establish which weapons the security forces had used, to look for fingerprints on the rifles, and to try and eliminate the inconsistencies between the military reports – had not been taken on board by the prosecutor. It followed that the national authorities had failed to carry out an effective investigation into the deaths.

Conclusion: violation (unanimously).

Article 3: After the military operation ended the bodies of the applicants' relatives were brought to a military base, placed outdoors, stripped of their clothes and examined by the prosecutor and two doctors. The bodies could thus be seen by a number of soldiers. After the prosecutor concluded his examination, the bodies were not given to the relatives but taken to a forensic-medicine institute for autopsies to be carried out. Regardless of whether or not the applicants actually saw their relatives' corpses in person, in view of their knowledge of the conditions in which the bodies were examined, there was little doubt that they must have endured mental suffering. Thought could have been given by the authorities to protecting the deceased's dignity and their relatives' feelings by using a screen to block the bodies from view and carrying out the necessary procedure in a more appropriate manner.

Nevertheless, the circumstances of the instant case distinguished it from those cases, concerning the mutilation of bodies, burning of houses or bombing civilians with fighter jets, in which the Court had found violations of Article 3 of the Convention, as the acts in question in those cases were carried out deliberately and without lawful excuse. In the present case, however, the applicants' suffering stemmed from lawful action by a prosecutor who was performing his duties to investigate but failed to appreciate the consequences. Accordingly, and in view of the purpose of the treatment, which was to enable the prosecutor and doctors to examine the bodies, the circumstances were not such as to give the applicants' suffering a dimension and character distinct from the emotional distress

which may be regarded as inevitably caused to any family member of a deceased person in a comparable situation.

Conclusion: no violation (unanimously).

Article 41: EUR 65,000 each applicant in respect of non-pecuniary damage.

(See the Factsheet on the Right to life; see also *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], 24014/05, 14 April 2015, Information Note 184; and *Benzer and Others v. Turkey*, 23502/06, 12 November 2013, Information Note 168)

Inhuman or degrading punishment

De facto irreducibility of life sentence imposed on prisoner suffering from mental illness: *violation*

Murray v. the Netherlands - 10511/10
Judgment 26.4.2016 [GC]

Facts – The applicant, who suffered from a mental illness, was convicted of murder and sentenced to life imprisonment in the Netherlands Antilles in 1980. His repeated requests for a pardon were refused. In his application to the European Court he 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 2011 through legislation that provided that any person sentenced to life imprisonment would be released on parole after serving at least 20 years of his or her sentence if a custodial sentence no longer served any reasonable purpose. The applicant's case had been reviewed accordingly but he could not be released because he was still considered dangerous and capable of re-offending. The Chamber also held unanimously that there had been no violation of Article 3 in respect of the applicant's conditions of detention.

In 2014 the applicant was granted a pardon on health grounds and released.

On 17 April 2014 the case was referred to the Grand Chamber at the applicant's request (see Information Note 173). He died shortly afterwards.

Law – Article 3: At the outset, the Court resumed and further developed the general principles applicable to the present case.

(a) *Life sentences* – The imposition of a sentence of life imprisonment on an adult offender is not incompatible with Article 3 of the Convention, provided it is not grossly disproportionate and, from the date of imposition of the sentence, there is both a prospect of release and possibility of review. In line with existing comparative and international standards, the review should be guaranteed no later than twenty-five years after the imposition of the life sentence, with further periodic reviews thereafter, and should allow the domestic authorities to consider whether, in the course of the sentence, any changes in the life prisoner and progress towards his or her rehabilitation are of such significance that continued detention is no longer justified on legitimate penological grounds. This assessment must be based on rules having a sufficient degree of clarity and certainty and be based on objective, pre-established criteria, surrounded by sufficient procedural guarantees.

(b) *Rehabilitation and prospect of release for life prisoners* – As noted above, the review should permit the authorities to assess any changes in the life prisoner and any progress towards rehabilitation. In European and international law there is clear support, also endorsed by the Court, towards the principle that all prisoners, including those serving life sentences, be offered the possibility of rehabilitation and the prospect of release if rehabilitation is achieved. The State's positive obligation is one of means and can be achieved, for example, by setting up and periodically reviewing an individualised programme that encourages the prisoner to develop so as to be able to lead a responsible and crime-free life.

(c) *Health care for prisoners with mental-health problems* – A lack of appropriate medical care for persons in custody can engage the State's responsibility under Article 3 of the Convention. Obligations under that provision may go so far as to impose an obligation on the State to transfer prisoners to special facilities where they can receive adequate treatment. In the case of mentally ill prisoners, the assessment of whether particular conditions of detention are incompatible with the standards of Article 3 has to take into consideration the prisoners' vulnerability and, in some cases, their inability to complain coherently or at all about how they are being affected by any particular treatment. It is not enough for them to be examined and a

diagnosis made; proper treatment for the problem diagnosed and suitable medical supervision should also be provided.

(d) *Life prisoners with mental disabilities and/or mental-health problems* – Life prisoners who have been held criminally responsible may nevertheless have certain mental-health problems which could impact on the risk of their reoffending. States are required to assess such prisoners' needs for treatment with a view to facilitating their rehabilitation and reducing the risk of their reoffending and to enable them to receive suitable treatment – to the extent possible within the constraints of the prison context – especially where it constitutes a precondition for the life prisoner's possible, future eligibility for release. However, States also have a duty to take measures to protect the public from violent crime and the Convention does not prohibit them from subjecting a person convicted of a serious crime to an indeterminate sentence allowing for the offender's continued detention where necessary to protect the public.

As to the specific circumstances of the instant case, when the applicant lodged his application to the Court he had already been imprisoned for some thirty years. His repeated requests for a pardon were rejected, *inter alia*, because of the continued existence of a risk of recidivism. However, although at his trial the applicant was diagnosed with various mental-health problems, he was never provided with any treatment in prison. On the contrary, in the absence of concrete and feasible alternatives, he was eventually given a sentence of life imprisonment.

Nevertheless, the applicant's detention in prison rather than in a custodial clinic could not obviate the need for the recommended treatment. The mere fact that the punishment imposed on him did not stipulate that he undergo treatment and that he had never made a request for treatment did not relieve the respondent State from its obligations concerning the duration of the applicant's incarceration and the provision of appropriate medical care for his rehabilitation. Although the principle of rehabilitation of prisoners was explicitly recognised in the domestic law at least from 1999 onwards, the applicant's risk of reoffending was deemed too great for him to be considered eligible for a pardon or conditional release. Treatment constituted, in practice, a precondition for the applicant to have the possibility of progressing towards rehabilitation. The lack of treatment or of an assessment of his treatment needs therefore meant that, when the applicant lodged his application with the Court, any request for a pardon was in practice incapable of leading to the conclusion that he had made such significant progress towards rehabilitation that his continued detention would no longer serve any penological purpose. It followed that the applicant's life sentence was not *de facto* reducible as required by Article 3 of the Convention.

Conclusion: violation (unanimously).

Article 41: Finding of a violation constituted sufficient just satisfaction in respect of any non-pecuniary damage.

(See the Factsheets on Detention and mental health and on Life imprisonment)

ARTICLE 5

Article 5 § 1

Deprivation of liberty

Lawyer held in office in police station for less than ten minutes: *no violation*

Cazan v. Romania - 30050/12
Judgment 5.4.2016 [Section IV]

(See Article 3 above, page 7)

ARTICLE 6

Article 6 § 1 (civil)

Fair hearing

Application of supervisory review procedure in applicants' civil cases following 2008 reform in conformity with legal certainty requirement: *no violation*

Trapeznikov and Others v. Russia - 5623/09 et al.
Judgment 5.4.2016 [Section III]

Facts – Since 2003 the supervisory review procedure in Russian civil cases has been subject to continuous reforms. In 2003 the new Code of Civil Procedure limited the possibility of initiating supervisory review solely to the parties in the case and introduced a one-year time-limit for lodging the

application.[1] In 2008 new amendments to the procedure[2] reduced the time-limit for lodging a supervisory review application from one year to six months, abolished the discretionary power of the regional court presidents to overrule decisions taken by regional court judges dismissing such applications, and made it obligatory to exhaust the available avenues of appeal before applying for supervisory review. The most recent reform, in 2012,[3] converted the first two levels of supervisory review (the presidia of the regional courts and the Civil Chamber of the Supreme Court) into courts of cassation while limiting the supervisory review procedure to the Presidium of the Supreme Court.

In the instant case, final and enforceable judgments in the applicants' favour were quashed by way of supervisory review at the defendants' requests under the provisions of the Code of Civil Procedure as in force between 7 January 2008 and 1 January 2012, that is after the 2008 reform.

