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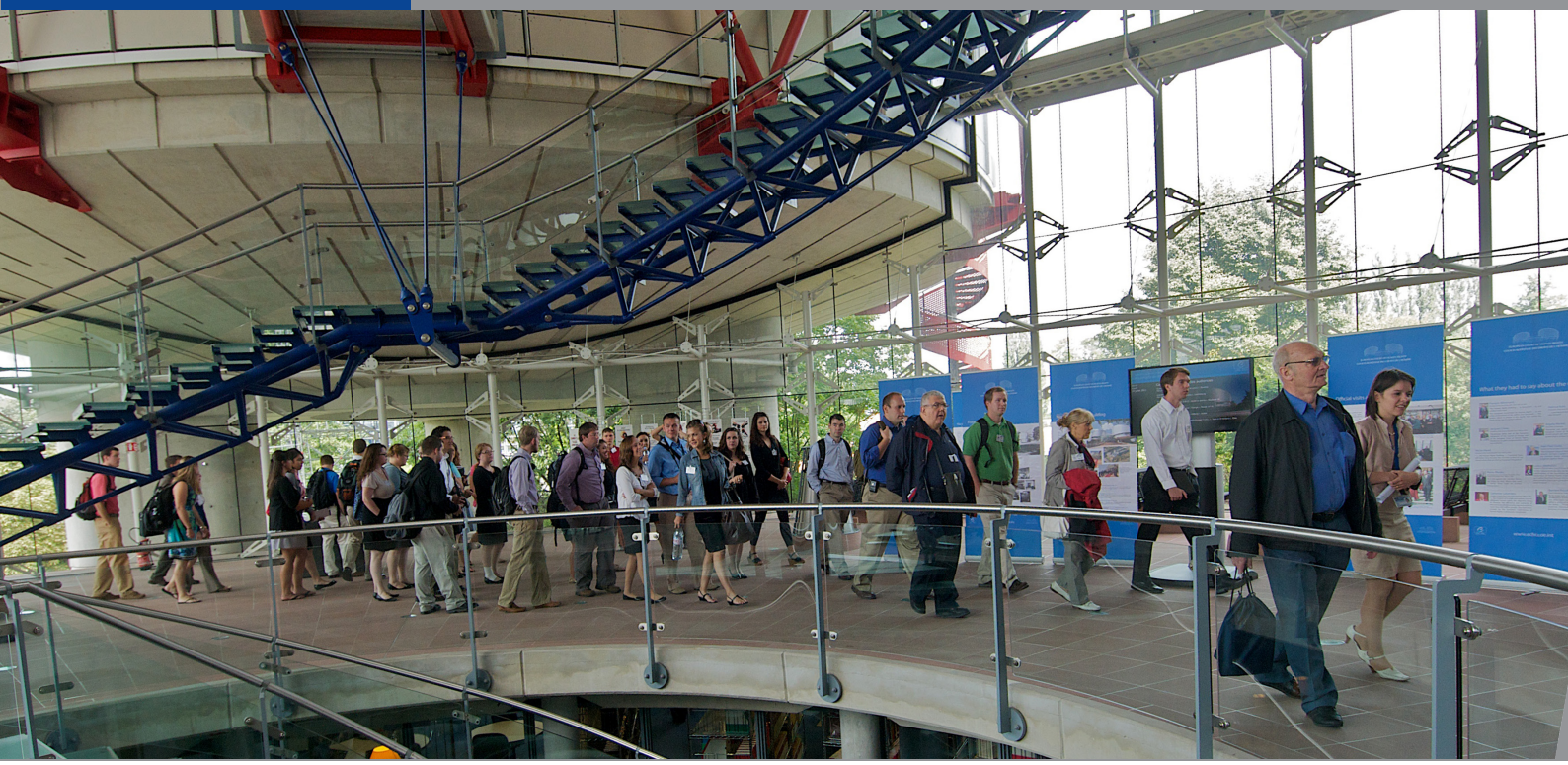

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COUR EUROPÉENNE DES DROITS DE L'HOMME

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ARTICLE 2

Positive obligations (substantive aspect)

Decision to withdraw life-sustaining treatment for infant child suffering from fatal genetic disease: *inadmissible*

Gard and Others v. the United Kingdom, 39793/17, decision 27.6.2017 [Section I]

Facts – The case concerned an infant (Charles Gard) suffering from a rare and fatal genetic disease. In February 2017 the treating hospital sought a declaration from the domestic courts as to whether it would be lawful to withdraw artificial ventilation and provide him with palliative care. His parents also asked the courts to consider whether it would be in the best interests of their son to undergo experimental treatment in the United States. The domestic courts concluded that it would be lawful for the hospital to withdraw life-sustaining treatment because it was likely that the child would suffer significant harm if his present suffering was prolonged without any realistic prospect of improvement, and the experimental therapy would be of no effective benefit.

In the Convention proceedings, the applicants complained, *inter alia*, that the hospital had blocked access to potentially life-sustaining treatment in the United States, in breach of Article 2 of the Convention, and that the domestic court decisions amounted to an unfair and disproportionate interference in their parental rights (Article 8).

Law

Article 2: As to the applicants' complaint that the hospital had, through the domestic legal proceedings, blocked access to life-sustaining treatment for the child, the Court recalled that in *Hristozov and Others*[1] it had found no violation of Article 2 because the respondent State in that case had put in place a regulatory framework governing access to experimental medication. Such a framework was in place in the United Kingdom and was derived from the relevant European Directives.[2] Article 2 of the Convention could not be interpreted as requiring access to unauthorised medicinal products for the terminally ill to be regulated in any particular way.

The Court went on to consider whether there had been a violation of Article 2 on account of the withdrawal of life-sustaining treatment. Of relevance here were (i) the existence in domestic law and practice of a regulatory framework; (ii) the wishes of the patient and those close to him and the opinions of other medical personnel; and (iii) the possibility to refer to the courts doubts regarding the best decision in the patient's interests.[3]

All three elements were satisfied in the present case:

(i) *Regulatory framework* – The Court had already found in a previous case (*Glass*[4]) that an appropriate regulatory framework, consistent with the standards laid down in the Council of Europe's Convention on Human Rights and Biomedicine in the area of consent, existed in the United Kingdom and saw no reason to change that conclusion.

(ii) *Views of patient, family and medical experts* – Although the child could not express his own wishes, the domestic courts had ensured that his wishes were expressed though his guardian, an independent professional appointed expressly by the domestic courts for that purpose. The parents had been fully involved and represented through all the decisions made and significant weight was given to their views. They had also been able to instruct their own medical expert and the domestic courts had engaged in detail with the views of that expert. The opinions of all the medical personnel involved were examined in detail and opinions were also sought from a specialised overseas team. The Court of Appeal had also heard from the doctor in the United States who was willing to treat the child and who had also been invited to discuss his professional views with the child's doctors in the United Kingdom.

(iii) *Referral to courts* – It was evident from the domestic proceedings that there was not only the possibility to approach the courts in the event of doubt but in fact, a duty to do so. The hospital had quite properly applied to the High Court under the

1. *Hristozov and Others v. Bulgaria*, 47039/11 and 358/12, 13 November 2012, Information Note 157.
2. Notably the European Clinical Trials Directive (EC/2001/20).
3. *Lambert and Others v. France* [GC], 46043/14, 5 June 2015, Information Note 186.
4. *Glass v. the United Kingdom*, 61827/00, 9 March 2004, Information Note 62; and *Glass v. the United Kingdom* (dec.), 61827/00, 18 March 2003, Information Note 51.

relevant statute and the inherent jurisdiction of that court to obtain a legal decision as to the appropriate way forward.

Accordingly, and in view of the margin of appreciation left to the authorities, the complaint under Article 2 was manifestly ill-founded.

Conclusion: inadmissible (manifestly ill-founded).

Article 8: There had been interference with the parents' rights relating to their family ties with their son. That interference had been in accordance with the law and pursued the legitimate aims of protecting the "health or morals" and the "rights and freedoms" of a minor.

In examining whether the interference had been necessary in a democratic society, the Court rejected two arguments that had been raised by the parents who had argued that (i) it was not appropriate for the question of their son's treatment to be taken by the courts and (ii) the appropriate test for determining whether the interference with their parental rights was necessary was not whether it was in the child's "best interests", but whether there was a risk of "significant harm" to the child. As to the first argument, the Court stated that in the light of its case-law in *Glass* and *Lambert and Others*, it was clearly appropriate for the treating hospital to turn to the courts in the event of conflict. As to the second argument, there was a broad consensus – including in international law – in support of the idea that in all decisions concerning children, their best interests must be paramount. The question was not, however, decisive in the instant case as the domestic courts had in any event concluded on the basis of extensive expert evidence that there was a risk of "significant harm" to the child, who was likely being exposed to continued pain, suffering and distress and would not benefit from the experimental treatment.

The domestic courts had been meticulous and thorough, ensured that all concerned were represented throughout, heard extensive and high-quality expert evidence and accorded weight to all the arguments raised. The domestic decisions were reviewed at three levels of jurisdiction with clear and extensive reasoning giving relevant and sufficient support for the courts' conclusions at all three levels.

There was accordingly nothing to suggest that the domestic courts' decisions could amount to an arbitrary or disproportionate interference.

Conclusion: inadmissible (manifestly ill-founded).

The Court also declared inadmissible, as manifestly ill-founded, the applicants' complaint under Article 5 of the Convention.

Positive obligations (procedural aspect)

Lack of adequate judicial response to establish circumstances of death of passenger in truck carrying inflammables: *violation*

Sinim v. Turkey, 9441/10, judgment 6.6.2017 [Section II]

Facts – The applicant's husband entered into an agreement with a truck owner for the transport of personal goods and furniture. The husband was informed that the truck had been booked by a transport company for the same day and would also be carrying raw materials belonging to another client. While transporting the goods, the truck was involved in a collision with another vehicle and caught fire. The applicant's husband, who was a passenger in the truck, later died from burns in hospital. It was subsequently discovered that the "raw materials" being transported with the husband's goods were in fact an inflammable liquid which had caught fire upon impact.

Law – Article 2 (procedural aspect): The truck was not equipped with an electrical system to prevent short circuits and fire and carried no warning signs. The driver had not been trained in the transport of dangerous goods, contrary to the clear requirements of the law. No licence had been obtained for the transport of such goods and the shipment was incorrectly described as "raw material" in the invoice and delivery note in a possible attempt to evade inspection by the authorities. All these elements taken together suggested that, although not caused intentionally, the husband's death had resulted from voluntary and reckless disregard of their statutory duties by those responsible. It was not a case of simple omission or human error for which civil remedies were sufficient. By their apparently reckless conduct, the persons responsible for the shipment had caused the kind of serious harm that the legislation in question was intended to prevent. Such action required a criminal-law response to ensure effective deterrence against similar threats to the right to life in the future.

A criminal investigation into the accident had been necessary to determine whether the death was

caused by the unlawful transport of a dangerous substance contrary to section 174 § 1 of the Criminal Code.

Although an investigation was promptly initiated into the circumstances surrounding the death, the public prosecutor appeared to have treated the incident as an ordinary traffic accident caused by negligent driving without paying attention to the cause of the fire that claimed the applicant's husband's life. No steps were taken to determine the composition and chemical properties of the truck's cargo or to identify the individuals or companies involved in the transport of such material. These significant omissions by the public prosecutor were disregarded by the Assize Court, despite the applicant's objections.

In addition, the judicial authorities ignored the applicant's official complaints for a considerable length of time and denied her the right to participate effectively in the proceedings. She was not notified of the expert opinion or of the prosecutor's decision not to prosecute. She was not recognised as a "complainant" by the Assize Court and not notified of its decision.

Those considerations largely sufficed to conclude that the criminal proceedings at issue did not satisfy the State's positive obligations under Article 2 as they failed to shed light on the circumstances of the death and had little deterrent effect in terms of ensuring effective enforcement of the regulatory framework on the transport of dangerous goods.

Although the applicant also brought compensation proceedings against those allegedly responsible, the appropriate judicial response would have been a criminal-law remedy. Civil remedies aimed at awarding damages alone were not sufficient to fulfil the respondent State's obligations under Article 2 in the applicant's case.

Conclusion: violation (unanimously).

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

ARTICLE 5

ARTICLE 5 § 1

Liberty of person

Alleged unlawful detention of journalists: *communicated*

Sabuncu and Others v. Turkey, 23199/17 [Section II]

(See Article 18 below, page 29)

ARTICLE 5 § 3

Brought promptly before judge or other officer

Alleged unlawful detention of journalists: *communicated*

Sabuncu and Others v. Turkey, 23199/17 [Section II]

(See Article 18 below, page 29)

ARTICLE 5 § 4

Speediness of review

Alleged unlawful detention of journalists: *communicated*

Sabuncu and Others v. Turkey, 23199/17 [Section II]

(See Article 18 below, page 29)

ARTICLE 6

ARTICLE 6 § 1 (CIVIL)

Access to court, fair hearing

Application of Islamic law (sharia) in litigation concerning succession to estate of Greek Muslim: *relinquishment in favour of the Grand Chamber*

Molla Sali v. Greece, 20452/14 [Section I]

On the death of her husband the applicant inherited his entire estate under the terms of a will drawn up by her late husband before a notary. The deceased's two sisters contested the will on the grounds that their brother had belonged to the Muslim community and that all matters relating to his estate were therefore subject to Islamic religious law and to the jurisdiction of the mufti rather than to the provisions of the Greek Civil Code. They relied in particular on the 1920 Treaty of Sèvres and the 1923 Treaty of Lausanne, which provided for Islamic customs and Islamic religious law to be applied to Greek nationals who were Muslims.

