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Findikoglu v. Germany - 20672/15
Decision 7.6.2016 [Section V]

Facts – In 2015 the applicant was extradited to the United States where he was wanted in connection with an international conspiracy he was alleged to have led to attack the computer networks of financial service providers for financial gain. In his application to the European Court, the applicant complained that the range of offences for which he had been extradited carried a maximum prison sentence of 247.5 years, which meant that, if convicted, he would have no prospect of being released, in breach of Article 3 of the Convention.

Law – Article 3: There was no indication that the practices adopted in the United States as regards people suspected of cybercrime were similar to those adopted in respect of persons suspected of terrorism offences. Furthermore, none of the individual charges against the applicant carried life imprisonment. The applicant's argument that he ran the risk of receiving a disproportionately long prison sentence in the United States was based on the allegation that, if convicted of all the offences in the indictment, he faced a maximum sentence of 247.5 years in prison, which would amount to *de facto* life imprisonment.

The Court noted that the possibility of consecutive sentences did not seem to be excluded and reiterated that uncapped consecutive sentences, on their own, or in combination with a person's age or health, could be equivalent to a life sentence. However, the applicant had not demonstrated that the maximum penalty would be imposed without due consideration of all the relevant mitigating and aggravating factors, that a review of sentence would be unavailable, or that the maximum sentence of 247.5 years had to be imposed if he was found guilty of all the offences listed in the indictment. Moreover, a number of the applicant's co-conspirators had already received from the same judge as the one assigned to the applicant's case sentences that were far shorter than the original advisory sentencing range. In that regard, the applicant had not advanced any reasons why the advisory sentencing range applicable in his case (324-420 months in prison) would not be applied or why its application depended on his cooperating with the US Government. Moreover, the length of his prison sentence could be affected by pre-trial factors, and he also had the possibility to seek a reduction or commutation of his sentence. The existence of a risk of a prison sentence amounting to life imprisonment could not, therefore, be assumed and the problem of whether or not the applicant would have any chance of being released if convicted was not relevant. Accordingly, the applicant had not demonstrated that his extradition to the United States exposed him to a real risk of treatment reaching the Article 3 threshold as a result of the likely sentence.

Conclusion: inadmissible (manifestly ill-founded).

(See *Trabelsi v. Belgium*, 140/10, 4 September 2014, Information Note 177; see also the Factsheet on Extradition and life imprisonment)

ARTICLE 5

Article 5 § 1 (e)

Persons of unsound mind

Preventive detention of violent mental-health patient in purpose-built centre offering appropriate medical care: *no violation*

Petschulies v. Germany - 6281/13
Judgment 2.6.2016 [Section V]

Facts – In 2001 the applicant, who already had a string of convictions for violent offences, was convicted of an assault committed on his daughter while on home leave from preventive detention that had been ordered following periods of imprisonment. He was sentenced to four months' imprisonment, which he served before being transferred to a hospital detoxification department for alcohol abuse. In 2005 a Regional Court ordered his further preventive detention in a psychiatric hospital rather than in a detoxification facility, as his rehabilitation could be better promoted there. In 2011 his preventive detention in a psychiatric hospital was renewed beyond the maximum ten-year limit on the grounds that he suffered from a mental disorder entailing a high risk of further violent offending in the event of his release.

Law – Article 5 § 1: The applicant suffered from a dissocial personality disorder that did not amount to a pathological mental disorder. The Court had in previous cases repeatedly expressed doubts as to

whether a dissocial personality or dissocial personality disorder alone could be considered a sufficiently serious mental disorder to be classified as a "true" mental disorder for the purposes of Article 5 § 1 (e). However, it found that there were sufficient elements in the applicant's case to show that his disorder was sufficiently serious to come within the scope of that provision. His disorder had marked psychopathic elements and was exacerbated by his abuse of alcohol. The extent of the disorder had manifested itself in the manner in which the offences were committed: under the influence of alcohol, and with randomly chosen victims and gratuitous brutality. Furthermore, the fact that the authorities had ordered the applicant's preventive detention in a psychiatric hospital several years prior to the decisions complained of indicated that they considered that his condition required, or stood to benefit from, therapeutic treatment in a psychiatric hospital.

The Court was further satisfied that the applicant's mental disorder was of a kind or degree that warranted compulsory confinement in view of the high risk of his committing serious violent crimes and that under the domestic law, the applicant's preventive detention could only be continued if and for so long as that risk remained. The Court was therefore satisfied that the applicant was a person "of unsound mind" for the purposes of Article 5 § 1 (e).

The Court went on to note that the applicant was essentially detained in a supervised residential facility affiliated to a psychiatric hospital with the aim of preparing him for his release and gradually rehabilitating him. It considered that the suitability of the institution for mental-health patients was not called into question by the fact that he no longer received any specific treatment for his mental disorder. The applicant's preventive detention complied with national law and was necessary in view of the high risk of his committing further extremely serious violent offences. It was thus not arbitrary, despite the fact that it had already exceeded twenty years.

Conclusion: no violation (unanimously).

(See *Bergmann v. Germany*, 23279/14, 7 January 2016, Information Note 192, and the cases cited therein)

ARTICLE 6

Article 6 § 1 (civil)

Civil rights and obligations
Access to court

Sanctions imposed on applicants on basis of UN Security Council resolution without judicial scrutiny: *violation*

Al-Dulimi and Montana Management Inc. v. Switzerland - 5809/08
Judgment 21.6.2016 [GC]

Facts – The first applicant is an Iraqi national who lives in Jordan and is the managing director of a company incorporated under the laws of Panama with its registered office in Panama (the second applicant). After the invasion of Kuwait by Iraq in August 1990, the United Nations Security Council adopted a number of resolutions calling upon member and non-member States to impose an embargo on Iraq, on Kuwaiti resources confiscated by Iraq and on air transport. In August 1990 the Swiss Federal Council adopted an Ordinance introducing economic measures in respect of Iraq. According to the applicants, their assets in Switzerland had been frozen since August 1990. In September 2002 Switzerland became a member of the United Nations. In May 2003, following the fall of Saddam Hussein's Government, the UN Security Council adopted Resolution 1483, imposing on States an obligation to freeze assets and economic resources located outside Iraq which belonged to the former Iraqi regime, to senior officials of that regime and to entities under their control or management. In November 2003 a Sanctions Committee was given the task of listing the individuals and entities targeted by the measures. The applicants' names were added to the relevant list in May 2004.

In May 2004 the applicants' names were also added to the list of individuals and organisations appended to the Swiss Iraq Ordinance as amended. That same month the Federal Council adopted another Ordinance, valid until 30 June 2010, providing for the confiscation of the frozen Iraqi assets and economic resources and their transfer to the Development Fund for Iraq.

In December 2006 the UN Security Council adopted a resolution providing for a delisting procedure.

The applicants asked the competent Swiss authority, in a letter of August 2004, to suspend the con-

fiscation procedure in respect of their assets. But as their application to the UN Sanctions Committee for delisting remained without effect, they then requested in a letter of September 2005 that the confiscation procedure be continued in Switzerland. In spite of their objections, the Federal Department of Economic Affairs ordered the confiscation of their assets and stated that the sums would be transferred to the bank account of the Development Fund for Iraq within ninety days from the entry into force of the decision. In support of its decision, the Department noted that the applicants' names appeared on the lists of individuals and entities established by the Sanctions Committee, that Switzerland was obliged to implement Security Council resolutions, and that names could be removed from the annex to the Iraq Ordinance only if the relevant decision had been taken by the UN Sanctions Committee. The applicants appealed to the Federal Court to have the decision set aside. In three almost identical judgments, their appeals were dismissed. The applicants lodged a fresh delisting application, but it was rejected on 6 January 2009.

In a judgment of 26 November 2013 (see Information Note 168), a Chamber of the Court held, by four votes to three, that there had been a violation of Article 6 § 1. It took the view that, for as long as there was no effective and independent judicial review at UN level of the legitimacy of adding individuals and entities to the relevant lists, it was essential that such individuals and entities should be authorised to request the review by the national courts of any measure adopted pursuant to the sanctions regime. Such review had not been available to the applicants. It followed that the very essence of their right of access to a court had been impaired.

On 14 April 2014 the case was referred to the Grand Chamber at the Government's request.

Law – Article 6 § 1: As the Swiss Federal Court, in its January 2008 judgments, had refused to examine the applicants' allegations that the decision to confiscate their assets was not compatible with the fundamental safeguards of a fair trial, their right of access to a court under Article 6 § 1 of the Convention had thus been restricted.

That refusal, stemming from a concern to ensure the effective domestic implementation of the obligations under UN Security Council Resolution 1483 (2003), which was the basis of the confiscation decision, pursued the legitimate aim of maintaining international peace and security.

In spite of their importance, the Court did not consider the guarantees of a fair trial, and in particular the right of access to a court under Article 6 § 1, to be *jus cogens* norms in the current state of international law.

Where a resolution such as Resolution 1483 (2003) did not contain any clear or explicit wording excluding the possibility of judicial scrutiny of the measures taken for its enforcement, it always had to be construed as authorising the courts of the respondent State to apply a sufficient degree of oversight such as to avoid any arbitrariness. The Court thus took account of the nature and aim of the measures required by Resolution 1483 in verifying whether a fair balance had been struck between the need to ensure respect for human rights and the imperatives of the protection of international peace and security.

In the event of a dispute over a decision to add a person to the list or to refuse delisting, it was necessary for the domestic courts to be able to obtain sufficiently precise information in order to exercise the requisite scrutiny in respect of any substantiated and tenable allegation made by listed persons to the effect that their listing was arbitrary. Any inability to access such information was therefore capable of constituting a strong indication that the impugned measure was arbitrary, especially if the lack of access was prolonged, thus continuing to hinder judicial scrutiny. Accordingly, any State Party whose authorities gave legal effect to the addition of a person – whether an individual or a legal entity – to a sanctions list, without first ensuring – or being able to ensure – that the listing was not arbitrary would engage its responsibility under Article 6 of the Convention.

The Court was of the view that paragraph 23 of Resolution 1483 (2003) could not be understood as precluding any judicial scrutiny of the measures taken to implement it.

In those circumstances, and to the extent that Article 6 § 1 of the Convention was at stake, Switzerland was not faced in the present case with a real conflict of obligations capable of engaging the primacy rule in Article 103 of the UN Charter. Consequently, the respondent State could not validly confine itself to relying on the binding nature of Security Council resolutions, but had to persuade the Court that it had taken – or at least had attempted to take – all possible measures to adapt the sanctions regime to the individual situation of the applicants, at least guaranteeing them adequate protection against arbitrariness.

The Federal Court had been unable to rule on the merits or appropriateness of the measures entailed by the listing of the applicants. As regards the substance of the sanctions – the freezing of the assets and property of senior officials of the former Iraqi regime, as imposed by paragraph 23 of Resolution 1483 (2003) – the choice had fallen within the eminent role of the UN Security Council as the ultimate political decision-maker in this field. However, before taking the above-mentioned measures, the Swiss authorities had had a duty to ensure that the listing was not arbitrary. In its judgments of January 2008 the Federal Court had merely confined itself to verifying that the applicants' names actually appeared on the lists drawn up by the Sanctions Committee and that the assets concerned belonged to them, but that was insufficient to ensure that the applicants had not been listed arbitrarily.

The applicants should, on the contrary, have been afforded at least a genuine opportunity to submit appropriate evidence to a court, for examination on the merits, to seek to show that their inclusion on the impugned lists had been arbitrary. Consequently, the very essence of the applicants' right of access to a court has been impaired.

Moreover, the applicants had been, and continued to be, subjected to major restrictions. The confiscation of their assets had been ordered in November 2006. They had thus already been deprived of access to their assets for a long period of time, even though the confiscation decision had not yet been enforced. The fact that it had remained totally impossible for them to challenge the confiscation measure for many years was hardly conceivable in a democratic society.

The UN sanctions system, and in particular the procedure for the listing of individuals and legal entities and the manner in which delisting requests were handled, had received very serious, reiterated and consistent criticisms from Special Rapporteurs of the UN, also shared by sources outside that organisation. The respondent Government themselves had admitted that the system applicable in the present case, enabling applicants to apply to a "focal point" for the deletion of their names from the Security Council lists, did not afford satisfactory protection. Access to these procedures could not therefore replace appropriate judicial scrutiny at the level of the respondent State or even partly compensate for the lack of such scrutiny.

The Swiss authorities had taken certain practical measures with a view to improving the applicants' situation, thus showing that Resolution 1483 (2003) could be applied with a degree of flexibility. However, all those measures had been insufficient in the light of the above-mentioned obligations on Switzerland under Article 6 § 1 of the Convention.

Conclusion: violation (fifteen votes to two).

Article 41: no award.

(See *Al-Jedda v. the United Kingdom* [GC], 27021/08, 7 July 2011, Information Note 143, and *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], 45036/98, 30 June 2005, Information Note 76).

