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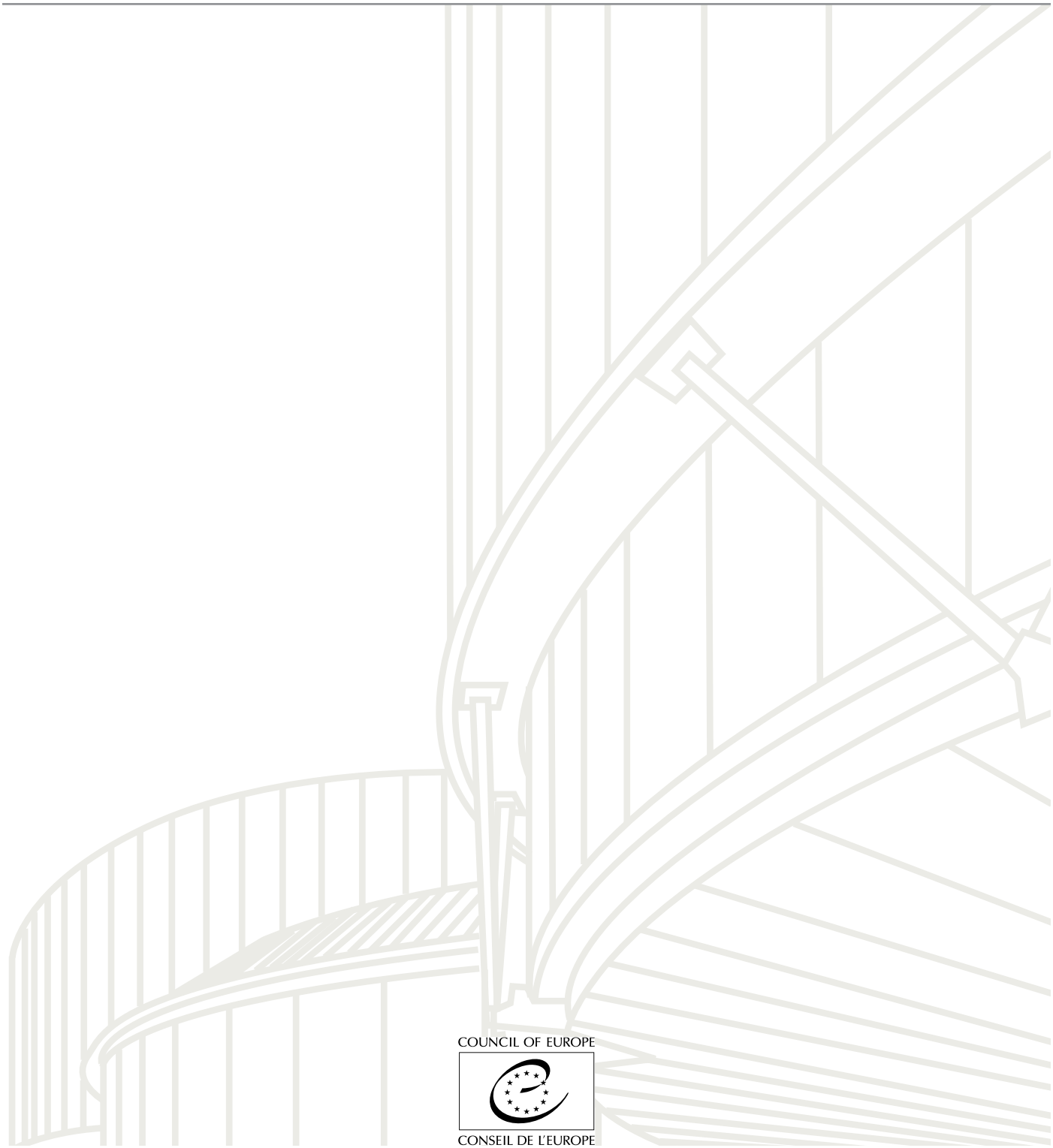

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Degrading treatment

Lack of physiotherapy and of adequate access to sanitary facilities for severely disabled prisoner: *violation*

Helhal v. France - 10401/12
Judgment 19.2.2015 [Section V]

Facts – The applicant, who has suffered since 2006 from paraplegia of the lower limbs and double incontinence, is currently serving a thirty-year prison sentence. In August 2010 he applied to the judge responsible for the execution of sentences to have his sentence suspended on medical grounds. He complained that the prison premises were not adapted to his disability, as a result of which he could only move around in a wheelchair, that he had to be assisted in taking a shower by another prisoner assigned to him for that purpose, and that the physiotherapy he received was inadequate. In February 2011 the court responsible for the execution of sentences rejected his application and found, taking into account two concurring expert medical opinions, that the applicant's state of health was compatible with imprisonment. However, the court observed that the prison was not adapted to the applicant's needs and that other establishments existed that would be better equipped to receive him. The appeals lodged by the applicant against that judgment were dismissed.

Law – Article 3: As the applicant had a disability which left him largely confined to a wheelchair – although he could apparently walk at times with the aid of walking sticks or a walking frame – his complaints were examined in the light of the principles governing the State's duty of care towards individuals with disabilities, in view of their vulnerability when it came to dealing with the hardships of detention.

As to the quality of the care provided to the applicant in detention, and in particular the question whether the national authorities had done everything that could reasonably be expected of them to provide him with the rehabilitative treatment he needed and offer him some prospect of an improvement in his condition, no physiotherapy had been provided in the prison for three years. Throughout that period, no specific measures had been taken nor had any efforts been made to enable the applicant to have physiotherapy sessions adapted to his condition, in spite of the doctors' repeated recommendations that he be treated in a specialist setting. The attitude of the applicant, who had apparently been reluctant to seek a transfer because of the distance from his family, was not sufficient to justify the inaction of the prison and health care authorities.

With regard to the conditions of detention and access to the sanitary facilities, and especially the showers, the applicant was unable to get to the facilities unaided since they were not located within the cell, nor were they wheelchair-accessible. Furthermore, in view of the applicant's condition, the prisoner assigned to assist him with daily tasks had to help him wash, a situation that had been deemed unacceptable by the Inspector General of Prisons. Although the legislature had made provision in 2009 for all prisoners with a disability to designate a carer of their own choosing, such a measure – even assuming that the relevant criteria had been met in the instant case – was not sufficient to cater for the needs of the applicant, who found showering difficult because of his incontinence, the lack of privacy and the fact that a fellow prisoner was given the task of assisting him. That assistance was not provided in addition to any care dispensed by health care professionals, and the prisoner assigned to help the applicant had not received the training required to assist a person suffering from a disability. In that connection the Court had held on several occasions that where assistance was provided, even willingly, by a fellow prisoner, this did not mean that the applicant's special needs had been met or that the State had fulfilled its obligations in that regard under Article 3 of the Convention.

In sum, while the applicant's continuing detention was not in itself incompatible with Article 3 of the Convention, the domestic authorities had not provided him with the care required in order to protect him against treatment contrary to that

provision. In view of his severe disability and the fact that he was doubly incontinent, the length of time he had spent in detention without any rehabilitative treatment, in an establishment where he could take a shower only with the help of a fellow prisoner, had subjected the applicant to hardship exceeding the unavoidable level of suffering inherent in detention. Those circumstances amounted to degrading treatment in breach of Article 3. The fact that there was nothing to suggest that the authorities had acted with the intention of humiliating or debasing the applicant did nothing to alter that finding.

Conclusion: violation (unanimously).

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

Inhuman or degrading punishment

Continued detention under whole life order following clarification of Secretary of State's powers to order release: *no violation*

Hutchinson v. the United Kingdom - 57592/08
Judgment 3.2.2015 [Section IV]

Facts – Following his conviction in September 1984 of aggravated burglary, rape and three counts of murder, the applicant was sentenced to life imprisonment with a recommended minimum tariff of 18 years. In December 1994 the Secretary of State informed him that he had decided to impose a whole life term. Following the entry into force of the Criminal Justice Act 2003, the applicant applied for a review of his minimum term of imprisonment. In May 2008 the High Court found that there was no reason for deviating from this decision given the seriousness of the offences. The applicant's appeal was dismissed by the Court of Appeal in October 2008.