Following the remittal of the case by the Court of Cassation, the Court of Appeal held in December 2015 that the law applicable to the deceased's estate was Islamic religious law and that the public

will in question did not produce any legal effects. The applicant appealed against that judgment on points of law.

Relying on Article 6 § 1, taken alone and in conjunction with Article 14 of the Convention, the applicant complains of the application to her inheritance dispute of Sharia law rather than the ordinary law applicable to all Greek citizens, despite the fact that her husband's will was drawn up in accordance with the provisions of the Greek Civil Code. She also alleges that she was subjected to a difference in treatment on grounds of religion.

Under Article 1 of Protocol No. 1, the applicant also argues that, by applying Islamic religious law rather than Greek civil law to her husband's will, the Court of Cassation deprived her of three-quarters of her inheritance.

On 6 June 2017, at the applicant's request, the Chamber to which the case had been assigned relinquished jurisdiction in favour of the Grand Chamber.

Impartial tribunal

Composition of appeal court failed to guarantee objective impartiality: *violation*

Ramljak v. Croatia, 5856/13, judgment 27.6.2017 [Section II]

Facts – A judgment adopted in the applicant's favour in civil proceedings was overturned on appeal. The applicant lodged an appeal with the Supreme Court alleging that she had not had a fair hearing before an independent and impartial tribunal because one of the appeal judges was the father of a trainee lawyer employed in the office of the two lawyers representing her opponent. Her appeal was dismissed and her constitutional complaint declared inadmissible.

Before the European Court, the applicant complained that her right under Article 6 to an impartial tribunal had been violated.

Law – Article 6 § 1: There was no evidence as regards personal bias on the part of the appeal judge. The case was therefore to be examined from the perspective of objective impartiality and, more specifically, the question whether the applicant's doubts, stemming from the specific circumstances, could be regarded as objectively justified.

The nature of the personal link was of importance when determining whether the applicant's fears were objectively justified. There was nothing to suggest that the judge was not aware of the fact that his son was employed at a law office representing a party in the proceedings at issue. However, nothing in the case file showed that he informed the president of the court of those circumstances. Had he done so all the issues concerning his participation in the case would have been addressed before it was examined. The fact that such a close relative as the son of a judge adjudicating a civil case at the appeal stage had such close working ties with lawyers representing the applicant's opponent as one of the parties in those civil proceedings, although he had no involvement in the case, and that he was in a position of subordination to them compromised the court's impartiality and made it open to doubt.

It was not possible to ascertain the exact influence of the judge on the outcome of the appeal since it had been decided in a closed meeting. However, it could be observed that he had presided over the appeal court's three-judge panel and that therefore the applicant had grounds to believe that he had had an important role in delivering the judgment against her and that the impartiality of the court could have been open to genuine doubt.

Although the higher courts had the power to quash the decision on the ground that it appeared that the president of the appeal panel had not been impartial, they had declined to do so.

Conclusion: violation (six votes to one).

Article 41: EUR 3,500 in respect of non-pecuniary damage.

(See *Morice v. France* [GC], 29369/10, 23 April 2015, Information Note 184)

ARTICLE 6 § 1 (CRIMINAL)

Equality of arms

Appointment of expert who had already reported to the public prosecutor during the preliminary investigation as official expert at trial: *no violation*

J.M. and Others v. Austria, 61503/14 et al., judgment 1.6.2017 [Section V]

Facts – The applicants were investigated in connection with an alleged breach of trust and fraud relating to the level of consultancy fees paid in

connection with the sale of shares in a bank. During the preliminary investigation the public prosecutor appointed an expert (F.S.) to submit a report on what would have been a reasonable payment for the consultant's services.

During the applicants' ensuing trial the same expert from the preliminary investigation was appointed an official expert. He submitted a written report and was questioned by the trial court and the parties. Although the applicants were able to challenge him for bias, their challenge was dismissed as unfounded. An expert commissioned by the defence sat next to the applicants' lawyers and advised them, but was not allowed to question F.S. on his own and the applicants' request to call evidence from their private experts to counter F.S.'s findings were rejected. The applicants were convicted.

In the Convention proceedings, the applicants complained that the criminal proceedings had been unfair as the official expert at the trial (F.S.) had also acted as an expert appointed by the public prosecutor during the preliminary proceedings.

Law – Article 6 §§ 1 and 3 (d): If a bill of indictment is based on the report of an expert who was appointed in the preliminary investigations by the public prosecutor, the appointment of the same person as expert by the trial court entails the risk of a breach of the principle of equality of arms. However, that risk can be counterbalanced by specific procedural safeguards.

In the instant case, the applicants' doubts about F.S.'s impartiality were not objectively justified. As a professor of law at a German university, F.S. was not, economically or otherwise, dependent on the public prosecutor's office. He had been present at the trial and had given a brief summary of his report and answered questions by the court and the parties, but otherwise had played no active role. The applicants had been free to rely on assistance by private experts for support at the trial, for example when questioning F.S. F.S. was under a strict legal obligation to be objective and the trial court had examined the applicants' allegations of bias before dismissing them as unfounded. F.S.'s evidence was not decisive for the conviction. The applicants had had a reasonable opportunity to present their case and had not been placed at a substantial disadvantage *vis-à-vis* the prosecution. There had thus been no breach of the principle of equality of arms in the criminal proceedings against the applicants.

Conclusion: no violation (unanimously).

ARTICLE 6 § 1 (ENFORCEMENT)

Reasonable time

Length of time taken to comply with court orders for payment of costs of "Pinto" proceedings directly to the plaintiffs' lawyers: *inadmissible*

Izzo and Others v. Italy, 46141/12, decision 30.5.2017 [Section I]

Facts – The applicants were lawyers who acted as counsel for a number of clients seeking compensation under the Pinto Act[5] in length-of-proceedings cases. Having advanced the court costs on behalf of their clients the applicants requested and were granted an order for the legal costs and fees (totalling between EUR 150 and EUR 2,180) to be paid directly to them. The sums were paid only after delays of between 16 and 23 months. In the Convention proceedings, the applicants complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 of the delays in payment.

Law – Article 6 § 1 of the Convention and Article 1 of Protocol No. 1: The Court reiterated that, in the light of the particular nature of the "Pinto" remedy, decisions adopted within the framework of proceedings instituted under the Pinto Act should in principle be complied with within a particularly short time, specifically within a period not exceeding six months from the date on which the decision awarding compensation became enforceable.

However, that short time-limit stemmed from the compensatory nature of the "Pinto" remedy which was relevant only as regards the plaintiff who brought the claim under the Pinto Act, not the lawyers who represented them. A "Pinto" decision awarding a certain sum directly to the lawyer had no compensatory value and merely represented a credit instrument evidencing a debt owed by the State. Adherence to the particularly short time-limit for the execution of the "Pinto" decisions in such cases was not warranted. In the instant case, the judgments of the "Pinto" courts were complied with following delays ranging from 16 to 23 months. Those periods were not unreasonable for the purposes of either Article 6 § 1 of the Convention or Article 1 of Protocol No. 1.

5. Law no. 89 of 24 March 2001 (the "Pinto Act").

Conclusion: inadmissible (manifestly ill-founded).

ARTICLE 6 § 3 (c)

Defence through legal assistance

No provision for legal assistance during questioning by police and investigating judge in initial phase of criminal proceedings: *relinquishment in favour of the Grand Chamber*

Beuze v. Belgium, 71409/10 [Section II]

In December 2007 the applicant was arrested by the French gendarmerie and taken into police custody for the execution of a European Arrest Warrant. According to the arrest record he waived his right to a lawyer at that stage.

After being surrendered to the Belgian authorities, the applicant was brought before the investigating judge and stated that he had not retained a lawyer. The record of the interview indicated that he had been informed that the investigating judge would notify the Chairman of the Bar Council of the situation.

A second warrant was issued on 8 August 2008, extending the scope of the investigating judge's remit. In 2008 and 2009 the applicant was questioned on seven occasions by the police and on two occasions by the investigating judge. At no point was he assisted by a lawyer and such assistance at that stage of the proceedings was not provided for under Belgian law at the time.

Before the Assize Court, the applicant, assisted by counsel, requested that the proceedings be declared inadmissible on the ground that he had not been assisted by a lawyer while being questioned by the police and the investigating judge. The Assize Court rejected that defence. He was found guilty and sentenced to life imprisonment.

The Court of Cassation dismissed the applicant's argument based on the absence of legal assistance in the preliminary phase of the proceedings, considering that, having regard to the proceedings as a whole, his right to a fair trial had been respected.

Relying on Article 6 §§ 1 and 3 (c) the applicant complains that he did not enjoy the right to legal assistance at the initial stage of the proceedings brought against him.

On 13 June 2017 the Chamber to which the case had been allocated relinquished jurisdiction in favour of the Grand Chamber.

ARTICLE 7

Nulla poena sine lege

Removal from elected office pursuant to legislation introduced after the impugned offence had been committed: *relinquishment in favour of the Grand Chamber*

Berlusconi v. Italy, 58428/13 [Section I]

(See Article 3 of Protocol No. 1 below, page 34)

ARTICLE 8

Respect for private and family life, positive obligations

Insufficient protection afforded to child's image: *violation*

Bogomolova v. Russia, 13812/09, judgment 20.6.2017 [Section III]

Facts – In 2007 the applicant, a single mother, learnt that a photograph of her son had been reproduced on the cover page of a booklet entitled "Children need a family", which was published by a centre for psychological, medical and social support. She brought civil proceedings against the centre complaining that her and her son's honour, dignity and reputation had been damaged by the unlawful publication of her son's photograph in a booklet calling for adoption and that the photograph had been published without her authorisation or knowledge. Her claims were dismissed.

Before the European Court the applicant complained that the domestic courts had not afforded sufficient protection to her and her son's right to respect for their private and family life.

Law – Article 8: In order for Article 8 to come into play, the attack on personal reputation had to attain a certain level of seriousness and had to have been carried out in a manner causing prejudice to personal enjoyment of the right to respect for private life. Regarding photographs, a person's image constituted one of the chief attributes of his or her personality, as it revealed that person's unique characteristics and distinguished them from his or her peers. The right to the protection of one's image was thus one of the essential components of personal development and presupposed the right to control the use of that image, including the right to refuse publication thereof.

The effect of the publication of the photograph attained a certain level of seriousness and prejudiced the applicant's enjoyment of her right to respect for her private life. The main issue in the case was whether the domestic courts had afforded the applicant and her son sufficient protection of their private life. In taking the decision to dismiss the applicant's claims, the domestic courts established that the photograph had been taken with the applicant's authorisation and that the applicant had not placed any restrictions or conditions on its use. However, they had failed to examine whether she had given her consent to the publication of the photograph.

The case concerned the publication of a photograph which, at least by inference, could be seen to suggest that the applicant's son was an orphan. Consequently, the impugned publication could have given its readers the false impression that the applicant's son had no parents or that his parents had abandoned him. Any such impression or other similar false impressions could prejudice the public perception of the family bond and relations between the applicant and her son.

Conclusion: violation (unanimously).

Article 41: EUR 7,500 in respect of non-pecuniary damage; EUR 130 in respect of pecuniary damage.

(See *Reklos and Davourlis v. Greece*, 1234/05, 15 January 2009, Information Note 115)

Respect for private life, positive obligations

Expert medical report relieving doctors of liability without examining whether they had provided due professional care: *violation*

Erdinç Kurt and Others v. Turkey, 50772/11, judgment 6.6.2017 [Section II]

Facts – The applicants are a couple and their daughter, who was left severely disabled following two operations. The first operation was designed to treat a very serious congenital heart condition; the second was aimed at remedying a complication arising out of the first operation, but resulted in severe neurological damage.

The parents brought an action for compensation in the civil courts and the Court of First Instance ordered an expert report. Citing extensively from the literature, the report detailed the incidence of complications and fatalities linked to this type of surgery, and concluded in the light of the very substantial risks that there had been no negligence on the part of the doctors. Alleging that the report had failed to provide sufficient explanations, the applicants requested a second expert report, without success.

Law – Article 8: While the findings of an expert report were not binding on the courts, they were apt to have a decisive influence on the latter's assessment since they concerned a technical field outside the courts' sphere of expertise.

Only where it was established that the doctors had provided due professional care in performing the operation, taking due account of the risks involved, could the damage caused be regarded as an unforeseeable consequence of treatment. Were it otherwise, surgeons would never be called to account for their actions, since any surgical intervention carried a degree of risk.

In the instant case the issue to be decided by the experts had consisted precisely in determining whether, irrespective of the risk posed by the operation, the doctors had contributed to the damage caused.

However, the expert report had not even touched on this issue. Basing its findings solely on data from the literature attesting to the existence of risks, it had not examined whether the doctors in question had acted in compliance with modern medical standards before, during and after the operation. As it was not based on any specific evidence, its conclusion that there had been no negligence was to be regarded more as affirmation than as proof.

The report had therefore given insufficient explanations regarding the issue on which it was supposed to provide technical insight. Faced with this shortcoming, the authorities had taken no action in response to the applicants' request for a second expert report. Accordingly, the applicants had not obtained an adequate response from the courts in the light of the requirements inherent in protection of the patient's right to physical integrity.

Conclusion: violation (unanimously).

