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INFORMATION NOTE
on the Court's case-law

NOTE D'INFORMATION
sur la jurisprudence de la Cour

The Court's monthly round-up of case-law, news and publications

Le panorama mensuel de la jurisprudence, de l'actualité et des publications de la Cour

European Court of Human Rights

Cour européenne des droits de l'homme

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

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An annual index provides an overview of the cases that have been summarised in the monthly Information Notes. The annual index is cumulative; it is regularly updated.

-ooOoo-

La Note d'information contient les résumés d'affaires dont le greffe de la Cour a indiqué qu'elles présentaient un intérêt particulier. Les résumés sont rédigés par des juristes du greffe et ne lient pas la Cour. Ils sont en principe rédigés dans la langue de l'affaire concernée. Les traductions des résumés vers l'autre langue officielle de la Cour sont accessibles directement à partir de la Note d'information, au moyen d'hyperliens pointant vers la base de données HUDOC qui est alimentée au fur et à mesure de la réception des traductions. Les versions électroniques de la Note (en format PDF, EPUB et MOBI) peuvent être téléchargées à l'adresse suivante : www.echr.coe.int/NoteInformation/fr.

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Un index annuel récapitule les affaires résumées dans les Notes d'information. L'index est cumulatif pour chaque année ; il est régulièrement édité.

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RECENT PUBLICATIONS/PUBLICATIONS RÉCENTES

ARTICLE 2

Positive obligations (substantive aspect)/ Obligations positives (volet matériel)

Failure to preventively confiscate gun from student whose internet postings prior to committing school killings, while not containing specific threats, cast doubt on his fitness to safely possess firearm: *violation*

Défaut de saisie préventive du pistolet d'un étudiant ayant ensuite commis une tuerie dans son école, alors que ses publications antérieures sur Internet, bien que dépourvues de menaces spécifiques, jetaient un doute sur son aptitude à posséder une arme à feu en toute sécurité : *violation*

Kotilainen and Others/et autres – Finland/Finlande, 62439/12, Judgment/Arrêt 17.9.2020 [Section I]

Traduction française du résumé – Printable version

Facts – The applicants are relatives of individuals who were killed in a school shooting. The perpetrator (one of the students) had been licenced to possess a gun and, further to certain of his internet posts, had been interviewed by a police officer as regards his fitness to possess the weapon, following which it was decided that there was no need to withdraw his weapon. He killed ten people and then killed himself during the incident.

Law – Article 2 (substantive limb): The use of firearms entailed a high level of inherent risk to the right to life since any kind of misconduct, not only intentional but also negligent behaviour, involving the use of firearms might have fatal consequences on victims, and the risk of such weapons being used to commit deliberate criminal acts was even more serious. Accordingly, it was a form of dangerous activity which must engage the States' positive obligation to adopt and implement measures designed to ensure public safety. This primary obligation consisted in the duty to adopt regulations for the protection of life and to ensure the effective implementation and functioning of that regulatory framework.

(i) *Regulatory framework* – The Court was not prepared to hold that the absence of a nationwide sharing between the various local police authorities of information regarding past records of various threats which had not given rise to criminal proceedings could in itself be considered as a relevant deficiency.

(ii) *Licensing of the perpetrator's firearm* – The domestic courts had established that the licence granted to the perpetrator had been issued in compliance with the relevant legislation (the perpetrator had fulfilled the statutory requirements and had undergone a personal interview as a prerequisite for the license) and had found there was no evidence of negligence on the part of the licensing authorities. The Court saw no reason to call these findings into question.

(iii) *Existence of a real and immediate risk to life* – The domestic courts had concluded that, although, prior to the murderous attack committed by the perpetrator, there had been certain factual elements suggesting that the perpetrator might potentially pose a risk of committing life-threatening acts, the information available to the local police authority at the time preceding the perpetrator's criminal act, including his Internet postings, had not given rise to any reason to suspect an actual risk of an attack in the form of a school shooting. There remained a substantial difference between conduct involving video clips and cryptic postings on the Internet without any specific or even unspecific threats, and the indiscriminate killing of persons present at a specific location (see, *mutatis mutandis, Van Colle v. the United Kingdom,* 7678/09, 13 November 2012, Information Note 157). The domestic courts' approach had therefore not been inconsistent with the test of actual or imputed knowledge of a real and imminent risk to life as laid down in the Court's case-law.

Furthermore, the present case must also be distinguished from *Bljakaj and Others v. Croatia* (74448/12, 18 September 2014, Information Note 177), which concerned a mentally disturbed and dangerous person in respect of whom the need for further medical supervision had been identified and who, due to the acute state he had been in and the threats made by him, had been under immediate police control previously on the same day on which he severely wounded his wife and killed her lawyer.

The Court was therefore not in a position to conclude that there had been a real and immediate risk to life emanating from the perpetrator of which the police knew or ought to have known in advance of the attack. Thus, it could not be held that the circumstances in the present case had given rise to a duty of personal protection toward the victims of the subsequent killing, or toward the other pupils or staff of the school concerned.

The above conclusion was not affected by the argument advanced by the applicants according to which the police authority ought to have obtained the perpetrator's medical and military records to verify data regarding his mental health. Access by the police to an individual's medical data could not be a matter of routine and must remain subject to

specific requirements of necessity and justification, which could not be established with the benefit of hindsight. Furthermore, even if the data on the perpetrator's medical history had been available, it could not be determined whether or to what extent the assessment of whether the perpetrator posed a real and imminent risk at the relevant time might have depended on such information.

(iv) *Duty of special diligence* – The Court held that the duty to provide general protection to society against potential criminal acts of one or several individuals may be engaged in respect of persons, notably dangerous prisoners, who were in the charge of State authorities, or in circumstances where the imminent danger emanating from them had become apparent in connection with an intervention by the police. The Court considered that a similar obligation of special diligence was engaged in the circumstances of the present case.

Although the perpetrator was not in the charge of State authorities, those authorities were responsible for determining and upholding the requirements for the lawful possession of firearms. Given the particularly high level of risk to life involved in any misconduct with firearms, it was essential for the State to put in place and rigorously apply a system of adequate and effective safeguards designed to counteract and prevent any improper and dangerous use of such weapons. This entailed a duty for the authorities to intervene when alerted to facts that gave rise to concrete suspicions regarding compliance with such requirements.

In the present case, the local police had become aware of the perpetrator's postings on the Internet which, although they did not contain any threats, were of such a nature as to cast doubt on whether the perpetrator could safely remain in possession of a firearm. Indeed, the police had not remained passive but had conducted an interview with the perpetrator. No action had been taken, however, to confiscate the weapon he was known and licensed to possess. While an individual error of judgment could not suffice to conclude a violation of the State's positive obligations, especially not when identified with the benefit of hindsight, what was in issue in the present case could be seen to go beyond such an error of judgment.

For the Court, the seizure of the perpetrator's weapon was a reasonable measure of precaution to take under circumstances where doubts had arisen, on the basis of information that had come to the attention of the competent authority, as to whether the perpetrator was fit to possess a dangerous firearm. That measure would not have entailed any significant interference with any competing rights under the Convention, and thus it would not have involved any particularly difficult or delicate balancing exercise. Nor would such a measure have required any high threshold of application, rather the contrary. This finding was a matter separate from the conclusion according to which it could not be held that the decision not to seize the gun had been causally relevant to the subsequent killings, or that it had entailed a failure to comply with the State's obligation to provide personal protection to the victims.

Therefore, the domestic authorities had not observed the special duty of diligence incumbent on them because of the particularly high level of risk to life inherent in any misconduct involving the use of firearms. There had thus been a violation by the respondent State of its substantive positive obligations.