In his application to the European Court, the applicant alleged that the whole life order with no prospects of release had violated Article 3 of the Convention.

Law – Article 3: The case centred on whether the Secretary of State's discretion to release a whole life prisoner under section 30 of the Criminal Justice Act 2003 was sufficient to make the whole life sentence imposed on the applicant legally and effectively reducible. In *Vinter and Others v. the United Kingdom*, the Grand Chamber found that was a lack of clarity in the law as chapter 12 of the Indeterminate Sentence Manual (which provided that release would be ordered only if the prisoner were terminally ill or physically incapacitated) gave rise to uncertainty as to whether the section 30 power would be exercised in a manner compliant with Article 3. In addition, the fact that the Manual had not been amended meant that prisoners subject to whole life orders derived from it only a partial picture of the exceptional conditions capable of leading to the exercise of the Secretary of State's power under section 30.

The Court of Appeal had, however, since delivered a judgment expressly responding to the concerns detailed in *Vinter and Others*. In *R v. Newell; R v McLoughlin*[1] the Court of Appeal held that it was of no consequence that the Manual had not been revised, since it was clearly established in domestic law that the Secretary of State was bound to exercise his power under section 30 in a manner compatible with Article 3. If an offender subject to a whole life order could establish that "exceptional circumstances" had arisen subsequent to the imposition of the sentence, the Secretary of State had to consider whether such exceptional circumstances justified release on compassionate grounds. Regardless of the policy set out in the Manual, the Secretary of State had to consider all the relevant circumstances, in a manner compatible with Article 3. Any decision by the Secretary of State would have to be reasoned by reference to the circumstances of each case and would be subject to judicial review, which would serve to elucidate the meaning of the terms "exceptional circumstances" and "compassionate grounds", as was the usual process under the common law. In the judgment of the Court of Appeal, domestic law therefore did provide to an offender sentenced to a whole life order hope and the possibility of release in the event of exceptional circumstances which meant that the punishment was no longer justified.

Where, as here, the national court had specifically addressed doubts expressed by the Court regarding the clarity of domestic law and set out an unequivocal statement of the legal position, the Court had to accept the national court's interpretation of domestic law.

Conclusion: no violation (six votes to one).

(See *Vinter and Others v. the United Kingdom* [GC], 66069/09, 130/10 and 3896/10, 9 July 2013, Information Note 165)

1. *R v. Newell*; *R v. McLoughlin* [2014] EWCA Crim 188.

Effective investigation

Refusal to reopen criminal proceedings in respect of which Government had submitted unilateral declaration: *relinquishment in favour of the Grand Chamber*

Jeronovičs v. Latvia - 44898/10
[Section IV]

In 1998 the applicant instituted criminal proceedings concerning his alleged ill-treatment by police officers with a view to extracting a confession. Those proceedings were ultimately discontinued. In 2001 the applicant lodged an application (no. 547/02) with the European Court complaining, *inter alia*, about the ill-treatment and the lack of an effective investigation. In respect of that complaint the Government submitted a unilateral declaration acknowledging a breach of Article 3 and awarding the applicant compensation. The application was consequently struck out of the list in so far as it concerned the complaints referred to in the unilateral declaration. In 2010, the authorities refused a request by the applicant to have the criminal proceedings relating to his allegations of ill-treatment by the police reopened after finding that the Government's unilateral declaration could not be considered newly-disclosed evidence within the meaning of the relevant domestic legislation.

In his present application to the Court, the applicant complains in substance that, despite the acknowledgment by the Government of the breach of his rights under Article 3 of the Convention, the State authorities have failed to properly investigate his ill-treatment by the police officers.

The case was communicated under Articles 3 and 13 of the Convention. On 3 February 2015 a Chamber of the Court decided to relinquish jurisdiction in favour of the Grand Chamber.

Expulsion

Proposed removal of a young man with no dependents to Italy under Dublin II Regulation: *inadmissible*

A.M.E. v. the Netherlands - 51428/10
Decision 13.1.2015 [Section III]

Facts – The applicant, who claims to be a Somali national, entered Italy in April 2009 in a group of about 200 people. The next day the local police took his fingerprints and registered him as having illegally entered the territory of the European Union. He was subsequently transferred to a reception centre for asylum-seekers, where he applied for international protection and was granted an Italian residence permit for subsidiary protection valid for three years. In May 2009 he left the reception centre for an unknown destination before applying for asylum in the Netherlands in October 2009. In April 2010 the Netherlands authorities requested the Italian authorities to take back the applicant under the terms of the Dublin II Regulation.[1] As the Italian authorities failed to react to that request within two weeks, they were considered as having acceded to it implicitly.

In his application to the European Court, the applicant complained that his transfer to Italy would be in breach of Article 3 of the Convention in that he risked to be exposed there to bad living conditions where no reception, care and legal aid were available for asylum-seekers.

Law – Article 3: Unlike the applicants in the case of *Tarakhel*, who were a family with six minor children, the applicant was an able young man with no dependents. As regards transfers to Italy under the Dublin II Regulation, the Netherlands authorities had decided in consultation with the Italian authorities how and when transfers of asylum seekers to the Italian authorities would take place and in principle three working days' notice was given. Moreover, the situation in Italy for asylum-seekers could in no way be compared to the situation in Greece at the time of the *M.S.S.* judgment. The structure and overall situation of the reception arrangements in Italy could not in themselves act as a bar to all removals of asylum seekers to that country. Therefore, bearing in mind how he had been treated by the Italian authorities after his arrival in Italy, the applicant had not established that his future prospects, if returned to Italy, whether taken from a material, physical or psychological perspective, disclosed a sufficiently real and imminent risk of hardship severe enough to fall within the scope of Article 3. There was no indication that he would not be able to benefit from the available resources in Italy for asylum-seekers or that, in case of difficulties, the Italian authorities would not respond in an appropriate manner.

Conclusion: inadmissible (manifestly ill-founded).

1. Council Regulation (EC) No. 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.

(See *Tarakhel v. Switzerland* [GC], 29217/12, 4 November 2014, Information Note 179; and M.*S.S. v. Belgium and Greece* [GC], 30696/09, 20 January 2011, Information Note 137; see also the Factsheet on "Dublin" cases)

ARTICLE 5

Article 5 § 1 (e)

Persons of unsound mind

Lack of effective legal representation in proceedings concerning applicant's confinement in a psychiatric hospital: *violation*

M.S. v. Croatia (no. 2) - 75450/12
Judgment 19.2.2015 [Section I]

Facts – In 2012 the applicant went to a hospital emergency room complaining of severe lower-back pain. She was diagnosed with lumbago and psychiatric disorders and admitted against her will to a psychiatric clinic where she was forcibly tied to a bed in an isolation room and kept in that position until the next morning. A county court subsequently ordered her continued confinement in the clinic in a decision that was upheld by a three-judge panel, despite the applicant's request for her discharge and complaints of ill-treatment in the clinic. The applicant was discharged a month after her forced hospitalisation.

Law – Article 3

(a) *Procedural aspect* – Both the applicant and her sister had complained in writing to the hospital administration of ill-treatment during the applicant's involuntary confinement and had provided detailed information about the treatment and the pain suffered as a consequence of physical constraint for 15 hours. Their allegations, supported by medical documentation, had raised an arguable claim of ill-treatment, which had in turn triggered the authorities' obligation to conduct an effective official investigation. However, the complaints had not been examined by the domestic courts or forwarded to other competent authorities for further investigation.