Inability of Supreme Court President to contest premature termination of his mandate:
Article 6 applicable; violation

Baka v. Hungary - 20261/12
Judgment 23.6.2016 [GC]

Facts – The applicant, a former judge of the European Court of Human Rights, was elected President of the Supreme Court of Hungary for a six-year term ending in 2015. In his capacity as President of that court and of the National Council of Justice, he expressed his views on various legislative reforms affecting the judiciary. The transitional provisions of the new Constitution (Fundamental Law of Hungary of 2011) provided that the legal successor to the Supreme Court would be the Kúria and that the mandate of the President of the Supreme Court would end following the entry into force of the new Constitution. As a consequence, the applicant's mandate as President of the Supreme Court ended on 1 January 2012. According to the criteria for the election of the President of the new Kúria, candidates were required to have at least five years' experience as a judge in Hungary. Time served as a judge in an international court was not counted. This led to the applicant's ineligibility for the post of President of the new Kúria.

In a judgment of 27 May 2014 (see Information Note 174), a Chamber of the Court held unanimously that there had been a violation of Article 6 § 1 of the Convention (right of access to court) because the applicant had been unable to contest the premature termination of his mandate. It also found a breach of the applicant's right to freedom of expression under Article 10 after finding that the premature termination of the applicant's man-

date had been as a result of views expressed publicly in his professional capacity.

On 15 December 2014 the case was referred to the Grand Chamber at the Government's request.

Law – Article 6 § 1

(a) *Applicability*

(i) *Existence of a right* – In accordance with the domestic law, the applicant's mandate as President of the Supreme Court had been due to last for a period of six years, unless it was terminated following mutual agreement, resignation or dismissal. There had thus existed a right for the applicant to serve his term of office until such time expired, or until his judicial mandate came to an end. This was also supported by constitutional principles regarding the independence of the judiciary and the irremovability of judges. Accordingly, the applicant could arguably claim to have been entitled to protection against removal from office during his mandate. The fact that his mandate was terminated *ex lege* by the new legislation could not remove, retrospectively, the arguability of his right under the applicable rules in force at the time of his election.

(ii) *Civil nature of the right* – To determine whether the right claimed by the applicant was "civil", the Court applied the criteria developed in the judgment *Vilho Eskelinen and Others v. Finland* ([GC], 63235/00, 19 April 2007, Information Note 96). As to the first condition of the *Vilho Eskelinen* test – whether national law expressly excluded access to a court for the post or category of staff in question – the Court observed that in the few cases in which it had found that condition to be fulfilled, the exclusion at stake had been clear and express.[1] However, in the present case the applicant had not been expressly excluded from the right of access to a court; instead, his access had been impeded by the fact that the premature termination of his mandate was included in the transitional provisions of the new legislation which had entered into force in 2012. This had precluded him from contesting the measure before the Service Tribunal, as he would have been able to do in the event of a dismissal on the basis of the previously existing legal framework. The Court was thus of the view that, in the specific circumstances of the case, it had to determine whether access to a court had been excluded under domestic law before, rather than at the time when, the impugned measure concerning the applicant was adopted.[2] The Court further noted that in order for national legislation excluding access to a court to have any effect under Article 6 § 1 in a particular case, it had to be compatible with the rule of law, which forbade laws directed against a specific person, as in the applicant's case. In the light of these considerations, it could not be concluded that national law expressly excluded access to a court for a claim based on the alleged unlawfulness of the termination of the applicant's mandate. The first condition of the *Vilho Eskelinen* test had not therefore been met and Article 6 was applicable under its civil head.

(b) *Compliance* – As a result of legislation whose compatibility with the requirements of the rule of law was doubtful, the premature termination of the applicant's mandate was neither reviewed, nor open to review, by any bodies exercising judicial powers. Noting the growing importance which international and Council of Europe instruments, as well as the case-law of international courts and the practice of other international bodies, were attaching to procedural fairness in cases involving the removal or dismissal of judges, the Court considered that the respondent State had impaired the very essence of the applicant's right of access to a court.

Conclusion: violation (fifteen votes to two).

Article 10

(a) *Existence of an interference* – In previous cases concerning disciplinary proceedings, or the removal or appointment of judges, the Court had concluded that Article 10 was applicable as the impugned measures had been prompted by the applicants' statements on a certain question and were not related to their eligibility for public service or their professional ability to exercise judicial functions.[3] In other cases the Court had found that

1. *Suküt v. Turkey* (dec.), 59773/00, 11 September 2007, Information Note 100; and *Nedeltcho Popov v. Bulgaria*, 61360/00, 22 November 2007.

2. The Court observed that to hold otherwise would mean that the impugned measure itself, which constituted the alleged interference with the applicant's "right", could at the same time be the legal basis for the exclusion of the applicant's claim from access to a court. This would open the way to abuse, allowing Contracting States to bar access to a court in respect of individual measures concerning their public servants, by simply including those measures in an ad hoc statutory provision not subject to judicial review.

3. *Wille v. Liechtenstein* [GC], 28396/95, 28 October 1999, Information Note 11; and *Kudeshkina v. Russia*, 29492/05, 26 February 2009, Information Note 116.

the measure complained of was unrelated to the exercise of freedom of expression.[1]

In the present case, no domestic court had ever examined the applicant's allegations or the reasons for the termination of his mandate. The facts of the case therefore had to be assessed and considered "in their entirety" and, in assessing the evidence, the Court adopted the standard of proof "beyond reasonable doubt". In this connection, the Court noted that in 2011 the applicant, in his professional capacity as President of the Supreme Court and the National Council of Justice, had publicly expressed critical views on various legislative reforms affecting the judiciary. Despite the assurance given by two members of the parliamentary majority and the Government in the same year to the effect that the legislation being introduced would not be used to unduly put an end to the terms of office of persons elected under the previous legal regime, the proposals to terminate the applicant's mandate were made public and submitted to Parliament shortly after he gave a parliamentary speech in November 2011 and were adopted within a strikingly short time. Having regard to the sequence of events in their entirety, there was prima facie evidence of a causal link between the applicant's exercise of his freedom of expression and the termination of his mandate. Thus, the burden of proof shifted to the Government.

As to the reasons put forward by the Government to justify the impugned measure, it was not apparent that the changes made to the functions of the supreme judicial authority or the tasks of its President were of such a fundamental nature that they could or should have prompted the premature termination of the applicant's mandate. Consequently, the Government had failed to show convincingly that the impugned measure was linked to the suppression of the applicant's post and functions in the context of the reform of the supreme judicial authority. Accordingly, it could be presumed that the premature termination of the applicant's mandate was prompted by the views and criticisms he had publicly expressed in his professional capacity, and thus constituted an interference with the exercise of his right to freedom of expression.

(b) *Whether the interference was justified* – Although it was doubtful that the legislation in question complied with the requirements of the rule of law, the Court proceeded on the assumption that the interference was prescribed by law. State Parties could not legitimately invoke the independence of the judiciary in order to justify a measure such as the premature termination of the mandate of a court president for reasons that had not been established by law and which did not relate to any grounds of professional incompetence or misconduct. In these circumstances, the impugned measure appeared to be incompatible with the aim of maintaining the independence of the judiciary.

In the present case, the impugned interference had been prompted by criticisms the applicant had publicly expressed in his professional capacity as President of the Supreme Court and of the National Council of Justice. It was not only his right but also his duty to express his opinion on legislative reforms which were likely to have an impact on the judiciary and its independence. The applicant had expressed his views and criticisms on questions of public interest and his statements had not gone beyond mere criticism from a strictly professional perspective. Accordingly, his position and statements called for a high degree of protection for his freedom of expression and strict scrutiny of any interference, with a correspondingly narrow margin of appreciation being afforded to the domestic authorities. Furthermore, he was removed from his office more than three years before the end of the fixed term applicable under the legislation in force at the time of his election. This could hardly be reconciled with the particular consideration to be given to the nature of the judicial function as an independent branch of State power and to the principle of the irremovability of judges, which was a key element for the maintenance of judicial independence. The premature termination of the applicant's mandate undoubtedly had a chilling effect in that it must have discouraged not only him but also other judges and court presidents in future from participating in public debate on legislative reforms affecting the judiciary and more generally on issues concerning the independence of the judiciary. Finally, in the light of the Court's findings under Article 6 § 1, the impugned restrictions had not been accompanied by effective and adequate safeguards against abuse. In sum, the reasons relied on by the respondent State could not be regarded as sufficient to show that the interference complained of was necessary in a democratic society.

Conclusion: violation (fifteen votes to two).

Article 41: EUR 70,000 in respect of pecuniary and non-pecuniary damage.

1. *Harabin v. Slovakia* (dec.), 58688/11, 29 June 2004; and *Harabin v. Slovakia*, 58688/11, 20 November 2012, Information Note 157.

Access to court

Absence of universal jurisdiction of civil courts in torture cases: *no violation*

Naït-Liman v. Switzerland - 51357/07
Judgment 21.6.2016 [Section II]

Facts – The applicant, a Tunisian political refugee who had settled in Switzerland in 1993, lodged a criminal complaint against a former Minister of the Interior of the Tunisian Republic, during the latter's brief stay in a Swiss hospital in 2001, for acts of torture allegedly perpetrated against the applicant in 1992 at the premises of the Ministry in Tunisia. The proceedings in respect of that complaint were discontinued on the grounds that the former Minister had left Switzerland. The applicant then instituted civil proceedings against him and against the Tunisian State seeking damages. However, the Swiss courts declined jurisdiction on the grounds that the facts of the case were insufficiently connected with Switzerland.

Law – Article 6 § 1

(a) *Refusal of the Swiss courts to accept jurisdiction as "forum of necessity" under domestic law*

The refusal to examine the merits of the applicant's civil action had been motivated by the concern to ensure the proper administration of justice and the effectiveness of domestic judicial decisions. Universal jurisdiction, in a civil context, would risk creating considerable practical difficulties for the courts, particularly regarding the administration of evidence and the enforcement of such judgments. The acceptance of universal jurisdiction would also be liable to cause undesirable interference by a country in the domestic affairs of another country.

The domestic courts had examined whether their jurisdiction could be based on the concept of "forum of necessity", recognised in Switzerland under Article 3 of the Federal Act on International Private Law ("the LDIP"). They had concluded that the condition requiring the existence of a "sufficient connection" between the applicant's claim and Switzerland was not met. Their interpretation of Article 3 of the LDIP in the present case did not appear arbitrary; nor had it been unreasonable to observe that all the aspects of the case concerned Tunisia.

In those circumstances the Swiss authorities had been justified in taking account of the problems of taking evidence and enforcing judgments that would have arisen as a result of their accepting jurisdiction. They had also been justified in finding that the fact that the applicant had settled in Switzerland, both after the facts of the case and for reasons unconnected with them, did not have to be taken into account. The Federal Court had not been in a position to take account of the applicant's acquisition of Swiss nationality, which had been granted the day before the Federal Court's decision and confirmed only afterwards.

The comparative-law study carried out by the Court supported the Federal Court's approach regarding the concept of "forum of necessity". The study showed that only a minority of nine out of the 26 Contracting States studied provided for that type of jurisdiction. Moreover, in the States in question that jurisdiction was subject to strict conditions, which had to be met cumulatively: inability to bring the case before the courts of another State, and the existence of a sufficient connection between the facts of the case and the requested forum State. The criteria used to assess that link were normally nationality and domicile or habitual residence. Accordingly, Article 3 of the LDIP was in no way exceptional and fell within a very broad consensus among the member States of the Council of' Europe which had introduced that type of jurisdiction into their domestic legal order.

(b) *Lack of binding norms of international law*

It remained to be determined whether the acceptance of universal civil jurisdiction was a requirement under other norms of international law. The question arose with regard to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by Switzerland, Article 14 of which required the States Parties to guarantee victims of torture a right to compensation. However, the wording of that provision was not unequivocal as to its extraterritorial application. Admittedly, the Committee against Torture had construed Article 14 as not limited to victims of torture committed on the territory of the requested State Party or by or against one of its nationals. However, that approach had not been followed by the States Parties to that instrument. On the contrary, none of the 26 European States covered by the Court's comparative-law study currently recognised universal civil jurisdiction for acts of torture.

Furthermore, several States already provided for universal criminal jurisdiction of their courts, with the victim thus able to apply to join the criminal proceedings as a civil party seeking damages. In the present case the applicant had in fact applied

to join the proceedings as a civil party, even though his criminal complaint had been discontinued after the defendant had left Switzerland.

Consequently, in the Court's view, Switzerland had not been bound by any Convention obligation to accept the applicant's civil action. Furthermore, given the lack of a common practice among the States expressing an *opinio juris* to that effect, universal civil jurisdiction could not be deemed to have the status of a rule of customary law.

(c) *Conclusion* – In conclusion, notwithstanding the fact that the prohibition of torture was a *jus cogens*, the Swiss courts' decision to decline jurisdiction in respect of the applicant's claim for compensation had pursued legitimate aims in a proportionate manner and had not deprived the applicant's right of access to a tribunal of its very essence.

Conclusion: no violation (four votes to three).