Conclusion: violation (six votes to one).

The Court found, unanimously, no violation of Article 2 under its procedural aspect.

Article 41: EUR 30,000 for non-pecuniary damage to each household unit jointly; EUR 31,571.97 for pecuniary damage to one of the applicants (loss of earnings owing to the death of his mother).

Effective investigation/Enquête effective

Failure of authorities to react with special diligence in conducting a thorough investigation following acid attack against a woman: *violation*

Manquement des autorités à réagir avec la diligence requise dans la conduite d'une enquête approfondie sur une attaque à l'acide contre une femme : *violation*

Tërshana – Albania/Albanie, 48756/14, Judgment/Arrêt 4.8.2020 [Section II]

Traduction française du résumé – Printable version

Facts – The applicant had been disfigured as a result of a serious acid attack by an unidentified assailant in a street in Tirana. Although she suspected her former husband, criminal investigations had not lead to any criminal conviction.

Law – Article 2 (procedural aspect): The Court had to examine whether the investigation carried out by the State authorities had met the requirements of the procedural limb of Article 2, having regard to the general situation of women in Albania in which the acid attack had occurred and the authorities' response in investigating the incident.

International reports in respect of Albania had repeatedly stressed a high prevalence of violence against women. Moreover, the national reports lend support to the view that at the relevant time vio-

lence against women was a widespread problem. International reports further noted that violence against women was under-reported, under-investigated, under-prosecuted, and under-sentenced. They suggested that the police and prosecuting authorities manifested an ineffectual approach to violence against women on the ground of 'social attitude and cultural values' and that a climate of leniency or impunity prevailed towards perpetrators of violence against women. At the time of the attack, there existed prima facie a general climate in Albania that was conducive to violence against women.

Where an attack happened in such a general climate, the investigation assumed even greater importance and the investigative authorities had to be more diligent in conducting a thorough investigation, in order to secure the effective implementation of the domestic laws which protected the right to life. Such diligence to investigate, amongst other things, an acid attack – which, according to the Convention on the Elimination of All Forms of Discrimination against Women Committee and other reports, might be a practice of "gender based violence" against women – had been reiterated in General Recommendation no. 19 according to which "States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation", and that had been firmly re-established in General Recommendation no. 35.

An investigation into the acid attack had been opened by the prosecutor and several investigative actions had been carried out in respect of the applicant's former husband, upon whom a compulsion order had been imposed. Further investigative steps had been undertaken, including the examination of the footage from the video cameras of two nearby banks. Nevertheless, at no point had the authorities been able to establish the nature of the substance found in the container and on the applicant's clothes. No chemical or toxicological expert report had been obtained as the relevant authorities either lacked the necessary specialist equipment or it was not within their competence to compile such reports. In that regard, it was difficult for the Court to accept that an investigative measure of crucial importance for the case, namely an expert report to enable the identification of the substance used to attack the applicant, had not been carried out with due expedition and determination. It was up to the domestic authorities to sort out the issues of competence or to establish specialised institutions to carry out such procedural steps which were decisive for the progress of the investigation and to meet the procedural obligations under Article 2.

The circumstances of the attack on the applicant – which had the hallmarks of a form of gender-based violence – should have incited the authorities to react with special diligence in carrying out the investigative measures. Whenever there was a suspicion that an attack might have been gender motivated, it was particularly important that the investigation was pursued with vigour.

The final decision in the case – a decision to stay the investigation, which had not been amenable to appeal – had not provided any definite answer to the nature of the substance found in the container and on the applicant's clothes. Moreover, despite the applicant's repeated inquiries about the progress of the investigation, she had not been given any information or documents in response. She could not therefore challenge (the omission of) any investigative actions or request the authorities to take other measures. Nor could she bring a claim for damages in the absence of an identified perpetrator. Accordingly, the criminal investigation in question had not been an effective response by the authorities to the acid attack.

Conclusion: violation (unanimously).

The Court also held, unanimously, that there had been no violation of the substantive aspect of Article 2 as there existed an effective legislative framework in Albania at the relevant time and that before the attack the applicant had not brought to the authorities' attention any risks posed to her by her former husband, which would have triggered the authorities' positive obligation to take preventive measures or other reasonable steps to protect her life.

Art. 41: EUR 12,000 in respect of non-pecuniary damage; claim for pecuniary damage dismissed.

ARTICLE 5

Article 5 § 3

Reasonableness of pre-trial detention/ Caractère raisonnable de la détention provisoire

Proper justification for applicant's pre-trial detention, unaffected by law limiting courts' powers to release terrorism suspects: *no violation*

Placement en détention provisoire ordonné par une décision adéquatement justifiée et non affectée par la loi limitant les pouvoirs des tribunaux en matière de libération de personnes soupçonnées de terrorisme : *non-violation*

Grubnyk – Ukraine, 58444/15, Judgment/Arrêt 17.9.2020 [Section V]

Traduction française du résumé – Printable version

Facts – Following an explosion outside the offices of the Odessa Regional Directorate of the Security Service of Ukraine, the applicant was arrested on suspicion of having participated in a terrorist act. He was placed in pre-trial detention, against which he appealed unsuccessfully. In this regard, the applicant complained of the application in his case of Article 176 § 5 of the Code of the Criminal Procedure ("the Bail Exclusion Clause"), which precluded the use of non-custodial preventive measures to terrorism suspects. Subsequently, the Constitutional Court declared unconstitutional the Bail Exclusion Clause on the grounds that its operation in practice had limited the domestic courts' ability to issue properly reasoned detention orders.

Law – The Court had held that legislative schemes limiting the domestic courts' decision-making powers in matters of pre-trial detention had breached Article 5 § 3 of the Convention (see *S.B.C. v. the United Kingdom*, 39360/98, 19 June 2001, Information Note 31; *Boicenco v. Moldova*, 41088/05, 11 July 2006, Information Note 88; *Piruzyan v. Armenia*, 33376/07, 26 June 2012, Information Note 153). In the present case, however, unlike in the above judgments, the domestic courts had the power to review the existence of a reasonable suspicion against the defendant, examine the evidence in this respect and order his release if they considered that no reasonable suspicion was shown in respect of the charges brought against him or if they had considered that there were no risks justifying detention. The domestic courts, which had before them considerable evidence in support of the suspicion against the applicant, had exercised this power of control in his case, as they had done in some other terrorism and national security-related cases.

The unavailability of release had been self-evident, given the specific circumstances of the applicant's case. He had been suspected of organising and leading a terrorist group composed of several individuals, one of whom had already absconded by the time the applicant had been arrested. The group had used sophisticated undercover operations techniques and had been engaged in a highly dangerous activity, an activity which had been allegedly ongoing at the time the arrest had been made.

In this context the authorities had been under a duty to protect the rights of the actual and potential victims of violent attacks under Articles 2, 3 and 5 § 1 of the Convention. In circumstances such as those in the applicant's case, it must interpret the scope of the authorities' obligations under Article 5 § 3 to provide reasons for their decisions in a manner consistent with the practical requirements of discharging that duty.

Moreover, the applicant's case had been examined against the background of great tensions in Odessa at the relevant time and the fleeing of defendants in other previous high-profile cases.

The District Court, which had full jurisdiction in that respect, had found that the evidence had supported a reasonable suspicion against the applicant on those specific charges and that there had been a risk of him absconding if released. Although the District Court's initial detention order had been stated in a succinct fashion, given that the danger of the applicant absconding had been evident, this could not alone amount to a violation of Article 5 § 3. Moreover, the degree of specificity of the domestic courts' reasons had evolved over time.

