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COUR EUROPÉENNE DES DROITS DE L'HOMME

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ARTICLE 3

Inhuman or degrading treatment

Alleged administration of a slap by a police officer to an individual during police interview: *case referred to the Grand Chamber*

Bouyid v. Belgium - 23380/09
Judgment 21.11.2013 [Section V]

The applicants, two brothers, one of whom was a minor at the material time, were questioned separately by police officers about unrelated incidents. They both alleged that they had been slapped once on the face by the officers. They filed a criminal complaint, with a request for civil-party status, but were unsuccessful.

In a judgment of 21 November 2013 (see Information Note 168), a Chamber of the Court unanimously found no violation of Article 3.

The Chamber considered that even supposing that there had been slaps on the face, in both cases one single slap had been rashly administered by police officers exasperated by the abusive and provocative behaviour of the applicants, and had not been geared to extracting confessions. Furthermore, the incidents had occurred in a context of tension between the local police force and the members of the applicants' family. Under these circumstances, even though one of the applicants had been only 17 years of age at the time and whilst it was understandable that they felt strong resentment, assuming the events had taken place as alleged, each slap had been a one-off act in a situation of nervous tension and without any serious or long-term effect. Such acts, although unacceptable, could not be regarded as generating a sufficient degree of humiliation or debasement for a breach of Article 3 to be established.

On 24 March 2014 the case was referred to the Grand Chamber at the applicants' request.

Effective investigation

Failure to take reasonable steps to investigate plausible evidence that violent assault was racially motivated: *violation*

Abdu v. Bulgaria - 26827/08
Judgment 11.3.2014 [Section IV]

Facts – The applicant and one of his friends, both Sudanese nationals, had been involved in a fight with two Bulgarian youths. During the fight the applicant had been slightly injured. He alleged that his attackers, two skinheads, had assaulted him for racist reasons. The police conducted an investigation into these allegations but were unable to ascertain who had started the fight or whether it had been racially motivated. In the absence of evidence on these two factors, the public prosecutor decided not to prosecute any of the individuals involved.

Law – Article 3 (*procedural aspect*) and Article 14 in conjunction with Article 3: Even though under the Bulgarian Criminal Code, racially motivated acts of violence against other persons constituted a criminal offence punishable by imprisonment and a preliminary investigation had been promptly initiated following the incident, the prosecution had nevertheless considered that the offence had not been made out and that, specifically, the racist motivation for the act of violence had not been established.

The prosecuting authorities had concentrated their investigations and analysis on whether it had been the two Sudanese nationals or the two Bulgarians who had started the fight. They had therefore confined themselves to establishing the *actus reus*, namely the violent acts, merely noting the lack of evidence that the violence had been motivated by racist considerations. The authorities had therefore not deemed it necessary to question the witness about any remarks he might have heard during the incident, or to question the two Bulgarian youths about a possible racist motive for their actions. Yet right from the beginning of the investigation the applicant had claimed that he had suffered racist insults and the two Bulgarian youths had been described in the police report as skinheads – a group known for their extremist, racist ideology. The applicant had, moreover, pointed out these shortcomings in the investigation in the appeal which he had lodged against the decision not to prosecute, drawing the prosecutor's attention to the way the two youths were dressed and the need to question them specifically about their motives, but these requests had been ignored by the public prosecutor.

In view of these considerations and the specific substantiated allegations voiced by the applicant during the criminal proceedings, the authorities had been in possession of plausible evidence pointing to a possible racist motive on the part of the applicant's attackers and had failed in their duty to take all reasonable steps to investigate whether the acts of violence had been racially motivated.

Therefore, the legal remedies mentioned by the Government, namely a criminal prosecution for minor bodily injuries and an action for damages against those responsible, could not, in the circumstances of the present case, be considered apt to fulfil the State's procedural obligations, and the objection raised by the Government as to non-exhaustion of domestic remedies had to be rejected.

Furthermore, various national and international agencies had noted cases where the Bulgarian authorities had failed to implement effectively the provisions penalising cases of racist violence.

Conclusion: violation (five votes to two).

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

(See also: *Nachova and Others v. Bulgaria* [GC], 43577/98 and 43579/98, 6 July 2005, Information Note 77; *B.S. v. Spain*, 47159/08, 24 July 2012, Information Note 154)

Extradition

Proposed extradition to Russia of man suspected of belonging to terrorist group:
extradition would constitute a violation

M.G. v. Bulgaria - 59297/12
Judgment 25.3.2014 [Section IV]

Facts – The applicant is a Russian national of Chechen origin who had lived in Ingushetia in the northern Caucasus until 2004. In 2003 he fell under suspicion of belonging to an armed jihadist group operating in that region. In 2004 he fled to Poland, where he, his wife and their three children obtained refugee status. In February 2005 an arrest warrant was issued against him, and the Russian authorities issued an international wanted notice, which was channelled through Interpol. In December 2005 the applicant and his family settled in Germany, where they were granted refugee status. In July 2012, while he was driving to Turkey, the applicant was arrested after an identity check at the Bulgarian border. In reply to an official request from Russia, the Bulgarian authorities initiated extradition proceedings. Despite the intervention of the representative of the United Nations High Commissioner for Refugees in Sofia, who pointed out that the danger to the applicant which had led to the granting of refugee status in two different countries was still extant, the court of appeal ruled in favour of his extradition in September 2012. Following the decision of the European Court of Human Rights to apply Rule 39 of the Rules of Court, the applicant was transferred to prison in Sofia, where he is still being held.

Law – Article 3: In scores of cases against the Russian Federation the Court had found serious human rights violations in the northern Caucasus, including Ingushetia, perpetrated in the course of anti-terrorist operations or during criminal prosecutions of persons suspected of belonging to insurgent groups. Most cases had involved forced disappearance, torture and inhuman and degrading treatment, as well as the lack of effective investigations into allegations of such violations. While the majority of these findings of violations of Articles 2 and 3 of the Convention concerned events which had taken place in the first five years of this century, it was nonetheless true that this relevant fact had to be taken into account in determining the overall situation in this region of Russia. Moreover, the applicant's prosecution and sudden departure from the northern Caucasus to Poland both dated precisely from that period. Drawing on a large number of reports, the Court was compelled to conclude that the northern Caucasus, including Ingushetia, was still an armed conflict zone characterised by violence and insecurity and serious violations of fundamental human rights, such as extrajudicial executions, forced disappearances, torture and other types of inhuman or degrading treatment, and collective punishments of specific local population groups.

As regards the applicant's individual situation, his refugee status in two other European countries was a major indication, although it only constituted a starting point for analysing his current situation. The Russian authorities had been actively searching for the applicant and had issued an international wanted notice. Shortly after his arrest in Bulgaria they had applied to the Bulgarian authorities for his extradition to Russia. It was likely that if he were extradited the applicant would be imprisoned in one of the provisional detention centres in the northern Caucasus. Since he was facing charges concerning offences related to the activities of an armed insurgent group, he would be exposed in particular to a risk of being tortured in order to extract confessions, or being subjected to other types of inhuman and degrading treatment. These allegations had been corroborated by several reports, including that of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). Furthermore, the applicant claimed that his relatives in Ingushetia had been harassed by the

Russian police, described cases of arbitrary searches, seizures, threats and ill-treatment, and explained that his sister had disappeared. Several international reports also appeared to suggest such a possibility.

Further, the assurances given by the Russian Prosecutor General were insufficient to dispel the risk of the applicant's being subjected to ill-treatment. In particular, the international reports pointed out that persons accused of belonging to the armed group in question operating in the northern Caucasus were often tortured during their detention and that the relevant Russian authorities frequently ignored their obligation to conduct effective investigations into cases of alleged ill-treatment in the provisional detention centres in the northern Caucasus. Moreover, the Bulgarian Government had not specified any practical measures it was intending to adopt in order to ensure that the Russian authorities complied with their undertakings or whether its diplomatic services had already cooperated in the past with the Russian authorities in similar cases of extradition to the northern Caucasus. Nevertheless, the domestic court of appeal had drawn exclusively on the same assurances from the Russian authorities in authorising the applicant's extradition: insufficient attention had been paid to whether or not the applicant was running a severe and substantiated risk of suffering ill-treatment in his country of origin. Consequently, the applicant had been deprived of the safeguards required by Article 3 of the Convention. These facts were sufficient to conclude that the applicant faced a severe and substantiated risk of being subjected to torture or other types of inhuman and degrading treatment in his country of origin.