Article 6 § 1 (criminal)

Impartial tribunal

Criminal trial conducted by a court where victim's mother worked as a judge: *violation*

Mitrov v. the former Yugoslav Republic of Macedonia - 45959/09
Judgment 2.6.2016 [Section I]

Facts – Following a road-traffic accident in which a young woman died, the applicant was charged with "severe crimes against the safety of people and property in traffic". As the victim of the accident was the daughter of M.A., the president of the criminal section of the trial court, the applicant applied, *inter alia*, for his case to be transferred to another court. However, his request was refused after the judges assigned to try his case stated that they would not be influenced by the fact that the victim was the daughter of a colleague. M.A. did not sit at the trial, but had victim status as the deceased's mother in the proceedings. The applicant was convicted and sentenced to four and a half years' imprisonment. His conviction was upheld on appeal. In the Convention proceedings, he complained under Article 6 § 1 of a lack of impartiality.

Law – Article 6 § 1: At the relevant time there were only four judges, including M.A., in the criminal section of the trial court. They were all full-time and had similar functions. It could not therefore be excluded that personal links had come to exist between them. The nature of those personal links was of importance when determining whether the applicant's fears of a lack of impartiality were objectively justified. The judge who presided over the trial (C.K.) had worked with M.A. for at least two and a half years and had previously worked for her as a clerk. The Court also attached significant weight to the importance of the proceedings to M.A., who had lost her eighteen-year old daughter. It was also relevant that M.A. had victim status in the proceedings and had lodged a compensation claim against the applicant's insurance company, which was subsequently decided on the merits by the same panel of judges that determined the applicant's guilt. In these circumstances, the fact that C.K. had presided over the panel which decided the applicant's guilt prompted objectively justified doubts as to her impartiality. Similar considerations applied in respect of all the judges in the trial court. It was also relevant that the domestic law provided for the possibility of transferring a case to another competent court and that it was not disputed that that practice had been followed in similar circumstances. The applicant's fears as to the impartiality of the trial court could thus have been considered objectively justified.

Conclusion: violation (unanimously).

Article 41: EUR 3,600 in respect of non-pecuniary damage; claim in respect of pecuniary damage dismissed.

Article 6 § 1 (administrative)

Access to court

Appeal dismissed by Supreme Administrative Court for lack of clear and detailed evidence that statutory conditions of admissibility were met: *no violation*

Papaioannou v. Greece - 18880/15
Judgment 2.6.2016 [Section I]

Facts – A statutory provision added in 2010 to the Code governing the Supreme Administrative Court required, for an appeal thereto to be admissible, that it be stated in the notice of appeal either that there was no previous case-law of that court on the relevant question or that the grounds of the judgment appealed against were at odds with the judgments of the country's three supreme courts.

In October 2012 the applicant appealed to the Supreme Administrative Court against a judgment of the Administrative Court of Appeal, before

which he had been unsuccessful. Pursuant to the above-mentioned law, he observed in a specific section of his appeal that there was no precedent of the supreme court dealing with the relevant question. He further argued that the statutory provision breached the constitutional principle of the separation of powers, because it raised case-law to the rank of a source of law by requiring, as a condition of admissibility for an appeal on points of law, divergence from the case-law of the Greek supreme courts and lower administrative courts.

In December 2014 the Supreme Administrative Court dismissed his appeal on the ground that the admissibility conditions under the statutory provisions in question were not satisfied.

Law – Article 6 § 1: The law in question sought to change the procedure before the Supreme Administrative Court, to speed up proceedings before it and clear its back-log. Its aim was to enable the Supreme Administrative Court to rule promptly on cases raising issues of general interest and thus to ensure the rapid creation of case-law that could be followed by the lower administrative courts in similar cases. These were legitimate aims for the purpose of enabling that court to operate efficiently.

In order for an appeal to the Supreme Administrative Court to be admissible, the new provision required the appellant to show precisely and in detail, in the notice of appeal, either that there was no case-law concerning the legal question at issue, or that that each of the grounds of appeal raised a specific legal question that was decisive for the resolution of the dispute and that the legal aspect of that resolution was inconsistent with the well-established case-law of the Supreme Administrative Court, another supreme court or a final decision of the lower administrative courts. The provision was already the subject of a significant body of case-law of the Supreme Administrative Court, which had clarified its meaning. Consequently, the formalities for lodging an appeal with the Supreme Administrative Court were clear and foreseeable, and were such as to ensure the principle of legal certainty.

In the present case, the question raised by the applicant as to the constitutionality of the relevant provision had already been resolved and was the subject of abundant case-law. The judgment in which the Supreme Administrative Court had ruled on the constitutionality of the provision had been delivered three months before the applicant lodged his appeal. As to the applicant's argument about the lack of precedent, it had been formulated in a laconic manner, without giving a clear explanation as to which question – of a legal nature in particular – had not been covered by previous case-law.

Having regard to the specificity of the Supreme Administrative Court's role in ensuring the consistency of case-law, the imposition of stricter admissibility conditions for proceedings before that court could be accepted. Moreover, to subject the admissibility of an appeal to the existence of objective circumstances that had to be demonstrated by the appellant, as provided for by law and interpreted by the administrative courts, was not, as such, disproportionate or in breach of the right of access to the Supreme Administrative Court.

The applicant had thus not been deprived of the essence of his right of access to a court. The limitations in question pursued a legitimate aim and a reasonable relationship between the means employed and the aim sought to be realised had been maintained in their application. Accordingly, the applicant had not sustained a disproportionate limitation of his right of access to a court, as guaranteed by Article 6 § 1 of the Convention.

Conclusion: no violation (unanimously).

ARTICLE 7

Article 7 § 1

Heavier penalty

Increased tax liability as a result of loss of special tax status: *inadmissible*

Société Oxygène Plus v. France - 76959/11
Decision 17.5.2016 [Section V]

Facts – The applicant is a company carrying on the activity of "property dealer"[1]. Between 1997 and 2001 it benefited from favourable tax treatment in relation to the ordinary stamp duty for property conveyancing (*droits d'enregistrement*). In 2002 the tax authority observed that the applicant company had not satisfied one of the statutory conditions for that regime, namely the obligation to keep a register of all property transactions, and considered that the anomalies were serious enough to warrant the forfeiture of the favourable treatment. Consequently, the applicant company was required to pay EUR 213,915, corresponding to the tax

1. A property dealer (*marchand de biens*) buys and sells real estate to generate capital gains.

ordinarily levied on property transactions, including EUR 43,353 in default interest.

The applicant company challenged that reassessment. During the proceedings a new law replaced the measure of forfeiture of the favourable tax treatment by a system of tax penalties. Subsequently, even the obligation to keep a register was abolished. The applicant company thus found it justified to rely on the principle of the application of the more lenient criminal law. But the Court of Cassation dismissed its appeal on points of law on the ground that the new law could not call into question obligations that had lawfully arisen on the date of the event which rendered the tax assessable.

Law – Article 7: In the present case, the impugned forfeiture of the favourable treatment had not been decided further to any conviction of a criminal offence. That finding was not, however, decisive in itself, as the Court had to examine the case in the light of the criteria set out in *Engel and Others v. the Netherlands* (5100/71 et al., 8 June 1976).

The first of those criteria – the fact that the forfeiture did not fall within the criminal law but was matter of tax law – was not decisive here.

The second criterion, concerning the nature of the offence, was the most important. The relevant provision of the General Tax Code provided for the possibility of derogation from the ordinary law and exemption from the tax ordinarily levied on property purchases, subject to compliance with certain formalities. It thus appeared logical that a property dealer claiming preferential treatment but failing to satisfy the conditions, which constituted a decisive factor for granting the tax regime, should have that treatment withdrawn, resulting in the application of the ordinary law and therefore in the payment of taxes which it would normally have had to pay. It could not be said that the forfeiture of the preferential treatment was based on a rule whose aim was both preventive and punitive.

As to the third criterion, lastly, it was true that the applicant company had been ordered to pay significant amounts. However, they consisted merely of a tax reassessment together with default interest. No penalties had been imposed on the applicant company, whose good faith was not disputed by the tax authority.

Regard being had to the foregoing, the withdrawal of the preferential treatment did not, in the present case, constitute a "penalty" within the meaning of Article 7 of the Convention.

Conclusion: inadmissible (incompatible *ratione materiae*).

ARTICLE 8

Respect for private life
Respect for correspondence
Positive obligations

Monitoring of an employee's use of the Internet at his place of work and use of data collected to justify his dismissal: *case referred to the Grand Chamber*

Bărbulescu v. Romania - 61496/08
Judgment 12.1.2016 [Section IV]

The applicant was dismissed by his employer, a private company, for using the company's Internet during working hours in breach of internal regulations prohibiting the use of company computers for personal purposes. The employer had, over a period of time, monitored the applicant's communications on a Yahoo Messenger account the applicant had been requested to open for the purpose of responding to clients' enquiries. The records produced during the domestic proceedings showed that he had exchanged messages of a purely private nature with third parties.

In the Convention proceedings the applicant complained that the termination of his contract had resulted from a breach of his right to respect for his private life and correspondence and that the domestic courts had failed to protect that right.

In a judgment of 12 January 2015 a Chamber of the Court held, by six votes to one, that there had been no violation of Article 8. In the Court's view, there was nothing to indicate that the domestic authorities had failed to strike a fair balance, within their margin of appreciation, between the applicant's right to respect for his private life under Article 8 and his employer's interests (see Information Note 192).

On 6 June 2016 the case was referred to the Grand Chamber at the applicant's request.

Respect for private life

Loss of teaching post as a result of subsequent amendment of certificate recognising overseas diploma: *violation*

Şahin Kuş v. Turkey - 33160/04
Judgment 7.6.2016 [Section II]

Facts – In August 1993 the Turkish Higher Education Council (YÖK) recognised the applicant's Syrian university degree in Arabic language and literature as being equivalent to a bachelor's degree. He consequently studied for a master's degree at a Turkish university and graduated in October 1996.

In December 1996 the applicant was appointed as a primary school teacher by the Ministry of National Education ("the Ministry"). In May 1997 he started working as a trainee teacher at a primary school; he subsequently embarked on a teacher training course organised by the Ministry.

However, in April 1997 the YÖK decided that certificates of equivalence should no longer be issued for foreign degrees in or involving theology. In July 1997 it extended that decision to any other qualification obtained at a higher education institution where theology was taught. It also decided to cancel any certificates of equivalence it had issued previously, including the one issued to the applicant. As a result, the Ministry revoked the applicant's appointment, and he was removed from his post in September 1997.

The applicant applied to the administrative court for judicial review of the decisions of the YÖK and the Ministry. The case was referred to the Supreme Administrative Court.

In May 1998 the YÖK amended its decision on the grounds that the applicant had already been awarded his master's degree, and instead of cancelling the certificate endorsed it with a note to the effect that it was not valid for the appointment of primary school teachers.

In February 1999 the Supreme Administrative Court found against the applicant. None of his subsequent appeals were successful.

Law – Article 8: The cancellation and subsequent amendment of the applicant's certificate of equivalence, together with his ensuing dismissal, could be regarded as interference with his right to respect for his private life.

By regulating access to the teaching profession, the interference in question had sought to ensure decent teaching standards in schools, in other words "the prevention of disorder" and "the protection of the rights and freedoms of others", specifically the pupils.

The crucial issue lay in the fact that the YÖK had gone back on its initial decision to recognise the applicant's degree as equivalent without any restrictions and ultimately had deprived him of authorisation to work as a primary school teacher.

However, the measure complained of had applied in general terms to all graduates of universities where theology was taught, without taking into account the personal circumstances of each individual concerned. After having his bachelor's degree recognised, the applicant had successfully studied for a higher degree. His qualifications had been considered sufficient by the Ministry to appoint him to a teaching post, and after his appointment he had successfully completed his teacher training.

Above all, the authorities had amended the applicant's certificate of equivalence four years after it had been issued, by which time he had already taken up his duties as a trainee teacher. In doing so they had caused an abrupt deterioration in the applicant's professional situation, even though he had not been accused of any failings and there was no suggestion that he was not up to his task. They had therefore given rise to an unacceptable level of legal and personal uncertainty for the applicant, who had justifiably believed that he was entitled to practise the profession of teacher and to organise both his professional life and his private life accordingly. He had been legitimately entitled to plan for the future with confidence, being assured of his continued teaching career.

On that account, the measures complained of had not satisfied a pressing social need and had not been proportionate to the legitimate aims pursued. They had therefore not been necessary in a democratic society.

Conclusion: violation (unanimously).

Article 41: EUR 7,500 for non-pecuniary damage; claim for pecuniary damage dismissed.

Absolute prohibition on growing a beard in prison: *violation*

Biržietis v. Lithuania - 49304/09
Judgment 14.6.2016 [Section IV]

Facts – The applicant prisoner complained that he was prohibited from growing a beard, irrespective of its length or tidiness, by the internal rules of the prison where he served his sentence. His objection to the prohibition was ultimately rejected by the Supreme Administrative Court on the ground that a prisoner's wish to grow a beard could not be

considered a matter of fundamental rights unless linked to the exercise of a relevant right such as freedom of religion (which was not in issue in the applicant's case). It further held that the prohibition could be justified as a necessary and proportionate measure in view of the prison authorities' need to be able to identify prisoners quickly.

