258

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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

Le panorama mensuel de la jurisprudence 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

COUNCIL OF EUROPE
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The Information Note contains legal summaries of the cases examined during the month in question which the Registry considers to be of particular interest. The summaries are drafted by lawyers under the authority of the Jurisconsult and are not binding on the Court. They are normally drafted in the language of the case concerned. The translation of the legal summaries into the other official language can be accessed directly through hyperlinks in the Note. These hyperlinks lead to the HUDOC database, which is regularly updated with new translations. The electronic version of the Note may be downloaded at www.echr.coe.int/NoteInformation/en.

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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.

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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 sous l'autorité du jurisconsulte 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. La version électronique de la Note peut être téléchargée 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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TABLE OF CONTENTS / TABLE DES MATIÈRES

ARTICLE 8

Respect for private life/Respect de la vie privée
Respect for correspondence/Respect de la correspondance

- Inadequate legal safeguards against arbitrariness and abuse for secret surveillance, retention and access of communications data: *violations*
- Garanties inadéquates contre l'arbitraire et les abus en matière de surveillance secrète, de conservation de données de communication et d'accès à celles-ci : *violations*

Respect for private life/Respect de la vie privée

- Asset freezing of a member of the entourage of the former President of Ukraine (Yanukovych), ongoing for nearly eight years: *communicated*
- Gel des avoirs d'un proche de l'ex-président ukrainien (Ianoukovitch) durant depuis une huitaine d'années : *affaire communiquée*

ARTICLE 10

Freedom of expression/Liberté d'expression

- Conviction of a local councillor for failing to take prompt action in deleting illegal comments by others on the wall of his Facebook account, which was freely accessible to the public and used during his election campaign: *case referred to the Grand Chamber*
- Condamnation pénale d'un élu faute d'avoir promptement supprimé les propos illicites de tiers sur le mur de son compte Facebook librement accessible au public et utilisé lors de sa campagne électorale : *affaire renvoyée devant la Grande Chambre*

- Journalist's unjustified and disproportionate conviction and sanctioning for statements on well-known legal entities at public Parliamentary Commission hearing: *violation*
- Condamnation et sanction injustifiées et disproportionnées d'un journaliste pour des déclarations faites devant une commission parlementaire au sujet de personnes morales connues : *violation*

ARTICLE 11

Freedom of peaceful assembly/Liberté de réunion pacifique

- Administrative conviction and detention for protests held in Crimea after Russia had asserted jurisdiction over the peninsula in 2014: *communicated*
- Condamnation et détention administrative pour des manifestations en Crimée après que la Russie a déclaré en 2014 que la péninsule relevait de sa compétence : *affaire communiquée*

Freedom of association/Liberté d'association

- Dismissal of employees on account of their involvement in a strike organised outside a trade-union context: *Article 11 not applicable; inadmissible*
- Licenciement d'employés fondé sur leur participation à une grève organisée en dehors d'une action syndicale : *article 11 non applicable ; irrecevable*

ARTICLE 34

Hinder the exercise of the right of application/Entraver l'exercice du droit de recours

- 35-day delay in enforcing the Court's interim measure requesting the placement of a bipolar patient in a specialist centre excessively long: *violation*
- Retard de 35 jours excessivement long dans l'exécution de la mesure provisoire de la Cour demandant le placement d'un bipolaire dans une résidence spécialisée : *violation*

ARTICLE 3

Inhuman or degrading treatment/ Traitement inhumain ou dégradant

Detention for two years in an ordinary prison of a person suffering from bipolar disorder, in poor conditions and without any overall therapeutic strategy to treat his condition: *violation*

Détention, durant deux ans, en milieu carcéral ordinaire d'une personne bipolaire dans de mauvaises conditions et sans stratégie thérapeutique globale de prise en charge de sa pathologie : *violation*

Sy – Italy/Italie, 11791/20, Judgment/Arrêt 24.1.2022 [Section I]

English translation of the summary – Version imprimable

En fait – Le requérant, souffrant d'un trouble bipolaire aggravé par la toxicomanie, a été maintenu en détention en milieu carcéral ordinaire, malgré les décisions des tribunaux nationaux qui avaient ordonné son placement dans une résidence pour l'exécution des mesures de sûreté (REMS) sur la base des expertises attestant l'incompatibilité de son état de santé avec la détention en prison. Même une ordonnance de la cour d'appel de le libérer, étant donné le retard à le placer dans un établissement adapté, n'a pas été exécutée.

Depuis le 1er avril 2015, les mesures de l'internement en établissement de soins et de détention en hôpital psychiatrique judiciaire sont exécutées dans les REMS. En raison d'un problème systémique de manque de places dans les REMS, de nombreuses personnes comme le requérant attendent en prison qu'une place soit disponible.

En droit

Article 3 (volet matériel) : L'état de santé mentale du requérant était incompatible avec la détention en prison et, malgré les indications claires et univoques, l'intéressé est resté incarcéré en milieu pénitentiaire ordinaire pendant près de deux ans. Les conclusions auxquelles les spécialistes et les autorités judiciaires internes sont parvenus ne sauraient être remises en question. Le maintien du requérant en milieu pénitentiaire ordinaire était incompatible avec l'article 3.

Au demeurant, le requérant n'a bénéficié d'aucune stratégie thérapeutique globale de prise en charge de sa pathologie visant à porter remède à ses problèmes de santé ou à prévenir leur aggravation, et ce dans un contexte caractérisé par de mauvaises conditions de détention.

Conclusion : violation (unanimité).

Article 5 § 1 e) : Le placement immédiat du requérant en REMS a été ordonné pour la période d'un an, au motif que cette mesure était la seule adéquate pour faire face à la dangerosité sociale de ce dernier. L'ordonnance de placement n'a jamais été exécutée.

Les trois conditions de la jurisprudence *Winterwerp* sont réunies en l'espèce :

– à la date où le placement en REMS a été ordonné, l'aliénation du requérant avait été démontrée devant l'autorité compétente au moyen d'une expertise médicale objective ;

– le JAP a considéré à juste titre que le trouble mental du requérant revêtait un caractère légitimant l'internement, étant donné que ce dernier, bien qu'en liberté surveillée, avait gravement violé les conditions de celle-ci, et que le placement en REMS était donc la seule solution capable de satisfaire l'impératif de protection sociale ;

– le danger pour la société représenté par le requérant n'avait pas cessé d'exister.

La mesure de détention dans une REMS a pour but non pas seulement de protéger la société, mais aussi d'offrir à l'intéressé les soins nécessaires pour améliorer, autant que possible, son état de santé et rendre possible ainsi la réduction ou la maîtrise de sa dangerosité. Il était donc essentiel qu'un traitement adapté fût proposé au requérant afin de réduire le danger qu'il représentait pour la société. Or, même après l'arrêt par lequel la cour d'appel avait ordonné sa libération, le requérant n'a pas été transféré dans une REMS. Il a en revanche continué à être détenu en milieu pénitentiaire ordinaire, dans de mauvaises conditions, et n'a pas bénéficié d'une prise en charge thérapeutique individualisée.