Conclusion: extradition would constitute a violation (unanimously).

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

ARTICLE 5

Article 5 § 1

Deprivation of liberty

Thirty-day placement of minor in detention centre for young offenders to "correct his behaviour": *case referred to the Grand Chamber*

Blokhin v. Russia - 47152/06
Judgment 14.11.2013 [Section I]

The applicant, who at the material time was twelve years old and suffering from attention-deficit hyperactivity disorder and enuresis, was arrested and taken to a police station on suspicion of extorting money from a nine-year old. The authorities found it established that the applicant had committed offences punishable under the Criminal Code but, since he was below the statutory age of criminal responsibility, no criminal proceedings were opened against him. Instead he was brought before a court which ordered his placement in a temporary detention centre for minor offenders for a period of 30 days in order to "correct his behaviour" and to prevent his committing further acts of delinquency. The applicant alleged that his health deteriorated while in the centre as he did not receive the medical treatment his doctor had prescribed.

In a judgment of 14 November 2013 (see Information Note 168), a Chamber of the Court held unanimously that there had been violations of Article 3 of the Convention (on account of the lack of adequate medical treatment for the applicant's condition), of Article 5 (on account of the applicant's detention in the temporary detention centre for minor offenders, which was held to have been arbitrary) and of Article 6 § 1 in conjunction with Article 6 § 3 (c) and (d) (on account of the lack of adequate procedural guarantees in the proceedings).

On 24 March 2014 the case was referred to the Grand Chamber at the Government's request.

ARTICLE 6

Article 6 § 1 (civil)

Access to court

Fixed ten-year limitation period for asbestos related claims irrespective of whether claimant was aware of its effects upon him: *violation*

Howald Moor and Others v. Switzerland
- 52067/10 and 41072/11
Judgment 11.3.2014 [Section II]

Facts – The applicants are the widow and two daughters of a mechanic who died in 2005 from a disease caused by the asbestos to which he had been

exposed in the course of his work. The deceased's daughters continued the proceedings brought by their father against his employer. They and their mother also claimed compensation in respect of non-pecuniary damage. All the applicants' claims were held to be time-barred, as the ten-year limitation period began to run as soon as the claim became enforceable, irrespective of whether the claimant was aware of the effects of the damage.

Law – Article 6 § 1: This case concerned the fixing of the starting point for the limitation period applicable under Swiss law to victims of asbestos exposure. Given that the latency period for asbestos-related diseases could be several decades, the fixed limitation period of ten years – which, according to the legislation in force and the case-law of the Federal Court, began running on the date when the person concerned had been exposed to the asbestos dust – would invariably have expired. Accordingly, any claims for damages would be bound from the outset to fail, as they would lapse before the victims could be objectively said to be aware of their rights. Furthermore, the claims lodged by asbestos victims, who had been exposed to that substance prior to the outright ban on its use introduced in Switzerland in 1989, had all become time-barred under the law in force. The bill revising the Swiss legislation on limitation periods did not provide for any equitable solution to the problem, if only on a transitional basis in the form of a "period of grace". The rules on limitation periods pursued the legitimate aim, *inter alia*, of ensuring legal certainty. As to their proportionality, however, their systematic application to persons suffering from diseases which, like those caused by asbestos, could not be diagnosed until many years after the triggering events, was liable to deprive those persons of the opportunity to assert their claims before the courts. Taking into account the legislation existing in Switzerland to deal with comparable situations and without wishing to prejudge other solutions that might be considered, the Court took the view that where it was scientifically proven that a person could not know that he or she was suffering from a certain disease, that fact should be taken into consideration in calculating the limitation period. Accordingly, the Court found that the application of the limitation periods had restricted the applicants' access to a court to the point of impairing the very essence of their right.

Conclusion: violation (six votes to one).

Article 41: EUR 12,180 jointly in respect of non-pecuniary damage.

Adversarial trial

Failure to take sufficient steps to identify address for service in civil proceedings: *violation*

Dilipak and Karakaya v. Turkey
- 7942/05 and 24838/05
Judgment 4.3.2014 [Section II]

Facts – Civil proceedings were brought against the applicants following the publication of two articles in their newspaper. Neither the writ of summons nor the statement of claim could be served at the address supplied by the claimant as the applicants were unknown there. Fresh writs were sent to the addresses established by the police. The documents were served on the "authorised employee" for one of the applicants. The other applicant could not be traced. The court then decided to have the notification published in the press. The applicants were convicted *in absentia*. When the judgment had become final, the claimant brought enforcement proceedings. Orders to pay were sent to the applicants' homes. The applicants, who were thus apprised simultaneously of both the proceedings and the findings against them, produced evidence that the authorities had known their addresses. Three appeals were lodged with a view to obtaining a fresh trial. None of these appeals had been successful at the time of delivery of the present judgment.

Law – Article 6 § 1: When considering judicial proceedings from the angle of the civil aspect of Article 6, regard must be had to the Court's approach to criminal matters. Consequently, the first question to be examined was whether the authorities had taken the requisite steps to inform the applicant of the existence of the trial and whether the latter had waived his or her right. If not, it must be ascertained whether the applicant could have obtained a fresh adversarial trial under domestic law.

The domestic court had first of all attempted to serve the statement of claim and the writ of summons at the address supplied by the claimant. Subsequently, since the applicants were not to be found at that address, it had decided to order a police search. The court did not appear to have considered the action carried out by the police or the advisability of further action before resorting to service via publication in the press, in the case of the first applicant, even though the latter procedure often had very unfortunate consequences for the addressee. No enquiries seemed to have been made in respect of either of the applicants

with the civil registry, professional bodies or the authority responsible for issuing press cards, although their journalist status could hardly have been unknown. In short, there was nothing to show that the enquiries which might legitimately and reasonably have been expected from the authorities had actually been carried out; indeed, all the evidence was to the contrary. It was quite troubling that, when it came to enforcing the judgment, the real addresses of the two journalists had then been traced without difficulty. The applicants had therefore been deprived of the opportunity to participate in the civil proceedings against them or to defend their interests. Moreover, there was nothing to suggest that they had waived their right to a fair trial.

It therefore remained to be seen whether domestic law afforded the applicants, with a sufficient degree of certainty, the opportunity to appear at a new trial. In the present case three appeals had been lodged to that end. The first appeal had been dismissed by the domestic courts on the grounds that the service via publication in the press had been valid. Secondly, an appeal on points of law had been ordered by the Ministry of Justice, even though setting aside a judgment on points of law would have no effect on the litigants' situation. In any event the Court noted that the appeal had been dismissed by the Court of Cassation. Thirdly, the first applicant had applied to reopen the proceedings. However, the conditions for making use of such a remedy did not include the circumstance that one of the parties was unable to take part in the original proceedings owing to lack of notification or to any other factor invalidating the notification. Moreover, the applicant had based his application not on that circumstance but on the discovery of new information concerning the merits of the case. Consequently, the application to reopen the proceedings did not guarantee with sufficient certainty that the applicants would have the opportunity to appear at a new trial to present their defence. In conclusion, the requisite steps had not been taken to inform the applicants of the proceedings against them and the latter had not had the opportunity to appear at a new trial, despite the fact they had not waived their corresponding right.

Conclusion: violation (unanimously).

The Court also unanimously held that there had been a violation of Article 10.

Article 41: question reserved regarding the first applicant's claim; no claim made by the second applicant.