Law – Article 8: The choice to grow a beard constituted a part of the applicant's personality and individual identity. It fell within the ambit of private life and Article 8 was therefore applicable.

While the Court was prepared to accept that the interference had a legal basis, it expressed reservations as to the existence of a legitimate aim. In particular, the Government had not showed how allowing the applicant (or other prisoners) to grow a beard could lead to "disorder and crime". Nor had they argued that the prohibition on beards was aimed at ensuring respect for social norms and standards among prisoners.

In any event, the Government had failed to demonstrate that the absolute prohibition on growing a beard, irrespective of its hygienic, aesthetic or other characteristics, and not allowing for any exceptions, was proportionate. Moreover, the prohibition at issue did not seem to affect other types of facial hair, such as moustaches or sideburns, thereby raising concerns of arbitrariness.

Conclusion: violation (six votes to one).

Article 41: Finding of a violation constituted sufficient just satisfaction in respect of any non-pecuniary damage.

Withdrawal of citizenship following annulment of simulated marriage: *no violation*

Ramadan v. Malta - 76136/12
Judgment 21.6.2016 [Section IV]

Facts – The applicant, who at the time was an Egyptian national, acquired Maltese citizenship by reason of his marriage to a Maltese national in 1993. The marriage was annulled in 1998. The applicant subsequently remarried in Malta a Russian national with whom he had two children, both of whom were Maltese nationals. In 2007 the authorities became aware of the judgment annulling the applicant's first marriage. His citizenship was subsequently revoked on the ground that that marriage had been simulated since his only reason to marry had been to remain in Malta and acquire Maltese citizenship.

Law – Article 8: A loss of a citizenship already acquired or born into could have the same (and possibly a bigger) impact on a person's private and family life as the denial of recognition of the right to acquire citizenship. Thus, an arbitrary revocation of citizenship could in certain circumstances raise an issue under Article 8 of the Convention because of its impact on the private life of the individual.

The decision to deprive the applicant of his citizenship had been made in accordance with the law. Moreover, the applicant had had the possibility – of which he availed himself – to defend himself in a procedure which was accompanied by the necessary procedural safeguards. Furthermore, although it could be questioned whether the authorities had acted diligently and swiftly, any delay there may have been had not been to the disadvantage of the applicant, who had continued to benefit from the situation. Furthermore, the applicant was aware that when his marriage was annulled his citizenship could be revoked at any time, and thus that he was in a precarious situation. Finally, the situation complained of came about as a result of the applicant's fraudulent behaviour and any consequences complained of were to a large extent a result of his own choices and actions. It thus followed that the decision to deprive the applicant of his Maltese citizenship had not been arbitrary.

As to the consequences of the impugned measure, the applicant was not threatened with expulsion from Malta. Importantly, while the applicant's Russian wife lost her exempt-person status, the applicant's sons had not lost their Maltese citizenship, nor had there been any attempts by the Maltese authorities to deprive them of it in the nine years since the applicant had been deprived of his own Maltese citizenship. The applicant had been able to pursue his business and continued to reside in Malta. Although various possibilities were open to him to regularise his stay in the country, the applicant had taken no steps to do so. As to his claim that he was currently stateless, he had not substantiated his assertion that he had relinquished his Egyptian nationality or demonstrated that he would not be able to re-acquire it if he had. The fact that a foreign national had renounced his or her nationality did not mean in principle that the host State had the obligation to regularise his or her stay in the country.

It followed that an assessment of the State's negative obligations under Article 8 of the Convention was not warranted in the present case, nor did the

Court need to assess the State's positive obligations, given that as the situation stood the applicant run no risk of being deported.

Conclusion: no violation (five votes to two).

(See also *Savoia and Bounegru v. Italy* (dec.), 8407/05, 11 July 2006; and *Genovese v. Malta*, 53124/09, 11 October 2011, Information Note 145)

Respect for private life
Respect for correspondence

Unjustified lack of *ex post facto* notification of temporary phone-tapping measure: *violation*

Cevat Özel v. Turkey - 19602/06
Judgment 7.6.2016 [Section II]

Facts – In 2004 a warrant to monitor the applicant's telephone communications was granted by a court for a duration of three months, on the grounds that there were indications of contact between him and suspected members of a criminal association. Upon the expiry of the time-limit, the public prosecutor wrote to the police asking them to discontinue the surveillance, and the recordings made were destroyed. The applicant was not notified of this. In the course of his professional duties as a lawyer, he discovered the prosecutor's letter by chance while consulting a file at the court registry. He then brought a claim for damages against the individual judges who had authorised the telephone tapping, arguing that it had had no basis in law, but his claim was dismissed.

Law – Article 8: The impugned interference with the applicant's right to respect for his private life and correspondence had occurred in the context of a judicial investigation conducted in accordance with the law on combating criminal associations and had therefore had a basis in law.

While acknowledging that it might be necessary to keep previous surveillance operations secret for a number of years, the Court had already found that once a surveillance measure had ended, the persons concerned should be notified as soon as was practicable without jeopardising the purpose of the measure or activity carried out by the intelligence services.[1]

In the present case, although the relevant legislation provided for the destruction of data, it had not contained any reference to notifying the person concerned of the measure. It had not been shown that there were any regulations or practice compensating for this gap in the law. Nor had the Government indicated what reasonable grounds could possibly have explained the failure to notify the applicant of the measure.

This lack of notification had formed a fundamental obstacle to the possibility of lodging an appeal. Unless criminal proceedings were brought against him or her and the data intercepted were used as evidence in those proceedings, the person concerned had little chance – other than in the chance event of a leak – of being able to discover in due course that his or her communications had been intercepted.

Accordingly, the telephone tapping approved by a court in the context of the judicial investigation in respect of the applicant had not been accompanied by adequate and effective safeguards against abuses of the State's monitoring powers. That factor in itself was sufficient for the Court to conclude that the relevant law had lacked the requisite quality.

Conclusion: violation (six votes to one).

Article 41: EUR 7,500 for non-pecuniary damage.

Use in disciplinary proceedings of data obtained from telephone tapping in criminal proceedings: *violation*

Karabeyoğlu v. Turkey - 30083/10
Judgment 7.6.2016 [Section II]

Facts – From 2008 the applicant, a judge, had his telephone lines monitored in the context of a criminal investigation into an illegal organisation to which he was suspected of belonging or providing assistance and support. In December 2009 the public prosecutor gave a decision not to prosecute on the basis of the evidence gathered. He also gave orders for the material obtained during the surveillance operation to be destroyed, for a report to be drawn up to that effect and for the persons concerned to be notified of the surveillance measure. Accordingly, the telephone-tapping records and the devices on which the recordings had been made were destroyed.

The applicant was also the subject of a disciplinary investigation, and the material gathered during the monitoring of his telephone lines was used for that purpose.

1. *Roman Zakharov v. Russia* [GC], no. 47143/06, 4 December 2015, Information Note 191.

Law – Article 8

(a) *In the context of the criminal investigation* – The monitoring of the applicant's telephone lines had interfered with the exercise of his right to respect for his private life and correspondence. There had been an accessible and foreseeable legal basis for the measures complained of.

The phone-tapping operations in respect of the applicant had been ordered on the basis of suspicions that could be regarded as objectively reasonable, and had been carried out in accordance with the relevant legislation. In particular, the surveillance measure in question had been authorised by a court with a view to preserving national security and preventing disorder; the rules and regulations containing strict conditions for the implementation of the measure had been scrupulously observed; the information thus obtained had been processed in compliance with the legal requirements; and lastly, the information had been destroyed within the statutory time-limit after the public prosecutor had decided not to prosecute.

The applicant had been sent a note within the required time-limit informing him of the procedure undertaken and the measure applied, and had also been sent a copy of the material in the file concerning him.

In conclusion, the interference with the applicant's right had been necessary in a democratic society in the interests of national security and for the prevention of disorder and crime.

Conclusion: no violation (unanimously).

(b) *In the context of the disciplinary investigation* – The material obtained during the monitoring of the applicant's telephone lines had also been used in the disciplinary proceedings against him.

Although, following the December 2009 decision not to prosecute, the public prosecutor in charge of the criminal investigation had destroyed the recordings in question, a copy had indisputably remained in the possession of the judicial inspectors, who had used the relevant material in the context of the disciplinary investigation opened in respect of the applicant and had not destroyed it until March 2010, at the end of this second investigation. The relevant legislation had thus been breached in two respects: the information had been used for purposes other than the one for which it had been gathered, and had not been destroyed within the fifteen-day statutory time-limit after the criminal investigation had ended.

These aspects were specifically covered by provisions of criminal law that appeared, on the face of it, to afford adequate protection of the right to private life in the context of the case under examination. A prison sentence could be imposed in the event of failure by public officials to destroy data within fifteen days after the end of the investigation where this requirement applied; and in such cases, a prosecution could be brought even in the absence of a criminal complaint.

Nevertheless, no investigation had been opened on that account in the present case, and the applicant had had no other means of redress available.

Accordingly, during the disciplinary investigation in respect of the applicant, none of the applicable statutory provisions had been observed by the national authorities. The Court thus concluded that the interference with the applicant's right to respect for his private life had not been "in accordance with the law" as far as the disciplinary proceedings against him were concerned.

Conclusion: violation (unanimously).

The Court also held, unanimously, that there had been a violation of Article 13 of the Convention because it did not appear from the material before it that a domestic remedy was available for securing a review of whether the interference with the applicant's right to respect for his private life was compatible with the Convention requirements, in relation to either the criminal or the disciplinary investigation.

Article 41: EUR 7,500 for non-pecuniary damage; claim for pecuniary damage dismissed.

Use as evidence in disciplinary proceedings against a lawyer of transcript of conversation with client whose telephone was being monitored: *no violation*

Versini-Campinchi and Crasnianski v. France - 49176/11
Judgment 16.6.2016 [Section V]

Facts – The applicant,[1] Ms Crasnianski, who is a lawyer, had a telephone conversation in December 2002 with a client whose telephone line was being tapped at the request of an investigating judge. The

1. The part of the application concerning Mr Versini-Campinchi was declared inadmissible.

transcript of the conversation showed that the applicant had disclosed information covered by legal professional privilege. The principal public prosecutor sent the transcript to the Bar Council for disciplinary proceedings to be commenced, following which a penalty was imposed.

Law – Article 8: The Court acknowledged the existence of an interference with the right to respect for private life and correspondence not only of the person whose telephone had been tapped, but also of the applicant, whose communication had been intercepted and transcribed. That interference had continued by the use of that transcript in the subsequent disciplinary proceedings.

(a) *Sufficient legal framework and legitimate aim* – On the basis of the relevant provisions of the Code of Criminal Procedure and the case-law of the Court of Cassation, the applicant, who was a legal practitioner, had been in a position, in the context of the present case, to foresee that her client's telephone line was likely to be tapped and that disclosing information covered by legal professional privilege would expose her to criminal or disciplinary proceedings.

The interference had therefore been "in accordance with the law". Moreover, it had pursued the legitimate aim of "prevention of disorder".

(b) *Proportionality*

(i) *Effectiveness of the judicial review available to the applicant* – In the present case the telephone tapping and transcript of the conversation had been ordered by a judge and carried out under the latter's supervision; a judicial review had taken place in the context of criminal proceedings brought against the applicant's client; and the applicant had obtained a review of the lawfulness of the transcript of the telephone-tapping records in the context of the disciplinary proceedings brought against her.

Consequently, even though the applicant had not been able to apply to a judge to have the transcript of the telephone conversation in question annulled, the Court considered that her case was distinguishable from that of *Matheron v. France* (57752/00, 29 March 2005): in the particular circumstances of the present case there had been an effective scrutiny capable of limiting the interference complained of to that which was necessary in a democratic society.

(ii) *Weight to be given to the fact that the conversation in question had been between a lawyer and her client* – By clearly stating that the statutory exception to the principle of privileged communications between a lawyer and his or her client could not impinge on respect for the rights of the defence, French law contained an adequate and sufficient safeguard against abuse. Accordingly, as the transcript of the conversation between the applicant and her client had been based on the fact that the contents of that exchange gave rise to a presumption that the applicant had herself committed an offence, and the domestic courts had satisfied themselves that the transcript did not infringe the client's defence rights, the fact that the former was the latter's lawyer did not suffice to find a violation of Article 8 in her regard.

Regarding the idea that the possibility of criminal proceedings against a lawyer on the basis of the transcript could have a chilling effect on the freedom of communication between the lawyer and his client, and thus on the latter's defence rights, that submission was not arguable where the comments made by the lawyer himself were capable of amounting to illegal conduct on his part. A legal practitioner such as a lawyer was particularly well qualified to know where the limits of lawfulness lay and to realise that, where applicable, his communications with a client were capable of giving rise to a presumption that he had himself committed an offence. This was especially true where the utterances themselves were capable of amounting to an offence, such as a breach of professional confidentiality as defined in the Criminal Code.

