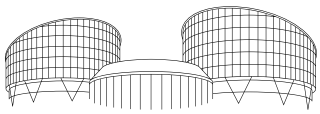

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Information Note on the Court's case-law

No. 198 July 2016

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ARTICLE 2

Positive obligations (substantive aspect)

Insufficient consideration given to risk of fatal injuries in context of domestic violence: *violation*

Halime Kılıç v. Turkey - 63034/11
Judgment 28.6.2016 [Section II]

Facts – Fatma Babatlı (the applicant's daughter) lodged a criminal complaint alleging domestic violence and seeking protection measures. She had to repeat her request several times because her husband failed to comply with the protection orders and injunctions she had obtained. After he had been found to be in possession of knives, he was briefly placed in police custody and subsequently released. Several months later the applicant's daughter was killed by her husband, who then committed suicide.

Law

Article 2: The protection orders and injunctions had turned out to be totally ineffective, firstly because of the excessive delays in serving them (19 days for the first order and 8 weeks for the second), and secondly because her husband was never punished for failing to comply with those measures.

Furthermore, despite the fact that her husband had clearly been shown to represent a danger, the criminal court had refused to grant the prosecution's request to place him in pre-trial detention, without assessing the risks for his wife, including the risk of death or further possible attacks. The climate of impunity thus created had allowed the husband to continue assaulting his wife without fear of prosecution.

Regarding the victim's alleged ability to seek refuge in a shelter with her seven children, neither the prosecutor nor the police had attempted to direct her to a facility adapted to her needs. The Court found that the national authorities had had a duty to take account of the particularly precarious and vulnerable psychological, physical and material situation in which the wife had found herself and to assess it accordingly, whilst offering her appropriate support.

Conclusion: violation (unanimously).

Article 14 in conjunction with Article 2: Following the judgment in *Opuz v. Turkey* – in which the Court had found that domestic violence affected mainly women and that the general and discriminatory judicial passivity in Turkey had created a climate that was conducive to domestic violence – numerous initiatives had been taken in Turkey, such as the enactment of a new law offering greater protection (Law no. 6284) and the ratification of the Istanbul Convention[1]. However, the facts of the present case had predated those reforms.

Referring to reports by the NGO Human Rights Watch and the Committee for the Elimination of Discrimination against Women (CEDAW[2]), and producing figures recording the numbers of women who had lost their lives as a result of assaults, the applicant had provided prima facie evidence that at the relevant time women had not received effective protection against assault. The Court had itself been able to observe, in the light of those reports and statistics, the extent and persistence of violence against women, particularly domestic assault, in Turkish society; and the fact that the number of women's shelters, at the relevant time, was considered insufficient.

The above finding of impunity reflected a certain denial on the part of the national authorities, both regarding the seriousness of instances of domestic violence and regarding the particular vulnerability of the victims. In regularly turning a blind eye to the repeated acts of violence and death threats against the applicant's daughter, the domestic authorities had created a climate that was conducive to domestic violence. It was unacceptable that the victim had been left to face her husband's violence without resources or protection.

Conclusion: violation (unanimously).

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

(See also *Opuz v. Turkey*, 33401/02, 9 June 2009, Information Note 120; *M.G. v. Turkey*, 646/10, 22 March 2016, Information Note 194; and the Factsheet on Domestic violence)

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1. Council of Europe Convention on preventing and combating violence against women and domestic violence, ratified by Turkey in 2012 and entered into force in 2014.
2. Committee set up by the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), ratified by Turkey in 1985.

Authorities' failure to close airspace above military conflict zone resulting in incident with the Malaysian Airlines MH17 flight: *communicated*

Ioppa v. Ukraine - 73776/14
[Section I]

The applicant is the mother of one of the passengers on the Malaysian Airlines MH17 flight from Amsterdam to Kuala Lumpur on 17 July 2014. The aircraft, which was under the control of the Ukrainian air-traffic authority and flying at the authorised height of approximately 10,000 metres, disintegrated and impacted the ground in the eastern part of Ukraine. All 298 persons on board lost their lives. The applicant claims that the Ukrainian authorities' intentional failure to close the airspace above the military conflict zone resulted in the death of her daughter.

Communicated under Articles 2 (right to life) and 35 § 1 of the Convention (exhaustion of domestic remedies).

Effective investigation
Positive obligations (procedural aspect)

Ineffective and lengthy investigation into applicant's son's death: *violation*

Mučibabić v. Serbia - 34661/07
Judgment 12.7.2016 [Section III]

(See Article 34 below, page 18)

ARTICLE 3

Inhuman or degrading treatment

Administrative detention of minors pending expulsion: *violations*

A.B. and Others v. France - 11593/12
R.K. and Others v. France - 68264/14
R.C. and V.C. v. France - 76491/14
R.M. and Others v. France - 33201/11
A.M. and Others v. France - 24587/12
Judgments 12.7.2016 [Section V]

Facts – In the context of deportation procedures, the applicants, families with underage children originally from Russia, Armenia and Romania, were placed in the Toulouse-Cornebarrieu and Metz-Queuleu administrative detention centres.

Law

Article 3: In cases concerning the placement in administrative detention of accompanied foreign minors, the Court had concluded, *inter alia*, that there had been a violation of Article 3 on account of the convergence of three factors: the children's young ages, the duration of their administrative detention and the fact that the premises concerned were not adapted for children (see *Muskhadzhiyeva and Others v. Belgium*, 41442/07, 19 January 2010, Information Note 126; and *Popov v. France*, 39472/07, 19 January 2012, Information Note 148).

With regard to the material conditions of administrative detention, the Toulouse-Cornebarrieu and Metz-Queuleu centres were among those "authorised" to receive families. The authorities had been careful to separate families from other detainees, to provide bedrooms that were specially adapted and to make available appropriate equipment for childcare.

However, the Toulouse-Cornebarrieu Centre had been constructed immediately next to an airport runway; it was therefore exposed to particularly strong noise pollution. The children, for whom periods of outside playtime were necessary, were thus subjected to excessive levels of noise.

In general, the inherent constraints in detention, which was especially difficult for young children, as well as the conditions of organised life in the centres, had necessarily produced anxiety in the applicants' children. In particular, they had been permanently subjected to announcements made over the centres' loudspeakers. Furthermore, in the Metz-Queuleu Centre the interior courtyard of the family area was separated from the "men's" area by only a metal fence, allowing everything that happened inside to be observed.

Beyond a brief period, the repetition and accumulated nature of these mental and emotional assaults necessarily had adverse consequences for young children, exceeding the relevant threshold of gravity to fall within the scope of Article 3. It followed that the duration of detention was of paramount importance.

This brief period had been exceeded in respect of the detention for eighteen days of a four-year-old child in the conditions set out above (case of *A.B. and Others*). In addition, since he could not be left on his own, he had been obliged to accompany his parents to all of the meetings required by their situation, and to the various judicial and

administrative hearings. During those visits, he had been required to be in close proximity to armed and uniformed police officers. Finally, he had been exposed to his parents' emotional and mental distress, in a place of detention where they had been unable to put the necessary distance between them for his protection.

The above-mentioned short period had also been exceeded with regard to the administrative detention of:

(i) a child of two-and-a- half years and another of four months, for a duration of at least seven days (case of *A.M. and Others*);

(ii) a seven-month-old child, for at least seven days (case of *R.M. and Others*);

(iii) a two-year-old child, for a ten-day period (case of *R.C. and V.C.*);

(iv) a child of fifteen months, for at least nine days (case of *R.K. and Others*).

Conclusion: violation in respect of the applicants' children (unanimously).

Article 5 § 1 (f): The presence in administrative detention of a child accompanying his or her parents was compatible with that provision only in so far as the domestic authorities demonstrated that they had resorted to that measure of last resort only after having verified, in tangible terms, that no other coercive measure could be put in place.

(a) Cases of *A.B. and Others*, *R.M. and Others* and *R.K. and Others*: Alternative measures to the families' placement in administrative detention had not been sought.

Conclusion: violation in respect of the applicants' children (unanimously).

(b) Case of *A.M. and Others:* The option of resorting to a less coercive measure had been dismissed by the prefect on account of the applicant's refusal to contact the border police with a view to organising her departure, the absence of identity papers and the uncertain nature of her accommodation.

(c) Case of *R.C. and V.C.*: The option of resorting to a less coercive measure had been dismissed by the prefect on account of the applicant's conviction for serious offences, her declared wish not to return to her country of origin and the fact that she had no known address.

The domestic authorities had thus effectively sought to establish whether the placement of these families in administrative detention was a measure of last resort for which no alternative was available.

Conclusion: no violation (unanimously).

The Court also concluded that there would be no violation of Article 3 of the Convention if the applicants were to be sent back to Russia (cases of *R.M. and Others* and *R.K. and Others*).

It also found a violation of Article 5 § 4 in respect of the applicants' children (cases of *A.B. and Others*, *R.M. and Others* and *R.K. and Others*) and a violation of Article 8 in respect of all of the applicants (in the cases of *A.B. and Others* and *R.K. and Others*).

In contrast, the Court found no violation of Article 5 § 4 in respect of the applicants' children and no violation of Article 8 in respect of all of the applicants (in the cases of *A.M. and Others* and *R.C. and V.C.*).

Article 41: awards in respect of non-pecuniary damage, ranging from EUR 1,500 to EUR 9,000.