À partir de février 2019, le département de l'administration pénitentiaire a adressé de nombreuses demandes d'accueil aux REMS afin de trouver une place pour le requérant, mais sans succès, faute de places disponibles. Face à ces refus, les autorités nationales n'ont pas créé de nouvelles places au sein des REMS ni trouvé une autre solution. Il leur revenait d'assurer au requérant qu'une place en REMS serait disponible ou de trouver une solution adéquate. L'absence de places n'était pas une justification valable au maintien du requérant en milieu pénitentiaire.

Conclusion : violation (unanimité).

Article 34 : La mesure provisoire indiquée par la Cour consistait à assurer le transfert du requérant dans une structure, REMS ou autre, permettant d'assurer la prise en charge adéquate, sur le plan thérapeutique, de sa pathologie psychique.

Les autorités internes ont transféré le requérant au sein d'une communauté thérapeutique trente-cinq jours après l'adoption de la mesure par la Cour.

L'absence de places dans les REMS n'est pas une justification valable au retard. Il revenait au gouvernement de trouver pour le requérant, au lieu d'une place en REMS, une autre solution adéquate. Et bien qu'un certain retard dans l'exécution de la mesure provisoire ait été en l'espèce acceptable dans une situation exceptionnelle telle que celle du confinement de mars 2020 en Italie, trente-cinq jours apparaissent néanmoins excessifs.

Conclusion : violation (unanimité).

La Cour conclut aussi, à l'unanimité, à la violation de l'article 5 § 5 en raison de l'absence de moyen pour obtenir, à un degré suffisant de certitude, réparation des violations de l'article 5 § 1 ; à la violation de l'article 6 § 1 du fait de la non-exécution de l'arrêt ordonnant la remise en liberté du requérant et de la décision ordonnant son placement en REMS ; à la non-violation de l'article 5 § 1 a), du fait que le requérant, à l'époque du procès, était apte à y participer de manière consciente et était ainsi à même, au moment de l'exécution de la peine, de comprendre la finalité de réinsertion sociale que celle-ci poursuivait et d'en bénéficier.

Article 41 : 36 400 EUR pour préjudice moral.

(Voir aussi *Assanidzé c. Géorgie* [GC], 71503/01, 8 avril 2004, Résumé juridique ; *Torreggiani et autres c. Italie*, 43517/09, 8 janvier 2013, Résumé juridique ; *W.D. c. Belgique*, 73548/13, 6 septembre 2016, Résumé juridique ; et *Rooman c. Belgique* [GC], 18052/11, 31 janvier 2019, Résumé juridique)

ARTICLE 5

Article 5 § 1 (e)

Persons of unsound mind/Aliéné

Continued detention in an ordinary prison of a person suffering from bipolar disorder, despite the domestic court order for his transfer to an appropriate institution, for lack of available places: *violation*

Maintien en détention en prison ordinaire d'un bipolaire, malgré son placement dans un établissement adapté ordonné par les tribunaux nationaux, faute de places disponibles : *violation*

Sy – Italy/Italie, 11791/20, Judgment/Arrêt 24.1.2022 [Section I]

(See Article 3 above/Voir l'article 3 ci-dessus, page 6)

ARTICLE 6

Article 6 § 1 (criminal/pénal)

Fair hearing/Procès equitable

Use at trial of initial confession by terrorist suspect held incommunicado and denied, without individualised reasons, access to lawyer of own choice and legal-aid lawyer: *violation*

Utilisation au procès des aveux initiaux d'un suspect de terrorisme détenu au secret qui s'était vu refuser, sans motivation individualisée, l'accès à l'avocat de son choix et à un avocat commis d'office : *violation*

Atristain Gorosabel – Spain/Espagne, 15508/15, Judgment/Arrêt 18.1.2022 [Section III]

(See Article 6 § 3 (c) below/Voir l'article 6 § 3 c) ci-dessous, page 8)

Fair hearing/Procès equitable

Conviction based on written statements of absent witnesses, who were examined by the courts of their places of residence, absent reasonable efforts by the trial court to secure their attendance: *violation*

Condamnation fondée sur les déclarations écrites de témoins absents, entendus par les tribunaux de leur lieu de résidence, en l'absence de mesures raisonnables prises par la juridiction de jugement pour assurer leur comparution : *violation*

Faysal Pamuk – Turkey/Turquie, 430/13, Judgment/Arrêt 18.1.2022 [Section II]

(See Article 6 § 3 (d) below/Voir l'article 6 § 3 d) ci-dessous, page 9)

Article 6 § 3 (c)

Defence through legal assistance/Se défendre avec l'assistance d'un défenseur
Legal assistance of own choosing/Assistance d'un défenseur de son choix

Use at trial of initial confession by terrorist suspect held incommunicado and denied, without individualised reasons, access to lawyer of own choice and legal-aid lawyer: *violation*

Utilisation au procès des aveux initiaux d'un suspect de terrorisme détenu au secret qui s'était vu refuser, sans motivation individualisée, l'accès à l'avocat de son choix et à un avocat commis d'office : *violation*

Atristain Gorosabel – Spain/Espagne, 15508/15, Judgment/Arrêt 18.1.2022 [Section III]

Traduction française du résumé – Printable version

Facts – The applicant is currently serving a seventeen-year sentence of imprisonment for membership of a terrorist group and possession of explosives. After his arrest on 29 September 2010, his detention incommunicado was authorised by an investigating judge of the *Audiencia Nacional*. The applicant complains that he was denied a lawyer of his own choosing whilst being held incommunicado, that he was not allowed to communicate with the lawyer appointed to represent him before and during the police interviews, and that for those reasons he made self-incriminatory statements which had enabled the police to obtain the evidence on which his conviction was based.

Law – Article 6 §§ 1 and 3 (c): At the material time the Code of Criminal Procedure denied to detainees being held in detention incommunicado, as in cases concerning terrorism such as the present one, the possibility of being assisted by a lawyer of their own choosing, although it stipulated that they had to be appointed a legal-aid representative from the moment of their arrest. They were also restricted to consult with the lawyer prior to the police interviews.