Conclusion: violation (unanimously)

(b) *Substantive aspect* – Developments in legal standards on seclusion and other forms of coercive and non-consensual measures against patients with psychological or intellectual disabilities in hospitals and all other places of deprivation of liberty required that such measures be employed as a matter of last resort and when their application is the only means available to prevent immediate or imminent harm to the patient or others. The use of such measures must be commensurate with adequate safeguards against abuse, providing sufficient procedural protection, and capable of demonstrating sufficient justification that the requirements of ultimate necessity and proportionality have been complied with and that all other reasonable options failed to satisfactorily contain the risk of harm to the patient or others. It must also be shown that the measure was not prolonged beyond the period strictly necessary for that purpose.

In the instant case, the applicant's medical records did not suggest that she posed any immediate or imminent harm to herself or others or that she had been aggressive in any way. The fact that she may have given incoherent information about her health issues could not in itself justify the use of measures of physical restraint. Nor had it been shown that any alternative means had been tried, that physical restraint had been used as a matter of last resort, or that the measure had been necessary and proportionate in the circumstances. Lastly, the Court was not satisfied that the applicant's condition while restrained had been effectively and adequately monitored. Therefore, the ill-treatment the applicant had been subjected to had amounted to inhuman and degrading treatment.

Conclusion: violation (unanimously)

Article 5 § 1 (e): The county court had appointed a legal aid lawyer to represent the applicant in the involuntary confinement proceedings. However, he did not meet the applicant, provide her with legal advice or make submissions on her behalf and acted as a passive observer during the hearing. The mere appointment of a lawyer, without him or her actually providing legal assistance, could not satisfy the requirements of necessary "legal assistance" for persons confined on the ground of "unsound mind". Effective legal representation of persons with disabilities required an enhanced duty of supervision of their legal representatives by the competent domestic courts. Although aware of the lawyer's omissions, the domestic authorities had failed to take appropriate measures to secure the applicant's effective legal representation. Furthermore, although the judge conducting the proceedings had visited the applicant in hospital, he had made no appropriate adjustments to secure her effective access to justice, such as informing her of her rights or considering the possibility for her to participate in the hearing. In this respect,

there had been no valid justification for the applicant's exclusion from the hearing. In view of several shortcomings in the procedure for the applicant's involuntary hospitalisation, the Court concluded that the domestic authorities had failed to meet the necessary procedural requirements under Article 5.

Conclusion: violation (unanimously)

Article 41: no claim made in respect of damage.

(See also *M.S. v. Croatia*, 36337/10, 25 April 2013; *Bureš v. the Czech Republic*, 37679/08, 18 October 2012. See also the Factsheets on Mental Health and Persons with disabilities)

ARTICLE 6

Article 6 § 1 (civil)

Civil rights and obligations
Fair hearing

Grossly arbitrary construction of European Court's judgment by Supreme Court when dismissing exceptional appeal: *Article 6 § 1 applicable; violation*

Bochan v. Ukraine (no. 2) - 22251/08
Judgment 5.2.2015 [GC]

Facts – The applicant was involved in longstanding but ultimately unsuccessful litigation over title to land in the domestic courts. In 2001 she lodged an application with the European Court complaining of unfairness in the domestic proceedings. In a judgment of 3 May 2007 (*Bochan v. Ukraine*, 7577/02) the Court found a violation of Article 6 § 1 of the Convention on the grounds that the domestic courts' decisions had been reached in proceedings which failed to respect the Article 6 § 1 fair-hearing guarantees of independence and impartiality, legal certainty and the requirement to give sufficient reasons. It awarded the applicant EUR 2,000 in respect of non-pecuniary damage.

Relying on the European Court's judgment, the applicant then lodged an "appeal in the light of exceptional circumstances" ("exceptional appeal") in which she asked the Ukrainian Supreme Court to quash the domestic courts' decisions in her case and to allow her claims in full. In March 2008 the Supreme Court dismissed her appeal after finding that the domestic decisions were correct and well-founded. In June 2008 it declared a further exceptional appeal lodged by the applicant inadmissible.

In her application to the European Court in the instant case, the applicant complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 that in dismissing her exceptional appeal the Supreme Court had failed to take into account the European Court's findings in its judgment of 3 May 2007.

Law – Article 6 § 1: The Court had to determine three issues: (a) whether it was prevented by Article 46 of the Convention from dealing with the applicant's complaints given that the Committee of Ministers of the Council of Europe was still supervising execution of the judgment of 3 May 2007, (b) whether the domestic proceedings on the applicant's exceptional appeal attracted the Convention guarantees and, if so, (c) whether the requirements of Article 6 § 1 had been complied with.

(a) *Whether the Court was prevented by Article 46 from examining the complaints* – The Grand Chamber reiterated that the Committee of Ministers' role in the sphere of execution of the Court's judgments does not prevent the Court from examining a fresh application concerning measures taken by a respondent State in execution of a judgment if that application contains relevant new information relating to issues undecided by the initial judgment.

Some of the applicant's pleadings in the present case could be understood as complaining about an alleged lack of proper execution of the Court's judgment of 3 May 2007. However, complaints of a failure either to execute the Court's judgments or to redress a violation already found by the Court fell outside the Court's competence. The applicant's complaints concerning the failure to remedy the original violation of Article 6 § 1 in her previous case were thus inadmissible.

However, the applicant had also raised a new grievance concerning the conduct and fairness of the proceedings decided by the Supreme Court in March 2008. She alleged, in particular, that the reasoning employed by the Supreme Court in that decision had manifestly contradicted the Court's pertinent findings in its 2007 judgment. This new grievance was thus about the manner in which the March 2008 decision had been reached in the proceedings concerning the applicant's exceptional appeal, not about the outcome of those proceedings as such or the effectiveness of the national courts' implementation of the Court's judgment. It thus concerned a situation distinct from that examined

in the 2007 judgment and contained relevant new information relating to issues undecided by that judgment. Accordingly, the Court was not prevented by Article 46 of the Convention from examining the applicant's new complaint about the unfairness of the proceedings that had culminated in the Supreme Court's decision of March 2008.

(b) *Applicability of Article 6 to the proceedings concerning the applicant's exceptional appeal* – While Article 6 § 1 was not normally applicable to extraordinary appeals seeking the reopening of terminated judicial proceedings, the nature, scope and specific features of the proceedings on a given extraordinary appeal in the particular legal system concerned may be such as to bring the proceedings on that kind of appeal within the ambit of Article 6 § 1 and of the safeguards of a fair trial that it affords to litigants. The Court therefore had to examine the nature, scope and specific features of the exceptional appeal at issue in the instant case.

The applicable national legal framework made available to the applicant a remedy enabling a judicial review of her civil case by the Supreme Court in the light of the European Court's finding that the original domestic decisions were defective. By virtue of the kind of judicial review it provided for, the exceptional appeal brought by the applicant could be viewed as a prolongation of the original (terminated) civil proceedings, akin to a cassation procedure as defined by Ukrainian law. That being so, while the special features of this cassation-type procedure could affect the manner in which the prescribed procedural guarantees of Article 6 § 1 operate, the Court was of the view that those guarantees should be applicable to it in the same way as they applied to cassation proceedings in civil matters generally.

That conclusion derived from the applicable domestic legal provisions was corroborated by reference to the scope and nature of the "examination" actually carried out by the Supreme Court in March 2008 before it dismissed the applicant's exceptional appeal, leaving the contested decisions unchanged. The Supreme Court reviewed the case materials and the court decisions from the original proceedings in the light of the applicant's new submissions based mainly on the Court's 2007 judgment.

Thus, in the light both of the relevant provisions of the Ukrainian legislation and of the nature and scope of the proceedings culminating in the Supreme Court's decision of March 2008 in relation to the applicant's exceptional appeal, followed by its confirmatory decision of June 2008, the Court considered that the proceedings were decisive for the determination of the applicant's civil rights and obligations. Consequently, the relevant guarantees of Article 6 § 1 applied to those proceedings.