Allegations of unlawful detention and ill-treatment by authorities of so-called Lugansk and Donetsk People's Republics: *communicated*

L.M.P. and V.V.P. v. Ukraine and Russia - 45742/15
O.I.Z. and V.P.Z. v. Ukraine and Russia - 22980/16
[Section I]

The applications concern allegations of unlawful detention and ill-treatment by members of the separatist forces of the so-called Lugansk People's Republic and Donetsk People's Republic.

Communicated under Articles 1, 3, 5 § 1 and 13.

Effective investigation
Positive obligations (procedural aspect)

Refusal to reopen criminal proceedings in respect of which Government had submitted unilateral declaration: *violation*

Jeronovičs v. Latvia - 44898/10
Judgment 5.7.2016 [GC]

(See Article 37 below, page 20)

Extradition

Proposed extradition to United States where applicant faced life imprisonment without parole: *relinquishment in favour of the Grand Chamber*

Harkins v. the United Kingdom - 71537/14
[Section I]

The applicant had been the subject of an extradition request from the United States Government since 2003 on charges of first-degree murder and attempted robbery. Although the US Government provided assurances that the death penalty would not be imposed, the applicant faced a mandatory sentence of life imprisonment without the possibility of parole if extradited and convicted of first-degree murder. In *Harkins and Edwards v. the United Kingdom* (9146/07 and 32650/07, 17 January 2012, Information Note 148), the Court decided that the applicant's extradition would be compatible with Article 3. Following the Court's judgment, the applicant applied for judicial review of the extradition decision in the UK courts. His application was refused.

In his application to the European Court, the applicant complains that the mandatory sentence of life imprisonment without the possibility of parole should be considered *de facto* and *de jure* irreducible and grossly disproportionate, in breach of Article 3. He also complains that his extradition would violate Article 6 because the mandatory nature of the sentence does not permit the sentencing judge to take into account mitigating factors.

On 5 July 2016 the Chamber decided to relinquish jurisdiction in favour of the Grand Chamber.

ARTICLE 5

Article 5 § 1

Liberty of person

Allegations of unlawful detention and ill-treatment by authorities of so-called Lugansk and Donetsk People's Republics: *communicated*

L.M.P. and V.V.P. v. Ukraine and Russia - 45742/15
O.I.Z. and V.P.Z. v. Ukraine and Russia - 22980/16
[Section I]

(See Article 3 above, page 9)

Article 5 § 1 (f)

Expulsion

Authorities required to examine alternative measures to administrative detention of families pending expulsion: *violations; no violations*

A.B. and Others v. France - 11593/12
R.K. and Others v. France - 68264/14
R.C. and V.C. v. France - 76491/14
R.M. and Others v. France - 33201/11
A.M. and Others v. France - 24587/12
Judgments 12.7.2016 [Section V]

(See Article 3 above, page 8)

Article 5 § 3

Reasonableness of pre-trial detention

Absence of relevant and sufficient reasons for pre-trial detention other than reasonable suspicion of commission of an offence: *violation*

Buzadji v. the Republic of Moldova - 23755/07
Judgment 5.7.2016 [GC]

Facts – The applicant, a businessman, was arrested in May 2007 and formally charged with defrauding a State company of which he was the director. He was placed in detention pending trial given the gravity of the charges against him, the complexity of the case and the risk of collusion. His detention was then extended on a number of occasions until July 2007 when the domestic courts accepted his request to be placed under house arrest. He remained under house arrest until March 2008 when he was released on bail.

In a Chamber judgment of 16 December 2014, the Court held, by four votes to three, that there had been a violation of Article 5 § 3 of the Convention because the domestic courts had failed to give sufficient reasons for extending the applicant's detention pending trial and subsequently ordering his house arrest.

On 20 April 2015 the case was referred to the Grand Chamber at the request of the Moldovan Government.

Law – Article 5 § 3: Under the first limb of Article 5 § 3, persons arrested or detained under Arti-

cle 5 § 1 (c) on suspicion of having committed an offence have the right to be brought "promptly" before a judicial authority who will examine the lawfulness of the detention and whether the suspicion is reasonable.

Under the second limb of Article 5 § 3 – the right to a trial within a reasonable time or to release pending trial – the Court's case-law provided that the persistence of a reasonable suspicion is a condition *sine qua non* for the validity of the continued detention, but, after a "certain lapse of time", this no longer suffices so that other "relevant and sufficient" reasons to detain are required. The Court had, however, never defined the length of a "certain lapse of time" although it had recognised that it could be as short as a few days.

The Court therefore considered it useful to further develop its case-law as to the requirement on national judicial authorities to justify continued detention for the purposes of the second limb of Article 5 § 3. As a starting point, it reiterated that the period to be taken into consideration for the assessment of the reasonableness of the detention under the *second* limb begins when the person is deprived of his or her liberty.

The Court noted that, while the two limbs conferred distinct legal rights, there were certain overlaps: the period started to run for both from the time of arrest; both required a judicial authority to determine whether there were reasons justifying detention and to order release if not; and in practice the application of the guarantees under the second limb would to some extent overlap with those of the first, typically in situations where the judicial authority which authorises detention under the first limb at the same time orders detention on remand subject to the guarantees under the second. In such situations, the first appearance of the suspect before the judge constituted the "crossroads" where the two sets of guarantees met and where the second set succeeded the first. Yet, the question of when the second applied to its full extent, in the sense that further relevant and sufficient reasons additional to reasonable suspicion were required, was left to depend on the rather vague notion of "a certain lapse of time".

In this connection, the Court noted that the domestic laws of the great majority of the thirty-one Council of Europe member States covered by its comparative-law survey required the relevant judicial authorities to give "relevant and sufficient" reasons for continued detention if not immediately then only a few days after the arrest, namely when a judge examined for the first time the necessity of placing the suspect in pre-trial detention. Such an approach, if transposed to Article 5 § 3 of the Convention, would not only simplify and bring more clarity and certainty into the Convention case-law, but would also enhance the protection against detention beyond a reasonable time.

There were thus compelling arguments for synchronising the second-limb guarantees with the first limb. Accordingly, the requirement on the judicial officer to give relevant and sufficient reasons for the detention in addition to the persistence of reasonable suspicion applied already at the time of the first decision ordering detention on remand, that is to say "promptly" after the arrest.

The Grand Chamber found that the applicant's house arrest also constituted a deprivation of liberty and proceeded to apply the same criteria for the entire period of deprivation of liberty, irrespective of the place where the applicant had been detained.

It found that the reasons invoked by the domestic courts for ordering and prolonging the applicant's detention had been stereotyped and abstract. Their decisions had cited the grounds for detention without any attempt to show how they applied concretely to the specific circumstances of the applicant's case. Moreover, the domestic courts could not be said to have acted consistently. In particular, on some occasions they had dismissed as unsubstantiated and implausible the prosecutor's allegations about the danger of the applicant's absconding, interfering with witnesses and tampering with evidence. On other occasions they had accepted the same reasons without there being any apparent change in the circumstances and without explanation. Where such an important issue as the right to liberty was at stake, it was incumbent on the domestic authorities to convincingly demonstrate that the detention was necessary. That had certainly not been the case here.

Thus there had been no relevant and sufficient reasons to order and prolong the applicant's detention pending trial.

Conclusion: violation (unanimously).

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

(See *Letellier v. France*, 12369/86, 26 June 1991; *Labita v. Italy* [GC], 26772/95, 6 April 2000, Information Note 17; and *Idalov v. Russia* [GC], 5826/03, 22 May 2012, Information Note 152)

Article 5 § 4

Review of lawfulness of detention

Unduly limited scope of review of administrative court ruling on an appeal against administrative detention order: *violation*

A.M. v. France - 56324/13
Judgment 12.7.2016 [Section V]

Facts – In March 2011 the applicant, a Tunisian national, was served with an order for his deportation to Tunisia. By a judgment of March 2011 an administrative court confirmed the lawfulness of that order, but the order was never enforced. On 7 October 2011 the applicant was rearrested and held in a detention centre pending enforcement of the deportation order of March 2011.

However, the applicant contested the lawfulness of the detention order before the administrative court. The hearing was fixed for 11 October 2011, but on that morning he was deported to Tunisia and so was unable to attend the hearing. Despite this, the administrative court dismissed his application the same day. In March 2012 the Administrative Appeal Court reversed the administrative court's decision. In March 2013, however, the *Conseil d'État* set aside the judgment of the Administrative Appeal Court and, ruling on the merits, dismissed the applicant's application to the administrative court.

The applicant submitted to the European Court that, in breach of Article 5 § 4 of the Convention, he had been deprived of any effective access to a judge to verify the lawfulness of his detention. He had been deported to Tunisia before the referral to the pre-sentencing judge and before the administrative court could determine the lawfulness of his detention. The applicant also complained of a lack of impartiality in the scrutiny carried out by the administrative court, as it had no power to review the circumstances of his arrest.

Law – Article 5 § 4: The applicant's detention began with his arrest on 7 October 2011 and ended within his deportation on 11 October 2011. The applicant had used the only remedy available to him in applying to the administrative court.

As regards the suspensive effect of that remedy, the Court had never required the remedies provided for in Article 5 § 4 to include a suspensive effect *vis-à-vis* detention measures for the purposes mentioned in Article 5 § 1 (f). Moreover, inasmuch as the alien remained in detention pending the decision of the administrative court, such a requirement would, paradoxically, lead to prolonging the very situation which he or she was seeking to end by challenging the administrative detention. It could also delay the execution of a final decision on deportation, the lawfulness of which might already have been verified, as in the present case.

