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INFORMATION NOTE
on the Court's case-law

NOTE D'INFORMATION
sur la jurisprudence de la Cour

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

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

European Court of Human Rights

Cour européenne des droits de l'homme

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

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

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

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

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Vanyo Todorov – Bulgaria/Bulgarie, 31434/15, Judgment/Arrêt 21.7.2020 [Section IV]

English translation of the summary – Version imprimable

En fait – Le requérant se vit refuser, par les juridictions internes, le droit de se constituer partie à la procédure pénale concernant le meurtre de son frère par un particulier et d'obtenir une réparation pour les préjudices matériel et moral subis.

En droit – Article 2 (volet procédural) : À l'époque des faits de l'espèce, en vertu d'une jurisprudence impérative de l'ancienne Cour suprême, seules les personnes faisant partie d'un cercle familial restreint (parents, enfants et conjoints) pouvaient prétendre à un dédommagement moral pour le décès d'un proche, à l'exclusion d'autres parents tels que les frères et sœurs. Dans la mesure où, en vertu du code de procédure pénale, seules les personnes pouvant prétendre à l'indemnisation d'un préjudice résultant de l'infraction pouvaient se constituer partie à la procédure pénale, les juridictions internes ont refusé la demande du requérant de se constituer partie accusatrice et partie civile.

Le préjudice matériel allégué par le requérant dans la procédure interne concernait des biens qui auraient été volés au domicile de son frère et n'était donc pas une conséquence du décès de celui-ci. La possibilité d'obtenir une indemnité au titre de ce préjudice ne relève donc pas des obligations procédurales de l'État défendeur au titre de l'article 2.

Concernant le préjudice moral, en l'absence de responsabilité d'autorités publiques dans le décès et donc de « grief défendable » de violation de l'article 2, l'article 13 ne trouve pas à s'appliquer. Cependant, dans des affaires où le décès n'était pas imputable à des autorités publiques, la Cour a envisagé la possibilité d'obtenir une indemnisation pour le dommage moral consécutif au décès d'un proche sous l'angle des obligations procédurales découlant de l'article 2.

Il ressort des éléments de droit comparé que l'ensemble des États contractants étudiés prévoient un droit à réparation au profit des personnes qui ont subi un dommage moral à la suite du décès d'un de leurs proches et que pour la quasi-totalité de ces États cette possibilité existe lorsque le responsable est un particulier. Cependant, les conditions et les mécanismes d'attribution d'une indemnité, de même que la détermination des personnes pouvant y prétendre, varient. Dans une vaste majorité de pays, la liste de ces personnes n'est pas prédéfinie mais les ayants droit sont déterminés dans chaque cas en fonction de critères tels que le lien familial avec le défunt, la réalité de la relation affective ou d'entraide existante entre eux, une éventuelle cohabitation ou encore la qualité d'héritier du demandeur. Il semble cependant résulter de l'application de ces critères que très peu de pays encadrent cette possibilité de manière aussi restrictive que le droit bulgare à l'époque pertinente.

Par ailleurs, la directive européenne 2012/29/UE établissant des normes minimales concernant les droits, le soutien et la protection des victimes de la criminalité inclut les frères et sœurs d'une personne décédée dans la notion de « victime » d'une infraction pouvant bénéficier des droits qui y sont visés. Si la directive permet aux États d'adopter des normes pour limiter le nombre de membres de la famille d'une personne décédée susceptibles de bénéficier de ces droits, elle semble plutôt viser des situations où il existe plusieurs « membres de la famille », et non celles où, comme en l'espèce, une seule personne peut prétendre à cette qualité. La directive prévoit en outre qu'une telle limitation n'est permise qu'à condition qu'il soit « [tenu] compte des particularités de chaque cas », alors que le droit bulgare applicable à l'époque des faits excluait la possibilité de chercher réparation pour certains membres de la famille de manière absolue, sans appréciation des circonstances particulières de chaque espèce.

Au demeurant la jurisprudence bulgare pertinente a été modifiée postérieurement aux faits de l'espèce et la Cour suprême de cassation admet désormais que d'autres personnes que celles qui étaient limitativement listées dans les décisions interprétatives de l'ancienne Cour suprême peuvent prétendre à une indemnisation si elles parviennent à établir que, compte tenu de leur relation avec le défunt, elles ont subi des souffrances morales comparables à celles du cercle familial proche. Si cette évolution du droit interne ne permet pas en soi de considérer que la situation antérieure était contraire à la Convention, ce changement de jurisprudence, adopté notamment pour mettre le droit bulgare en conformité avec la directive européenne 2012/29/UE, doit être pris en compte pour constater l'existence d'une tendance dans le droit des États contractants.

Ainsi, il existe un consensus parmi les États contractants selon lequel les membres de la famille les plus proches doivent avoir la possibilité de demander une réparation pécuniaire pour le dommage moral subi du fait du décès de leur proche, sous réserve que soient évalués dans chaque cas concret l'intensité des liens qui les unissaient au défunt et le préjudice réellement enduré.

Lorsque comme en l'espèce, le requérant était l'unique membre de la famille et l'unique héritier de son défunt frère, avec lequel il avait entretenu une relation étroite, en ne prévoyant aucune voie de recours qui aurait permis à l'intéressé de prétendre à une réparation pécuniaire du dommage moral qu'il a pu subir, l'État défendeur a failli à son obligation de mettre en place un système judiciaire capable de fournir une « réparation adéquate » au sens de l'article 2.

Partant, malgré le caractère efficace de la procédure pénale menée en l'espèce, ayant permis d'établir les faits et ayant abouti à la condamnation du meurtrier, l'absence de toute possibilité pour le requérant d'obtenir un dédommagement moral a méconnu l'obligation de l'État de mettre en place un système judiciaire effectif qui fournisse une réponse appropriée aux proches de la victime en cas de décès.

Conclusion : violation (unanimité).

Article 41 : 12 000 EUR pour préjudice moral ; demande pour dommage matériel rejetée.

(Voir aussi *Zavoloka c. Lettonie*, 58447/00, 7 juillet 2009, Note d'information 121, et *Sarishvili-Bolkvadze c. Géorgie*, 58240/08, 19 juillet 2018, Note d'information 220)

ARTICLE 3

Degrading treatment/Traitement dégradant

Asylum-seekers living rough for several months without resources due to administrative delays preventing them from receiving the support provided for by law: *violation; no violation*

Demandeurs d'asile vivant dans la rue pendant plusieurs mois sans moyens à cause des lenteurs administratives les empêchant d'accéder aux conditions d'accueil prévues par le droit : *violation ; non-violation*

N.H. and Others/et autres – France, 28820/13, Judgment/Arrêt 2.7.2020 [Section V]

English translation of the summary – Version imprimable

En fait – Les requérants, cinq demandeurs d'asile majeurs isolés en France, ont été sans ressources et contraints de dormir dans la rue pendant plusieurs mois. Ils reprochent aux autorités françaises, d'une part, l'impossibilité dans laquelle ils se sont trouvés, en raison de leur action ou des omissions délibérées, de bénéficier en pratique de la prise en charge matérielle et financière prévue par le droit national et de l'Union européenne (UE) afin de pourvoir à leurs besoins essentiels, et, d'autre part, l'indifférence des autorités à leur encontre.

En droit – Article 3 : L'obligation de fournir un hébergement ou des conditions matérielles décentes aux demandeurs d'asile démunis pèse sur les autorités de l'État défendeur concerné en vertu des termes mêmes de la législation nationale qui transpose le droit de l'UE, à savoir la « directive Accueil ».

Les étrangers en situation irrégulière souhaitant obtenir l'asile en France devaient, dans un premier temps, demander leur admission au séjour au titre de l'asile. Les autorités disposait d'un délai de quinze jours à compter du moment où un demandeur se présentait à la préfecture avec une domiciliation et les pièces requises pour enregistrer sa demande d'asile et l'autoriser à séjourner régulièrement. À l'époque des faits, dans la pratique, ce délai était en moyenne de trois à cinq mois selon les préfectures. Pour N.H., il a été de plus de trois mois et plus de quatre mois pour K.T. A.J. a lui été muni d'une autorisation provisoire de séjour au titre de l'asile après trois mois. S.G. a obtenu un récépissé constatant le dépôt de sa demande d'asile dans un délai d'un mois. Les recours en référé liberté de N.H. et A.J., pour qu'il soit enjoint au préfet de police d'examiner leurs demandes, n'ont pas abouti.

Avant l'enregistrement de leur demande d'asile, les requérants ne pouvaient pas justifier de leur statut et donc bénéficier des conditions d'accueil prévues par le droit. N.H., K.T. et A.J. ont vécu dans la peur d'être arrêtés et expulsés vers leur pays d'origine.

Pendant l'ensemble de la procédure d'asile, les requérants ont tous vécu dans la rue (A.J. durant plus de cinq mois et demi, N.H. pendant plus de huit mois et demi, et S.G. et K.T. au minimum neuf mois chacun). L'offre en hébergement d'urgence était très largement insuffisante et destinée à accueillir de façon prioritaire des demandeurs d'asile particulièrement vulnérables en raison de leur âge, de leur santé ou de leur situation familiale (familles avec enfants mineurs).

Par ailleurs, le droit interne conditionnait la perception de l'allocation temporaire d'attente (ATA) à la production devant Pôle emploi d'une autorisation de séjour au titre de l'asile et d'une preuve de dépôt effectif de la demande devant l'Office français de protection des réfugiés et des apatrides (OFPRA).

Mais les demandeurs d'asile n'étaient pas autorisés à exercer une activité professionnelle pendant la durée de la procédure. En situation de dénuement, pour subvenir à leurs besoins fondamentaux, ils dépendaient entièrement de la prise en charge matérielle et financière prévue par le droit national qui devait leur être accordée tant qu'ils étaient autorisés à demeurer sur le territoire en qualité de demandeurs d'asile. S.G. a perçu l'ATA deux mois après sa première présentation en préfecture; N.H. ne l'a jamais perçue malgré ses démarches pour l'obtenir ; K.T. et A.J. ne l'ont perçu qu'après, respectivement, 185 et de 133 jours.

Après l'obtention du statut de demandeurs d'asile par les requérants, ils pouvaient justifier de la régularité de leur séjour et bénéficier des conditions matérielles d'accueil prévues par le droit national.

Pour le Gouvernement, les présentes affaires sont à distinguer de la situation de l'arrêt *M.S.S. c. Belgique et Grèce* dès lors que les autorités nationales, confrontées à une augmentation conséquente du nombre de demandeurs d'asile entre 2007 et 2014, n'ont pas été passives. En outre, les requérants n'étaient pas dépourvus de perspective de voir leur situation s'améliorer dès lors que leurs demandes d'asile étaient en cours de traitement. Pour la Cour, le nombre de demandeurs d'asile augmente continuellement depuis 2007 et il en résulte la saturation graduelle du dispositif national d'accueil (DNA). Les faits de l'espèce s'inscrivent dans une hausse progressive et ne se sont donc pas déroulés dans un contexte d´urgence humanitaire engendré par une crise migratoire majeure, qualifiable d´exceptionnelle, à l'origine de très importantes difficultés objectives de caractère organisationnel, logistique et structurel (voir *Khlaifia c. Italie*). Les autorités ont consenti des efforts pour créer des places d'hébergement supplémentaires et pour raccourcir les délais d'examen des demandes d'asile. Toutefois, ces circonstances n'excluent pas que la situation des demandeurs d'asile ait pu être telle qu'elle est susceptible de poser un problème sous l'angle de l'article 3 de la Convention.

a) *S'agissant de N.H., K.T. et A.J.* – Les autorités ont manqué à leurs obligations prévues par le droit interne. En conséquence, elles doivent être tenues pour responsables des conditions dans lesquelles les requérants se sont trouvés pendant des mois, vivant dans la rue, sans ressources, sans accès à des sanitaires, ne disposant d'aucun moyen de subvenir à leurs besoins essentiels et dans l'angoisse permanente d'être attaqués et volés. Les requérants ont été victimes d'un traitement dégradant témoignant d'un manque de respect pour leur dignité et cette situation a, sans aucun doute, suscité chez eux des sentiments de peur, d'angoisse ou d'infériorité propres à conduire au désespoir. De telles conditions d'existence, combinées avec l'absence de réponse adéquate des autorités qu'ils ont alertées à maintes reprises sur leur impossibilité de jouir en pratique de leurs droits, et donc de pourvoir à leurs besoins essentiels, et le fait que les juridictions internes leur ont systématiquement opposé le manque de moyens dont disposaient les instances compétentes au regard de leurs conditions de jeunes majeurs isolés, en bonne santé et sans charge de famille, ont atteint le seuil de gravité requis par l'article 3.