Most importantly, the decision to place the applicant in pre-trial detention had not been based on the Bail Exclusion Clause, although it had contained a reference to the latter, but had been the result of a balanced assessment which had taken into account the seriousness of the crime of which the applicant had been suspected and the risk posed by release.

The domestic courts had therefore given "relevant" reasons for his detention which were "sufficient" under the circumstances to meet the minimum standard of Article 5 § 3.

Conclusion: no violation (unanimously).

The Court also held, unanimously, that there had been two violations of Article 5 § 1, a first one on account of a delay in drawing up the applicant's arrest report, and a second one on the basis of the applicant's arrest without a prior court decision; that there had been no violation of Article 5 § 2 on the basis that nothing had indicated that any possible delay in the formal explanation of the reasons for the applicant's arrest had been in any way prejudicial to the applicant in terms of him being able to challenge the lawfulness of his detention; that there had been a violation of Article 6 § 2 on account of the wording in pre-trial detention order, which had expressed the domestic court's opinion that the defendant had been guilty.

Article 41: finding of violations constituted in itself sufficient just satisfaction for the non-pecuniary damage.

(See also *Khodorkovskiy v. Russia*, 5829/04, 31 May 2011, Information Note 141)

ARTICLE 8

Respect for private and family life/Respect de la vie privée et familiale
Respect for correspondence/Respect de la correspondance

Lack of legal basis for restrictions on detainee's right to receive and subscribe to socio-political magazines and newspapers: *violation*

Absence de base légale propre à justifier une restriction du droit d'un détenu de recevoir des magazines et journaux socio-politiques et d'y souscrire un abonnement : *violation*

Mirgadirov – Azerbaijan and Turkey/Azerbaïdjan et Turquie, 62775/14, Judgment/Arrêt 17.9.2020 [Section V]

Traduction française du résumé – Printable version

Facts – Following deportation from Turkey to Azerbaijan, the applicant was arrested in Azerbaijan and charged with high treason for espionage. He was held in detention pending trial. The investigator decided to restrict the applicant's rights to use the telephone, to correspond with and meet people other than his lawyers, and to receive and subscribe to any socio-political newspapers or magazines. These measures were imposed temporarily during the preliminary investigation, without any specific time-limit, on the basis of Articles 17.3 and 19.8 of the Law on the Guarantee of the Rights and Freedoms of Individuals Kept in Detention Facilities of 22 May 2012 ("the Law of May 2012"). The applicant unsuccessfully challenged these measures.

Law

(a) *Complaints against Azerbaijan*

Article 8: The impugned measures constituted an interference with the exercise of the applicant's right to respect for his private and family life and correspondence.

(i) *Restrictions on the applicant's right to receive and subscribe to any socio-political newspaper or magazine* – Neither Article 17.3 nor Article 19.8 of the Law of May 2012 provided for the possibility to impose such a restriction on a detainee. Moreover, Article 23 of the Law of May 2012, which governs a detainee's right to receive and subscribe to a newspaper or magazine, provided for restrictions only in respect of publications propagandising war, violence, extremism, terror and cruelty, or inciting racial, ethnic and social enmity and hostility, or containing pornography. The Azerbaijani Government had also failed to refer to any legal provision laying down restrictions in respect of receiving and subscribing to socio-political newspapers or magazines. Consequently, it was not possible to establish that the interference with the applicant's right in this regard had a legal basis in domestic law.

(ii) *Restrictions on the applicant's right to have telephone calls, correspondence and visits* – Those restrictions had a legal basis in domestic law, and the law itself was clear, accessible and sufficiently precise. They had amounted to a *de facto* outright ban on the applicant having any contact (meetings, telephone calls or correspondence) with the outside world, except for contact with his lawyers. However, neither the investigator nor the domestic courts had put forward any relevant justification in support of the imposition of such harsh and all-encompassing measures. In particular, the domestic authorities had confined themselves to referring to the necessity to protect the confidentiality of the investigation and prevent the disclosure of information about the investigation, without providing any explanation as to why the impugned measures were appropriate and necessary in the present case. The Court was unable to discern any factual elements which could have warranted such stringent limitations on the family visits in the instant case, since none of the applicant's family members had been in any way involved in the criminal proceedings in question, and there were no apparent indications that there was a risk of secret information being transferred to foreign intelligence services through his family members. The reasons given by the domestic authorities in support of those restrictions were not relevant and sufficient.

Conclusion: violation (unanimously).

The Court also held, unanimously, that there had been a violation of Article 5 § 1 on account of the absence of a reasonable suspicion that the applicant had committed an offence and on account of the applicant's detention from 19 to 20 November in the absence of a court order; that there had been a violation of Article 5 § 4 on account of the domestic courts' failure to assess the applicant's arguments in favour of his release, and of Article 6 § 2 on account of a public statement on July 2014 which had violated the applicant's right to be presumed innocent until proven guilty according to the law; that there had been no violation of Article 18 § 5 taken in conjunction with Article 5, on the basis that that the evidence before the Court did not enable it to find beyond reasonable doubt that the applicant's arrest and detention had pursued any ulterior purpose.

(b) *Complaints against Turkey* – The Court held that there was no need to examine the applicant's complaint under Article 5 § 4 against Turkey, and declared the remainder of his complaints against Turkey inadmissible.

Article 41: EUR 20,000 in respect of non-pecuniary damage; claim for pecuniary damage dismissed.

(See also *Khoroshenko v. Russia* [GC], 41418/04, 30 June 2015, Information Note 186; *Moiseyev v. Russia*, 62936/00, 9 October 2008, Information Note 112; and *Andrey Smirnov v. Russia*, 43149/10, 13 February 2018)

ARTICLE 10

Freedom of expression/Liberté d'expression

Video promoting continuation of pregnancy following Down syndrome diagnosis excluded from television advertising slots: *communicated*

Vidéo promouvant la poursuite de la grossesse en cas de trisomie 21 exclue des espaces publicitaires de la télévision : *affaire communiquée*

De Pracomtal et Fondation Jérôme Lejeune – France, 34701/17 and/et 35133/17, Communication [Section V]

English translation of the summary – Version imprimable

Dans le prolongement de la Journée mondiale de la trisomie 21, l'association requérante fit diffuser à titre gracieux par trois chaînes de télévision une vidéo de sensibilisation – « Chère future maman » – montrant des enfants et jeunes adultes trisomiques heureux de vivre, dont la première requérante.

Saisi de plaintes, le Conseil supérieur de l'audiovisuel (CSA) écrivit aux chaînes concernées pour leur indiquer que cette vidéo ne pouvait être diffusée dans le cadre de leurs plages publicitaires. En effet, le règlement n'admettait les diffusions à titre gracieux, telles que celles au bénéfice d'organisations caritatives, que pour les messages « d'intérêt général ». Or la vidéo litigieuse, qui se présentait comme une réponse aux craintes d'une femme enceinte après un diagnostic prénatal de trisomie, portait un message ambigu et non-consensuel, qui pouvait troubler en conscience les femmes qui, dans le respect de la législation applicable à l'avortement, avaient fait des choix de vie personnelle différents. S'inscrivant dans une démarche de lutte contre la stigmatisation des personnes handicapées, le CSA estima que ce message aurait pu être valorisé par une diffusion mieux encadrée et contextualisée, au sein d'émissions notamment. Le recours contre cette décision fut rejeté par le Conseil d'État.

Affaire communiquée sous l'angle de l'article 10 de la Convention.