Law – Article 6 § 1: In accordance with the 2008 legislative amendments, a supervisory review application had to be lodged (a) by a party to the proceedings and (b) within six months of the appeal judgment. While the appeal judgment was deemed to be binding and enforceable under domestic law, in numerous Contracting States, supreme judicial instances examined appeals on points of law after the judgments of the lower courts had become binding and enforceable. This did not, *ipso facto*, raise an issue under the principle of legal certainty, provided a number of criteria were met. These criteria included the existence of a relatively short time-limit and the Court had previously accepted that a six-month time-limit for lodging such appeals did not appear unreasonable.

In a supervisory review application, the party making the application could allege substantial violations of substantive or procedural law which had an impact on the determination of the case. The supervisory review court had the power to quash the judgment and remit the case to the lower courts for fresh examination, or it could modify the judgment and terminate the proceedings. If no supervisory review application was lodged within six months of the delivery of the appeal judgment, that judgment became irrevocable and could no longer be called into question for misapplication of the domestic substantive or procedural law.

The Court was not convinced that in the system so construed the judgments at the appeal level acquired such stability that the successful party could not expect the other party not to have recourse to the supervisory review remedy after losing the case at second instance. Although the Court had already decided not to take that remedy into account for the purposes of the six-month rule, it could not thus exclude that its operation in practice could, under certain circumstances, be consonant with the requirements of Article 6. The issue to be addressed in the present case was not whether the amended 2008 supervisory review procedure was compatible as such with the Convention but whether the procedure, as applied in the circumstances of the applicants' cases, had resulted in a violation of the legal-certainty requirement.

In the instant case, the supervisory review applications had been lodged by parties to the proceedings, not a third party State official, and after they had availed themselves of an appeal before a second-instance court. The domestic judgments delivered in the applicants' favour had been quashed by higher courts following requests for supervisory review lodged by the defendant parties within the relatively short time-limits laid down by the Code of Civil Procedure, on the grounds that they were contrary to the law or ill-founded. The supervisory review proceedings had not lasted indefinitely and were not tarnished by any deficiency identified by the Court in its previous case-law. As a result, the supervisory review as applied in the particular circumstances of the applicants' cases constituted the next logical element available to the parties in the chain of domestic remedies, rather than an extraordinary means of reopening proceedings. Furthermore, the relevant domestic decisions did not disclose any manifestly arbitrary reasoning.

1. The Court found this procedure to be in breach of the legal certainty requirement (see, among many other authorities, *Prisyazhnikova and Dolgopolov v. Russia*, 24247/04, 28 September 2006; *Sobelin and Others v. Russia*, 30672/03 et al., 3 May 2007; and *Kulkov and Others v. Russia*, 25114/03 et al., 8 January 2009).

2. The Court had assessed the 2008 reform only under Article 35 and found that the amended supervisory review procedure was not subject to exhaustion for the purposes of that Article (*Martynets v. Russia* (dec.), 29612/09, 5 November 2009, Information Note 124).

3. The 2012 reform had been assessed by the Court only under Article 35. The Court had considered that the new cassation procedure available before two former supervisory review courts after the 2012 reform was to be exhausted for the purposes of that Article (see *Abramyan and Yakubovskiye v. Russia* (dec.), 38951/13 and 59611/13, 12 May 2015, Information Note 186).

Thus, there had been no breach of the principle of legal certainty on account of the supervisory review procedure as applied in the applicants' cases.[1]

Conclusion: no violation (unanimously).

Article 6 § 1 (criminal)

Fair hearing

Court of Appeal's decision to overturn acquittal on the basis of its own assessment of the record of evidence that had been before the trial court: *no violation*

Kashlev v. Estonia - 22574/08
Judgment 26.4.2016 [Section II]

Facts – Following a brawl outside a nightclub in which a man sustained life-threatening head injuries, the applicant was charged with causing serious health damage. He attended his trial where he was assisted by a lawyer and was able to question the prosecution witnesses. He was acquitted after the first-instance court rejected the statements of certain witnesses as being incoherent or contradictory. The prosecutor appealed. The applicant informed the Court of Appeal in writing that he did not wish to attend the appeal hearing. However, he continued to be represented by his lawyer. Relying purely on the record of the evidence from the trial, the Court of Appeal overturned the applicant's acquittal after finding that the first-instance court had erred in its assessment of the evidence. The applicant was given a mainly suspended prison sentence.

In the Convention proceedings, the applicant complained that the Court of Appeal had convicted him only on the basis of the case file without examining any witnesses at its hearing.

Law – Article 6 §§ 1 and 3 (d): The Court found that the applicant's right to a fair trial had not been breached.

(i) The applicant had unequivocally waived his right to take part in the hearing before the Court of Appeal by informing it in writing of his wish not to take part and asking for the case to be examined in his absence (his lawyer had attended the hearing). There was no suggestion that the applicant – who was not in detention – was hindered from seeking legal advice concerning the nature of the appeal proceedings or the possibility of his acquittal being overturned.

(ii) The applicant had not requested the examination of witnesses at the appeal hearing. Under the Court's case-law the requirements of Article 6 §§ 1 and 3 (d) could be met where an accused was able at the pre-trial stage to put questions to prosecution witnesses whose statements were subsequently admitted in evidence at the trial. That principle applied *a fortiori* to cases such as the applicant's where the witnesses whose statements were admitted in evidence in the appeal proceedings had been examined at first-instance in the presence of the applicant and he had been able to put questions to them.

(iii) The Court of Appeal had followed the requirement of domestic law to provide particularly thorough reasoning for departing from the first-instance court's assessment of the evidence. The difference in assessment had resulted mainly from the two courts' different approach to the coherence or discrepancies within and between the testimony of individual witnesses and their interpretation of the circumstances of the offence as a whole. There was nothing to suggest that the domestic courts had acted in an arbitrary or unreasonable manner in assessing the evidence, establishing the facts or interpreting the domestic law.

(iv) The applicant had appealed to the Supreme Court, which had thus been able to assess the Court of Appeal's approach. For the European Court, the requirements, including those of a fair trial, deriving from the Supreme Court's case-law and that court's verification that those requirements had been met had constituted further safeguards for the applicant's defence rights.

Conclusion: no violation (six votes to one).

ARTICLE 8

Respect for private life
Positive obligations

Inadequate investigation into racist abuse directed at woman of Roma origin: *violation*

R.B. v. Hungary - 64602/12
Judgment 12.4.2016 [Section IV]

Facts – In 2011 several right-wing groups organised an anti-Roma rally in Gyöngyöspata, the village

1. See also *Svetlana Vasilyeva v. Russia*, 10775/09, 5 April 2016, where the Court found a violation of Article 1 of Protocol No. 1 on the ground that the supervisory review procedure, as applied in that case, constituted unlawful interference with the applicant's right to the peaceful enjoyment of her possessions.

where the applicant, who was of Roma origin, lived. During the rally four men yelled racist insults at the applicant, who was in her garden together with her child and some acquaintances, and threatened her with an axe. The applicant lodged a criminal complaint about the incident. However, the ensuing investigations were ultimately discontinued.

Law – Article 8: The abuse that occurred during the anti-Roma rallies was directed against the applicant by reason of her belonging to an ethnic minority. This conduct necessarily affected her private life, in the sense of ethnic identity, within the meaning of Article 8 of the Convention.

When investigating violent incidents, State authorities had an additional duty under Article 3 of the Convention to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice may have also played a role in the events. Furthermore, acts of violence such as inflicting minor physical injuries and making verbal threats may require the States to adopt adequate positive measures in the sphere of criminal-law protection, in accordance with Article 8 of the Convention. A similar obligation could therefore arise in cases where alleged bias-motivated treatment did not reach the threshold necessary for Article 3, but constituted an interference with the applicant's right to private life under Article 8, as in the instant case.

The impugned insults and acts took place during an anti-Roma rally and came from a member of an openly right-wing paramilitary group. There were therefore grounds to believe that it was because of her Roma origin that the applicant had been insulted and threatened. Thus, it had been essential for the domestic authorities to conduct the investigation in that specific context, taking all reasonable steps with the aim of unmasking the role of racist motives in the incident. The necessity of conducting a meaningful inquiry into the discrimination behind the incident was indispensable given that it was not an isolated case but formed part of the general hostile attitude against the Roma community in Gyöngyöspata. Despite this, the domestic authorities completely disregarded the racist motives behind the attack. Moreover, the legal provisions in force at the material time provided no appropriate legal avenue for the applicant to seek remedy for the alleged racially motivated insult.

Therefore, the respondent State's criminal-law mechanisms as implemented in the instant case were defective to the point of constituting a violation of the respondent State's positive obligations under Article 8 of the Convention.

Conclusion: violation (six votes to one).