Conclusion : violation (unanimité).

b) *S'agissant de S.G.* – L'intéressé a obtenu un récépissé constatant le dépôt de sa demande d'asile un mois après son premier rendez-vous à la préfecture et, s'il a effectivement vécu sous une tente, il a perçu l'ATA deux mois après sa première présentation à la préfecture. Pour difficile que cette période ait pu être pour le requérant, il a ensuite disposé de moyens lui permettant de subvenir à ses besoins essentiels.

Conclusion : non-violation (unanimité).

Article 41 : 2 396,80 EUR pour dommage matériel à N.H. ; 10 000 EUR à N.H. et K.T. chacun et 12 000 EUR à A.J. pour préjudice moral.

(Voir *M.S.S. c. Belgique et Grèce* [GC], 30696/09, 21 janvier 2011, Note d'information 137, et *Khlaifia et autres c. Italie* [GC], 16483/12, 15 décembre 2016, Note d'information 202)

Expulsion

Refusal of border guards to receive asylum applications and summary removal to a third country, with a risk of *refoulement* to and ill-treatment in the country origin: *violation*

Refus des garde-frontières d'enregistrer des demandes d'asile et renvoi sommaire vers un État tiers associé à un risque de refoulement vers le pays d'origine et de mauvais traitements au sein de celui-ci : *violation*

M.K. and Others/et autres – Poland/Pologne, 40503/17 et al., Judgment/Arrêt 23.7.2020 [Section I]

Traduction française du résumé – Printable version

Facts – The applicants are Russian nationals of Chechen origin. In 2017 they presented themselves at border checkpoints (Terespol and Czeremca-Polowce) at the Polish-Belarussian border on several occasions. They allege that each time they wished to lodge asylum applications, but were denied that opportunity by the border guards, who refused them entry and removed them to Belarus,

even though the applicants had alleged that they would not have access to an adequate asylum procedure in Belarus and that they would face torture or other forms of inhuman or degrading treatment if returned to the Russian Federation (Chechnya). According to the records of the border guards, the applicants had not expressed a wish to lodge asylum applications, whereas numerous reports by national human rights institutions, NGOs and the media stated that the border guards routinely refused to receive asylum applications. In respect of the applications, the Court indicated interim measures under Rule 39 of the Rules of Court. Nevertheless, the applicants were returned to Belarus. Thereafter the applicants arrived at the border checkpoints on further occasions, but were again turned away. In respect of some of the applicants, their asylum applications were eventually received by the Polish authorities and they were placed in a reception centre.

Law

Article 3 of the Convention: In determining whether or not the applicants had expressed a wish to apply for asylum when they presented themselves at the border checkpoints, the Court attaches more weight to the applicants' version of the events at the border that had been corroborated by other witnesses. The reports by the national human right institutions had indicated the existence of a systemic practice of misrepresenting the statements given by asylum-seekers in the official notes drafted by the border guards at the checkpoints between Poland and Belarus. Moreover, the irregularities in the procedure concerning the questioning of foreigners arriving at the Polish-Belarusian border at the relevant time, including the lack of a proper investigation into the reasons for which they sought entry into Poland, had been confirmed by judgments of the Supreme Administrative Court .They had also been corroborated by a number of documents presented by them to the Court, especially by copies of the applications for international protection carried by the applicants at the border, their numerous attempts of crossing the border and their representation by Polish and Belarusian lawyers. In any event, the authorities had been aware of the applicants' fears of ill-treatment upon return, as the asylum applications had been shared with them by electronic means by their representatives as well as by the Court when it indicated interim measures under Rule 39. Accordingly, the Court could not accept the argument of the Government that the applicants had presented no evidence whatsoever that they had been at risk of being subjected to ill-treatment.

The applicants could arguably claim that there had been no guarantee that their asylum applications would be seriously examined by the Belarusian authorities and that their return to Chechnya could violate Article 3. The assessment of those claims should have been carried out by the Polish authorities. Moreover, they had been under an obligation to ensure the applicants' safety, in particular by allowing them to remain within Polish jurisdiction until such time that their claims had been properly reviewed by a competent domestic authority. The scope of that obligation had not been dependent on whether the applicants had been carrying documents authorising them to cross the Polish border or whether they had been legally admitted to Polish territory on other grounds.

The respondent Government had argued that by refusing the applicants entry into Poland, it had acted in accordance with the European Union legal obligations. However, the EU law had clearly embraced the principle of *non-refoulement*, as guaranteed by the Geneva Convention, and had also applied it to persons who had been subjected to border checks before being admitted to the territory of one of the member States. Consequently, the impugned measure taken by the Polish authorities fell outside the scope of Poland's strict international legal obligations.

In sum, the applicants had not had the benefit of effective guarantees that would have protected them from exposure to a real risk of being subjected to inhuman or degrading treatment, as well as torture. The absence of proceedings in which the applicants' applications for international protection could be reviewed had constituted a violation of Article 3. Moreover, given the situation in the neighbouring State, the Polish authorities, by failing to allow the applicants to remain on Polish territory pending the examination of their applications, had knowingly exposed them to a serious risk of chain-*refoulement* and treatment prohibited by Article 3.

Conclusion: violation (unanimously).

Article 4 of Protocol No. 4: If the prohibition on the collective expulsion of aliens expressed in Article 4 of Protocol No. 4 had been to be held applicable in respect of the actions of a State, the effect of which had been to prevent migrants from reaching the borders of that State, then it had been even more evident that it had applied to a situation in which the aliens had presented themselves at a land border and had been returned from there to the neighbouring country.

During the procedure at the border, the applicants' statements concerning their wish to apply for international protection had been disregarded and that even though individual decisions had been issued with respect to each applicant, they had not prop-

erly reflected the reasons given by the applicants to justify their fear of persecution. And some of the applicants had not been allowed to consult lawyers and had been denied access to them even when their lawyers had been at the border checkpoint and had demanded to be allowed to meet with their clients.

The applicants had been trying to make use of the procedure of accepting applications for international protection that should have been available to them under domestic law. They had attempted to cross a border in a legal manner, using an official checkpoint and subjecting themselves to border checks as required by the relevant law. Hence, the fact that the State had refused to entertain their arguments concerning justification for their applications for international protection could not be attributed to their own conduct.

Moreover, the independent reports concerning the situation at checkpoints had indicated that the applicants' cases had constituted an exemplification of a wider state policy of refusing entry to foreigners coming from Belarus, regardless of whether they had been clearly economic migrants or whether they had expressed a fear of persecution in their countries of origin. Those reports had noted a consistent practice of: holding very brief interviews, during which the foreigners' statements concerning the justification for their seeking international protection had been disregarded; emphasis being placed on the arguments that had allowed them to be categorised as economic migrants; and misrepresenting the statements made by the foreigners in very brief official notes, which had constituted the sole basis for issuing refusal-of-entry decisions and returning them to Belarus, even in the event that the foreigners in question had made it clear that they had wished to apply for international protection in Poland. These conclusions had also been supported by the statement of certain authorities referred to by the applicants.

The decisions refusing entry into Poland issued in the applicants' cases had constituted a collective expulsion of aliens.

Conclusion: violation (unanimously).

The Court also held, unanimously, that there had been a violation of Article 13 taken in conjunction with Article 3 of the Convention and Article 4 of Protocol No. 4, due to the absence of a remedy with automatic suspensive effect, and that the respondent State had failed to discharge its obligations under Article 34 of the Convention as it complied with the interim measures indicated by the Court under Rule 39 of the Rules of Court only with significant delay, or not at all.

Article 41: EUR 34,000 each to the individual applicant and to both applicant families in respect of non-pecuniary damage.

(See also *Hirsi Jamaa and Others v. Italy* [GC], 27765/09, 23 February 2012, Information Note 149; *Ilias and Ahmed v. Hungary* [GC], 47287/15, 21 November 2019, Information Note 234; *N.D. and N.T. v. Spain* [GC], 8675/15 and 8697/15, 13 February 2020, Information Note 237; and the Factsheet on Collective expulsion of aliens)

ARTICLE 5

Article 5 § 4

Speediness of review/Contrôle à bref délai

Lack of promptness in transferring an application for release to a court in a different territorial jurisdiction for the purpose of joint examination, and unjustified two-month ban on submitting a further application for release: *violations*

Lenteur du transfert d'une demande de libération dans un autre ressort territorial à des fins de regroupement et interdiction injustifiée d'introduire une nouvelle demande avant deux mois : *violations*

Dimo Dimov and Others/et autres – Bulgaria/Bulgarie, 30044/10, Judgment/Arrêt 7.7.2020 [Section IV]

English translation of the summary – Version imprimable

En fait – En novembre 2009, les requérants furent placés en détention provisoire dans le cadre d'une même procédure pénale. Suite à l'échec de plusieurs demandes de libération, ils ne furent libérés qu'à l'expiration de la durée maximale d'un an prévue par la loi. En 2014, suite à plusieurs demandes de complément d'enquête, et après avoir constaté que le parquet n'avait toujours pas dressé un nouvel acte d'accusation, le tribunal compétent mit fin à la procédure pénale. Suite à cet abandon des poursuites, les requérants engagèrent avec succès une action en dédommagement pour la détention subie.

En droit – La requête n'est déclarée recevable que dans le chef d'un seul des requérants («le requérant»).

Article 5 § 4

i. *Sur la célérité de l'examen* – Si l'examen de l'une des demandes de libération du requérant est intervenu au bout de quatre jours, ce qui cadre avec la notion de «bref délai», tel n'est pas le cas de son autre demande, qui a pris vingt-cinq jours.

Plus précisément, suite au choix des autorités de regrouper l'examen de cette demande du requérant avec celles de ses trois co-inculpés (qui pourrait s'expliquer par le fait qu'il s'agissait d'une seule et même procédure pénale), le transfert de la demande du requérant entre le parquet de la capitale, qui l'a reçue, et le tribunal régional d'une autre ville, qui était compétent pour l'examiner, a pris dix-neuf jours. Même en prenant en compte la distance entre les deux villes (environ 230 kilomètres), et la nécessité d'envoyer le dossier de l'enquête au tribunal régional pour lui permettre d'examiner de manière effective la demande du requérant, la Cour estime que ce délai – entièrement imputable aux autorités de poursuite – a été excessif.

ii. *Sur l'interdiction temporaire d'introduire une nouvelle demande de libération* – Lors du rejet de sa deuxième demande de libération, le tribunal interdit au requérant d'en présenter une nouvelle avant l'expiration d'un délai de deux mois.

Cette mesure était prévue par le code de procédure pénale. La Cour n'exclut pas qu'elle puisse en principe se justifier en cas d'abus manifeste des droits procéduraux des détenus (par exemple lorsque ces recours sont utilisés pour retarder la procédure ou nuire à l'efficacité de l'enquête). Cependant, il revient aux autorités de démontrer la nécessité de cette mesure, en exposant des motifs pertinents et suffisants pour éviter tout soupçon d'arbitraire.

Le droit bulgare ne prévoit pas un contrôle automatique de la légalité et de la nécessité de la détention, ce contrôle étant exercé à l'initiative des détenus. En l'espèce, lorsque le tribunal régional a décidé d'imposer la restriction en cause, le requérant était déjà détenu depuis cinq mois, il n'avait formé auparavant qu'une seule demande de libération, et sa nouvelle demande n'avait pas été examinée avant plusieurs jours – soit autant d'éléments qui semblent indiquer l'absence d'abus du droit de recours en libération de sa part.

Par ailleurs, l'enquête pénale à l'encontre du requérant était encore pendante, ce qui pouvait conduire au rassemblement de nouvelles preuves susceptibles, par exemple, de remettre en cause l'existence des soupçons raisonnables contre lui. Dans ces circonstances, il était d'autant plus nécessaire pour les tribunaux internes d'exposer des arguments solides et convaincants pour justifier l'imposition de l'interdiction en cause.

Or, le tribunal régional a choisi d'imposer l'interdiction pour la période maximale prévue par le droit interne, et ce sans exposer de motif concernant la nécessité de cette mesure ni le délai d'application choisi. Partant, la Cour estime que cette mesure était dépourvue de fondement, et contraire au droit de l'intéressé d'obtenir le réexamen de sa détention à brefs intervalles.

Conclusion : violation (unanimité).

La Cour conclut également, à l'unanimité, à la violation de l'article 5 § 5 de la Convention : le requérant a obtenu un dédommagement pour le préjudice subi du fait de la durée excessive de sa détention provisoire (valant grief au titre de l'article 5 § 3), mais aucune reconnaissance de la violation de ses droits garantis par l'article 5 § 4 ni dédommagement y relatif ; le recours interne nouvellement introduit et permettant de demander la réparation spécialement pour la violation de cette dernière disposition n'a pas d'application rétroactive ; aucun autre recours interne ne permet au requérant de se prévaloir d'un droit à réparation à ce titre même après le prononcé du présent arrêt de la Cour.