(See also *Colozza v. Italy*, 9024/80, 12 February 1985; *Medenica v. Switzerland*, 20491/92, 14 June 2001, Information Note 31; and *Sejdovic v. Italy* [GC], 56581/00, 1 March 2006, Information Note 84)

Article 6 § 1 (criminal)

Equality of arms

Handling of evidence in a manner that resulted in placing the defence at a substantial disadvantage vis-à-vis the prosecution:
violation

Matytsina v. Russia - 58428/10
Judgment 27.3.2014 [Section I]

Facts – The applicant worked for a non-profit association providing training sessions, lectures, personal consultations and the like. According to one of the association's brochures, the treatment provided would help fight insomnia and depression, strengthen cardio-vascular systems, control emotions and boost natural defence mechanisms. The association operated without a licence as its activities were not considered "medical" in nature. In 2003 criminal proceedings were opened against the applicant for the illegal practice of medicine after a client, S.D., was diagnosed with serious psychological problems she claimed were directly linked to her participation in training sessions run by the association. A series of expert examinations were conducted in the pre-trial phase to establish whether S.D. had suffered any physical or mental harm as a result of her participation in the sessions and whether the sessions were "medical" in nature. However, she did not give evidence before the trial court owing to her fragile mental state. The applicant was ultimately convicted.

Law

Article 6 § 1: The applicant complained that expert evidence adduced by the prosecution had been taken into consideration, whereas the reports and opinions of experts suggested by the defence had been declared inadmissible. The Court began by noting that the fact that at the beginning of the trial the trial court had only had before it expert reports obtained by the prosecution without any participation of the defence was not, as such, contrary to the Convention, provided that in the trial proceedings the defence had sufficient procedural tools to examine that evidence and effectively challenge it.

As regards the evidence concerning S.D.'s mental condition, the defence had not participated in the process of obtaining any of the expert reports at the investigation stage. Further, a key expert for the prosecution (the rapporteur of the only report based on a personal examination of S.D. and the only person to have claimed that the association's training sessions had a direct causal link with her subsequent mental disorder) had been absent from the trial and the defence had not been able to question him. The court had refused to order another expert opinion, despite the fact that two other experts had thought a further opinion necessary. Moreover, under Russian law the defence did not have the same rights as the prosecution with regard to obtaining expert opinions: all they could do was either ask the court for an expert examination (and suggest experts and questions) or seek the assistance of "specialists", whose opinion however carried much less weight than that of an "expert". In consequence, the defence had had virtually no possibility of challenging reports submitted by the prosecution with their own counter-evidence. The Court concluded that the combination of the above handicaps experienced by the defence throughout the proceedings had put it at a net disadvantage *vis-à-vis* the prosecution.

As regards the evidence concerning the nature of the association's activities, the Court observed that an expert opinion favourable to the defence which the authorities had obtained at the pre-trial stage was either never produced in court or was simply disregarded. Either way, the authorities had breached the fundamental principles of a fair trial, since according to the Court's case-law, the prosecution must disclose to the defence "all material evidence in their possession for or against the accused", including exculpatory evidence. That rule would make no sense if courts were allowed to leave such evidence without consideration and not even mention it in their judgments.

In sum, the Court was mindful of the fact that the trial judge had heard a number of witnesses for the defence, had examined several expert opinions and had studied various documents. However, the question of whether or not the defence had enjoyed "equality of arms" with the prosecution and whether the trial had been "adversarial" could not be addressed solely in quantitative terms. In the applicant's case it had been very difficult for the defence to effectively challenge the expert evidence submitted to the court by the prosecution, on which the case against the applicant had been built. In those circumstances, the way in which the expert evidence had been handled had rendered the applicant's trial unfair.

Conclusion: violation (unanimously).

Article 6 § 3 (d): The applicant also complained of his inability to examine S.D. in court. Instead of hearing her in person, the trial court had used her testimony obtained in the course of the police investigation without the defence's participation. She was not called to testify in person owing to her fragile mental condition and the danger of a relapse.

The Court was prepared to accept that the interests of a witness, and in particular the physical and mental integrity of the alleged victim of a crime, were important factors which could sometimes justify limitations on the rights of the defence and that the decision at issue had not been arbitrary. More importantly, it considered that S.D.'s testimony had yielded no conclusive evidence against the applicant and had not been "sole and decisive" evidence against her. Given the low level of importance of her testimony, her absence from the trial had not prejudiced the interests of the defence in any significant manner and had been outweighed by genuine concern for her well-being.

Conclusion: no violation (six votes to one).

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

Public hearing

Absence of public hearing before financial markets regulator empowered to impose heavy penalties: *Article 6 § 1 applicable; violation*

Grande Stevens and Others v. Italy
- 18640/10 et al.
Judgment 4.3.2014 [Section II]

Facts – The applicants are two companies and their chairman, Mr Gabetti, together with Mr Marrone, the authorised representative of one of the companies, and Mr Grande Stevens, a lawyer who had advised them. They consulted the National Companies and Stock Exchange Commission (hereafter, Consob) about a possible financial operation. In response to a question from Consob, they issued a press release indicating that no initiative had been taken or examined concerning the expiry of a particular financial agreement, although negotiations with an English bank were in fact at an advanced stage. Consob's Markets and Economic Opinions

Division accused the applicants of breaching Article 187 *ter* § 1 of Legislative Decree no. 58 of 24 February 1998, penalising the dissemination of information, news or false or misleading rumours capable of providing false or misleading information concerning financial instruments. On appeal, the applicants were ordered to pay fines ranging from EUR 500,000 to EUR 3,000,000, and Mr Gabetti, Mr Grande Stevens and Mr Marrone were banned from administering, managing or supervising listed companies for several months. Although proceedings were still pending before the Court of Cassation, criminal proceedings were brought against the applicants in respect of the same press release. An appeal on points of law lodged by Mr Gabetti and Mr Grande Stevens was still pending when the European Court's judgment was delivered.

Before the European Court, the applicants alleged that the procedure before Consob had been unfair and complained that Consob had not been impartial and independent. They also considered that they had been victims of a violation of the principle *ne bis in idem*.

Law – Article 6 § 1

(a) *Applicability* – The accusations of market manipulation made against the applicants did not constitute a criminal offence under Italian law, but were sanctioned by a penalty described as "administrative" by Article 187 *ter* § 1 of Legislative Decree no. 58 of 1998.

With regard to the nature of the offence, the provisions which the applicants were accused of breaching were intended to guarantee the integrity of the financial markets and to maintain public confidence in the security of transactions. Consob, an independent administrative authority, had the task of protecting investors and ensuring the effectiveness, transparency and development of the stock markets. This concerned the general interests of society, usually protected by criminal law. In addition, the fines imposed were essentially intended to prevent repeat offending. They were thus based on rules whose purpose was both deterrent, namely to prevent the applicants from re-offending, and punitive, since they punished unlawful conduct. They were thus not intended solely to repair damage of a financial nature. In this respect, it should be noted that the penalties were imposed by Consob on the basis of the seriousness of the impugned conduct, and not of the damage caused to investors.

As to the nature and severity of the penalty "likely to be imposed" on the applicants, it was true that the fines in question could not be replaced by a custodial sentence in the event of non-payment. However, they could go up to EUR 5,000,000, and in certain circumstances this ordinary maximum amount could be tripled or fixed at ten times the proceeds or profit obtained through the unlawful conduct. The imposition of the above-mentioned pecuniary administrative penalties entailed the temporary loss of their honour for the representatives of the companies involved, and, if the companies were listed on the stock exchange, their representatives could be temporarily forbidden from administering, managing or supervising listed companies for periods ranging from two months to three years. Consob could also forbid listed companies, management companies and auditing companies from engaging the services of the perpetrator, for a maximum duration of three years, and could request the professional bodies to suspend, on a temporary basis, the individual's right to carry out his or her professional activity. Lastly, the imposition of pecuniary administrative penalties entailed confiscation of the proceeds or profit of the unlawful conduct and the assets through which they had been obtained. Admittedly, in the instant case the full range of penalties had not been applied, as the appeal court had reduced certain of the fines imposed by Consob and no confiscation order had been made. However, the issue of whether an institution could be classified as criminal in nature depended on the severity of the penalty to which the individuals concerned were *a priori* liable, and not on the severity of the penalty ultimately imposed. The penalties imposed on Mr Gabetti, Mr Grande Stevens and Mr Marrone were such as to compromise their integrity, and the fines, given their amounts, were of undeniable severity, incurring significant financial consequences for the applicants. Through their severity, the penalties in question were thus criminal in nature, so that Article 6 § 1 was applicable in its criminal branch.