Conclusion: preliminary objection dismissed (unanimously).

(c) *Compliance with Article 6 § 1* – The Court reiterated that it was not its role to act as a fourth instance and to question under Article 6 § 1 the judgments of the national courts, unless their findings could be regarded as arbitrary or manifestly unreasonable.

In the instant case, the Supreme Court had, in its decision of March 2008, grossly misrepresented the European Court's findings in its judgment of 3 May 2007. In particular, it had recounted that the European Court had found the domestic courts' decisions lawful and well-founded and had awarded just satisfaction for the violation of the "reasonable-time" guarantee (when in fact that complaint had been rejected as manifestly ill-founded). Those affirmations were palpably incorrect. The Supreme Court's reasoning did not amount merely to a different reading of a legal text. For the Court, it could only be construed as being "grossly arbitrary" or as entailing a "denial of justice", in the sense that the distorted presentation of the 2007 judgment had the effect of defeating the applicant's attempt to have her property claim examined in the light of that judgment in the framework of the cassation-type procedure provided for under domestic law. The impugned proceedings had thus fallen short of the requirement of a "fair trial" under Article 6 § 1.

Conclusion: violation (unanimously).

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

Article 6 § 1 (criminal)

Fair hearing

Inability to obtain a rehearing after conviction *in absentia*: *violation*

Sanader v. Croatia - 66408/12
Judgment 12.2.2015 [Section I]

Facts – In 1992, while the applicant was living in the then occupied parts of Croatia, he was charged by the Croatian prosecuting authorities with war crimes against prisoners of war. He was tried *in*

absentia, convicted as charged and sentenced to 20 years' imprisonment. The judgment was upheld by the Supreme Court in 2000 and an arrest warrant was issued. In 2009, after the applicant had learned of his conviction, he requested the Croatian courts to reopen the proceedings, but his request was dismissed since he now lived in Serbia and was not available to the Croatian authorities.

Law – Article 6 § 1: At the time the first detention order against the applicant was issued and his trial *in absentia* allowed, the applicant could not be traced. Due to the escalating war in the country and the fact that he was living in the then occupied territory of Croatia, which was not under the control of the domestic authorities, it was impossible to notify him of the criminal proceedings or to secure his presence. In these circumstances it was unlikely that the applicant could have gained any knowledge of the proceedings or that the reason for his absence at the time was to escape trial. The trial *in absentia* was held in the public-interest to secure the effective prosecution of war crimes which, under the Court's case-law, was not in itself incompatible with Article 6 provided the person concerned had the possibility, once he became aware of the proceedings, of being granted a retrial. The Government suggested two remedies the applicant had at his disposal which would have allowed him to obtain a fresh determination of the charges against him by a court in full respect of his defence rights.

The first remedy consisted of a measure allowing for the automatic reopening of proceedings conducted *in absentia* based on a request by the convicted person and depended on "the possibility of a re-trial in [the convicted person's] presence". According to the domestic interpretation of this remedy, in order to be able to request a retrial, the person concerned had to appear before the domestic authorities and provide an address in Croatia where he or she would reside pending the criminal proceedings. Conversely, a request for a retrial by a convicted person who lived outside Croatia and was thus not under the jurisdiction of the Croatian authorities could not lead to the reopening of the proceedings and the domestic courts were not inclined to accept any promises or guarantees as to attendance at court hearings provided by persons residing outside Croatia. The remedy relied on thus appeared disproportionate as, firstly, it would normally lead to the applicant's custody based on his conviction *in absentia*, which ran contrary to the principle that there could be no question of an accused being obliged to surrender to custody in order to secure the right to be retried in conditions that complied with Article 6 and, secondly, it was unreasonable from a procedural point of view in that the applicant's conviction as such would not have been affected by the domestic courts' order for a retrial.

The second remedy suggested by the Government related to the general legal avenue for seeking a retrial after a judgment had become final and enforceable. However, this remedy was of a secondary and subsidiary nature and applicable only to a restricted category of cases tried *in absentia*, namely when the convicted person was able to submit new evidence or facts capable of leading to acquittal or resentencing under a more lenient provision. The applicant was unable to use this remedy as he had been tried in his absence without the opportunity of challenging the factual findings of the judgment resulting in his conviction. Such a demand appeared disproportionate against the essential requirement of Article 6 that a defendant should be given an opportunity to appear at trial and have a hearing where he could challenge the evidence against him.

In sum, the applicant had not been provided with sufficient certainty with the opportunity of obtaining a fresh determination of the charges against him by a court in full respect of his defence rights.

Conclusion: violation (unanimously).

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

(See also *Sejdovic v. Italy* [GC], 56581/00, 1 March 2006, Information Note 84; and *Krombach v. France*, 29731/96, 13 February 2001)

ARTICLE 7

Article 7 § 1

Nulla poena sine lege

Confiscation of property despite time-bar on prosecution or absence of criminal charges: *relinquishment in favour of the Grand Chamber*

Hotel Promotion Bureau s.r.l. and RITA Sarda s.r.l. v. Italy - 34163/07
Falgest s.r.l. and Gironda v. Italy - 19029/11
G.I.E.M. v. Italy - 1828/06

The applicants are companies incorporated under Italian law and some of their representatives. They complained before the Court of the confiscation

orders issued to them under section 19 of Law no. 47 of 1985 for unlawful land development, despite an order discontinuing the proceedings on the grounds that prosecution of the offence had become time-barred and, in one case, despite the absence of any criminal charges.

The cases were communicated under Articles 6 §§ 1 and 2, 7 and 13 of the Convention and Article 1 of Protocol No. 1. On 17 February 2015 a Chamber of the Court decided to relinquish jurisdiction in favour of the Grand Chamber.

(See also *Sud Fondi srl and Others v. Italy*, 75909/01, 20 January 2009, Information Note 115, and *Varvara v. Italy*, 17475/09, 29 October 2013, Information Note 167)

ARTICLE 8

Respect for private life

Leak of information from criminal investigation file to the press: *violation*

Apostu v. Romania - 22765/12
Judgment 3.2.2015 [Section III]

Facts – In 2011 the applicant, a former mayor, was placed in pre-trial detention on suspicion of corruption and forgery. Before he was committed to stand trial, several newspapers published information and documents from the investigation file, quoting extracts from intercepted telephone conversations and referring to aspects of the applicant's private life unrelated to the trial. The criminal proceedings against the applicant were still pending at the time of the European Court's judgment.

Law – Article 8: Excerpts from the prosecution file concerning the applicant's case had become public before the beginning of the adversarial phase of the proceedings and their content had put the applicant in an unfavourable light, giving the impression that he had committed crimes. Moreover, parts of the telephone conversations of a strictly private nature had not served to advance the criminal prosecution and their publication had thus not corresponded to a pressing social need. The leak of that information by the authorities thus constituted an interference with the applicant's right to respect for his private life.

Under the domestic law, public access to information contained in a criminal case file was possible only after the case had been lodged with a court but even then it was limited and subject to judicial control. However, in the applicant's case the possibility for a judge to assess whether a piece of information should be disclosed to the public had been impaired because it had already been leaked to the press. The respondent State had thus failed to provide safe custody of the information in their possession in order to secure the applicant's right to respect for his private life or to offer him any means of redress once the breach of his rights had occurred.

Conclusion: violation (unanimously).

The Court also found a violation of the substantive aspect of Article 3 on account of the conditions in which the applicant was held in pre-trial detention.

Article 41: claim made out of time.