As regards the administrative court's supervision of the applicant's detention, that period of custody had lasted from the time of his arrest by the security forces through his placement in administrative detention until the date of his deportation. However, administrative courts examining an appeal against an administrative detention order could only verify the competence of the authority which issued the order, its reasons for making the order and the necessity of the administrative detention. They had no jurisdiction to review the lawfulness of measures preceding and leading to the administrative detention. In particular, they could not verify the conditions surrounding the alien's arrest. They could not verify whether the circumstances of the arrest leading to the administrative detention complied with domestic law and with the purpose of Article 5, which was to protect individuals against arbitrary treatment. Such supervision was therefore insufficient in the light of the requirements of Article 5 § 4 for the purposes of detention under Article 5 § 1 (f).

Accordingly, the applicant had not benefited from a remedy for the purposes of Article 5 § 4 of the Convention.

Conclusion: violation (six votes to one).

Article 41: no claim made in respect of damage.

ARTICLE 6

Article 6 § 1 (criminal)

Fair hearing

Decision of court of appeal to overturn applicant's acquittal without hearing oral testimony from main prosecution witnesses: *violation*

Lazu v. the Republic of Moldova - 46182/08
Judgment 5.7.2016 [Section II]

Facts – In 2005 the applicant, a bank armoured-vehicle driver, was charged with violating traffic rules. He was acquitted by the first instance court on the grounds that the witness statements against him could not be considered reliable. However, he was later convicted by the court of appeal.

In his application to the European Court, the applicant complained that the criminal proceedings against him had been unfair because, when overturning his acquittal, the court of appeal had failed to hear the witnesses whose testimony had been used to find him guilty, in breach of Article 6 § 1 of the Convention.

Law – Article 6 § 1: The Court noted at the outset that the witness statements and the weight given to them had had a decisive impact on the determination of the case because, apart from them, there was no other evidence which could lead on its own to the applicant's conviction.

The first-instance court acquitted the applicant because it did not trust the witnesses after hearing them in person. In re-examining the case, the court of appeal disagreed with the first-instance court as to the trustworthiness of the witness statements without ever hearing the witnesses. As a result it found the applicant guilty as charged. In doing so, the court of appeal breached the relevant legal provisions as well as their interpretation provided by the domestic case-law, which foresaw that, in order for a court of appeal to rule on the merits of a case, a fresh examination of the evidence was needed. Moreover, the court of appeal did not provide any reasons for not complying with the domestic law, nor did it explain why it had come to a conclusion different from that of the first-instance court. Lastly, having regard to what was at stake for the applicant, the issues to be determined by the court of appeal could not have been properly examined without a direct assessment of the evidence given by the prosecution witnesses. Nothing in the case-file indicated that the applicant had waived his right to recall any of the witnesses other than the victim. Moreover, having been acquitted at first instance and being aware that for a conviction the appellate court had to re-assess directly the evidence in the file, the applicant had not had any particular reason to recall the witnesses.

The applicant's conviction without the re-examination of any witnesses, after he had been acquitted by the first-instance court, had therefore violated the guarantees of a fair trial.

Conclusion: violation (six votes to one).

Article 41: EUR 2,000 in respect of non-pecuniary damage; claim in respect of pecuniary damage dismissed.

(See also *Dan v. Moldova*, 8999/07, 5 July 2011)

ARTICLE 7

Article 7 § 1

Heavier penalty

Refusal to apply more lenient sentence existing during short interval in legislation between abolition of death penalty and ensuing amendment of the law: *no violation*

Ruban v. Ukraine - 8927/11
Judgment 12.7.2016 [Section V]

Facts – The applicant was convicted in 2010 of offences, including aggravated murder, committed in 1996. At the time of the commission of the offences the 1960 Criminal Code provided for the death penalty for that offence. On 29 December 1999 the Constitutional Court found the death penalty to be unconstitutional with immediate effect. Three months later, on 29 March 2000, the Parliament amended the Criminal Code so as to abolish the death penalty by replacing it with life imprisonment for the offence of aggravated murder. The applicant contended in the Convention proceedings that the *lex mitior* principle required that he benefit from the more lenient (fifteen-year) sentence that he alleged was applicable to the offence of aggravated murder dur-

ing the three-month interval between the ruling of the Constitutional Court and the amendment to the Criminal Code bringing in the sentence of life imprisonment.

Law – Article 7: Article 7 § 1 guaranteed not only the principle of non-retrospectiveness of more stringent criminal laws but also, and implicitly, the principle of retrospectiveness of the more lenient criminal law effect; in other words, where there were differences between the criminal law in force at the time of the commission of the offence and subsequent criminal laws enacted before a final judgment was delivered, the courts had to apply the law whose provisions were most favourable to the defendant. It was consistent with the principle of the rule of law to expect a trial court to apply to each punishable act the penalty which the legislator considered proportionate.[1]

The gap in the legislation during the three-month period between the abolition of the death penalty and the ensuing amendment of the Criminal Code had been unintentional. Indeed, it would be difficult to argue that the wording of the 1960 Criminal Code during the relevant period contained a punishment for the type of crime committed by the applicant that the legislator considered proportionate. The intention of the legislator to humanise the criminal law and to give retrospective effect to more lenient law was an important factor (see *Gouarré Patte v. Andorra*, 33427/10, 12 January 2016, Information Note 192). However, from the materials before it, the Court could not detect any intention on the part of the legislator in particular, and of the State in general, to mitigate the law to the extent claimed by the applicant. At the time the applicant committed his crime in 1996, it was punishable by the death penalty. The Parliament had then replaced that penalty with the life sentence, which it considered proportionate. Thus the refusal of the domestic courts to consider the 1960 Criminal Code as worded during the said three-month period as the most lenient law enacted before the final verdict and their decision to apply instead the wording of the Criminal Code as amended by the Parliament on 29 March 2000, that is long before the applicant's conviction and which had been in place ever since, had not upset the applicant's rights as guaranteed by Article 7. Accordingly, having sentenced the applicant to life imprisonment, which was the applicable penalty at the time of conviction, and not to the death penalty, which was the relevant penalty at the time he committed the crime, the domestic courts had in fact applied the more lenient punishment.

Conclusion: no violation (six votes to one).

1. *Scoppola v. Italy (no. 2)* [GC], 10249/03, 17 September 2009, Information Note 122.

ARTICLE 8

Respect for private life

Dam construction threatening important archaeological site: *communicated*

Ahunbay and Others v. Turkey, Austria and Germany - 6080/06
Decision 21.6.2016 [Section II]

In 2006 work began on constructing the Ilısu dam as part of a project to create a dam and a hydroelectric power plant on the River Tigris. The project poses a direct threat to the Hasankeyf archaeological and cultural heritage site, which is over six thousand years old and is classified as a "Category I protected site" by the Turkish authorities. According to the report entitled "Cultural aspects of the Ilisu Dam Project, Turkey", submitted to the Parliamentary Assembly of the Council of Europe on 18 December 2001, construction of the Ilısu dam is liable to result in the disappearance of a large part of the upper Tigris valley, which is of great cultural and historic importance. The report states that the scientific significance of the unexcavated parts of Hasankeyf, as of the other two hundred sites identified in the affected area, could be enormous.

The applicants brought an unsuccessful action seeking the cancellation of the project in question.

They complain that the destruction of an archaeological heritage which is six thousand years old and which should be the subject of various long-term studies would breach their right to understand their cultural heritage and to transmit these values to future generations.

Complaints against Turkey: *communicated* under Articles 8 and 10.

Complaints against Austria and Germany: *declared inadmissible* (incompatible *ratione personae*).

ARTICLE 10

Freedom of expression

Criminal conviction and imposition of a fine on journalist for article mocking local government officials: *violation*

Ziembiński v. Poland (no. 2) - 1799/07
Judgment 5.7.2016 [Section IV]

Facts – The applicant was the proprietor and editor-in-chief of a local newspaper which published an article mocking a district mayor and two of his officials for their endorsement of a project to develop quail farming in the region as a solution to the problem of rural unemployment. The article called the district mayor and one of the officials "dull bosses" and described the other official as being a "numbskull", "dim-witted" and a "poser".

The mayor and the two officials brought a private prosecution against the applicant for defamation. Having reclassified the offence as one of proffering insults, the domestic courts sentenced him to a fine, finding that he had abused his freedom of speech and infringed the officials' dignity.

Law – Article 10: The applicant's conviction and sentence had amounted to "interference" with the exercise of his right to freedom of expression. It had been prescribed by law and had pursued the legitimate aim of protecting the reputation or rights of others.

The applicant had written a satirical article criticising the quail farming project endorsed by the local officials as a remedy to the problem of local unemployment. There was no doubt that this issue, which related to the exercise of the local officials' functions, had been a matter of legitimate public interest and so concerned a sphere in which restrictions on freedom of expression were to be strictly construed.

The applicant was convicted of proffering insults against local government officials, including a mayor, who, as an elected local politician, could be subjected to wider criticism than private individuals. The other two officials were civil servants. While civil servants acting in an official capacity were, like politicians, subject to wider limits of acceptable criticism than private individuals, it could not be said that they knowingly lay themselves open to close scrutiny of their every word and deed to the extent politicians do.

The assessment of the necessity of the interference in the present case could not be detached from the context and the apparent goal of the applicant's criticism. The satirical nature of the text and the irony underlying it had to be taken into account when analysing the article. The use of sarcasm and irony was perfectly compatible with the exercise of a journalist's freedom of expression. However, the domestic courts had not taken sufficient account of these features.