The Court also rejected the applicant's complaint about the authorities' failure to fulfil their positive obligations under Article 3 read in conjunction with Article 14 of the Convention as being manifestly ill-founded, as the racist abuse the applicant had been subject to did not reach the minimum level of severity required in order for the issue to fall within the scope of Article 3 of the Convention.

Article 41: EUR 4,000 in respect of non-pecuniary damage.

(See also, with respect to allegedly racially motivated violence under Article 14 read in conjunction with Article 3, *Nachova and Others v. Bulgaria* [GC], 43577/98 and 43579/98, 6 July 2005, Information Note 77; and, more generally, the Factsheet on Roma and Travellers)

Respect for home

Order, without proportionality assessment, for demolition of applicants' home for breach of building regulations: *demolition would constitute a violation*

Ivanova and Cherkezov v. Bulgaria - 46577/15
Judgment 21.4.2016 [Section V]

Facts – Section 148(1) of the Territorial Organisation Act 2001 provides that buildings may only be constructed if they have been duly authorised in accordance with the Act. By virtue of section 225(2)(2) a building constructed without a building permit is illegal and subject to demolition. Unless it falls within the Act's transitional amnesty provisions, an unlawfully constructed building cannot subsequently be legalised. The Bulgarian Supreme Administrative Court has held that this legislation demonstrates the heightened public interest in controlling construction and that the building-control authorities have no discretion in relation to the removal of illegally constructed buildings, but must order their demolition.

The applicants built a house without obtaining a building permit. The local authority served a demolition order on them. The first applicant sought judicial review arguing that the house was her only home and that its demolition would cause her considerable difficulties as she would be unable

to secure another place to live. However, the domestic authorities ruled against her after the Supreme Administrative Court found that the house was subject to demolition as it had been built unlawfully and did not be qualify for legalisation under the transitional amnesty provisions.

In the Convention proceedings, the applicants complained that the demolition of the house would breach their right to respect for their home (Article 8 of the Convention). The first applicant further complained that the demolition would be a disproportionate interference with her right to the peaceful enjoyment of her possessions (Article 1 of Protocol No. 1).

Law – Article 8: Although only the first applicant had legal rights to the house, both applicants had lived in the property for a number of years. It was therefore "home" for both of them. The order for demolition amounted to interference with their right to respect for that home. The interference was in accordance with the law and pursued the legitimate aims of preventing disorder and promoting the economic well-being of the country as it sought to tackle the problem of illegal construction which appeared to be rife in Bulgaria.

The question whether the loss of the applicants' home for the promotion of a public interest was necessary in a democratic society involved not only issues of substance but also the procedural question of whether the decision-making process afforded due respect to the interests protected under Article 8. Among the factors likely to be of prominence in illegal construction cases were whether the home was established unlawfully, whether it was established knowingly, the nature and degree of the illegality, the precise nature of the interest sought to be protected by the demolition, and the availability of suitable alternative accommodation or of less severe ways of dealing with the case.

The proceedings in the applicants' case did not meet these procedural requirements. The entire focus of the proceedings was on whether the house had been built without a permit and whether it fell within the transitional amnesty provisions. The Supreme Administrative Court did not even mention, let alone substantively engage with, the first applicant's point that the house was her only home and that she would be severely affected by its demolition. None of the remedies that had been suggested by the Government or the Supreme Administrative Court – postponement of the enforcement of the demolition order, an application for judicial review under Article 294 et seq. of the Code of Administrative Procedure 2006 or a claim for declaratory judgment under Article 292 of the Code – appeared to be effective in practice. Likewise, the involvement of the social services could not make good the lack of a proper proportionality assessment.

In sum, the applicants had not had at their disposal a procedure enabling them to obtain a proper review of the proportionality of the intended demolition of the house in which they lived in the light of their personal circumstances.

Conclusion: demolition would constitute a violation (six votes to one).

Article 1 of Protocol No. 1: The first applicant had a "possession" as it was settled law in Bulgaria that illegal buildings could be the object of the right to property and the domestic courts had found that she owned shares in both the land and the house. The demolition order amounted to interference in the form of a "control [of] the use of property". It had a clear legal basis and was therefore "lawful" and was also "in accordance with the general interest", as it sought to ensure compliance with the building regulations.

The salient issue was whether the interference would strike a fair balance between the first applicant's interest in keeping her possessions intact and the general interest in ensuring effective implementation of the prohibition against building without a permit. The States have a wide margin of appreciation regarding the implementation of spatial planning and property development policies. For that reason, unlike Article 8 of the Convention, Article 1 of Protocol No. 1 did not in such cases presuppose the availability of a procedure requiring an individualised assessment of the necessity of each measure of implementation of the relevant planning rules.

In the first applicant's case, the house had knowingly been built without a permit in flagrant breach of the domestic building regulations. That was a crucial consideration under Article 1 of Protocol No. 1. The order that the house be demolished, which was issued a reasonable time after its construction, simply sought to put things back in the position in which they would have been if the first applicant had not disregarded the requirements of the law. The order and its enforcement would also serve to deter other potential lawbreakers. That was a relevant factor in view of the apparent pervasiveness of the problem of illegal construction in Bulgaria. In view of the State's wide margin of appreciation, none of these considerations could

be outweighed by the first applicant's proprietary interest in the house.

Conclusion: demolition would not constitute a violation (unanimously).

Article 41: Finding of a violation sufficient just satisfaction in respect of non-pecuniary damage.

ARTICLE 9

Freedom of religion
Manifest religion or belief

Refusal to provide public religious services to members of Alevi faith: *violation*

İzzettin Doğan and Others v. Turkey - 62649/10
Judgment 26.4.2016 [GC]

Facts – In June 2005 the applicants, who are followers of the Alevi faith, individually submitted a petition to the Prime Minister requesting that the services connected with the practice of the Alevi faith constitute a public service, that Alevi places of worship (*cemevis*) be granted the status of places of worship, that Alevi religious leaders be recruited as civil servants and that special provision be made in the budget for the practice of the Alevi faith. The Prime Minister's public-relations department replied that it was impossible to grant their requests. Almost 2,000 people, including the applicants, subsequently lodged an application for judicial review of that refusal with the Administrative Court. In July 2007 the Administrative Court dismissed the application, ruling that the administrative authorities' refusal had been in conformity with the legislation in force. The applicants lodged an appeal on points of law which was dismissed by the Supreme Administrative Court.

In their application to the European Court the applicants alleged a violation of Article 9 of the Convention on account of the refusal of their requests for a religious public service to be provided to followers of the Alevi faith. They further complained of a violation of Article 14 of the Convention taken in conjunction with Article 9, alleging that the members of the Alevi community received less favourable treatment than citizens adhering to the Sunni branch of Islam.

On 25 November 2014 a Chamber of the Court decided to relinquish jurisdiction in favour of the Grand Chamber.

Law

Article 9: The refusal complained of, which amounted to denying the religious nature of the Alevi faith, constituted interference with the applicants' right to freedom of religion. The Court accepted that the interference in question had been "prescribed by law" and had pursued a legitimate aim, namely the protection of public order.

The Government advanced several arguments as justification for that interference. They submitted (a) that they complied with their duty of neutrality with regard to religions; (b) that, despite the restrictions imposed by the law, Alevis were able to exercise their freedom of religion without any hindrance; (c) that the national authorities enjoyed considerable discretion in the matter; and (d) that there were numerous differences with regard to the definition, resources, rituals, ceremonies and rules of Alevism in Turkey.

The Court examined each of these reasons in order to ascertain whether they were "relevant and sufficient" and whether the refusal in question had been "proportionate to the legitimate aims pursued".

(a) *The State's duty of neutrality and impartiality towards the Alevi faith* – Although the Turkish Constitution guaranteed the principle of secularism, which prohibited the State from manifesting a preference for a particular religion or belief, the attitude of the Turkish State towards the Alevi faith infringed the Alevi community's right to an autonomous existence, which was at the very heart of the guarantees in Article 9 of the Convention. This attitude on the part of the State authorities made no allowances for the specific characteristics of the Alevi community and resulted in the latter coming within the category of religious groups covered by Law no. 677[1], which entailed significant prohibitions. It was incompatible with the State's duty of neutrality and impartiality and with the right of religious communities to an autonomous existence.

(b) *The free practice by Alevis of their faith*: Law no. 677 laid down a number of significant prohibitions with regard to these religious groups, relating for instance to the use of the title "*dede*" (denoting an Alevi spiritual leader) and to the designation of premises for Sufi practices. These practices were banned and were punishable by a

1. Law no. 677 of 30 November 1925 on the Closure of Dervish Monasteries and Tombs, the Abolition of the Office of Keeper of Tombs and the Abolition and Prohibition of Certain Titles.

term of imprisonment and a fine. The Court expressed serious doubts as to the ability of a religious group that was thus characterised to freely practise its faith and provide guidance to its followers without contravening the aforementioned legislation.