(See also *Craxi v. Italy (no. 2)*, 25337/94, 17 July 2003; and the Factsheet on the Right to the protection of one's image)

Respect for private life
Positive obligations

Use of public figure's forename in satirical advert without consent: *no violation*

Bohlen v. Germany - 53495/09
Judgment 19.2.2015 [Section V]

Facts – The applicant, a musician and artistic producer, published a book some passages of which were removed following court rulings. In October 2003 a tobacco company launched an advertising campaign referring to this event and including the applicant's first name. At the applicant's request, the company undertook in writing to refrain from further distributing the advertisement in question with the heading mentioning his name, but refused to pay him the compensation he claimed by way of a notional licence fee. The applicant then applied to the Regional Court, which granted his request. The Court of Appeal upheld the main findings of the Regional Court, but reduced the amount of the notional licence fee. However, the Federal Court of Justice quashed the Court of Appeal judgment in June 2008, finding in particular that the applicant's interest in not being named in the advertisement without his consent was outweighed by the tobacco company's right to freedom of expression.

Law – Article 8: The applicant complained of the State's failure to protect him against the use of his first name by the tobacco company without his

consent. The present application required the Court to examine the fair balance to be struck between the applicant's right to respect for his private life, from the standpoint of the State's positive obligations under Article 8 of the Convention, and the company's freedom of expression under Article 10.

The balancing of the right to respect for private life and the right to freedom of expression had to be carried out in the light of the contribution to a debate of general interest, the extent to which the person in question was in the public eye, the subject of the reporting, the prior conduct of the person concerned and the content, form and impact of the publication.[1] In the instant case the advertising campaign had related to a topic of public interest, dealing in a humorous and satirical manner with the publication of the applicant's book and the ensuing proceedings shortly after the events had occurred. The applicant was a public figure who could not claim the same degree of protection of his private life as an individual not in the public eye. The advertisement complained of had referred exclusively to a public event that had been covered in the media, and had not reported details of the applicant's private life. Moreover, in publishing his book the applicant had actively sought the limelight, so that his "legitimate expectation" that his private life would be effectively protected had been reduced. Lastly, the advertisement had not contained anything degrading or negative regarding the applicant, a non-smoker, and had not suggested that he identified in any way with the product being advertised.

The use of a public figure's name in connection with a commercial product without his or her consent could raise issues under Article 8 of the Convention. However, the advertisement in question had been of a humorous nature, bearing in mind that the company had sought to make a humorous connection between the image of a packet of its brand of cigarettes and a topical event involving a well-known person. Furthermore, only a small number of people would have been able to make the connection between the advertisement and the applicant, since neither his surname nor his photograph had featured in the campaign. Only persons familiar with the legal dispute concerning the book's publication would have understood the advertisement.

1. See *Axel Springer AG v. Germany* [GC], 39954/08, 7 February 2012, Information Note 149.

The applicant alleged in particular that the Federal Court of Justice had dismissed his claims primarily because the company's freedom of expression enjoyed greater legal protection than his right to protection of his private life. Some passages in the judgment in question appeared to suggest that, simply because it was enshrined in constitutional law, the company's right to freedom of expression carried greater weight in this case than the applicant's right to protection of his personality and his name, which were only protected by ordinary law. However, the Federal Court of Justice had specified that only the pecuniary aspects of personality rights were protected by the ordinary law, whereas the right to the protection of one's personality, in so far as it protected non-pecuniary interests, was one of the fundamental rights guaranteed by constitutional law. The Federal Court of Justice had also taken into consideration the circumstances of the case in conducting a thorough balancing exercise between the competing interests at stake, before finding that priority should be given to the company's freedom of expression and refusing to grant a notional licence fee to the applicant, who had already obtained an undertaking from the company to refrain from further distribution of the advertisement. In those circumstances, and in view of the wide margin of appreciation left to the national courts in this sphere in weighing up the competing interests, the Federal Court of Justice had not failed in its positive obligations towards the applicant under Article 8 of the Convention.

Conclusion: no violation (six votes to one).

(For a similar finding, see the case of *Ernst August von Hannover v. Germany* (53649/09, 19 February 2015), in which a tobacco company launched an advertising campaign featuring the applicant's first names and making reference to a public altercation in which he had been involved. See also *Von Hannover v. Germany (no. 2)*, 40660/08 and 60641/08, 7 February 2012, Information Note 149.)

Respect for family life

Refusal to allow child to travel abroad to join his mother without the consent of the father: *violation*

Penchevi v. Bulgaria - 77818/12
Judgment 10.2.2015 [Section IV]

Facts – The first applicant was the mother of the second applicant, a minor child. In 2010, following the breakdown of the first applicant's marriage to

the child's father, the applicants left the matrimonial home in Bulgaria. The first applicant subsequently requested the father's consent to allow their son to travel from Bulgaria to Germany where the first applicant was completing a postgraduate course, but he refused. She sought a court order, but the proceedings, which lasted almost two years and two months for three levels of jurisdiction, ended with the refusal of the Supreme Court of Cassation to allow the child to travel outside Bulgaria with only his mother. The applicants brought further proceedings in July 2012 which ended in a decision of December 2012 allowing the child to travel with his mother.

Law – Article 8: For the applicants, who were mother and child, the possibility of continuing to live together was a fundamental consideration which clearly fell within the scope of their family life within the meaning of Article 8 of the Convention. The Supreme Court of Cassation's refusal, and the time it took the courts to decide the case, had prevented the applicants from being together while the first applicant pursued her studies in Germany. There had thus been an interference with both applicants' right to protection of their family life. The interference was "in accordance with the law" as the consent of both parents was required for all questions related to the exercise of parental rights, including the child's travel abroad, and it pursued the legitimate aim of protecting the rights of the child's father.

The requirement for both parents' consent for any type and duration of travel abroad by their child did not appear to impose either an unreasonable or a disproportionate limitation on the applicants' right to family life, given that the State is called upon to ensure a fair balance between the competing interests at stake – those of the child, of the two parents, and of public order. The mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life under Article 8 even when the relationship between the parents has broken down.

In the present case the two lower instance courts had allowed the child's travel abroad in the absence of the father's agreement after carrying out a detailed analysis of the family situation and establishing that travel would be in the child's interest. Their decisions were, however, overruled by the Supreme Court of Cassation on the basis of its well established case-law according to which permission for a child's unlimited travel abroad with one parent only could not be granted. The Supreme Court did not, however, take into account the circumstances of the case such as the father's and mother's ability to take care of the child, the elements of a psychological, emotional, material or medical nature or whether there was any real and specific risk for the child if he travelled with his mother abroad. In addition, it based its refusal on a technical error made by the mother when submitting her application and, more specifically, her failure to specify in writing Germany as the country of destination. Finally, despite prompting by the first applicant, it refused to define of its own motion concrete boundaries within which travel could be permitted. These factors, taken together, cast doubts on the adequacy of the Supreme Court's assessment of the child's best interests. In these circumstances, its analysis was not sufficiently thorough and its approach was overly formalistic.

In addition, the domestic proceedings had lasted more than two years and eight months. Throughout that period the child was unable to travel to join his mother. Given that the proceedings were decisive for both applicants' right to family life under Article 8 and in particular for their ability to continue to live together and enjoy each other's company, they should have been conducted with particular diligence. In view of the second applicant's very young age and close attachment to the first applicant, some urgency had been required in the national authorities' handling of the request for travel.

In sum, the decision-making process at domestic level had been flawed in that the Supreme Court had dismissed the travel request on what appeared to be formalistic grounds without any real analysis of the child's best interests and the proceedings had lasted too long.

Conclusion: violation (unanimously).

Article 41: EUR 7,500 jointly in respect of non-pecuniary damage; EUR 1,101 jointly in respect of pecuniary damage.