(a) *Existence of reasons for the restrictions of the applicant's right of access to a lawyer of his own choosing and of the access to the legal-aid lawyer before the police interviews during his incommunicado detention* – The impugned restrictions stemmed from the applicable provisions of the Criminal Procedure Code in respect of the ordering of detention incommunicado which, as such, had been authorised by the investigating judge in view of the *Guardia Civil* requests to enter and search properties used by the cell of ETA to which the applicant allegedly belonged and the objective of pre-empting the potential frustration of the ongoing investigation, which had been primarily aimed at the location of explosives. Following that decision, the applicant had been entitled to and had in fact been granted a legal-aid representative when arrested and prior to giving his statements to the *Guardia Civil*; that representative had been present during the interviews when the applicant had made those statements.

If a suspect received the assistance of a qualified lawyer, who was bound by professional ethics, rather than another lawyer whom he or she might have preferred to have appointed, this was not in itself sufficient to show that the whole trial had been unfair – subject to the proviso that there was no evidence of manifest incompetence or bias. In the present case, the decisions which had restricted the applicant's right to be assisted by a lawyer of his own choosing had been of a general and mandatory nature and based on a general provision of domestic law. They had not entailed an individual assessment of the particular circumstances of the case and had not been subject to judicial authorisation in the light of the specific facts, but had taken into account general suspicions that the applicant had participated in a terrorist organisation and had hidden explosives that could allegedly have been used in a manner posing a severe risk to others' lives. Further, no relevant and sufficient grounds had been given by the national courts for the restriction. The fact that the judge must provide reasons for the incommunicado detention in general did not imply a justification about the necessity of the restriction of the right of access to a lawyer of one's own choosing. The national courts had thus failed to demonstrate how the interests of justice had required that the applicant should not be able to choose his counsel.

Similarly, no concrete justification had been provided by the domestic courts on the existence of compelling reasons to justify preventing the applicant from having access to his lawyer before the interviews and during his incommunicado detention. The lack of access to a lawyer before the interviews was also (and logically) covered by the Court's relevant case-law which emphasised the crucial importance of these confidential meetings. It had also not been shown that the domestic courts had carried out an individual assessment of the particular circumstances of the case. The case-by-case analysis currently provided for by the domestic law, had not been applicable at the material time.

(b) *The fairness of the proceedings as a whole* – The control of the overall fairness had to be very strict, taking into account the double nature of the restrictions which had been particularly extensive.

The evidence obtained as a result of the statements made by the applicant at the police station had formed a significant part of the probative evidence upon which his conviction had been based. Although there had been other evidence on which the conviction had also been based, the significant likely impact of the applicant's initial confession on the further development of the criminal proceedings against him could not be ignored. In this connection, the Court observed, that the Government had not provided any reasons, other than the content of Article 527 of the Code of Criminal Procedure, concerning the necessity to prevent the applicant from contacting his lawyer and having an interview with the legal-aid lawyer assigned to him. This element had since been modified in the Code of Criminal Procedure currently in force, which now required an individual judicial decision to restrict

the right of the detained person to communicate with a lawyer including during incommunicado detention. Further, neither the first instance court nor the Supreme Court had provided any reasoning to justify the applicant's complaint that his legal-aid representative had not been allowed to communicate with him, despite repeated attempts to communicate with his client. Lastly, the domestic courts had not taken into account the fact that the applicant had made his second statement despite the opposition of his legal-aid representative.

Consequently, denying the applicant access to the legal-aid lawyer before the interviews as well as from being assisted by a lawyer of his own choosing, without individualised reasons, had undermined the overall fairness of the subsequent criminal proceedings in so far as the applicant's incriminating initial statement had been admitted in evidence.

Conclusion: violation (unanimously).

Article 41: EUR 12,000 in respect of non-pecuniary damage.

(See also *Dvorski v. Croatia* [GC], 25703/11, 20 October 2015, Legal Summary; *Ibrahim and Others v. the United Kingdom* [GC], 50541/08 et al, 13 September 2016, Legal Summary; *Beuze v. Belgium* [GC], 71409/10, 9 November 2018, Legal Summary)

Article 6 § 3 (d)

Examination of witnesses/Interrogation des témoins

Conviction based on written statements of absent witnesses, who were examined by the courts of their places of residence, absent reasonable efforts by the trial court to secure their attendance: *violation*

Condamnation fondée sur les déclarations écrites de témoins absents, entendus par les tribunaux de leur lieu de résidence, en l'absence de mesures raisonnables prises par la juridiction de jugement pour assurer leur comparution : *violation*

Faysal Pamuk – Turkey/Turquie, 430/13, Judgment/Arrêt 18.1.2022 [Section II]

Traduction française du résumé – Printable version

Facts – The applicant was convicted for involvement in three different armed activities as a member of a terrorist organisation, namely the PKK (Workers' Party of Kurdistan). He complained that, during the criminal proceedings, he had not been able to confront in person four witnesses who had earlier made incriminating statements about him.

Law – Article 6 §§ 1 and 3 (d)

(a) *Whether there was a good reason for the non-attendance of the four witnesses* – The applicant had confessed to his involvement with the PKK; however, he had denied having carried out or taken part in any armed activities. The public prosecutor had relied on the statements other organisation members had made in the course of different criminal proceedings, and of four witnesses in particular. The trial court had decided that those witnesses would be examined by the courts of their places of residence. Accordingly, the evidence of three of the four witnesses had been taken by courts other than the trial court, and the latter had admitted copies of their written statements as evidence in lieu of their live in-court-testimony.

The method chosen by the trial court, namely the examination of the witnesses by the courts of their places of residence if they were residing somewhere other than where the trial was taking place, appeared to result from the interpretation of the relevant provisions of the Code of Criminal Procedure. In other words, the crux of the applicant's inability to examine the witnesses in person had stemmed from the trial court's inflexible and mechanical approach, which had rested on the fact that the witnesses had been situated in different cities. That precluded any individualised assessment of the question of whether there had been any good reasons, in the sense of the term used by the Court in its case-law under Article 6 § 3 (d), for the witnesses' non-attendance at the trial, and appeared to absolve the domestic courts of their duty to make all reasonable efforts to secure their attendance.

Indeed, the fact that that three of the witnesses had been serving their sentences in different prisons in Turkey at the time they had given evidence during the applicant's trial, and had hence been under the exclusive authority of the State, had not prompted the trial court to assess whether it had been possible to hear them in person. Similarly, the steps taken by the domestic authorities to locate the fourth witness, which had consisted only of enquiring at his alleged work address and calling a mobile telephone number belonging to him, did not suggest that they had done everything reasonably expected of them to secure his presence.

In view of the above, the trial court's decision to send letters of request to the courts had been the result of an inability to secure the attendance of the witnesses. No good reason had been shown for the non-attendance of those witnesses at trial.

(b) *Whether the evidence of the absent witnesses was the sole or decisive basis for the applicant's conviction* – In establishing the applicant's involvement in the

three armed incidents indicated in the indictment and sentencing him to life imprisonment, the trial court had relied to a decisive extent on the evidence given by the absent witnesses.