Article 41 : 5 000 EUR pour préjudice moral.

ARTICLE 8

Respect for private life/Respect de la vie privée

Unjustified refusal to allow a transsexual to have his change of sex recorded in the civil-status register, although his physical appearance and social and family identity had been altered for a long time: *violation*

Refus injustifié d'accorder à un transsexuel sa réassignation du sexe sur le registre d'état civil malgré son physique et son identité sociale et familiale modifiés depuis longtemps : *violation*

Y.T. – Bulgaria/Bulgarie, 41701/16, Judgment/Arrêt 9.7.2020 [Section V]

English translation of the summary – Version imprimable

En fait – Le requérant, transsexuel, s'est vu refuser par les juridictions bulgares la modification de la mention relative à son sexe sur les registres d'état civil et ainsi la reconnaissance légale de son appartenance au sexe masculin.

En droit – Article 8 : La question principale à trancher est celle de savoir si le dispositif réglementaire en place et les décisions prises à l'égard du requérant permettent de constater que l'État s'est acquitté de son obligation positive de respect de la vie privée du requérant, notamment dans son aspect relatif à l'identité sexuelle.

Même si la loi bulgare ne consacre pas de procédure spécifique unique aux demandes de conversion sexuelle, l'accès à l'ouverture d'une procédure permettant de demander la modification de la

mention du sexe sur les registres civils peut être déduit de la loi sur les registres civils. Elle précise explicitement que seule la voie judiciaire et non administrative est possible pour reconnaître le changement du sexe. D'autres dispositions du droit interne traitent également des conséquences de la modification du sexe, ce qui confirme aussi la possibilité de reconnaître officiellement ce changement. Ainsi, le cadre légal a permis au requérant d'introduire et de faire examiner en substance sa demande relative à sa réassignation sexuelle.

Le requérant souhaitait subir une intervention chirurgicale pour terminer le processus de conversion sexuelle mais il ne pouvait réaliser cette démarche qu'après la reconnaissance préalable de cette conversion par une décision de justice. Il n'allègue pas avoir été amené à se soumettre à une telle intervention contre sa volonté et dans le seul but d'obtenir la reconnaissance légale de son identité sexuelle. Au contraire, il désirait recourir à la chirurgie afin d'harmoniser son aspect physique avec son identité sexuelle. Dès lors, contrairement à l'affaire *A.P., Garçon et Nicot c. France*, une atteinte au respect de l'intégrité physique du requérant contraire à l'article 8 n'est pas en jeu dans la présente espèce.

La Cour est donc appelée à déterminer si le refus des juridictions de faire droit à la demande du requérant de changement de la mention de son sexe sur les registres civils a constitué une atteinte disproportionnée au droit de celui-ci au respect de sa vie privée.

Les tribunaux internes ont constaté que le requérant était transsexuel sur la base d'informations détaillées relatives à son état psychologique et médical ainsi qu'à son mode de vie social et familial. Ils ont toutefois refusé d'autoriser la modification de la mention du sexe sur les registres civils. La préservation du principe de l'indisponibilité de l'état des personnes, de la garantie de la fiabilité et de la cohérence de l'état civil et, plus largement, de l'exigence de sécurité juridique relève de l'intérêt général et justifie la mise en place de procédures rigoureuses dans le but notamment de vérifier les motivations profondes d'une demande de changement légal d'identité.

Néanmoins, la motivation des décisions de rejet de la demande du requérant rendues par les tribunaux faisait référence aux arguments disparates et elle se basait, néanmoins, sur trois éléments principaux. Premièrement, les tribunaux ont exprimé la conviction que la conversion sexuelle n'était pas possible dès lors que la personne présentait des caractéristiques physiologiques sexuelles opposées à la naissance. Deuxièmement, ils ont considéré que la seule aspiration socio-psychologique d'une personne n'était pas suffisante pour faire droit à une demande de conversion sexuelle. Enfin et de toute façon, le droit interne ne prévoyait pas de critères permettant une telle conversion sur le plan juridique. Sur ce dernier point, le tribunal régional a explicitement déclaré qu'il n'accordait pas d'importance à la tendance jurisprudentielle selon laquelle il y avait lieu de reconnaître la réassignation de sexe indépendamment du suivi d'un traitement médical préalable. Ainsi, les autorités judiciaires ont établi que le requérant s'était engagé dans un parcours de transition sexuelle modifiant son apparence physique et que son identité sociale et familiale était déjà masculine depuis longtemps. Pourtant, elles ont considéré que l'intérêt général exigeait de ne pas permettre le changement juridique du sexe, puis rejeté la demande. Les tribunaux n'ont aucunement élaboré leur raisonnement quant à la nature exacte de cet intérêt général et n'ont pas réalisé, dans le respect de la marge d'appréciation accordée, un exercice de mise en balance de cet intérêt avec le droit du requérant à la reconnaissance de son identité sexuelle. Dans ces conditions, la Cour ne peut déceler quelles sont les raisons d'intérêt général ayant conduit au refus de mettre en adéquation l'état masculin du requérant et la mention correspondant à cet état sur les registres civils.

Une rigidité de raisonnement sur la reconnaissance de l'identité sexuelle du requérant l'a placé, pendant une période déraisonnable et continue, dans une situation troublante lui inspirant des sentiments de vulnérabilité, d'humiliation et d'anxiété.

Les décisions judiciaires en cause datent de 2015 et 2016. La Cour observe avec intérêt la décision de la Cour suprême de cassation de janvier 2017, qui permet de confirmer la pratique déjà existante selon laquelle, malgré l'absence d'une procédure dédiée uniquement à la réassignation de sexe, cette dernière peut être reconnue au cours de la vie d'une personne selon le droit bulgare. Pour ce qui est des conditions pour la réassignation de sexe commentées dans cette décision, la Cour n'a pas la compétence, dans le cadre de la présente affaire, d'analyser dans l'abstrait leur compatibilité avec la Convention. Elle note aussi la demande récente de décision interprétative auprès de l'assemblée plénière de la Cour suprême de cassation dans ce domaine. Dans ce contexte, la Cour estime nécessaire de se référer aux recommandations émises par des organes internationaux, notamment le Comité des Ministres et l'Assemblée parlementaire du Conseil de l'Europe, ainsi que le Haut-Commissaire des Nations unies aux droits de l'homme, sur des mesures visant à combattre la discrimination fondée sur l'orientation sexuelle ou l'identité de sexe, parmi lesquelles se trouve la recommandation faite aux États visant à permettre le changement de nom et

de sexe dans les documents officiels de manière rapide, transparente et accessible.

Eu égard à ces éléments, le refus des autorités internes de reconnaître légalement la réassignation de sexe du requérant sans avancer pour cela de motivation suffisante et pertinente, et sans expliquer pourquoi dans d'autres affaires une telle réassignation pouvait être reconnue a porté une atteinte injustifiée au droit du requérant au respect de sa vie privée.

Conclusion : violation (unanimité).

Article 41 : 7 500 EUR pour préjudice moral.

(Voir aussi *Christine Goodwin c. Royaume-Uni* [GC], 28957/95, 11 juillet 2002, Note d'information 44 ; *Hämäläinen c. Finlande* [GC], 37359/09, 16 juillet 2014, Note d'information 176 ; *A.P., Garçon et Nicot c. France*, 79885/12 et al., 6 avril 2017, Note d'information 206 ; *S.V. c. Italie*, 55216/08, 11 octobre 2018, Note d'information 222 ; Recommandation CM/Rec(2010)5 du Comité des Ministres du Conseil de l'Europe aux États membres sur des mesures visant à combattre la discrimination fondée sur l'orientation sexuelle ou l'identité de genre du 31 mars 2010 ; Résolution 1728 (2010) intitulée « Discrimination sur la base de l'orientation sexuelle et de l'identité de genre » du 29 avril 2010 ; Rapport du Haut-Commissaire des Nations unies aux droits de l'homme sur les Lois et pratiques discriminatoires et actes de violence dont sont victimes des personnes en raison de leur orientation sexuelle ou de leur identité de genre (A/HRC/19/41) du 17 novembre 2011 ; Résolution 2048 (2015) sur « La discrimination à l'encontre des personnes transgenres en Europe » du 22 avril 2015)

Respect for private life/Respect de la vie privée

Obligation for children born under surrogacy arrangement to be adopted in order to ensure recognition of legal mother-child relationship: *no violation*

Obligation d'emprunter la voie de l'adoption pour la reconnaissance du lien de filiation avec leur mère génétique des enfants nés par gestation pour autrui : *non-violation*

D – France, 11288/18, Judgment/Arrêt 16.7.2020 [Section V]

English translation of the summary – Version imprimable

En fait – Les requérants sont un couple hétérosexuel marié et leur fille, née en 2012 en Ukraine d'une gestation pour autrui (GPA). En 2017, la cour d'appel confirma le refus du procureur de République de transcrire sur les registres de l'état civil français l'intégralité de l'acte de naissance ukrainien – qui désignait les deux premiers requérants comme mère et père, sans aucune mention de la femme ayant accouché. Seule fut transcrite la filiation paternelle. Pour la filiation maternelle, la cour d'appel considéra que la première requérante pouvait recourir à l'adoption.

En droit

Article 8 : Le rejet de la demande tendant à la transcription sur les registres de l'état civil français de l'acte de naissance étranger pour autant qu'il désigne la première requérante comme étant sa mère s'analyse en une ingérence dans le droit au respect de la vie privée de l'enfant (voir les affaires françaises antérieures sur le même sujet). Cette ingérence était prévue par la loi, et la Cour a déjà admis qu'elle puisse être considérée comme poursuivant un but légitime.

La loi française n'autorisant pas la GPA, la question de l'état civil des enfants nés à l'étranger selon ce procédé a déjà donné lieu à plusieurs affaires (depuis notamment *Mennesson c. France*, 65192/11, 26 juin 2014, Note d'information 175), suivies d'un avis consultatif à la demande de la Cour de cassation française (P16-2018-001, 10 avril 2019, Note d'information 228).

Il en résulte que, lorsqu'un enfant est né à l'étranger par GPA et est issu des gamètes du père d'intention, le droit au respect de la vie privée de l'enfant requiert que le droit interne offre une possibilité de reconnaissance d'un lien de filiation entre l'enfant et le père d'intention et entre l'enfant et la mère d'intention, qu'elle soit ou non sa mère génétique. Il en ressort de plus que cette reconnaissance du lien de filiation entre l'enfant et le père d'intention, père biologique, et entre l'enfant et la mère d'intention qui n'est pas la mère génétique peut dûment se faire par d'autres moyens que la transcription de l'acte de naissance étranger de l'enfant.

La Cour ne voit pas de raison d'en décider autrement ici, s'agissant de la filiation avec la mère d'intention, mère génétique. Ainsi, le seul fait que la mère d'intention coïncide avec la mère génétique n'est pas de nature à rendre disproportionnée l'ingérence subie par l'enfant, dès lors que leur lien de filiation peut être effectivement établi par une autre voie.

Peu importe ici la différence de traitement que l'état du droit positif français créait, quant à l'établissement de la filiation, entre le père d'intention, père biologique, et la mère d'intention, mère génétique. En effet, la présente requête ne concerne pas les droits des parents d'intention au regard de la Convention, mais uniquement ceux de l'enfant.

Or – et c'est l'élément déterminant – le rejet de la demande de transcription ne faisait pas obstacle à l'établissement de la filiation maternelle. Même si, en tant que parent génétique, la première requérante a des réticences que la Cour peut comprendre à passer par une procédure d'adoption, il convient là encore de rappeler que la présente requête concerne uniquement les droits de l'enfant.

Or, la Cour l'a indiqué dans son avis consultatif : ce qu'il faut au regard de la vie privée de l'enfant, c'est un mécanisme effectif et suffisamment rapide permettant la reconnaissance du lien de filiation manquant ; et l'adoption produit bien, s'agissant de la reconnaissance du lien de filiation entre l'enfant et la mère d'intention, des effets de même nature que la transcription de l'acte de naissance étranger. La Cour estime que ces critères valent non seulement lorsque l'enfant est issue des gamètes du père d'intention et d'une tierce donneuse et n'a donc pas de lien génétique avec la mère d'intention (contexte de l'avis consultatif) mais aussi dans le cas où, comme en l'espèce, l'enfant est issu des gamètes du père d'intention et de celles de la mère d'intention.