(b) *Merits* – Although the proceedings before Consob had not met the requirements of fairness and objective impartiality, the applicants' case had subsequently been reviewed by an independent and impartial body with full powers. However, the latter had not held a public hearing, which, in the present case, had amounted to a breach of Article 6 § 1 of the Convention.

Conclusion: violation (unanimously).

Article 4 of Protocol No. 7

(a) *Reservation by Italy in respect of Article 4 of Protocol No. 7* – The Government noted that Italy had made a declaration to the effect that Articles 2

to 4 of Protocol No. 7 applied only to offences, proceedings and decisions classified as criminal under Italian law. However, the reservation in question did not contain "a brief statement" of the law or laws which were allegedly incompatible with Article 4 of Protocol No. 7. It could be inferred from the wording of the reservation that Italy had intended to exclude from the scope of this provision all offences and proceedings which were not classified as "criminal" under Italian law. However, a reservation which did not refer to or mention those specific provisions of the Italian legal order which excluded offences or proceedings from the scope of Article 4 of Protocol No. 7 did not afford to a sufficient degree a guarantee that [it] did not go beyond the provision expressly excluded by the Contracting State. In this respect, it was necessary to reiterate that even important practical difficulties in indicating and describing all of the provisions concerned by the reservation could not justify failure to comply with the conditions set out in Article 57 of the Convention. Italy's reservation was consequently invalid.

(b) *Merits* – There were valid grounds for considering that the procedure before Consob concerned "a criminal charge" against the applicants, and the sentences imposed by Consob and partly reduced by the court of appeal had become final in June 2009. From that date, the applicants ought therefore to have been considered as having been "already finally convicted for an offence" for the purposes of Article 4 of Protocol No. 7. Yet the new set of criminal proceedings which had been brought against them in the meantime were not closed and resulted in judgments being delivered at first and second instance. The proceedings before Consob and the criminal courts concerned the same conduct by the same persons on the same date. It followed that the new set of proceedings concerned a second "offence" originating in identical facts to those which had been the subject-matter of the first, and final, conviction.

Moreover, in so far as the Government submitted that European Union law had explicitly authorised the use of a double penalty (administrative and criminal) in the context of combatting unlawful conduct on the financial markets, the Court, while specifying that its task was not to interpret the case-law of the Court of Justice of the European Union (CJE), noted that in its judgment of 23 December 2009 in the case of *Spector Photo Group*, the CJE had indicated that Article 14 of Directive no. 2003/6 did not oblige the Member States to provide for criminal sanctions against authors of insider dealing, but merely stated that those States were required to ensure that administrative penalties were imposed against the persons responsible where there had been a failure to comply with the provisions adopted in implementation of the directive. It had also drawn the States' attention to the fact that such administrative penalties could, for the purposes of the application of the Convention, be qualified as criminal sanctions. Further, in its *Åklagaren v. Hans Åkerberg Fransson* judgment, on the subject of value-added tax, the CJE had stated that, under the *ne bis in idem* principle, a State could only impose a double penalty (fiscal and criminal) in respect of the same facts if the first penalty was not criminal in nature.

Conclusion: violation (unanimously).

The Court also held that there had been no violation of Article 6 § 3 (a) and (c) (six votes to one) or of Article 1 of Protocol No. 1 (five votes to two).

Article 41: EUR 10, 000 to each of the applicants in respect of non-pecuniary damage; claim in respect of pecuniary damage dismissed.

Article 46: The respondent State was to ensure that the new criminal proceedings brought against the applicants in violation of Article 4 of Protocol No. 7, which, according to the most recent information received, were still pending in respect of Mr Gabetti and Mr Grande Stevens, were closed as rapidly as possible.

Article 6 § 1 (administrative)

Impartial tribunal

Hearing of successive appeals on points of law by bench including same three judges: *violation*

Fazlı Aslaner v. Turkey - 36073/04
Judgment 4.3.2014 [Section II]

Facts – In 1993 the applicant, who had successfully sat a competition for the post of head registrar in the State Security Court, was unable to obtain that post on account of his ranking. In 1997 he applied for another post, but, given the authorities' refusal to appoint him, he sought judicial review before the administrative court, which granted his claim. The Ministry of Justice lodged an appeal on points of law against that judgment. In December 2000 the fifth administrative division of the Supreme Administrative Court quashed the impugned judgment. In March 2002 the same division dismissed

an application by the applicant for rectification of the judgment. Following a new appeal on points of law by the authorities, the case was assigned *ex officio* to the general assembly of the administrative proceedings divisions of the Supreme Administrative Court. In January 2003 that assembly quashed the administrative court's judgment. Three judges who had been involved in examining the application for rectification of the judgment in the fifth division's decision of December 2000 were on the 31-judge bench. In December 2003 the general assembly of administrative proceedings divisions dismissed the application.

Law – Article 6 § 1: The applicant's fears that the general assembly was not impartial stemmed from the fact that three of the judges on that bench had previously been involved in examining the first appeal on points of law. The Court was required to decide whether, having regard to the nature and scope of the judicial review which the general assembly of administrative proceedings divisions was required to conduct, the three judges in question had displayed or could legitimately be considered to have displayed bias with regard to the decision to be taken on the merits.

During the first appeal on points of law, the issue examined by the fifth division of the Supreme Administrative Court had been to determine whether the administrative court judgment which held that the authorities were bound by the competition ranking, even with regard to appointments in other judicial districts, had complied with the law. Yet three of the 31 judges who sat in the general assembly of administrative proceedings divisions had previously sat on that bench of the fifth division, and those three judges had therefore participated, in the same case, in a decision concerning the question which they were required to examine. In consequence, they could legitimately be considered to have displayed bias with regard to the decision to be taken on the merits of the second appeal on points of law.

However, the fact that certain judges had previously formed an opinion did not in itself suffice to conclude that the impartiality of the general assembly of administrative divisions had been affected. Equally, the Court considered in the instant case that the number or (relatively low) proportion of judges concerned by the issue of objective impartiality was not decisive, and that quantitative considerations did not have an impact on examination of the case, give that there had existed no serious ground rendering absolutely necessary the participation of the three judges in question on the bench with voting capacity. In addition, one of the three judges, in her capacity as deputy president of the Supreme Administrative Court, had presided over the assembly of administrative divisions, and had accordingly led the discussions during the deliberations, which amounted to an additional circumstance undermining the appearance of impartiality. Those two factors were such as to render objectively justified the applicant's fears concerning the objective impartiality of the assembly of administrative divisions as it had been composed in this case.

Conclusion: violation (four votes to three).

Article 41: EUR 6,000 in respect of non-pecuniary damage.

Article 6 § 2

Presumption of innocence

Statement in expert report that applicant was guilty of criminal offence of which he had been acquitted: *Article 6 § 2 applicable; no violation*

Müller v. Germany - 54963/08
Judgment 27.3.2014 [Section V]

Facts – In 1984 the applicant was given a life-sentence for the murder of his wife. In 1999 he was acquitted of a further charge that he had caused bodily harm to a female acquaintance (Ms J) while on prison leave in 1997. After serving 15 years of his life sentence he applied for probationary release, but this was refused by the regional court on the grounds that he remained dangerous. It reached that conclusion after hearing witness evidence relating to the 1997 incident. In September 2007 a different regional court rejected a further application for probationary release in the absence of any realistic chance that the applicant would not reoffend. In reaching that conclusion it relied on a fresh expert's opinion that stated that "the criminal offence that the applicant had committed to the detriment of Ms J. showed that the applicant was willing to enter into relationships with women once more and that a separation would lead to violent acts for reasons of wounded pride". That decision was upheld on appeal.