ARTICLE 11

Freedom of peaceful assembly/Liberté de réunion pacifique

Ban on demonstrations in the context of the Covid-19 pandemic: *communicated*

Interdiction des manifestations dans le contexte de la pandémie de Covid-19 : *affaire communiquée*

Communauté genevoise d'action syndicale (CGAS) – Switzerland/Suisse, 21881/20, Communication [Section III]

English translation of the summary – Version imprimable

En application de la loi fédérale sur les épidémies, le Conseil fédéral suisse adopta le 13 mars 2020 un train de mesures comportant notamment la restriction de la liberté de réunion ou de manifestation, sous peine d'amende voire de privation de liberté pouvant aller jusqu'à trois ans pour tout organisateur ou participant à un rassemblement interdit.

En conséquence, l'association requérante – qui en temps normal organise ou participe à de nombreux rassemblements syndicaux chaque année – a notamment renoncé à l'organisation d'une manifestation prévue le 1er mai 2020, en retirant sa demande d'autorisation. Elle fait également état de plusieurs cas de manifestants pénalement poursuivis pour avoir contrevenu à l'interdiction litigieuse.

La requérante n'a pas saisi les instances nationales : selon elle, le droit interne n'offre pas de possibilité de recours contre les ordonnances du Conseil fédéral, en tant qu'actes de portée générale.

Affaire communiquée sous l'angle de l'article 11 de la Convention (avec des questions préliminaires sur la qualité de victime et l'épuisement des voies de recours internes).

Freedom of association/Liberté d'association

Criminal proceedings unnecessary vis-à-vis attempt to set up political party on religious basis: *violation*

Poursuites pénales non nécessaires pour avoir tenté de former un parti politique sur une base religieuse : *violation*

Yordanovi – Bulgaria/Bulgarie, 11157/11, Judgment/Arrêt 3.9.2020 [Section V]

English translation of the summary – Version imprimable

En fait – En septembre 2009, les deux requérants, frères issus de la communauté turco-musulmane en Bulgarie, ont organisé une réunion à laquelle ont participé une centaine de personnes et lors de laquelle la création d'un parti, l'adoption de ses statuts et l'élection de ses organes ont été entérinées. Quelques jours plus tard, les requérants ont fait l'objet de poursuites pénales, s'étant soldées par une décision de culpabilité et des sanctions, pour avoir tenté de créer un parti politique « sur une base religieuse ».

En droit – Article 11 : Les poursuites pénales contre les requérants, qui ont abouti à une décision de culpabilité et des sanctions pour avoir tenté de créer un parti politique, et donc d'exercer le droit de fonder une association ou un parti politique, doivent s'analyser comme une « restriction » à leur droit à la liberté d'association.

La restriction reposait sur l'article 166 du code pénal de 1968, qui réprime, entre autres, le fait de créer une organisation politique « sur une base religieuse ». Au regard de la formulation précise de cet article, les requérants savaient ou auraient dû savoir, en s'entourant au besoin de conseils éclairés, que leurs agissements en septembre 2009 pouvaient engager leur responsabilité pénale par le jeu de cette disposition.

Certes, faute d'une jurisprudence appliquant l'article 166 du code pénal de 1968 depuis l'entrée en vigueur de la Constitution de 1991, l'interprétation de cette phrase par les tribunaux pénaux bulgares ne pouvait être connue avec certitude. Mais leur appréciation en l'espèce était raisonnablement prévisible, compte tenu notamment de la manière dont la Cour constitutionnelle avait en 1992 interprété l'article 11, alinéa 4, de la Constitution de 1991, qui contient des termes presque identiques et auquel les tribunaux se sont d'ailleurs référés. Il ne faut donc y voir ni un revirement brusque et imprévisible de jurisprudence, ni un élargissement par analogie de la portée d'une loi pénale.

Au regard des débats parlementaires lors de l'adoption de l'article 11, alinéa 4, de la Constitution de 1991, ainsi que l'interprétation de cet article par la Cour constitutionnelle bulgare, les poursuites pénales contre les requérants poursuivaient les buts légitimes de « défense de l'ordre » et de « protection des droits et libertés d'autrui ».

Même sans avoir à se pencher sur l'appréciation faite par les tribunaux pénaux bulgares sur la question de savoir si le parti que les requérants ont tenté de créer pouvait à juste titre être considéré comme ayant « une base religieuse », et de juger ainsi si ces tribunaux se sont fondés sur une appréciation acceptable des faits pertinents, la Cour a de sérieux doutes sur la nécessité, au regard de l'article 11 § 2 de la Convention, d'assortir l'interdiction litigieuse de sanctions de nature pénale. Mais ce qui importe en l'espèce n'est pas tant la gravité des sanctions imposées aux requérants à la suite des poursuites pénales contre eux que le fait même que ces poursuites pénales, qui se sont soldées par un constat de culpabilité et des sanctions, ont été menées à leur encontre.

Or, force est de constater que les requérants n'ont pas poursuivi jusqu'au bout la procédure requise pour obtenir l'enregistrement du parti politique dont la création a été décidée en septembre 2009. En droit bulgare, la conséquence de cette omission est que ce parti ne peut exister et exercer son activité. Dès lors, le résultat visé par les autorités, assurer la coexistence pacifique des différents groupes ethniques et religieux en Bulgarie, pouvait être atteint dans le cadre d'une telle procédure, en refusant de faire droit à une demande d'enregistrement de ce parti politique. À cet égard, il existe en outre une possibilité pour les autorités de dissoudre un parti qui aurait été déclaré contraire à la Constitution par la Cour constitutionnelle. La Cour ne voit donc pas pourquoi, dans les circonstances de l'espèce, des poursuites pénales pour avoir tenté de créer un parti politique, qui ont abouti à une décision de déclarer les requérants coupables et de les sanctionner, qui représentent une réponse particulièrement grave de la part des autorités, seraient nécessaires en plus de ces possibilités.

Au surplus, l'article 166 du code pénal de 1968 existait bien avant la Constitution de 1991, au temps du régime communiste en Bulgarie. Et l'objectif de cette disposition était plutôt d'éliminer toute possibilité de réapparition des partis politiques « capitalistes » qui avaient existé avant l'instauration du régime et qui existaient toujours dans les « pays capitalistes », et non de défendre la tolérance religieuse et ethnique en Bulgarie. De surcroît, l'article 166 du code pénal de 1968 ne vise que la création d'une organisation politique sur une base religieuse, alors que l'article 11, alinéa 4, de la Constitution de 1991 prohibe également les partis politiques créés sur une base ethnique ou raciale.

Eu égard à ces considérations, les poursuites pénales contre requérants pour avoir tenté de créer un parti politique sur une base religieuse n'étaient pas nécessaires dans une société démocratique.

Conclusion : violation (six voix contre une).

Article 41 : constat de violation suffisant en lui-même pour le préjudice moral.

(Voir aussi *Artyomov c. Russie* (déc.), 17582/05, 7 décembre 2006, Note d'information 92)

ARTICLE 14

Discrimination (Article 8 and/et Article 6 § 2)

Allegations of racial profiling during identity control: *communicated*

Contrôle d'identité prétendument opéré « au faciès » : *affaire communiquée*

Wa Baile – Switzerland/Suisse, 43868/18, Communication 28.8.2020 [Section III]

English translation of the summary – Version imprimable

De nationalité suisse, le requérant fit l'objet d'un contrôle d'identité dans une gare, alors qu'il se rendait à son travail. S'estimant victime d'un contrôle « au faciès », il refusa de présenter ses papiers d'identité. Il put repartir après que les policiers eurent trouvé ses papiers dans son sac. Ce refus d'obtempérer lui valut une amende d'environ 140 EUR, qu'il contesta vainement devant les tribunaux comme discriminatoire, de manière directe ou indirecte, en fonction de sa couleur de peau.