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

(See also, from the standpoint of Article 2 of the Convention, *Eugenia Lazăr v. Romania*, 32146/05,

16 February 2010, Information Note 127; and *Altuğ and Others v. Turkey*, 32086/07, 30 June 2015)

Respect for private life

Fixed period for retention of DNA samples of convicted offenders irrespective of gravity of offence and with no possibility of seeking their destruction: *violation*

Aycaguer v. France, 8806/12, judgment 22.6.2017 [Section V]

Facts – In 2008 the applicant was sentenced to two months' imprisonment, suspended, for having struck gendarmes with an umbrella during a farmers' trade union demonstration. The applicant was subsequently ordered to undergo biological testing with a view to registration in the national computerised DNA database (FNAEG) for persons convicted of specific offences (listed in legislation), the applicant refused to undergo the testing. He was not registered in the database but was fined EUR 500 for his refusal.

Law – Article 8: Where a particularly important aspect of someone's life or identity is in issue, the State's margin of appreciation is generally restricted.

Personal data protection plays a primordial role in the exercise of a person's right to respect for his private life enshrined in Article 8 of the Convention. Domestic legislation must therefore ensure that the appropriate safeguards are in place.

The considerations set out below led the Court to conclude that in the absence of a fair balance between the competing public and private interests involved in the case, the respondent State had overstepped its margin of appreciation and that the interference with the applicant's right to respect for his private life had been disproportionate.

a) *Duration of data storage* – In 2010 the French Constitutional Council declared constitutional the legislative provisions on the impugned database, subject to "ensuring that the duration of storage of such personal data remained proportional, in the light of the purpose of the database, to the nature and/or the seriousness of the offences in question". No appropriate action has so far been taken on that reservation.

According to the Code of Criminal Procedure, the duration of storage of DNA profiles cannot exceed "forty years" in the case of persons convicted of one of the listed offences. That maximum period ought to have been established by decree. The absence of a decree means that the forty-year period is no longer a mere maximum but, in practice, the norm.

At present, therefore, the duration of storage is not differentiated according to the nature and seriousness of the offence committed. However, a wide range of different situations is likely to fall within the scope of the database in question, potentially covering extremely serious offences (e.g. sex offences, terrorism, crimes against humanity and trafficking in human beings).

The present case (concerning unidentified gendarmes who were struck with an umbrella in the context of a political and trade union activity) is obviously different from those relating specifically to such serious offences as organised crime and sexual attacks.

b) *Deletion procedure* – Access to such a procedure is only authorised for suspects, not for convicted persons (such as the applicant). The Court, however, took the view that convicted persons too should be allowed to submit a request for the deletion of stored data.

Conclusion: violation (unanimous).

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

(See also the Factsheet on Protection of personal data)

Removal of name of former police investigator with criminal conviction from list of trainee advocates: *no violation*

Jankauskas v. Lithuania (no. 2), 50446/09, judgment 27.6.2017 [Section IV]

Facts – In October 2000 the applicant, a police investigator, was found guilty of abuse of office for having solicited and obtained bribes in exchange for the discontinuation of criminal proceedings. He was sentenced to a period of imprisonment and prohibited from working in law enforcement or the justice system for five years. In 2007, following his release from prison, the applicant wrote to the Lithuanian Bar Association, requesting to be admitted as a trainee advocate. His application was accepted. The Bar Association subsequently became aware of his previous conviction which he had failed to mention in his application. In domestic proceedings

the applicant was found to have breached the Code of Professional Ethics for Advocates and was removed from the list of trainee advocates as a disciplinary measure. The applicant's appeals against that measure were dismissed.

Before the European Court the applicant complained about the decision to strike his name off the list arguing that it had violated his right to respect for his private life under Article 8.

Law – Article 8

(a) *Applicability* – The notion of private life did not in principle exclude activities of a professional or business nature. Restrictions on registration as a member of certain professions, which could to a certain degree affect an applicant's ability to develop relationships within the outside world would undoubtedly fall within the sphere of his or her private life.

The applicant had a degree in law and from 1991 up to his conviction had worked as a police investigator. After his conviction had been expunged, he practised law as an in-house lawyer in the private sector and also worked as a trainee advocate for ten months. Taking into account the applicant's education and his prior professional experience the Lithuanian authorities' decision to remove him from the list of trainee advocates affected his ability to pursue his professional activity and there were consequential effects on the enjoyment of his right to respect for his private life within the meaning of Article 8.

(b) *Merits* – The applicant's dismissal as a trainee advocate constituted an interference with his right to respect for his private life. The interference had been prescribed by law and pursued a legitimate aim, namely that of the protection of the rights of others. As to whether the interference was necessary in a democratic society, the Court underlined the important role played by lawyers in the administration of justice. For members of the public to have confidence in the administration of justice they had to have confidence in the ability of the legal profession to provide effective representation. That special role of lawyers, as independent professionals, in the administration of justice entailed a number of duties and restrictions, particularly with regard to their professional conduct, which had to be discreet, honest and dignified.

Any criminal proceedings entailed certain consequences for the private life of an individual who had committed a crime. Those consequences were compatible with Article 8 of the Convention provided that they did not exceed the normal and inevitable consequences of such a situation.

The domestic courts had found that the applicant was not of high moral character based on consistent domestic case-law, which emphasised the high standards applicable to the profession of advocate. They underlined that the applicant had committed his crimes while working in law enforcement. Having found the applicant guilty, the domestic courts also prohibited him from working in law enforcement and the justice system for five years. Given the nature of the crimes committed by the applicant, it was not unreasonable for the domestic courts to have found that it was inappropriate to regard the applicant as being person of high moral character so as to qualify to work in the justice system. The principles applicable to an advocate's profession contained values such as the dignity and honour of the legal profession, the integrity and good standing of the individual advocate, respect towards professional colleagues and respect for the fair administration of justice.

In addition, the applicant's prior conviction and the nature and scope of his crimes were only one of the grounds for holding that he lacked high moral character. The domestic authorities had also noted that a person who wished to become an advocate had an obligation to cooperate honestly and fully with the Bar Association and to disclose all relevant information, which the applicant had failed to do. It was not unreasonable that the domestic authorities should have concluded that such an obligation flowed from notions of honesty and ethics and the idea that the relationship between an advocate and the Bar Association had to be based on mutual respect and goodwill assistance. The applicant should have understood the significance of such information for his application and the need to provide it.

The domestic courts had carried out a careful analysis and had sought to strike a balance between the protection of the applicant's private life and the need to protect the rights of others and the justice system as a whole.

Conclusion: no violation (unanimously).

(See *Bigaeva v. Greece*, 26713/05, 28 May 2009, Information Note 119; *Morice v. France* [GC], 29369/10, 23 April 2015, Information Note 184; and *Lekavičienė v. Lithuania*, 48427/09, 27 June 2017)

Respect for family life

Child removed from parents and declared eligible for adoption on ground of precarious living conditions of family: *violation*

Barnea and Caldararu v. Italy, 37931/15, judgment 22.6.2017 [Section I]

Facts – The applicants are a Roma family. The parents (the first two applicants) and their four children (including the three other applicants) were living in a camp in precarious conditions.

In June 2009 the youngest daughter was placed in an institution, then declared eligible for adoption by a court of first instance in December 2010. The applicants were mainly criticised for failing to provide the child with adequate material conditions and for having entrusted her to a third party.

In October 2012, however, the court of appeal decided that the child was to be gradually returned to her family over a six-month period. The social services did not comply with those instructions, and in November 2014 the court extended the child's placement in a foster family. In January 2015 the court of appeal set aside that decision but maintained the child's placement in the foster family with whom she had lived for six years.

Finally, in August 2016 the first-instance court ordered that the child be returned to her birth family. The child was returned in September 2016, an experience that she found very difficult.

Law – Article 8: Notwithstanding the respondent State's margin of appreciation, the Italian authorities had failed to make appropriate and sufficient efforts to secure the applicants' right to live with their child between June 2009 and November 2016, given the conditions in which they were separated and the non-execution of the court of appeal's 2012 judgment providing for the child's return to her family of origin, thus breaching the applicants' right to respect for their family life.

Firstly, the grounds on which the first-instance court had refused to return the child to the applicants and declared her eligible for adoption did not constitute "very exceptional circumstances" capable of justifying the severing of family ties. Moreover, before placing the child and opening a procedure for adoption, the authorities ought to have taken practical measures to enable her to live with the applicants.

At no stage of the proceedings were allegations made of ill-treatment, sexual abuse or emotional deficiencies, or of any worrying health problems or of psychological instability on the part of the parents. On the contrary, the ties between the parents and the child were particularly strong. The applicants had been capable of fulfilling their parental role and had not had a negative influence on the child's development. Moreover, the first expert report suggested that a process be started to reintegrate the child into her family.

Secondly, following the court of appeal's judgment in 2012, no plan to rebuild the relationship between the applicants and the child had been implemented within the recommended six months. The first-instance court had then extended the placement in a foster family and reduced the number of meetings between the child and her family to four per year, basing this decision on the applicants' conduct and physical living conditions, the child's potential difficulties in reintegrating into her birth family and the strong ties that she had formed with the foster family.

The fact that a child could be placed in an environment more beneficial for his or her upbringing could not on its own justify a compulsory measure of removal from the care of the biological parents. In the present case, the applicants' ability to provide their child with educational and emotional support had not been at issue and had been recognised on several occasions by the court of appeal.

Thirdly, although the first-instance court's decision had subsequently been set aside in 2015, the court of appeal had nonetheless confirmed the foster placement on the grounds that, given the passage of time – six years in this instance – very strong bonds had been forged with the foster family and it was no longer feasible to return the child to the applicants.

However, effective respect for family life required that future relations between parent and child be determined solely in the light of all relevant considerations and not by the mere effluxion of time. In the present case, the grounds given by the social services and subsequently by the judicial authorities in refusing the child's return to the applicants did not constitute the "very exceptional" circumstances which could justify severing family ties.

The Court understood that, given the passage of time and a child's integration in the foster family,

the national courts could refuse his or her return. In the present case, however, the passage of time, a consequence of the social services' inertia in beginning the process of rebuilding the family, and the grounds put forward by the first-instance court for extending the child's temporary placement had been decisive factors in preventing the applicants' reunion with the child, which ought to have occurred in 2012.

Conclusion: violation (unanimously).

Article 41: EUR 40,000 in respect of non-pecuniary damage.

(See *Kutzner v. Germany*, 46544/99, 26 February 2002, Information Note 39; *Couillard Maugery v. France*, 64796/01, 1 July 2004, Information Note 66; *Clemeno and Others v. Italy*, 19537/03, 21 October 2008, Information Note 112; *Saviny v. Ukraine*, 39948/06, 18 December 2008, Information Note 114; *B. v. Romania (no. 2)*, 1285/03, 19 February 2013, Information Note 160; *R.M.S. v. Spain*, 28775/12, 18 June 2013, Information Note 164; *Zhou v. Italy*, 33773/11, 21 January 2014, Information Note 170; and *Soares de Melo v. Portugal*, 72850/14, 16 February 2016, Information Note 193)

Decision to withdraw life-sustaining treatment for infant child against parents' wishes: *inadmissible*

Gard and Others v. the United Kingdom, 39793/17, decision 27.6.2017 [Section I]

(See Article 2 above, page 8)

ARTICLE 9

Freedom of religion, manifest religion or belief

Refusal to register religious association owing to lack of precise description of its beliefs and rites in its statute: *violation*

Metodiev and Others v. Bulgaria, 58088/08, judgment 15.6.2017 [Section V]

Facts – In February 2007 ten individuals who were Ahmadi Muslims, including nine of the 31 applicants, decided to set up a new religious association called the Ahmadiyya Muslim Community.

The first applicant filed with the district court an application for the registration of the new religious association in accordance with the Religions Act. He appended the association's constitution setting out its aims and beliefs. However, the national courts denied the application on the ground that there was no specific statement of the association's beliefs and rites.

Law – Article 9, read in the light of Article 11: Owing to the district court's failure to register it the religious association was unable to acquire legal personality and exercise the rights associated with that status in its own name, such as the right to own or rent property, hold bank accounts or bring legal proceedings – rights which were nevertheless essential for the purpose of manifesting its religion. Thus the refusal to register the association pursuant to the Religions Act constituted interference with the rights secured under Article 9 of the Convention, interpreted in the light of Article 11. The interference was "prescribed by law" and pursued the legitimate aims of protecting public order and the rights and freedoms of others.

The sole ground relied on by the Supreme Court of Cassation for denying the application was the lack of any sufficiently precise and clear indication of the beliefs and rites of the Ahmadi faith in the association's constitution. It had concluded that the constitution did not meet the requirements of the relevant provisions of the Religions Act, which sought to distinguish between the different denominations and avoid confrontations between religious communities.

The name of the religious association and its constitution clearly indicated that it belonged to the Ahmadiyya Community, which was present throughout the world, and its constitution set out the beliefs and fundamental values of its followers. The Religions Act did not contain any specific provisions as to what degree of precision such a description should have or what specific information had to be given in the statement of beliefs and rites. There were no other rules or guidelines accessible to the applicants which could have been of help to them in that connection. It had not therefore been straightforward for the applicants to ensure that their constitution complied with the precision required by the domestic courts. In addition, the applicants were not given the possibility of rectifying the shortcoming by providing additional information to the relevant courts.