Moreover, in addition to the refusal to recognise the *cemevis* as places of worship, Alevis faced numerous other problems which affected not just the organisation of the religious life of their community but also the rights of Alevi parents whose children attended primary and secondary schools. The Court had previously held that the education system in Turkey was not appropriately equipped to ensure respect for the beliefs of Alevi parents[1].

Furthermore, the absence of a clear legal framework governing unrecognised religious minorities such as the Alevi faith caused numerous additional legal, organisational and financial problems with regard to the ability to build places of worship, receive donations or subsidies and have access to the courts. Religious communities trying to operate as a foundation or an association faced numerous legal obstacles.

The Court was therefore not convinced that the freedom to practise its faith which the authorities left to the Alevi community enabled that community to fully exercise its rights under Article 9.

(c) *Margin of appreciation* – The State's duty of neutrality and impartiality excluded any power on its part to determine whether religious beliefs or the means used to express such beliefs were legitimate. The right enshrined in Article 9 would be highly theoretical and illusory if the degree of discretion granted to States allowed them to interpret the notion of religious denomination so restrictively as to deprive a non-traditional and minority form of religion, such as the Alevi faith, of legal protection.

(d) *The absence of consensus within the Alevi community* – The fact that there was a debate within the Alevi community regarding the basic precepts of the Alevi faith and the demands of the Alevi community in Turkey did nothing to alter the fact that it was a religious community with rights protected by Article 9 of the Convention. The existence of such an internal debate did not constitute grounds for the refusal complained of, particularly since the respondent State had had the opportunity to identify and bring together the demands common to Alevi citizens, and a clear consensus had emerged on issues pertaining to the autonomy of the Alevi community and the fundamental elements of the faith.

In sum, in the absence of relevant and sufficient reasons to justify refusing the recognition that would allow the members of the Alevi community to effectively enjoy their right to freedom of religion, the respondent State had overstepped its margin of appreciation. The interference complained of could not therefore be considered necessary in a democratic society.

Conclusion: violation (twelve votes to five).

Article 14 taken in conjunction with Article 9: The facts complained of came within the scope of Article 9 of the Convention, and "religion" was specifically mentioned in Article 14 as a prohibited ground of discrimination. Article 14 was therefore applicable to the facts of the case.

In Turkish law, the religious public service benefited only the followers of the majority (Sunni) understanding of Islam, while Alevi citizens were deprived of that service and of the corresponding status. Irrespective of the place occupied by the Alevi faith in Muslim theology, there was no doubt that it was a religious conviction which had deep roots in Turkish society and history. Alevis formed a religious community which had distinctive characteristics in numerous spheres including theological doctrine, principal religious practices, places of worship and education. The needs of its followers with regard to recognition and the provision of a religious public service in respect of their community appeared comparable to the needs of those for whom religious services were regarded as a public service. The applicants, as Alevis, were therefore in a comparable situation to the beneficiaries of the religious public service provided by the Religious Affairs Department (RAD).

The right to freedom of religion protected by Article 9 encompassed the freedom, in community with others and in public or in private, to manifest one's religion in worship, teaching, practice and observance. Accordingly, the applicants received less favourable treatment than the beneficiaries of the religious public service despite being in a comparable situation.

The main argument relied on by the Government as justification for this difference in treatment was based on a theological debate concerning the place of the Alevi faith within the Muslim religion. Such an approach was inconsistent with the State's duty of neutrality and impartiality towards religions and clearly overstepped the State's margin of appreci-

1. See *Mansur Yalçın and Others v. Turkey*, 21163/11, 16 September 2014, Information Note 177.

ation in choosing the forms of cooperation with the various faiths. In particular, there was a glaring imbalance between the applicants' situation and that of persons who benefitted from the religious public service, especially with regard to the applicable legal regimes and entitlement to State subsidies. The Court failed to see why the preservation of the secular nature of the State should necessitate denying the religious nature of the Alevi faith and excluding it almost entirely from the benefits of the religious public service.

In the light of the considerations outlined in relation to Article 9, the Court also doubted whether the Turkish system clearly defined the legal status of religious denominations, and especially that of the Alevi faith. The Alevi community was deprived of the legal protection that would allow it to effectively enjoy its right to freedom of religion. Moreover, the legal regime governing religious denominations appeared to lack neutral criteria and to be virtually inaccessible to the Alevi faith, as it offered no safeguards apt to ensure that it did not become a source of *de jure* and *de facto* discrimination towards the adherents of other religions or beliefs. In a democratic society based on the principles of pluralism and respect for cultural diversity, any difference on grounds of religion or beliefs required compelling reasons by way of justification.

Whatever form of cooperation with the different religious communities was chosen, the State had a duty to put in place objective and non-discriminatory criteria so that religious communities which so wished were given a fair opportunity to apply for a status which conferred specific advantages on religious denominations.

In sum, in view of the existence of an Alevi community with deep roots in Turkish society and history, the importance for that community of being legally recognised, the Government's inability to justify the glaring imbalance between the status conferred on the majority understanding of Islam in the form of a religious public service, and the almost blanket exclusion of the Alevi community from that service, and also the absence of compensatory measures, the choice made by the respondent State appeared to the Court to be manifestly disproportionate to the aim pursued. The difference in treatment to which the applicants, as Alevis, were subjected thus had no objective and reasonable justification.

Conclusion: violation (sixteen votes to one).

Article 41: The findings of a violation constituted sufficient just satisfaction for any non-pecuniary damage sustained by the applicants.

ARTICLE 10

Freedom of expression

Detention and administrative conviction of solo demonstrators for breach of prior-notification requirement: *violation*

Novikova and Others v. Russia - 25501/07 et al.
Judgment 26.4.2016 [Section III]

Facts – The Public Assemblies Act 2004[1] required prior notice to be given to the competent authorities of public events or pickets. "Pickets" were defined as a form of public expression of opinion not involving movement or the use of loudspeaker equipment. The notice requirement did not apply to so-called "solo static demonstrations" but, by virtue of a 2012 amendment to the Public Assemblies Act, a certain distance had to be kept between unrelated solo demonstrators. The precise distance was left to the discretion of the regional authorities, but was not to exceed fifty metres. The Act also empowered the domestic courts to decide *post facto* whether a public event was an assembly or a solo static demonstration.

At different times and in different places, the five applicants staged peaceful solo demonstrations, each of which ended with the applicants being taken to the police station before being released some hours later.

According to the Russian Government, the first three applicants held group public events. In particular, five other people holding posters with similar slogans were present at the same place as the first applicant. As regards the second applicant, some five passers-by gathered and then dispersed after a warning from a police officer. As to the third applicant, another person made similar claims in a demonstration on the other side of the street.

The first three applicants were subsequently convicted of the administrative offence of holding a group public event without prior notification and ordered to pay fines ranging from the equivalent of EUR 29 to EUR 505. The first applicant was

1. Federal Law no. FZ-54 of 19 June 2004 on Gatherings, Meetings, Demonstrations, Marches and Pickets ("the Public Assemblies Act").

convicted under the pre-2012 legislation. The second and third applicants were convicted under the amended provisions.

The fourth applicant was awarded the equivalent of EUR 149 in civil proceedings against the police for unlawful detention. However, a civil claim against the police by the fifth applicant, whose prosecution for using foul language was discontinued under the statute of limitations, was dismissed.

Law – Article 10: Given that the applicants had argued that the authorities' actions related to their "solo demonstrations" rather than to peaceful assembly with others, the Court found it appropriate to examine the case under Article 10, taking into account the principles of its case-law under Article 11. The demonstrations concerned matters of public interest and constituted a form of political expression.

(a) *First, second and third applicants*

(i) *The decisions to end the demonstrations and take the applicants to the police station* – Despite certain reservations, the Court proceeded on the assumption that the impugned interference had a basis in domestic law and pursued the legitimate aim of "crime prevention". As regards proportionality, the Court was not satisfied that relevant and sufficient reasons had been adduced at the domestic level. In particular, given the alleged number of participants ranging from two people (in the third applicant's case) to six people (in the first and second applicants' cases), notification would not have served the purpose of enabling the authorities to minimise any disruption to traffic or to provide first-aid when necessary. Nothing suggested the authorities had any additional reasons to consider that the situation would give rise to particular security or public-safety concerns. The applicants had not obstructed pedestrians or traffic, used or called for violence or refused to cease their *prima facie* unlawful conduct. The authorities should have shown a degree of tolerance by allowing them to complete their demonstrations. If appropriate, a measure such as a reasonable fine could have been imposed. There had thus been no compelling reasons to end the demonstrations and take the applicants to the police station.