ARTICLE 9

Freedom of religion
Positive obligations

Failure to take adequate steps to prevent or investigate disruption of Muslim prayers by offensive and violent demonstrators: *violation*

Karaahmed v. Bulgaria - 30587/13
Judgment 24.2.2015 [Section IV]

Facts – On a Friday in May 2011 around noon the applicant went to a Sofia mosque for regular Friday prayers. On the same day around 150 leaders and supporters of a right-wing political party came to protest against the noise emanating from loudspeakers at the mosque during the calls to prayer. The party had informed the authorities the day before of its intended rally and a certain number of specialist police officers were dispatched to the scene. The event was video recorded and broadcast on Bulgarian television. The recordings showed the demonstrators, mainly dressed in black, shouting insults at the gathered worshippers and throwing eggs and stones. A scuffle ensued between several demonstrators and worshippers when the former installed their own loudspeakers on the roof of the mosque to cover the sound of the prayers and the latter attempted to remove them. Several police officers attempted to separate the fighting parties and made three arrests. Other officers attempted to cordon off the remaining demonstrators from the area where the worshippers were praying. The incident ended at around 2 p.m. when the demonstrators left the scene. Two separate investigations ensued. The first, led by the police, did not appear to have resulted in a conviction. The second, initiated by the prosecutor's office, was still ongoing at the time of the adoption of the European Court's judgment. No charges had been brought.

Law – Article 9: The case raised an issue concerning two competing sets of rights: the right of the political party members to freedom of expression and peaceful assembly and the right of the Muslim worshippers to freedom of religion. Those rights in principle deserved equal respect and had to be balanced against each other recognising their importance in a society based on pluralism, tolerance and broad-mindedness. States had to ensure that both sets of rights were protected by setting up an adequate legal framework and taking effective measures to ensure their respect in practice. Once the authorities had been notified of the planned demonstration, they could have taken a number of steps to ensure that tensions between the demonstrators and the worshippers did not turn into violence, while at the same time allowing for the free exercise of both groups' fundamental rights. However, it was clear from the available video recordings that the police had failed to ensure due respect for those rights or even to give any serious consideration as to how such respect could be achieved. Several hundred demonstrators and worshippers had been separated by no more than a dozen police officers forming an improvised and visibly insufficient cordon. The situation was defused only by the demonstrators leaving the mosque area of their own accord after having set fire to some of the worshippers' prayer mats. The outcome of the police response that day was that a large number of demonstrators were able to stand in front of the mosque, shout insults and throw objects at praying worshippers and ultimately gain access to the mosque and disrupt the prayers. They enjoyed a virtually unfettered right to protest whereas the applicant and other worshippers had their prayers entirely disrupted The police actions were confined to simply limiting the violence and no proper consideration was given as to how to balance respect for the effective exercise of both the demonstrators' and the worshippers' rights. Even though the President and Parliament subsequently publicly condemned the demonstrators' actions and sought adequate action by the competent State authorities, there was no proper response to the impugned events. The police investigation led to charges of hooliganism against seven individuals, but it was limited to acts of physical violence which occurred on the roof of the mosque. The public prosecutor's investigation into the interference with religious freedoms led to no tangible result. No progress had been made in identifying or charging those responsible for the most provocative gestures and almost none of the leading figures had been interviewed. In view of the foregoing, the State had failed to fulfil its positive obligations under Article 9.

Conclusion: violation (unanimously).

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

(See also *Begheluri v. Georgia*, 28490/02, 7 October 2014; *Members of the Gldani Congregation of Jehovah's Witnesses and Others v. Georgia*, 71156/01, 3 May 2007, Information Note 97)

ARTICLE 10

Freedom of expression

Fine imposed on opposition MPs for showing billboards during parliamentary votes: *case referred to the Grand Chamber*

Karácsony and Others v. Hungary - 42461/13
Judgment 16.9.2014 [Section II]

At the material time, all four applicants were members of the opposition in the Hungarian Parliament. On a motion introduced by the Speak-

er, they were fined amounts ranging from EUR 170 to EUR 600 for having gravely disrupted parliamentary proceedings after they displayed billboards accusing the government of corruption. The fines were imposed by the Parliament in plenary session without a debate.

In a judgment of 16 September 2014 (see Information Note 177), a Chamber of the Court held unanimously that there had been a violation of the applicants' freedom of expression guaranteed under Article 10 of the Convention.

On 16 February 2015 this case and the *Szél and Others v. Hungary* case (44357/13) related to similar facts were referred to the Grand Chamber at the Government's request.

Freedom of expression
Freedom to impart information

Conviction of journalists for secretly filming and subsequently broadcasting for public-interest purposes interview with insurance broker: *violation*

Haldimann and Others v. Switzerland - 21830/09
Judgment 24.2.2015 [Section II]

Facts – All four applicants are journalists. In 2003 the fourth applicant organised an interview with an insurance broker, posing as a potential customer. The interview was recorded without the broker knowing. He was subsequently informed of the recording, but refused to express any views on its content. Excerpts from the interview, in which the broker's face was pixelated and his voice modified, were broadcast as part of a TV documentary on practices in the field of sales of life insurance products. All four applicants had been involved in preparing and broadcasting this documentary.

The applicants were convicted of recording conversations of third persons and of recording conversations without authorisation, respectively. The first three applicants were given monetary penalties of twelve day-fines of between EUR 80 and EUR 290 and the fourth a suspended penalty of four day-fines of approximately EUR 30, coupled with a probationary period of two years.

Law – Article 10: the interference in the applicants' right to freedom of expression was prescribed by law and pursued the legitimate aim of protecting the rights and reputation of others, in this case the broker's right to protection of his image, utterances and reputation.

The Court had already dealt with cases concerning attacks on the personal reputation of public figures, establishing six criteria in order to weigh freedom of expression against the right to private life: contributing to a debate of general interest, ascertaining how well-known the person being reported on was and the subject of the report/documentary, that person's prior conduct, the method of obtaining the information, the veracity, content, form and repercussions of the publication, and the severity of the penalty imposed. The Court had also adjudicated cases of defamation related to individuals' professional activities. However, the present case differed from those previous cases in that, firstly, the broker was not a well-known public figure and secondly, the impugned documentary was not intended to criticise the broker personally but to highlight specific commercial practices in his particular professional category. Therefore, the impact of the documentary on the broker's personal reputation had been limited, which aspect had to be taken into account in applying the aforementioned criteria.

The subject of the documentary, namely the poor quality of the advice provided by private insurance brokers and therefore a question of consumer rights protection in this sector, had concerned a debate of major public importance. Clearly, the broker who had been filmed without his knowledge was not a public figure. He had not consented to being filmed and could therefore have reasonably believed that the conversation had been private. Nevertheless, the documentary at issue had focused not on the broker himself but on specific commercial practices within a specific professional category. Furthermore, the interview had not taken place in the broker's offices or any other business premises. Consequently, the interference in the broker's private life was less serious than if the documentary had concentrated personally and exclusively on him.

There had been no absolute prohibition in domestic law on the use of a hidden camera, which could be authorised under strictly defined conditions. Although the broker could legitimately claim to have been deceived by the applicants, they could not be accused of having acted deliberately in breach of professional ethics. They had not disregarded the journalistic rules laid down by the Swiss Press Council limiting the use of hidden cameras, but had in fact concluded that the aim of their documentary was such as to authorise the use such cameras. The Swiss courts had failed to reach a unanimous position on this question. Consequently, the applicants should be granted the benefit of the

doubt regarding their desire to comply with the ethical rules applicable to the present case, as regards their method of obtaining information.

The veracity of the facts as presented had never been disputed.

The recording itself had only constituted a limited infringement of the broker's interests, given that only a restricted group of individuals had had access to it. The decisive point in this case was that the applicants had pixelated the broker's face so that only his hair and skin colour were still visible after this image transformation, and his voice had also been altered. Similarly, even though his clothes were visible, they had lacked any distinctive features, and the interview had not taken place in the broker's usual business premises.