There was no doubt that the remarks in question, taken in the particular context of the article, remained within the limits of admissible exaggeration. The domestic courts had failed to consider them in the context of the article as a whole. Satire was a form of artistic expression and social commentary which, by its inherent features of exaggeration and distortion of reality, naturally aimed to provoke and agitate. Accordingly, any interference with the right to use this means of expression had to be examined with particular care.

Lastly, the applicant had been sentenced to a fine of EUR 2,630 and ordered to reimburse costs totalling EUR 755.

Having regard to the foregoing considerations, the domestic courts had not given "relevant and sufficient" reasons to justify the applicant's conviction and sentence. Accordingly, the interference with his right to freedom of expression had been disproportionate to the aim pursued, and had not been "necessary in a democratic society".

Conclusion: violation (five votes to two).

Article 41: EUR 1,000 in respect of non-pecuniary damage; EUR 3,385 in respect of pecuniary damage.

ARTICLE 13

Effective remedy

No requirement under Article 13 for States to set up second level of appeal with suspensive effect in asylum cases: *no violation*

A.M. v. the Netherlands - 29094/09
Judgment 5.7.2016 [Section III]

Facts – The applicant, an Afghan national, entered the Netherlands in 2003 and applied for asylum. In 2005 both his application for asylum and his

appeal against that decision were rejected. The applicant did not appeal to the Administrative Jurisdiction Division of the Council of State. In 2007 an exclusion order was imposed on him and his attempts to challenge that decision were also unsuccessful. Again, the applicant did not appeal to the Administrative Jurisdiction Division.

In 2009 the European Court granted the applicant's request for an interim measure under Rule 39 of its Rules of Court, indicating to the Netherlands Government that he should not be expelled to Afghanistan until further notice.

Law – Article 13 read in conjunction with Article 3: In cases concerning expulsion or extradition, the notion of an effective remedy under Article 13 required (i) independent and rigorous scrutiny of a claim that there existed substantial grounds for believing that there was a real risk of treatment contrary to Article 3, and (ii) a remedy with automatic suspensive effect. In the present case, a further appeal to the Administrative Jurisdiction Division did not have automatic suspensive effect. This remedy therefore fell short of the second effectiveness requirement. This finding was not altered by the fact that it was possible to seek a provisional measure from the Administrative Jurisdiction Division as such a request did not itself have automatic suspensive effect either.

This did not mean, however, that a further appeal to the Administrative Jurisdiction Division in asylum cases should be regarded as irrelevant. Such an approach would overlook the important role played by the Administrative Jurisdiction Division as a supervisory tribunal that sought to ensure legal consistency in, *inter alia*, asylum law. In addition, it was quite feasible that – while an asylum case was pending before the European Court – the Administrative Jurisdiction Division could decide to accept the further appeal against the impugned ruling of the Regional Court, quash it and remit the case to the Regional Court for a fresh ruling. Such a development at the domestic level could affect an applicant's status as "victim" in the context of Article 34 of the Convention.

The Court further noted the automatic suspensive effect of an appeal filed with the Regional Court as well as the powers of this appeal court in asylum cases. Although Article 13 did not compel Contracting States to set up a second level of appeal, the applicant had had at his disposal a remedy complying with the above two requirements for challenging the Minister's decision to deny him asylum. In fact, he could appeal to the Regional Court, which was empowered to examine the Article 3 risks in full and had indeed evaluated them on different occasions. It was true that the appeal to the Regional Court in the exclusion-order proceedings did not have suspensive effect. However, Article 13 had been complied with by virtue of the suspensive effect in the asylum proceedings.

Conclusion: no violation (unanimously).

The Court also found, unanimously, that there would be no violation of Article 3 in the event of the applicant's removal to Afghanistan.

ARTICLE 14

Discrimination (Article 2)

Persistent climate of impunity in matters of domestic violence, mainly to the detriment of women: *violation*

Halime Kılıç v. Turkey - 63034/11
Judgment 28.6.2016 [Section II]

(See Article 2 above, page 7)

ARTICLE 34

Locus standi
Victim

Standing of non-governmental organisation to lodge application on behalf of deceased children: *absence of victim status*

Bulgarian Helsinki Committee v. Bulgaria -
35653/12 and 66172/12
Decision 28.6.2016 [Section V]

Facts – In December 2007, following a television broadcast of a documentary highlighting the situation of disabled children in a home in Bulgaria, the applicant association wrote to the State Prosecutor requesting a criminal investigation into the conditions in which these children were accommodated in the home and into the deaths that had occurred. Between January and October 2008 the prosecution carried out preliminary investigations before concluding that there was no need to institute criminal proceedings and dismissing the cases.

In August 2009 the applicant association brought a civil action against the State Prosecutor's Office under the Protection against Discrimination Act, seeking to establish that the prosecution's refusal to launch an investigation amounted to discrimination on grounds of the disability and state of health of the children concerned. In September 2010 the applicant association withdrew its action.

The applicant association monitored the progress of the criminal investigations and lodged appeals against a number of decisions of the prosecution not to prosecute or discontinuing proceedings.

Law – Article 34: The applicant association could not claim to be either a direct victim of the alleged violations – the direct victims being the adolescent children who had died – or an indirect victim, having regard to the lack of a "sufficiently close link" with the direct victim or "personal interest" in maintaining the complaints. The Court was thus required to analyse the standing of the applicant association to act on the deceased children's behalf. Having regard to the exceptional nature of that application of the concept of *locus standi*, the criteria set forth in *Câmpeanu*[1] were decisive for the examination of the present applications.

The direct victims, on account of their mental disability, their status as abandoned children and their extreme vulnerability, had not been in a position to complain, while alive, of the conditions in the home where they had been placed.

As the young girls had been abandoned at birth and had not had any contact with their biological parents while alive, and one of the mothers had explicitly waived parental rights, the children had *de facto* led an orphan's life in the institutions in which they had been placed. Accordingly, even if the mothers remained the children's legal representatives under domestic law, there had been no real link in the present case between the parents and children, with the result that no one had been responsible for protecting the children's best interests. Accordingly, the parents in question could not be regarded as persons "capable of lodging an application with the Court".

The applicant association had not had any contact with the adolescent children and had not taken an interest in their case prior to their deaths, which had occurred in October 2006 and October 2007 respectively. Long periods had elapsed not only between the girls' deaths and the first steps taken by the applicant association in the respective investigations, but also between the decisions discontinuing the proceedings, of which the applicant association had already learnt, and their applications to the prosecution to have the investigations reopened. The Court could not consider that the applicant association could rely indefinitely on a right to contest the allegedly flawed criminal proceedings in the present case, even supposing that it could be deemed to have had that right from the time it had learnt of the girls' death. A contrary finding would mean, irrespective of the examination of the issue of *locus standi*, that the applicant association would be exempted from the duty to comply with another condition of admissibility of applications brought before the Court, namely, introduction of the application within six months.

Whilst the applicant association had intervened at domestic level it had not had formal standing in the domestic proceedings under Bulgarian law. It had not been party to the proceedings and had not enjoyed the procedural rights granted to the parties. It had only been able to challenge the prosecutor's discontinuance orders and had not subsequently had the right to appeal against them before the courts.

In conclusion, in view of the fact that the applicant association had not been in contact with the girls before they died and had not had a procedural status encompassing all the rights enjoyed by parties to criminal proceedings and the fact that its intervention in the criminal proceedings following the discontinuance orders had been delayed, the criteria established in *Câmpeanu* had not been satisfied. Accordingly, the Court was unable to find that the applicant association had legal standing in the present case.

However, the Court's decision was limited to the circumstances of the present case and the above conclusion should not be interpreted as disregard for civil society's work to protect the rights of extremely vulnerable people. The applicant association had played an active and vigilant role in alerting the competent institutions and had cooperated with them during the investigations and inspections that had been carried out. In that context the Bulgarian authorities had taken the reports made by the applicant association seriously despite the fact that the latter had no formal status in the domestic proceedings.

1. *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], 47848/08, 17 July 2014, Information Note 176.

Accordingly, the Court accepted the Government's objection regarding the applicant association's lack of *locus standi* and considered that the applications were incompatible *ratione personae* within the meaning of Article 34 of the Convention.

Conclusion: inadmissible (incompatible *ratione personae*).

(See also *Association for the Defence of Human Rights in Romania – Helsinki Committee on behalf of Ionel Garcea v. Romania*, 2959/11, 24 March 2015, Information Note 183)

Victim

Lack of effective and sufficient redress for death of applicant's son: *victim status upheld*

Mučibabić v. Serbia - 34661/07
Judgment 12.7.2016 [Section III]

Facts – In 1995 the applicant's son died in an accident caused by the covert production of rocket fuel on the premises of a socially-owned company. A preliminary judicial investigation was opened and then discontinued in 2000. At the applicant's request a further inquiry was opened in 2002 to explore the possibility that breaches of safety regulations had caused the explosion. That inquiry was closed in 2003. Following an indictment filed by the applicant, criminal proceedings were opened against four senior executives of the two companies commissioned to produce the rocket fuel and an executive of the intelligence services. The defendants were eventually acquitted by the first-instance court owing to a lack of evidence. The criminal proceedings were still pending at second instance. In the meantime, in 2011 the Constitutional Court found that there had been delays and shortcomings in the investigation into the accident and held that the applicant was entitled to damages. The proceedings to determine the amount of compensation were still pending.