(c) *Whether there were sufficient counterbalancing factors to compensate for handicaps under which the defence laboured* – Given the centrality of the witness evidence, weighty counterbalancing factors had been required to ensure the fairness of proceedings:

The method adopted by the trial court had not been capable of operating as a procedural safeguard in the absence of good reasons for the non-attendance of absent witnesses and when the trial court had had recourse to it without considering alternative measures for obtaining evidence from the absent witnesses. It had not allowed the defence to properly and fairly assess the credibility of the evidence. The Court did not accept the Government's contention that the applicant's lawyer had failed to attend the commission hearings, which would have enabled him to examine the witnesses. The accused and/or defence lawyers would have had to travel to different places with a view to attending the hearings where witnesses would be giving evidence: such a course of action would risk placing a disproportionate burden on the defence to an extent incompatible with the principle of equality of arms. In any event, it appeared that the applicant, who had remained in pre-trial detention throughout the criminal proceedings, could not attend the commission hearings before the different courts had he so wished. Moreover, the trial court's approach was capable of jeopardising the principle of immediacy, in so far as it gave rise to a situation in which the trial court would not have the possibility to directly observe the demeanour and credibility of a certain witness giving evidence in the courts of his or her place of residence.

There was also no indication that the national courts had either approached the evidence given by the absent witnesses with any particular caution or that they had been aware that it had carried less weight owing to their absence from the trial.

Finally, and as regards the availability and strength of further incriminating evidence, the court had already made findings as regards the probative value of the evidence given by the absent witnesses for the applicant's conviction.

In view of the foregoing considerations, the defence's ability to test the truthfulness and reliability of the four witnesses' evidence had been substantially affected and, in the circumstances of the present case, the overall fairness of the proceedings against the applicant had been tainted.

Conclusion: violation (unanimously).

Article 41: no claim made in respect of damage.

(See also *Al-Khawaja and Tahery v. the United Kingdom* [GC], 26766/05 and 22228/06, 15 December 2011, Legal Summary, and *Schatschaschwili v. Germany* [GC], 9154/10, 15 December 2015, Legal Summary)

ARTICLE 8

Respect for private life/Respect de la vie privée
Respect for correspondence/Respect de la correspondance

Inadequate legal safeguards against arbitrariness and abuse for secret surveillance, retention and access of communications data: *violations*

Garanties inadéquates contre l'arbitraire et les abus en matière de surveillance secrète, de conservation de données de communication et d'accès à celles-ci : *violations*

Ekimdzhiev – Bulgaria/Bulgarie, 70078/12, Judgment/Arrêt 11.1.2022 [Section IV]

Traduction française du résumé – Printable version

Facts – The applicants are two lawyers and two non-governmental organisations related to them. They claimed that the nature of their activities put them at risk of both secret surveillance and of having their communications data accessed by the authorities under the laws authorising that in Bulgaria. They did not allege that they had in fact been placed under surveillance or had had their communications data accessed by the authorities.

Law – Article 8

(a) *Secret surveillance*

(i) *Admissibility* – The Court determined that the present complaint was not "substantially the same" as that examined in *Association for European Integration and Human Rights and Ekimdzhiev v. Bulgaria*. Despite the fact that two of the applicants were the same and that the gist of their grievance was identical, the present complaint was not based on the same facts. The system of secret surveillance in Bulgaria had evolved considerably since 2007; in cases such as the one at hand, where the complaint was based on the state of the domestic law, that domestic law and the way it was applied in general were the main fact under examination.

The Committee of Ministers' ongoing review of the relevant Bulgarian laws and practice for the purpose of supervising the execution of *Association for European Integration and Human Rights and*

Ekimdzhiev was also no bar to the admissibility of the complaint under Article 46. The Court's task was to examine the complaint that the secret surveillance system, as it stood now – granted, partly as a result of general measures taken to abide by *Association for European Integration and Human Rights and Ekimdzhiev* – fell short of the requirements of Article 8. The Court therefore had jurisdiction to examine the complaint.

(ii) *Merits* – The laws governing secret surveillance in Bulgaria, as applied in practice, had significantly improved after they had been examined in *Association for European Integration and Human Rights and Ekimdzhiev*. However, they still fell short of the minimum safeguards against arbitrariness and abuse required under Article 8 in the following respects:

– the internal rules governing the storage and destruction of materials obtained via surveillance had not been made accessible to the public;

– the "objects" which might be placed under surveillance had not been defined in domestic law in a way so as to ensure that it could not serve as a basis for indiscriminate surveillance;

– the excessive duration of the initial authorisation for surveillance on national-security grounds – two years – significantly weakened the judicial control to which surveillance was subjected;

– the authorisation procedure, as it operated in practice, was not capable of ensuring that surveillance was resorted to only when "necessary in a democratic society";

– a number of lacunae existed in the statutory provisions governing the storing, accessing, examining, using, communicating and destroying of surveillance data;

– the oversight system, as currently organised, did not comply with the requirements of sufficient independence, competence and powers;

– the notification arrangements were too narrow; and

– the dedicated remedy was not available in practice in all possible scenarios, did not ensure examination of the justification of each instance of surveillance (by reference to reasonable suspicion and proportionality), was not open to legal persons, and was limited in terms of the relief available.

Those shortcomings in the legal regime appeared to have had an actual impact on the operation of the system of secret surveillance in Bulgaria. Recurring scandals relating to secret surveillance suggested the existence of abusive practices, which appeared to be at least in part due to inadequate legal safeguards.

It followed that the Bulgarian laws governing secret surveillance did not fully meet the "quality of law" requirement and were incapable of keeping the "interference" entailed by the system of secret surveillance to what was "necessary in a democratic society".

Conclusion: violation (unanimously).

(b) *Retention and accessing of communications data* – Under Bulgarian law, all communications service providers in the country had to retain all the communications data of all of their users for six months, with a view to making that data available to the authorities for certain law-enforcement purposes. Various authorities might then access that data.

The general retention of communications data by communications service providers and its access by the authorities in individual cases had to be accompanied, *mutatis mutandis*, by the same safeguards against arbitrariness and abuse as secret surveillance. However, the Bulgarian laws fell short of those minimum safeguards in the following respects:

– the authorisation procedure was not capable of ensuring that retained communications data was accessed by the authorities solely when that was "necessary in a democratic society";

– no clear time limits had been laid down for destroying data accessed by the authorities in the course of criminal proceedings;

– no publicly available rules existed on the storing, accessing, examining, using, communicating and destroying of communications data accessed by the authorities;

– the oversight system, as currently organised, was not capable of effectively checking abuse;

– the notification arrangements, as currently operating, were too narrow; and

– there did not appear to be an effective remedy.