Law – Article 6 § 2

(a) *Applicability* – The applicant had been charged with causing bodily harm to a female acquaintance while on prison leave in January 1997. In February

1999 a district court had acquitted him of that charge on factual grounds without giving any further written reasons. In 2007 the execution of sentence chamber of the regional court and the court of appeal considered that the circumstances of the alleged incident of January 1997 were of relevance to the decision on the applicant's request for probationary release. There thus existed a sufficient connection between the criminal proceedings terminated by the applicant's acquittal in 1999 and the proceedings on his request for probationary release to bring the case within the scope of applicability of Article 6 § 2 of the Convention.

Conclusion: admissible (unanimously).

(b) *Merits* – The Court reiterated that the presumption of innocence would be violated if a statement of a public official concerning a person charged with a criminal offence reflected an opinion that he was guilty unless he had been proved so according to law. However, there was no single approach to ascertaining the circumstances in which that Article would be violated in the context of proceedings following the conclusion of criminal proceedings and much depended on the nature and context of the proceedings in which the impugned decision was adopted. Although the language used by the decision-maker was of critical importance in assessing the compatibility of the decision and its reasons with Article 6 § 2, when regard was had to the nature and context of the particular proceedings even the use of some unfortunate language may not be decisive.

Turning to the applicant's case, the Court noted that his complaint directly related only to the decisions given by the regional court and court of appeal in 2007. The decisions given on his earlier requests for probationary release, in particular the regional court's decision of February 1999, were therefore relevant only in so far as they provided the context for the 2007 decisions.

As regards the nature and context in which the impugned decision was taken, the regional court had been required to assess whether the applicant's probationary release would cause a risk to public safety and had therefore had to consider the applicant's conduct while serving his sentence. It was in that context that it had examined his behaviour following his separation from Ms J. The Court did not consider that the regional court was *a priori* prevented from taking into account certain facts which had been under the consideration of the criminal court in 1999, particularly as it had been expressly stated in relation to the application for probationary release in 1999 that the qualification of the 1997 incident under criminal law was irrelevant for the prognostic decision that had to be made on the question of probationary release.

With regard to the language that had been used in the 2007 decision to refuse probationary release, although it would have been more prudent for the regional court clearly to distance itself from the expert's misleading statements as to criminal guilt, it was sufficiently clear from the wording it had used that it was directly quoting from the expert report and that the reference was accepted as a follow-up to the analysis previously given with respect to the issue of probationary release. Neither the regional court nor the court of appeal had stated that the applicant was guilty of a fresh criminal offence. The regional court had expressly stated that it was part of the expert's task to assess a factual situation from a medical point of view. A close reading of the text excluded an understanding which would touch upon the applicant's reputation and the way he was perceived by the public.

Accordingly, the decision to refuse the request for probationary release did not demonstrate a lack of respect for the presumption of innocence the applicant enjoyed in respect of the criminal charge of which he had been acquitted.

Conclusion: no violation (five votes to two).

ARTICLE 8

Respect for private life
Respect for correspondence

System of monitoring of mobile phone communications: *relinquishment in favour of the Grand Chamber*

Zakharov v. Russia - 47143/06
[Section I]

The case concerns the compatibility with Article 8 of the Convention of the provisions of Russian law governing the secret interception of mobile phone communications. It also raises an issue under Article 13 of the Convention.

The applicant is the editor-in-chief of a publishing company and subscribed to the services of several mobile network operators. In 2003 he brought judicial proceeding against the operators, the Ministry of Communications and Information Technologies and the regional department of the

Federal Security Service ("the FSB") complaining of interference with his right to privacy for his telephone communications. He claimed that pursuant to a ministerial order, which had never been published, the mobile operators had installed equipment which permitted unrestricted interception of all telephone communications by the FSB without prior judicial authorisation. He asked the court to issue an injunction to remove the equipment and to ensure that access to telecommunications was given to authorised persons only. His claims were rejected by the domestic courts as he had failed to prove that his telephone conversations had been intercepted. The domestic courts also found that the equipment in question had been installed to enable law-enforcement agencies to conduct operative search activities in accordance with the procedure prescribed by law and did not in itself infringe the privacy of the applicant's communications.

On 11 March 2014 a Chamber of the Court decided to relinquish its jurisdiction in the case in favour of the Grand Chamber.

Respect for family life
Positive obligations

Refusal to grant family reunion to a Danish citizen and his foreign wife on the ground that the spouses' ties with another country were stronger than their ties with Denmark: *no violation*

Biao v. Denmark - 38590/10
Judgment 25.3.2014 [Section II]

(See Article 14 below)

ARTICLE 14

Discrimination (Article 3)

Failure to take reasonable steps to investigate plausible evidence that violent assault was racially motivated: *violation*

Abdu v. Bulgaria - 26827/08
Judgment 11.3.2014 [Section IV]

(See Article 3 above, page 7)

Discrimination (Article 8)

More favourable conditions for family reunion applying to persons who had held Danish citizenship for at least 28 years: *no violation*

Biao v. Denmark - 38590/10
Judgment 25.3.2014 [Section II]

Facts – The applicants are husband and wife. The first applicant is a naturalised Danish citizen of Togolese origin who lived in Ghana from the age of 6 to 21, entered Denmark in 1993 aged 22 and acquired Danish citizenship in 2002. He married the second applicant in 2003 in Ghana. She is a Ghanaian national who was born and raised in Ghana who at the time of the marriage had never visited Denmark and did not speak Danish. After the marriage, the second applicant requested a residence permit for Denmark, which was refused by the Aliens Authority on the grounds that the applicants did not comply with the requirement under the Aliens Act (known as the "attachment requirement") that a couple applying for family reunion must not have stronger ties with another country – Ghana in the applicants' case – than with Denmark. The "attachment requirement" was lifted for persons who had held Danish citizenship for at least 28 years, as well as for non-Danish nationals who were born and/or raised in Denmark and had lawfully stayed there for at least 28 years (the so-called 28-year rule under the Aliens Act). The applicants unsuccessfully challenged the refusal to grant them family reunion before the Danish courts. They submitted, *inter alia*, that the 28-year rule resulted in a difference in treatment between two groups of Danish nationals, namely those who were born Danish nationals and those who acquired Danish nationality later in life. The first applicant could not therefore be exempted from the attachment requirement until 2030 when he would reach the age of 59.

In the meantime, the second applicant entered Denmark on a tourist visa. Some months later, the couple moved to Sweden where they had a son, born in 2004. Their son has Danish nationality due to his father's nationality.

Law – Article 8: In so far as the instant case concerned the refusal to grant family reunion in Denmark, it was to be seen as one involving an allegation of failure on the part of the respondent State to comply with a positive obligation. While the first applicant had strong ties to Togo, Ghana and Denmark, his wife had very strong ties to Ghana but no ties to Denmark apart from having

married the first applicant who lived in Denmark and had Danish citizenship. The applicants had never been given any assurances by the Danish authorities that the second applicant would be granted a right of residence in Denmark. The attachment requirement having entered into force in 2002, the couple could not have been unaware when they married – in 2003 – that the second applicant's immigration status would make any family life in Denmark precarious for them from the outset. Moreover, the second applicant could not have expected any right of residence by simply entering the country on a tourist visa. On the other hand, the first applicant himself had stated that, if he obtained paid employment in Ghana, he and his family could settle there. Therefore, the domestic courts had found that the refusal to grant the second applicant a residence permit in Denmark had not prevented the couple from exercising their right to family life in Ghana or any other country. In the light of the above, the European Court did not find that the domestic authorities had acted arbitrarily or otherwise transgressed their margin of appreciation when seeking to strike a fair balance between the public interest in ensuring effective immigration control, on the one hand, and the applicants' need for family reunion in Denmark, on the other.

Conclusion: no violation (unanimously).