The religious association, as a prerequisite for registration, had to show how its beliefs were differ-

ent from denominations already registered and, in particular, from the mainstream Muslim faith. Such an approach, when strictly adopted as was the case here, would lead in practice to the refusal of registration of any new religious association with the same doctrine as an existing denomination. Having regard to the impossibility under Bulgarian law for an association with religious activities to obtain legal personality by any other means, that approach of the highest court could result in allowing the existence of only one religious association for each religious movement and in requiring all followers to adhere to it. Moreover, the assessment of the nature of beliefs was a matter for the courts and not for the religious communities themselves.

Such an approach was hard to reconcile with the freedom of religion secured by Article 9 of the Convention, interpreted in the light of Article 11. The right to freedom of religion excluded in principle any assessment by the State of the legitimacy of religious beliefs or the forms of expression of those beliefs, even if the aim was to preserve unity within a religious community. The alleged lack of precision in the description of the religious association's beliefs and rites in its constitution was not capable of justifying the denial of the registration in question, which was accordingly not necessary in a democratic society.

Conclusion: violation (unanimously).

Article 41: EUR 4,000 to the first applicant for non-pecuniary damage; finding of violation sufficient in itself for any non-pecuniary damage sustained by the other applicants.

(See *Hassan and Chaush v. Bulgaria*, 30985/96, 26 October 2000; *Metropolitan Church of Bessarabia and Others v. Moldova*, 45701/99, 13 December 2001, Information Note 37; *Kimlya and Others v. Russia*, 76836/01 and 32782/03, 1 October 2009, Information Note 123; and *İzzettin Doğan and Others v. Turkey* [GC], 62649/10, 26 April 2016, Information Note 195)

ARTICLE 10

Freedom of expression

NGOs bound by requirement to verify factual statements defamatory of private individuals: *no violation*

Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina, 17224/11, judgment 27.6.2017 [GC]

Facts – The applicants, a religious community of Muslims and three NGOs of ethnic Bosniacs in the Brčko District, sent a letter to the highest district authorities, voicing their concerns about the procedure for the appointment of director of the multi-ethnic public radio station and alleging that an editor at the station, who had been proposed for the position, had carried out actions which were disrespectful of Muslims and ethnic Bosniacs. Soon afterwards, the letter was published in three different daily newspapers. The editor brought civil defamation proceedings. The applicants were held liable for defamation and ordered to retract the letter, failing which they were to pay compensation for non-pecuniary damage.

Before the European Court the applicants complained that their punishment violated their right to freedom of expression as guaranteed by Article 10.

Law – Article 10: The decisions of the domestic courts amounted to an interference with the applicants' freedom of expression. The interference had been prescribed by law and pursued a legitimate aim, namely that of the protection of the reputation of others. The central issue before the Court was whether the interference was necessary in a democratic society.

Accusing the editor of being disrespectful in regard to another ethnicity and religion was not only capable of tarnishing her reputation, but also of causing her prejudice in both her professional and social environment. Accordingly, the accusations attained the requisite level of seriousness as could harm her rights under Article 8. Therefore the Court had to verify whether the domestic authorities had struck a fair balance between the two values guaranteed by the Convention, namely, on the one hand, the applicant's freedom of expression protected by Article 10 and, on the other, the editor's right to respect for her reputation under Article 8.

The applicants were not in any subordinated work-based relationship with the public radio which would have made them bound by a duty of loyalty, reserve and discretion towards it and as such, there was no need for the Court to enquire into issues central to its case-law on whistle-blowing. The Court shared the opinion of the domestic authorities that the applicants' liability for defamation

should be assessed only in relation to their private correspondence with local authorities, rather than the publication of the letter in the media, as it had not been proven that they had been responsible for its publication.

When an NGO drew attention to matters of public interest, it was exercising a public watchdog role of similar importance to that of the press and could be characterised as a social watchdog. In the area of press freedom, by reason of the duties and responsibilities' inherent in the exercise of freedom of expression, the safeguard afforded by Article 10 to journalists in relation to reporting on issues of general interest was subject to the proviso that they were acting in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism. The same considerations applied to an NGO assuming a social watchdog function.

In balancing the competing interests involved, it was appropriate to take account of the criteria that generally applied to the dissemination of defamatory statements by the media in the exercise of its public watchdog function.

(a) *How well-known was the person concerned and what was the subject of the allegations* – By having applied for the post of the radio's director and bearing in mind the public interest involved in the information contained in the letter, the editor had to be considered to have inevitably and knowingly entered the public domain and laid herself open to close scrutiny of her acts. In such circumstances, the limits of acceptable criticism were accordingly to be wider than in the case of an ordinary professional.

(b) *Content, form and consequences of the information passed on to the authorities* – An important factor was the wording used by the applicants in the impugned letter. They had not explicitly said that part of the information which they passed on to the authorities had emanated from other sources, such as radio employees. They had introduced their letter with the words "according to our information", but had not clearly indicated that they had acted as messengers. Therefore they implicitly presented themselves as having direct access to that information and in those circumstances they had assumed responsibility for the statements.

Another important factor was whether the thrust of the impugned statements had been primarily to accuse the editor or whether it had been to notify the competent State officials of conduct which to them appeared irregular or unlawful. The applicants maintained that their intention had been to inform the competent authorities about certain irregularities and to prompt them to investigate and verify the allegations made in the letter. However, the impugned letter did not contain any request for investigation and verification of the allegations.

As to the consequences of the above accusations passed on to the authorities, there could be little doubt that when considered cumulatively and against the background of the specific context in which they were made, the conduct attributed to the editor was to be regarded as particularly improper from a moral and social point of view. The allegations cast her in a very negative light and were liable to portray her as a person who was disrespectful and contemptuous in her opinions and sentiments about Muslims and ethnic Bosniacs. The domestic courts had held that the statements in question contained defamatory accusations that damaged her reputation and the Court found no reason to hold otherwise. That the allegations were submitted to a limited number of State officials by way of private correspondence did not eliminate their potential harmful effect on the career prospects of the editor as a civil servant and her professional reputation as a journalist. Irrespective of how the letter reached the media, it was conceivable that its publication opened a possibility for public debate and aggravated the harm to her dignity and professional reputation.

(c) *The authenticity of the information disclosed* – The most important factor relevant for the balancing exercise in the case was the authenticity of the information passed on to the authorities. In the context of press freedom, special grounds were required before the media could be dispensed from their ordinary obligation to verify factual statements that were defamatory of private individuals. Similarly to newspapers, the applicants were bound by the requirement to verify the veracity of the allegations submitted. That requirement was inherent in the Code of Ethics and Conduct for NGOs.

The domestic authorities had held that there was an evident inconsistency between what the appellants had been told by the radio's employees and what they had reported in the letter. The applicants, as NGOs whose members enjoyed a good reputation in society, were required to present an accurate rendering of the employees' account, as an important

element for the development and maintaining of mutual trust and of their image as competent and responsible participants in public life. The domestic courts had established that, contrary to what had been alleged, the editor had not been the author of comments reported in the weekly newspaper. The verification of that fact prior to reporting would not have required any particular effort on the part of the applicants.

The Court found no reason to depart from the findings of the domestic courts that the applicants had not proved the truthfulness of their statements which they knew or ought to have known were false and accordingly concluded that the applicants did not have a sufficient factual basis for their impugned allegations about the editor in their letter.

(d) *The severity of the sanction* – The domestic authorities had ordered that the applicants inform the authorities that they had retracted their letter, failing which they would have to pay EUR 1,280 jointly in respect of non-pecuniary damage. The amount the applicants were ordered to pay was not, in itself, disproportionate.

The Court discerned no strong reasons which would require it to substitute its view for that of the domestic courts and to set aside the balancing done by them. It was satisfied that the disputed interference was supported by relevant and sufficient reasons and that the authorities of the respondent State had struck a fair balance between the applicants' interest in free speech, on the one hand, and the editor's interest in protection of her reputation on the other hand, thus acting within their margin of appreciation.

Conclusion: no violation (eleven votes to six).

(See *Zakharov v. Russia*, 14881/03, 5 October 2006; *Björk Eiðsdóttir v. Iceland*, 46443/09, 10 July 2012, Information Note 154; *Pedersen and Baadsgaard v. Denmark* [GC], 49017/99, 17 December 2004, Information Note 70)

Conviction of newspaper for publishing criminal procedural documents before they had been read out in open court: *no violation*

Giesbert and Others v. France, 68974/11 et al., judgment 1.6.2017 [Section V]

Facts – The applicants, a magazine, its editor-in-chief and a journalist, were convicted of publishing two articles quoting documents relating to a set criminal proceedings before they were to be read out in open court in the high-profile case of Ms Bettencourt, one of the wealthiest persons in France, who had given B. a large number of money gifts totalling several hundred million euros. The national courts found that the impugned publications had infringed B.'s right to a fair trial with respect for the rights of the defence and the presumption of innocence and had violated section 38 of the 1881 Law publishing the offence of publishing documents relating to criminal proceedings before they are read out in open court.

Law – Article 10: The impugned convictions amounted to an interference in the applicants' exercise of their right to freedom of expression as provided for by law with a view to protecting the reputation and rights of others and safeguarding the authority and impartiality of the judiciary.

The Court held that the criteria established in the *Bédat v. Switzerland* [GC] judgment (no. 56925/08, 29 March 2016, Information note 194), which should guide the domestic authorities of the States Parties to the Convention in balancing the rights secured under Article 10, on the one hand, and the public and private interest covered by the secrecy of judicial investigations, on the other, were applicable *mutatis mutandis* to the present case.

(a) *As regards how the applicants obtained the impugned information* – Although Article 38 of the 1881 Law does not cover or penalise the circumstances under which a document pertaining to a set of proceedings was obtained but merely punishes the publication of such a document, the applicants should have known that the verbatim publication of any of the impugned documents fell foul of the prohibition laid down in that article.

(b) *As regards the content of the impugned articles* – The articles had been slanted towards the truth of the charges against B., in breach of his right to the presumption of innocence.

(c) *Contribution of the impugned articles to the public interest* – The applicants' criticised statements, which concerned public figures and the functioning of the judiciary, were made in the framework of a public-interest debate which transcended the mere curiosity of a certain readership about an event or an anonymous trial. The public interest in receiving general information exceeded the bounds of the proceedings in question.

The decisions given by the domestic courts did not take into consideration the potential contribution of the article published to the public debate and the public interest; the fact that they did not find such contribution sufficiently relevant was a discretionary matter for the courts.

(d) *Influence of the impugned articles on the conduct of the criminal proceedings*

(i) *As regards the articles of 10 December 2009 and 4 February 2010 in relation to B.* – In view of the complex questions which the judicial authorities had to determine as regards, on the one hand, Ms Bettencourt's vulnerability, and, on the charges of abuse of weakness against B., the publication of procedural documents in biased articles comprised risks of disrupting the proper conduct of the proceedings and jeopardising the defendant's right to a fair trial.

(ii) *As regards the article of 4 February 2010 concerning Ms Bettencourt* – The interlocutory proceedings resulted in a finding that she had been wronged by the publication of the article because it was liable to infringe her rights by presenting her, before the criminal case had been examined by the criminal court, as a weakened, easily manipulated woman, which she denied. Given that Ms Bettencourt had filed submissions as a voluntary intervener with a subsidiary application to join the proceedings before the criminal court as a civil party, and in view of the content of the information provided for the magazine's readership, the impugned article could have had a negative effect on the proper administration of justice.

(e) *As regards infringement of private life* – The domestic courts found no infringement of B.'s and Ms Bettencourt's private lives.

(f) *As regards the proportionality of the penalty imposed* – The applicants had been ordered to pay an advance of EUR 13,000, to publish the court ruling in two issues of their magazine and to pay EUR 1 in respect of non-pecuniary damages. Those penalties could not be considered excessive or liable to have a deterrent effect on the exercise of freedom of the media.

(g) *Conclusion* – The reasons given by the domestic courts to justify their interference with the applicants' right to freedom of expression in the framework of their conviction had been relevant and sufficient. In particular, the applicants' and the public interest in communicating and receiving information on a matter of public interest has not been such as to override the considerations set out by the domestic courts regarding the consequences for the protection of the rights of others and the proper administration of justice. Therefore, the convictions had met a social need compelling enough to override the public interest in the freedom of the press, and could not be considered disproportionate to the legitimate aims pursued.

Conclusion: no violation (unanimous).

(See also *Du Roy and Malaurie v. France*, 34000/96, 3 October 2000; *Tourancheau and July v. France*, 53886/00, 24 November 2005; and *Dupuis and Others v. France*, 1914/02, 7 June 2007, Information Note 98)

Absence of adequate and effective safeguards concerning damages award in libel action: *violation*

Independent Newspapers (Ireland) Limited v. Ireland, 28199/15, judgment 15.6.2017 [Section V]

Facts – The applicant company, which at the material time published the *Evening Herald* newspaper, was sued by a public-relations consultant (Ms L.) after running a series of articles attacking her business and personal integrity in connection with an award of Government contracts. Ms L. brought a civil action against the applicant company in defamation and the jury found in her favour. On the question of damages, the trial judge gave directions to the jury in accordance with the *Barret* rules[6] that had been laid down by the Supreme Court in 1986. He did not give any specific guideline to the jury regarding the appropriate level of compensation, stressed the limited nature of the guidelines he could provide and indicated, in broad terms, that, when assessing damages the jury must bear in mind reality, the current times, the cost of living and the value of money. He warned the jurors not to be "overcome by feelings of generosity". The jurors assessed damages at EUR 1,872,000. On appeal, the Supreme Court set the award aside as being excessive and substituted its own assessment of damages in an amount of EUR 1,250,000.