Those laws therefore did not fully meet the "quality of law" requirement and were incapable of keeping the "interference" entailed by the system of retention and accessing of communications data to what was "necessary in a democratic society".

Conclusion: violation (unanimously).

Article 41: findings of violation constituted in itself sufficient just satisfaction in respect of non-pecuniary damage.

(See *Association for European Integration and Human Rights and Ekimdzhiev v. Bulgaria*, 62540/00, 28 June 2007, Legal Summary; see also *Roman Zakharov v. Russia* [GC], 47143/06, 4 December 2015, Legal Summary, and *Centrum för rättvisa v. Sweden* [GC], 35252/08, 25 May 2021, Legal Summary)

Respect for private life/Respect de la vie privée

Asset freezing of a member of the entourage of the former President of Ukraine (Yanukovych), ongoing for nearly eight years: *communicated*

Gel des avoirs d'un proche de l'ex-président ukrainien (Ianoukovitch) durant depuis une huitaine d'années : *affaire communiquée*

Ivanyushchenko – Switzerland/Suisse, 54708/20, Communication [Section III]

English translation of the summary – Version imprimable

À la suite de la destitution du président ukrainien Viktor Ianoukovitch, en février 2014, le Conseil fédéral suisse décida par ordonnance de bloquer les valeurs patrimoniales en Suisse du président déchu et de son entourage, au vu des forts soupçons de corruption pesant sur ces personnes. En juillet 2016, une nouvelle ordonnance fut adoptée, dont la durée de validité est depuis lors prolongée d'année en année.

En décembre 2017, le requérant demanda à ce que son nom soit radié de l'ordonnance, soutenant notamment que sa durée d'application n'était plus proportionnée à l'objectif légal de permettre l'entraide judiciaire, et y voyant une atteinte grave à son droit au respect de sa réputation. Le département fédéral des Affaires étrangères lui opposa un refus, en se référant notamment à de « graves soupçons de détournement » qui pesaient sur lui au regard des procédures suisses et ukrainiennes.

Ses recours juridictionnels furent vains : en mars 2020 dernièrement, le Tribunal fédéral considéra que la situation du requérant étant complexe, il n'était pas totalement exclu que l'on découvre à l'avenir d'autres avoirs, jusqu'à présent inconnus, qui ne seraient pas visés par un séquestre pénal ; partant, le gel de ses avoirs apparaissait toujours nécessaire, afin d'éviter que de tels biens puissent quitter la Suisse.

Affaire communiquée sous l'angle de l'article 8 de la Convention.

ARTICLE 10

Freedom of expression/Liberté d'expression

Conviction of a local councillor for failing to take prompt action in deleting illegal comments by others on the wall of his Facebook account, which was freely accessible to the public and used during his election campaign: *case referred to the Grand Chamber*

Condamnation pénale d'un élu faute d'avoir promptement supprimé les propos illicites de tiers sur le mur de son compte Facebook librement accessible au public et utilisé lors de sa campagne électorale : *affaire renvoyée devant la Grande Chambre*

Sanchez – France, 45581/15, Judgment/Arrêt 2.9.2021 [Section V]

On 17 January 2022 the case was referred to the Grand Chamber at the applicant's request (see the Legal Summary of the Chamber judgment).

Le 17 janvier 2022, cette affaire a été renvoyée devant la Grande Chambre à la demande du requérant (voir le Résumé juridique de l'arrêt de chambre).

Freedom of expression/Liberté d'expression

Journalist's unjustified and disproportionate conviction and sanctioning for statements on well-known legal entities at public Parliamentary Commission hearing: *violation*

Condamnation et sanction injustifiées et disproportionnées d'un journaliste pour des déclarations faites devant une commission parlementaire au sujet de personnes morales connues : *violation*

Freitas Rangel – Portugal, 78873/13, Judgment/Arrêt 11.1.2022 [Section IV]

Traduction française du résumé – Printable version

Facts – The applicant was a renowned journalist in Portugal. He was convicted of the criminal offence of insulting a legal entity on account of statements he had made about the Professional Association of Judges and the Professional Association of Public Prosecutors at a hearing before the Parliamentary Commission on Ethics, Society and Culture concerning freedom of expression and the media in Portugal. He was also sentenced to a fine of EUR 6,000 and ordered to pay EUR 25,000 to each of the associations in respect of non-pecuniary damage.

Law – Article 10: The applicant's conviction had amounted to an "interference" with the exercise of the applicant freedom of expression which was "prescribed by law" and had pursued the legitimate aims of the protection of the reputation or rights of others as well as the maintaining the authority of the judiciary. The main question therefore that arose was whether the interference had been necessary in a democratic society. The Court replied in the negative.

The applicant had made the impugned statements while giving his opinion on freedom of expression

and the media and how these were influenced by the political and economic classes. He had alleged that the associations had shared confidential information with journalists to advance their political objectives. Those issues were matters of general interest to the community and discussing them before Parliament formed part of a political debate, a field where a high level of protection of freedom of expression would normally be accorded, with the authorities thus having a narrow margin of appreciation. Further, since the parliamentary session had been open to the public and journalists had been present, it was unsurprising that his statements had been widely disseminated in the media in the days following his speech. He had also been interviewed immediately after the session by a journalist who had been present during his speech and the next day had given a follow-up interview reiterating his position.

Both associations were reputable and well-known professional associations which were frequently invited to present their views before Parliament on legal proposals in matters connected to the functioning of justice. The domestic courts had assumed that the applicant had made only statements of fact which he had known were false and defamatory towards those associations. However, most of his statements had consisted of his personal opinions, the truthfulness of which was not susceptible of proof. The only statement of fact at issue was his claim as to the sharing of confidential information which could be considered as speaking in a more general way about the information sharing by the two organisations. Albeit possibly an exaggerated and thus unfortunate formulation, his comments could be interpreted as an illustration of a broader societal critique regarding the judiciary's inappropriate intervention as a whole in politics and the media; a subject of public interest which he believed to have been true.

The protection of the reputation of a legal entity did not have the same strength as the protection of the reputation or rights of individuals. Further, although not an elected representative, the applicant, being an invited expert presenting his views before a parliamentary commission, should have been afforded an elevated level of protection, as was the case for parliamentary and political speech. Notwithstanding, the Lisbon Court of Appeal had based its decision solely on the right to the associations' good name and reputation, without duly taking into account or examining in detail the Court's case-law criteria. Lastly, besides the deterrent effect of the criminal fine imposed, which had not been modest, the compensation amounts had been disproportionate to any potential damage caused to the reputation of the associations. Sanctions of this severity could have a chilling effect on the exercise of freedom of expression of persons called upon to participate in discussions on general public interest matters and institutions.