Article 14 in conjunction with Article 8: The applicants had failed to substantiate having been discriminated against on the basis of race or ethnic origin in the application of the 28-year rule, given that non-Danish nationals who had been born and/or raised in Denmark and who had stayed lawfully in the country for 28 years, were exempted from the attachment requirement. The Court did find, however, that there had been a difference in treatment between the first applicant who had been a Danish national for fewer than 28 years and persons who had been Danish nationals for more than 28 years. The aim of the 28-year rule was to distinguish a group of nationals who, seen from a general perspective, had lasting and long ties with Denmark so that it would be unproblematic to grant family reunion with a foreign spouse because it would normally be possible for such spouse to be successfully integrated into Danish society. While that aim was legitimate, it appeared excessively strict to conclude that that in order to be presumed to have strong ties with a country, one had to have had direct ties with that country for at least 28 years. The Court was not convinced that the strength of one's ties continuously and significantly increased after, for example, 10, 15 or 20 years of stay in a country. Moreover, all persons born Danish nationals were exempted from the attachment requirement as soon as they turned 28 years old, whether or not they had lived in Denmark, and whether or not they had retained strong ties with Denmark. The 28-year rule thus affected persons who only acquired Danish nationality later in life with a far greater impact than persons born with Danish nationality. In fact, the chances of reuniting with a foreign spouse in Denmark, and creating a family there, were significantly poorer and almost illusory where the residing partner acquired Danish citizenship as an adult, since the family either had to wait 28 years, or create such strong aggregate bonds in other ways to Denmark, despite being separated, as to fulfil the attachment requirement. As regards the proportionality of the measure, the applicants' aggregate ties to Denmark were clearly not stronger than their ties to another country (Ghana). Moreover, the first applicant had been a Danish national for less than two years when he was refused family reunion. The refusal to exempt the applicant from the attachment requirement after such a short time could not, in the Court's view, be considered disproportionate to the above mentioned legitimate aim of the 28-year rule.

Conclusion: no violation (four votes to three).

Discrimination (Article 9)

Refusal of full exemption from rates in respect of Mormon temple that was not open to the general public: *no violation*

The Church of Jesus Christ of Latter-Day Saints v. the United Kingdom - 7552/09
Judgment 4.3.2014 [Section IV]

Facts – In addition to a number of local chapels and larger chapels known as stake centres, the applicant Church has two temples in the United Kingdom, one of which is in Preston. The temple is considered by members of the Church (Mormons) to be the house of the Lord and one of the holiest places on earth. Ceremonies held there carry profound theological significance and it is a tenet of the Mormon faith that only the most devout members, those who hold a current "recommend", are entitled to enter.

In 1998 the Preston temple was listed as a building used for charitable purposes and therefore retained a liability to pay only 20% rates, but was refused

the full statutory tax exemption reserved under the Local Government Finance Act 1988 for places of "public religious worship". The valuation officer accepted, however, that the stake centre on the same site was a "place of public religious worship" entitled to exemption. In 2001 the applicant applied also to have the temple removed from the rating list, but their claim to exemption was ultimately refused, after the House of Lords held that as a matter of domestic law a place of "public religious worship" had to be one that was open to the general public.

In its application to the European Court, the applicant Church complained that the refusal to grant its Preston temple the exemption from business rates accorded to places of public religious worship amounted to discrimination on religious grounds, in breach of Article 14 of the Convention taken in conjunction with Article 9.

Law – Article 14 in conjunction with Article 9: It was unnecessary for the Court to decide whether, in the particular circumstances, the applicant's complaint about the application to it of the tax exemption legislation fell within the ambit of Article 9, so that Article 14 applied, since the claim of discrimination was in any event unfounded on the merits.

Firstly, on the facts, it was open to doubt whether the refusal to accord an exemption in respect of the applicant Church's temple in Preston gave rise to any difference of treatment of comparable groups, given that the tax law in question applied in the same way to, and produced the same result in relation to, all religious organisations, including the Church of England in respect of its private chapels. Nor was the Court convinced that the applicant Church was in a significantly different position from other churches because of its doctrine concerning worship in its temples, so as to call for differential treatment involving exemption from the contested tax, since other faiths likewise did not allow access of the public to certain of their places of worship for doctrinal reasons.

Secondly, in the Court's view, any prejudice caused to the applicant Church by the operation of the tax law was reasonably and objectively justified. The rates exemption was first conferred on places of public religious worship by the Poor Rate Exemption Act 1833 in order to benefit religious buildings which provided a service to the general public and where the church in question "worshipped with open doors". The House of Lords had held that there was a public benefit in granting the general public access to religious services and that openness in religious practice could dispel suspicions and contradict prejudices in a multi-religious society. The policy of using rates exemptions to promote the public benefit in enjoying access to religious services and buildings could be characterised as one of general social strategy, in respect of which the State authorities had a wide margin of discretion. The consequences of refusing the exemption had not been disproportionate: all the applicant's places of worship that were open to the public, such as its chapels and stake centres (including the stake centre on the same site in Preston), had the benefit of the full exemption; the temple itself, which was not open to the public, did not attract the full exemption, but did benefit from an 80% reduction in rates in view of its use for charitable purposes; the legislation prompting the contested measure did not go to the legitimacy of Mormon beliefs, but was instead neutral, being the same for all religious groups as regards the manifestation of religious beliefs in private and producing exactly the same negative consequences for the officially established Christian Church in England (the Church of England) as far as private chapels were concerned; lastly, the remaining liability to rates was relatively low in monetary terms. In conclusion, in so far as any difference of treatment between religious groups in comparable situations could be said to have been established, it had a reasonable and objective justification.

Conclusion: no violation (unanimously).

ARTICLE 33

Inter-State cases

Contracting Parties called upon to refrain from taking any measures, in particular military actions, putting at risk life and health of the civilian population: *interim measure applied*

Ukraine v. Russia - 20958/14
[Section III]

(See Rule 39 of the Rules of Court below, page 24)

ARTICLE 35

Article 35 § 1

Exhaustion of domestic remedies
Effective domestic remedy – Serbia
Six-month period

Failure to raise allegation of discrimination either expressly or in substance in proceedings before Constitutional Court: *preliminary objection upheld*

Vučković and Others v. Serbia - 17153/11 et al.
Judgment (preliminary objections)
25.3.2014 [GC]

Facts – The applicants were former Yugoslav army reservists who claimed entitlement to *per diem* allowances in respect of military service they had performed between March and June 1999. The Serbian Government initially rejected the claims but, after protracted negotiations, in 2008 agreed to pay allowances to those reservists who resided in "underdeveloped" municipalities. The applicants did not qualify for payment under the terms of this agreement as they were not resident in the municipalities concerned and so, in March 2009, brought civil claims for payment under the Rules on Travel and Other Expenses in the Yugoslav Army. They also alleged that the terms of the 2008 agreement were discriminatory. However, their claims were rejected at first instance and on appeal as being out of time. The applicants then lodged an appeal with the Constitutional Court challenging the application of the statutory limitation period in their cases. Although the Constitutional Court ruled in their favour as regards their complaints of judicial inconsistency in the application of the limitation period, it ruled that publication of its decision in the Official Gazette constituted sufficient redress. In the meantime in a number of similar cases that were decided between 2002 and early March 2009, first-instance and appellate courts across Serbia upheld certain reservists' claims which had not been declared time-barred.

In their application to the European Court, the applicants complained of discrimination concerning the payment of the *per diems* following the 2008 agreement. In a judgment of 28 August 2012 a Chamber of the Court held by six votes to one that there had been a violation of Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1. Before the Grand Chamber the respondent Government argued that the applicants had not exhausted domestic remedies as they had failed to raise the issue of alleged discrimination before the Constitutional Court.

Law – Article 35 § 1: In so far as there exists at the national level a remedy enabling the domestic courts to address, at least in substance, the argument of a violation of a given Convention right, it is that remedy which should be exhausted. It is not sufficient that the applicant may have unsuccessfully exercised another remedy which could have overturned the impugned measure on other grounds not connected with the complaint of a violation of a Convention right. It is the Convention complaint which must have been aired at national level for there to have been exhaustion of "effective remedies".