Affaire communiquée sous l'angle de l'article 14 de la Convention, combiné avec l'article 8 ou l'article 6 § 2.

(Voir également *Basu c. Allemagne*, 215/19, affaire communiquée le 10 septembre 2019)

Discrimination (Article 2 of Protocol No. 1/ du Protocole n° 1)

Inability for autistic child to receive specialised learning support to which she was entitled by law, in first two years of primary school: *violation*

Impossibilité pour une enfant autiste de bénéficier d'un soutien scolaire spécialisé, prévu par la loi, pendant ses deux premières années d'école primaire : *violation*

G.L. – Italy/Italie, 59751/15, Judgment/Arrêt 10.9.2020 [Section I]

English translation of the summary – Version imprimable

En fait – La requérante, une enfant autiste non verbale née en 2004, n'a pas pu bénéficier, pendant ses deux premières années d'école primaire de 2010 à 2012, de l'assistance spécialisée à laquelle elle avait droit en vertu de la législation pertinente. Par conséquent, la requérante a dû payer une assistance spécialisée privée. Saisies par la requérante, les juridictions administratives l'ont déboutée de ses prétentions.

En droit – Article 14 de la Convention combiné avec l'article 2 du Protocole n° 1 : Le champ d'application de l'article 14 englobe non seulement l'interdiction de la discrimination fondée sur le handicap, mais aussi l'obligation pour les États d'assurer « des aménagements raisonnables » à même de corriger les inégalités factuelles qui, ne pouvant être justifiées, constitueraient une discrimination.

Le système juridique italien garantit le droit à l'instruction des enfants en situation de handicap sous la forme d'une éducation inclusive au sein des écoles ordinaires de l'école publique. Un enseignant de soutien est obligatoirement présent dans les classes intégrant des enfants handicapés et d'autres assistants sont prévus dans le cas où la situation de l'élève le nécessite.

a) *Refus de fournir l'assistance spécialisée à la requérante* – Au moment des faits, différentes dispositions législatives consacraient le droit des enfants en situation de handicap à l'éducation et leur protection contre la discrimination.

En prévoyant l'inclusion des enfants handicapés dans les établissements d'enseignement ordinaires, le législateur national a fait un choix dans le cadre de sa marge d'appréciation. En l'espèce, même si la loi prévoyait de façon abstraite la mise en place d'« aménagements » raisonnables sans laisser à cet égard la moindre marge de manœuvre à l'administration, les instances nationales compétentes n'ont pas précisé concrètement comment ces aménagements devraient être mis en œuvre de 2010 à 2012, et qu'ainsi la requérante n'a pas bénéficié pendant cette période d'une assistance spécialisée correspondant à ses besoins pédagogiques spécifiques.

La Cour considère que l'article 14 de la Convention doit être interprété à la lumière des exigences énoncées notamment de la Convention relative aux droits des personnes handicapées (CRDPH). Selon cet instrument, les « aménagements raisonnables » que les personnes en situation de handicap sont en droit d'attendre sont « les modifications et ajustements nécessaires et appropriés n'imposant pas de charge disproportionnée ou indue » apportés « en fonction des besoins dans une situation donnée » pour assurer à ces personnes « la jouissance ou l'exercice, sur la base de l'égalité avec les autres, de tous les droits de l'homme et de toutes les libertés fondamentales », et la discrimination fondée sur le handicap « comprend toutes les formes de discrimination, y compris le refus d'aménagement raisonnable ». En effet, les mesures d'aménagement raisonnable ont pour but de corriger des inégalités factuelles.

Certes, il n'appartient pas à la Cour de définir les « aménagements raisonnables » à mettre en œuvre dans le domaine de l'enseignement pour répondre aux besoins éducatifs des personnes en situation de handicap. Il importe cependant que les États soient particulièrement attentifs à leurs choix dans

ce domaine compte tenu de l'impact de ces derniers sur les enfants en situation de handicap, dont la vulnérabilité particulière ne peut être ignorée.

Pour le Gouvernement, en raison de l'affectation des seuls fonds disponibles aux besoins des personnes atteintes de sclérose latérale amyotrophique (SLA), les autorités ne disposaient pas de ressources financières susceptibles d'être rapidement allouées au soutien scolaire. Il affirme par ailleurs que l'administration scolaire a mis en place, à ses frais, une assistance spécialisée assurée par des employés de l'école. Il ne procure toutefois aucune information sur les compétences spécifiques de ces personnes ou sur l'aide fournie, ni aucune précision sur les périodes et les heures concernées. En outre, l'école a dépensé 476,56 EUR pour les services fournis par six personnes pendant une année scolaire.

Au regard de ces explications, la requérante n'a donc pas pu continuer à fréquenter l'école primaire dans des conditions équivalentes à celles dont bénéficiaient les élèves non handicapés, et cette différence de traitement était due à son handicap. Ainsi, pendant deux années scolaires, hormis une assistance privée payée par les parents de la requérante et quelques interventions d'employés de l'école, la requérante n'a pas reçu l'assistance spécialisée à laquelle elle avait pourtant droit et qui devait lui permettre de bénéficier du service éducatif et social offert par l'école dans des conditions d'égalité avec les autres élèves.

b) *Procédure devant les juridictions administratives* – Les juridictions administratives ont considéré que le manque de ressources financières justifiait le fait qu'il ne lui ait pas été fourni d'assistance spécialisée, sans rechercher si les autorités avaient ménagé un juste équilibre entre ses besoins éducatifs et la capacité restreinte de l'administration à y répondre ni si ses allégations de discrimination étaient fondées. Notamment, elles n'ont pas vérifié si les restrictions budgétaires invoquées par l'administration avaient eu le même impact sur l'offre de formation pour les enfants non handicapés et pour les enfants handicapés.

Les instances nationales n'ont jamais envisagé l'éventualité que le manque de ressources ou la nécessité extraordinaire de fournir des soins en priorité aux personnes atteintes d'une pathologie grave puissent être compensés non par une modification des aménagements raisonnables permettant de garantir aux enfants handicapés l'égalité des chances, mais par une réduction de l'offre éducative répartie équitablement entre les élèves non handicapés et les élèves handicapés, et ce alors que la Cour de cassation avait déjà souligné cet aspect dans ses arrêts. Compte tenu d'une part du modèle d'inclusion scolaire adopté en Italie, où tous les élèves sont accueillis dans la même filière, et d'autre part de la jurisprudence de la Cour de cassation, les éventuelles restrictions budgétaires doivent impacter l'offre de formation de manière équivalente pour les élèves handicapés et pour les élèves non handicapés.

c) *Conclusion* – Les autorités n'ont pas cherché à déterminer les véritables besoins de la requérante et les solutions susceptibles d'y répondre afin de lui permettre de fréquenter l'école primaire dans des conditions équivalentes dans la mesure du possible à celles dont bénéficiaient les autres enfants sans pour autant imposer à l'administration une charge disproportionnée ou indue.

En outre, la discrimination subie par la requérante est d'autant plus grave qu'elle a eu lieu dans le cadre de l'enseignement primaire, qui apporte les bases de l'instruction et de l'intégration sociale et les premières expériences de vivre ensemble, et qui est obligatoire dans la plupart des pays.

Le Gouvernement n'a pas démontré que les autorités nationales aient réagi avec la diligence requise pour garantir à la requérante la jouissance de son droit à l'éducation sur un pied d'égalité avec les autres élèves, de manière à ménager un juste équilibre entre les intérêts concurrents en jeu.