6. *Barrett v. Independent Newspapers Limited* [1986] IR 13.

In the Convention proceedings, the applicant company complained that the award was excessive and signified the absence of adequate and effective safeguards in domestic law, in violation of its right to freedom of expression under Article 10 of the Convention.

Law – Article 10: The award of damages against the applicant company constituted a restriction on the exercise of its right to freedom of expression, which interference was prescribed by law and pursued the aim of protecting Ms L.'s reputation and her right to respect for her private and family life.

As to whether the interference could be regarded as "necessary in a democratic society", the Court, following its approach in the *Independent News and Media* case, examined the adequacy and efficacy, in the circumstances of the applicant company's case, of the domestic safeguards against disproportionate awards. It noted in that connection that unpredictably high damages in libel cases were considered capable of having a chilling effect and therefore required the most careful scrutiny and very strong justification. The effectiveness – or not – of the safeguard at first instance, the resulting unpredictability of the quantum of damages that was not solely a function of the unique facts of each case, the considerable expense and delay entailed by seeking appellate review and, where an award was set aside, a re-trial of the case, were all relevant considerations.

(i) *First safeguard – directions to the jury*: At first instance, the safeguard took the form of guidance to the jury on how to assess the damages to be awarded. The Court reiterated that in the context of defamation cases, while the jury's assessment of damages may be inherently complex and uncertain, the uncertainty must be kept to a minimum and the nature, clarity and scope of the directions provided to the jury were key in that regard. In the applicant company's case the trial judge had had to operate under the strict constraints imposed by the Supreme Court's case-law. As a result, his directions had remained inevitably quite generic. While it could not be said that the jury's discretion was without limit, the Court did not consider that the direction given was such as to reliably guide the jury towards an assessment of damages bearing a reasonable relationship of proportionality to the injury sustained by Ms L. to her reputation and private and family life. Therefore, and as evidenced by the Supreme Court finding that the jury award was excessive and disproportionate, the first safeguard had proved ineffective.

(ii) *Second safeguard – appellate review*: The Supreme Court had set aside the High Court award and, to that extent at least, the appellate safeguard was effective. However, the Supreme Court had gone on, exceptionally, to substitute its own award. The amount of that award was higher than any award ever made by a jury or appellate court and was far in excess of amounts the Supreme Court had previously approved or set aside. In the Court's view, the quite legitimate but exceptional exercise by the Supreme Court of its power to substitute its own assessment of damages for that of the jury, along with the exceptional nature of the final award from a domestic perspective, pointed to a need for comprehensive reasons explaining the final award. However, while its award was not entirely unreasoned, the Supreme Court did not explain, apart from reapplying the *Barrett* principles which had formed the basis for the charge to the jury and comparing, with caution, a previous defamation case, how it arrived at the figure of EUR 1,250,000. Nor, despite strong misgivings voiced by the experienced trial judge at the constraints deriving from the Supreme Court's case-law restricting the terms in which he could direct the jury, did it address the ineffectiveness in the instant case of that crucial safeguard against disproportionate awards.

The Court stressed in conclusion that what was at issue in the present case was not the respondent State's choice of a system of trial judge and jury, but rather the nature and extent of the directions to be given to the jury by the trial judge to guide it in its assessment of damages and protect against disproportionate awards and, in the event that the appellate court engaged in a fresh assessment, relevant and sufficient reasons for the substituted award.[7]

Conclusion: violation (unanimously).

Article 41: claims in respect of pecuniary and non-pecuniary damage dismissed, the Court being unable to speculate on the outcome of the proceedings had there been no violation.

7. The Court also noted that the legal regime in Ireland had changed since the events in the applicant company's case with the adoption of the Defamation Act 2009, which included new provisions allowing the trial judge to give more detailed directions to the jury when assessing damages.

(See also *Tolstoy Miloslavsky v. the United Kingdom*, 18139/91, 13 July 1995; *Independent News and Media and Independent Newspapers Ireland Limited v. Ireland*, 55120/00, 16 June 2005, Information Note 76)

Criminal conviction for referring to tax inspector in abusive and derogatory terms in letter sent to two administrative authorities: *violation*

Ali Çetin v. Turkey, 30905/09, judgment 20.6.2017 [Section II]

Facts – The applicant was convicted in criminal proceedings for having sent a letter to a foundation for which he had worked (a copy of which he attached to an administrative appeal), in which he criticised a tax inspector who had written a report that had led to the applicant's dismissal of acting as though he were launching a "fatwa" against him, and indirectly compared the inspector to a fictional character from Turkish literature.

Law – Article 10: The impugned conviction amounted to interference in the applicant's exercise of his right to freedom of expression, was prescribed by law and pursued the legitimate aim of protecting the reputation and rights of others.

It was clear from the wording of the letter attached to his administrative appeal that the applicant had been seeking to express his personal opinions. His statements were thus akin to value judgements rather than allegations of fact.

The comments in question were not made as part of an open discussion of matters of public concern, but were criticisms issued in reaction to a report, drawn up by an inspector in his capacity as a civil servant, which had caused direct and undoubted harm to the applicant, namely his dismissal. In his complaint, the applicant was requesting the deletion of certain passages in the report, which, in his opinion, were likely to jeopardise his career. He compared the mentality of the report's author to that of a fictional character from Turkish literature.

The applicant's conviction had been based on the terms which he used to describe the inspector, terms which had been found to be insulting and could be perceived as vexatious, and not on the critical opinions of a professional nature which he had expressed against the inspector.

However, the impugned comments had been made in a letter attached to an appeal to challenge a report which had entailed serious professional repercussions for the applicant. They were not therefore intended to be accessible to the general public, but solely to the relevant domestic authorities.

Bearing in mind the nature of the impugned remarks and the context in which they were disseminated, the grounds relied upon by the domestic authorities to convict the applicant could not be regarded as "relevant and sufficient".

Although the sanction imposed on the applicant (a seven-day prison sentence, commuted to a fine of about EUR 195) was a proportionate interference with the applicant's right to exercise his freedom of expression, it had nevertheless constituted a penalty in the criminal meaning of the term.

The applicant's conviction had thus amounted to a disproportionate interference in his right to freedom of expression, which had not been "necessary in a democratic society".

Conclusion: violation (unanimously).

Article 41: claim in respect of pecuniary and non-pecuniary damage dismissed.

Legislative prohibition on the promotion of homosexuality among minors reinforcing stigma and prejudice and encouraging homophobia: *violation*

Bayev and Others v. Russia, 67667/09 et al., judgment 20.6.2017 [Section III]

Facts – The applicants, gay rights activists, were fined in administrative proceedings for having staged a protest against laws banning the promotion of homosexuality among minors. Such laws had been enacted first at regional and subsequently at federal level.

Before the European Court the applicants complained under Article 10 about the ban on public statements concerning the identity, rights and social status of sexual minorities. They further argued that this ban was discriminatory under Article 14 as no similar restrictions applied with regard to the heterosexual majority.

Law – Article 10: The central issue in the case was the very existence of a legislative ban on the promotion of homosexuality or non-traditional sexual relations among minors which the applicants argued was inherently incompatible with the Convention. It was of relevance that even before any

administrative measures had been taken against the applicants the ban had arguably encroached on the activities in which they might personally have wished to engage, especially as LGBT activists. The chilling effect of a legislative provision or policy could in itself constitute an interference with freedom of expression. The Court was not required to establish the existence of interference on the basis of the general impact of the impugned laws on the applicants' lives, however, because the laws had actually been enforced against the applicants in the administrative proceedings.

In order to determine the proportionality of a general measure, the Court had to primarily assess the legislative choices underlying it, regard being had to the quality of the parliamentary and judicial review of the necessity of the measure, and the risk of abuse if a general measure were to be relaxed. In doing so, it had to take into account its implementation in the applicants' concrete cases, which were illustrative of its impact in practice and were thus material to the measure's proportionality. As a matter of principle, the more convincing the general justifications for the general measure were the less importance the Court would attach to its impact in a particular case. Accordingly, the Court's assessment would focus on the necessity of the impugned laws as general measures, an approach which was to be distinguished from a call to review domestic law in the abstract.

The Government defended the need for the legislative ban with reference to the protection of morals and family values, the protection of health and the protection of the rights of others.

(a) *Justification on the grounds of protection of morals* – There was a clear European consensus about the recognition of individuals' right to openly identity themselves as gay, lesbian or any other sexual minority, and to promote their own rights and freedoms. There was no reason to consider that, as argued by the Government, maintaining family values as the foundation of society and acknowledging the social acceptance of homosexuality were incompatible, especially in view of the growing tendency to include relationships between same-sex couples within the concept of family life and the acknowledgement of the need for their legal recognition and protection.

The Court had consistently declined to endorse policies and decisions which embodied a predisposed bias on the part of a heterosexual majority against a homosexual minority. Those negative attitudes, references to traditions or general assumptions in a particular country could not of themselves be considered to amount to sufficient justification for the differential treatment, any more than similar negative attitudes towards those of a different race, origin or colour. The legislation at hand was an example of such predisposed bias, unambiguously highlighted by its domestic interpretation and enforcement, and embodied in formulas such as "to create a distorted image of the social equivalence of traditional and non-traditional sexual relationships".

The Court took note of the Government's assertion that the majority of Russians disapproved of homosexuality. It was true that popular sentiment could play an important role in the Court's assessment when it came to the justification on the grounds of morals. However, there was an important difference between giving way to popular support in favour of extending the scope of the Convention guarantees and a situation where that support is relied on in order to narrow the scope of the substantive protection. It would be incompatible with the underlying values of the Convention if the exercise of Convention rights by a minority group were made conditional on their being accepted by the majority. Were this so, a minority group's rights to freedom of religion, expression and assembly would become merely theoretical rather than practical and effective as required by the Convention.

(b) *Justification on the grounds of protection of health* – It was improbable that a restriction on potential freedom of expression concerning LGBT issues would be conducive to a reduction of health risks. Quite the contrary, disseminating knowledge on sex and gender identity issues and raising awareness of any associated risks and of methods of protecting oneself against those risks, presented objectively and scientifically, would be an indispensable part of a disease-prevention campaign and of a general public-health policy.

It was equally difficult to see how the law prohibiting promotion of homosexuality or non-traditional sexual relations among minors could help in achieving the desired demographic targets, or how, conversely, the absence of such a law would adversely affect them. Suppression of information about same-sex relationships was not a method by which a negative demographic trend might be reversed.

(c) *Justification on the grounds of protection of the rights of others* – The position of the Government concerning possible forceful or underhand "recruiting" of minors by the LGBT community had not evolved since *Alekseyev*[8] and remained unsubstantiated. The Government had been unable to provide any explanation of the mechanism by which a minor could be enticed into a "homosexual lifestyle", let alone any science-based evidence that one's sexual orientation or identity was susceptible to change under external influence.

In sensitive matters such as public discussion of sex education, where parental views, educational policies and the right of third parties to freedom of expression had to be balanced, the authorities had no choice but to resort to the criteria of objectivity, pluralism, scientific accuracy and, ultimately, the usefulness of a particular type of information to the young audience. It was important to note that the applicants' messages were not inaccurate, sexually explicit or aggressive. Nor did the applicants make any attempt to advocate any sexual behaviour. Nothing in the applicants' actions diminished the right of parents to enlighten and advise their children, to exercise with regard to their children the natural parental functions as educators, or to guide their children on a path in line with the parents' own religious or philosophical convictions. To the extent that the minors who witnessed the applicants' campaign were exposed to the ideas of diversity, equality and tolerance, the adoption of those views could only be conducive to social cohesion.

The legal provisions in question did not serve to advance the legitimate aim of the protection of morals, and such measures were likely to be counterproductive in achieving the declared legitimate aims of the protection of health and the protection of the rights of others. Given the vagueness of the terminology used and the potentially unlimited scope of the application, the provisions were open to abuse in individual cases, as evidenced in the applications at hand. By adopting such laws the authorities reinforced stigma and prejudice and encouraged homophobia, which was incompatible with the notions of equality, pluralism and tolerance inherent in democratic society. In adopting the measures in question and implementing them in the applicants' cases the Russian authorities had overstepped the margin of appreciation afforded by Article 10.

Conclusion: violation (six votes to one).

Article 14 in conjunction with Article 10: The State's margin of appreciation was a narrow one with regard to differences in treatment based on sexual origination. Such differences required particularly convincing and weighty reasons by way of justification. Differences based solely on considerations of sexual orientation were unacceptable under the Convention. The legislation at hand stated the inferiority of same-sex relationships compared with opposite-sex relationships. The legislative provisions embodied a predisposed bias on the part of the heterosexual majority against the homosexual minority and the Government had not offered convincing and weighty reasons justifying that difference in treatment.

Conclusion: violation (six votes to one).

Article 41: Between EUR 8,000 and EUR 20,000 in respect of non-pecuniary damage; between EUR 45 and EUR 180 in respect of pecuniary damage.