The Grand Chamber was satisfied that at the relevant time an appeal to the civil courts had constituted an effective domestic remedy for the purposes of Article 35 § 1 of the Convention. However, although the applicants had made use of that remedy, they had failed to comply with the applicable national prescription rules, which was one of the conditions that should normally be fulfilled in order to meet the requirement of exhaustion of national remedies. Although they had had gone on to challenge the civil courts' application of the rules on statutory limitation in the Constitutional Court, they had not raised their discrimination complaint before that court, either expressly or in substance.

The Grand Chamber took note of three decisions the Constitutional Court had taken in comparable cases. In none of these cases had the Constitutional Court declined jurisdiction to examine the complaints made under Article 21 of the Constitution in relation to the allegedly discriminatory effects of the 2008 agreement. In two of them it had omitted to deal with the issue but had upheld the constitutional appeals in question on other grounds and in the remaining case, it had not determined the complaint because the appellants had failed to invoke Article 21 in conjunction with another constitutional provision.

In the Grand Chamber's view, there was therefore nothing to show that the constitutional remedy would not have offered a reasonable prospect of success in respect of the applicants' discrimination complaint had they sought to properly raise it before the Constitutional Court. Where legal systems provided constitutional protection of fundamental human rights and freedoms, it was in principle up to the aggrieved individual to test the extent of that protection and allow the national courts to develop those rights by way of inter-

pretation. The existence of mere doubts as to the prospects of success of a particular remedy was not a valid reason for failing to exhaust that avenue of redress.

Consequently, although the civil and constitutional remedies had been sufficient and available to provide redress in respect of the applicants' discrimination complaint, they had failed to exhaust these remedies.

Conclusion: preliminary objection upheld (fourteen votes to three).

ARTICLE 41

Just satisfaction

Award in respect of pecuniary damage incurred by the applicants as a result of unlawful removal from the Register of Permanent Residents

Kurić and Others v. Slovenia - 26828/06
Judgment (just satisfaction) 12.3.2014 [GC]

Facts – In a judgment delivered on 26 June 2012 ("the principal judgment") the Grand Chamber held, unanimously, that there had been violations of Article 8 and Article 13 of the Convention, which essentially originated in the prolonged failure of the Slovenian authorities to regularise the applicants' residence status following their unlawful "erasure" from the Register of Permanent Residents and to provide them with adequate redress. As a result, not only the applicants in this particular case, but also a large number of other persons had been and were still affected by that measure. The Court decided to apply the pilot-judgment procedure under Article 46 of the Convention and Rule 61 of the Rules of Court and ordered the respondent State to set up as a general measure an *ad hoc* domestic compensation scheme within one year of the delivery of the principal judgment.

Law

Article 41: The Grand Chamber stressed that the six applicants, who did not possess any Slovenian identity documents, had as a result of the "erasure" been left in a legal vacuum, and therefore in a situation of vulnerability, legal uncertainty and insecurity for a lengthy period of time. The loss of legal status resulting from their "erasure" had entailed significant material consequences. Given that the applicants had been "erased" without prior notification and had learned of their situation only incidentally, there was a multi-layered causal link between the unlawful measure and the pecuniary damage sustained.

Accordingly, the Court examined the applicants' entitlement to just satisfaction in respect of pecuniary damage under two categories. To compensate for loss of past income, it made awards in respect of social allowances (to each applicant) and child benefits (to two applicants). No award was made in respect of housing allowance because the domestic law in force since 2003 conditioned payment of the allowance on the possession of Slovenian citizenship and the applicants had failed to prove that they would have fulfilled the conditions under the previous legislation. As regards the second category of pecuniary damage – loss of future income – no awards were made in respect of pension rights as the granting of the applicants' claims in respect of social allowances precluded any claim in this regard.

Article 46: The Court noted that the respondent Government had failed to set up an *ad hoc* domestic compensation scheme within one year from the date of the principal judgment. However, they had not disputed the necessity of general measures at national level. In this context, the Grand Chamber had due regard to the fact that the Act on the setting up of an *ad hoc* compensation scheme was to become applicable as of 18 June 2014. This statute was to introduce compensation on the basis of a lump sum for each month of the "erasure" and the possibility of claiming additional compensation. This solution appeared to be appropriate.

Lastly, in the context of systemic, structural or similar violations, the potential inflow of future cases was also an important consideration in terms of preventing the accumulation of repetitive cases. Moreover, there were currently some 65 cases involving more than 1,000 applicants pending before the Court. Swift implementation of the judgment was therefore of the utmost importance.

(See also *Kurić and Others v. Slovenia* [GC], 26828/06, 26 June 2012, Information Note 153)

Compensation for expropriation based on equitable considerations

Vistiņš and Perepjolkins v. Latvia - 71243/01
Judgment (just satisfaction) 25.3.2014 [GC]

Facts – Under contracts of donation signed in 1994 the applicants acquired five plots of land on an island that is mainly occupied by port facilities and

is part of the city of Riga. In the 1990s the applicants' properties were expropriated in connection with the enlargement of the Free Port of Riga in accordance with a new special law that derogated from the normal rules of expropriation. The compensation awarded to the applicants was fixed at EUR 850 and EUR 13,500 respectively. They were also awarded, respectively, the equivalent of EUR 85,000 and EUR 593,150 in rent arrears for the use of their land. Following its incorporation into the Port of Riga, the value of the first applicant's land was estimated at EUR 900,000 and the value of the second applicant's land at a total of EUR 5,000,000.

In a judgment on the merits delivered on 25 October 2012, the Grand Chamber of the Court found, by twelve votes to five, a violation of Article 1 of Protocol No. 1 owing to the unjustified disproportion between the official cadastral value of the land and the compensation awarded to the applicants (see Information Note 156).

Law – Article 41

(a) *Pecuniary damage* – Since in the principal judgment the Court had not declared the expropriation incompatible with the principle of legality, the criteria laid down in *Guiso-Gallisay v. Italy*, could not be transposed to the instant case since they applied to expropriations that were unlawful *per se*. The redress to be provided by the State was thus limited to the payment of appropriate compensation which should have been awarded at the time of the expropriation. By contrast, there was no basis on which the applicants could claim any loss of income (*lucrum cessans*) in respect of the period subsequent to the expropriation. That part of their claims was rejected.

The compensation to be determined in the instant case would not have to reflect the idea of a total elimination of the consequences of the impugned interference, nor the full value of the property. The Court deemed it appropriate to fix sums that were, as far as possible, "reasonably related" to the market value of the plots of land. It also decided to have recourse to equitable considerations in calculating the relevant sums, whilst taking into account the findings in the principal judgment to the effect that the Latvian authorities had been justified in deciding not to compensate the applicants for the full market value of the expropriated property and that much lower amounts could suffice to fulfil the requirements of Article 1 of Protocol No. 1. The Court thus reduced by 75% the economically-based effective average cadastral value per square metre of the land in question, established on the basis of an expert report. The amounts already paid to the applicants by way of compensation at domestic level were deducted. The sums were adjusted to offset the effects of inflation and statutory interest was added. Lastly, the Court did not see any reason to deduct from these sums the rent arrears that had been paid to the applicants at national level, as their claim derived from a separate legal basis from that of the compensation for expropriation.

The first applicant was thus awarded EUR 339,391 and the second applicant EUR 871,271 in respect of pecuniary damage.

(b) *Non-pecuniary damage* – EUR 3,000 to each applicant.