(ii) *Prosecution for an administrative offence* – The pre-2012 legislation that had served as the basis for the first applicant's prosecution was not sufficiently foreseeable as regards what conduct or omissions could be classified as an offence on account of a breach of the notification requirement where there was a doubt as to whether the event in question was a group event (in the form of a meeting or a static demonstration), a series of simultaneous solo demonstrations or a single solo demonstration.

As to the 2012 amendments, as authoritatively interpreted by the Russian Constitutional Court in 2013, there had been a perceived need at the domestic level to prevent assembly organisers from evading their notification obligations by disguising public assemblies as solo demonstrations. However, a legislative choice to make conduct or an omission a criminal or other assimilated offence should not run counter to the very essence of fundamental rights, such as the right to freedom of expression. The primary purposes of the notification requirement – to enable the authorities to ensure public safety and protect the rights of the event participants and others – were fully attainable through reasonable application of the distance requirement. The Court could not see what legitimate aim the authorities had sought to achieve by empowering the domestic courts to classify an event as an "assembly" *post facto*. Nor could it discern sufficient reasons for a conviction for non-observance of the notification requirement where the demonstrators were merely standing in a peaceful and non-disruptive manner at a distance of some fifty metres from each other. Indeed, no compelling considerations relating to public safety, the prevention of disorder or the protection of the rights of others had been at stake. The only relevant consideration – the need to punish unlawful conduct – was not a sufficient consideration in this context, in the absence of any aggravating elements.

Thus, while accepting that the aim of the interference may have been to prevent disorder, the Court was not satisfied that the applicants' right to exercise their freedom of expression was properly taken into consideration during the examination of the administrative-offence charges against them.

For the Court, the mere presence of two or more people in the same place at the same time was not sufficient to classify the situation as an "assembly". As illustrated by the third applicant's case, the fact that two simultaneous solo demonstrations concerned the same topic did not suffice to confirm that the demonstrators' actions were of a concerted and premeditated nature. The domestic courts' findings in that respect had thus not been sufficiently substantiated.

Moreover, solo demonstrations were by their nature capable of and aimed at attracting attention from passers-by. However, the domestic courts had

adopted a formalistic approach in the second applicant's case by qualifying his interaction with passers-by as a group event requiring prior notification, even though it was difficult to conceive how such an event would generate a significant gathering warranting specific measures from the authorities and there was nothing to suggest that the applicant had *ab initio* conceived his event as an assembly. With due regard to the presumption of innocence, where the authorities suspected intentional actions aimed at evading the notification requirement, they should bear the burden of proving the relevant factual and legal elements.

Finally, the Court noted the ten-fold increase of fines in 2012 for the offence in question. In particular, the fine of EUR 505 imposed on the second applicant was disproportionate, given that the failure to notify the event in question had not caused any damage whatsoever. The high level of fines was liable to have a "chilling effect" on legitimate recourse to protests and solo demonstrations.

(iii) *Overall conclusion* – In the absence of aggravating factors, the swift termination of the events followed by the taking of the applicants to the police station and their subsequent prosecution solely for organising or participating in a non-notified public event, had constituted a disproportionate interference with the first three applicants' freedom of expression.

(b) *Fourth applicant* – Even assuming that the domestic court's finding that the police had acted unlawfully constituted, in substance, an acknowledgment of the violation of his freedom of expression, the Court was not satisfied that the award of EUR 149 constituted adequate and sufficient redress.

(c) *Fifth applicant* – It remained unclear what exact words were uttered by and held against the fifth applicant. The Court therefore considered, with due regard to the presumption of innocence, that he had not used foul language to the extent or in a way which might justify his being taken to the police station and the termination of his demonstration. The domestic courts had failed to make a specific assessment of the factual and legal issues pertaining to the lawfulness and necessity of taking him to the station and the adverse effect it had had on the exercise of his freedom of expression. The authorities' reaction to his demonstration had thus been disproportionate.

Conclusion: violation in respect of all five applicants (unanimously).

Article 41: No claim made by fourth applicant in respect of damage. EUR 7,500 to each of the first three applicants and EUR 6,000 to fifth applicant in respect of non-pecuniary damage; EUR 120 to second applicant in respect of pecuniary damage; fifth applicant's claim in respect of pecuniary damage dismissed.

ARTICLE 11

Freedom of association

Legally unforeseeable and thus unlawful confiscation of political party's assets: *violation*

Cumhuriyet Halk Partisi v. Turkey - 19920/13
Judgment 26.4.2016 [Section II]

Facts – The applicant was the Turkish main opposition party, Cumhuriyet Halk Partisi ("the People's Republican Party"). Following an inspection of the applicant party's final accounts for the years 2007, 2008 and 2009, the Constitutional Court declared some of its expenditure to be unlawful under the Political Parties Act and ordered the confiscation of the applicant party's assets in an amount equalling the deemed unlawful expenditure (in excess of EUR 1,000,000).

In its application to the European Court, the applicant party complained, *inter alia*, that the Constitutional Court's decisions had infringed its right to association under Article 11 of the Convention.

Law – Article 11: The Court acknowledged the necessity of supervising political parties' financial activities for purposes of accountability and transparency, which served to ensure public confidence in the political process. Therefore, the inspection of political parties' finances did not in itself raise an issue under Article 11. Moreover, there was no uniform practice across the Council of Europe member States regarding the oversight of political parties' financial accounts. However, the margin of appreciation enjoyed by States, although wide, was nevertheless not unlimited. Where the inspection of the finances of a political party had the effect of inhibiting a party's activities, it could amount to an interference with the right to freedom of association. In the applicant party's case, the sanctions in question had had a considerable impact on its activities, although their full impact could not be taken into account, having regard to

the Court's finding of inadmissibility in respect of the sanctions concerning the 2007 accounts. Nevertheless, the sanctions pertaining to the 2008 and 2009 accounts alone constituted a sum which could not be considered to be negligible, as they had obliged the applicant party to curtail a significant number of its political activities, including at local branch level. Accordingly, the sanctions in question constituted an interference with the applicant party's political activities and thus its freedom of association under Article 11 of the Convention.

In order to prevent the abuse of the financial inspection mechanism for political purposes, a high standard of "foreseeability" had to be applied with regard to laws that govern the inspection of the finances of political parties.

(a) *Unforeseeability of "unlawful expenses"* – The unlawfulness of the applicant party's expenditure allegedly concerned the fact that it had not been incurred in pursuance of the "objectives of a political party" and "in the name of the party's legal personality" as provided for in domestic law. Prior to amendments introduced in 2011, the relevant domestic law did not offer any guidance on how the expression "objectives of a political party" would be interpreted for the purposes of the inspection to be carried out by the Constitutional Court, and what activities would fall outside the scope of those objectives. Furthermore, prior to the amendments, there was no provision to specify the nature and scope of the inspection. Therefore the relevant domestic law suffered prima facie from a lack of precision in this respect.

As to the Constitutional Court's decisions providing, in the Government's view, the guidance that was lacking from the written law, they were delivered after the relevant accounts were submitted to the Constitutional Court for inspection and so had no precedential value for the purposes of the instant case. The decisions also suffered from inconsistencies as to the criteria to be applied in the assessment of the lawfulness requirements, thus adding to their unpredictability. The legal uncertainty was further exacerbated by the delays encountered in the inspection procedure, in the absence of any time-limits set out in the law. Bearing in mind the significant financial interests at stake for the applicant party, the Constitutional Court should have acted with special diligence to finalise the inspections in a timely manner, which would have also allowed the applicant party to regulate its conduct in order to avoid facing sanctions for similar expenditure in the following years.

(b) *Unforeseeability of applicable sanctions* – The domestic law provided for a warning mechanism for any contravention of the legislation regulating political parties' activities. However, the warnings issued in the instant case were not triggered by an application from the chief public prosecutor as required under the relevant provisions. This, coupled with the absence, in the Constitutional Court's decisions, of a specific reference to the legal provisions establishing the warning mechanism, created an ambiguity as to the actual legal basis of those warnings. Moreover, it was not clear from the relevant legislation, from the Government's submissions, or from the Constitutional Court's decisions when a warning, as opposed to a confiscation order, could be issued in relation to expenditure that fell foul of the requirements of the legislation. Nor was it possible to derive clarification from the nature of the expenses that were the subject of warnings, which did not appear to be characteristically different from other unlawful expenses that resulted in confiscation orders. Therefore, the applicant party had not been able to foresee whether and when unlawful expenditure would be sanctioned with a warning or a confiscation order.