Law – Article 2 (*procedural aspect*)

(a) *The applicant's victim status* – In its 2011 decision, the Constitutional Court found that the applicant had suffered a breach of his right to a trial within a reasonable time on account of the ineffective, inadequate and lengthy criminal proceedings before the first-instance court. It thus ordered the competent courts to bring the impugned criminal proceedings to a conclusion as soon as possible and declared that the applicant was entitled to compensation in respect of non-pecuniary damage. The applicant was initially offered the equivalent of EUR 840, which he refused to accept, deeming it insufficient. The civil courts then increased the compensation to approximately EUR 2,580, stating that a higher award would be contrary to the purpose of compensation and that the State could not be responsible for the omission of third parties.

In the Court's view, however, the redress provided domestically was not effective or sufficient. Firstly, while the requirement of diligence and promptness was inherent in both Article 6 and the procedural aspect of Article 2, the scope and motives of the examination given by the Constitutional Court appeared to be narrower that those before the European Court. Secondly, the just satisfaction awarded was not in reasonable proportion to the award the European Court would have made in respect of comparable violations of Article 2. Thirdly, even assuming that the acknowledgment that the proceedings had lasted too long could have been fulfilled, the proceedings to determine the ultimate amount of compensation, as well as the underlying criminal proceedings, were still pending. Therefore, the domestic authorities had not afforded effective or sufficient redress for the alleged breach. Accordingly, the applicant could still claim to be a "victim" of a violation under the Convention.

(b) *Merits* – The applicant's son had died in an accident caused by the covert production of rocket fuel, which was, *per se*, a dangerous activity that put people's safety at risk. Whenever a State undertook or organised dangerous activities, or authorised them, it had to ensure that the risk was reduced to a reasonable minimum. The Court lacked temporal jurisdiction to examine the events surrounding the incident, whether the existing regulatory framework called for criticism or whether the competent authorities had failed to take statutory measures that were necessary and sufficient to avert the risks inherent in that dangerous activity. It had not yet been established at the domestic level whether or not there had been any negligence attributable to State officials or bodies going beyond an error of judgment or carelessness. Moreover, it was not the Court's task to determine whether there was a causal connection between any failure on the part of the individuals or the State authorities and the accident, or to reach any findings as to guilt or innocence in that sense.

As to the criminal investigation carried out by the domestic authorities, the Court noted that,

thirteen years after the indictment had been confirmed (and more than twenty years after the accident), the criminal proceedings were still pending at second instance. The Constitutional Court itself had found delays and shortcomings in the investigation. The sensitive nature of the case and the obstacles encountered by the investigation could not be considered an excuse for the delay. On the contrary, they should have constituted a further reason for the State to organise its judicial system to overcome the earlier defects and omissions by the prompt and diligent establishment of the facts at the criminal trial and to bring anyone responsible to justice. The passage of time inevitably eroded the amount and quality of evidence available and the appearance of a lack of diligence cast doubt on the good faith of the investigative efforts. Moreover, the passage of time was also liable to compromise the chances of the investigation being completed. It also prolonged the ordeal for the members of the family. In sum, the respondent State had failed to provide a prompt, diligent and effective response consonant with its obligations flowing from Article 2 of the Convention.

Conclusion: violation (unanimously).

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

(See also the Factsheet on the Right to life)

ARTICLE 35

Article 35 § 3 (a)

Manifestly ill-founded

Failure to provide prima facie evidence in support of complaints about destruction of property in context of armed conflict: *inadmissible*

Lisnyy and Others v. Ukraine and Russia - 5355/15
Decision 5.7.2016 [Section I]

Facts – In April 2014, after the events in Ukraine commonly referred to as the "Revolution of Dignity" or "Euromaidan", armed pro-Russian groups started to seize official buildings in the east of Ukraine and announced the creation of the so-called "Donetsk and Lugansk People's Republics". In response, an "anti-terrorist" operation was launched by the Ukrainian government.

Relying on Articles 2, 6, 8, 10, 13 of the Convention and Article 1 of Protocol No. 1, the applicants complained that their lives had been put at risk and their homes damaged or destroyed as a result of the shelling of the villages where they lived.

Law – Article 35 § 3 (a): Given the adversarial nature of the proceedings before the Court, it was for the parties to substantiate their factual arguments by providing the Court with the necessary evidence. In so far as the applicants relied on Article 1 of Protocol No. 1, the Court had accepted the claim of ownership by some applicants on the basis of extracts from a housing inventory issued by the town administration after the attack complained of. The Court had also considered that an applicant complaining about the destruction of his home should provide at least a brief description of the property in question. As further examples of prima facie evidence of ownership of or residence on property, the Court had accepted documents such as land or property titles, extracts from land or tax registers, documents from the local administration, plans, photographs and maintenance receipts as well as proof of mail deliveries, statements of witnesses or any other relevant evidence. Generally, if an applicant did not produce any evidence of title or residence, his complaints were bound to fail. To sum up, applicants were required to provide sufficient prima facie evidence in support of their complaints about destruction of property in the context of armed conflict.[1] Similar considerations applied as far as complaints made under Articles 2, 6 § 1, 8, 10 and 13 were concerned.

The applicants in the instant cases, who were legally represented, had submitted copies of their passports, photographs of a destroyed house but without proof of ownership, copies of various reports of the Organisation of Security and Co-operation in Europe and certain printouts of items found on the Internet on the general situation in eastern Ukraine.

The Court had consistently applied a more lenient approach in cases where the applicants might encounter difficulties in submitting documentary evidence to support their complaints due to exceptional circumstances beyond their control, such as a situation of ongoing conflict. However, the applicants had not made any submissions as

1. *Sargsyan v. Azerbaijan* [GC], 40167/06, 16 June 2015, Information Note 186.

to the reasons why they had failed to submit any relevant documents supporting their Convention claims. Nor had they informed the Court of any attempts they might have made in order to obtain at least fragmentary documentary evidence to substantiate their allegations. In these circumstances, and in application of Rule 44C § 1 of its Rules, the Court concluded that their complaints had not been sufficiently substantiated.

Conclusion: inadmissible (manifestly ill-founded).

ARTICLE 37

Striking out applications

Continuing obligation of the respondent State to investigate Article 3 complaints even following a decision striking out the complaint following a unilateral declaration

Jeronovičs v. Latvia - 44898/10
Judgment 5.7.2016 [GC]

Facts – In 1998 the applicant instituted criminal proceedings concerning his alleged ill-treatment by police officers. 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. On 10 February 2009 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 reopened.

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

On 3 February 2015 a Chamber of the Court decided to relinquish jurisdiction in favour of the Grand Chamber.

Law – Article 3

(a) *Court's case-law and practice on unilateral declarations* – The considerations to be taken into account when deciding whether to strike out a case, or part thereof, under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration are: (i) the nature of the complaints made, the nature and scope of any measures taken by the respondent Government in the context of the execution of judgments delivered by the Court in any such previous cases and the impact of these measures on the case at issue; (ii) the nature of the concessions contained in the unilateral declaration, in particular the acknowledgment of a violation of the Convention and the payment of adequate compensation for such violation; (iii) the existence of relevant or "clear and extensive" case-law in that respect, in other words, whether the issues raised are comparable to issues already determined by the Court in previous cases; and (iv) the manner in which the Government intend to provide redress to the applicant and whether this makes it possible to eliminate the effects of an alleged violation. If the Court is satisfied with the answers to the above questions, it then verifies whether it is no longer justified to continue the examination of the application, or the part in question, and that respect for human rights does not require it to continue its examination. If these conditions are met it then decides to strike the case, or the relevant part, out of its list.

Even after it has accepted a unilateral declaration and decided to strike an application (or part thereof) out of its list of cases, the Court reserves the right to restore that application (or part of it) to its list. In exercising such power, the Court carries out a thorough examination of the scope and extent of the various undertakings referred to in the Government's declaration as accepted in the strike-out decision, and anticipates the possibility of verifying the Government's compliance with their undertakings. A Government's unilateral declaration may thus be submitted twice to the Court's scrutiny. Firstly, before the decision is taken to strike a case out of its list of cases, the Court examines the nature of the concessions contained in the unilateral declaration, the adequacy of the compensation and whether respect for human rights requires it to continue its examination of the case according to the criteria mentioned above. Secondly, after the strike-out decision the Court may be called upon to supervise the implementation of the Government's undertakings and to examine whether there are any "exceptional circumstances" which justify the restoration of the application (or part thereof) to its list of cases. In supervising the implementation of the Government's undertakings the Court has the power to interpret the terms of both the unilateral declaration and its own strike-out decision.

(b) *Merits* – In its strike-out decision the Court did not expressly indicate to the Government whether they remained under an obligation to conduct an effective investigation or whether such obligation was extinguished by the acknowledgment of a breach and the payment of compensation. The Court had therefore to examine whether such an obligation could arise from the Government's undertaking contained in their unilateral declaration and from the Court's decision striking out the applicant's complaint, or whether the refusal in question disclosed a failure to comply with any procedural obligation that continued to exist after that strike-out decision.