Accordingly, the interference was not disproportionate to the legitimate aim pursued.

Conclusion: no violation (unanimously).

(See also *Lambert v. France*, 23618/94, 24 August 1998; *Michaud v. France*, 12323/11, 6 December 2012, Information Note 158; and *Pruteanu v. Romania*, 30181/05, 3 February 2015)

Respect for family life
Positive obligations

Inadequacy of measures taken by State to secure father's right of access to his children pursuant to court order: *violation*

Fourkiotis v. Greece - 74758/11
Judgment 16.6.2016 [Section I]

Facts – An interim court ruling of February 2011 awarded custody of two children to their mother and contact rights to the applicant, the children's father. However, the applicant encountered diffi-

culties in exercising his contact rights and was subsequently unable to have contact with his children at all. The penalties provided for in the decision in the event of failure to comply – custodial sentence or pecuniary penalty – did not deter the children's mother from impeding the applicant's attempts to fetch his children on the dates scheduled for his contact rights. Accordingly, the applicant complained of the failure on the part of the authorities to take action to enforce his contact rights and of the refusal of the various prosecutors to whom he had complained to let him have copies of the psychologists' reports and the social inquiry reports.

Law – Article 8: The prosecutor had not taken account of the fact that the applicant had not had contact with his children for several months and that the passage of that time without contact had already contributed and would certainly continue to contribute to the children's attitude of rejection towards the applicant. No mediation or other non-confrontational approach had been put in place to help the applicant and his children re-establish their family relationship.

The applicant lodged a number of claims and complaints before the court of first instance, but the proceedings were discontinued at the request of the applicant, who stated that he did not want to see a financial penalty, still less a custodial sentence, imposed on the mother of his children.

The Court agreed that the above-mentioned judicial measures were not necessarily always appropriate to situations such as the one here. Accordingly, it would not draw adverse inferences from the fact that the applicant had decided not to pursue his various claims and complaints against the children's mother. The use of measures involving, in cases concerning custody or contact rights, a deprivation of liberty of one of the parents had to be regarded as an exceptional measure and could only be implemented where alternative means had been used or explored.

The authorities had failed in their duty to take speedy and practical measures with a view to encouraging the parties to cooperate better, while having regard to the best interests of the children which also consisted in not allowing a steady dilution or, worse, a breakdown in relations with their father. The authorities had failed to take any action to supervise the enforcement of the judgment scheduling the father's contact. Apart from the social inquiry ordered by the prosecutor responsible for cases involving minors, at the applicant's request in March 2011, and which took five months, no other measure had been implemented by the authorities. That inquiry and the five reports subsequently drawn up had not led to the implementation of any specific measure. The letter sent in September 2011 by the applicant to the public prosecutor at the Court of Cassation complaining about the inactivity of the prosecutor responsible for cases involving minors had not even received a reply. The authorities had therefore allowed a *de facto* situation to set in, thus disregarding the judgment of February 2011.

Throughout that period the applicant had been deprived, as a result of his wife's conduct, of any contact with his children.

In addition, the applicant's children had been unable to benefit from psychological support with a view to maintaining and attempting to improve their relationship with their father. Whilst the failure to make any progress regarding the applicant's contact with his children was above all due to the mother's failure to cooperate, that lack of cooperation could not exempt the authorities from their duty to implement every means capable of maintaining the family tie.

With regard to the authorities' refusal to communicate to the applicant the reports drawn up by the child psychologists, it was very important for parents to always be placed in a position allowing them to advance every argument in support of obtaining contact with their child and to be able to have sight of psychiatrists' reports drawn up in cases concerning parental rights of contact with their children. No measure had been taken in the present case by the prosecutor responsible for minors following the preparation of various reports whose contents showed a need for psychological support involving all members of the applicant's family.

The Court could not criticise the applicant for failing to pursue his civil claims or criminal complaints which could have enabled the authorities to impose binding measures on the mother such as fines, or even imprisonment. Although the authorities were entirely aware of the mother's obstruction of the applicant's contact rights, they had failed to take any steps in that regard and had merely taken note of the situation. In that connection the Court could not but observe that the prosecutor responsible for minors had failed to take any action following communication of the reports drawn up by the social workers, and had refused to send those reports to the applicant which would have enabled him to undertake meaningful work with the child psychiatrists.

Accordingly, the authorities had remained well below the level of what could reasonably have been expected of them in order to satisfy their positive obligation to take adequate measures to promote the prospects of holding a meeting between the applicant and his children and protect the former's right to respect for his family life.

Conclusion: violation (unanimously).

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

ARTICLE 9

Freedom of conscience
Freedom of religion

Conscientious objection to military service not based on genuine religious convictions: *inadmissible*

Enver Aydemir v. Turkey - 26012/11
Judgment 7.6.2016 [Section II]

Facts – Following his conscription in 2007, the applicant declared himself to be a conscientious objector and refused to perform his military service, citing his religious beliefs. He was then taken by force to the gendarmerie station to comply with his obligations. However, he refused to put on military uniform and obey orders.

He was consequently taken into pre-trial detention in July 2007. In August 2007 two sets of criminal proceedings were instituted against him for persistent disobedience. According to the indictment, the applicant had stated that he "refused to wear military uniform belonging to the Republic of Turkey, which is governed according to secular principles" and had claimed to support "sharia". In October 2007 he was provisionally released but did not return to his regiment, thus becoming a deserter.

In December 2009 the applicant was arrested and taken back into pre-trial detention. He claimed that he was forced by soldiers to put on military uniform and was subjected to various forms of ill-treatment when he refused to do so. As a result, he went on hunger strike.

During the criminal proceedings against him, the applicant appeared before the Military Court. He again declared himself to be a conscientious objector and refused to perform military service because of his religious beliefs. In August 2011 the Military Court found the applicant guilty of persistent disobedience and sentenced him to two months and fifteen days' imprisonment for each act of disobedience. However, it decided to suspend the delivery of the judgment.

In February 2010 a third set of criminal proceedings was instituted against the applicant for desertion. In July 2013 he was found guilty by the Military Court and given a prison sentence, which was subsequently commuted to a fine.

In December 2009 the applicant filed a criminal complaint on account of the ill-treatment allegedly inflicted on him during his detention and requested to undergo a forensic medical examination. The case is currently pending before the Criminal Court.

Law – Article 9: On the basis of the applicant's statements – refusing, because of his idealistic and political views linked to the Koran and sharia, to perform military service for the secular Republic of Turkey – the Military Court had found that his objection to performing military service was not based on religious beliefs but on political reasons.

Regard being had to the applicant's position as expressed to the national authorities, he was not claiming either that his beliefs were opposed to military service in itself, or that he supported a pacifist and anti-militarist philosophy.

It was legitimate for the national authorities to carry out a prior examination of the applicant's claim in order to determine whether to recognise him as a conscientious objector. Although no definition of the term existed, the Human Rights Committee had held that conscientious objection was based on the right to freedom of thought, conscience and religion where this right was incompatible with the obligation to use "lethal force". The Court also considered it legitimate to restrict conscientious objection to religious or other beliefs that included a firm, fixed and sincere objection to participation in war in any form or to the bearing of arms. Furthermore, the Contracting States enjoyed a certain margin of appreciation in defining the circumstances in which they recognised the right to conscientious objection and in establishing mechanisms for examining claims made on that account.

The Court was mindful of the applicant's beliefs concerning his objection to military service on behalf of the secular Republic of Turkey, but observed that not all opinions or convictions fell within the scope of Article 9 § 1 of the Convention.

The applicant's complaints did not relate to a form of manifestation of a religion or belief through worship, teaching, practice or observance within the meaning of the second sentence of Article 9 § 1. Furthermore, the term "practice" as employed in Article 9 § 1 did not cover each and every act that was motivated or influenced by a religion or belief.

Accordingly, the applicant's opposition to military service was not such as to entail the applicability of Article 9 of the Convention. The evidence before the Court did not suggest that his stated beliefs included a firm, fixed and sincere objection to participation in war in any form or to the bearing of arms. That being so, the Court was not satisfied that the applicant's objection to performing military service had been motivated by sincere religious beliefs which were in serious and insurmountable conflict with his obligation to perform military service.

Conclusion: inadmissible (incompatible *ratione materiae*).

The Court also held unanimously that there had been a violation of the substantive aspect of Article 3 of the Convention, since the treatment to which the applicant had been subjected while in detention had undoubtedly been such as to arouse in him feelings of fear, anguish and inferiority capable of humiliating and debasing him and possibly breaking his physical and moral resistance. This finding was all the more valid as, in addition to the ill-treatment, the applicant had been the subject of several sets of criminal proceedings and the cumulative effect of his criminal convictions was likely to repress his intellectual personality.

The Court also unanimously found a violation of the procedural aspect of Article 3 of the Convention in that statements had not been taken from the applicant until more than a month after the events and the filing of his complaint. Moreover, some six years after the events, the criminal proceedings instituted against the main perpetrators of the acts of violence were still pending before the first-instance court.

Article 41: EUR 15,000 in respect of non-pecuniary damage.

(See *Bayatyan v. Armenia* [GC], 23459/03, 7 July 2011, Information Note 143; *Erçep v. Turkey*, 43965/04, 22 November 2011, Information Note 146; and *Feti Demirtaş v. Turkey*, 5260/07, 17 January 2012, Information Note 148)

ARTICLE 10

Freedom of expression

Premature termination of Supreme Court President's mandate as a result of views expressed publicly in his professional capacity:
violation

Baka v. Hungary - 20261/12
Judgment 23.6.2016 [GC]

(See Article 6 § 1 above, page 10)

Freedom to receive information

Conviction of journalists for possessing and using radio equipment to intercept confidential police communications:
no violation

Brambilla and Others v. Italy - 22567/09
Judgment 23.6.2016 [Section I]

Facts – The first applicant is the director of a local online newspaper and the remaining two applicants are journalists working for the newspaper.

In August 2002 the applicants listened in on a conversation during which the *carabinieri* decided to send a patrol to a location where weapons were being stored illegally. The second and third applicants arrived at the scene while the *carabinieri* were there. After obtaining a search warrant the *carabinieri* searched their vehicle and found two items of equipment capable of intercepting police radio communications. They later went to the newspaper's offices and seized two pieces of equipment tuned to the radio frequencies used by the *carabinieri*. Other frequencies used by police operational centres were stored in the equipment's memory.

The applicants were convicted on appeal and received custodial sentences of between six months and one year and three months. The radio equipment was also seized. However, the sentences were suspended by the Court of Appeal. The Court of Cassation dismissed the appeals lodged by the applicants.

Law – Article 10: The Court doubted whether there had been interference with the applicants' freedom of expression in the present case. Even assuming that Article 10 was applicable, the Court observed that the search and seizure operation and the custodial sentences imposed on the applicants had been prescribed by law.

The measures in question had pursued legitimate aims, in particular the protection of the rights of others and, with more specific reference to the interception of the police communications, the protection of national security and the prevention of disorder and crime.

The applicants had not been prohibited from bringing the news items to the public's attention. Their conviction had been based solely on the possession and use of radio equipment to intercept police communications, which were confidential under domestic law, in order to obtain information more rapidly.

The courts' decisions finding that communications between members of the law-enforcement agencies were confidential, and that the journalists' actions were therefore to be classified as criminal conduct, had also been duly reasoned.

In seeking to obtain information for publication in a local newspaper the applicants had acted in a manner which, according to domestic law and the consistent interpretation of the Court of Cassation, contravened the criminal law prohibiting in general terms the interception by any persons of conversations not addressed to them, including conversations between law-enforcement officers. Furthermore, the journalists' actions had comprised a technique which they used routinely in the course of their journalistic activity.

Lastly, the Court of Appeal had suspended the applicants' sentences and there was no evidence in the case file to demonstrate that they had served their custodial sentences. Accordingly, the penalties imposed on the applicants did not appear disproportionate.

The courts had made an appropriate distinction between the applicants' duty to comply with domestic law and their pursuit of their journalistic activity, which had not otherwise been restricted.

Conclusion: no violation (unanimously).

(See *Stoll v. Switzerland* [GC], 69698/01, 10 December 2007, Information Note 103; *Pentikäinen v. Finland* [GC], 11882/10, 20 October 2015, Information Note 189; *Erdtmann v. Germany* (dec.), 56328/10, 5 January 2016, Information Note 192; and *Salihu and Others v. Sweden* (dec.), 33628/15, Information Note 196)

ARTICLE 11

Freedom of association

Alleged breach of applicant company's negative right to freedom of association: *no violation*

Geotech Kancev GmbH v. Germany - 23646/09
Judgment 2.6.2016 [Section V]

Facts – The applicant was a company engaged in the building industry. Although not a member of the employers' associations, it was nevertheless obliged to contribute financially to the Social Welfare Fund jointly set up by these associations and the trade union in the building industry, as the relevant collective agreements in the industry had been declared generally binding by the Federal Ministry for Labour and Social Affairs.

In its application to the European Court, the applicant company complained that the obligation to participate financially in the Fund violated its right to freedom of association provided by Article 11 of the Convention.