Les deux parents requérants étant mariés et l'acte de naissance ukrainien ne mentionnant pas la femme qui a accouché, la première requérante a la possibilité de saisir le juge d'une demande d'adoption plénière de l'enfant du conjoint. En juillet 2017, la ministre de la Justice a émis une dépêche invitant le parquet général concerné à s'y montrer favorable. Selon le Gouvernement, la grande majorité des demandes d'adoption de l'enfant du conjoint de ce type sont accueillies.

Certes, l'avis consultatif a précisé que le mécanisme requis doit exister au plus tard lorsque le lien entre l'enfant et la mère d'intention s'est concrétisé. Or, la possibilité de recourir à l'adoption n'est établie de manière certaine que depuis deux arrêts de la Cour de cassation de juillet 2017, rendus alors que l'enfant requérante avait presque cinq ans – soit bien après, selon toute vraisemblance, la concrétisation du lien entre elle et sa mère d'intention.

Toutefois, cette évolution du droit positif était antérieure à la décision interne définitive dans la présente affaire et les requérants avaient été directement informés de cette possibilité en décembre 2017 par l'arrêt rendu en leur cause. La durée moyenne pour une adoption plénière étant de 4,1 mois, selon le Gouvernement – les requérants n'étayant pas leur opinion contraire – si la procédure d'adoption avait été engagée après le dernier arrêt rendu, la filiation maternelle aurait vraisemblablement pu être réglée avant que l'enfant ait atteint l'âge de six ans, et à une date proche de celle à laquelle les requérants ont saisi la Cour. Dès lors que pareille démarche était susceptible d'aboutir rapidement, la Cour ne voit pas comme un fardeau excessif imposé à l'enfant requérante le fait d'attendre des parents requérants qu'ils engageassent une procédure d'adoption.

Partant, l'État défendeur n'a pas excédé sa marge d'appréciation.

Conclusion : non-violation (unanimité).

Article 14 combiné avec l'article 8 : Dans leur requête, les requérants dénonçaient une atteinte discriminatoire à la vie privée de l'enfant, fondée sur « la naissance ».

Dans leurs observations complémentaires de février 2020, ils dénoncent également une différence de traitement entre la mère biologique et le père biologique, en ce que la retranscription du lien de filiation établi à l'étranger n'a pas suscité d'opposition des autorités à l'égard de ce dernier.

i. *Sur la recevabilité* – Notant cette comparaison additionnelle entre le père et la mère d'intention, la Cour en déduit que les requérants entendent ainsi la saisir d'un grief relatif à une discrimination dont la première requérante aurait à souffrir ; il s'agit là d'un grief distinct de ceux de la requête, qui visent uniquement les droits de l'enfant requérante.

Or, ce grief repose sur un fait – la circonstance que la première requérante est la mère génétique de l'enfant requérante – que les requérants ont omis d'indiquer dans la requête et n'ont révélé à la Cour qu'à la suite d'une demande de la présidente de la chambre, en septembre 2019. Il ressort aussi des pièces du dossier que les autorités et juridictions internes n'en étaient pas informées non plus. En tout état de cause, ce nouveau grief se heurte au délai de six mois.

ii. *Sur le fond* – Ce que dénoncent les requérants de manière recevable est donc uniquement la différence de traitement, quant aux modalités de la reconnaissance du lien de filiation avec leur mère génétique, entre les enfants français nés à l'étranger d'une GPA, et les autres enfants français nés à l'étranger.

À supposer que l'on puisse considérer que les deux catégories d'enfants ainsi identifiées par les requérants se trouvent dans des situations analogues ou comparables quant à leur filiation maternelle, il reste que la différence de traitement entre ces deux catégories ne consiste pas en une « impossibilité » d'établir la filiation mais seulement en l'obligation de passer, pour cela, par la voie de l'adoption.

Or, comme la Cour vient de le constater ci-dessus, l'adoption de l'enfant du conjoint constitue en l'espèce un mécanisme effectif à cette fin.

Elle note également l'intention sous-jacente à cet état du droit positif, expliquée par le Gouvernement, de faire en sorte qu'un juge vérifie dans chaque cas qu'il était bien dans l'intérêt supérieur de l'enfant de procéder à l'établissement du lien de filiation à l'égard de la mère d'intention, afin de limiter les risques liés au recours à la GPA par les ressortissants d'un pays où elle n'est pas autorisée.

La Cour – qui se prononce uniquement à l'aune des éléments de comparaison évoqués par les requérants –, admet donc que la différence de traitement qu'ils dénoncent reposait sur une justification objective et raisonnable.

Conclusion : non-violation (unanimité).

Respect for private life/Respect de la vie privée

Unjustified intrusion of a male police officer into the toilet resulting in a female applicant being exposed to him in a state of undress: *violation*

Intrusion injustifiée d'un policier de sexe masculin dans les toilettes alors que la requérante s'y trouvait en petite tenue : *violation*

Yunusova and/et Yunusov – Azerbaijan/Azerbaïdjan (no. 2/n° 2), 68817/14, Judgment/Arrêt 16.7.2020 [Section V]

Traduction française du résumé – Printable version

Facts – The first applicant was a well-known Azerbaijani human rights defender and civil-society activist, and the director of an association named the "Institute for Peace and Democracy" and the second applicant, her husband, was a researcher and the head of department in the association. In 2005 the first applicant launched a joint project with a non-governmental organisation based in Armenia to focus on peace and reconciliation between the two countries.

On 25 April 2014 the applicants' bank accounts were frozen within the framework of a criminal case against a third party. On the evening of 28 April 2014, the State Border Service at the airport did not allow the applicants to board a flight. Their luggage and handbags were searched and their passports and various documents seized. The applicants were kept at the airport from 10.30 p.m. on 28 April 2014 until 3.40 a.m. on 29 April 2014 and then taken to their home address. Their flat and the association's office were searched.

In July 2014 the first applicant was charged with large-scale fraud, illegal entrepreneurship, large-scale tax evasion, high treason and falsification of official documents and the second applicant with large-scale fraud and high treason. They were remanded in custody. In August 2015 they were convicted and sentenced to eight and a half and seven years' imprisonment respectively. In December 2015 the applicants' sentences were commuted to five years' imprisonment suspended on probation.

Law – Article 8

(a) *With regard to the intrusion on the first applicant while using the toilet and in a state of undress* – The first applicant had complained that a male police officer had intruded whilst she was using the toilet, and observed her in a state of undress. She had submitted video recordings showing that the superior officer, to whom she had complained about that incident, had condoned the intrusion by indicating that the police officer in question had been protecting her from self-harm. There had therefore been prima facie evidence in favour of the first applicant's account of events. There was nothing in the national courts' decisions suggesting that they had been precluded from examining those video recordings or that the latter had been inadmissible on any other procedural grounds: the domestic courts' decisions had been totally silent in this regard. The impugned intrusion had clearly amounted to an interference with the first applicant's right to respect for her private life. The interference could not be regarded as "necessary in a democratic society": there had been no emergency situation requiring the officer in question to take any imminent action in order to protect the first applicant; nor had she presented a risk of self-harm.

Conclusion: violation (unanimously).

(b) *With regard to the searches and seizures to which both applicants were subjected* – The inspection of the applicants' luggage and handbags, the searches of their home and the association's office and seizure of various materials had been carried out in the context of criminal proceedings against a third party. However, it had not been explained why the domestic authorities had considered that carrying out the impugned searches and seizures would help to further that investigation and/or to protect national security. The mere fact that the third party in issue knew the applicants well and had cooperated with the association could not be considered, in the absence of any concrete purpose for those measures, as reasonable grounds for suspecting that a specific piece of evidence relevant for the investigation of that criminal case might have been found as a result.

Furthermore, several days prior to the applicants' arrest at the airport, the authorities had instituted criminal proceedings in connection with alleged irregularities in the financial activities of a number of NGOs following which several notable NGO activ-

ists had been arrested, whose offices and premises had also been searched. Therefore, in the light of the specific context of the present case and the lack of any concrete reasons put forward either in the domestic or in the Convention proceedings justifying the measures at stake, the Government had failed to convincingly demonstrate that the authorities had been guided by the legitimate aims relied on, that is to say the investigation of the criminal case against the third party or the prevention of the crime of high treason and the protection of national security. Accordingly, the impugned interference had not pursued any of the legitimate aims enumerated in paragraph 2 of Article 8.

Conclusion: violation (unanimously).

Article 18, taken together with Article 5 § 1: The applicants' arrest and pre-trial detention had not been carried out for a purpose prescribed under Article 5 § 1 (c) of the Convention, as the charges against them had not been based on a "reasonable suspicion". Therefore, no issue had arisen with respect to a plurality of purposes, as set out in *Merabishvili v. Georgia* [GC].

In this connection, in the case of *Aliyev v. Azerbaijan*, the Court had found that its judgments in a series of similar cases had reflected a pattern of arbitrary arrest and detention of government critics, civil society activists and human rights defenders through retaliatory prosecutions and misuse of the criminal law in breach of Article 18. The present case had constituted a part of that pattern since the combination of the relevant case-specific facts in the applicants' case had been similar to that in the previous ones, where proof of an ulterior purpose had derived from a juxtaposition of the lack of suspicion with contextual factors.

Firstly, as regards the applicants' status, the first applicant had been a well-known human rights defender and the second applicant had been closely involved in her activities.

Secondly, the applicants had been charged with serious criminal offences whose core constituent elements could not reasonably be found in the existing facts.

Thirdly, the applicants' arrest had been accompanied by stigmatising statements made by public officials against the local NGOs and their leaders, including the applicants, who had been labelled as "traitors". Those statements had not simply concerned an alleged breach of domestic legislation on NGOs and grants, but rather had the purpose of delegitimising their work.

Fourthly, the general context of the increasingly harsh and restrictive legislative regulation of NGO activity and funding could not be simply ignored in a case like the present one, where such a situation had led to NGO activists being prosecuted for alleged failures to comply with legal formalities of an administrative nature while carrying out their work.

Fifthly, the applicant's situation had to be viewed against the backdrop of arrests of other notable civil society activists and human rights defenders who had been detained and charged to a large extent with similar criminal offences.

Thus, the authorities' actions had been driven by improper reasons and the actual purpose of the impugned measures had been to silence and to punish the applicants for their NGO activities. In the light of these considerations, the restriction of the applicants' liberty had been imposed for purposes other than those prescribed by Articles 5 § 1 (c).

Conclusion: violation (unanimously).

The Court also found, unanimously, violations of Article 5 § 1 on account of the applicants' unlawful deprivation of liberty at the airport, and their subsequent detention in the absence of a "reasonable suspicion" of their having committed a criminal offence; of Article 5 § 4 on account of the lack of adequate judicial review of the lawfulness of their detention; of Article 6 § 2 because the press statement of the national authorities had contained declaration of their guilt; of Article 1 of Protocol No. 1 on account of the unlawful freezing of their bank accounts, of Article 13 in conjunction with Article 1 of Protocol No. 1 and Article 2 of Protocol No. 4 on account of the inability to challenge the seizure of their passports and the freezing of their bank accounts before the domestic courts; and of Article 34 on account of the impediments to communication between the applicants and their representative, whose licence to practise law had been suspended.

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

(See also under Article 8: *Buck v. Germany*, 41604/98, 28 April 2005, Information Note 74; *Ivashchenko v. Russia*, 61064/10, 13 February 2018, Information Note 215; and under Article 18: *Rasul Jafarov v. Azerbaijan*, 69981/14, 17 March 2016, Information Note 194; *Merabishvili v. Georgia* [GC], 72508/13, 28 November 2017, Information Note 212; *Aliyev v. Azerbaijan*, 68762/14 and 71200/14, 20 September 2018, Information Note 221)

Respect for private life /Respect de la vie privée

Expulsion

Denial of residence permit to alien unlawfully staying in host State from an early age, who

became recidivist once adult and aware of precarious immigration status: *no violation*

Refus de permis de séjour opposé à un étranger résidant illégalement dans l'État d'accueil depuis son enfance, informé de la précarité de son statut d'immigré et devenu récidiviste à l'âge adulte : *non-violation*

Pormes – Netherlands/Pays-Bas, 25402/14, Judgment/Arrêt 28.7.2020 [Section IV]

Traduction française du résumé – Printable version

Facts – The applicant was born in Indonesia in 1987 to a Dutch father and Indonesian mother. After his mother died, he travelled to the Netherlands on a short-term tourist visa when he was four years old. He lived there from then on, initially with his father and, after the latter's death, with his foster parents. In 2004, when he was 17, the applicant became aware that he did not have Dutch nationality and was staying in the Netherlands unlawfully. He applied unsuccessfully for a residence permit. While the relevant proceedings were pending (between 2006 and 2013), he was convicted of indecent assault and attempted indecent assault several times. In 2016 the applicant left the Netherlands for Indonesia.