Accordingly, the interference in the broker's private life had not been serious enough to override the public interest in the information on alleged malpractice in the insurance brokerage field. Despite the relative leniency of the monetary penalties, the sentence passed was liable to deter the media from expressing criticism, even though the applicants had not been prevented from broadcasting their documentary.

Conclusion: violation (six votes to one).

Article 41: no claim made in respect of damage.

(See also *Axel Springer AG v. Germany* [GC], 39954/08, 7 February 2012, Information Note 149)

Freedom of expression

Criminal and disciplinary sanctions imposed on applicant lawyer for defamation of expert witness for the prosecution: *inadmissible*

Fuchs v. Germany - 29222/11 and 64345/11
Decision 27.1.2015 [Section V]

Facts – The applicant is a lawyer. While representing a client accused of having downloaded child pornography on his computer he alleged in writing before a domestic court that the private expert engaged by the prosecution to decrypt the data files had manipulated them in order to obtain the result sought by the prosecution and had a personal interest in falsifying evidence. The expert had been sworn-in when presenting his results to the court. The expert lodged a criminal complaint against the applicant. The applicant was convicted of defamation and fined. In subsequent disciplinary proceedings he received a reprimand and a fine.

In his application to the European Court, the applicant complained that the measures taken against him had breached his rights under Article 10 of the Convention.

Law – Article 10: The Court found that the measures had been necessary in a democratic society. As regards the relevance and sufficiency of the reasons given by the domestic courts, the Court agreed with the domestic criminal court that the defence of his client's interests did not allow the applicant to imply, generally, that the expert would falsify evidence. It also agreed with the court in the disciplinary proceedings that the offensive statements did not contain any objective criticism of the expert's work in his client's case, but were aimed at deprecating generally his work and declaring his findings to be unusable. The Court accepted the domestic courts' conclusions that the statements which formed the subject matter of the criminal and disciplinary proceedings were not justified by the legitimate pursuit of the client's interests.

As to the question of proportionality, the Court noted that the criminal court, in determining the sanction to be imposed on the applicant, took into account the fact that his statements had not been made publicly, that sworn-in experts must be able to perform their duties free of undue perturbation and may require protection from offensive and abusive verbal attacks and that the fines imposed in the criminal and disciplinary proceedings did not appear to be disproportionate.

Conclusion: inadmissible (manifestly ill-founded).

Freedom to receive information
Freedom to impart information

Failure by mayor to comply with final judgments granting the applicant right to access information: *violation*

Guseva v. Bulgaria - 6987/07
Judgment 17.2.2015 [Section IV]

Facts – The applicant, a member and representative of an association active in the area of animal rights protection, obtained three final Supreme Administrative Court's judgments requiring a mayor to provide her with information relating to the treatment of stray animals found on the streets of the town over which he officiated. The mayor did not

comply with the judgments. In her application to the European Court the applicant complained under Article 10 of the Convention that the mayor's conduct was in breach of her right to receive and impart information.

Law – Article 10: The applicant had sought access to information about the treatment of animals in order to exercise her role of informing the public on this matter of general interest and to contribute to public debate. The existence of her right of access to such information had been recognised both in the domestic legislation and in three final Supreme Administrative Court judgments. Therefore, the gathering of information with a view to its subsequent provision to the public fell within the ambit of the applicant's freedom of expression.

Although the applicant had lodged the application in her private capacity and not on behalf of the association she represented, the information she sought to obtain was directly related to her work in the association. Consequently, she had been involved in the legitimate gathering of information of public interest for the purpose of contributing to public debate. Thus, the mayor's failure to act in accordance with final court judgments and provide her with the information had constituted a direct interference with her right to receive and impart information.

At the material time, the judgments were final and enforceable under domestic law and the mayor's failure to comply with them was thus unlawful. However, the national judicial practice accepted that the domestic law itself provided no clear time-frame for enforcement thus leaving the question to the good will of the administrative body responsible for the implementation of the judgment. Such a lack of a clear time-frame for enforcement created unpredictability as to the likely time of enforcement, which, in the applicant's case, never materialised. The applicable domestic legislation therefore lacked the requisite foreseeability resulting in the interference with the applicant's Article 10 rights not being "prescribed by law".

Conclusion: violation (five votes to two).

The Court also found a violation of Article 13 read in conjunction with Article 10 as there had been no effective remedies capable of providing redress in respect of the applicant's complaint and offering reasonable prospects of success.

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

ARTICLE 34

Victim

Victim status of applicant who was awarded compensation by civil courts for torture but whose criminal complaint was not the subject of an effective investigation: *victim status upheld*

Razzakov v. Russia - 57519/09
Judgment 5.2.2015 [Section I]

Facts – In 2009 the applicant was held in police custody for three days and subjected to severe ill-treatment in order to make him confess to a murder. No criminal proceedings were ever brought against him. After initially refusing to investigate the applicant's complaint of ill-treatment, the authorities eventually opened criminal proceedings, but these did not lead to the identification of those responsible. In parallel civil proceedings the applicant was awarded damages.

Law – Article 34: The Court praised the fact that the domestic civil court had duly examined the applicant's case, established the State's liability for his ill-treatment and awarded him compensation for the damage suffered as a result of his unlawful detention and ill-treatment. However, the Court recalled that in cases of wilful ill-treatment by State agents, a breach of Article 3 could not be remedied only by an award of compensation to the victim. If the authorities could confine their reaction to incidents of this kind to the mere payment of compensation, while not doing enough to prosecute and punish those responsible, it would be possible for State agents to abuse the rights of those within their control with virtual impunity. This would render the general legal prohibition of torture and inhuman and degrading treatment ineffective in practice. Thus, in the present case the applicant could still claim to be a victim of a violation of Article 3 in respect of his alleged ill treatment.

Conclusion: victim status upheld (unanimously).

Article 3

(a) *Substantive aspect* – In view of the State's acknowledgment of a violation of Article 3 and the domestic authorities' decisions in the criminal and civil proceedings, the Court found the applicant's allegations as to what happened established. During his arbitrary detention the applicant had been subjected to a sequence of abhorrent acts of physical and psychological violence for a prolonged

period. The police officers had acted intentionally with the aim of making the applicant, who was in a very vulnerable position and had a limited command of Russian, confess to a murder. Thus, the treatment to which the applicant had been subjected amounted to torture.

Conclusion: violation (unanimously).

(b) *Procedural aspect* – The respondent State had acknowledged the lack of an effective official investigation into the applicant's credible allegation of ill-treatment. Noting that the investigative authority had opened a criminal case only five months after the alleged ill-treatment had been brought to its attention, the Court reiterated that in cases of credible allegations of treatment proscribed under Article 3 a "pre-investigation inquiry" alone was not capable of meeting the requirements of an effective investigation under that provision. Indeed, the mere fact of the investigative authority's refusal to open a criminal investigation into credible allegations of serious ill-treatment in police custody was indicative of the State's failure to comply with its obligation to conduct an effective investigation. Moreover, although the evidence collected during the preliminary investigation had been considered sufficient for the civil court to establish the State's liability for the acts of the police officers and for awarding compensation to the applicant, the investigative committee had considered that evidence insufficient to mount a prosecution. In this regard, the material in the case file actually showed that the investigation's conclusions had not been based on a thorough, objective and impartial analysis of all relevant elements. In the light of these considerations, the Court concluded that the domestic authorities had failed to conduct an effective investigation into the applicant's allegations of ill-treatment in police custody.

Conclusion: violation (unanimously).

Article 41: EUR 20,000 in respect of non-pecuniary damage.

The Court also found that the applicant could not claim to be a victim of a violation of Article 5 as the compensation awarded in the domestic proceedings had offered him appropriate and sufficient redress.