Consequently, the domestic courts had failed to provide relevant and sufficient reasons to justify the interference with the applicant's right to freedom of expression and had exceeded the margin of appreciation afforded to them regarding limitations on public interest debates. Further, there had been no reasonable relationship of proportionality between the restriction on his right and the legitimate aim pursued.

Conclusion: violation (unanimously).

Article 41: EUR 31,500 in respect of pecuniary damage.

ARTICLE 11

Freedom of peaceful assembly/Liberté de réunion pacifique

Administrative conviction and detention for protests held in Crimea after Russia had asserted jurisdiction over the peninsula in 2014: *communicated*

Condamnation et détention administrative pour des manifestations en Crimée après que la Russie a déclaré en 2014 que la péninsule relevait de sa compétence : *affaire communiquée*

Bekirov – Russia/Russie, 70557/14 et al., Communication [Section I]

Traduction française du résumé – Printable version

The case concerns 53 applications originating from the conflict between Ukraine and the Russian Federation, after the latter asserted jurisdiction over Crimea in 2014. Most applicants participated in demonstrations in Crimea between 2014-2019, with a view to expressing their pro-Ukrainian position or protesting against prosecutions brought against Tatars by the Russian authorities in Crimea.

The applicants were charged with various breaches under Russian law in respect of the conduct of public events and convicted of administrative offences. They were sentenced either to fines of various amounts, or to administrative detention. They complain that their convictions for staging demonstrations breached their right to freedom of assembly and/or freedom of expression. Some of the applicants also complain of a breach of their right to freedom of assembly on account of the refusals of the Russian authorities to grant them authorisation to hold demonstrations.

In addition, some of the applicants complain that their arrests, transfers to police stations and administrative detention were contrary to Article 5. Finally, nearly all applicants allege that the administrative proceedings brought against them fell short of the guarantees of a fair hearing.

Communicated under Articles 5, 6 § 1, 10, 11 and 14 of the Convention.

Freedom of association/Liberté d'association

Dismissal of employees on account of their involvement in a strike organised outside a trade-union context: *Article 11 not applicable; inadmissible*

Licenciement d'employés fondé sur leur participation à une grève organisée en dehors d'une action syndicale : *article 11 non applicable ; irrecevable*

Barış and Others/et autres – Turkey/Turquie, 66828/16, Decision/Décision 14.12.2021 [Section II]

English translation of the summary – Version imprimable

En fait – 550 salariés d'une société, dont les 32 requérants, ont mené une action de protestation contre les conditions de négociation de la convention collective conclue entre le syndicat et leur employeur et contre les pressions alléguées exercées par l'employeur pour adhérer ou ne pas démissionner d'un syndicat auquel ils ne faisaient plus confiance ou auquel ils ne souhaitaient plus appartenir.

L'action n'a pas été officiellement initiée par un syndicat, mais par un grand nombre d'employés qui ont démissionné en masse de leur syndicat actuel, qui avait négocié la dernière convention collective, et dont beaucoup, y compris les requérants, ont pris l'initiative pour adhérer à un autre syndicat.

L'employeur licencia 50 employés, dont les requérants, pour avoir cessé le travail tout au long de l'action sans permission ni excuse. Les salariés licenciés saisirent les tribunaux du travail pour licenciement abusif et sollicitèrent leur réintégration dans leur emploi initial. Ces tribunaux leur donnèrent gain de cause. Cependant, la Cour de cassation, saisie par l'employeur, mit fin à la procédure en infirmant les jugements des tribunaux du travail. Les recours individuels des requérants devant la Cour constitutionnelle n'aboutirent pas.

En droit – Article 11 : La Cour doit d'abord répondre à la question pertinente, qui n'est pas de savoir si les employés individuels, en dehors du cadre d'une action organisée par un syndicat, ont le droit, en vertu du droit national ou international, d'initier une grève ou d'y participer, mais si un tel droit entre dans le champ d'application de l'article 11.

Selon la jurisprudence constante de la Cour, les actions de grève ne sont, en principe, protégées par l'article 11 que dans la mesure où elles sont organisées par les organismes syndicaux et considérées comme faisant effectivement, et non seulement présumées, partie de l'activité syndicale. La Cour n'a jamais admis qu'une grève menée non pas par un syndicat mais par des membres de ce syndicat ou des non-membres puisse également bénéficier de la protection de l'article 11. Pareillement, selon la jurisprudence du Comité européen des droits sociaux, le fait de réserver la décision de déclencher une grève aux syndicats est conforme à l'article 6 § 4 de la Charte sociale européenne pourvu que la constitution d'un syndicat ne soit pas soumise à des formalités excessives.

Alors que les tribunaux du travail ont accueilli les demandes des requérants, après avoir estimé que les salariés concernés avaient été licenciés en raison de leurs activités syndicales et du fait qu'ils avaient déclenché la grève d'une manière pacifique pour protester contre l'absence d'un véritable droit de s'organiser et d'adhérer au syndicat de leur choix et contre la pression exercée par l'employeur, la Cour de cassation les a rejetées. Elle a estimé que la raison de leur licenciement était le fait qu'ils avaient illégalement cessé de travailler pour protester contre la convention collective conclue par le syndicat. La grève n'était pas une grève légale faisant suite à un conflit survenu au cours des négociations en vue de la conclusion d'une convention collective.

En ce qui concerne les quelques employés qui avaient déclaré avoir protesté contre les conditions de travail, la Cour de cassation a constaté que seulement certains d'entre eux « ont déclaré avoir utilisé leur droit d'action collective en raison de mauvaises conditions de travail » et « sans pourtant indiquer quelles étaient ces mauvaises conditions ».

Le raisonnement de la Cour constitutionnelle va dans le même sens. Elle a constaté que la grève n'avait pas été organisée par le syndicat pour la défense des intérêts des employés, qu'au cours de l'action certains employés avaient quitté le syndicat mis en cause pour adhérer à un autre syndicat et que, par conséquent, il n'était pas possible d'assimiler l'action en question à une activité syndicale. Le droit de grève faisait partie du droit de s'organiser, mais, en l'occurrence, l'action n'ayant pas été menée dans le cadre de l'organisation syndicale, il n'était pas possible de considérer que la rupture des contrats de travail des requérants avait porté atteinte à leur droit de grève.

Les requérants se plaignent que leurs droits au titre de l'article 11 ont été violés en raison de leur licenciement « pour participation à une grève ». Ils n'allèguent donc pas que leur licenciement était fondé sur le motif qu'ils voulaient quitter leur syndicat et adhérer à un autre syndicat. Les conditions d'affiliation au syndicat ne faisaient pas du tout l'objet de l'action.

Par ailleurs, les requérants n'ont pas respecté les procédures prévues en droit interne pour mener une action collective organisée par un syndicat.