Law – Article 8: The relevant principles as well as the factors and considerations to be taken into account when examining whether Article 8 imposed a positive obligation on a State to allow an alien unlawfully residing in its territory a resident permit had so far mainly been formulated in cases that concerned family life or in which the Court had considered it appropriate to focus on that aspect. The Court found that similar considerations applied in respect of an alien who had established social ties amounting to private life in the territory of a State during a period of unlawful stay. The extent of the State's positive obligations to admit such an alien would depend on the particular circumstances of the person concerned and the general interest. The Court had, moreover, identified a number of factors in its case-law that were to be taken into account when assessing whether a State might be under a positive obligation to admit to its territory an alien whose stay in the country was unlawful, such as the extent to which family life was effectively ruptured, the extent of the ties in the Contracting State, whether there were insurmountable obstacles in the way of the family living in the country of origin of one or more of them, whether there were factors of immigration control (e.g. a history of breaches of immigration law) or considerations of public order weighing in favour of exclusion.

Those factors also applied – to the extent possible – to cases where it was more appropriate to focus on the aspect of private life. Equally, if an alien established a private life within a State at a time when he or she was aware that his or her immigration status was such that the continuation of that private life in that country would be precarious from the start, a refusal to admit him or her would amount to a breach of Article 8 in exceptional circumstances only.

The applicant had a private life in the Netherlands, he had lived there for twenty-five years, he had spoken Dutch fluently, and he had received all his schooling and spent most of his formative years there. He had taken part in everyday life in the same way as his Dutch-national contemporaries. Having regard to the specific circumstances of the present case (in particular, the lack of dependency between the applicant and his foster parents), the Court focused mainly on the aspect of "private life".

When the applicant had started to build his ties with the Netherlands, he had been completely unaware that neither his presumed father nor his foster parents had taken steps to regularise his stay in the country. Having regard to his young age when he had arrived in the Netherlands and the other circumstances of the case, this could not be held against the applicant. Moreover, the applicant could not be identified with any omission on the part of his foster parents to ensure that his stay in the Netherlands had a lawful basis since, as Dutch nationals, their right of residence in the Netherlands had not been dependent on whether or not the applicant would be granted a residence permit, as had also been recognised by the authorities. Accordingly, the applicant qualified neither as a "settled migrant" nor as an "alien" who had to be aware of the precariousness of his immigration status from the outset. Consequently, as regards the balancing of interests at stake, it can neither be said that the refusal of a residence permit would require very serious reasons to be justified under Article 8 nor that it would violate that provision only in very exceptional circumstances. Instead, the assessment had to be carried out from a neutral starting point, taking into account the specific circumstances of the applicant's case.

While the applicant had established very strong ties in the Netherlands, his ties to Indonesia had not been strong: he had apparently no actual family or social ties and had not spoken Indonesian. Given that the applicant could not be reproached for the unlawful character of his stay in the Netherlands and bearing in mind that he had established close ties with that country for a considerable period of time, if no other factors had entered into the equation, his interests in being allowed to reside in the Netherlands would have outweighed any interest of immigration control on the part of the State.

However, it could not be overlooked that the applicant, once adult and aware of his precarious residence status, had become a multiple recidivist.

Given the length of his residence in, and the strength of his ties with the Netherlands, the applicant's relocation to Indonesia would have entailed a certain amount of hardship. Nevertheless, he had been a healthy adult man, and he would have been able to manage by himself in that country. The applicant had possessed a number of practical skills and he would have been able to adjust to Indonesian culture and to learn the language. Contacts with his foster family and others in the Netherlands might have been maintained through modern means of communication. And no exclusion order had been imposed on the applicant, which had left open the possibility that he might apply for a visa in order to make visits to the Netherlands.

In addition, every domestic decision-making body had had specific regard to the State's obligations under Article 8. In the light of all of the above, and having regard in particular to the nature, seriousness and number of offences committed by the applicant, including at a time when he had known that his residence status in the Netherlands had been precarious, the domestic authorities had not attributed excessive weight to the general interest in the prevention of disorder or crime and had not overstepped the margin of appreciation afforded to them in the circumstances of the present case.

Conclusion: no violation (five votes to two).

(See also *Boultif v. Switzerland*, 54273/00, 2 August 2001, Information Note 33; *Rodrigues da Silva and Hoogkamer v. the Netherlands*, 50435/99, 31 January 2006, Information Note 82; *Z. and T. v. the United Kingdom* (dec.), 27034/05, 28 February 2006, Information Note 83; *Üner v. the Netherlands* [GC], 46410/99, 18 October 2006, Information Note 90; *Maslov v. Austria* [GC], 1638/03, 23 June 2008, Information Note 109; *Osman v. Denmark*, 38058/09, 14 June 2011, Information Note 142; *A.A. v. the United Kingdom*, 8000/08, 20 September 2011, Information Note 144; *Jeunesse v. the Netherlands* [GC], 12738/10, 3 October 2014, Information Note 178)

ARTICLE 10

Freedom of expression/Liberté d'expression

Statements alleging corruption directed at certain of members of parliament made by politician in support of her view of incompatibility of that role with that of lawyer: *violation*

Accusations de corruption contre des membres du Parlement formulées par une femme politique qui estimait cette fonction incompatible avec la profession d'avocat : *violation*

Monica Macovei – Romania/Roumanie, 53028/14, Judgment/Arrêt 28.7.2020 [Section IV]

Traduction française du résumé – Printable version

Facts – The applicant, an active politician, had made some statements directed at two opposition politicians (D.Ş. and V.P.) which had been reported in the press. The statements concerned some actions (giving legal advice to State companies from their constituencies) on the part of V.P. and D.Ş. which the applicant perceived as a "typical act of corruption by political influence". By a final judgment of the High Court of Cassation and Justice, the applicant had been ordered to pay damages to D.Ş. and to publish that judgment at her own expense.

Law – Article 10: The applicant's statements had been capable not only of tarnishing D.Ş.'s reputation, but also of causing him serious prejudice in both his professional and his social environment. Accordingly, the accusations had attained the requisite level of seriousness to be capable of undermining his rights under Article 8. The Court had therefore to verify whether the domestic authorities had struck a fair balance between the two values guaranteed by the Convention, namely, on the one hand, the applicant's freedom of expression protected by Article 10 and, on the other, D.Ş.'s right to respect for his reputation under Article 8.

The criticism in the applicant's comments had been directed not at D.Ş.'s private activities but rather at his conduct in his political capacity, that was, as an elected parliamentary representative. As such, his conduct in that capacity had clearly been of legitimate concern to the general public and the authorities had had a particularly narrow margin of appreciation in assessing the need for the interference with the applicant's freedom of expression.

The national courts were, in principle, better placed than an international court to assess the intention behind impugned phrases and statements and, in particular, to judge how the general public would interpret and react to them. However, the appellate courts had not provided convincing reasons for their conclusion that the applicant had made an untruthful statement of fact. In view of the limited scope of their reasoning in that respect, the Court was not persuaded by their approach and could not share their conclusion.

Given the wording of the applicant's statements, the explanation contained in the relevant press articles and the contradictory findings of the domestic courts which had examined the matter, the applicant's comments had contained a combination of

value judgments and statements of fact. The thrust of her statements had been to use the example of specific conduct by D.Ş. and V.P., which she had regarded as tantamount to a "typical act of corruption by political influence", in the context of the broader concept of conflict of interest as support for an idea that she had been constantly promoting, namely the introduction of a law rendering the functions of lawyer and member of parliament incompatible. The question, therefore, was whether a sufficiently accurate and reliable factual basis proportionate to the nature and degree of the applicant's statements and allegations could be established.

Some of the applicant's statements, such as those concerning D.Ş.'s specific conduct – namely the alleged signing of very lucrative contracts with State-owned companies located in the constituency he was representing in Parliament – could have been considered to lack a sufficient factual basis. None of the information relied on by the applicant in her submissions had suggested that D.Ş. or the law practice he had founded had signed contracts with State-owned companies located in the said constituency at a time when he was both a lawyer and a member of parliament. However, that the applicant's statements and allegations had been of a collective nature, concerning both D.Ş. and V.P., and had merely been aimed at providing an example of a system of political corruption consisting in an award of contracts for legal advice by public companies rather than at accusing either of them of genuine corruption. In addition, the available information suggested that V.P. had been both a member of parliament and an associate of the law practice founded by D.Ş. at a time when the law practice had signed lucrative legal-assistance contracts with State-owned companies located in the constituency represented in Parliament by V.P. In that context, the applicant's allegations and, in particular, the expressions used, albeit perhaps inappropriately strong, could be viewed as polemical, involving a certain degree of exaggeration.

Under those circumstances, given the status of the applicant and D.Ş. as politicians and elected representatives of the people, the collective nature of the applicant's statements and allegations, the overall context reflected by the press reports, namely that of promoting the need for legislation establishing an incompatibility between the functions of lawyer and member of parliament, and the existence of at least a certain factual background to her statements and allegations taken collectively, the applicant's comments had not amounted to an ill-fated gratuitous personal attack against D.Ş. In that connection it was always necessary to bear in mind that political invective often spilt over into the personal sphere; such were the hazards of politics and the free debate of ideas, which were the guarantees of a democratic society.

Lastly, the applicant had been ordered to pay damages of EUR 2,300 and to publish the last-instance court's judgment at her own expense in five national newspapers, including three with the widest circulation in the country. Under the circumstances, the sanction imposed had been capable of having a dissuasive effect on the exercise of her right to freedom of expression.

In the light of those considerations – the shortcomings in the appellate courts' reasoning when examining the case and the said courts' apparent failure to consider what consequences the possible classification of the applicant's statements as being of a collective nature could have had in the overall context in which they were made, taken together with the chilling effect the penalty imposed on the applicant had on her freedom of expression – the domestic courts had failed to strike a fair balance between the relevant interests and to establish a "pressing social need" for putting the protection of D.Ş.'s reputation protected by Article 8 above the applicant's right to freedom of expression under Article 10. The interference with the applicant's right to freedom of expression had not been "necessary in a democratic society".

Conclusion: violation (five votes to two).

Article 41: EUR 3,000 in respect of non-pecuniary damage; EUR 4,505 in respect of pecuniary damage.

ARTICLE 13

Effective remedy/Recours effectif

Failure to provide effective remedy by which to challenge election results and seek recount: *violation*

Absence d'un recours effectif permettant de contester le résultat des élections et de demander un recomptage des voix : *violation*

Mugemangango – Belgium/Belgique, 310/15, Judgment/Arrêt 10.7.2020 [GC]

(See Article 3 of Protocol No. 1 below/Voir l'article 3 du Protocole n° 1 ci-dessous, page 23)

ARTICLE 14

Discrimination (Article 8)

Obligation for children born under surrogacy arrangement to be adopted in order to ensure

recognition of legal mother-child relationship: *no violation*

Obligation d'emprunter la voie de l'adoption pour la reconnaissance du lien de filiation avec leur mère génétique des enfants nés par gestation pour autrui : *non-violation*

D – France, 11288/18, Judgment/Arrêt 16.7.2020 [Section V]

(See Article 8 above/Voir l'article 8 ci-dessus, page 13)

ARTICLE 18

Restriction for unauthorised purposes/ Restrictions dans un but non prévu

Detention of human rights defenders for the purpose of silencing and punishing them for their NGO activities: *violation*

Détention de défenseurs des droits de l'homme dans le but de les faire taire et de les punir des activités de leur ONG : *violation*

Yunusova and/et Yunusov – Azerbaijan/Azerbaïdjan (no. 2/n° 2), 68817/14, Judgment/Arrêt 16.7.2020 [Section V]

(See Article 8 above/Voir l'article 8 ci-dessus, page 15)

ARTICLE 34

Victim/Victime

Impact on individual shareholders of legislation putting banks under central supervising authorities and resulting in significant loss of their operational autonomy: *inadmissible*

Conséquences, pour les actionnaires de banques, d'une loi plaçant celles-ci sous le contrôle d'autorités centrales et entraînant pour elles une perte importante de leur autonomie opérationnelle : *irrecevable*

Albert and Others/et autres – Hungary/Hongrie, 5294/14, Judgment/Arrêt 7.7.2020 [GC]

Traduction française du résumé – Printable version

Facts – The applicants were two hundred and thirty seven individual shareholders in two savings banks. Collectively they held 98% of shares in one bank and around 88% in the other. They complained that the Integration Act of 2013 had breached Article 1 of Protocol No. 1 by excessively restricting their rights to influence the operation of the said banks, in particular, the rights to establish and amend a memorandum of association, adopt annual reports, appoint board members and determine share capital or payment of dividends. Under the new legislation those issues had become subject to the approval of two central bodies which had initially been controlled by the State: the Integration Organisation of Cooperative Credit Institutions (hereinafter "the Integration Organisation") and the Savings Bank.