(See also *Lyapin v. Russia*, 46956/09, 24 July 2014, Information Note 176; *Gäfgen v. Germany* [GC], 22978/05, 1 June 2010, Information Note 131)

ARTICLE 1 OF PROTOCOL No. 1

Peaceful enjoyment of possessions

Loss of disability benefits due to newly introduced eligibility criteria: *violation*

Béláné Nagy v. Hungary - 53080/13
Judgment 10.2.2015 [Section II]

Facts: In 2001 the applicant was granted a disability pension, which was withdrawn in 2010 after her degree of disability was re-assessed at a lower level using a different methodology. She underwent further examinations in the following years and was eventually assessed at the qualifying level. However, new legislation which entered into force in 2012 introduced additional eligibility criteria related to the duration of the social security cover. The applicant did not fulfil those criteria. As a consequence, although her degree of disability would otherwise have entitled her to a disability allowance under the new system, her applications were refused.

Law – Article 1 of Protocol No. 1: The modifications in the degree of the applicant's assessed disability had resulted solely from successive changes in the methodology used and not from any improvement in her health, which remained unchanged. In 2012 the disability pension system was replaced by an allowance system, which contained new eligibility criteria. The applicant was found ineligible for that allowance not because she did not have the requisite degree of disability but because she did not have a sufficient period of social cover as required by the new rules. That was a condition which was virtually impossible for her to fulfil since she was no longer in a position to accumulate the requisite number of days. However, during her employment, the applicant had contributed to the social security system as required by law. This had prompted a social solidarity-based obligation by the State to provide her with disability care should a contingency occur. The Court endorsed the Constitutional Court's view that allowances acquired by compulsory contributions to the social security scheme could partly be seen as "purchased rights". The disability pension/allowance was thus an assertable right to a welfare benefit recognised under the domestic law to which Article 1 of Protocol No. 1 was applicable. That recognised legitimate expectation and the proprietary interests generated by the legislation of a Contracting State in force at the time of becoming eligible could not be considered extinguished by the fact that, under a new

methodology, the applicant's disability had been significantly scored down without any material change in her condition. In this regard, the existence of the applicant's continued, recognised legitimate expectation to receive disability care was demonstrated by the fact that she was subject to periodic reviews of her degree of disability. Irrespective of the loss of her disability pension in 2010, her expectation had thus been legitimate and continuous. As to the question whether the legitimate expectation to receive disability care entailed the right not to have the eligibility criteria changed, the Court noted that the ethical guidelines set out in the World Health Organisation's International Classification of Functioning, Disability and Health should not be used to deny established rights or restrict legitimate entitlements to benefits for individuals. Moreover, respect for the rule of law required the States to secure, on the basis of societal solidarity, a certain income for those whose working capacity fell below the statutory level provided they had made sufficient contributions to the scheme.

As regards proportionality, although States had a certain margin of appreciation in regulating access to disability care, once such care had been granted they could not go as far as depriving the entitlement of its very essence. In this respect, the Court noted that the applicant had been totally divested of her disability care instead of being subject to a reasonable and proportionate reduction. This course of events amounted to a drastic and unforeseeable change in the conditions of her access to disability benefits. The applicant had thus had to bear an excessive and disproportionate individual burden in the circumstance.

Conclusion: violation (four votes to three).

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

(See the Factsheet on Persons with disabilities and the European Convention on Human Rights)

REFERRAL TO THE GRAND CHAMBER

Article 43 § 2

Karácsony and Others v. Hungary - 42461/13
Judgment 16.9.2014 [Section II]

(See Article 10 above, page 17)

RELINQUISHMENT IN FAVOUR OF THE GRAND CHAMBER

Article 30

Jeronovičs v. Latvia - 44898/10
[Section IV]

(See Article 3 above, page 9)

Hotel Promotion Bureau s.r.l. and RITA Sarda s.r.l. v. Italy - 34163/07
Falgest s.r.l. and Gironda v. Italy - 19029/11
G.I.E.M . v. Italy - 1828/06

(See Article 7 § 1 above, page 13)

COURT NEWS

Subscription to the CLIN RSS feed

The Court's website now offers the possibility of subscribing to the Case-law Information Note RSS feed which lets you know when new documents are published on the site. So whenever you click on the link created in your "Favorites" bar, this will open a web page with the most recently published Information Notes appearing at the top of the list.

For further information, please consult the manual "How to Subscribe to RSS Feeds" available on the Court's Internet site (<www.echr.coe.int/RSS>).

Launch of two new HUDOC databases (CPT and ESC)

Two new HUDOC search engines were launched in February: the HUDOC CPT (for searches linked to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment) and HUDOC ESC (for searches linked to the European Social Charter). These sites have the same architecture as HUDOC ECHR and in terms of consistency and ease of use look very similar and offer many of the same features.

They can be found at the following Internet addresses (for the English interface):

<http://hudoc.cpt.coe.int/eng> (HUDOC CPT)

<http://hudoc.esc.coe.int/eng> (HUDOC ESC)

Seminar in honour of Michael O'Boyle

Michael O'Boyle, who was Deputy Registrar of the Court for 9 years, retired from office in February 2015. As a tribute, the Court and the International Institute of Human Rights organised a Seminar on the theme of "The Right to Life: 20 Years of Legal Developments since *McCann v. the United Kingdom*" on 13 February 2015 in Strasbourg, at the Human Rights Building. The seminar proceedings will be published later this year.

More information on the Courts' Internet site (<www.echr.coe.int> – The Court – Events).

European Moot Court Competition

On 25 February the Court welcomed the Grand Final of the 3rd European Human Rights Moot Court Competition, in English, organised by the European Law Students' Association (ELSA) in co-operation with the Council of Europe. The moot was won by students from the National and Kapodistrian University of Athens (Greece) who beat the team from Essex University (United Kingdom) in the final round.

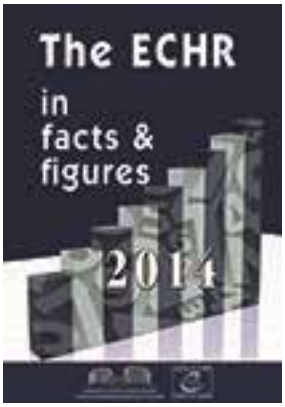
More information on the ELSA Internet site (<http://elsa.org/>).

RECENT PUBLICATIONS

The Court in facts and figures 2014

This document contains statistics on cases dealt with by the Court in 2014, particularly judgments delivered, the subject-matter of the violations found and violations by Article and by State. It can be downloaded from the Court's Internet site (<www.echr.coe.int> – The Court).

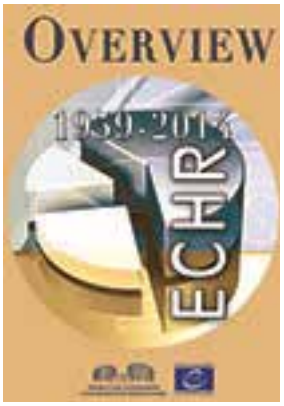
The ECHR in facts & figures 2014 (eng)



Overview 1959-2014

This document, which gives an overview of the Court's activities since it was established, has been updated. It can be downloaded from the Court's Internet site (<www.echr.coe.int> – The Court).

Overview 1959-2014 (eng)



Case-Law Guides: Russian translations

Guides on the civil limb and the criminal limb of Article 6 (Right to a fair trial) have just been translated into Russian within the framework of the project "Russian Yearbook on the European Convention on Human Rights" at the Kutafin Moscow State Law University. These translations are available on the Court's Internet site (<www.echr.coe.int> – Case-Law).

Руководство по статье 6 Конвенции (гражданско-правовой аспект) (rus)

Руководство по статье 6 Конвенции (уголовно-правовой аспект) (rus)

Handbook on European law relating to asylum, borders and immigration: Portuguese translations

The Portuguese translation of this Handbook – published jointly by the Court and the European Union Agency for Fundamental Rights (FRA) – is now available and can be downloaded from the Court's Internet site (www.echr.coe.int – Publications).

Manual de legislação europeia sobre asilo, fronteiras e imigração (por)