Toutes les mesures prises par l'employeur l'ont été en relation avec le défaut de reprise du travail des employés et non pour une affiliation ou une non-affiliation à un syndicat spécifique. La possibilité ou non pour les requérants de quitter un syndicat et d'adhérer à un autre syndicat ne semble pas donc être en cause en l'espèce. D'après les faits établis par la Cour de cassation, leur licenciement était fondé sur leur participation à une grève en dehors d'une action syndicale et non sur leur souhait de quitter leur syndicat et d'adhérer à un autre syndicat.

Dans la mesure où, sur la base des éléments du dossier, les requérants n'ont pas été licenciés pour avoir participé à une manifestation organisée par le syndicat ou pour avoir revendiqué des droits professionnels dans le cadre des activités du syndicat ou pour avoir quitté un syndicat spécifique ou pour avoir décidé de ne pas adhérer à un syndicat spécifique, ils ne peuvent effectivement revendiquer un droit à la liberté d'association protégé par l'article 11.

Conclusion : irrecevable (incompatibilité *ratione materiae*).

ARTICLE 34

Hinder the exercise of the right of application/Entraver l'exercice du droit de recours

35-day delay in enforcing the Court's interim measure requesting the placement of a bipolar patient in a specialist centre excessively long: *violation*

Retard de 35 jours excessivement long dans l'exécution de la mesure provisoire de la Cour demandant le placement d'un bipolaire dans une résidence spécialisée : *violation*

Sy – Italy/Italie, 11791/20, Judgment/Arrêt 24.1.2022 [Section I]

(See Article 3 above/Voir l'article 3 ci-dessus, page 6)

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

Deprivation of property/Privation de propriété
Positive obligations/Obligations positives

Annulment of titles and requisition of land plots in Crimea by Russian authorities, after Russia asserted jurisdiction over peninsula in 2014: *communicated*

Annulation de titres de propriété et réquisition de terrains par les autorités russes en Crimée après que la Russie a déclaré en 2014 que la péninsule relevait de sa compétence : *affaires communiquées*

Andriyevskiy and Others/et autres – Russia/Russie or/ou Russia and Ukraine/Russie et Ukraine, 53891/16 et al., Communication [Section I]

Traduction française du résumé – Printable version

The cases concern 230 applications originating from the conflict between Ukraine and the Russian Federation, after the latter asserted jurisdiction over Crimea in 2014.

Until 2012, Ukrainian local authorities allocated the land plots in question to the applicants or, in some cases, their previous owners, for permanent use and allowed their privatisation. In most cases the legality of the land allocation was subject to judicial review and confirmed by final decisions of Ukrainian courts. By the time the Russian Federation asserted jurisdiction over Crimea, most applicants/previous owners had finalised the privatisation process and registered full ownership titles to the land plots under Ukrainian law.

When the Russian Federation asserted its jurisdiction in 2014, all public property that had been nominally owned by the Ukrainian state, regional and local authorities was declared to constitute the property of the Russian authorities. Russian law provided for transitional arrangements aimed at homogenising the regulation of, *inter alia*, property and land rights and relations in Crimea and Sevastopol with the legal regime established in the Russian Federation.

In accordance with the new legal regime, many of the applicants successfully re-registered their titles to the land plots under Russian law. Some of them sold the land plots to third persons after re-registration and others purchased the disputed land plots after their previous owners had their titles fully established under Russian law.

Nevertheless, the Russian authorities successfully brought lawsuits against the applicants with a view

to claiming their land plots as public property and having their titles annulled. They argued that the allocation of the disputed land plots to private persons for permanent use did not fully comply with the Ukrainian law applicable at the material time. For those who had sold the plots to third parties, the judicial proclamation of illegality of the initial transfer of land titles into private hands enabled regression claims against them. Some applicants were ordered to compensate financial losses to individuals who had purchased the disputed land plots prior to their requisition by the authorities.

The applicants argue that the annulment of their titles and requisition of the disputed land plots constituted *de facto* expropriation of their property. They also argue that the Russian courts in Crimea, which ordered that *de facto* expropriation, did not afford them a fair hearing, and were neither independent and impartial, nor established by law. Given that the legality of the privatisation process had been verified and confirmed by the final decisions of the Ukrainian courts, the orders which questioned them were not in conformity with the *res judicata* principle.

One applicant also argues that the Russian authorities' ban on her leaving the territory, until she had paid compensation for financial losses, resulted in a breach of her right to move freely within the territory of Ukraine (between Crimea and mainland Ukraine).

A number of applicants further raise complaints against Ukraine, arguing that the Ukrainian authorities have not done enough to protect their property rights in Crimea and in breach of their positive obligations under Article 1 of Protocol No. 1.

Communicated under Articles 6 and 13 of the Convention, Article 1 of Protocol No. 1 and Article 2 of Protocol No. 4.

ARTICLE 1 OF PROTOCOL No. 12/ DU PROTOCOLE N° 12

General prohibition of discrimination/ Interdiction générale de la discrimination

Discriminatory denial to blind chess players of financial awards granted to sighted players as national sporting recognition for winning similar international accolades: *violation*

Refus discriminatoire d'accorder aux joueurs d'échecs aveugles les récompenses financières attribuées à titre de reconnaissance nationale aux joueurs voyants qui avaient remporté des distinctions internationales comparables : *violation*

Negovanović and Others/et autres – Serbia/Serbie, 29907/16 et al., Judgment/Arrêt 25.1.2022 [Section II]

Traduction française du résumé – Printable version

Facts – The four applicants are blind chess players and Serbian nationals who, between 1961 and 1992, won a number of medals for Yugoslavia, notably at the Blind Chess Olympiads, as part of the national team. They complained that they had been discriminated against by the Serbian authorities by being denied certain financial awards provided under the 2006 Sporting Achievements Recognition and Rewards Decree, i.e. a lifetime monthly cash benefit as well as a one-time cash payment, unlike all other athletes and chess players, including sighted chess players or other athletes or players with disabilities, who had won similar international accolades. Their discrimination claims were dismissed by the domestic courts.

Law – Article 1 of Protocol No. 12

(a) *Applicability* – The domestic law, as interpreted by the national courts, provided that only chess players who had won medals at the Chess Olympiad, otherwise organised for sighted chess players only, were entitled to certain financial awards, thus effectively disqualifying all other chess players including those who, such as the applicants, had won their medals at the Blind Chess Olympiad. It follows that the Serbian authorities, when deciding to enact such legislation, had clearly exercised their discretionary power in such a way as to treat differently the sighted and the blind chess players despite them winning similar international accolades. Consequently, the applicants' complaints fell under category (iii) of potential discrimination as envisaged by the Explanatory Report on Protocol No. 12.