In conclusion, the Court accepted that the broad spectrum of activities undertaken by political parties in modern societies made it difficult to provide for comprehensive criteria to determine those activities which could be considered to be in line with the objectives of a political party and which relate genuinely to party work. It stressed however that, having regard to the important role played by political parties in democratic societies, any legal regulations which may have the effect of interfering with their freedom of association, such as the inspection of their expenditure, must be couched in terms that provide a reasonable indication as to how those provisions will be interpreted and applied.

It followed from these considerations that the condition of foreseeability was not satisfied and the interference in question was not prescribed by law.

Conclusion: violation (unanimously).

Article 41: EUR 1,085,800 in respect of pecuniary damage.

(See *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], 41340/98 et al., 13 February 2003, Information Note 50; and *Republican Party of*

Russia v. Russia, 12976/07, 12 April 2011, Information Note 140)

ARTICLE 14

Discrimination (Article 3)

Failure to take into account possible discriminatory motives in investigation of homophobic attack: *violation*

M.C. and A.C. v. Romania - 12060/12
Judgment 12.4.2016 [Section IV]

Facts – In 2006 the applicants participated in a Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) rally in Bucharest. The march was accompanied by counter-demonstrations which, despite the police protection afforded to the participants, ended in several individuals being fined for disturbing the event. At the end of the march, the applicants were attacked by a group of individuals who also shouted homophobic insults. The subsequent criminal investigation was ultimately terminated in 2011, without the perpetrators of the attack having been identified.

Law – Article 14 in conjunction with Article 3: In the Court's view, the aim of the physical and verbal abuse the applicants had been subject to had probably been to frighten them so that they would desist from their public expression of support for the LGBTI community. The applicants' feelings of emotional distress must have been exacerbated by the fact that they had been attacked because they were exercising rights guaranteed by the Convention, namely, participating in an LGBTI rally. Bearing in mind the reports prepared by several International instances, including the Commissioner for Human Rights of the Council of Europe, the Court acknowledged that the LGBTI community in the respondent State found itself in a precarious situation, being subject to negative attitudes towards its members. Therefore, the treatment to which the applicants had been subjected reached the requisite threshold of severity to fall within the ambit of Article 3 read in conjunction with Article 14 of the Convention.

As to the investigation of the incidents, the applicants had promptly lodged a criminal complaint and presented all the evidence at their disposal, evidence which they considered made it possible to identify at least some of the attackers. However, the authorities took no significant steps for a period of almost a year and, more than five years after the initial criminal complaint, they had not yet established the identity of the perpetrators. In addition, the Court observed several shortcomings in the investigation. In particular, the authorities did not take into account the role played by possible homophobic motives behind the attack. This was indispensable given the hostility against the LGBTI community in the respondent State and in the light of the applicants' submissions that clearly homophobic hate speech had been uttered by the assailants during the incident. Without such a rigorous approach from the law-enforcement authorities, prejudice-motivated crimes would inevitably be treated on an equal footing with cases involving no such overtones, and the resultant indifference would be tantamount to official acquiescence, or even connivance, in hate crimes. Moreover, without a meaningful investigation, it would be difficult for the respondent State to implement measures aimed at improving the policing of similar peaceful demonstrations in the future, thus undermining public confidence in the State's anti-discrimination policy.

Conclusion: violation (unanimously).

Article 41: EUR 7,000 each in respect of non-pecuniary damage.

(See *Identoba and Others v. Georgia*, 73235/12, 12 May 2015, Information Note 185; and, more generally, the Factsheet on Sexual orientation issues; see also, in respect of suspected racially motivated violence, *Nachova and Others v. Bulgaria* [GC], 43577/98 and 43579/98, 6 July 2005, Information Note 77, and, in respect of suspected religiously motivated violence, *Members of the Gldani Congregation of Jehovah's Witnesses and Others v. Georgia*, 71156/01, 3 May 2007, Information Note 97)

Discrimination (Article 9)

Difference in treatment between members of Alevi faith and citizens adhering to majority branch of Islam: *violation*

İzzettin Doğan and Others v. Turkey - 62649/10
Judgment 26.4.2016 [GC]

(See Article 9 above, page 15)

ARTICLE 1 OF PROTOCOL No. 1

Peaceful enjoyment of possessions

Five-year instalment payment plan set up to remedy delays in compensation for war-related property loss: *no violation*

Lukats v. Romania - 24199/07
Judgment 5.4.2016 [Section IV]

Facts – Through various international treaties signed at the relevant time the Romanian State undertook the obligation to compensate former owners or their successors in title who had lost buildings, land or crops abandoned on certain territories following border changes before and during the Second World War. A compensatory mechanism set up by three different laws (nos. 9/1998, 290/2003 and 393/2006) was subject to a number of successive legislative amendments, the most recent being a law (no. 164/2014) which came into force in 2014 and provided for a five-year instalment payment plan and adjustment of the amounts granted as compensation in relation to the consumer price index. It also prescribed binding time-limits for each administrative step, as well as opportunities for an effective review by the courts in case of non-compliance on the part of the responsible authorities.

In 2009 the National Authority for Property Restitution confirmed the applicant's entitlement to compensation in the amount of approximately EUR 117,000. While its decision stated that the payment would be made in two annual instalments, at the date of delivery of the Court's judgment the applicant had not received any compensation. In accordance with the new 2014 law, the compensation granted to the applicant was to be paid in five equal annual instalments, starting on 1 January 2015.

Law – Article 1 of Protocol No. 1: Regardless of whether it might be characterised as an interference or as a failure to act, or a combination of both, the assessment of the conduct of the Romanian authorities called upon the Court to determine whether the time necessary for them to pay the applicant the compensation to which she was entitled had placed an excessive burden on her.

In view of the large number of Romanian citizens who had suffered considerable material losses caused by expropriation and nationalisation both before and after the Second World War and under totalitarian regimes, and given the considerable impact of the restitution mechanism on the country as a whole, it was necessary to examine the case also from the perspective of the general measures that were taken in the interest of other potentially affected individuals, in particular, in response to the requirements set out in the Court's pilot judgment of *Maria Atanasiu and Others v. Romania* (30767/05 and 33800/06, 12 October 2010, Information Note 134). In such circumstances, the national authorities had to be allowed to retain full discretion in choosing the general measures.

The Court took note of the Romanian authorities' constructive attempts to improve the efficiency of the relevant compensation mechanism by seeking to continue payments while also maintaining a proper budgetary balance.[1] There was no reason to consider that the new procedure set out by the 2014 law would lack clarity and foreseeability. The Court had already held that paying compensation awards in instalments over a longer period might also help to strike a fair balance between the interests of former owners and the general interest of the community, as long as the authorities managed to implement and enforce such measures with the required diligence. The mechanism put in place by the 2014 Law should in principle be considered as able to offer redress in respect of all the relevant claims.

Given that the payment of compensation granted to various claimants had been delayed on account of the successive legislative changes, the authorities' similar conduct in respect of the applicant could not be regarded as lacking justification. The burden on the applicant could not be considered either disproportionate or excessive, as long as the State ensured that the payment in question would be made under the conditions prescribed by law.

Conclusion: no violation (unanimously).

Control of the use of property

Order for demolition of applicants' home for breach of building regulations: *demolition would not constitute a violation*

Ivanova and Cherkezov v. Bulgaria - 46577/15
Judgment 21.4.2016 [Section V]

(See Article 8 above, page 13)

1. See Law no. 165/2013; *Preda and Others v. Romania*, 9584/02 et al., 29 April 2014, Information Note 173.

ARTICLE 4 OF PROTOCOL No. 7

Right not to be tried or punished twice

Revocation of firearms licence by police authority following conviction for assault: *inadmissible*

Palmén v. Sweden - 38292/15
Decision 22.3.2016 [Section III]

Facts – The applicant was convicted of assaulting his partner and given a suspended sentence and a term of community service. Subsequently the Police Authority revoked the applicant's firearms licence on the grounds that he was unsuitable to possess a weapon. In reaching that conclusion, the Police Authority noted that the applicant had been convicted of an assault that was rendered more serious by the fact that the violence had taken place at home and against a person with whom the applicant had a close relationship. The applicant's appeals to the domestic courts against the revocation of his firearms licence were dismissed.

In the Convention proceedings, the applicant alleged that he had been tried and convicted twice for the same offence, in violation of Article 4 of Protocol No. 7 to the Convention.

Law – Article 4 of Protocol No. 7: The first set of proceedings, in which the applicant was convicted of assault, was criminal in nature. As to the proceedings in which the applicant's weapons licence was revoked, the Court applied the three "Engel criteria" for determining whether or not there was a "criminal charge": the legal classification of the offence under national law, the very nature of the offence and the degree of severity of the potential penalty.