Conclusion : violation (unanimité).

Article 41 : 10 000 EUR pour préjudice moral ; 2 520 EUR pour dommage matériel.

(Voir *Ponomaryovi c. Bulgarie*, 5335/05, 21 juin 2011, Note d'information 142 ; *Çam c. Turquie*, 51500/08, 23 février 2016, Note d'information 193 ; *Şanlısoy c. Turquie* (déc.), 77023/12, 8 novembre 2016 ; *Enver Şahin c. Turquie*, 23065/12, 30 janvier 2018, Note d'information 214 ; *Stoian c. Roumanie*, 289/14, 25 juin 2019 ; voir aussi l'article 15 de la Charte sociale européenne révisée et la Recommandation Rec(2006)5 du Comité des Ministres du Conseil de l'Europe aux États membres sur le Plan d'action du Conseil de l'Europe pour la promotion des droits et de la pleine participation des personnes handicapées à la société : améliorer la qualité de vie des personnes handicapées en Europe 2006-2015, adoptée le 5 avril 2006)

ARTICLE 3 OF PROTOCOL No. 1/ DU PROTOCOLE N° 1

Stand for election/Se porter candidat aux élections

Arbitrary disqualification of a party three days before parliamentary elections on account of alleged use of undeclared foreign funds: *violation*

Disqualification arbitraire d'un parti trois jours avant les élections parlementaires à raison de l'utilisation alléguée de fonds étrangers non déclarés : *violation*

Political Party "Patria" and Others/Parti politique « Patria » et autres – Republic of Moldova/République de Moldova, 5113/15 et al., Judgment/Arrêt 4.8.2020 [Section II]

Traduction française du résumé – Printable version

Facts – The applicant party is a Moldovan political party without representation in Parliament at the time of the events. The other applicants were candidates on its electoral list in the November 2014 legislative elections. The leader of the party, one of the applicants, was a businessman in the Russian Federation. The application concerned the removal of the applicant party from the list of participants three days before the elections on the ground that, contrary to the provisions of the electoral law, it had used undeclared funds, including money from abroad.

Law – Article 3 of Protocol No. 1: The annulment of the party's registration constituted an interference both with the rights of the party and of the individual applicants under Article 3 of Protocol No. 1. This interference was based on a foreseeable law and pursued the legitimate aim of observance of the rule of law and the protection of democracy's proper functioning which implied the assurance of equal and fair conditions for all candidates in the electoral campaign and the protection of free expression of the opinion of the people in elections.

The decision to disqualify the applicant party had been based in the first place on the allegation that it had used for its campaign money of foreign origin belonging to the applicant, leader of the party. However, no evidence for this allegation had been presented by the police, and none had been requested by the Central Electoral Commission ("the CEC") nor by the domestic courts which had accepted this hypothesis without any reserve and, apparently, in the absence of any proof.

Another argument for disqualifying the applicant party, accepted by the CEC and the domestic courts, had been that it had spent undeclared money on the purchase of eleven cars in May 2014, as well as fuel and mobile communications. Again, no evidence had been presented to support these allegations by the police and none had been required by the CEC and domestic courts. Nevertheless, the applicant, leader of the party, had admitted during the proceedings that he had financed the purchase of eleven cars, but that purchase had taken place before the impugned foreign money had been brought into Moldova and before the electoral campaign had commenced, not to mention that it had happened before the creation of the applicant party.

Besides the lack of substantiation of the allegations against the applicant party, the applicant party had not been afforded sufficient procedural safeguards against arbitrariness. In particular, the CEC had informed the applicant party about its hearing only fifteen minutes in advance, instead of the minimum twelve hours required by the CEC rules thus taking the applicant party by surprise and leaving it unprepared for the hearing before the CEC. Moreover, the courts had disregarded all the pertinent arguments brought by the applicant party and had accepted without hesitation what appeared to be unsubstantiated accusations against it.

In sum, the applicant party's disqualification from participating in the elections had not been based on sufficient and relevant evidence, the procedures of the electoral commission and the domestic courts had not afforded the applicant party sufficient guarantees against arbitrariness, and the domestic authorities' decisions had lacked reasoning and had been thus arbitrary.

Conclusion: violation (unanimously).

Article 41: EUR 7,500 in respect of non-pecuniary damage for the applicant party; finding of a violation constituted sufficient just satisfaction in respect of non-pecuniary damage for the applicants other than the applicant party; claim for pecuniary damage dismissed.

OTHER JURISDICTIONS/ AUTRES JURIDICTIONS

European Union – Court of Justice (CJEU) and General Court/Union européenne – Cour de justice (CJUE) et Tribunal

Approximation of laws – The CJEU invalidates Decision 2016/1250 on the adequacy of the protection provided by the EU-US Data Protection Shield

Rapprochement des législations – La CJUE invalide la décision 2016/1250 relative à l'adéquation de la protection assurée par le bouclier de protection des données UE-États-Unis

Joined Cases/Affaires jointes C-133/19, C-136/19 and/et C-137/19, Judgment/Arrêt 16.7.2020

Press release – Communiqué de presse

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Area of Freedom, Security and Justice – The date to be taken into account, in order to determine whether a family member of a sponsor is a "minor child" is the date of submission of the application for entry and residence

Espace de liberté, sécurité et justice – La date à prendre en compte, pour déterminer si un membre de la famille d'un regroupant familial est un « enfant mineur », est la date de présentation de la demande d'entrée et de séjour

Case/Affaire C-311/18, Judgment/Arrêt 16.7.2020

Press release – Communiqué de presse

Inter-American Court of Human Rights (IACtHR)/Cour interaméricaine des droits de l'homme

Right to life/States' positive obligations regarding migrants' right to a fair trial

Droit à la vie/Obligations positives des États concernant le droit des migrants à un procès équitable

Roche Azaña et al./et autres – Nicaragua, Series C No. 403/Série C n° 403, Judgment/Arrêt 3.6.2020

[This summary was provided courtesy of the Secretariat of the Inter-American Court of Human Rights. It relates only to the merits and reparations aspects of the judgment. A more detailed, official abstract (in Spanish only) is available on that court's website: www.corteidh.or.cr.]

[Le présent résumé a été fourni gracieusement (en anglais uniquement) par le Secrétariat de la Cour interaméricaine des droits de l'homme. Il porte uniquement sur les questions de fond et de réparation traitées dans l'arrêt. Un résumé officiel plus détaillé (en espagnol uniquement) est disponible sur le site web de cette cour : www.corteidh.or.cr.]

On 8 April 1996 the first and second applicant – two siblings – departed from Ecuador with the aim of emigrating to the United States of America. On 14 April 1996 they arrived at Nicaragua's capital city, Managua, where they met with 30 other migrants to be transported in a van. At about 8:00 pm of that same day, while travelling to the cross-border city of Chinandega, the van went through three police checkpoints. The driver of the van refused to stop, despite the warnings made by State agents. As a result, several State agents fired shots at the van. At least six people were injured, including the two applicants. The first applicant was shot in the head, causing his death at around midnight on 15 April 1996. The second applicant was shot twice, which resulted in the fracture of his right hip and a severe wound in his right thigh. He was hospitalised and remained in a coma for two months.

As a result of these events, criminal proceedings were initiated against three military personnel, two policemen and one volunteer police member. In February 1997 a Jury Court found the defendants not guilty. They were subsequently acquitted of all charges. Neither the surviving applicant nor the applicants' parents were able to participate in the proceedings. In August 1998 the applicants' mother was served with the criminal court's decision acquitting the defendants.