The Court found no exceptional circumstances that could justify restoring to its list of cases the part of application no. 547/02 that it struck out on 10 February 2009. However, it considered particularly relevant the reference, in its 2009 decision, to the fact that the applicant retained the possibility to exercise "any other available remedies in order to obtain redress" as a pre-condition of the Court's decision to strike the relevant part of the application out of its list of cases. Such possibility had to be accompanied by a corresponding obligation on the part of the respondent Government to provide him with a remedy in the form of a procedure for investigating his ill-treatment at the hands of State agents. The payment of compensation could not suffice, having regard to the State's obligation under Article 3 to conduct an effective investigation in cases of wilful ill-treatment by agents of the State. The unilateral declaration procedure was an exceptional one and was not intended either to circumvent the applicant's opposition to a friendly settlement or to allow the Government to escape their responsibility for the breaches of the most fundamental rights contained in the Convention. Accordingly, by paying compensation and by acknowledging a violation of the various Convention provisions, the respondent State had not discharged the continuing procedural obligation incumbent on it under Article 3 of the Convention.

Under the domestic law the applicant could request the reopening of the investigation on the grounds of newly disclosed circumstances, and he had availed himself of this possibility. His request was however dismissed on the ground that the Government's unilateral declaration was not considered as a newly disclosed circumstance for the purposes of the domestic law at issue. Although the Convention did not in principle guarantee a right to have a terminated case reopened, the Court could nevertheless review whether the manner in which the Latvian authorities had dealt with the applicant's request produced effects that were incompatible with their continuing obligation to carry out an effective investigation. In this regard, it found that national legal obstacles could not exempt States from complying with such an obligation. Otherwise the authorities could confine their reaction to incidents of wilful ill-treatment by State agents to the mere payment of compensation, while not doing enough to prosecute and punish those responsible. This would make it possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity, and would render the general legal prohibition of torture and inhuman and degrading treatment, despite its fundamental importance, ineffective in practice. It followed that the applicant had not had the benefit of an effective investigation as required by Article 3 of the Convention.

Conclusion: violation (ten votes to seven).

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

(See also *Gäfgen v. Germany* [GC], 22978/05, 1 June 2010, Information Note 131; *Tahsin Acar v. Turkey* (preliminary objections) [GC], 26307/95, 6 May 2003, Information Note 53; *Žarković and Others v. Croatia* (dec.), 75187/12, 9 June 2015, Information Note 187; and *Alekseentseva and Others v. Russia*, 75025/01 et al., decisions of 4 September 2003 and 23 March 2006, and judgment of 17 January 2008)

ARTICLE 1 OF PROTOCOL No. 1

Peaceful enjoyment of possessions

Rescheduling of national debt entailing decrease in nominal value of bonds without consent of private investors: *no violation*

Mamatas and Others v. Greece - 63066/14, 64297/14 and 66106/14
Judgment 21.7.2016 [Section I]

Facts – In June 2011, when the Greek debt crisis was at its peak, the international institutional investors who had lent Greece amounts well beyond its reimbursement capabilities acknowledged their share of responsibility in the problem. They waived their right to full reimbursement and negotiated a consensual reduction in their claims against the Greek State. At the time, the authori-

ties declared that this procedure would not concern individual bondholders. However, when a new legislation came into force, the individual bondholders, including the applicants, were subjected, against their will and without prior participation in the negotiations between the State and the institutional investors, to a procedure involving exchanging their bonds for other less valuable securities issued by the State with a view to reducing the Greek public debt.

Law – Article 1 of Protocol No. 1: In accordance with the law, Greek State bondholders had had, on expiry of their securities, a pecuniary claim on the State of an amount equivalent to the nominal value of their bonds. They could therefore assert a "legitimate expectation" to have their claims met in accordance with the law and accordingly had "property" covered by the safeguards set out in Article 1 of Protocol No. 1.

The new legislation had led to the conclusion of an agreement, which included activating collective action clauses, between the State and the bondholders, under which decisions were to be taken on an enhanced majority. This agreement altered the conditions governing the bonds, including a cut in their nominal value, and was also binding on the minority bondholders, such as the applicants.

The applicants' mandatory participation in this procedure and the modification of the selected securities amounted to an interference with their right to the enjoyment of their property, which interference was prescribed by legislation which was accessible, the consequences of any refusal on the applicants' part also being foreseeable.

During the serious political, economic and social crisis in Greece the respondent State was justified in taking steps to achieve the goals of maintaining economic stability and restructuring the debt, in the best interests of the community. Therefore, since the exchange operation had resulted in a reduction of the Greek debt, the impugned interference pursued an aim in the public interest.

The applicants' bonds were cancelled and replaced with new securities, entailing a 53.5% capital loss. This loss, which on the face of it was substantial, was nonetheless not large enough to amount to a statutory measure ensuring the cancellation of or an insignificant return on the applicants' investment in the State bonds.

The amount which the applicants expected to receive when their bonds matured could not serve as the reference point for assessing the extent of the loss they had suffered. The nominal value of a bond was not the actual market value at the time of enactment by the State of the impugned legislation. That value had probably already been diminished by declining State solvency, which suggested that by August 2015 the State would not have been able to honour its obligations under the contractual clauses of the old bonds, that is to say before the new legislation was introduced.

At the time the old securities held by the applicants were issued, neither those instruments nor Greek law provided for the possibility of implementing collective action clauses. Such clauses were, however, common practice on the international money markets and had been included in all new euro-area government securities with a maturity date exceeding one year. Furthermore, if a consensus had had to be reached among all the bondholders on the plan to restructure the Greek debt, or if the operation had been confined exclusively to those having consented, the whole plan would almost certainly have collapsed.

Collective action clauses were an appropriate and necessary means of reducing the Greek public debt and saving the respondent State from bankruptcy. Investing in bonds could never be risk-free. Furthermore, the General Court of the European Union had dismissed an appeal against the European Central Bank by 200 Italian nationals holding Greek State bonds.

Therefore, by taking the impugned action Greece had neither upset the fair balance between the public interest and the protection of the applicants' property nor inflicted an individual and excessive burden on them.

Having regard to those considerations and to the wide margin of appreciation afforded the Contracting States in this sphere, the impugned measures could not be considered disproportionate to their legitimate aim.

Conclusion: no violation (unanimously).

The Court also found, unanimously, that there had been no violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1 because the exchange procedure applied to the applicants' securities had not infringed their right to non-discrimination in the enjoyment of their right under Article 1 of Protocol No. 1.

(See also *Malysh and Others v. Russia,* 30280/03, 11 February 2010; *Lobanov v. Russia*, 15578/03,

2 December 2010; and *Broniowski v. Poland* [GC], 31443/96, 22 June 20040, Information Note 65)

Control of the use of property

Court order requiring copyright manager to enter into licence agreement with two radio stations and to set an equitable royalty rate: *no violation*

SIA AKKA/LAA v. Latvia – *562/05*
Judgment 12.7.2016 [Section V]

Facts – The applicant organisation (SIA "Autortiesību un komunicēšanās konsultāciju aģentūra/Latvijas Autoru apvienība" – Copyright and Communication Consulting Agency Ltd./ Latvian Authors Association) was an organisation responsible for managing the copyright of the musical works of a large number of Latvian and international authors. In the 1990s the applicant organisation failed to conclude new licence agreements with several broadcasting companies. Despite this, some of the broadcasters continued to use the protected musical works. In 2002 and 2003 the applicant organisation issued civil proceedings against several of the broadcasting parties, including claims against a private radio station and state-owned radio company, for copyright infringement. In both cases the applicant organisation and the two radio companies were ordered to conclude a licence agreement and to set an equitable royalty rate.

Law – Article 1 of Protocol No. 1

(a) *Interference with the applicant organisation's possessions* – The applicant organisation held the rights transferred to it by its members, namely, the authors of musical works. Accordingly, the applicant organisation's rights constituted possessions in the form of musical works and the economic interests deriving from them. The domestic courts had ordered it to conclude written licence agreements with the defendant organisations in the domestic proceedings and had set certain terms and conditions which in turn had entailed limits on its freedom to enter into contracts in relation to the broadcasting of music. Accordingly, there had been interference with the applicant organisation's possessions in the form of a control of the use of property.

(b) *Compliance* – The domestic courts' competence to order the impugned measures had had a basis in domestic law. The application of the relevant provisions had not been arbitrary, as the domestic courts had provided reasons regarding the setting of royalty rates and the legal basis for the conclusion of the licence agreements. The interference had therefore been prescribed by law. The measures had pursued a legitimate aim, as the domestic courts had endeavoured to maintain a balance between the rights of the applicant organisation to obtain equitable remuneration from the use of musical work and the defendants' interest in obtaining a licence allowing them to legally broadcast rights-protected work.

As to whether a fair balance had been struck, the Court noted that the applicant organisation considered that the State's actions constituted an unjustified interference, whereas the Government had contended that by adopting the contested decisions the State had carried out its positive obligations as enshrined by international and domestic copyright agreements and legislation. In this respect, by virtue of the Berne Convention for the Protection of Literary and Artistic Works and the domestic law as interpreted and applied by the domestic courts, where no agreement between the parties had been reached and no other authority had decided on this issue, it was for the courts to set an equitable royalty rate. In order to assess whether this mechanism had provided safeguards in the instant case to ensure that the functioning of the copyright protection system and its impact was neither arbitrary nor unforeseeable, the Court took into account the following elements.

Firstly, before laying down the royalty rate, the domestic courts had provided the parties with time to reach an agreement. When this did not prove possible, they had relied on the fact that in the first set of proceedings the parties had already reached an agreement on the method for calculation of the royalty rate. In the second set of proceedings the domestic courts referred to the method that had been used in licence agreements the applicant organisation had concluded with other broadcasters, and the rate set by the domestic courts was not considerably lower than the rate negotiated by the parties in their previous licence agreement.