In a judgment of 29 January 2019, a Chamber of the Court held, by six votes to one, that due to the applicants not having pointed to any circumstances justifying the lifting of the corporate veil, they could not claim to be victims of the alleged violation and that there had been no violation of Article 1 of Protocol No. 1. On 24 June 2019 the case was referred to the Grand Chamber at the applicants' request.

Law – Article 34: When it came to cases brought by shareholders of a company, it was crucial to draw a distinction between complaints brought by shareholders about measures affecting their rights as shareholders and those about acts affecting companies, in which they held shares. In the former group, shareholders themselves might be considered victims within the meaning of Article 34. In such cases the difference between the rights of the company and the rights of the shareholders was maintained and the company's legal personality remained intact, as the complaints and the Court's substantive analysis concerned the rights and the situation of the company's shareholders and not those of the company. In the latter group the general principle was that shareholders of companies could not be seen as victims, within the meaning of Article 34, of acts and measures affecting their companies. That principle might be justifiably qualified in two kinds of situations, firstly, where the company and its shareholders were so closely identified with each other that it was artificial to distinguish between the two and, secondly, if it was warranted by "exceptional circumstances" precluding the affected companies from bringing the cases to the Court on their own behalf.

(a) *Distinction between acts and measures affecting the company and acts affecting the rights of shareholders as such* and *whether the Integration Act and the Amendments had directly affected the applicants' rights as shareholders as such*

The mere loss of value of shares was not the only decisive factor when determining what constituted an act "aimed at the rights of the shareholder as such". The Court had to consider whether the likely

effects of the measure in question concerned not only the applicant's interests in the company but had also been directly decisive for his or her individual rights.

In a number of cases where the measure complained of by an applicant shareholder had directly and adversely affected legal rights covered by such share(s) or the ability to exercise such rights, the Convention institutions had recognised the applicant's victim status implicitly by accepting the case for examination without entering into a detailed discussion. The Court had been prepared to find an interference with the enjoyment of possessions where the impugned measures had directly and adversely affected the applicants' ownership of their shares or their freedom to dispose of their shares, or obliged the applicant to sell his shares, or where the measures had decreased their power to influence the company *vis-à-vis* other shareholders, or to act as the company's manager, or to vote. Those decisions were consistent with and could be viewed as illustrations of the general principles set out in the leading rulings in *Agrotexim and Others v. Greece* and *Olczak v. Poland*, notably of measures directed or aimed at the applicant's rights as a shareholder, to be distinguished from the infringements of the company's right to the peaceful enjoyment of its possessions.

Having had regard to the reasoning in those leading rulings and also taking due account of its case-law, the Court observed that acts affecting the rights of the shareholders were distinct from measures or proceedings affecting the company in that both the nature of such acts and their alleged effect impacted the shareholders' legal rights both directly and personally and went beyond merely disturbing their interests in the company by upsetting their position in the company's governance structure.

The Integration Act adopted in 2013 had made the two banks ipso jure members of the new State-sponsored integration scheme and they had been faced with a choice between either remaining members of the Integration Organisation or leaving it. The choice of leaving implied the need to reapply for a new banking licence and also, among other things, the requirement to raise the banks' own capital, whereas the option of remaining as a member required the banks to agree to a significant loss of their operational autonomy.

Given the consequences for non-compliance with the requirements of the Integration Act, the relevant provisions of the impugned legislation clearly had a coercive and involuntary character. The choice to remain had to be made by the competent bodies of the banks, i.e. the general meeting of their shareholders, which included most of the applicants, and the banks' management. In the end both banks had agreed to remain members of the Integration Organisation and, as a result, had lost a significant amount of their operational autonomy.

It was not in dispute that the Integration Act and its Amendments did not regulate directly, even on a temporary basis, any of the specific legal rights that the applicants as shareholders held under the applicable domestic law, or directly interfere with the exercise of those rights. Nor did it appear that the impugned legislation had had an adverse impact on the business of the two banks. The matters to which the applicants had referred as examples of restrictions of their rights were in fact powers which, under the applicable domestic law, belonged to and were exercised exclusively by the companies' statutory bodies. Moreover, their exercise of those powers was subject to various procedural rules, including quorum and majority requirements.

Thus, the reform had been aimed at, and indeed directly affected, the governing structures of the two banks, their respective general meetings of shareholders and their boards of directors. As a consequence, those bodies had permanently lost a significant degree of their powers in managing the banks in so far as such powers had been conferred to the Integration Organisation and the Savings Bank. As regards the powers of individual shareholders, each of them could exercise his or her rights in respect of the above-mentioned matters, notably by being involved in the decision-making process and voting. The applicants' interests had thus also been affected by the reform. However, their individual shareholdings were of such size that each of them could not, in his or her capacity as a shareholder, control any of the banks. Given the number of shareholders that each of the two banks had, the number of shares owned by an average shareholder (0.015% in one bank and 0.016% in another) and the lack of any indication that at the relevant time the applicants as a group had been bound by a shareholder agreement or other means of consolidating their fragmented influence at general meetings of the two banks, the influence of a single shareholder over other shareholders at any given moment was on the whole weak. In those circumstances there was nothing to indicate that the applicants' rights as individual shareholders had as such been aimed at or adversely affected by the impugned measures, which essentially related to corporate matters.

It followed that, even though the reform had had a considerable impact at company level, its bearing on the situation of individual shareholders, whilst

real, had nevertheless been incidental and indirect. The case could therefore be distinguished from cases where the relevant measures, such as the artificial dilution of a shareholder's voting power or the outright cancellation of shares, had either directly affected the applicants' legal rights or had direct and decisive effect on their exercise (*Olczak* and *Shesti Mai Engineering OOD and Others)*. In those circumstances, the Court concluded that the acts complained of by the applicants had concerned principally the banks, and had not directly affected their shareholder rights as such.

(b) *Whether the applicants as shareholders could be identified with their banks*

Although companies with a separate legal personality were not normally to be identified with their shareholders, in some of its previous cases the Court had accepted that there were situations where it would "serve no purpose to distinguish between the two" and had allowed the shareholders to proceed with their complaints about the proceedings or events affecting their companies. The reason for accepting victim status in such cases was that there had been no risk of differences of opinion among shareholders or between shareholders and a board of directors as to the reality of infringement of Convention rights or to the most appropriate way of reacting to such an infringement. That group had included cases brought by shareholders of small or family-owned or family-run companies or cooperatives, notably where a sole owner of a company had complained about the measures taken in respect of his or her company, or where all shareholders of a small cooperative had applied to the Court as applicants, or where one shareholder in a family-owned firm had lodged an application under the Convention, whilst the remaining shareholders at least had not objected to that.

The two banks were not family-run or family-owned firms or otherwise closely-held entities, but rather public companies with limited liability, numerous shareholders and a fully delegated management. The applicants had argued that they owned "almost 100% of the shares" in the two banks. That being so, the exact percentage of shares that the applicants might have owned was not dispositive, as they did not "carry [out their] own business through the medium of the company [or have] a direct personal interest in the subject-matter of the complaint". In those circumstances it could not be assumed that the company and its shareholders were so closely identified with each other that it would be artificial to distinguish between the two.

(c) *Whether the case involved exceptional circumstances precluding the affected companies from bringing the cases to the Court on their own behalf*

The starting point was that when a company was run by its management, duly appointed by the company's competent statutory bodies, the management had to bring the relevant complaints and such cases should be lodged in the company's, and not the manager's, name. In a number of cases lodged before it concerning companies in respect of which some degree of outside supervision or control had been imposed due to the company's financial or other difficulties, the Court had decided the question of the shareholders' victim status by examining in detail the alleged impediments to the company's ability to institute proceedings under the Convention on its own. In some instances, the Court had agreed with the applicants' arguments and acknowledged that the existence of "exceptional circumstances" had precluded the affected company from bringing the case and had allowed the shareholders to proceed with their complaint, notwithstanding the company's existence with separate legal personality.

In cases falling within that group, the mere existence of measures of outside supervision or control in respect of the company at issue was generally viewed as an important factor, but not the only one. As explained by the Court in *Agrotexim and Others*, the differences of opinion between various stakeholders of a company which were characteristic of "the life of a limited company" were exacerbated where insolvency or other similar types of proceedings (involving the transfer of control of the company's matters to an outside official) were brought in respect of the company. Yet, even then "the piercing of the 'corporate veil' or the disregarding of a company's legal personality would be justified only in exceptional circumstances, in particular where it was clearly established that it had been impossible for the company to apply to the Convention institutions through the organs set up under its articles of incorporation or – in the event of liquidation – through its liquidators".

As to what "circumstances" might be considered "exceptional", in the cases where shareholders had been allowed to proceed with their complaints on behalf of the company the burden had been on them to demonstrate that an official who had been tasked with looking after the company's interests at the relevant time, had been unable or unwilling to apply to domestic courts and the Strasbourg Court with the grievances at issue, that the Convention complaint had concerned a matter, such as the removal of a regular manager and the appointment of a trustee, in respect of which there had been a difference of opinion between the trustee and the shareholders, or various actions of the trustee affecting the interests of the shareholders. In each case, the matter had been such that its poten-

tial impact could have had a serious effect on the shareholders' situation, either directly or indirectly.

It was clear that, in order for applicants to satisfy the Court that their pursuit, as shareholders, of a matter affecting the company had been justified by "exceptional circumstances", they had to give weighty and convincing reasons demonstrating that it had been practically or effectively impossible for the company to apply to the Convention institutions through the organs set up under its articles of association and that they should therefore be allowed to proceed with the complaint on the company's behalf.

In the applicants' case the two banks had never been subjected to any insolvency or bankruptcy proceedings, and throughout the relevant time had remained operational and their regular management had remained in place. The applicants had collectively held considerable voting majorities in the general meetings of the two banks and could, if they had so wished, have directed the banks to bring legal proceedings on their behalf. It could not be said that the officials who had been tasked with looking after the two companies' interests at the relevant time had been unable to apply to the Court with the grievances at issue. As to the further question whether the banks had been precluded from bringing their case on account of undue pressure from the authorities, the applicants had not made any specific allegations regarding either direct or implied threats to that effect. Instead, they had vaguely referred to "the high degree of State involvement in the integration".

The circumstances of the adoption and entry into force of the Integration Act suggested that the future member institutions might have felt some pressure to join the new integration. That was evident in that the legal compulsion to become members of the Integration Organisation had been combined with heavy financial and formal conditions and time constraints. In addition, as a result of the reform, the Integration Organisation had acquired a seemingly wide discretion over its members to impose sanctions, including very severe ones, such as exclusion of the members and withdrawal of licences. At the same time, any pressure to join the integration should not be taken to mean that pressure was also brought to bear in order to prevent the reform or related measures from being challenged before the courts. There was no evidence of any pressure on the banks to prevent them from challenging the reform. Quite the contrary, the domestic legal system had provided future member institutions and persons concerned with access to court to contest the reform in general as well as specific decisions of the Integration Organisation.

In particular, the entirety of the impugned legislation had been challenged before the Constitutional Court, which had intervened on behalf of some savings cooperatives and modified some of its provisions. That eventually resulted in the Amendments to the Integration Act. It had also to be noted that in so far as the reform had subjected the banks to the supervisory powers of the Integration Organisation and the Savings Bank, the latter bodies' specific decisions were not only open to judicial review before the domestic courts, but such remedies were also used and with success.

There was no indication that there existed exceptional circumstances precluding the affected companies from bringing the respective cases to the Court in their own names.

In the circumstances of the case the complaints about the Integration Act and the Amendments should have been brought by the two banks and the applicants could not claim to be victims of the alleged violations within the meaning of Article 34.

Conclusion: inadmissible (incompatible *ratione personae*).