Merits

(a) Articles 4 (right to life) and 5 (right to humane treatment) in conjunction with article 1(1) (obligation to respect rights) of the American Convention on Human Rights (ACHR): As regards the death of the first applicant and the wounds caused to the second applicant, the Inter-American Court of Human Rights (hereafter "the Court") focused its analysis on assessing whether the use of force in attempting to intercept the van was carried out in accordance with the ACHR standards in this matter. In that regard the Court considered that the use of force displayed by the State agents in the present case did not meet the criteria of legality, legitimate aim, absolute necessity and proportionality and, consequently, the first applicant's death as well as the second applicant's serious wounds were the result of the disproportionate use of force attributable to the State. In particular, the Court noted that the domestic legislation at the time of the events did not establish sufficiently clear guidelines as to the use of lethal force and firearms by State agents. It also held that the aim of the State agents was not legitimate, as it resulted in the death of the first applicant and the serious injuries caused to the second applicant, as well as the injuries caused to four other people. As regards the necessity requirement, the Court noted that the State agents could have used less harmful means to stop the van. Additionally, it recalled that the requirement of absolute necessity is not met when the use of force is displayed against persons who do not pose a direct danger, "even where the lack of use of force will result in the loss of the opportunity to capture them". Lastly, the Court also concluded that the use of force was not proportional, in view of the type of weapons (for military use) and the way they were used.

Accordingly, the Court determined that the first applicant's death constituted an arbitrary deprivation of life, in violation of Article 4(1) in conjunction with Article 1(1) of the ACHR. Moreover, the injuries caused to the second applicant constituted a violation of Article 5(1) in conjunction with Article 1(1) of the ACHR.

The Court also determined that the State failed to comply with its obligation to guarantee the rights to life and personal integrity through appropriate legislation on the use of force, in contravention of

Article 2 (domestic legal effects) in conjunction with Articles 4(1) and 5(1) of the ACHR.

Conclusion: violation (unanimously).

(b) Articles 8(1) (right to a fair trial) and 25 (right to judicial protection) of the ACHR: This judgment consolidates and develops standards relating to the duties of States to guarantee the rights of migrants to a fair trial and effective access to justice. The Court noted that the second applicant was not part of the criminal proceedings instituted against the alleged perpetrators of the shooting, nor was he granted any opportunity for any intervention. The Court observed that the second applicant's status as a migrant had a fundamental impact on his absence to participate in the proceedings, and stressed that the State had a positive obligation to adopt special measures that would help reduce or eliminate the obstacles and deficiencies on account of his migrant status, which in the end undermined the applicant's right to a fair trial. The Court also noted that the applicants' parents were not able to participate in the proceedings. Accordingly, the Court concluded that the State did not guarantee the applicants' right of access to justice.

Conclusion: violation (unanimously).

(c) Article 5 of the ACHR: Finally, the Court held that the State violated the applicants' parents' right to personal integrity.

Conclusion: violation (unanimously).

Reparations – The Court established that the judgment constituted *per se* a form of reparation and ordered the State to: (i) create and implement a training plan for members of the Nicaraguan National Police and the Nicaraguan Army on international standards on the use of force, as well as on the protection of the rights of persons in the context of mobility; (ii) publish the judgment and its official summary; and (iii) pay the monetary sums established in the judgment for pecuniary and non-pecuniary damages and for the reimbursement to the Victims' Legal Assistance Fund.

Inter-American Court of Human Rights (IACtHR)/Cour interaméricaine des droits de l'homme

Rights of the child / Violence against women / Right to education / Obligation to respect and guarantee rights without discrimination / Right to life, personal integrity, protection of honour and dignity

Droits de l'enfant / Violence à l'égard des femmes / Droit à l'instruction / Obligation de respecter et de garantir les droits sans discrimination / Droit à la vie, à l'intégrité personnelle, à la protection de l'honneur et de la dignité

Guzmán Albarracín et al./et autres – Ecuador/ Équateur, Series C No. 405/Série C n° 405, Judgment/Arrêt 24.6.2020

[This summary was provided courtesy of the Secretariat of the Inter-American Court of Human Rights. It relates only to the merits and reparations aspects of the judgment. A more detailed, official abstract (in Spanish only) is available on that court's website: www.corteidh.or.cr.]

[Le présent résumé a été fourni gracieusement (en anglais uniquement) par le Secrétariat de la Cour interaméricaine des droits de l'homme. Il porte uniquement sur les questions de fond et de réparation traitées dans l'arrêt. Un résumé officiel plus détaillé (en espagnol uniquement) est disponible sur le site web de cette cour : www.corteidh.or.cr.]

The applicant was 14 years old at the time of the events. As she was manifesting difficulties with certain subjects at the state school, the Vice Principal offered to help her, on the condition that they had sexual intercourse. This sexual relationship continued for over a year. On 12 December 2002, and due to this situation of sexual harassment and abuse, the applicant swallowed some tablets that contained white phosphorous. Once the school authorities knew what she had done, they took her to the infirmary and urged her to pray. They then contacted her mother, who arrived at the school shortly afterwards. She took her daughter by taxi to a hospital and, subsequently, to a clinic. The applicant died the next day.

Due to these events, criminal and administrative proceedings were opened. The Vice Principal was charged with aggravated rape. However, he absconded, resulting in the suspension of the proceedings against him. In September 2008, at the request of the Vice-Principal, the Ecuadorian courts declared that the statute of limitations applied to the criminal offence the Vice Principal had been charged with and dismissed the case.

Merits

(a) Article 1 (obligation to respect rights), Article 4(1) (rights to life), Article 5(1) (right to humane treatment), Article 11 (right to privacy) and Article 19 (rights of the child) of the American Convention on Human Rights (ACHR), Article 13 (right to education) of the Protocol of San Salvador, and Article 7 of the Convention of Belém do Pará on the Prevention, Punishment, and Eradication of Violence against Women

This is the first time that the Inter-American Court of Human Rights (hereafter "the Court") addressed a case of sexual violence against a child in the framework of the educational system. The Court established that the duties to prevent, punish and eradicate violence against women, and adopt pro-

tection measures regarding girls and boys, as well as the right to education, entail the obligation to protect girls and adolescents against sexual violence in the school environment. Furthermore, States must develop actions to monitor and prevent acts of sexual violence within educational institutions.

In the present case the Court observed that, for more than a year, the applicant had been subject to a situation that included harassment, abuse and sexual intercourse, which in the end involved the exercise of gross acts of sexual violence against her within an educational institutional setting. This occurred because a state official took advantage of an unequal balance of power between both of them. It was revealed that this sexual abuse was a condition set by the Vice Principle in order to help the applicant pass the school year. The Court described these facts as a relationship founded on abuse of power and trust, since the Vice Principal had committed acts of sexual violence against a child when he had a duty of care towards her. It also noted that in this context, prejudicial gender stereotypes tending to blame the victim had facilitated the exercise of power and the abuse of the relationship of trust. All of this allowed the commission of acts to the detriment of the applicant's rights, as a female adolescent, to live a life free from violence, as well as her right to education.

The Court noted that the state authorities had tolerated the acts of sexual violence, as they were aware of the situation. This institutional violence, which was not an isolated case, but rather part of a structural situation, was discriminatory because of the applicant's gender and age. The Court determined that the State had failed to adopt adequate measures to address acts of sexual violence in the educational setting. It also stablished the State's failure to provide the applicant with education on sexual and reproductive rights, which had increased her situation of vulnerability.

Conclusion: violation (unanimously).