As to the legal classification of the offence the proceedings were considered under Swedish law as being administrative, not criminal, in nature. As regards the nature of the offence, revoking the weapons licence was not an automatic consequence of the criminal conviction. Indeed, while the conviction gave rise to the administrative proceedings, it was not the decisive factor in the revocation of the licence. Rather, the domestic authorities focused on the applicant's personal circumstances (his earlier conduct – including the assault conviction – and the fact that he had been under the influence of alcohol, had committed the assault at home and had a close relationship with the victim). Only after assessing all these circumstances did they find that the applicant lacked the high levels of good judgement, reliability and obedience to the law necessary to be considered suitable to possess a weapon. In the Court's view, the underlying object of revoking the firearms licence was preventive rather than punitive or deterrent in nature. States have a legitimate interest in protecting public safety by controlling who has the right to possess firearms and a responsibility to protect the general public. Lastly, as regards the degree and severity of the measure, the applicant was not professionally dependent on a firearms licence and could apply for a new licence at any time. Revocation of the firearms licence could not, therefore, be characterised as a penal sanction.

In sum, revocation of the licence was not to be considered, as a result of either its nature or severity, a criminal sanction for the purposes of Article 4 of Protocol No. 7.

Conclusion: inadmissible (incompatible *ratione materiae*).

DECISIONS OF OTHER INTERNATIONAL JURISDICTIONS

Court of Justice of the European Union (CJEU)

Procedure for dealing with execution of European Arrest Warrant in case of actual risk of inhuman or degrading conditions of detention in issuing State

Pál Aranyosi and Robert Căldăraru - Joined cases C-404/15 and C-659/15 PPU
Judgment (Grand Chamber) 5.4.2016

In connection with procedures concerning the execution of European Arrest Warrants issued against a Hungarian national and a Romanian national by the authorities of their countries of origin, the Bremen Higher Regional Court (Germany), with reference to judgments in which the European Court of Human Rights (ECtHR) found against Romania and Hungary respectively on the grounds of prison overcrowding[1], referred to the CJEU two requests for a preliminary ruling essentially concerning:

1. See *Varga and Others v. Hungary*, 14097/12 et al., 10 March 2015, Information Note 183; *Voicu v. Romania*, 22015/10, 10 June 2014; *Bujorean v. Romania*, 13054/12, 10 June 2014; *Constantin Aurelian Burlacu v. Romania*, 51318/12, 10 June 2014; and *Mihai Laurențiu Marin v. Romania*, 79857/12, 10 June 2014.

– whether, where there are strong indications that detention conditions in the issuing State infringe fundamental rights, the execution of a European Arrest Warrant could or should be refused or else made conditional on receipt of information from that State demonstrating that the conditions are compliant; and

– whether the provision of such information is directly incumbent on the issuing judicial authority or is subject to the domestic rules of competence in the issuing Member State.

The CJEU judgment refers to the case-law of the ECtHR, noting that:

– in all circumstances, including those of the fight against terrorism and organised crime, the ECtHR prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the conduct of the person concerned[1];

– the authorities of the State within whose territory a person is detained have an obligation to ensure that the he or she is detained in conditions which guarantee respect for human dignity, that the way in which detention is enforced does not cause the person concerned hardship or distress of an intensity exceeding the unavoidable level of suffering inherent in detention and that, having regard to the practical requirements of imprisonment, the detainee's health and well-being are adequately protected[2].

The CJEU therefore holds that the consequence of the execution of a European Arrest Warrant must not be that the individual concerned suffers inhuman or degrading treatment. The role of the judicial authority in this regard is clarified as follows.

First of all, the executing judicial authority must assess the existence of a real risk of inhuman or degrading treatment resulting from the overall conditions of detention in the issuing State, based on objective, reliable, precise and duly updated facts pointing to the existence of systemic or widespread deficiencies, or issues affecting specific groups of persons or specific detention facilities. These facts may derive from international judicial decisions, such as ECHR judgments, judicial decisions from the issuing State, or decisions, reports and other documents prepared by the organs of the Council of Europe or the United Nations system.

However, no single deficiency in the overall conditions of detention in an issuing State can, of itself, trigger a refusal to execute a European Arrest Warrant: the executing judicial authority is bound to assess, in a practical and precise manner, whether the conditions of detention envisaged for the individual concerned in the issuing State provide substantial grounds for believing that that individual actually risks being subjected to such treatment.

Accordingly, executing judicial authority must ask the judicial authority in the issuing State for the urgent provision of any necessary additional information:

– on the conditions under which the individual is expected to be detained,

– and on the existence in that State of any national or international procedures and mechanisms for monitoring conditions of detention (visits to prisons, etc.).

After having, if necessary, sought the assistance of the central authority or of one of the central authorities of the issuing Member State, the issuing judicial authority is obliged to provide that information to the executing judicial authority within the time-limits set out in the request.

Meanwhile, the executing judicial authority must postpone its decision. If the existence of a risk cannot be discounted within a reasonable time, that authority must decide whether the surrender procedure should be brought to an end. The duration of detention should not be exempt from any limit in time: it must comply with the requirement of proportionality, and the continuation of detention is subject to the requirement of sufficient diligence in the execution procedure, taking account of the presumption of innocence when the arrest warrant is requested for the purposes of criminal prosecution.

However, if the decision is taken to bring the detention to an end, the executing judicial authority must then attach to the provisional release of the person in question any measures which it deems necessary in order to prevent him from absconding and to ensure that the material conditions necessary for his effective surrender remain fulfilled for as long as no final decision on the execution of the European Arrest Warrant has been taken.

1. See, in particular, *Bouyid v. Belgium* [GC], 23380/09, 28 September 2015, Information Note 188.
2. See, in particular, *Torreggiani and Others v. Italy*, 43517/09 et al., 8 January 2013, Information Note 159.

Inter-American Court of Human Rights

Obligation to guarantee the effective use and enjoyment of the collective territory of indigenous and tribal Peoples through title clearing

Case of Punta Piedra Garifuna Community v. Honduras - Series C No. 304
Judgment 8.10.2015[1]

Facts – In 1993, the State of Honduras granted a property title to the Punta Piedra Garifuna Community.[2] The title was later expanded in 1999. Nevertheless, at the moment that the Community received title, part of the territory was occupied by peasants of the Río Miel village. As a result, multiple conciliatory proceedings were held. In 2001 the State committed to clearing the title over the territory in favour of the Punta Piedra Community by paying for the relocation of the Río Miel peasants and for improvements they had made to the property. However, these commitments were not fulfilled, thus generating greater conflict between the communities. As of that moment, acts of violence and intimidation occurred, and a leader of the Punta Piedra Community, Mr Félix Ordóñez Suazo, was killed. In the course of the proceedings, the information disclosed to the Inter-American Court showed that an exploratory mining concession granted by the State could also affect part of the territory to which the Punta Piedra Community was granted title.

For the purposes of this specific case, the Inter-American Court requested a report from the American Association for the Advancement of Science (AAAS) in order to obtain additional information, by means of satellite imagery analysis, on the territory belonging to the Punta Piedra Community. Moreover, a delegation of the Tribunal headed by the President of the Court held an on-site visit to the territory in order to observe some of the claimed areas, hear testimony from the villagers and meet with the parties.

Law

(a) *Preliminary objections* – The State submitted two preliminary objections regarding the non-exhaustion of domestic remedies. These were rejected unanimously on the grounds that part of Honduras's argument was time-barred and that there had been unwarranted delay in rendering a final judgment with regard to the investigation into Mr Ordóñez Suazo's death.

(b) *Partial acknowledgment of international responsibility* – The Inter-American Court unanimously accepted the acknowledgment of international responsibility expressed by the State, in that it had not cleared the Punta Piedra Community's title, and thus not guaranteed the Community peaceful possession of the territory. For the Court, that recognition had legal consequences regarding the violation of the right to collective property of the Punta Piedra Community.

(c) *Article 21 (right to property) of the American Convention on Human Rights (ACHR), in relation to Article 1(1) (obligation to respect and ensure rights) and 2 (domestic legal effects)* – The Inter-American Court established that the State's failure to provide clear title, as well as the lack of implementation of the conciliatory agreements, had obstructed the Punta Piedra Community´s use and enjoyment of the possession and its effective protection of its territory against third parties, in violation of its right to collective property.

The Court held that one of the appropriate measures for ensuring the effective use and enjoyment of the collective territory of indigenous and tribal Peoples is "title clearing". For the purposes of this case, the Court understood that "title clearing" (*saneamiento*) is a process that derives from the obligation of the State to remove any interference regarding the territory, in particular, granting plenary possession to the legal owner and, if applicable, paying for improvements made by third-party occupants and for their relocation. Also, the Court found that even though title clearing is a measure that usually must be executed before title is transferred, once this had occurred, the State had the undisputable obligation to clear title, in order to guarantee the use and enjoyment of the collective property of the Punta Piedra Community. This obligation had to be fulfilled by the State *ex officio* and with extreme diligence, so as to protect the rights of third parties as well.