(See *Guiso-Gallisay v. Italy* (just satisfaction) [GC], 58858/00, 22 December 2009, Information Note 125)

ARTICLE 46

Pilot judgment – General measures

Respondent State required to introduce and implement *ad hoc* domestic compensation scheme

Kurić and Others v. Slovenia - 26828/06
Judgment (just satisfaction) 12.3.2014 [GC]

(See Article 41 above, page 21)

ARTICLE 3 OF PROTOCOL No. 1

Stand for election

Eligibility requirement of 100,000 signatures for independent candidates in European elections: *inadmissible*

Mihaela Mihai Neagu v. Romania - 66345/09
Decision 6.3.2014 [Section III]

Facts – Wishing to stand for the elections to the European Parliament on 7 June 2009, the applicant submitted her candidature to the central electoral office, accompanied by signatures of support from 15,000 persons registered on the electoral rolls. In April 2009 the office dismissed her candidature on the ground that she did not have enough signatures as Law no. 33 of 16 January 2007 on

the organisation of elections to the European Parliament required independent candidates to submit 100,000 signatures of support. The applicant challenged that decision before the county court, which found against her after finding that the central electoral office's decision complied with the statutory provisions. The applicant appealed on points of law to the appeal court. She reiterated the arguments put forward at first instance and raised a plea of unconstitutionality with regard to the section of the law requiring 100,000 signatures of support for independent candidates. On 12 May 2009 the Constitutional Court examined the plea and ruled that the impugned section was not contrary to the Constitution. By a final judgment of 3 June 2009, the appeal court, relying on the Constitutional Court's decision, dismissed the appeal on points of law submitted by the applicant and confirmed that the decision to reject her candidature had been lawful.

Law – Article 3 of Protocol No. 1: The Court had to determine whether the eligibility requirement for standing for election, criticised by the applicant, had pursued a legitimate aim and whether there was a reasonable relationship of proportionality between the means employed and the aim pursued.

The aim of the measure in question was to make a reasonable selection from among the candidates, in order to ensure their representative character in the European Parliament and to eliminate possible frivolous candidatures. Like the Constitutional Court, the Court considered that this was the result of a choice made by the legislature, and grounded on political and institutional criteria.

With regard to the proportionality between the means employed and the aim pursued, the 100,000 signatures required in order to submit a valid independent candidature for one of the thirty-three seats assigned to Romania in the European Parliament represented about 0.55% of the total number of citizens registered on the electoral rolls. The obligation to have collected a high number of signatures in order to be able to submit a candidature could deprive independent candidates of the possibility to represent part of the electorate. However, that circumstance alone was not decisive and it had to be analysed in the particular circumstances of the case.

The percentage of signatures required in relation to the number of registered electors was lower than the maximum 1% threshold recommended by the Venice Commission. Thus, the impugned eligibility requirement could not be considered excessive. Indeed, two independent candidates collected the required number of signatures for the elections held in June 2009, and one of them obtained a number of votes higher than the electoral coefficient.

European Union law gave member States a wide measure of discretion with regard to the electoral procedures for the European Parliament. Some member States required a certain number of signatures of support in order to lodge a candidature, while others restricted the right to stand in the European elections to parties or similar organisations.

Furthermore, it was essentially through the national courts that European Union law provided a remedy to individuals against a member State for a breach of EU law. In the instant case, electoral law no. 33/2007 transposed into domestic legislation EU law concerning the election of members of the European Parliament, and the applicant had had an effective remedy before the domestic courts and the Constitutional Court in order to challenge the central electoral office's decision. During those proceedings, the applicant had been able to set out her complaints concerning the alleged unfairness and unlawfulness of the electoral process. In the absence of arbitrariness, the Court could not call into question the findings reached by those courts. Lastly, the electoral dispute had been brought before several levels of jurisdiction, and had been settled at final instance before the elections were held. Accordingly, the applicant could not allege that this remedy had lacked the effectiveness required by Article 3 of Protocol No. 1. Equally, given the role and status of political parties as representative bodies, the requirement concerning the number of signatures needed to stand as an independent candidate was justified and had not been discriminatory.

In the light of the principles established by its case-law, and in view of the considerable latitude left by European Union law to the Member States in establishing the criteria governing eligibility to stand for election, the Court considered that the number of signatures required to submit an independent candidature had not entailed a breach of the right relied upon by the applicant.

Conclusion: inadmissible (manifestly ill-founded).

ARTICLE 4 OF PROTOCOL No. 7

Right not to be tried or punished twice

Administrative penalties and criminal proceedings arising out of same set of facts: *violation*

Grande Stevens and Others v. Italy - 18640/10 et al.
Judgment 4.3.2014 [Section II]

(See Article 6 § 1 (criminal) above, page 12)

RULE 39 OF THE RULES OF COURT

Interim measures

Contracting Parties called upon to refrain from taking any measures, in particular military action, putting at risk life and health of the civilian population: *interim measure applied*

Ukraine v. Russia - 20958/14
[Section III]

On 13 March 2014 the Government of Ukraine lodged an inter-State application under Article 33. They also submitted a request under Rule 39 of the Rules of Court for an interim measure indicating to the Russian Government, among other things, that it should refrain from measures which might threaten the life and health of the civilian population on the territory of Ukraine.

Considering that the current situation gave rise to a continuing risk of serious violations of the Convention, the President of the Third Section decided to apply Rule 39 of the Rules of Court. With a view to preventing such violations and pursuant to Rule 39, the President called upon both Contracting Parties concerned to refrain from taking any measures, in particular military actions, which might entail breaches of the Convention rights of the civilian population, including putting their life and health at risk, and to comply with their engagements under the Convention, notably in respect of Articles 2 and 3. Both States were also asked to inform the Court as soon as possible of the measures taken to ensure that the Convention is fully complied with.

REFERRAL TO THE GRAND CHAMBER

Article 43 § 2

Bouyid v. Belgium - 23380/09
Judgment 21.11.2013 [Section V]

(See Article 3 above, page 7)

Blokhin v. Russia - 47152/06
Judgment 14.11.2013 [Section I]

(See Article 5 § 1 above, page 9)

RELINQUISHMENT IN FAVOUR OF THE GRAND CHAMBER

Article 30

Zakharov v. Russia - 47143/06
[Section I]

(See Article 8 above, page 16)

RECENT PUBLICATIONS

Annual Report 2013 of the European Court of Human Rights

The Court has just issued the printed version of its Annual Report for 2013. This report contains a wealth of statistical and substantive information such as the Jurisconsult's short survey of the main judgments and decisions delivered by the Court in 2013 as well as a selection in list form of the most significant judgments, decisions and communicated cases. An electronic version is available on the Court's Internet site (<www.echr.coe.int> – Reports).

Research report in Armenian

The research report entitled "The new admissibility criterion under Article 35 § 3 (b) of the Convention: Case-law principles two years on" has just been translated into Armenian, thanks to a joint European Union/Council of Europe programme. This version – and the 3 existing language versions: English, French and Bulgarian – can be downloaded from the Court's Internet site (<www.echr.coe.int> – Publications).

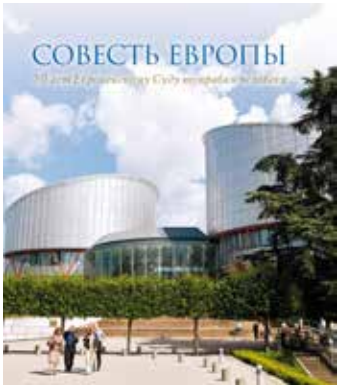
Հետազոտության զեկույց – Ընդունելիության նոր չափանիշը Կոնվենցիայի 35-րդ հոդվածի 3-րդ կետի «բ» ենթակետի համաձայն. նախադեպային իրավունքի սկզբունքները երկու տարի շարունակ (hye)

Court's Anniversary Book in Russian

Following the first edition of 2010 published in English and in French, the Russian edition of the Anniversary Book was launched in April 2013. It was published with updated and additional content tailored to the Russian-speaking readership in co-operation with iRGa 5 Ltd (Moscow) and Third Millennium Information Ltd (London). It can now be downloaded from the Court's Internet site (<www.echr.coe.int> – Publications).

Совесть Европы: 50 лет Европейскому Суду по правам человека (rus)

Пресс-релиз (rus)



Human rights and policing

The European Convention on Human Rights and policing v. A handbook for police officers and other law enforcement officials has been published in the framework of a Joint Programme between the European Union and the Council of Europe. It is a tool for the police and other State authorities to prevent and fight police misconduct or impunity and to uphold human rights. It can be downloaded from the Court's Internet site (<www.echr.coe.int> – Publications).

The European Convention on Human Rights and policing (eng)