(b) Article 8(1) (right to a fair trial), Article 24 (right to equal protection) and Article 25(1) (right to judicial protection) of the ACHR, in conjunction with Articles 1(1) and 2 (domestic legal effects) of the ACHR and Article 7(b) of the Convention of Belém do Pará: The State acknowledged its responsibility for the lack of due diligence in the framework of the administrative and criminal proceedings. The Court additionally stressed that the proceedings had not been conducted within a reasonable timeframe. It also noted that the judicial decision was based on gender stereotypes to the detriment of the applicant and was thus discriminatory, inasmuch as it considered that it was not the Vice Principle who had "persecuted" the applicant, but the adolescent, who had "seduced" the Vice Principle by requesting "teaching favours". The Court also established that States should implement simple, safe and accessible mechanisms so that such acts of sexual violence could be reported, investigated and punished.

Conclusion: violation (unanimously).

(c) Article 5 (personal integrity) in conjunction with Article 1(1) of the ACHR: Finally, the Court also determined that the right to personal integrity had been violated to the detriment of the applicant's mother and sister.

Conclusion: violation (unanimously).

Reparations – The Court established that the judgment constituted, in itself, a form of reparation and, in addition, ordered the State to: (i) provide psychological treatment to the applicant's mother and sister; (ii) hold a public act of acknowledgment of responsibility; (iii) grant, posthumously, the Bachelor's degree to the applicant; (iv) declare an official day to combat sexual violence in classrooms; (v) adopt measures to address sexual violence in education; (vi) pay compensation for pecuniary and non-pecuniary damages and the legal costs.

COURT NEWS/DERNIÈRES NOUVELLES DE LA COUR

Elections/Élections

On 7 September 2020 the plenary Court elected Marialena Tsirli Registrar of the Court for a five-year term of office starting on 1 December 2020. Marialena Tsirli is the first female Registrar in the history of the Court.

Les juges de la Cour ont élu Marialena Tsirli en tant que greffière de la Cour, pour un mandat de cinq ans à compter du 1er décembre 2020. Marialena Tsirli est la première femme greffière dans l'histoire de la Cour.

Interim measures/Mesures provisoires

On 28 September 2020 the Court received a request for interim measure lodged by Armenia

against Azerbaijan, in which the Armenian Government requested the Court to indicate to the Azerbaijani Government "to cease the military attacks towards the civilian settlements along the entire line of contact of the armed forces of Armenia and Artsakh; to stop indiscriminate attacks; to stop targeting civilian population, civilian objects and settlements" (see press release).

On 29 September 2020 the Court granted an interim measure in the case of *Armenia v. Azerbaijan* (see press release).

-ooOoo-

Le 28 septembre 2020, la Cour a reçu une demande de mesure provisoire introduite par l'Arménie contre l'Azerbaïdjan, dans laquelle le gouvernement arménien demande à la Cour d'indiquer au gouvernement azerbaïdjanais «de cesser les attaques militaires contre les populations civiles sur toute la ligne de contact des forces armées d'Arménie et d'Artsakh; de cesser les attaques aveugles; de cesser de cibler la population civile ainsi que les biens civils et les agglomérations» (voir le communiqué de presse).

Le 29 septembre 2020, la cour a accordé une mesure provisoire dans l'affaire *Arménie c. Azebaïdjan* (voir le communiqué de presse).

New inter-State application/Nouvelle requête interétatique

The Government of Liechtenstein lodged an inter-State application against the Czech Republic, alleging breaches of the rights of its citizens in property cases. For more information, see the press release.

-ooOoo-

Le gouvernement du Liechtenstein a introduit contre la République tchèque une requête étatique, invoquant des violations des droits de ses ressortissants dans des affaires patrimoniales. Voir le communiqué de presse pour plus d'informations.

Protocol No. 15/Protocole n° 15

On 18 September 2020 Bosnia and Herzegovina ratified Protocol No. 15 amending the European Convention on Human Rights. This means that only one more ratification, by Italy, is needed to trigger the entry into force of this Protocol, which will reduce the time-limit set by the Convention for applying to the Court from six months to four months.

-ooOoo-

Le 18 septembre 2020, la Bosnie-Herzégovine a ratifié le Protocole n° 15 portant amendement à la Convention européenne des droits de l'homme. Il ne manque donc plus qu'une ratification, celle de l'Italie, pour déclencher l'entrée en vigueur de ce protocole qui fera passer de six mois à quatre mois le délais prévu par la Convention pour saisir la Cour.

Conference: 70th anniversary of the Convention / Conférence : 70 ans de la Convention

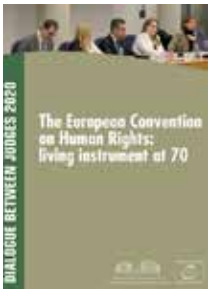
To mark the 70th anniversary of the Convention, the Court held a conference on 18 September 2020 entitled "The European Convention on Human Rights at 70 – Milestones and major achievements". Leading figures from the judicial world took part in the celebrations, including by video link. More information is available on the Court's website.

Pour marquer les 70 ans de la Convention, la Cour a tenu une conférence le 18 septembre 2020 sur le thème «La Convention européenne des droits de l'homme a 70 ans – Dates marquantes et grandes avancées». Des personnalités du monde judicaire ont pris part à ces célébrations, notamment par vidéoconférence. Plus d'informations sont disponibles sur le site web de la Cour.

RECENT PUBLICATIONS/ PUBLICATIONS RÉCENTES

Dialogue between Judges 2020/Dialogue entre juges 2020

The proceedings of the Seminar for the Opening of the 2020 judicial year on the theme of "The Convention: living Instrument at 70" have just been published on the Court's website.



Les actes du séminaire de l'inauguration de l'année judiciaire 2020, portant sur le thème «La Convention européenne des droits de l'homme: un instru-

ment vivant de 70 ans », viennent d'être publiés sur le site web de la Cour.

New factsheets/Nouvelles fiches thématiques

The Court has just published four new factsheets on its case-law on the following themes:

- Independence of the justice system
- Restrictions on the right to liberty and security for reasons other than those prescribed by the European Convention on Human Rights
- Right to respect for family life of prisoners in remote penal facilities
- Use of force in the policing of demonstrations

All the Press factsheets, in English, French and some non-official languages, are available for downloading from the Court's website.

-ooOoo-

La Cour vient de publier quatre nouvelles fiches thématiques sur sa jurisprudence, portant sur les thèmes suivants :

- Indépendance de la justice
- Restrictions au droit à la liberté et à la sûreté pour des raisons autres que celles prévues par la Convention européenne des droits de l'homme
- Droit au respect de la vie familiale des personnes détenues dans des établissements pénitentiaires éloignés
- Usage de la force pour le maintien de l'ordre lors des manifestations

Toutes les fiches thématiques de la Presse en français et en anglais, mais aussi pour certaines dans d'autres langues non officielles, sont disponibles sur le site web de la Cour.

Joint FRA/ECHR handbooks: new translations/ Manuels conjoints FRA/CEDH : nouvelles traductions

A translation into Georgian of the Handbook on European law relating to the rights of the child and a translation into Romanian of the 2018 Handbook on European data protection law have recently been published. All the handbooks can be downloaded from the Court's website.

- ბავშვის უფლებების ევროპული სამართლის სახელმძღვანელო (geo)
- Manual de legislație europeană privind protecția datelor (ron)

Une traduction en géorgien du Manuel de droit européen en matière de droits de l'enfant ainsi qu'une traduction en roumain du Manuel 2018 de droit européen en matière de protection des données viennent d'être publiées. Tous les manuels peuvent être téléchargés à partir du site web de la Cour.