(See also *Olczak v. Poland* (dec.), 30417/96, 7 November 2002, Information Note 47; *Pokis v. Latvia* (dec.), 528/02, 5 October 2006, Information Note 90; *Agrotexim and Others v. Greece*, 14807/89, 24 October 1995, Information Note; *Nassau Verzekering Maatschappij N.V. v. the Netherlands* (dec.), 57602/09, 4 October 2011, Information Note 145; *Shesti Mai Engineering OOD and Others v. Bulgaria*, 17854/04, 20 September 2011, Information Note 144; and *Lekić v. Slovenia* [GC], 36480/07, 11 December 2018, Information Note 224)

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

Stand for election/Se porter candidat aux élections

Complaint calling for recount of ballot papers examined by body lacking impartiality, through procedure lacking adequate and sufficient safeguards: *violation*

Réclamation portant sur une demande de recomptage de bulletins de vote examinée par un organe manquant d'impartialité, dans une procédure ne présentant pas de garanties adéquates et suffisantes : *violation*

Mugemangango – Belgium/Belgique, 310/15, Judgment/Arrêt 10.7.2020 [GC]

Traduction française du résumé – Printable version

Facts – Under Belgian electoral law, legislative assemblies are themselves competent to verify any irregularities during the elections, thus excluding the jurisdiction of any external court or body. Having stood for election to the Walloon Region's parliament in 2014, the applicant failed to win a seat by just fourteen votes. Without asking for the election to be declared void and for fresh elections to be held, the applicant called for a re-examination of the ballot papers that had been declared blank, spoilt or disputed (over 20,000) and a recount of the votes validly cast in his constituency. While the Walloon Parliament's Committee on the Examination of Credentials found the applicant's complaint well-founded and proposed to hold a recount of votes, the Walloon Parliament, not yet constituted at the material time, decided not to follow that conclusion and approved all the elected representatives' credentials. The applicant complained about the procedure for the examination of his complaint.

Law – Article 3 of Protocol No. 1: Where irregularities in vote counting or in election documents might have affected the outcome of the elections, a fair procedure for recounting votes was an important safeguard as to the fairness and success of the entire election process. The concept of free elections would be put at risk only if there had been evidence of procedural breaches capable of thwarting the free expression of the opinion of the people, and where complaints of such breaches had received no effective examination at domestic level. The Court had therefore to ascertain firstly whether the applicant's allegations were sufficiently serious and arguable, and secondly, whether they had received an effective examination.

(a) *Whether the applicant's allegations were serious and arguable* – The Walloon Parliament's Committee on the Examination of Credentials ("the Credentials Committee") had established that in several of the scenarios envisaged, the distribution of seats in the applicant's constituency would have been liable to change had the blank, spoiled and disputed ballot papers been ultimately counted as valid votes. That change would also have been likely to have affected the distribution of seats in other constituencies in the Province. That had been confirmed by the plenary Walloon Parliament. In any event, it could not be ruled out that the applicant might have been declared elected following the recount he had been seeking. Accordingly, it could not be maintained that the alleged mistakes would not have undermined the reliability of the results.

The applicant had put forward sufficiently serious and arguable allegations that could have led to a change in the distribution of seats. However, that did not necessarily mean that the Walloon Parliament should have upheld his demand for a recount. Although the recounting of votes was an important safeguard as to the fairness of the election process, it was not for the Court to determine precisely what action the authorities should have taken. It was the Court's task to verify that the applicant's right to stand for election had been effective; that would imply that his allegations, which were sufficiently serious and arguable, should have received an effective examination satisfying the requirements set out below.

(b) *Whether the examination of the applicant's allegations had been effective* – For the examination of appeals in matters concerning electoral rights to be effective, the decision-making process concerning challenges to election results had to be accompanied by adequate and sufficient safeguards ensuring, in particular, that any arbitrariness was avoided. Such safeguards served to ensure the observance of the rule of law during the procedure for examining electoral disputes, and hence the integrity of the election, so that the legitimacy of Parliament was guaranteed and it could thus operate without the risk of any criticism of its composition. What was at stake was the preservation of the electorate's confidence in Parliament. In that respect, those safeguards ensured the proper functioning of an effective political democracy and thus represented a preliminary step for any parliamentary autonomy.

Admittedly, the rules concerning the internal functioning of a parliament, including the membership of its bodies, as an aspect of parliamentary autonomy, in principle fell within the margin of appreciation of the Contracting States. The discretion enjoyed by the national authorities should nevertheless be compatible with the concepts of "effective political democracy" and "the rule of law" to which the Preamble to the Convention referred. It followed that parliamentary autonomy could only be validly exercised in accordance with the rule of law.

The applicant's case involved a post-election dispute relating to the result of the elections, that is to say, to the lawfulness and legitimacy of the composition of the newly elected parliament. In that regard, the present case differed from disputes that might arise after the valid election of a candidate, that is to say, in respect of a full member of parliament at a time when the composition of the legislature had been approved in accordance with the procedure in force in the national system concerned. At the time they had examined and given their decision on the applicant's complaint, both the Credentials Committee and the plenary Walloon Parliament had been composed of members of parliament elected in the elections whose validity was being challenged by the applicant.

Furthermore, at the time when the Walloon Parliament decided to reject the complaint, its members' credentials had not yet been approved and they had not been sworn in. The Parliament had thus yet to be constituted. That factor had to be taken into account in the weight attached by the Court to parliamentary autonomy when reviewing the observance of the rights guaranteed by Article 3 of Protocol No. 1.

The Court focused its review on the following issues:

(i) *Guarantees of the impartiality of the decision-making body* – Article 3 of Protocol No. 1 sought to strengthen citizens' confidence in Parliament by guaranteeing its democratic legitimacy and as such certain requirements also flowed from that Article in terms of the impartiality of the body determining electoral disputes and the importance that appearances might have in that regard.

In the context of the right to free elections secured by Article 3 of Protocol No. 1, the requisite guarantees of impartiality were intended to ensure that the decision taken was based solely on factual and legal considerations, and not political ones. The examination of a complaint about election results must not become a forum for political struggle between different parties. In that connection, by definition members of parliament could not be "politically neutral". It followed that in a system such as the one in place in Belgium, where Parliament was the sole judge of the election of its members, particular attention had to be paid to the guarantees of impartiality laid down in domestic law as regards the procedure for examining challenges to election results.

Having regard to standards developed and the recommendations issued by other European and international bodies, the question arose as to whether the system set up under Belgian law, as applied in the circumstances of the applicant's case, had afforded sufficient guarantees of impartiality.

The applicant's complaint had initially been examined by the Credentials Committee. That Committee had seven members drawn by lot from among all those elected to the Walloon Parliament. It was exclusively composed of members of parliament, and it was not required by law to be representative of the various political groups in Parliament. Two members of parliament sitting on the Credentials Committee had been elected for the same constituency in which the applicant had stood. At the material time, there had been no provision in the Rules of Procedure of the Walloon Parliament or any other regulatory instrument for the withdrawal of those members of parliament concerned, and they had refrained voluntarily from taking part. The conclusions of the Committee's report indicated that the members in question had nevertheless been present during the deliberations on the applicant's complaint and had voted on the final report to be submitted to the plenary Parliament, which included the opinion on the merits. In any event, the Credentials Committee's opinion was then submitted to the plenary Walloon Parliament, which had not followed the conclusions of the report.

The members elected in the applicant's constituency, who were his direct opponents, had not been excluded from the voting in the plenary Walloon Parliament. The decision had therefore been taken by a body that included members of parliament whose election could have been called into question if the applicant's complaint had been declared well-founded and whose interests had been directly opposed to his own. The decision on the applicant's complaint had been taken by a simple majority. A voting regulation of that kind allowed the prospective majority to impose its own view, even though there would also be a significant minority. Thus, contrary to the Venice Commission's recommendations, the rule on voting by simple majority that had been applied without any adjustment in the particular case had been incapable of protecting the applicant – a candidate from a political party not represented in the Walloon Parliament prior to the elections of 25 May 2014 – from a partisan decision.

It followed that the applicant's complaint had been examined by a body that had not provided sufficient guarantees of impartiality.

(ii) *Discretion enjoyed by the decision-making body* – The discretion enjoyed by the body taking decisions in electoral matters could not be excessive; it had to be circumscribed, with sufficient precision, by the provisions of domestic law. The applicable rules had to be sufficiently certain and precise.

In the applicant's case, those requirements had not been met. Domestic law did not provide at the relevant time for a procedure to deal with complaints, such as the one lodged by the applicant, and conferred exclusive jurisdiction on the Walloon Parliament to rule on the validity of electoral processes and on any disputes arising in relation to its members' credentials. The criteria that could be applied by the Walloon Parliament in deciding on such complaints were not laid down sufficiently clearly in the applicable provisions of domestic law. Nor did those provisions specify the effects of decisions to uphold a complaint, in this particular instance the circumstances in which a recount should take place or the election should be declared void.

(iii) *Guarantees of a fair, objective and reasoned decision* – The procedure in the area of electoral disputes had to guarantee a fair, objective and suf-

ficiently reasoned decision. In particular, complainants had to have had the opportunity to state their views and to put forward any arguments they considered relevant to the defence of their interests by means of a written procedure or, where appropriate, at a public hearing. In that way, their right to an adversarial procedure was safeguarded. In addition, it had to be clear from the public statement of reasons by the relevant decision-making body that the complainants' arguments had been given a proper assessment and an appropriate response.

In the applicant's case, neither the Constitution, nor the law, nor the Rules of Procedure of the Walloon Parliament as applicable at the material time, had provided for an obligation to ensure safeguards of that kind during the procedure for examination of credentials. In practice, however, the applicant had enjoyed the benefit of certain procedural safeguards during the examination of his complaint by the Credentials Committee. He and his lawyer had both been heard at a public sitting and the Committee had given reasons for its findings. Furthermore, the Walloon Parliament's decision likewise contained reasons and the applicant had been notified of it.

However, the safeguards afforded to the applicant during the procedure had not been sufficient. In the absence of a procedure laid down in the applicable regulatory instruments, those safeguards had been the result of *ad hoc* discretionary decisions taken by the Credentials Committee and the plenary Walloon Parliament. They had been neither accessible nor foreseeable in their application.

Moreover, most of those safeguards had only been afforded to the applicant before the Credentials Committee, which did not have any decision-making powers and whose conclusions had not been followed by the Walloon Parliament. Admittedly, the Walloon Parliament had given reasons for its decision. However, it had not explained why it had decided not to follow the Committee's opinion, even though the Committee had expressed the view, on the same grounds as had been referred to by the Parliament, that the applicant's complaint was admissible and well-founded and that all the ballot papers from the applicant's constituency should be recounted.

It followed that the applicant's complaint had been examined by a body which had not provided the requisite guarantees of its impartiality and whose discretion had not been circumscribed with sufficient precision by provisions of domestic law. The safeguards afforded to the applicant during the procedure had likewise been insufficient, having been introduced on a discretionary basis. The applicant's grievances had not been dealt with in a procedure offering adequate and sufficient safeguards to prevent arbitrariness and to ensure their effective examination in accordance with the requirements of Article 3 of Protocol No. 1.

Conclusion: violation (unanimously).

Article 13 of the Convention in conjunction with Article 3 of Protocol No. 1: As the system in Belgium currently stood, no other remedy had been available following the decision by the Walloon Parliament, whether before a judicial authority or any other body. Indeed, domestic law conferred exclusive jurisdiction on the Walloon Parliament to rule on the validity of elections as regards its members. Pursuant to those provisions, the courts declined jurisdiction to deal with disputes concerning post-election issues.

The Court had concluded, under Article 3 of Protocol No. 1, that the procedure for complaints to the Walloon Parliament had not provided adequate and sufficient safeguards ensuring the effective examination of the applicant's grievances. Therefore, in the absence of such safeguards, that remedy could likewise not be deemed "effective" within the meaning of Article 13 of the Convention.

The "authority" referred to in Article 13 did not necessarily have to be a judicial authority in the strict sense. Having regard to the subsidiarity principle and the diversity of the electoral systems existing in Europe, it was not for the Court to indicate what type of remedy should be provided in order to satisfy the requirements of the Convention. That question, closely linked to the principle of the separation of powers, fell within the wide margin of appreciation afforded to Contracting States in organising their electoral system. A judicial or judicial-type remedy, whether at first instance or following a decision by a non-judicial body, was in principle such as to satisfy the requirements of Article 3 of Protocol No. 1.

Conclusion: violation (unanimously).