Secondly, the domestic courts established that in circumstances where parties were in principle willing to enter into an agreement, banning the broadcast of the music would not suit the best interests of copyright holders to receive the maximum benefit from the works.

Thirdly, the orders to enter into a licence agreement were limited in scope and time. Accordingly, the parties had not been prevented from renegotiating the rate. It followed that the authorities had minimally restricted the right of the applicant organisation to renegotiate terms and conditions with the defendants and other broadcasting companies.

It followed that the domestic authorities had struck a fair balance between the demands of the general interest and the rights of the applicant organisation.

Conclusion: no violation (unanimously).

The Court also found, unanimously, that, since the national courts had acted in accordance with national law and had provided sufficient reasoning in their decisions, there had been no violation of Article 6 § 1 of the Convention.

RELINQUISHMENT IN FAVOUR OF THE GRAND CHAMBER

Article 30

Harkins v. the United Kingdom - 71537/14
[Section I]

(See Article 3 above, page 10)

DECISIONS OF OTHER INTERNATIONAL JURISDICTIONS

Court of Justice of the European Union (CJEU)

No deprivation of liberty for a nine hour overnight daily curfew monitored by means of an electronic tag

JZ v. Prokuratura Rejonowa Łódź–Śródmieście - C-294/16 PPU
Judgment 28.7.2016 (Fourth Chamber)

In the context of a dispute concerning a request by Mr JZ, who had been the subject of a European arrest warrant issued by the Polish authorities, to have the period of approximately eleven months during which he had been subject in the United Kingdom, on the basis of that arrest warrant, to a curfew from 10 p.m. to 7 a.m. in conjunction with electronic monitoring, credited towards the custodial sentence of three years and two months imposed on him in Poland, the Łódź District Court (Poland) requested a preliminary ruling from the Court of Justice of the European Union (CJEU) as to whether such measures could be classified as "detention" within the meaning of the Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States. The Framework Decision provides, in particular, that the Member State which issues the European arrest warrant must deduct all periods of detention arising from the execution of the arrest warrant from the total period of detention to be served in the issuing Member State as a result of a custodial sentence or detention order being passed.

In its judgment the CJEU began by observing that the concept of "detention" in the Framework Decision was an autonomous concept of EU law that had to be given a uniform interpretation throughout the European Union. The obligation to deduct the period of detention arising from the execution of the European arrest warrant from the total period of detention which the person concerned would be required to serve in the issuing Member State was designed to meet the general objective of respecting fundamental rights, by preserving the right to liberty of the person concerned and the practical effect of the principle of proportionality in the application of penalties.

In so far as it required account to be taken of any period during which the person sentenced had been detained in the executing Member State, the Framework Decision ensured that that person was not required to serve a period of detention the total length of which – both in the executing Member State and in the issuing Member State – would ultimately exceed the length of the custodial sentence imposed on him in the issuing Member State.

In that regard, the Framework Decision could not be interpreted as merely requiring the Member State which issued the European arrest warrant to deduct only periods of imprisonment in the executing Member State, excluding periods during which other measures had been applied that involved a deprivation of liberty with effects comparable to those of imprisonment.

The concept of "detention" within the meaning of the Framework Decision referred not to a measure that restricted liberty but to one that deprived a person of it. It covered not only imprisonment

but also any measure or set of measures imposed on the person concerned which, on account of their type, duration, effects and manner of implementation, deprived the person concerned of his liberty in a way that was comparable to imprisonment.

The relevant case-law of the European Court of Human Rights supported that interpretation. In order to determine whether someone had been "deprived of his liberty" within the meaning of Article 5 of the European Convention on Human Rights, the starting point had to be the individual's concrete situation, and account had to be taken of a whole range of criteria such as the type, duration, effects and manner of implementation of the measure in question[1]. In particular, measures requiring the person concerned to report once a month to the monitoring police authority, to maintain contact with the psychiatric centre of the relevant hospital, to live in a specified place, not to leave the district in which he was residing, and to stay at home between the hours of 10 p.m. and 7 a.m., had been found not to constitute deprivation of liberty within the meaning of Article 5 of the Convention.[2]

Consequently, the judicial authority of the Member State which issued the European arrest warrant was required to consider whether the measures taken against the person concerned in the executing Member State were to be treated in the same way as a deprivation of liberty, and therefore constituted "detention". If, in carrying out that examination, the judicial authority came to the conclusion that that was the case, the Framework Decision required that the whole of the period during which those measures had been applied be deducted from the period of detention.

In the case at hand, while the measures ordered against Mr JZ in the United Kingdom, which included a nine-hour night-time curfew together with monitoring by means of an electronic tag, an obligation to report to a police station at fixed times on a daily basis or several times a week and a ban on applying for foreign travel documents, certainly restricted his liberty of movement, they were not, in principle, so restrictive as to have the effect of depriving him of his liberty and thus to be classified as "detention" within the meaning of the Framework Decision.

However, in so far as the Framework Decision merely imposed a minimum level of protection of the fundamental rights of the person subject to the European arrest warrant, it did not prevent the judicial authority of the Member State that had issued the arrest warrant from being able, on the basis of domestic law alone, to deduct from the total period of detention all or part of the period during which that person had been subject, in the executing Member State, to measures involving not a deprivation of liberty but a restriction of it.

The CJEU judgment and press release are available at <http://curia.europa.eu>.

Inter-American Court of Human Rights

Protection of the environment and natural resources vis-á-vis the rights of indigenous peoples

Case of Kaliña and Lokono Peoples v. Suriname - Series C No. 309
Judgment 23.11.2015

[This summary was provided courtesy of the Secretariat of the Inter-American Court of Human Rights. A more detailed, official abstract (in Spanish only) is available on that Court's website (<www.corteidh.or.cr>).]

Facts – The Kaliña and Lokono peoples represent two of the four largest indigenous populations in Suriname. This case relates to the actions taken by the Kaliña and Lokono peoples to obtain the State's recognition of their collective juridical personality and their right to collective ownership of their traditional territories, lands for which titles have not been issued. Parts of the territory claimed adjoin settlements of the N'djuka Maroon tribe. For other claimed areas, non-indigenous third parties were granted property titles on lots bordering the Marowijne River. Inside the territory claimed, three nature reserves were established: (i) the Wia Wia Nature Reserve in 1966, (ii) the Galibi Nature Reserve in 1969, and (iii) the Wane Kreek Nature Reserve in 1986. The Wia Wia and Galibi Nature Reserves were established to protect the beaches where sea turtles nest. During certain periods, military posts were established at access points to prevent members of the indigenous communities from accessing the latter reserve due to an increase in the theft of

1. The CJEU referred to the judgments in *Guzzardi v. Italy*, 7367/76, 6 November 1980, and *Buzadji v. the Republic of Moldova* [GC], 23755/07, 5 July 2016, Information Note 198.
2. The CJEU referred to the judgment in *Villa v. Italy*, 19675/06, 20 April 2010.

turtle eggs. The Wane Kreek Nature Reserve was established to protect and conserve ecosystems. Open-cast mining operations to extract bauxite have been carried out in this reserve, without the effective participation of these peoples through a consultation process. These operations have caused problems stemming from environmental degradation and a decline in the possibility of hunting and fishing.

The judicial proceedings filed by the Kaliña and Lokono peoples were dismissed because the members of the indigenous peoples lacked legal standing as a collective entity and did not possess a collective property title to the territory claimed, and the administrative petitions presented to public officials were not answered.

For the purposes of this specific case, a delegation of the Tribunal headed by the President of the Court held an on-site visit to the territory.

Law

(a) *Article 3 (right to recognition of juridical personality) in relation to Articles 1(1) (obligation to respect and ensure rights without discrimination), 2 (domestic legal effects), 21 (right to property) and 25 (right to judicial protection) of the American Convention on Human Rights (ACHR)* – The Court reiterated its jurisprudence in previous cases concerning Suriname and determined that since the State's domestic law did not recognise the collective legal personality of the indigenous and tribal peoples, the State had violated Article 3, in relation to Article 2 of the ACHR. This also led to the violation of other rights recognised in Articles 1(1), 21 and 25 of the ACHR.

Conclusion: violation (six votes to one).

(b) *Articles 21 and 23 (political rights) in relation to Articles 1(1) and 2 of the ACHR* – With regard to the right to collective ownership, the Court concluded that the State's failure to delimit, demarcate and grant title to the territory of the Kaliña and Lokono peoples violated the right to collective property recognised in Article 21 of the ACHR, as well as the duty to adopt domestic legal provisions established in Article 2 thereof. It also indicated that the State should, through a consultation process, delimit the territories that correspond to the Kaliña and Lokono peoples, and also demarcate and grant title to these territories, guaranteeing the effective use and enjoyment of these lands. To this end, the Court indicated that the State should also respect the rights of the Maroon communities or their members in the area. With regard to individual property titles issued to non-indigenous third parties, the Court found that the right to request the restitution of the territory remained valid, and that the State should therefore weigh the private or State territorial interests against the territorial rights of the members of the indigenous communities.

The Court noted that the establishment of nature reserves and the granting of a mining concession had occurred before Suriname acceded to the ACHR and accepted the Court's contentious jurisdiction in 1987. Therefore, the Court took into account its jurisdiction *ratione temporis* in relation to the respective disputes.