Regarding the duty to ensure a consultation process and the right to cultural identity, the Court noted that the exploratory mining concession could directly affect the territory of the Punta Piedra Community. The State therefore had the duty to perform a consultation process prior to any ex-

1. This summary was provided courtesy of the Secretariat of the Inter-American Court of Human Rights. A more detailed, official abstract (in Spanish only) is available on that Court's website (<www.corteidh.or.cr>).
2. The Garifuna Peoples are a culture and a distinct ethnic group, originated as a syncretism between indigenous and African people, who have asserted their rights in Honduras as indigenous Peoples.

ploration project that might affect the traditional territory of indigenous or tribal communities[1], but had failed to do so in the instant case. On that point, the Court examined the domestic law and found that it was imprecise regarding the previous stages of the consultation process, as it did not establish the need for consultation before the exploratory stage. Hence, the Court found a breach of the State's duty to adopt domestic measures, with respect to Articles 21, 1(1) and 2 of the ACHR.

Conclusion: violation (unanimously).

(d) *Article 25 of the ACHR (right to judicial protection), in relation to Article 1(1)* – The Inter-American Court held that due to the lack of a collective remedy in Honduras at the time of the events, the conciliatory agreements, which were *ad hoc* procedures, should have been adopted by mechanisms that guaranteed their direct execution, without requiring other administrative or judicial proceedings for that purpose. Thus, even when the conciliatory agreements adopted in this case were appropriate in order to obtain the title clearing of the indigenous territory, the lack of direct execution rendered them ineffective and obstructed the use and enjoyment of the territory titled in favour of the Punta Piedra Community. Therefore, the Court found the State responsible for the violation of Articles 25(1) and 25(2)(c) of the ACHR.

Conclusion: violation (unanimously).

(e) *Article 4 of the ACHR (right to life), in conjunction with Article 1(1)* – Regarding the alleged failure to guarantee Mr Félix Ordóñez Suazo's right to life, the Court held that there was not enough evidence to determine that the State knew or should have known of a situation of real and immediate risk to his detriment prior to his death. Therefore, the Court did not find a violation of the duty to guarantee the right to life.

Conclusion: no violation (unanimously).

1. In that regard, the Court noted that Article 15(2) of the Indigenous and Tribal Peoples Convention, 1989 (International Labour Organisation Convention No. 169) establishes the following: "In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities."

(f) *Article 8(1) of the ACHR (judicial guarantees) and Article 25 in relation to Article 1(1)* – The Inter-American Court analysed multiple complaints filed by members of the Punta Piedra Community, including usurpation of territories, threats, and the murder of Mr Ordóñez Suazo. It concluded that the State had not complied with its obligations to exercise due diligence and to carry out the investigation within a reasonable time. The State was therefore responsible for the violation of the rights established in Articles 8(1) and 25 of the ACHR, to the detriment of Mr Félix Ordóñez Suazo and the members of the Punta Piedra Community.

Conclusion: violation (unanimously).

(g) *Reparations* – The Inter-American Court established that the judgment constituted *per se* a form of reparation and ordered, *inter alia*, that the State: (i) guarantee the use and enjoyment of the traditional territory of the Punta Piedra Community by clearing the title; (ii) cease any activity regarding the exploratory mining concession that had not been previously consulted; (iii) establish a community development fund for the members of the Punta Piedra Community as compensation for pecuniary and non-pecuniary damage; (iv) publish the summary of the judgment and broadcast it by radio; (v) adopt measures so that domestic legislation regarding mining does not affect the right to consultation; (vi) establish an appropriate mechanism to regulate the property register system; and (vii) continue and conclude, in a reasonable time, the investigation into the death of Mr Ordóñez Suazo and, if applicable, punish those responsible.

COURT NEWS

Elections

During its spring session held from 18 to 22 April 2016, the Parliamentary Assembly of the Council of Europe elected Marko Bošnjak judge of the Court in respect of Slovenia. His nine-year term in office will commence no later than three months after his election.

2016 René Cassin advocacy competition

The final round of the 31th 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 Court in Strasbourg on 1 April 2016.

Thirty university teams from seven countries (France, Switzerland, Luxembourg, the Netherlands, Romania, Russia and Slovenia), selected following the written stage of the competition, competed in a case concerning armed conflicts and European human-rights law. Students from the University of Reunion Island (France) were declared the winners after beating a rival team from the University of Luxembourg in the final round.

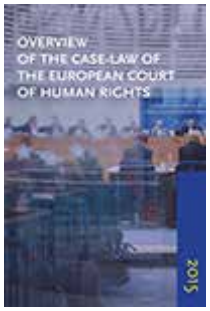
Further information about this year's competition and previous contests can be found on the René Cassin competition Internet site (<www.concourscassin.eu>).

RECENT PUBLICATIONS

Case-Law Overview 2015

This annual *Overview* series, available in English and French, focuses on the most important cases the Court deals with each year and highlights judgments and decisions which raise either new issues or important matters of general interest.

It can be downloaded from the Court's Internet site (<www.echr.coe.int> – Case-law). A print edition of the 2014 and 2015 Overviews is available from Wolf Legal Publishers (the Netherlands) at <www.wolfpublishers.nl> or <sales@wolfpublishers.nl>.



Factsheets

The Court has launched a new factsheet on gender equality. All factsheets can be downloaded from the Court's Internet site (<www.echr.coe.int> – Press).

Translation of the Case-Law Information Note into Turkish

Two more issues for 2015 of the Court's Case-Law Information Note have just been translated into Turkish, thanks to the Turkish Ministry of Justice. Further issues will be added progressively. The Notes in Turkish can be downloaded from the Court's Internet site (<www.echr.coe.int> – Case-law).

Sayı 184 – Nisan 2015 (tur)
Sayı 185 – Mayıs 2015 (tur)

Admissibility Guide: new translations

With the help of the Italian and Romanian governments, translations into Romanian and Italian of the third edition of the Practical Guide on Admissibility Criteria are now available. A translation into Chinese has also been published recently. The different linguistic versions of the Admissibility Guide can be downloaded from the Court's Internet site (<www.echr.coe.int> – Case-law).

欧洲人权法院案件受理标准实践指南 (chi)

Guida pratica sulle condizioni di ricevibilità (ita)

Ghid practic cu privire la condițiile de admisibilitate (rum)

Case-Law Guides: new translations

The Court has recently published on its Internet site (<www.echr.coe.int> – Case-law) a Turkish translation of the Guide on Article 5 (right to liberty and security), with the help of the Council of Europe's Directorate General Human Rights and Rule of Law; and the English version of the Guide on Article 9 (freedom of thought, conscience and religion).

Madde 5 rehberi – Özgürlük ve güvenlik hakki (tur)

Guide on Article 9 (freedom of thought, conscience and religion) (eng)

Joint FRA/ECHR Handbooks: new translations

A translation into German of the Handbook on European law relating to the rights of the child – which was published jointly by the Court, the Council of Europe and the European Union Agency for Fundamental Rights (FRA) in 2015 – is now available.

The IRZ (Deutsche Stiftung fur internationale rechtliche Zusammenarbeit e.V.) has just produced a translation into Macedonian of the Handbook on European data protection law, which was published jointly by the Court, the Council of Europe and the European Union Agency for Fundamental Rights (FRA) in 2014.

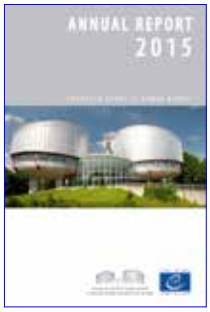
All FRA/ECHR Handbooks can be downloaded from the Court's Internet site (<www.echr.coe.int> – Case-law).

Handbuch zu den europarechtlichen Grundlagen im Bereich der Rechte des Kindes (ger)

Прирачник за европското законодавство за заштита на податоците (mak)

Annual Report 2015 of the ECHR

The Court has just issued the printed version of its Annual Report for 2015. This report contains a wealth of statistical and substantive information such as the Jurisconsult's overview of the main judgments and decisions delivered by the Court in 2015. An electronic version is available on the Court's Internet site (<www.echr.coe.int> – Publications).



Annual Report 2015 on the execution of judgments of the Court

The Committee of Ministers' Ninth Annual Report on the supervision of the execution of judgments of the European Court of Human Rights has just been published. It can be downloaded from the Internet site of the Council of Europe's Directorate General Human Rights and Rule of Law (<www.coe.int> – Protection of human rights – Execution of judgments of the Court).