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

(See also *Dadydov and Others v. Russia*, 75947/11, 30 May 2017, Information Note 207)

ARTICLE 4 OF PROTOCOL No. 4/ DU PROTOCOLE N° 4

Prohibition of collective expulsion of aliens/Interdiction des expulsions collectives d'étrangers

Refusal of border guards to receive asylum applications and summary removal to a third

country, with a risk of *refoulement* to and ill-treatment in the country origin: *violation*

Refus des garde-frontières d'enregistrer des demandes d'asile et renvoi sommaire vers un État tiers associé à un risque de refoulement vers le pays d'origine et de mauvais traitements au sein de celui-ci : *violation*

M.K. and Others/et autres – Poland/Pologne, 40503/17 et al., Judgment/Arrêt 23.7.2020 [Section I]

(See Article 3 above/Voir l'article 3 ci-dessus, page 8)

OTHER JURISDICTIONS/ AUTRES JURIDICTIONS

Human Rights Review Panel[1]/Groupe consultatif sur les droits de l'homme

Whilst an EU Mission cannot be treated in all relevant respects as if it were a State for the purpose of safeguarding fundamental human rights, it is expected to meet basic standards of protection where its mandate and resources so allow, including in respect of investigation of cases of enforced disappearance that fall within its mandate

Bien qu'une mission de l'Union Européenne ne puisse pas être traitée à tous les égards pertinents comme si elle était un État aux fins de la sauvegarde des droits fondamentaux de l'homme, elle doit répondre aux normes de protection fondamentales des droits de l'homme lorsque son mandat et ses ressources le permettent, y compris en ce qui concerne son devoir d'enquête de cas de disparitions forcées

Miomir Krivokapić – EULEX, Case/Affaire 2016-13, Decision and Findings/Décision et conclusions 12.02.2020

On 13 September 1999 Arsenije Krivokapić, father of the complainant, Miomir Krivokapić, was seen walking towards Bosniak Mahala, Mitrovica (northern Kosovo). He disappeared immediately thereafter and was not seen again. The complainant reported the disappearance of his father to a variety of international organisations, including the European Union Rule of Law Mission in Kosovo EULEX (hereafter "the Mission"). He never heard anything further from the authorities about his father or his disappearance. On 30 June 2016 Miomir Krivokapić filed a complaint with the Human Rights Review Panel of the Mission (hereafter "the Panel") alleging a violation of his fundamental rights by the Mission as guaranteed, *inter alia*, by Articles 2 and 3 of the European Convention of Human Rights.

Under the Council Joint Action 2008/124/CFSP of 4 February 2008, the Mission has an obligation to ensure all its activities respect international human rights standards, pursuant to its founding document. In evaluating the Mission's responsibility, the Panel took note of the fact that the EULEX Mission is not a State and that its ability to guarantee the effective protection of human rights cannot be compared in all relevant respects to what may be expected of a State (see also *A,B,C,D against EULEX*, 2012-09 to 2012-12, 20 June 2013, § 50; *S.H. against EULEX*, 2016-28, 11 September 2019, § 49). Expectations placed upon the ability of the Mission to investigate and resolve complex criminal cases need therefore to be realistic and not place upon it a disproportionate burden that its mandate and resources could not reasonably be expected to meet (*L.O. against EULEX*, 2014-32, 11 November 2015, §§ 43 and 45; *A,B,C,D against EULEX*, § 50; *Sadiku-Syla against EULEX*, 2014-34, 29 September 2015, §§ 35-37). In each case, the Panel therefore reviews whether there were concrete and real obstacles that might have undermined the capacity of the Mission to conduct a prompt and effective investigation of a case. Such an evaluation is not intended to justify operational shortcomings unrelated to concrete and demonstrable challenges (see, for instance, *L.O. against EULEX*, § 44; *S.H. against EULEX*, § 50).

The Panel highlighted that in every case, in particular instances of this seriousness, investigative authorities are expected to act with reasonable diligence and expeditiousness and to invest resources commensurate with the necessity and possibility of resolving the case. Whilst no investigative authority may be expected to resolve all cases brought before it, it is expected to act with such diligence, promptness and effectiveness as reflects the gravity of the matter under investigation (*L.O. against EULEX*, §§ 46 and 59; *S.H. against EULEX*, § 54).

The Panel highlighted the particularly challenging circumstances in which the Mission had to conduct the investigation of these cases, in particular: the

1. The European Union established the Human Rights Review Panel on 29 October 2009 with a mandate to review alleged human rights violations by EULEX Kosovo in the conduct of its executive mandate. If the Panel, which is an independent body, determines that a violation has occurred, its findings may include non-binding recommendations for remedial action by the Head of Mission. In reaching its determination, the Panel is empowered to apply human rights instruments. Of particular importance to the work of the Panel are the European Convention on Human Rights and the UN International Covenant on Civil and Political Rights (ICCPR). For further information on the work of the Panel please see its website.

post-conflict situation; weaknesses of local institutions; difficulties associated with the inadequate safe-keeping of records by the UN Mission that preceded it; the magnitude and difficulty of the investigative task; as well as limitations upon the Mission's resources.

Despite these challenges, however, the Panel found that the Mission did not do enough to protect and guarantee the fundamental rights of the complainant as guaranteed under Articles 2 (procedural limb) and 3 of the European Convention of Human Rights. In particular, it pointed to the Mission's failures (i) to fully and diligently investigate the case; and (ii) to sufficiently involve and inform close relatives of the disappeared.

In relation to the Mission's failure to properly investigate the case, the Panel pointed, in particular, to the Mission's failure to treat this case and similar cases as investigative priorities. It also noted the Mission's failure to deploy necessary resources and efforts to investigate the case, its failure to seek additional resources if necessary, the lack of clear prosecutorial focus on cases of this sort, and the Mission's failure to reach out to other organisations which might have had information about these cases or expertise relevant to assisting the Mission's investigative efforts prior to deciding not to investigate.

On the question of informing relatives of the disappeared person, the Panel noted that the public authority must balance the rights of the relatives to be kept informed of the investigation with the interest to maintain a sufficient degree of confidentiality. In this case, it found that the Mission made no efforts to inform or involve the relatives, contributing to the uncertainty of the complainant as regards the disappearance of his father and violating his right to truth.

Accordingly, the Panel found that Mission had violated the rights of the complainant as guaranteed by Article 2 (procedural limb) and 3 of the European Convention of Human Rights.

Reparations – Pursuant to its mandate, the Panel does not have the authority to order reparation. Its powers are limited to making recommendations to the Head of Mission, and it cannot recommend financial reparation. On that basis, it recommended, *inter alia*, that the Head of Mission should acknowledge the violation of the complainant's rights committed by the Mission; should ensure that the case-file pertaining to this case and the present Decision are sent to the competent local authorities; that the case should be subject to monitoring by the Mission; that the Mission should emphasise to the national authorities which are now competent over the case the importance of the victims' rights to the truth, the fact that the violation is ongoing, and to indicate that it welcomes information on the general course of the investigation; to report to the competent authorities in Brussels if it becomes apparent that local authorities are not fulfilling their obligations in that regard; to take active steps to inquire with the authorities what steps, if any, are being taken to investigate this case and to report to the competent authorities of the European Union in Brussels if it becomes apparent that the authorities are not fulfilling their obligations in that regard.

COURT NEWS/DERNIÈRES NOUVELLES DE LA COUR

New inter-State application/Nouvelle requête interétatique

The Government of the Netherlands has lodged an application with the Court against the Russian Federation concerning the destruction of Malaysian Airlines Flight MH17, shot down on 17 July 2014 over eastern Ukraine, in which 298 persons, including 196 Netherlands nationals, were killed. For more information, see the press release.

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Le gouvernement des Pays-Bas a saisi la Cour d'une requête contre la Fédération de Russie concernant la destruction de l'avion de la compagnie Malaysian Airlines assurant le vol MH17, abattu le 17 juillet 2014 au-dessus de l'Est de l'Ukraine, et dans lequel 298 personnes, dont 196 ressortissants néerlandais, trouvèrent la mort. Voir le communiqué de presse pour plus d'informations

Webcasting: contribution from Ireland/ Webcasting : soutien de l'Irlande

Ireland has recently renewed its support for the webcasting project that enables all the public hearings of the Court to be filmed, recorded and broadcast on the Court's website.

Thanks to the funding received since 2007 from the Irish Department of Foreign Affairs and Trade, more than 270 hearings have been filmed to date and have reached a wide audience via the Internet. The videos are made available on the day of the hearing and even the older videos can still be watched.

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L'Irlande vient de renouveler son soutien au projet de webcasting, grâce auquel toutes les audiences publiques de la Cour sont filmées, enregistrées et retransmises sur le site web de celle-ci.

Ce financement assuré depuis 2007 par le ministère irlandais des Affaires étrangères et du Commerce a

permis, à ce jour, de filmer plus de 270 audiences et de les diffuser largement sur internet. Les vidéos sont disponibles le jour même de la tenue des audiences, et restent consultables même si elles sont anciennes.

Dialogue between Human Rights Courts/ Dialogue entre Cours des droits de l'homme

On 9 July 2020, the European Court of Human Rights, the Inter-American Court of Human Rights and the African Court on Human and Peoples' Rights hold their first online Dialogue on the impact of Covid-19 on human rights. This Dialogue between the three regional Human Rights Courts is part of the ongoing cooperation established by the San José Declaration (2018) and the Kampala Declaration (2019).

Video of the online Dialogue

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Le 9 juillet 2020, la Cour européenne des droits de l'homme, la Cour interaméricaine des droits de l'homme et la Cour africaine des droits de l'homme et des peuples ont tenu le premier dialogue en ligne concernant l'impact de la COVID-19 sur les droits de l'homme. Ce dialogue entre les trois cours régionales des droits de l'homme s'inscrit dans le cadre d'une coopération mise en place par la Déclaration de San José (2018) et la Déclaration de Kampala (2019).

Vidéo du Dialogue en ligne

SCN Webinar/Webinaire du SCN

On account of the health crisis, the Forum of the Superior Courts Network (SCN) took place on 10 July 2020 in the form of a webinar on the theme of "Adapting judicial systems to the COVID-19 pandemic and its potential impact on the right to a fair trial".

The webinar was opened by President Robert Spano. Speakers from the ECHR and from the Network's member courts then discussed the procedural and practical measures taken to adapt to this unprecedented situation, and the applicable norms under Article 6 (right to a fair trial) of the Convention.

En raison de la crise sanitaire, le Forum du Réseau des cours supérieures (SCN) a eu lieu le 10 juillet 2020 sous la forme d'un webinaire sur le thème « L'adaptation des systèmes judiciaires à la pandémie COVID-19 et l'impact potentiel sur le droit à un procès équitable ».

Le webinaire a été ouvert par le Président Robert Spano. Des intervenants de la CEDH et des juridictions membres du SCN ont ensuite discuté des mesures procédurales et pratiques prises pour s'adapter à cette situation sans précédent, ainsi que des normes applicables en vertu de l'article 6 (droit à un procès équitable) de la Convention.

HELP Network e-Conference/Conférence du réseau HELP

The main objective of the Programme on Human Rights Education for Legal Professionals (HELP) is to enhance the capacity of judges, lawyers and prosecutors, in all 47 Council of Europe member States and beyond, to apply the European human rights standards in their daily work.

On 8-9 July 2020, due to the limitations caused by the COVID-19 outbreak, the HELP Annual Network Conference was exceptionally held in an entirely online format. It provided a forum to present the latest HELP courses developed and key HELP projects, and also to debate on the theme of "Marking 70 years of the European Convention on Human Rights in critical times".

Video of the e-conference and speech by President Robert Spano

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Le principal objectif du programme sur l'éducation aux droits de l'homme pour les juristes (HELP) est de renforcer la capacité des juges, avocats et procureurs, dans les 47 États membres du Conseil de l'Europe et au-delà, à appliquer les normes européennes des droits de l'homme dans leur travail quotidien.

Du 8 au 9 juillet 2020, en raison des limitations causées par l'épidémie de COVID-19, la conférence annuelle du réseau HELP s'est tenue exceptionnellement dans un format entièrement en ligne. Elle a fourni un forum pour présenter les derniers cours et les principaux projets HELP développés, et aussi pour débattre sur le thème « Marquer les 70 ans de

la Convention européenne des droits de l'homme dans des temps critiques ».

Vidéo de la e-conférence et discours du président Robert Spano

RECENT PUBLICATIONS/ PUBLICATIONS RÉCENTES

Overview of the Court's case-law/Aperçu de la jurisprudence de la Cour

The Court has recently published an Overview of its case-law for the first 6 months of 2020 (precisely from 1 January to 15 June), which contains a selection of cases of interest from a legal perspective. The Overviews can be downloaded from the Court's website.

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La Cour vient de publier un Aperçu de sa jurisprudence pour le premier semestre de 2020 (pour la période du 1er janvier au 15 juin), correspondant à une sélection d'arrêts et de décisions présentant un intérêt jurisprudentiel. Les Aperçus peuvent être téléchargés à partir du site web de la Cour.

Country profiles/Fiches par pays

The 47 *country profiles* containing data and information, broken down by individual State, on significant cases considered by the Court or currently pending before it have been updated as at July 2020. All country profiles can be downloaded from the Court's website.

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Les 47 Fiches pays, contenant des données et informations par État sur les affaires marquantes examinées par la Cour ou actuellement pendantes devant elle, ont été mises à jour au mois de juillet 2020. Toutes les fiches peuvent être téléchargées à partir du site web de la Cour.