(b) *Merits*

(i) *Whether there was a difference in treatment* – The lifetime monthly cash benefit was to be paid to sighted chess players for winning medals in the Chess Olympiad but not to blind chess players for winning medals in the Blind Chess Olympiad, the former competition having been listed in the decree but the latter competition not having been specifically mentioned therein. The situation with the one-time cash payment, however, seemed less clear since Article 3 of the decree referred only to persons who had won medals for Serbia rather than both Serbia and Yugoslavia. The applicants had been thus at least partly treated differently based on a ground of distinction covered by Article 1 of Protocol No. 12, namely their disability.

(ii) *Whether the two groups of persons were in comparable situations* – The applicants, as blind chess

players who had won their medals at the Blind Chess Olympiad, on the one hand, and the sighted chess players who had won their medals at the Chess Olympiad, on the other, had to be seen as two groups of persons engaging in the same activity, i.e. playing chess, and, furthermore, as two groups whose members had attained some of the highest international accolades. They had thus been in analogous or relevantly similar situations.

(iii) *Whether there was an objective and reasonable justification* – While it had been obviously legitimate for the Serbian authorities to focus on the highest sporting achievements and the most important competitions, it had not been shown why the undoubtedly high accolades that had been won by the applicants, as blind chess players, would have been less "popular" or "internationally significant" than similar medals that had been won by sighted chess players. Indeed, the International Braille Chess Association had informed the Serbian authorities that blind chess players were, based on their results, "on the single official list of FIDE together with chess players without sight impairment" and had requested that they be treated "in accordance with the basic postulates of ethics and fair-play in sports". In any event, it was inconceivable that the "prestige" of a game or a sport as such, including for example some of the most popular sports such as football, basketball or tennis, should depend merely on whether it was practised by persons with or without a disability. The decree itself actually placed the Olympics and the Paralympics on an equal footing and thus regarded the achievements of disabled sportsmen and sportswomen in the sports concerned as meriting equal recognition. Also, equal treatment of blind and sighted chess players for similar achievements, in Serbian legislation as well as in practice, could only have served to enhance the country's reputation abroad and promote inclusiveness domestically. Lastly, of all the medal winners and champions over the years, namely a total of some 400 persons including sighted chess players, only blind chess players had been denied their national sporting recognition award. Adding the four applicants to this number, therefore, clearly could not have undermined the country's financial stability, particularly since there had been no suggestion that winning a medal at the Blind Chess Olympiad was, generally speaking, an easily attainable achievement capable of giving rise to many future entitlements.

Accordingly, and notwithstanding the State's margin of appreciation, there was no "objective and reasonable justification" for the differential treatment of the applicants merely on the basis of their disability, it being understood that the said margin was reduced considerably in this particular context.

Conclusion: violation (five votes to two).

Article 41: EUR 4,500 to each applicant in respect of non-pecuniary damage. As to pecuniary damage, the Government must pay each applicant the accrued and any future financial benefits and/or awards to which he would have been entitled had he been a sighted chess player who had won, for Yugoslavia, a relevant medal at the Chess Olympiad for sighted chess players, together with the applicable domestic statutory interest as regards the accrued benefits and/or awards only.

(See also *Glor v. Switzerland*, 13444/04, 30 April 2009, Legal Summary; *Savez crkava "Riječ života" and Others v. Croatia*, 7798/08, 9 December 2010, Legal Summary; and *Napotnik v. Romania*, 33139/13, 20 October 2020, Legal Summary)

PROTOCOL No. 15/DU PROTOCOLE N° 15

Four-month time-limit for applying to the Court/Délai de quatre mois pour saisir la Cour

The time-limit for applying to the European Court of Human Rights is now four months from the date of the final domestic decision

Le délai pour saisir la Cour européenne des droits de l'homme est dorénavant de quatre mois à partir de la décision interne définitive

Press realease – Communiqué de presse

GRAND CHAMBER (PENDING)/ GRANDE CHAMBRE (EN COURS)

Referrals/Renvois

Sanchez – France, 45581/15, Judgment/Arrêt 2.9.2021 [Section V]

(See Article 10 above/Voir l'article 10 ci-dessus, page 12)

OTHER JURISDICTIONS/ AUTRES JURIDICTIONS

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

Child, being a minor and a Union citizen, whose birth certificate was drawn up by the host member State and designates as parents two persons of the same sex: the member State of which the child is a national is obliged to issue an identity card or a passport to that child without

requiring a birth certificate to be drawn up beforehand by its national authorities

Enfant mineur citoyen de l'Union dont l'acte de naissance établi par l'État membre d'accueil désigne comme ses parents deux personnes de même sexe : l'État membre dont il est ressortissant est obligé de lui délivrer une carte d'identité ou un passeport, sans requérir l'établissement préalable d'un acte de naissance par ses autorités nationales

Case/Affaire C-490/20, Judgment/Arrêt 14.12.2021

Press release – Communiqué de presse

-oOo-

The principle *ne bis in idem* does not preclude the issue of a European arrest warrant against persons accused of abducting the son of a former Slovak President

Le principe *ne bis in idem* ne s'oppose pas à l'émission d'un mandat d'arrêt européen contre les personnes accusées d'avoir enlevé le fils d'un ancien président slovaque

Case/Affaire C-203/20, Judgment/Arrêt 16.12.2021

Press release – Communiqué de presse

-oOo-

EU law precludes the application of a decision of the Constitutional Court insofar as this, combined with national provisions on prescription, creates a systemic risk of impunity – The primacy of EU law requires that national courts have the power to disapply a decision of a constitutional court which is contrary to that law, in particular without running the risk of incurring their disciplinary liability

Le droit de l'Union s'oppose à l'application d'une jurisprudence de la Cour constitutionnelle dans la mesure où celle-ci, combinée avec les dispositions nationales en matière de prescription, crée un risque systémique d'impunité – La primauté du droit de l'Union exige que les juridictions nationales aient le pouvoir de laisser inappliquée une décision d'une cour constitutionnelle qui est contraire à ce droit, notamment sans courir le risque d'engager leur responsabilité disciplinaire

Joined Cases/Affaires jointes C-357/19, C-379/10, C-547/19, C-811/10 and/et C-840/19, Judgment/Arrêt 21.12.2021

Communiqué de presse (press release not available in English)

RECENT PUBLICATIONS/ PUBLICATIONS RÉCENTES

The following publications have recently been published on the Court's website, under the Case-Law menu / Les publications suivantes ont récemment été mises en ligne sur le site web de la Cour, sous l'onglet « Jurisprudence ».

Publications in non-official languages/ Publications en langues non officielles

Romanian/Roumain

Ghid privind art. 14 din Convenție (interzicerea discriminării) și art. 1 din Protocolul nr. 12 la Convenție (interzicerea generală a discriminării)

Russian/Russe

Руководство по прецедентной практике Европейского Суда. Права заключенных