(See *Smith and Grady v. the United Kingdom*, 33985/96 and 33986/96, 27 September 1999; *Animal Defenders International v. the United Kingdom* [GC], 48876/08, 22 April 2013, Information Note 162; and *Lashmankin and Others v. Russia*, 57818/09 et al., 7 February 2017, Information Note 204)

Alleged breach of freedom of expression of journalists: *communicated*

Sabuncu and Others v. Turkey, 23199/17 [Section II]

(See Article 18 below, page 29)

Freedom to impart information

Order restraining mass publication of tax information: *no violation*

Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland, 931/13, judgment 27.6.2017 [GC]

Facts – The first applicant company (Satakunnan Markkinapörssi Oy) published a newspaper providing information on the taxable income and assets of Finnish taxpayers. The information was, by law, public.[9] The second applicant company (Satamedia

8. *Alekseyev v. Russia*, 4916/07 et al., 21 October 2010, Information Note 134.

9. By virtue of section 5 of the Act on the Public Disclosure and Confidentiality of Tax Information.

Oy) offered a service supplying taxation information by SMS text message.

In April 2003 the Data Protection Ombudsman requested the Data Protection Board to restrain the applicant companies from processing taxation data in the manner and to the extent they had in 2002 and from passing such data to an SMS-service. The Data Protection Board dismissed the Ombudsman's request on the grounds that the applicant companies were engaged in journalism and so were entitled to a derogation under section 2(5) of the Personal Data Act. The case subsequently came before the Supreme Administrative Court, which in February 2007 sought a preliminary ruling from the Court of Justice of the European Union (CJEU) on the interpretation of the EU Data Protection Directive.[10] In its judgment of 16 December 2008[11] the CJEU ruled that activities relating to data from documents which were in the public domain under national legislation could be classified as "journalistic activities" if their object was to disclose to the public information, opinions or ideas, irrespective of the medium used to transmit them. In September 2009 the Supreme Administrative Court directed the Data Protection Board to forbid the processing of taxation data in the manner and to the extent carried out by the applicant companies in 2002. Noting that the CJEU had found that the decisive factor was to assess whether a publication contributed to a public debate or was solely intended to satisfy the curiosity of readers, the Supreme Administrative Court concluded that the publication of the whole database collected for journalistic purposes and the transmission of the information to the SMS service could not be regarded as journalistic activity.

In the Convention proceedings the applicant companies complained, among other matters, of a violation of Article 10 of the Convention. In a judgment of 21 July 2015 a Chamber of the Court held, by six votes to one, that there had been no violation of that provision. On 14 December 2015 the case was referred to the Grand Chamber at the applicants' request.

Law – Article 10

(a) *Preliminary issue – whether the taxpayers had a competing right to privacy under Article 8* – The fact that information was already in the public domain did not necessarily remove the protection of Article 8. Where there had been compilation of data on a particular individual, processing or use of personal data or publication of the material concerned in a manner or degree beyond that normally foreseeable, private-life considerations arose. In the instant case, the data collected, processed and published by the applicant companies in the newspaper had provided details of taxable earned and unearned income and taxable net assets and so clearly concerned the private life of the individuals concerned, notwithstanding the fact that, pursuant to Finnish law, the data could be accessed by the public.

(b) *Interference, prescribed by law and legitimate aim* – The Data Protection Board's decision to forbid the processing of the taxation data in the manner complained of, as upheld by the national courts, entailed an interference with the applicant companies' right to impart information as guaranteed by Article 10. The interference was prescribed by law – the terms of the relevant data-protection legislation and the nature and scope of the journalistic derogation on which the applicant companies sought to rely were applied in a sufficiently foreseeable manner following the interpretative guidance provided to the Supreme Administrative Court by the CJEU and, as media professionals, the applicant companies should have been aware that the mass collection of data and its wholesale dissemination might not be considered as processing "solely" for journalistic purposes – and the interference pursued the legitimate aim of protecting the reputation or rights of others.

(c) *Necessity in a democratic society* – The Court examined the criteria it had identified in its previous case-law as being relevant when balancing the competing rights to private life under Article 8 of the Convention and to freedom of expression under Article 10.

(i) *Contribution to a debate of public interest*: Underpinning the Finnish legislative policy of rendering taxation data publicly accessible was the need to ensure that the public could monitor the activities of government authorities. Nevertheless, public access to taxation data, subject to clear rules and

10. Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

11. *Tietosuojavaltuutettu v. Satakunnan Markkinapörssi Oy and Satamedia Oy*, C-73/07, judgment of 16 December 2008.

procedures, and the general transparency of the Finnish taxation system did not mean that the impugned publication itself contributed to a debate of public interest. Taking the publication as a whole and in context the Court, like the Supreme Administrative Court, was not persuaded that publication of taxation data in the manner and to the extent done by the applicant companies (the raw data was published as catalogues *en masse*, almost verbatim) had contributed to such a debate or indeed that its principal purpose was to do so.

(ii) *Subject of the publication* – Some 1,200,000 natural persons were the subject of the publication. They were all taxpayers but only a very few were individuals with a high net income, public figures or well-known personalities within the meaning of the Court's case-law. The majority of the persons whose data were listed in the newspaper belonged to low-income groups.

(iii) *Manner of obtaining the information and its veracity* – The accuracy of the information published was never in dispute and the data were not obtained by illicit means. However, it was clear that the applicant companies, who had cancelled their request for data from the National Board of Taxation and instead hired people to collect taxation data manually at the local tax offices, had a policy of circumventing normal channels and, accordingly, the checks and balances established by the domestic authorities to regulate access and dissemination.

(iv) *Content, form and consequences of publication* – Although journalists enjoy the freedom to choose, from the news items that come to their attention, which they will deal with and how, that freedom is not devoid of responsibilities. Even though the taxation data in question in the applicant companies' case were publicly accessible in Finland, they could only be consulted at the local tax offices and consultation was subject to clear conditions. Journalists could receive taxation data in digital format, but only a certain amount of data could be retrieved. Journalists had to specify that the information was requested for journalistic purposes and that it would not be published in the form of a list. Therefore, while the information relating to individuals was publicly accessible, specific rules and safeguards governed its accessibility. For the Court, the fact that the data in question were accessible to the public under the domestic law did not necessarily mean that they could be published to an unlimited extent. Publishing the data in a newspaper, and further disseminating that data via an SMS service, had rendered them accessible in a manner and to an extent that was not intended by the legislator. The safeguards in national law were built in precisely because of the public accessibility of personal taxation data, the nature and purpose of data-protection legislation and the accompanying journalistic derogation. Under these circumstances, the authorities of the respondent State enjoyed a wide margin of appreciation in deciding how to strike a fair balance between the respective rights under Articles 8 and 10.

When weighing those rights, the domestic courts had sought to strike a balance between freedom of expression and the right to privacy embodied in data-protection legislation. Applying the derogation in section 2(5) of the Personal Data Act and the public-interest test to the impugned interference, they and, in particular, the Supreme Administrative Court, had analysed the relevant Convention and CJEU case-law and carefully applied the case-law of the Court to the facts of the instant case.

(v) *Sanction* – The applicant companies had not been prohibited from publishing taxation data or from continuing to publish the newspaper provided they did so in a manner consistent with Finnish and EU rules on data protection and access to information. The fact that, in practice, the limitations imposed on the quantity of the information to be published may have rendered some of their business activities less profitable was not, as such, a sanction within the meaning of the Court's case-law.

In conclusion, the competent domestic authorities and, in particular, the Supreme Administrative Court had given due consideration to the principles and criteria laid down by the Court's case-law for balancing the right to respect for private life and the right to freedom of expression. The Supreme Administrative Court had attached particular weight to its finding that the publication of the taxation data in the manner and to the extent described did not contribute to a debate of public interest and that the applicants could not in substance claim that it had been done solely for a journalistic purpose within the meaning of domestic and EU law. The reasons relied upon by the domestic courts were thus both relevant and sufficient to show that the interference complained of had been "necessary in a democratic society" and that the authorities of the respondent State had acted

within their margin of appreciation in striking a fair balance between the competing interests at stake.

Conclusion: no violation (fifteen votes to two).

The Grand Chamber also held by fifteen votes to two that there been a violation of Article 6 § 1 of the Convention in respect of the length of the proceedings before the domestic courts.

ARTICLE 11

Freedom of association

Refusal to register religious association owing to lack of precise description of its beliefs and rites in its statute: *violation*

Metodiev and Others v. Bulgaria, 58088/08, judgment 15.6.2017 [Section V]

(See Article 9 above, page 18)

ARTICLE 14

Discrimination (Article 10)

Unjustified difference in treatment between heterosexual majority and homosexual minority: *violation*

Bayev and Others v. Russia, 67667/09 et al., judgment 20.6.2017 [Section III]

(See Article 10 above, page 24)

Discrimination (Article 1 of Protocol No. 1)

Alleged discrimination against former members of military as regards entitlement to pensions: *communicated*

Persjanow v. Poland, 39247/12 [Section IV], Rał v. Poland, 41178/12 [Section IV]

(See Article 1 of Protocol No. 1 below, page 34)

ARTICLE 18

Limitation on use of restrictions on rights

Alleged politically motivated judicial harassment against journalists: *communicated*

Sabuncu and Others v. Turkey, 23199/17 [Section II]

In October and November 2016 ten journalists from the daily newspaper *Cumhuriyet* ("the Republic") were arrested and placed in pre-trial detention on suspicion of having committed offences on behalf of terrorist organisations and disseminating propaganda. The applicants challenged the relevant detention orders and applied, unsuccessfully, for release. Proceedings before the Constitutional Court are pending.

In the Convention proceedings, the applicants complain under Article 5 §§ 1, 3 and 4 about their pre-trial detention and its duration, under Article 10 that there has been a breach of their freedom of expression and under Article 18 that their detention is a sanction against them for criticising the Government and amounts to politically-motivated judicial harassment.

Communicated under Article 5 §§ 1, 3 and 4 and Articles 10 and 18 of the Convention.

ARTICLE 35

ARTICLE 35 § 1

Exhaustion of domestic remedies, effective domestic remedy (Poland)

Failure to have recourse to labour courts: *inadmissible*

Bilewicz v. Poland, 53626/16, decision 30.5.2017 [Section I]

Facts – The applicant was a prosecutor at the Prosecutor General's Office. Following the introduction of new legislation,[12] he was informed that he was to be transferred to a regional office. Before the European Court, the applicant complained that he had no right to institute court proceedings against the Prosecutor General's decision[13] to transfer him to a lower post.

Law – The Supreme Court had examined a case of a prosecutor who had been affected by the same measure as the applicant and had claimed that judicial review of the Prosecutor General's decisions had been excluded. In that case, the Supreme Court

12. The Prosecution Service Act (*Prawo o prokuraturze*) and the Prosecution Service (Introductory Provisions) Act (*Przepisy wprowadzające ustawę – Prawo o prokuraturze*).

13. Taken under section 36 of the Introductory Provisions Act.

had found that such a decision, which entailed a change of the conditions of service, could be reviewed by a labour court in accordance with the general rule[14] that the labour courts had jurisdiction to hear claims related to a prosecutor's service.

The applicant had failed to have recourse to a remedy provided by the domestic law as indicated by the Supreme Court. It would have been inconsistent with the subsidiarity principle to accept his application for substantive examination without requiring him first to submit the substance of his Convention claim to the domestic authorities.

Conclusion: inadmissible (failure to exhaust domestic remedies).

Exhaustion of domestic remedies, effective domestic remedy (Turkey)

New remedy to be exhausted when challenging measures taken under emergency decree laws: *inadmissible*

Köksal v. Turkey, 70478/16, decision 6.6.2017 [Section II]

Facts – Following an attempted *coup d'état* in July 2016, a state of emergency was decreed in Turkey. Eleven Legislative Decrees were then adopted in this legal framework. One of them provided for the dismissal of over 50,000 civil servants, of whom the applicant was one. They could never be reinstated as civil servants and their passports were cancelled.

On 28 September 2016 the applicant lodged an individual appeal with the Constitutional Court to challenge his dismissal. The appeal is still pending.

After the lodging of the application before the European Court, Legislative Decree no. 685, published on 23 January 2017, provided for the setting-up of a commission which would have the task, in particular, of adjudicating upon appeals against measures adopted directly by Legislative Decrees issued in the context of the state of emergency, including the dismissals of civil servants. Civil servants affected by the relevant measures thus had the possibility of referring their cases to the commission within 60 days from the date to be fixed by the Prime Minister by 23 July 2017 at the latest. The commission's decisions could then be appealed against before the administrative courts, whose decisions in turn could be challenged before the Constitutional Court by individual petition. When that highest court had examined a case and given judgment, any individual could also, if need be, submit a complaint under the Convention to the European Court.

Law – Article 35 § 1: Legislative Decree no. 685 had clearly made available the possibility of scrutiny, by the above-mentioned commission, of measures adopted under the state of emergency, together with subsequent judicial review of the commission's decisions. The Legislative Decree had thus been adopted with the aim of remedying a large-scale problematic situation resulting, not only from shortcomings in the decision-making process in respect of the impugned measures, but also from the uncertainty about judicial review of those measures.

Even though the commission was a non-judicial body, its decisions could be subject to judicial review. Moreover, the new system constituted in principle an accessible remedy.

The applicant thus had a new remedy which would enable him to give the domestic authorities an opportunity to provide redress for the alleged violation of the Convention provisions at national level.

It was thus justified to make an exception to the general principle that the condition of exhaustion of domestic remedies must be assessed at the time when the application was lodged.

However, this conclusion did not prejudge, if necessary, a possible re-examination by the Court of the question of the effectiveness and reality of the remedy introduced by Legislative Decree no. 685, both in theory and in practice, in the light of the decisions to be given by the commission and domestic courts and of the effective enforcement of those decisions. In any event, the burden of proof concerning the effectiveness of this remedy would then be on the respondent State. In addition, the Court retained jurisdiction for the ultimate review of any complaint by applicants who had exhausted the available domestic remedies.