Law – Article 11: The Court noted that it was legally impossible for the applicant company directly to become a member of the Social Welfare Fund and that it was not obliged to become a member of one of the employers' associations in the building industry.

The Court reiterated that the obligation to contribute financially to an association could resemble an important feature in common with that of joining an association and could constitute an interference with the negative aspect of the right to freedom of association. There were nevertheless a number of differences which distinguished the present case from those in which the Court had found that such an obligation constituted an interference with the negative aspect of the right to freedom of association.[1]

Firstly, the applicant company had to contribute financially to social welfare entitlements in the interest of all employees working in the building industry, as these contributions could only be used to implement and administer the Fund and to pay out benefits to employees in the building industry. For that reason, the contributions which the applicant was required to pay could not be considered

1. See, for example, *Vörður Ólafsson v. Iceland*, 20161/06, 27 April 2010, Information Note 129.

to be a membership contribution to an employers' association.

Secondly, members of the associations that set up the Social Welfare Fund did not receive reductions in their membership fees, or more favourable treatment than non-members in other areas, nor had they have any direct control over the use of the financial contributions of the Fund. Moreover, all contributing companies, whether or not members of an employers' association, received full information about the use to which their contributions were put. There was a high level of transparency surrounding the operation of the Fund.

Thirdly, unlike the position in *Vörður Ólafsson*, there was a significant degree of involvement in and control of the scheme by public authorities.

In conclusion, while it was true that the impugned obligation could be regarded as creating a *de facto* incentive for the applicant company to join one of the employers' associations, that incentive was too remote to strike at the very substance of the right to freedom of association and therefore did not amount to an interference with the applicant company's freedom not to join an association against its will.

Conclusion: no violation (unanimously).

The Court also found, unanimously, no violation of Article 1 of Protocol No. 1, as a fair balance had been struck between the general interest in ensuring the social protection of all employees working in the building industry and the applicant company's right to peaceful enjoyment of its possessions.

ARTICLE 13

Effective remedy

Alleged inability to challenge applicants' deportation orders: *inadmissible*

Sakkal and Fares v. Turkey - 52902/15
Decision 7.6.2016 [Section II]

Facts – In September 2015 the applicants – a Syrian national and two stateless Palestinians – were arrested in Turkey on suspicion of breaching the Meetings and Demonstration Marches Act (Law no. 2911) during a march by Syrian refugees. They were then transferred to a centre where they were detained pending their removal to Syria.

In their application to the European Court, the applicants complained, *inter alia*, about the alleged inability to challenge their deportation orders before the national courts, in breach of Article 13 of the Convention.

Law – Article 13 in conjunction with Articles 2 and 3: The Court had to examine whether the applicants had had an effective domestic remedy capable of affording redress for the alleged violation of their rights under Articles 2 and 3 of the Convention, and, if so, whether they had exhausted that remedy. The fact that the Court had declared the applicants' complaints under Articles 2 and 3 inadmissible *ratione personae*, since they no longer faced a risk of deportation from Turkey to Syria or elsewhere, did not necessarily exclude the operation of Article 13.

The applicants claimed that they had been held *incommunicado* between 24 September and 23 October 2015 and it appeared that they had indeed been unable to meet with their lawyers during that period. However, a lawyer was present when they were first questioned and it was clear that, during their detention, they had maintained contact with their representative, whom they telephoned twice. Moreover, the Government had submitted a document signed by the applicants and a lawyer attached to Refugee Rights Turkey, according to which they met with her in October 2015. Notwithstanding the difficulties in obtaining powers of attorney, these contacts with their representatives had been sufficient to enable the applicants to exercise the right to lodge an application with the administrative court to stay the enforcement of their deportation and also to lodge an individual application with the Constitutional Court, which was competent to examine it. The remedies available were therefore effective for the purposes of Article 13 of the Convention.

Conclusion: inadmissible (manifestly ill-founded).

(See also the Factsheet on Migrants in detention)

ARTICLE 14

Discrimination (Article 8)

Refusal to grant a residence permit for family reunion to a same-sex foreign partner: *violation*

Taddeucci and McCall v. Italy - 51362/09
Judgment 30.6.2016 [Section I]

Facts – The applicants have lived together as a homosexual couple since 1999. They lived in New Zealand, as an unmarried couple, until December 2003, when they decided to settle in Italy.

After first moving to Italy the second applicant, a New Zealand national, had a student's temporary residence permit. He subsequently applied for a residence permit on family grounds but it was denied on the basis that the statutory criteria were not fulfilled. A partner could not be treated as a "family member", only a spouse. None of their appeals were successful.

The applicants left Italy in July 2009 and settled in the Netherlands, where they got married in May 2010.

Law – Article 14 taken together with Article 8: Italian law did not treat unmarried couples differently according to their sexual orientation, but limited the concept of "family member" to heterosexual couples, given that only the latter could get married and acquire the status of "spouse". The applicants, forming a homosexual couple, had been treated, for the purposes of obtaining a residence permit on family grounds, in the same manner as persons having a significantly different situation to their own, namely heterosexual partners who had chosen not to get married.

However, the fact of applying the same restrictive rule to unmarried heterosexual and homosexual couples, with the sole aim of protecting the traditional family, had subjected the applicants to discriminatory treatment. Without any objective or reasonable justification, the Italian State had failed to treat homosexual couples like the applicants differently from heterosexual couples and to take account of the possibility for the latter, but not the former, to obtain legal recognition of their relationship and thus to meet the requirements of domestic law for the purposes of obtaining a residence permit on family grounds.

It was precisely the inability for homosexual couples to have access to a form of legal recognition that had placed the applicants in a different situation from that of an unmarried heterosexual couple. Even assuming that at the relevant time the Convention had not obliged the Government to provide, in the case of stable and serious same-sex relationships, the possibility of a civil union or registered partnership through which they would have had the requisite status and certain basic rights, it was undeniable that, unlike a person in a heterosexual relationship, the second applicant had had no legal means in Italy by which to obtain the status of "family member" in relation to the first applicant and had not therefore been entitled to a residence permit on family grounds.

Moreover, there was a "significant trend" worldwide towards treating same-sex partners as "family members" and recognising that they had the right to live together, and also an emerging European consensus to the effect that, in matters of immigration, same-sex unions should be regarded as "family life".

At the relevant time, by deciding, for the purposes of granting a residence permit on family grounds, to treat homosexual couples in the same way as unmarried heterosexual couples, the State had breached the applicants' right not to be subjected to discrimination on grounds of sexual orientation in the enjoyment of their rights under Article 8 of the Convention.

Conclusion: violation (six votes to one).

Article 41: EUR 20,000 jointly for non-pecuniary damage.

(See also *Thlimmenos v. Greece* [GC], 34369/97, 6 April 2000, Information Note 17; *Schalk and Kopf v. Austria*, 30141/04, 24 June 2010, Information Note 131; *X and Others v. Austria* [GC], 19010/07, 19 February 2013, Information Note 160; and the Factsheet on Sexual Orientation)

Discrimination (Article 8 of the Convention and Article 1 of Protocol No. 1)

Difference in rights to retrospective survivor's pension between same-sex couples and unmarried different-sex couples: *no violation*

Aldeguer Tomás v. Spain - 35214/09
Judgment 14.6.2016 [Section III]

Facts – In the Convention proceedings, the applicant complained that he had been discriminated against on the ground of his sexual orientation in that, as the survivor of a *de facto* same-sex

union, he had been denied a survivor's pension following the death of his partner in 2002.

He complained in particular of the difference of treatment between *de facto* same-sex unions, who had been unable to achieve legal recognition before the legalisation of same-sex marriage in 2005, and unmarried heterosexual couples who had been unable to marry before divorce was legalised in Spain in 1981. While the legislation legalising same-sex marriage did not recognise a right to a survivor's pension retroactively, Law no. 30/1981 covering different-sex cohabiting couples who had been legally unable to marry did contain a retroactivity clause allowing the survivor to claim a pension even when their partner had died before that legislation came into force.

Law – Article 14 in conjunction with Article 8 of the Convention and Article 1 of Protocol No. 1: The applicant's relationship with his late partner in a stable, same-sex, *de facto* union for more than eleven years fell within the notion of "private life" and "family life" within the meaning of Article 8 of the Convention. Further, although Article 8 did not address the issue of survivors' pensions, the State had gone beyond its obligations under that provision by expressly providing such a right to spouses and to surviving partners of unmarried heterosexual couples who had been legally unable to marry before the entry into force of Law no. 30/1981. Consequently, the case was within the ambit of Article 8. The interest in receiving a survivor's pension from the State also fell within the ambit of Article 1 of Protocol No. 1. Article 14 was thus applicable in conjunction with those provisions.

The Court found, however, that the applicant was not in a relevantly similar situation to that of a surviving partner of a different-sex couple who had been unable to marry because of an impediment to remarrying which had affected one or both members of the couple before 1981.

Firstly, the retrospective provisions of Law no. 30/1981 had the very specific purpose of providing a provisional and extraordinary solution giving the surviving partner access to a survivor's pension under certain conditions against the background of a situation where the participation in building up pension rights by paid work had not been equally distributed among the sexes, since women were underrepresented in the work force.

Secondly, although there had been a legal impediment to marriage in both same-sex and different-sex couples, it was of a different nature. The applicant was unable to marry because the legislation in force during his partner's lifetime restricted the institution of marriage to different-sex couples. The impediment to marriage in the case of different-sex couples did not result from the sex or sexual orientation of its members but from the fact that one or both partners were legally married to a third person and that divorce was not permitted at the time. What was at stake was an impediment to remarrying, not an impediment to marrying: the specific factual and legal situation addressed by Law no. 30/1981 could not genuinely be compared to the position of a same-sex couple who were ineligible for marriage in absolute terms, irrespective of the marital status of one or both of its members.

The difference in context and the difference in nature of the legal impediment to marriage thus made the situation of the applicant in 2005 fundamentally different from that of different-sex couples covered by Law no. 30/1981.

Conclusion: no violation (unanimously).

ARTICLE 18

Restrictions for unauthorised purposes

Pre-trial detention of politician and leader of opposition party, allegedly performed only to exclude him from the political life of the country: *violation*

Merabishvili v. Georgia - 72508/13
Judgment 14.6.2016 [Section IV]

Facts – The applicant was a Georgian politician who had formerly held high-ranking State offices, including those of Minister of the Interior and Prime Minister, and was the leader of the strongest opposition party. Between 2012 and 2013, soon after the change of power resulting from the parliamentary election of October 2012, criminal proceedings were instituted against him for abuse of power and other offences. The applicant was subsequently placed in pre-trial detention. In 2014 he was convicted of the majority of the charges brought against him.

In his application to the European Court the applicant complained, *inter alia*, that his prosecution and arrest had been used by the authorities to exclude him from the political life of the country, in breach of Article 18 of the Convention.

Law – The Court found, unanimously, no violation of Article 5 § 1 in respect of the applicant's pre-trial detention, no violation of Article 5 § 3 as regards the initial court decisions imposing pre-trial detention, but a violation of Article 5 § 3 with regard to the second judicial review of the applicant's detention.

Article 18 in conjunction with Article 5 § 1: The fact that the Court had found no violation with respect to the applicant's complaint under Article 5 § 1 regarding the alleged unlawfulness of his pre-trial detention did not preclude it from addressing the applicant's claims about the existence of improper political motives behind his detention. In that connection, the Court noted its finding that the applicant's pre-trial detention had lacked reasonableness, in breach of Article 5 § 3.

Following the applicant's arrest and detention a number of international observers had expressed concerns over the possible use of criminal proceedings against him for an improper, hidden political agenda on the part of the regime. However, the Court's scrutiny could not be based only on the general perspective of the allegedly politically motivated prosecution of the applicant as an opposition leader, but had to be grounded on evidence in the legal sense and the Court's own assessment of the relevant and specific factual circumstances of the case. These suggested that the applicant's detention had its own distinguishable features which allowed the Court to look into the matter separately from the general political context. In particular, in December 2013 the applicant was, according to his submissions, removed from his prison cell for a late-night meeting during which the Chief Public Prosecutor and the head of the prison authority had used his pre-trial detention as leverage to obtain statements from him relating to an unrelated investigation into the death of the former prime minister and also to the former president of the country. The applicant's account of the incident was particularly credible and convincing, and supported by a number of surrounding circumstances. Moreover, the authorities had unmistakably been opposed to the repeated calls by the applicant, the public and even certain senior high-ranking State officials for an objective and thorough investigation.

The applicant's account of the incident could therefore be considered to be factual with as a high a degree of certainty as possible. It could thus be argued that the applicant's pre-trial detention had been used not only for the purpose of bringing him before the competent legal authority on reasonable suspicion of the offences with which he had been charged, but also as a means of exerting moral pressure on him.

Conclusion: violation (unanimously).

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

(See also *Lutsenko v. Ukraine*, 6492/11, 3 July 2012, Information Note 154; *Tymoshenko v. Ukraine*, 49872/11, 30 April 2013, Information Note 162; *Ilgar Mammadov v. Azerbaijan*, 15172/13, 22 May 2014, Information Note 174; *Rasul Jafarov v. Azerbaijan*, 69981/14, 17 March 2016, Information Note 194)

ARTICLE 1 OF PROTOCOL No. 1

Peaceful enjoyment of possessions

Automatic forfeiture of applicant's civil-service pension following disciplinary proceedings resulting in his dismissal:
no violation

Philippou v. Cyprus - 71148/10
Judgment 14.6.2016 [Section III]

Facts – In 2005 the applicant, a civil servant, was convicted of, *inter alia*, dishonesty, obtaining money by false pretences and forging cheques, and sentenced to five years' imprisonment. Following subsequent disciplinary proceedings, he was dismissed, which automatically entailed the forfeiture of his civil-service pension.

In his application to the European Court, the applicant complained of a breach of Article 1 of Protocol No. 1 through the forfeiture of his pension.

Law – Article 1 of Protocol No. 1: The forfeiture of the applicant's retirement benefits amounted to a lawful interference with his right to the peaceful enjoyment of his possessions.

As to whether this interference had been proportionate, the Court reiterated that it did not consider it inherently unreasonable for provision to be made for a reduction in the amount of a pension or even total forfeiture in suitable cases. In general[1], the deprivation of the entirety of a pension was likely to breach Article 1 of Protocol

1. See, for example, *Da Silva Carvalho Rico v. Portugal* (dec.), 13341/14, 1 September 2015; and *Stefanetti and Others v. Italy*, 21838/10 et al., 15 April 2014, Information Note 173.

No. 1[1] and, conversely, the imposition of a reduction which the Court considered to be reasonable and commensurate would not.[2] Whether or not the right balance had been struck would depend on the circumstances and particular factors of a given case.

As to the applicant's case, the Court first noted that, in the separate disciplinary proceedings brought against him following his criminal conviction, the applicant's personal position had been considered in depth before the authorities decided on the penalty to be imposed. Moreover, the forfeiture decision was reviewed by the Supreme Court at two levels of jurisdiction. He had thus benefited from extensive procedural guarantees.

Secondly, the impugned decision did not leave the applicant without any means of subsistence. The forfeiture only concerned his public-service retirement benefits. He remained eligible to receive, and did receive from 2012, a social-security pension from the Social Insurance Fund to which he and his employer had contributed.

Thirdly, the applicant's wife received a widow's pension, which ensured that the family immediately received a pension based on the assumption that he had died rather than that he had been dismissed.

Weighing the seriousness of the offences committed by the applicant against the effect of the disciplinary measures and taking all the above factors into consideration, the Court found that the applicant did not have to bear an individual and excessive burden.

Conclusion: no violation (unanimously).

ARTICLE 1 OF PROTOCOL No. 12

General prohibition of discrimination

Ineligibility of Bosniac living in the Republika Srpska to stand for election to the national presidency: *violation*

Pilav v. Bosnia and Herzegovina - 41939/07
Judgment 9.6.2016 [Section V]

1. See, for example, *Apostolakis v. Greece*, 39574/07, 22 October 2009, Information Note 123.
2. See, for example, *Da Silva Carvalho Rico*, cited above; *Arras and Others v. Italy*, 17972/07, 14 February 2012, Information Note 149; and *Poulain v. France* (dec.), 52273/08, 8 February 2011.

Facts – Under the Bosnian Constitution, only persons declaring affiliation with a "constituent peoples" were entitled to stand for election to the Presidency, which consisted of three members: one Bosniac and one Croat, each directly elected from the Federation of Bosnia and Herzegovina, and one Serb directly elected from the Republika Srpska. The applicant, a Bosniac living in the Republika Srpska was as a result excluded from the Presidential elections.

Law – Article 1 of Protocol No. 12: In *Sejdić and Finci v. Bosnia and Herzegovina* concerning the inability of the applicants, of Roma and Jewish origin respectively, to stand for election to the Presidency and in *Zornić v. Bosnia and Herzegovina* concerning an applicant who did not declare affiliation with any of the "constituent peoples" but declared herself a citizen of Bosnia and Herzegovina, the Court found that the impugned constitutional precondition, linked to candidates' affiliation to one of the constituent groups, amounted to a discriminatory difference in treatment in breach of Article 1 of Protocol No. 12.

Unlike the applicants in those judgments, however, the present applicant belonged to one of the "constituent peoples", and thus had a constitutional right to participate in elections to the Presidency. However, in order effectively to exercise that right he was required to move to the Federation of Bosnia and Herzegovina. Therefore, while theoretically eligible to stand for election to the Presidency, in practice, he could not use this right as long as he lived in the Republika Srpska.

In relation to cases concerning Article 3 of Protocol No. 1, the Court had found that a residence requirement was not disproportionate or irreconcilable with the underlying purposes of the right to free elections. Enjoyment of the right to vote and to stand for election could depend on the nature and degree of the links that existed between the individual applicant and the legislature of the particular country. However, the Presidency of Bosnia and Herzegovina was a political body of the State and not of the Entities. Its policy and decisions affected all citizens of Bosnia and Herzegovina, whether they lived in the Federation, the Republika Srpska or Brčko District. Therefore, although the applicant was involved in political life in the Republika Srpska, he was also clearly concerned with the political activity of the collective Head of State. While it was true that the residence requirement in question applied to all the "constituent peoples" equally, the applicant was treated differently from Serbs living in the Republika Srpska. The reasons advanced by the Government to jus-

tify this difference in treatment, such as a need to preserve peace and facilitate dialogue between different ethnic groups, were the same as those already examined by the Court in *Sejdić and Finci*. For that reason, notwithstanding the difference between this case and *Sejdić and Finci* and *Zornić*, the present applicant had also been excluded from standing for election to the Presidency by a combination of his ethnic origin and place of residence. The territorial restriction in question thus amounted to a discriminatory treatment in breach of Article 1 of Protocol No. 12.

Conclusion: violation (unanimously).

Article 41: finding of a violation constituted sufficient just satisfaction in respect of any non-pecuniary damage; claim in respect of pecuniary damage dismissed.

(See *Sejdić and Finci v. Bosnia and Herzegovina* [GC], 27996/06 and 34836/06, 22 December 2009, Information Note 125; and *Zornić v. Bosnia and Herzegovina*, 3681/06, 15 July 2014, Information Note 176)

REFERRAL TO THE GRAND CHAMBER

Article 43 § 2

Bărbulescu v. Romania - 61496/08
Judgment 12.1.2016 [Section IV]

(See Article 8 above, page 16)

DECISIONS OF OTHER INTERNATIONAL JURISDICTIONS

Court of Justice of the European Union (CJEU)

Refusal to recognise name indicative of noble origins chosen in another Member State for personal reasons

Nabiel Peter Bogendorff von Wolffersdorff v. Standesamt der Stadt Karlsruhe and Zentraler Juristischer Dienst der Stadt Karlsruhe - C-438/14
Judgment 2.6.2016 [Second Chamber]

In the context of a dispute concerning the refusal by the German municipal authorities to modify the forenames (Nabiel Peter) and surname (Bogendorff von Wolffersdorff) entered on the applicant's birth certificate and to enter in the civil-status register tokens of nobility forming part of the surname acquired by him in the United Kingdom (Peter Mark Emanuel (forenames) Graf von Wolffersdorff Freiherr von Bogendorff' (patronymic, meaning Count of Wolffersdorff Baron of Bogendorff)), the Karlsruhe District Court (*Amtsgericht*) in Germany requested a preliminary ruling from the Court of Justice of the European Union (CJEU) as to whether such refusal of recognition was contrary to European Union (EU) law.

The CJEU observed that a person's forename and surname were a constituent element of his or her identity and private life as protected by Article 7 of the EU Charter of Fundamental Rights and Article 8 of the European Convention on Human Rights. Since the refusal in question gave rise to a discrepancy between the applicant's identity documents in the two countries, it was apt to entail administrative problems for the applicant, particularly when it came to dispelling doubts as to his identity and to proving his family ties with his minor daughter, whose name contained the words *Gräfin* (Countess) and *Freiin* (Baroness) on her British passport, but also, following an order issued by the relevant court, on her German passport. Accordingly, the refusal amounted to a restriction on the free movement of EU citizens.

In the view of the referring court, the difference between the names on the applicant's British and German passports was not attributable to the circumstances of his birth, to an adoption or to any other amendment of his personal status, but was the result of his decision to change his name in the United Kingdom for purely personal reasons. Referring to the judgment of the European Court of Human Rights in *Stjerna v. Finland* (18131/91, 25 November 1994), the CJEU took the view that the refusal to recognise the applicant's British name could not be justified by the mere fact that the change of name had been made for personal reasons, without account being taken of the reasons for the change. Furthermore, neither the principles of immutability and continuity of names nor the objective of avoiding disproportionately long names or names which were too complex, which were also cited by the referring court, could justify refusing recognition.

However, given that the 1919 Constitution of Weimar had abolished all privileges and titles connected with nobility in Germany and prohibited the creation of titles giving the appearance of noble origins, in order to ensure equal treatment of all

German citizens, such a restriction might be justified on public-policy grounds. The EU legal system undeniably sought to ensure observance of the principle of equal treatment as a general principle of law, a principle that was also enshrined in Article 20 of the EU Charter of Fundamental Rights.

Despite having been abolished as such, ancient titles of nobility had been maintained as components of names, with the result that there were still some German citizens whose names included elements corresponding to ancient titles. Nevertheless, it would run counter to the intention of the German legislature for German nationals, using the law of another Member State, to adopt afresh titles of nobility that had been abolished. Systematic recognition of changes of name such as that at issue in this case could lead to that result.

The CJEU therefore replied to the question put by the referring court as follows:

The authorities of a Member State are not bound to recognise the name of a citizen of that Member State when he also holds the nationality of another Member State in which he has acquired that name, which he has chosen freely and which contains a number of tokens of nobility which are not accepted by the law of the first Member State, provided that it is established – which it is for the referring court to ascertain – that a refusal of recognition is, in that context, justified on public-policy grounds in that it is appropriate and necessary to ensure compliance with the principle that all citizens of that Member State are equal before the law.

In weighing up the different legitimate interests in this regard, the court hearing the case at hand would have to take into consideration the fact that (i) the applicant had exercised his right to freedom of movement and had dual German and British nationality; (ii) the elements of the name acquired in the United Kingdom which allegedly undermined German public policy did not formally constitute titles of nobility either in Germany or in the United Kingdom; and (iii) the German court examining the request to have the name of the applicant's daughter entered in the register had not taken the view that that entry was contrary to public policy.

On the other hand, the court would also have to take into account the fact that (i) the change of name under consideration rested on a purely personal choice; (ii) the resulting difference in name could not be attributed either to the circumstances of the applicant's birth[1], to adoption[2], or to the acquisition of British nationality; and (iii) the name chosen in the United Kingdom included elements which, without formally constituting titles of nobility in Germany or the United Kingdom, gave the impression of noble origins.

In any event, public policy and the principle that all German citizens were equal before the law could not justify the refusal to recognise the applicant's change of forenames.

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

Fresh proceedings may be brought against a suspect in a Schengen State where previous criminal proceedings in another Schengen State were terminated without a detailed investigation

Piotr Kossowski - C-486/14
Judgment 29.6.2016 [Grand Chamber]

The case originated in a request by the Hamburg Court of Appeal (*Oberlandesgericht*) to the Court of Justice of the European Union (CJEU) for a preliminary ruling as to whether the *ne bis in idem* principle should be interpreted as meaning that a decision of the public prosecutor terminating criminal proceedings and finally closing the investigation procedure against a person, albeit with the possibility of its being reopened or annulled, without any penalties having been imposed, could be characterised as a final decision for the purposes of Article 54 of the Convention implementing the Schengen Agreement, read in the light of Article 50 of the EU Charter of Fundamental Rights, when that procedure had been closed without a detailed investigation having been carried out.

The CJEU pointed out that the *ne bis in idem* principle was aimed at ensuring that persons who had been found guilty and served their sentence, or, as the case may be, had been acquitted by a final judgment in a Schengen State, could travel within the Schengen area without fear of being prosecuted in another Schengen State for the same acts.

1. See the CJEU judgment of 14 October 2008 in the case of Grunkin and Paul (C-353⁄06).
2. See the CJEU judgment of 22 December 2010 in the case of Sayn-Wittgenstein (C-208⁄09).

However, this principle was not intended to protect suspects from having to submit to investigations that might be undertaken successively, in respect of the same acts, in several Schengen States.

Applying the *ne bis in idem* principle to a decision to terminate proceedings adopted by the judicial authorities of a Member State when there had been no detailed assessment whatsoever of the unlawful conduct alleged against the accused would clearly run counter to the very purpose of the area of freedom, security and justice, namely to combat crime, and was liable to undermine the mutual trust between Member States.