Regarding the alleged maintenance of the nature reserves in the traditional territory, the Court determined that the Kaliña and Lokono peoples had the right to claim the possible restitution of the lands corresponding to their traditional territory under domestic law, and, in this regard, the State must weigh the rights involved, that is, the collective rights of the Kaliña and Lokono peoples against the protection of the environment as part of the public interest.

Also, the Court considered that it was important to refer to the need to ensure compatibility between the safeguard of protected areas and the adequate use and enjoyment of the traditional territories of indigenous peoples. Thus, the Court found that a protected area consisted not only of its biological dimension, but also of its socio-cultural dimension and that, therefore, an interdisciplinary and participatory approach was required.

Accordingly, the Court concluded that, in principle, the protection of natural areas was compatible with the right of the indigenous and tribal peoples to the protection of the natural resources in their territories. It also emphasised that, owing to their interrelationship with nature and their way of life, the indigenous and tribal peoples can make an important contribution to nature conservation. Thus, the criteria of: (a) effective participation; (b) access to and use of their traditional territories; and (c) the possibility of obtaining benefits from conservation – all of the foregoing provided they were compatible with protection and sustainable use – were essential elements to achieve the compatibility that should be evaluated by the State. Consequently, the Court held that the State must have adequate mechanisms to implement those criteria.

Additionally, the Court noted that the participation of the indigenous communities in the con-

servation of the environment is not only a matter of public interest, but also forms part of the exercise of their right as indigenous peoples "to participate in decision-making in matters which would affect their rights, […] in accordance with their own procedures and […] institutions."[1]

Regarding the adverse effects on the nature reserves, the Court found that, in this case, there was no violation derived from the lack of exclusive management and monitoring of the nature reserves by the indigenous peoples. However, the Court did verify the absence of explicit mechanisms that guaranteed the access, use and effective participation of the Kaliña and Lokono indigenous peoples in the conservation of the nature reserves and the benefits derived therefrom.

Regarding the mining concession within the Wane Kreek Nature Reserve, the Court held that the State had to comply with ensuring: (a) effective participation of the members of the indigenous and tribal peoples with regard to any development, investment, exploration or extraction plans implemented within their territory; (b) that they receive a reasonable benefit, and (c) that no concession is granted within their territory until independent and technically-qualified entities, under the State's supervision, have conducted a prior social and environmental impact assessment. The Court further decided that the State must, for the effects of this case, put in place mechanisms for the effective participation of the indigenous peoples using procedures that are culturally adapted to the decision-making of such peoples. The Court determined that this was not only a matter of public interest, but also formed part of the exercise of their right to take part in any decision-making on matters that affect their interests, in accordance with their own procedures and institutions, in relation to Article 23 of ACHR.

Furthermore, the Court held that the State's obligation to ensure effective participation, through a consultation process, applied before any action was taken that could have an important impact on the interests of the indigenous and tribal peoples, such as the exploration and exploitation or extracting stages. Thus, the guarantee of effective participation should have been put into effect before the start of the mining extraction or exploitation operations, which did not happen in this case. Moreover, no social and environmental impact assessment had been made and the benefits of the mining project were not shared.

The Court noted that even if the Wane Kreek Nature Reserve was established in order to protect and conserve unique ecosystems in part of the territory claimed as traditional lands, the extraction of bauxite resulted in serious damage to the environment and to the natural resources necessary for the survival and development of the Kaliña and Lokono peoples. In this regard, the mining companies had put in place certain policies for the area's rehabilitation, but to date the actions taken had not met the satisfactory rehabilitation of the territory in question. Therefore, the Court concluded that the State had the obligation to protect the areas of both the nature reserve and the traditional territories in order to prevent damage to the indigenous lands, even damage caused by third parties. This should be achieved through appropriate supervision and monitoring mechanisms, in particular by supervising and monitoring environmental impact assessments.

In this case, the mining activities that resulted in the adverse impact on the environment and, consequently, on the rights of the indigenous peoples, were carried out by private agents. In this regard, for the first time, the Court took note of the "Guiding Principles on Business and Human Rights," endorsed by the Human Rights Council of the United Nations, which establish that businesses must respect and protect human rights, as well as prevent, mitigate, and accept responsibility for the adverse human rights impacts directly linked to their activities. Hence, the Court recalled that "States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication."[2]

Conclusion: violation (six votes to one).

(c) *Article 25 (right to judicial protection) in relation to Articles 1(1), 2 and 13 (freedom of thought and expression) of the ACHR* – Regarding the remedies under domestic law to protect collective rights, the Court held that the norms analysed in

1. Article 18 of the United Nations Declaration on the Rights of Indigenous Peoples, Resolution 61/295, 13 September 2007.

2. Principle 1 of the UN Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework. Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, A/HRC/17/31, 21 March 2011.

this case did not include appropriate and effective administrative or judicial remedies that established procedures to protect the right to collective property of indigenous and tribal peoples. Thus, the Court found that domestic remedies should be interpreted and applied to ensure the human rights of the indigenous peoples, and it specified various criteria on the matter. The Court also found that the judicial proceedings and the petitions filed had not been effective and that the State had not provided the public information requested by the representatives or justified the impossibility of handing it over.

Conclusion: violation (six votes to one).

(d) *Reparations* – The Court established that the judgment constituted *per se* a form of reparation and ordered, *inter alia,* that the State: (i) grant the Kaliña and Lokono peoples legal recognition of collective juridical personality; (ii) delimit, demarcate and grant collective title to the territory of the members of the Kaliña and Lokono peoples, and ensure their effective use and enjoyment, taking into account the rights of other tribal peoples in the area; (iii) determine the territorial rights of the Kaliña and Lokono peoples in cases in which the land claimed is owned by the State or by non-indigenous and non-tribal third parties; (iv) take the appropriate measures to ensure the access, use and participation of the Kaliña and Lokono peoples in the Galibi and Wane Kreek Nature Reserves; (v) take the necessary measures to ensure that no activities are carried out that could have an impact on the traditional territory while the above-mentioned processes for the effective participation of the Kaliña and Lokono peoples have not been guaranteed; (vi) implement the sufficient and necessary measures to rehabilitate the affected area in the Wane Kreek Nature Reserve; (vii) create a community development fund for the members of the Kaliña and Lokono peoples; (viii) take the necessary measures in favour of the indigenous and tribal peoples in Suriname to: (a) recognise collective juridical personality; (b) establish an effective mechanism for delimiting, demarcating and titling their territories; (c) establish domestic remedies, or adapt those that exist, in order to ensure effective collective access to justice; (d) ensure effective participation processes for these peoples, the execution of social and environmental impact assessments, and the distribution of benefits.

COURT NEWS

Declaration by Turkey indicating its derogation under Article 15 of the Convention

Within the framework of the state of emergency declared in Turkey following the coup attempt staged on 15 July 2016, the Turkish authorities have notified the Secretary General of the Council of Europe of its derogation from the European Convention on Human Rights under the Convention's Article 15. Notifications by Turkey are available on the Council of Europe's Internet site (<www.coe.int/conventions> – Treaty Office).

It is important to note that the Convention will continue to apply in Turkey. Where the Government seeks to invoke Article 15 in order to derogate from the Convention in individual cases, the European Court of Human Rights will decide whether the application meets the criteria set out in the Convention, notably that of proportionality of the measure taken.

RECENT PUBLICATIONS

Case-Law Overview

The Court has just published an Overview of the Court's case-law for the first six months of 2016 (from 1 January to 15 June), which contains a selection of cases of interest from a legal perspective. This Overview and previous editions can be downloaded from the Court's Internet site (<www.echr.coe.int> – Case-law).

Reports of Judgments and Decisions

The first three volumes (I, II and II) for 2014 have now been published. The print edition is available from Wolf Legal Publishers (the Netherlands) at <sales@wolfpublishers.nl>. They can also be purchased from the Amazon website. All published volumes from the *Reports* series may also be downloaded from the Court's Internet site (<www.echr.coe.int> – Case-law).

New Case-Law Guides

The Court has recently published two new Case-Law Guides: a first one, in French, on Article 7 of the Convention; the other, in English, on Article 4 of Protocol No. 4. Translations into English and French respectively will be available by the end of the year. The Case-Law Guides can be downloaded from the Court's Internet site (<www.echr.coe.int> – Case-law).

Guide sur l'article 7 de la Convention (pas de peine sans loi) (fre)

Guide on Article 4 of Protocol No. 4 (prohibition of collective expulsion of aliens) (eng)

Translation of the Case-Law Information Note into Turkish

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

Sayı 186 – Haziran 2015 (tur)
Sayı 187 – Temmuz 2015 (tur)
Sayı 188 – Ağustos-Eylül 2015 (tur)
Sayı 189 – Ekim 2015 (tur)

Admissibility Guide: Greek translation

With the help of the Greek government, a translation into Greek of the third edition of the Practical Guide on Admissibility Criteria is now available. The different linguistic versions of the Admissibility Guide can be downloaded from the Court's Internet site (<www.echr.coe.int> – Case-law).

Πρακτικοσ οδηγοσ προϋποθεσεων παραδεκτου (gre)

Factsheets: Greek translation

The Factsheet on Children's rights has just been translated into Greek. All factsheets can be downloaded from the Court's Internet site (<www.echr.coe.int> – Press).

Δικαιώματα των παιδιών (gre)

FRA Annual Activity Report 2015

The EU Agency for Fundamental Rights (FRA) has just issued its Annual Activity Report for 2015. This report details the achievements and initiatives taken by FRA in 2015. It can be downloaded from the FRA Internet site (<http://fra.europa.eu> – Publications).