Conclusion: inadmissible (failure to exhaust domestic remedies).

14. Section 101(1) of the Prosecution Service Act.

Effective domestic remedy (Bulgaria)

Domestic remedy under the State and Municipalities Liability for Damage Act 1988, as amended and in force from 15 December 2012, capable of providing redress: *inadmissible*

Tsonev v. Bulgaria, 9662/13, decision 30.5.2017 [Section V]

Facts – In June 2012 the applicant was charged with possession of a narcotic drug with intent to distribute and placed in pre-trial detention. His appeals against that measure were dismissed. In July 2013 he was convicted of drug offences and sentenced to six years' imprisonment. His appeals against conviction were dismissed.

Relying on Articles 5 §§ 1 (c), 3, and 4, the applicant complained that the domestic courts had refused to examine the reasonableness of the suspicion against him when considering his pre-trial detention.

Law – Article 5: The question before the Court was whether the remedy cited by the Government – a claim for damages under section 2(1)(1) and (1)(2) of the State and Municipalities Liability for Damage Act 1988, as amended and in force from 15 December 2012 – was available to the applicant and whether that remedy was capable of providing him adequate redress. A claim under the relevant provisions could result in an express acknowledgment of a breach of Article 5 of the Convention and a consequent award of compensation. Such a remedy could in principle provide adequate redress, if the situation alleged to amount to a breach of Article 5 had come to an end.

The applicant was still in pre-trial detention when he raised his complaints before the Court. Though the national courts' decisions of which he complained were one-off acts, it was open to question whether those courts' refusals to enquire into the reasonableness of the suspicion against him had an effect on his ensuing pre-trial detention. It followed that it was also open to question whether, in view of its purely compensatory character, the remedy was capable of providing the applicant adequate redress with respect to his complaint under Article 5 § 3 as long as that pre-trial detention persisted. But the applicant's situation had changed. In 2013 he was convicted and in 2014 his conviction became final. He was thus no longer in pre-trial detention. A remedy capable of resulting in an acknowledgment of the breach and compensation therefore became adequate in his case. Since the applicant's complaint concerned judicial decisions given after the amendment had entered into force, the remedy was clearly available and its lack of retrospective effect did not affect him.

The main point of contention between the parties was whether a claim for damages about the way in which a criminal court had dealt with a legal challenge to pre-trial detention would have been likely to succeed. Doubts about the prospects of a remedy which appeared to offer a reasonable possibility of redress were not a sufficient reason to eschew it. That was especially true if the legal provision on which the remedy was based had been specifically put in place to allow a grievance under the Convention to be aired domestically. When the proper construction of a new legal provision was yet to be settled, the domestic courts had to be given the opportunity to dispel any doubts. It was true that the Bulgarian courts' case-law under the amended provisions was still scant and not well-settled. But that could not in itself lead to the conclusion that the remedy did not offer a reasonable prospect of success. The applicant's grievances directly related to judicial decisions and were thus well within the ambit of the legislation in question.

The limitation period for such a claim was five years and it was still open to the applicant to make one. If he was not successful, he would be able to re-apply to the Court, as the process of exhaustion of domestic remedies amounted to relevant new information.

While the application was therefore to be rejected for non-exhaustion of domestic remedies, the Court emphasised that its view on the effectiveness of the remedy could be subject to reconsideration depending, in particular, on the Bulgarian court's ability to develop a consistent case-law under those provisions in line with the requirements of the Convention.

Conclusion: inadmissible (failure to exhaust domestic remedies).

ARTICLE 41

Just satisfaction

Loss of two-thirds of old-age pension as a result of introduction of legislation effectively

deciding outcome of pending litigation against the State: *assessment of pecuniary damage*

Stefanetti and Others v. Italy, 21838/10 et al., judgment (just satisfaction) 1.6.2017 [Section I]

Facts – The applicants brought court proceedings contesting the method of calculation used by the National Social Security Agency (INPS) to determine their old-age pension entitlement. However, the courts dismissed their claims following the introduction during the proceedings of interpretative legislation – a provision of the Finance Act 2007 (Law no. 296/2006) – endorsing the position of the INPS. As a result, the applicants lost approximately two-thirds of the pension which they could have expected to receive on the basis of the domestic courts' case-law.

In a judgment of 15 April 2014 ("the principal judgment", Information Note 173), the Court found a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 on account of the lack of any compelling reasons of public interest and the disproportionate consequences of the legislative intervention in question. It awarded the applicants EUR 12,000 each in respect of non-pecuniary damage and reserved the question of pecuniary damage.

Law – Article 41 (*pecuniary damage*): The Court determined the damage in two stages.

(a) *Calculation of the difference between the sums actually received and those which the applicants would have obtained in the absence of the impugned legislation*

(i) *Reference period* – The period to be taken into account started on the date of the applicants' retirement. As to the finishing point, the Court did not accept:

– either that the period should end with the entry into force of the legislation in question (the Government's argument), as the violation of Article 6 of the Convention and of Article 1 of Protocol No. 1 was not linked exclusively to the retrospective nature of the legislation;

– or that it should run to the end of the applicants' remaining life expectancy (the applicants' argument), as just satisfaction had to relate to the violations found. With regard to the period subsequent to the principal judgment (delivered in 2014), the damage sustained was to be determined and dealt with by the national authorities in the context of the procedure for execution of the principal judgment. That damage resulted solely from the fact that the impugned legislation was still in force; under Article 46 §§ 1 and 2 of the Convention, in the context of the execution of judgments, States were under an obligation to put an end to the violation found and erase its consequences. The Court referred in this regard to Resolution CM/ResDH (2013)91 of the Committee of Ministers of 29 May 2013 on the execution of the judgment in *Lakićević and Others v. Montenegro and Serbia* (27458/06 et al., 13 December 2011, Information Note 147).

In sum, the Court decided to base its calculations on the pension arrears as established in 2014.

(ii) *Figures submitted by the parties* – As the sums claimed by the applicants incorrectly took into account various contributions that were not relevant, the Court decided to base its calculation on the amounts indicated by the Government, established on the basis of the INPS tables. As to the period after the date at which the Government figures stopped (2012), the Court based its assessment on the applicants' figures.

(b) *Determination of the damage on this basis, in view of the nature of the violation found* – The damage sustained in the present case went beyond mere "loss of opportunity", as there had been a violation not just of Article 6 § 1 of the Convention but also of Article 1 of Protocol No. 1.

Nevertheless, the Court would not have made the same finding of a violation had the reduction in the applicants' pension entitlement remained reasonable and proportionate. The Court had previously found that a reduction of less than half was not unreasonable (see *Maggio and Others v. Italy*, 46286/09 et al., 31 May 2011, Information Note 141).

Hence, the damage for which compensation was due did not amount to the full difference between the sums received by the applicants and the sums they would have obtained had the legislation not been passed. In view of the nature of the dispute in question, the Court found it reasonable to set the amount of pecuniary damage at the difference between the sums received and 55% of the sums the applicants would have obtained in the absence of the legislation.

Following these calculations, the Court awarded each of the applicants an amount of between EUR 14,786 and EUR 167,601, depending on the case. The Court specified that the amounts in ques-

tion did not give rise to any special exemption from income tax on the pension arrears.

ARTICLE 1 OF PROTOCOL No. 1

Peaceful enjoyment of possessions

Insufficient account taken of applicant's situation in settlement of dispute over land acquired by monastery through adverse possession: *violation*

Kosmas and Others v. Greece, 20086/13, judgment 29.6.2017 [Section I]

Facts – The monasteries of Mount Athos are public-law entities which enjoy special status. Under the law, their property cannot be acquired through adverse possession except where continuous possession for more than thirty years prior to 1915 can be demonstrated.

In 2004 a monastery claimed ownership before the courts of a plot of land being used by the first applicant ("the applicant"). The monastery relied on a deed of purchase dated 1824 and, in the alternative, on continuous possession from 1882 to 1915. The applicant objected, citing a series of transfer deeds going back to 1883 and various steps concerning possession taken since 1974. He also alleged that the action constituted an abuse of rights.

The courts held that the monastery was the owner, at least by virtue of adverse possession of the property since 1912, as the applicant had not proved continuous possession by his predecessors over the same period. Accordingly, the courts found that the subsequent steps invoked by the applicant could not be relied on, in view of the fact that monastic property could not be acquired through adverse possession. The complaint of abuse of rights was also dismissed.

Law – Article 1 of Protocol No. 1

(a) *Existence of a "possession" and the applicable rule* – The title or possession of the applicant or his predecessors had never been contested (the applicant had even been granted administrative authorisation to run a restaurant and construct a building).

The fact that this situation had been tolerated over a lengthy period indicated that the authorities and the monastery had recognised *de facto* that the applicant and his predecessors had a proprietary interest in the land, consisting in possession as recognised and protected by domestic law, and that they had never done anything to suggest that the situation would change.

In sum, the applicant's proprietary interest was sufficiently established and weighty to amount to a "possession" within the meaning of the first sentence of Article 1 of Protocol No. 1; that Article was therefore applicable.

(b) *Interference and proportionality* – The eviction of the applicant following the Court of Cassation's judgment had been provided for by law and had pursued a legitimate aim (to protect the monasteries' immovable property from encroachment by third parties).

Nevertheless, the following reasons led the Court to find that the applicant had had to bear an individual and excessive burden which was not justified by any legitimate interest.

The applicant, believing that he owned the land lawfully and in good faith on the basis of title deeds dating back to 1883, had set up and operated a business there with his family.

The courts had taken no account of those title deeds, of the fact that various operating and building permits had been issued to the applicant as if he were the owner of the land, or of the fact that he had been paying property tax.

It was true that the administrative authorities could not have known at the time that the monastery would successfully claim ownership of the property in 2004.

Nevertheless, the administrative legal acts drawn up by the State authorities could only have reinforced the beneficiaries' belief that the system of acquisition and transfer of property was stable and reliable and that they were in legitimate possession of the property in question.

In any event, the applicant had also argued that the action brought by the monastery constituted an abuse of rights. Had that argument been upheld, he would at least have been able to retain "possession" of the land. However, it had been rejected on the ground that the costs incurred in using the land for commercial purposes had been offset by the profits made and the fact that no rent was paid to the monastery.

Accordingly, the courts had not taken into account the loss, without any compensation, of the tools of

the applicant's trade, which had constituted his and his family's livelihood since 1986.

Conclusion: violation with regard to the first applicant (five votes to two).

Article 41: EUR 75,000 to the first applicant in respect of pecuniary and non-pecuniary damage.

Suspension of pension following grant of another: *communicated*

Persjanow v. Poland, 39247/12 [Section IV], Rał v. Poland, 41178/12 [Section IV]

Section 95(1) of the Law of 17 December 1998 provides that where a person is authorised to receive several of the benefits referred to in the Act, the person concerned shall be paid one benefit, either the most advantageous or that of his own choice.

Both applicants served in the army and were granted military pensions. They were then employed outside of the military, paid compulsory contributions into the Social Insurance Fund and were granted retirement pensions. When calculating the retirement pensions, the Social Security Board did not take into account their periods of military service. The first applicant chose to receive the pension from the Social Insurance Fund and his military pension was suspended. The second applicant chose to be paid the military pension and payment of his pension from the Social Insurance Fund was suspended. The applicants' appeals against the decisions of the Social Security Board were dismissed.

In the Convention proceedings, the applicants complain that even though they are entitled to both a retirement pension from the Social Insurance Fund and a military pension they can only be paid one of these benefits and that either the period of employment or of military service will not be taken into account.

Communicated under Article 14 of the Convention and Article 1 of Protocol No. 1.

ARTICLE 3 OF PROTOCOL No. 1

Stand for election

Removal from elected office pursuant to legislation introduced after commission of impugned offence: *relinquishment in favour of the Grand Chamber*

Berlusconi v. Italy, 58428/13 [Section I]

In 2012 the applicant, a former prime minister, was found guilty of tax fraud by a District Court and sentenced to a term of imprisonment and to an ancillary penalty of five years' disqualification from public office (reduced to two years on appeal).

In February 2013 the applicant was elected to the Senate. In August 2013 the Senate Commission for elections and parliamentary immunities initiated the procedure for his removal from office. On 15 October 2013 it reported to the Senate, which, on 27 November 2013, declared the applicant's office terminated.

In his application of 10 September 2013 to the European Court, the applicant complains of (i) a violation of Article 7 of the Convention (no punishment without law) on the grounds that he was disqualified from elective office after being convicted for acts he had committed before the entry into force of the relevant legislation (the so-called Severino Act[15]); (ii) a violation of Article 3 of Protocol No. 1 (right to free elections) alone and in conjunction with Article 14 (prohibition of discrimination) on the grounds that the ineligibility provided for by the Severino Act did not comply with the principles of legality and proportionality in relation to the aim pursued and was also discriminatory; (iii) a violation of Article 3 of Protocol No. 1 in that the applicant's removal from office breached both the applicant's right to hold office and the electorate's legitimate expectation that he would remain in office throughout the parliamentary term; and (iv) a violation of Article 13 on the grounds that there was no accessible and effective remedy in domestic law by which to challenge either the incompatibility of the Severino Act with the Convention or the Senate's decision to remove him from office.

On 6 June 2017 the Chamber to which the case had been allocated relinquished jurisdiction in favour of the Grand Chamber.