Accordingly, the CJEU held that a decision by the public prosecutor terminating criminal proceedings and finally closing the investigation procedure against a person, without any penalties having been imposed, could not be characterised as a final decision[1] for the purposes of applying the *ne bis in idem* principle, where it was clear from the statement of reasons for that decision that the procedure had been closed without a detailed investigation having been carried out. The fact that neither the victim nor a potential witness had been interviewed was an indication that no such investigation had taken place.

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

Inter-American Court of Human Rights

Ill-treatment during military service and ineffective investigation

Case of Quispialaya Vilcapoma v. Peru - Series C No. 308
Judgment 23.11.2015[2]

Facts – On 26 January 2001, Mr Valdemir Quispialaya Vilcapoma was hit in the forehead and right eye with the butt of his rifle by his military superior during a shooting drill in the course of his military service because he failed to fire the shots correctly. Due to the injury inflicted, Mr Quispialaya lost vision in his right eye and subsequently suffered from depression. The aforementioned actions were rooted in a culture of abuse that existed in Peru, in which physical and psychological violence was used to impose military discipline and authority. Judicial proceedings regarding the aggression were initiated in both the ordinary and military courts. Nevertheless, no one has been convicted for the above acts.

Law

(a) *Preliminary objections*: The State submitted two preliminary objections regarding the non-exhaustion of domestic remedies. The first preliminary objection was rejected on the grounds that the remedy invoked by the State during the admissibility proceedings was different from the one argued before the Court. The second preliminary objection was, in the view of the Court, an issue related to a reparation measure requested by the victims' representatives, and thus could not be analysed as a preliminary objection. Moreover, the State´s argument was time-barred.

(b) *Article 5(1) (right to personal integrity) and (2) (prohibition of torture and cruel, inhuman, or degrading punishment or treatment) of the American Convention on Human Rights (ACHR) in relation to Article 1(1) thereof and Article 6 of the Inter-American Convention to Prevent and Punish Torture (IACPPT)*: On the basis of standards set forth by the European Court of Human Rights [citing *Chember v. Russia*, 7188/03, 3 July 2008, § 50, Information Note 110; *Placì v. Italy*, 48754/11, 21 January 2014, § 51, Information Note 170; *Larissis and Others v. Greece*, 23372/94, 24 February 1998, §§ 50-51; and *Konstantin Markin v. Russia*, 30078/06, 22 March 2012, § 135, Information Note 150] and the UN Human Rights Committee [citing General Comment No. 35, 16 December 2014, UN Doc. CCPR/C/GC/35, paras. 5-6], the Inter-American Court determined that the particular situation under which military service is carried out entails a restriction or limitation to the rights and freedoms of recruits. This does not, however, represent an instance of deprivation of liberty, but rather a situation in which the State is the guarantor and custodian of the individuals under that regime.

The Court established, therefore, that the standards set forth in the cases of persons deprived of liberty apply to military personnel in active service and in their barracks, inasmuch as the State holds a special position of guarantor in respect of persons in its custody or subject to a superior-subordinate relationship. Thus, in relation to those persons subject to such special relationship, the Court found that the State has the duty to (i) safeguard the health and welfare of military personnel on active duty;

1. For the purposes of Article 54 of the Convention implementing the Schengen Agreement, read in the light of Article 50 of the EU Charter of Fundamental Rights.
2. This summary was provided courtesy of the Secretariat of the Inter-American Court of Human Rights. A more detailed, official abstract (in Spanish only) is available on that Court's website (<www.corteidh.or.cr>).

(ii) ensure that the manner and method of training does not exceed the unavoidable level of suffering inherent to military service; and (iii) provide a satisfactory and convincing explanation of any harm to the health of those in military service. Consequently, a presumption exists that the State is responsible for alleged violations of personal integrity of individuals under the authority and control of State agents, such as during military service.

When analysing the assault committed against Mr Quispialaya, the Court considered multiple factors, such as the abusive behaviour of the military authority, the violence displayed by the aggressor, the defencelessness of the victim, his reasonable fear, the threats made by the aggressor in order to avoid being denounced, the medical reports, and the psychological expert testimony rendered in the present case. For those reasons, the Court established that the attack suffered by Mr Quispialaya represented a violation of Articles 5(1) and 5(2) of the ACHR and of Article 6 of the IACPPT, that prohibit torture and cruel, inhuman, or degrading punishment or treatment.

Conclusion: violation (unanimously).

(c) *Articles 8(1) (right to a fair trial) and 25 (right to judicial protection) in relation to Article 1(1) (obligation to respect rights) of the ACHR and Articles 1, 6 and 8 of the IACPPT*: Furthermore, the Court considered that the aforementioned facts should have been investigated and, eventually, tried and punished in a criminal proceeding before ordinary courts. Accordingly, the Court found that the ruling of the Permanent Criminal Chamber of Peru's Supreme Court violated the competent court principle by preventing the investigation and trial by ordinary courts and retaining the case before military jurisdiction between 2002 and 2007. The Court found this to represent an undue expansion of the military justice system and thus a violation of Article 8(1) of the ACHR.

Regarding the intervention of ordinary tribunals, the Court found a series of shortcomings in their proceedings. The ordinary courts did not investigate the facts in a diligent and effective manner, nor did they analyse the evidence forwarded by a military judge. The investigating authorities were also negligent in finding witnesses, among other failings. Additionally, the Court found that the State took an unreasonable amount of time to conduct the investigation. Considering the above, the Court concluded that the State violated the rights to a fair trial and to judicial protection established in Articles 8(1) and 25 of the ACHR, as well as the obligations established in Articles 1, 6 and 8 of the IACPPT.

With regard to the situation of harassment and threats against the applicant, the Court found that the investigation conducted by the State was ineffective, and thus amounted to a violation of the right to judicial protection established in Article 25(1) of the ACHR.

Conclusion: violation (unanimously).

(d) *Article 5 (right to personal integrity) in relation to Article 1(1) (obligation to respect rights) of the ACHR*: The Court took notice of the close relationship between Ms. Victoria Vilcapoma Taquia, the applicant´s mother, and her son, the suffering she went through due to the consequences of the assault, as well as the threats and harassment that both endured. Therefore, the Court concluded that the State was responsible for the violation of Article 5(1) of the ACHR, to the detriment of Ms Victoria Vilcapoma Taquia.

Conclusion: violation (unanimously).

(e) *Article 2 (domestic legal effects) of the ACHR in relation to Article 6 of the IACPPT*: Regarding the duty to adopt domestic measures, the Court considered that Article 6 of the IACPPT deals with torture and other cruel, inhuman or degrading treatment or punishment in a different way, which is demonstrated by the different duties imposed by the Convention in each circumstance. Article 6, paragraph 2, sets out the obligation to adopt domestic legislation so that acts of torture constitute a punishable offence within a State's jurisdiction. In relation to cruel, inhuman or degrading treatment or punishment, the IACPPT establishes a duty to adopt measures to prevent and punish these acts, but it does not set forth the obligation to adopt domestic criminal legislation. In that sense, the Court considered that the prevention and prosecution of cruel, inhuman and degrading treatment could have been achieved in the present case through the use of other appropriate criminal offences already in the Criminal Code (for example, serious physical injury).

Additionally, the Court noted that, although the crime of torture is reserved for cases of extreme significance, this does not imply that a case of physical injury is less serious in Peru given that the punishment established in its domestic legislation for such offence is as severe as the one set out for cases of torture. Therefore, the Court considered that the crime of serious physical injury did not violate *per se* the obligation to prevent and sanction

other cruel, inhuman or degrading treatment or punishment. For those reasons, the Court did not find the State responsible for the violation of Article 2 of the ACHR or Article 6 of the IACPPT.

Conclusion: no violation (unanimously).

(f) *Reparations*: The Inter-American Court established that the judgment constituted *per se* a form of reparation and ordered, *inter alia*, that the State: (i) continue and conclude, within a reasonable time, the investigation into the violation of Mr Quispialaya's personal integrity and, if applicable, punish those responsible; (ii) guarantee regular and unexpected visits by independent, autonomous, and competent authorities to military barracks where military service is performed in order to monitor the conditions under which military service is carried out and the fulfilment of the rights of the recruits; (iii) issue a disability discharge certificate to Mr Quispialaya due to the injuries suffered during his military service; (iv) immediately provide Mr Quispialaya with the benefits linked to a disability pension; (v) ensure access for Mr Quispialaya to education programmes of a technical or professional nature; and (vi) pay pecuniary and non-pecuniary damages, as well as costs and expenses.

COURT NEWS

Elections

During its summer session held from 20 to 24 June 2016, the Parliamentary Assembly of the Council of Europe elected Tim Eicke judge of the Court in respect of the United Kingdom. His nine-year term in office will commence as from 7 September 2016 and in any event no later than three months after his election.

COURTalks – Videos on asylum and on terrorism

Within the pilot series *COURTalks-disCOURs* launched at the end of last year, two new training videos have just been released, one on asylum and the second on terrorism. Produced in cooperation with the Council of Europe's HELP Programme, these fifteen-minute videos are aimed at judges, lawyers and other legal professionals, as well as civil-society representatives.

The two videos, which are published in English and French and will soon be subtitled in ten additional languages, and a manuscript listing the relevant case-law, are available on the Court's Internet site (<www.echr.coe.int> – Case-law) and YouTube channel.

RECENT PUBLICATIONS

Bringing the Convention closer to home

Updated versions of the brochure "Bringing the Convention closer to home: case-law information, training and outreach" have now been published and can be downloaded from the Court's Internet site (<www.echr.coe.int> – The Court – Annual Reports).

Bringing the Convention closer to home: case-law information, training and outreach (eng)

La Convention à votre porte : information et formation sur la jurisprudence et communication générale (fre)

Handbook on European law relating to access to justice

On 22 June 2016 the Court and the European Union Agency for Fundamental Rights (FRA) launched a handbook on European law relating to access to justice. This practical guide summarises the key European legal principles in the area of access to justice, focusing on civil and criminal law. It seeks to raise awareness of the relevant legal standards set by the European Union (EU) and the Council of Europe, particularly through the case-law of both the Strasbourg Court and the EU Court.

This new handbook is available in English and French on the Court's Internet site (<www.echr.coe.int> – Case-law – Other publications). Translations into other languages are pending.

Handbook on European law relating to access to justice (eng)

Manuel de droit européen en matière d'accès à la justice (fre)

Factsheets in Greek

Two factsheets have been translated into Greek ("Dublin" cases and Gender identity issues) and can be downloaded from the Court's Internet site (<www.echr.coe.int> – Press).

Admissibility Guide: translation into Bulgarian

With the help of the Bulgarian Ministry of Justice, a translation into Bulgarian of the third edition of the Practical Guide on Admissibility Criteria has now been published. It can be downloaded from the Court's Internet site (<www.echr.coe.int> – Case-law).

Практическо ръководство върху критериите за допустимост на жалбите до Европейския съд по правата на човека (bul)

Case-Law Guides: new translations

Translations into Arabic of the guides on Article 6 of the Convention (civil and criminal limbs) – provided by the Council of Europe's South Programme II – have just been published on the Court's Internet site (<www.echr.coe.int> – Case-law).

الدليل العملي للمادة رقم 6 للطرف المدني

الحق في محاكمة عادلة - المادة6 من الاتفاقية - القانون الجنائي

Research Reports: new translations

With the help of the Kutafin Moscow State Law University, translations into Russian of the research reports on Cultural rights and on The new admissibility criterion have now been published on the Court's Internet site (<www.echr.coe.int> – Case-law).

Культурные права в прецедентной практике Европейского Суда по правам человека (rus)

Новый критерий приемлемости: принципы, выработанные за два года (rus)

Glossary of the European Convention on Human Rights in English and Arabic

The glossary of the European Convention on Human Rights in English and Arabic is intended to guide legal professionals from Council of Europe member states in using the correct terminology when they make Convention-based arguments in national proceedings and to correctly understand when reading judgments in English. It completes the glossaries already available developed by the developed by the Council of Europe's Directorate General Human Rights and Rule of Law.

The various glossaries between the English or English languages and Azerbaijani, Bulgarian, Georgian, Romanian, Russian, Serbian and Ukrainian are available on the Court's Internet site (<www.echr.coe.int> – Case-law – Other publications).

ECRI Annual Report 2015

The European Commission against Racism and Intolerance (ECRI) has just published its 2015 annual report. The year 2015 was characterised by two main separate developments that affected areas of concern to ECRI: the ongoing migration crisis and the Islamist terror attacks. This report can be downloaded from the ECRI Internet site (<www.coe.int/ecri> – Publications).

Quarterly activity report of the Commissioner for Human Rights / Rapport trimestriel d'activité du Commissaire aux droits de l'homme

The first quarterly activity report 2016 of the Council of Europe's Commissioner for Human rights is available on the Commissioner's Internet site (<www.coe.int> – Commissioner for Human Rights – activity reports).

Annual Report by the Secretary General of the Council of Europe

Drawn up at the request of the Committee of Ministers and based on the findings of the Council of Europe's monitoring bodies, this third report by the Secretary General provides an in-depth analysis of the state of human rights, democracy and the rule of law in Europe. It can be downloaded from the Council of Europe's Online Resources Internet site (<https://edoc.coe.int/>).