PENDING GRAND CHAMBER

Relinquishments

Molla Sali v. Greece, 20452/14 [Section I]

15. Legislative Decree no. 235/2012 on ineligibility and disqualification from holding elected and governmental office following final convictions for certain offences, which was adopted following the entry into force of the Anticorruption Act (Law no. 190 of 6 November 2012 – the "Severino Law").

(See Article 6 § 1 (civil) above, page 10)

Beuze v. Belgium, 71409/10 [Section II]

(See Article 6 § 3 (c) above, page 13)

Berlusconi v. Italy, 58428/13 [Section I]

(See Article 3 of Protocol No. 1 above, page 34)

OTHER JURISDICTIONS

Court of Justice of the European Union (CJEU)

Prior use of ombudsperson procedure as condition for admissibility of consumer law suits: *compliance with right of access to justice*

Livio Menini and Maria Antonia Rampanelli v. Banco Popolare Società Cooperativa, C-75/16, judgment 14.6.2017 (First Chamber)

In the context of main proceedings between a bank and two clients, an Italian court referred to the ECJEU, for a preliminary ruling, various questions concerning the interpretation of Directive 2013/11/EU on alternative dispute resolution for consumer disputes. The right to an effective remedy and to a fair hearing, as defined by Article 47 of the Charter of Fundamental Rights, to which the Directive referred in its recitals, were implicitly at stake.

In the present case, the two clients were seeking to oppose an order to make payments. The referring court questioned whether it was possible for the national legislation to make access to the judicial system conditional on a compulsory prior mediation procedure; to require the assistance of a lawyer during the mediation procedure; or to prohibit the parties from withdrawing from the mediation procedure without a valid reason.

The CJEU replied in substance as follows:

(a) *Applicability of the Directive* – The objective of the Directive was to enable consumers to submit, on a "voluntary" basis, complaints against traders through alternative dispute resolution (ADR) procedures. In so far as the mediation procedure could be considered as one of the possible forms of ADR – a matter which it was for the national court to determine – the Directive could therefore be applicable to the present case.

In particular, the Directive was applicable where the ADR procedure (in the present case, the mediation procedure) met the following three cumulative conditions: (1) it had to have been initiated by a consumer against a trader concerning obligations arising from a sales or service contract, (2) it had to be independent, impartial, transparent, effective, fast and fair; and (3) it had to be entrusted to an entity established on a durable basis which was entered on a special list notified to the European Commission.

(b) *Mandatory nature of the prior mediation procedure* – In the event that the Directive was found to be applicable, the "voluntary" nature did not lie in the freedom of the parties to choose whether or not to use that procedure, but in the fact that the parties were themselves in charge of the process and could organise it as they wished and terminate it at any time.

Accordingly, what was important was not whether the mediation system was mandatory or optional, but the fact that the parties' right of access to the judicial system was maintained. The requirement to undergo a mediation procedure before being able to bring court proceedings could be compatible with the principle of effective judicial protection subject to certain conditions, which were to be verified by the national court.

This was particularly the case where the mediation procedure: (1) did not result in a decision which was binding on the parties; (2) did not cause a substantial delay for the purposes of bringing legal proceedings; (3) suspended the period for the time-barring of claims, and (4) did not give rise to high costs, and only if (5) electronic means were not the only means by which the settlement procedure could be accessed, and (6) urgent interim measures were possible.

In those circumstances, the fact that national legislation had not only put in place an out-of-court mediation procedure, but had also made it mandatory to have recourse to that procedure before bringing an action before a judicial body was not incompatible with the Directive.

(c) *Legal assistance* – On the other hand, national legislation could not make it essential for a consumer taking part in an ADR procedure to be assisted by a lawyer.

(d) *Possibility of withdrawal* – Protection of the right of access to the judicial system meant that any withdrawal from an ADR procedure by a consumer, with or without a valid reason, ought never to have

unfavourable consequences for that consumer at subsequent stages of the dispute.

However, national legislation could provide for penalties in the event of the failure of the parties to participate in a mediation procedure without a valid reason, provided that the consumer could withdraw following the initial meeting with the mediator.

(See also *Rosalba Alassini e.a. v. Telecom Italia SpA e.a.*, C-317/08 – C-320/08, judgment of 18 March 2010)

Inter-American Court of Human Rights (IACtHR)

Presumption of innocence and assessment of evidence in criminal proceedings

Case of Zegarra Marín v. Peru, Series C No. 331, judgment 15.2.2017

[This summary was provided courtesy of the Secretariat of the Inter-American Court of Human Rights. It relates only to the merits and reparations aspects of the judgment. A more detailed, official abstract (in Spanish only) is available on that Court's website: www.corteidh.or.cr.]

Facts – The applicant, Mr Agustin Bladimiro Zegarra Marín, served as Deputy Director of Passports in the Peruvian Office of Migration and Naturalisation from March to September 1994. Between August and October 1994, the press revealed that certain passports had been issued improperly, including one with the applicant's signature. On 8 November 1996 he was convicted of the crimes of "personal concealment", "general falsification of documents", and "corruption of officials" by the Fifth Criminal Chamber. The plausibility assigned to the facts indicated in the co-defendants' statements played a decisive role in the outcome of the judgment, which expressly stated that the defendant had not rebutted in their entirety the charges against him, "because, the defence did not raise conclusive evidence that would render him totally innocent". He was sentenced to four years in prison, suspended conditionally, and ordered to pay civil reparation. The applicant subsequently filed a motion to annul the judgment. However, the Criminal Chamber of the Supreme Court of Justice confirmed the court *a quo*'s ruling and imposed additional penalties. The applicant subsequently filed an appeal for review with the President of the Supreme Court of Justice, but it was declared inadmissible.

Law

(a) *Articles 8(1) and 8(2) (right to a fair trial), in conjunction with Article 1(1) (obligation to respect and ensure rights without discrimination) of the American Convention on Human Rights* – The Inter-American Court stressed that the presumption of innocence is a guiding principle in criminal trials and a foundational standard for the assessment of the evidence. Such assessment must be rational, objective, and impartial in order to disprove the presumption of innocence and generate certainty about criminal responsibility. The Court noted that statements made by co-defendants are circumstantial evidence and, as such, their content should be corroborated by other means of proof. The Court established that, to reach a conviction, there must be sufficient evidence, which in turn must be substantial, precise and consistent. Co-defendants are not under any obligation to testify, given that their deposition is an act of defence.

The Court reiterated that, in criminal proceedings, the State bears the burden of proof. The accused is not obligated to affirmatively prove his innocence or to provide exculpatory evidence. However, to provide counterevidence or exculpatory evidence is a right that the defence may exercise in order to rebut the charges, which in turn the accusing party bears the burden of disproving.

The Court highlighted that to guarantee the presumption of innocence, especially as regards a criminal conviction rendered by a trial court, a reasoned judgment is imperative. It must state the sufficiency of the prosecution's evidence, observe the rules of sound judicial discretion in evaluating the evidence, including that which could generate doubt as to criminal responsibility, and lay out the final findings of the assessment of evidence. Only thus can a trial court judgment disprove the presumption of innocence and sustain a conviction beyond reasonable doubt. Where there is any doubt, the presumption of innocence and the principle of *in dubio pro reo* should play a decisive role in the judgment.

In the present case, the Court found that the presumption of innocence had not been respected, as the judgment had reversed the burden of proof, placing it on the accused rather than on the State. The Court also determined that the Fifth Criminal Chamber had not complied with its obligation to objectively and rationally evaluate the evidence before it or to assess the alternative hypothesis.

Moreover, despite the fact that the statements made by the co-defendants had played a decisive role in the conviction, they were not corroborated by any other means of proof.

Additionally, the Fifth Criminal Chamber had failed to adequately reason its decision given that the evidence, both for the prosecution and exculpatory, was simply listed but not assessed in order to spell out which evidence formed the basis for establishing the commission of the crime and the finding of guilt. In this regard, the Court noted that the circumstances of time, manner and place in which each of the alleged crimes were alleged to have taken place were not set out in the judgment. Finally, the Court found that the lack of reasoning had a direct impact on the ability to exercise the right of defence and to appeal the judgment.

Conclusion: violation (unanimously).

(b) *Articles 8(2)(h) (right to appeal the judgment to a higher court), and 25 (right to judicial protection) of the ACHR, in conjunction with Article 1(1) thereof* – The Inter-American Court recalled that the right to appeal in criminal matters involves a comprehensive review of the contested judgment. In addition, the competent authority must carry out an analysis of the issues raised by the defendant and rule on them. The Court found that the Criminal Chamber of the Supreme Court of Justice had merely upheld the lower court's findings, without addressing the applicant's main arguments in the motion to annul. Therefore, the appellate court had not ensured a full revision of the court *a quo*'s judgment and thus the appeal was not effective.

As for the appeal for review, the Inter-American Court found that, at the relevant time, it was not the appropriate remedy under Peruvian law to challenge a conviction.

Conclusion: violation of Articles 8(2)(h) and 25(1) concerning the motion to annul (unanimously), and no violation of Article 25(1) concerning the appeal for review (unanimously).

(c) *Reparations* – The Inter-American Court ordered the State to: (i) ensure that the conviction issued against the applicant had no legal effect and, therefore, adopt all necessary measures to expunge all judicial, administrative, criminal or police records existing against him in regard to such proceedings; (ii) publish the judgment and its official summary; and (iii) pay compensation in respect of non-pecuniary damages, as well as costs and expenses.

COURT NEWS

Superior Court Network (SCN)

On 16 June 2017 the Court hosted for the first time a Focal Points Forum for its Superior Court Network (SCN). 50 representatives from 43 different courts met each other and their Registry counterparts (SCN Focal Points) for a one-day working session which included a presentation on Protocol No. 16, training on the SCN secured Intranet site and HUDOC, as well as an afternoon of discussions.

The SCN was born out of the desire to create a more structured and effective dialogue between the Strasbourg Court and the national Superior Courts, a dialogue focused on exchanging information on Convention case-law and related matters. The SCN was launched in October 2015 and its membership has now risen to 54 courts from 32 States and is growing.

More information on the SCN's web page (www.echr.coe.int – The Court).

RECENT PUBLICATIONS

Reports of Judgments and Decisions

Volumes IV, V and VI for 2014 and the 2014 Index have now been published. The print edition is available from Wolf Legal Publishers (the Netherlands) at sales@wolfpublishers.nl. All published volumes and indexes from the *Reports* series may also be downloaded from the Court's Internet site (www.echr.coe.int – Case-law).

Case-Law Guides: updates and translations

Updates to 30 April 2017 in English and French have just been published regarding the Guides on Article 15 of the Convention (derogation in time of emergency), Article 2 of Protocol No. 1 (right to education) and Article 3 of Protocol No. 1 (right to free elections). Moreover, Guides on Article 4 (prohibition of slavery and forced labour) and Article 9 (freedom of thought, conscience and religion) of the Convention have just been translated into Albanian.

All Case-Law Guides can be downloaded from the Court's Internet site (www.echr.coe.int – Case-law).

Udhëzues rreth nenit 4 të Konventës (alb)

Udhëzues për nenin 9 (alb)

Guide on Article 15 of the Convention (eng)

Guide on Article 2 of Protocol No. 1 (eng)

Guide on Article 3 of Protocol No. 1 (eng)

Guide sur l'article 15 de la Convention (fre)

Guide sur l'article 2 du Protocole n° 1 (fre)

Guide sur l'article 3 du Protocole n° 1 (fre)

European Union Agency for Fundamental Rights (FRA)

The FRA has recently published three reports:

– Annual activity report 2016: this consolidated report provides an overview of the activities and achievements of the FRA in 2016.

– Fundamental Rights Report 2017 – FRA opinions: this report reviews major developments in the EU between January and December 2016, and outlines FRA's opinions thereon. Noting both achievements and remaining areas of concern, it provides insights into the main issues shaping fundamental rights debates across the EU.

– Between promise and delivery: 10 years of fundamental rights in the EU: this year marks the 10th anniversary of the EU Agency for Fundamental Rights. Such a milestone offers an opportunity for reflection – both on the progress that provides cause for celebration and on the lingering shortcomings that must be addressed.

These reports – available in English and French, and also in the various EU languages for the last two reports – can be downloaded from the FRA Internet site (http://fra.europa.eu/ – Publications).

The Information Note, compiled by the Court's Case-Law Information and Publications Division, contains summaries of cases examined during the month in question which the Registry considers as being of particular interest. The summaries are not binding on the Court.

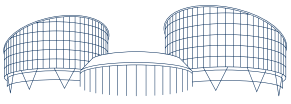
In the provisional version the summaries are normally drafted in the language of the case concerned, whereas the final single-language version appears in English and French respectively. The Information Note may be downloaded at www.echr.coe.int/NoteInformation/en. For publication updates please follow the Court's Twitter account at twitter.com/echrpublication.

The HUDOC database is available free-of-charge through the Court's Internet site (http://hudoc.echr.coe.int/sites/eng). It provides access to the case-law of the European Court of Human Rights (Grand Chamber, Chamber and Committee judgments, decisions, communicated cases, advisory opinions and legal summaries from the Case-Law Information Note), the European Commission of Human Rights (decisions and reports) and the Committee of Ministers (resolutions).

ENG

www.echr.coe.int

The European Court of Human Rights is an international court set up in 1959 by the member States of the Council of Europe. It rules on individual or State applications alleging violations of the rights set out in the European Convention on Human Rights of 1950.



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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE